

REGULAR ARBITRATION PANEL

JAN 13 2014

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 In the Matter of the Arbitration *
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 between: *
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 United States Postal Service *
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 and *
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 National Association of *
 Letter Carriers, AFL,CIO *

Grievant: Class Action
 Post Office: Lake Charles, LA
 USPS Case No: G06N-4G-C 12184644
 NALC Case No: M091404132012

BEFORE: Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Claudia M. Richardson

For the Union: Corey Walton

Place of Hearing: Postal Facility, Lake Charles, LA

Date of Hearing: December 13, 2013

Date of Award: January 09, 2014

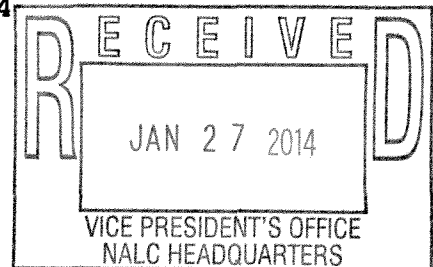
Relevant Contract Provision: Article 8

Contract Year: 2006

Type of Grievance: Contract

Award Summary:

The Union alleges a violation of Article 8.5, alleging the improper assignment of overtime on 13 April 2012. The evidence in this case was overwhelming in favor of the Union. The Employer was unable to prove the existence of a Window of Operation or any other exception that would allow such assignments to non-ODL Letter Carriers to be made. The grievance is sustained and the requested remedy is granted.



Lawrence Roberts

 Lawrence Roberts, Panel Arbitrator

SUBMISSION:

This matter came to be Arbitrated pursuant to the terms of the Wage Agreement between United States Postal Service and the National Association of Letter Carriers Union, AFL-CIO, the Parties having failed to resolve this matter prior to the arbitral proceedings. The hearing in this cause was conducted on 13 December 2013 at the postal facility located in Lake Charles, LA. Testimony and evidence were received from both parties. A transcriber was not used. The Arbitrator made a record of the hearing by use of a digital recorder and personal notes. The Arbitrator is assigned to the Regular Regional Arbitration Panel in accordance with the Wage Agreement.

OPINION

BACKGROUND AND FACTS:

This class action contract grievance was filed on behalf of Letter Carriers working at a Lake Charles LA postal facility.

The instant grievance was filed when, on 13 April 2012, a Letter Carrier, not on the Overtime Desired List worked over nine hours.

It was alleged in this grievance that other Letter Carriers should have been assigned this work. Conversely, the Employer claims the work was properly assigned; therefore, there was no violation of the Parties Agreement.

Obviously, the Parties were unable to resolve this dispute during the prior steps of the Parties Grievance-Arbitration

Procedure of Article 15. The Step B Team declared an impasse on 21 June 2012 and the matter was referred to arbitration.

It was found the matter was properly processed through the prior steps of the grievance procedure. Therefore, the dispute is now before the undersigned for final determination.

At the hearing, the Parties were afforded a fair and full opportunity to present evidence, examine and cross examine witnesses. The record was closed following the presentation of oral closing arguments by the respective Advocates.

JOINT EXHIBITS:

1. Agreement between the National Association of Letter Carriers Union, AFL-CIO and the US Postal Service.
- 1A. Joint Contract Administration Manual (in pertinent part)
2. Grievance Package

UNION'S POSITION:

The Union contends the instant grievance is a contract case dealing with Management's continued and blatant violations of Article 8 and 15 of the Joint Contract Administration Manual (JCAM) at the Lake Charles Installation.

The Union claims there to be a staggering volume of precedent setting Step B decisions that have been violated.

It is the contention of the Union that the Service at this installation is continually forcing non-overtime desired list Letter Carriers into an overtime status when Letter Carriers on the Overtime Desired List were available to do that work.

The Union insists the facts of this case will show the Employer has violated the Parties Agreement on a continuous and

egregious basis. The record, according to the Union will identify an overwhelming amount of past decisions, which total some 54 precedent setting Step B decisions and some 32 pre-arbitration decisions.

The Union points out that a Window of Operation does not exist at the Lake Charles installation.

As a remedy, the Union makes several requests. First being, that a final cease and desist order be issued.

Secondly, the Union asks that all Carriers not on the ODL that were forced to work overtime on the days in question shall be granted administrative leave.

