

Das #1

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

Case Heard: April 15, 1994 Award Issued: September 7, 1994

Statement of the Award: The grievances are sustained. The appropriate employee(s) shall be made whole accordingly.

BACKGROUND

The first of the present grievances was filed in August 1993 by the Employee, a classified Lead Utilityman at the City 1 line maintenance station. It states:

PER UNION AGREEMENT ARTICLE 4 PARGH I WHERE (3) OR MORE
UTILITYMEN ARE ON DUTY AT LEAST (1) OF THEM SHALL BE A LEAD
UTILITYMAN. THREE UTILITYMEN ON SHIFT 2 AUGUST 6 1993. NO LEAD ON
DUTY. THEREFORE I AM FILING FOR 8 HRS PAY AT THE APPROPRIATE
RATE.

Additional, essentially identical grievances were filed in succeeding weeks.

The parties have agreed to the following statement of issue in this case:

Did the Employer violate Article IV, Paragraph (I) of the Labor Agreement when it scheduled three Utility on duty on a shift during the Lead's day off, and, if so, what shall be the remedy?

Among the classifications provided for in Article IV of the Labor Agreement are Lead Utilityman and Utilityman. Paragraph (J) defines the basic duties of an Utilityman as follows:

The work of an Utilityman shall include cleaning, washing and polishing the interior and exterior of airplanes, airplane parts, ramp equipment, hangars, shops, locker rooms, and washrooms. . . .

Paragraph (I), in its entirety, reads as follows:

(I) Lead Utilityman

The work of a Lead Utilityman shall be the same as that of an Utilityman and, in addition, he shall be the employee who assigns, directs and approves the work of Utilitymen. It is understood that on each shift where three (3) or more Utilitymen are on duty, at least one (1) of them shall be a Lead Utilityman. The working group assigned to a Lead Utilityman shall consist of not more than twelve (12) Utilitymen. It is further understood that a Lead Utilityman will not be required where there are three (3) Utilitymen on duty for one (1) shift during a week as a result of days off rotation. When no Lead Utilityman is required, Utilitymen will be assigned to a Lead Mechanic on the same shift, shop and department, provided that the Lead Mechanic's ratio is not exceeded. A Lead Utilityman will be responsible for the completion of paper work and reports in connection with his normally assigned duties. (Emphasis Added)

Paragraph (I) originated in the 1964 Labor Agreement, when the position of Lead Cleaner was first established. (At that time the present Utilityman position had the title of Cleaner.) The language in Paragraph (I) has not changed since 1964, except for the change in job title from Lead Cleaner to Lead Utilityman. Article IV also includes several other Lead classifications, including: Lead Mechanic, Lead Stock Clerk and Lead Inspector. The provisions relating to Lead Mechanic and Lead Stock Clerk, which pre-existed the Lead Utilityman position, provide that a Lead will be assigned on any shift where three or more Mechanics/Stock Clerks are on duty. Those provisions do not contain an equivalent exception to that in Paragraph (I) for situations "where there are three (3) Utilitymen on duty for one (1) shift during a week as a result of days off rotation." The Lead Inspector provision, which was added in 1966, contains the same exception as that for Lead Utilityman.

The Labor Agreement requires that employees be scheduled for five consecutive days of 8 hours each with the same two consecutive days off each week. In order to provide 7-day coverage in situations where the Employer requires only two Utilitymen to be on duty on a particular shift, three Utilityman positions must be staffed for that shift. With a "5 and 2" schedule and regular

consecutive days off rotation, there is one day during the week when all three of those Utilitymen are on duty. The parties agree that in that situation, the exception in Paragraph (I) applies.

The situation at the City 1 station when the present grievance was filed essentially was the following. On 2nd shift, three Utilitymen and one Lead Utilityman (the Employee) were scheduled as follows:

| | Su | M | Tu | W | Th | F | Sa |
|-----------------|----|---|----|---|----|---|----|
| Lead Utilityman | X | X | X | X | X | | |
| Utilityman A | | | X | X | X | X | |
| Utilityman B | X | | | X | X | X | X |
| Utilityman C | X | X | | | X | X | X |

The present dispute concerns the schedule on this shift on Friday, when a Lead Utilityman was not assigned¹. The Union does not object to the absence of a Lead on Saturday (which normally has lighter flight schedules) because only two Utilitymen were assigned that day, and, thus, there was no contractual requirement for a Lead.

