FROM A TO ARBITRATION

EPISODE 44- THE DISPATCH OF VALUE AND THE WINDOW OF OPERATION

DOV AND WOO WHAT THEY MEAN

- DISPATCH OF VALUE OR DOV- IS THE LAST DISPATCH OF MAIL OUT OF YOUR INSTALLATION/STATION
- WINDOW OF OPERATION OR WOO- IS THE WINDOW OF TIME WHEN THE LAST TRUCK LEAVES YOUR INSTALLATION/STATION

IN OTHER WORDS

WHEN MANAGEMENT TRIES TO LIMIT AND OR RESTRICT THE OVERTIME OF THE CARRIERS THEY WILL SET A TIME, LIKE EVERYONE HAS TO BE BACK BY 5PM, TO MEET THE LAST DISPATCH OF VALUE/LAST DISPATCH OF MAIL AND EXPECTS ALL CARRIERS TO BE OFF THE STREET BY THAT TIME

WHEN MANAGEMENT STATES THAT THE LAST TRUCK WILL LEAVE AT 6PM TO THE PLANT AND ALL OUTGOING MAIL MUST BE ON THAT TRUCK

MANAGEMENT'S ARGUMENTS FOR THEM

- IT'S FOR CUSTOMER SERVICE, CUSTOMERS NEED THEIR MAIL EARLY
- IT GETS DARK, CARRIERS SHOULDN'T BE OUT AFTER DARK DELIVERING MAIL
- POSTMASTER AND DISTRICT MANAGER WANTS IT

ARTICLE 8 DOESN'T SEE LIGHT AND DARK

- MANAGEMENT WILL USE DOV AND WOO TO TRY TO CIRCUMVENT ARTICLE 8 BY STATING SAFETY TO CARRIERS AND CUSTOMER SERVICE GOALS
- ODL CARRIERS MUST WORK 12 HOURS REGARDLESS OF THE GOALS THAT MANAGEMENT SETS WHEN THEY ARE GIVING OUT OVER TIME AND MANDATING CARRIERS OFF ASSIGNMENT
- SHOP STEWARDS SHOULD BE COMBATING BOTH OF THE DOV AND WOO WHEN IT VIOLATES ARTICLE 8

ARTICLE 8.5.A

- **8.5.A**
  - EMPLOYEES DESIRING TO WORK OVERTIME SHALL PLACE THEIR NAMES ON EITHER THE "OVERTIME DESIRED" LIST OR THE "WORK ASSIGNMENT" LIST DURING THE TWO WEEKS PRIOR TO THE START OF THE CALENDAR QUARTER, AND THEIR NAMES SHALL REMAIN ON THE LIST UNTIL SUCH TIME AS THEY REMOVE THEIR NAMES FROM THE LIST. EMPLOYEES MAY SWITCH FROM ONE LIST TO THE OTHER DURING THE TWO WEEKS PRIOR TO THE START OF THE CALENDAR QUARTER, AND THE CHANGE WILL BE EFFECTIVE BEGINNING THAT NEW CALENDAR QUARTER.

- **WRITTEN TO PROTECT THOSE CARRIERS WHO DO NOT WISH TO WORK OVERTIME**

- **8.5.D**
- IF THE VOLUNTARY “OVERTIME DESIRED” LIST DOES NOT PROVIDE SUFFICIENT QUALIFIED PEOPLE, QUALIFIED FULL-TIME REGULAR EMPLOYEES NOT ON THE LIST MAY BE REQUIRED TO WORK OVERTIME ON A ROTATING BASIS WITH THE FIRST OPPORTUNITY ASSIGNED TO THE JUNIOR EMPLOYEE.
- **MANAGEMENT WILL ALWAYS TRY TO USE THIS, BUT THEY WILL ALWAYS MISQUOTE IT**

ARTICLE 8.5.D

HERE'S HOW WE BEAT THAT - 8.5.D

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. Employees on the "Overtime Desired" list:

1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.F); and

2. excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.

However, the Employer is not required to utilize employees on the "Overtime Desired" list at the penalty overtime rate if qualified employees on the "Overtime Desired" list who are not yet entitled to penalty overtime are available for the overtime assignment.

ARBITRATOR MITTENTHAL C-05860

- NATIONAL ARBITRATOR MITTENTHAL RULED IN H4N-NA-C-21, APRIL 11, 1986 (C-05860), THAT AN EMPLOYEE ON THE ODL DOES NOT HAVE THE OPTION OF ACCEPTING OR REFUSING WORK OVER EIGHT HOURS ON A NON-SCHEDULED DAY, WORK OVER SIX DAYS IN A SERVICE WEEK OR OVERTIME ON MORE THAN FOUR OF THE FIVE SCHEDULED DAYS IN A SERVICE WEEK; INSTEAD AN EMPLOYEE ON THE ODL MUST BE REQUIRED TO WORK UP TO 12 HOURS IN A DAY AND 60 HOURS IN A WEEK BEFORE MANAGEMENT MAY REQUIRE EMPLOYEES NOT ON THE ODL TO WORK OVERTIME. ARBITRATOR MITTENTHAL'S AWARD DOES NOT EXTEND TO SITUATIONS INVOLVING A LETTER CARRIER WORKING ON HIS OR HER OWN ROUTE ON A REGULARLY SCHEDULED DAY

COMPANION TO 8.5.G

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. Employees on the “Overtime Desired” list:

1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.F); and

2. excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.

