IN THE MATTER OF AN ARBITRATION

AND IN THE MATTER OF A UNION POLICY GRIEVANCE

FILED ON DECEMBER 20, 1995.

BETWEEN:

TRANSCONA-SPRINGFIELD SCHOOL DIVISION N0.12

-and-

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL NO. 832

WILLIAM D. HAMILTON **SOLE ARBITRATOR**

APPEARANCES :

DAVID LEWIS	COUNSEL FOR THE UNION
ROBERT SIMPSON	COUNSEL FOR THE SCHOOL DIVISION
HEATHER OSTOP	CHIEF SHOP STEWARD (UNION)
GARRY FINLAY	ASSISTANT SUPERINTENDENT (SCHOOL DIVISION)

AWARD

(I) GENERAL COMMENTS AND IDENTIFICATION OF ISSUE

This Grievance came before me as a result of a referral made by the Manitoba Labour Board (the "Board") under the expedited arbitration procedure in The Labour Relations Act (the "Act").

The hearing was held on August 28, 1996. At the outset, I advised the parties that I had taken the required Oath of Office. Exclusion of witnesses was sought and ordered.

The parties confirmed that I had been properly appointed and had jurisdiction to determine the matters at issue.

It was agreed that I need only deal with the basic question of liability in the circumstances prevailing and that if the Union was successful, in whole or in part, then the parties would, if the Award required it, attempt to resolve any issues relating to implementation or compensation between themselves but, failing agreement, I would remain seized of jurisdiction.

The Grievance (Ex.2) states:

> "We have a grievance under the Collective Bargaining Agreement in that the Transcona-Springfield School Division

> No. 12 has denied payment of wages to certain employees who contacted the parents of the school children to inform them of changes due to snow storm."
>
> This is a violation of Article 14.02, the Collective Agreement as a whole, and of Section 80(2) of the Manitoba Labour Relations Act."

As to remedy, the Union claims

> "We request that all affected employees who performed the said job be compensated for all hours spent to complete the task; plus benefits and seniority".

The Division denied the Grievance asserting that there has been no violation of any provision in the Collective Agreement (see Ex.3).

Two provisions in the 1992-1995 collective agreement (the "Agreement") (Ex. 1) are central to this dispute and it is useful to reproduce these provisions at the outset. Article 14.02 of the Agreement provides:

> "The Division agrees that if a bus driver is required to perform the following duties, said bus driver shall receive pay for all time so worked at the rate of $9.95 per hour and pro-rated for any portion thereof, except when it falls during their regular starting and normally ending driving run where it shall be part of their regular pay;
>
> Bus breakdown (including unexpected circumstances involving the bus) Irregular paper work, and
> Any other Divisionally assigned duties."

Appendix "A" to the Agreement deals with wages and rates of pay Section A-7 of this Appendix provides:

> "When schools are closed due to inclement weather or other unexpected circumstances, at the discretion of the Division, bus drivers shall be paid as if they had worked on said day. The Union agrees that any driver being paid under these circumstances may be called in to work to drive their bus, or other duties, in reverse order of seniority.

The Union's position is that, on the evening of November 9, 1995, a number of bus drivers were directed or instructed by the Division to contact parents of children on the routes serviced by the drivers to advise the parents that the schools in the Division would be closed the next day (November 10, 1995) and that the buses would not be running. These tasks fell within the parameters of Article 14.02 because they constituted "...any other Divisionally assigned duties" and they were performed other than during the regular starting and normally ending driving run for the drivers. In the circumstances, the wording of

Article 14.02 establishes entitlement to payment at the rate of $9.95 per hour (pro-rated) for all time so worked. Section A-7 of Appendix "A" has no application because that clause is limited to payment for work performed on the day of closure itself.

It is the Division's position that Section A-7 is the governing provision and Article 14.02 must be read in light of Section A-7. Under Section A-7 drivers are to be paid their full rate (inclusive of the kilometre rate) on the day of closure "... as if they had worked on said day". The Division says that it is part of a driver's regular duties to assist in notifying parents that the buses will not be running and/or that the schools will be closed. There is no basis, in the circumstances, to claim additional pay under the provisions of Article 14.02.

