ISSUE

The Union proposed as an issue: "Did the Company attempt to alter the contract outside of required negotiations by their issuance of the May 17 and 18, 2016, memos regarding the 12-day rule?"

The Company proposed as an issue: "Whether shift trade days apply to the 12-day work rule."

The parties agreed that the undersigned arbitrator should define the final statement of issue. Accordingly, the issue in this case is:

Does the May 17, 2016-memo apply the 12-Day Rule in accordance with the CBA? If not, what is the remedy?

FINDINGS

In this case the parties disagree regarding the proper application of the 12-Day Rule and of the Grievant X arbitration decision issued by the undersigned arbitrator on January 16, 2013. The focus of the parties' disagreement in that case was whether, after having approved her pick up of a shift on the 13th day, and after she had worked a shift trade on day 6, the Company could require Grievant X to work overtime on day 7. As seen by this comparison, the facts of the Grievant X case thus presented a different issue from the issue raised by example 2 in the Company's May 17 memo.

Example 2

Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
Sch	Sch	Sch	Sch	Sch	4 hrs. VOT or MOT	STW	Sch	Sch	Sch	Sch	Sch	OT

Grievant X's schedule

Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
Sch	Sch	Sch	Sch	Sch	STW	MOT	Sch	Sch	Sch	Sch	Sch	STW

Crucially, in the Grievant X case, day 13 was to be worked because she had voluntarily picked it up as a shift trade day. Therefore, the Company was not "requiring" her to work more than 12 days in a row. In example 2, however, the Company is reserving a right to assign mandatory overtime on day 13. This difference reflects a new application of the 12-day rule, one that was not litigated in

the Grievant X case. Therefore, the Union is not precluded, by the doctrine of collateral estoppel or res judicata, from pursuing the instant grievance.

To support its interpretation of the Grievant X decision, as reflected in the May 17th memo, the Company has taken certain language in the Findings of the Grievant X case to mean that when an employee voluntarily picks up a shift via a shift trade, that time worked does not factor into the calculation of days the Company requires the employee to work for purposes of the 12-day rule. That interpretation is not correct and directly contradicts the example the parties used in the 2010 Interps, quoted above. Specifically, the example on page 10 of the Interps states that an employee who works five days, volunteers for two (off) days, and works another five days *cannot* be mandatoried to work on the 13th day, but may volunteer. Example 2 in the Company's May 17th memo directly contradicts that mutually-agreed to Interpretation by treating time voluntarily worked via a shift trade differently from time voluntarily worked at overtime. The Company has offered no contractual support for that differentiation.

As the Union notes in this case, employees who pick up shift trades on day 13 place themselves at risk to work more than 12 days in a row, if the Company assigns them mandatory overtime on their days off before that 13th day. That result would be fully in accordance with the CBA, since employees are permitted to work more than 12 days in a row.

For the above reasons, the grievance will be sustained. The Company will be directed to revise and reissue the May 17th memo to accurately reflect the 12-day rule as set forth in the 2010 Interpretations.

AWARD

The grievance is sustained. The Company is to revise and reissue the May 17th memo to accurately reflect the 12-day rule as set forth in the 2010 Interpretations.

Elizabeth Neumeier, Arbitrator

February 21, 2017