ARBITRATOR'S OPINION AND AWARD

In the Matter of Arbitration Between:

January 16, 2013

SOUTHWEST AIRLINES COMPANY

and

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO
Local 555

Grievance: SAT-O-1101/12 (12-Day Rule, [redacted])

Before

Elizabeth Neumeier, Arbitrator

Representing:

The Employer: Suzanne Lehman Johnson, Muskat, Martinez & Mahoney, LLP

The Union: Mark Waters, District IV Representative, TWU Local 555

Statement of the Award: The grievance is denied.

BACKGROUND

Southwest Airlines Company (Company or Employer) and the Transport Workers Union Local 555 (Union) are parties to a collective bargaining agreement (CBA) effective July 1, 2008 through June 30, 2011. The CBA, in Article Six, Section One - Hours of Service, subparagraph J - Shift-trades, contains a number of provisions governing how employees may trade work shifts and days off. One provision is known as the "12-Day Rule" and reads as follows:

> 5. 12 Day Rule/Double Rule. Employees shall not be required to work more than twelve (12) days in a row, nor required to work more than three (3) consecutive double shifts nor permitted to work more than five (5) consecutive double shifts. The Employee off because of giving away a shift shall be eligible for overtime as out-lined in Article Seven (Overtime) of this Agreement.

The grievance at issue here, filed on June 18, 2012, protests that "Due to mandatory assignment forced to work more [than] 12 days in a row." A remedy of one day off with pay of the Grievant's choice was sought. The Company denied the grievance as follows:

> The grievant was required to work mandatory overtime on June 12, 2012. The mandatory overtime on June 12th was the seventh not the thirteenth day and therefore did not require the Employee to work more than 12 days in a row. In addition, in this case the grievant was not required but voluntarily traded into a shift on the thirteenth day (June 18, 2012). The San Antonio Station assigned the mandatory overtime correctly in this case and I must respectfully deny this grievance. [Jt. Ex.1.]

After the System Board deadlocked, the case was timely appeal to arbitration.

The basic facts giving rise to this grievance are essentially undisputed. The Grievant began working in the Company's Reservations department in 1995, moved to Customer Service after 10 years, and then to Ground Operations as an Operations Agent in San Antonio. Due to her short service in that department – she is the third most junior – she has been mandatoried to work overtime, something she understood would be a requirement of the position. (Co. Ex. 1.)

The Grievant was also familiar with the process for trading shifts. During the second week of May she traded her June 27 shift to work on June 18. (U. Ex. 3) Then, on June 9, her Supervisor approved her working a giveaway for another employee on June 11, the first of two consecutive days she had been scheduled to be off. (U. Ex. 2) Those changes meant that she would work six days, June 6-11, have one day off, June 12, then work another six days straight, including her regularly scheduled five days of June 13-17 plus the day she traded for, June 18.

While the Grievant was working a flight on June 11 she was called to the Operations

office, between 12:00 and 12:30 PM and after the overtime book had been closed. Her Supervisor told her she was to be mandatoried to work the following day. Her Supervisor and Union Representative were discussing whether that would happen because of her trades. The Union Representative was to call the District Representative and the Supervisor was to ask the Manager. The Supervisor said she probably would be mandatoried but that she would then get June 18 off with pay. The Manager later said no to paying her for not working on June 18. She did work that day and got shift extended.

The Grievant had not planned to work on June 12 and "moved some things around" to be able to do so because she knew that if she declined the mandatory overtime she would have a fact finding. She understood that once her trades were approved they were part of her regular shift assignments and she was responsible for working them. In addition to June 12, she worked some mandatoried overtime hours in June when her shifts were extended on other dates.

The relevant portion of the Grievant's June 2012 schedule was as follows:

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4 OFF	5 OFF	6 REG. SHIFT DAY 1	7 REG. SHIFT DAY 2	8 REG. SHIFT DAY 3	9 REG. SHIFT DAY 4
10 REG. SHIFT DAY 5	11 STW* DAY 6	12 MANDO** DAY7	13 REG. SHIFT DAY 8	14 REG. SHIFT DAY 9	15 REG. SHIFT DAY 10	16 REG. SHIFT DAY 11
17 REG. SHIFT DAY 12	18 STW DAY 13	19 OFF	20	21	22	23
24	25	26	27	28	29	30

* Shift Trade Worked
** Mandatoried

This grievance was filed because the Union disagreed with management's application of the 12-Day Rule. The Union's District Representative (District Representative) testified on behalf of the Union, as did the Grievant. The Company offered testimony from the Senior Manager, Employee Relations for Ground Operations (Senior Manager) and the Director of Employee Resources - Provisioning (Director).