(II) THE EVIDENCE

Heather Ostop ("Ostop") testified for the Union. She has been employed as a regular driver since 1988. She is assigned a regular route which she services in the morning and afternoon when school is in session. From 1985 to 1988 Ostop was a Spare Driver and relieved regular drivers on an as needed basis. She said that her normal work day begins at approximately 7:00 a.m. in the morning. At that time, she is required to do a "normal pre-trip inspection" which takes approximately one-half an hour. She will leave her residence (yard) at 7:30 a.m. in order to do her first student pick-up. During the 1995-96 school year Ostop was assigned Route 13 and she was responsible for picking up 53 students. Her student list for this year was filed as Ex.4. The approximate number of parents on her route was 40. Ostop drives students to the Oak Bank Complex. In the normal course she would arrive at the Complex by 8:30 a.m. After the students are dropped off, she fuels her bus and sweeps it out. She is then free to go home until the afternoon when she is responsible for picking up the students and returning them to their homes. In the winter months, she said that the buses are to be started at approximately 3:00 p.m. and they are to be waiting for the children at the appropriate location(s) by 3:25 p.m. She then drives these students home and her last drop off occurs at approximately 4:30 p.m. This ends her work day.

On November 9, 1995 Ostop said that the weather was "horrible" and it took more time than usual to complete her route. She arrived home at approximately 6:50. p.m. She received a call from Veronica Bagot ("Bagot"), the Dispatcher. Bagot advised Ostop that school was cancelled for the next day. Ostop said this was an unusual circumstance because, in her experience, she had never called the night before with notification of a cancellation. Cancellations have occurred occasionally due to weather conditions but any notification of route cancellations have been received on the morning of the day of closure itself.

Bagot advised Ostop that the Division had decided to cancel school for the next day. A few minutes later, Ostop said that Bagot called back and said that she had forgot to tell her that she (Ostop) was "... to start calling my parents". Ostop started calling the parents at approximately 7:00 p.m. and ceased the calls at approximately 9:45 p.m. She did not complete all of her calls on the evening of the 9th but did complete them between 7:00 and 7:45 a.m. the next morning. She said that she had never been asked to call the parents before. If the schools close she said the usual routine is that announcements will be made over the radio stations on the day of closure itself. There is also a "driver network" in place where a number of key drivers will call other drivers on their list to advise them of the cancellation. Closure notifications are usually completed by 7:00 a.m. but, at times, it is not completed until sometime later. She said she has never been asked by the Division to call parents.

She said the weather on November 10th was clear and sunny and, in her opinion, "... I think we could have gotten through" although the routes would have been late. In terms of her contacting parents on November 9th she said the amount of time varied because making a call of this nature invariably leads to some communication. She said comments were made by parents and it led to some "...chit chat". A

number of the parents expressed surprise at the cancellation being communicated to them the night before.

On cross-examination she agreed that there have been "stormy days" during her years as a regular driver. She confirmed that, in the ordinary course, there would be consultation between the Transportation Supervisor and the Administration of the Division on the morning of the storm and a decision made as to whether the buses are going to run. She confirmed she is usually contacted with a decision by 7:00 a.m. She said the intent of doing this was to let drivers know as soon as possible so that they will not be required to make their run. Ostop was asked whether, after receiving such a notification, it was an expectation of the drivers that they would notify as many parents as possible? Ostop answered "no". She had never been instructed to do this before.

She agreed that when she is ready to leave her yard with her bus on any morning she is required to radio in to Dispatch in order to obtain instructions or take any messages. She was asked whether the reason for this was that drivers are to be notified as soon as possible so that they, in turn, can notify the parents. Ostop answered that "...that may be but I usually hear the cancellation through the radio before hand". Ostop said that she has never been directed to call parents. She disagreed that being notified in the mornings was a courtesy and that it would not be a courtesy for her, in turn, to notify parents. She was not sure whether parents call into the Division itself making inquiries. She said that she personally has never been called by parents on a stormy day.

Ostop agreed that she was not disappointed when the routes were cancelled for the 10th. When asked whether she was appreciative of the call on November 9th she said she would not describe her emotion as being happy or appreciative but, due to the weather conditions, she said she was relieved.

Ostop re-affirmed that Bagot called her at approximately 7:00 p.m. on November 9th and re-affirmed that she was called back a few minutes later. She was asked whether, in the second call, Bagot told her that she had forgotten to remind Ostop to call the parents. Ostop said Bagot did not remind her to call the parents but rather told her to call the parents and said that she was told to start calling the parents.

