ARBITRATION DECISION NO.:
351

UNION:
OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:
Department of Rehabilitation
and Correction
Orient Correctional Institution

DATE OF ARBITRATION:
May 14, 1991

DATE OF DECISION:
June 3, 1991

GRIEVANT:
Mike Kvarness

OCB GRIEVANCE NO.:
27-21-(88-09-08)-0030-01-03

ARBITRATOR:
David Pincus

FOR THE UNION:
John Fisher
Staff Representative
Dennis Williams
Staff Representative

FOR THE EMPLOYER:
Jim Swyers
Advocate
Meril Price
Second Chair

KEY WORDS:
Payment for Travel Time
Arbitrability
Mileage Reimbursement
Report-In Location

ARTICLES:
Article 2-Non-Discrimination
§2.01-Non-Discrimination
§2.02-Agreement Rights
Article 13-Work Week,
Schedules and Overtime

§13.06-Report-In Locations
Article 25-Grievance Procedure
§25.02-Grievance Steps
§25.03-Arbitration Procedures
§25.05-Time Limits
Article 32-Travel
§32.02-Personal Vehicle

FACTS:

The grievant had served as a Corrections Officer at Orient Correctional Institution since January 21, 1986. Prior to 1986, Correction Officers assigned to hospital assignments were initially required to report to the facility. They were then transported as a group to their hospital assignments. For a variety of unspecified reasons, the employer decided to change its staffing strategy. Correction Officers were required to report directly to their hospital assignment. These assignments, however, necessitated the use of personal vehicles and added some travel time to certain officers' routes because of the change in report-in location.

The parties negotiated an initial Collective Bargaining Agreement which became effective on July 1, 1986 and contained provisions which dealt with Report-In Locations (Section 13.06) and use of Personal Vehicles (Section 32.02).

The grievant allegedly filed a grievance concerning the application of Sections 13.06 and 32.02 in October of 1986. He maintained that the grievance was never discussed with employer representatives subsequent to the formal submission date.

On March 1, 1987, the grievant filed another grievance which alleged a violation of Section 32.02. In evaluating the propriety of the grievance, the employer proposed a settlement offer which applied newly made guidelines regarding Sections 32.02 and 13.06 to a ten-day period prior to the filing of the grievance.

On May 4, 1987, through the Step 2 response, the employer offered its settlement. There was controversy concerning the nature of the Step 2 response. The employer asserted that the grievant and the union agreed to settle the dispute by agreeing to its terms. The grievant, however, admitted that he submitted vouchers for the ten-day period and was compensated accordingly. He did maintain that he advised the union to pursue the matter regarding ten unpaid portion of his complaint in subsequent stages of the grievance procedure.

On or about May 23, 1988, the grievant submitted a series of mileage and travel time requests which were disapproved on June 13, 1988. The employer testified that even though a travel pay voucher policy had been established as a consequence of the Step 2 response to the grievance, there seemed to be some Confusion regarding the reimbursement policy. As a consequence, a meeting was held with all affected employees and a memo was written which extended the reimbursement period.

As a result of the employer's memo, a grievance was filed on behalf of the grievant on September 6, 1988. It alleged a violation of Section 32.02 and Section 2.02. The grievance was denied at all levels.

UNION'S POSITION:

The position of the union was that the second grievance was filed in a timely fashion and is arbitrable. The union admitted that the grievant accepted the employer's ten-day offer in response to the claim concerning the first grievance. He never, however, waived his right to seek redress regarding the remaining days being grieved, and the associated reimbursements. The ten-day remedy never entirely resolved the matter. In fact, the grievant assumed that the grievance was to be forwarded by the Union to Step 3.

EMPLOYER'S POSITION:

The employer asserted that the Step 2 response to the initial grievance amounted to a settlement

mutually agreed to by the parties and the grievant. As such, the union was estopped from filing an identical claim later. The employer also alleged other timeliness deficiencies which made the grievance not arbitrable.

ARBITRATOR'S OPINION:

From the evidence and testimony introduced at the hearing, it was the Arbitrator's opinion that the grievance was not arbitrable because of timeliness deficiencies. As such, regardless of the Arbitrator's view concerning the propriety of the merits, his jurisdiction as a mutual agent to fashion a "contract settlement" is restricted in this instance because the matter was outside his jurisdiction.

