

STATE OF NEW YORK  
CONTRACT GRIEVANCE ARBITRATION

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AMALGAMATED TRANSIT UNION  
LOCAL 1342

In the Matter of the Arbitration between

AMALGAMATED TRANSIT UNION, LOCAL 1342,  
Union,

and

NIAGARA FRONTIER TRANSIT METRO  
SYSTEM, INC.,

Employer.

**OPINION**

**AND**

**AWARD**

Grievance: Return to Service Inspections

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BEFORE: Jeffrey M. Selchick, Esq.  
Arbitrator

APPEARANCES:

For the Amalgamated Transit Union, Local 1342  
Reden & Sugrue, LLP  
Robert J. Reden, Esq., of Counsel

For the Niagara Frontier Transit Metro System, Inc.  
David J. State, Esq., General Counsel  
Wayne R. Gradl, Esq., of Counsel

In accordance with Section 11 ("Discipline, Grievances and Arbitration") of the 2006-2009 Agreement (hereinafter "Agreement") (Joint Exhibit 1) of the parties (hereinafter "Union" and "Company"), the undersigned was duly designated Arbitrator. A hearing was held in Buffalo, New York on June 2, 2015.

The parties were accorded a full and fair hearing including the opportunity to present evidence, examine witnesses, and make arguments in support of their respective positions. The parties filed post-hearing briefs, and the record was closed on or about July 13, 2015.

### ISSUE

The parties were not able to agree as to an Issue to be presented for decision. The Union proposed the following Issue:

Did the Company violate the cba, including Section 18-2, when, on February 6, 2014 and any time thereafter: (1) it assigned the work of doing the so-called "return-to-service" inspection to Mechanic A Lucas Hoffarth; or (2) when it failed to pay Lucas Hoffarth the hourly rate applicable to the Specialist performing the "return-to-service" inspection? If so, to either question, what shall the remedy be?

The Company proposed two Issues, in the alternative. One such Issue proposed was:

Did the Company violate the parties' cba when management tasked an A Mechanic to perform only part of a lube inspection with no attending change of lubrication fluids to ascertain the road worthiness of a bus returning to service where management decided that said bus should undergo a newly directed and non-routine inspection called a "return-to-service" [rts] inspection? If so, what shall be the remedy?

The other Issue proposed by the Company was:

Did the Company ever designate or agree that a certain type or types of bus road worthiness or safety inspection could only be performed by a mechanic holding a Specialist's title or higher? If so, was that job designated or agreement violated in the circumstances connected with the present grievance? If so, what shall be the remedy?

The Arbitrator finds that both issues proposed by the Company reflect the Company's position in such a way that the Union could not be expected to consent to either proposed issue. The Union's proposed issue, on the other hand, fairly addresses, based on the state of the record herein, including the grievance, the scope of the parties' dispute. Therefore, the Arbitrator adopts the Union's proposed issue as the issue to be resolved in this proceeding.

### **RELEVANT CONTRACT PROVISIONS**

Section 13-2.1 ("Job Classifications and Rates of Pay") of the parties' 2006-2009 Agreement reads in pertinent part as follows:

The classifications of employees in the Shops and Garages and Porters, and the straight-time hourly rates of pay of the employees in such classifications are and shall be as follows for the term of this Agreement, August 1, 2006 through July 31, 2009.

The Company shall have the right to establish such other job classifications as necessary. The rate of pay shall be equal to the current classification most similar to the job content of such new jobs. Entitlement to allowances and other items under this Agreement, which depend upon the classification, shall be determined by the needs and duties of the job as set forth in the Job Description as prepared by the Company. (Joint Exhibit 1, 70).

Section 18.2 ("Schedules, Places, Hours and Assignments of Work") of the parties' 2006-2009 Agreement reads as follows:

It is recognized and agreed by the parties that the Company has the duty, responsibility and prerogative of designing and scheduling the operations of its service, and the work, places and hours of work of its employees. 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 of 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. Work of employees shall be performed at or from the places which may be prescribed by the Company. Schedules of runs shall operate from the same, new or changed locations, and runs may be scheduled to operate on more than one route. As schedules of runs or assignments of work are revised, altered or redesigned, it will be the duty and responsibility of the employees to promptly operate and perform their work thereunder. (Id., 102).

