BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between TEAMSTERS LOCAL NO. 75 and OLSON TRAILER & BODY	Case 1 No. 54952 A-5566

Appearances:

Mr. John J. Brennan, Attorney at Law, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., appearing on behalf of the Union.

Mr. Si Clements, General Manager, Olson Trailer & Body, appearing on behalf of the Company.

ARBITRATION AWARD

The Union and the Company named above are parties to a collective bargaining agreement covering the period from July 15, 1995 to July 15, 1998. The parties agreed to ask the Wisconsin Employment Relations Commission to appoint an arbitrator to resolve a dispute involving holiday pay. The undersigned was appointed and held a hearing on May 28, 1997, in Green Bay, Wisconsin, at which time the parties presented their evidence and gave their oral arguments in lieu of filing briefs. The record was closed upon the conclusion of the hearing.

ISSUE:

The parties ask that the Arbitrator resolve the following issue:

> Did the Company violate the collective bargaining agreement by denying holiday pay to Bob Landwehr for New Year's Day 1997?

CONTRACT LANGUAGE:

The relevant language is in Article 5, Holiday Pay:

> Regular employees shall not be required to work and shall be paid eight (8) hours pay at the straight time hourly rate for the following seven (7) holidays: New Year's Day, Memorial Day, Labor Day, Thanksgiving Day, the Day after Thanksgiving, Fourth of July, and Christmas Day, and regular employees shall

not be required to work and shall be paid four (4) hours pay at the straight time hourly rate for the following two (2) one-half (1/2) day holidays: last half of work day on Christmas Eve and last half of work day on New Year's Eve, when not worked and regardless of the day of the week on which if falls, provided they comply with the qualifications set forth hereinafter.

. . .

In order to qualify for eight (8) or four (4) hours of straight time pay for a holiday not worked it is provided that regular employees must work for the regular scheduled work day which immediately precedes and follows the holiday, except in cases of proven illness or unless the absence is mutually agreed to.

BACKGROUND:

The Grievant is Bob Landwehr, an employee with the Company for more than 25 years. He is a lead man for the repair department. He has no disciplinary record and never heard that he had any absenteeism problem until the incident that led to this grievance.

On January 2, 1997, the Grievant was sick with the flu. It was his understanding that employees have to call in sick and talk to the shop superintendent as close to 8:00 a.m. as possible. The Grievant's wife called in and spoke to Jim Jansen. She told Jansen that Landwehr was sick, and Jansen said "ok." She called in again on Friday, January 3rd, and spoke to Jansen again. She also called the Westside Clinic and spoke with a nurse who said that if Landwehr was not better in three days, he should come in.

On the following Monday, Landwehr came back to work. Jansen asked him how he was feeling, and he replied that he felt 100 percent better. When Landwehr got his paycheck on January 10th, he noticed that he was not paid for January 1st. The Steward told him that he needed a doctor's excuse to get paid for the holiday, and Landwehr figured that he could not get a doctor's excuse at that time, well after his illness.

The Company's General Manger, Si Clements, offered Landwehr up to 4:30 p.m. on January 13th to provide a doctor's excuse for his January 2nd illness. Landwehr did not provide the Company with a doctor's excuse.

THE PARTIES' POSITIONS:

The Union argues that the contract language provides for an exception to the rule that one has to work the day before and day after the holiday to get paid for it – the mutual agreement exception. The Union thinks that when Landwehr's wife called in to say that the Grievant was sick and Jansen said "ok," there was mutual agreement. The Grievant believed that he had mutual agreement at that point. If there were no mutual agreement, then it was incumbent upon the Company to tell the employee up front that he should see a doctor and provide a doctor's excuse. If the Grievant had been told that he had to provide an excuse, he would have made an appointment. It makes no sense to visit the clinic later, as no doctor would write an excuse for an

illness if the doctor never saw the patient when he was ill.

The Company argues that the contract language should be followed, and that there was no mutual agreement for Landwehr's absence. The language regarding "mutual agreement" is for absences that are pre-arranged and agreed to in advance of the holiday or day off, not that morning. When an employee calls in sick, the Company has no choice but to accept the fact that the employee will not be coming in, and that does not create mutual agreement. Moreover, the Company gave the Grievant every opportunity to provide proof of his illness, and it would have accepted a doctor's excuse. The Grievant never provided any such proof.

DISCUSSION:

The Company is correct in this case, because surely the contract language that says ". . . unless the absence is mutually agreed to" means something other than someone saying "ok" when an employee calls in sick. The term "ok" did not create mutual agreement to invoke the exception here. The term "ok" is so innocuous that it could mean anything or nothing. It is a regular way to respond to someone, but it does not commit the speaker of the phrase to anything. The fact that Jansen said "ok" when Landwehr's wife called in and said that Landwehr was sick does not mean that Landwehr and the Company reached mutual agreement for his absence the day after the holiday. It could have meant nothing more than the fact that Jansen acknowledged the phone call and the fact that Landwehr was not coming in to work that day.

While the Union argues that the Company should have told the Grievant on the spot that he needed to get a doctor's excuse, it was not incumbent upon the Company to remind the Grievant that he would need proof of his illness in order to get paid for the holiday. The Grievant probably knew the rule anyway, since he was employed at this company from over 25 years. He could have arranged to see a doctor sometime during his illness, which apparently went on for a few days, or he could have even checked with the clinic at a later date to see if the clinic kept any record showing that he or his wife called in about his illness. It was unreasonable for the Grievant to believe that he had the mutual agreement of the Company to be absent for the day after the holiday. The Grievant did not even speak to the shop superintendent himself, since his wife called in for him two days in a row.

I find that Landwehr's case does not meet the exceptions in the contract for absences surrounding the holiday, and the Company did not violate the contract by not paying him the holiday pay for New Years Day.

AWARD

The grievance is denied.

Dated at Elkhorn, Wisconsin this 7th day of June, 1997.

By Karen J. Mawhinney /s/

Karen J. Mawhinney, Arbitrator