The Employer contends that it was not required to assign a Lead Utilityman on Friday because of the exception in Paragraph (I) for situations "where there are three (3) Utilitymen on duty for one (1) shift during a week as a result of days off rotation." The Union contends that this exception does not apply because there were three Utility employees on duty six days during the week, not just one.

¹ In February 1994, the schedule in City 1 was changed in that the Lead Utilityman was transferred from the 2nd to the 1st shift and his days off were changed. Thereafter the grieved shift- when three utilitymen were assigned without a Lead on the Lead's day off- occurred on first shift on Monday. For simplicity, this decision will discuss the issue in terms of the situation when the initial grievance was filed.

UNION POSITION

The Union presented testimony from a retired Union official, Person 1, who had primary responsibility for contract negotiations from 1962 until his retirement in 1990. Person 1 testified that when the Union proposed establishing a Lead Cleaner position in 1964 with similar contractual language to that already existing for Lead Mechanic and Lead Stock Clerk, the Employer (which then was much smaller) pointed out that in many stations there were shifts when it needed only two Cleaners to get the work done and stated that it did not want to have to staff a Lead Cleaner just because of the one day when there was a third Cleaner on duty due only to scheduling requirements. This was the basis, Person 1 stated, on which the parties negotiated the exception now in dispute. This same exception also was included two years later when they established the Lead Inspector provision.

The Union maintains that the exception in issue properly covers only the situation where one day a week there are three rather than two Utility employees due to scheduling requirements. It stresses that the situation in City 1 which is grieved here is different because, due to work requirements, there were three Utility employees regularly on duty six days a week, not just one. The Union points out that in 1975 negotiations the Employer unsuccessfully sought to change the Agreement to include the following provision:

. . . A Lead (inspector, mechanic, stock clerk and utility) shall be maintained on duty when three (3) or more (inspectors, mechanics, stock clerks, and utility) are on duty on a shift in a shop, department, hangar, station or facility, except that in seven (7) day bid areas, the Employer may upgrade to a Lead position to cover a Lead's regular days off.

The Union adds that in 1981 the Employer unsuccessfully proposed the following contractual change:

Amend all lead classification language to forego the need for a lead where there are three (3) or more mechanics on duty for one (1) or two (2) shifts during a week as a result of days off rotation; or in an overtime situation when four (4) or less employees are assigned to two (2) or more different work functions.

The Union claims this also shows that the Employer recognized it could not have three Utilitymen on a shift when a Lead was on his or her day off. The Union protests that the Employer, thus, is trying to get through arbitration what it could not attain at the bargaining table.

The Union does not dispute that the same situation which existed in City 1 when these grievances were filed also exists in some other stations. It insists, however, that this was only brought to the Union's attention when the Employee first alerted Union officials to the situation in City 1 in August 1993. The Union adds that it is not surprising that this may have occurred elsewhere following the Employer's two recent mergers (with Company 1 and Company 2) which brought employees and supervisors into the system who were not familiar with the relevant contract language. In any event, the Union contends, the clear and concise language of the Labor Agreement must prevail.

The Union notes that there are several different ways, including overtime and use of a Rotator, by which the Employer could have provided the necessary Lead coverage on the shift in question. How it does that, the Union says, is up to Management.

EMPLOYER POSITION

The Employer insists that this case must be decided on the basis of the language in the Labor Agreement. The Employer does not have available any witness who was involved in the original negotiation of Paragraph (I) in 1964, but stresses that the reason for a written contract is to avoid the need to rely on bargaining history.

In the Employer's view, the language of the exception in Paragraph (I) is clear. It refers to a situation where 3 "Utilitymen" are on duty for one shift as a result of days off rotation. This does not include "Lead Utilitymen," who are a separate classification. In the situation at hand, the Employer emphasizes, it scheduled a total of three Utilitymen on 2nd shift over a 7-day week. On all but one day, there were only two Utilitymen on duty, and on that one day there were three Utilitymen on duty as a result of days off rotation.