Ostop was asked whether she was claiming for the calls she made on the morning of November 10th. She said her position was that she should be paid for the work that she was directed to do on November 9th. Ostop was asked whether the calls made on the morning of November 10th were part of her regular routine and Ostop said that "... I never gave it any thought and if I didn't reach some parents the night before then I continued calling the next morning".

Ostop agreed that, after she completed her calls to the parents on the morning of November 10th that was the end of her duties for the day but she was paid for that entire day as if she had driven the bus.

This completed the Union's evidence.

Garry Finlay ("Finlay") testified for the Division. He has been with the Division in various capacities for 28 years and is currently the Assistant Superintendent (Education). One of his responsibilities is to "...make the call on transportation", meaning that he decides whether the schools are to be closed and the buses cancelled. The general policy of the Division is that if the buses are not going to run then the schools (at least in the rural areas) will be closed.

Finlay rises early in the morning and if the weather conditions are severe enough then some time between 6:30 a.m. and 6:45 a.m. he will receive a call from the Supervisor of Transportation for a briefing. The Supervisor will advise Finlay of information he has received from other drivers, Environment Canada and the R.C.M.P. Based on this information, Finlay will make a decision whether to close schools and cancel the bus routes. He will call the Superintendent shortly before 7:00 a.m. to

confirm this. Finlay said he then would call the Supervisor of Transportation back to advise the Supervisor of the cancellation. Finlay will also notify radio stations. He also notifies other administrative staff and principals, whom he expects will, in turn, notify the teachers.

Finlay said the Transportation Supervisor is responsible for notifying the drivers as soon as possible. It is an expectation that drivers will call parents on their routes. A key consideration here is to ensure that children are not waiting for the bus in adverse weather conditions. Many families in the Division live in bedroom communities and parents will leave for work early in the morning.

Finlay said he must make his call to cancel school or routes by 7:00 o'clock in the morning.

Finlay described the events of November 9, 1995. The Supervisor had called him that evening at approximately 6:00 p.m. to advise of difficulties that drivers were having on the roads due to the storm conditions. By the time he arrived at home that evening the Supervisor of Transportation had already called again to advise him that buses were stuck on routes and road conditions were very poor. After checking with Environment Canada, Finlay learned that the storm was expected to continue unabated until approximately 4:00 p.m. the next day. As the Municipality does not start to plough the roads until a storm abates, Finlay decided to cancel busing for the next day. This decision was made at approximately 7:00 p.m. on November 9th. Due to the conditions and their expected continuance, there was no point waiting until the next morning. He said that by 6:00 a.m. the next morning it was still storming although it cleared up by 11:00 p.m.

It was decided to contact the drivers on the evening of November 9th. One of the reasons for this was that drivers had been calling the Supervisor with their own concerns regarding of the following day. He did not give any thought of waiting until the next morning to call the drivers.

With respect to drivers notifying parents on their routes, Finlay said that "...the assumption is that when notified in the morning the drivers will notify parents". On the evening of November 9th, Finlay said "... the assumption again was that they would call the parents". He said it was not a directive but he assumed the drivers would call the parents the night before as a matter of courtesy.

Finlay said there was no expectation that the drivers would be paid for these tasks. The only difference from other situations was that notification was being given 12 hours earlier and the drivers would be paid for the entire day of closure in any event. He assumed the drivers would notify the parents.

Finlay said the basis for denying the grievance was that the procedures which were normally followed were also followed on this occasion except that, giving the inclement weather conditions, "the call" was made 12 hours in advance.

On cross-examination, Finaly said that he assumed the drivers would contact the parnts on November 9th. he assumed the calls would be done automatically. He agreed that the Division wanted the parents to be called on the evening of November 9th. As Finlay put it "...yes, if you know 12 hours in advance then why wouldn't you call", as a matter of courtesy. finlay was asked whether calling parents the night before is outside of the normal work day. To this, finlay said "...I was operating under A-7". When asked whether this was a Division assigned dury Finlay said that it was an assumption the driver would call the parents because they have the student lists with the home numbers. If he was a driver then he would first call parents of children who have the longest walk to catch the bus the next morning.

