

IN THE MATTER OF THE ARBITRATION BETWEEN:

JEFFERSON PARTNERS L.P. dba JEFFERSON LINES

AND

**AMALGAMATED TRANSIT WORKERS UNION
LOCAL 1498**

FMCS Case No. 14-51479-3

OPINION AND AWARD OF ARBITRATOR

**Richard A. Beens
Arbitrator
1314 Westwood Hills Rd.
St. Louis Park, MN 55426**

APPEARANCES

For the Employer:

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For the Union:

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**Date of Award:
June 6, 2014**

JURISDICTION

This arbitration arises pursuant to a collective bargaining agreement (“CBA”) between Jefferson Partners L.P., dba Jefferson Lines (“Company” or “Employer”) and Amalgamated Transit Union Local 1498 (“Union”).¹ Donnell James (“Grievant”) is a member of the Union and works out of Employer’s Minneapolis division.

The undersigned neutral arbitrator was selected by the parties to conduct a hearing and render a binding arbitration award. The hearing was held on May 6, 2014 in Minneapolis, Minnesota. Both parties were afforded the opportunity for the examination and cross-examination of witnesses and for the introduction of exhibits. Written closing arguments were submitted by June 3, 2014. The record was then closed and the matter deemed submitted.

ISSUES

Formulation of the issues was left to the arbitrator. I find them to be:

1. *Was the grievance filed in a timely manner?*
2. *Did the Employer violate the collective bargaining agreement by allowing Grievant to be bumped from his route on August 8, 2013.?*
3. *Did the Employer violate the collective bargaining agreement by assigning ATU 1498 members to work in Billings, Montana, a base station under the jurisdiction of a different union?*

FACTUAL BACKGROUND

The Employer provides public, interstate bus service to 13 states ranging from Arkansas to Montana. Although the majority of their drivers are members of ATU 1498, those based in Sioux Falls, South Dakota, and Billings, Montana are represented by an

¹ Joint Exhibit 1.

International Brotherhood of Teamsters bargaining unit. The two unions have separate collective bargaining agreements with the Employer.

The Grievant, Donnell James, is based in Minneapolis and a member of ATU Local 1498. He was initially hired on April 1, 2013 and, after a period of training, was placed on the Company seniority list on May 11, 2013.² At the time of the events relevant to this case, Grievant's was the last name on a 74 person seniority list.³

Company drivers obtain assignments to their bus routes through a complex bidding and seniority process set out in the CBA.⁴ Company-wide bidding occurs semi-annually on March 1 and September 1 of each year.⁵ Drivers may bid on any number of routes, but are required to also give a numerical order of preference. Routes are then awarded based on seniority.⁶ Certain events such as a change in the route home base or a two hour or more change in departure or arrival time can trigger rebidding on a given route.⁷ However, when an operator loses a run through no fault of his own, he or she is allowed to "bump" any operator junior to him or her on the seniority list.⁸ In these cases, an initial bump will often lead to a cascade of bumps down the seniority list. Such a chain occurred in mid to late July, 2013 and inexorably led to the grievances now before me.

On July 10, 2013, Grievant had bid for and was awarded an overnight route from Minneapolis to Bismarck, North Dakota. He first drove the route three days later. While

² Employer Exhibit 1.

³ Ibid.

⁴ Joint Exhibit 1, Articles 13, 14, and 33.

⁵ Ibid., Article 33.4 and 33.5.

⁶ Ibid., Article 33.4.

⁷ Ibid., Article 33.9.

⁸ Ibid., Article 33.10.

the triggering event was not in evidence, we do know this: On July 23, 2013 Rebecca Stenquist, who was number 58 in seniority, bumped seniority number 60, Todd Treichler, from the route he was then working. The takeover was effective on July 26.⁹ A day or two later, the Employer offered Treichler a temporary two week assignment to it's Billings, Montana base station. Even though Billings-base employees were members of the Teamsters, Treichler was paid the slightly higher mileage rates bargained in the ATU contract plus \$0.10 per mile Premium Pay. In addition, his lodging and meals were paid by the Company.

