LABOR GRIEVANCE ARBITRATION
BEFORE ARBITRATOR BRADLEY A. AREHEART

In the Matter of the Arbitration between

FMCS Case No. 230221-03651
Issue: Contract Interpretation

and

AWARD OF THE ARBITRATOR

The Grievance was timely submitted, but the Employer did not violate Article XI or XII of the CLA by not paying double time to employees who worked on regularly scheduled Fridays during three separate weeks in which holidays were observed but not worked. Accordingly, the grievance filed on January 23, 2023 is dismissed.

Bradley A. Areheart, Esq.
Arbitrator
Dated: September 8, 2023

In the Matter of the Arbitration between

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Issue: Contract Interpretation

and

Appearances for the Parties:

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I. PROCEDURAL HISTORY

This matter arises under a construction labor agreement (CLA) entered into between and the affiliated unions of (the Union) covering the period October 1, 2016 through September 30, 2026 (the CBA). The grievance at issue was submitted to the Employer in writing on January 23, 2023 and thereafter processed in accordance with Article VII of the labor agreement. Following unsuccessful attempts at resolving the grievance it was referred to arbitration. Using the services of the Federal Mediation and Conciliation Service, Bradley A. Areheart was appointed as Arbitrator.

An evidentiary hearing was held in person on May 23, 2023, at which time the parties had full opportunity for the presentation of evidence, examination and cross-examination of witnesses, and oral argument. A transcript of the hearing was made and shared with the parties on June 5, 2023. The parties both filed briefs by June 30, 2023, at which time the record closed.

II. RELEVANT CONTRACT PROVISIONS

ARTICLE III – MANAGEMENT'S RIGHTS

Section 1. … The Employer shall schedule work, and shall determine when overtime will be worked. …

ARTICLE VII – GRIEVANCE PROCEDURE

Any controversy on any subject covered by this Agreement arising on the job involving the interpretation and application of Terms and Conditions other than those pertaining to craft jurisdictional disputes shall be process as set forth below. No such grievance shall be recognized unless presented to the Employer or Union within five (5) working days after the alleged violation was committed or becomes known. …

…

Step 3. …The intention of this [mediation] process is to avoid the use of final and binding arbitration, as stated in Step 4. …

Step 4. …The decision [of the Arbitrator] shall be final and binding upon the parties involved. Such decision shall be within the scope and terms of this Agreement, but shall not amend, modify or alter such scope and terms. …

…[The Arbitrator] shall not have authority to…render a decision, the effect of which would amend, modify, or alter this Agreement or its intent. …

ARTICLE XI – HOURS OF WORK, OVERTIME, SHIFT PROVISIONS

Section 1. The standard day shift shall be an established consecutive eight (8) hour period between the hours of 6:00 a.m. and 5:00 p.m., exclusive of a thirty (30) minute unpaid lunch period scheduled by the Employer which may vary between the hours of 11:00 a.m. and 1:00 p.m. A work day starts at the beginning of the day shift and continues for a twenty-four hour period thereafter. The work week starts at the beginning of the day shift Monday morning and continues until the beginning of the day shift the following Monday morning. Forty (40) hours per week shall constitute a week's work, Monday through Friday inclusive.

Section 2. In the interest of efficiency and productivity, the Employer may schedule work on a basis of four (4) ten (10) hour days each week. Any change to this schedule of work shall be subject to the limitation that the Union will be given at least seven (7) calendar days' notice of such change. Should the Employer elect to work the four (4) ten (10) hour schedule, starting and quitting times shall be determined between the hours of 6:00 a.m. and 6:00 p.m. so as to take advantage of conditions such as weather and daylight hours. There shall be a thirty (30) minute unpaid lunch period scheduled by the Employer which may vary between the hours of 11:00 a.m. and 1:00 p.m.

In the event it is not possible to work Monday through Thursday on the ten (10) hour per day workweek because of conditions beyond the Employer's control, Friday shall be available as a makeup day at straight time pay up to forty (40) hours of work.

