Arbitration Decisions

Labor Arbitration Decision, Job Options, Inc., 2022 BL 190193, 2022 BNA LA 130

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LABOR ARBITRATION TRIBUNAL

In the Matter of:

Teamsters, Chauffeurs, Warehousemen, Industrial and Allied Workers of America, Local 166,

Union,

and

Job Options, Inc.,

Employer.

Holiday Pay

Arbitrator Lee Hornberger

DECISION AND AWARD

April 25, 2022

Hide Summary

BNA Headnotes

LABOR ARBITRATION

SUMMARY

[1] Wages - Holiday recognized - Holiday pay - Plain meaning ►116.101 ►116.1031 ►24.15 [Show Topic Path]
Arbitrator Lee Hornberger ruled that Job Options, Inc, a federal contractor providing services for the U.S. Army Medical Command at Fort Irwin, didn't violate its CBA when it failed to grant Juneteenth as a holiday to be observed on Friday June 18, 2021, even though President Biden and Congress recognized it as federal holiday the previous day. The CBA unambiguously provides that employees shall be granted, "subject to the approval of the [c]ontracting [o]officer," any holiday established by Congress or the President, and the CO didn't authorize the holiday for 2018. Neither a statement from a contracting officer representative junior to the CO that allegedly implied approval of the new holiday, nor the fact that a subcontractor used by the employer paid its employees double time for working on Juneteenth, establishes such approval. The contracting officer representative isn't authorized to approve a new holiday, he didn't clearly do so, and the subcontractor is a distinct entity from the employer.

APPEARANCES

For the Union:

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For the Employer:

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INTRODUCTION

This arbitration arises pursuant to a Collective Bargaining Agreement (CBA) between the Teamsters, Chauffeurs, Warehousemen, Industrial and Allied Workers of America, Local 166 (Union) and Job Options, Inc. (Employer). The CBA also covers ADE Global Management Systems (ADE), a subcontractor utilized by the Employer. The Union contends that the Employer violated CBA Art. 15 by not granting Juneteenth as a holiday on June 18, 2021. The Employer maintains that it did not violate the CBA when it did not grant Juneteenth as a holiday on June 18, 2021.

Pursuant to the procedures of the CBA, I was selected by the parties to conduct a hearing and render a final and binding arbitration award. The hearing was held on March 8, 2022, in Fort Irwin, California, via Zoom. At the hearing, the parties were afforded the opportunity for examination and cross-examination of witnesses and for introduction of relevant exhibits. The hearing was transcribed. The transcript was received by me on March 17, 2022. The dispute was deemed submitted on April 15, 2022, the date the post-hearing submissions were received.

The parties stipulated that the grievance and arbitration were timely and properly before me, and that I could determine the issues to be resolved in the instant arbitration after receiving the evidence and arguments presented.

The advocates did an excellent job of presenting their respective cases.

ISSUE

The parties stipulated that the issue to be resolved in the instant arbitration is:

Whether the Employer violated CBA Art. 15 by not granting Juneteenth as a holiday on June 18, 2021; and, if so, what shall be the remedy?

RELEVANT CONTRACTUAL LANGUAGE

ARTICLE 15.00.00 — HOLIDAYS

15.01.00 The following eleven (11) days are designated as holidays

New Year's Day	Martin Luther King, Jr.'s Birthday
Presidents Day	Memorial Day
Independence Day	Labor Day
Columbus Day	Veteran's Day
Thanksgiving Day	Christmas Day
Employee's Birthday	

In addition to these holidays, employees shall be granted, subject to the approval of the Contracting Officer, any holiday that may hereinafter be established by an Act of Congress of the United States or by Proclamation of the President of the United States. ...

ARTICLE 29.00.00 — ARBITRATION . . .

29.04.00 The decision of the arbitrator, upon the matter submitted, shall be final, conclusive, and binding upon JOI and the Union, provided that the arbitrator shall not have the authority to change, alter, or modify any of the terms or provisions of this Agreement.

29.05.00 All expenses incurred and approved by JOI and the Union necessary for the considerations and decision of grievances or dispute submitted to it shall be borne by and divided equally. All fees and expenses of the arbitrator[*2] shall be borne by the party against[*2] whom the arbitrator rules.

