

1 Settlement, the parties agreed to submit the claims alleging violation of the Agreement to me for
2 final and binding arbitration. They further agreed therein that I “shall have continuing jurisdiction
3 to arbitrate any disputes regarding any remedy ordered arising out of the arbitration.”

4 The evidentiary hearing in this matter was held January 18, 2006, at the District’s offices in
5 Oakland, California. At the outset of the hearing, the parties stipulated that this matter was properly
6 before me in accordance with the Settlement. Each party had a full and adequate opportunity to call,
7 examine, and cross-examine witnesses and to introduce relevant evidence. The parties stipulated that
8 all witnesses would be sequestered prior to testifying. All witnesses testified under oath. A certified
9 shorthand reporter attended the hearing to record the proceedings and testimony and subsequently
10 produced a verbatim transcript thereof.

11 By letter dated February 17, 2006, the District submitted a copy of a 1978 arbitration award
12 in a case involving the Union and the District, which was issued by a tripartite Board of Arbitration
13 chaired by Arbitrator William Eaton (“Eaton Award”).¹ Although that award previously had not
14 been offered into evidence nor cited in this proceeding, the District asserted that it is dispositive of
15 the issues before me in this matter. Moreover, it averred that it had discovered the Eaton Award
16 only after the evidentiary hearing in this matter had concluded.

17 In a letter dated February 22, 2006, the Union objected to my consideration of the Eaton
18 Award, arguing that it was both untimely and irrelevant.

19 On February 23, 2006, I advised the parties by letter that I considered the District’s letter
20 to be a motion to reopen the hearing for receipt of the Eaton Award, and informed them that the
21 motion was granted. I offered to reconvene the hearing to permit the Union an opportunity to
22 introduce additional testimony or documentary evidence relevant to the applicability of the Eaton
23 Award here. I also requested that the parties address that issue in their post-hearing briefs. My letter
24 to the parties is incorporated herein by reference.

25 The Union did not ask to reopen the hearing, and the record was declared closed upon my
26 receipt of a post-hearing brief from each party.

27 ¹ Arbitration in the Matter of *Amalgamated Transit Union, Division 192, & Alameda-Contra Costa County*
28 *Transit District*, re: Travel Pay Dispute (William Eaton, May 19, 1978).

1 *ISSUE*

2 The parties agreed in the Settlement that the following is the issue to be decided here:

3 Has A-C Transit District violated Section 54.0 of the Collective
4 Bargaining Agreement by failing to pay travel time to bus operators
5 who drive regular scheduled runs which result in different starting
and ending points; and if so, what is the appropriate remedy?

6 *RELEVANT PROVISIONS OF THE AGREEMENT*

7 Effective July 1, 2000,
8 through June 30, 2004.²

9 . . .

Section 54.0

10 *TRAVEL TIME*

11 54.01 Bus drivers reporting for duty or checking in at the home terminal or at some other place differing
12 from the relief point by reasons of the District's requirement to do so, shall receive an allowance of
13 pay at straight time therefor. Such allowances shall be computed on the scheduled running time of
the service then available.

14 54.02 The foregoing refers to the beginning and end of regular scheduled runs whether straight or split.
15 In the case of unpaid breaks in split runs where the second part of the run picks up at a point
different from where the first part leaves off, travel time shall be allowed.

16 . . .

STIPULATED FACTS

17 At the outset of the hearing, the parties stipulated to the following facts:

- 18 1. The substance of the language of Section 54.0 of the 2000 – 2005 Collective
19 Bargaining Agreement has not changed since at least 1965.
- 20 2. Neither party has any evidence of bargaining history regarding that language
21 from when it was first negotiated or since.
- 22 3. There have been no grievances or arbitrations concerning said language, to the
23 knowledge of either party.³
- 24 4. There has been no bargaining between the parties regarding said language since
at least 1991, and possibly earlier.

25 _____
26 ² The parties' 2002 – 2004 Agreement was extended through June 30, 2005, by mutual agreement of the
27 parties. Moreover, the parties subsequently negotiated a new Agreement for 2005 – 2007, without modification of
Section 54.0.