Next, it is requested by the Union that all Carriers on the ODL that were available to do the work that non-ODL Carriers were forced to work shall be paid that equivalent at the overtime rate.

The Union then asks that some eleven (11) Letter Carriers be awarded \$1000 for Management's non-compliance and repeated and blatant violations of Article 8, 15 and M-01517.

And lastly, the Union requests Management be ordered to abide by Article 8.5.G and maximize those Letter Carriers on the ODL to the full 12 hours before requiring Letter Carriers not on the ODL to work one second of overtime. Additionally, the Union also requests the Service be ordered to cease and desist from implementing its Window of Operation at the Lake Charles installation.

COMPANY'S POSITION:

The Employer insists there is no violation of the Parties Agreement in this instant case. A similar grievance, according to Management, had been previously denied by another arbitrator.

It is the claim of the Agency that this case is similar in facts to that previous case that was already denied. The Employer claims the Union's case lacks facts, that being, a showing of who was available to work the overtime.

According to the Service, the chief complaint of the Union in this matter is that a Part Time Flexible Employee worked overtime. Management points out the language relied upon by the Union does not apply to Part Time Flexible Employees.

It is the position of Management that there is no Employer violation of the Parties Agreement in this instant case, and accordingly, it is requested the grievance be denied in its entirety.

THE ISSUE:

Did Management violate Article 8 of the National Agreement, or prior Step B Decisions, or M-01517 when Non_ODL/WA Carriers were mandated to work overtime prior to fully utilizing available ODL Carriers and TE Carriers at the Lake Charles Installation? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS:

ARTICLE 8
HOURS OF WORK

DISCUSSION AND FINDINGS:

This instant grievance involves an allegation by the Union of the improper assignment of overtime. The Union argues that another non-ODL Letter Carrier was improperly assigned work that should have first been made available to those Letter Carriers on the ODL list for that second quarter of 2012. Contained in the Joint 2 Grievance Package is a history of Letter Carriers working beyond the maximums defined by the Parties Agreement. More specifically, the record shows some fifty four (54) Step B settlements as well as some thirty two (32) pre-arbitration settlements regarding overtime assignments at this location. And with that in mind, it is clear the instant grievance does not represent an unfamiliar argument by and between these local Parties.

In their opening statement, the Employer argued this instant grievance was a mirror image of a similar grievance previously decided by Arbitrator Patrick Halter (Case Number G06N-4G-C 11113140) wherein it was found that:

"The record does not include the OTDL. Standing alone, this is not dispositive of the grievance. Considered in the context of other documentary evidence and testimony, it is an indication that the evidence is not persuasive in the Union's favor. For example, the Union's assertion as to which carriers are on the OTDL or not on that list rests solely with witness testimony from the Local President and his personal recollection of each carrier's status. From an evidentiary perspective, personal recollection may be inaccurate or not on point as asserted with the lapse of time and occurrence of intervening events. In the circumstances of this grievance, the witness did not review the OTDL roster or interview any carrier identified for remedial relief as to that carrier's status on the OTDL or hours available on Saturday, May 05, 2012.

This, the Union seeks to establish the alleged violations of the National Agreement without first-hand information from any of the carriers. Personal recollection, by itself, is problematic for, as noted in cross-examination of the witness, most all of the carriers claimed by the Union for remedial relief reported for duty as scheduled on May 05, 2012. This, some of the carriers were not available for the claimed work."

However, the facts and circumstances of this instant case are clearly not the same that faced Arbitrator Halter in the above decision.

Differing in this instant case is the fact the Step A Team reflects the following **"Relevant & Undisputed Facts,"** in pertinent part, stating, **"Evidence in the case file reflects there were thirteen (13) Letter Carriers on the Overtime Desired List (ODL) during quarter 2 of the year 2012 and five on the Work Assignment list."** It goes on to list names of the specific Letter Carriers in the respective groups.

Furthermore, Management contends there was no overtime violation on this date, and thus, there is no payable remedy. And furthermore, in the Step 3 Decision, **"Management's Reason for Impasse"** includes **"The relevant facts in this case are not in substantial dispute. There is no dispute that carriers not on the overtime desired list were scheduled to carrier mail on overtime on the day in the case file at the Lake Charles Main Office."**

At the hearing, Management raised the contention that the overtime assignment that day was worked by a Part Time Flexible Employee. And if that was the case, the Union's argument in this instance becomes moot.