29.06.00 If there is any question as to which is the losing party, or if a case is referred back to the parties without decision, or if there are decisions against more

than one of the parties to the arbitration, the arbitrator is authorized and requested to determine who shall pay the fees and may in such case order a sharing of such fees. In such an event the decision of the arbitrator will be binding. . . .

29.08.00 Each decision of the arbitrator shall be made in writing and a copy of each sent to the interested parties, including separate copies to the Union and JOI. The determinations of the arbitrator within the purview of his authority are final and binding. There shall be no appeal.

REVIEW OF THE FACTUAL PRESENTATIONS

Introduction

The Employer is a federal contractor that provides a broad range of services, including custodial or housekeeping services and grounds maintenance. The Employer has been retained by MEDCOM to provide services at Fort Irwin, California. The parties' CBA covers the terms and conditions of employment for the Employer's employees working at Fort Irwin. Many of the employees provide services at the hospital at Fort Irwin. The hospital at Fort Irwin operates twenty-four hours per day. There is employee coverage during all hours of the day. The Employer has subcontracted work at Fort Irwin to ADE, which is also a signatory to the CBA.

Juneteenth

On June 17, 2021, President Biden signed S. 745, an Act of Congress proclaiming that Juneteenth would be recognized as a federal holiday beginning immediately on June 19, 2021. Juneteenth is on the anniversary date of the June 19, 1865, announcement of General Order No. 3 by Union Army General Gordon Granger, proclaiming freedom for enslaved people in Texas.

Because June 19, 2021 fell on a Saturday, the legislation required that federal employees receive a holiday on the closest Friday or Monday before or after the holiday. Therefore, the federal holiday would be observed on the preceding Friday, June 18, 2021.

Later on June 17, 2021, Chief, Environmental Services for MEDCOM Matthew Mitchell advised the Employer that MEDCOM would consider the following day, Friday, June 18, 2021, to be a holiday for MEDCOM. He directed the Employer, "Please make arrangements to have everything completed as you would on a normal holiday, and please let me know if you have any questions."

Grievant

Grievant has been employed by the Employer in Housekeeping at the Fort Irwin Medical Facility since 2013. She worked on June 18, 2021. Other employees did not come to work that day. Grievant was not paid holiday pay for that day. She filed a Grievance because she was not paid holiday pay. She does not think other employees of the Employer were paid holiday pay for June 18, 2021.

ADE employee Ann Sturgis

Ann Sturgis is employed by ADE. ADE is a subcontractor of the Employer. Sturgis' supervisor is an employee of ADE. Sturgis worked on June 18, 2021. She was paid holiday[*3] pay. Other ADE employees had the day off. Sturgis found[*3] out on that day that it was a holiday from COR Mitchell. Sturgis' Supervisor is employed via the Employer. The Supervisor has stated she works for the Employer. Sturgis does not know if Mitchell is the CO. Mitchell used to be Project Officer for the Employer. Mitchell had been Sturgis' supervisor. Mitchell told Sturgis she would receive holiday pay under the same CBA as Grievant.

Sturgis testified that,

> Q. ... Matt Mitchell, his title, his COR, which I believe stands for contracting officer's representative; is that correct?
>
> A. I believe so, yes. Tr. 29/6-9.

Union Business Agent Eric Hug

Eric Hug has been the Union Business Agent (BA) since 2018. If an employee works on a holiday, the employee is paid double time. Grievant contacted BA Hug. BA Hug reached out to the Employer. There was email traffic. COR Mitchell represents the Federal government.

Eventually the Employer said Grievant was not getting paid for the holiday. The Employer did not pay for holiday pay for that day. BA Hug does not know if ADE asked for

permission from the Employer to pay holiday pay.

BA Hug testified that,

> A. Matt Mitchell is a contracting operations representative. So he represents the government.
> He over — he oversees — makes sure that Job Options and ADE is performing the work they're supposed to be performing. Tr. 36/7-11.

BA Hug further testified that,

> Q. To your knowledge, the contracting officer is Maria Cachola; correct?
> A. Yes. ... . Tr. 47/18-20.

