

**FEDERAL MEDIATION AND CONCILIATION SERVICE  
UNITED STATES GOVERNMENT  
UPPER MIDWEST REGION**

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Xcel Energy, Inc,

Company,

-and-

Grievance Arbitration  
FMCS Case No. 12-56541-6  
Arbitrator's Award

International Brotherhood of  
Electrical Workers, Local 953.

Union.

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|                                 |                       |
|---------------------------------|-----------------------|
| ARBITRATOR:                     | Rolland C. Toenges    |
| GRIEVANT:                       | Clint Mabie           |
| DATE OF GRIEVANCE:              | January 27, 2012      |
| DATE OF HEARING:                | May 21, 2013          |
| LOCATION OF HEARING:            | Eau Claire, Wisconsin |
| RECEIPT OF POST HEARING BRIEFS: | July 10, 2013         |
| DATE OF AWARD:                  | August 15, 2013       |

**ADVOCATES**

**FOR THE COMPANY:**

Michael J. Moberg, Attorney  
Briggs and Morgan, P.A.

**FOR THE UNION:**

Richard L. Kaspari, Attorney  
Metcalf Kaspari Engdahl &  
Lazarus, P.A.

**WITNESSES****FOR THE COMPANY:**

Tim Kiser, Mgr. Operations & Design

Richard Sobtzak, Mgr. Field Operations

Mark Crandell, Supv. Field Operations

Julie Simon, Sr. Dir. Field Operations

**FOR THE UNION:**

Robert Lahti, Asst. Bus Agent

**ALSO PRESENT**

Chrisanne Nelson, Sr. Wkr. Consultant

Dale Blank, Business Manager

Brian Thewis, Line Tech.

**RECORDER**

Angela D. Sauro, RPR  
Kirby A. Kennedy & Associates

**ISSUE IN DISPUTE**

**Did the Company violate Supplemental Agreement Number 1, dated December 17, 2008, when it failed to pay rest time to the Grievant on February 21, 2012? If so, what is the appropriate remedy?**

**JURISDICTION**

The matter at issue, regarding interpretation of the terms and conditions of the Collective Bargaining Agreement (CBA) between the Parties came on for hearing pursuant to the Grievance Procedure

contained in said Agreement. The Grievance Procedure, in relevant part, provides as follows:

**“METHOD OF HANDLING GRIEVANCES AND TIME LIMITS**

In the event that any difference arises between the Company and the Union, or any employee, concerning the interpretation, application or compliance with the provisions of this Agreement, such difference shall be deemed to be a grievance and shall be settled only in accordance with the grievance procedure set forth herein.”

**“Step 3, Arbitration.** If no settlement is reached in Step 2 in the specified or agreed time limits, the aggrieved party may in writing within fifteen (15) working days from the date of the denial, request that the matter be submitted to an arbiter for a hearing and resolution.”

**“ARBITRATION.** All differences that may arise which cannot be agreed upon by the representatives of the Company and the Local Union shall be submitted in the manner hereinbefore provided at the request of either party to an arbitration board as follows:

(1). The Arbitration Board shall consist of two (2) persons to be selected by the Company and two (2) by the Local Union (either party is privileged to select alternate members) and within fifteen (15) days from the date of written notice of the request for arbitration. Either party shall request from the Federal Mediation & Conciliation Service, a panel of five (5) arbitrators. The Company and the Union shall attempt to agree on one (1) of the five (5) arbitrators contained in the list submitted by the FMCS. If the parties are unable to agree, then the parties shall, through an alternating process, strike names one at a time from said list, and the remaining name shall act as arbitrator. The party requesting arbitration shall include the names of its two (2) members of the Arbitration Board in its written request for arbitration; the other party shall submit, in writing, the names of its two (2) members of

the Arbitration Board within seven (7) days following receipt of the arbitration request.

(2). The party requesting arbitration shall submit in writing to the other party, on the same date arbitration is requested, a Statement of Issues which shall contain specific reasons for the arbitration and which shall state specifically the clause or clauses of the Labor Agreement wherein a violation is claimed and the reasons advanced. Copies of the Statement of Issues shall be given to each individual member of the Arbitration Board at least three (3) days prior to their first meeting.

(3). The Arbitration Board, as above constituted, shall hear all evidence on the case, or cases, referred to it and with all members present render its decision in writing, and signed by a majority of its members immediately after testimony has been completed. The Arbitration Board, in meeting to render a decision or to hear a case, shall not be compelled to be in session at other than 8:00 a.m. to 5:00 pm., Monday through Friday, holidays excepted.

