

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
SOUTHERN DOOR EDUCATION SUPPORT PERSONNEL

and

SOUTHERN DOOR SCHOOL DISTRICT

Case 172
No. 68938
MA-14414

(Chaudoir Jury Duty Pay Grievances)

Appearances:

Ms. Kathy Rohde, Bayland Educators UniServ Directors, 1136 North Military Avenue, Green Bay, Wisconsin appearing on behalf of Southern Door Education Support Personnel.

Mr. Joe Innis, Superintendent, Southern Door County School District, 2073 County Trunk "DK", Brussels, Wisconsin, appearing on behalf of Southern Door County School District..

ARBITRATION AWARD

Southern Door Education Support Personnel, hereinafter "Association" and County School District, hereinafter "District" requested that the Wisconsin Employment Relations Commission provide them a list of five staff members from which Lauri A. Millot, staff arbitrator, was selected to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The hearing was held before the undersigned on September 9, 2010 in Brussels, Wisconsin. The hearing was not transcribed. The parties submitted post-hearing letters in support of their positions. The Union was provided a copy of the District's letter by October 18, 2010 and both sides retained the right to file responsive briefs. Neither party submitted a reply and the record was closed on October 24, 2010. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated that there were no procedural issues in dispute and were unable to agree as to the substantive issues.

The Association frames the substantive issues as:

Whether the District violated Article XVI, E. of the parties' Agreement when it retained the difference between Delores Chaudoir's jury duty pay and her bus driver pay? If so, what is the appropriate remedy?

The District did not propose a framing of the issue, leaving it to the Arbitrator to determine.

Having considered the facts and arguments of the parties, I frame the issues as:

Whether the District violated Article XVI, Leaves of Absence with Pay, Section E, Court Appearances, when it compensated the Grievant her regular daily rate rather than the court provided jurist pay when she served jury duty on May 26-29, 2009? If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE I Management Rights

Unless otherwise herein provided, the management of work and the direction of the working force is vested in the Board of Education. The Board of Education adopt reasonable rules and amend the same from time to time. The SDESP recognizes and respects the management's enforcement thereof.

...

ARTICLE VI Grievance Procedure

- A. Purpose: The purpose of this procedure is to provide an orderly method for resolving differences arising during the term of this agreement. A determined effort shall be made to settle any such differences through the use of the grievance procedure, and there shall be no suspension of work or interference with operations during the term of the agreement.
- B. Definition: For the purpose of this agreement, a grievance is defined as any complaint regarding the interpretation or application of a specific provision of the bargaining agreement.
- C. Grievances shall be processed in accordance with the following procedures:

...

Fourth Step: If the aggrieved, with the concurrence of SDESP, is not satisfied with the disposition of the grievance at Step 3, he/she may, within fourteen (14) calendar days of receipt of the Step 3 disposition, submit the grievance to arbitration by the WERC whose rules and regulations shall likewise govern the proceedings. The arbitrator shall have all power and remedies to render an award which shall be final and binding on both parties. The arbitrator shall have no power to add to, subtract from, modify, or extend any terms of this agreement including the schedule of wages.

ARTICLE XVI Leaves of Absence With Pay

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E. Court Appearances

Any employee subpoenaed as a witness or for jury duty shall be paid the difference between his/her regular salary and the witness pay.

...

BACKGROUND AND FACTS

The Grievant, Delores Chaudoir, is employed by the District in a part-time capacity as a bus driver. The Grievant drives both a morning and afternoon bus route. The morning route is a total of 1.5 hours starting at 6:00 a.m. and ending at 7:30 a.m. The afternoon route is a total of 1.5 hours starting at 2:30 p.m. and ending at 4 p.m. The Grievant also regularly fills in as a substitute for the District in various support staff positions both during the hours between the two bus routes and between 4 p.m. and 10 p.m. during the evening.

On May 26, 2009, the Grievant was summoned for jury duty at 8:30 a.m. The Grievant appeared as directed and was ultimately selected to serve a jurist. Following selection, the jurists were informed that the trial would last three days and that they would start the following morning at 8 a.m. The Grievant requested that the start of trial be delayed until 8:30 a.m. so that she could complete her morning bus route. The Grievant's request was granted. The Grievant drove her afternoon bus route on May 26, 2009. The Grievant requested and was approved for 1.5 hours of jury duty personal leave for her morning bus route on May 26, 2009.

