BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 2150

and

WISCONSIN ELECTRIC POWER COMPANY

Case 47
No. 50587
A-5184

Appearances:

Previant, Goldberg, Uelman, Gratz, Miller & Brueggeman, S.C., Post Office Box 12993, Milwaukee, Wisconsin 53212, by Ms. Naomi E. Eisman, Attorney at Law, appearing on behalf of IBEW Local 2150.

Ms. Lynn English, Attorney at Law, Post Office Box 2046, Milwaukee, Wisconsin 53201, appearing on behalf of the Wisconsin Electric Power Company.

ARBITRATION AWARD

The International Brotherhood of Electrical Workers, Local 2150 (hereinafter referred to as the Union) and the Wisconsin Electric Power Company (hereinafter referred to as the Company) jointly requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen of its staff to serve as Chairman of an Arbitration Board to hear and decide a dispute concerning travel time for a service crew temporarily assigned to work in the Milwaukee area. The Commission designated Arbitrator Nielsen. The Union designated Timm Driscoll as its member of the panel, and the Company designated John Barrett. A hearing was held in Milwaukee, Wisconsin on May 20, 1994, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. A transcript was made, which was received by the Chairman on June 15, 1994. The parties submitted post-hearing briefs, and the record was closed on August 15, 1994.

Now, having considered the evidence, the arguments of the parties and the record as a whole, the Arbitration Board makes the following Award.

I. Issue

The parties agreed that the following issue should be determined:

> Did the Company violate the collective bargaining agreement when it altered the grievants' time sheets for July 1 and July 2, 1993? If so, what is the appropriate remedy?

II. Relevant Contract Provisions

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ARTICLE IX
MANAGEMENT

Section 9.1

The right to employ, promote, discipline and discharge employees and the management of the property and business are reserved by and shall be vested in the Company, except as modified by the terms of this Agreement. . . .

. . .

ARTICLE XI
HOURS AND WORKING CONDITIONS

. . .

Section 11.8

Time allowed employees for traveling on Company business, and for which wages will be paid, shall be governed by the following rules:

Travel on Regular Work

(a) Except as provided under rules governing travel on emergency work, and except as provided for designated employees in part (b) below, no allowance shall be granted for time spent in traveling from the employee's home to his/her established headquarters or from headquarters to home. Time spent in traveling from one job to another during the scheduled hours of the working day shall be paid for at the wage rate applicable to the work.

. . .

Travel on Emergency Work

. . .

(c) Employees called out on emergency work, outside of the scheduled hours, shall be paid from the time they leave their residences until the time they return to their residences, including all travel time, at the rate of time and one-half, except for Sundays and holidays listed in Section 11.5 of this Article which shall be at double time rate.

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SPECIAL AGREEMENT REGARDING
EMPLOYEE EXPENSE REIMBURSEMENT PLAN
FOR OUT-OF-TOWN ASSIGNMENTS

This Special Agreement is by and between WISCONSIN ELECTRIC POWER COMPANY, WISCONSIN NATURAL GAS COMPANY (the "Companies" or the "Company", as applicable) and LOCAL UNION NO. 2150, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ALL EMPLOYEE UNITS (the "Union"). It sets forth the Employee Expense Reimbursement Plan applicable in lieu of reimbursement of actual expenses for regular employees represented by the Union when they are temporarily assigned to perform a work assignment (including an assignment for training purposes) at a location which is substantially distant from their regular headquarters. Part A of the Plan is applicable for assignments lasting longer than one week. Part B of the Plan is applicable at the discretion of the Companies for assignments lasting up to one week. [The Plan is not applicable, however, for those employees assigned to the Point Beach Nuclear Power Plant, either as regular employees or as part of the Peak Maintenance work force.] Notwithstanding any provision of any Labor Agreement applicable to such employees to the contrary, the arrangements set forth below will be applied as follows:

. . .

A. For Out-of-Town Assignments of More Than One Week

. . .

(2) Each employee will be paid for authorized travel time required, both for the initial trip from the regular headquarters to the temporary work location and for the final trip back to the

regular headquarters following completion of the out-of-town assignment. Such authorized travel time will be reported as time worked and will be paid at the applicable straight time or overtime wage rate, as appropriate, depending on whether the authorized travel time occurs within or outside of basic scheduled hours. There will be no other wage payment for employee travel time during the out-of-town assignment, except for authorized travel which occurs within basic scheduled hours.

. . .

B. For Out-of-Town Assignments of Up to One Week (or when employees are directed to return to their regular headquarters at the end of each week).