However, the Employer is not required to utilize employees on the “Overtime Desired” list at the penalty overtime rate if qualified employees on the “Overtime Desired” list who are not yet entitled to penalty overtime are available for the overtime assignment.

NEW WINDOW OR DISPATCH TIME

WHEN MANAGEMENT COMES UP AND SAYS WE ARE NOW GOING TO HAVE A NEW WINDOW OF OPERATION OR A DISPATCH OF VALUE THE SHOP STEWARDS MUST GRIEVE THIS IMMEDIATELY

STEWARDS WILL REQUEST ALL CLOCK RINGS AND START TO SHOW THAT MANAGEMENT IS CONTINUOUSLY VIOLATING ARTICLE 8 BY TRYING TO MAKE THIS CERTAIN SERVICE STANDARD TIME AND/OR WINDOW AND ARE WORKING CARRIERS IMPROPERLY

ARBITRATOR BRITTON C-13181

- IT IS MANAGEMENT'S UNDERSTANDING THAT THE UNION BELIEVES "SIMULTANEOUS SCHEDULING" IS NOT IN ACCORDANCE WITH THE NATIONAL AGREEMENT AND THAT MANAGEMENT IS NOT USING THE OTDL AS PRESCRIBED BY ARTICLE 8 OF THE NATIONAL AGREEMENT .
- IT IS MANAGEMENT'S POSITION THAT IN EVERY CASE CITED UNDER ARTICLE 8 , MANAGEMENT SCHEDULED ACCORDINGLY CONSIDERING ALL VALID OPERATIONAL CONSTRAINTS, IN NONE OF THE GRIEVANCES REFERRING TO ARTICLE 8 DID MANAGERS CALL IN OR SCHEDULE NON-OVERTIME DESIRED LIST EMPLOYEES WITHOUT FIRST MAXIMIZING THE PEOPLE ON THE OVERTIME DESIRED LIST. TO COVER VACANT ' ROUTES AS WELL AS ATTEMPT TO HAVE ALL MAIL DELIVERED PRIOR TO 1700 HOURS , IT WAS NECESSARY TO USE NON -OVERTIME DESIRED LIST EMPLOYEES, (VOLUNTEERS FIRST), TO WORK THEIR DAY OFF ALONG WITH OVERTIME DESIRED LIST EMPLOYEES. THE UNIONS CONTENTION THAT OVERTIME DESIRED LIST CARRIERS SHOULD WORK UP TO TWELVE (12) HOURS BEFORE USING NON-OVERTIME DESIRED LIST CARRIERS WOULD CAUSE LETTER CARRIERS TO BE DELIVERING MAIL UP TO 7:30 PM, WHICH IS UNSAFE AND DETRIMENTAL TO THE IMAGE OF THE POSTAL SERVICE . MANAGEMENT ALSO FEELS THAT SIMULTANEOUS SCHEDULING IS APPLIED NOT ONLY TO THE APWU (AS PER ATTACHED ARBITRATION AWARDS DATED JANUARY 29, 1990 AND JANUARY /4, 1991, BY ARB. RICHARD MITTENTHAL, BUT ALSO TO THE NALC, BEING THE NATIONAL AGREEMENT ENCOMPASSES BOTH PARTIES . AFTER A REVIEW OF THE ARBITRATION AWARDS, IT IS EVIDENT THAT THE NEED TO USE SIMULTANEOUS SCHEDULING , AS: IN PAST PRACTICE, IS A NECESSARY TOOL USED BY MANAGEMENT TO MOVE THE MAIL IN AN EFFICIENT MANNER.

MANAGEMENT'S PORTION C-13181 CONTINUED

- DUE TO THE FACT THAT MANAGEMENT FOUND IT NECESSARY TO SCHEDULE NON-OVERTIME DESIRED LIST EMPLOYEES WHERE THERE WAS NOT SUFFICIENT OVERTIME DESIRED LIST EMPLOYEES FOR OPERATIONAL NEEDS ; ALL AVAILABLE OVERTIME DESIRED LIST EMPLOYEES WERE AFFORDED THE OPPORTUNITY TO WORK; AND THAT MR, MITTENTHAL DENIED THE APWU GRIEVANCES PERTAINING TO ARTICLE 8, THIS GRIEVANCE IS DENIED.
- THIS WAS MANAGEMENT'S PORTION IN THE CASE. THEY TRIED TO TIE IN AND SPIN THE LANGUAGE THAT IT WAS NECESSARY TO WORK NON-OVERTIME DESIRED LIST BECAUSE THERE WASN'T SUFFICIENT EMPLOYEES FOR OPERATIONAL NEEDS. DISPATCH OF VALUE, OPERATIONAL NEEDS AND 1700 IS NOT PART OF ARTICLE 8 AND THEREFORE IS NOT AN AGREED UPON LIMIT IN THIS ARTICLE
- MITTENTHAL STATED ONLY AND MUST. REMEMBER THAT

