AMERICAN ARBITRATION ASSOCIATION
EMPLOYMENT ARBITRATION TRIBUNAL

ALLYN TODD NELSON, **Claimant,** **v.** **PJ CHEESE, INC.,** **Respondent.**	**Case No.: 01-19-0001-5314** **FINAL AWARD**

AWARD

Claimant Allyn Todd Nelson ("Claimant" or "Nelson"), represented by Mark A. Potashnick of the firm Weinhaus & Potashnick and Eli Karsh of the firm Liberman, Goldstein & Karsh, and Respondent PJ Cheese, Inc. ("Respondent" or "PJ Cheese"), represented by William K. Hancock of the firm Galloway, Scott, Moss & Hancock, LLC, selected Sherri L. Kimmell to arbitrate the demand submitted by Nelson to the American Arbitration Association ("AAA") on May 16, 2019, pursuant to the terms of the Dispute Resolution Program between Nelson and PJ Cheese executed by Nelson around February, 2017.

An evidentiary hearing was held pursuant to the parties' written agreement via videoconference on August 26, 2020 before Sherri L. Kimmell ("Arbitrator"). Claimant called Allyn Todd Nelson and Michael Earner as witnesses. Post-Hearing Briefs were submitted by the parties and the record was closed on October 15, 2020. Having been designated in accordance with the parties' Dispute Resolution Program, and having been duly sworn, and having duly heard the proofs and allegations of the parties and their representatives, Sherri L. Kimmell, Arbitrator, hereby issues the following **REASONED AWARD** and **ORDERS** as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

Respondent employed Claimant as a pizza delivery driver from February 20, 2017 through January 19, 2019. During that period, Claimant worked both inside Respondent's store and "on the road" delivering pizzas using a vehicle he provided. Respondent required Claimant to have a working vehicle to work as a delivery driver. Respondent also required Claimant to obtain vehicle insurance meeting at least the minimum coverage established by the state of Georgia. Claimant bore the sole responsibility for determining if he had adequate insurance coverage for any work-related accident. During the time Claimant worked for Respondent, he used three different vehicles to complete deliveries. For approximately the first month of employment, Claimant delivered pizzas for Respondent in a 2001 Toyota Sienna Minivan. For the remainder of his employment, Claimant delivered pizzas for Respondent in either a 2011 Honda CR-V Crossover SUV or a 2004 Lexus RX 330, both of which were owned by Rebecca Eaker, Claimant's girlfriend at the time.

Respondent compensated Claimant at the rate of $7.50 per hour for work inside the store until February, 2018 when Respondent increased Claimant's hourly rate to $8.00. For hours worked "on the road," Respondent paid Claimant an hourly rate of $4.00. In addition, Respondent took a tip credit of $4.50 per hour. Respondent also paid Claimant a varying amount in recognition of his provision of a vehicle for deliveries. These amounts are reflected on the Checkout Reports generated by Respondent and submitted as Exhibit 17 during the hearing.

Claimant contends that Respondent violated the Fair Labor Standards Act of 1938 ("FLSA") by failing to reimburse Claimant adequately for his reasonable, approximated automobile expenses, resulting in an illegal "kick-back" to Respondent, thereby reducing Claimant's compensation below the required minimum wage in violation of 29 U.S.C. § 206. Respondent contends that Claimant has overstated his vehicle expenses and the resulting kick-back and miscalculated the damages owed.

Claimant filed a Consolidated Motion for Partial Summary Judgment raising three issues: (1) whether Claimant could reasonably approximate his vehicle costs in lieu of providing evidence of actual costs; (2) whether Respondent must reimburse a portion of Claimant's fixed costs of driving and whether the "tends to shift costs" test was the applicable test for determining

such costs; and (3) whether tips in excess of the amount of the tip credit set by Respondent should be considered in determining net wages. In an Order dated February 3, 2020, the Arbitrator held that (1) Claimant could rely on reasonable approximations of his vehicle costs as evidence to show he provided a kickback to his employer; (2) Claimant could rely on the "tends to shift costs" test to determine what vehicle costs may be included in his calculations to determine whether Claimant provided a kickback to his employer, but fact questions remained as to whether Claimant had provided a kickback to his employer; and (3) the question raised in issue three by Claimant regarding tip credits was moot.

