

IN THE MATTER OF
ARBITRATION

BETWEEN

KANSAS CITY AREA)	
TRANSPORTATION AUTHORITY)	
)	FMCS No. 080114-01433-A
And)	Vacation Seniority
)	(Single Day/Floating Holiday)
AMALGAMATED TRANSIT UNION)	Grievance No. TR26-2007
LOCAL 1287)	

Hearing held May 1, 2008, in Kansas City, Missouri

Arbitrator: William S. Hart, selected through FMCS

APPEARANCES

For the Union: Scott A. Raisher, Attorney, Jolley, Walsh, Hurley & Raisher, P.C.,
204 West Linwood Blvd., Kansas City, Missouri, 64111

For the Authority: Jeffrey M. Place, Attorney, Spencer Fane Britt & Browne LLP,
9401 Indian Creek Parkway, Suite 700, Overland Park, Kansas 66210-
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BACKGROUND

For some time, and through the duration of multiple Labor Agreements, the Authority has assigned days off to bus operators according to the job classification in which they were scheduled. These job classifications consist of large buses, small buses and Metro Flex buses. Operators select work assignments in seniority order during a quarterly work bidding process known as mark-up. During each mark-up operators may select any open assignment once the selection process reaches the operator's position on the Unit-wide seniority list. Operators selecting assignments to drive large buses are paid a higher hourly rate than those who select small buses, and these in turn are paid at a

higher hourly rate than those who select Metro Flex buses, which are basically vans. The large and small bus assignments are further divided into day and night runs. In addition to bidding regular runs, operators may bid work as an "Extra Board" operator. These operators are held in reserve and used to fill regular work assignments that open up because of vacation, illnesses, or other forms of absenteeism. There are five separate extra boards, one each for large bus day runs, large bus night runs, small bus day runs, small bus night runs, and Metro Flex runs. Extra board operators fill open work assignments within their own job classifications.

Full-time bus operators earn paid vacation benefits on an annual basis, and each also receives one floating holiday per year. Operators bid for vacation weeks on a calendar year basis, during December of the prior year and are required to use most of their vacation time in one-week increments. After employees have earned two or more weeks of paid vacation they may elect to use one week of vacation on a single-day-at-a-time basis. This single day benefit can not be carried forward or cashed out at the end of the year; therefore, it is important that the employees schedule and use them. Operators either submit requests for these days during the year or, after the first of October, the Authority personnel will start assigning the days that have not been used by operators by that time.

Managing the scheduling of single-day vacations and floating holidays is quite extensive and follows a protocol provided for in the Labor Agreement. At least six (6) operators must be given one day vacation or floating holiday on any given work day, preference being given to four (4) operators requesting vacation time and two (2) operators requesting their floating holiday. Additional operators are given the day off if

requested, or assigned, providing manpower is available that day for adequate staffing of the routes after having done so. It is the method used by the Authority to grant these additional day off that is at issue in this arbitration. The Authority uses seniority to select those operators who will receive a given day off, but it is applied to each bus classification individually and separately, rather than system wide as an entire group which the Union claims is required by the Labor Agreement. On October 26, 2007, a grievance was filed by the Union in which it stated the following:

Local 1287 grieve that single day vacation or floating holiday current procedure is that by seniority (forty days prior) two operators locked into a one-day vacation, the remaining two one day vacation and two floating holidays also is done in seniority order via form #288 and a seven-day prior. Any other procedure would be in violation of contract agreement between Local 1287 and KCATA, Section 1.19.

Remedy – Would be that any senior operator requesting via form #288 in a timely manner can show a junior was allowed either a vacation or floating holiday day for day requested be allowed vac. or holiday pay for day in addition to work time and there after receive preference and pay for day denied.

The grievance is considered by the parties to be timely, duly processed and properly brought to arbitration.