The District Representative testified that by doing the shift trade the Grievant was required to be at work. He said that a person needs rest and employees are not required to work more than 12 days in a row. Here, the Company has taken the Grievant's choice of when to get that rest away from her. He said that the Union agreed to the language in Article Seven, I. 6 because there had been an issue of employees shift trading and then canceling the trade after

mandatory overtime had been assigned. The Company pays a penalty for incorrectly assigning mandatory overtime and the overtime is based on what is on the schedule at the time of the mandatory assignment, so he told the Representative to make sure the Company realized the Grievant would be working more than 12 days.

The District Representative also testified that the parties' April 12, 2010-Work Rules Interpretations allow Employees to pick up as many shifts as they can, and then get rest. Article Seven, Question 24 states:

> **24. Can an Employee volunteer to work more than 12 days in a row under the new contract? (Section One, par, J, 5)**
>
> Yes. The concern is for safety, but we felt that working more than 12 days was no harder on an Employee than working continual double shifts. Therefore, in exchange for limiting the amount of doubles the Employees can work, we will allow the Employee to volunteer to work more than 12 days in a row. If the Employee volunteers to work on the 13th day he is not off again until his next scheduled day off.
>
> Example: Work 5 days
> Volunteers 2 days off
> Work 5 days
> Day 13 volunteers to work (can't be mandatoried but may volunteer)
> Day 14 volunteers to work– Employee is not off again until his next scheduled day off [Jt. Ex. 3, pg. 10.]

On cross examination the District Representative disagreed that the words "*as if* it were part of their regular shift assignment" in Article Six, Section J makes shifts obtained by trading any different from regular shifts. He said that in this case, when they knew that mandatory overtime would be required on June 12, the Company should have looked at the Grievant's schedule as it then existed on paper and realized that forcing her to work would exceed 12 days in a row. He agreed that, if another employee wanted to pick it up, she could have traded off any day before the 13th day and that some employees want to be mandatoried to work because they are paid at double time. The Union has filed grievances on behalf of employees who should have been mandatoried but were not. He acknowledged that the Union's approach here might have resulted in a more senior employee being mandatoried on June 12.

The District Representative added, on re-direct, that if the Grievant had traded for the June 18 shift after she had been mandatoried to work on June 12 she would have been working 13 days in a row voluntarily. Further, if an employee trades for a Relief Agent shift, the shift may be further adjusted as the 2010 Work Rules Interpretations of Article Six make clear:

> **18. If an Employee shift trades with a Relief Agent, can the regular relief shift still be adjusted if necessary? (Section One, par. J)**
>
> Yes, when an Employee picks up or trades into a Relief Agent position, the Employee becomes, in effect, the Relief Agent for that day. When the shift trade is approved, it should be noted on the form that the shift may be adjusted. [Jt. Ex. 3, pg. 9.]

The Senior Manager, Employee Relations for Ground Operations, who previously worked at the San Antonio station as a Ramp agent, an Operations agent, an Operations supervisor, a manager of Ramp and Operations and a staffing analyst, testified that a "regular shift" is part of the five-day, 40-hour week the employee bids for. The parties' April 12, 2010-Work Rules Interpretations of Article Six cover this point as follows:

> **30. What is a regular scheduled shift? (Section One, par. K)**
>
> A regular scheduled shift is a shift that is bid, not one that is traded for, or volunteered for overtime. [Jt. Ex. 3, pg. 11.]

He said that employees may agree between themselves to trade a shift or time within a shift, but the Company needs to approve the trade so they know who is working. In addition, employees may get a day off by taking vacation time one day at a time and they receive one holiday per month that they bid for.

