Glazer #9

IN THE MATTER OF THE VOLUNTARY ARBITRATION BETWEEN

EMPLOYER,

Chestnut/Overtime Assignment

UNION

ARBITRATION OPINION AND AWARD

ISSUE

WAS THE GRIEVANT IMPROPERLY DENIED

A PREFERENCE FOR AN OVERTIME ASSIGNMENT,

AND IF SO, WHAT SHOULD BE THE REMEDY?

Barry Chestnut, a Compression Station Mechanic, grieved on February 2, 2006 that the Group One was performing overtime at the City headquarters, rather than himself. The Union contends that the overtime work belonged to the City Compression employees. Article X, Section 24 on Overtime, states in relevant part:

ARTICLE X GENERAL WORKING CONDITIONS

> ... Section 24. (App. Ltr 9) The Company will distribute overtime as equally as practicable among its employees, taking into account the nature of the work to be done and the availability of employees within the occupational group affected, at the time when such work becomes necessary.

At Step 1, the Union indicated that since June of 2005, the Department One, which included the Group One, had taken over the maintenance of Group Two. The

Union expressed that it had no problem with the Group Two doing the work on straight time, but it stated, "If overtime arises, the Compression Group overtime list should be exhausted before allowing the Group One in." The Company denied the grievance stating, "You are asking for overtime for hours worked by Group One employees. I will have to deny this. When the work is called into OTC, the Group One people get to call out."

An arbitration hearing was held on November 13, 2007. Testifying for the Union was Barry Chestnut, Jr., Grievant. Testifying for the Employer were: Earl Hazelnut, Gas Field Leader B-Ray Compressor Station; Michael Yew, Facilities Operations Manager and Tom Maple, Labor Relations Director. Comprehensive post-hearing briefs were submitted by the parties.

BACKGROUND

Mr. Chestnut works at the City Compressor Station. His work as a Compressor Station Mechanic includes maintenance of equipment. However, in 2005, the Company established the Group One, "to assume day-to-day management of building maintenance and operation for Group Two sites including...Compressor Stations...City."

Mr. Chestnut testified that notwithstanding the establishment of the Group One, he continued to perform his previous maintenance work. When overtime was required for maintenance, Mr. Chestnut contends that he should have been given a preference rather than the Group One.

Mr. Chestnut agrees that the Group One performs the same maintenance functions at City that he performs. He also stated that he has been called in on overtime to perform

maintenance work at City with the Group One. Mr. Chestnut grieved when the Group One was called-in for overtime maintenance work at City, but not himself.

The work at issue involved replacing motors in a sewage lift. The Grievant was on call at the time that persons from the Group One were utilized to perform the work.

PERTINENT CONTRACT PROVISIONS

ARTICLE XV Wages and Paydays

Section 1.

(a) The schedule of hourly wage rates attached hereto, marked Exhibit "A", and made a part hereof, are the Starting and Standard Rates for each job coming within the scope of this Agreement. The job titles referred to therein are the same job titles as those contained in the Company's "Job Manual for Operating, Maintenance and Construction Employees" copies of which have been furnished to the Union. The specifications as to the duties involved in, and the qualifications necessary for the performance of each job listed in said Job Manual are likewise, by reference, made a part of this Agreement. The Company will fairly and consistently apply Job Descriptions by not assigning employees work which is entirely dissimilar and unrelated to the duties listed in his Job Descriptions or Job Descriptions for lower rated jobs in his occupational group.

ARTICLE V Rights and Responsibilities of the Management

Section 1. It is agreed that the management of the Company, the supervision of all operations, the control of the property, and the composition, assignment, direction and determination of the size of the working forces belong to and are vested in the Company, except as they may be otherwise specifically limited in this Agreement.

POSITION OF THE UNION

The Union asks that a cease and desist order be issued, and that Mr. Chestnut be awarded overtime paid for the 30 days prior to his grievance.

It is noted that Mr. Chestnut's job description as a Compressor Station Mechanic includes routine maintenance work, and that he has performed maintenance work, both before and after the establishment of the Group One in September of 2005. The Council argues that Article X, Section 24 requires that the overtime maintenance work be assigned to the Grievant, because he was in the "occupation group affected" when the overtime became necessary.

The award in *OT-29* is argued to be inapplicable, because prior to September of 2005, the maintenance work at the Compressor Station belonged only to the personnel at that station. This is argued to conflict with the situation in *OT-29*. Further, it is maintained that after the Company established the Group One, the Grievant continued to perform maintenance functions as he had previously. Therefore, the "affected occupation group", it is argued, continues to be the Grievant's job classification.

The award in *MISC-35* is argued to be more germane. The Union contends that pursuant to that award, the overtime in this case should have been first offered to the Grievant's classification, and then if turned down, then offered to the Group One.

POSITION OF THE COMPANY

It is argued that pursuant to numerous earlier awards, there are no "jurisdictional walls", limiting the Company's management right to assign work, where there is a similarity of jurisdiction between occupational groups. The award in *JD-6* is cited as

permitting the Company to select an occupational group, where there is a "similarity of function and duties" between two groups. The award in *JD-9* is further cited for this principle.