Ostop's testimony that she relied on the radio for information and does not call parents in the normal course was put to finlay. He said that even after radio announcements are made he calls Principals and they in turn are expected to call their Teachers. There are backups in various organizations in the Division.

Finlay did not dispute that, on the evening of November 9th, drivers were expected to call the parents at that time but said that in so doing he was simply following "...storm procedure because he had made the decision the night before".

Finlay was asked whether this was the first occasion when school /routes had been cancelled the previous night. He said this had been done due to the "extremely abnormal situations". He gave some indication that, in years past (1986 blizzard for example), schools had been closed the day before.

Finlay again said there was no doubt the assumption was that the drivers would call the parents the night before due to the fact that the Division is in the service industry and has to provide service to the public. He was asked whether these calls would take time. He said that he had a telephone tree to follow himself and, in the course of his duties, he had to call a lot of people but it takes no more than 40 minutes. Finlay said that, in his view, drivers should be able to go through the list in a half hour or so because the calls should be done quickly. There should be no chit chat.

Finlay said that he was aware of Article 14.02. He said that, historically, drivers have never asked for payment in respect of calling parents but he did agree this is the first time the issue had been raised since the Union had been certified in 1990. He said that "common sense" has to be used.

Baqot testified. She has been with the Transportation Office in various capacities for a number of years. For the past three years has been the Assistant to the Supervisor of Transportation (dispatcher). She said there have been occasions when the schools have been closed and bus routes cancelled. The norm is that this decision is made on the morning of the storm. When this occurs, she said that there is a roster of drivers to be notified. These drivers are then expected to call other drivers. This is to enable all drivers to notify parents.

She said there were 44 regular drivers in the Rural area. On her short list there would be 8 to 10 drivers and these drivers would, in turn, have 4 to 5 other drivers to call. In this way the notification could be made quickly. As soon as she is advised of the decision to cancel then all of her calls are usually made by 7:00 a.m. This is to enable drivers to notify parents. If parents are going to work, for example, it is fair to allow parents to make arrangements for children who may be at home. She said notification to the community at large is done through the radio stations. People will also call into the Division offices. She said no issue has ever been raised regarding additional payment for drivers calling parents on the day of a closure.

She said that the events on November 9, 1995 constituted a different situation because the decision to cancel was made the night before. She and the Transportation Supervisor began contacting the drivers at approximately 7:00 p.m. that evening but they did not use the usual pyramid scheme. Rather, all 44 drivers were contacted directly either by the Supervisor or herself. This was completed by approximately 8:00 p.m. She said the calls were made at this time basically as a matter of courtesy. It would also enable the drivers to give the same courtesy to parents so that the parents would know that night rather than the next morning. She told the drivers she contacted that there was no school scheduled for the following day, as no buses would be running, and that they were to contact the parents. There was no consideration given to waiting until the following morning. She estimated she would have called one-half of the drivers herself. Bagot could not recall whether she told the drivers when the parents were to be called but said she did tell the drivers to "...call the parents". She said the drivers were very happy because they would not have to get their buses out of their yards the next morning. She said no one raised the issue of additional pay. On calling parents, Bagot said that this is "...an assumed thing that they would do" and she was simply reinforcing this in her calls that evening. She confirmed that, on a normal morning, when drivers are ready to leave their yards they are to radio into the Division offices in order to let the office know that they are on the road. This allows the Transportation Office to advise the driver of any messages (eg. students who are not to be picked up on that day).

On cross-examination, Bagot confirmed that she told the drivers that they were to contact the parents. When asked whether there was an expectation that they would make these calls on the evening of November 9th she said the calls were to be made "at their convenience" but she would have "hoped" that the calls would have been made that evening. Bagot said the drivers "...were not told they had to call that evening but we assumed they would". It was reasonable to let the parents know that evening. In normal situations Bagot said the Division hoped that drivers would call the parents shortly after 7:00 a.m. In respect of usual situations (when notification is given on the morning of the cancellation) Bagot was asked whether she tells the drivers she contacts to in turn contact parents. To this Bagot answered, "... no, not when on the pyramid system because I do not call all the drivers".

Bagot said that she recalls mentioning to drivers "...call your parents" on the evening of the 9th but she could not recall how many drivers she may have told this to. She agreed that when she gives directives to drivers she expects the directives to be followed.

