STATE OF NEW YORK
VOLUNTARY LABOR ARBITRATION

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In the Matter of the Arbitration between

AMALGAMATED TRANSIT UNION,
LOCAL 282,

- and -

REGIONAL TRANSIT SERVICE, INC.

OPINION

AND

AWARD

Grievance: 121-23 – Matthew Chapman – Overtime for SVOs

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BEFORE: Jay M. Siegel, Esq.
Arbitrator

APPEARANCES: For the Amalgamated Transit Union, Local 282
Blitman & King, LLP
By: Nolan J. Lafler, Esq., & F. Wesley Turner, Esq.,
Of Counsel

For the Regional Transit Service, Inc.
Harris Beach PLLC
By: Roy R. Galewski, Esq., Of Counsel

In accordance with the Collective Bargaining Agreement (Joint Exhibit 1) between the parties (Union and Company), the undersigned Arbitrator was selected to hear a grievance and render a binding determination. A hearing was held at the Company's offices on July 9, 2024.

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 record was closed on September 3, 2024, after the Arbitrator's receipt of the parties' written closing briefs.

ISSUE

The parties stipulated to the following issue to be decided by the Arbitrator:

> Did the Company violate the Collective Bargaining Agreement (as amended by the Memorandum of Agreement Reimagine RTS Project dated August 13, 2019) when it paid Matt Chapman at straight time for his worked time beyond eight (8) hours on April 10, 2023 because Mr. Chapman did not work more that forty (40) hours in that workweek?
>
> If so, what shall the remedy be?

RELEVANT CONTRACT PROVISIONS

ARTICLE 5 – GRIEVANCES

Definition of a Grievance

1. A grievance is defined to be:

   Any controversy between the Company and the Union as to any matter involving the interpretation or application of the terms of this Agreement or any controversy between the Company and the Union arising out of the terms of this Agreement, or any controversy that may include and involve past practices, work rules, additional agreements or conformity to law clauses.

2. The Company and the Union agree that the definition of a past practice is as follows:

   In the absence of a written past agreement, a past practice, to be binding, must be unequivocal, clearly understood, and readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties.

ARTICLE 25 – WORK WEEK – REGULAR OPERATORS

Regular operators are operators whose names appear on run guides. The work week for all bus operators shall be on the basis of eight (8) hours per day and five (5) days per week. All work over and above eight (8) hours daily and forty (40) hours weekly, exclusive of reporting and cash-in time but not including journey time, shall be paid for on the basis of time and one-half (1/2).

No runs will have more than three tricks assigned. A run with three tricks assigned will be referred to as a "three-tricker."

On runs when assigned work exceeds both eight (8) hours work and the ten (10) and one-half (1/2) hours spread, the spread penalty will be paid over and above the time and one-half (1/2) payment for work over eight (8) hours. This provision provides time on time…

MEMORANDUM OF AGREEMENT – REIMAGINE RTS PROJECT

With respect to the applicability of the existing CBA, full-time SVO employees shall be covered by only those provisions specifically set forth below by section number and topic:

- Section 25 – Work – Week (As modified by this MOA)…
- Section 64 – Term of Contract

Any provision of the CBA in conflict with this Memorandum of Agreement shall be superseded by this Memorandum of Agreement. Except as specifically set forth herein, full-time SVO employees are not entitled to any benefits except those required by law.

BACKGROUND FACTS

The Company operates a transit service that serves the City of Rochester and its surrounding suburbs. The Union represents more than 500 employees in positions ranging from bus operators to clerical workers.

In 2019, the Company established a new position, small vehicle operator (SVO) for a new service, i.e., an on-demand service where members of the public could use a mobile phone application to schedule rides in small vans owned and operated by the Company. It is similar to a public Uber or Lyft. The Union became the bargaining agent for the SVOs.