The grievant did not raise any formal concern regarding the presentation of this grievance for a considerable period of time. This condition further deteriorated his credibility. The grievant, moreover, attempted to resuscitate his claim by resubmitting vouchers for the contested time period on May 23, 1988. The employer denied these claims on June 13, 1988 without any formal timely protest by the grievant. This denial served as the triggering event for the presentation of a formal grievance. Section 25.02 Step 1 requires a formal filing "not later than ten (10) working days from the date the grievant became or reasonably should have become aware of the occurrence giving rise to the grievance not to exceed a total of thirty (30) days after the event." This negotiated guideline was not complied with by the grievant and the union.

AWARD:

The grievance was denied and dismissed. The grievance was not arbitrable which precluded an evaluation of its merits.

TEXT OF THE OPINION:

STATE OF OHIO AND OHIO CIVIL SERVICE ASSOCIATION LABOR ARBITRATION PROCEEDING

IN THE MATTER OF THE ARBITRATION BETWEEN

**THE STATE OF OHIO,
THE OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION,
ORIENT CORRECTIONAL INSTITUTION**

-and-

**OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION,
LOCAL 11, AFSCME, AFL-CIO**

GRIEVANCE:
Mike Kvarness
(Arbitrability and Travel Pay)

OCB Case No.:
27-21-880908-00-30-01-03

ARBITRATOR'S OPINION AND AWARD
Arbitrator: David M. Pincus
Date: June 3, 1991

APPEARANCES

For the Employer
Robert Thornton, Former Labor Relations Officer
Susan Dunn, Deputy Warden
Jim Swyers, Advocate
Meril Pricechi, Second Chair

For the Union
Mike Kvarness, Grievant
Carroll Dilley, President, Local No. 6540
Dennis Williams, Staff Representative
John Fisher, Staff Representative

INTRODUCTION

This is a proceeding under Article 25 Sections 25.03 and 25.04 entitled Arbitration Procedures and Arbitration Panel of the Agreement between the State of Ohio, the Ohio Department of Rehabilitation and Correction, Orient Correctional Institution, hereinafter referred to as the Employer, and the Ohio Civil Service Employees Association, Local 11, AFSCME, AFL-CIO, hereinafter referred to as the Union for July 1, 1986-July 1, 1989 (Joint Exhibit 1).

The arbitration hearing was held on May 14, 1991 at the Office of Collective Bargaining, Columbus, Ohio. The Parties had selected David M. Pincus as the Arbitrator.

At the hearing the Parties were given the opportunity to present their respective positions on the grievance, to offer evidence, to present witnesses and to cross examine witnesses. At the conclusion of the hearing, the Parties were asked by the Arbitrator if they planned to submit post hearing briefs. Both Parties indicated that they would not submit briefs.

ISSUES

Was the grievance filed in a timely fashion in accordance with the Collective Bargaining Agreement (Joint Exhibit 1), and thus, arbitrable?

Did the Employer violate Section 13.06 - Report-In Location and Section 32.02 - Personal Vehicle when it failed to reimburse the grievant with an allowance for days prior to February 21, 1987?

PERTINENT CONTRACT PROVISIONS

ARTICLE 2 - NON-DISCRIMINATION

. . .

2.01 - Non-Discrimination

Neither the Employer nor the Union shall discriminate in a way inconsistent with the laws of the United States or the State of Ohio or Executive Order 83-64 of the State of Ohio on the basis of race, sex, creed, color, religion, age, national origin, political affiliation, handicap or sexual orientation. Nor shall either party discriminate on the basis of family relationship.

The Employer shall not solicit bargaining unit employees to make political contributions or to support any political candidate, party or issue.

202 - Agreement Rights

No employee shall be discriminated against, intimidated, restrained, harassed or coerced in the exercise of rights granted by this Agreement.

. . .

(Joint Exhibit 1, Pgs. 2-3)

ARTICLE 13 - WORK WEEK, SCHEDULES AND OVERTIME

. . .

13.06 - Report-In Locations

All employees covered under the terms of this Agreement shall be at their report-in locations ready to commence work at their starting time. For all employees, extenuating and mitigating circumstances surrounding tardiness shall be taken into consideration by the Employer in dispensing discipline.

Employees who must report to work at some site other than their normal report-in location, which is farther from home than their normal report-in location, shall have additional travel time counted as hours worked.