(4). It is mutually agreed that the time limitations set forth in this Article are reasonable and shall be strictly adhered to unless such limitations are extended by the action or written approval of a majority of said Board.

(5). Each party shall bear the expense of preparing and presenting its own case and the expenses of its arbitrators. The expense, if any, of the fifth arbitrator, and incidental expense mutually agree to in advance, shall be borne equally by the parties herein.

(6). The fifth member of the Arbitration Board shall act as Chairman of the Board. The Board, by a majority decision, shall decide in all matters pertaining to procedure in connection with the presentation of the arbitration case.

(7). In reaching an award, the Arbitration Board shall not go beyond the evidence submitted and shall interpret only the signed agreement between the parties herein, and it shall not be the right

of the Arbitration Board to render decisions which have as their effect the enforcement on either party of new rules or regulations covering the conduct of either the Company or the employees covered herein.

(8). Nothing contained in this Labor Agreement shall be construed as an agreement to submit to arbitration any question or difference involved in the negotiation of a new Labor Agreement or in the negotiation of an amendment to this Labor Agreement. Also, neither the arbitration procedure nor the no strike, no lockout clause contained in this Agreement shall apply in the negotiations of a new Labor Agreement or in the negotiations of an amendment to this Labor Agreement.”

The CBA provision relevant to the issue in dispute, rest periods, is found in “SUPPLEMENTAL AGREEMENT #1 EMERGENCY REST AND PAY PROVISION,” dated 12-17-08:

“The purpose of this agreement is to document an understanding between the Company and the Union in relation to rest time and rest period premium for employees working four or more consecutive hours prior to the start of their normal shift. The main focus of this Letter of Understanding is to state the party’s agreement regarding the rest period, which normally consists of the eight hour time period prior to the start of an employee’s normal shift.

In the event an employee is required to work four (4) or more consecutive hours outside of his/her scheduled shift, and is released from work, eight (8) hours shall elapse before he/she returns to work, without loss of pay for any portion of his/her scheduled shift, except that the employee may be required to work earlier to aid in restoring service to customers.

If an employee is required to work four (4) or more consecutive hours outside of his/her shift, and is either not

released from work or is recalled to work before the expiration of the eight (8) hour rest period, the employee will be paid at the rate of time and one half for all hours worked until he/she has been released for an eight (8) hour rest period. In addition, he/she will be paid rest period premium (at the straight time rate) for those hours which fall within his/her normal shift. If work on a Sunday or holiday (recognized as a holiday in the Labor Agreement) is involved, double time shall be paid.

However, if an employee is called out twice or more times within the eight and one-half (8 ½) hour period immediately preceding his/her normal start time, the employee will be entitled to a rest period, regardless of the number of hours worked. A callout is defined as responding to the work site, service center or plant.

This agreement supersedes all other Exhibit B's, Letters of Agreement, Letters of Understanding or any other agreement whether verbal or written, in regards to rest time and the rest period premium, except the following which will remain in effect:

- The Wisconsin Mutual Aid Agreement
- The May 25, 2006 Storm Work Assignment Grievance Resolution (#7182).

The Parties selected Rolland C. Toenges as neutral Arbitrator to hear and render a decision in the interest of resolving the disputed matter.

The Arbitration Hearing was conducted as provided by the terms and conditions of the CBA and the Arbitration Rules and Regulations of the Federal Mediation and Conciliation Service. The Parties were afforded full opportunity to present evidence and argument bearing on the matter in dispute.

Witnesses were sworn under oath and subject to examination and cross-examination. A stenographic recording of the hearing was prepared and made available to both Parties and the Arbitrator.

The Parties stipulated that there were no procedural objections and the disputed matter was properly before the Arbitrator.

The Parties jointly stipulated to the statement describing the issue in dispute.

### **BACKGROUND**

Xcel Energy, Inc. (Company) is a major U S electric and natural gas company with operations in eight states, including Wisconsin, the location of the instant dispute. The Company provides products and services to approximately 3.4 million electricity customers and 1.9 million natural gas customers through four operating companies. The Company employs some 12,000 workers, including those that install, service and maintain electrical and natural gas transmission facilities. The Grievant is one of the aforementioned workers.