Because the SVO position was new and unique, the parties negotiated specific terms and conditions of employment for this position. Those terms and conditions are found in both the CBA and in the Reimagine Memorandum of Agreement (Reimagine MOA) that was negotiated in 2019. The Reimagine MOA addresses specific terms and

conditions unique to SVOs including scheduling and work selection process, filling of SVO overtime, geographic restrictions on where SVOs could work, etc. The parties negotiated a new wage rate for the SVO position that was several dollars per hour less than the rate paid to bus operators.

During negotiations, the parties agreed that many sections of the then-existing CBA were applicable to SVOs. In Paragraph 17 of the Reimagine MOA, the parties agreed to the following:

> With respect to the applicability of the existing CBA, full-time SVO employees shall be covered by only those provisions specifically set forth below by section number and topic:
>
> - Section 1 – Conformity to Law Clause
> - Section 2 – Management Rights…
> - Section 25 – Work – Week (As modified by this MOA)…
> - Section 64 – Term of Contract[1]
>
> Any provision of the CBA in conflict with this Memorandum of Agreement shall be superseded by this Memorandum of Agreement. Except as specifically set forth herein, full-time SVO employees are not entitled to any benefits except those required by law.

Grievant started his employment with the Company around 2015 as a bus operator. In 2021, when the Company started hiring SVOs, Grievant was one of two bus operators who voluntarily transferred to the position. Although Grievant would earn several dollars less per hour as an SVO, he decided to work as an SVO because his existing seniority would carry over. This could provide more overtime opportunities, and, as one of the most senior SVOs, Grievant also could select better routes and a better schedule than he could as a bus operator.

[1] The parties listed more than 40 separate sections of the CBA applicable to SVOs. This list includes a select few of the 40 plus sections in the CBA that are germane to this grievance.

Grievant testified that, in 2021, the Company actively recruited him and other bus operators to become SVOs. He testified that Company representatives, including Chris Dobson and Jay Corey, the Company's Director of Transportation, would show up in the break room to discuss becoming SVOs. He testified that they told him that overtime pay would be the same as it was for bus operators, namely, overtime after 8 hours in a day, in addition to overtime for all work in excess of 40 hours in a week. Grievant testified that because he was so high on the overtime list, the opportunity to select the best runs at the best times and have many opportunities for overtime was very appealing. He testified that he decided to become an SVO for quality of life issues.

On February 10, 2021, Grievant received an offer to become an SVO. Among other things, the offer stated, "You are eligible to receive overtime pay at a rate of time and one-half times your regular rate after 8 hours worked in a workday." Notably, this statement was included in dozens of written offers made by the Company in 2021 and 2022 to individuals agreeing to become SVOs.

On April 10, 2023, Grievant worked his regular shift from 6:00 AM to 2:00 PM. He was offered and accepted a block of overtime from 4:30 PM to 8:30 PM, which required him to report at 3:45 PM. Grievant worked that overtime shift and all of his other scheduled shifts that week, except for Friday that week. Grievant's total amount of actual weekly work time was 36.75 hours. However, instead of paying Grievant overtime for his 4.75 hours of work on April 10, 2023, the Company stated that it did not have to pay overtime to SVOs unless the SVOs work hours exceeded 40 hours in a week.

On April 20, 2023, the Union filed a grievance challenging the failure to pay 4.75 hours of overtime on April 10, 2023 for work beyond his scheduled shift. The Company

denied the grievance, asserting that it was only obligated to pay overtime to SVOs when their work hours exceeded 40 in a week. The Union demanded arbitration and the parties selected the undersigned Arbitrator to hear and decide this dispute.

POSITION OF THE UNION

The Union asserts that it must prevail because the Reimagine Agreement incorporates Section 25 of the CBA, which explicitly states that overtime is required when employees work more than eight hours in a day.

The plain meaning rule is that clear contract language must be given its ordinary meaning. Under this rule, an arbitrator's duty is to enforce the plain language in the CBA.

