

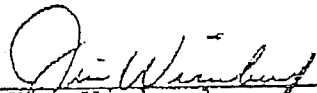


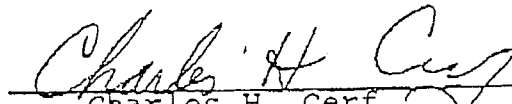
TO: Station and Provisioning Managers and ROPA Representatives
 FROM: Jim Wimberly and Chuck Cerf
 DATE: October 8, 1991
 SUBJ: Arbitration Award - Thanksgiving and Christmas Days

The matter of scheduling employees to work on Thanksgiving and Christmas Days has been processed through the grievance procedure to arbitration, and the guidelines below are given in accordance with that award. (Page numbers reference the arbitrator's award.)

1. No employee in the bargaining unit is "scheduled" to work on Thanksgiving or Christmas; they are off-days, and are paid holidays. (pgs. 8, 13)
2. The Company can require an employee to work on either or both of these holidays. (pgs. 8, 13) The Company will offer LWOP if operational requirements allow, and the employee may choose whether or not to take LWOP.
3. The Company is also allowed to assign less than a full shift for overtime work on these two days; shifts can be from 4 to 8 hours. The overtime call book shall be utilized. (pgs. 8, 9)
4. The overtime call book may be signed by all those willing to work overtime, despite their regularly-assigned shift. (pg. 8) All will be considered on first day off status, and assignments from the overtime call book will be awarded by seniority.
5. The call book for Thanksgiving Day and Christmas Day will be closed out two weeks prior to the holiday. Assignments will begin immediately and will be completed within 72 hours of close out.
6. Mandatory assignments will begin immediately following completion of voluntary assignments.
7. Employees may continue to sign up for voluntary overtime for these two days after the call book is closed by signing "below the line". Assignments may continue to be made to those volunteering, even though mandatory assignments have begun; however, those who sign under the line have no grievance rights in accordance with Article 7, paragraph K.
8. Once assignments are completed, employees may trade shifts in accordance with Article 6. Shift trades will be paid at the straight time rate. (pg. 16)

If you have any questions, please direct them to Ruth Ann Lasiter.


 Jim Wimberly


 Charles H. Cerf

copy to: Regional Directors
 Director of Provisioning
 John Chaussee

RECEIVED

SEP 16 1991

IN THE MATTER OF ARBITRATION
BETWEEN

SOUTHWEST AIRLINES COMPANY
AND

THE RAMP, OPERATIONS AND
PROVISIONING ASSOCIATION

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FMCS #91-11680

GRIEVANTS: ALL ROPA EMPLOYEES AFFECTED
BY 1990 THANKSGIVING & CHRISTMAS
HOLIDAY SCHEDULING

GRIEVANCE: OVERTIME PAY FOR HOLIDAYS
NOT WORKED BY COMPANY SCHEDULING

HEARING HELD AT THE OFFICES OF MENAKER & HUFFMAN, ATTORNEY FOR UNION, IN DALLAS, TEXAS, ON AUGUST 16, 1991, WITH JOHN CHAUSEE, CORPORATE COUNSEL, REPRESENTING THE COMPANY; MARVIN MENAKER, ATTORNEY AT LAW, REPRESENTING THE UNION; AND THE UNION REPRESENTING THE GRIEVANTS, BEFORE BARNETT M. GOODSTEIN, ARBITRATOR SELECTED THROUGH PROCEDURES OF THE FMCS, WASHINGTON, D.C.

BACKGROUND

The members of the bargaining unit for ramp, operations and provisioning employees were, at one time, represented by the International Association of Machinists. However, through the election process, the members of the bargaining unit chose The Ramp, Operations and Provisioning Association to represent the bargaining unit members in their collective bargaining and contract supervision with the Company. The first Labor Agreement between the Company and this Union seems to have been the result of the parties adopting the former IAM contract between this bargaining unit and the Company, and making it their own agreement. The Agreement, under which the instant Grievances were filed, became effective on May 16, 1990, and is the first Agreement negotiated by these parties, though much of it remains the same as in the previous Agreement between the Company and the IAM.