28 ³ As noted above, the District subsequently discovered the Eaton Award, which concerns the payment of travel
time in certain specific circumstances, and which was received into evidence here.

1 *Evidence of Practice.* Former Union President Christine Zook was called as a witness by the
2 Union. Zook worked for the District as a driver for 10 years beginning in February 1977. She
3 testified that she believes that the District paid her in accordance with the Union’s interpretation
4 of Section 54.0 during the 1970s and 1980s, although she presented no documentary evidence to
5 support that claim.

6 Zook testified that she served as Local 192’s business agent from December 1993 through
7 December 2005. She said that during her tenure as business agent, she negotiated four or five
8 Agreements with the District, and that there was never any discussion between the parties during
9 those negotiations regarding Section 54.0, in part because she had never received any complaints
10 from drivers regarding the District’s application of the contractual travel time provisions. When
11 asked about her understanding of the provision, Zook responded, “I never thought anything about
12 that language. . . . I understand it to mean exactly what it says.” She estimated that the language of
13 Section 54.0 had been in the Agreement without significant modification since the least 1947.

14 Zook further testified that she believes that she learned that the District had stopped paying
15 for travel time shortly after the United States Supreme Court’s decision making the federal Fair
16 Labor Standards Act applicable to public employees.⁵ According to Zook, the District effectuated
17 numerous changes to bus drivers’ schedules as a result of that decision.

18 The Union also called Deloris Wilkins as a witness. Wilkins said that she was hired by the
19 District as a driver in 1977. She later worked as a clerk, then returned to driving buses in 1996.
20 Wilkins testified that around 1979 or 1980, she was trained as an extra qualified timekeeper and
21 began working in that capacity on an as-needed basis; she said that she continued to work as an extra
22 qualified timekeeper about one day per month. Wilkins testified that she believes in 1979, the
23 District was paying for travel time in accordance with the Union’s interpretation of Section 54.0. She
24 further testified that when she returned to driving in 1996, she was paid for travel time in that
25 manner. Moreover, according to Wilkins, when she was retrained as a extra qualified timekeeper in
26 2000, she was told that such travel time is paid by the District.

27 ⁵ Zook apparently was referring to the U.S. Supreme Court’s decision in *Garcia v. San Antonio Metropolitan*
28 *Transportation Authority*, 469 US 528 (1985).

1 Director of Transportation Robin Little was called as a witness for the District. Little
2 testified that he began working for the District in May 1972. Since that time, has held a number of
3 increasingly responsible positions, including assistant transportation superintendent for eight or nine
4 years and director of transportation for the last several years. Little's responsibilities in the latter
5 position have included oversight of the District's four timekeepers and one lead timekeeper.
6 According to Little, drivers are not paid for travel time from the end of their run, except in certain
7 circumstances. He said that the District's practice regarding travel time has not changed since he was
8 hired, nor has his understanding of the travel time provisions. Little testified that he has never
9 received a complaint that a driver was improperly paid for travel time.

10 The District also called John Cavalli to testify. Cavalli began working as a driver for the
11 District in 1975. He testified that when he was a driver, he understood that he was entitled to pay
12 for travel time only in certain specific circumstances. In 1977, Cavalli became a timekeeper. He
13 was appointed lead timekeeper in 1983, a position that he held until his retirement in 2000.⁶ Cavalli
14 testified that he wrote the District's timekeeping manual, which he described as the basic guideline
15 for timekeepers, around 1998 or 1999. He said that he reviewed each section of the manual with the
16 other timekeepers to assure that it was consistent with existing practice. With respect to travel time,
17 Cavalli included the following statement in the timekeeping manual: "Time required to travel from
18 division, terminal or relief point upon the termination of one assignment to the beginning of
19 another. Travel time is computed at scheduled running time. Not subject to overtime in contract
20 however factors into F.L.S.A." Cavalli testified that he sent three or four copies of the timekeeping
21 manual to the Union for its review, but no Union official ever responded.

