

BEFORE THE ARBITRATOR

In the Matter of a Dispute Between
STEVENS POINT TRANSIT, AFSCME LOCAL 309

and

CITY OF STEVENS POINT

Case ID: 5.0005

Case Type: MA

AWARD NO. 7924

(Vacation Carryover Grievance)

Appearances:

Mr. Troy Bauch, Field Representative, AFSCME Council 32, 1190 Ruffedt Road, Cornell, Wisconsin, appearing on behalf of Stevens Point Transit, AFSCME Local 309.

Mr. A. Logan Beveridge, City Attorney, City of Stevens Point, 1515 Strongs Avenue, Stevens Point, Wisconsin, appearing on behalf of the City of Stevens Point.

ARBITRATION AWARD

Stevens Point Transit, AFSCME Local 309 (hereinafter referred to as “Union”) and the City of Stevens Point (hereinafter referred to as “City” or “Employer”) are parties to a collective bargaining agreement that provides for final and binding arbitration of unresolved grievances. Pursuant to the parties’ request, the Wisconsin Employment Relations Commission provided a panel of arbitrators from which the undersigned was selected to decide the instant grievance. A hearing on that grievance was held in Stevens Point, Wisconsin, on March 11, 2016. The hearing was not transcribed. The parties presented oral arguments whereupon the record was closed. Having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned issues the following Award.

ISSUE

The parties agreed there were no procedural issues in dispute and framed the substantive issue as:

Whether the City violated Article 14, Section F, when it denied the Grievant 5.75 hours vacation carryover for annual year 2014?

The parties stipulated that should the Arbitrator find in favor of the Union, the appropriate remedy is to compensate the Grievant for 5.75 hours at the 2014 rate.

RELEVANT CONTRACT LANGUAGE

Article 6 – Grievance Procedure

A grievance shall mean a dispute concerning the interpretation, application, or violation of this Agreement and shall be handled as follows:

A. Subject Matter: Only one subject matter shall be covered in any one grievance. However, this shall not prohibit one arbitration board from hearing successive grievances so long as each grievance hearing is completed before the next one begins.

* * *

E. Step 4 Arbitration:

* * *

6. Decision of the Arbitrator: The decision of the arbitrator shall be limited to the subject matter of the grievance. The arbitrator shall not modify, add to, or delete from the express terms of this Agreement.

* * *

Article 14 – Vacation

A. Annual: Full-time employees shall receive vacations with pay based on their length of service in accordance with the following schedule:

After twelve (12) months	one (1) week (40 hours)
After two (2) years	two (2) weeks (80 hours)
After seven (7) years	three (3) weeks (120 hours)
After thirteen (13) years	four (4) weeks (160 hours)
After twenty (20) years	five (5) weeks (200 hours)
After twenty-five (25) years	five (5) weeks and one (1) day (208 hours)*
After twenty-six (26) years	five (5) weeks and two (2) days (216 hours)*
After thirty (30) years	six (6) weeks (240 hours)

*These changes are effective on the employee’s anniversary date in 2002.

Vacation benefits for part-time employees will be determined on prorated basis.

Vacation shall be taken in full day increments however, each employee, after having worked two years for the City, shall be eligible to take two days of vacation in one-half day increments.

B. Vacation Dates: Employees will be allowed to use ten (10) days (two weeks) of their allotted vacation in periods of less than one (1) full week. Employees who request such vacation time must do so at least five (5) days in advance, excluding weekends, except in cases of emergency where it is not possible to give advance notice and permission is granted by the Transit Manager.

* * *

D. Seniority. The employee holding highest seniority in service shall select vacation time first and so on according to seniority. Vacation requests shall be made by March 1 and approved by the Transit Manager. The efficiency of the department shall not be jeopardized by the loss of two (2) employees on vacation at one time. (The third sentence of this section shall not be operative during the term of the 1995 96 Agreement. This supplement shall expire with this Agreement unless renewed by mutual agreement.)

- E. Vacation pay will be based on actual average shift time worked; i.e., for a bid route, if 32 ½ hours/week, you would receive 32 ½ hours of vacation.
- F. Vacation Carryover: Employees eligible for two (2) or more weeks vacation may carry over up to one (1) week into the employee's following vacation year with prior approval by the department head or Mayor's Office.
- G. Termination Benefits. Employees whose services are terminated (death, quit or discharge) shall receive pay for all unused earned vacation at the time of separation. A prorated vacation for the current vacation year shall be paid at the time of separation at the rate of one twelfth (1/12) of a full vacation for each full month of service beyond the employee's anniversary date except in the case of an employee who quits and fails to give at least two (2) weeks prior notice.