Instead, I am of the considered opinion this was new argument presented by the Employer not until this arbitration hearing. First, I could find no such PTF argument made in the

case file, either in the Step A or Step B writing.

Additionally, I could find no evidence in the case file that would identify the employee in question as being classified as a Part Time Flexible on the date in question.

While the Employer Advocate insisted that the "Employee Everything Report" found on Page 40 of Joint Exhibit 2 identified the Carrier as being a PTF, there was no other association found in the file that would relate the particular employee code as that of a PTF. Furthermore, the Employer witness did not make any mention of the non-Overtime Desired List Employee being a Part Time Flexible Employee. Furthermore, the Union's evidence in opposition to the Employer's argument far outweighed that of the service.

The crux of the Employer defense was that of a Window of Operation. However, other than a mention by name only, I could find no other evidence in this case file or witness testimony that would indicate, or even suggest, the presence of any type of Window of Operation in existence at this Lake Charles facility. And the record clearly shows the supposed WOO was often and regularly violated.

As I've stated before in past decisions regarding overtime assignments, a Window of Operation could be a valid defense of

the Employer, based on the circumstances evolving around the specific case at hand. However, prior to that Window of Operation defense being considered, the Employer must first show the existence of such a policy at that particular facility.

However, in this case, other than the mention of a Window of Operation being in place, there was simply no evidence in this case file that would indicate or even suggest that such a Policy was ever in place at this Lake Charles facility. The mere claim of the existence of a Window of Operation is simply not enough to qualify such as a defense.

For if that were the case, each and every overtime claim made by the Union could conceivably be dismissed due to an alleged Window of Operation being in place. However, that should never be the case, on the basis of a mere assumption.

The pre-requisite to a WOO defense is either documented proof of its existence or, credible testimony indicating that everyone at the facility was aware of its existence. And in addition to that would be a requisite sampling of time records to show a consistent compliance. However, at any rate, none of that occurred in this instant case.

With that being said, I was convinced there was clearly an Article 8 overtime assignment violation as alleged by the Union in this matter. Secondly, I was convinced by the case file itself that this has been an ongoing issue at this facility.

And with that reasoning, the instant grievance is granted. The Employer argued there to be no violation of the Parties Agreement and therefore, no payable remedy. And to that end, I respectfully disagree. The violation was clear and there was no reason provided by the Employer that would allow them to circumvent the language of Article 8.5 regarding the assignment of such overtime being assigned. Since there was no objection to the Union's requested remedy by the Employer, it shall be granted with one exception. Item 5 is reduced from \$1000 to \$500. Otherwise the requested remedy found on Pages 29 and 30 of Joint Exhibit 2 is granted as modified below.

, which states:

"1. Management in the Lake Charles Installation must cease and desist from future violations of Article 8, Section 5 of the National Agreement. Otherwise an escalated monetary ward may be awarded for future violations.

2. The following Letter Carrier shall each be paid a lump sum payment equivalent to 8 hours at the overtime rate:

U. Primeaux - \$469.00

3. The following Non-ODL Letter Carriers shall be paid 100% of their base bay or granted compensatory time off in the form of administrative leave whichever is most acceptable to the employee.

U. Primeaux - 9.38

4. The following carriers on the 10/12 OTDL shall be paid the following lump-sum payment

:

D. Prudhomme-\$37 J. Ayo-\$37 J. Simon-\$37
P. Alexis-\$37 C. McGee-\$37 M. Thierry-\$37
G. David-\$37
L. Wimberly-\$37 J. Gatewood-\$37 G. Thierry-\$37

5. The following carriers shall be awarded \$500.00 (reduced from the requested \$1000) each for management's non-compliance and repeated and blatant violations of Article 8, 15 and M-01517.

U.Primeaux - D Prudhomme - J. Ayo - J. Simon -
P. Alexis - C. McGee - M. Thierry - G. David -
L. Wimberly - J. Gatewood - G. Thierry

It is so granted.

AWARD

The grievance is sustained and resolved in accord with the above.

Dated: January 09, 2014
Fayette County PA