UNION'S POSITION C-13181

- IT IS THE UNIONS UNDERSTANDING THAT MANAGEMENT BELIEVES THAT ALL THE CITED GRIEVANCES ARE "SIMULTANEOUS SCHEDULING. " THE UNION DID NOT PUT FORTH THE ARGUMENT THAT ALL THE CITED GRIEVANCES ARE "SIMULTANEOUS SCHEDULING", EACH GRIEVANCE WAS TO BE PRESENTED ON IT'S OWN MERIT, WHEN THE ABOVE GRIEVANCES WERE PRESENTED, MANAGEMENT DID NOT PUT FORTH AT ANY TIME, THE ARGUMENT THAT SIMULTANEOUS SCHEDULING WAS BASED ON " . . . VALID OPERATIONAL CONSTRAINTS". MANAGEMENT, DID IN FACT SCHEDULE CARRIERS NOT ON THE OTDL PRIOR TO MAXIMIZING THE CARRIERS ON THE OTDL . ALSO, MANAGEMENT HAS NOW PRESENTED MATTERS CONCERNING AN "OPERATIONAL WINDOW" (VALID OPERATIONAL CONSTRAINTS) IN ORDER TO ". . HAVE ALL MAIL' DELIVERED PRIOR TO 1700 HOURS. . . ". THAT WAS NOT PRESENTED THEN AND HAS NEVER BEFORE BEEN ARTICULATED TO THE UNION. FURTHERMORE, THE UNIONS CONTENTIONS CONCERNING THE APPLICABILITY OF THE APWU ARBITRATION AWARDS CASE NUMBER H4C-NA-C 30, DATED JANUARY 29, 1990 AND JANUARY 14, 1991, IS REFLECTED SIMPLY IN THAT THE ARBITRATION WAS RELATIVE TO THE PARTIES (USPS AND APWU ONLY) DISAGREEMENTS CONCERNING THE MEANING OF THEIR ARTICLE 8 MORANDUM EXECUTED VIA A SERIES OF MEETINGS BETWEEN DECEMBER 10 AND 17 .

MANAGEMENT WILL USE THIS

- ON OCTOBER 5, 1992, LINDA YOUNG, LABOR RELATIONS IN A LETTER TO MR. JERRY KERNER, REGIONAL ADMINISTRATIVE ASSISTANT, STATED IN RELEVANT PART AS FOLLOWS:
- ON 08/05/92, THE ABOVE REFERENCED GRIEVANCE WAS DISCUSSED AT STEP 3 OF OUR CONTRACTUAL GRIEVANCE PROCEDURE. THE MATTERS PRESENTED BY THE UNION CONCERNING THIS GRIEVANCE, AS WELL AS THE APPLICABLE CONTRACTUAL PROVISIONS HAVE BEEN REVIEWED AND GIVEN CAREFUL CONSIDERATION . MANAGEMENT HAS ESTABLISHED A LEGITIMATE BUSINESS REASON TO HAVE THE MAIL DELIVERED TIMELY AND SUFFICIENTLY. BASED ON THE FACT THAT SIMULTANEOUS SCHEDULING WAS UTILIZED AND IS AUTHORIZED AND CONFIRMED BY A NATIONAL ARBITRATION AWARD, THERE IS NO EVIDENCE OF ANOTHER CONTRACTUAL VIOLATION OF ARTICLE 8. THEREFORE, THE CORRECTIVE ACTION REQUESTED WILL NOT BE GRANTED , AND THE GRIEVANCE IS DENIED. IN THE OPINION OF THE POSTAL SERVICE, THIS GRIEVANCE DOES NOT INVOLVE ANY INTERPRETIVE ISSUE(S) PERTAINING TO THE NATIONAL AGREEMENT OR ANY SUPPLEMENT THERETO WHICH MAY BE OF GENERAL APPLICATION . THEREFORE, THIS CASE MAY BE APPEALED DIRECTLY TO REGIONAL ARBITRATION IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 15 OF THE NATIONAL AGREEMENT.

MANAGEMENT WILL USE CONTINUED

- MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND JOINT BARGAINING COMMITTEE(AMERICAN POSTAL WORKERS UNION, AFL-CIO, AND NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO) RE: ARTICLE 8
- RECOGNIZING THAT EXCESSIVE USE OF OVERTIME IS INCONSISTENT WITH THE BEST INTERESTS OF POSTAL EMPLOYEES AND THE POSTAL SERVICE, IT IS THE INTENT OF THE PARTIES IN ADOPTING CHANGES TO ARTICLE 8 TO LIMIT OVERTIME, TO OVOID EXCESSIVE MANDATORY OVERTIME, AND TO PROTECT THE INTERESTS OF EMPLOYEES WHO DO NOT WISH TO WORK OVERTIME, WHILE RECOGNIZING THAT BONA FIDE OPERATIONAL REQUIREMENTS DO EXIST THAT NECESSITATE THE USE OF OVERTIME FROM TIME TO TIME . THE PARTIES HAVE AGREED TO CERTAIN ADDITIONAL RESTRICTIONS ON OVERTIME WORK, WHILE AGREEING TO CONTINUE THE USE OF OVERTIME DESIRED LISTS TO PROTECT THE INTERESTS OF THOSE EMPLOYEES WHO DO NOT WANT TO WORK OVERTIME, AND THE INTERESTS OF THOSE WHO SEEK TO WORK LIMITED OVERTIME.

