C-31269

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	*	
between:	*	Grievant: Class Action
United States Postal Service	*	Post Office: Lake Charles, LA
and	*	USPS Case No: G06N-4G-C 12184648
National Association of Letter Carriers, AFL,CIO	*	NALC Case No: M091404142012

BEFORE: Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: James Oliver

For the Union: Corey Walton

Place of Hearing: Postal Facility, Lake Charles, LA

Date of Hearing: March 11, 2014

Date of Award: March 29, 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 Saturday 14 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 remedy set forth in the Discussion and Findings below is hereby ordered.

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 11 March 2014 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 grievance was filed when, on Saturday, 14 April 2012, a Letter Carrier, not on the Overtime Desired List worked over eight hours. At that time the Overtime Desired List was not exhausted.

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, according to Management 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 and to 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 grievance is a contract case dealing with Management's continued blatant and egregious violations of Article 8 and 15 of the Joint Contract Administration Manual (JCAM) at the Lake Charles Installation.

The Union believes this instant case is the "same song, different verse at this Installation.

It is the argument of the Union the evidence will show that Management has been put on notice some 54 times through past B-

Team Decisions and numerous pre-arbitration settlements to stop violating Articles 8 and 15.

It is explained by the Union that the evidence in this case will show that on 14 April 2012, a non-Overtime Desired List Letter Carrier worked 8.80 hours on his non-scheduled day. That same evidence, according to the Union, will also show that Management left one Carrier on the Overtime Desired List stay at home on that same day in question.

The Union also claims that Management failed to maximize the Overtime Desired List before using the non-Overtime Desired List Letter Carrier. The Union goes on to cite the specific language of Article 8 that was allegedly violated.

The Union implies the case file will clearly show where on 14 April, Overtime Desired List Letter Carriers could have worked an additional 23 hours before their 12 hour limit was maximized, thus easily covering the 8.80 hours the non-ODL Carrier was forced to work.

The Union suggests that Management will make a futile attempt to say these violations were justified due to an alleged Window of Operation at this Lake Charles facility. However, according to the Union, the clock rings in this case file will show where Carriers regularly worked past that alleged Window of Operation.

According to the Union, Management has continuously argued a Window of Operation and in each case has continuously failed to prove one exists.

As a remedy, the Union asks the Award made in Case Number G06N-4G-C 12184644 be mirrored. The Union asks that a cease and desist order be issued. Additionally, the Union asks that a group of nine (9) Carriers on the 10/12 hour Overtime Desired List be paid a lump sum of $50 to each individual mentioned. Additionally, the Union requests that a sum of $500 each be awarded to ten (10) Carriers specifically due to Management's alleged non-compliance and repeated blatant violations of Article 8, 15 and M-01517.

COMPANY'S POSITION:

The Employer insists there is no violation of the Parties Agreement in this case. According to the Service, it was their intent to cover the route in question with 8.80 units of time. Management insists non-ODL was scheduled because there were five Carriers with nonscheduled days off on that particular day.

It is the claim of the Agency that three of the ODL Letter Carriers were already on annual leave. From the perspective of the Service, if an employee is on annual leave, that same employee probably does not want to come in the next day to work. The Agency believes this is the way it has always been done and does not believe a dispute exists regarding that particular issue.

It is the position of Management that if no one else is available on the overtime desired list, a non-ODL Letter Carrier may be scheduled, albeit, the pecking order. It is the argument of the Employer that the other Letter Carrier available on the Overtime Desired List had requested to be off that day. As explained by the Employer, a Supervisor granted the Carrier's request to be off that day.

The Employer insists this is not a blatant violation and does not fit into the same category as other cases. In the view of the Management, a judgment call was made by the Employer and the remedy requested by the Union is totally inappropriate.

