

AMERICAN DISPUTE RESOLUTION CENTER

ARBITRATION OPINION AND AWARD

IN THE MATTER OF THE ARBITRATION BETWEEN

UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 1459

and

M&J BUS, INC.

Case No. 40-0015-20L

Grievant: [REDACTED], et. al.

Hearing Held: June 8, 2021

Susan R. Meredith, Arbitrator

APPEARANCES

FOR THE EMPLOYER: Kevin J. Greene, Esq.

FOR THE UNION: Terence E. Coles, Esq.

Date of Award: July 27, 2021

ISSUE

The parties could not agree on a precise statement of the issue here and so agreed to the following and authorized me to frame the issue more specifically based on the arguments and presentations of the parties:

What shall be the disposition of the grievance?

I concluded that the issue as argued and presented by the parties is:

Did the employer's actions in placing employees on unpaid quarantine leave as a result of their exposure to Covid-19 violate the collective bargaining agreement?

If so, what shall be the remedy?

THE PROCEEDINGS

M&J Bus, Inc. (Company) and United Food and Commercial Workers Union, Local 1457 (Union) are parties to a collective bargaining agreement which provides for the arbitration of grievances under the auspices of the American Dispute Resolution Center. The parties submitted to arbitration a dispute concerning the Company's requirement that the grievants serve a quarantine period without pay. A hearing was held June 8, 2021 using the video platform Zoom. The parties filed post-hearing briefs, and the hearing was closed on July 20, 2021.

CITED CONTRACT PROVISIONS

The Union's grievance cited the following contract provisions:

ARTICLE 10 - DISCIPLINE AND DISCHARGE

Section 1. Just Cause - The Employer shall not suspend, demote or discharge an Employee except for just cause.

ARTICLE 11 - HOURS OF WORK

Section 1. A. The regular workday for Drivers shall be a minimum of two (2) hours guarantee for A.M. or P.M. run, four hours guarantee for both A.M. and P.M. run, and a one and one-half (1-1/2) hours guarantee for any other callback (i.e. a drop and pick) and a one and one-half hour guarantee for mid-day run, late run and one (1) hour guarantee for early release Monday through Friday.

B. Drivers will be paid from their scheduled reporting time until they return to the terminal. Drivers will be compensated for all time worked in service to the company.

ARTICLE 30 - WAGES

ARTICLE 20 - PROTECTION OF CONDITIONS

All conditions of employment previously granted by M&J Bus, Inc. relating to wages, bonuses, hours of work, overtime differentials, and general working conditions shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement and the conditions of employment shall be improved whenever specific provisions of improvement are made elsewhere in this Agreement, provided that this Article shall not apply to circumstances beyond the control of the Employer, including but not limited to requirements or changes imposed by the Employer's revenue contracts.

ARTICLE 16 - EMPLOYER POLICIES

Section 1. The Employer retains the right to promulgate and to enforce written rules and regulations, not to conflict with this Agreement, as it may from time to time deem best for the purpose of maintaining order safety and/or effective operation of the Employer operations and after advance notice thereof to the Union and the Employees.

Section 2. It is recognized that the Union reserves the right in the initial grievance filed subsequent to the enforcement of any such rule or regulation to challenge its reasonableness.

Section 3. The Employer shall inform all Employees of all general work and safety rules including the School Department's current polices regarding student discipline, assault, etc.

ARTICLE 6 - MANAGEMENT RIGHTS

Section 1. Unless specifically provided elsewhere in this Agreement, it is agreed that nothing in this Agreement shall limit the Company in the exercise of its functions of management, including but not limited to, the sole and exclusive right to plan, manage and direct the operation and affairs of the business; such right to select and purchase goods and services, to subcontract, to transfer or cease operations, in whole or in part, such right to direct the working force, to maintain order and discipline, suspend or discharge for just cause, and such right to schedule work, control productivity, maintain standards and to develop methods of work and control efficiency. The Company further retains the right to make, and enforce reasonable Employee rules, regulations, policies and practices, such right to transfer, assign, promote, demote, classify, reclassify, layoff, recall, and replace Employees, such right to introduce new and eliminate or change existing equipment machinery, services, or processes, such right to determine the job content and requirements of any job classification, and number of qualified Employees needed for any job worked, and the starting [sic] and stopping times. Provided, however, that this Article may not be applied to evade a specific right otherwise expressly granted to the Employees in this Agreement.

Section 2. It is understood and agreed that the Employer retains and shall continue to exercise any and all rights, authority, powers and privileges it had prior to the execution of this Agreement except only such rights, authority, powers, and privileges which have been clearly and expressly relinquished by the specific and unambiguous terms and provisions of this Agreement.

Section 3. The Union reserves the right to grieve any action taken under this Article, including any unreasonable or improper implementation of a policy or procedure of any kind.

