BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	:	
TEAMSTERS UNION LOCAL NO. 695	:	Case 15 No. 46562 A-4859
and	:	
WIS-PAK OF WATERTOWN, INC.	:	

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, Milwaukee, Wisconsin 53212, by Mr. John J. Brennan, appearing on behalf of the Union.

Lindner & Marsack, S.C., Attorneys at Law, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, by Mr. Dennis G. Lindner, appearing on behalf of the Employer.

SUPPLEMENTARY ARBITRATION AWARD

The Arbitration Award, which was issued on July 3, 1992, provided that the undersigned would retain jurisdiction for at least forty-five (45) days from the date of the Award for the sole purpose of resolving any issues as to the application of the remedy. On August 10, 1992, the undersigned was notified by the Union that there was a possible dispute as to the application of the remedy. At that time, the undersigned was jointly requested to retain jurisdiction for an additional thirty (30) days. On September 8, 1992, the undersigned was advised that the parties were unable to reach a mutually acceptable payment plan in accordance with the make whole remedy issued in the Award. At that time, the undersigned was advised that the parties would file additional written argument and was requested to continue to maintain jurisdiction. The Employer filed a written brief on September 22, 1992 and the Union filed a written brief on October 5, 1992.

The Employer attached three exhibits to its brief which contained facts not in evidence and asked the undersigned to consider such facts when issuing a supplemental award. By a letter dated October 12, 1992, the undersigned advised the parties that she could not issue a supplemental award which is based upon facts which were not in evidence and requested the Union to advise her as to whether it wished to stipulate to the three exhibits filed by the Employer. The Union responded by a letter dated October 16, 1992, which letter was received by the undersigned on October 20, 1992. Given the conditions set forth in the Union's letter of October 16, 1992, the undersigned can not consider the three exhibits attached to the Employer's brief of September 21, 1992 to be in evidence.

The intent of the "make whole" remedy is to restore to the aggrieved employe the overtime which the employe would have worked but for the Employer's failure to abide by the Agreement. Contrary to the argument of the Union, the make whole remedy does not require the Employer to pay each Grievant a sum equal to the number of overtime hours worked by all bargaining unit employes divided by the number of the Grievants.

Absent evidence to the contrary, it is reasonable to rely upon the Grievants' assertions concerning their availability to work. Upon review of the grievances which were filed in this matter, the undersigned is satisfied that each Grievant has declared that, if he/she had been offered the opportunity, then he/she would have worked the overtime which was worked by employes on the same shift as the Grievant. Thus, the make whole remedy is satisfied if the individual Grievant is compensated for those overtime hours worked by employes on the Grievant's shift which should have been offered to the Grievant.

As discussed above, the three exhibits attached to the Employer's supplemental brief are not in evidence. Accordingly, it is not possible for the undersigned to rely upon the information contained in those exhibits to fashion a remedy for each individual Grievant. However, for the sole purpose of illustrating the effect of the make whole remedy, the undersigned has assumed that the three exhibits attached to the Employer's supplemental brief are correct. Assuming arguendo that the three exhibits are correct, then the make whole remedy would be as follows:

FIRST SHIFT

1. Grievant's Roberts, Heiser and Degner are more senior than any of the first shift employes who performed overtime work and should have been offered four hours of overtime on each of the following days: 9/11, 9/12, and 9/13. Thus, each of these three Grievants would be entitled to 12 hours of overtime.
2. Employee Frentzel is more senior than either Grievant Schroeder or Grievant Viola and, thus, was entitled to work the twelve hours of overtime that he did work on 9/11, 9/12, and 9/13.
3. Given that Roberts, Heiser, Degner, and Frentzel were more senior than either Grievant Schroeder or Grievant Viola, they would have accounted for 16 hours of the first shift overtime worked on 9/11, 16 hours of the first shift overtime worked on 9/12, and 16 hours of the first shift overtime worked on 9/13. Inasmuch as there were only 16 hours of first shift overtime worked on 9/12 and 9/13, neither Grievant Schroeder nor Grievant Viola would have sufficient seniority to be offered any overtime for 9/12 or 9/13.
4. Of the remaining overtime hours worked by first shift employes, i.e., eight hours on 9/11, Grievant Schroeder had sufficient seniority to work four hours of overtime. The remaining four hours of overtime was worked and would have been worked by Employe Lehmann.