OPINION OF THE ARBITRATOR

- DETERMINATIVE OF THIS MATTER, IS WHETHER THE OVERTIME USED ON NOVEMBER 29, 1991 WAS IN ACCORDANCE WITH ARTICLE 8 AND THE MEMORANDUM OF UNDERSTANDING IN THE NATIONAL AGREEMENT. SPECIFICALLY APPLICABLE HERETO IS THE LANGUAGE OF ARTICLE 8, SECTION 5.G OF THE NATIONAL AGREEMENT. THEREIN, IT IS EXPRESSLY PROVIDED THAT FULL-TIME EMPLOYEES NOT ON THE "OVERTIME DESIRED" LIST MAY BE REQUIRED TO WORK OVERTIME " . . . ONLY IF ALL AVAILABLE EMPLOYEES ON THE . . . "LIST HAVE WORKED UP TO TWELVE (12) HOURS IN A DAY OR SIXTY (60) HOURS IN A SERVICE WEEK ." IN ADOPTING THIS LANGUAGE, THE PARTIES HAVE CLEARLY EXPRESSED THEIR INTENT TO CONDITION THE WORKING, BY NON-ODL EMPLOYEES ON OVERTIME ON ODL EMPLOYEES WORKING UP TO TWELVE (12) HOURS, AND AVOIDING, AS MUCH AS POSSIBLE, REQUIRING THAT EMPLOYEES PERFORM OVERTIME SERVICE CONTRARY TO THEIR INDICATED DESIRES .

OPINION OF THE ARBITRATOR

- IT IS URGED BY THE EMPLOYER THAT NON-ODL CARRIERS AND ODL CARRIERS WORKED SIMULTANEOUSLY FOR EIGHT (8) HOURS ON NOVEMBER 29, 1991, AS IT WAS NECESSARY TO COVER VACANT ROUTES AND HAVE ALL MAIL DELIVERED PRIOR TO 5:00 O'CLOCK P.M. MANAGEMENT, IN EVERY INSTANCE, IS SAID TO HAVE ACTED IN ACCORDANCE WITH ARTICLE 8 AND IN CONSIDERATION OF ALL VALID OPERATIONAL CONSTRAINTS. SUPPORTIVE OF THE VALIDITY OF ITS ACTION, ACCORDING TO THE EMPLOYER, IS THE EXISTENCE OF AN OPERATIONAL WINDOW, AND CASE NO . H4C-NA-C 30 . THE RECORD SUBMITTED REFLECTS THAT CARRIERS AT THE HYATTSVILLE STATION BEGIN WORK AT 7 :00 O'CLOCK A.M. AND WORK UNTIL 3:30 O'CLOCK P.M. THE MAIL OF ALL BUSINESS CUSTOMERS IS DELIVERED PRIOR TO OR AS NEAR AS POSSIBLE TO 12:00 O'CLOCK NOON . THERE IS TESTIMONY OF MANAGEMENT WITNESSES THAT EARLY DARKNESS OCCURS AROUND 4:30 TO 5:00 O'CLOCK P.M. DURING THE PERIOD OF TIME IN QUESTION AND THAT SUCH CREATES A SAFETY PROBLEM .

OPINION OF THE ARBITRATOR

- IN THIS REGARD, THE EMPLOYER MAINTAINS THAT IT IS THE RESPONSIBILITY OF MANAGEMENT TO PROVIDE SAFETY TO ALL ITS EMPLOYEES AND AS, THE DELIVERY OF MAIL AFTER 5:00 O'CLOCK P.M. IN THE DARK CONSTITUTES A SAFETY HAZARD, IT SHOULD BE AVOIDED AS NOT IN THE BEST INTEREST OR WELFARE OF ITS EMPLOYEES. MOREOVER, THE EMPLOYER MAINTAINS THAT THE DELIVERY OF MAIL AT THAT TIME IS DETRIMENTAL TO THE POSTAL SERVICE AS IT DOES NOT CONVEY GOOD BUSINESS PRACTICE. AS A RESULT, THE EMPLOYER CONTENDS THAT A PAST PRACTICE HAS EXISTED THE HYATTSVILLE STATION FOR MANY YEARS THAT ALL MAIL MUST BE DELIVERED AND CARRIERS BACK IN THE OFFICE BY 5:00 O'CLOCK P.M. BEFORE DARK. AS JUSTIFICATION FOR ITS ACTION, REFERENCE IS MADE BY THE EMPLOYER TO THE LANGUAGE CONTAINED IN THE MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND JOINT BARGAINING COMMITTEE (AMERICAN POSTAL WORKERS UNION, AFL-CIO, AND NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO) WITH RESPECT TO ARTICLE 8 THAT " . . . THE NEW LANGUAGE IS NOT INTENDED TO CHANGE EXISTING PRACTICES RELATING TO USE OF EMPLOYEES NOT ON THE OVERTIME DESIRED LIST WHEN THERE ARE INSUFFICIENT EMPLOYEES ON THE LIST AVAILABLE TO MEET THE OVERTIME NEEDS . . . ."