### **BACKGROUND FACTS**

The instant grievance was filed by the Union on February 19, 2014. (Joint Exhibit 2). It alleged that the Company had “put in place a return to service inspection sheet, which is the same as a D.O.T. inspection sheet and has historically been always done by a D.O.T. Specialist or above.” (Id.). The grievance sought as a remedy “to return work to specialist and above.” (Id.).

In denying the grievance in its 1<sup>st</sup> step response, the Company, via the Superintendent of Bus Garages, maintained that the return to service inspection was a “standard job ... created for buses/vans that leave their assigned garage for repairs” and “[w]hen they return to the assigned ‘home’ location a Return to Service needs to be performed.” (Id.). The Company asserted that “[t]he job

description of a Mechanic A class title, states 'Utility/Inspection'" and "[e]very task on the 'Return to Service' work order falls within the responsibilities listed for that job description." (Id.). The Company maintained that the Return to Service could be completed by a Mechanic A or Specialist and denied the grievance. Ultimately, the Union demanded arbitration. (Id.).

As set forth in the grievance history, the subject matter of the parties' disputes centers on the return to service inspection. The Company's witness, David Rugg, Manager of Bus Maintenance and Equipment, offered testimony regarding the return to service inspection. It is noted that Mr. Rugg's employment history with the Company has seen him act in a managerial capacity in the Maintenance Department from approximately 1995.

Mr. Rugg testified that the Company began return to service inspections in February 2014. According to Mr. Rugg, the Company implemented such inspections because a bus had been returned to the street with inoperative brakes after having been worked on. Thus, he testified, the Company decided to inspect buses after repair work had been performed on them before returning them to service. He noted that the return to service inspection was not required by the DOT and the process itself involved criteria developed by the Company. To this end, the record shows a return to service inspection form that the Company developed that is utilized by employees for such inspections. (Joint Exhibit 7).

The two job positions at issue in this proceeding are the position of Mechanic "A" ("Utility/Inspection") and the position of "Specialist – Bus Garage". (See Joint Exhibits 5, 6). Both positions are assigned to the "Maintenance Department (BUS)". (Id.). The record discloses that the higher title is that of Specialist, which position pays \$.49 per hour more than the Mechanic position.

The Company's "job description" for Mechanic under "General Statement of Duties" states:

The job involves the preparation, performance and completion of any type of assigned work done by the Bus Garage personnel at any location connected with the operation of the Metro system. It principally consists of inspecting vehicles; identifying and correcting defective, unserviceable or deteriorating conditions with a minimum of direct supervision; observing for and reporting of unsafe or irregular conditions; exercising sound judgment relative to all aspects of assigned duties, and the protecting of Company property. (Joint Exhibit 6).

The Company's "job description" for the Specialist – Bus Garage position states under "General Statement of Duties":

The job involves the preparation, performance and completion of any type of assigned work done by the Bus Garage personnel at any location connected with the operation of the Metro system. It principally consists of reading and interpreting instruction sheets and blueprints; analyzing defects in bus equipment, parts and mechanisms; setting up equipment for and conducting tests; making repairs, replacements and adjustments with a minimum of direct supervision; observing for and reporting of unsafe or irregular conditions; exercising sound judgment relative to all aspects or assigned duties; and the protecting of Company property. (Joint Exhibit 5).

The Company's implementation of the return to service inspection resulted in an assignment given to Mechanic A Lucas Hoffarth to perform a return to service inspection on February 16, 2014. At the time he was assigned the inspection, Mr. Hoffarth had been in the Company's employ for approximately two and a half years. The record contains the return to service inspection form that Mr. Hoffarth completed on February 16, 2014, which form was signed by his foreman to indicate that the assignment had been completed. (Joint Exhibit 7). According to the inspection form, Mr. Hoffarth began his inspection at 2:30 p.m. and completed it at 4:30 p.m. (Id.). Mr. Hoffarth testified that he received no extra pay for performing the inspection and that he did not refer to any DOT regulations in the process of completing the inspection or filling out the inspection form. Mr. Hoffarth also testified that he subsequently was assigned to perform several more return to service inspections.

David Lipowski, a Specialist in the Company's garage, testified that his duties included performing safety inspections on buses. He testified about a safety inspection form utilized to perform bus inspections. (Union Exhibit 3). On the form, Mr. Lipowski added references to the State DOT Regulations. (Id.). According to Lipowski he was required to take a DOT exam on the regulations to become a Specialist. He acknowledged that on a daily basis he does not usually have to refer to the DOT regulations because he knows them. The DOT test, he clarified on cross-examination, was not one administered by the State but was a Company test. The record is clear that there is no legal requirement in New York

that any person needs a special license to perform bus inspections and there is no DOT inspection sticker required for Company buses.