On September 2, 2020, Respondent filed a motion to reconsider the Order on Claimant's Consolidated Motion for Partial Summary Judgment in light of an opinion letter issued by the Wage and Hour Division of the U.S. Department of Labor on August 31, 2020 (the "WHD Opinion Letter"), pertaining to the reimbursement of hourly delivery drivers for business-related expenses while using their personal vehicles during the course of employment. In an Order issued on September 9, 2020, the Arbitrator denied Respondent's request to direct the parties to address the "anti-kickback rule" and related regulations in light of the WHD Opinion Letter in their post-hearing briefs; directed the parties to focus on whether costs expended in connection with Claimant's use of his personal vehicle to perform duties for Respondent were expended for the benefit of the employer versus the employee; and otherwise upheld the Order on Partial Summary Judgment issued on February 3, 2020.

II. ANALYSIS

A. Damages Under the Fair Labor Standards Act

The Fair Labor Standards Act ("FLSA") requires an employer to pay an employee at least minimum wage for all hours worked in a workweek. The "anti-kickback rule" in 29 C.F.R. § 531.35 provides that:

> Whether in cash or in facilities, "wages cannot be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally or "free and clear." The wage requirements of the Act will not be met where the employee "kicks-back" directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee. This is true whether the "kick-back" is made in cash or in other

> than cash. For example, if it is a requirement of the employer that the employee must provide tools of the trade which will be used in or are specifically required for the performance of the employer's particular work, there would be a violation of the [FLS]Act in any workweek when the cost of such tools purchased by the employee cuts into the minimum or overtime wages required to be paid him under the Act. 29 C.F.R. § 531.35.

Essentially, "a wage is not considered 'paid' if the employer causes a portion of, or all of, the employee's wage to be expended in the form of a 'kick-back' that is for the employer's benefit." *Benton v. Deli Management, Inc.*, 396 F.Supp.3d 1261, 1270 (N.D. Ga. 2019). The cost of "other facilities" provided primarily for the benefit or convenience of the employer do not count as wages, including the required use of a personal vehicle. 29 C.F.R. § 531.3(d). The WHD Opinion Letter specifically referred to "required use of a personal vehicle" as a "tool of the trade." WHD Opinion Letter, p. 2. "An employer violates the FLSA 'in any workweek when the cost of such tools' (and the like) 'cuts into the minimum or overtime wages required to be paid . . . ." WHD Opinion Letter, p. 2 citing 29 C.F.R. § 531.35.

In assessing whether costs incurred by the employee should be deducted from an employee's wage to determine compliance with the minimum wage requirements of the FLSA, courts have used the "primarily for the benefit of the employer" test and the "tends to shift costs" test. Under the "primary benefit" test, each cost allegedly incurred by Claimant must be analyzed to determine whether the cost was incurred for an employer's primary benefit. Under the "tends to shift costs" test, the focus is on "who should bear the expense as between the employer and the employee." *Benton*, 396 F.Supp.3d at 1272. District courts in the Eleventh Circuit have considered both the primary benefit test and the tends to shift [costs] test and determined that both have been applied in the Eleventh Circuit, and that neither is binding to the exclusion of the other. *Id*.

The Arbitrator directed the parties to focus on "whether payment by the employee 'tends to shift part of the employer's business expense to employees.'" *Sullivan v. PJ United, Inc.*, 362 F.Supp.3d 1139, 1158 (N.D. Ala. 2018)(citations omitted). Embedded within the analysis is the understanding that costs that an employer has been freed from paying are reimbursable to the employee regardless of whether such costs were paid by the employee or by someone else on the employee's behalf. The focus is on the "nature of the expenses themselves and whether they are

of the type that should be borne by the employer rather than the employee." *Benton*, 396 F.Supp.3d at 1273. The determination focuses on "which direction the benefit from the expense flows as between the employer and the employee."[1] *Id*. at 1274. Variable and fixed costs attributable to the miles driven by an employee for an employer may be recoverable.