OPINION OF THE ARBITRATOR

- THE DIFFICULTY WITH ACCORDING THE EMPLOYER'S ARGUMENT AS TO THE EXISTENCE OF A 5 :00 O'CLOCK OPERATIONAL WINDOW PERSUASIVE FORCE IS THAT IT IS NOT CONVINCINGLY DEMONSTRATED BY THE EVIDENCE PRESENTED THAT SUCH AN OPERATIONAL WINDOW EXISTS AT THE HYATTSVILLE STATION. NOT ONLY DOES CONTRARY TESTIMONY INDICATE THAT IN THE PAST MANAGEMENT WAS NOT CONCERNED WITH WHETHER CARRIERS DELIVERED MAIL IN THE DARK, BUT THERE IS TESTIMONY THAT THE ALLEGED 5:00 O'CLOCK OPERATIONAL WINDOW SIMPLY DID NOT EXIST. SHOWN TO BE STRONGLY INDICATIVE OF THE LATTER IS A MEMORANDUM FROM BARRY A. SWINEHART,

OPINION OF THE ARBITRATOR

- BARRY A. SWINEHART-FIELD DIRECTOR, HUMAN RESOURCES, SOUTHERN MARYLAND DIVISION, DATED NOVEMBER 25, 1987, SUBJECT : ARTICLE 8 TO ALL DIVISION DIRECTORS, POSTMASTERS, AND DESIGNATED MANAGERS AND . SUPERVISORS (UNION EXHIBIT NO.6) CLEARLY STATED AT PAGE 4 THEREOF IS THE FOLLOWING :
  - 4. IF AND WHEN AN "OPERATIONAL WINDOW" IS ESTABLISHED POSTAL MANAGER'S MUST MAKE IT KNOWN TO ALL MANAGERS, UNION OFFICIALS AND EMPLOYEES IN WRITTEN FORM. THIS WILL ELIMINATE ALL QUESTIONS CONCERNING ANY CHANGE IN POLICY OR PRACTICE.

OPINION OF THE ARBITRATOR

- DESPITE THIS EXPRESS WRITTEN MANDATE, IT IS UNCONTROVERTED THAT THE UNION WAS NEVER INFORMED IN WRITING OF THE EXISTENCE OF AN OPERATIONAL WINDOW AT THE HYATTSVILLE POST OFFICE. INDEED, LAWRENCE JOSEPH WELLING, MANAGER AT HYATTSVILLE IN CHARGE OF THE ENTIRE HYATTSVILLE PROCESS AND DELIVERY AT THE TIME OF THE GRIEVANCES, IS SHOWN TO HAVE ADMITTED IN HIS TESTIMONY THAT HE NEVER NOTIFIED THE UNION IN WRITING OF AN OPERATIONAL WINDOW AT HYATTSVILLE. THUS, IT WOULD APPEAR FROM THE EVIDENCE THAT MANAGEMENT AT THE HYATTSVILLE POST OFFICE IGNORED ITS OWN POLICY AND GUIDELINES SET FORTH IN THE ABOVE DESCRIBED MEMORANDUM OF MR. BARRY A. SWINEHART. SUCH EVIDENCE NEGATES THE EXISTENCE OF AN ESSENTIAL ELEMENT OF PAST PRACTICE AND STRONGLY MILITATES AGAINST A FINDING THAT A PRACTICE HAS EXISTED AT THE HYATTSVILLE STATION FOR MANY YEARS THAT ALL MAIL MUST BE DELIVERED AND CARRIERS BACK IN THE OFFICE BY 5:00 O'CLOCK P.M. BEFORE THE ADVENT OF DARKNESS .

OPINION OF THE ARBITRATOR

- NOR DOES THE ARBITRATOR FIND THE POSITION OF THE EMPLOYER TO BE MATERIALLY ADVANCED BY ITS RELIANCE ON CASE NO. H4C-NA-C 30. IN THIS REGARD, THE EMPLOYER POINTS OUT THAT THE ARBITRATOR THEREIN ALLUDED TO STANDARDS OR CRITERIA FOR SIMULTANEOUS SCHEDULING SUCH AS 'BONA FIDE OPERATIONAL REQUIREMENTS", ‘EXISTING, PRACTICES'; AND THE ‘NEED TO GET OUT THE MAIL," AND DENIED THE APWU GRIEVANCES PERTAINING TO ARTICLE 8 . THAT RELIANCE BY THE EMPLOYER ON THE REFERENCED AWARD IS MISPLACED, IT SEEMS TO THE ARBITRATOR, IS DEMONSTRATED BY THE LANGUAGE IN SUCH AWARD CONSTRUING THE MEMORANDUM AS TO WHEN SIMULTANEOUS SCHEDULING WAS JUSTIFIED.

OPINION OF THE ARBITRATOR

- AFTER RECITING THE NEW LANGUAGE IN THE MEMORANDUM, THE WORDS THEREIN WERE CONSTRUED BY THE ARBITRATOR AS NOT CREATING A NEW CRITERION FOR SIMULTANEOUS SCHEDULING, BUT AS HAVING MERELY EMBRACED "EXISTING PRACTICES. "AS STATED BY THE ARBITRATOR," . . . , THE PARTIES AGREED THAT WHATEVER ' . . . PRACTICES" WERE IN EXISTENCE ON THIS SUBJECT BEFORE DECEMBER 1984 WOULD CONTINUE IN EFFECT AFTER DECEMBER 1984 ." THUS, SUCH AWARD IS NOT APPLICABLE HERETO IN THE ABSENCE OF PERSUASIVE EVIDENCE OF THE EXISTENCE OF THE PAST PRACTICE ADVERTED TO BY THE EMPLOYER .. MOREOVER, THE NONEXISTENCE IN SUCH AWARD OF ANY EXPLICIT REFERENCE TO THE MAXIMIZATION OF OVERTIME DESIRED LIST EMPLOYEES IN ACCORDANCE WITH ARTICLE 8, SECTION 5.G SUBSTANTIALLY DIMINISHES ITS PRECEDENTIAL VALUE IN THE INSTANT CASE .

