

In the Matter of Arbitration between:

Arbitrator: Richard Bales

Grievant: MS

Company

Grievance: March 16, 2020

and

Hearing: November 19, 2020

Union

Brief Exchange: January 22, 2021

Award Date: January 26, 2021

Award

I. Facts

Company operates a commercial laundry and delivery facility providing uniforms and workplace supplies (merchandise) to a wide variety of companies near _____, Virginia. Many of its employees are represented by Union. Terms and conditions of employment for these employees are governed by a collective bargaining agreement. The facts giving rise to this Grievance arose under the CBA dated February 29, 2020 – March 3, 2023.

The CBA Article 39 creates three categories of bargaining-unit drivers:

- Shuttle Drivers transport merchandise between Company locations. Shuttle Drivers are not at issue in this Grievance.
- Route Sales Representatives (RSRs) drop off and pick up merchandise at customer locations, manage customer accounts, and are expected to solicit new business from new and existing customers. RSRs are paid on a commission basis, and depending on the route can be paid quite well.
- Haul Wholesale Drivers (HWDs), like RSRs, drop off and pick up merchandise at customer locations. However, they are paid on a flat hourly basis rather than on commission, and the hourly rate is such that these drivers usually earn significantly less than RSRs. The critical distinction that the CBA draws between RSRs and HWDs is that HWDs “shall have no more than twelve (12) stops per day.” The CBA repeats this admonition twice – in both Article 39.03(a) and 39.03(c).

Notwithstanding the distinction in Article 39 between RSRs and HWDs, the two sets of drivers do their jobs almost identically. Company assigns each of them a designated route. Each route contains a defined set of customers for each day between Monday and Friday. Each day, the driver receives a “settlement sheet” listing the various customers for the day in order of delivery. Throughout the course of a delivery day, the driver travels from customer location to

customer location. At each location, the driver will deliver and pick up merchandise and leave an invoice with the appropriate customer representative.

Many customers operate large facilities. They often prefer to receive their merchandise in separate “batches”, and to receive separate invoices, for different departments or subdivisions of their organizations. This helps the customer in two ways. First, it helps the customer route the correct merchandise to the correct part of its organization. Second, it helps the customer track costs among the various parts of its organization.

To facilitate this, at a customer’s request (often made through a Company driver), the Company will divide deliveries and invoices into two or more separate customer identification numbers (CIDs). The Company will do this even though the delivery/pick-up is made to the same customer at the same physical address on the same day. If a customer requests changes in the way merchandise is grouped and invoiced, the Company can create new CIDs, consolidate CIDs, or re-allocate merchandise and invoices among existing CIDs. None of this affects the total volume of merchandise delivered to the customer by the driver, though it does make it easier for the driver and the customer to properly route the correct merchandise to the correct part of the customer’s organization.

Where such billing separation and allocation occurs, the Company’s records will then show multiple CIDs and perhaps (but not always) separate stop numbers, even where the RSR is delivering to a single customer location/address. However, whether there is one CID assigned to a customer location or multiple CIDs assigned to that location, the total volume and total work involved in making a delivery is unaffected – the RSR will visit that single location, deliver the purchased items, leave one or more invoices, and then travel to the next location.

Additionally, sometimes the same customer operates two or more facilities with different street addresses but that are immediately adjacent to each other, and prefers that the Company make separate deliveries to each facility. Similarly, sometimes a customer with a single large facility and street address might prefer that the Company make different deliveries to different doors or loading docks of the same building. The Company will accommodate such requests, again by assigning separate CIDs for each delivery point (and perhaps multiple CIDs for each delivery point, if the customer has requested this as described above).

The Company and the drivers use “stop” numbers to help the drivers deliver the correct merchandise to the appropriate place where the same customer has multiple street addresses or multiple delivery points at the same street address or, sometimes, where the customer wants to segregate a delivery made to a single delivery point. “Stop” numbers help the drivers group their deliveries and invoices appropriately, and often correspond roughly to delivery points. For example, if a single customer wants separate deliveries to separate street addresses, or to multiple delivery points at the same street address, each delivery point would receive a different “stop” number. The Company’s post-hearing brief explains: “The RSR could choose to have all billing line items at a single customer location/address under the same stop number –

the number itself is only relevant for purposes of sequencing from separate customer address relative to the next to separate customer address.” Company’s Post-Hearing Brief at p. 2, fn. 3.

This grievance arose out of the Company’s decision to convert Route 223 from an RSR route to a to an HWD route. Route 223 had for a long time been a lucrative RSR route held by bargaining unit member DT. In early 2020, DT announced he was transferring to North Carolina. RSRs DB and Grievant MS expressed interest in using their seniority to bid to that route.

However, Company converted Route 223 to an HWD route paid on an hourly basis instead of by commission. Nobody bid for it, so it was assigned to the lowest seniority driver, PRH. Converting Route 223 from an RSR route to a to a HWD route saved the Company approximately \$100,000 per year on wages.