The facts in this "class" Grievance seem not to be in dispute. For many years, the Agreement between the parties provided for the employees in this bargaining unit to bid for their work schedules. The Agreement provides for bids to be "open-ended," but with a minimum period of 28 days. Employees were

allowed to trade shifts, and to work for one another, almost at will.

For several years prior to 1990, the employees who bid a shift that included the holidays of Thanksgiving and/or Christmas (the only holidays provided by the Agreement) were required to report for work on those holidays. If the Company did not need all of such employees to work on those holidays (they are, historically, the slowest business days of the calendar year), it permitted those employees who did not wish to work on the holiday to take off, without pay (other than the regular holiday pay that all employees received), and allowed them to leave. Those who did not elect to leave were kept at work, whether or not there was work for them, and they were paid at the overtime rate of time and one-half.

This arrangement, apparently, created problems with many employees who could not plan for these two holidays, since they had to report for work in order to learn whether the Company was going to require their services, or whether they would be able to be off on those days, or either of them. Therefore, prior to the 1990 Thanksgiving holiday, the Company (without notifying the employees or the Union) sent certain of its station managers an internal memo requesting that they schedule for work on that Thanksgiving holiday those employees only who would be needed to work, and to inform all other employees on the holiday shift not to report for work. All of the station managers did not handle this holiday scheduling in the same manner, and there was a good deal of confusion caused by this new method of scheduling for Thanksgiving.

Because of the complaints generated by the Thanksgiving scheduling, the Company and Union officials discussed the scheduling for the Christmas holiday. The parties reached no consensus as to how the Christmas scheduling should be handled; so the Company sent out another internal memo prior to the Christmas holiday, ad-

vising the station managers to handle the Christmas scheduling in much the same manner as they had handled the Thanksgiving holiday work schedule (that had caused all the confusion). Again, there was much confusion caused by the Christmas scheduling, and both such schedules caused many Grievances to be filed by affected employees.

The employees who were not allowed to work grieved; the employees who were allowed to report, but then were sent home early, grieved; and those who were senior to certain junior employees who were allowed to work, grieved. The Company admitted that the scheduling for these two holidays left much to be desired, but concluded that it was a better system than previously had been in effect, and the problems caused by this scheduling could be solved in future years. The employees affected by this scheduling did not agree, and filed Grievances over the unilateral change in the former manner of holiday scheduling by the Company. The matter was processed through the grievance procedure to arbitration, where both parties agree it is properly before the arbitrator for an interpretation of the various provisions of the Agreement that impact upon the problem.

ISSUES

In the Company Brief, the Company has limited the issues to be resolved by this arbitrator to four. However, during the hearing, the Union set forth some 13 questions for the arbitrator to rule on, and the Company, at that time, agreed to all 13 of such issues. Therefore, this arbitrator will attempt to respond to all of the issues raised by both parties, in an effort to quiet the confusion apparently generated by the Company's 1990 work scheduling of Thanksgiving and Christmas. Some overlap.

The Company's proposed issues are as follows:

1. Was Southwest management permitted to schedule ROPA employees off of work on Thanksgiving and Christmas 1990?

2. Was Southwest management scheduling of actual work shifts on Thanksgiving and Christmas 1990 permitted?
3. Was Southwest management permitted to instruct employees not to report for their shift, or to instruct employees to leave work early on Thanksgiving and Christmas 1990?
4. Was Southwest management permitted to nullify shift-trade involving either Thanksgiving or Christmas 1990 which had previously been approved by Southwest management?

The Union's proposed issues are as follows:

1. Can the Company put all of the employees off the clock on the Thanksgiving and Christmas holidays?
2. Was the Company practice in 1990, of a one-day bid for work on Thanksgiving and Christmas illegal under the Contract?
3. Were there by-passes of overtime on these holidays; and did junior employees work when senior employees did not?
4. Were the Thanksgiving and Christmas holiday shifts improperly adjusted, when some employees were sent home early and others went home early?
5. Were some employees called out to work, and some employees who were senior to others sent home early, while the junior employees were allowed to remain at work?
6. Should any employee who reported for work on the regular holiday shift on Thanksgiving and Christmas been sent home at all, or allowed to remain and paid whether or not there was sufficient work for that employee to handle?
7. What is the role of call-back for bidding; or the viability of a one-day call-out for Thanksgiving and/or Christmas scheduling?
8. Was there a call-out by seniority?