Contract Manager Daniel Torres

Contract Manager Daniel Torres has been an employee of the Employer for approximately three years. He has been the Contract Manager three years. There is a contract between the Employer and MEDCOM. Torres overseas the contract between the U.S. Army and MEDCOM. The CO is Patricia Cachola. Mitchell reports to the CO. ADE is a subcontractor of the Employer. No one from ADE asked the Employer for approval to pay holiday pay.

Torres testified that:

> Q. Did Ms. Cachola ever advise you that Medcom approved of adding Juneteenth as a holiday to the existing collective bargaining agreement between JOI and the [T]eamsters?
>
> A. No. Tr. 57/18-22.

July 15, 2022, Grievance

Following the filing of the grievance, Torres reached out to CO Cachola for clarification on COR Mitchell's June 17, 2021, email and whether CO Cachola, as Contracting Officer, approved June 18, 2021, as a holiday pursuant to CBA Sec 15.01.00. His July 19, 2021, email to CO Cachola said.

Hello Ms. Cachola,

> I want to follow up on [Mitchell's June 17, 2021] email for some clarification. Does that mean that our contract is going to be modified to include the additional holiday pay?

CO Cachola responded, "We have received no guidance on the subject. For now, a modification is not required. Thank you!"

March 8, 2022, arbitration hearing

The Union requested to have the Grievance submitted to arbitration. The hearing was held on March 8, 2022.

CONTENTIONS[*4] OF THE PARTIES

a. For the Union

The Union contends that the Employer's[*4] initial denial of holiday pay apparently stemmed from an email it received from Cachola, indicating that she had not received guidance on the subject and that for the time being the Employer would not need to modify its contract. On this basis, the Employer concluded that it had not received "approval of the Contracting Officer" under Art. 15 to grant the Juneteenth holiday. This communication with the CO came over a month after Mitchell, in his capacity as the COR, sent instruction to the Employer that June 18 would be considered a federal holiday to commemorate Juneteenth and to make arrangements as they would on a normal holiday. Cachola and several others from the U.S. Army MEDCOM were copied on that email, which was never contradicted by anyone. From that basis, even if the Employer had not strictly received a communication from Cachola authorizing it to treat Juneteenth as a holiday, the totality of the circumstances from the uncontradicted statements from Mitchell indicate that it either would have had that authorization or would have received it shortly thereafter. Even after multiple discussions on this issue between the Employer and the Union, the Employer still never followed up with Cachola or Mitchell to get further clarification on the subject. The Employer should not be able to claim that it received no authorization when it did not follow up on the issue beyond the one inconclusive email.

That ADE, a subcontractor of the Employer and signatory to the same CBA, did in fact pay its employees double pay on June 18 pursuant to Art. 15 further undercuts the Employer's claims that it did not know if it had received authorization for that payment. As Union Business

Representative Eric Hug testified, confirmed by Employer Contracts Manager Daniel Torres, ADE could not have authorized new holiday pay on its own, but would have had to receive authorization from someone in the U.S. Army MEDCOM. Sturgis testified that this authorization came from Mitchell, a claim not disputed by any side. As the Employer and ADE shared the same CO and COR, it can be reasonably inferred that ADE either received explicit approval for double pay or did not receive any kind of contradicting guidance.

The conversations between the Union, the Employer, Mitchell, and Cachola indicate that Juneteenth had been authorized as a holiday and that there was some question as to whether the Employer's contract would need a modification in order to cover the holiday, a question on which the Employer never bothered to follow up. Furthermore, Employer's subcontractor ADE did apparently receive authorization to pay their employees double holiday pay pursuant to the[*5] CBA, which was confirmed by Mitchell. The totality of the circumstances demonstrate that the Employer was authorized to provide holiday pay to employees, and it was their lack[*5] of effort in obtaining explicit clarification from Cachola and Mitchell that led them to believe they lacked authorization. On this basis, the Employer violated CBA Art. 15. The Union requests the Arbitrator award double pay pursuant to Art. 15.04.00 to all bargaining unit members, including Grievant, who worked for the Employer on June 18, 2021, as well as regular holiday pay for nonworking employees pursuant to Art. 15.03.02.

b. For the Employer

The Employer contends this case involves the Employer not providing its employees holiday pay for June 18, 2021, which was declared a federal holiday by Congress in honor of Juneteenth. The Union contends that the CBA compels the Employer to provide holiday pay for that date even though CBA Sec. 15 requires that any newly-established holiday be approved by the Contracting Officer, which did not occur in this case. Because the Contracting Officer of the United States Army Medical Command at Fort Irwin (MEDCOM) did not approve of the addition of Juneteenth as a holiday covered by CBA Art. 15, the Employer was under no obligation to treat June 18, 2021 as a paid holiday.