Whether the CBA entitles the Company to make this conversion turns on whether Route 223 had more than twelve “stops” per day. The Company argues that by its definition of a “stop”, Route 223 had no more than twelve stops on any one day even while DT was still driving it. Regardless, when Company converted Route 223 from an RSR route to a to a HWD route, it further reduced the number of “stops” in two ways.

First, it re-assigned certain customer accounts to other routes, and re-assigned certain customer accounts with Route 223 to different days of the week. For example, it moved “HHH 6378092” from Route 223 – Tuesday to Route 223 – Wednesday. The Company argues it has the unilateral authority to make such changes under the CBA’s Management Rights clause of Article 24, and the Union apparently does not contest this authority.

Second, the Company consolidated the stop numbers of several customers. This is reflected in the Route Settlement Sheets before and after the conversion of Route 223. For example, when DT was driving Route 223, customer “JJJ” had eighteen different stop numbers, each of which was associated with a different invoice directed to a different part of the JJJ organization (e.g., “JJJ – Utilities”). However, when PRH drove Route 223 on May 14, 2020, JJJ still had eighteen different invoices directed to those same eighteen different parts of the JJJ organization. This time, however, the invoices are grouped into only three different stop numbers. Compare Union Exhibits 3, 4.1; compare also Company Exhibits 1, 2 (reflecting JJJ consolidated into two rather than three stop numbers).

Witnesses at the arbitration hearing testified that JJJ occupies two buildings immediately adjacent to each other. If the drivers made two physical stops – one at each building – this might explain consolidating into two stop numbers, but it does not explain consolidating into three. Witnesses testified similarly that for some customers, drivers would make several physical stops to different delivery points of the same building – but there was no testimony on this point specifically about JJJ.

II. Issue

Did the Company violate Article 39.03 of the CBA when it converted Route 223 to a Haul Wholesale Driver route?

III. Relevant CBA Provisions

Article 24 – Management Rights

24.01 The Employer has the sole right to manage the affairs of the business, to determine the products, work loads, methods and schedules of operation.

Article 39 – Route Wages

39.01 All commissioned Route Sales Representatives shall have the following commission schedule:

39.02

- a) A Shuttle Driver transports merchandise between Employer locations. ...
- b) The Shuttle Driver shall be paid \$13.25 per hour....

39.03

- a) A Haul Wholesale Driver delivers and picks up merchandise at large customer locations. A Haul Driver shall have no more than twelve (12) stops per day. A Haul Wholesale Driver has no sales quota.
- b) A Haul Wholesale Driver shall be paid on the following hourly wage schedule:
February 11, 2011 - \$14.35 per hour
- c) The Haul Wholesale Driver shall have no more than twelve (12) stops per day. ...

IV. Analysis

The Union argues each different stop number on the Route Settlement Sheet that predated the Company's conversion of Route 223 should be treated as a separate stop for purposes of counting stops under Article 39.03. The Company argues an Article 39.03 stop refers to a visit to a single customer address or location. Both parties make solid arguments to support their positions.

The Union's first argument is that by using the same word "stop" in both Article 39.03 and on Route Settlement Sheets, the parties intended the word to be given the same meaning in each context. Normally I would find this argument highly persuasive. Here, however, the purpose of using the word "stop" in Article 39.03 appears to be different from the purpose of using that same word in Route Settlement Sheets. In Article 39.09, the purpose seems to be to count the number of locations where the driver is to make a delivery, whereas on Route

Settlement Sheets the purpose seems to be to segregate merchandise that is to be delivered at the same physical stop. The Union might rejoin that if the parties had intended a different meaning they would have used different words, but I can't think of a single, simple word that captures the idea of a "stop" as the parties are using it for purposes of Route Settlement Sheets.

The Union's argument also is inconsistent with the regular, colloquial use of the word "stop". It seems inconsistent with the usual meaning of the word "stop" to say that if a driver parks his truck in front of JJJ building #1, and unloads nine bundles of merchandise, the driver has made nine different "stops". If the Union had provided a different example of how the parties had used its definition to interpret Article 39.03 in the past, this would be an easy win for the Union. But the Union hasn't, and I'm reluctant to interpret the CBA's language in a way that seems far removed from normal usage.

The Union's second argument is that Company's proposed methodology for counting "stops" on Route 223 doesn't add up. If it's arbitrary or discretionary, it should not serve as the basis for determining rights under the CBA. The Union uses the customer JJJ as an example, and professes not to understand how Company consolidated the eighteen JJJ invoices into two stops. See Company Ex. 1.

I have already expressed my confusion on how Company consolidated JJJ's invoices into three stops in Union Exhibit 1. However, if the Route 223 driver makes two physical stops for JJJ – one at each of JJJ's buildings – that would be a rational and non-arbitrary basis for saying that eighteen stop numbers equate to two Article 39.03 stops – consistent with Company Exhibits 1 and 2.

The Union's third argument is that stop numbers are a functional sorting mechanism – without them, merchandise from different invoices, which should be sent to different departments of the same customer, are mingled and must later be separated. The Union's definition of "stop" therefore is both functional and rational.