9. Was there a call-out by those signing the overtime book?
10. Doesn't a bid have to be for a minimum of 28 days, and not for 1 day?
11. For employees who sign and have approved shift trades, do these employees who work one shift, and then are scheduled for a double shift receive pay at the rate of time and one-half, since all such are approved shifts?
12. What role does mandatory overtime play for senior employees over junior employees.
13. What is the role of a double shift; i.e., a regular shift and an overtime shift?

OPINION OF THE ARBITRATOR

The Labor Agreement provides for only two holidays: Thanksgiving Day and Christmas Day. However, each employee receives one free day from January through October. Thanksgiving is observed in November, and Christmas is observed in December. Thus, the employees receive 12 paid "holidays" during each calendar year. The Company's business falls off approximately 50% on Thanksgiving and Christmas days, and it was not until 1990 - - after negotiations for the Agreement that became effective on May 16, 1990 - - did the Company attempt to correct a problem that had been plaguing the Company and the employees for many years. However, neither party attempted to change the provisions of the Agreement for the 1990-1994 period, during the negotiations for this Agreement. Rather, the provisions that, apparently had given rise to the problem, were allowed to remain the same for the 1990 Agreement.

Article 22 of the 1990 (and previous) Agreement provides for holidays and free days. Each employee is required to bid for shifts (Section 6.E.), which shifts must be at least for a period of 28 days. The Company can require a re-bidding - - but only for particular shifts - - and then only upon 72-hours prior

notice. This was not done by the Company for the 1990 Thanksgiving and Christmas shifts.

Article 22.C. provides that Thanksgiving and Christmas days are the only "observed" holidays. All employees receive regular straight-time pay for those holidays (unless they ordinarily receive a shift differential or other premium pay, that is continued); and no employee is required to work on those holidays, in order to receive that pay. This sub-section makes it very clear that no employee is regularly scheduled to work on those holidays - - even though the shifts bid by the employees at the beginning of the year include those holiday shifts. The employees bidding those shifts know, or should know, that they will not be regularly scheduled to work on those holidays, but will receive holiday pay, as will all other such employees.

The Agreement is just as clear and unambiguous concerning work scheduling for those holidays; it is not bid. The Agreement states: If the Company requires an employee to work on a holiday, he shall be paid time and one-half according to his regular compensation rate for the first eight (8) hours, in addition to his regular holiday bonus rate and triple time thereafter. (Article 22.C) Thus, no employee in the bargaining unit is "scheduled" to work on Thanksgiving or Christmas; they are off-days, and are paid holidays.

Moreover, the Company can require an employee to work on either or both of these holidays. However, Article 22 does not cover the basis for the Company to "require" certain employees to work, and not others. Therefore, we must look to other parts of the Agreement to determine whether such call-in requirement is covered by the Agreement at all.

Article 7 covers Overtime under the Agreement. This Article provides that the employee will be paid 1-1/2 times his/her regular rate for the first 4 hours

worked either before or after the regular shift; or for the first 8 hours of one of the two regularly scheduled days off. Double time is paid for all hours worked in excess of 8 on either of the two regularly scheduled days off each work week; for all time worked on the second regularly scheduled day off, if any part of the first such day also was worked; or for all time worked in excess of 12 in a day.

Sub-section G. provides that, if a known overtime assignment of less than 4 hours is available, it will be filled by the person on the off-going (or on-coming) shift, and the employees permitted to fill that position will be determined by a posted sign-up sheet. "Assignments will be made to the most senior qualified employee(s) on the sign up sheet." If no one signs up for the overtime assignments, the employees will be assigned the overtime work on the basis of reverse order of seniority. The Company is also allowed to assign less than a full shift for overtime work. However, if an overtime assignment is going to cover 4 hours or more, "an overtime call book for each classification shall be utilized. To be eligible for this overtime, an employee must sign the overtime call book in ink and initial, in ink, any subsequent deletion or changes in preference(s)." Overtime call books must be posted for a minimum of 14 days prior to the day of overtime to be scheduled. When an employee signs the overtime book, he/she enters into a binding contract with the Company to work the overtime assignment, subject to the attendance rules of the Company. These overtime assignments must be made by seniority.

