BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

GLAZIERS & GLASSWORKERS LOCAL NO. 941

and

LAKE CITY GLASS, INC.

Case 1
No. 64408
A-6154

Appearances:

Timothy C. Hall, Attorney, Previant Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., 1555 North RiverCenter Drive, Suite 202, Milwaukee, Wisconsin 53212, appearing on behalf of the Union.

Wes Brown, President, Lake City Glass, Inc., 3501 East Washington Avenue, Madison, Wisconsin 53704, appearing on behalf of the Company.

ARBITRATION AWARD

The above-captioned parties, hereafter referred to as the Union and either the Company or the Employer, respectively, are signatories to a collective bargaining agreement providing for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to hear a grievance. The hearing, which was not transcribed, was held in the Commission's offices on April 28, 2005, and the parties agreed to submit the matter to the arbitrator without post-hearing briefs. The undersigned informed the parties by letter dated May 26, 2005 that in order to be able to interpret one of the parties' joint exhibits, he had accessed a website that purported to calculate distances between cities. The letter proceeded to list approximately 100 city-to-city distances and granted the parties until June 8, 2005, in which to identify misperceptions or inconsistencies in those calculations. Neither party submitted a response.

ISSUE

At hearing, the parties stipulated to the following statement of the issues in this matter:

> Did the employer violate Article 5 of the collective bargaining agreement when it refused to pay Bob Dobson travel time and mileage to an on-site job outside of the greater Madison area?
>
> If so, what is the remedy?

PERTINENT CONTRACT PROVISIONS

The collective bargaining agreement between the parties that became effective June 1, 2003 and expires on May 31, 2008, includes the following provisions:

ARTICLE 5 – TRAVEL TIME

A. Driving Time and Riding Time from the Employer's warehouse and return outside of regular work shift hours (eight [8] hours work between 6:00 a.m. and 4:30 p.m.) shall be paid at $15.00 per hour rate, pro-rated for apprentices. Travel time shall not be considered as hours worked.

The Greater Madison Area shall mean and include the Cities of Madison, Middleton, Monona, Sun Prairie, Fitchburg and Verona, and the Villages of Shorewood, Maple Bluff, Waunakee, and McFarland.

Travel time rate of pay shall apply under the conditions set forth below:

1. It shall be optional with the Employer within greater Madison or other Employer's warehouse city as to whether or not the employee report on the jobsite or at the Employer's warehouse for the start of their days work. It shall likewise be optional with the Employer as to whether the employee finishes his/her day's work at the jobsite or at the Employer's warehouse. It shall also be optional with the Employer as to whether or not employee reports directly to jobsite if, the distance from the employees' home to Employer's warehouse is greater than the distance from the employees' home to jobsite. No materials or equipment belonging to the Employer shall be hauled in an employee personal vehicle. No travel time or mileage allowance shall be paid where employee reports to jobsite.

2. When employees are directed to report to and from the jobsite (outside the greater Madison area) and use their own vehicles, they shall be paid the IRS standard mileage allowance and the travel time rate of pay.

3. Where employees are directed to report to the jobsite and subsequently during the day are requested to move to another site or sites and use their own automobiles, they shall be paid mileage at the rate provided in this Agreement.

4. When the employee is directed to report to the Employer's warehouse for the start of his/her work day or to conclude his/her work day and is not required or permitted to perform any work enroute or at such place of business, then all time spent enroute before and after regular scheduled work hours shall be paid for at the rate of pay for travel time.

5. When the employee is directed to report to the Employer's warehouse for the start of his/her work day or to conclude his/her work day and is required or permitted to perform any work enroute or at such place of business, then all time spent from time of reporting before or after regular scheduled work hours shall be considered and paid as hours worked.

6. All vehicles used by employees covered under this Agreement are to be clearly lettered in paint to display the full firm name of the Employer. . . .

ARTICLE 9 – EXPENSES

A. When employees are sent out of the Employer's warehouse city, all necessary expense and transportation expense shall be paid by the Employer. . .

FACTS

Bob Dobson worked as a glazier for the Employer from approximately 2002 or 2003 until October of 2004.

At all relevant times, Mr. Dobson has been a member of the Union and has resided in Muscoda, Wisconsin.

The Employer's shop or warehouse is located on East Washington Avenue in Madison, Wisconsin.

On 41 days between May 17, 2004 and August 19, 2004, the Employer told Mr. Dobson to report directly to a jobsite in Platteville, Wisconsin, rather than reporting to the shop in Madison. Platteville is outside of the greater Madison area as that term is defined in the collective bargaining agreement. Dobson drove his own vehicle from his home in Muscoda to the jobsite on all 41 days. He did not transport any tools or other equipment for the Employer. Each round trip for Dobson from Muscoda to Platteville covered 92 miles and took 2 hours.

The distance from Muscoda to Platteville is less than the distance from Muscoda to the Employer's shop in Madison.

Other than for this one job in Platteville, Mr. Dobson always reported to either the Employer's shop or to a jobsite within the greater Madison area as that area is defined in the collective bargaining agreement.

