

Great River Energy

ARBITRATION DECISION - AWARD

TIME REQUIRED TO
RENDER AWARD: 57 DAYS

IN RE

Great River Energy
Elk River, Minnesota

and

FMCS #04-56926-7

IBEW Local 160

DISPUTE:

~~Robert Miller~~ travel pay claim.

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Arbitrator:
Daniel G. Jacobowski, Esq.
June 16, 2006

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Great River Energy
Elk River, Minnesota

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IBEW Local 160

ARBITRATOR: Daniel G. Jacobowski, Esq.

DISPUTE: R█████ M█████ travel pay claim.

JURISDICTION

APPEARANCES: Company: Minneapolis Attorney Reid Carron of
Faegre & Benson.

Union: Minneapolis Attorney M. William O'Brien of Miller
O'Brien.

HEARING: Conducted on March 15, 2006 at the Radisson Hotel in
Plymouth, on this contract grievance, pursuant to the procedures
and stipulations of the parties under their collective bargaining
agreement. Briefs were received April 20, 2006.

DISPUTE

ISSUE: Did the employer violate the contract when it refused to
pay grievant R█████ M█████ travel time pay under Article V,
section 5(b) of the contract, for his overtime work on August 30
and 31, 2003? If so, the remedy?

CASE SYNOPSIS: On Saturday and Sunday, August 30 and 31, 2003,
the grievant worked two overtime shifts to replace the regular
employee who was off. The two days were during the grievant's
own regular days off. Since they were days outside his regular
schedule, the grievant also claimed one-half hour travel time pay
for each day under provision of the contract. The company denied
the travel time pay claim on the grounds that it was not
applicable to this scheduled overtime shift work.

CONTRACT PROVISION APPLICABLE:

ARTICLE V - WORKING HOURS

"SECTION 5.(b) When an employee is called back to work
after having been released from his/her regular day's
work he/she shall receive:

(1) Regular overtime rates.

(2) Fifteen (15) minutes at overtime rates for travel time from home to the job, and fifteen (15) minutes at overtime rates for travel time from the job to home.

(3) In any event, he/she shall receive no less than an amount of pay equivalent to two (2) hours' pay at overtime rates plus travel time.

The following is an interpretation of paragraph two (2) of this Section: Traveling time shall be paid when an extra trip is involved for an employee in addition to his/her regular trip to and from work.

Traveling time shall not be paid for scheduled shifts negotiated or put into effect under the terms of this Agreement even though such shifts begin two (2) hours or more prior to the employees' regularly scheduled start time."

The company also cited Section 11, which provides:

"When employees are requested to work on scheduled overtime they shall be given sixteen (16) hours advance notice in such cases...."

BACKGROUND - FACTS

The grievant is employed at the Elk River station as an Assistant Control Room Operator. He works a regular day shift of 12 hours from 6:00 a.m. to 6:00 p.m. This dispute is over the company refusal to pay him his claim of travel time for two days of overtime shifts he was scheduled to work on his days off.

On August 27, his last day of work that week, he was given notice that he was scheduled to work two shifts of overtime on Saturday, August 30 and Sunday, August 31 to replace the Control Room Operator who would be off. These were overtime days for the grievant since he was on days off the rest of the week. He did receive the higher rate applicable with time and a half overtime for the Saturday and double time for the Sunday. Since these were not his regular scheduled workdays, he also claimed a half hour travel time pay for each day, which the company denied on the grounds that it was not applicable to a scheduled overtime shift and was not an extra trip if he had been called back unscheduled after his regular shift. According to the company figures, he received \$1,309.56 for the two days worked. His claim for the travel time is for \$54.57.

The union case. The general provision for travel time pay when an employee is called back with an extra trip for overtime work dates back to at least 1957, when the interpretation paragraph of 2 was longer and dealt with the hours of work called back or for an early call in. This language was shortened to its current

form in the 1979 negotiations with the company. Business Rep T [REDACTED] was in those negotiations and gave the only testimony from them. He stated that it was the intent by the change of the language to its current form to mean that travel pay would be paid anytime an employee had to return to work overtime after his regular shift hours. He cited the company pays travel time on callbacks for emergency outages and in substitutes for someone else, without any 16-hour notice provision applicable. He and the other union witnesses stated that this dispute is the first time the company has claimed a 16-hour scheduling notice to exempt a travel pay requirement.

The grievant cited that he has always been paid before when he claimed travel pay. He noted that he has received travel pay for attending voluntary safety meetings on his days off, and company photo occasion. He admitted his records showed several relief days for others when he did not put in claims for travel pay but he couldn't explain why. He claimed other days he was paid travel pay to fill in for others but he couldn't recall when. Another union witness stated there were times when he did receive travel pay and there were other times he did not submit a claim at his own discretion.

The company case. Two company supervisors with long-term service and earlier years in the bargaining unit stated their experience and practice was that travel time was only paid when called back with an extra trip after their regular shift, typically for emergencies and outages. However, no travel time was paid for overtime scheduled in advance.

The operation supervisor at the station prepared a list of scheduled and unscheduled overtime of employees for the year from August 2002 through August 2003 citing overtime that was scheduled or unscheduled whether travel time was submitted and whether paid. The list showed a mixed bag of inconsistency. Some were paid, some not, even those scheduled, and he admitted that he used his own judgment in determining which were scheduled, unscheduled and those with question marks. In addition, there was no reference as to how much of a notice was given for scheduled overtimes.

The plant manager stated that it has been a longstanding practice of the company to pay travel time for attending safety meetings on days off. The meetings are voluntary and some meetings occur during regular employee work hours. The situation is similar for photos of employees for security badges.