Claimant and Respondent agree that Respondent had an obligation to reimburse Claimant for his reasonable vehicle expenses to the extent such expenses reduced Claimant's weekly pay below minimum wage, but they disagree on the amount of the vehicle expenses, the appropriate reasonable reimbursement, and thus, on the resulting amounts owed, if any. "A reimbursement to cover expenses incurred on the employer's behalf or for the employer's convenience is sufficient if it "reasonably approximates the expenses incurred.'" WHD Opinion Letter, p. 2, citing 29 C.F.R. § 778.217. "A reimbursement amount based on IRS guidelines, including the annual standard mileage rates, 'is per se reasonable.'" *Id*. The IRS annual standard mileage rate for 2017 was 53.5 cents per mile; for 2018, 54 cents per mile, and for 2019, 58 cents per mile. See https://www.irs.gov/tax-professionals/standard-mileage-rates.

Claimant presented evidence during the hearing of his reasonable approximation of his vehicle costs during his employment. Claimant presented evidence regarding estimated gas mileage for each vehicle, repairs made to each vehicle, maintenance for each vehicle, insurance costs, taxes and registration costs. Claimant also calculated depreciation for each vehicle based on the vehicle's purchase price, the sale price and the miles traveled.[2]

Michael Earner presented testimony during the hearing to explain his calculations of miles traveled each week by Claimant delivering pizzas for Respondent. Mr. Earner relied on trip information maintained and supplied by Respondent to determine the starting and ending location for each delivery and the resulting miles traveled. Mr. Earner calculated that Claimant

[1] While the Order on Claimant's Consolidated Motion for Partial Summary Judgment relied on precedent from District Courts in the Eleventh Circuit to direct the parties to use the "tends to shift costs" test to decide what expenses should be included in any calculation of a potential kickback, the Arbitrator notes that, relying on guidance provided in the WHD Opinion Letter, application of the "primary benefit test" would appear to count the same expenses. See WHD Opinion Letter, pp 6-7 (Recognizing that variable and fixed costs attributable to miles driven by the employee "at the employer's behest" . . . "are incurred primarily for the employer's benefit rather than for the employee's benefit.")

[2] During the first month of his employment, Claimant drove a 2001 Toyota Sienna For the remainder of his employment, Claimant drove a 2011 Honda CR-V Crossover SUV for approximately 80% of the time and a 2004 Lexus RX 330 for approximately 20% of the time.

drove approximately 44,853.82 miles for Respondent during his employment. Claimant testified that the Checkout Reports maintained by Respondent did not record repeat visits to customers, which occurred at least once per shift, and each trip averaged 5.69 miles. In addition, Claimant testified that for southbound deliveries, he was instructed to exit on a side street and wind his way to a stoplight on Turner McCall Boulevard, which added approximately .5 miles to the trip, as opposed to waiting to turn left onto Turner McCall Boulevard. This additional mileage was not reflected in Respondent's records.[3]

Claimant combined his cost estimates with the weekly mileage determinations made by Mr. Earner to calculate the average cost per mile traveled in each vehicle he used for delivery while employed. Based on the evidence of his actual or approximated vehicle expenses, Claimant estimated he spent $0.38 per mile traveled in the Toyota Sienna, and a weighted cost per mile based on usage of $0.428 per mile traveled in the Honda CR-V or the Lexus RX 330.

From the start of Claimant's employment through October 4, 2018, Respondent reimbursed Claimant at a flat rate of $1.58 per delivery. Beginning October 5, 2018, Respondent reimbursed Claimant at a per mile rate of $0.29 for deliveries. The per mile rate changed to $0.30 on November 9, 2019, to $0.28 on December 8, 2018, and to $0.27 on January 8, 2019. In Table 1 attached to Claimant's Post-Hearing Brief, Claimant calculated for each workweek the total amount paid by Respondent, the total vehicle expenses owed and the mileage traveled to determine what, if any, additional wages were claimed from Respondent to ensure Claimant earned minimum wage for all hours worked during the workweek. A tally of the amount Claimant asserts is owed by Respondent equals $4,004.70 for under-reimbursed vehicle expenses, $1,037.74 for unreimbursed return trips during Claimant's employment, and $156.04 for unreimbursed extra mileage to avoid making a left onto Turner McCall Boulevard for southbound deliveries.