On re-examination, she said that, to the best of her recollection, she hoped that she told each of the drivers to call their parents. When asked whether she has to tell drivers to call parents in normal situations, Bagot said that it is "...an assumed thing that they will call" but, on this occasion, she does recall telling drivers to call the parents.

This completed the Division's case.

The Union called no rebuttal evidence.

(III) POSITIONS OF THE PARTIES

(a) The Union

On November 9th, 1995, there is no dispute that work (a Divisionally assigned duty) was assigned by the Division outside of the regular driving run times. The only exception is where tasks are required to be performed during a normal or regular day. In this case, the additional tasks or duties were assigned on the evening of November 9th. Article 14.02 creates an entitlement to payment. The evidence discloses that the drivers were told to call the parents and it was a clear expectation that the calls would be made on the evening of November 9th. Ostop, being representative of the group, testified that she received a directive and that she followed it. Ostop also testified that, in the past, when a closure has occurred on the morning of the day of closure, she has never been told to phone parents that morning. Rather, notification is given via other means, including the radio. The Division's best evidence is that it assumes, on morning closures, that drivers will contact parents. Regardless of that evidence, however, there were clear instructions given on the evening of the 9th and there was an expectation that drivers would call parents then. Whether the Division or the drivers turned their minds, at that particular point in time, to a potential claim for wages is irrelevant. The issue is not one of unfairness or unreasonableness. Rather, it is a question of entitlement under a clause in the Agreement which is clear on its face. Section A-7 of Appendix "A" has no application because that clause is clearly limited to the day of the closure itself and what is being sought is payment for tasks which were performed on the day prior to the day of closure.

My task as an arbitrator is to apply the clear provisions of the Agreement. In this case, Article 14.02 is clear and unambiguous. Concerns relating to perceived hardship or unreasonableness by the Division are not relevant.

(b) The Division

A central tenet of the Division's position is that the parties could not have intended that drivers will be paid for the day of closure as if they had worked and also receive an additional amount for notifying parents that the schools were to be closed and routes shut down. This means that the Division could have avoided payment by waiting until the morning of November 10th and going through the normal process. This, it is argued, leads to an "absurdity". It is not the intended result. The Agreement is to be read as a whole, bearing in mind the Preamble and the principles recognized in Article 3.04 of the Agreement.

In normal closure situations, drivers are paid as if they had worked. Even then, drivers can be assigned other duties. Notifying the parents is part of these other duties. It is included in the daily or basic salary. Notifying parents is a duty and an expectation. There is no restriction on timeliness in Section A-7 as to when drivers can be assigned other duties. So, if a driver is expected to call parents on the day of closure itself then it is an absurd proposition to be paid simply because calls may have to be the made prior to the first scheduled student pick-up. The obvious intent is that as much advance notice as possible be given to parents to avoid students waiting for buses and to allow parents to make alternative arrangements. The parties simply cannot be said to have intended that the drivers be paid for not driving on the day of closure (A-7) but, at the same time, also be paid an additional amount for notifying those individuals whom they serve that they will not be driving.

In the normal closure situation, drivers are contacted by 7:00 a.m. on the day of closure and it is part of the driver's normal duties, or at least an expectation, that they will contact parents. On such days no claim has ever been made for compensation if calls happen to be made before normal starting times.

In the situation before me, the only difference is that the decision to close had been made 12 hours earlier but the same basic process was followed. There is no question that when the Supervisor and Bagot called the drivers on the evening of November 9th the drivers were reminded to contact parents and it was an expectation that the parents would be contacted as soon as possible. However, it was not a "drop everything and get to it" order. Rather, it was a reminder of their normal duties. There was no suggestion the drivers were to be subject to discipline if they could not reach parents until the next morning or did not try until the next morning.

As to Ostop, she reached most of the parents on the evening of November 9th and the remainder on the next morning. No differentiation can be made between these calls. The absurdity, said Mr. Simpson, is to avoid having to make this kind of additional payment by waiting until the next day to communicate information to the drivers and parents.

It is wrong to read Article 14.02 in isolation and it must be read in the context of Section A-7.

If I conclude that the language in 14.02 is ambiguous then the evidence discloses that the consistent expectation of the Division has been that, in the event of cancellation, drivers will be involved in notifying parents.