(1) An employee assigned under this part B of the Plan will be eligible for the full $53.00 per diem allowance, as described in part A(1) of the Plan, except that it will be paid only for days on which the employee is required by the Company to remain overnight at the temporary work location. However, the $22.00 amount for meal expense and the $6.00 amount for miscellaneous expense will be paid for the final day of the assignment.

(2) An employee assigned under this part B of the Plan will be eligible for payment of authorized travel time, to and from the temporary work location, as described in Part A(2) of the Plan.

. . .

III. Background Facts

The Company is a utility providing electrical power to people in Wisconsin. The Company's distribution network is serviced by, among others, line mechanics represented by the Union. The grievants in this case are line mechanics who normally work out of the Company's service center in Appleton.

On June 30, 1993, a severe storm damaged power lines in the area of Milwaukee. In an effort to restore service, the Company assigned crews from other service area to the Milwaukee area. Among the crews assigned were four from the Fox Valley region, headed by line mechanics Vander Wielen, Mislinski, Wunderlich and Taylor. These crews were assigned to report to the Metro North Service Center in Menomonee Falls. They arrived in Menomonee Falls during their regularly scheduled work day on June 30th, and were given various repair assignments. The

crews worked late into the evening, and then went to the local hotel the Company had arranged for them.

The crew were instructed to report to the service center at 7:00 a.m. on July 1st. At 6:00 a.m., the crews began inspections of the Company trucks and loading some tools. They drove to the service center, arriving at 6:50 a.m. Crew members fueled the trucks and loaded additional equipment at the service center, and began work at 7:00 a.m. One crew returned to Appleton that evening, arriving at 7:30 p.m. The other three crews remained in the Milwaukee area, reporting back to the service center, and leaving there for the hotel at 7:00 p.m. They arrived at the hotel at 7:30 p.m. At the direction of the crew leaders, the three remaining crews left the hotel at 6:00 a.m. on the morning of July 2nd for the drive back to Appleton. They arrived at the Appleton service center at 11 a.m.

The crews submitted time sheets requesting which included time outside of their basic work schedules for travel time between the hotel and the Metro North Service Center. The three crews that returned on July 2nd also requested pay for travel time before the start of their normal work schedule for the drive back to Appleton. The Company reviewed the time sheets and changed them to eliminate the travel time outside of the normal schedule. The instant grievance was thereafter filed. It was not resolved in the lower steps of the grievance procedure, and was referred to arbitration.

Additional facts, as necessary, will be set forth below.

IV. Arguments of the Parties

A. The Union's Brief

The Union takes the position that the grievants are entitled to be paid for the time they spent working on the Company's behalf. It is absolutely clear, the Union submits, that time spent inspecting and preparing Company vehicles is work time as a matter of federal law, arbitral precedent and common sense. Travel time and preparation of the Company's truck are compensable activities under the Fair Labor Standards Act, and are integral parts of a line mechanic's duties. Transportation of other employees to the work site is similarly compensable under federal wage laws. The Company's own policies require inspection of bucket and digger trucks, as do federal safety regulations. Every activity undertaken by these employees was for the benefit of the employer, and the Company cannot accept the benefit of their efforts without paying them for their time.

The Union notes that the Company was, or should have been, aware that these employees were performing compensable work before reporting to and after leaving the Metro Milwaukee service center. It was inevitable, given the demands of the Company and the realities of the situation. The Company instructed them to take the Company trucks with them to Milwaukee and

provided no alternate means of transportation to and from the hotel. Given that the employees had to use the Company trucks for transportation, it necessarily followed that some time would be spent doing required inspections and preparation before the trucks could be taken on the road to report to the service center. The Company ordered them to be at the service center by 7:00 a.m. and thus required them to perform work before the beginning of their normal work shift. The Company knew that the trucks had to be inspected before they could be driven, knew that the employees had to use the trucks to get to the service center, and set a reporting time that would not allow the employees do perform the necessary preparatory work within the hours of their basic work schedule.

The Union points to the testimony that employees were not permitted to use Company vehicles for personal excursions and were required to follow Company rules and policies while in the vehicles. This demonstrates that the employees were acting under the control of the Company, and for its benefit, while using the vehicles to travel to and from the hotel on July 1st.

The contract requires that the Company pay these workers. Any other interpretation would be both absurd and unlawful. Section 11.8(a) of the contract excuses the Company from paying for time spent driving from their homes to service centers, but this provision is specifically made inapplicable to "travel on emergency work." Section 11.8(c) requires pay for travel time when employees are called out for emergencies. There is no question that the power outages in Milwaukee were an emergency, and the Company cannot refuse to pay these workers for their travel time.