BACKGROUND

The Grievant, Thomas Allen, worked continuously as a part-time bus driver for the City for at least eight years prior to his voluntary retirement on May 15, 2015. Allen's bid route was for 30 hours per week and he rarely worked overtime. At all times relevant herein, Allen's Supervisor was John Alekna, the Transit Manager was Susan Lemke, and the Director of Public Works and Transportation was Joel Lemke.

On September 4, 2014, Allen requested vacation for Wednesday, September 10, 2014. His request was denied on that same date because two operators had already been approved for leave.

On September 9, 2014, Allen requested vacation for September 15, 2014. His request was denied because two operators were on an extended leaves.

On October 8, 2014, Allen requested vacation for October 13, 2014. His request was denied on that same date because three operators were already off on extended leaves. In addition to denying the requested October 13 date, the City prospectively denied "Oct. 13-17, Oct. 20-24, Oct. 27-31, Nov. 3-7, and Nov 10" on the request for time off form.

Additional facts, as relevant, are contained in the DISCUSSION section below.

DISCUSSION

The parties' collective bargaining agreement allows an employee to carry over unused vacation leave subject to certain conditions; first, employees may only carry over up to one week; and, second, the employee must obtain prior approval from the department head or the Mayor's office.

On Allen's 2014 anniversary date, November 11, he had a vacation balance of 35.75 hours from the annual year 2014. Allen had neither requested approval from his department head or the Mayor's office, thus he failed to fulfill a condition precedent to carry over the vacation time. Normally, failure to comport with the terms of a collective bargaining agreement will negate the benefit, but in this instance, Allen filed a grievance and, after the second step meeting, the City approved 30 hours of vacation carryover to Allen.¹ This did not satisfy Allen and he seeks payment for the additional 5.75 hours.

My authority arises out of the agreement and specifies that I "shall not modify, add to, or delete from the express terms of the Agreement." The fact that the City offered Allen 30 hours does not expand my authority to interpret the language of the agreement. I therefore start with the language of Article 14, Section F, which provides:

Vacation Carryover: Employees eligible for two (2) or more weeks vacation may carry over up to one (1) week into the employee's following vacation year with prior approval by the department head or Mayor's Office.

Allen testified to inquiries he made to Susan Lemke, Alekna, and two other supervisors about "what was happening with his vacation," but the record is silent as to when these conversations occurred. Regardless, a general inquiry that is not directed to the appropriate personnel does not equate to a request to carry over vacation leave. Allen did not verbally or in writing request approval to carry over his annual year 2014 vacation hours from Joel Lemke or the Mayor. The language of Article 14, Section F, is clear and unambiguous and provides that prior approval is required. Allen therefore failed to obtain the requisite approval and, as such, is not entitled to annual year 2014 vacation leave carryover.

Even if I were to overlook Allen's failure to comply with the express terms of the collective bargaining agreement, possibly as a result of the City's willingness to apply "extenuating circumstances," the Union's definition of a week is flawed. The Union argues that a week is 40 hours and, therefore, Allen should have been able to carry over 40 hours.

¹ The City approved the carryover of 30 vacation hours for Allen due to "mitigating circumstance." Specifically, the City experienced a high number of drivers on extended leave during 2014 which the City acknowledged made it difficult for Allen to take his earned vacation time.

The problem with the Union's assertion is that the parties' specifically defined how to calculate a "week" for purposes of vacation. Article 14, Section E, provides:

Vacation pay will be based on actual average shift time worked; i.e., for a bid route, if 32 ½ hours/week, you would receive 32 ½ hours of vacation.

There is no dispute that Allen's bid route was 30 hours or that he consistently worked 30 hours a week. Therefore, per the language of the agreement, his "week" for purposes of vacation carryover would be 30 hours.

The Union maintains that Allen was unaware of the procedure required for carryover, but also admits that he did not read or review the collective bargaining agreement. It is not the responsibility of the Employer to educate employees on the terms and conditions of employment.

The Union next points to the denial of Allen's September and October vacation requests, asserting that he was unable rather than unwilling to use his vacation leave. There is no question that in the fall of 2014 the City was short-staffed and leave requests were not granted. However, Allen was awarded his vacation leave in November 2013 and therefore had ten months before his first request to use the leave time. Allen did not attempt to use his leave in the months preceding September 2014. Further, if he had wanted to take vacation days in September and October, he could have availed himself to the seniority-based vacation request procedure as recognized in the collective bargaining agreement and he did not do this. I do not find Allen was unable to use his vacation leave.

AWARD

No, the City did not violated Article 14, Section F, when it denied Allen 5.75 hours vacation carryover for annual year 2014.

Dated at Rhinelander, Wisconsin, this 2nd day of May 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Lauri A. Millot, Arbitrator