The International Brotherhood of Electrical Workers, Local 953 (Union) represents the aforementioned workers in a collective bargaining relationship with the Company.

The Company and Union are Parties to a Collective Bargaining Agreement (CBA) in effect from January 1, 2010 to December 31, 2013.<sup>1</sup> The Agreement, among other things, includes provisions that apply to situations where employees are called in to work on their normal off duty time. Such call-ins occur with some frequency due to interruptions in electric and gas service from natural and other causes.

The CBA contains provisions for additional pay and rest time for employees called out to work during their normal off duty time.<sup>2</sup> Such provisions have been a part of the CBA of some time and were amended via a Supplement Agreement dated December 17, 2008.<sup>3</sup> This Supplemental Agreement, among other things, provides that; “. . . if an employee is called out twice or more times within the eight and one-half (8 ½) hour period immediately preceding his/her normal start time, the employee will be entitled to a rest period, regardless of the number of hours worked. A call out is defined as responding to the work site, service center or plant.” It is this particular CBA language disputed in the instant case.

Employees typically volunteer for unscheduled called outs. By doing so the employee receives standby pay of two hours each weekday, four hours on Saturday and six hours on Sunday. Employees also typically

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<sup>1</sup> Joint Exhibit #1.

<sup>2</sup> Joint Exhibit #1, Article IV.

<sup>3</sup> Joint Exhibit #1, Supplement Agreement #1.

volunteer for pre-arranged early reports. By doing so the employee receives overtime for hours worked.

The instant dispute involves a situation where the Grievant had been called out once during the eight and one half hour period immediately preceding his normal start time and also was scheduled in advance to report for work one hour prior to normal start time. While the Union interprets this as two call outs, which would qualify the employee for rest time, the Company's position is that a previously pre-arranged report time is not a call out, within the meaning of Supplement Agreement #1.

The disputed matter was processed through the CBA Grievance Procedure, but without resolution. The disputed matter was then advanced to the Arbitration step of the Grievance Procedure, where it now comes before the instant proceeding for resolution.

### **EXHIBITS**

#### **JOINT EXHIBITS:**

- J-1. Collective Bargaining Agreement
- J-2. Excerpt, Collective Bargaining Agreement, 01/01/2008 – 12/31/2010,
- J-3. Supplemental Agreement #1, "Emergency Pay and Rest Provisions," 12/17/2008.
- J-4. Letter, Elmasry to Lahti, "Emergency Pay and Rest Provisions," 12/08/2011.

UNION EXHIBITS:

- U-1. Field Operations Timecard, Don Wiener, 06/17/2012.
- U-2. Field Operations Timecard, Jeff Wiberg, 06/21/2012.
- U-3. Field Operations Timecard, Teresa Hrdicka, 04/13/2013.

COMPANY EXHIBITS:

- C-1. Letter, Kiser to Erickson, subject; "Grievance – Meal Reimbursement (Co #72007), 05/25/2006.
- C-2, a. Field Operations Timecard, Jim Boylan, 05/11/2011.
- C-2, b. Callout Detail Report; 65042, Jim Boylan, 05/11/2011.
- C-2, c. 2011 La Crosse Gas Timesheet, Brian McGuire, 07/27/2011.
- C-2, d. 2011 La Crosse Gas Timesheet, Bryan Willcoxson, 10/05/11.
- C-3, a. Field Operations Timecard, Mabie Clint, 02/21/2012.
- C-3, b. Field Operations Timecard, Don Wiener, 06/18/2012.
- C-3, c. Callout Detail Report Results, Darrell Kress, 06/18/2012.
- C-3, d. Field Operations Timecard, Jeff Wiberg, 06/21/2012.
- C-3, e. Field Operations Timecard, Brian Thewis, 07/05/2012.
- C-3, f. Field Operations Timecard, Brian Thewis, 07/05/2012.
- C-3, g. Field Operations Timecard, Steve Thewis, 02/27/2013.
- C-4, a. Field Operations Timecard, Pat McGuire , 07/15/2011.