The Senior Manager testified that the prohibition in the Article Six, Section One, J-5 12-Day Rule refers to mandatory assignments when it says "Employees shall not be required to work more than twelve (12) days in a row...." At the time this assignment was made June 12 was the Grievant's 7th day at work, not her 13th. If she had worked June 6 through 17, the Company would not have been able to assign her to work on June 18 because that would have been 13 days in a row. He said that is the way the 12-Day Rule has been applied and how it has always been understood. He said that seniority is very important in the airline industry and if she had not accepted the mandatory assignment the next more senior person, or a qualified junior person who was available, would have been assigned in accordance with Article Seven, Section I-6.

The Senior Manager further testified that it would be administratively burdensome to require the Company to look forward as the Union suggests. He said that, if day seven is a violation in this example, then when that shift-trade was turned in for day 13, it would not have been approved. If day seven is a violation in this example, the Company cannot approve any shift trades in advance, because the 12-Day Rule would become a 25-day rule, requiring the Company to look backwards and forwards to ensure there is no violation of the contract. That would be a liability for the Company and a tremendous disadvantage for the employee who would be forced to wait to see until possibly the day before whether the trade would be approved. System-wide there would be 100-300 trades each day put on hold until the Company could see how many days in a row the employee was actually working. When a station manager

is looking to fill mandatory overtime, first in the order of assignment is "first day off." Under Article Two, Section D of the CBA, management has reserved the right to manage and direct the workforce, subject to the rules in the contract.

On cross examination the Senior Manager testified that when employees complete a trade request the supervisor reviews it to make sure the hours and dates are correct, that the employees signed it, etc. He is not aware of grievances being filed over staffing because staffing is a management right under the contract. Employees who refuse mandatory overtime go to a Fact Finding to determine the circumstances and discipline can be given. He said that the Company could not mandatory an employee who – voluntarily – has already worked 12 straight days to work another day because day 13 is the day they look at and it would be a mandatory assignment. The Grievant could, however, trade to work a 13th day. The Senior Manager was aware of a grievance the Union lost at arbitration involving the Company making an overtime assignments based on the information known at the time, and not what subsequently occurred.

On re-direct the Senior Manager testified that refusal of overtime is covered in the Work Rules Interpretations as follows:

> **23. Can an Employee refuse overtime? (Par. I, 6)**
>
> No. If an Employee refuses to or cannot work a mandatory overtime assignment, a fact-finding meeting will be held to determine whether discipline is appropriate. It is the Employee's duty to be available to work overtime when there is a need.
>
> *Note: An Employee who repeatedly calls in sick for mandatory overtime assignments will be called into a fact finding to discuss the circumstances to determine if disciplinary action is appropriate. [Jt. Ex. 3, pg. 17.]

He said that by considering day seven in the 12-Day Rule the entire work group could do trades and then just cancel them all. The ability to manipulate would mean that no one would be in line for mandatory and it would be assigned to more senior employees. There are still complaints over manipulation, which is why the parties agreed to the "d. status." That provides a fall-back plan so that for seven days the employee is still subject to being assigned mandatory overtime. What has occurred in this instance was never foreseen or contemplated as an issue, but the 12-Day Rule has never been applied this way. Employees are offered the opportunity to work, as the Work Rules Interpretations state, but shift trade work and voluntary overtime are not part of the definition of required to work. Doing a shift trade to work 13 days is not a violation. He referred to a May 2012 timecard as an example of voluntary overtime causing an employee to work more than 12 days. (Co. Ex. 2)

The Director has worked for the Company for 22 years, was on the Company negotiating team for the CBA, and worked on the Work Rules Interpretations from 2001 to present. She explained that pages 1-2 list the approximately 40 changes in the Interpretations made in 2010.

No changes were made in Article Seven, Question 24. After the 2001 CBA was ratified that work rule interpretation was discussed at several meetings before the Interpretations were distributed in November 2001. Her notes from those discussions reflect that an employee who worked 12 days in a row and was scheduled off on the 13th day could not be required to work but the employee could elect to pick up a shift trade or voluntary overtime assignment. If the employee did so, the employee would work the regularly scheduled shifts until the next day off.