THE ISSUE:

Did Management violate Article 8 of the National Agreement, or prior Step B Decisions, or M-01517 when a Non_ODL Carrier was mandated to work overtime prior to fully utilizing available ODL 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 grievance involves an allegation by the Union of the improper assignment of overtime. The Union argues that a non-ODL Letter Carrier was improperly forced to work, insisting that work should have first been made available to Overtime Desired

List Letter Carriers on Saturday 14 April 2012. Additionally, the record shows some fifty four (54) prior Step B settlements at this location concerning similar assignments made in the past. And with that in mind, it is clear the instant grievance does not represent an unfamiliar argument by and between these local Parties. In fact, the undersigned decided an almost identical case by and between the same parties styled **G06N-4G-C 12184644.** The incident in that particular case occurred the day before this instant case, that being on Friday 13 April 2012.

Similar to the previous case, part of the Employer argument found in the Step B Decision included that of a Window of Operation. However, there was no evidence on this record to indicate that any form of Window of Operation was in place at this Lake Charles facility. So, in that regard, the Employer's defense lacks any merit.

As I've stated before in the previous case 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.

And for the record in this particular case, other than the mention of a Window of Operation being in place, there was

simply no evidence in the 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 the same as a defense. In the Step B decision, there was mention by the Employer that an 1830 window was in place. However, there were simply no clock rings over any convincing period of time to establish its existence. Clock rings over a matter of a couple of weeks, indicating that Carriers were off the street by 1830 certainly is not enough evidence to establish the existence of a Window of Operation.

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

And again, as previously discussed in a prior decision, 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, albeit a practice. 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. In fact, this particular instance occurred only a day later than the previous case decided by the undersigned.

Controlling in this instant case is the fact the scheduling supervisor in this case testified that: **"The majority of the people on the big overtime list were not available because they had leave either the day before or the day after so I couldn't use them for that Saturday so... based on that Saturday, I needed Mr. Joubert to come in."**

However, that testimony indicates this Supervisor had only assumed that certain individuals on the overtime desired list were not available. There was no proof indicating that the Letter Carriers on the Overtime Desired List were actually contacted and provided the opportunity to work on that Saturday.

Even with that aside, the language of the Agreement is unambiguous. Article 8.5.G provides that **"full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or**

sixty (60) hours in a service week." The language is clear, hence the violation.

Furthermore, based on the frequency of such violations at this facility, the supervisor should have been well aware of the Article 8.5 language as it relates to the scheduling of overtime assignments. While the supervisor attempted to reason away his scheduling procedure, the language of the Parties Agreement provides a different methodology. The language offers a specific procedure for the administration of overtime opportunities. And that specific procedure was clearly not followed in this case.

Once the Employer determines that overtime is available, a certain sequence must first occur prior to any non-ODL being scheduled. And clearly, that didn't happen in this matter, regardless of the rationale provided by the scheduling Supervisor.

And with that reasoning, the grievance is granted. A violation was clear in this case and, as in the previous matter, 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. The Union's requested remedy is granted to the extent set forth below:

1. That Management in the Lake Charles Installation again be issued instructions to cease and desist from future violations of Article 8, Section 5 of the National Agreement.

2. That Carrier E. Joubert be granted compensatory time off in the form of administrative leave for a period of 8.80 hours. There will be no additional pay since he was already paid for his time.

3. That the following carriers on the 10/12 OTDL be paid the following lump-sum payment for lost overtime:

D. Prudhomme-$50 J. Ayo-$50 J. Simon-$50 P. Alexis-$50 C. McGee-$50 M. Thierry-$50 L. Wimberly-$50 J. Gatewood-$50 G. Thierry-$50

5. That the following carriers each be awarded a $500.00 punitive payment for management's non-compliance and repeated and blatant violations of Article 8, 15 and M-01517.

D Prudhomme - J. Ayo - J. Simon - E. Joubert
P. Alexis - C. McGee - M. Thierry - L. Wimberly
J. Gatewood - G. Thierry

It is so granted.

AWARD

The instant grievance is sustained in accord with the above.

Dated: March 29, 2014
Fayette County PA