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JACKSON CO. -Y

☒ CIRCUIT
☐ DISTRICT

COURT ADMINISTRATION

Vol. m89 Page 6675 3.75CYNTHIA J. NICKESON,Petitioner/PlaintiffARBITRATION AWARD/SETTLEMENT
(Circle One)

vs.

Case No. 88-1297-L-3CHARLES MALONEY,Respondent/Defendant

TO:

Check One:

 This case has been settled. The Court Administrator may submit
to the Circuit/District Court an Order of Dismissal.x This arbitration hearing was held on January 5, 1989.

I make the following award: (1) Plaintiff is awarded \$1,685.47; and

(2) Her reasonable costs, disbursements and attorney fees.

(use the back of this form if additional space is necessary)Was any part of this award based upon the failure of any party
to participate? Yes x No. If "yes", identify:
Additional Comments: See attached Arbitration Opinion and AwardJames A. Wickre
Signature of Arbitrator1-10-89
DateOriginal to: Trial Court Administrator
Jackson County Justice Building
Madford, Oregon 97501

Each party.

189 APR 29 PM 12 15

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR JACKSON COUNTY

CYNTHIA J. NICKESON,

Plaintiff,

vs

CHARLES MALONEY,

Defendant.

No. 88-1297-L-3

ARBITRATION OPINION
AND AWARD

There are a number of issues that need to be addressed in order to reach a decision in this case.

1. What was the agreed rate of pay for "team" driving by plaintiff?

The plaintiff, defendant and the Third Party witness Mr. David D'Ambra all testified that the agreed rate for plaintiff's team driving was 10 cents per mile and I so find that as the agreed rate for "team" driving by the plaintiff.

2. What was the agreed or reasonable rate of pay for "solo" driving by plaintiff?

Plaintiff testified that the agreed rate of pay was 22 cents per mile. Defendant testified that the agreed rate was 18 cents per mile. Mr. D'Ambra testified that the parties told him the agreed rate was 17 cents per mile. Anita Findlay testified that 20 cents was the highest rate she had heard of based upon her experience in the industry and that "company drivers" received 17 cents to 18 cents per mile. The agreement of the parties was not reduced to writing and the plaintiff has not met her burden of proof that the agreed rate was 22 cents

1 per mile. I therefore find that 18 cents per mile was the
2 agreed and reasonable value for plaintiff's solo driving for
3 defendant.

4 3. Was plaintiff to receive compensation for "dead load"
5 driving or in other words driving without any cargo and if so
6 what was the compensation?

7 Plaintiff testified that she was to be paid for the solo
8 or team rate regardless of whether there was a cargo or not.
9 Defendant testified there was to be no compensation for "dead
10 load driving". However, in his testimony he seems to equivocate
11 on this point. He seemed to say plaintiff would not be paid
12 for dead loads if she refused to pick up an available load
13 near-by. I find plaintiff has met her burden of proof that she
14 was to be compensated at the agreed or reasonable rates set
15 forth above for both loaded and "dead load" driving.

16 4. How many "team" miles did plaintiff drive from March
17 1, 1987 until September 8, 1987.

18 I find the best evidence on this issue to be the "packet
19 reports" (plaintiff Exhibit 3) submitted by both parties to
20 Combined Transport contemporaneous with the work performed. The
21 records show the following "team" driving by plaintiff:

22 <u>Date</u>	<u># of miles</u>
23 June 5, 1987	LD 400 MT 99
24 May 6-7, 1987	LD 2505 MT 391
25 March 16, 1987	LD 224 MT 37

March 16-17, 1987

LD 502
MT 59

TOTAL

4,217 miles

$$4,217 \times .10 = \$421.70$$

Based upon the above, plaintiff is entitled to \$421.70 for team driving.

5. How many "solo" miles did plaintiff drive from March 1, 1987, until September 8, 1987?

Again I find the best evidence on this issue to be the "packet reports" (plaintiff Exhibit 2) submitted by both parties to Combined Transport contemporaneous with the work performed. These records show the following "solo" driving by plaintiff:

<u>Date</u>	<u># of miles</u>
March 27, 1987	LD 673 MT 80
March 30, 1987	LD 904 MT 151
April 1, 1987	LD 462 MT 10
April 2, 1987	LD 857 MT 10
April 6, 1987	LD 387 MT 154
April 9-10, 1987	LD 385 MT 15
April 7, 1987	LD 280 MT 10
June 13-14, 1987	LD 1624 MT 72