GOING AT IT AT EVERY ANGLE

- MANAGEMENT TRIED TO SHOW A PATTERN OF PAST PRACTICE OF THE 5 O'CLOCK WINDOW BUT THE UNION SHOWED, WITH STATEMENTS AND CLOCK RINGS, THAT THERE WAS NO SUCH PAST PRACTICE AND SOLD THE LANGUAGE IN THE CONTRACT TO THE ARBITRATOR THAT THEY GO HAND IN HAND
- MANAGEMENT TRIED TO STATE THAT FOR MANY YEARS CARRIERS BEING OUT AFTER DARK WAS A SAFETY ISSUE, BUT THE UNION CAME BACK WITH STATEMENTS AND TESTIMONY FROM CARRIERS THAT THIS WAS NOT TRUE AND SIMPLY DID NOT EXIST
- THE UNION ALSO BROUGHT UP THAT IT WAS NEVER NOTIFIED OR INFORMED OF THE EXISTENCE OF AN OPERATIONAL WINDOW AND BROUGHT UP THE MEMO FROM IT'S OWN MANAGEMENT TEAM

ARBITRATOR DILTS C-26675

- USE THIS ARBITRATION TO SEE THE ARGUMENTS THAT MANAGEMENT WILL USE
- ALWAYS ANTICIPATE WHAT THEY WILL ARGUE BACK AND HAVE AN ANSWER FOR IT
- WE HAVE 10 CITES AND THEY HAVE 10 CITES, SO LEARN TO BRING 11
- DON'T USE THIS CITE FOR YOUR GRIEVANCE BECAUSE THE REMEDY IS CRAP, BUT USE IT TO LEARN WHAT MANAGEMENT ARGUES AND WHAT THE ARBITRATOR'S ANSWER WAS. WHICH ARGUMENTS WORKED AND WHICH ARGUMENTS DIDN'T

ARBITRATOR DILTS C-26675

- UNION'S POSITION:
- THE UNION CONTENDS THAT MANAGEMENT HAS VIOLATED THE 2001 NATIONAL AGREEMENT AND THE MEMORANDUMS OF UNDERSTANDING WHEN THEY FORCED NON-OTDL CARRIERS TO WORK MANDATORY OVERTIME WHEN OTDL CARRIERS WERE AVAILABLE TO CARRY MAIL. THE UNION POINTS OUT THAT KANSAS CITY MANAGEMENT IS AGAIN ATTEMPTING TO ALLEGE AN OPERATIONAL NEED TO JUSTIFY VIOLATION THE PROVISIONS OF ASSIGNING ADDITIONAL WORK IN CONTRAVENTION TO ARTICLE 8.5 OF THE NATIONAL AGREEMENT. LOCAL MANAGEMENT HAS ATTEMPTED THIS TACTIC SEVERAL TIMES BEFORE AND EACH ONE HAS BEEN RESOLVED BY HIGHER MANAGEMENT DETERMINING THAT LOCAL MANAGEMENT VIOLATED THE NATIONAL AGREEMENT.

ARBITRATOR DILTS C-26675

- THE UNION PROVIDED THE APPLICABLE SETTLEMENT AGREEMENTS AND REQUESTS THAT THE ARBITRATOR ENFORCE WHAT MANAGEMENT HAD AGREED TO IN PREVIOUS INSTANCES WHERE THEY VIOLATED NATIONAL AGREEMENT BY FORCING NON-OTDL EMPLOYEES TO WORK OVERTIME WHEN OTDL EMPLOYEES WERE AVAILABLE TO WORK THE OVERTIME .
- THERE IS REALLY NO DISPUTE THAT NON-OTDL CARRIERS WERE BEING REQUIRED TO WORK OVERTIME BEFORE ALL OTDL CARRIERS WERE OFFERED THE OVERTIME TO BRING THEM TO THE 12 HOURS PER DAY AND 60 HOURS IN A SERVICE WEEK IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 8.5.G OF THE NATIONAL AGREEMENT. THE PARTIES HAVE AGREED THAT THE OVERTIME ALERT REPORTS ACCURATELY REFLECT THE HOURS IN DISPUTE . THE VIOLATIONS BEING CITED BY THE UNION ARE EXTENSIVE, AS DETAILED IN THE INFORMAL STEP A STEWARD' S HANDWRITTEN ASSESSMENT OF THE HOURS ON EACH OF THE FIVE DAYS IN QUESTION .

ARBITRATOR DILTS C-26675

- THE UNION HAS PRESENTED NUMEROUS ARGUMENTS, DETAILING THE NATURE AND EXTENT OF MANAGEMENT'S CONTRACTUAL OBLIGATIONS AND THEIR BLATANT VIOLATIONS OF THOSE OBLIGATIONS . THOSE ARGUMENTS, AND CORRESPONDING DOCUMENTATION, WERE DETAILED IN THE GRIEVANCE FILE DURING THE PROCESSING OF THIS DISPUTE AND FURTHER EXPLORED DURING THE TESTIMONY OF THE UNION'S WITNESSES AT THE HEARING . THE UNION HAS PROVIDED THE HISTORY OF THE PARTIES' NEGOTIATIONS ON OVERTIME ISSUES, AND THE HISTORY OF HOW MANAGEMENT FREELY ENTERED INTO AGREEMENTS WHICH PROVIDED PROTECTIONS FOR CARRIERS FROM UNWANTED MANDATORY OVERTIME AND, ULTIMATELY, NARROWED THE CIRCUMSTANCES IN WHICH MANAGEMENT COULD SIMULTANEOUSLY SCHEDULE A NON-OTDL CARRIER TO WORK MANDATORY OVERTIME .

