

In the Matter of the Arbitration)
between)
EXECUTIVE DEPARTMENT of the)
STATE OF OREGON,)
Employer,)
and)
ASSOCIATION OF ENGINEERING)
EMPLOYES,)
Association.)

OPINION AND ORDER
RE: Contract Interpretation
Supplemental Agreement
Section 9

BEFORE
ERIC B. LINDAUER
ARBITRATOR

December 24, 1980

FOR THE ASSOCIATION:

Mr. Fred Van Natta
565 Union Street N.E.
Salem, Oregon 97301

FOR THE EMPLOYER:

Mr. Ranney H. Reinen
Deputy Administrator
Executive Department
155 Cottage Street N.E.
Salem, Oregon 97301

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NATURE OF PROCEEDING

This is an interpretation of contract language dispute. The Oregon State Employes Association (Employer) and the Association of Engineering Employes (Association) are parties to a supplemental agreement governing Travel Expense Reimbursement. (Jt. Exh. 2)

In June, 1979 the parties entered into collective bargaining negotiation to modify certain provisions of Article 56, Travel Expense, 1979-81 Central Collective Bargaining Agreement (Jt. Exh. 1). The result of these negotiations culminated in September, 1979 when the parties signed a Supplemental Agreement. (Jt. Exh. 2)

This dispute arises out of the interpretation of Section 9 Travel Differential of the Supplemental Agreement and specifically the last sentence of Section 9 which provides:

Any full-time employe, except Highway Maintenance employes, who are away from their permanently assigned work location for two hours or more beyond the end of their regularly scheduled work shift but do not stay overnight, shall be entitled to an additional dinner reimbursement up to \$9.00.

Prior to the commencement of the hearing, the parties entered into a submission agreement which set forth the issues to be decided by the Arbitrator:

Stipulated Issues in Dispute

actual

1. Is "Reimbursement" a refunding of the actual expenses or is "Reimbursement" \$9.00?
2. Is the Employer required to pay the employe under Article 67, Section 4A, "Up to nine dollars (\$9.00) when the employe is away for two (2) hours or more beyond the end of his/her normal work shift, but does not stay overnight", under the following circumstances:

Time for
purchase of
food off
duty

YES

a. When employe purchases his/her dinner at a grocery store outside the metropolitan area while on duty and consumes the food while off duty?

YES

b. When employe purchases his/her dinner at a grocery store outside the metropolitan area while on duty and consumes the food while off duty?

NO

c. When employe purchases his/her dinner at a grocery store within the metropolitan area and consumes the food while on duty?

NO

d. When employe purchases his/her dinner at a grocery store within the metropolitan area and consumes the food while off duty?

NO

e. When an employe reports back to his/her official station and eats at home after he/she is off duty?

YES

f. When employe reports back to his/her official station and eats at a restaurant after he/she is off duty?

YES

g. When employe returns to the metropolitan area of his/her official station and eats at a restaurant before going off duty?

Not included

3. When the two (2) hours beyond the end of the work shift includes time spent eating?

At the commencement of the hearing, the parties stipulated that the procedural requirements of the grievance procedure as set forth in the collective bargaining agreement had either been complied with or expressly waived and that the issues as set forth herein were properly before the Arbitrator.

The arbitration hearing was held on November 19, 1980 in Salem, Oregon and following the taking of testimony and receipt of exhibits the parties agreed to submit post-hearing briefs which were mailed to the Arbitrator on November 26, 1980. The Arbitrator agreed to submit Opinion and Order to the parties on or before December 24, 1980.

OPINION

Before addressing the specific issues in dispute it is appropriate to give consideration to the fundamental and well recognized guidelines established in the interpretation of disputed provisions of a collective bargaining agreement.

In this Arbitration, as in most cases involving contractual interpretation, there is little dispute as to the operative facts; the position of the parties are in conflict not on the basis of fact but on interpretation of language. In this Arbitration the parties disagree on the interpretation and application of Section 9 of the Supplement Agreement regarding travel reimbursement. As a result of the inability to reach an accord as to the meaning of Section 9 and specifically the last sentence of Section 9, they have submitted the matter to Arbitration.

The Contract

An Arbitrator's responsibility is to ascertain and enforce the mutual intent of the parties at the time of the contract's negotiation and execution. When clear and unambiguous, the language of the contract itself is the best evidence of this intent.