22 Veloes Purdy was also called by the District as a witness. Purdy said that she began working
23 for the District in 1975 as a driver, became a ticket seller in 1976, then returned to driving buses in
24 1978. Purdy testified that she became a timekeeper in 1979, and that she was appointed lead
25 timekeeper when Cavalli retired in 2000. Purdy further testified that she has attended classes for
26 new drivers to explain the District's pay practices. According to Purdy, drivers receive travel time for
27 returning to their divisions only if their runs end at the San Francisco elevated terminal or in a

28 ⁶ Both the timekeeper positions and the lead timekeeper are in the bargaining unit represented by ATU.

1 foreign division, or if the driver is relieved at a point other than the regular relief point at the request
2 of the District. Purdy stated that drivers never have received travel time for returning to their
3 starting point from their regular relief point or for regular straight runs, and she testified that travel
4 time has always been paid in that manner. According to Purdy, no driver ever complained about not
5 receiving travel time in other circumstances.

6 *The Grievance.* Sometime during 2002, Zook attended a meeting of the California
7 Conference Board, the lobbying agent for ATU in California. She said that during the meeting, she
8 learned of a then-recent ruling by the California Department of Labor Standards Enforcement
9 concerning the payment of travel time to drivers of another transit district. Zook sent the following
10 letter dated December 19, 2002, to AC Transit General Manager Rick Fernandez:

11 I am writing to acquaint you with a development in wage and hour law which affects
12 ATU 192 members in your employ. On January 29, 2002, the Acting Chief Counsel
13 of the Department of Labor Standards Enforcement issued an opinion letter to
14 Sacramento Regional Transit District (RTD) and Amalgamated Transit Union
15 Local 256's attorney, explaining that since January 1, 2001, under the state labor
16 code and IWC Wage Order 9-2001, transit employees are entitled to pay for any
17 time they have to spend traveling from the point where they end their shift to the
18 location at which they begin their shift, if that location is different. . . . The opinion
19 letter starts out by noting that the transportation wage order no longer *exempts* public
20 employees from the scope of the provision on "hours worked." . . .

21 This ruling is important to AC Transit drivers who are taken to a relief point by a
22 Supervisor or travel to a different work location after reporting to a Division, if their
23 shift does not end at the Division where they started, such as when making a relief
24 for drug testing. However, in *any* circumstance where a driver or other employee
25 ends his/her run or shift at a location that is different from the location where they
26 started work, this ruling applies.

27 The Union requests that AC Transit pay each employee for the travel time required
28 by this opinion, beginning January 1, 2001 when the wage order went into effect and
that the District revise its pay practices immediately to ensure that employees who
are required to travel in this fashion are paid for their travel time. Please provide the
Union with a list of all employees who have started and ended their shifts in different
locations from January 1, 2001 to the present and the dates when they experienced
such assignments and the amount of time the District estimates the travel took
(based on the time it would take on public transportation) as soon as possible. We
look forward to reviewing this information in the near future and discussing with you
the steps AC plans on taking to correct the situation.

1 Neither Fernandez nor any other District official responded to Zook's letter. Therefore, on
2 October 24, 2003, Zook sent a letter to Fernandez under the subject line "Overtime Pay Claims for
3 Drivers." The relevant portions of that letter state the following:

4 I am writing to follow-up on my letter of December 19, 2002, to which I have
5 received no response and to raise additional issues regarding what appear to be
6 statutory and contractual violations of drivers' rights under the Collective Bargaining
7 Agreement and state and federal law. I request that you respond to these issues at the
8 [Joint Labor Management Committee] meeting on [sic] immediately, so that we can
9 resolve how the District will comply with the contract and state and federal law and
10 how it will compensate drivers who are owed back wages for the various violations
11 described below. Alternatively, if the District disputes the claims, please let us know.

