

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

FOX VALLEY PAPERWORKERS LOCAL NO. 932

and

TRANSPORT DRIVERS, INC.

Case 1
No. 51681
A-5299

Appearances:

Mr. Robert Wolfgram, International Representative, United Paperworkers International Union, appearing on behalf of the Union.

Mr. Dennis Duffy, Executive Vice President, Transport Drivers, Inc., appearing on behalf of the Company.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and the Company or Employer, respectively, are signatories to a collective bargaining agreement providing for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to hear a grievance. A hearing, which was not transcribed, was held on February 21, 1995, at Madison, Wisconsin. Afterwards the parties filed briefs which were received by April 11, 1995. Based on the entire record, the undersigned issues the following Award.

ISSUE

At the commencement of the hearing, each side gave its version of the issue involved here. The Union frames the issue as:

Should the employes of Transport Drivers, Inc., operating truck tractors with semi-trailers 102" wide be compensated for all out-of-route miles driven on the National Truck Network or Special Designated highways when complying with the regulations of the Michigan Department of Transportation? If so, what is the remedy?

The Company frames the issue as:

Is the Employer properly computing mileage in accordance with the terms and conditions of the collective bargaining agreement in effect between the parties?

Since the parties were unable to agree on a framing of the issue, the arbitrator has framed it. From a review of the record and the briefs, the undersigned has framed the issue as follows:

Is the Company computing miles between Otsego, Michigan and Battle Creek, Michigan in accordance with the collective bargaining agreement? If not, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 1992-95 collective bargaining agreement contains the following pertinent provisions:

ARTICLE 33. MILEAGE DETERMINATION

Mileage shall be computed over the route traveled by use of the official Household Movers Guide. When Household Movers Guide mileage is not current or available, then the latest official State Highway Maps shall be used to determine the correct mileage. On routes where official mileage is not given by the methods above set forth, same shall be logged by the Union and Employer, such findings to be final and binding. When route is logged, the starting point at origin shall be the main U.S. Post office, and the ending point or destination shall be the main U.S. Post Office.

On Michigan intra-state hauls, because of state laws and regulations regarding gross weight limitations on certain roads and highways, mileage for loads exceeding 73,280 pounds total gross weight (including vehicle and load) shall be calculated in accordance with the Household Movers Guide via the actual routes

traveled on the special designated highways ("green line highways") as shown on the State of Michigan Department of State Highways and Transportation "Truck Operators Map".

. . .

ARTICLE 40. FEDERAL STATE AND MUNICIPAL LAWS

The Employer shall comply with Workmen's Compensation laws, Social Security Laws and Unemployment Insurance Laws, and observe fully all provisions of the Federal, State or Municipal laws affecting the well-being of his employees.

The Employer agrees to cooperate toward the prompt settlement of employee on-the-job injury claims when such claims are due and owing as required by law. The Employer shall provide workmen's compensation protection for all employees even though not required by such laws.

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SUPPLEMENT A
WAGE CHART

| | <u>EFFECTIVE</u> <u>JULY 1, 1992</u> | <u>EFFECTIVE</u> <u>JULY 1, 1993</u> | <u>EFFECTIVE</u> <u>JULY 1, 1994</u> |
|---|---|---|---|
| FOUR OR MORE YEARS OF REGULAR <u>EMPLOYMENT</u> | | | |
| MILEAGE RATE - FULL RATE | 0.30 | 0.31 | 0.32 |

. . .

BACKGROUND

Menasha Transport is a wholly owned subsidiary of the Menasha Corporation. Menasha Transport leases truck drivers from Transport Drivers, Inc. The Union represents the truck drivers of Transport Drivers, Inc., who are assigned to perform services for Menasha Transport at facilities in Neenah and Hartford, Wisconsin.

As part of their compensation, drivers are paid on a per mile basis. The contract has a provision which addresses how mileage is determined or computed. That provision (Article 33) has not been changed for the last four contracts, a period of ten years.

Article 33 specifies that mileage is computed by "the official Household Movers Guide." The Household Movers Guide, which is also known as the Household Goods Carriers' Bureau Mileage Guide, is published by the Household Goods Carriers' Bureau of Rand McNally. This publication is considered the proverbial "bible" in the trucking business for determining mileage between points. The Guide is available in both book and electronic formats. It has been used for many years by shippers and carriers and has evolved into the accepted industry standard. It is also a tariff which is on file with the Interstate Commerce Commission (ICC). The mileage listed in the Household Movers Guide is also used by shippers and carriers for computing freight rates.

The Household Movers Guide computes mileages which result in the shortest distance between any two points over authorized highways. It does not purport to compute distances actually traveled by carriers. The actual distance traveled between points is invariably higher. The record contains several examples which illustrate this. For example, the Household Movers Guide indicates that the distance between Bridgeport, Michigan and Otsego, Michigan is 154 miles, while the actual practical route a driver would have to drive between those same two points is 172 miles. In this particular example, the actual mileage is eleven percent higher than the figure listed in the Household Movers Guide. Overall though, the actual distance traveled between points is about nine or ten percent higher than the figure listed in the Household Movers Guide. It appears from the record that the norm in the trucking industry is that carriers do not pay truck drivers or freight charges based on actual or operating miles; instead, they pay based on the map miles computed by the Household Movers Guide.