ISSUE

Does the Authority violate the Agreement when it assigns single day vacations and floating holidays, beyond the minimum number of six (6) established in the Collective Bargaining Agreement, using job classification seniority rather than system/unit wide seniority? If so, what shall be the remedy?

RELEVANT CONTRACT CLAUSES

Article I-General Provisions

Section 1.19. Vacations With Pay

(b) Employee with more than two years' service.

* * *

Operators who have earned at least two weeks of vacation are allowed to take one week of their vacation a day at a time. All operators who have completed one year of service have a floating holiday. The Authority and the Union agree to allow at least six operators off duty by way of one day vacation or floating holiday on any given work day. Preference is given to four one-day vacations and two floating holidays. When this criterion is not met, any combination totaling six is acceptable.

Whenever manpower allows, more than the standard six will be allowed off duty. Current procedure requires operators to submit a request via form #288 for a single day vacation or floating holiday. Forty days prior, two operators, by seniority, are locked into a one-day vacation. Seven days prior, the remaining two one-day vacation and two floating holidays are locked in place. Again this is done in seniority order and operators locked in are guaranteed the day off. A senior operator cannot bump a junior operator who is locked in seven days before the day requested off. This procedure only works for the standard four and two combination.

With other combinations, operator may not know until the day before if their request has been granted. For example, if there are five operators on the one-day vacation list and one operator on the floating holiday list, the fifth operator on the vacation list would not know until the day before whether or not he will be allowed off duty. The four/two combination takes preference. Should another operator request a floating holiday, making him the second floating holiday requested, he would bump the fifth one-day vacation operator. This happens regardless of operator seniority or the lock in time procedures stated above. Operators involved in any combination other than the four/two, risk the chance of being bumped.

Operators above the agreed six allowed off, are subject to manpower capabilities and therefore will never know prior to the making of the extra board, whether or not they will be allowed the requested day off.

* * *

Allocation of vacation periods shall be determined by the departmental representatives of the Authority, with due regard to the necessity of providing adequate public service at all times, and such open vacation periods shall be selected by seniority.

Section 1.21. Holidays-Holiday Allowances

(a) All regular full time employees shall be entitled to one (1) "Floating Holiday" per calendar year. The Authority shall have the right to establish reasonable restrictions on the number of employees who may be off at any one time (including vacations, etc.) and may prohibit the taking of such holidays on a reasonable number of anticipated high traffic days. Unless waived by the Authority in individual cases, the employee shall give at least five (5) days written notice to his supervisor of his desire to take a specific day as the Floating Holiday for that year. Floating Holidays may not be deferred to the following year. Employees who have not requested their Floating Holiday by October 1 of each year may be scheduled by the Authority. In case of conflicting requests, seniority shall control, except that once the holiday is selected, an employee cannot be bumped.

POSITION OF THE UNION

The Union submits that the relevant language of Section 1.19 does not permit the Authority to use what has been characterized as classification seniority in awarding additional operators single days of vacation and floating holidays. Section 1.19 repeatedly and consistently states that additional operators shall be awarded days off in accordance with an operator's seniority, that is, system seniority. The present system of granting single days of vacation and floating holidays based on classification seniority has the effect of allowing, on occasion, a junior operator to receive a day off that is desired, but denied, to a senior operator. This would not happen if the Authority followed the requirements of the Labor Agreement and assigned these days off by system seniority rather than the job classification seniority currently in use.

POSITION OF THE AUTHORITY

The most reasonable reading of the Labor Agreement affirmatively permits the Employer to assign single day vacations and floating holidays on the basis of seniority within job classifications, as it has done for many years. The Labor Agreement clearly

does not prohibit the currently used approach, which was discussed but not altered during the most recent collective bargaining negotiations.