ARGUMENT

UNION: In brief summary, the union argued the following main points. 1. The contract language is clear that travel time shall be paid for any extra trip required when scheduled or called back to work after the employee's regular shift or work. 2. In this

instance, the grievant was called or scheduled overtime for the two days on his days off which were therefore after his regular days of work, thus entitling him to the travel time pay. 3. The 16-hour notice requirement for scheduled overtime has nothing to do with the travel time pay requirement. 4. The past practice favors the union. The past practice of the company has been inconsistent with its position in this case. The record shows a number of occasions when the company has paid travel time pay regardless of whether scheduled or unscheduled, both during 2002 and 2003. The one company supervisor prepared list of such overtime occasions contained much question and assumptions by the supervisor. The company admits payments for safety meeting attendance and photo sessions. 5. Prior to this grievance the company had made no reference to the 16-hour rule for scheduled overtime notice as being applicable to travel time pay. 6. Union witness T■■■■, the only witness to the 1979 negotiations which simplified the travel time pay provision, gave unrefuted and clear evidence that the intent was to pay the travel time pay for any extra trip to work in addition to a regular trip to and from work. 7. Respectfully, the union requests that the arbitrator sustain the grievance, direct the employer to abide by the contract travel pay language, enjoin the employer from further violation of the travel pay language, and direct the employer to make the grievant whole.

COMPANY: In brief summary, the company argued the following main points. 1. The grievant worked scheduled shifts under terms of the agreement and therefore is not entitled to travel time pay. Under the section 5(b) language, the grievant was not called back after his regular day's work. Instead he was notified two days in advance of the scheduled overtime shifts. The overtime shifts were scheduled shifts. Section 11 provides for 16 hours advance notice for scheduled overtime. His work on the two days was scheduled overtime.

2. The union argument that the grievant did not work his scheduled shifts is without merit. The agreement does not limit the travel time pay exemption only for the employee's own schedule shifts. 3. The reference to an extra trip in the language is consistent with the concept that the employee has recently gone home from work and then is called back. 4. Section 11 is properly applicable in making reference to 16-hour notice for scheduled overtime.

5. The past practice does not support the union position. There has not been a consistent past practice. At times employees were paid travel pay and at other times were not. That it is why management decided to clarify its position consistent with the contract language. The testimony of the grievant and the union itself indicated times when request for travel time pay were not submitted. The employer payments for attending safety meetings and photo sessions voluntarily and for good reason does not support the union case. The grievant's own time sheets show

occasions when he did not submit claims for travel pay, inconsistent with his current claim.

6. Respectfully, the grievance should be denied.

DISCUSSION - ANALYSIS

Upon full review of the contract language and evidence in this case, I have come to the conclusion in favor of the union that its position is correct that the grievant is entitled to the travel time pay claim. I so conclude based on the following reasons and factors.

1. The most crucial determinate is the contract language itself which provides for the travel time pay. The clear import of the language is that the employee qualifies for travel time pay when called back or scheduled for any work after released from his/her regular shift hours during his time or days off between his regular shift hours. This then qualifies for the payment of overtime and the travel time pay. The crucial elements are that the overtime is after the employee's own regular shift release and that it involves the extra trip for return during his/her off time.

2. Supportive is the significant testimony of union witness Tindle that the intent of the modification of the language to its current form from the 1979 negotiations, was to provide travel time pay anytime the employee is called back or scheduled for overtime during his time off after leaving or finishing his regular shift work. His was the only testimony from such negotiations.

3. A comparison of the prior language with that of the current language since is supportive of the effect and intent testified to by Tindle.

4. Admittedly the past practice is a mixed bag, by both the union and the company, that at times travel time pay was submitted and paid, and at other times not. Even the company list prepared by the supervisor of scheduled and unscheduled overtimes even though incomplete, does establish that at times the company has paid travel time even for scheduled overtimes.

5. The fact that the company has paid travel time on some such occasion and also for off day safety meetings, indicates that the company is not adverse to paying travel time as such and has given some recognition to its merit.

6. I reject and do not find merit in the company argument that the 16-hour notice for scheduled overtime exempts it from travel time pay and equates it with a regular day schedule of work. The reference to the 16 hours was never before made to the union, and was only developed by the company as rationale for its position

in connection with its denial of this grievance. There is no reference to scheduled or unscheduled overtime in the travel time pay provision at issue.

7. While I do recognize the arguability aspects of the company position, I do not find them sufficiently persuasive in the face of the contract language itself and the more convincing evidence and argument of the union.

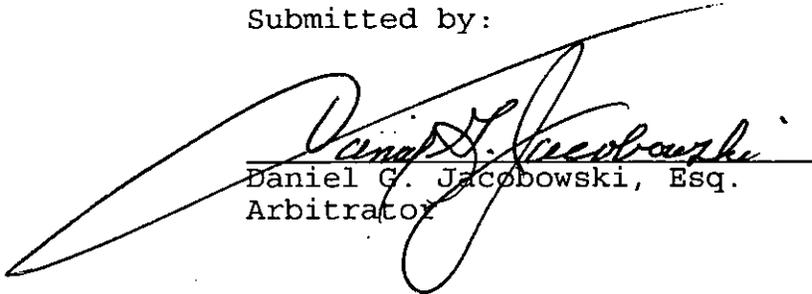
DECISION - AWARD

DECISION: The union grievance is sustained that grievant M [REDACTED] is entitled to travel time pay for his overtime days of August 30 and 31, 2003.

AWARD: The company is directed to comply with this decision in such overtime occasions as may occur in the future and to reimburse the grievant for the one hour of travel time pay he is entitled.

Dated: June 16, 2006

Submitted by:



Daniel G. Jacobowski, Esq.
Arbitrator