The CBA clearly and unambiguously requires that the grievance be denied. CBA Sec. 15 provides:

> In addition to [the eleven enumerated holidays designated in the CBA], employees shall be granted, subject to the approval of the Contracting Officer, any holiday that may hereinafter be established by an Act of Congress of the United States or by Proclamation of the President of the United States. CBA, p. 18.

The CBA requires that all new or additional holidays be approved by the Contracting Officer. MEDCOM's CO, Cachola, undisputedly advised the Employer that the contract between MEDCOM and the Employer (and, by extension, the CBA) need not be modified to account for Juneteenth as a paid holiday. The Employer had no duty to provide employees with holiday pay benefits for June 18, 2021. By bringing this grievance and demanding that the Employer provide holiday pay for Juneteenth, the Union is effectively asking the Arbitrator to modify Sec. 15's requirement that new holidays be approved by the CO, which the Arbitrator may not do.

The Union contends that Matthew Mitchell of MEDCOM was authorized to approve the holiday and he did so. The evidence demonstrates otherwise. Cachola, not Mitchell, was the CO. There is nothing in the record that suggests that COR Mitchell is authorized to supersede the commands and directives of CO Cachola, his superior.

The Union claims that the fact that ADE, an Employer subcontractor and party to the CBA, paid its employees holiday pay is dispositive. The mere fact that ADE chose to provide its own employees such pay does not establish that the CBA required the Employer or ADE to provide holiday pay benefits. ADE's actions are not binding on the Employer.

The[*6] Union contends that the Employer profited off of the fact that its employees did not need to work on June 18,[*6] 2021, pursuant to MEDCOM's instruction. The mere fact that MEDCOM did not require the employees' service on that day does not entitle the employees to holiday pay. The CBA makes it clear that the right to a paid holiday only arises if there is approval from the CO, which there was not in this instance. The Union's claim that the Employer profited due to some of its employees not working at Fort Irwin on June 18, 2021 is unfounded as the Union is not privy to the Employer's financials. Despite a handful of employees not being required to report for work on June 18, 2021, due to several outlying clinic closures, other employees, including Grievant, were required to report for work as the Army Medical Command at Fort Irwin is a hospital which requires services twenty-four hours per day, seven days per week.

The Arbitrator must deny the Union's grievance in its entirety.

DISCUSSION AND DECISION

The instant case involves a contract interpretation in which I am called upon to determine the meaning of some portion of the CBA between the parties. I may refer to sources other than the CBA for enlightenment as to the meaning of various provisions of the CBA. My essential role, however, is to interpret the language of the CBA with a view to determining what the parties intended when they bargained for the disputed provisions of the CBA. Indeed, the validity of the award is dependent upon my drawing the essence of the award from the plain language of the CBA. It is not for me to fashion my own brand of workplace justice nor to add to or delete language from the CBA.

In determining the meaning of the instant CBA, then, I draw the essence of the meaning of the CBA from the terms of the CBA of the parties. Central to the resolution of any contract

application dispute is a determination of the parties' intent as to specific contract provisions. In undertaking this analysis, I will first examine the language used by the parties. If the language is ambiguous, I will assess comments made when the bargain was reached, assuming there is evidence on the subject. In addition, I will examine previous practice by the parties related to the subject. When direct evidence is not available, circumstantial evidence may be determinative.

This is a contract interpretation case. The basic issue revolves around whether the Employer violated CBA Art. 15 by not granting Juneteenth as a holiday on June 18, 2021. The Union maintains that the Employer violated CBA Art. 15 by not granting Juneteenth as a holiday on June 18, 2021. The Employer maintains that it did not violate the CBA when it did not grant Juneteenth as a holiday on June 18, 2021.