12 1. Travel Time. The District regularly assigns drivers to routes which cause a shift
13 to end at a place other than where they start their shift. This can happen either
14 because the route starts at the yard and ends elsewhere, or conversely, the route starts
15 out somewhere else in the District and ends at the yard. In either case, the driver is
16 required to commute back to where he left his or her car at the beginning of the
17 Shift. I am informed that the District is not paying drivers for this time, and I have
18 previously requested information that would confirm or disprove this violation. I
19 wrote you on this subject on December 19, 2003 [sic], and enclosed a [Department
20 of Labor Standards Enforcement] Opinion Letter which established that such travel
21 time must be treated as "hours worked" under the California Labor Code and IWC
22 Wage Orders. Indeed, not paying plaintiffs for this forced travel time not only
23 violates state law, but also violates Section 54.01 of the Collective Bargaining
24 Agreement. Moreover, we understand that the district is not transporting Operators
25 who make relief for drug testing, back to the division, and is not paying Operators
26 for this time.

27 In my letter/grievance, I requested that the District provide the Union with
28 information pertaining to this travel time, and asked you to meet with me regarding
this issue. Your response is long overdue. It is imperative that you promptly provide
the Union with a list of all employees who have started and ended their shifts in
different locations from January 1, 2001 to the present, and the dates they
experienced such assignments and the amount of time the District estimates the
travel took, in each instance. We are prepared to arbitrate this issue and subpoena the
records if necessary, but we prefer to address this in a non-adversarial forum. Please
understand, if that does not occur in the very near future, we will be forced to take
legal action.

 The issue was not resolved by the parties, and the matter was ultimately submitted to final
and binding arbitration, as described above.

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OPINION

Having carefully reviewed and weighed all the testimony and evidence presented at the hearing, and after considering each argument raised by the parties, I find that the District has violated Section 54.0 of the Agreement by failing to pay travel time to bus operators who drive regular scheduled runs which result in different starting and ending points. As persuasively argued by the Union, Section 54.0 plainly requires that travel time be paid to drivers in such situations. The evidence in this record fails to establish that the District's practice was sufficient to obviate that contractual requirement. Moreover, in view of the unambiguous language of Section 54.0, past practice is irrelevant. Finally, I am not persuaded that the Eaton Award is applicable here, much less dispositive of the issues presented in this arbitration. Accordingly, the grievance must be granted.

It must be emphasized at the outset that this decision is limited to the alleged violation of the parties' Agreement; in the Settlement, the Union and the individual plaintiffs specifically retained their right to litigate their statutory claims after receipt of this Award. Accordingly, external law is irrelevant in this case, and no finding regarding the applicability of state or federal law may be properly inferred from this Opinion & Award.

Determining Mutual Intent: Contract Language & Past Practice. An arbitrator's sole function in a case involving contract interpretation is to determine and apply the mutual intent of the parties, not to rewrite their contract. Such intent is to be determined by reference first to the contract itself. Where the language is clear and unambiguous on its face, further inquiry is inappropriate:

Plain and unambiguous words are undisputed facts. The conduct of Parties may be used to fix a meaning to words and phrases of uncertain meaning. Prior acts cannot be used to change the explicit terms of a contract. An arbitrator's function is not to rewrite the Parties' contract. His function is limited to finding out what the Parties intended under a particular clause. The intent of the Parties is to be found in the words which they, themselves, employed to express their intent. When the language used is clear and explicit, the Arbitrator is constrained to give effect to the thought expressed by the words used.⁷

Consistent, long-standing practices are often viewed as an integral part of the contract. Where practice is contrary to clear and unambiguous contract language, however, it is generally

⁷ *Phelps Dodge Copper Products Corp.*, 16 LA 229, 233 (Jules Justin, 1951).

1 unenforceable and irrelevant: “[Established practice] is a useful means of ascertaining intention in
2 case of ambiguity or indefiniteness; but no matter how well established a practice may be, it is
3 unavailing to modify a clear promise.”⁸ The relationship between past practice and clear contract
4 language was stated even more emphatically in another frequently quoted case: “[W]hile evidence
5 of past practice may be admissible to explain an ambiguous provision or to demonstrate that
6 language appearing in the instrument was used in a particular sense different from that which it
7 ordinarily imports, such evidence is wholly inadmissible where the contract language is plain and
8 unambiguous.”⁹ Stated more simply, “If the language points in one direction and the practice points
9 in another, go with the language.”¹⁰

10 *The Clear and Unambiguous Language of Section 54.01 & 54.02.* The language of Section 54.0
11 is clear and unambiguous, albeit seemingly somewhat convoluted on first reading, and the plain
12 meaning of that provision is consistent with the Union’s position in this arbitration. The first
13 sentence of Section 54.01 simply states the following: “Bus drivers reporting for duty or checking
14 in at the home terminal or at some other place differing from the relief point by reasons of the
15 District’s requirement to do so, shall receive an allowance of pay at straight time therefor.” The first
16 portion of that sentence clearly and unmistakably defines the employees to whom the provision
17 applies, specifically any bus driver who reports for duty or checks in at some place other than his or
18 her relief point. There is simply no other logical reading of that clause.