The Union notes that the Special Agreement governs and limits travel time compensation to authorized time spent between the normal headquarters and the temporary work location. It is silent, however, as to travel time between the service center and lodgings at the temporary work location. This provision conclusively requires pay for the travel back to Appleton on July 2nd, given that the crew leaders have the authority to determine starting times. However, as to travel time between the Metro North Service Center and the hotel, the Special Agreement is inapplicable, and Article 11.8(c) controls. This interpretation is supported by the past practice established in previous cases. The grievants testified without contradiction that they had always been paid for travel between hotels and work sites in the past. The one instance raised by the Company in which employees were denied travel time pay involved workers represented by another union who wanted to be paid for waking up, dressing, eating breakfast and walking across the street from the hotel to the service center. The specific facts of that case led to the denial, and the union involved did not deem the claim important enough to seek arbitration. This case is easily distinguishable because the activities undertaken by these employees were work related tasks that the Company customarily pays employees to perform.

B. The Company's Brief

The Company takes the position that the "Special Agreement" on out of town assignments governs this dispute and resolves it in the Company's favor. Article 11.8 (a) of the contract

establishes general rules for employee travel, precluding pay for travel from the employee's home to headquarters, but requiring pay for travel between work locations during the regular shift. The emergency work provision of Article 11.8 (c) makes an exception to the general rules, allowing payment for travel from residences to work where the employee is called from his/her residence for emergency work outside of regular hours. While the Union claims that this work was an emergency, it clearly does not meet the criteria implicit in Article 11.8 (c). The

grievants were not called out from their residences, they were not called out outside of their normal work hours, and the work was not emergency work as contemplated by Article 11.8 (c). That provision requires payment of all time from the point at which the employee leaves home until he/she returns, and it would be absurd to apply it to out-of-town assignments.

Given the applicability of the Special Agreement, it is clear that this grievance must be denied. The Special Agreement only allows for authorized travel time within the normal work schedule. The travel time outside of the normal schedule reported by these crews was not authorized by the Company and is not therefore compensable.

The Company disputes the existence of any past practice requiring it to pay for the travel time at issue in this case. As a practical matter, storm restoration work requiring out-of-town motel stays occurs infrequently, and it would not be possible for a long standing practice to emerge. Given the intermittent nature of this work, even past payments could as easily indicate mistakes or leniency by individual supervisors. There is simply no way to find any evidence of a consensual arrangement for the payment of travel time, and without evidence of mutual consent there can be no binding past practice. In point of fact, the record shows that the Company has denied requests for payment in the past. In a 1987 case, a line crew asked for pay for an hour and a half of time spent primarily for personal purposes, but also on travel between the hotel and the service center. The Company took the position that the service center was the headquarters site and that work time would be measured from arrival at the headquarters. The Company's position prevailed, and this demonstrates that there has never been any acquiescence in the past practice suggested by the Union.

As for the decision by three of the crews to begin their trip back to Appleton at 6:00 a.m. on July 2nd, the Company concedes that it is generally within the discretion of the crew leader to make such decisions. In this case, however, the crew leaders' decisions were rather clearly unreasonable, and an abuse of discretion. The overnight stay in the Milwaukee area on July 1st was itself probably unnecessary, since the crews could have reached Appleton at a reasonable hour on the night of the 1st. The decision to incur an hour of overtime simply to avoid traffic on July 1st is an obvious effort to boost pay for no legitimate reason. The Company notes that the crews allegedly took 5 hours to make the 2 hour trip between Milwaukee and Appleton, offering the explanation that all six vehicles and all ten employees got lost for nearly an hour trying to find the correct entrance onto the highway. This, the Company submits, is not believable.

With respect to the travel time before the start of the basic schedule on July 2nd, there was no authorization whatsoever for the decision to start at 6:00 a.m. With respect to the hour spent between 6 a.m. and 7 a.m. on July 1st, it was not expressly authorized as work time. The Union seems to suggests that it was implicitly authorized, because the grievants had to perform an inspection of the trucks before starting out, and because the drivers were covered by CDL regulations while driving to the service center. Even assuming that these are in some way work related, they are de minimis efforts, and should not be paid. The inspection is largely a walk around of the vehicles, looking at the tires, checking the oil dipstick, looking under the truck at the slack adjuster and running the engine for five minutes to check air pressure. This activity could have taken at most five to ten minutes.