This is an important case for both parties. Holiday pay is important to the Employer for production, mission accomplishment, morale, integrity of the CBA, and managerial reasons. Holiday pay is important to the[*7] Union for predictability, self-esteem, quality of life, integrity[*7] of the CBA, and morale.

I conclude the Employer did not violate the CBA when it did not grant Juneteenth as a holiday on June 18, 2021.

Burden of proof

The burden lies with the Union to identify a CBA provision which prohibited the Employer from acting as it did. *Reynolds Metal Co.*, *62 LA 695* (Volz, 1974). Abrams, *Inside Arbitration* (2013), pp. 246-247 and 301-303. In alleging a violation of a CBA, the Union has to prove by a preponderance of the evidence that a violation occurred. *Steamboat Ski & Resort Corp.*, **139 LA 693** (Bonney, 2019).

General overview

The CBA says,

> In addition to [the eleven enumerated holidays designated in the CBA], employees shall be granted, **subject to the approval of the Contracting Officer**, any holiday that may hereinafter be established by an Act of Congress of the United States or by Proclamation of the President of the United States. CBA, p. 18. Emphasis added. ...
>
> [T]he arbitrator shall not have the authority to change, alter, or modify any of the terms or provisions of this Agreement. CBA, p. 36.

There is no negotiating history. Elkouri & Elkouri, pp. 9-26 to 9-31.

There is no past practice. *Id.* at pp. 9-33 to 9-33.

All of the witnesses testified honestly and to the best of their recollections. The good faith testimony of the witnesses does not resolve whether the Employer violated Art. 15 by not granting Juneteenth as a holiday on June 18, 2021. This means I have to go the CBA language which says, "subject to the approval of the Contracting Officer ... ."

> The primary rule in construing a written instrument is to determine, not alone from a single word or phrase, but from the instrument as a whole, the true intent of the parties, and to interpret the meaning of a questioned word, or part, with regard to the connection in which it is used, the subject matter and its relation to all other parts or provisions. *Riley Stoker Corp*, *7 LA 764, 767* (Platt, 1947).

All words of the CBA have to be given meaning. "Ordinarily, all words used in an agreement should be given effect. The fact that a word is used indicates that the parties intended it to have some meaning ... ." Elkouri & Elkouri,, p. 9-36. Each word and phrase of a CBA is to be given meaning. The phrase "subject to the approval of the Contracting Officer" must have been put in the CBA for a reason. If the parties had wanted to say, "subject to the approval of the Contracting Officer or the Contracting Officer Representative," they could have. They did not. Elkouri and Elkouri, pp. 9-26 to 9-31. I do "not have the authority to change, alter, or modify any of the terms or provisions of this Agreement." CBA, p. 36.

If CBA wording is clear and definite, clear language should be enforced. In cases where the language is clear and unambiguous, arbitrators are generally unlikely to consider extrinsic forms of evidence such as the intent of the parties, bargaining notes or history, or practices. *Champion Int'l Corp.*, *85 LA 877, 880* (Allen, 1985); and Elkouri & Elkouri, (2014 Supp), p. 59. Words should be given their ordinary and popularly accepted meaning in the absence of anything indicating that they were used in a different sense[*8] or that the parties intended some special or technical meaning.

> It is axiomatic in contract construction that[*8] an interpretation that tends to nullify or render meaningless any part of the contract should be avoided because of the general presumption that the parties do not carefully write into a solemnly negotiated agreement words intended to have no effect. *John Deere Tractor Co.*, *5 LA 631, 632* (Updegraff, 1946)
>
> It has been indicated that:

> Although [I] may use [my] expertise in interpreting and applying the contractual provisions, [I] cannot substitute [my] own sense of equity and justice but the award must be grounded in the terms of the agreement. To do otherwise would, in effect, be to change or alter the agreement through indirection. This [I] cannot, and should not do in the interest of *all* parties and the collective bargaining process. In other words, it is the [my] duty ... to interpret the contract as precisely as [I] can, and not to rewrite it. *Johnston-Tombigbee Mfg Co.*, **113 LA 1015, 1020** (Howell, 2000). Emphasis in original.

The significant emails from the Exh. 3 email chain are quoted below.

