BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS LODGE NO. 1855

and

KRC (HEWITT) INC.

Case 3
No. 55101
A-5576
(Meal Ticket)

Appearances:

Previant, Goldberg, Uelman, Gratz, Miller & Brueggeman, S.C., 1555 North Rivercenter Drive, Post Office Box 12993, Milwaukee, WI 53212, by **Mr. Frederick Perillo**, Attorney at Law, appearing on behalf of the Union.

Godfrey & Kahn, S. C., Attorneys at Law, 219 Washington Avenue, Post Office Box 1278, Oshkosh, WI 54902-1278, by **Mr. Edward J. Williams**, appearing on behalf of the Company.

ARBITRATION AWARD

Pursuant to the provisions of their collective bargaining agreement, Machinists Local 1855 (hereinafter referred to as the Union) and KRC (Hewitt) Inc. (hereinafter referred to as the Employer or the Company) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator to hear and decide a dispute concerning the Company's refusal to pay a request for reimbursement of foodstuffs purchased by the grievant. The Commission designated Daniel Nielsen. A hearing was held on December 1, 1997 in Neenah, Wisconsin, 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 stenographic record was made of the hearing, but no transcript was ordered. The parties submitted the case on oral argument at the close of the hearing.

Now, having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the arbitrator makes the following Award.

ISSUE

The parties stipulated that the following issue should be determined herein:

Did the Company violate the provisions of past practice #17 when it denied the grievant payment of $10.00 when he made the purchase of May 9, 1997?

The parties further stipulated that, should the arbitrator determine that there was a violation, the appropriate remedy would be payment of $10.00 to the grievant.

PERTINENT CONTRACT LANGUAGE

1994 - 1997 AGREEMENT
SIDE LETTER PRINTED AT PAGES 33-34

. . .

The Company agrees to continue only the following past practices for the duration of the current contract agreement.

. . .

1.The Company shall pay up to $10 towards the purchase of a meal for employees who work more than 10 hours on short notice.

. . .

1997-2000 AGREEMENT
SIDE LETTER PRINTED AT PAGES 33-34

. . .

The Company agrees to continue only the following past practices for the duration of the current contract agreement.

. . .

2.The Company shall pay up to $10 towards the purchase of a meal for employees who work 10 or more hours on short notice. A legible sales slip with date and name of establishment where meal was purchased must be submitted. Note: Date must conform to the day and shift the employee completed.

. . .

BACKGROUND FACTS

The Company was purchased by KRC in the early 1990's. After the purchase, the Union negotiated a successor to the 1991-94 contract, and during negotiations the new owner insisted on reducing past practices to writing. Eighteen practices were listed in a side letter, which was printed along with the 1994-97 contract. Practice number 17 addressed the purchase of meals for employees who were required to work over ten hours on short notice, and reflected the Company's agreement to pay up to $10 for their meal expenses.

In the 1997-2000 negotiations, both parties proposed changes in practice #17. The Union proposed to have each employee who was held over paid an hour's wages in lieu of the meal reimbursement, and to have the benefit available to employees who worked exactly ten hours, as well as those who worked over ten hours. The Company proposed to add a requirement that employees provide a legible sales slip with date and restaurant name.

The Company's proposal was aimed at eliminating a problem identified by its auditors, in that receipts were being submitted late and/or without any identifying information on them, drawing into question their validity for tax purposes. The Union objected to the limitation to restaurant meals, and told the Company that people bought their food at a variety of places,

including bars, delis, and grocery stores. By way of example, Lewis Welsh, a member of the Union bargaining team told the Company's negotiators that he'd once bought a family pack of pork chops at a store as his meal and had been reimbursed. In the course of this discussion, Company spokesman Jack Witham told the Union's negotiators that a raw steak was not a meal, but the Company did agree that deli food would constitute a meal.

The Company rejected the Union's request for an hour's pay, but agreed to make the meal benefit available to employees who worked ten hours or more. For its part, the Union agreed to condition the meal money on presentation of a legible receipt showing a date and time conforming to the extra hours, and stating the name of the "establishment" where the meal was purchased. The language was fine tuned over several sessions, and the final signed tentative agreement read:

> The Company shall pay up to $10 towards the purchase of a meal for employees who work 10 or more hours on short notice. A legible sales slip with date and name of establishment where meal was purchased must be submitted.
> Note: Date must conform to the day and shift the employee completed.