The Company sent its station managers a memo on November 16, 1990 (prior to Thanksgiving), notifying them that, although not exercised, the Company had the contractual ability to schedule only those employees who would be needed to work on Thanksgiving and Christmas, and would so exercise that contractual right in 1990. The memo does not provide for the use of an overtime call book but, rather,

advises each supervisor to determine the number of employees to be needed for each shift, and have them volunteer for such work if they desired to work on the holiday. Assignments were to be made from those "regularly scheduled to work on that shift." However, if an insufficient number volunteered, the assignments were to be made "to those regularly scheduled for that shift by inverse seniority."

Since no employees are "scheduled" to work on the Thanksgiving and Christmas holidays (those being paid holidays), the provisions of Article 7 (Overtime) must apply. That Article provides for an overtime call book, how and when it should be posted, and who should be chosen from it. Sub-section 5. thereof requires that the Company can fill its requirements for overtime work (if an insufficient number of volunteers apply) by requiring such overtime work, "in reverse order of seniority."

The Agreement does not provide for such overtime work for those "regularly scheduled for that shift." Rather, the overtime call book may be signed by all those willing to work overtime, and despite their regularly-assigned shift. The only limitations to their overtime assignments are covered by Sub-section 6.I.1.a. through g and by Article 7.I. These sub-sections outline, specifically, the manner in which overtime assignments must be made. The Company is obligated to follow this mandate in filling overtime assignments for the Thanksgiving and Christmas holiday work.

To the extent that the November 16, 1990 Company memo to the station managers fails to meet the criteria established by Article 7, the Company is in violation of the Agreement. Thanksgiving scheduling can be no different than any other overtime scheduling, and must continue to follow the provisions of the Agreement.

On November 28, 1990, the Company sent another memo to its station managers, this time concerning the scheduling of overtime work for the Christmas

holiday. This memo provides for the supervisors to determine their scheduling for Christmas Day; rightfully indicates to these supervisors that the scheduling for Christmas Day can be from 4 to 8 hours. Then, the Company advises the supervisors to "post that day's schedule for bid by those regularly scheduled to work on that day." Again, although the employees may have bid a 28-day schedule, and that period included Thanksgiving and/or Christmas day, according to the Agreement, no one else is scheduled to work on those two holidays. Rather, if the Company "requires" an employee to work, he/she will receive overtime for such additional work. Therefore, even though an employee may bid the shift with either or both of those two holidays in that 28-day period, the Agreement does not limit the overtime bidding to employees only on the shifts during which the holiday work is required. That is determined by the provisions of Article 7, the Overtime Article.

The Company argues that it has the right to schedule overtime, not covered by the Agreement, under the provisions of the Management Rights Article (Article 2). That, of course, is correct, providing the Agreement does not limit those management rights ("subject to the provisions of this Agreement"). However, Articles 7 and 22 appear to cover all the provisions of overtime work for the holidays of Thanksgiving and Christmas. Therefore, the Company is obligated to follow the terms and provisions of the Agreement, as they apply to scheduling for Thanksgiving and Christmas, and the Company may not substitute its own method of selecting employees for such overtime work; it must follow the provisions of the negotiated Agreement.

Article 6 covers Hours of Service (Section One). Sub-section L. of this Section provides for shift trading between and among employees. That sub-section provides for the specific manner in which employees may trade shifts or days off. It

provides, specifically, that the right to trade shifts is contractually protected, if the request is in writing, signed by all of the trading employees, and submitted to the appropriate station manager at least 12 hours in advance of the starting time of the first intended trade. Thus, the Company cannot restrict the right of employees to make shift trades - - in accordance with the provisions of the Agreement - - and cannot prohibit employees from exercising their contractual right to trade shifts - - even for work scheduled on a holiday.