As for the CDL regulation of the drivers while making the trip to and from the service center, the Company acknowledges that it precludes the drinking of alcohol. However, CDL regulations preclude the drinking of alcohol for four hours before operating a commercial vehicle, and this does not somehow make that time compensable. Employees are not allowed to drink over the unpaid lunch, but this restriction on their activities does not make that time compensable. Thus CDL regulation of the drivers is irrelevant to the question of whether these employees should be paid for time spent in Company vehicles driving to work.

In sum, the Company paid the grievants in accordance with the specific agreement negotiated to cover out of town work assignments, and there is no basis in contract, law or equity for the payment of any additional sums to these grievants.

V. Discussion

At the outset, the Board finds it necessary to clarify what is and is not at issue in this case. The Company has expressed some skepticism about the amount of time allegedly used for the return trip to Appleton, and for travel between the motel and the service center. This is not an unreasonable reaction, at least as to the claim of five hours for a highway drive of 100 miles. However, as indicated by the grievance documents, and by counsel for the Company at the hearing, the Company did not base its decision to change the time sheets on any dispute over their accuracy or a belief that the grievants had falsified them. The Company has not challenged the amount of time reported. Rather, the Company's position is that the time, no matter what amount is reported, is not compensable as a matter of contract. For the purpose of analysis, the Board therefore puts aside any doubts about the amount of time reported and limits this decision to the compensable character of the time.

There are three categories of time in dispute in this case: (1) the time spent performing inspections of the vehicles and other preparatory activities at the motel and at the service center before 7:00 a.m. on the morning of July 1st; (2) the time spent driving to the Metro North Service Center from the motel on the morning of July 1st and driving from the Metro North Service

Center to the motel on the night of July 1st; and (3) the one hour portion of the return trip to Appleton, from 6:00 a.m. to the start of the basic work schedule at 7:00 a.m., on the morning of July 2nd. The issues before the Board are, first, which contract provision is applicable to the three categories of time, and second, whether the time is compensable under the applicable contract provisions. Each is addressed in turn.

A. Applicable Contract Language

The Union asserts that this work is governed by the "Emergency Work" provision of Article XI, 11.8, while the Company points to the "Special Agreement Regarding Employee Expense Reimbursement Plan For Out-Of-Town Assignments", which is an Appendix of the contract.

Section 11.8 provides that employees are paid for all time, including travel time, when they are called out on emergencies, from the point at which they leave their homes until the point at which they return:

> (c) Employees called out on emergency work, outside of the scheduled hours, shall be paid from the time they leave their residences until the time they return to their residences, including all travel time, at the rate of time and one-half, except for Sundays and holidays listed in Section 11.5 of this Article which shall be at double time rate.

The Special Agreement speaks to pay for travel time when employees are on assignments out of town:

> …Notwithstanding any provision of any Labor Agreement applicable to such employees to the contrary, the arrangements set forth below will be applied as follows:
>
> A. For Out-of-Town Assignments of More Than One Week
>
> . . .
>
> (2) Each employee will be paid for authorized travel time required, both for the initial trip from the regular headquarters to the temporary work location and for the final trip back to the regular headquarters following completion of the out-of-town assignment. Such authorized travel time will be reported as time worked and will be paid at the applicable straight time or overtime wage rate, as appropriate, depending on whether the authorized travel time occurs within or outside of basic scheduled hours. There will be no other wage payment for employee travel time during the out-of-town assignment, except for authorized travel

which occurs within basic scheduled hours.

. . .

B. For Out-of-Town Assignments of Up to One Week (or when employees are directed to return to their regular headquarters at the end of each week).

. . .

(2) An employee assigned under this part B of the Plan will be eligible for payment of authorized travel time, to and from the temporary work location, as described in Part A(2) of the Plan.

The Union is correct in terming the situation in Milwaukee as an "emergency", but that is a definition from the common parlance. The fact that the reassignment of these employees was done in response to an emergency situation does not bring it within the ambit of Section 11.8. The language of the "Emergency Work" provision clearly contemplates a system of premium pay for a call-out rather than creating different rules for compensation depending upon how urgently the Company needs the employee's services. Section 11.8 addresses employees being called out from home, outside of scheduled hours, and dictates that they receive time and one-half for all time from the point at which they leave home until they return. None of this is applicable to the crews in this case, who were called out from work during scheduled hours and have not claimed premium pay for all of the hours spent away from Appleton, or pay for their travel back to their residences once they returned to Appleton. The only connection between the situation contemplated by Section 11.8 and the facts of this case is that the Company was motivated by an emergency in making this assignment. The motives of the Company cannot govern over the practical realities of the situation in determining the rules for compensation.