Proof of willfulness extends the statute of limitations under the FLSA from two years to three years. 29 U.S.C. § 255(a). In addition, liquidated damages are mandatory under the FLSA

[3] Claimant testified that the detour added approximately half a mile or .7 of a mile to every southbound trip. See Transcript of Hearing, pp. 67-68. In his post-hearing brief, Claimant stated that the detour added "at least 0.25 extra miles." See Claimant's Post-Hearing Brief, p. 22. For purposes of calculating mileage driven and damages, the Arbitrator has relied on the lower mileage estimate.

absent a showing of good faith by the employer. 29 U.S.C. § 216(b). In response to Claimant's Interrogatory No. 15, Respondent stated "PJ Cheese agrees to arbitrate Claimant's claim from the issuance of his first paycheck in March 2017, which period spans approximately two months more than the basic two-year statute of limitation. PJ Cheese understands that by not raising an affirmative defense, an amount equal to unpaid wages awarded, if any, must be awarded as liquidated damages, but believes that the cost of opposing an award of liquidated damages would greatly exceed the potential amount of such an award." Thus, the issue of willfulness has been waived and Claimant seeks damages and liquidated damages for the full period of his employment, totaling $10,396.96.

Respondent did not call any witnesses at the hearing, but instead sought to discredit the reasonableness of Claimant's vehicle cost approximations through cross-examination. In its post-hearing brief, Respondent contends that its flat rate and per mile reimbursements to Claimant were per se reasonable. Respondent states "[t]he reimbursement PJ Cheese provided Nelson for the use of these vehicles did not exceed the IRS rate and was therefore *per se* reasonable under 29 C.F.R. § 278.271 [sic]." See PJ Cheese, Inc.'s Response to Nelson's DOL Post-Hearing Brief, p. 2. Presumably, Respondent is relying on language in the WHD Opinion Letter to assert that a reimbursement rate *up to* the IRS mileage reimbursement rate is presumed to be reasonable. In addressing whether the employer adequately reimbursed its employees' costs for using their own vehicles to complete deliveries, the WHD Opinion Letter states that "a reimbursement to cover expenses incurred on the employer's behalf or for the employer's convenience is sufficient if it "reasonably approximates the expenses incurred. A reimbursement amount based on IRS guidelines, including the annual standard mileage rates, 'is per se reasonable.'" WHD Opinion Letter, p. 2 (citations omitted). As noted in the WHD Opinion Letter, an employer may use a variety of methods to determine a reasonable reimbursement rate for an employee's use of his personal vehicle and need not use only the IRS reimbursement rate. Respondent did not present evidence during the hearing to explain the basis for its reimbursement rates, nor is there any evidence that Respondent reimbursed Claimant at the IRS mileage rate.[4] The Arbitrator finds no

[4] As noted in the WHD Opinion Letter footnote 2, the FLSA standard for determining payments for "facilities" that can be excluded from an employee's regular rate of pay for purposes of calculating overtime is different than the

support for the proposition that reimbursing an employee at roughly half the IRS mileage rate is *per se* reasonable, nor any evidence to conclude that Respondent's rate was based on a reasonable calculation.

Respondent contends that it is not responsible for fixed costs associated with the Honda CR-V or the Lexus RX 330 because Rebecca Eaker, and not Claimant, owned those vehicles. However, as noted above, the focus is on the "nature of the expenses themselves and whether they are of the type that should be borne by the employer rather than the employee." *Benton*, 396 F.Supp.3d at 1273. The determination focuses on "which direction the benefit from the expense flows as between the employer and the employee." *Id*. at 1274. Respondent should not receive a windfall simply because Claimant did not own the vehicle. Adopting Respondent's argument would allow Respondent to reduce expenses by requiring all employees to use vehicles owned by third parties.

Respondent relies on language in the WHD Opinion Letter to argue that Respondent also should not be responsible for reimbursing Claimant's fixed vehicle costs because Claimant's vehicles were not solely "tools of the trade." While the WHD Opinion Letter contains conflicting, and potentially contradictory, statements when read in isolation, a more comprehensive reading of the WHD Opinion Letter suggests an employer may be responsible for both fixed and variable costs associated with the use of an employee's personal vehicle for business purposes. ("[C]osts might include, for instance, the cost of gasoline; the cost of periodic maintenance, such as oil changes and tire rotations and replacement; and the depreciation of the vehicle's value attributable to the employee's trips. For example, if an employee drives an extra 250 miles at the employer's behest rather than for the employee's own benefit, the gasoline, maintenance, and depreciation costs attributable to those 250 miles are incurred primarily for the employer's benefit rather than for the employee's own benefit." WHD Opinion Letter, pp. 6-7). It is reasonable to conclude that miles Claimant drove in his vehicles to deliver pizzas were primarily for Respondent's benefit and Respondent should be responsible for the variable and fixed costs associated with those miles.

