



Andy Milburn
Vice President

May 7, 2010

TO: District 6 Local Presidents

FROM: Andy Milburn, Vice President *AM*

SUBJECT: 6-09-139 – Force Management Reps – Wages/Out of Class Pay
Embarq – Warrensburg, Missouri – Local 6372

Attached is the case summary on the above-referenced arbitration case in which arbitrator William Holley sustained the Union's grievance.

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cc: David Van Os, CWA District 6 Counsel
District 6 Staff
File



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May 7, 2010

Mr. Ed Pinkelman
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Re: CWA 6-09-139; AAA Case No. 57 300 00125 09, Force Management Representatives Working Out of Class.

The issue in this case was whether Embarq violated Article 9, Section 5 of the collective bargaining agreement by not paying Force Management Representatives (FMRs) an additional \$1.00 per hour (effective February 1, 2009, the differential rate was raised to \$1.25 per hour) for work performed. The Union contended that the Company was required to pay the differential for work performed by the FMRs between June 17, 2008 and September 26, 2009 when the implemented a new dispatch system. In essence, the Company had the FMRs performing work of the higher paid persons holding the Analyst job title.

The arbitrator sustained the grievance and held that the Company had to pay the differential for periods where employees spent four or more hours a day working out of title. CWA argued in this case that the fact that the Company had to train the grievants to perform new tasks during the implementation period demonstrated that they had not performed this work before. The Company never made a formal proposal to combine the rep and analysts titles. As such, CWA never clearly and unmistakably waived its right to bargain about the work performed by either title. The arbitrator further noted that the Company's ability under the CBA to terminate old job title and create new job titles did not provide it with authority under the CBA to combine two job titles.

The facts of the case thus led the arbitrator to conclude that the FMRs had been working out of title during the implementation of the dispatch system. Consistent with the contract, however, the arbitrator restricted backpay of the differential to periods where the FRMs were performing higher-level work for four or more hours.