Decision and Award in the Matter of Arbitration between:

Ohio State Troopers Association

and

Ohio Department of Public Safety,
Division of the State Highway Patrol

Grievance #: DPS - 2017- 03700-01
Grievant: Trooper Ronald Dudley

Arbitrator: Jack Buettner

Date of Hearing: June 17, 2019
Date Briefs Received: July 29, 2019
Date Decision Issued: August 10, 2019

Representing the Union:
Ms. Elaine Silveira, Esq.
Ohio State Troopers Coalition, Inc.
190 West Johnstown Road
Gahanna, OH 43233

Representing the Employer:
Lieutenant Dustin Neely, Advocate for the Employer
Ohio State Highway Patrol
1970 W. Broad St.
Columbus, OH 43223

By mutual agreement, the Hearing was convened on June 17, 2019, at 9:00 AM. The Hearing was held at the Oho Department of Administrative Services in Columbus, Ohio. Jack Buettner was selected by the parties to arbitrate this matter as a member of the panel of permanent umpires pursuant to Article 20, Section 20.8, of the Collective Bargaining Agreement which is effective from 2015-2018.

The parties each stipulated to the statement of the issue, a series of background facts, and the admission of joint exhibits. The parties have also agreed to the arbitration of this matter. No issues of either procedural or jurisdictional arbitrability have been raised, and the matter is now properly before the arbitrator for a determination of the merits.

In attendance for the Union:

Ms. Elaine Silveira	Advocate/Attorney
Trooper Ronald Dudley	Grievant
Jeremey Mendenhall	
Larry Phillips	
Bob Cooper	

In attendance for the Employer:

Lt. Dustin D. Neely	State Advocate
Captain Cory Davies	District Commander
Captain Charles Linek	Witness

The parties were asked to submit exhibits into the record.

The following were submitted as Joint Exhibits:

Joint Exhibit #1	Contract between the State of Ohio and OSTA, Unit 1, 2015-2018
Joint Exhibit #2	Grievance Trail– DPS-2016-00923-01

The following were submitted as Union Exhibits:

Union Exhibit #1	Handwritten Notes

The following were submitted as Employer Exhibits:

Employer Exhibit #1 Contract, 2003-2006

Employer Exhibit #2 Contract, 2006-2009

Background:

Trooper Ronald Dudley, the Grievant, has worked for the Ohio Highway Patrol for twenty-nine (29) and a half years. The Grievant was placed off work by his doctor after he was unable to complete his graded exercise test due to back issues. In September of 2017 he was placed into the Transitional Return to Work Program on light duty.

The Grievant's reported work location at the time of in the injury was the Cambridge district headquarters. His light duty assignment was at the New Philadelphia post which increased his commute time and distance traveled.

Issue:

Did the Employer violate Article 26, Section 26.04, when the Employer denied the Grievant additional travel time as hours worked when he reported to a location other than his assigned report-in location while participating in the Transitional Return to Work Program? If so, what shall the remedy be?

Union Position:

The Union contends that the Grievant is entitled to additional compensation for travel time based on Article 26, Section 26.04 of the CBA. It states, "Any Unit 1 employee who must begin work at some location other than their actual work location or report-in location shall have any additional travel time counted as hours worked." The Grievant's original post was the Cambridge district headquarters, and he was assigned to the New Philadelphia post. This added approximately fifty-five (55) to sixty (60) minutes to the Grievant's commute each way.

While the Employer argues that Section 46.06 supersedes Section 26.04, the Union believes each section operates independently. Section 46.06 governs the Transitional Return to Work Program. Section 26.04 is part of Article 26 which governs Hours of Work and Work Schedules. It governs commutation time for "any Unit 1 employee"; it does not make an exception for people in the Transitional Return to Work Program.

The Employer cited previous contract history that showed the deletion of language for drive time. The Union contends this language was deleted from Article 46 because Article 26.02 (the article number at the time of the negotiations) covered additional travel time as hours worked. It would have been redundant to have that language in both articles. The Union contends that the language was not removed to eliminate employees from receiving drive time while on light duty. The Grievant, therefore, should be awarded travel time counted as hours for his commute.