Employees who work from their homes, shall have their homes as a report-in location. The report-in locations for ODOT field employees shall be the particular project to which they are assigned or 20 miles, whichever is less. In the winter season when an employee is on 1,000 hours assignment, the report-in location will be the county garage in the county in which the employee resides.

For all other employees, the report-in location shall be the facility to which they are assigned.

. . .

(Joint Exhibit 1, Pgs. 12-20)

ARTICLE 25 - GRIEVANCE PROCEDURE

. . .

Section 25.02 - Grievance Steps

Step 1 - Immediate Supervisor

The grievant and/or the Union shall orally raise the grievance with the grievant's supervisor who is outside of the bargaining unit. The supervisor shall be informed that this discussion constitutes the first step of the grievance procedure. All grievances must be presented not later than ten (10) working days from the date the grievant became or reasonably should have become aware of the occurrence giving rise to the grievance not to exceed a total of thirty (30) days after the event. If being on approved paid leave prevents a grievant from having knowledge of an occurrence, then the time lines shall be extended by the number of days the employee was on such leave except that in no case will the extension exceed sixty (60) days after the event. The immediate supervisor shall render an oral response to the grievance within three (3) working days after the grievance is presented. If the oral grievance is not resolved at Step One, the immediate supervisor shall prepare and sign a written statement acknowledging discussion of the grievance, and provide a copy to the Union and the grievant.

Step 2 - Intermediate Administrator

In the event the grievance is not resolved at Step One, it shall be presented in writing by the Union to the intermediate administrator or his/her designee within five (5) days of the receipt of the answer or the date such answer was due, whichever is earlier. The written grievance shall contain a statement of the grievant's complaint, the section(s) of the Agreement allegedly violated, if applicable, the date of the alleged violation and the relief sought. The form shall be signed and dated by the grievant. Within seven (7) days after the grievance is presented at Step Two, the intermediate administrator shall discuss the grievance with the Union and the grievant. The intermediate administrator shall render a written answer to the grievance within eight (8) days after such a discussion is held and provide a copy of such answer to the Union and the grievant.

Step 3 - Agency Head or Designee

If the grievance is still unresolved, it shall be presented by the Union to the Agency Head or designee in writing within ten (10) days after receipt of the Step Two response or after the date such response was due,

whichever is earlier. Within fifteen (15) days after the receipt of the written grievance, the parties shall meet in an attempt to resolve the grievance unless the parties mutually agree otherwise.

The Agency Head or designee shall give his/her written response within fifteen (15) days following the meeting.

If no meeting is held, the Agency Head or his/her designee shall respond in writing to the grievance within ten (10) days of receipt of the grievance.

. . .

(Joint Exhibit 1, Pg. 38-39)

Section 25.03 - Arbitration Procedures

. . .

Only disputes involving the interpretation, application or alleged violation of a provision of the Agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement, nor shall he/she impose on either party a limitation or obligation not specifically required by the expressed language of this Agreement.

. . .

(Joint Exhibit 1, Pg. 40)

. . .

25.05 - Time Limits

Grievances may be withdrawn at any step of the grievance procedure. Grievances not appealed within the designated time limits will be treated as withdrawn grievances.

The time limits of any step may be extended by mutual agreement of the parties involved at that particular step.

The Employer's failure to respond within the time limits shall automatically advance the grievances to the next step.

. . .

(Joint Exhibit 1, Pg. 41)

ARTICLE 32 - TRAVEL

32.02 - Personal Vehicle

If the Agency requires an employee to use his/her personal vehicle, the Agency shall reimburse the employee with a mileage allowance of no less than twenty-two cents ($.22) per mile. If an employee uses a motorcycle, he/she will be reimbursed no less than eight and one-half cents ($.085) per miles.

. . .

(Joint Exhibit 1, Pgs. 52-51)

STIPULATED FACTS

1. The Grievants (sic) hire date - January 21, 1986.

2. The matter in dispute deals with an individual grievance and not a group or class grievance.

CASE HISTORY

Mike Kvarness, the Grievant, has served as a Corrections Officer at the Institution since January 21, 1986. Orient Correctional Institution, the Employer, is responsible for the incarceration and detention of male prisoners. The Employer, moreover, is responsible for the long term medical care of all inmates in its custody. This requirement occasionally requires the guarding of prisoners while being transported to medical facilities and ensuring room-related security during their stay. These security duties are accomplished by the

Corrections Officers. Prior to July, 1987, inmates were being escorted for medical treatment purposes to Ohio State University and Grant Hospitals. Eventually, the Grant Hospital visits were curtailed and medical care was solely provided by the Ohio State University Hospital.