FLSA standard for determining the amount to reimburse an employee for providing "facilities" primarily for an employer's benefit. "Employers should be careful not to confuse these two standards." WHD Opinion Letter, n. 2.

Respondent argues that Claimant's approximations of his vehicle costs are unreasonable by comparing the data to information from the United States Department of Transportation's Bureau of Transportation Statistics, information which was not shared during discovery or presented during the hearing. Respondent also challenges individual components of Claimant's calculations. For example, Respondent contends that the vehicles were insured for more coverage than Respondent required, however, Respondent presented no evidence of the price difference, if any, between Claimant's insurance coverage and lesser coverage. In addition, Respondent contends that Claimant overestimated the percentage of time he drove the Lexus to make deliveries. If Respondent is correct, then Claimant has understated the weighted average cost per mile for the two vehicles because the cost per mile for the Lexus is less- $0.42- than the cost per mile for the Honda CR-V- $0.43. Respondent also challenges Claimant's method of depreciation, but as noted in the WHD Opinion Letter, the IRS standard for depreciation does not dictate how cars depreciate in the real world. See WHD Opinion Letter, p. 7, n. 7. Respondent's challenges, individually and collectively, fail to present evidence sufficient to counter the weight of evidence presented by Claimant at the hearing regarding the reasonable estimated costs incurred in connection with the use of his vehicles to deliver pizzas for PJ Cheese.

Respondent suggests Claimant was adequately compensated and considered the relationship "mutually beneficial" because he received tips in excess of the tip credit. In its response to Claimant's Consolidated Motion for Partial Summary Judgment, Respondent stated "PJ Cheese has never claimed in this proceeding, and does not plan to claim, that tips in excess of the $4.50 tip credit taken can be used to offset unpaid wages." PJ Cheese, Inc.'s Response to Claimant's Consolidated Motion for Summary Judgment, p. 4. Based on this representation, the Arbitrator disregards Respondent's argument that tips paid in excess of the credit showed that "both PJ Cheese and Nelson mutually benefitted from the relationship." PJ Cheese, Inc.'s Response to Nelson's DOL Post-Hearing Brief, pp. 13-14.

Respondent asserts that Claimant's damage calculation included in Table 1 attached to Claimant's post-hearing brief differs from any damage calculation Claimant previously provided in discovery. The components of Table 1 were presented and discussed during the hearing as well as the extra miles driven by Claimant to complete an order or avoid delay on Turner McCall

Boulevard. Respondent had the opportunity to cross-examine Claimant and Michael Earner regarding these components.

Respondent also argues that Claimant's calculation of damages in Table 1 fails to account for wages Respondent paid over minimum wage and thus, the final damage calculation is overstated. Respondent correctly states that Claimant is only entitled to receive damages to the extent his vehicle costs reduced his hourly wage below the minimum required by the FLSA for each workweek. However, Respondent supports the argument by calculating wages paid and reimbursements made on an aggregate basis rather than a workweek basis. Respondent is not entitled to claim the benefit of vehicle reimbursement overpayments or, stated differently, amounts paid in a workweek for vehicle use which exceed Claimant's estimated vehicle costs. Calculating the difference in amounts paid and amounts owed on an aggregate basis risks unfairly crediting Respondent for such payments.

Claimant asserts in his Reply that any potential overpayment to Claimant is negated in any workweek in which overtime wages were paid. "Overtime pay, as required by the FLSA, has not been paid unless both straight time pay and overtime pay have been fully paid and have been paid based on an employee's regular pay." Claimant's Post-Hearing Reply Brief, pp. 22-23 citing *Wright v. Pulaski County*, 2010 U.S. Dist. LEXIS 87283 *26-28 (E.D. Ark. 2010) (citations omitted). While Claimant's argument may be correct, it is not clear it has been applied in this context. Such a determination is unnecessary, however, because the difference in the calculation of wages is so negligible as to fall within the realm of a reasonable calculation of damages to be awarded within the equitable forum of arbitration.