ARBITRATOR DILTS C-26675

- THE UNION EXAMINED THE NATURE AND APPLICATION OF OPERATIONAL WINDOWS AND, IN PARTICULAR, THE LEGITIMACY OF THE ONE THAT IS CENTRAL TO THIS CASE. THE UNION DEMONSTRATED THAT CREATING A WINDOW, IN AND OF ITSELF, DOES NOT GIVE MANAGEMENT THE RIGHT TO VIOLATE THE PROVISIONS OF ARTICLE 8.5 OF THE NATIONAL AGREEMENT. IN FACT, WHILE MANAGEMENT MAY ESTABLISH A WINDOW, THEY MUST DO SO IN CONFORMANCE WITH THE VARIOUS PROVISIONS OF THE 2001 NATIONAL AGREEMENT. IN PARTICULAR, THE SIMULTANEOUS SCHEDULING ASSOCIATED WITH OPERATIONAL WINDOWS CANNOT BE IMPLEMENTED IN SUCH A WAY THAT THE APPLICATION OF ARTICLE 8.5.D (MANDATORY OVERTIME) BECOMES THE RULE, RATHER THAN THE EXCEPTIONAL AND THE PROVISIONS OF ARTICLE 8.5.G. BECOME MEANINGLESS. THIS IS THE APPROACH THAT MANAGEMENT TOOK IN THIS INSTANT CASE . FURTHERMORE, THERE WAS NO CONSISTENCY IN THE APPLICATION OF THE WINDOW, WHICH FURTHER UNDERMINES THE LEGITIMACY OF MANAGEMENT'S ACTIONS IN THIS CASE.

ARBITRATOR DILTS C-26675

- SEVERAL ALTERNATIVES TO MANAGEMENT'S ARTICLE 8.5 VIOLATIONS IN CONJUNCTION WITH ESTABLISHING A DELIVERY WINDOW WERE OFFERED BY THE UNION. THESE INCLUDED: PROPER STAFFING (HIRING), REASSIGNING CURRENT PTF'S FROM OTHER OFFICES, EARLIER STARTING TIMES, EARLIER DISPATCH TIMES FROM THE PLANT TO THE OFFICES, CASING BULK MAIL IN THE AFTERNOON, ETC . MANAGEMENT MADE NO ATTEMPT TO EXPLORE ANY OF THESE OPTIONS. ADDITIONALLY, THE CLOSE PROXIMITY OF THE PLANT, THE EXISTENCE OF COLLECTION BOXES WITH LATE EVENING PICKUP TIMES, THE SMALL NUMBER OF OTDL CARRIERS INVOLVED AND THE SMALL AMOUNT OF COLLECTION MAIL BEING GENERATED WERE CITED TO POINT UP THE WEAKNESS IN MANAGEMENT'S CLAIM REGARDING PLANT PROCESSING DELAYS. MANAGEMENT DID NOT ADDRESS THESE ARGUMENTS DURING THE GRIEVANCE PROCEDURE, OR ANY OTHER UNION CONTENTIONS FOR THAT MATTER.

ARBITRATOR DILTS C-26675

- IN FACT, MANAGEMENT COMPLETELY FAILED TO CARRY THEIR BURDEN OF PROOF IN THIS INSTANT CASE. THEIR ARGUMENT IS, ESSENTIALLY, THAT BY ESTABLISHING A WINDOW OF OPERATIONS, THEY CAN NO LONGER BE HELD TO THE PROVISIONS OF THE NATIONAL AGREEMENT. THIS IS AN AFFIRMATIVE DEFENSE AND , AS SUCH, SHIFTS THE BURDEN OF PROOF TO THEM TO SHOW THEY HAVE NO REASONABLE ALTERNATIVE TO MEETING THE WINDOW THAN TO VIOLATE ARTICLE 8.5. THEY HAVE FAILED TO PROVIDE ANY LEGITIMATE ARGUMENTS IN SUPPORT OF SUCH A POSITION, IN THE GRIEVANCE FILE OR AT THE ARBITRATION HEARING. THEIR RELIANCE ON ARBITRATOR MITTENTHAL'S 1991 AWARD IS MISPLACED . IT CERTAINLY DOES NOT GIVE THEM AN UNFETTERED RIGHT TO ESTABLISH AN OPERATIONAL WINDOW IN VIOLATION OF THE NATIONAL AGREEMENT

ARBITRATOR DILTS C-26675

- IN FACT, THE ARBITRATOR'S ASSERTION THAT THE MEMORANDUM IN QUESTION DOES NOT CHANGE EXISTING PRACTICES REGARDING SIMULTANEOUS SCHEDULING FURTHER UNDERCUTS THEIR POSITION, GIVEN THE HISTORICAL RECORD REGARDING THE PARTIES ' NEGOTIATIONS ON MANDATORY OVERTIME AND THE EXISTING PRACTICES AT JAMES CREWS, AND THROUGHOUT THE KANSAS CITY, MISSOURI INSTALLATION, OF WORKING OTDL CARRIERS 12 HOURS IN A DAY AND 60 HOURS IN A WEEK PRIOR TO REQUIRING NON-OTDL CARRIERS TO WORK OVERTIME. THIS MEMORANDUM WAS, ESSENTIALLY, NEGOTIATED BETWEEN APWU AND USPS . THE LANGUAGE REGARDING AN EXAMPLE OF WHEN SIMULTANEOUS SCHEDULING MIGHT OCCUR WAS MOST CERTAINLY THE RESULT OF TIME PRESSURES WITHIN THE CLERK CRAFT FOR GETTING THE MAIL OUT TO THE DELIVERY UNITS TO BE SORTED AND DELIVERED BY THE CARRIERS.