The first responsibility of the Arbitrator is to consider the specific terms of the contract in dispute. The express written intention of the parties, if unequivocal controls.

It is also well recognized contract law that language is not considered ambiguous if the Arbitrator can determine its meaning

. . . "Without any other guide than a knowledge of the simple facts on which its meaning depends. 13 CJS 481, 520.

On the other hand, contractual language is regarded as ambiguous if "plausible contentions may be made for conflicting interpretations". 17 LA 741, 744 Armstrong Rubber Co. (1954).

In that event, the Arbitrator must consider the intent of the parties, normal usage, construction of the contract as a whole, custom and practice, the avoidance of a harsh or nonsensical result and finally "reason and equity". Admittedly, these guidelines are often as vague as the language the Arbitrator is asked to interpret. In the final analysis, the Arbitrator must be guided by the specific language of the contract, the determination of the parties intent and what result will do the least amount of violence to the judgment of a reasonable man.

With these guidelines for the Arbitrator to follow we now consider whether the language of Section 9 is, or is not, ambiguous.

ISSUE I

Is "reimbursement" a refunding of the actual expenses or is "reimbursement" \$9.00?

The first issue submitted to the Arbitrator is the interpretation of Section 9, Travel Differential, of the Supplemental Agreement between the parties. The parties are in disagreement over the application of the last sentence of Section 9.

This section provides initially for a basic \$3.00 per hour overtime for employees who are away one hour or more from their "permanently assigned work location." This section further provides that if employees are away from their permanently assigned work location for two hours or more beyond the end of their shift (but not overnight) then those employees shall be "entitled to an additional dinner reimbursement up to \$9.00."

The parties negotiated a new agreement which resulted in the creation of Section 9 which replaced the language of the prior agreement authorizing a flat or per diem allowance of a specified amount for each meal. The new language provided for reimbursement in the place of that allowance.

POSITION OF THE PARTIES

The Association

The Association argues that the language of the contract is clear: that an employee having complied with the conditions of Section 9 would be entitled to a reimbursement up to and including \$9.00. If \$9.00 was claimed, \$9.00 should be paid by the employer. In support of its position, the Association

contends that there is no limitation in the contract on the amount paid other than the maximum of \$9.00 and further that the employer no longer requires the employes to provide receipts for actual expenditures for overtime meals. Therefore, it is the Association's position that any amount claimed up to and including \$9.00 should be paid to the employe by the employer without further evidence of the amount actually expended.

The Employer

The Employer's position is predicated on negotiation history and definition of the word "reimbursement". The Employer submits that the 1979-80 agreement clearly modified the per diem payment provisions by a basic change in the method of authorizing payment. Under the prior contract the employe was provided an "allowance" for overtime meals which was paid to the qualifying employe without proof or explanation by the employe as to whether or not the expenses were actually incurred. The travel per diem provisions under the prior contract (Article 56) was an allowance based on the average amount expended. The Employer argues that the parties negotiated a new travel expense in the 1979-81 contract. The new section, Section 9 of the Supplemental Agreement, eliminated the flat allowance payment and provided direct reimbursement for expenses actually incurred and submitted for payment. Therefore, the Employer argues that the Arbitrator should construe language of Section 9 and specifically the word "reimbursement" to mean that a qualifying employe is entitled

to be reimbursed only for those expenses actually expended for meals while the employe is away from his or her permanently assigned work location for two hours or more beyond his/her normal work shift.

OPINION

The evidence submitted at the hearing demonstrates that the parties entered into extensive negotiations regarding this provision of the contract, although this specific issue was not discussed addressed by either party. It is apparent that there was an expressed desire to change the language of the contract and the parties intent was reflected in the modification of the contractual language from an allowance or per diem payment to a direct reimbursement.

The Arbitrator is requested to interpret the language of Section 9 and specifically the parties intent with respect to the word "reimbursement."

The Employer provided dictionary definitions of the words "allowance" and "reimbursement". These definitions are instructive and give credence to the Employer's position.

In the Arbitrator's opinion the term "reimbursement" is clearly distinguishable from "allowance" as applied to the issue in dispute. As stated in Black's Law Dictionary (Employer's Exh. 5) an "allowance" is "an average payment" in contrast to "reimbursement" which is "to repay that expended".