Article 6., Section L., sub-section 8. provides that "(T)he provisions of this Article may be changed to provide for different work schedules provided mutual agreement can be obtained between the Company and the Association in regards to Section One of this Article (Hours of Service) and Article Seven (Overtime)." Thus, work schedules must be bid for minimum periods of 28 days, and may not be scheduled for a re-bid by the Company unless the employees are given at least 72 hours notice of such rebidding; shift trading must be permitted as provided by the Agreement; and no other provision of this Article can be changed without mutual agreement of the parties. The Company did not negotiate the Thanksgiving and Christmas work schedule with the Union; therefore, any change from the terms of the Agreement, and especially Article 7 (Overtime) and Article 6 (Hours of Overtime) and Article 22 (Holidays/Free Day) had to have been negotiated with the Union. To the extent that the Company digressed from the provisions of the Agreement in its 1990 Thanksgiving and Christmas scheduling, it is in violation of the Agreement. The Company must bid the available holiday overtime scheduling in accordance with the Agreement, and must permit shift-trading in accordance with its provisions as well. However, if the bidding by the employees, for overtime work on either of the holidays in question, caused, or would have caused, any employee to work, or have worked, more than 12 consecutive days, then the

Company was not in violation by not permitting such employee to have worked an overtime shift on Thanksgiving or Christmas.

The Company, in its actions, and in its Brief, seems to argue that the Thanksgiving and Christmas holidays are bid by certain employees just because they fall within the scheduled work days of those employees. Previously (before 1990), those employees were required to report to work on the Thanksgiving and Christmas holidays; if they were not needed, they were allowed to take off, without pay; if they wished to stay, they were allowed to remain for their shift, and were paid for the entire shift. I do not read the Agreement in that manner. Article 22.C. is clear in that Thanksgiving and Christmas Days "will be observed as holidays, and all employees are excused from working their regularly scheduled shift, if it falls on one of those two holidays. However, if the Company requires an employee to work on one of those two holidays, that employee will receive overtime pay for such time worked.

The Union argues that some employees bid the shift with holidays in them so they could work the holiday, and receive the extra pay. The Company argues that some employees bid that shift (with the holidays in it) so they could not work then, but collect the holiday pay anyway. There is no actual evidence before me to indicate why any employee bids any shift. If one bids a shift that includes one of the two holidays, so be it. He/she still cannot change the clear wording of the Agreement, and all members of the bargaining unit, as well as the Company and the Union, must adhere to all the terms and provisions of the negotiated Agreement.

The Company argues in its Brief that, prior to 1990, ROPA employees were highly dissatisfied with the scheduling procedures for the holidays. The Union argues that, if the Company wanted to make a change in the holiday scheduling,

from prior years, it could and should have offered such changes during negotiations for the Agreement that became effective on May 16, 1990; it did not, and both parties agreed to leave the wording of the provisions unchanged, and just as they were in past years.

The Union appears to rely on the past practices of the Company in its scheduling of work for the holidays, and argues that this should not be changed, except through negotiation. It is an accepted principle, however, that even established past practice cannot alter the terms of a Labor Agreement whose terms and provisions have been mutually negotiated and agreed upon by both parties thereto.

Moreover, where the Agreement is clear and unambiguous, and specifies a right or obligation, the mere non-use of that right does not constitute a waiver of the obligation or the abandonment of that right. The holiday provisions and the overtime provisions of the Agreement, including the bidding and shift-trading, are provided by agreement of the parties. They may not be changed by past practice, but only by agreement of the parties.

The Company argues for the benefits of the 1990 scheduling system then established by the Company. However, no matter how beneficial to the employees such 1990 Company-ordered scheduling might have been, to the extent that it violated the clear and unambiguous provisions of the Agreement, it is a practice that must not be continued.

AWARD OF THE ARBITRATOR

The issues promulgated by each of the parties will be answered based upon the findings made hereinabove, and the conclusions drawn above on those findings. The Company's issues are as follows:

1. Was Southwest management permitted to schedule all ROPA employees off of work on Thanksgiving and Christmas 1990? The Company does not have to schedule

such employees off work; the Agreement between the parties does so itself, unless the Company requires one or more employees to work on those days.