Mr. Dobson expected to receive travel time and mileage for his travel between Muscoda and Platteville but the Employer declined to compensate him.

Prior to a collective bargaining agreement reached between the Union and the Employer in 1993, glaziers who worked on jobs outside of the greater Madison area had to travel to the Employer's shop before they could journey, by company truck, to the jobsite. The parties negotiated a change to this practice in 1993 and language was added to the contract to reflect the agreement. At some point between 1995 and 2003, the parties agreed to add what is now paragraph 2 to Article 5, Section A.

Since the bargained language was added to the contract in 1993, the Employer's consistent practice has been not to pay for travel time and mileage attributable to a glazier's commute from home to a jobsite outside of the greater Madison area where that distance is shorter than the distance from the glazier's home to the shop and the glazier is not transporting tools. The Employer applies this practice to approximately 5 employees daily and relies upon it when bidding jobs that are proximate to glaziers' homes.

DISCUSSION

This dispute is centered on language that has been added to the collective bargaining agreement in 1993 or in subsequent versions of the contract. The Union contends that Mr. Dobson is entitled to travel time and mileage reimbursement for driving his personal vehicle from his home in Muscoda to a jobsite that was 46 miles away in Platteville. The Employer contends that Dobson is not eligible to be compensated for his travel because his home is closer to the Platteville jobsite than it is to the Employer's shop in Madison, a distance of more than 50 miles.[1]

Before the change that was negotiated in 1993, glaziers had to drive to the Employer's shop in Madison and then travel by a company truck to any of the Employer's jobsites that were outside of the greater Madison area. This practice meant that the glazier spent unnecessary time in transit and had higher out-of-pocket costs than if he had simply driven his own vehicle directly to the jobsite. At the same time, the Employer bore the cost of the non-productive time spent in the company truck.

The parties agree they negotiated a change in 1993 that allowed the Employer to have glaziers report to work directly to distant jobsites[2] rather than reporting to the shop in Madison for transit to the site.[3] However, they disagree whether the change entitled the glaziers to compensation for travel time and mileage in their personal vehicle en route to the jobsite in those instances when the distance from home to the jobsite is less than the distance they would otherwise have to drive to the shop in Madison.

---

[1] In other words, the glazier is "on his own nickel" when he lives closer to the jobsite than to the shop.

[2] Unless otherwise indicated, references hereafter to a jobsite is to a location outside the "greater Madison area" as that term is defined in the second unnumbered paragraph in Article 5, Section A.

[3] The parties agree that the glazier would be entitled to travel time if he was driving a company truck and that he would be entitled to both travel time and mileage if he was transporting the Employer's equipment in his personal vehicle.

The undersigned believes the contract language supports the Employer's interpretation.

The Union appears to base its interpretation solely on the language of paragraph 2,[4] which makes no distinction based upon the relative distances from home to shop and home to jobsite. The Employer takes the position that paragraph 2 must be read together with the following sentence from paragraph 1 (sometimes referred to hereafter as the "key sentence") in order to correctly apply the contract:[5]

> It shall also be optional with the Employer as to whether or not employee reports directly to jobsite if, the distance from the employees' home to Employer's warehouse is greater than the distance from the employees' home to jobsite.

If, as the Union argues, the present dispute can be resolved by referring only to paragraph 2 (a conclusion that would have the effect of rejecting the Employer's reading of the key sentence in paragraph 1), the Union would need to ascribe some utility to the key sentence in paragraph 1 or there would be no reason to have included it in the contract.[6] The undersigned can fathom potential arguments for two alternative purposes. One is that the sentence exists to grant the Employer the *authority* to send glaziers directly to a jobsite outside of Madison when they live closer to the jobsite than to the shop on East Washington Avenue. In order to accept this interpretation, there should be a corresponding grant of authority for those instances when the Employer directs the glazier to report from home to the jobsite even though it is *farther* than the distance from home to the shop. As already noted, paragraph 2 does not differentiate, at least explicitly, between relative distances to the jobsite and to the shop. There is no other sentence or clause in the contract that would serve as the corresponding grant of authority. A second conceivable argument is that the language of the key sentence in paragraph 1 was intended to refer solely to jobsites *within* greater-Madison rather than outside that area. However, that contention/interpretation would be inconsistent with the meaning of the initial sentence in paragraph 1 and would be contrary to the words "it

---

[4] Hereafter, unless otherwise indicated, references to paragraphs by number 1 through 6 are to those in Article 5, Section A. Paragraph 2 reads:

> When employees are directed to report to and from the jobsite (outside the greater Madison area) and use their own vehicles, they shall be paid the IRS standard mileage allowance and the travel time rate of pay.

[5] One of the generally accepted rules for construing ambiguous contract language is to reach a conclusion based upon the entire agreement. As described in GREAT LAKES DREDGE & DOCK CO., 5 LA 409, 410 (Kelliher, 1946):

> Sections or portions cannot be isolated from the rest of the agreement and given construction independently of the purpose and agreement of the parties as evidenced by the entire document. . . . The meaning of each paragraph and each sentence must be determined in relation to the contract as a whole."