- C-4, b. Callout Detail Report: 70668, Pat McGuire, 07/15/2011.
- C-4, c. Field Operations Timecard, Pat McGuire, 08/02/2011.
- C-4, d. Callout Detail Report: 72561, Pat McGuire, 08/02/2011.
- C-4, e. Field Operations Timecard, Larry Smiskey, 08/02/2011.
- C-4, f. Field Operations Timecard, Craig Sosalla, 08/02/2011.
- C-4, g. Field Operations Timecard, Eric Craker, 09/01/2011.
- C-4, f. Callout Detail Report: 74776, Eric Craker, 09/01/2011.
- C-4, g. Field Operations Timecard, Craig Sosalla, 09/09/2011.
- C-4, h. Callout Detail Report: 75384, Craig Sosalla, 09/09/2011.
- C-4, i. Field Operations Timecard, Jeff Reali, 09/12/2011.
- C-4, j. Field Operations Timecard, Jeff Reali, 09/12/2011.
- C-4 k. Callout Detail Report: 75595, Jeff Reali, 09/12/2011.
- C-4, l. Field Operations Timecard, David Denzine, 10/25/2011.
- C-4, m. Callout Detail Report: 78093, David Denzine, 10/25/2011.
- C-4, n. Field Operations Timecard, Mike Kopca, 11/01/2011.
- C-4, o. Callout Detail Report: 78458, Mike Kopca, 11/01/2011.

## **POSITION OF THE PARTIES**

### **THE UNION SUPPORTS ITS POSITION WITH THE FOLLOWING:**

- Rest time is a subject that is of particular significance in the utility industry.
- An earlier provision in the main body of the CBA, deals with rest time and is applied and interpreted under Supplemental Agreement #1, which is found on page 52 of the current CBA.
- The basic concept of what rest time is and its purpose is reflected in the original CBA provision, found in Article IV, at Page 31 of Joint Exhibit #1.
- The purpose of the rest time provision is to ensure that, when an employee works well into their normal rest period, they are still allowed an eight-hour rest period, without loss of pay.
- An exception to the rest time provision is during emergency situations when it's all hands-on-deck – however, in emergency situations there is financial offset to the loss of rest time.
- The Parties amended the Rest Time provisions in 2008 to allow for rest time when an employee was called out two or more times during normal off duty time, even if the total time worked was less than four hours.
- The current dispute focuses on the 2008 amendment relating to callouts of two or more times and, in particular, what constitutes a callout.
- The typical kind of trouble call situation is well understood. If an employee gets two or more of these within an eight and one-half-

hour period they are entitled to a rest period following the end of the last one.

- The issue in dispute is a second interruption of an employee's scheduled off time to report early for the next regularly scheduled shift.
- The most common early report situation is for "switching," which involves shutting down power for construction or other reasons.
- The early report assignment is typically made to an employee prior to the end of their previous shift.
- The facts of the instant dispute involve an employee, Clint Mabie, who was called out at 11:48 p.m., worked until 1:02 a.m. and then returned to work an hour early at 6:30 a.m., as previously assigned.
- Mabie, requested rest time following completion of work on the 6:30 a.m. early report, but was denied.
- Mabie's denial was the first of which the Union was aware following the 12/08/2011 position of the Company (Joint Exhibit #4) that an early report, scheduled in advance, is not defined as a "call out."
- Upon learning of the Company position, Union Assistant Business Agent, Robert Lahti, informed the Company Representative, Nicole Kimasry that, as far as the Union was concerned, whether the overtime was scheduled or unscheduled made no difference, if the employee had two responses within the eight and one half hours prior to the next regularly scheduled shift.

- Ms. Kimasry's response was, "I will look into it and get back to you."
- The Union is aware of three additional times this issue has come up since the Mabie incident, in June of 2012 and April of 2013, and all involved employees who were paid rest time.
- The Union's position is that when an employee actually has to get up, get out and go to work during the eight and one half hours prior to the normal start time, then it counts as a call-out for purposes of Supplemental Agreement #1.
- The Union is particularly concerned that this is a safety issue involving loss of sleep.
- Attempting to distinguish loss of sleep time resulting from scheduled or unscheduled work time is a distinction without a substantial difference.
- Given the purpose of Supplemental Agreement #1, which is to provide adequate rest time, it should be interpreted in accordance with the Union's position.
- The language of Supplemental Agreement #1 is fairly clear and consistent with the Union's position.
- The Union concedes that the issue in dispute was not explicitly addressed when Supplemental Agreement was negotiated – it never came up.
- From the Union's perspective, scheduled overtime had never been treated any differently than unscheduled overtime for rest time purposes.