2. Was Southwest management scheduling of actual work shifts on Thanksgiving and Christmas 1990 permitted? Scheduling of holiday work by the Company is permitted; however, such scheduling must be done in accordance with the provisions of the Agreement, and not based upon the internal memos sent to the managers in November of 1990.

3. Was Southwest management permitted to instruct employees not to report for their shift, or to instruct employees to leave work early on Thanksgiving and Christmas 1990? The Agreement itself instructs the employees not to report to work on those holidays, unless the Company requires that they do so report (in the manner set forth in the Agreement). The Company could not instruct employees to leave work early on those holidays, having called them in for an entire shift, and not pay them at their overtime rate for the entire shift. The Company did not post overtime work on the basis of less than an 8-hour shift on the holidays in question.

4. Was Southwest management permitted to nullify shift-trade involving either Thanksgiving or Christmas 1990 which had previously been approved by Southwest Management? No, unless such work would have caused the affected employee to have worked more than 12 days in a row. Shift trades are provided by Contract and may not be prohibited by the Company, unless such trade would result in a violation of another section of the Agreement.

The Union's issues are as follows:

1. Can the Company put all of the employees off the clock on the Thanksgiving and Christmas holidays? Yes, Article 22 of the Agreement specifically provides that those two days will be observed as holidays. All employees are "off the

clock," unless the Company "requires" an employee to work on those days, or either of them.

2. Was the Company practice in 1990, of a one-day bid for work on Thanksgiving and Christmas illegal under the Contract? Yes. Overtime assignments must be bid in accordance with the provisions of Article 7. I., J., K., L. and M. They were not so bid during the 1990 holidays.

3. Were there by-passes of overtime on these holidays; and did junior employees work when senior employees did not? Yes, but in many cases senior employees may not have bid to work on those holidays. Therefore, only those employees who filed grievances over being by-passed for this overtime work should be considered as having been affected by this Contract violation.

4. Were the Thanksgiving and Christmas holiday shifts improperly adjusted, when some employees were sent home early and others went home early? Yes. The Company is allowed, by the Agreement, to schedule a shift for fewer than 8 hours. However, it must post the bid for the reduced shift, and the employees must be paid for the entire amount of time for which the shift is bid, whether or not they work that entire period. If no specific time is posted for bid, the employees are then able to rely on the fact that such posting of an overtime shift is for an entire 8-hour shift, and not one at the pleasure of the Company.

5. Were some employees called out to work, and some employees who were senior to others sent home early, while the junior employees allowed to remain at work? Yes. Call-outs are governed by the provisions of Article 7 of the Agreement, and are based upon calls from the overtime call book and from sign up sheets, as provided therein. There are provisions in Article 7 for call outs of fewer than 4 hours, and for call outs of more than 4 hours, and up to 8 hours in a given shift. No employee should be sent home during a shift, unless he/she has been called out

under the provisions of Article 7, for fewer than 8 hours during the shift.

6. Should any employee who reported for work on the regular holiday shift on Thanksgiving and Christmas have been sent home at all, or allowed to remain and paid whether or not there was sufficient work for that employee to handle? No. Any employee who reported for work on the two holidays, without having bid the shift and having been notified by the Company to report on either or both of those days, is not entitled to receive any compensation for having been sent home and not having been allowed to work. However, if any employee was allowed to remain and begin work at the beginning of the regular holiday shift, that employee must be paid for the entire shift, unless he/she requested permission to leave early, without being paid for the remainder of the shift (WOP).

7. What is the role of call-back for bidding; of the validity of a one-day call-out for Thanksgiving and/or Christmas scheduling? The call-out procedure that must be followed by the Company is set forth in specific detail in the provisions of Article 7. Call-outs must be made from the call book and the continuous sign up sheets; the bids must be posted, and the assignments for overtime work must be made in accordance with the provisions of Article 7. A standard sign up sheet is shown in Appendix A, and a standard overtime call book is shown in Appendix B, to the Agreement governing the parties. These must be utilized and followed as provided by Article 7, for all overtime - - including that to be assigned on Thanksgiving and Christmas days.

