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Mr. James C. Holland  
Spencer Fane Britt & Browne, LLP  
1000 Walnut Street, Suite 1400  
Kansas City, MO 64106-2140

Mr. Scott A. Ralsher  
Jolley Walsh Hurley & Ralsher, PC  
204 West Linwood Boulevard  
Kansas City, MO 64111

Re: KCATA and ATU Local 1287  
FMCS Case #030123-05084-7  
Grievant: [REDACTED]  
Arbitrator's File 03-09-1910

Dear Mr. Holland and Mr. Ralsher:

I have had an opportunity to read your submissions concerning the back pay question which has arisen in the above referenced grievance.

As I understand your positions, the Employer takes the position that it will calculate Grievant's hours for back pay purposes based on her average for the year that she worked prior to her discharge. This calculation would be less than the hours assigned to her run, due to her poor attendance.

The Union takes the position that customarily the hours assigned to her run would be used as the hours worked. This is what has been done in the past, and the Union sees no reason to depart from this practice. The Union believes that there is no justification for making an exception to the method previously used for calculating back pay.

I think that given Grievant's admittedly extremely poor work record, there is justification for using the Employer's method. There should be some penalty for poor attendance. It would be unfair to the general work force to treat someone with poor attendance the same as those with good attendance. There is always a question as to where to draw the line as to what constitutes poor attendance and what constitutes at least acceptable attendance. Apparently in this case, her attendance record was clearly poor, not merely borderline.

I therefore believe that the method used by the Employer for calculating [REDACTED]'s back pay is correct given the circumstances of the case.

Very truly yours,



GERALD COHEN

CC/cib  
Enc.