- It didn't occur to the Union to make sure that the lack of distinction between scheduled and unscheduled overtime would be continued.
- Given the purpose of Supplemental Agreement #1, to insure adequate rest time, there is no substantial basis for drawing a distinction between scheduled and unscheduled overtime.
- Moreover, should either of the Parties have expected such a distinction would be drawn?
- The Union is concerned that an employee who has been out in the middle of the night, the wee small hours, on a trouble call and then had to report early on top of that will be sleep deprived.
- A sleep-deprived employee is not up to full capacity with regard to decision-making, particularly eye-hand coordination and other things.
- Sleep deprivation is particularly serious in a dangerous occupation such as is the case with the employees at issue.
- Sleep deprivation is not only dangerous for the sleep-deprived employee, but also for co-workers and even the public.
- In the three cases referenced, which are similar to Clint Mabie's, the supervisors did the right thing and provided the employees with rest time.
- The Arbitrator is encouraged to agree with the Union's position and apply the language on the side of safety.

THE COMPANY SUPPORTS ITS POSITION WITH THE FOLLOWING:

- There is no dispute that the Company, like the Union is concerned about the safety of employees.
- Notwithstanding safety, what governs here is the agreement between the Parties.
- It is the contractual language that governs, not some unspoken intent that is not manifested in the contract language.
- In our industry, due to emergency situations, there are many instances where employees may work 16 and even up to 24 straight hours, but employees are always free to ask to be relieved if they don't feel fit for duty.
- The Company is certainly not going to force or require a worker who feels unsafe to go out in the field.
- As a practical matter, many employees want to work long hours because of financial reasons.
- In certain situations, employees are not only paid for the hours they work but also for rest time lost while working.
- The idea of rest time is if an employee works enough hours at night responding to an emergency call(s), then the employee doesn't have to come to work the normal shift and instead gets paid eight hours pay to rest.
- It is important to understand that, when an employee gets called out to respond to an emergency outside of normal working hours, the employee is going to get a minimum of two

hours pay, even if the time period worked is less than two hours.

- A lot of times, a call-out takes less than two hours and at times even less than an hour.
- There is a significant difference between a call-out and scheduled, or pre-arranged, overtime.
- A call-out is an unplanned or unscheduled emergency response, typically during the middle of the night.
- Scheduled overtime is different in that it is pre-arranged in advance. The employee knows before leaving his/her shift that they will be working earlier or longer in a later shift.
- The language in Supplemental Agreement #1 controls with respect to rest time issues.
- Supplement Agreement #1 says near the end that it supercedes any other contractual agreement, except two separate agreements not at issue here.
- It is noted that there is a slight difference in the first paragraph of Supplemental Agreement #1 and the language in the prior contract, although not material to the instant dispute.
- There are circumstances, typically during the construction season, where the normal shift may start earlier or consist of ten hours.
- In a circumstance where the shift is scheduled to start earlier and the employee has been called out once during the eight and one half hour period preceding the start, we would again have the situation involved in the instant dispute.

- Prior to late fall 2011, the Parties agree that an employee would get rest time in two circumstances:
  1. If called out and working four or more consecutive hours in the eight and one half hour period prior to the normal shift, and
  2. When called out two or more times for situations of an emergency nature within the eight and one half period prior to the normal shift starting time..
- In the aforementioned circumstances, the employee doesn't have to report for the normal shift. Instead, the employee goes home and receives rest time pay in lieu of pay for working the normal shift.
- The Company believes it has consistently interpreted and applied the language of Supplemental Agreement #1 since implemented in December 2008.
- The Company's position is that scheduled overtime is not a second call-out under Supplemental Agreement #1 for purposes of entitling an employee paid rest time.
- There is perhaps a slight difference between the Parties understanding of what prompted Ms. Elmasry's December 2011 letter to the Union, but the difference is probably immaterial to the instant dispute.
- The Union has acknowledged that during the negotiation of Supplemental Agreement #1, there was no discussion of whether scheduled overtime was or was not to be considered a call-out.

- It is important to note that rest time language in the main CBA says: “A call-out is defined as responding to the work site, service center or plant.”
- The Company wanted the aforementioned language to avoid confusion if the Company were to contact an employee at night and simply have a phone call with the employee lasting only a couple minutes.
- The grievance resolution that resulted in Supplemental Agreement #1 had nothing to do with scheduled overtime, only call-outs that are unscheduled.
- The Company doesn’t believe it has altered its application of Supplemental Agreement #1, being consistent in saying scheduled overtime is not the same as call-out.
- It is interesting to note that the Union has waited three years to complain about the Company’s interpretation of Supplemental Agreement #1.
- The instant case is the first occasion where the Union has grieved the Company’s interpretation of Supplemental Agreement #1 when the Agreement has been in effect since December 2008.
- In the three situations where the Union claims employees were paid rest time based on an early report, they all came after the grievance at issue was filed.
- Further, in the aforementioned three situations, all involve situations where the Company either was not given a complete understanding of the factual situation or was not

asked by an employee about taking rest time, before the employee took it.

