C#17582

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration between NATIONAL ASSOCIATION OF LETTER CARRIERS and UNITED STATES POSTAL SERVICE	GRIEVANCE: Class Action Case No.: B9ON-4B-C 94029392 NALC System No.: 5356

BEFORE: Carlton J. Snow, Professor of Law

APPEARANCES: For the Union: Mr. Keith E. Secular

For the Postal Service:
Ms. Marta E. Erceg

PLACE OF HEARING: Washington, D.C.

DATE OF HEARING: June 17, 1997

POST-HEARING BRIEFS: September 8, 1997

RELEVANT CONTRACT PROVISIONS: Article 11; ELM 434.533

CONTRACT YEAR: 1990-94

TYPE OF GRIEVANCE: Contract Award

SUMMARY: Grievance Denied.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the grievance shall be denied. It is so ordered and awarded.

Date: 11-28-97

Carlton J. Snow
Professor of Law

NATIONAL ARBITRATION PANEL

IN THE MATTER OF ARBITRATION BETWEEN NATIONAL ASSOCIATION OF LETTER CARRIERS AND UNITED STATES POSTAL SERVICE (Class Action Grievance) (Case No. B9ON-4B-C 94029392) NALC System No.: 5356)	ANALYSIS AND AWARD Carlton J. Snow Arbitrator

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from June 12, 1991 through November 20, 1994. A hearing took place on June 17, 1997 in a conference room of Postal Headquarters located in Washington, D.C. Mr. Keith E. Secular, attorney with the law firm of Cohen, Weiss & Simon in New York City, represented the National Association of Letter Carriers. Ms. Marta E. Erceg, National Litigation Attorney, represented the United States Postal Service.

The hearing proceeded in an orderly manner. The parties had a full opportunity to submit evidence, to examine and cross-examine witnesses, and to argue the matter. Mr. Charlie Smith of Diversified Reporting Services, Inc. reported the proceedings for the parties and submitted a transcript of 69 pages. The advocates fully and fairly represented their

respective parties.

The parties stipulated that the matter properly had been submitted to arbitration and that there were no issues of substantive or procedural arbitrability to be resolved. They elected to submit the matter on the basis of evidence presented at the hearing as well as post-hearing briefs, and the arbitrator officially closed the hearing on September 8, 1997 after receipt of the final post-hearing brief in the matter.

II. STATEMENT OF THE ISSUE

The stipulated issue before the arbitrator is as follows:

> Did the Employer violate Article 11 and ELM Section 434.533 by not paying holiday scheduling premium to full-time regular employees who worked their designated holidays, replacing full-time regular employees who were scheduled to work a regularly scheduled day, not their holiday or designated holiday? If so, what is an appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 11 - HOLIDAYS

Section 1. Holidays Observed

The following ten (10) days shall be considered holidays for full-time and part-time regular scheduled employees, hereinafter referred to in this Article as "employees":

New Year's Day
Martin Luther King, Jr.'s Birthday
washington's Birthday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans' Day
Thanksgiving Day
Christmas Day

Section 3. Payment

A. An employee shall receive holiday pay at the employee's base hourly straight time rate for a number of hours equal to the employee's regular daily working schedule, not to exceed eight (8) hours.

Section 4. Holiday Work

A. An employee required to work on a holiday other than Christmas shall be paid the base hourly straight time rate for each hour worked up to eight (8) hours in addition to the holiday pay to which the employee is entitled as above inscribed.

Section 5. Holiday on Non-Work Day

A. When a holiday falls on Sunday, the following Monday will be observed as the holiday. When a holiday falls on Saturday, the preceding Friday shall be observed as the holiday.

B. When an employee's scheduled non-work day falls on a day observed as a holiday, the employee's scheduled workday preceding the holiday shall be designated as that employee's holiday.

Section 6. Holiday Schedule

A. The Employer will determine the number and categories of employees needed for holiday work

and a schedule shall be posted as of the Tuesday preceding the service week in which the holiday falls.

B. As many full-time and part-time regular schedule employees as can be spared will be excused from duty on a holiday or day designated as their holiday. Such employees will not be required to work on a holiday or day designated as their holiday unless all casuals and part-time flexibles are utilized to the maximum extent possible, even if the payment of overtime is required, and unless all full-time and part-time regulars with the needed skills who wish to work on the holiday have been afforded an opportunity to do so.