The Company also cites *JD-15*, *Supervisor and Electrical Repairmen Doing Stockmen's Work* (Mittenthal, 1965) as supporting its position. The arbitrator said in that case: If such self-service may be proper during straight-time hours, as Chairman Miller held, it surely may be proper during overtime hours.

Employer contends that since the job descriptions for both the Compressor Station Group and the Group One permit maintenance work, the Company had the right to assign work to either group on straight time, and pursuant to *JD-15*, to either group on overtime. It is denied that "jurisdictional walls" prevented the Company from first offering the overtime work to the Group One.

The award in *OT-29, Mechanical Repair Crew, B.C. Cobb Plant, Whether In-plant Repairmen Have Priority to Overtime Arising at a Job Assigned to the Traveling Repair Crew*, (Ellmann, 1986) is cited as permitting the Company's assignment of overtime to the Group One, where both the Grievant's classification and the Group One performed maintenance work.

The decision in *MISC-35,* (McCormick, 1975) is argued to be no longer applicable, because the Company has discontinued standby assignments based upon the employee's position on the overtime list. Further, it is contended that two employee

groups are involved in this case, whereas only one classification was involved in *MISC-35*. Also, it is noted that *OT-29* was decided after *MISC-35*, and is more specific and recent.

DISCUSSION

The Union asserted that the Grievant should have received a preference for the overtime work, before that work was assigned to the Group One. The Union does not challenge maintenance work being performed by the Group One at City on straight time.

The appropriate result in this matter is determined by the authoritative, in-house award, in *OT-29.* In that case, a traveling repair crew and an in-plant repair crew, performed an overhaul of a turbine together on straight time. The in-plant repair crew, however, grieved when overtime work was given exclusively to the travel group. The Union felt that the local repair crew should have received a preference for the overtime. Arbitrator Ellmann held that there was nothing in the contract which required a preference for overtime for the in-house crew, when both crews performed the maintenance work. He stated:

> What is urged here, however, is that the Company's assignment of overtime to members of the Travel Repair Crew was improper because such work could have been performed by members of the Plant Repair Crew. I finding nothing in the Collective Bargaining Agreement, however, which "specifically limits" the Company's discretion in assigning overtime. The Union refers to various contractual provisions dealing with temporary transfers, meals away from home, and the creation of occupational groups but none can be said to control overtime assignments. Article X, Section 24 requires the distribution of overtime as equally as practicable among "employees within the occupational group affected," but two occupational groups

> are involved in situations which precipitate this problem. It has long been established that when the performance of certain tasks is common to employees in each of two groups, neither has exclusive claim to the work. The Union's efforts to establish "jurisdictional walls" around classifications - which I first encountered a quarter century ago - have not received sympathetic arbitral consideration nor has this concept been enshrined in the contractual language.
>
> A significant number of prior arbitral opinions has been presented to me. While many are illuminating, none suggests that the parties have restricted the Company's right to assign overtime within any occupational group eligible to perform the work, in accordance with established equalization principles. Unless some contractual principle is affronted, the Company may assign overtime work to the employees in the occupational group which has been performing it on straight time or assign it to employees in a different occupational group. It may likewise select, appropriately, employees from both occupational groups regularly qualified to perform the tasks. Since seniority does not measure preference in the assignment of overtime and, indeed, equalization principles may operate inconsistently with seniority, Article VII, Section 1 does not seem of controlling significance.
> The parties respectively argue the wisdom of one policy or the other, not without plausibility. Conceivably, there are reasons which might justify confining overtime to available local crews or confining it to the traveling crews, or permitting some employees from each group to work cooperatively on overtime as they do on straight time. But these considerations are to be evaluated and negotiated by the parties themselves. Where they have left managerial discretion uncurbed, an arbitrator should not imply restrictions.
>
> Accordingly, in answer to the question posed, I do not find that In-Plant Repairmen are entitled to priority for overtime opportunities arising on a job which has been exclusively assigned to a Travel Repair Crew on straight time.

Since both the Group One and the Grievant were permitted to perform the maintenance work at issue, the authoritative Ellmann award permits the Company to

choose to call in the Group One for the overtime. The fact that prior to 2005, the Grievant had exclusively performed the maintenance work, is not a determining factor. Further, as noted by Arbitrator Mittenthal in *JD-15*:

> If such self-service may be proper during straight-time hours, as Chairman Miller held, it surely may be proper during overtime hours.

The decision in *MISC-35* does not require a different result. Factually, that case is different from Arbitrator Ellmann's case and the present one, insofar as employees from the same classification were involved, whereas in this matter, employees from separate occupational groups were at issue. More importantly, the Ellmann decision is specific to the factual situation presented by this case, and it occurred after the McCormick award. In particular, Arbitrator Ellmann stated, as previously noted:

> Unless some contractual principle is affronted, the Company may assign overtime work to the employees in the occupational group which has been performing it on straight time or assign it to employees in a different occupational group. It may likewise select, appropriately, employees from both occupational groups regularly qualified to perform the tasks.

The Group One had been previously performing the work at issue on straight time. Therefore, under the authoritative Ellmann award, the Company could assign the overtime work at issue to the Group One on overtime.

AWARD

For the foregoing reasons, the grievance is denied.

Mark J. Glazer Arbitrator February 18, 2008