(c) <u>Rely of Union</u>

Mr. Lewis took issue with the statement that the evidence disclosed that the normal or standard practice was for drivers to call parents. Ostop testified that she has never called parents on the morning of a prior closure and has never been asked to do this. Bagot's evidence is that she told the drivers to call on the evening of the 9th. She also testified that this is not an usual or normal directive when closure is made on the morning itself. On those occasions she uses the "pyramid" system. Section A-7 has no application because it is restricted to the day of closure itself. There is no ambiguity in any of the language.

(IV) DECISION

The sole issue placed before me for determination at this time is whether drivers are entitled to receive payment at the applicable rate under Article 14.02 for time spent on the evening of November 9th, 1995 calling parents to advise them of the school closure the next day. The parties agreed that I was to address the issue of general interpretation only and not deal with the precise amount of time that may have been worked by any individual driver.

During argument, Mr. Lewis clarified that no claim is being advanced for any time worked (ie. parents who may have been called) on the morning of November 10, 1995. Accordingly, this Award is limited to the claim for time spent on November 9, 1995.

In my view, the issue raised requires that I address three questions. First, on the evidence, can it be said that the drivers who were called on the evening of November 9, 1995 by Division representatives were required or directed to call parents that evening? Secondly, if the answer to the first question is in the affirmative then can the tasks be characterized as a "...Divisionally assigned duty" performed outside of the drivers' regular starting and normally ending driving run? Third, if the answer to the first two questions is affirmative then does Section A-7 affect any entitlement that may arise under Article 14.02? This last question involves consideration of the Division's submissions regarding reasonableness and absurdity of result.

I do not find any of the provisions to be ambiguous in the legal sense such that extrinsic evidence is required as an aid to interpretation itself. The provisions, on their face, are capable of being given a rational meaning and I must say that I have no untoward difficulty in understanding the language used. Really, it is a matter of arguability of different constructions. To acknowledge as much does not lead to the conclusion that there is ambiguity. In any event, it is common ground that the circumstance which presented itself on November 9th, 1995 was unique in the history of this collective bargaining relationship and, from that perspective, there simply has been no past practice. The normal or usual practice which may have been followed when the decision to close has been made on the morning of a storm is not a definitive answer in this case.

The predominant reference point for an arbitrator must be language used by the parties in the Agreement because it is from the written word that the common intention of the parties must be construed. Language is to be construed in accordance with its ordinary and plain meaning unless adopting this approach would lead to an absurdity or repugnancy. In these latter situations, arbitrators will interpret the words used in a manner so as to avoid such results. However, these are principles of interpretation to be used in the context of the written agreement itself. A counter balancing principle is that anomalies or ill-considered results are not sufficient to cause the alteration of the plain meaning of words. Neither is the fact that one interpretation of a collective agreement may result in a (perceived) hardship to one party. In the seminal case of Massey-Harris (1953) 4 L.A.C. 1579 (Gale) at p.1580:

> "... we must ascertain the meaning of what is written into a clause and to give effect to the intention of the signatories to the Agreement as so expressed. If, on its face, the clause is logical and is unambiguous, we are required to apply its language and the apparent sense in which it is used notwithstanding that the result may be obnoxious to one side or the other. In those circumstances it would be wrong for us to guess that some effect other than indicated by the language therein contained was contemplated or add words to accomplish a different result."

See also Re Canadian National Railway Company (Telecommunications Dept.) and Canadian Telecommunications Union (1975) 8 L.A.C. (2d) 256 (Brown) at p.259. Similar principles were

expressed in Re International Brotherhood of Boilermakers, etc. and Howden and Parsons (Canada) Ltd. (1970) 21 L.A.C. 177 (P. Weiler), particularly at p.187.

It is also a generally accepted aid to interpretation that the provisions of an agreement ought to be construed as a whole [see Palmer, Collective Agreement Arbitration in Canada (3d ed.) p.123, para. 1.141]. In International Union United Automobile Aircraft and Agricultural Implement Workers of America, Local 439 and Massey-Harris Company Ltd. (1974) 1 L.A.C. (68) Roach at p. 69.