Time worked over forty (40) straight time hours in the workweek shall be at the overtime rate of time and one-half (1.5).

The Friday makeup day will be scheduled as a full ten (10) hour workday and covers all employees, of any employer electing to work. Please review UMAC Interpretation, Pages 51 & 52.

Section 3. All time worked before or after the established workday of either (8) hours Monday through Friday and all time on Saturday shall be paid for at the rate of time and one-half (1.5). All time on Sundays and the Holidays stated in Article XII shall be paid at the rate of double time (2.0). When work is scheduled under the provisions of Section 2 above, overtime will be paid on the basis of work in excess of ten (10) hours per day.

…

Section 5. Should a work schedule of four (4) ten (10) hour days be established under the provisions of Section 2 above… Shifts shall be established for a minimum of four (4) consecutive workdays. … .

ARTICLE XII – HOLIDAYS

The following seven (7) days shall constitute the legal holidays within the terms of this Agreement: New Year's Day, Martin Luther King Birthday, Memorial Day (as designated by the federal government), July Fourth, Labor Day, Thanksgiving Day, and Christmas Day. There shall be no paid holidays unless worked. In the event a holiday falls on Sunday, the following day, Monday, shall be observed as such holiday. In the event a holiday falls on Saturday, it will be observed on Saturday.

ARTICLE XXV – ENTIRE UNDERSTANDING

The parties agree that the total results of their bargaining and the entire understanding between the parties is embodied in this Agreement.

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UMAC "CONSTRUCTION LABOR AGREEMENT INTERPRETATION"

…

2. HOLIDAYS AND 4 – 10's LANGUAGE

As stated above, the make-up day was intended to cover conditions beyond the control of the employer. Holidays are not a condition beyond the control of the employer. When bidding or proposing on work, it is the responsibility of the bidder or proposer to identify holidays which may fall during the construction phase of the contract. Holidays are paid at the rate of double time. For instance, a contractor cannot observe a Monday Holiday and then schedule work on Friday as a make-up day at straight time to make-up for the work time lost on Monday. Holidays are scheduled and do not fall into the area of an unexpected occurrence.

III. ISSUE

The issues as determined by the Arbitrator are as follows:

1. Was the Grievance submitted timely relative to the holidays that are in dispute?
2. Did the Company violate Article XI or XII of the CLA by not paying double time to employees who worked on regularly scheduled Fridays during three separate weeks in which holidays were observed but not worked?

IV. SUMMARY OF THE EVIDENCE

Background

The federal government created ████ in 1942 as part of the Manhattan Project that ended World War II. ████ has since continued to support national security by maintaining and updating the nation's nuclear weapons arsenal. ████'s mission includes weapons-related uranium enrichment operations, as well as weapon component assembly and disassembly. ████ consists of over 300 hundred buildings spread across more than 3,000 acres.

████ is the prime contractor for Y-12. As the prime contractor, ████ is responsible to the U.S. Department of Energy ("DOE") and National Nuclear Security Administration ("NNSA") for all management and operation ("M&O") functions at ████, as well as the construction work in support of the M&O activities and any new construction projects.

This Grievance arises within the category of construction work performed at ████. Construction work at ████ is performed pursuant to the Construction Labor Agreement ("CLA") (JX 1), a multi-employer, multi-union "Pre-Hire" Agreement, authorized by Section 8(f) of the National Labor Relations Act ("NLRA"). The CLA covers all of ████ Y-12 construction craft employees (approximately 1875) both those in support of M&O production operations (approximately 275), as well as those working on construction of the new Uranium Processing Facility ("UPF") (approximately 1600).