The Director further testified that some of the Interpretations were "a little bit gray" and examples were needed. Her notes from a January 3, 2003-telephone conversation with the Local Union President about the 12-Day Rule show the example was discussed. She said that they agreed that no matter how the employee gets to day 13 the Company cannot require them to work but they can continue to pick up days on their own. When the Work Rules Interpretations were revised in November 2003, this example that was added to Article Seven, Question 24. (Co. Ex. 3.) She said that all of the discussions were about protecting day 13 and there was no forecasting.

On cross examination the Director agreed that an employee who volunteered to work on days off and, hence, 20 days straight as in the example, would be unavailable for mandatory overtime. She was not involved in negotiating the CBA when the 12-Day Rule was added.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE TWO
SCOPE OF THE AGREEMENT

D. **Management Rights.** The right to manage and direct the workforce, subject to the provisions of this Agreement, is vested in and retained by the Company.

ARTICLE SIX
SECTION ONE
HOURS OF SERVICE

A. **Tour of Duty.** Time worked in any tour of duty, including holidays, overtime, and shift trades, shall be considered as work performed on the day during which the Employee's regular shift began.

* * *

C. Scheduled Days Off. Employees, excluding Relief Agents, shall be scheduled for at least two (2) consecutive days off each of their work weeks. Saturday and Sunday shall be considered as

consecutive days off for this purpose.

* * *

J. **Shift-trades.** The trading of a work shift or day off between Employees within the same classification shall be permitted if a request in writing, signed by all of the trading Employees, is submitted to the appropriate station management at least twelve (12) hours in advance of the starting time of the first intended trade, provided the Employees involved are capable, current, and qualified for performing the job functions traded. Requests submitted less than twelve (12) hours prior to the first intended trade are subject to management approval. Employees who trade become responsible to work the shift agreed to as if it were part of their regular shift assignment. No trade can involve more than four (4) persons. Trades involving probationary Employees in their first thirty (30) days worked of service are subject to Company approval.

1. **Approval.** The trading or giving away of a workshift shall be permitted when agreed to by two (2) Employees when the above mentioned requirements have been met, subject to the approval of the Company.

* * *

4. **Reporting Requirements.** All trade agreements and shift giveaways must be in writing, signed by all parties involved, and be submitted to station management in order to be considered valid. Shift trades and giveaways of less than a full shift shall be permitted. An Employee who commits to work a shift other than his own shall be required to report on time.

5. **12 Day Rule/Double Rule**. Employees shall not be required to work more than twelve (12) days in a row, nor required to work more than three (3) consecutive double shifts nor permitted to work more than five (5) consecutive double shifts. The Employee off because of giving away a shift shall be eligible for overtime as out-lined in Article Seven (Overtime) of this Agreement.

6. **Preserving Seniority.** It is understood that the shift/day trade provisions of this Article may not be used to circumvent the awarding of shifts as described in Article Eight (Seniority).

7. **Giveaway/Mandatory.** An Employee required to work an overtime assignment may elect to give away such assignment by means of a shift giveaway upon verification by the Company. The employee shall then be classified under Article Seven, Paragraph I, Sub-paragraph 1 (e), for any other overtime call out procedures.

* * *

ARTICLE SEVEN
OVERTIME

* * *

I. **Overtime Call Book.** If a known overtime assignment of four (4) hours or more is available, the overtime call book for each bid location shall be utilized. In accordance with Appendix A, to be eligible for this overtime, an Employee must complete and sign the overtime call book in ink, and must initial, in ink, any subsequent deletion or changes. All such changes must be witnessed and initialed by a supervisor. A standard overtime call book shall be used at all stations and offices. Overtime call books shall be posted for a minimum of fourteen (14) days in advance. When an Employee signs the overtime call book, it shall constitute his agreement to work on the day for which he signed, and normal attendance rules shall apply.