On July 29, 2013, a day after his arrival in Billings, Treichler emailed a notice to his Minneapolis supervisors, Gary Magnuson and Mike Holliday, that he would bump Grievant from the Minneapolis-Bismarck route, "...Effective 8/8/13 (or on my return)."¹⁰ A copy of the email was given to Grievant the on July 29th. In anticipation of Treichler's takeover the next day, Grievant last drove the Minneapolis/Bismarck route on August 7, 2013.¹¹ However, Treichler did not return to Minneapolis until August 22 when he finally took over Grievant's route.¹²

Four events significant to this arbitration occurred after August 8th. First, Treichler volunteered to extend his stay in Billings, Montana for two additional weeks. Second, the Minneapolis/Bismarck route was serviced by "Board" drivers, rather than Grievant. These are operators who have no assigned route and fill in as needed. Third, Grievant, being last on the seniority list and having no one below him to bump, did

⁹ Employer Exhibit 3.

¹⁰ Employer Exhibit 4.

¹¹ Union Exhibit 1.

¹² Ibid.

occasional charter work for three weeks. At the end of the charter jobs, Grievant was told there was no further work for him in the Minneapolis area. He was then asked if he wished a temporary assignment to the Billings station. He felt he had no financial option but to accept. Consequently, he was assigned to Billings for three weeks starting on August 30, 2013. He was paid at the Minneapolis CBA rates and was allowed to take his wife along for at least a portion of the time. Last, Grievant realized that Treichler had not taken over the route shortly after August 8th.

Since he was a relatively new employee and unfamiliar with the bumping process, Grievant immediately and repeatedly sought an explanation from his supervisors, Mike Halliday and Gary Magnuson. Upon receiving notice of the pending bump, he first approached Halliday, the night dispatcher, who refused to give him any explanation. On August 1, Grievant asked Magnuson how bumps worked when Treichler was working in Billings outside the Minneapolis division. He was told, "I'll look into it and get back to you." He repeated his questions after Treichler failed to take over the route on August 8th as indicated in his bumping notice. Magnuson again said, "I'll look into it and get back to you." Despite the promises, Magnuson never got back to him and, ultimately, even refused to acknowledge Grievant's questions. Frustrated, Grievant approached Employer's Human Resources Director, Susan Renee, on August 30. When he complained about Magnuson's lack of response, she immediately summoned Magnuson for a meeting. The three of them met for about 10 to 15 minutes. When Grievant again expressed his confusion over Treichler's failure to take over his route on August 8th, Magnuson simply replied, "He (Treichler) has bumping rights." Without any further explanation, Magnuson left, claiming the need to attend another meeting. Grievant filed

the present grievance on September 4, 2013.¹³

APPLICABLE CONTRACT PROVISIONS

ARTICLE 7

7.1 MANAGEMENT PREROGATIVE - The inherent nature of the industry in which the parties hereto are engaged requires in the interest of customer service, public safety and profitable operations that sound methods of management be maintained. The Union recognizes the rights and prerogatives of the Company to manage, operate and conduct its business and agrees that its members will abide to the best of their ability and governed by all reasonable rules, orders and regulations issued by the Company not contrary to or in conflict with this Agreements.

The Company shall, insofar as is practical, give consideration the welfare, comfort and convenience of its Employees in making of such rules, orders and regulations, and no change shall be made in any present rule, order or regulation which would be contrary to or in conflict with the Agreement. The right to hire, promote, discharge or discipline for cause and to maintain discipline and efficiency of Employees is the sole responsibility of the Company.

7.2 It is recognized that the Employer has and will retain the sole rights and responsibilities to: direct the operations of the Employer; to determine the number and locations of its divisions; the scheduling of new routes and/or relocation of all bus routes and what equipment will be utilized on those routes; the services to be offered, changed or relocated; the size and number of the working force; determine the schedules of all operations including shift schedules, route schedules and hours of work; the methods and means of all operation; to select and hire all employees; to make, change, rewrite and apply rules, policies standards and regulations for service, discipline, efficiency, quality and especially safety, provided the above rights of the Employer do not conflict with any provision of this Agreement.

ARTICLE 33

33.10 NO FAULT LOSS OF RUN - An Operator on a regular run assignment who loses such assignment through no fault of his own will be permitted to displace or bump an Operator junior to him on a System Seniority Basis, or place himself on the "extra board" within forty-eight (48) hours after losing his assignment.

¹³ Employer Exhibit 2.

....

33.14 DISPLACEMENT - Serving and Receiving Notice - Employees eligible and desiring to displace others shall have a reasonable length of time to declare their choice, which time shall not exceed five (5) days. Operators being displace either from a regular run or a board position will receive at least 48 hour notice before being displaced...

33.21 Time for Operators to take over Bid Runs - Successful bidders on advertised runs may be required to take over same within forty-eight (48) hours if within their division and within eight (8) days if in another division.