> It is a well recognized ruled of construction that words in a document are to be given their ordinary grammatical meaning unless to do so results in an inconsistency or repugnancy. It is also a well recognized rule of construction that where part of a document permits of two interpretations, that meaning is to be attached which best harmonizes with the whole of the document. That latter rule has been expressed thus, namely, that the tribunal charged with the responsibility of interpreting the document must attempt to construe it so that it will be a harmonious whole and effect given to every part of it." (my emphasis)

While these guides or interpretive aids do provide assistance, they are not a substitute for nor can they override clear language in a collective agreement. This is reinforced by Article 26.3 of the Agreement where the arbitrator is not vested with "…the power to change, modify or alter any of the terms of this Agreement".

After considering the evidence and arguments, it is my conclusion that the Division, through its administrative officials, did, on the evening of November 9, 1995, require the drivers to contact parents to advise them of developments. I am satisfied that the expectation (so communicated) was that this task was to be performed (to the extent possible) that very evening. I take no issue with the reasonableness or bona fides of the decision made by Finlay (and others) on the evening of November 9th. The decision was made and a process put in motion but the process did differ from the normal or usual practice that has occurred in the past when schools or routes have been closed due to inclement weather on the morning in question. Rather than follow the pyramid approach, both the Supervisor of Transportation and Bagot called all of the drivers individually on the evening (between 7:00 p.m. and 8:00 p.m.), advised them of the decision and told the drivers that parents were to be contacted. I accept that the decision was made due to rather unique circumstances and the then prevailing weather conditions. From any common sense perspective, the reason for the call the night before was to ensure drivers and parents were notified. In their evidence, Finlay and Bagot referred to "assumptions" made or "reminders" but these characterizations were basically used when they referred to what drivers were expected to do after notification was given on the day of closure itself. I am satisfied that the calls made on the evening of the 9th were in the nature of a directive and the clear expectation was that calls were to be made to parents that evening. This is confirmed by Ostop who said that Bagot called a second time to deal with the parent issue. When cross-examined on this point Ostop testified that Bagot's call was more that a reminder. She said she was told to start calling the parents that evening. This specific evidence was not put to nor rebutted by Bagot when she testified. Neither of the Division's witnesses stated or even inferred in their evidence that the drivers were instructed or told to wait until the morning of November 10th to call parents.

I also find that this directive constituted a "Divisionally assigned duty" and that it was one which was to be performed outside of the drivers' "... regular starting and normally ending driving run..." The evidence supports this. It is not disputed that a normal run will start at approximately 7:00 a.m. in the morning on any given school day when the driver conducts his/her pre-inspection, just prior to calling

into the Division offices before leaving on the route. The route ends at approximately 4:30 p.m. (probably adjusted for some individual routes). So, the calls to the parents were clearly made outside of the protective proviso in 14.02. This means that the first two questions I posed, supra, are answered in the affirmative. This brings me to the third question regarding Section A-7.

In my view, there is a lack of clarity in the evidence as to what constitutes the normal or usual practice when the schools/routes are cancelled on the day of closure itself. In her experience, Ostop said that she has never been directed to call parents on the morning and has never done so. Finlay's and Bagot's evidence was not definitive on this point. Finlay used the word "assumed" throughout his evidence. He said the Division made the assumption that drivers call parents when School is cancelled on the morning of a school day. He characterized this as an "expectation" and "assumption" on a number of occasions. In her evidence, Bagot said that, in normal situations, "...we hope they call shortly after 7:00 a.m." but agreed that, in these "usual" situations (when calling on the pyramid system) she does not tell the drivers she initially calls to contact parents. Bagot's evidence, therefore, is not really at odds with Ostops's. No written policy or manual setting forth this duty or task was produced. Nor was any class specification or job description to this effect introduced. I note that Appendix "C" to the Agreement contemplates job descriptions being contained in the Driver's handbook.

In any case, and notwithstanding the observations must made, even if drivers do call parents (voluntarily or otherwise) on the morning of a day when School/routes have been cancelled, the evidence is that this task would have commenced very shortly before, around or shortly after 7:00 a.m. Notification to drivers on the day of a closure would, at best, only be made some few minutes before 7:00 a.m. By the time Finlay makes his decision he has had a briefing with the Supervisor (between 6:30 and 6:45) and has had a conversation with the Superintendent. He then notifies the Supervisor, following which Bagot starts calls her key drivers on the pyramid scheme. So, even if some drivers have started to call parents shortly before 7:00 a.m. in the past, I believe that these calls can be regarded as part and parcel of "... said day" [Section A-7] because 7:00 a.m. is the approximate time when drivers start their day doing pre-inspections. Hence, the pay received for the cancelled day under Section A-7 would cover normal tasks or "...other duties" assigned on that day in any event. It is not surprising that claims have never been made in the past for any such calls. In my view, the Division's submission regarding reasonableness and absurdity would be relevant in assessing a pay claim for such tasks performed a few minutes prior to 7:00 a.m. However, the focus in this case is on November 9, 1995 and I have determined that a specific directive was given to drivers on that day.