* * *

6. **Mandatory Assignments.** The Company and the Union agreed that mandatory overtime assignments are not in the best interests of either party. To maximize voluntary overtime utilization, the Company must make overtime known to the Employees, and employees must utilize the overtime call book to the fullest. If a sufficient amount of overtime is not voluntarily obtained or if no one signed the overtime call book, the Company

shall require Employees to work the overtime. It shall only be assigned as outlined in Article 7.I. a., b, and c. in reverse order of seniority.

a. However, when an Employee trades or gives away his/her entire shift or any portion of his/her shift, and

- then cancels or trades back to his/her original shift after initial callout assignments have been made, and
- the original trade or giveaway made that Employee ineligible for a mandatory callout assignment that he/she would have received, then
- that Employee will continue to be eligible for assignment as outlined in Article 7.I. a., b, and c. in reverse order of seniority and will be eligible to be given one mandatory assignment when on "d" status during the next seven (7) calendar days.

b. Employees will only be required to work on one (1) of their regularly scheduled days off. However, in the event of an emergency situation and the Employee is mandatoried to work both scheduled days off, the Employee will be paid for the second scheduled day off at the applicable overtime rate plus an additional one half (½) time at his regular rate for all hours worked during the overtime assignment.

CONTENTIONS OF THE PARTIES

The Union's Contentions

The Union contends that the 12-Day Rule was put into the contract because both parties agreed that "mandatory overtime assignments are not in the best interests of either party." Every employee needs time off to rest and recuperate and the Company violated the contract by requiring the Grievant to work more than 12 days.

The Union disagrees with the Company's assertion that after the shift trade was signed and approved in May the Grievant was still considered a volunteer for the 13th day. The shifts

she picked up became her required shifts to work. Both trades were signed before June 12 and the Company recognized that the second traded-for day would be her 13th at work.

The Union contends that under the unambiguous language of Article Six, Section One, Paragraph J, #4 and #5 the Grievant had agreed to work two six-day blocks with a day off in the middle. She did not agree to work more that 12 days in a row. Once the trade was approved she was the employee responsible for the trade. Attendance rules apply and employees have been disciplined for no showing shifts they traded for. The Company is seeking to have it both ways: holding the employee liable but not themselves.

The Union disagrees with the Company's reliance upon the 2010 Work Rules Interpretations. The Article Six Question #24 interpretation covers the scenario when the agent volunteers to work on both their days off. Here, the Grievant agreed to work only one of her two days off, leaving the second for rest.

The Union contends that the Company must take into account all available information at the time they are making an assignment. That is what occurred in a case the Company won at arbitration. See BDL-O-1699/08, [redacted] (William H. Lemons, Arbitrator, 2009). (Lemons Award.) In that case the Company assigned continuous with overtime that exceeded the 3:59 hour restriction provision. The assignment was grieved because the Union believed the overtime should have been given out as a four-hour call-out. The arbitrator ruled for the Company because, at the time of the assignment, the flight in question was to be in the station within two hours, meaning less than four hours overtime would be needed. Due to an unexpected maintenance delay the flight arrived late. The Arbitrator ruled that the Company had to base its decision on the information they had at the time of the assignment.

The Union contends that the same should apply here. The Company should have used all the information available to make the correct decision. They knew that by requiring her to work on June 12 - due to her junior status - they would be forcing her to work more than 12 days in a row, in clear violation of Article Six. The Union notes that even the Operations Manager thought she would be given Monday, June 18 off with pay. The Supervisor was basing that statement on all available information.

Finally, the Union rejects the Company's argument that it could not look to the future. The contract provides for looking forward on mandatory assignments. Under Article Seven, Paragraph I, #6, she would have been penalized if she had cancelled her shift trades to avoid a mandatory assignment. The station had two choices under the CBA: force the Grievant to work on June 12 and give her June 18 off with pay or not mandatory her to work on June 12.

The Union asks that the grievance be sustained, that the Grievant be given a day off with pay, and that the Company stop requiring agents to work more than 12 days in a row.

The Employer's Contentions

The Company contends that the Union has not met its burden of showing that the

Company breached the CBA under the plain language of the CBA, the relevant bargaining history, and past practice. In addition, the Union's position would produce absurd results in contravention of the CBA.

The Company contends that the plain language does not prohibit additional days that are worked on a voluntary basis through day trades. The interpretation of the word "required" urged by the Union would extend the prohibition of the 12-Day Rule to include shifts voluntarily picked up by employees, as the Grievant did here.