The Arbitrator concludes that the terms of Section 9 are neither ambiguous nor unclear. Reimbursement up to \$9.00 means

in the opinion of the Arbitrator simply what it says--that an employe shall be entitled to a reimbursement for those expenses actually incurred for meals up to \$9.00. If an employe who having met the qualifying conditions of Section 9 submits an expense statement for \$3.75 as a meal expense he or she shall be reimbursed \$3.75 and if an expense statement is submitted for \$8.50, reimbursement shall be paid for that amount.

However, as noted by the Arbitrator at the close of the hearing, the issue here is not only the interpretation of the language but its application as well. The Employer, for administrative and accounting reasons, no longer requires the employe to provide actual receipts for overtime meals. The employe is only required to submit an expense statement for monies actually expended for the meal.

The issue of application is presented and a dispute occurs when an employe who having met the conditions of Section 9 submits an expense statement for \$9.00 without verification by an accompanying receipt for the meal. The Employer then questions the employe's expense statement and refuses to pay the amount claimed. The issue simply comes down to a matter of employer-employe credibility. Did the employe actually spend \$9.00 for dinner or is he or she taking liberal advantage of the terms of the collective bargaining agreement?

It is the Arbitrator's opinion that the employe having met the conditions of Section 9 is to be reimbursed only for what was actually paid for the meal up to a maximum of \$9.00, no more and no less. The employe should be entitled to full meal

reimbursement when required to work overtime, nor should the provision be abused by the request for payment of false claims.

This Opinion is instructive to the parties only. As previously noted, the real measure of whether this Opinion is of value is in the direct application of the individual employes and the Employer. The employe is entitled to be fully reimbursed for actual expenses of the overtime meal without verification by receipt or questioning by the Employer. Each party must not only honor the language of the agreement but by its underlying intent. The continuation of unnecessary questioning of submitted expense statements by the Employer and the excessive to claims by the employe will ultimately result in an abuse by both sides, leading inevitably to the reinstatement of required receipts which is acknowledged to be degrading to the employe and costly to the Employer.

If the employe and the Association make a determined effort to honor the express terms of Section 9 and its intent as negotiated by the parties, then further disputes can be avoided. Hopefully, this Opinion will serve as a constructive basis to achieve that result.

ISSUE 2

Although Issue 2 poses a series of seven factual circumstances which are submitted to the Arbitrator for response, the issue can be summarized as follows:

Is the Employer required to pay the employe, under Article 67, Section 4A "up to nine dollars (\$9.00)" when the employe is:

- a. Away from their permanently assigned work station for two hours or more beyond the end of the normal work shift but does not stay overnight and
 - 1) Purchases their dinner at a grocery store,
 - 2) Eats at home, or
 - 3) Eats at a restaurant.
- b. Assuming the above factual situation would it make any difference if the employe was on or off duty.

The second issue raised in this arbitration is the application of Section 9 of the Supplemental Agreement to factual circumstances where the employe is returning to his or her permanently assigned work station after being away two or more hours beyond the normal work shift (but not overnight) and either eats at home, at a restaurant or purchases his or her dinner at a grocery store. The issue is further qualified by the question of whether or not it would make any difference if the employe was on or off duty.

POSITION OF THE PARTIES

The Association

The Association argues that a strict interpretation (dinner reimbursement only when money is actually expended outside the employe's permanently assigned work station) is

without justification. The Association contends that neither the parties in their negotiations nor the language of the contract suggests such a limited interpretation. In support of its position the Association cites other collective bargaining agreements as indication of negotiated limitations. There being none in the present agreement, the Association concludes that the Arbitrator should not impose such an interpretation.

The Employer

The Employer contends that the issues submitted are those of practical application requiring third party interpretation. The Employer contends that the issues submitted were clearly not what was intended or agreed to at the bargaining table. Specifically, the Employer submits that it is unrealistic to expect that an employe should be reimbursed for a meal which was eaten at the employe's home.

OPINION

It is difficult to formulate an opinion that will serve as a general guideline for each specific factual situation presented in Issue 2.

What the parties are requesting from the Arbitrator is what did the parties intend when the language was agreed to and the Supplemental Agreement signed.

The evidence on these issues, as submitted by the parties is limited and subjective. On the basis of the evidence, the Arbitrator can only render his best judgment as to the parties intent and reach a decision which is not unreasonable and is consistent with the terms of Section 9.

