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In the Matter of Arbitration

between

Niagara Frontier Metro Transit System, Inc.

and

Amalgamated Transit Union, Local 1342

Opinion

and

Award

* *

This arbitration was heard on September 22, October 20, and December 15, 2009, at the Company's offices in Buffalo, New York. The undersigned was designated to arbitrate the controversy from a panel maintained by the parties. On submission of post-hearing briefs by both sides on March 5, 2010, the record was closed.

APPEARANCES

For the Employer:

Wayne R. Gradl, Attorney
Howard Scholl, Manager of Bus Maintenance
David Rugg, Superintendent of Bus Shops
Michael Komenda, Vehicle Maintenance Supervisor, Frontier Garage
William McGee, Consultant
James Jones, Jr., Vehicle Maintenance Supervisor, Cold Spring Garage

For the Union:

Joseph O'Donnell, Attorney
George R. Bailey, Vice President
Johnnie Walker, Mechanic B and Grievant
Ray Shanley, Mechanic A, Cold Spring Garage
Lawrence Karsky, Jr., Clerk, Cold Spring Garage
David Stawowy, Executive Board Member
Raymond Overton, Lubrication Inspector and Utility
Gary Ehrhardt, Specialist, Babcock Garage
Alfonso LaGreca, Leader, Frontier Garage
Jerry Borden, Executive Board Member
Martin Slaughter, Sr., Vehicle Maintenance Supervisor, Cold Spring Garage (ret.)
Michael Gruber, Assistant Vehicle Maintenance Supervisor, Cold Spring Garage

THE ISSUE

The parties were unable to agree on a statement of the issue and authorized the Arbitrator to frame it. The Union's version is this:

> Has the Company violated the parties' CBA, including Sections 13-12 and 19-1, by regularly assigning J. Walker, Mechanic B (Chassis and Unit Change), on an involuntary basis, to fill in for the first shift Booker position when the incumbent of that position is absent for the day, even though an "As Assigned/As Assigned" person is available? If so, what shall the remedy be?

The Company poses the issue as follows:

> Does the CBA authorize the Company to assign any employee to do any work such employee is reasonably capable of performing where the needs of the business on a given day prompt management to decide that such assignment would best accomplish the work desired to get done on that day? If not, what shall be the remedy?

After hearing the testimony and reviewing the documentary evidence, I believe the essence of the grievance is appropriately captured by the following questions:

> Does the Company violate the Collective Bargaining Agreement (CBA) when it assigns a Mechanic B to involuntarily cover the absence of a Booker on a day when an As Assigned/As Assigned person is present on the shift and not engaged in covering another absence? If so, did the Company so violate the CBA in the case of Johnnie Walker? If so, what shall the remedy be?

BACKGROUND

Section 13-12 of the CBA provides the rights and procedures for job and shift picks by seniority. Such picks are overseen by the Union and are made at various times during the year. Jobs may reflect specific work content and schedules, or they may be designated "as assigned/as assigned," which is indicated on the pick sheets as "Vacation, Absentee Relief & As Assigned."

Section 19-1 of the CBA reads in relevant part as follows:

> The present working conditions, practices, rules and regulations of the Company not altered or modified by this Agreement, shall continue in full force and effect . . . . However, it is understood and agreed that the Company shall always be privileged from time to time to revise, supplement and otherwise change its rules, provided same are not in conflict with any specific provision of this Agreement, and if in conflict or inconsistent

> with any such specific provision, such revised, supplemental, or changed rules or regulations shall be subject to the approval of the Union, which approval the Union agrees not to unreasonably withhold.

Also relevant to this controversy is §18-2, which reads in relevant part as follows:

> The Company may assign any employee to such work which he or she is reasonably capable of performing, and when so assigned any such employee shall be governed during the period thereof by the rules, regulations and working conditions applicable to the department or subdivision to which he or she is so assigned, but shall be paid the regular hourly rates applicable to the position to which he or she is so assigned or to his or her regular position, whichever is greater. The Company may revise, change or redesign the work, places and hours of work, number of work-hours per day and number or work days per week, and its schedules of runs and other assignments of work, whenever it may deem same to be necessary or desirable, provided, however, that nothing therein shall be in conflict, or inconsistent, with any provision of this Agreement.