The Company contends that the CBA must be interpreted as a whole and that other contractual provisions in the same section make it clear that day trades are days that are voluntarily agreed to between employees. The provision the Union claims as a support for its argument that a day trade shift is a "required" shift, Article Six, Section 1, J.4, actually emphasizes the employee's voluntary role in taking on the responsibilities associated with a day trade: "an Employee who commits to work a shift other than his own shall be required to report on time." From the outset the day trade section emphasizes that "Employees who trade become responsible to work the shift agreed to as if it were part of their regular shift assignment," emphasizing that the employees have agreed to the shift. (Article Six Preface.)

The Company notes that the differences in pay further distinguish between voluntary day trades undertaken by the employee and a shift required through assignment by management. Under Article Six, Section 1.J, 2 and 3, the rate of pay in the case of a trade or giveaway is at "straight time" and no overtime "shall be created." Overtime pay is computed for "required" days assigned by management as pay of "time and one-half" or "double-time." (Article Seven, A, B, and C.) Management-assigned overtime is also subject to procedural requirements that do not apply to voluntary trades.

The Company contends that the specific language of the 12-Day Rule and trading demonstrates the clear intent that voluntary days are treated differently than required days that are assigned by management through shift bid, mandatory overtime, or otherwise. These specific provisions include: Article Six, Section 1.C-Scheduled Days Off and D-Work Schedule Bids/Requirements; Article Six, Section 1.J-2-Rate of Pay and J-3-Overtime Exclusion; Article Seven Overtime, A, B and C; and Article Six, Section 1.K-10-Hour Rest Rule.

The Company contends that the Work Rules Interpretations pose the exact question that is central to this arbitration: "Can an Employee volunteer to work more than 12 days in a row under the new contract? The simple answer to that question is: "Yes." The example affirms that the employee's choice to pick up a 13th day does not violate the 12-Day Rule, stating that "If the Employee volunteers to work on the 13th day, he is not off again until his next scheduled day off." The fact that the Grievant worked mandatory overtime on one of her two days off in the prior week and volunteered to work a shift trade on the other day off does not alter the character of her 13th day – a voluntary day trade. The Grievant is in the best position to determine whether or not to accept day trades on her days off, and this responsibility should not be delegated to the Company through some strained interpretation of a voluntary trade day as a "required" day. The bargaining history of the Interpretation supports the Company's position.

The Company contends that past practice is the most widely used standard to interpret contract language. The Interpretation and "look-back" method of applying the 12-Day Rule are consistent. The Union's unique interpretation would preempt the Company's ability to require mandatory overtime where an employee has voluntarily picked up days that alter the original schedule and require the Company to pass over that employee when assigning mandatory overtime in the week prior to the 13th day. Such a requirement would be in violation of management's right to manage and direct the work force under Article Two, D. Scattered exceptions or confusion by local management are insufficient to alter this practice.

The Company contends that the absurd result of the Union's interpretation would be to sacrifice the rights of more senior employees based on the voluntary scheduling whims of less senior employees. More senior employees have no power over the voluntary day trades of less senior employees yet could be "the next in line" for mandatory overtime if less senior employees like Grievant are allowed to deflect responsibility for mandatory overtime through day trading. This is clearly not the intended result and would dishonor the seniority rights of dedicated employees. It would also be contrary to the clear intent that the Company not incur liability for overtime pay in connection with a day trade.

The Company requests that this grievance be denied on the grounds that the Union failed to carry its burden of showing a contractual breach.

STIPULATED ISSUE

Whether the Company has violated the 12-Day Rule and if so, what is the remedy?

FINDINGS

In this case the parties disagree regarding the proper application of the 12-Day Rule. They agree that the rule is intended to prohibit management from requiring employees to work more than 12 days in a row. Their dispute centers on the meaning of the word "required."

Both parties discussed the example in the April 12, 2010-Work Rules Interpretations. That example does not really address the facts of this case. In the example set forth in Interpretation Article Seven, Question 24, the employee is never mandatoried to work overtime. The example merely states that the employee could not be mandatoried on Day 13. The parties agree that if an employee works a regular schedule for five days, then volunteers for two off days, then works another regular schedule for five days, the employee is free to again volunteer but cannot be mandatoried.

In this case the Grievant had already volunteered, i.e., traded, to work the 13th day before she was mandatoried to work on day 7. Therefore, the crux of this case is whether, by requiring the Grievant to work both overtime on day 7 and keep her commitment to working the day she traded, for the Company was "requiring" her to work more that 12 days in a row.