[6] One arbitrator has described the underlying rule of construction as follows:

> It is axiomatic in contract construction that an interpretation that tends to nullify or render meaningless any part of the contract should be avoided because of the general presumption that the parties do not carefully write into a solemnly negotiated agreement words intended to have no effect.

John Deere Tractor Co., 5 LA 631, 632 (Updegraff, 1946).

shall also be optional" found at the beginning of the key sentence.

A second factor to weigh when ascertaining the proper interpretation of paragraphs 1 and 2 is the basic structure of Section A of Article 5. Paragraph 1 describes circumstances in which a glazier is *not* entitled to travel time or a mileage allowance. With the exception of paragraph 6 (which does not specifically indicate if it describes circumstances relating to whether or not the employee is to be compensated/reimbursed), the remaining paragraphs in Section A describe circumstances where some form of payment to the employee is contemplated. Given that the particulars of Mr. Dobson's commute are more specifically described by the language of the key sentence in paragraph 1 rather than by the language of paragraph 2, the structural distinction within Section A supports the Employer's interpretation of the contract.

The third factor favoring the Employer's interpretation is the sequence of the changes made to Section A of Article 5. Although the record in this matter does not contain a copy of the contract as it existed before 1993, testimony established that at that time the Employer had no authority to tell a glazier to report directly to a jobsite. The 1993 negotiations that granted discretion to the Employer to have glaziers report to the jobsite were reflected in the contract that applied from 1993 to 1995, more specifically in Article 5, Section A, paragraph 1 of that contract. The parties have not changed paragraph 1 in their subsequent contracts and no testimony suggests this topic has remained a subject of negotiations.[7] Consequently, the result reached when considering Mr. Dobson's commute from Muscoda to Platteville should be the same under the 1993 contract as under the current (2003 to 2008) contract. The following language, all of which is still found in paragraph 1, would be determinative if the contractual construction was limited to the provisions of the 1993 contract:

> It shall be optional with the Employer within greater Madison or other Employer's warehouse city as to whether or not the employee report on the jobsite or at the Employer's warehouse for the start of their days work. . . . It shall also be optional with the Employer as to whether or not employee reports directly to jobsite if, the distance from the employees' home to Employer's warehouse is greater than the distance from the employees' home to jobsite. . . . No travel time or mileage allowance shall be paid where employee reports to jobsite.

In addition to the language of the contract itself, the past practice of the parties supports the Employer's interpretation.[8] Evidence shows the Employer has consistently *not* paid travel time or mileage when the glazier's travel from home to the jobsite is less than to the shop in Madison. The evidence also shows that glaziers have not expected to be compensated under

---

[7] While paragraph 1 and the remaining language in Article 5 of the 1993 contract have not changed, what is now paragraph 2 was added sometime after the 1993 contract and the other paragraphs were renumbered accordingly.

[8] "[T]he parties' intent is most often manifested in their actions. Accordingly, when faced with ambiguous language, most arbitrators rely exclusively on the parties' manifestation of intent as shown through past practice and custom. Indeed, use of past practice to give meaning to ambiguous contract language is so common that no citation of arbitral authority is necessary." ELKOURI & ELKOURI, HOW ARBITRATION WORKS, 623 (6TH ED.) (footnote omitted).

those circumstances. The Employer supplied records covering a 27-month period ending in

March 2005, listing all travel payments received by its employees. The records reflected the jobsite, the name of the employee receiving travel pay, the number of travel hours and the employee's home address. The undersigned compared the distance from the employee's city/town of residence to Madison with the distance from the employee's city/town of residence to the jobsite city. In fifty-seven of the sixty-one unambiguous instances in which travel pay was awarded, the distance from home to the jobsite was *more than* the distance from home to the shop, thereby supporting the Employer's interpretation of the contract. In the remaining four instances, the difference in mileage was small enough to have resulted from using less accurate city-to-city distances rather than address-to-address distances. In other words, the Employer never provided travel pay to glaziers during this 27-month period unless the employee traveled farther to the jobsite than s/he would have traveled to reach the shop in Madison. The testimony of glazier James Poley, a 20-year employee, provided additional support for the conclusion that Mr. Dobson was the first employee to request travel pay when traveling from home to a jobsite closer than the shop. Mr. Poley confirmed that he received travel pay if he drove a company truck but stated he had not even asked for reimbursement when driving his personal car from his home in Deerfield to a jobsite that was closer than the shop in Madison.

While a cursory review of the contract may have caused Mr. Dobson to expect he would receive travel time for the 90-mile round trip between his home in Muscoda and the Platteville jobsite, both the parties' past practice and a closer look at the entire collective bargaining agreement reveal that his expectation was unjustified.

In light of the above, it is my

AWARD

That the Employer's action denying travel time and mileage to Bob Dobson for the 41 days he reported from his home in Muscoda directly to the jobsite in Platteville was in accordance with the collective bargaining agreement. Therefore, this grievance is denied.

Dated at Madison, Wisconsin, this 29th day of June, 2005.

Kurt M. Stege /s/

Kurt M. Stege, Arbitrator

rb
6850