Accordingly, the exception applies to that one day.

The Employer stresses that if it had scheduled the Utilitymen exactly as it did, but without a Lead Utilityman on the schedule, the Union concedes that the exception would apply to the one day when the three Utilitymen are scheduled, and that the Employer would not be required to schedule a Lead on any day of the week. The Employer maintains that it defies logic and smacks of featherbedding for the Union to claim that if the Employer "voluntarily" assigns a Lead for five days in the week, as it did here, then it is also required to assign a Lead on a sixth day. If no Lead would be required on that particular day if the Employer had not scheduled a Lead during any part of the week, argues the Employer, why should a Lead be required on that day just because the Employer decides to add a Lead on other days.

The Employer presented testimony from Person 2, the Line Maintenance Operations Director for Region 1. Person 2 has been involved in manpower staffing since 1978. He testified that the

situation where three Utilitymen are scheduled on a shift over a 7-day week, with two per shift on all but one shift, when three are assigned, has occurred with some regularity over the years. In this situation, no Lead is required. He also stated that, historically, they have had situations like the present one where three Utilitymen and one Lead Utilityman are assigned over the course of a 7-day week, and on one of the Lead's two days off there are three Utilitymen working. In that instance, he said, he has never staffed a Lead for that one day and he has never before been told by the Union that this was required. In his opinion, this situation is basically the same as where no Lead is assigned at all, because the Labor Agreement permits the Employer to have three Utilitymen on duty on one shift per week without a Lead.

The Employer points out that the present situation in City 1 was grieved for the first time in August 1993, although the Employer went to that type of scheduling at that location starting in November 1992². The Employer stresses that it has heard no explanation for why these grievances were filed some 8-9 months later. The Employer also presented evidence that the same type of situation has existed at other locations since at least January 7, 1992, and it states that no complaint was filed at that location³.

In response to the Union's arguments based on the Employer's contract proposals in 1975 and 1981, the Employer notes that Management never has had the protection of the exception it relies

² Prior to November 1992, the Employer staffed a total of ten Utilitymen and five Lead Utilitymen in City 1. One Lead and three Utilitymen were scheduled on each of the 1st and 2nd shifts and a Rotator Lead was scheduled to cover the Leads' days off on those two shifts. (Two Leads and four Utilitymen were scheduled on 3rd shift.) Starting in November 1992, the Employer reduced the total number of Leads from five to three. No Lead was scheduled on 1st shift, Person 2 testified, because the Employer no longer needed three persons on duty during the week on that shift, due to flight schedules. The Rotator also was eliminated. This left one Lead and three Utilitymen assigned on 2nd shift --the situation involved in this case.

³ Employer evidence further shows that this situation has existed at Burlington, Vermont since September 30, 1993, which is after the first of the present grievances was filed.

on in this case for Mechanics and Stock Clerks. It argues that it is just as logical to conclude that what it really was after in those negotiations was similar protection for those classifications. Moreover, it contends that it could just as validly be argued that the Union's unsuccessful effort in 1990 negotiations to remove this exception from the Lead Utilityman and Lead Inspector provisions supports the Employer's position in this case. The Employer further urges that none of those various contract proposals really are very meaningful for purposes of deciding this case. Finally, the Employer suggests that if the Union were to prevail in this case, Management could simply eliminate the Lead altogether from the shift in question, without running afoul of Paragraph (I).

FINDINGS

The Employer's contractual position in this case basically hinges on ignoring or disregarding the Lead Utilityman it staffed and scheduled on 2nd shift and looking only at the three Utilitymen on the weekly schedule for this shift. In this fashion, the Employer concludes that the situation on Friday fits within the exception in Paragraph (I) because there were only two Utilitymen scheduled on 2nd shift on the rest of the days of the week. Contrary to the Employer's contention, however, Paragraph (I) clearly does include the Lead Utilityman position as an Utilityman when it speaks of each shift where "three or more Utilitymen" are on duty. It states: It is understood that on each shift where three (3) or more Utilitymen are on duty, at least one (1) of them shall be a Lead Utilityman. (Emphasis added.)