IV. STATEMENT OF FACTS

In this case, the Union challenges whether the Employer properly denied five Letter Carriers in Bangor, Maine their premium scheduling pay. Four were required to work on December 30, 1993. This was their designated holiday for New Year's Day, 1994. The four Letter Carriers required to work on December 30 were replacing three Letter Carriers who called in sick. It was not explained why an extra worker was needed, and the protest before the arbitrator did not proceed on this basis. The decision does not address the discrepancy. The fifth carrier was required to work on Friday, December 31, his designated holiday.

Procedures for holiday scheduling are covered in Article 11 of the parties' agreement as well as in Section 434.5 of the Employee and Labor Relations Manual. Article 11 names

ten specific holidays recognized by the Employer, including New Year's Day. When a holiday falls on a day for which an employee normally would not work, the employee's "designated holiday" is the work day just preceding the actual holiday. In the case before the arbitrator, New Year's Day fell on a Thursday. None of the five grievants in this case normally would have been scheduled to work on Saturday. Accordingly, their designated holiday was their work day just before Saturday. In one case, this day was Friday, December 31. In the other four cases, it was Thursday, December 30. These four employees normally would not have worked Friday or Saturday.

The issue in the case is directly addressed by provisions in the Employee and Labor Relations Manual regarding holiday pay. Such provisions, of course, have been incorporated into the agreement through Article 19 of the parties' labor contract. Employees who work on holidays or on their designated holidays are entitled to double pay. This is regular pay for the hours worked plus regular pay for the holiday leave. The Employer, however, is required under Section 434.533(a) of the Employee and Labor Relations Manual to pay an additional premium of fifty percent of regular pay if management fails to notify employees that they are required to work their holiday or designated holiday by the specified deadline. The Employer is to notify employees by posting a holiday schedule by Tuesday of the week preceding the holiday week. The only exceptions to paying this premium occur when "an emergency

situation attributable to Act(s) of God arises" and also when "a full-time regular employee who is scheduled to work on a holiday is unable to or fails to work on the holiday." (See ELM § 434.533(b) and (c).)

Language in Section 434.5 of the Employee and Labor Relations Manual originated on March 4, 1974 in a settlement Agreement that included the National Association of Letter Carriers. (See Union's Exhibit No. 6.) A provision of the 1974 Settlement Agreement paralleled that of ELM 434.533(c) and included a phrase that appeared in the original Employee and Labor Relations Manual in 1978, but the phrase now has been dropped from the ELM. That phrase, "in accordance with the provisions of Article XI, Section 6," appears in several paragraphs of the 1974 Settlement Agreement. The section of Article 11 referred to in this phrase is the provision covering holiday scheduling, including the deadline for schedule posting and the method by which management selects employees to work on holidays and designated holidays. Because the Settlement Agreement addressed the proper interpretation of Article 11, it is unsurprising that it was referred to several times. Section 3(c) of the 1974 Settlement Agreement stated:

> c. When a full time regular employee scheduled to work on a holiday in accordance with the provisions of Article XI, Section 6, is unable to or fails to work on the holiday, the Employer may require another full time regular employee to work such schedule and such replacement employee shall only be paid for such holiday work in accordance with Article XI, Sections 2, 3, and 4. The selection of such replacement

> employees shall be made in accordance with any applicable local agreement consistent with the terms of the 1973 National Agreement. (See Union's Exhibit No. 6, p. 2.)

The phrasing of the provision suggests it is the scheduling that must comply with posting and scheduling procedures in Article 11 in order for the remainder of the section to be applicable. Another conceivable interpretation is that the phrase refers to the way an employee is scheduled, and only those who are scheduled through the posted holiday schedule are included in this category of employees. It is unclear whether a "holiday schedule" includes all employees regardless of their status (regular, holiday, or designated holiday) or only those for whom the day is a holiday or designated holiday.