UPF, the largest capital construction project in Tennessee history, is a $6.5 Billion project designed to replace the existing uranium processing facilities that were initially built in the 1940's as part of the Manhattan Project. UPF began construction in 2018 and is scheduled for completion in 2025. Just

as ███ is the nation's central repository for highly enriched weapons grade uranium, the ███ UPF facility will be the nation's principal uranium processing plant. CX 1 & CX 2.

The Prior "On-Boarding" New Hire Arbitration Award – Issued July 12, 2022

In 2020, a group of 25 new hires participated in a 40-hour on-boarding mandatory training program, beginning on their first day of work, Tuesday, September 8, 2020. JX 5 at 93, 104. The 2020 Labor Day Holiday was Monday, September 7, 2020. The on-boarding training consisted of four 10-hour shifts (4x10) and ran from Tuesday, September 8 through Friday, September 11, 2020. JX 5 at 101, 175–76. The on-boarding new hires were paid straight time for the entire 40-hour program, including the 10 hours they worked on Friday, September 11, 2020.

The Union argued that all other bargaining unit members who worked that same weekly schedule and who worked that Friday received holiday/double time pay. JX 6 at 1. The Union argued that these on-boarding employees were being treated exceptionally given their new status. Id. at 1-2. The Union sought double-time pay for these 25 workers. Id. at 10.

The Arbitrator, ██████, sustained the grievance and awarded double-time rates for the time the new employees worked that Friday. She did so largely on the strength of Section 2 of the Construction Labor Agreement Interpretation clarification (p.51 of the CLA). JX 4 at 5. The Arbitrator observed that the language there constrains the Company's ability to schedule make-up days on a Friday and pay straight time. Specifically, conditions beyond the control of the Employer allow the Employer to schedule a make-up day on Friday and pay employees at their regular rate. However, the same clause states that holidays are not a condition beyond the control of the employer. "Holidays are paid at the rate of double time. For instance, a contractor cannot observe a Monday Holiday and then schedule work on Friday as a make-up day at straight time to make-up for the work time lost on Monday." For the Arbitrator, this meant that the Company could not schedule Friday as a make-up day for a holiday and pay anything less than double time.

Implicit in Arbitrator ████ determination that these workers were owed holiday pay was the notion that the Employer would have scheduled these workers to begin work on Monday, September 7 (the Labor Day Holiday)—but for the desire to avoid owing them holiday pay. Having these workers do on-boarding on Friday was tantamount to scheduling that fourth day as a make-up for a holiday earlier in the week. Tr. 75.

Conduct Between the On-Boarding Arbitration Award and the Current Grievance

About seven weeks after the Arbitrator ████ July 12, 2022 award, union employees worked the Friday following Labor Day 2022. Tr. 82. At that time, in addition to the UPF general workforce, the M&O bargaining unit employees, who are also covered by the CLA, were working "4/10s," and those who did not work on Monday were paid time-and-a-half for work on Friday, September 9, 2022. Tr. 83. The Union did not file a grievance claiming that those employees should have been paid double-time for the Friday work. Tr. 60-64.

On September 1, 2022, ███ notified the Union that effective September 12, 2022, it was changing the UPF construction craft schedule from 5x8s (Monday-Friday) with two hours of scheduled daily overtime Monday-Thursday, to a 48-hour Monday-Friday work schedule, consisting of 10-hour shifts Monday through Thursday, and "eight (8) hours of scheduled overtime on Friday." JX 12. According

to the Company, the reason for this change was to entice traveling craft workers who lived outside the area not to go home and miss work on Fridays by making all Friday hours overtime. Co. Br. at 10 n.5. The notice provided that "[o]vertime will be paid in accordance with the Construction Labor Agreement." JX 12. The Company and ████ observe that this schedule remains in effect today. Tr. 87-88, 99; Co. Br. at 10.