I agree, but this does not necessarily mean that this definition should be imputed to Article 39.03. If anything, the Union's argument makes the case that the number of "stops" for purposes of Article 39.03 should be determined without regard to the number of stop numbers on a Route Settlement Sheet. The Company and drivers alike should be able to use as many stop numbers on Route Settlement Sheet as makes deliveries most efficient, without having to worry whether the way merchandise is segregated for drop-off at a particular delivery point will impact the number of "stops" for purposes of Article 39.03.

The Union's fourth argument is a variant on past practice: "The Company might be right that the Union's definition of the word "stop" is not the best way to define it, but it is the way it has been defined and applied consistently for years. It is on that definition/application that the parties have agreed on how the routes are paid."

It is possible the Union may be correct on this point, but no such evidence has been introduced. Neither side presented evidence on how the parties have defined “stops” for purposes of counting to twelve in prior disputes over whether a route should be designated as RSR or HWD. The parties presented only one dispute over how “stops” are counted under Article 39.03 – this Grievance, where the parties disagree over how a “stop” should be defined. This is insufficient to establish a past practice.

Fifth, the Union argues under the Company’s definition of “stops”, Route 223 would have been an HWD route even when DT was driving it. The Union argues that “[i]t is not credible to believe that the Company had the right to turn this into an hourly route, and save over \$100,000 per year but did not do so.” Instead, the Union argues, Route 223 was an RSR route then and it remains one now.

I disagree. Company General Manager JG testified that although he believed he could have converted Route 223 while DT was driving it, he decided not to do it while an incumbent driver was on the route. This seems to be consistent with the high degree of trust both parties must have with each other in this collective bargaining relationship. For example, both parties assume the Company has the unilateral right to reassign customers among drivers. It would seem fairly easy for the Company to unilaterally reassign customers in a way that converts many if not all RSR routes into HWD routes. The Company might rationally avoid doing so, even if the CBA seems to permit it, with an eye toward maintaining a relatively collegial collective bargaining relationship. Similarly, if the Union’s definition of ‘stop’ were accepted, it would seem fairly easy for drivers to inflate the number of stops by adding additional but unnecessary stop numbers. Such bi-lateral opportunities for abuse seem to have tempered the parties’ technical abilities to behave opportunistically.

On the other side, Company argues an Article 39.03 stop refers to a visit to a single customer address or location. The Union’s witness, Union Steward MS, seemed to echo this definition when he testified on direct examination that a “stop” is a “customer” and acknowledged on cross examination that a “stop” could be an “address” – a “site you’re going to with an account to make a delivery.” This also seems consistent with the colloquial way a “stop” is understood in this context, as a discrete delivery point where a driver is to make a delivery.

Both the Company and the Union accurately provide examples of how the other party’s definition of “stop” is somewhat arbitrary. The Company points out that JJJ’s account had only two stop numbers until JJJ asked that each of its departments be invoiced separately; dividing the deliveries among several invoices changed neither the actual work performed by the RSR nor the number of locations visited. Thus, argues Company, “stops” must mean something other than stop numbers. The Union, conversely, decries the ability of Company to, in its view, convert JJJ’s eighteen stop numbers into two stops, even though the drivers’ workload was unaffected. Thus, argues the Union, “stops” must mean stop numbers.

Both sides are correct. The number of “stops” – however defined – does not accurately reflect a driver’s workload. A driver might have a single “stop” delivering a huge quantity of merchandise, or many stops delivering only a small quantity of merchandise at each stop. Regardless, the parties have chosen to use the number of stops to differentiate a RSR route from an HWD route.

I find that a Company driver makes a “stop” for purposes of Article 39.03 every time s/he puts her/his truck in “park” or turns it off for the purpose of dropping off or picking up merchandise or delivering an invoice for a single customer. A driver may make multiple “stops” for the same customer or street address if there are multiple delivery points, such as different entrances or loading zones for the same building. A driver likewise makes multiple Article 39.03 stops, even if there is only one physical stop, if the driver is delivering to multiple customers in the same location, such as different stores located inside the same indoor shopping mall. However, the mere existence of different invoices for the same customer or delivery point does not by itself establish multiple stops, regardless of the number of invoices or the quantity of merchandise delivered.

Applying this definition to the current Grievance, I find that Company Route 223 did not have more than twelve stops per day on any day, and that the grievance should be dismissed. Company Exhibits 1 and 2 appear to reflect Company counting each physical address as one “stop”, and counting the same customer as having multiple “stops” if that customer has multiple street addresses as delivery points, as with the deliveries to two distinct JJJ buildings. These exhibits also appear to reflect Company counting the same customer as having multiple “stops” if that customer has multiple delivery points to the same street address, as with what appears to be two different delivery points to “MegaStore #1243”. If I am wrong on this point, and if the number of multiple delivery points to the same physical address arguably raises the number of Route 223 stops beyond twelve, the Union is free to petition me for a re-calculation.

VII. Award

For the reasons described above, the Grievance is denied. I retain jurisdiction for the limited purpose of resolving any disputes the parties may have about applying or interpreting this Award.



January 26, 2021