The instant grievance was filed on behalf of Johnnie Walker, a "B" Mechanic, on February 13, 2007. There is no claim that the grievance is procedurally defective. It claims that, under a longstanding practice at the Cold Spring Garage, vacancies are to be filled by employees carrying the "as assigned/as assigned" designation (hereafter AA/AA), when such employees are available. Although this designation is not defined in the CBA, it refers to a status in which the employee has no regular assignment but rather is used to fill in for other employees who are absent. Whether the AA/AA employee may be used for other purposes is somewhat in dispute. The Union agrees that when AA/AA employees are not available because they themselves are absent or are on fill-in assignments on other shifts, other employees on the shift in question may be used to cover open positions that cannot be left vacant. However, the Union claims that a new supervisor in the Cold Spring Garage changed the practice and began assigning a mechanic, specifically Mr. Walker, to the Booker position even when AA/AA employees were available. It is undisputed that the Booker is one position that cannot be left vacant.

POSITION OF THE UNION

The Union contends that, as shown by the testimony in this case, the grievant, whose picked job was Mechanic B, was regularly assigned involuntarily to fill in for an absent Booker even when an AA/AA Mechanic A was available to do the work. According to Mr. Walker, he was so assigned "all the time." This testimony was corroborated by other employees who worked with Mr. Walker. The testimony also shows that, under the previous supervisor of the Cold Spring Garage, Marty Slaughter, openings in the Booker position would always be filled by overtime or by using available AA/AA employees. With Mr. Slaughter's retirement and his replacement by Jim Jones, Booker openings began to be filled with B Mechanics, particularly the grievant, regardless of whether AA/AA mechanics were available. Similarly, the record shows that, at both the Frontier Garage and the Babcock Garage, AA/AA employees have been used to cover openings in the Booker position. The testimony on these points went unrebutted.

The Union argues that, contrary to the Company's position, Section 18-2 of the CBA does not give the Company the unfettered right to assign work. This position totally ignores the seniority protections contained within the CBA, confirmed by years of practice. Section 18-2 itself recognizes a limitation on the right of assignment when it says that nothing in this section may be in conflict with any provision of the Agreement. The Company's position is decidedly in conflict with Section 13-12, the "Pickings" provision of the CBA. It is also in conflict with Section10-5.3 of the CBA, which states that "Seniority shall apply to and govern . . . the selection or picking of work . . . where picking of work is the practice." Thus when an employee selects a job during a pick, that

employee has a reasonable expectation of being assigned to the type of work selected. An employee who picks an AA/AA job knows that his primary responsibility is vacation and absentee relief and that his secondary responsibility is general mechanical work. The grievant, however, used his seniority to select a Mechanic B position, which does not have a "Utility" designation, a designation that would have exposed him to assignments outside his regular job. In picking this job, the grievant had a reasonable expectation that he would be regularly assigned to the Chassis and Unit Change work associated with it, with limited exceptions. That expectation was shattered by the Company's arbitrary assignments.

The "nature of work" of the grievant's picked position limits the Company's right to assign him to other jobs, asserts the Union. This principle was upheld by me in a previous case involving assignments in the Cold Spring shops. In that decision, I found that an employee who picks a job that does not have a "Utility" designation may be assigned to a different job only under pressing circumstances and for only as long as there is no other employee who can be assigned. In the present case, the Company has shown no "pressing circumstances" each time the grievant was involuntarily assigned to the Booker position and on each occasion that an AA/AA person was available. Moreover, under this standard, it is the Company's burden to justify the assignments in question and to show that it made every effort to ameliorate the condition that necessitated the assignment in the first place. The Company has clearly not met this burden. Indeed, it has not tried, relying instead on the argument that under §18-2 it has an absolute right to assign employees as it sees fit. Further, the Union's attempts to fully develop the record were thwarted by the Company's unexplained loss of relevant

assignment records for 2008. Nevertheless, the Union did show that on two occasions in 2007, the grievant was assigned to book for the day although he had plenty of his regular work to do and an AA/AA person was available.

In contrast, the Union argues, the other arbitration awards relied on by the Company are not applicable to this case. The Foster award of 1990 dealt with the appropriateness of assignments to AA/AA people, not to employees without that designation. In the Duff award of 2002, the grievance challenged an assignment of work outside the grievants' department. There was no claim that the nature of the work to which they were assigned was improper.

For all of the foregoing reasons, the Union urges that the grievance be upheld and that the Company be directed to comply with the provisions of the CBA regarding assignments, as construed by this Arbitrator in 2008.