It appears that prior to 1986, Correction Officers assigned hospital assignments were initially required to report to the facility. They were then transported as a group to their hospital assignments. For a variety of unspecified reasons, the Employer decided to change its staffing strategy. Correction Officers were required to report directly to their hospital assignment. These assignments, however, necessitated the use of personal vehicles and added some travel time to certain officers' routes because of the change in report-in location.

The Parties negotiated an initial Collective Bargaining Agreement (Joint Exhibit) which became effective on July 1, 1986. It contained provisions which dealt with Report-In Locations (Section 13.06) and use of Personal Vehicle(s) (Section 32.02).

The Grievant allegedly filed a grievance concerning the application of Sections 13.06 and 32.02 in October of 1986. He maintained that the grievance was never discussed with Employer representatives subsequent to the formal submission date.

On March 1, 1987, the Grievant filed a grievance which alleged a violation of Section 32.02. It contained the following Statement of Facts:

"...
It was brought to my attention at a Union meeting on 2/26/87 that you are in violation of Article (sic) 32.02. From Jan. '86 to Jan. '87 I used my personal vehicle 180 days at outside hospital, 100 miles a day round trip. Totals 18,000 miles at .22 cents (sic) a mile, comes to $3,960.00
..."

(Joint Exhibit 3, Pg. 1)

Susan Dunn, Administrative Assistant to the Warden at the time of the dispute, testified that the above-mentioned grievance precipitated an internal review of the existing policy. Nicholas G. Menedis, Chief of Labor Relations for the Department of Rehabilitation and Correction, issued an advisory on April 10, 1987 dealing with travel reimbursement to outside hospitals (Joint Exhibit 4). The guidelines dealing with Section 13.06 - Report-In Locations consisted of a number of critical conclusions. Additional travel time would be counted as hours worked when an employee is reporting directly to an outside hospital which is further from home than his/her normal report-in location. As such, the Employer would not compensate an employee for his/her regular travel time when reporting to work. Travel time would only be reimbursed if the travel time from home to the institution was less than the travel time from home to the hospital. Menedis, moreover, recommended that a standard travel time from the Institution to the hospital should be established. This would result in no employee receiving more than the established standard travel time. It might, however, engender a situation where an employee would only be entitled to less than the standard travel time. An outcome of this type would result if a direct route from an employee's home to the hospital results in a travel time shorter than the established standard.

Menedis suggested similar guidelines regarding the application of Section 32.02 - Personal Vehicle. He noted reimbursement would be paid in accordance with the allowance contained in the Section. Such compensation, however, would only be paid for mileage incurred in excess of the distance normally traveled by the Employer when reporting to the Institution from home. The Employer, moreover, would establish a standard distance from the Institution to the hospital in question. This distance would be used as the comparative baseline against which an employee's travel would be compensated. Any reimbursement would not exceed the standard mileage from the Institution to the hospital.

In evaluating the propriety of the grievance, the Central Office told Dunn to propose a settlement offer which applied the previously mentioned guidelines to a ten-day period prior to the filing of the grievance. As such, February 21, 1987 was established as the baseline for the March 1, 1987 grievance (Joint Exhibit 3), and all other like grievances filed by other bargaining unit members. Menedis's guidelines (Joint Exhibit 4) were to be applied in all future mileage and time computations.

On May 4, 1987, Dunn issued a Step 2 response. It contained the following statement:

". . .
Grievance is granted retroactive to 10 days prior to filing of grievance on 3/2/87, effective date is 2/21/87. Please see attached procedures.
. . ."

(Joint Exhibit 3, Pg. 2)

The attached procedure was authored by Dunn on April 30, 1987. It dealt with mileage and travel time to alternate work sites (Joint Exhibit 3, Pg. 2).

There appears to be a great deal of controversy surrounding the nature of the Step 2 response. The Employer asserted that the Grievant and the Union agreed to settle the dispute by agreeing to the above-mentioned terms. The Grievant, however, admitted that he submitted vouchers for the ten-day period and was compensated accordingly. He did maintain that he advised the Union to pursue the matter regarding the unpaid portion of his complaint in subsequent stages of the grievance procedure.