1	June 8, 1987	LD 2226 MT 139
2	June 9, 1987	LD 1199 MT 23
3		
4	June 7, 1987	LD 1206 MT 77
5	August 18, 1987	LD 942 MT 7
6		
7	August 17, 1987	LD 280 MT 10
8	August 14, 1987	LD 547 MT 159
9		
10	August 10, 1987	LD 603 MT 151
11	August 3 - 6, 1987	LD 913 MT 558
12		
13	July 31, 1987	LD 1204 MT 248
14	July 27, 1987	LD 752 MT 226
15		
16	July 21, 1987	LD 2582 MT 96
17	July 13-14, 1987	LD 2707 MT 396
18		
19	June 30, 1987	LD 640 MT 102
20	June 29, 1987	LD 339 MT 186
21		
22	June 25, 1987	LD 677 MT 10
23	June 22, 1987	LD 1338 MT 152
24		
25	June 15, 1987	LD 688 MT 11
26	Total	<hr/> 27,466 miles

$$27,466 \times .18 = \$4,943.88.$$

Based upon the above, plaintiff is entitled to \$4,943.88 for solo driving.

6. What was the total compensation earned by plaintiff:

For Team Miles	\$ 421.70
For Solo Miles	4,943.88
Total Earned	<u>\$ 5,365.58</u>

7. How much has plaintiff been paid?

Plaintiff alleges she has been paid \$2,747.73. A review of plaintiff's Exhibit 5 shows that she was advanced the following amounts by Combined Transport, Inc.:

3/30/87	\$200.00
4/3/87	\$300.00
4/7/87	\$100.00
4/8/87	\$100.00
4/	\$100.00
6/8/87	\$100.00
6/17/87	\$250.00
6/9/87	\$200.00
6/23/87	\$200.00
6/25/87	\$100.00
6/29/87	\$100.00
7/1/87	\$100.00
7/6/87	\$100.00
6/18/87	\$100.00
7/10/87	\$100.00
7/14/87	\$150.00
7/13/87	\$ 50.00
7/6/87	\$ 50.00
7/21/87	\$100.00
7/30/87	\$150.00
8/3/87	\$100.00
7/22/87	\$100.00
7/29/87	\$100.00
7/10/87	\$100.00
8/6/87	\$150.00
8/15/87	\$100.00
8/14/87	\$100.00

8/18/87	\$150.00
8/20/87	\$200.00
6/12/87	\$100.00

TOTAL ADVANCE	<u>\$3,850.00</u>
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Defendant additionally presented evidence of payment in the form of two checks (Def. Exhibits C and D) totalling \$400.00. I find that defendant's testimony regarding cash payments to be too indefinite in amount to credit.

Plaintiff presented evidence of unreimbursed expenses which I find credible as follows:

(a) Federal Express Bill dated 8/3/87 (Pl. Ex. 10)	\$11.10
(b) Far West Truck Center bill dated 7/31/87 (truck repairs)	\$44.10
(c) Port Truck Stop & Cafe 7/18/87 (truck repairs)	\$16.00
(d) Pendleton 76 Truck Stop 7/18/87 (Truck maintenance)	\$44.95
(e) Trailmobile 8/4/87 (truck parts)	\$62.44
(f) Winmill Truck Stop 7/16/87 (gas-diesel)	\$204.04
(g) Kingman Union 76 7/25/87 (diesel)	\$187.26
((b) through (g) Pl. Ex. 7)	
TOTAL UNREIMBURSED EXPENSES	<u>\$569.89</u>

Thus to sum up, I make the following calculations regarding amounts paid and unreimbursed expenses:

(a) Amount paid plaintiff as per exhibits from Combined Transport	\$3,850.00
(b) Plus two checks paid by defendant	+ 400.00
(c) Minus unreimbursed expenses	- 569.89

TOTAL PAID PLAINTIFF BY DEFENDANT	<u>\$3,680.11</u>
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ARBITRATION OPINION AND AWARD - 6

8. How much is plaintiff awarded?

Total Earned (see #6 above) \$5,365.58

Total Paid (see #7 above) - \$3,680.11

(1) Total Award \$1,685.47

(2) Plus Costs, Disbursements and Reasonable
Attorney Fees.

DATED: Jul 9, 1989

JAMES A. WICKRE
Arbitrator

This instrument is a correct copy of
the original on file in this office.

ATTEST: APR 17 1989
Circuit Court-Trial Court Administrator
STATE OF OREGON - CLATSOP COUNTY

STATE OF OREGON, ss.
County of Klamath

Filed for record at request of:

Return: Joel B. Reeder
116 Mistletoe St.
Medford, Or. 97501

Joel B. Reeder
on this 20th day of April A.D. 19 89
at 12:15 o'clock P.M. and duly recorded
in Vol. M89 of Co. Lien Page 6675
Docket
Evelyn Biehn County Clerk
By Darlene Mulhender

Fee. \$40.00

Deputy.

ARBITRATION OPINION AND AWARD - 7

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