POSITION OF THE COMPANY

The Company contends, in sum, that the periodic assignment of Johnnie Walker to cover isolated absences of the day-shift Booker did not violate the CBA, as the CBA expressly makes such periodic assignments a management prerogative. Further, there is no binding past practice that overrides this prerogative and limits the assignments in question.

The Company observes that the Union has repeatedly tried to nullify §18-2 of the CBA by asserting that the job-pick provisions of §13-12 precluded the Company from assigning work outside an employee's specific picked classification. Arbitrators have consistently rejected these efforts. The present Arbitrator in 2008 rendered a decision that sought to harmonize the prerogatives in §18-2 and the limitations in a Utility

Agreement that applied to *shop* employees. This grievance involves garage employees, where there is no equivalent to the Utility Agreement.

The Company further notes that the number of times Mr. Walker was assigned to cover for an absent Booker is not readily ascertainable. Under the previous supervisor no daily work-assignment records were kept. Under the current supervisor, day-planner sheets were prepared, but changes to those assignments occasioned by unanticipated absences were not always recorded. Thus although the grievant testified that under the new supervisor, Mr. Jones, he was "always" assigned to cover a Booker's absence, that fact cannot be ascertained. The record contains at least one example of another employee's being so assigned (July 19, 2007). In addition, on days when the Booker was absent (and Mr. Walker was present), the AA/AA position may have been unfilled or the AA/AA person may have been covering other absences. For present purposes, however, the range of possible fill-ins by the grievant may be established by the testimony of Supervisor Jones and the grievant's co-worker, Ray Shanley. From their testimony, the range would be 8 to 24 days per year, indicating that the grievant spent a large preponderance of his time on the work that he picked.

In any event, argues the Company, the CBA clearly gives the Company the prerogative to temporarily assign garage employees to perform duties within their capabilities, even if the jobs they picked did not include these duties. Section 18-2 allows the Company to assign *any employee* to such work, and although limitations to "any employee" were negotiated for shop employees under the Utility Agreement, this grievance does not involve a shop employee. The Company's prerogative to change an employee's job duties is also contemplated in §13-2.1 of the CBA. Also, since a

previous arbitrator opined that making assignments is "at the very core or managerial rights," the present grievance is without merit.

The Union's contractual argument is based on §13-12, notes the Company, even though that section is not cited in the grievance. In any event, this argument has been expressly rejected in prior arbitrations. These arbitrations have upheld the Company's right to make assignments under §18-2. This result, moreover, does not render §13-12 meaningless. The job picks pursuant to §13-12 allow employees to select their *normal* work assignments, establishing an expected routine that benefits all. But on any given day there may be unexpected developments in employee attendance or work demand that require deviations from the norm. Meeting these needs may require moving employees from their regular assignments. The Union argues that such moves should not take place when an AA/AA mechanic is "available." Thus the issue here reduces to who decides when the AA/AA mechanic is really available to fill the Booker position. Under §§18-2 and 13-2.1, that decision is accorded to management.

In addition, argues the Company, if §13-12 precludes the Company from assigning work outside the pick sheets, then there would have been no need for the Utility Agreement. That Agreement placed limits on the Company's prerogative to assign work, but if those limits were already in §13-12, no further agreement would have been necessary. Indeed, the argument that §13-12 trumps §18-2 should have ended with the Duff award in 2002. The Company's prerogative is either preserved by §18-2 or it is not. Great violence is done to the principle of *res judicata* if every temporary assignment to a non-picked job has to be litigated anew.

The Union's past-practice argument is no more persuasive than its contractual argument, contends the Company. In a 1990 arbitration, the Union argued that past practice *precluded* the assignment of AA/AA employees to cover isolated absences. Now the Union argues that a practice has formed *requiring* such assignments. The crux of the argument is that former Supervisor Slaughter always used AA/AA employees to cover absences of the Booker. There are no records to prove or disprove this contention. However, work-scheduling records for 2006-2007 show that Mr. Walker was sometimes used to cover for a an absent Booker, and sometimes another employee was assigned even when Mr. Walker was available. These records corroborated the testimony of the current Supervisor, Mr. Jones, who testified that, based on the circumstances of a given day, there are a variety of ways in which Booker absences have been handled. Both Jones and another supervisor, Michael Komenda, denied any knowledge of a past practice limiting their assignment prerogatives. Further, the missing records from 2008 could not demonstrate the existence of a practice in February 2007, when the grievance was filed. And regardless of what the records could or could not show, the testimonial evidence from both sides indicates that under normal circumstances Mr. Walker reported for work and did his regular job. He himself testified that under Mr. Slaughter he would fill in for Booker absences because certain AA/AA mechanics did not want to deal with the bus assignments to drivers, which the Booker does.