When the Settlement Agreement was incorporated into Section 434.533(c) of the 1978 Employee and Labor Relations Manual, the phrase was changed to read "in accordance with a, above;" and it no longer referred back to Article 11. Instead, it referred to Section 434.533(a) of the ELM. This ELM provision provides that, if the Employer does not meet schedule posting deadlines, an employee is entitled to the holiday schedule premium. In this context, the phrase suggests that the employee who "fails to or is unable to work" must have appeared on a schedule that met the posting procedure. Unlike Article 11.6, ELM Section 434.533(a) makes no reference to the method of selecting which employees will work the holiday or designated holiday. Section 434.533 in the current version of the Employee and Labor Relations Manual does not include any "in accordance with" language in Subsection (c).

At issue in this case is whether it makes a difference if the replaced employee was scheduled to work a regular day or a holiday (or designated holiday). The Union contends that it is only when an employee being replaced was scheduled to work his or her holiday or designated holiday that the exception under Section 433.533(c) applies. That is the situation in this case. The three employees who were unable to work on Thursday, December 30, would not have been working their designated holiday had they worked. For them, it was a regular work day; and their holiday or designated holiday came later. They were replaced by the grievants, for whom December 30, in fact, was a designated holiday. Similarly, the employee who was replaced on Friday, December 31, called in sick on his regular work day, not on his designated holiday. When the parties were unable to resolve their differences, the matter proceeded to arbitration.

V. ANALYSIS

A. Contrasting Theories of the Case

1. "Use a Literal Interpretation"

The Union contends that, despite the fact that the Employer properly posted the holiday schedule by the Tuesday deadline, affected employees should have received the holiday scheduling premium for working their designated holiday. The Union argues that the grievants in the case are entitled to holiday scheduling premium pay because the Employer failed to notify them by listing them on the posted schedule. Rather, they were required to work on their designated holidays with one or two days of notice. According to the Union, such circumstances do not qualify for the exception under ELM 434.533(c) because the employees who were unable to work on the days in question were not "scheduled to work on a holiday" but, rather, were scheduled to work what was for them a regular work day. The Union contends that, because these replaced employees were not scheduled for holiday work, the exception in Subsection (c) does not apply and that the Employer must pay the premium.

The Union relies on language in the 1974 Settlement Agreement which provides an exception to the holiday scheduling premium when an employee who is "scheduled to work on a holiday in accordance with the provisions of Article XI, Section 6" is unable to work. (See Union's Exhibit No. 6, p. 2.) If this situation occurs, the Employer may require another employee to work on the holiday; and the replacing employee

will not be eligible for premium pay. The Union argues that, because December 30-31 were regular work days for the replaced employees and were not their designated holidays, the employees were not "scheduled to work a holiday in accordance with" Article XI. Hence, the exception to paying the holiday scheduling premium pay does not apply, according to the Union's theory of the case.

The Union argues that incorporating into the 1978 ELM and the F21 and F22 Handbooks a phrase essentially identical to that in the Settlement Agreement supports its position. In all three documents, the "in accordance with" phrase refers back to the section which provides premium pay when the Employer fails to post the holiday schedule in a timely manner, according to the Union. The Union maintains that, since the current ELM does not include this phrasing, it should not be concluded that the parties intended to change the meaning of the provision.

The Union believes that a literal interpretation and application of the 1974 Settlement Agreement is supported by subsequent settlements and decisions. The Union asserts that a Settlement Agreement in a 1978 Step 4 decision provides precedent for such an interpretation by stating that the status of the replaced employee (as "properly scheduled for holiday work") exempts the Employer from paying the premium to the replacing employee. (See Union's Post-hearing Brief, p. 13.) The Union argues the implication is that an employee scheduled for regular work would not exempt the Employer from

paying the premium.

Similarly, a 1977 Step 4 decision which obliges the Employer to pay the premium when the replaced employees were part-time but not when they were full-time, allegedly supports the Union's view that the language should be interpreted literally. (See Union's Exhibit No. 10.) The Union contends that the 1978 decision distinguished between full-time and part-time employees "simply because the literal language . . . required that result." (See Union's Post-hearing Brief, p. 14.) The Union believes the absence of a practical distinction between full-time and part-time employees in the 1978 case is analogous to the present situation in which management sees no difference between an absent employee who was scheduled to work a regular day and one who was scheduled to work his or her designated holiday. In both cases, the Union concludes that the provision literally requires different results.