5. Grievant Viola did not lose any overtime opportunity because he did not have sufficient seniority to be offered any of the overtime work which was worked by first shift employes on 9/11, 9/12, or 9/13.
6. In summary, under this illustration, the make whole remedy would be effected by paying 12 hours of overtime to each of the following three Grievants: Roberts, Heiser, and Degner and by paying four hours of overtime to Grievant Schroeder. The Employer would not be obligated to make any payments to Grievant Viola because he would not have been entitled to work any overtime.

SECOND SHIFT:

1. Employe Kletsch was the most senior second shift employe and, therefore, was entitled to work the four hours of overtime that he worked on 9/11 and the 3.75 hours of overtime that he worked on 9/13.
2. Grievant Priegnitz, as the next senior, would be entitled to work fours hours of second shift overtime on each of the following days: 9/11, 9/12 and 9/13.
3. Employe Tyrer, as the next senior, would be entitled to work the four hours of overtime that he worked on 9/11 and and the four hours of overtime that he worked on 9/12.
4. Employe Sjoberg, as the next senior, was entitled to work the four hours that he worked on 9/12 and the 3.75 hours that he worked on 9/13.
5. Employe Nunez, as the next senior, was entitled to work the four hours of overtime that he worked on 9/11 and and the four hours of overtime that he worked on 9/12.
6. Given that Kletsch, Priegnitz, Tyrer, Sjoberg, and Nunez were more senior than either Grievant Ninmann or Grievant Wilderman, they would have worked 16 of the 24 second shift overtime hours worked on 9/11; all of the 16 hours of second shift overtime worked on 9/12 and all of the 11.5 hours of second shift overtime worked on 9/13. Grievant Wilderman and Ninmann would not have sufficient seniority to have been offered any of the second shift overtime which was worked on either 9/12 or 9/13.
7. Of the remaining overtime worked by second shift employes, i.e., eight hours on 9/11, Grievant Wilderman, as the next senior employe, would have been entitled to work four hours. Employe Dunn, as the next senior employe, was entitled to work the remaining four hours.

9. Grievant Ninmann, who would have less seniority than Employe Dunn, would not have sufficient seniority to be offered any of the overtime work.

10. In summary, under this illustration, the make whole remedy would be effected by paying 12 hours of overtime to Grievant Priegnitz and by paying four hours of overtime to Grievant Wilderman. The Employer would not be obligated to make any payments to Grievant Ninmann because he would not have been entitled to work any overtime.

THIRD SHIFT

1. Grievants Vogel and Hertel, as the most senior of the third shift employes, would each be entitled to work four hours of third shift overtime on 9/11, four hours of third shift overtime on 9/12, and four hours of third shift overtime on 9/13. Thus, each of these Grievants would be entitled to 12 hours of overtime.

2. Employes Richards, Albedyll, and Fuchs, as the next senior third shift employes, would have been entitled to work all of the third shift overtime hours that they did work on 9/11 and 9/12.

3. Given their seniority, Vogel, Hertel, Richards, Albedyll, and Fuchs would have worked all of the overtime which was worked by third shift employes on 9/11 and 9/12. Thus, Grievant's Anderson, Rowoldt, Mosher, and Gerth would not have been offered any of the overtime which was worked by third shift employes on either 9/11 or 9/12.

4. The remaining overtime worked by third shift

   employes, i.e., eight hours on 9/13, would have been worked by Grievants Anderson and Rowoldt, each of whom would be entitled to four hours of overtime.

6. In summary, under this illustration, the make whole remedy would be effected by paying 12 hours of overtime to each of the following two Grievants: Vogel and Hertel and by paying four hours of overtime to each of the following two Grievants: Anderson and Rowoldt. The Employer would not be obligated to make any payments to Grievants Mosher or Gerth because they would not have been entitled to work any overtime.

Dated at Madison, Wisconsin this 24th day of November, 1992.

By _____
Coleen A. Burns, Arbitrator