In sum, argues the Company, the Union has not proved either the existence of a practice to assign AA/AA employees to isolated Booker absences or that the Company understood and agreed that any such practice supplanted the job-assignment prerogative contained in §18-2. In fact, when the Booker was absent, the procedure was to review

the pool of available employees and the work load for the day, and then assign the work accordingly. This process frequently, but not invariably, resulted in Mr. Walker's being assigned to cover for the Booker. Ultimately, however, the merits of this grievance do not turn on Mr. Walker's personal situation, but on the core managerial prerogative of deciding what work must be accomplished at a given time and assigning personnel to accomplish it efficiently or advantageously. That prerogative has been expressly reserved to the Company by §18-2 of the CBA.

For all of these reasons, the Company urges that the grievance be denied.

FINDINGS AND OPINION

As the Company notes, there has been ongoing controversy between these parties over the extent of the Company's contractual discretion in assigning work under varying circumstances. The ultimate source of this controversy is the tension in the CBA between the employee's right to exercise his seniority to pick the work and the schedule that he prefers and the Company's right to assign work according to its assessment of operational needs. The reason for this tension is that, at bottom, neither of these rights is absolute. The right of the employee to pick his normal type of work and schedule does not mean that he can never be assigned to do other work, for then §18.2 would have no meaning. Similarly, the right of the Company to assign work outside an employee's picked job does not mean that there are no limits to such assignments, for then the job of every employee would be "as assigned," which is directly contrary to the idea of a pick. The parties are free, of course, to relieve this tension by negotiating specific rules surrounding the assignment of work outside a picked job, but since they have not done so (at least not in the Cold Spring Garage), the

contract reader can do no more than construe the language in a way that preserves the essence of the bargain that the parties have struck.

The grievance in this case (Jt. Ex. 12) does not cite any particular contract language, but the Union's argument rests heavily on §13-12, titled "Pickings." That provision, it is contended, requires that employees whose jobs are designated "as assigned" must first be used to cover absences, and only when such employees are "unavailable" (because they themselves are absent or are already covering for another absence) may an employee with a specific picked job be assigned to another job. The pick sheets themselves, however, do not suggest that AA/AA employees are used *exclusively* to cover week-long absences. On the sheets, jobs designated "as assigned" have a footnote attached, and the footnote reads, "Vacation, Absentee Relief *and As Assigned*." In this formulation, it seems clear that AA/AA employees may be used for purposes beyond vacation and absentee relief; that is, they may be used to fill in for an employee who is on vacation, to fill in for an employee who is otherwise absent, or *in addition* they may be assigned to meet some other need. There is broad latitude in the language of the pick sheets as to how AA/AA employees may be used, and there is nothing to suggest that they must be used to cover, say, the absence of a Booker in preference to other assignments. If the AA/AA employee may be given an assignment to meet another need, then he is not "available" for the Booker assignment, and since the Booker position cannot go unfilled, some other employee must be assigned to it.

The foregoing may perhaps be seen more clearly in the context of a hypothetical situation. Suppose, on a given day, the Booker is absent, the AA/AA Mechanic is not on a long-term relief assignment, and there is a piece of work (call it X-work) that had been

assigned to another absent employee or is the result of a surge or backlog that has developed. Assuming no overtime (which the Company is clearly not obligated to schedule), there are in this mix two employees present (the AA/AA Mechanic and another employee, who for present purposes we shall assume is a B Mechanic) and three possible work assignments (the Booker's work, the X-work, and the work that the B Mechanic would normally do – call it B-work). The alternative outcomes are: (1) The B Mechanic stays with the B-work, the AA/AA Mechanic is assigned the Booker work, and the X-work is forgone; (2) the AA/AA Mechanic is assigned to the Booker work and the B mechanic to the X-work; with the B-work forgone; or (3) the AA/AA Mechanic is assigned the X-work and the B Mechanic to the Booker work, with the B-work forgone. Under the Union's argument, alternative (3) is a violation of the CBA. Although alternative (2) has not been explicitly discussed in the case, it would appear that this would also violate the sanctity of the B Mechanic's pick, and in any event it is possible that the X-work is not within the skills of a B Mechanic. Thus the only choice clearly available to the Company is (1), meaning that it must forgo a piece of work that it deems more important to get done than the B-work. It is surely difficult to harmonize that result with the language of §18-2, by which the Company has the right to assign *any employee* to any work that he is reasonably capable of performing, and clearly is aimed at providing the Company with some discretion to match available manpower with production needs.