According to Manager Rugg, since at least 1995, “both the Specialist and Mechanic A employees perform inspection work.” The Mechanic A, Mr. Rugg testified, performs basic or “lube” inspections when a bus first reaches 3,000 miles and then every 6,000 miles thereafter. A safety inspection, Mr. Rugg testified, is done every 6,000 miles. There are four levels of lube inspections, according to the testimony of Mr. Rugg, and such inspections are always performed by a Mechanic A. In performing the inspection, a Mechanic A, according to his testimony, does not need any knowledge of the DOT regulations.

A safety inspection, Mr. Rugg testified, is no more extensive than a higher level lube inspection and Mechanic A's along with Specialists have been performing the safety inspections “for many years”. According to Mr. Rugg, a Mechanic A performs a safety inspection if there is no Specialist available, which can occur because of volume or backlog or simply because of the absence of a Specialist. Regarding any inspection, Mr. Rugg testified, the inspector, be it a Specialist or Mechanic A, does not have the authority to take a bus out of service, which authority can only be exercised by a Supervisor. In making that determination, a Supervisor, Mr. Rugg stated, does use DOT regulations. He acknowledged that the job description for Specialist refers to obtaining a DOT Certificate, but Mr. Rugg also noted in his testimony that the Specialist job



description was created before the Company was able to “self inspect” buses.

Safety inspections, Mr. Rugg emphasized, do not include the utilization of DOT “defect ratings”. Mr. Rugg further observed that on a recent posting for the Specialist position (Joint Exhibit 5), reference was made that the position requires a complete knowledge of DOT regulations. Further, Mr. Rugg testified that Specialist can bid by seniority for different assignments, and Mr. Lipowski bid for the inspection assignment. Mr. Rugg further testified that Specialists are primarily Mechanics who work on more “detailed subsystems” in making repairs than do Mechanics.

#### **POSITION OF THE UNION**

In setting forth its position that the Company violated the parties’ Agreement by assigning a Mechanic A to perform the return to service inspection, the Union maintains that it is of no moment that Mechanics A have performed safety inspections in the past. That is, the Union argues, “[t]hat on some occasions they have performed such work may be indicative of nothing more than that the Company has been in violation of Section 18-2 and for some reason the Union did not grieve it; or that the Mechanics A were reasonably capable of performing the work and were paid the Specialist’s rate for the work.” The Union emphasizes its understanding that the record does not contain any evidence that the past performance of safety inspections by Mechanics A was necessarily unaccompanied by the payment of the Specialist rate.

As to the return to service inspection, the Union maintains that Section 18-2 in essence contains two criteria to justify the Company's assignment of an employee to work in a higher position. First, the Union observes, Section 18-2 requires that the employee be "reasonably capable of performing" the work. In the case of employee Hoffarth, the Union observes, that the Company did find that he was reasonably capable of performing the return to service inspection and thus "was privileged to assign him that work." But, the Union contends, the other criterion required the Company to pay the higher rate applicable to the Specialist position when employee Hoffarth performed the return to service inspection.

In setting forth its position that the return to service inspection assignment was the work of a Specialist and not of a Mechanic A, the Union points to the job descriptions for both positions. Focusing on the Specialist job description, the Union observes that the responsibilities set forth in the description include language that the Specialist is to "identify defective, unserviceable or deteriorating conditions in bus systems ... test, repair or replace bus systems or components ... perform periodic inspections and preventive maintenance on bus systems and components ... [and] possess a thorough knowledge of all New York State D.O.T. regulations pertaining to bus maintenance and be qualified to make any test and perform any garage work required to obtain a New York State D.O.T. certificate for a bus." This portion of the job description, the Union observes, is consistent with a job opportunity notice of April 29, 2015 distributed

by the Company which mirrors that part of the job description identified by the Union. It is clear, according to the Union, that the “essence” of the Specialist position “is that of inspections.” In contrast, the Union maintains, “the essence of the job Mechanic A, as testified to by Hoffarth and as seen in the job description ... is that of doing repairs.” (Emphasis in original).