It is the belief of the Union that five regional arbitration decisions on which the Employer relied do not provide persuasive authority in this case for several reasons. The Union dismisses the Sickles Award as irrelevant because it decided whether the Employer's decision to call in an employee was justified and did not address the issue in contention here. The Union also rejects the Britton, Caraway and Schedler Awards as simplistically and mistakenly premising the decision in the respective cases on the fact that the Employer complied with the holiday schedule posting provision without

regard to whether the grievants appeared on the schedule.

According to the Union, the ELM provision includes an assumption that an employee who is mistakenly left off the schedule and subsequently is called in to work on his or her designated holiday would be entitled to premium pay. Thus, a blanket denial of premium pay based merely on an assertion that the schedule was posted on time is unsupported, in the opinion of the Union. The Union contends that its position in regard to the regional arbitration awards is supported by the Employer's Memorandum to Postmasters, which states, in effect, that the premium pay compensates for a lack of timely notice to employees. (See Union's Post-hearing Brief, p. 17.) The Union argues that this purpose would be defeated if the Employer were permitted to call in employees to work on holidays for any reason as long as the schedule, no matter how inaccurate, had been posted on time.

The Union also contends that reasoning in the Dobranski Award is fatally flawed because it failed to address the "in accordance with" phrase in the 1974 Settlement Agreement. The Union asserts that the result of such an omission mistakenly places the emphasis on the employee who is required to work the holiday, rather than on the employee who is replaced. The Union maintains that, because the Dobranski Award failed to acknowledge the effect of the "in accordance with" phrase on the meaning of Subsection (c), it is devoid of persuasive authority in this case.

The Union concludes that Section 434.533 of the Employee

and Labor Relations Manual should be interpreted literally and, hence, that the grievance in this case must be sustained. The Union's position is that the grievants are entitled to holiday scheduling premium pay because the workers the grievants replaced had been scheduled for a regular work day, not a designated holiday.

2. "Use a Purpose Interpretation"

The Employer argues that the grievants are not entitled to premium pay because management, in fact, posted the holiday schedule in a timely manner. The Employer asserts that its compliance with relevant regulations in the current Employee and Labor Relations Manual has not been contested. It is the Employer's position that premium pay is due only when management fails to post the holiday schedule correctly and that, therefore, the grievants are not entitled to it based on the facts of the case. According to the Employer, credible evidence supports its theory that the holiday scheduling premium is paid only when management has not posted the schedule properly. Additional language in the 1974 Settlement Agreement and the 1978 ELM allegedly confirms that the schedule posting provision must not have been violated for this provision to apply. The Employer argues that it is important to focus on purpose, and the purpose of Subsection (c) allegedly is to relieve management of an obligation to pay the

premium when it did everything it could to predict accurately staffing needs for the holiday and designated holiday.

The Employer believes that the Union has misinterpreted Section 434.533(c) of the ELM. As the Employer sees it, use of the neutral words "a" and "the" to modify the word "holiday," rather than the possessive pronouns "his" or "her," suggests that drafters of the language did not intend to limit the meaning of "holiday" to only that day to which the subject "employee" was entitled. The Employer argues that the word "holiday" includes both the holiday itself and other days that could be designated as holidays for employees who would not have been scheduled to work the actual holiday.

The Employer argues that the Union mistakenly has relied on the 1977 Step 4 decision for its conclusion that ELM Section 434.533(c) should be interpreted literally. Instead, the Employer maintains that the Step 4 decision, in fact, did interpret the section literally both by reading "holiday" as being neutral and by requiring the premium to be paid when the replaced employe was part-time rather than full-time. The Employer concludes that the Union really is asking for a nonliteral interpretation by ignoring the neutrality of "a" and "the" and implying "his" or "her" in their place.

The Employer believes that the intent of the 1974 Settlement Agreement, from which the ELM provision originated, was to provide a remedy for management's violation of the holiday schedule posting requirement. Accordingly, the holiday schedule premium allegedly is directly related to a

violation of the posting protocol by management. The Employer bolsters this claim by citing a memorandum from management to postmasters on April 17, 1974. (See Employer's Exhibit No. 2.) The memorandum's interpretation of the parties' agreement, as requiring strict compliance with the scheduling provision in order to avoid paying the premium, allegedly is evidence that management's purpose was to decrease violations. The Employer asserts that the agreement was not intended to penalize management when a scheduled employee calls in sick. There allegedly is no indication that the provision was intended to be a compromise which allowed the premium when a replaced employee was scheduled to work a regular work day and disallowed the premium when a replaced employee was scheduled to work his or her holiday.