The Union further argues, however, that the Company must in fact forgo the X-work in the above example because of a past practice, under which an absent Booker *must* be replaced by an AA/AA employee whenever the AA/AA employee is at work and

not otherwise assigned for long-term relief. In my judgment, the record is insufficient to establish such a practice, at least in terms of one that is binding on the parties. The evidence on the practice is both mixed and thin, consisting wholly of some testimony asserting that it existed (with no particulars) and other testimony asserting that it did not (again with no particulars). What we have here is far short of establishing that over time the previous supervisor never failed to assign an AA/AA employee to cover for an absent Booker when that employee was not on a long-term assignment.

It may be the case, to be sure, that Mr. Slaughter tended to handle Booker absences differently from the way Mr. Jones has done, but the relevant question is whether the way Mr. Slaughter may have done things (and again the record is not undisputed as to just *how* he did things) became part of the bargain between the parties. For that to have happened, the "practice" must have been readily ascertainable, unequivocal, and mutually understood as the prescribed way of doing things. The evidence in this case does not meet these tests, especially the one regarding the mutuality of any understanding that B Mechanics cannot be assigned to book whenever an AA/AA employee is "available." Such an understanding would mean that the Company has acknowledged, despite §18-2 in the contract, that an AA/AA employee is considered available for booking, and must be assigned to booking, even when there is a pressing need for the employee in another assignment that does not involve vacation or long-term absentee relief. The evidence for such an acknowledgment must be stronger than what we have in this record.

As noted earlier, in the CBA the reach of §18-2 is limited by §13-12 and the pick sheets, and it may be limited further by separate negotiations between the parties, as it

was in the case of the Utility Agreement in the shops. That agreement shows that the parties knew how to establish additional limitations on the Company's right to assign work, and indeed the prior arbitration before me involved just how the Utility Agreement constrained the Company's discretion in this regard. That Agreement applied specifically to employees in the shops, and there is no evidence that the parties intended to extend it to the garages. The holding in the previous arbitration addressed "how the Utility Agreement and the CBA combine to establish rules by which the Company may assign an employee to a job outside the one that he or she has picked." It recognized that in executing the Utility Agreement the parties were placing additional restrictions on the Company's discretion in assigning work; hence reassigning employees from their normal jobs required "pressing circumstances," limited options, and an effort to avoid the need for such reassignment. Here, however, we have no equivalent to the Utility Agreement, so at the least it must be said that the limitations on the Company's discretion are less than they are in the shops. For example, the circumstances surrounding the assignment do not have to be "pressing," although they clearly must reflect a sound basis for reassigning an employee whose job is not "as assigned."

In sum, in the absence of any side agreement governing assignments in the garages, I believe that the Company, under §18-2, has broad but not unlimited discretion in assigning work outside a picked job. The limitations, inherent in the bargain between the parties and beyond the contractual ones in §18-2, are twofold. *First*, any individual assignment must be made to meet an identifiable operational need of the day. In other words, it must not be arbitrary and, needless to say, it must be done in good faith. It is unlikely, to be sure, that there will be many successful challenges to assignments on this

score, as it is hard to envision assignments made for no reason at all or assignments born of animus toward the affected employee. *Second*, the assignments to a particular employee, even if they all meet the first test, cannot be so frequent as to change the fundamental nature of the picked job. In the present case, the Company argued that there was no sense in which Mr. Walker became a "*de facto* booker." I would put the test somewhat more broadly: the assignments may not be so frequent that the employee's job is effectively one with an "as assigned" designation.