19 The second portion of the first sentence of Section 54.01, “by reason of the District’s
20 requirement to do so,” is equally clear, qualifying and limiting the application of the provision. It
21 is beyond dispute that the District requires bus drivers to operate their assigned vehicle from point
22 A to point B on an established route. The driver is neither free to determine the starting point or
23 the relief point, nor may the driver deviate from the assigned route without risking discipline. The
24 District’s apparent belief that this provision limits the application of Section 54.01 to those instances
25 where the driver is ordered to report to a different division or to continue beyond the established

26 ⁸ *Tide Water Oil*, 17 LA 829, 833 (Hubert Wyckoff, 1952).

27 ⁹ *Penberthy Injector Company*, 15 LA 713, 715 (Harry Platt, 1950).

28 ¹⁰ Paul Prasow & Edward Peters, *Arbitration and Collective Bargaining*, (McGraw-Hill, 1983) 92.

1 relief point is unsupported by the plain language of the provision; such a holding would improperly
2 infer a limitation on a contractual benefit that is entirely inconsistent with the plain language of the
3 provision, and which was never mutually intended by the parties.

4 The second sentence of Section 54.01 reads, “Such allowances shall be computed on the
5 scheduled running time of the service then available.” This clearly and simply defines the method
6 for calculating travel time.

7 The first sentence of Section 54.02 makes it clear that “the foregoing,” meaning the
8 provisions of Section 54.01, “refers to the beginning and end of regular scheduled runs whether
9 straight or split.” This provision makes it clear that Section 54.01 is intended to apply to all regular
10 scheduled runs, and specifically to the start and finish of those runs. Again, the provision is
11 unambiguous.

12 The final sentence of Section 54.02 simply states the following: “In the case of unpaid breaks
13 in split runs where the second part of the run picks up at a point different from where the first part
14 leaves off, travel time shall be allowed.” That provision is clear beyond dispute.

15 Given the clarity of each portion of Sections 54.01 and 54.02, and absent any internal
16 conflict between the individual portions of those provisions, I find that the disputed language is clear
17 and unambiguous on its face. I further find that the language in question is consistent with the
18 Union’s position in this arbitration, and contrary to that of the District.

19 *Past Practice is Unenforceable Here.* As noted above, the prevailing view among labor
20 arbitrators is that past practice cannot modify clear contract language.¹¹ In rare circumstances,
21 however, longstanding practice has been viewed as modifying a seemingly clear contract. For
22 example, Professor Benjamin Aaron has written that otherwise clear language may be modified by
23 consistent practice, reasoning that this “conclusion can be defended on the ground that it does not
24 alter the agreement but merely takes note of a modification which has already been made, either by
25 the parties jointly or unilateral action of the employer, tacitly approved by the union.”¹²

26
27 ¹¹ *Supra*, notes 7 through 10.

28 ¹² “The Uses of the Past in Arbitration,” *Arbitration Today* (Washington, D.C.: The Bureau of National Affairs, Inc., 1955).

1 Even if one accepts Professor Aaron’s view, however, arbitrators require substantial credible
2 evidence of any such contrary practice. As noted by Arbitrator Raymond Roberts, “the highest
3 quantum of proof will ordinarily be required in order to show that the parties intended by their
4 conduct to amend or modify unambiguous contractual language”¹³ Having found that Sections
5 54.01 and 54.02 unambiguously support the Union’s position here, the practice cited by the District
6 is irrelevant. However, even accepting *arguendo* that past practice can modify, amend, or obviate
7 clear contractual language, the District necessarily bears burden of establishing by the highest
8 quantum of proof that its purported practice meets the established tests for enforceability. The
9 District has not met that burden here.