Paragraph 17 of the Reimagine Agreement lists the sections of the CBA that would apply to SVOs. This includes Section 25, which clearly and unambiguously requires the Company to pay overtime for all daily hours worked over eight. There is nothing in Paragraph 17 modifying this requirement, so it must be given its ordinary meaning and application. For Grievant, this means that the Company clearly violated the CBA by failing to pay him 4 hours and 45 minutes at the overtime rate for the work he performed beyond eight hours on April 10, 2023.

Notably, not a single witness for either the Union or the Company testified about any bargaining history establishing that the Reimagine Agreement modified the daily overtime requirement in any way. Instead, the Company relies solely on a generic catchall phrase at the end of Paragraph 17 of the Reimagine Agreement, which states, "Except as specifically set forth herein, full-time SVO employees are not entitled to any benefits except those required by law." In other words, since the Company argues it is

required to provide only benefits required by law, it need not pay overtime after eight hours of work in a day as that is not legally required.

This argument is illogical because the catchall phrase explicitly describes all of the sections that are applicable to SVOs. Paragraph 17 of the Reimagine Agreement does not state that the Company will provide only those benefits required by law. Rather, it says the Company will provide SVOs the specific benefits listed in the Reimagine Agreement. The catchall phrase is intended to expressly mean that no benefits in the CBA other than those listed in the Reimagine Agreement or required by law, apply to SVOs.

Other traditional rules of contract interpretation strongly support the Union's position. Notably, an interpretation that nullifies or would render meaningless any part of the contract is to be avoided as the assumption is that parties agree to language for specific reasons. The Union must prevail because the Company's interpretation of Paragraph 17 would render the adoption of Section 25 for SVOs entirely superfluous. Indeed, Jay Corey, the Company's Director of Transportation, testified that no other provision in Section 25 applies to SVOs because nothing else within Section 25 is required by law. This would mean that all of the other rights bargained by the Union in Section 25, including the prohibition on runs with more than three pieces of work, the premium paid for runs with three pieces of work, etc., would also not be applicable to SVOs. This cannot be true. If Paragraph 17 simply means that Company only needs to comply with statutory guarantees, this concept is already addressed in Section 1 of the CBA, entitled "Conformity to Law Clause." Since the idea that the Company would comply with the law is already governed by Section 1 of the CBA, it is abundantly clear

that Paragraph 17 was intended to articulate the actual benefits the Company intended to provide to SVOs. Otherwise, the language addressing Section 25 would be listed but would mean nothing.

Of significant note, the Company's arguments stand in stark contrast to its own administration of the Reimagine Agreement and the representations it has made to dozens of drivers that it recruited into SVO positions. There is no dispute that the Company unequivocally represented to the vast majority of current SVOs that they would be paid time and one-half for all hours over eight per day as dozens of congratulatory offer letters expressly state this to be the case. Moreover, Grievant testified that when the Company was recruiting drivers to become SVOs in 2020 and 2021, Company officials, including Director Corey, promoted daily overtime as a benefit that would offset the lower wages paid to SVOs.

Director Corey also admitted that the Company has previously applied the spread penalty contained within Section 25 to SVOs. In other words, the Company has expressly provided the benefits included in Section 25 to SVOs, which are not limited to time and one-half after 40 hours of work in a week.

For all of the reasons above, the Union urges the Arbitrator to find that the Company's action toward Grievant on April 10, 2023 violated the CBA. The grievance should be sustained and Grievant should be awarded overtime for all hours worked beyond his eight hour shift on April 10, 2023.

POSITION OF THE COMPANY

The Company asserts that the grievance must be dismissed because the Union has failed to establish a violation of any provision in the CBA. The Company states that the Reimagine Agreement addresses specific employment terms for SVOs, including pay rates and scheduling. It also contains provisions explaining which sections of the main CBA apply to full-time SVOs. Section 17 of the Reimagine Agreement states that Section 25 of the CBA applies to full-time SVOs, as modified by the Reimagine Agreement. At the very end of Section 17, the parties agreed that, "except as specifically set forth herein, full-time SVO employees are not entitled to any benefits except those required by law." In the Company's estimation, this demonstrates that SVOs are only entitled to employment benefits required by law. Since there is no express language in the Reimagine Agreement stating that SVOs are entitled to overtime after working eight hours in a day, it is clear that SVOs are only entitled to overtime after 40 hours of work in a week, which is consistent with the federal Fair Labor Standards Act and New York State Labor Law.