While it seems that the determination of wages paid and wages owed should result in an exact and verifiable calculation, the varying cycles for measuring expenses and wages, the slight variations between a per week calculation and an aggregate calculation, and the multiple variables that can be adjusted can frustrate the achievement of a precise calculation. The FLSA recognizes these challenges and permits good faith estimates and reasonable approximations to ensure an employee is properly compensated for work performed. Respondent has attempted to discredit the details of Claimant's calculations, at times using methods that would actually increase Claimant's recovery. Regardless, the weight of the evidence suggests Claimant has

made a good faith effort to reasonably approximate the vehicle costs incurred during his employment with Respondent and to calculate the amounts owed by workweek. This conclusion is reinforced by comparing Claimant's calculations to the IRS mileage rate, which is "per se reasonable," and would result in a larger damage recovery for Claimant. Respondent has failed to provide evidence to show that Claimant's approximations of his vehicle expenses are unreasonable or materially inaccurate. Therefore, Claimant is entitled to recover his reasonably approximated vehicle costs to the extent those costs reduced his weekly wage below the statutory minimum as calculated by Claimant. Objections and arguments raised by Respondent or Claimant not otherwise addressed herein are hereby denied.

B. Attorneys' Fees and Costs

The FLSA provides that a court "shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." 29 U.S.C. § 216(b). Where the claimant prevails, attorney's fees and cost awards are mandatory under the FLSA. *Sahyers v. Prugh, Holliday, et al.*, 603 F.3d 888, 893 n. 1 (11th Cir. 2010). Attorneys' fees are typically calculated using the lodestar method, multiplying the number of hours worked by the reasonable hourly rate of counsel.

Claimant's counsels' time records, attached to Claimant's post-hearing brief, show that Mark Potashnick worked 238.8 hours at an hourly rate of $500, Eli Karsh worked 53.6 hours at an hourly rate of $450 and Brandon Blyer worked 24 hours at an hourly rate of $125 for total fees of $146,520.00. In assessing the reasonableness of the fees billed and whether to adjust the lodestar, the Arbitrator considers the factors outlined in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) abrogated on other grounds by *Blanchard v. Bergeron*, 489 U.S. 87, 109 S.Ct. 939, 103 L.Ed.2d 67 (1989).

Respondent contends that it cannot respond to Claimant's fee request because it does not include the time entry detail, yet Claimant provided time entry detail in Attachment A to Exhibit 43 and Attachment A to Exhibit 44 to his Post-Hearing Brief and Exhibits 60 and 61 to Claimant's Post-Hearing Reply. In addition, Respondent suggests that the hourly rates for Mr. Potashnick and Mr. Karsh may be unreasonable for the Rome, Georgia area, but Respondent provides no evidentiary support for this contention, nor does it explain why Rome is the

appropriate locale for measurement.

Reviewing the factors outlined in *Johnson*, the Arbitrator finds that Claimant's attorneys' fees are reasonable, given the time and labor required to litigate this particular case, the requisite skill to pursue the claims, Claimant's success, the undesirability of the case and Claimant's counsels' experience.

Claimant also seeks costs equal to $7,347.32, which Respondent does not challenge. See Claimant's Post-Hearing Brief, p. 29 and PJ Cheese, Inc.'s Response to Nelson's DOL Post-Hearing Brief, p. 40.

III. FINAL AWARD

The Arbitrator finds that Respondent PJ Cheese, Inc. violated the Fair Labor Standards Act by failing to pay Claimant Allyn Todd Nelson minimum wage for all hours worked, as required by 29 U.S.C. § 206. The Arbitrator hereby AWARDS as follows:

Respondent shall pay Claimant:
Actual Damages: $5,198.48
Liquidated Damages: $5,198.48
Attorneys' Fees and Costs: $153,867.32

In addition, Respondent shall pay Claimant pre-judgment and post-judgment interest as provided by law. This Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are denied.

The administrative fees of the AAA, totaling $2,950.00, and the compensation and expenses of the Arbitrator, totaling $19,160.00, shall be borne as incurred.

So Ordered this 20th day of October, 2020.

/s/ Sherri L. Kimmell

Sherri L. Kimmell, Arbitrator