ARTICLE 43

43.4(a) The first step of a grievance procedure in cases not dealing with discipline will be a meeting between the employee, and their immediate supervisor, within 5 (five) work days of the occurrence with the objective being resolution of the issue at hand....

43.4(b) If the grievance cannot be settled in an oral meeting between the employee, Union representative and immediate supervisor, within fifteen (15) work days from the date on which the grievance occurred, or last occurred, the aggrieved Employee may file a written statement of grievance addressed to the Employee's home terminal supervisor, as designated by the Company. The written grievance shall be in such detail as to identify the nature of the grievance, the name of the aggrieved Employee and the date and place of occurrence.

OPINION AND AWARD

The instant case involves a contract interpretation in which the arbitrator is called upon to determine the meaning of some portion or portions of the collective bargaining agreement between the parties. The arbitrator may refer to sources other than the CBA for enlightenment as to the meaning of various provisions of the contract. However, the essential role of the arbitrator is to interpret the language of the CBA with a view to determining what the parties intended when they bargained for the disputed provisions of the agreement. Indeed, the validity of the award is dependent upon the arbitrator drawing the essence of the award from the plain language of the agreement. It is not for the

arbitrator to fashion his or her own brand of workplace justice nor to add to or delete language from the agreement.

In undertaking this analysis, an arbitrator will first examine the language used by the parties. This objective approach "...holds that the meaning of the language is that meaning that would be attached to the integration by a reasonably intelligent person acquainted with all the operative usages and knowing all the circumstances prior to and contemporaneous with the making of the integration."¹⁴ If the language is clear and unambiguous, that is the end of the inquiry. A writing is ambiguous if judged by its language alone and without resort to parol evidence, it is reasonably susceptible of more than one meaning.¹⁵

1. Was the grievance filed in a timely manner?

The Employer asserts Grievant violated the CBA by failing to file his grievance in accord with time limits set out in section 43.4(a). More specifically, they allege he did not meet the grievance prerequisite of meeting with his supervisor to discuss the issue "...within 5 (five) work days of the occurrence.."

All agree that Treichler gave Grievant notice of his bump on July 29th and indicated an intent to take over the route on August 8th. Further, all agree that Grievant did not formally meet with Magnuson, his immediate supervisor until August 30th.

"Occurrence" is not defined in the CBA. The employer contends the date of the bump, July 29th, is the "occurrence. The Union contends the occurrence is the date Grievant learned Treichler had not taken over the route and was still in Montana is the point where

¹⁴ Elkouri & Elkouri, *How Arbitration Works*, Sixth Edition, (2003), Chapter 9.1.B.I.

¹⁵ See *Metro Office Parks Co. v. Control Data Corp.*, 205 N.W.2nd 121 (1973).

the Section 43.4(a) clock should start. I find both contentions to be irrelevant in the context of this case. The real issue centers around the Section 43.4(a) requirement that a grievant and supervisor meet within five days. Grievant made immediate attempts to fulfill this requirement, but was thwarted by his supervisors.

Grievant testified that he first attempted to discuss his grievance issues with Holliday upon receipt of the bump notice and then Magnuson on August 1st, two days after he was notified of the bump. Article 43, section 43.4(a) is a two way street. It does not specify how the required meeting is to be arranged. Although no specific time limit is set for the Employer's response, I can't believe either party to the CBA intended stonewalling to be a proper stratagem. While settling disputes informally is a laudable goal, the efficient operation of 43.4(a) is dependant on both sides acting in good faith. When an employee has a potential grievance question, it is incumbent on management to respond in a timely manner. It would be manifestly unfair to allow employers to benefit through dismissal of a grievance from their own agent's refusal to answer legitimate questions. That is clearly what happened in this case.

Grievant approached his supervisors well within the five day window allowed. His testimony that Halliday, and more importantly Magnuson, repeatedly ignored his questions went un rebutted. The Employer's supervisors were either unaware of their duty to give an immediate response or purposely put grievant off to foil his complaint. Either way, their actions were inappropriate. The grievance was filed within five working days from when Magnuson was finally forced to meet on August 30. Even then, Grievant was given an inadequate response to his questions. Under the facts before me, I find the grievance was filed in a timely manner.

2. Did the Employer violate the collective bargaining agreement by allowing Grievant to be bumped from his route on August 8, 2013?