10 Arbitrator Richard Mittenthal has cogently summarized the established and widely accepted
11 factors that must be present for a practice to be enforceable in arbitration. They are: (1) clarity and
12 consistency of the pattern of conduct; (2) longevity and repetition of the activity; (3) acceptability
13 of the pattern, and (4) mutual acknowledgment of the pattern by the parties.¹⁴

14 The evidence in this record does not support a finding that the District’s practice with
15 respect to pay for travel time is enforceable, and it most certainly falls short of the quantum of proof
16 required to modify the clear language of Section 54.01 and 54.02. Indeed, the evidence regarding
17 practice consists entirely of vague hearsay that is uncorroborated by credible documentary evidence.
18 Although Little testified that drivers are not paid for travel time, he also said that when he drove
19 buses in 1972, he was paid for travel time “sometimes,” but he could not recall when he was entitled
20 to such pay. Similarly, Zook testified that she recalls being paid for travel time when she drove buses
21 during the 1970s and 1980s, and Wilkins recalled receiving such pay when she drove buses during
22 the late 1970s. Cavelli, however, said that when he drove buses in the mid-1970s, he received pay
23 for travel time only if he worked in a foreign division. Finally, Purdy testified that when she was
24 driving buses in the mid- to late-1970s, she received pay for travel time only if her run was to the

25 ¹³ *Total Petroleum, Inc.*, 78 LA 729, 737 (1982), cited with approval by Marvin F. Hill, Jr., and Anthony V.
26 Sinicropi, *Evidence in Arbitration*, Second Edition (Washington, D.C.: The Bureau of National Affairs, Inc., 1987) 344.

27 ¹⁴ *Past Practice and the Administration of Collective Bargaining Agreements*, 59 Mich. L. Rev. 1017 (1961),
28 quoted with approval by the National Academy of Arbitrators, Theodore J. St. Antoine, editor, *The Common Law of
the Workplace: The Views of Arbitrators*, Second Edition (Washington, D.C.: The Bureau of National Affairs, Inc., 2005)
89 – 90.

1 San Francisco elevated terminal or ended in a different division from where it began.¹⁵ None of the
2 testimony concerning the District's pay practices was supported by documentary evidence.¹⁶ In my
3 judgement, the evidence was simply too vague and contradictory to support a finding of an
4 enforceable past practice here.

5 Similarly, the timekeeping manual prepared by Cavalli in 1998 or 1999 is insufficient to
6 establish the existence of an enforceable past practice. Although Cavalli testified that he consulted
7 with subordinate timekeepers and later sent copies of the completed manual to the Union, there is
8 no evidence that the District ever sought to negotiate with the Union about the development of the
9 timekeeping manual, nor did the District seek the Union's concurrence as to its accuracy. Moreover,
10 the manual comprises 40 pages of obscure minutia in cryptic language, and each of its pages includes
11 the statement, "Timekeeping guide only, not a legal/binding document." The Union's failure to
12 respond to the document is therefore neither remarkable nor significant. Moreover, it is wholly
13 insufficient to establish that the Union was aware of or acquiesced in any practice regarding pay for
14 travel time.

15 Any contention that the Union should have been aware of the District's practice is
16 unconvincing. Given the arcane, detailed pay system utilized by the District, it is not surprising that
17 no driver complained to the Union about pay for travel time. Any driver who did complain
18 presumably would have been informed by the timekeepers that the pay was correct, despite the clear
19 language of Sections 54.01 and 54.02 to the contrary. Although arbitrators often presume that a
20 union is aware of existing practices, any such presumption would be inappropriate in view of the
21 clarity of the language in dispute in this arbitration.

22 I therefore find that the evidence of District's practice regarding pay for travel time is
23 insufficient to establish the existence of an enforceable past practice that is contrary to the plain and
24 unambiguous language of Sections 54.01 and 54.02 of the Agreement.

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26 ¹⁵ There is no contractual support for such seemingly arbitrary exceptions to the District's asserted practice of
not paying for travel time under Section 54.0.