DISCUSSION

In the Labor Agreement, on page 34, the parties have agreed to a situation where seniority is waived in favor of the stated and predetermined proportion of four vacation/two floating holidays for the daily six employees to be given a day off on each scheduled work day. The operator requesting the fifth vacation day off can be bumped by a second operator requesting a floating holiday if that operator is asking for the same day off, even if that second floating holiday requester is junior to the fifth vacation requester. The Contract states "This happens regardless of operator seniority or the lock in time procedures. . ." This indicates that the parties have recognized that there are other factors that on occasion justify, or even require, overriding seniority in determining assignments of time off for operators. Yet another instance found in the Labor Agreement at Section 1.21 involves the requesting of a floating holiday by an operator. This must be done by written notice to his supervisor five days in advance of the day he desires to take off. Seniority is used in the event of conflicting requests, "... except that once the holiday is selected, an employee cannot be bumped."

The current grievance does not concern the six Contract required vacation/floating holidays that must be given off daily to operators, but does point to seniority exceptions provided for by the Labor Agreement in the making of assignments of operator time off. It can be seen that system wide seniority was not intended by the parties to be absolute in its application to all situations of operator assignments. In looking at the optional time off that can be granted to operators by the Authority for assignment or selection, in

addition to the mandatory six daily, it can be concluded that a similar exception to seniority also exists. "Whenever manpower allows. . ." is the first requirement for giving more than the standard six operators off duty time. As to vacation period assignments in general the Agreement provides on page 37 that it will be done, "...with due regard to the necessity of providing adequate public service at all times." It then provides that, "...open vacation periods shall be selected by seniority."

Having bid by seniority into schedule categories, i.e. large bus, small bus or van classifications, and having done so for a period of one quarter year (and repeated every three months) each employee is locked into the resulting category to which assigned. There is no substituting upward from lower category to a higher – that is, from van where junior employees tend to be, to either bus classification where the more senior employees tend to be – and downward substituting is allowed on a very restricted basis. The result of this seniority based system of assignment, and the inability to substitute operators between categories, is that staffing within each job category must be done by the Authority from the group of employees who bid into that category.

The intent of the equipment assignment categories is to allow the senior employees to bid for the higher paying jobs of the large buses in preference to the junior employees who tend to be assigned to the lower paid jobs in routes served by vans or small buses. A further implication of this classification assignment limitation is that the Authority is prohibited from using junior employees in place of senior employees in situations where the latter are needed to staff the routes to which they are assigned. On some days, senior employees may be needed in greater quantity than junior employees for a variety of reasons.

The Labor Agreement is silent on the matter of route categories being a basis of seniority rather than system seniority. However, the issue of manpower needs are determined primarily on the basis of the equipment categories first and then daily schedules, including days off, are determined within these categories on the basis of seniority. Whether or not anyone beyond the six required operators is given time off on a given day is determined by the needs of each job category independent of the other categories due to the restrictions imposed by bidding and the inability to substitute junior employees for senior employees.

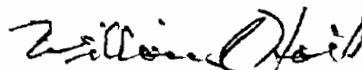
The manpower needs, not seniority, are the *de facto* first consideration the Authority rightfully gives to determining time off, and it can result in the decision to give no time off for anyone, even the most senior employees. Junior employees cannot be moved from lower paying route categories to allow more senior employees in the higher paying route categories to be assigned vacation or floating holiday time off on any given day. Manpower needs may happen to be such on occasion that because of the dictates of route staffing for operators in the Metro Flex or small bus categories, a less senior employee in a lower pay job (where there is less need for operators on a given day) will get time off that is desired by a more senior employee in a higher pay job (where there is greater need for operators on that same given day).

The parties admitted that this set of circumstances happens rarely, but it is certain to occur occasionally when manpower needs must be given first consideration. It is well within the Contract provisions for the Authority to use job classification first in determining manpower needs before next considering the seniority of those operators

within each category when granting one day off at a time for the optional vacation/floating holiday days in addition to the Contract required six operators.

AWARD

For the reasons given above, the grievance is denied.



William S. Hart
February 13, 2009