8. Was there a call-out by seniority? Not in all cases, and probably not by design. However, the call-outs that were made had to be made from sign up sheets and the standard call book, as that is the only way the Company could know which employees wanted to work the holiday overtime. If the sign up sheets and call book were not posted by the Company, as provided by Article 7,

then those employees who filed grievances for not having been called out to work the holidays should be the only ones considered in a determination of whom should receive this overtime compensation; they showed they were willing to work the overtime had they been called.

9. Was there a call-out by those signing the overtime book? From the evidence before this arbitrator, it appears that there was not in all cases, and the Company treated these holidays differently in 1990 than in prior years for call-out purposes. The overtime assignments should have been made from the call book, and from sign up sheets, as for any other overtime assignment. These holidays should not have been treated differently during 1990 - - or at any other time.

10. Doesn't a bid have to be for a minimum of 28 days, and not for 1 day? Under the shift bidding process, bidding must be for a 28-day period. However, this does not apply to holidays, when no one is assigned to work, according to the Agreement. During the holiday periods, the overtime assignments must be made from the sign up sheets and call book posted by the Company in accordance with the provisions of Article 7.

11. For employees who sign and have approved shift trades, do these employees who work one shift, and then are scheduled for a double shift, receive pay at the rate of time and one-half, since all such are approved shifts? No. Shift trades, and the payment for time worked during those shift trades, are covered by Article 6 of the Agreement. That Article specifically provides that, ". . . the Company will pay the employee who actually performed the work for the hours actually worked at straight time." It further provides that, "(O)vertime caused by the trading or giving away of a shift shall be waived."

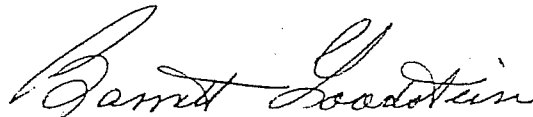
12. What role does mandatory overtime play for senior employees over junior employees? If an insufficient number of employees sign up for overtime continuous

with their existing shifts, the Company can make mandatory overtime assignments "in reverse order of seniority." (Article 7.G.4.) Scheduling by seniority is covered by Article 7.I. Sub-section 1. provides for overtime assignments by seniority in a descending order as there prescribed. However Sub-section 5. thereof provides as follows: "(I)f a sufficient amount of overtime is not voluntarily obtained or if no one signed the overtime call book, the Company will require employees to work the overtime. It will be assigned as in Sub-Paragraph 1.a.b. and c. in reverse order of seniority." Therefore, to the extent that the Company required certain senior employees to work when certain junior employees should have been called first, the Company violated the Agreement, whether this occurred during the 1990 Thanksgiving and Christmas holidays, or at any other time. The provisions of Article 7 cover all overtime assignments.

13. What is the role of a double shift; i.e. a regular shift and an overtime shift? The employee will be paid at regular time for the regular shift (8 hours). The first 4 hours of the next shift worked (assuming continuous) will be paid at the rate of time and one-half. The next 4 hours of the overtime shift (assuming continuous) will be paid at double time the regular rate of pay for that employee. However, the employee shall be paid at the rate of double time the regular rate for all hours worked in excess of 12 "in any one work day," whether or not these are continuous. If the hours worked are on one of the regularly scheduled days off in any work week, the overtime pay is governed by Article 7.C.1. and 2.

The parties have stipulated that they will determine between themselves the pecuniary effect, if any, of the findings and conclusions here made and drawn; the arbitrator is not called upon to determine which of the grievants, or those in the bargaining unit covered by these findings and conclusions, are to receive additional compensation, if any. However, this arbitrator does hereby retain

jurisdiction over the Grievances filed herein, and covered hereby, for a period of 30 days from the date hereof. In the event the parties have difficulty determining the meaning of any of the arbitrator's findings or conclusions, or in determining the amount that might be due, or claimed, for the benefit of any employee covered hereunder and hereby, the parties may reopen this hearing for the purpose of having the arbitrator determine those items still unsettled. Should the parties require more than the 30-day period for this determination, they are requested to so notify the arbitrator, who then will extend the time during which he retains jurisdiction for additional periods of 30 days each, until all such problems between the parties have been resolved.



Barnett M. Goodstein
Arbitrator

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September 11, 1991