The Union also argues that the Special Agreement only addresses travel time to and from the out-of-town work location when the assignment is less than one week, while addressing both travel to and from, and travel during, assignments of more than one week. Thus it is silent as to travel during the assignments of less than one week, and the Emergency Travel provision of Section 11.8 should be read as providing the rules in the void left by the Special Agreement's silence. This is a tautology. The Emergency Travel provision only supplements the Special Agreement if it is first determined that the parties intended to make some provision for travel time during out-of-town assignments of less than one week, and that the Emergency Travel provision was intended to apply rather than the presumption under the Regular Travel provision against pay for travel time from housing to job site, and then only if one ignores the introductory language of the Special Agreement, to wit:

Notwithstanding any provision of any Labor Agreement applicable to such employees to the contrary, the arrangements set forth below will be applied as follows…

As discussed above, nothing in the Emergency Travel provision suggests that it was intended to apply to the work at issue in this case and, in fact, the internal structure of that provision and its requirement of overtime pay from the moment of leaving home to the moment of return strongly indicate that it is not applicable to this case.

Given the specific facts of this case, the Board concludes that the "Emergency Work" provisions of the contract are not applicable to these crews. Instead the Board concludes that the assignment of these crews to work in Milwaukee on June 30th and July 1st, even though triggered by a storm damage emergency, is an out-of-town work assignment, and the work performed by these employees was done under the Special Agreement.

B. Compensability of Time

Having determined that the Special Agreement governs the work performed by these crews in Milwaukee, the question remains whether the time reported is compensable under that contract

provision.

1. Inspections and Fueling

The crew members testified that they performed inspections of the vehicles before leaving the motel on the morning of July 1st between 6:00 a.m. and that these inspections were required by law and/or Company policy. They also fueled the vehicles and loaded supplies after arriving at the service center at 6:50 a.m. and before leaving for their assigned tasks at 7:00 a.m.

The Special Agreement contains limitations applicable to pay for travel time outside of the basic schedule. The time devoted to preparatory work before leaving the motel, and to fueling and loading after arriving at the service center, cannot reasonably be termed travel time, and thus does not fall within the contractual limitations on pay for travel time. All of these tasks are required by the Company, are normally performed on work time, and normally result in pay for employees performing the work. The time devoted to these tasks is connected with the use of Company vehicles, but is not, in and of itself, travel.

The Company may question the necessity of performing this work outside of the basic scheduled hours, and/or having an entire crew engaged in the inspection of vehicles. With respect to the preparatory and inspection work at the motel, the order to arrive at the service center by 7:00 a.m. necessarily requires someone to perform work outside of the basic schedule. The Company requires that this work be done before its vehicles are taken on the road, and it would have been physically impossible to both report at 7:00 a.m. and do the inspections within the basic schedule. With respect to the fueling and loading, it appears that this was a decision of the crew leader to use time productively once the crew arrived at the service center. The evidence suggests, however, that the crews were permitted to perform this work, in that it was not done surreptitiously or prohibited by the local officials of the Company.

It may be that the Company will wish in the future to adopt policies and procedures limiting the number of employees performing inspection and preparatory work outside of the basic schedule, or making allowances for the amount of time that should reasonably be needed to complete these tasks. It may be that the Company will wish to place limits on which vehicles are taken to motels and which are kept at the Company service centers. The record evidence does not show that any such policies, procedures or limitations were in place in the summer of 1993. Thus the Board concludes that the inspection, preparatory work, fueling and loading performed on July 1st were not prohibited by the Company, and were in fact necessary tasks required by the Company. Nothing in the Special Agreement precludes payment for the time reported by these crews for such activities.

2. Travel Between the Motel and the Service Center on July 1st

The time spent traveling between the service center and the motel is purely travel time, in

that no work was performed, except to the extent that getting to the job site in a Company vehicle may be considered work. The Union has cited a number of precedents to establish the coverage of the Fair Labor Standards Act to preparatory work. Most of this precedent is

relevant to the inspections and the fueling and loading, which have already been determined to be compensable. However, a number of the arbitration cases cited are said to have relevance to the issue of travel time itself. On closer inspection, the Awards are distinguishable from this case.