The Employer states that the Union's position is illogical, and that Management should not be penalized for "voluntarily" choosing to assign a Lead Utilityman on five days of the week when it was not otherwise required to do so. The Employer likewise suggests that if the Union were to

prevail in this case, Management could simply discontinue assigning any Lead on this shift, which hardly could be what the Union is seeking. These arguments by the Employer, however, are based on the false theoretical assumption that the Employer did not need a third employee to perform Utilityman duties on this shift throughout the week, rather than just on Saturday when there is a lighter flight schedule. If the Employer did not need three employees to perform Utilityman duties each shift (except for Saturday) it surely would not have assigned that many employees.⁴ The reason Management included a Lead Utilityman on the schedule for this shift was not because it "voluntarily" chose to do so, but because, given its manpower requirements, it was required by Paragraph (I).

Union witness Person 1's testimony regarding the negotiating history is consistent with and fits the language of Paragraph (I). The exception which the parties grafted onto the requirement quoted above (which was based on the existing provisions for Lead Mechanics and Lead Stock Clerks) applies when there are three Utilitymen on duty for one shift during the week because of days off rotation. In the present case, however, there are three Utilitymen (one of whom is, as required, a Lead Utilityman) working six shifts during the week, not because of Management's largesse, but because of operating requirements. There is no evidence or claim by the Employer that operating needs on Friday (as opposed to Saturday when only two Utilitymen were scheduled) were any less than on the five other days of the week when three Utilitymen (including the required Lead) were scheduled.

Employer witness Person 2 testified that:

Based on the contract language, we can have three Utilitymen on duty one day or one shift without. . . a lead utility.

⁴ An Employer witness explained that the reason the Employer stopped scheduling a Lead Utilityman on first shift at this same station in November 1992 was because it no longer needed three persons on duty during the week on that shift due to flight schedules.

But that is not what Paragraph (I) provides. It states, in its essence:

...on each shift where three (3) or more Utilitymen are on duty, at least one (1) of them shall be a Lead Utilityman...[except] that a Lead Utilityman will not be required where there are three (3) Utilitymen on duty for one (1) shift during a week as a result of days off rotation.

As discussed above, there simply is no legitimate justification for the Employer's approach of disregarding the fourth employee on the schedule because he was, as required, a Lead Utilityman. Thus, this was not a situation "where there are three (3) Utilitymen on duty for one (1) shift during a week as a result of days off rotation." (Emphasis added.)

Moreover, while having to assign a Lead Utilityman to cover for a lead employee's day off in some cases may result in inefficiency or otherwise unnecessary expense, which is not unique to this situation or to this position. Presumably it was because of such "costs" that the Employer sought (without success) to change the contract in 1975 to permit it to upgrade to a Lead position to cover a Lead's regular day off. In any event, whatever "costs" are involved result from applying the terms of the Labor Agreement negotiated by the parties.

Employer witness Person 2 testified that the situation where three Utilitymen (without a Lead) are assigned on a weekly basis to cover a 7-day operation has occurred with some regularity over the years. To the extent days off rotation results in all three scheduled employees working one shift per week, that situation is squarely covered by the exception in Paragraph (I), and is not in dispute.

Person 2 also testified that "historically" there have been stations where three Utilitymen and one Lead Utilityman were assigned on a weekly basis to cover a 7-day operation and that he had never staffed a Lead to cover the Lead's days off, even though on one of those days three

Utilitymen were on duty. He added that he had never been told by the Union that he was required to staff a Lead for that day. That is the situation involved in this grievance. However, the only specific evidence presented by the Employer in support of Person 2's general testimony is that the Employer has done this at City 1 since November 1992 -- that is, some 8-9 months before these grievances were filed -- and at another station since January 1992. There is no specific evidence that such scheduling had occurred on a more widespread basis or at an earlier date. On the present record, the Union's claim that Union officials only became aware of such scheduling when the Employee contacted them from City 1 in August 1993 is credible. Moreover, as both parties in effect agreed at the arbitration hearing, when the meaning of language in the Labor Agreement is reasonably clear and applies to the facts at hand, it is controlling. That is the situation here.

For the reasons stated above, these grievances must be sustained.

AWARD

The grievances are sustained. The appropriate employee(s) shall be made whole accordingly.