

Edgett #2

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

BACKGROUND

The Employees, Employee 1 and Employee 2, were on light duty at City 1 Stores. Stores Foreman Person 1 and Manager Person 2 decided that they did not need a full complement to work on the 1991 Good Friday holiday. Person 2 also decided that he needed persons working on the holiday who could do full duty. He said that it is possible to get caught with an emergency or a road trip, and that employees are subject to assignment to varied duties and areas. He said that with a full force, you can cover and accommodate persons on light work, but that with a reduced complement, you don't have the necessary leeway.

Both Employees were notified that they were not to report for work on the Good Friday holiday and employees junior to them did work on that day. In the grievances, the Union took the position that this violated Article 6(C) which reads (in part):

"When a full scheduled crew is not required to work on a holiday, employees will be offered the holiday off on the basis of hiring date, seniority by classification, shift, and department until the reduced complement is achieved.

Once the reduced complement is achieved and the Employer finds it necessary to increase the complement, those employees in the bid area who were not afforded an opportunity to work by reason of such reduction will be asked to work first in order of hiring date, seniority by classification, shift and department prior to utilizing the overtime list."

DISCUSSION

Both Employees were restricted to light work by their physicians. The Employer's position, throughout, has been that it determines whether light duty is available and that in the instant cases, a determination had been made that with the reduced crew, it did not have light duty available. Clearly those are decisions which must be made by the Employer. No doubt if the Employer acted arbitrarily or in a discriminatory manner, a Board could take that into account in its deliberation, but, here it is clear that the Employer acted in good faith in the belief that employees restricted to light duty could affect the working of the department on a day when a reduced complement was scheduled.

Article 6(C) does not refer or deal with employees who are restricted to light work. It is necessary to look at other provisions of the Agreement and read them together with Article 6(C). Article 12(B) provides that an employee receiving compensation payments will receive the difference between that amount and "that amount the employee would have received at his regular rate." (Underlining added)

Thus, employees are not guaranteed income beyond their regular rate. Here, the Employees are seeking the additional wages they would have received by working on a holiday for which they are paid, in any event, holiday pay. That amount would be beyond what they would receive at their regular rate. Provision is made for light work in Article 8(J). It provides that injured employees "will be given preference of such light work as they are able to handle within their work classification." Here, it must be noted, the reference is to such light work. On the day in question, Management's determination was that there was not light work available. Implicit in the Employees' argument here is that they were not restricted, but were prepared to do whatever work was required. It may well be that during the normal work week, Employees performed their

work with little or no adjustment. However, the fact remains that both of them were under restriction by physicians. The Employer could not insist that they do full duty, in contravention of their physician's restriction, and its determination that on a day when a reduced complement was working, it was necessary to have employees work that were not under restriction was certainly not arbitrary or capricious. Although they did not have the opportunity during that work week to receive pay beyond their regular pay, they were protected, as provided by the Agreement, and received their regular day.

Based upon the foregoing, the Board finds that the Employer did not violate Article 6(C) when it did not work the Employees (who were restricted to light duty) and, instead, worked employees junior to them on Good Friday, 1991.

AWARD

Grievances denied.