In support of its argument, the Employer also cites a May 16, 1974 Postal Bulletin. A notice in the bulletin was entitled "Timely Posting of Holiday Work Schedules," and it made clear that failure to comply with timely posting requirements would not result in liability for "penalty pay." The bulletin allegedly reveals the purpose of the parties.

The Employer believes that further support for its position may be found in the F-21 and F-22 Handbooks dealing with how time and attendance data of employees are recorded. In the opinion of the Employer, both handbooks are clear about the fact that holiday scheduling premium is to be paid when management fails to post the holiday schedule properly. (See Employer's Post-hearing Brief, p. 12.)

The Employer argues that a number of arbitration awards provide persuasive authority for an interpretation consistent with the Employer's. In a 1986 decision, Arbitrator Mittenthal tangentially addressed the issue of the merits when ruling on the arbitrability of a related issue. His decision focused on the effect of penalty overtime pay on holiday scheduling. (See Employer's Exhibit No. 6.) In interpreting the meaning of Article 11.6 in the parties' agreement, Arbitrator Mittenthal observed that premium pay is due when management fails to comply with schedule posting requirements. (See Employer's Exhibit No. 6, p. 4.) In the Employer's view, Arbitrator Mittenthal's language supports management's position in this case.

The Employer also believes that five regional arbitration decisions provide persuasive authority for its theory of the case. An award by Arbitrator Dobranski in 1985 denied holiday scheduling premium pay to a carrier because the holiday schedule properly had been posted and because premium pay was "expressly limited" to situations" where there has been a violation of the posting requirement." (See Employer's Exhibit No. 7, p. 7, and Employer's Post-hearing Brief, p. 15.) The Employer asserts Arbitrator Dobranski rejected the argument that a premium must be paid when a replaced employee is scheduled to work a regular day. The Employer contends that Arbitrator Dobranski's analysis is persuasive in two ways. First, the status of the replaced employee allegedly is irrelevant in understanding the purpose of ELM Section 434.533(c).

Second, the meaning of "holiday" in the subsection allegedly includes the designated holiday of the replacing employee.

The Employer also relies on four other regional arbitration awards that allegedly address the same issue as the one before this arbitrator. The Employer finds support for its "purpose" interpretation in the 1992 Britton Award. It denied the Union's grievance and found no violation of ELM Section 434 in management's denial of premium pay. (See Employer's Exhibit No. 8) Other awards from Arbitrators Caraway (1983), Schedler (1986), and Sickles (1995) allegedly limit premium pay to cases where management fails to post the holiday schedule properly. (See Employer's Exhibit Nos. 9, 10, and 11.)

The Employer concludes that it has not violated the parties' agreement in this case. It is the belief of the Employer that the Union's argument which is premised on the basis of the replaced employee's status must be denied. According to the Employer, the Union has misinterpreted ELM Section 434.533(c) and offers an interpretation which is contrary to the purpose for which the parties intended the provision.

B. Whose Meaning to Prefer?

Fundamentally, the issue in the dispute before the arbitrator is about the intent of the parties. It is also about the meaning of words and how such meanings are affected by their context and the circumstances in which words are used. Underlying the dispute is the practice of giving employees time off and compensation for certain holidays.

Article 11 of the parties' agreement outlines holiday provisions. It defines terms and, in Section 6 of Article 11, requires two actions of the Employer, namely, (1) that management make holiday staffing decisions based on the category and seniority of employees; and (2) that management notify employees of the holiday schedule in a timely manner. But the provision went no further than that until 1974 when grievances over management's poor record of compliance with the scheduling requirement prompted negotiations and an eventual Settlement Agreement between the parties. The parties had not thought to provide a remedy for violating Article 11.6, and they set about negotiating an incentive to encourage compliance. The parties' agreement suggests that the fifty percent "holiday scheduling premium" became a part of the labor contract to motivate management to give employees reasonable notice of holiday schedules.

Unfortunately, language in the Settlement Agreement did not adequately address all possible contingencies. That fact set the stage for the present grievances. Did the parties intend to restrict the "premium" exception in ELM 434.533(c)

only to cases where the replaced employee was scheduled to work on his or her holiday? In other words, what is the meaning of the words to which the parties subscribed in the provision?