Here, there appears to be a factual discrepancy as the Union claims in its brief that "███ changed its schedule, *for those three weeks only*, from its otherwise applicable four days a week/ten hours a day ("4x10's") Monday thru Thursday schedule to a 4x10's Tuesday thru Friday schedule." Un. Br. at 2 (emphasis added). Indeed, the issue put forth by the Union is: "Whether a Company working on a 4x10s Monday thru Thursday schedule can avoid paying double time pay by shifting its schedule, *solely for the weeks on which a holiday falls on Monday*, to a 4x10s Tuesday thru Friday schedule." Un. Br. at 6 (emphasis added). The Union may be arguing that the Company changed its schedule for those weeks by not having those employees work on a holiday, but that is quite a bit different than the apparent claim that the Company gave its workers a unique schedule for only those three weeks. If the Union is arguing the latter, I can find no evidence to support that claim.

Following the schedule change, the next Monday holiday was Christmas (December 25, 2022), which was recognized on Monday, December 26, 2022. JX 10; Tr. 51. New Years, another CLA holiday, was recognized on Monday, January 2, 2023. JX 11. Similarly, Martin Luther King ("MLK") Day, occurred on Monday, January 16, 2023. JX 11; Tr. 51. All UPF craft employees were paid time and a half for working the subsequent scheduled Fridays—December 30, 2022, Friday, January 6, 2023, and Friday, January 20, 2023. JX 2.

The Current Grievance

On January 23, 2023, the Union filed this grievance asserting that ███ was violating the July 12, 2022 On-Boarding Arbitration Award "by not paying the correct holiday pay for working the Christmas, New Years, and Martin Luther King, Jr. holidays." JX 2. It noted that holidays were not conditions beyond the control of the Employer since they are known and defined in the CLA. On February 6, 2023, the Company responded that it found no violation of the CLA.

V. POSITIONS OF THE PARTIES

The Union's Position.

The Union first argues that the grievance was timely. Under the CLA, grievances must be filed within 5 days of a violation or when the violation became known. Here, the Union cites ████ testimony that a grievance was filed, at worst, within 4 days of him learning workers did not receive double time for the holidays in question. The Union avers that the legal standard for knowledge here is objective (an actual violation or when it became known) and not constructive (should have known). It further asserts that the Employer bears the burden of showing the grievance was untimely.

The Union's second argument is that the previous arbitral award by ████ ought to govern this dispute. After all, it was the same parties, same CLA, and the same essential issue of shifting the schedule around to avoid holiday pay. This dispute should thus be resolved consistently with the

onboarding decision if that decision is to be truly "final and binding" under Article VII. That would mean paying the affected workers holiday—not overtime—pay.

The Union's third argument is that the company shifted the schedule to try and avoid its contractual duty to pay workers double time. The CLA does not permit such "pay shenanigans." Un. Br. at 3. The Union reads Article XI and Page 51 together to conclude there was no authority to pay the affected workers straight time or time and a half. Under the plain language of the contract, the only acceptable compensation—where the employer has shifted the schedule to avoid a holiday—is double time.

The Union makes one more argument that seems to anticipate the employer is going to rely on past practice to oppose the Union's understanding of the agreement. Specifically, the Union argues that extrinsic evidence (such as past practice or course of dealing) should not be used to interpret an agreement where the language is clear and unambiguous. They cite several 6th Circuit cases that stand for this proposition.

The Employer's Position.

The Company makes several arguments for why I should deny the grievance. It first notes that Arbitrator Grubb's decision is not controlling. Here, the Company cites Sixth Circuit precedent to establish that arbitrators may disagree with prior decisions so long as the current arbitrator's decision draws its essence from the contract. The Company additionally notes that the earlier award was based on a factual inaccuracy in the Union's brief. As such the decision was made without the benefit of critical facts.

Second, the Company notes that it did not owe the workers in this dispute double time, per the Contract, since they did not work on Sunday or on a holiday. Here, the work time in question was worked as a part of regularly scheduled days. As such, there is no contractual basis for paying holiday rates to these workers.