Although the Company offered testimony about the consistent application of the 12-Day Rule, this specific scenario apparently has not been contested before now. No past grievances on similar facts were referred to. That is understandable as this is a relatively uncommon occurrence.

The Union strongly argues that the counting of the 12 days should have been based upon the Grievant's schedule as it existed when the mandatory overtime assignment was made. Such an approach would be consistent with that taken by the Company when it prevailed at arbitration in a 2009-overtime case. That is, the decision is based on the information at hand when the decision is made.

The Union's argument has the benefit of consistency but cannot prevail here because of the differences in the CBA provisions involved. At issue in the Lemons Award were the overtime assignment provisions of Article Seven, specifically Paragraph G-Continuous With Overtime. That states, in part: "If a known overtime assignment of less than four (4) hours is available, it shall be filled by continuous with overtime (shift extension) as follows...." Arbitrator Lemon ruled that the "known overtime assignment" was two and one-half hours and that the determination of that duration was made in good faith to meet operational needs. Therefore, the award of continuous with overtime rather than callout overtime to the grievant did not violate the CBA, even though a previously-unanticipated delay caused the actual overtime assignment to reach exactly four (4) hours.

The CBA sets parameters upon and differentiates between time worked under different circumstances in various ways. Article Six, Section One - Hours of Service, Paragraph C requires that employees be scheduled for at least two (2) consecutive days off in each of their work weeks. Paragraph D requires that once an Employee's shift is established "it shall not be changed except in accordance with this provision or Article Seven (Overtime)."

The parties agree that employees may trade shifts or days off if the requirements of Paragraph J are met and with the approval of management. They disagree as to the meaning of this sentence:

> Employees who trade become responsible to work the shift agreed to as if it were part of their regular shift assignment.

The parties could have stated that a traded-for shift becomes part of the Employee's regular shift assignment, as posted in accordance with Article Six.G. They did not do so and the words "become responsible to work" and "as if" cannot be ignored.

In addition, the Interpretations of Article Six answer the specific question:

> **30. What is a regular scheduled shift? (Section One, par. K)**
>
> A regular scheduled shift is a shift that is bid, not one that is traded for, or volunteered for overtime. [JX 3 at 11.]

That question is asked about Paragraph K of Article Six, Section One dealing with the 10 Hour Rest Rule. As discussed below, the rest rule is one of several provisions treating traded-for shifts differently from regular scheduled shifts that are bid for.

The Union makes much of the fact that employees who trade for shifts are subject to the same requirement to report on time (J.4) as is any other employee, or be summoned to a Fact Finding. However, other ramifications for an employee who takes on an additional shift in a trade are significantly different from what occurs when an employee is mandated to work overtime. An employee trading for a shift always will be paid at straight time (J.2) with no overtime pay (J.3). An employee mandated to work overtime is paid at time and one-half or double time, depending upon the circumstances (Article Seven-B and -D).

An employee trading to work an additional shift on a day off can choose which shift and which day off. An employee being mandated to work overtime does not have that flexibility. Further, an employee trading to work an additional shift is not protected by the 10-hour rest rule. An employee being assigned mandatory overtime who receives less than 10 hours rest can elect compensation. (Article Six, Section 1-K)

These differences in the treatment of a traded-for shift and a mandatoried-overtime shift help give meaning to the critical "become responsible to work" and "as if" phrases. "As if" does not mean the traded-for shift has become "part of their regular shift assignment." There is a difference in character between a shift an employee voluntarily commits to work via a shift trade or by picking up a giveaway and a mandatory assignment. The Company properly treated them differently for purposes of counting the number of days the Grievant was *being required* to work in June 2012.

The Company also has raised significant considerations with respect to the impact on more senior employees that the interpretation sustaining this grievance would require. The Paragraph J shift trade provisions offer employees a great amount of flexibility. When mandatory overtime is needed and assigned in reverse order of seniority, no provision permits a junior-service employee to preemptively avoid such an assignment via a voluntary trade for a future date.

For the above reasons, the grievance will be denied.

AWARD

The grievance is denied.

Elizabeth Neumeier

Elizabeth Neumeier, Arbitrator

January 16, 2013