BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	Case 6 No. 49862 A-5134
TEAMSTERS LOCAL UNION NO. 43	
and	Case 7 No. 49863 A-5135
HRIBAR TRUCKING, INC.	

Appearances:

Mr. John J. Brennan, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, Milwaukee, WI, 53212, appearing on behalf of Teamsters Local Union No. 43.

Mr. Lee R. Hribar, President, at hearing and on brief, and Ms. Lori Hribar, Vice President, at hearing, Hribar Trucking, Inc., 1521 Waukesha Road, Caledonia, WI 53108, appearing on behalf of Hribar Trucking, Inc.

ARBITRATION AWARD

Teamsters Local Union No. 43 (Union) and Hribar Trucking, Inc., (Company or Employer) have been parties to a collective bargaining agreement at all times relevant to this matter. Said agreement provides for arbitration of unresolved grievances by an arbitrator appointed by the Wisconsin Employment Relations Commission (Commission). On September 24, 1993, the Union filed with the Commission a request to initiate grievance arbitration in each of these matters. The Company concurred in said requests. The Commission appointed James W. Engmann, a member of its staff, as the impartial arbitrator in these matters. The Union and the Company agreed to consolidate both cases for hearing and decision. A hearing was held on November 30, 1993, in Caledonia, Wisconsin, at which time both parties were afforded the opportunity to present evidence and to make arguments as they wished. The hearing was not transcribed. The parties filed briefs, the last of which was January 4, 1994. Decision in these matters was put on hold pending the efforts of the parties to resolve these matters between themselves. These efforts were unsuccessful. The parties waived the filing of reply briefs. Full consideration has been given the evidence and arguments of the parties in reaching this decision.

STATEMENT OF THE FACTS

On August 24, 1993, Christopher Lampton and Joe Ryddner were dispatched by the Company to haul limestone from a pit in Racine, Wisconsin, to Zion, Illinois. Both employes were stopped that day by Lake County, Illinois, Deputy Sheriffs for driving overload. Lampton was cited at 79,080 pounds and Ryddner at 79,940 pounds. The citation and fine for Lampton was $1,057 and for Ryddner $1223. Both men requested the Company to pay the fines. The Company refused. Lampton and Ryddner both filed a grievance alleging that the Company should pay the fines. The grievance was processed through the procedure established by the collective bargaining agreement without resolution, and is properly before this arbitrator.

PERTINENT CONTRACT LANGUAGE

ARTICLE 1

INTENT AND PURPOSE

1.1) In order to insure a day's work for a day's pay, to maintain the Employer's ability to compete successfully in the trucking industry, to prevent strikes and lockouts and to insure a peaceful adjustment and settlement of any and all grievances, disputes and differences which may arise between any of the parties to this Agreement without stoppage of work, and to bring about, as near as is possible, uniform conditions that will tend to stabilize and encourage the harmonious cooperation between the Employer and the employees, both parties have entered into this Agreement.

. . .

ARTICLE 5
MANAGEMENT RIGHTS

5.1) Except as otherwise specifically provided in this Agreement, the Employer has the sole and exclusive right to exercise all the rights and functions of management. It is understood and agreed that any of the rights, powers, and authority that the Employer had prior to signing this Agreement are retained by the Employer, except those rights which are specifically abridged, granted or delegated to others, or modified by this Agreement. The Employer is not subject to any duties not expressly assumed in this Agreement. This Agreement embodies all restrictions on the Employer's rights.

5.2) The Union agrees that the Employer has the right to make such reasonable rules and regulations not in conflict with this Agreement as it may, from time to time, deem best for the purpose of maintaining order, safety and/or effective and efficient operations of the Employer's business.

. . .

ARTICLE 7
GRIEVANCE PROCEDURE

. . .

7.3) The sole function of the arbitrator shall be to determine whether or not the rights of the employee, as set forth in the grievance, have been violated by the Employer. The arbitrator shall have no authority to add to, subtract from or modify this Agreement in any way nor to substitute his discretion for the discretion of the Employer unless such discretion is manifestly unjust. . . .

. . .

ARTICLE 21
WORK RULES

21.1) The Employer may, from time to time, adopt reasonable Work Rules not in conflict with this Agreement.

PERTINENT WORK RULES

The Pit - It is important to build a good rapport with the employees of the pit. Remember that we need their material in order to perform our job. If you create a good working relationship with the pit, you will find your job to be much easier and more pleasant. The following pointers should help you at the pit:

1. Load truck according to the legal load limit.
2. Overloads are to be shoveled off. Drivers are responsible for paying all overload fines.
3. Check tires each load and remove all loose material from truck and pup.
4. Drivers are to have a signed ticket for each load.
5. Uphold the reputation of our company. You have an important job to do and should be proud of it.

ISSUE

The parties stipulated that the arbitrator would frame the Issue in the Award.

The Union would frame the Issue as follows:

> Is the Employer in violation of the parties' agreements by dispatching drivers at overload weights and requiring drivers to pay the penalty?
>
> If so, what is the remedy?

The Employer would frame the issue as follows:

> Is there a violation of the contract?

I frame the Issue as follows:

> Did the Employer violate the collective bargaining agreement by refusing to pay the fines incurred by the Grievants?
>
> If so, what is the appropriate remedy?

POSITIONS OF THE PARTIES

Union

The Union argues that since the work rules are expressly incorporated into the labor agreement, and the work rules as applied are manifestly unjust, this arbitrator has full authority to require the Employer to reimburse the Grievants for the fines in addition to any attorney's fees they have expended defending the fines which the Employer refused to defend on their behalf.