Third, even if the language is found to be ambiguous, the parties' past practices and course of conduct show that the Union did not expect to receive double time pay under these facts. Here, they cite past situations as well as testimony to show that the expectation was that if the Company had employees work on a Friday following a Monday holiday, then they would receive overtime pay (or time and a half).

Finally, the Company argues the grievance is not timely because it should have known about the contractual violation much earlier and thus should have filed the grievance earlier. The Company questions how—after widely disseminating the on-boarding award in the summer of 2022—the Union was not aware until MLK day of alleged underpayment for Labor Day 2022, Christmas 2022, and New Years 2023.

VI. ANALYSIS

In this arbitration, there are two issues: (1) Was the Grievance submitted timely relative to the holidays that are in dispute? (2) Did the Company violate Article XI or XII of the CLA by not paying double time to employees who worked on regularly scheduled Fridays during three separate weeks in

which holidays were observed but not worked? I will address timeliness first and then move on the second question, which demands more attention.

Timeliness

The standard for whether the grievance is timely is plainly set out in Article VII of the contract: "No such grievance shall be recognized unless presented to the Employer or Union within five (5) working days after the alleged violation was committed or becomes known." This standard is disjunctive. If a party were to learn of a violation at the very time it was committed, timeliness would be measured from when the actual violation took place. But if a party were to learn of a violation later in time, timeliness would be measured from actual (not constructive) knowledge.

Here, there is not much evidence regarding when the Union learned of the alleged contract violation. The Company has used a lot of circumstantial evidence to say that the Union should have pieced together an alleged violation much sooner than MLK day. It notes, for example, "the Union never raised this issue in relation to Labor Day 2022, when they knew everyone was being paid 'as they always had before' (Tr. 84)." Co. Br. at 23.

For its part, the Union relies on testimony from President [redacted] who explained how it was that the Union did not recognize or learn of these violations until a few days prior to January 23, 2023. [redacted] testified that he was talking with some of the other building trades members, and someone brought up the fact that they were not being paid double time for recent holidays and that this might run afoul of the prior arbitration ruling. He also explained why the council had met less than normal prior to that conversation. The Union observes that the Company bears the burden of proof on this issue, and that the cumulative proof offered is limited.

I concur with the Union that the proof offered on this subject is limited. Further, I find Mr. [redacted] testimony that he did not have knowledge of the violation until no more than 4 days before filing a grievance to be the best evidence submitted on the subject. As such, I conclude the Union filed this grievance in a timely manner.

The Prior On-Boarding Award

There appears to be some agreement between the parties on the effect of the prior on-boarding award. Both parties tell me I am not necessarily bound by a prior arbitral award. Rather, it is up to me to determine whether the prior award ought to have preclusive effect—depending upon the relevant scope of that award and whether there were missing facts or are now new conditions present. Co. Br. at 12-13; Un. Br. at 5-6.

I am unwilling to construe the prior arbitral award to determine this matter. Both parties agree that Arbitrator [redacted] was missing critical information regarding what non-onboarding employees who worked on the Friday following a holiday were paid. Both parties also agree that those workers were paid time and a half. Yet the Arbitrator seemed persuaded—at least in part[1]—that the onboarding workers should have been paid the same as non-onboarding workers. In her decision, she wrote:

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[1] In addition to the implicit claim that these on-boarding workers should be paid the same as non-onboarding workers, Arbitrator [redacted] relied heavily on the contractual language on page 51 of the CLA.

> *Non*-onboarding bargaining-unit members on the same 4 x 10 schedule and working the same schedule were paid differently and paid more than the twenty-give (25) bargaining-unit members undergoing onboarding. The CLA, p.26-42 outlines different wage rates for different crafts, but there is no (0) reference to onboarding bargaining-unit members, nor to such members' being paid less, i.e., no (0) holiday pay for working that Friday. JX 4 at 6 (emphasis in original).