It remains to apply the foregoing standards to the record of this case. That record, unfortunately, lacks the requisite specificity to assess whether the Company abused its discretion when it assigned Mr. Walker to work outside of his picked job. Indeed, Mr. Walker himself is not mentioned in the grievance, nor is any specific instance of his (or anyone else's) being assigned to the Booker position. The record does contain voluminous documents – mainly in the form of pick sheets, day planners, and attendance summaries – covering late 2006 and all of 2007 and indicating the presence of the Booker, Mr. Walker, and other employees. These records tell us when the Booker was absent and Mr. Walker was present, and on some of those occasions they also tell us that Mr. Walker was assigned to fill in for the Booker. They may also tell us whether an AA/AA employee was at work and not assigned to vacation or absentee relief. What they do not tell us, however, is what the circumstances were underlying the assignments. They do not generally tell us what assignments the AA/AA employee was given, and they do not ever tell us what the need was for that work on that day.

The Union notes that certain records are missing for 2008 and argues that, in any event, it is up to the Company to show "pressing circumstances" each time Mr. Walker

was assigned to book and an AA/AA person was available. As for the missing records, the grievance was filed in February 2007, and records were available for late 2006 and all of 2007. If the CBA was being violated as alleged in the grievance, the records through 2007 should have served to demonstrate that. There is thus no basis for concluding that the missing records prevented the Union from being able to prove more than was provable with the earlier records (or indeed with records for 2009). As for the Company's burden, I agree that if the Company defends its assignments as based on good-faith judgments of the relative need for one piece of work over another on a given day, then the Company should be expected to explain the basis for its judgments. But it cannot reasonably be expected to do that without specific claims, either in the grievance or afterwards. The claim of this repeated contract violation needed to flag the specific occasions on which the grievant was assigned to book and an AA/AA person was "available." To the extent that the grievance calls upon the Company to justify its judgment that the AA/AA employee was not available to book because another assignment for him or her was more pressing at the time, the Company may not reasonably be asked to answer that call years after the fact. If the B Mechanic's assignment were protested at the time, then at least the Company would be on notice that it may have to explain why the AA/AA employee was more needed elsewhere.

There is nothing in the record to suggest that the Booker assignments to Mr. Walker were arbitrary or discriminatory. In general, we do not know in particular instances why the Company chose to assign the AA/AA employee to something other than booking, but once that decision was made, the further decision to assign the booking to Mr. Walker was, by his own testimony, justified. Mr. Walker testified that he

asked a supervisor why the fill-in booking assignments were not more spread across the workforce, and Mr. Walker noted that they were "having problems" and needed somebody "firm" to do the booking. In short, Mr. Walker was good at a job that others had difficulty with, and that surely sounds like a basis for assigning him to do it from time to time, and to assign him more often than others. There is no evidence, and indeed no claim, that the assignments were made to disadvantage or irritate Mr. Walker, which would be an example of acting in bad faith.

As for the second test, there is no evidence that Mr. Walker has been reassigned out of his picked job with such frequency that his position has effectively become one of "as assigned." There is no claim that Mr. Walker has been assigned to jobs outside of "Chassis and Unit Change" other than Booker. Although he testified variously that he was assigned to book "all the time" or "a majority of the time," there is nothing in the record to contradict the Company's observation that "Mr. Walker spends the large majority of the month performing his 'picked' job and thus the pick sheets do have meaning." The supervisor, Mr. Jones, estimated that Mr. Walker may be used for booking "maybe twice every two to three months." Ray Shanley, an A Mechanic, testified that assigning Mr. Walker to book "could happen a couple of times a month." George Bailey, a Union official, testified that there were seven to ten instances a year of Mr. Walker's being so assigned, and that the Walker situation "triggered the grievance." While only the parties can establish specific limits on how often a mechanic may be reassigned from his picked job, the order of magnitude in the testimony (perhaps one day a month on average) is not sufficient to say that Mr. Walker was reassigned so frequently as to effectively become an "as assigned" employee.

For all of the foregoing reasons, I find that the grievance lacks merits and should be denied.

AWARD

The Company does not violate the Collective Bargaining Agreement (CBA) when it assigns a Mechanic B to involuntarily cover the absence of a Booker on a day when an As Assigned/As Assigned person is present on the shift and not engaged in covering another absence, except in cases where such assignments are arbitrary or made in bad faith, or made with such frequency as to effectively convert the Mechanic B to an "as assigned" employee.

The Company did not violate the CBA in the case of Johnnie Walker. The grievance is denied.

STATE OF NEW YORK} SS:
COUNTY OF ERIE }

I, Howard G. Foster, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

March 25, 2010
(dated)

Howard G. Foster
(signature)