The Union argued for a literal interpretation of language in the Employee and Labor Relations Manual that addresses the holiday scheduling premium. The consequences of such a narrow interpretation, however, bear no relation to the purpose for which the parties entered into the original Settlement Agreement. Rather than merely providing the Union with a remedy for misdeeds of management, the provision could be made through technical manipulation to wreak an injustice on the Employer. No evidence suggested that the parties intended to remove one unfair provision only to impose another.

It has been a general rule in the common law of the shop to strive to effectuate the intent of the parties. It would be imprudent to pursue a literal approach to interpretation as a general rule at the expense of implementing the parties' intent. The lesson of the common law of the shop as well as codifications such as Restatement (Second) of Contracts is that agreements must be read in light of the intentions of the parties, and contractual intent must be understood within the context of circumstances surrounding an agreement. Contract language need not be ambiguous in order to consider external evidence of intent. As Restatement (Second) has made clear, rules in aid of contract interpretation "do not depend upon any determination that there is an ambiguity, but

are used in determining what meanings are reasonably possible as well as in choosing among possible meanings." (See § 202, comment a, 87 (1981).) Modern day contract readers recognize that there simply is no "paradise where all words have a fixed, precisely ascertained meaning." (See Thayer, A Preliminary Treatise on Evidence, 108 (1898).)

A fundamental principle of contract interpretation used by modern courts and arbitrators alike is that a contract reader should view all relevant aspects of a transaction to understand the meaning of language in an agreement. Even if one took a more restricted view and demanded proof of ambiguity before using external evidence as an interpretive aid for determining the meaning of words in an agreement, the process of proving ambiguity should permit a contract reader to consider evidence of surrounding circumstances. As one court observed, "proof on the issue of ambiguity may encompass. . . surrounding circumstances, common usage and custom . . . and subsequent conduct of the parties." (See Eskimo Pie Corp. v. Whitelawn Dairies, 284 F. Supp. 987 (S.D.N.Y. 1968).) As a primary standard of interpretation, Restatement (Second) teaches that "words and other conduct are interpreted in the light of all the circumstances, and if the principal purpose of the parties is ascertainable, it is given great weight." (See § 202, 86 (1981).)

Unfortunately, the parties presented little direct evidence of their express intention in negotiating the 1974 Settlement Agreement. It, of course, provided the basis for

language in ELM Section 434.533. Ms. Heath, Labor Relations Specialist in Grievance and Arbitration at Postal Headquarters, offered some insight into the course of performance between the parties with regard to how Section 434.533(c) of the ELM has been implemented. Her testimony suggested that the exception to premium pay delineated in Section 434.533(c) has been broadly applied by the Employer. (See Tr. 65-67.)

The parties are presumed to have intended an interpretation of their agreement which is both reasonable and gives an effective meaning to all the terms of the agreement. In other words, the parties are presumed to have structured their agreement logically, absent evidence to the contrary. The circumstance which gave birth to the Settlement Agreement of 1974 was that the Employer was violating the scheduling protocol with impunity. The absence of a remedy had permitted opportunistic behavior by management that disadvantaged workers, and the Settlement Agreement provided a negotiated solution in the form of a holiday scheduling premium. The logical implication is that the agreement exists to provide a remedy for violations of Article 11.6.

Did the agreement purport to resolve any other problems? The parties presented no evidence of such an intention. If details of how to implement the holiday scheduling premium incorporated other motives, it is impossible to discern from the record what those motives might have been. Can a rational distinction be made between employees who were scheduled to

work a regular day and those who were scheduled to work a holiday, whether actual or designated? An affirmative response to this question seems far outside the main purpose for which these provisions were drafted. The record, however, is not devoid of such evidence.

For example, the Union relied on a 1977 Step 4 Settlement Agreement in which the parties agreed to distinguish between full-time and part-time employees for purposes of paying holiday scheduling premium to those workers who replaced them. This, indeed, appeared to constitute a literal interpretation. Language of the Settlement Agreement did not address intentions or purpose. Instead, its analysis seems confined to the "four corners" of the agreement. This, of course, suggests that a "plain meaning" interpretation of the agreement is appropriate.

