



SPECIAL EDITION

Arbitrator Rules in Favor of IAM on Subcontracting

On January 13, 2014, a neutral arbitrator issued his Decision and Award in favor of the IAM. The award is a major win and should result in a huge back pay recovery.

The primary issues before the Arbitrator were whether Auto Truck Transport violated various provisions of the Collective Bargaining Agreement and/or established practices by (1) using Non-Bargaining Unit Drivers to perform Bargaining Unit work; (2) failing to follow the Master Dispatch Procedure; (3) not giving Unit Drivers choice of Loads and preferential dispatch in accordance with Article 19, Sections 2(a) and 2(b); (4) repeated noncompliance with the Section 2(c) requirement to consult with the Union designee and (5) in the course of pairing and assigning Loads, not dispatching from a single Board and/or giving Bargaining Unit Drivers the longer and/or more lucrative Loads to the maximum extent practicable.

Hearings in this matter were conducted by the Arbitrator in Charlotte, North Carolina and Chicago, Illinois on 14 hearing dates over an almost two-year period: August 9th, 24th and 25th in 2011; July 10th, 11th, 12th and October 9th, 10th, 23rd, 24th and 25th in 2012; February 19th, 20th and June 11th in 2013.

Boysen Anderson, Director of the IAM Auto-

motive Department and Attorney Rod Tanner presented the Union's case. The arbitrator's decision and award consists of 75 pages.

This case would not have been won without the testimony of clerical employees Aletha Dudley and Sophie Probst who provided credible uncontested testimony and Union Stewards Philip Calloway, Steve Campbell and Don Magill and Business Representative Mark Hammond.

The Arbitrator found all to be credible during their testimony. When you see these Sisters and Brothers please acknowledge them for a job well done.

The IAM will aggressively recover every penny owed per the Award. The Arbitrator will retain jurisdiction for 120 days in order to monitor compliance relating to the remedies.

The Award section of the decision is attached and available at: <http://bit.ly/CoxAward>.

IAM Strike Authorization Vote

The IAM will hold a Strike Authorization Vote.

The Strike Authorization Vote is an important step to take action against Auto Truck Transport for breaching of provisions of the Agreement.

THE AWARD

As the analysis indicates, during the term of the 2010 Agreement, ATT violated a number of Contract provisions including Article 2, Section 1, the Recognition Clause; Article 3, Section 3, Seniority and Transferability; Article 6, The Master Dispatch Procedure, and Sub-Contracting prohibitions in Article 19, especially Sections 2 (a), (b) and (c).

Loss of Short Board Work

As reviewed above, there is insufficient evidence that ATT had been responsible for Daimler's decision to discontinue using them for work being performed by Bargaining Unit Employees assigned to the Short Board. The circumstances of the cancellation of ATT's authority to run the Short Board at Cleveland were, at best, "sketchy" considering (a) Scott Vallier's testimony that he was negotiating without knowledge of contract provisions, (b) ATT failures to provide the ATT/Daimler Agreement or the asserted underlying Contract Daimler has with Unimark to which Addendum F was purportedly a part and (3) the vagaries and inconsistencies in that Addendum. The evidence regarding the Short Board was far from, as ATT characterizes it , *"unambiguous and concise"*.

As far as the evidence here provided, JHT Holdings and its subsidiaries Auto Truck Transport (ATT) and Unimark Truck Transport LLC, are separate corporate entities operating independently of Daimler Trucks North America LLC. There was no evidence that JHT or any of its affiliates had played any role in Daimler's decision to discontinue using ATT for the shorter run traffic moved on the Short Board at the Cleveland Terminal. There no showing that ATT, JHT or any affiliates contributed to Daimler's retention of Unimark to do the work previously performed by Bargaining Unit Drivers. For these and reasons discussed above, I do not find that ATT violated any provision of their Agreement in the course of the process through which ATT lost and Unimark acquired the Short Board Work. The Grievance is denied with respect to the loss of the Short Board Work, but only that Work.

Short Radius Driving remains Cleveland Shuttler Work

I find that runs within a 100 mile radius of the Terminal previously exclusively performed by Bargaining Unit Cleveland Shuttle Employees remains a part of ATT Bargaining Unit Work. ATT had no basis to allow of facilitate its affiliate Unimark's performance of that work.

In 2004, ATT and the IAM had reached an agreement that such Shuttle work would be performed by Bargaining Unit Employees in an independent work group. It would be a bid job. The fact those in that classification may have moved a Load within a 100 radius of the Cleveland Terminal did not make such work a part of the Short Board Work Unit which had been created in 2008 without any effect on Shuttle Driving and was handled by Calloway, determining from an unpaired list of Loads, which would be handled by the Short Board.