The parties could have easily stated in the Reimagine Agreement that Section 25 of the CBA applies to SVOs in the same manner it is applied to Bus Operators. Instead, they agreed that Section 25 of the CBA applies to SVOs only "as modified by" the Reimagine Agreement. They also agreed that SVO employees are only entitled to benefits required by law.

In order for the Union to prevail, the Arbitrator would have to deem the phrase "as modified by this MOA" to be meaningless. Such a ruling would be in direct contravention to basic principles of contract law. In other words, the parties' choice of

these words must have meaning and arbitrators are to interpret provisions in a way that would give effect to all provisions.

The fact that the Company has provided SVOs with spread pay, a benefit set forth in Section 25 of the CBA, which is not required by law, does not negate the Company's right to adhere to the plain language and only provide benefits required by law. Director Corey testified that while the Company is not required to pay the spread penalty of Article 25 to SVOs because the spread penalty is not required by law, the Company made a decision to pay this because very long shifts are undesirable to drivers and the Company determined it was the right thing to do.

Similarly, the Company's error in SVO offer letters stating that SVOs would receive time and one-half for all hours above eight does not and cannot override clear and unambiguous contract language. Moreover, while the offer letters may have mistakenly offered this benefit, there is no dispute that the Company has not previously paid SVOs time and one-half for over eight hours in a day when they did not also exceed 40 hours of work in a week.

The bottom line is that the Union is asking the Arbitrator to ignore critical provisions in Section 17 of the Reimagine Agreement and read that MOA as if those words did not exist. Since the plain language must prevail, Union President John Trott's testimony about the negotiations leading to the Reimagine Agreement is not relevant. The best way of determining intent is through clear language. Since the clear language expressly states that the Company will provide SVOs only those benefits required by law, it is abundantly clear that Grievant had no right to overtime on April 10, 2023, when he

worked beyond his regular workday. The Company urges the Arbitrator to dismiss the grievance in its entirety.

OPINION

After carefully considering the evidence in the record and the arguments of the parties, the Arbitrator concludes that the grievance must be sustained.

The Union must prevail because the totality of the evidence persuades the Arbitrator that its interpretation is consistent with the clear and unambiguous language and the actions of the parties. Paragraph 17 of the Reimagine Agreement expressly lists dozens of sections in the CBA that the parties agreed would be applicable to SVOs, stating:

> With respect to the applicability of the existing CBA, full-time SVO employees shall be covered by only those provisions specifically set forth below by section number and topic.

The parties then listed dozens of sections that were applicable to SVOs. Many of the sections are simply listed by section number and name, e.g., "Section 1 – Conformity to Law Clause." Numerous others listed the section number, name, and added a parenthetical clause, "(As modified by this MOA)." Then, at the end of the list, the parties agreed to the following:

> Any provision of the CBA in conflict with this Memorandum of Agreement shall be superseded by this Memorandum of Agreement. Except as specifically set forth herein, full-time SVO employees are entitled to any benefits except those required by law.

The Arbitrator finds the Union's interpretation to comport with the clear and unambiguous language. This list is the best evidence of the articles of the CBA that the

parties agreed would be applicable to SVOs and this list includes Section 25, entitled "Work – Week."

The Company is essentially claiming that even though Paragraph 17 lists Section 25 and numerous others as being applicable to SVOs, these provisions actually are not applicable because, at the end of Paragraph 17, the parties added, "except as specifically set forth herein, full-time SVO employees are not entitled to any benefits except those required by law."