The Company does not designate which roads drivers are to follow when going from point to point. Drivers use their own judgment concerning same. Although drivers usually try to go the shortest route between points, they do not have to. The following example illustrates this. A driver going from Neenah, Wisconsin to Gary, Indiana could go either through downtown Chicago on I-94 or around downtown Chicago on I-294. The shortest route is through downtown, but some drivers take I-294 because it takes less time than driving through the central city.

The Company is presently paying its drivers based on mileage computed by the Household Movers Guide; it is not paying them based on actual or operating miles.

FACTS

The State of Michigan prohibits the operation of semi-trailers wider than 96" on Highway 89. As a result, semi-trailers which are 102" wide cannot be driven on that particular highway.

Sometime prior to June, 1994, an unnamed TDI driver drove a 102" wide semi-trailer from Otsego, Michigan, to Battle Creek, Michigan. The most direct route between these two points is via Highway 89. That is also the route which the 1993 edition of the Household Movers Guide uses to determine the mileage between Otsego and Battle Creek. However, since a 102" wide semi-trailer cannot legally be driven on Highway 89, the driver used highways that would accommodate 102" wide semi-trailers. Specifically, the driver used U.S. Highway 131 and I-94. By using these highways the driver drove about ten more miles than the mileage computed by the Household Movers Guide for the distance between Otsego and Battle Creek. The Union filed a grievance concerning same seeking "proper compensation for out of route mileage." The grievance was processed to arbitration.

POSITIONS OF THE PARTIES

It is the Union's position that drivers who operate 102" wide semi-trailers between Otsego, Michigan and Battle Creek, Michigan are being paid incorrectly. As background to this contention the Union notes that drivers cannot operate 102" wide semi-trailers on Highway 89 between those two cities, so they have to take different routes in order to be legal. The Union also notes that using these different routes adds about ten miles to the trip. The Union further notes that the Company is currently computing the mileage for those drivers by using the mileage figure in the Household Movers Guide which utilizes Highway 89 to determine the mileage between those two cities. In the Union's view, the Company should be paying the drivers for their actual miles (i.e. the miles they must drive in order to comply with Michigan law). To support this contention, the Union initially relies on Article 40. According to the Union the Company is violating that provision because drivers who comply with the Michigan law concerning 102" wide semi-trailers are losing wages. The Union submits that in this instance, the applicable federal and state laws should supersede the contract. Next, the Union contends that Article 33 is inapplicable to this matter. However, should the arbitrator decide otherwise and find it applicable, the Union makes the following arguments concerning same. First, it asserts that since drivers of 102" wide semi-trailers cannot use Highway 89, that highway is not an authorized highway within the meaning of the Household Movers Guide. The Union submits that since Highway 89 is an "illegal route" for 102" wide semi-trailers, mileage should not be computed using that route. Second, the Union argues that the Household Movers Guide is not current because the restriction against 102" wide semi-trailers using Highway 89 has existed since 1990. In order to remedy this alleged contractual breach, the Union asks the arbitrator to uphold the grievance and order the affected drivers paid for their actual miles at the applicable rate.

It is the Company's position that it is computing the mileage between Otsego and Battle Creek in accordance with the labor agreement. The Company acknowledges at the outset that its drivers cannot operate 102" wide semi-trailers on the most direct route between those two cities (namely Highway 89) so they have to take different routes in order to be legal. The

Company further acknowledges that when this happens, it is not paying those drivers for their out-of-route miles. The Company contends the reason for this is simple: it is not contractually obligated to pay them for their actual miles. To support this premise the Company relies exclusively on Article 33. It believes that Article 40, the provision which the Union relies on, is inapplicable here. The Company asserts that Article 33 provides that the source to determine mileage is the Household Movers Guide. The Company calls the arbitrator's attention to the fact that the Household Movers Guide uses Highway 89 to determine the mileage between Otsego and Battle Creek. According to the Company, trailer width does not affect which routes are used to determine mileage via the Household Movers Guide. The Company asserts that since it is, in fact, using the mileage figure specified by the Household Movers Guide for the mileage between Otsego and Battle Creek, it is in compliance with that provision. The Company argues that if the Union wants to change the way miles are computed (from the Household Movers Guide figure to actual miles), it should take the matter up in negotiations. In the Company's view the Union is trying to obtain through this arbitration that which it should attempt to gain through negotiations. It therefore requests that the grievance be denied.