- While the Union points to three examples where rest time was paid based on an early report, the Company believes these certainly can be explained.
- The Company has a better representation of examples where rest time was not paid based on an early report.
- The Company believes that the Union's position is not supported by the facts and testimony.
- The Company respectfully requests the Arbitrator deny the Union's grievance.

### **DISCUSSION**

The instant dispute is representative of a classic case of "intent' versus "*expresso unius est exclusio alterius*," (to express one thing is to exclude another). The Union argues "purpose" and "intent" of the CBA language in support of its position. The Company argues to the exclusion of any reference to "pre-arranged early report" in support of its position.

It is widely accepted that the role of the Arbitrator is to interpret the language of the contract and apply its provisions. The Parties have agreed that the Arbitrator may *not* "legislate" additions, modifications or subtractions to their Agreement. "In reaching an award, the Arbitration Board shall *not* go beyond the evidence submitted and shall interpret *only* the signed agreement between the Parties . . . and it shall

*not* . . . render decisions which have as their effect the enforcement on either party of new rules or regulations. . .”<sup>4</sup>

The history of interpretation and application of the language in dispute is instructive. The Union introduced exhibits showing three instances where early reports were accepted as a second call-out for purposes of paid rest time<sup>5</sup>. The Company points out that the three incidents occurred after the instant grievance was filed and at least two of these instances appear to have been implemented absent management knowledge at the time. Company Witnesses testified that, in two of the instances, the paid rest time was discovered later and the manager opted not to recover the rest time pay due to the issue pending arbitration.

The Company introduced exhibits showing some sixteen instances during 2011 and 2012 where early reports were *not* accepted as a call-out for purposes of paid rest time.<sup>6</sup> Four Company Witnesses testified that the language in dispute has never been knowingly interpreted or applied to provide rest time for early reports scheduled in advance.<sup>7</sup>

Of significance is that the language in dispute had been in effect for some three years before a grievance was filed. The record does not

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<sup>4</sup> Joint Exhibit #1, ARBITRATION, (7).

<sup>5</sup> Union Exhibits #1, 2 & 3.

<sup>6</sup> Company Exhibits #2, 3 & 4.

<sup>7</sup> Company Witnesses Kiser, Sobtzak, Crandell and Simon.

show the number of instances where a call-out followed by a pre-arranged early report occurred during this three-year period.

Notwithstanding the absence of this information, it is axiomatic that this circumstance cannot be uncommon, considering the number of emergency situations and need for switching that would have occurred during the three-year period preceding the instant grievance.

It is also significant that the title of Supplemental Agreement #1 is, "EMERGENCY PAY AND REST PROVISION." The title clearly indicates the Agreement applies to "emergency" situations. The record is clear that a callout refers to an emergency situation, a matter not known to exist in advance, that requires immediate action. In contrast, the work to be performed via an early report is known in advance as it is pre-arranged. If it was not known in advance and required immediate action it would be handled as unscheduled call out.

The record shows Supplement Agreement #1 was the result of a grievance settlement that modified the conditions under which an employee called out would receive paid rest time.<sup>8</sup> The earlier rest time language, contained in the CBA, provided for paid rest time if the employee worked four or more hours "overtime" preceding start of the normal shift.<sup>9</sup> The language negotiated in Supplemental Agreement #1 modified the four-hour requirement to "four or more consecutive hours." Supplemental Agreement #1 also provides for paid rest time if

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<sup>8</sup> Joint Exhibit #3.

<sup>9</sup> Joint Exhibit #1, ARTICLE IV, 5.

the employee is “called out” two or more times during the eight and one half hour period immediately preceding the normal start time, regardless of the number of hours worked.<sup>10</sup>

Supplemental Agreement #1 also defines a call out as responding to the work site, service center or plant.<sup>11</sup>

“... A callout is defined as responding to the work site, service center or plant.”