Jacksonville Shipyards, 76 LA 652 (Williams, 1981) involved a unilateral change in a clear past practice. In that case, the parties agreed that the time was work time, and the dispute was over whether a premium should be paid for time in transit to the premium work aboard ship, after the employees had reported to work. The arbitrator found that the contract language and the past practice both supported pay for the time in transit. Likewise in Ozark Air Lines, 62 LA 596, the contract language specifically called for pay for travel and waiting time, and the dispute was whether travel time included travel to a motel after a flight, or whether that was a rest period. The arbitrator's decision turned on the meaning of "rest" and found no distinction between travel on an airplane and the ensuing trip to the motel.

U.S. Immigration and Naturalization Service, 59 LA 119 (Lennard, 1972) involved a unilateral change in a well established past practice of allowing one hour of administrative and travel time to employees at the beginning and end of a shift, with six hours of the shift actually devoted to manning a checkpoint. The change required the agents to report to the checkpoint at the beginning of the eight hour shift and remain until the end. However, they were still required to initially report to the headquarters some 45 minutes from the checkpoint to pick up a government car and perform necessary administrative tasks, drive the car to the checkpoint, return the car after the shift, see to its maintenance and fueling, and perform additional administrative work. During the drive to and from the checkpoint, the agents were required to be available for law enforcement functions, and during the drive the grievant was regularly called upon to perform such functions. Not surprisingly, the arbitrator determined that the hours over eight were overtime, since the employee was clearly engaged in work activity. In this case, the preparatory inspections are hardly of the same character as the multitude of administrative tasks signaling the start of the duty day for INS agents once they reported to headquarters. The fact that the employees drove the Company's trucks to and from the motel is not comparable to the INS prohibition on personal vehicles, and the required compliance with CDL restrictions (basically not drinking alcohol) are distinctly less intrusive than the active patrol performed by the INS agents during the drive between headquarters and the checkpoint. 1/ Travel between jobs is compensable

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1/ The CDL restriction on consuming alcohol before or while driving a commercial vehicle has little practical impact on the grievants, since the normal rules of the Company on

under this contract, just as Arbitrator Lennard determined it was under the INS agreement. The issue here, however, is whether travel to the job is itself compensable work.

The Union cites Martin v. D. Gunnels, Inc., 30 Wage & Hour Cases 997 (1991) for the proposition that travel time is compensable, and urges that the Board read the contract in conformity with Federal Wage-Hour law, reciting the familiar proposition that contracts should be interpreted in a manner that makes them legal and enforceable. The Board agrees that the contract must, if possible, be read as being consistent with the law, but finds the Gunnels case inapplicable. Like many of the arbitration cases discussed above, Gunnels involved an employee who was required to report to headquarters for instructions. This foreman was then required to transport employees and equipment to the job site. This is not, in the Board's view, analogous to the case of employees temporarily residing in a motel and driving to the headquarters. The work day had not yet begun for these employees. It is true that the crews performed some inspection work on the trucks before leaving the motel, and that the inspection work is compensable. The compensability of the inspection work hinges on its necessity to the performance of the Company's other work, the fact that it is customarily paid work, and the fact that the Company would reasonably have expected its employees to perform this work and to be paid for the work. The need to inspect the vehicles before leaving the motel does not signal the start of the work day for these crews, as it did with the supervisor in Gunnels, who had received his assignments at the headquarters and had begun the day's work activities. The grievants here were at liberty until 7:00 a.m., and the performance of the inspection does not transform the motel from a place of residence to a headquarters. As for the return trip to the motel from the service center, the rationale of Gunnels is completely inapplicable, since the Union has not identified any way in which this would have been related to the performance of the grievants' customary duties.

Neither any express provision of the contract nor any case law principle supports the Union's claim for travel time pay between the motel and the service center. On the other hand, there is no express provision of the contract which prohibits such pay for trips of less than one week. The Regular Travel provision bars such payments under normal circumstances, the Emergency Travel provision requires them for emergency call-out, the Special Agreement limits

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fitness for duty would prohibit consumption of alcohol during the shift, and the requirement that the driver refrain from alcohol for four hours before leaving the motel (roughly from 2:15 a.m. on) would be a de minimis intrusion on the crew members' personal freedom under the facts of this case. Moreover, the CDL alcohol ban does not bear on the driving time, but on the hours before the drive begins.

payment to authorized travel within basic scheduled hours for out-of-town assignments of more than one week, but neither the contract nor the Special Agreement makes provision for allowing or prohibiting pay for travel time during out of town assignments of less than one week.