The Union acknowledges “some overlap” between the duties of a Specialist and Mechanic A and acknowledges that “there is some inspecting of vehicles by Mechanics A.” Nevertheless, the Union posits, “the most glaring difference [between the two job descriptions] is that missing from the Mechanic A job description is any need to possess a thorough knowledge of New York State D.O.T. regulations.” A Specialist, on the other hand, the Union observes “must possess such thorough knowledge” of DOT regulations. (Emphasis in original).

According to the Union, “[t]he requirement that a Specialist have a thorough knowledge of the D.O.T. regulations pertaining to bus maintenance implies, at least, that he needs those skills because he needs to inspect vehicles”, which “is the primary mission of the position.” The Mechanic A, however, the Union maintains, does not need to possess knowledge of the D.O.T. regulations “since he is primarily involved in doing repairs.” According to the Union, it is the job descriptions that are critical in determining the differences between the two positions. It maintains that the Company has sought to argue that no difference exists between the Specialist and Mechanic A positions. The Union maintains that reason demands the conclusion that “the Company pays

the Specialist more because the Specialist is more skilled”, which “additional skill is his thorough knowledge of the D.O.T. regulations such that he can perform an adequate inspection.”

The Union references Arbitrator Foster's Award in an earlier dispute between the parties wherein Arbitrator Foster emphasized the importance of job descriptions. The Union then emphasizes that the “essential nature” of the Specialist position is different from that of the Mechanic A position. While the Mechanic A does perform inspections, the primary function of the Mechanic A, according to the Union, is to perform repairs whereas the essential function of the Specialist position “is to inspect vehicles using a thorough knowledge of the D.O.T. regulations.” The Union observes that the return to work inspection was a “new job” and no “past practice” exists, which the Union maintains requires the resolution of the grievance to be based on the language of Section 18-2 and the job descriptions for the two positions.

The Union discounts any evidence that Mechanics A perform lube inspections. In the Union's estimation, the lube inspections do not constitute what is to be decided in this proceeding and the record contains no evidence of the “specifics” of what lube inspections consist of because no actual Mechanic A that has performed a lube inspection appeared to testify in this arbitration. The Union observes that the “check list” for a lube inspection “is very similar to that of the safety inspection” and the Union opines that “[i]t could be there is a past practice of Mechanics A performing the lube inspections” or “it could be that all of

the Mechanics A who performed the lube inspections were capable of performing the work and were paid the additional monies”, or “it could be that the Union has preserved the right to argue the issue in the future, even if it has not done so to date.”

The Union proffers that the safety inspection “is identical” to the return to service inspection and both require “a thorough knowledge of the D.O.T. regulations.” Only Specialists, the Union emphasizes, “are required to possess such knowledge” of the regulations. Mr. Rugg, according to the Union, offered testimony that the inspections required by the Company are in accord with D.O.T. regulations.

The Union thus concludes that the instant grievance should be sustained and “[t]he Company should be directed to use only Specialists in performing the return-to-service inspection; or, in the event a Mechanic A is reasonably capable of performing the work, then the Company may assign the work to a Mechanic A, provided the Company pays him the wages of the Specialist during such time as the return-to-service inspection is conducted.”

## POSITION OF THE COMPANY

The Company observes that the Union has the burden of proof in establishing its claim that the parties' Agreement was violated. In setting forth its position, the Company maintains that the Union has made no genuine claim that any "past practice" as reflected in Section 19-1 of the parties' Agreement required the Company to assign the return to service inspection work to a Specialist. In fact, the Company notes, the return to service inspection work was not implemented by the Company until approximately February 2014. As the Company views it, the true "burden of proof first requires the Union to establish that the Safety Inspection is uniquely Specialists' work and then establish that the Return To Service Inspection at issue is more closely analogized to the Safety Inspection than the Lube Inspections routinely performed by A Mechanics for decades."

The Company identifies the job descriptions for the A Mechanic and Specialist positions. Both descriptions, the Company asserts, "contemplate the performance of vehicle inspection work" and thus it could be said that "the jobs of both Specialists and A Mechanics include inspecting buses for 'defective, unserviceable and deteriorating conditions in systems, units or parts' [as set forth in both descriptions]", which, the Company maintains, "should not be viewed as remarkable as both Garage Specialists and A Mechanics work as bus mechanics and incidental to the primary function of such bus mechanics is looking over the bus to see what might be in need of maintenance or repair."