I have carefully considered the Division's core submission. It is my conclusion that Section A-7 does not affect the entitlement to payment under Article 14.02 in the circumstances which prevailed on November 9, 1995. I agree with Mr. Lewis that Section A-7 is limited to the day upon which the Schools are closed by reason of inclement weather or other unexpected circumstances. In such situations, drivers are to be paid as if they had worked on "said day" but the Division reserves the right to call drivers in to work to either drive their bus or perform other duties. The reference to "said day" and being "called into work" are, in my view, references to the day in question. A driver can be called upon to perform "...other duties" on a closure day during what would otherwise presumably be that driver's starting time and normally ending driving run. Article 14.02 and Section A-7 do harmonize with each other because if any of the tasks listed in Article 14.02 (ie. bus breakdown, irregular paper work or any other Divisionally assigned duties) are assigned on the day of closure by reference to normal run times then such a task is indeed covered by the full payment already being received for the "... said day". Section A-7 and Article 14.02 deal with two different situations essentially from the perspective of "when" duties are to be performed.

Mr. Simpson made issue of the question of "timing" and submitted that it would lead to an absurd result or an inconsistency to find that tasks performed on the 10th (when no payment would have to be made) must be paid for simply because they were performed on November 9th. However, I do not accept that

such a finding leads to an inconsistency or an absurdity as those terms are understood in arbitral law. The clauses do dovetail with each other. In point of fact, it is the "timing" of the assignment which has been specifically addressed by the parties in clear language. This is reinforced by Article 14.01 where the parties have addressed what duties (in addition to driving) are covered by a driver's base salary. These duties include pre-trip inspection, fuelling, washing, normal paperwork and servicing. So, the parties have been quite specific not only as to duties which are covered by base salary but also in respect of additional duties which can be assigned to drivers (Art. 14.02) during normal run times and for which no additional payment need be made beyond base salary. The point of distinction is not so much "what" the duties are but rather the distinction made by these parties is "when" these duties are performed, with the "when" (timing) determining whether the specified rate of pay is to be paid. This type of distinction is not unusual in collective agreements. The same duties which, if otherwise performed during the course of a normal or standard work day, often do attract superior, different or premium rates of pay when they are performed at other times, at the direction of the employer. By way of examples only, the many variations that parties often make in the overtime or call-out provisions of any collective agreement come to mind.

The parties have specifically, and with reasonable clarity, addressed situations when drivers are to be paid at a given rate for performing Divisionally assigned duties outside of their normal or usual hours for a route. Such duties were assigned on November 9th, 1995. Article 14.02 applies and it must be given effect in accordance with its terms. As noted, I do not see any real conflict between Article 14.02 and Section A-7 nor can I reasonably conclude that Section A-7 somehow overrides or renders Article 14.02 inoperative in these circumstances.

(V) SUMMARY

For all of the reasons given, it is my conclusion that the Union has established a basic entitlement for the drivers in respect of the time they spent calling parents on the evening of November 9, 1995.

However, this does not automatically answer the question of an individual driver's entitlement in the sense of any outstanding issues that may arise regarding time spent by an individual on the evening of November 9th. It may be that attention will have to be directed to individual circumstances. Nothing in this Award ought to be taken as a predetermination in respect of the precise amount owing to any individual driver. I was not asked to address these individual issues. As requested, I reserve jurisdiction on all issues of implementation and/or compensation should the parties be unable to resolve these issues between themselves.

To the extent of the interpretative ruling made in this Award, the Grievance is allowed.

I express my appreciation to Messrs. Simpson and Lewis for their able and succinct presentations.

Dated at Winnipeg, Manitoba, this 4th day of September 1996.

W. D. Hamilton, Sole Arbitrator