Employer Position:

The Employer contends that the Grievant is not entitled to additional travel time as hours worked that resulted from his relocation to the New Philadelphia post while participating in the Transitional Return to Work Program. While the Union cited a violation of Section 26.04, the Employer contends that Article 46.06 specifically governs the Transitional Return to Work Program. As such, Article 46.06 should be the governing section since it refers to a very explicitly designed program. Thus, it does not entitle an employee to additional travel time.

Further, the Employer cited the evolution of the CBA and how the language was specifically changed over the course bargaining to disallow the compensation for travel time. Management Exhibit #1, the CBA dated 2003-2006, states in Section 46.06, Light Duty, that, “Any light duty employee who must begin work at some location other than his/her regular work location or report-in location shall have any additional travel time counted as hours worked.” In the next negotiated contract dated 2006-2009, (Management Exhibit #2) the Transitional Return to Work Program is delineated. The language concerning pay for travel time is not present nor was it added into any subsequent CBA (Joint Exhibit #1). The Employer contends that its absence was intentional and by design.

The Grievant’s relocation post was within the stipulated fifty (50) mile radius from the Grievant’s home as stated in the CBA. Section 46.06 governs the Transitional Return to Work Program of which the Grievant was a part, and this section does not allow for additional compensation for travel time. Therefore, the Employer contends the Grievant is not entitled to any additional travel time.

DISCUSSION AND DECISION

This Arbitrator reviewed all of the exhibits, the 2015-2018 CBA which is the governing document in this instant case, and the transcript of the hearing in making this decision. No facts in this instant case are in dispute so the case boils down to which section of the CBA 2015-2018 should prevail in determining if the Grievant is awarded travel time counted toward hours worked for his change in work location.

Section 26.04, Report-in and Commutation Time for Bargaining Unit 1, does state that any Unit 1 employee who must begin work at a different location other than their actual report-in location will receive additional travel time counted as hours worked. It would seem cut and dry except that a stand-alone section was created by the bargaining parties to address the special situation of the Transitional Return to Work Program.

Article 46, Occupational Injury Leave, Section 46.06, was created to address a very explicit need, that of gradually transitioning people back to work after an injury. The section evolved over time and was called the Transitional Return to Work Program. Part of that evolution was to deal with peculiar circumstances that may arise as a result of its implementation. The language was specifically removed that provided for additional travel time as hours worked. The Employer stated that this change was intentional and by design. The section does say, “Light duty may only be assigned at the normal report-in location or at another location up to maximum of fifty (50) miles from the employee’s residence.” The concept of a difference in travel commute was not eliminated. The issue was addressed by keeping language in the CBA that referred to distance parameters. Also retained was language that provided for living expenses “… as a result of a transitional return to work assignment to another divisional facility in cases where the Employer cannot allow a daily commute...” The language addresses the condition under which compensation would occur.

Section 46.06 states that efforts will be made to keep an employee at their assigned post, but they can be assigned to other divisional facilities. By the nature of the program such reassignment may be necessary. According to 26.04, an employee who must begin work “at some location **other** than their actual work location or report-in location” would receive commutation time. Thus, the Grievant was assigned to a different post as allowed for in the Transitional Return to Work Program. That would be considered his new work site or report-in location. No additional travel time would be in question.

This instant case represents an example of latent ambiguity where the language appears clear on its face but becomes unclear when an effort is made to apply it to a given situation. [Midwest Rubber Recla9imin g Co., 69 LA 198,199 (1977)] The Union sees this as a clear violation of Section 26.04. The ambiguity comes in when trying to

apply the language of 26.04 to another provision that has already set it guidelines for implementation.

According to the CBA, Section 20.08, Part 5, “The umpire shall have no power to add to, subtract from or modify any of the terms to this agreement, nor shall the umpire impose on either party a limitation or obligation not specifically required by the language of this Agreement.” Knowing that the contract was specifically changed to remove travel time language from Section 46.06, this Arbitrator cannot obligate the Employer to compensate the Grievant for travel time.

AWARD:

For the reasons stated above, the grievance is denied.

This closes the arbitration.

Respectfully submitted this day of 10st day of August, 2019,

Jack Buettner

Arbitrator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one (1) copy each of the Arbitration report was delivered via email on the 10th day of August, 2019, to

Ms. Elaine Silveira, Esq., Advocate for the Grievant

and

Lieutenant Dustin Nealey, Advocate for the Employer

(Staff Lieutenant Pyles and Lieutenant Harris

as representatives of Lt. Nealey who has since retired)

Jack Buettner

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