Three days after the contract was signed, the grievant worked ten or more hours on short notice. After his shift, he stopped at a grocery store and purchased two cans of beans, an uncooked tenderloin filet, and some milk. He submitted the receipt for payment. The Company refused to pay him the $10 he requested, because it did not regard the uncooked steak from a grocery to be a meal from an establishment, as specified in the contract.

Additional facts, as necessary, are set forth below.

DISCUSSION

The Union argues that unprepared foods have long been paid for under the meal ticket practice, and that this was not changed in bargaining. The Company disagrees. There are two prongs to the Company's argument. The first is that the term "meal", which is carried over unchanged from the prior agreement, does not encompass food which has not already been prepared for consumption. The second is that by adding the word "establishment" to the contract, the parties intended to limit the places that a meal could be purchased.

Past practices are generally enforced as implied terms of the contract, and one reason for this is that parties are presumed to have relied on the continuation of these practices when they negotiated the written agreement. A party may renounce a practice during bargaining, because the other party then has a fair opportunity to negotiate language to preserve the practice and, if it fails to do so, clearly does not enter into the new contract in reliance on the practice. The contract here, however, lists and describes the past practices, and these practices, having been codified, have the same dignity as any other provision of the contract. Thus this practice is not subject to unilateral renunciation. Any change must be negotiated, just like any other written term.

The Company asserts in this proceeding that an uncooked steak is not a "meal", because it is not prepared for consumption prior to purchase. This flies in the face of the evidence that a "meal" under the practice has included frozen pizzas, uncooked pork chops, and ice cream treats, all of which the Company had paid for in the past. The statement by Witham in bargaining that a raw steak is not a meal may have been an accurate reflection of his viewpoint, but it does not

change the meaning that term has acquired over time. No one contends that the Union clearly acquiesced in Witham's interpretation, much less affirmatively stated that it would agree to change the existing understandings about what did and did not constitute a meal. As the term itself was not modified in negotiations, even after it became apparent that it had been broadly construed in the past, I cannot find that its meaning was changed.

The other prong of the Company's argument is that the term "establishment" was intended to limit the places where meals could be bought, to restaurants and quasi-restaurant operations where prepared foods are available for purchase. The Company's main objective in bargaining over practice #17 was to insure that legitimate receipts were being produced, including the name of the place where the meal was purchased, a description of the purchase and the purchase date. The Company initially specified that the meal be purchased at a restaurant, but then changed this to the more general term "establishment." Whichever term was used, the company's primary concern was clearly satisfied in the negotiations as it got agreement on specificity in the receipts. The question then is whether there was a secondary objective to the Company's proposal, the placing of limits on where meals could be purchased. If so, the use of the term "establishment" does not accomplish that

end. An "establishment" may refer to any place of business. Moreover, the limit suggested by the Company leads to unusual results in the modern marketing environment. A person may purchase slices of cooked pizza and pieces of hot fried chicken at many gas stations and groceries, which also sell frozen pizzas and frozen fried chicken. Given the Company's interpretation, an employee could buy the same foodstuffs for the same price at the same place, and take them home for consumption, but reimbursement will depend upon whether the store cooks it or he cooks it. It does not make great deal of sense that a grocery would be an "establishment" if the employee shops in the deli section, but would cease to be an "establishment" when the employee wanders down the aisle to the meat counter or the frozen foods. Without much clearer evidence of mutual intent, the word used in the contract simply will not support the distinction sought by the Company.

The language of the contract does not give an employee carte blanche to spend the $10 meal allotment however he wants. Clearly it is not intended as a general shopping allowance, and the purchase is limited to food which might reasonably be consumed as the employee's meal. An employee could not use the meal allowance to buy a pound of sugar or a fifth of whiskey. Within that general guideline, however, the language of the contract and the practice of the parties does not place restrictions on where the food is purchased or its state of preparation.

On the basis of the foregoing, and the record as a whole, I have made the following

AWARD

The Company violated the provisions of past practice #17 when it denied the grievant payment of $10.00 when he made the purchase of May 9, 1997. The stipulated remedy is to pay the grievant $10.00, and the Company is hereby directed to do so.

Dated at Racine, Wisconsin this 11th day of December, 1997.

Daniel J. Nielsen /s/

Daniel J. Nielsen, Arbitrator

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