During July, 1987, the Grievant went on disability leave. He eventually returned on or about April 30, 1988. Robert Thornton, the acting Labor Relations Officer, testified that during the leave period he was contacted several times by the Grievant concerning the status of his grievance. Upon his return, Thornton held a meeting with the Grievant and his Union Steward. He told them he had checked the records at the Central Office and that the grievance was never processed to Step 3.

On or about May 23, 1988, the Grievant submitted a series of mileage and travel time vouchers (Union Exhibits 1 and 2) for the period July 16, 1986 to January 17, 1987. Thornton disapproved these vouchers on June 13, 1988.

Thornton testified that even though a travel pay voucher policy had been established as a consequence of the Step 2 response to the grievance, there seemed to be some confusion regarding the reimbursement policy. As a consequence, he held a meeting with all affected employees and reviewed a memo which extended the reimbursement period. The memo was authored by Thornton on August 5, 1988 and contained the following relevant particulars:

". . .
In April 1987 we began paying for travel to and from OSU Hospital, and at that time Grant Hospital, retroactive to February 21, 1987. We have been processing requests for reimbursement dating back to February 21, 1987 until now.

In order to properly budget funds for these payments we are requiring that all requests for reimbursement from February 21, 1987 through June 30, 1988 be submitted to my office by no later than 4:30 PM on September 9, 1988. Any requests for the period from February 21, 1987 through June 30, 1988 not submitted by this deadline will be denied as untimely.

All future requests should be made no more than two pay periods following the dates on which the travel occurred. This will allow for a reasonable accumulation of time and mileage, but not create a burden on the business office in budgeting the funds necessary for mileage reimbursement.

If you have any questions about this subject please feel free to call me at OCI Ext. 560.

Your cooperation in this matter is greatly appreciated.
. . ."

(Joint Exhibit 6)

As a result of Thornton's memo, a grievance was filed on behalf of the Grievant on September 6, 1988. It alleged a violation of Section 32.02 and Section 2.02, and contained the following Statement of Facts:

". . .
Sir, Officer Kvarness filed a grievance back in 1986 which was lost. He refiled in March 1987 at which time he won his grievance at Step 2 back dated 10 days. Recently O.C.I posted a letter allowing officers to file for travel pay back to February 1987. This action had to be taken by September 9, 1988 giving everyone

approximately 18 months to file. We are going for less than half that amount of time with M. Kvarness, so we the Union demand his grievance and any others on this matter be reopened and settled accordingly. . . ."

(Joint Exhibit 2, Pg. 1)

The remedy portion of the grievance requested payment for all miles traveled to Ohio State University Hospital beyond the normal travel time to work at a rate of $.22 per mile to all who qualify back to July 1986.[1]

The Union processed the grievance to Step 2 on September 9, 1988. Thornton denied the grievance on November 9, 1988. He raised the following points in support of his denial:

". . .
OCI management in consultation with DR&C labor relations office determined that provisions of 32.02 should be interpreted as applying to certain officers at OCI when required to travel to duty at OSU (previously including Grant) Hospital. That answer was provided to the Grievant on 5-4-87, and stated that the award was retroactive to 2-21-87. As the Grievant could have filed to Step 3 within ten days and did not, the grievance is denied as untimely.
. . ."

(Joint Exhibit 2, Pg. 2)

On January 25, 1989, a Step 3 grievance hearing was held to review the merits of the grievance. It was denied by the Employer February 8, 1989 (Joint Exhibit 2 Pgs. 3-4). In support of this decision, the Employer noted that the original grievance (Joint Exhibit 3) was settled to everyone's satisfaction except the Grievant's. As such, a separate agreement with the Grievant would create a case of disparate treatment and favoritism. The grievance, moreover, was unwarranted because the Grievant received his reimbursement on an equal basis with all other qualified employees.

A similar denial was submitted by the Employer on March 20, 1989 in its Step 4 Response. Once again, the Employer emphasized that it had fashioned a grievance settlement which applied equally to all similarly situated employees, including the Grievant. As such, it could not legitimately expand the settlement offer beyond the qualifying period to individual employees. To do otherwise would violate the terms of the settlement agreement entered into by the Parties and would undermine the Union's status as sole bargaining agent.

THE PARTIES' ARBITRABILITY ARGUMENTS

The Position of the Employer

It is the position of the Employer that the grievance is not arbitrable. This position was based upon an alleged settlement agreed to by the Parties, and several procedure violations regarding grievance processing.