Given the silence of the contract, each party makes reference to past practice. The Union presented testimony from its business agent, who stated that it was his observation that such time was customarily paid, and from three crew leaders who said that travel time had always been paid between the motel and the service center on trips of less than one week, except when they were housed at a motel right next door to the service center. Each of the crew leaders had been with the Company for over 28 years, and testified to having been assigned out-of-town between six and twelve times in his career.

For its part, the Company pointed to a 1987 case in which a grievance was filed demanding travel time for employees on an out-of-town assignment of less than one week. The Union did not pursue the grievance further after Company's denial.

The 1987 case cited by the Company has little bearing on the instant grievance. The demand for pay in that case included all time from receiving a wake-up call in the motel at 6:00 a.m. until reporting to the service center at 7:30 a.m. The grievance sought pay for time spent getting out of bed, showering, grooming, eating breakfast, etc. The service center in question was about a quarter of a mile down the road from the motel, a drive of no more than one minute. The Union's Business Agent testified that the case was dropped because the actual compensable time involved was insignificant, and that the Union customarily phrased its withdrawals as being without precedential value. The facts of that case are so outrageous, and the demand for compensation so far outside of any plausible contractual right, that the Board finds the Union's failure to pursue the matter indicates nothing more than a normal ability to screen grievances.

The Company argues that the evidence of past practice is not persuasive because out-of-town assignments of less than one week are very infrequent, and thus the payments made to unit employees lack the consistency needed to demonstrate mutual intent. This argument confuses frequency with consistency. In order to be reliable evidence of the parties' intent, a past practice must be clear, actual and consistent over time. The degree of consistency, rather than the frequency of occurrence, is what matters for this analysis. There are contract provisions that, by their very nature, do not come into play very often, yet the parties may have understandings about how those matters should be handled when they do come up. So long as it is handled in the same way each time it happens, the Board may look at that consistency as evidence of mutual intent.

The Company presented testimony from front office officials who said that they do not authorize travel time payments outside of the basic schedule, but aside from the 1987 case they were unable to cite any specific examples and largely appeared to be restating a position taken by other Company officials. The employees who testified to receiving payment for travel time also

testified that, in the great majority of cases, the crews were headed by Company supervisors who themselves submitted the travel time for payment. The Company is not in a position to disclaim the consistent conduct of its own supervisors over the years, and the Board finds that the record evidence very strongly supports the Union's claim of a mutual past practice of paying for travel between the motel and the out-of-town headquarters.

While the contract is silent on payment of motel to headquarters travel time for out-of-town assignments of less than one week, and is thus ambiguous, the Board finds that the overall structure of the contract language creates a slight inference that such time is not compensable. The only circumstance under which payment is provided from residence to work is in an emergency call-out, which cannot fairly be read as including the work at issue in this case. It is specifically forbidden for normal day-to-day operations, and for out-of-town assignments of more than one week. Case law does not mandate payments for this time without a contract provision requiring payment. Where payment is required by this contract, the requirement is specifically stated. On the other hand, where payment is forbidden, the contract also specifically states the prohibition. The parties have demonstrated their ability to speak clearly on this subject, but have chosen not to do so with respect to assignments of less than one week.

On balance, the Board concludes that the inference to be drawn from the contract language cannot overcome the clear and consistent evidence of past practice. The inference against payment is drawn from speculating over what the parties might have meant by choosing the language they used, but the practice is an established fact. Given the choice between the two, the actions of the parties must be given greater weight, since conduct is generally the most reliable evidence of intent. The Board cautions, however, that an interpretation based upon past practice is necessarily premised upon the specific evidence in the record of this case. That evidence is anecdotal, and the decision in this case is not intended to foreclose a closer examination of the practice in future cases. Having noted the limited scope of its finding, however, the Board concludes that the evidence in this case demonstrates that the Company violated the contract by refusing to pay for travel time between the motel and the service center on July 1st.

3. Travel Between 6:00 a.m. and 7:00 a.m. on July 2nd

The Special Agreement expressly allows for payment of travel time outside of the basic schedule for the return trip home after an out-of-town assignment:

> Each employee will be paid for authorized travel time required, both for the initial trip from the regular headquarters to the temporary work location and for the final trip back to the regular headquarters following completion of the out-of-town assignment. Such authorized travel time will be reported as time worked and will be paid at the applicable straight time or overtime wage rate, as appropriate, depending on whether the authorized travel time occurs within or outside of basic scheduled hours… (emphasis added)

The Company does not challenge whether time for traveling home was "authorized", since it was plainly necessary for the crews to spend some amount of time to make the journey. It does, however, argue that the decision to start the trip before the start of the normal work day was not authorized, in that it was unnecessary and an abuse of the crew leaders' discretion to decide the starting time for the crew.