DISCUSSION

The Company's drivers are paid, in part, on a per mile basis. Consequently, their mileage affects their overall compensation. Broadly speaking, the instant dispute involves how those miles are computed. In making their respective cases though, each side focused on just one particular run that Company drivers make, namely the run between Otsego, Michigan and Battle Creek, Michigan. The undersigned will do likewise. The record indicates that the most direct route between those two cities, and the route utilized by the Household Movers Guide, is Highway 89. However, 102" wide semi-trailers are not allowed on that highway. That being so, drivers of 102" wide semi-trailers must take different highways between Otsego and Battle Creek. These alternate highways add about ten miles to the trip between those two cities. When this happens, the Company does not count the out-of-route miles when computing the mileage between Otsego and Battle Creek. Instead, it computes the miles between those two cities via Highway 89 even though drivers of 102" wide semi-trailers cannot use that highway. The Union contends that in this particular instance, the Company should not use the mileage figure contained in the Household Movers Guide (i.e. via Highway 89) to compute the driver's mileage, but rather should utilize the actual miles (i.e. the miles the driver must actually drive between Otsego and Battle Creek). The Company disagrees. Given the foregoing, the issue which will be addressed here is whether the Company is computing miles between Otsego and Battle Creek in accordance with the labor agreement.

In deciding this contractual dispute, the undersigned will look at the two provisions relied upon by the parties, namely Article 40 and Article 33. The Union contends Article 40 controls while the Company relies on Article 33. Inasmuch as the parties dispute which article is applicable here, that will be addressed first. In the following discussion I will review both

contractual provisions and decide which one is most applicable.

As just noted, the Union relies on Article 40 to support its case. That provision, which is aptly titled "Federal, State and Municipal Laws" provides, in pertinent part, that the Company will comply with all "federal, state or municipal laws affecting the well-being of his employees." Said another way, the Company promises to follow all applicable laws. Obviously this is a very general provision because it does not specify or identify a single particular law which the parties intended to incorporate by reference into the labor agreement. As a practical matter then, this article does nothing more than state the obvious. Of course the Company is bound to comply with all applicable laws. However, the reason it is bound to comply with applicable federal, state and municipal laws is not because of either Article 40 or the labor agreement in general. Rather, it is because if the Company violates federal, state or municipal law, those levels of government will enforce the statutory provisions which they administer and remedy violations of same. It therefore follows that if the Company does violate some statute, the undersigned is not empowered to remedy same. This is because my authority is limited to interpreting the labor agreement and resolving questions of contractual rights. Any alleged statutory violation is separate and distinct from an alleged contractual violation. Consequently, nothing in this award should be construed as a ruling on any "federal, state or municipal laws affecting the well-being of (TDI) employees."

That said, attention is now turned to Article 33, the provision which the Company relies on to support its case. That provision, which is aptly titled "Mileage Determination," deals with how mileage is determined or computed. The first sentence of the first paragraph of that article provides that "mileage shall be computed . . . by use of the official Household Movers Guide." With these specific yet plain terms, the parties established a general rule that mileage is to be computed by using a specific publication, namely the Household Movers Guide. This means that when a question arises as to the mileage between two cities, the figure specified in the Household Movers Guide controls. The second paragraph of this article goes on to make an exception to this general rule for computing mileage. The exception is that when loads exceed a certain weight limit, namely 73,280 pounds, the actual mileage will be used.

It is a well-established rule of contract interpretation that specific language controls over general language. As just noted, Article 33 is considerably more specific than is Article 40 concerning the topic involved here, namely how mileage is computed. That being so, Article 33 is found to be more applicable than Article 40 in the context of the instant dispute concerning how miles are computed.

Having so found, Article 33 will now be applied to the instant facts. As previously noted, Article 33 provides that miles are to be computed by using the Household Movers Guide. The record indicates that the Household Movers Guide uses Highway 89 to determine the mileage between Otsego and Battle Creek. The record further indicates that the Company is, in fact, using Highway 89 to compute the mileage between those two cities. Since the Company is using the Household Movers Guide to compute the mileage between Otsego and Battle Creek, it is in

compliance with Article 33.

The Union contends that here, though, the actual mileage should be used -- not the mileage contained in the Household Movers Guide. I disagree. To begin with, the weight exception referenced in the second paragraph of Article 33 is inapplicable here. Second, while the Union characterizes Highway 89 as an "illegal route" for 102" wide semi-trailers, the fact remains that it is still the route utilized by the Household Movers Guide to determine the mileage between Otsego and Battle Creek. Insofar as the record shows, trailer width does not affect which highways are determined by the Household Movers Guide to be the most direct between points. Finally, although the Union contends that the 1993 edition of the Household Movers Guide which the Company is utilizing is not current, there is nothing in the record which supports that contention. Given the foregoing, none of the Union's reasons for utilizing the actual mileage figure in lieu of the Household Movers Guide mileage figure are found persuasive.

In summary then, it is held that the Company is computing miles between Otsego and Battle Creek in accordance with Article 33. Consequently, the Company is not contractually obligated to pay drivers of 102" wide semi-trailers who drive between Otsego and Battle Creek for their actual or out-of-route miles.

In light of the above, it is my

AWARD

That the Company is computing miles between Otsego, Michigan and Battle Creek, Michigan in accordance with the collective bargaining agreement. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 7th day of July, 1995.

By Raleigh Jones /s/
Raleigh Jones, Arbitrator