There, however, are two important differences between the 1977 transaction and the case before the arbitrator. One difference is that language in the 1977 transaction is clear. ELM Section 434.533(c) contains a clear and specific reference ("a full-time regular employee") instead of a general statement. The Union argued that the distinction is purely literal because tere is no other possible basis for it. In other words, the Union's theory of the case would equate the difference between full-time and part-time workers with the difference between a replaced employee missing work on a regular day and missing work on a holiday. But this is where the second and more important difference between the two

cases resides.

First, drafters of the 1974 Settlement Agreement specifically referred to the status of the replaced employee as "full-time regular" rather than referring to a "generic employee." Since parties are presumed to have intended all their words to impart meaning, this choice must be assumed to be deliberate. On the other hand, use of the generic term "holiday" later in the section does not appear to be deliberate, especially as it was modified with the less specific modifiers "a" and "the." More importantly, however, is whether a purpose for the difference can be discerned. Why would the parties specify that the absent employee be "full-time regular?" By focusing on the original purpose of the agreement (that of encouraging management to produce a timely and accurate schedule), the distinction between part-time and full-time employees becomes meaningful. Calling in a full-time worker to replace a part-time worker shows more than bad luck but bad planning by management as well. Moreover, the authority to call in full-time employees to replace part-time employees without penalty would provide an opportunity for potential abuse when management underestimated its staffing needs.

In other words, the exception set forth in Section 6 to paying the premium is not available when management is able to increase its work force without having scheduled for it under Section 434.533(a). In the case before the arbitrator, management has not increased its work force, nor could it,

by replacig a full-time employee scheduled for a regular day with another full-time employee not scheduled on his or her designated holiday. The purpose for which the agreement was made is affected by the status of the replaced employee only with regard to classification and not with regard to schedule dates.

Although the "plain meaning" rule of interpretation remains viable and has many respected adherents, it is not appropriate to apply it in this case. Even under the "plain meaning" rule, however, it is appropriate to consider external material in the face of ambiguity. Moreover, in this particular industry, underlying circumstances and external manifestations of contractual intent have provided a source of meaning that can be ascribed to contractual language.

The Union argued that the "in accordance with" language, which appeared in the original Settlement Agreement and was incorporated into the first ELM Manual but does not appear in the current ELM Manual, reveals an intention to limit the exception. In the original Settlement Agreement, the "in accordance with" phrase referred back to Article 11. But in the first ELM Manual, the regulation states that the replaced employee is "scheduled to work on a holiday in accordance with a, above." Parsing the sentence does not make entirely clear whether the phrase modified the word "scheduled" or the word "holiday." But because the section to which it referred implements premium pay for failing to post the holiday schedule on time, it more logically seems to be placing primary

emphasis on compliance with that provision. In any event, the language no longer appears in the current version of the Employee and Labor Relations Manual; and the parties submitted no explanation for its absence. Accordingly, it would be imprudent to speculate on its previous meaning and insert it back into the provision.

The Union urged rejection of the five regional arbitration awards on which the Employer relied. As the Union saw them, three of the decisions were simplistic and perhaps too literal in that they rested their holding solely on whether a holiday schedule had been posted, regardless of its accuracy with regard to an individual employee. It, however, is unnecessary to accept or reject the decisions of Arbitrators Britton, Caraway, or Schedler in terms of their persuasive authority. The decisions appear to defeat the purpose in the labor contract of giving timely notification to employees, but the case before the arbitrator includes no allegation of an inaccurate schedule. It, therefore, cannot be said whether an inaccurate, yet timely schedule alone satisfied the Employer's obligation under this contractual provision. Nor has their arbitral reasoning been a basis for deciding this case. The Union's objection to the Dobranski Award (namely, that it failed to address the "in accordance with" phrase) was dealt with earlier.

In summary, the purpose of the holiday scheduling provision is to encourage timely and accurate posting of holiday schedules. This main purpose will not be served by requiring

the Employer to pay a holiday scheduling premium in cases where the need for a replacement employee is out of the Employer's control. Accordingly, whether the replaced employee is scheduled for a regular day or for his or her holiday is of no consequence with regard to the application of Employee and Labor Relations Manual Section 434.533(c).

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the grievance shall be denied. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: 11-28-97