The basic premise of the Arbitrator's opinion in the preceding issue is that the employe was to be reimbursed only for actual expenses incurred for meals. This conclusion, right or wrong, must be consistent with application to the issues raised in Issue 2.

Therefore, it is the Arbitrator's opinion, without further discussion of each factual circumstance, that employes are to be reimbursed for actual expenses incurred for dinners purchased either at a restaurant or at a grocery store irrespective of whether the employe is on or off duty as long as "the employe is away for two hours or more beyond the end of his/her normal work shift, but does not stay overnight."

The intent of Section 9, as interpreted by the Arbitrator, is to compensate the employe for expenses actually incurred whether those expenses are for dinners purchased at a restaurant or a grocery store. There was evidence of circumstances which may arise in Eastern Oregon where an employe would not be in proximity to a restaurant and thereby necessitating a purchase of food in a grocery store. The Arbitrator finds it difficult to believe that such a circumstance could exist but gives the Association the benefit of the doubt on this issue.

In this issue, as in the previous issue, there must be restraint by the employe in abusing the contract language and of the parties intent and to refrain from the temptation to inflate the reimbursement claim for expenses where no receipt is required. To the same extent and for the same reason the Employer must respect the claims of the employes.

For the foregoing reasons, it is the Arbitrator's opinion that when an employe is within a metropolitan area, a restaurant is available for dinner and there would be no necessity for the employe to purchase his/her dinner at a grocery store. Therefore, the employer should not be required to reimburse under those circumstances.

In the event that the Employer determines that this provision (grocery reimbursement) is being abused by members of the Association then the only alternative is to reinstate the receipt requirement, with itemization of groceries purchased. Hopefully, the requests by employes for grocery reimbursement will be only in isolated cases and reimbursement requests will be limited only to dinner meals eaten at restaurants.

It is the Arbitrator's opinion that reimbursement for eating at home or for groceries purchased where no restaurants are available should not be granted and should be discouraged by the Association.

In applying the Arbitrator's decision to the specific questions raised in Issue 2 the answers are as follows:

- a. Yes
- b. Yes
- c. No
- d. No
- e. No
- f. Yes
- g. Yes

The Arbitrator's decision is intended to serve as a guideline in applying Section 9 to the factual circumstances presented.

ISSUE 3

The parties stipulated that the third issue the Arbitrator should interpret is whether or not:

"The two (2) hours beyond the end of the work shift includes time spend for eating?"

This issue is also inter-related with the other two issues submitted. The previous opinion made no distinction of whether an employee was on or off duty in order to qualify for the dinner reimbursement. If the employe had worked the two hours beyond the end of his normal shift then the Employer would be required to reimburse for the dinner meal, provided the meal was eaten at a restaurant or purchased at a grocery store where no restaurant was available.

The present issue raises the interesting question of whether the two hours beyond the work shift includes time spent for eating or whether the provision contemplates that two hours means two hours of work, not meal time.

The Arbitrator adopts the position that meal time is outside the two hour overtime provision. Therefore, the answer to Issue 3 is no, the two hours does not include time spent eating.

Section 9 provides for meal reimbursement up to \$9.00 when the employe is away for two (2) hours or more beyond the end of his/her normal work shift. The Arbitrator concludes that being "away" implies being on the job or away from his/her permanent work station necessitated by his work, not to eat at a restaurant. For these reasons, the Arbitrator concludes that the answer to Issue 3 is no.

ORDER

The Arbitrator, in arriving at this decision, has reviewed all of the evidence, exhibits, and recorded testimony of the hearing and has taken into consideration the arguments of the parties set forth in the post-hearing briefs. In view of all the evidence, it is the opinion of the Arbitrator that in response to the issues set forth herein the Arbitrator finds and so Orders:

1. That "reimbursement" as set forth in Section 9, Supplemental Agreement is a refunding by the Employer of actual expenses expended by the employe.

2. a. Yes
 b. Yes
 c. No
 d. No
 e. No
 f. Yes
 g. Yes

3. That time spent eating is not included in the two (2) hours beyond the end of the work shift as provided in Section 9 of the Supplemental Agreement.

Respectfully submitted,

Eric B. Lindauer
Arbitrator

December 24, 1980