June 17, 2021, COR Mitchell email to the Employer and others,

> We just received notification that tomorrow 18 June 2021, will be considered a Federal Holiday observed by USAMEDCOM to commemorate Juneteenth. Please make arrangements to have everything completed as you would on a normal holiday, and please let me know if you have any questions.

July 19, 2021, Contract Manager Torres email to CO Cachola,

> Hello Ms. Cachola,
>
> I want to follow up on [Matthew Mitchell's June 17, 2021] email for some clarification. Does that mean that our contract is going to be modified to include the additional holiday pay?

July 19, 2021, CO Cachola email response,

> We have received no guidance on the subject. For now, a modification is not required. Thank you!

July 19, 2022, the Employer's Human Resources Director Anderson email,

> ... The KO didn't authorize the time off and we will not be paid for the day so [the Employer's] stance remains the same. Employees will not be paid for the time off this year but will begin next year. ... .

The email chain does not show that there was "approval of the Contracting Officer."

The Union has made several additional serious arguments. I have seriously considered each of these arguments.

The Union argues that the Employer should not be able to claim that it received no authorization when it did not follow up on the issue beyond the one inconclusive email. This argument does not control. COR Mitchell is not the Contracting Officer. CO Cachola is the Contracting Officer. COR Mitchell reports to CO Cachola. COR Mitchell is not vested with the authority to approve new holidays pursuant to Sec. 15. Even assuming COR Mitchell had such authority, he did not approve of the Employer adding June 18, 2021, as a holiday for which the Employer's employees would be entitled to holiday pay. He merely advised that the day "will be considered a Federal Holiday observed by USAMEDCOM**[*9]** to commemorate Juneteenth." He requested that the Employer "make arrangements to have everything completed as [it] would on a normal holiday" and let him know if the Employer**[*9]** had any questions. COR Mitchell did not direct the Employer to consider June 18, 2021, as a holiday for purposes of the CBA.

The Union argues that subcontractor ADE paying its employees double pay on June 18 pursuant to Art. 15.04.00 undercuts the Employer's claims that it did not know if it had received authorization for that payment. This argument does not control. **A**DE decided to provide its employees with holiday pay for June 18, 2021. This has no bearing on whether the CBA required the Employer to pay holiday pay. The Employer and ADE are different entities. ADE apparently did not ask the Employer whether the Employer would approve ADE providing holiday pay benefits for June 18, 2021. ADE paying holiday pay does not prove that CO Cachola issued the CBA required "approval" that the Employer pay holiday pay to its own employees.

The Union argues that as the Employer and ADE shared the same CO and COR, it can be reasonably inferred that ADE either received explicit approval for double pay or did not receive any kind of contradicting guidance. This argument does not control. The fact that ADE paid its own employees holiday pay does not establish that the CBA required the Employer to provide holiday pay. ADE's actions on the issue before me are not binding on the Employer.

The Union argues that the totality of the circumstances demonstrate that the Employer was authorized to provide holiday pay to employees, and it was the Employer's lack of effort in obtaining explicit clarification from CO Cachola and COR Mitchell that led the Employer to believe it lacked authorization. This argument does not control. CO Cachola, not COR Mitchell, was the Contracting Officer. There is nothing in the record that suggests that COR Mitchell was authorized to supersede the directives of CO Cachola. Since there was no "approval of the Contracting Officer," the Employer was not obligated to pay the holiday pay in question or seek clarification.

The crucial points in this case include:

1. CO Cachola, not COR Mitchell, was the Contracting Officer,
2. there was no "approval of the Contracting Officer,"
3. clear and unambiguous language that is interpreted consistent with the parties' intent as reflected by clear and explicit terms,
4. ordinary meaning given to words unless they are clearly used otherwise,
5. the totality of the circumstances, and

6. the wording of the CBA.

In conclusion, the Employer did not violate CBA Art. 15 by not granting Juneteenth as a holiday on June 18, 2021

This decision neither addresses nor decides issues not raised by the parties.

8. AWARD

Having heard or read and carefully reviewed the evidence and argumentative materials in this case and in light of the above discussion, I deny the Grievance.

LEE HORNBERGER
Arbitrator
Traverse City, Michigan

Dated: April 25,[*10] 2022