The Employer asserted that the Step 2 response to the initial grievance amounted to a settlement mutually agreed to by the Parties and the Grievant. The Grievant accepted payment after filing vouchers pertaining to the ten-day settlement period. As such, the Union was estopped from filing an identical claim after the Grievant's return from disability leave. Dunn's testimony supported the Employer's settlement argument. She not only maintained that the settlement applied to the Grievant's claim but served as an acknowledged remedy for all other similarly situated employees.

A number of timeliness objections were also raised by the Employer relating to Section 25.02 and Section 25.05 requirements. First, the Union and the Grievant expressly acknowledged the legitimacy of the settlement by failing to process the initial grievance to Step 3. Section 25.02 contains a ten-day filing requirement which was never complied with by the Union. Second, by failing to forward the grievance, the

Employer properly concluded that the grievance was withdrawn. Section 25.05 specifies that "Grievances not appealed within the designated time limits will be treated as withdrawn grievances."

Similar timing deficiencies were raised regarding the second grievance; the one filed upon the Grievant's return from disability leave. The Grievant and a Union representative conversed with Thornton upon his return on or about April 30, 1988. No further appeal regarding the initial grievance was pursued by the Union after the conversation. Rather, on May 23, 1988, the Grievant re-submitted vouchers (Union Exhibits 1 and 2) dealing with travel which took place prior to February 21, 1987. Thornton rejected these vouchers on June 13, 1988, and yet, no grievance was filed. Such notice should have resulted in the presentation of a grievance within ten-working days in accordance with Section 25.02, Step 1. As such, the formal filing of the second grievance on September 6, 1988 violated this proviso.

The second grievance was also thought to be deficient because it merely duplicated the claim raised by the March 1, 1987 grievance (Joint Exhibit 3). The original grievance resulted in a settlement and a waiver of all future claims dealing with the identical fact situation.

The previous arguments raised certain claims regarding the scope of the Arbitrator's authority. If the Arbitrator ruled that the second grievance was timely, he would be violating Section 25.03. This section precludes an arbitrator from modifying any of the terms of the Agreement (Joint Exhibit 1) or imposing on either Party an obligation not specifically required by the expressed language. A ruling in the Union's favor would obviously modify the time limitation requirements contained in Section 25.02 and Section 25.05.

The Position of the Union

It is the position of the Union that the second grievance was filed in a timely fashion and, therefore, is arbitrable and ripe for adjudication.

A great deal of emphasis was placed on the contents of a memo (Joint Exhibit 6) authored by Thornton on August 5, 1988. In that memo, Thornton indicated that "Any requests for the period from February 21, 1987 through June 30, 1988 not submitted by September 9, 1988 to my office will be denied as untimely." This phrase broadened the window dealing with the Grievant's prior claim. The Grievant, moreover, complied with particulars contained in the memo by filing his grievance on September 9, 1988.

The Union admitted that the Grievant accepted the Employer's ten-day offer in response to the claim concerning the first grievance. He never, however, waived his right to seek redress regarding the remaining days being grieved, and the associated reimbursements. The ten-day remedy never entirely resolved the matter. In fact, the Grievant assumed that the grievance was to be forwarded by the Union to Step 3.

THE ARBITRATOR'S OPINION AND AWARD DEALING WITH THE ARBITRABILITY CLAIM

From the evidence and testimony introduced at the hearing, it is my opinion that the grievance is not arbitrable because of timing deficiencies. Here, the subject matter of the grievance is not comprised within the agreement to arbitrate made by the Parties because of Section 25.02 and Section 25.05 defects. As such, regardless of my view concerning the propriety of the merits, my jurisdiction as a mutual agent to fashion a "contract settlement" is restricted in this instance because the matter is outside my jurisdiction. As an arbitrator, when the Parties have negotiated clear and unambiguous language regarding certain grievance processing timing requirements, I am not empowered to deviate from these mutually negotiated particulars. To do otherwise would result in the fashioning of my own brand of industrial jurisprudence; an undertaking outside the scope of my contractual authority.

The Grievant's reference to a 1986 grievance has to be totally discounted. Other than mere allegations, the Union and the Grievant failed to provide any evidence and testimony in support of this claim. In fact, a grievance log (Employer Exhibit 1) submitted by the Employer totally rebutted this assertion. The Grievant never filed a grievance in 1986 which contested the Employer's application of Section 32.02 requirements.