This is not persuasive. The Arbitrator discerns from the list in Paragraph 17 an unmistakable intent to have all of the listed sections applicable to SVOs. It is the Company's interpretation that essentially asks the Arbitrator to assume that the parties listed all of these sections and then wholly undermined them by adding the catchall phrase that employees are not entitled to any benefits except those required by law. This is not logical, nor is it what the parties expressly stated. The parties' decision to list Section 25 and dozens of other sections tells the Arbitrator that, except as modified by the MOA, Section 25 is applicable. Since there is no language expressly nullifying Section 25 of the CBA, and Section 25 provides for overtime pay after eight hours of work in a day, it is abundantly clear that the parties intended for this to be applicable to SVOs. If it was not one of the listed sections, then the Company's obligations would be limited to those benefits required by law.

The Company would have the Arbitrator believe that all of the express contractual rights provided in Section 25 were nullified by the catchall phrase. To the Arbitrator, if the parties were going to change a benefit as fundamental as a change from overtime pay after eight hours in a day to overtime pay only after 40 hours in a week, such a change

would need to be clearly articulated. There is not a shred of unequivocal evidence of this clear and unambiguous intent.

What seems far more plausible is that the parties added the parenthetical clause "(As modified by this MOA)" to sections from the CBA that were addressed in other places in the Reimagine Agreement. When one reviews the Reimagine Agreement, one can see that it added new language that impacted certain sections of the CBA, and that these are the sections on the list where the parties added the parenthetical clause, "As modified by this MOA."

For example, in Paragraph 18 of the Reimagine Agreement, the parties agreed to language about Article 20(a) of the CBA. As another example, in Paragraph 8 of the Reimagine Agreement, the parties agreed to specific language on work week, i.e., Section 25. Notably, both Section 20 and Section 25 are listed with the parenthetical clause "(As modified by the MOA)." In stark contrast, the Reimagine Agreement does not have new language on topics such grievances, discipline, and arbitration, (Sections 5, 6, and 8 respectively) and those sections do not have the aforementioned parenthetical clause.

The Union should also prevail because all of the extrinsic evidence supports its case. It establishes that, from the time these provisions were negotiated until the time the Company denied this grievance, the Company took the position that SVOs are paid time and one-half for all hours beyond eight in a day. Notably, from 2021 through 2024, the Company sent dozens of offer letters to SVOs informing them that they would be paid time and one-half for all hours of work beyond eight in a day. The Company has also treated spread pay provisions of Article 25 as being applicable even though those provisions are more generous than the law would provide. Finally, Grievant provided

unrebutted testimony that when SVOs were first being hired, Company officials told bus operators that they should become SVOs because although the pay was less, the overtime provisions of pay after eight hours in a day would offset those lost wages.

The Arbitrator notes that the Reimagine Agreement is new, yet the Company presented no evidence that it proposed the language in dispute because it intended to provide only those benefits required by law to SVOs. It also failed to present negotiations history that the parties discussed this issue at the negotiating table and/or that the Company articulated its understanding that while Paragraph 17 was applicable, the overtime provisions were not and were to be governed by external law.

In the end analysis, the language supports the Union and the Company's historical actions support the Union's position. The Union must prevail.

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

AWARD

1. The grievance is sustained. The Company violated the Collective Bargaining Agreement (as amended by the Memorandum of Agreement Reimagine RTS Project) dated August 13, 2019) when it paid Grievant at straight time for his worked time beyond eight (8) hours on April 10, 2023, because Mr. Chapman did not work more than forty (40) hours in that workweek. As a remedy, Grievant shall be made whole by the Company paying him time and one-half his rate of pay for his 4.75 hours of overtime work on April 10, 2023.[2]

Dated: September 23, 2024
Cold Spring, New York

Jay M. Siegel, Esq.
Arbitrator

STATE OF NEW YORK)
COUNTY OF PUTNAM)

I, Jay M. Siegel, 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 23, 2024

Jay M. Siegel, Esq.
Arbitrator

[2] Assuming Grievant already received straight time pay for these hours, he shall receive an additional one-half time of pay for all time worked to be made whole.