The precise situation leading to this grievance was apparently never anticipated when the parties negotiated their CBA. Treichler had seniority over Grievant and, undoubtedly had the right to bump him. However, the unanticipated twist happened when Treichler volunteered to stay in the Billings division for two weeks beyond the August 8th date he indicated in his notice to Grievant. Nevertheless, Grievant was removed from the Minneapolis-Billings route on August 7. Between August 7 and August 22, when Treichler ultimately took over the run, it was served by “board” drivers. Grievant was left with less remunerative charter and substitution driving.¹⁶

While not specifically addressed in the CBA, this situation is best analyzed by starting with Article 33, Section 33.14. “...*Employees eligible and desiring to displace others shall have a reasonable length of time to declare their choice, which time shall not exceed five (5) days. Operators being displaced either from a regular run or a board position will receive at least 48 hours notice before being displace....*” In my view, this section presumes the lower seniority operator is being displaced by the person who bumped him, not some unidentified board driver. That is not what happened in this case. Grievant was displaced from August 8 to 22 by board drivers, not Treichler. Grievant had a regular run and was supposed to be replaced by the senior driver on August 8. When Treichler failed to return on August 8, Grievant should have retain his rights to the Minneapolis-Bismarck route. I find it hard to believe the contracting parties meant this

¹⁶ Union Exhibit 1.

section to allow a regular run driver to be involuntarily displaced, even temporarily, by board drivers. Consequently, I find Grievant should have been allowed to remain on the Minneapolis-Bismarck run at least until Treichler actually returned on August 22.

The facts of this case give rise to a sub- question: Did Treichler forfeit his right to bump Grievant when he failed to return from Billings on August 8? Again, this situation was not anticipated by the drafters of the CBA. Section 33.21 says time limits for successful bidders on advertised runs to take over the run “...*may be required.*” The provisions is permissive, not mandatory. Further, it applies to “...*bidders on advertised runs...* It does not contemplate the present situation where a bump based solely on seniority occurred. When exercising his bump, Treichler specifically noted that he would take over Grievant’s run “...*Effective 8/8/12 (or on my return).*”¹⁷ I can find nothing in the CBA forbidding his delayed takeover. Consequently, I must find that Treichler’s failure to take over until August 22 is not a contract violation and that he did not forfeit he bumping rights.

3. Did the Employer violated the CBA by assigning ATU 1498 members to Billings, Montana, a base station under the jurisdiction of another union?

Analysis of this question must start with a review of salient facts. First, the evidence clearly indicates all ATU 1498 member transfers to Billings were voluntary. The fact that some may have felt compelled to volunteer out of economic necessity does not change the underlying fact that they had the right to refuse. Second, ATU 1498 members working in Billings were paid in accordance with the Employer-ATU 1498

¹⁷ Employer Exhibit 4.

CBA, not the lower rates contained in the Employer-IBT contract in place for permanent Billings drivers. Third, there is no evidence ATU members lost any rights contain in their CBA during or after their temporary stints in Billings.

Article 7 of the CBA outlines Management Prerogatives. It contains the customary management right to manage, operate and conduct it's business. The only limitation is that, "*... no change shall be made in any present rule, order or regulation which would be contrary to or in conflict with this Agreement.*"¹⁸

In the final analysis, there is nothing in the CBA forbidding the temporary, voluntary transfer of ATU 1498 members to the Billings division. It is voluntary and works to the economic benefit of the ATU members. They are paid at Minneapolis CBA rates and, in Grievant's case, it provided continued employment when none was available in the Minneapolis division. If there is any basis for complaint, it would appear to lie with the union having jurisdiction over the Billings unit, not ATU 1498. The division appears to be chronically understaffed, necessitating importation of rival union members who are paid higher rates. Finally, and most importantly, there is nothing in the CBA that prohibits this practice. If it is to be changed, it must be done at the bargaining table, not through arbitration.

Under the provisions of the CBA and the facts in evidence, I find the Employer did not violate the CBA by making temporary, voluntary assignments of ATU 1498 members to the Billings division.

¹⁸ Joint Exhibit 1, Article 7.1 and 7.2.

AWARD

The grievance is SUSTAINED in part and DENIED in part. Employer's contention that the grievance was untimely is DENIED. It is SUSTAINED in that Grievant should have been allowed to retain the Minneapolis-Bismarck route until it was actually taken over by the senior driver on August 22, 2013. Grievant is entitled to any pay differential between what he actually earned between August 7, 2013 and August 22, 2013 and what he would have earned had he been allowed to remain on the Minneapolis-Bismarck route.

All other Union grievances are DENIED.

I will retain jurisdiction for a period of 60 days from this date to resolve any disputes that may arise from this Award.

Dated: _____

Richard A. Beens, Arbitrator