The Company further maintains that the job description for Mechanic A specifically states that the Mechanic A will perform “periodic inspections” and that the safety inspection, though “generally performed by Specialists is a **periodic inspection** that in contrast to the Lube Inspection is performed at mileage intervals where no oil changes or lubrication work is due.” (Emphasis in original).

The Company identifies what it considers to be the unrefuted testimony of Manager of Bus Maintenance and Equipment Rugg “that A Mechanics have been used for decades to perform Safety Inspections in place of absent Specialists without receiving any out-of-classification pay for this work and without any claims for out-of-classification pay being made by the Union.” In fact, the Company observes, Manager “Rugg also added that the higher-level Lube Inspections performed by A Mechanics could also be viewed as more comprehensive than the Safety Inspections performed by Specialists.” That the Specialists generally get assigned to perform the safety inspections, as the Company views the record, “is more a function of A Mechanics being busy performing their inspection work in conjunction with oil changes and lubrication work than any real difference in the inspection work performed by A Mechanics and Specialists.”

The Company rejects any reliance by the Union based on that part of the Specialist job description requiring a Specialist to “possess a thorough knowledge of all New York State DOT regulations pertaining to bus maintenance” and to “be qualified to make any test and perform any garage work required to

obtain a New York State DOT Certificate for a bus.” The Union sought to emphasize this portion of the job description, the Company claims, by having Specialist Lipowski present a worksheet he prepared which illustrates how the safety inspection checklist items relates to former DOT regulations. The Company observes, however, that Specialist Lipowski added the DOT regulation references to the Company's inspection sheet and that Mechanic Hoffarth in his testimony acknowledged “that he did actually complete the [return to service] inspection assignment by noting any problems he observed in connection with any of the checklist items on the inspection sheet” and that “he has performed several other Return To Service Inspections after the one triggering the present grievance and was not advised by supervision that had done any of these Return To Service Inspections improperly.” Mr. Hoffarth's “training records”, the Company adds, would certainly imply that he would know how to determine if a bus was fit to be put back into service “despite the purported lack of training in how to conduct official DOT prescribed inspections.”

There is no dispute, the Company also maintains, “that no DOT inspection certificates are placed on any Company buses” and “[w]hether the inspection being performed is a Lube Inspection or a Safety Inspection, it is done in accordance with checklists and methodologies developed by the Company and does not end with any DOT certification being affixed to the bus.” What the record actually shows, according to the Company, as set forth in the testimony of Manager Rugg, is that “the main difference between a Specialist and A Mechanic



aside from the former passing the requisite trial period and classification rate test for one of the Specialist's positions, is not some special, higher-level official DOT bus inspection function, but rather that Specialists perform the non-routine, higher level bus repairs, such as wheelchair ramps and lifts as well as repairs on air conditioning, ventilation and heating systems." This difference, the Company argues, is reflected in a comparison of the job descriptions for A Mechanic and Specialist, which the A Mechanic "mak[ing] routine ... repairs," while Specialists make far more complex and intricate repairs.

In the Company's estimation, "the Union has failed to prove that Specialists perform any kind of bus inspection work that is qualitatively different than the inspection work routinely performed by A Mechanics during the course of performing bus oil changes and lubrication work." The Company asserts that the Union did not establish "that completing the Safety Inspection checklist in comparison to the Lube Inspection checklists requires knowledge or training uniquely possessed by Specialists and Leaders, but Manager of Bus Maintenance and Equipment David Rugg's testimony that A Mechanics have likewise also performed Safety Inspections without being paid or demanding out-of-class pay for that inspection work stands un rebutted."

Based on the above, the Company maintains that there has been no violation of the Agreement and that the instant grievance must be denied.

## OPINION

The parties offer no particular dispute about the meaning of Section 18-2, which is the crucial point of focus in this proceeding, at least as Section 18-2 would apply to the instant grievance. The parties essentially agree that there is a basic factual question the Arbitrator must answer, namely, whether the assignment of a Mechanic A to perform the return to service inspection required the Company to pay the Mechanic A the higher rate of the Specialist position rather than the pay of his "regular position" of Mechanic A.<sup>1</sup> The Union has the burden of establishing by a preponderance of the evidence that this factual question should be answered in its favor. That is, it is the Union's burden to show by a preponderance of the evidence that the work performed by the Mechanic A in performing the return to service inspection is only the work of a Specialist and not the work of the "regular position" of Mechanic A.