The crew leaders decided to leave Milwaukee at 6:00 a.m. to avoid the morning rush hour. This is not, on its face, an arbitrary decision. Reducing time lost to traffic congestion is a commonplace and reasonable factor in planning a trip. What the Company is objecting to is that the time saved by starting early does not outweigh the additional cost of the premium pay. This may be an appropriate judgment, but it is not the only possible judgment. The crew that left on July 1st incurred some overtime for their return trip and received pay for the time. Had these crews returned at the same time on the 1st, the entire trip would have been outside of the basic scheduled hours. The Company has vested its crew leaders with the right to make decisions such as this, and the fact that they made a decision that the Company disagrees with does not strip them of their authority.

The Board would note that, even if the crew leaders had acted arbitrarily in deciding to leave for Appleton at 6:00 a.m., the Company would not have been justified in docking the pay of every employee on the crews for the hour before the basic schedule. Having entrusted the crew leaders to set a starting time, the Company cannot put the members of the crew in a position of choosing between disobedience by refusing to leave until 7:00 a.m. and obeying, but working for an hour without pay as the cost of obedience. The crew members were obligated to obey the legitimate directives of those assigned to supervise them, and absent evidence of some conspiracy among the crew leaders and the crew members to improperly claim overtime pay by leaving at 6:00 a.m., their obedience with the leaders' plans for the return trip cannot be held against them. 2/

As with the inspection and preparatory work, it may be that the Company will wish to provide future guidance to its crew leaders about when it would appropriate to travel to and from out of town assignments outside of the basic scheduled hours, but there is no evidence that such guidance was given in the summer of 1993. Given that the crew leaders had the discretion to set the starting time for the return trip, based their decision on a reasonable desire to avoid traffic congestion, and did not act in contravention to any existing rules or procedures, the Board concludes that the travel time between 6:00 a.m. and 7:00 a.m. on July 2nd is compensable under

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2/ Again, the Board stresses the limited nature of its analysis. We are solely concerned with the compensability of the first hour of the return trip, not with its remarkable overall duration.

the contract, and should not have been stricken from the time sheets.

CONCLUSION

The time spent on inspections, preparatory work, fueling and loading the trucks is not travel time, and while the Company has the right to regulate the performance of this work outside of the basic schedule, no such restrictions were in place in the summer of 1993. Thus, the Company violated the contract by refusing to pay for this work. The contract is silent and ambiguous with respect to the compensability of travel time between the motel and the service center. On the evidence in this record, the Board concludes that there is a clear and consistent past practice, indicating that such time is compensable for these crews. Finally, the crew leaders had the right to set the starting time on July 2nd, and made a non-arbitrary decision to leave early to avoid traffic. The crew members had a duty to comply with the decisions of the crew leaders. As with the preparatory work, the Company has the right to restrict the discretion of crew leaders in setting starting times, but had not exercised this right at the time of this grievance. Thus the Company violated the contract by refusing to pay for the travel time between 6:00 a.m. and 7:00 a.m. on July 2nd.

On the basis of the foregoing, and the record as a whole, the Arbitration Board makes the following

AWARD

The Company violated the collective bargaining agreement when it altered the grievants' time sheets for July 1 and July 2, 1993. The appropriate remedy is to pay the grievants for the time reported on the time sheets.

Signed this 22nd day of November, 1994 at Racine, Wisconsin:

By Daniel Nielsen /s/
Daniel Nielsen, Neutral Chair

I concur in Section V(A) of the Neutral Chair's Decision:
I concur in Section V(B)(1) of the Neutral Chair's Decision:
I concur in Section V(B)(2) of the Neutral Chair's Decision:
I concur in Section V(B)(3) of the Neutral Chair's Decision:
I concur in the Remedy ordered in the Neutral Chair's Decision:

/s/ Timm Driscoll Date: December 14, 1994
Timm Driscoll, Union Member

I concur in Section V(A) of the Neutral Chair's Decision:
I concur in Section V(B)(1) of the Neutral Chair's Decision:
I dissent from Section V(B)(2) of the Neutral Chair's Decision:
I dissent from Section V(B)(3) of the Neutral Chair's Decision:
I dissent from the Remedy ordered in the Neutral Chair's Decision:

/s/ John Barrett Date:March 23, 1995
John Barrett, Company Member
(Signed on Mr. Barrett's behalf by Charles Prentice)