On May 26, 27, and 28, 2009, the Grievant drove her morning bus route following which she traveled to Sturgeon Bay and served as a jurist. The Grievant did not drive her afternoon route on any of these dates. The Grievant was approved for 1.5 hours (her afternoon bus route) of jury duty personal leave for all three dates.

The District employed a substitute bus driver to drive the Grievant's routes when she was serving as a jurist. The substitute driver earned the same amount as the Grievant for driving one bus route - \$26.93.

The County of Door Circuit Court issued the District a check in the amount of \$217.60 which represented both the mileage and jurist service compensation.¹ The Grievant was compensated her regular earnings of \$26.93 for each of the routes she did not drive on the four dates and was issued a check for \$77.60 for mileage.

The Association filed a grievance on August 7, 2009, alleging a violation of Article XVI, Leaves of Absence with Pay, section E, Court Appearances describing the violation as:

This Contract clause assures that an employee will not suffer a loss of pay as a result of being required to appear in a court of law as a witness or as a jurist. It neither states nor implies that any court paid stipend in excess of employee can be kept by the School District. The District violated the contract by keeping four days of said excess stipend pay.

The remedy the Association sought \$8.07 per day for four days which was the difference between the Grievant's court paid stipend of \$35.00 per day and her regular two hour bus route compensation of \$26.93 per day. The District denied the grievance at all steps placing it properly before the Arbitrator.

DISCUSSION

This dispute revolves around the meaning of Article XVI, Leaves of Absence with Pay, Section E, Court Appearances. The Association's view is that the Grievant is entitled to the greater of her what she would have earned had she been at work and not serving as a jurist. The County jurist fee while the District takes the position that it must only compensate the Grievant what she would have earned while in District employ.

The language of Section E, Court Appearances, provides that an employee who serves as a jurist, "shall be paid the difference between his/her regular salary and the witness pay." This language is ambiguous. The Grievant's regular salary for one-and-one half hours of work is \$26.93. The difference between that and the juror pay is \$8.07. Certainly the parties did not intend for the Grievant to receive only \$8.07 for each of the four court dates which is the difference between the witness pay and her regular salary. This is evidenced by the record which provides that the parties have interpreted this language to mean that an employee will not earn the witness/juror pay when their regular daily compensation was greater.

¹ The Grievant was compensated \$140.00 for service and \$77.60 for mileage. The mileage amount was based on four days of 40 miles per day travel at the rate of \$.48 cents per mile.

As the Association correctly points out, it is not generally the case that the approved jurist compensation exceeds the compensation that an employee would have earned if he/she had been at work rather than performing their civic duty. There is no evidence in this record that indicates the parties envisioned this scenario and, in fact, this is the first time it has presented itself.

The parties have a jury duty compensation practice which is relevant to this proceeding. When an employee receives a check for serving as witness or juror in a court proceeding, the employee forwards the check to the District payroll officer. From that check, the District reimburses the employee the mileage portion and Section E is applied. Payroll records indicate that in all cases, except for the Grievant's, the employee's regular compensation was greater than the witness or jurist compensation and the employee was provided their total regular salary.

The Association argues that the intent of section E is to ensure that an employee will not suffer a loss of compensation if he/she serves as a jurist and therefore the Grievant is entitled to the difference between her morning route and jury duty monies. I agree with the Association's assertion that the intent of the language is that an employee will not suffer an economic loss by performing their civic duty, but nowhere in the language is there any mention of what the parties intended in the event that an employee's regular compensation is less than the court repayment. The Association is seeking a benefit that the language of the agreement does not provide. If the Union seeks this benefit, then it must negotiate it. I will not award through arbitration a result which the parties neither contemplated nor negotiated.

AWARD

1. No, the District did not violated Article XVI, Leaves of Absence with Pay, Section E, Court Appearances, when it compensated the Grievant her regular daily rate rather than the court provided jurist pay when she served jury duty on May 26-29, 2009.

2. The grievance is denied.

Dated at Rhinelander, Wisconsin, this 21st day of January, 2011.

Lauri A. Millot /s/

Lauri A. Millot, Arbitrator

LAM/gjc
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