Initially, the Arbitrator would observe that the resolution of the factual question is not dependent on the understanding of any past practice. The record shows that the Company's adoption and implementation of the return to service inspection was almost simultaneous with the assignment of that job to Mechanic A Hoffarth. What is central to the factual inquiry are the Company's job descriptions for Specialist and Mechanic A. This observation is consistent with

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<sup>1</sup> The relevant language of Section 18-2 is that "[t]he Company may assign any employee to such work which he or she is reasonably capable of performing, and one so assigned any such employee ... shall be paid the regularly 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 language found in the Award of Arbitrator Foster in an earlier dispute between the parties (Joint Exhibit 4) and is an observation that neither party can quarrel with in this proceeding.

Thus, the Arbitrator turns to an analysis of the Company's job descriptions for the two positions. A comparison of the two positions does not advance the Union's cause. The Company's job description for Mechanic A states that "[i]t principally consists of inspecting vehicles; identifying and correcting defective, unserviceable or deteriorating conditions with a minimum of direct supervision; observing for and reporting of unsafe or irregular conditions; exercising sound judgment relative to all aspects of assigned duties, and the protecting of Company property." (Joint Exhibit 6). Among the "responsibilities" for this position is to "[m]ake routine mileage and periodic inspections and repairs." (Id.).

Hence, the Mechanic A's job description unequivocally contemplates that the Mechanic A will be engaged in the work of inspections, to the point where it is stated that the work of the position "principally consists of inspecting vehicles." It is simply not accurate, as the Union has claimed, to state that the crucial function of the Mechanic A is to perform repairs. Inspection work is stated to be one essential function of the job and the job description, if anything, serves as support for the Company's position in this proceeding. In addition, the Arbitrator would observe that no evidence was adduced that the work regularly performed by the Mechanic A, contrary to the job description, consists primarily in making repairs.

The job description of Specialist does plainly contemplate that the Specialist will perform inspection work. The testimony of Company witness Rugg that the Specialist is primarily called upon to do repair work, however, is consistent with the first listed responsibility for the Specialists to “[r]ead and correctly interpret blueprints, instruction sheets and manuals.” At most, the job description for Specialists as it would pertain to inspection work supports the conclusion that the Mechanic A and the Specialist do both perform inspections on a regular basis.

It is true, as the Union notes, that there is a link to DOT regulations, in that the Specialist is to “possess a thorough knowledge of all New York State D.O.T. regulations pertaining to bus maintenance and be qualified to make any tests and perform any garage work required to obtain a New York State D.O.T. certificate for a bus.” To some extent, however, this language is outdated because the record is clear that the Company's buses no longer need a New York State D.O.T. certificate. Nor, the Arbitrator would observe, is there any persuasive evidence in the record that to perform a return to service inspection the inspector would need to have any “thorough knowledge” of State DOT regulations. Instead, the inspection is self-imposed by the Company and the inspection sheet makes no specific reference to any DOT regulation. (See Joint Exhibit 7). The Arbitrator finds it significant that Mechanic A Hoffarth was able to complete a return to service inspection to the satisfaction of the Company without any reference to the DOT regulations but on the basis of his own knowledge as a

Mechanic regarding what was needed to complete the inspection. Consistent with the inspection form itself (Id.), Mr. Hoffarth would write a comment on the inspection form if "something was found." Moreover, he subsequently was assigned to more return to service inspections and has never received any negative comments regarding inspections of this type he has performed. This evidence, in the Arbitrator's estimation, reflects facts that run counter to the Union's argument. Put differently, there is nothing in the job description of Specialist or in the record evidence that would suggest that a return to service inspection is "unique" or "exclusive" to the Specialist position and there is no basis for the Arbitrator to conclude that the Union met its burden of establishing a contractual violation.

Accordingly, and based on the foregoing, I find and make the following:

**AWARD**


The Company did not violate the parties' Agreement, including Section 18-2, when on February 6, 2014 and any time thereafter: (1) it assigned the work of doing the so-called "return-to-service" inspection to Mechanic A Lucas Hoffarth; or (2) when it failed to pay Lucas Hoffarth the hourly rate applicable to the Specialist performing the "return-to-service" inspection.

The grievance is denied.

STATE OF NEW YORK )  
COUNTY OF ALBANY ) ss:

I, Jeffrey M. Selchick, do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument, which is my Opinion and Award.

Dated: September 4, 2015  
Albany, New York



JEFFREY M. SELCHICK, ESQ.  
ARBITRATOR