An examination of ATT and Daimler discussions as well as a review of their correspondence does not establish Daimler intent to remove any part of Cleveland Shuttler work from ATT. Short runs Shuttler's make as an integral part of their work assignments were not discussed. Only Short Board costs had been the subject of negotiations between ATT and Daimler. Vallier acknowledged not having knowledge of the Daimler/ATT Agreement or any provisions dealing with ATT Shuttler and/or Short Board work and no Daimler Representative testified. As far as the evidence indicates, the focus of Daimler rate discussions with Scott Vallier had been exclusively on the Short Board with no mention of the incidental work that the Shuttlers may perform within a limited radius from the Terminal. Such work was not shown to have been within the purview of traffic taken from ATT. Shuttlers continue to provide basic services to Daimler in and around the Terminal and ATT did not have any basis for circumscribing the driving work they had historically performed. Shuttler work assignments to drive were removed from their classification without contractual or legitimate business reasons.

The evidence of how the Daimler/ATT Contract had been amended was, at best, vague. In an effort to clarify Daimler's intent and what work they had

removed, Mike Minton was called to explain the new work Unimark had obtained. He was unable to do so, not having been involved. He offered only Addendum F as evidence of the work acquired and its terms do not appear relevant.

The evidence established with certainty that rates for Short Board work were the issue. There was no evidence there has been any transfer of work between 301 miles and further despite the mention in F. Runs in that range, like the 100 mile radius work for Shuttlers, had never been Short Board Work. In fact, the 301 to 500 mile work mentioned in F has not been thereafter performed by Unimark, consistent with the concept that only the Runs Short Board Drivers had were intended to be taken from ATT.

The Collective Bargaining Agreement covers the work, including incidental driving, that Shuttlers have historically performed within that classification. The extent to which Shuttler 's perform driving work at other ATT locations was not shown. It appears that only at Cleveland was there any driving work removed from that Classification despite the scope of the National Agreement. There was no evidence of any change in the work of the Shuttler Classification or their compensation except at Cleveland where it had been a long practice to operate such trips within the 100 mile radius. There was no evidence of any Daimler intent to remove any aspect of Shuttler work from their Contract with ATT.⁵⁵

Unlike discontinuation of the Short Board Operation, ATT did not have cause for the unilateral withdraw of short radius Driver Work from the Shuttler Classification at Cleveland. The evidence established cause for the close down of the Short Board based upon the cancellation of that Work assignment to ATT by Customer Daimler. On the other hand, there is no evidence that there had been a similar external reason from the removal of short radius work from the Shuttler Classification. There is a no evidence that Shuttler work had ever been part of the "*Short Board*" work in Cleveland lost as a result of Freightliner awarding that work to Unimark. It still belongs to ATT and remains bargaining unit work.

All Cleveland Shuttlers shall be made whole for loss of pay and benefits arising from the removal of that short radius driving work from their classification and that work is to be returned to that Classification. ATT is to offer reinstatement to any Shuttler displaced and make all Shuttlers whole for any loss of wages or benefits.

Subcontracting the Texas Shuttle

There is no question that there had been available Bargaining Unit Employees both (1) at the time of the initial Shuttle subcontracting during the January through May 2011 period through Shuttler Drivers reinstatement in October 2012 and then (2) subsequently when Shuttle Drivers work was again subcontracted in late fall 2012. It is my understanding that Subcontracting continued at least through the 2013 Hearings. There was no basis shown for that subcontracting which, ATT states in their Brief, began in November 2012. The contention that ATT needed Road Drivers but not equally qualified Shuttler Drivers was not established. No records of hiring efforts during these periods were provided. The fact that ATT selected the alternative of transferring qualified personnel who were Shuttlers to work on the Road delivering decked Loads during a period when there had been an urgent need for Road Driver services does not justify that subcontracting. There was no evidence of any effort to hire during the several months of the initial period of Subcontracting to Unimark or any justification for subcontracting en masse to cure a short term problem. While individual Subcontractor personnel were not used was not addressed.

There were both Drivers and Yard employees qualified and available to perform the Texas Shuttle work when it was subcontracted to Unimark not long after ATT employees had been removed from Texan Shuttle work and assigned to Road Driving. The subcontractors filled jobs which had been Bargaining Unit work in violation of Article 19 provisions which, among other conditions, restricts ATT from subcontracting work that member(s) of the Bargaining Unit were available to perform. Furthermore, as the Union points out, Article 3, Section 3 requires current unit employees be given an opportunity to transfer to a new business operation before it can properly be subcontracted.