27 ¹⁶ The parties did submit as joint exhibits 19 pages of documents entitled "synopsis of runs," which include
28 information regarding the times of certain runs. While there was some testimony concerning those documents, they cover
only two dates, December 22, 2003, and June 28, 2004, both subsequent to Zook's letters to Fernandez.

1 *The Eaton Award is Not Controlling.* As noted above, subsequent to the close of the hearing
2 but before the submission of briefs, the District discovered the Eaton Award, a 1978 decision in an
3 arbitration involving these parties.¹⁷ The District proffered the Eaton Award, arguing that it was
4 dispositive of the issues raised in the instant case. I overruled the Union’s objection and received the
5 Eaton Award into evidence, directing the parties to address its applicability in their briefs.

6 Having carefully studied the Eaton Award in the context of this record, I find that it is not
7 dispositive of the issues presented in this arbitration. As noted by Arbitrator Eaton, the earlier
8 dispute arose out of the circumstances surrounding the formation of a new division, specifically
9 Division 6. Drivers were permitted to sign up for runs from a new facility built for that division.
10 However, construction of that new facility was delayed, and the drivers who had signed up for those
11 runs therefore were required to report to Division 4 for several weeks. A dispute arose between the
12 parties as to whether the affected drivers were entitled to pay for the time required to travel to and
13 from Division 4. That dispute was eventually submitted to arbitration before Arbitrator Eaton.

14 As framed by Arbitrator Eaton, the “essential issue” presented to the Board of Arbitration
15 was “whether an agreement was reached by the parties which amended their collective bargaining
16 Agreement, [and] if so whether such agreement included the question of payment of travel time,
17 and if not what the obligations of the district are regarding travel time under the existing terms of
18 the Agreement.”¹⁸ Arbitrator Eaton concluded that the District failed to prove that the parties had
19 agreed to alter the travel time provision of the Agreement, and ordered the District to “pay travel
20 time under the existing travel time provisions.”¹⁹

21 The Union argues persuasively that the Eaton Award does not define or limit the scope of
22 Section 54.01 and 54.02. Indeed, Arbitrator Eaton did not interpret the travel time provisions of the
23 Agreement, but instead merely determined that the parties had not agreed to waive those provisions
24 in the particular circumstances of that case. As correctly argued by the Union, that holding does not
25 mean that the provisions are inapplicable in other circumstances.

26 ¹⁷ *Supra*, note 1.

27 ¹⁸ *Id.*, at 23.

28 ¹⁹ *Id.*, at 39.

1 *AWARD*

2 A-C Transit District has violated Section 54.0 of the Collective Bargaining Agreement by
3 failing to pay travel time to bus operators who drive regular scheduled runs which result in different
4 starting and ending points.

5 To remedy that violation, the District shall pay travel time in accordance with Section 54.0
6 of the Agreement to any and all bus drivers assigned to such runs, retroactive to October 24, 2003,²⁰
7 and henceforth. The determination of the employees who are thus entitled to retroactive pay for
8 such travel time, and the computation of the amounts thus owed to them, is hereby remanded to the
9 parties. The parties shall meet forthwith for that purpose, and shall continue meeting for a
10 minimum of 90 days or other mutually agreeable period. If no agreement is reached within that
11 time, or if the parties agree that they are at impasse prior to the expiration of that period, either party
12 may invoke my retained jurisdiction to resolve any remaining disputes regarding remedy.

13 Finally, in accordance with the parties' Settlement, I shall retain jurisdiction over this matter
14 for the sole and limited purpose of resolving any disputes that may arise between the District and
15 the Union regarding the interpretation or application of this Award, including, but not limited to,
16 the determination of the employees who are entitled to retroactive pay for travel time in accordance
17 with Section 54.0 of the Agreement, and the computation of the amounts owed to them.

18 It is so ordered.

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20 R. DOUGLAS COLLINS
21 Arbitrator

22 Dated: August 7, 2006
23 Hermosa Beach, California

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27 _____
28 ²⁰ October 24, 2003, is the date of Zook's letter to Fernandez, alerting the District to the contractual violation found herein.