Specifically, the Union argues that when the parties negotiated the work rule regarding load limit, it was the Union's understanding that the "legal load limit" meant the load limit of the vehicle itself; that if the driver overloaded his vehicle, he would be responsible for paying that fine; that, in this case, the vehicles themselves were not overloaded but were allegedly beyond the load limit for the highway on which they were driving; that the Employer did not rebut this; that certain drivers have refused to haul to certain sites without receiving confirmation from the Company that it would be responsible for the fines; that both Grievants have done this; that several employes have told the Company that they needed permits on certain roads or they would not travel those roads anymore; that the Company secured the necessary permits; and that these instances show that the work rules do not mean what the Company claims they mean.

The Union also argues that the Company has told the employes that it is the drivers' responsibility to check with the Company should they have any questions on legal load limits; that the drivers have repeatedly done this; that the Company has told drivers that the legal load limit was 80,000 pounds in Illinois, up to five miles off the state highway; that the Grievants were dispatched by the Company at 80,000 pounds on the day in question; and that the Grievants followed the dispatch and were cited for overloads.

Finally, the Union argues that it is manifestly unjust for the Employer to require its employes to violate the law and then subsequently require them to be responsible for the citation and substantial fine which results; and that the Company should be made to pay any fine which results and, if no fine results, the Company should still pay the Grievants for their expenses in securing the services of an attorney to defend these fines.

Employer

The Employer argues that the Union's August 30, 1993, grievances should be denied because the Company has not violated the collective bargaining agreement; that the Union failed to prove its case that the Company violated a specific provision of the contract; that the work rule in question is reasonably designed to ensure efficient and safe operations; that the Company and the Union negotiated and agreed to the work rule prior to its implementation; that by agreeing to the work rule through negotiations, the Union demonstrated its belief that the rule was reasonable; that to uphold the instant grievances would be to deny the Company a right it secured in collective bargaining that is an important part of its over-all business scheme; that enforcement of the rule in the present case is also reasonable; that both Grievants were aware of the work rule holding employes responsible for paying overload citations; and that, therefore, the Grievants should be held responsible for their own abuse of discretion.

The Employer also argues the experienced truck drivers are aware of legal load limits for particular routes; that any experienced truck driver knows access to the highways for motor carriers is limited by the road's legal load limit; that, as such, experienced drivers are also aware that fines may be imposed when a vehicle carries weight in excess of a highways's legal weight limit; that a driver may easily determine a road's legal load limit through the use of a designated state truck route system map; and that when a driver becomes aware that use of a road necessary for delivery is limited by its load limit, a use permit may be used to access of the road.

In conclusion, the Employer argues that the arbitrator should deny both grievances filed by the Union; that the Employer and Union negotiated and agreed to holding drivers responsible for citations received for driving vehicles over their legal load limits; that this work rule was reasonably adopted to balance the Company's incentive pay system which is based on speed and weight with the legal load limits of the highways; that the Grievants were aware of this work rule; that by overloading their vehicles, the drivers gambled they would not be stopped and issued citations; and that the arbitrator should deny the grievances and hold the drivers responsible for their own gambling.

DISCUSSION

This is a difficult case to decide as the Union's argument rests on whether the application of the work rule in this situation is "manifestly unjust," not an easy concept to define.

Initially, though, the Union argues that the work rule applies only to the legal load limit of the truck in question and, therefore, is not applicable here. I disagree. I have no doubts that the Employer's concern in this matter was not only for overloading a truck in regard to the truck's capacity, but also in regard to the road's capacity.

Indeed, this is supported by a reading of the entire work rule. While paragraph 1 states that a driver should load a truck "according to the legal load limit," paragraph 2 states that "Drivers are responsible for paying all overload fines" (emphasis added). Overload is a broad term, including overloading of the truck both in terms of its own capacity and the capacity of the road it travels. "All" includes both. So I am convinced that the work rule applies to this situation.

The question then becomes whether the application of the work rule in this case is "manifestly unjust".

There is conflicting testimony as to what the Company told the drivers in terms of the legal load limit, and I am disturbed if the Company is directing the Grievants to carry illegal loads.

Yet, it is clear from the testimony that when a driver questions a load limit, the Company has either gotten the necessary use permits or agreed to pay any fines that are incurred.

The fact that the Company, at times, has agreed to pay the fines does not cut into its argument as to what the work rule means, as the Union argues; indeed, it supports the Company's point of view for it shows that, absent agreement by the Company, fines are the responsibility of the driver. Indeed, the drivers involved here have both been involved in situations in which the Company agreed to pay fines if any were incurred.

But such is not the case here. In this situation, the drivers did not question the load limit, and the Company did not agree to pay any fines that were incurred.

Absent such an agreement, the work rule applies, in which case the "drivers are responsible for paying all overload fines." I do not find the work rule "manifestly unjust" on its face, nor do I find it so as applied in these cases. The record shows that if the Company had been confronted about the load limit, it would have sought a use permit or would have agreed to pay the possible fines. Since this option was available to the grievants, I find no violation of the agreement.

Therefore, for the reasons stated above, the Arbitrator issues the following

AWARD

1. That the Employer did not violate the collective bargaining agreement by refusing to pay the fines incurred by the Grievants?

2. That the Grievances are hereby denied and dismissed.

Dated at Madison, Wisconsin, this 17th day of November, 1994.

By James W. Engmann /s/

James W. Engmann, Arbitrator