ARTICLE 25 - LEAVE OF ABSENCE

Section 3. A request for leave of absence or for extension must be made in writing by the Employee and approved in writing by the Employer.

THE FACTS

The parties stipulated to the following facts:

1. The employees in this consolidated grievance, [REDACTED], were all non-probationary bargaining unit members covered by the terms of the parties' collective bargaining agreement, including but not limited to all of the articles listed in the consolidated grievance.
2. The employees are bus drivers who worked for the employer and provided bus transportation to the Suffield Public Schools at all times relevant to the grievance.
3. On September 17, 2020, an individual who tested positive for Covid-19 on September 18, 2020 was on the bus that [REDACTED] was operating on September 17, 2020.
4. On September 18, 2020, the Suffield Public Schools notified M&J of (1) the facts set forth in stipulation 3, (2) that [REDACTED] had to quarantine from driving for 14 days from September 18, 2020 through October 1, 2020.
5. On September 18, 2020, M&J notified [REDACTED] of the facts set forth in Stipulation 4 and also notified her that she would be unpaid from September 18, 2020 through October 1, 2020.
6. [REDACTED] was not allowed to work for M&J from September 18, 2020 through October 1, 2020 and was not paid during that time period.
7. All of the other employees identified in stipulation 1 were not allowed to work for M&J and were not paid by M&J for periods of time due to the same type of factual circumstances set forth in stipulations 3 through 6.

The employer also presented the testimony of [REDACTED], COO of M&J Bus who affirmed that the quarantine of drivers was required by the contract between the employer and the Suffield Public Schools. He also testified that the Company made the decision not to pay people while quarantined because the employees were not able to work and the Company had to pay other drivers to provide the transportation required by Suffield.

DISCUSSION

The Union argues in this matter that the Company has violated the collective bargaining agreement by putting employees on unpaid suspension when they were exposed to Covid-19 on the bus they were driving. Article 10 provides that suspensions must be for cause while these employees were suspended through no fault of their own. They were prevented from driving because of a reasonable rule designed to prevent the spread of Covid-19, but the decision not to pay the drivers was unreasonable.

The Company argues that its decision not to pay the drivers while they were quarantined was allowed by the contract and applicable law which only require that the drivers be paid when they work. As they were not able to work, there was no obligation to pay them. The management rights article gives the right to schedule work and to enforce reasonable rules. The Company was required by its contract to quarantine these drivers to comply with the Suffield Public School's policies. Article 20 provides that conditions in the Company's revenue contracts are not covered by the Protection of Conditions provisions of the collective bargaining agreement.

I find that the Company placed the grievants on unpaid leave or suspension and that its reliance on the collective bargaining agreement's provisions do not justify these actions. The contract contains no language which specifically addresses the question of drivers who are not allowed to work because of exposure to contagious disease but it does contain provisions which require management to act in accord with reasonable rules and allows the Union to challenge whether such rules are reasonable.

The Company relies on Article 20's language that the Company's obligations under their revenue contracts may affect the protection of conditions provisions. This language would allow the Company to follow Suffield's rule and not allow those drivers exposed to Covid-19 to drive their bus for the period of time Suffield prescribes. The Union agrees that this is a reasonable rule designed to prevent the spread of disease.

However, the contract with Suffield Public Schools does not dictate the terms under which employees of M&J Bus will be quarantined, whether paid or unpaid. The Union challenges the Company's decision to place the employees on unpaid leave as unreasonable.

These employees were ready and willing to work. Only the exposure to Covid-19, which was a direct result of their work for the Company, prevented them from performing their jobs. I agree with the Union that the Company's decision to place these employees on unpaid suspension was unreasonable in the circumstances. The employees should not be required to carry the financial burden of quarantine in addition to the anxiety and inconvenience of exposure to a deadly disease to which they were exposed by performing work at the behest of and for the benefit of the Company.

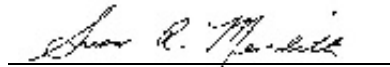
There is no provision in the contract which allows the Company to place employees on unpaid suspension when there is no fault. The contract does allow for an unpaid leave of absence but such a leave must be requested in writing by the employee, not imposed by the employer. Employees may earn sick leave and vacation pay but these are accrued benefits for the employee and not time the employer can require to be used for the Company's benefit.

The Company's decision to require these employees to quarantine to avoid the spread of disease was a reasonable one. The decision to place them in an unpaid status was not reasonable and violates the contract.

AWARD

The Company's placement of the grievants on an unpaid leave when they were exposed to Covid-19 in the course of their employment violated the collective bargaining agreement.

The grievants shall be made whole for all wages lost .At the request of the parties, I will retain jurisdiction for a period of 60 days solely to resolve any dispute related to the remedy.

A handwritten signature in cursive script, reading "Susan R. Meredith", is positioned above a horizontal line.

Susan R. Meredith