Whether a binding settlement did in fact take place at Step 2 of the grievance procedure is not of primary importance regarding the present analysis. If the Grievant and the Union had some misgivings regarding the

Step 2 outcome, they had an affirmative obligation to present the Employer with a grievance in writing within ten days of the Step 2 response. This requirement is clearly articulated in Section 25.02, Step 3. By failing to comply with this requirement, the Employer properly treated the matter as withdrawn by the Union. Again, the Parties agreed to such an outcome when they negotiated this prohibition in Section 25.05. Nothing in the record indicates that the Parties mutually agreed to extend the previously mentioned time limits.

The Grievant's own actions raise some concern regarding the propriety of the Union's arguments. The Grievant asserted that travel days falling outside the Step 2 offer were to be claimed in a forthcoming Step 3 presentation. Union representatives assured the Grievant they would comply with his request. And yet, no formal document or testimony were introduced in support of this allegation. Dunn testified that she engaged in discussions with the Grievant and Union representatives regarding the finality of the Step 2 settlement. She never stated that the ten-day reimbursement constituted a partial settlement with the remaining days ripe for discussion in subsequent stages of the grievance procedure. The record does not support this conclusion. If such a perception existed, then the Union should have presented a Step 3 response, or at a minimum, supplied testimony corroborating the Grievant's allegations.

The Grievant did not raise any formal concern regarding the presentation of this grievance for a considerable period of time. This condition further deteriorated his credibility. He received, and partially concurred with, the Employer's Step 2 response, yet, he waited approximately twelve months to formally raise his concerns with Thornton. He and the Union were advised in April-May of 1988 that the Employer never received a Step 3 response and that the matter, in the opinion of the Employer, had been settled on May 4, 1987. The Employer's decision was never challenged by the Union.

The Grievant, moreover, attempted to resuscitate his claim by resubmitting vouchers (Union Exhibits 1 and 2) for the contested time period on May 23, 1988. Thornton denied these claims on June 13, 1988 without any formal timely protest by the Grievant. Even if this Arbitrator totally discounted the impact of his prior timeliness ruling and viewed the new submission as an independent fact situation, which it was not, the Union's failure to file a new grievance resulted in an additional timeliness defect. Section 25.02 Step 1 requires a formal filing "not later than ten (10) working days from the date the grievant became or reasonably should have become aware of the occurrence giving rise to the grievance not to exceed a total of thirty (30) days after the event." Thornton's denial on June 13, 1988 served as the triggering event for the presentation of a formal grievance. This negotiated guideline was not complied with by the Grievant and the Union.

Reliance on Thornton's August 5, 1988 memo (Joint Exhibit 5) also seems misplaced. The memo's contents did not broaden the Grievant's claim regarding the contested reimbursement days prior to February 21, 1987. The dates in question were grieved as part of the initial grievance filed in 1987. The Statement of Facts (Joint Exhibit 3, Pg. 1) references "From Jan. '86 to Jan. '87." As such, these dates and associated reimbursement claims were resolved as a consequence of the Step 2 settlement.

I am also of the opinion that the settlement of the Grievant's claims served as a settlement for all other similarly situated employees. The Employer's arguments regarding this conclusion were never properly rebutted by the Union. In fact, testimony by Dunn and Thornton were never adequately challenged by any Union witness. Thornton merely re-notified other affected bargaining unit members about their travel reimbursement rights. Obligations reflected in the terms of the Step 2 settlement and further documented in Dunn's memo (Joint Exhibit 3, Pg. 3). It appears that neither the Union nor any other bargaining unit member challenged Thornton's interpretative guidelines. These guidelines, more specifically, offered other bargaining unit members the same reimbursement rights agreed to by the Grievant; the time frames were identical as well as the benefits. Other employees were not granted travel reimbursement benefits prior to February 21, 1987. As such, the Employer did not violate Sections 2.01 and 2.02; the Grievant was not discriminated against by the Employer or the Union.

AWARD

The grievance is denied and dismissed. The grievance is not arbitrable which precludes an evaluation of the merits.

Date: 6/3/91
Dr. David M. Pincus
Arbitrator

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[1] Although the grievance is written as if it reflected a class action grievance, the Parties stipulated that the present dispute only concerned the Grievant's individual claim.