The Company proposed this language and argues this provision was included to make it clear that telephone contact alone, without actually reporting to a work site, service center or plant, does not entitle the employee to rest time. The Union agrees that this definition of “callout” includes pre-arranged early reports. The Company having proposed this language gives greater creditability to the Company’s argument.

Lastly, Supplemental Agreement #1 provides that it “. . . supersedes all other Exhibit B’s, Letters of Agreement, Letters of Understanding or any other agreement whether verbal or written, in regards to rest time and the rest period premium, except the following, which will remain in effect:

- The Wisconsin Mutual Aid Agreement
- The May 25, 2006 Storm Work Assignment Grievance Resolution (#7182)”

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<sup>10</sup> Joint Exhibit #1, SUPPLEMENTAL AGREEMENT #1, EMERGENCY REST AND PAY PROVISIONS.

<sup>11</sup> Joint Exhibit #1, SUPPLEMENTAL AGREEMENT #1, EMERGENCY REST AND PAY PROVISIONS.

The above exceptions were not emphasized in evidence and presumably are not relevant to the instant dispute.

It is not difficult to understand that being called for unscheduled overtime (call-out) during normal rest time constitutes a significant inconvenience including loss of rest. One must get up, get dressed and assemble the necessary items and equipment necessary to address the emergency situation plus travel to the work site. When the emergency matter is taken care of, the employee must return the equipment and supplies, travel back home, get cleaned up if necessary and attempt to return to sleep. If this requires four or more hours or occurs more than once in the eight and one half hour period preceding the employee's normal start time, it is not difficult to understand the inconvenience and loss of rest warrants the paid rest time provided in Supplemental Agreement #1.

The Union presents the argument that, if the *purpose* and *intent* of the rest time language is to insure employees have adequate rest, any effort to distinguish unscheduled call-out time from pre-arranged early report time is without logic – both result in a reduction in the time an employee has available for rest. The Union argues that if the *purpose* and *intent* is to accommodate lost rest time, what difference does it make whether the time worked is an unscheduled call-out or pre-arranged early report?

The Company argues that there is a difference between being called-out without prior notice (unscheduled overtime) and being scheduled in advance (scheduled overtime) to start work earlier than the normal start time (early start). An employee having advanced notice, that rest time will be diminished by an early report, has the opportunity to adjust off duty rest time.

The record shows the Parties have negotiated different conditions for employees in “call-out” status versus those scheduled for an “early report.” Employees in “call-out” status are paid two hours pay per weekday, four hours on Saturday and six hours on Sunday to be readily available (on standby) for call-out. Employees in “Call-out” status have limited mobility while in this status. Employees in “call-out” status receive a minimum of two hours pay when called out. In contrast, employees, scheduled to report early, typically volunteer for the early report and know of it in advance, do not receive standby pay, and do not receive a minimum of two hours pay, if the early report is less than two hours before the normal start time.

The record shows that the impetus for Supplemental Agreement #1 was settlement of a grievance that concerned qualifying conditions for call-out pay. Both Parties agree that pre-arranged early report overtime was not an issue and was not addressed – “it never came up.”

In conclusion, the question is whether sufficient evidence exists to find the provisions of Supplemental Agreement #1 applicable exclusively to

unscheduled emergency call-outs. It is important to note that reference to “call outs” appears only in Supplemental Agreement #1. The earlier superseded provisions on rest time (CBA, Article IV, 5) referenced only “overtime” as the basis for rest time and there was no reference to either “call outs” or “early reports.”

### **FINDINGS**

Supplemental Agreement #1, which expanded conditions for rest time pay, specifies only “call out” as a qualification.

The grievance settlement that resulted in Supplemental Agreement #1 addressed only call-out pay and pre-scheduled early reports were not a consideration.

The record shows the Parties have recognized that unscheduled (emergency) “call-outs” and pre-scheduled “early reports” are not the same, having negotiated different conditions for each.

The conditions applicable to a pre-arranged “early report” are sufficiently distinguishable from an unscheduled “call out” that a common meaning is not applicable.

### **AWARD**

**The grievance is denied.**

**A pre-arranged “early report” is not subject to the provisions of Supplemental Agreement #1.**

**CONCLUSION**

The Parties are commended on the professional and thorough manner with which they presented their respective cases. It has been a pleasure to be of assistance in resolving this grievance matter

Issued this 13<sup>th</sup> day of August 2013 at Edina, Minnesota.

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Rolland C. Toenges, Arbitrator