

BEFORE THE ARBITRATOR

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IN THE MATTER OF THE ARBITRATION OF A DISPUTE BETWEEN

**UNITED REGIONAL MEDICAL SERVICES, INC.**

and

**WISCONSIN FEDERATION OF NURSES AND HEALTH  
PROFESSIONALS, LOCAL 5001, AFT, AFL-CIO**

Case 10 No. 54479 A-5522

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**APPEARANCES**

**Ms. Carol Beckerleg**, Field Representative, for the Union.

**Ms. Carol L. Wichmann**, Director of Human Resources, for the Employer.

**ARBITRATION AWARD**

Pursuant to the terms of their 1996 Memorandum of Agreement, the parties asked the Wisconsin Employment Relations Commission to assign a member of its staff to act as arbitrator. I was so assigned.

Hearing was held in Milwaukee, Wisconsin, on February 24, 1997. No transcript was made of the hearing. The parties filed post-hearing briefs and the record was closed April 17, 1997, when I received a letter from parties advising me they would not be filing reply briefs.

**ISSUE**

The parties agreed that the issue I am to decide is:

*Whether Damingo Jones was correctly paid under Section 2.29, for the leave that he requested in order to attend a four hour seminar on May 10, 1996? If not, what remedy is appropriate?*

**CONTRACT LANGUAGE**

*2.29 SEMINAR/CERTIFICATION FEE AND TUITION REIMBURSEMENT*

*Seminar Leave and Reimbursement . . .*

*(b) When an employe is authorized to attend a seminar irrespective of the manner of reimbursement, the employe shall be permitted to attend during the employe's normally scheduled working hours. In the event the employe is scheduled for p.m.'s or nights, the employe's schedule shall be modified to permit attendance during the day. However, attendance at seminars on regularly scheduled off days shall not be compensated.*

*Employes attending seminars will be credited with paid leave during their scheduled shift for that day, but will be expected to return to duty if two (2) or more hours of work can be completed on the shift for that day.*

*The term "authorized" shall mean permission of or direction by the employer.*

## **DISCUSSION**

Jones is a third shift employe working 11:00 p.m. to 7:00 a.m. in Milwaukee. In April 1996, Jones received permission to attend a seminar in Appleton, Wisconsin, on May 10, 1996, from 8:00 a.m. to noon.

The Employer advised Jones that he would only be allowed four hours paid leave time for the seminar and offered him four hours of work to fill out his shift. Jones did not accept the work opportunity, attended the seminar and then filed a grievance alleging he should have received eight hours paid leave for May 10.

The Employer contends the contract is silent as to whether it must pay employes such as Jones for more than the time actually spent attending the seminar. However, the Employer asserts that it has a consistent previously unchallenged practice of only knowingly paying for time actually spent at a seminar. The Employer argues its practice should prevail over the inconsistent evidence of past practice presented by the Union.

The Union asserts the second paragraph of Section 2.29(1)(b) clearly entitles Jones to eight hours pay because he would not have been able to return from Appleton to Milwaukee to complete two or more hours of work before the end of a 6:30 a.m. to 3:00 p.m. first shift. The Union contends its position is also consistent with the parties' past practice.

I find that Section 2.29(1)(b) does entitle employes to eight hours paid leave on the day of seminar attendance if an employe returning from the seminar would arrive at work less than two hours before the end of the shift.

Employes who would arrive at work from a seminar more than two hours before the end of their shift are required to work the end of their shift, but receive paid leave for the time spent returning to the work site.

I further find that application of these contract rights to Jones entitles him to eight hours leave.

Contrary to the Employer's contentions, the contract is not silent on the question of how seminar leave is to be calculated. The contract specifies that "*Employees attending seminars will be credited with paid leave during their scheduled shift for that day . . .*" (emphasis added). As argued by the Union, the clear intent of this language is to provide the employe with no loss (or gain via overtime) of pay for a day when an employe is attending a seminar instead of working. To the extent the Employer has presented evidence of a contrary past practice, I find the clear language prevails.

The contract also is not silent on the question of how a "*p.m. or night*" shift will be "*modified to permit attendance during the day.*" In my view, the contractual references to "*normal scheduled working hours*" and "*scheduled shift*" establish intent that "*p.m. or night*" shift employes be placed on the most standard day shift hours for the purposes of seminar attendance. While the Employer presented credible evidence of a consistent practice of using the start of the seminar as the start of the shift for "*seminar leave*" purposes, I find this practice conflicts with the clear intent of the contract and thus is of no consequence to the resolution of this dispute.

When Jones attended the May 10 seminar, the standard day shift hours were 6:30 a.m. to 3:00 p.m. Thus, this is the time frame against which Jones' entitlement to eight hours leave must be measured.

The May 10 seminar ended at noon. Jones was contractually entitled to a 30 minute lunch period. Thus, his departure time from Appleton was 12:30 p.m. for the purposes of Section 2.29 (1)(b). The parties agreed the distance from seminar to work is 100 miles. Assuming a standard average travel speed of 55 miles per hours, Jones would have been able to return to work slightly before 2:30 p.m. Because his shift ended at 3:00 p.m., he thus had no obligation to return to work as a condition of receiving eight hours pay for the day. Therefore, Jones is entitled to an additional four hours pay, and the Employer is ordered to make him whole in that amount.

It bears noting that nothing in the contract or this award entitles any employe to more than eight hours pay per day for seminar attendance. Employes who are required to return to work (i.e., can work two or more hours ) and fail to do so risk discipline and lose entitlement to any seminar pay beyond time actually spent in attendance.

Dated at Madison, Wisconsin, this 11th day of August 1997.

Peter G. Davis /s/  
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Peter G. Davis, Arbitrator