Later, Arbitrator ████ wrote about the need to understand onboarding as simply another form of "work." She invoked President Lincoln and his statement about how saying that a tail is a leg doesn't make it a leg. She seemed to be driving home the point that onboarding was "work" and, as such, should have been compensated just like any other work. *Yet* Arbitrator ████ awarded double time, not time and a half—seemingly in part because of the factual inaccuracy supplied by the Union (i.e., that all other bargaining unit members who worked that same weekly schedule and who worked that Friday received holiday/double time pay).

Additionally, I find the current dispute factually dissimilar in the following way: The work completed on Fridays under the current set of facts was completed pursuant to a regular schedule that went into effect on September 12, 2022. In the prior arbitration, Arbitrator ████ viewed the Friday onboarding as not regularly scheduled, but as a "make-up" for the Labor Day holiday. She acknowledged this was the Union's argument, JX 4 at 2, and she confirmed her agreement with it in the Rulings section. JX 4 at 9.[2]

In sum, I find the prior Arbitral award is unreliable since it depends to a material extent on a factual inaccuracy.

Is the Contract plain or ambiguous?

It is axiomatic that the doctrine of contract interpretation is about trying to discern the parties' intent. One of the best ways to do that is the text of an agreement, as long as the text is clear and unambiguous. If, however, the text of an agreement is susceptible of more than one meaning, the law allows the consideration of extrinsic evidence to determine what is meant by any word, phrase, or clause.

It could be tempting to read language in a vacuum and say that it is plain. But there is no "lawyer's Paradise [where] all words have a fixed, precisely ascertained meaning, . . . and where, if the writer has been careful, a lawyer, having a document referred to him may sit in his chair, inspect the text, and answer all questions without raising his eyes."[3]

Here, the Union claims the text is clear. Overtime pay is contemplated in certain instances and working a make-up day for a holiday is not one of those. The Union also relies heavily on the language on page 51: "Holidays are paid at the rate of double time. For instance, a contractor cannot observe a Monday Holiday and then schedule work on Friday as a make-up day at straight time to make-up for

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[2] "[T]he arbitrator finds the Employer breached and violated the CLA … over the corresponding [] pay the twenty-five (25) bargaining-unit members received for their working that Friday/post-Labor Day[]*as a 'make-up' day*, while being on a 4 x 10 shift schedule[.]" JX 4 at 9 (emphasis added).

[3] E. ALLAN FARNSWORTH, CONTRACTS §7.8 (4th ed. 2004).

the work time lost on Monday." Un. Br. at 15. The Union argues the parties' intent is clear and there is no need to look to any evidence outside of the contract.

The Employer argues in the alternative. It first claims that the only way one can receive double time under the contract is if they work on an actual holiday. It then argues that if the CLA is found to be ambiguous as to any provision, the course of conduct "clearly establishes that the bargaining-unit employees and the Union did not expect to receive Double-Time Holiday pay for the scheduled Fridays after the Monday Holidays at issue." Co. Br. at 19.

I find the Contract is ambiguous on the following point: how workers should be paid when there is a holiday during a week, the workers do not work on the actual holiday, and the hours never surpass the Article XI, Section 3 thresholds to trigger overtime pay. Without more, the Arbitrator would be inclined to think they do not receive holiday pay, but instead receive straight pay. However, I am told by the Union these workers should receive double pay because that Friday is essentially a make-up day for a holiday the Union did not allow them to work under paragraph 2 of P.51. But I am not convinced that Friday is being scheduled as a make-up day; it is a part of these workers' regular schedules. In contrast, I am told by the Company that these workers should receive time and a half because that was their custom. But these workers had not surpassed the hourly or weekly thresholds for overtime that are outlined in Section 3 of Article VII.[4] I do not find textual support for the Company's stated overtime practices.

The Arbitrator is essentially left with the Company paying a middle ground between straight pay and double time. This compromise may recognize that these workers were not asked to work the holiday—which would have entitled them to double time—but they are also not being paid straight time as the Company might have grounds to do under the Contract. Ultimately, my study of the Contract does not tell me how exactly these workers should be paid. There is an ambiguity.

Does other evidence shed light on intent?

There is significant evidence regarding past practice and course of performance from the Union's own witness. In particular, [REDACTED] testified the following:

- Historically, 4 x 10 workers who didn't work a Monday holiday but did work Friday were paid time and a half on that Friday; this was never grieved as a violation of the contract. Tr. 78.
- To his knowledge there has never been holiday double pay for work not done on an actual holiday. Tr. 69-70, 86.
- The only two circumstances in the history of the CLA where double time has been paid is Sunday or a holiday. Tr. 70, 76.
- The focus of the on-boarding grievance was that the on-boarding workers "should at least get time and a half, not straight time." Tr. 80.[5]

[4] [REDACTED] asked: "Those guys didn't have 40 hours of workweek – 40 hours of work come Friday, did they, if they only worked Tuesday, Wednesday, and Thursday?" [REDACTED] replied: "They was at 30. Yeah, that's correct." [REDACTED]: "So they weren't over 40 hours of work, right?" [REDACTED]: "Right." Tr. 90.

[5] This said, double time was in fact sought by the union in their post-hearing brief. JX 6 at 10.

- Prior to the on-boarding arbitration award, (a labor relations manager) told that regardless of the result, planned to pay regular workers the same as it always had for Fridays following a holiday. Tr. 60-64.
- The on-boarding award was a "big deal" or "bonus" (as far as getting double time for a day other than the holiday). Tr. 81, 83, 86.
- Following the on-boarding award, all UPF craft employees were paid time and a half for all the scheduled Fridays that fell in a week where there was a Monday holiday. Tr. 84, 99. That included the Monday Labor Day holiday, which was about seven weeks later than the onboarding award. According to , they had shared the award widely, but "nobody informed us that they weren't paid correctly." Tr. 83.

Cumulatively, this evidence suggests to me that the parties' intent, as understood by the parties, was for workers to receive time and a half where they work a regularly scheduled Friday during a week in which a holiday is observed. Though the argument is not made precisely by the Union, I can see in Section 2 (p.51) an argument for double time where a contractor chooses not to work people on a holiday and then schedules a make-up day for the work that was lost on that holiday. That was *arguably* what happened in the on-boarding award. But that is not what happened here. These workers were already scheduled to work on Fridays, and they did in fact work on Fridays.

testified that "other contractors did, in fact, pay double time on those Fridays"—presumably the ones in dispute. Tr. 66-67. But there was no additional detail from regarding whether those workers are similarly situated to the workers affected here (i.e., whether they were regularly scheduled to work on Friday). Nor was there any additional detail regarding how or why those contractors understood themselves to be obligated to pay double time.

If the parties feel this award misses their intent, they should bargain over the issue. It appears that working during weeks in which a holiday is observed (but not worked) is an issue that recurs and if it is the parties' intent to do something different than the arguable past practice of time and a half, it could certainly agree to do so. It could, for example, set out a list of hypotheticals and explain how workers are compensated under each situation. As things currently exist, though, the parties did not attempt to bargain or discuss how the three holidays in question here should be paid. Tr. 68.

Ultimately, I find that the past practice and course of dealing is instructive of the parties' intent: that whenever a worker has worked a Friday following a Monday holiday, those workers are paid time and a half. Where that Friday is regularly scheduled (i.e., not scheduled as a make-up day), the point seems even less arguable. Double time appears to be reserved for limited circumstances: where someone works on Sundays or a holiday. Article XI(3). The Company thus did not violate Article XI or XII of the CLA by not paying double time to employees who worked on regularly scheduled Fridays during three separate weeks in which holidays were observed but not worked.

VII. AWARD

The Union has not established a violation of the CBA. The grievance is denied.

Date: September 8, 2023

Bradley A. Areheart, Arbitrator
Knoxville, TN