ARBITRATOR DILTS C-26675

- INSTEAD OF TRYING TO SUPPORT WHAT LITTLE ARGUMENT THEY PROVIDED DURING THE GRIEVANCE PROCEDURE, MANAGEMENT RESORTED TO PROVIDING NEW ARGUMENT AND NEW TESTIMONY AT THE HEARING. THIS IS A VIOLATION OF THE SPIRIT AND INTENT OF ARTICLE 15, AND THE UNION RESPECTFULLY REQUESTS THAT, AS SUCH, IT BE EXCLUDED FROM CONSIDERATION IN REACHING A DECISION ON THIS CASE . ARBITRATION BY AMBUSH IS NOT PERMITTED UNDER ARTICLE 15 OF THE 2001 NATIONAL AGREEMENT, AND THIS IS PRECISELY WHAT MANAGEMENT ATTEMPTED IN THIS CASE .
  - END OF UNION'S POSITION

ARBITRATOR DILTS C-26675

- POSTAL SERVICE'S POSITION:
- THE SERVICE MAINTAINS SIMULTANEOUS SCHEDULING OF CARRIERS TO MEET THE OPERATIONAL WINDOW, WHICH PROVIDED FOR THE JAMES CREWS STATION TO ADHERE TO THE FINAL DISPATCH, WAS A SOUND BUSINESS DECISION. FURTHER, MANAGEMENT OPERATED WITHIN ITS CONTRACTUAL RIGHTS WHILE DOING SO IN THIS PARTICULAR CASE .
- ARTICLES 3 AND 8.5.D OF THE 2001 NATIONAL AGREEMENT PROVIDE MANAGEMENT WITH THE RIGHT TO MANDATE NON-OTDL CARRIERS TO WORK OVERTIME WHEN THERE IS NOT SUFFICIENT AUXILIARY ASSISTANCE AVAILABLE. DURING THE WEEK AT ISSUE, OTDL, PTF (PART-TIME FLEXIBLE) AND CASUAL CARRIERS WERE NOT AVAILABLE BECAUSE THEY WERE CARRYING OTHER ASSIGNMENTS TO MEET THE DEADLINES NECESSARY TO MEET THE FINAL DISPATCH.

ARBITRATOR DILTS C-26675

- THE STEP B REPRESENTATIVE ARGUES MANAGEMENT'S ARTICLE 3 RIGHTS ON PAGE 1 OF JOINT EXHIBIT 2. DURING DIRECT EXAMINATION, NALC FORMAL A REPRESENTATIVE TROY SMITH TESTIFIED TO ARTICLE 3 OF THE NATIONAL AGREEMENT. MR. SMITH TESTIFIED HE RECOGNIZED MANAGEMENT'S RIGHTS. HE THEN CLAIMED MANAGEMENT MUST WORK WITHIN THE CONFINES OF THE NATIONAL AGREEMENT. THIS IS EXACTLY WHAT MANAGEMENT DID IN THIS MATTER. THE JAMES CREWS STATION WAS OPERATING IN AN INEFFICIENT MANNER. CARRIERS WERE ON THE STREET AT ALL HOURS OF THE EVENING AND THE MAIL THE CARRIERS COLLECTED DURING THE DAY WAS NOT BEING RETURNED TO THE STATION UNTIL THE CARRIER RETURNED. SUBSEQUENTLY, THE MAIL WAS NOT BEING PROCESSED UNTIL LATE IN THE EVENING. SENIOR PLANT MANAGER VINCENT JACKSON TESTIFIED TO THE ADVERSE EFFECT OF RECEIVING ORIGINATING MAIL OUTSIDE OF THE DISPATCH SCHEDULE .

ARBITRATOR DILTS C-26675

- HE TESTIFIED THE "ORIGINATING MAIL" IS MAIL RECEIVED FROM KANSAS CITY, MISSOURI AND IS SO POSTMARKED. MR. JACKSON TESTIFIED THIS MAIL IS BROUGHT TO THE KANSAS CITY P&DC TO BE PROCESSED ON A DISPATCH SCHEDULE. HE TESTIFIED WHEN ORIGINATING MAIL IS BROUGHT TO THE P&DC LATER THAN SCHEDULED IT CAN "BOTTLENECK" THE OPERATION. FURTHER, MR. JACKSON TESTIFIED UNDER CROSS EXAMINATION WHEN UNEXPECTED ORIGINATING MAIL IS BROUGHT TO THE P&DC THE OPERATION MUST BE "PULLED-DOWN" AND THE MACHINES WHICH PROCESS THE ORIGINATING MAIL MUST BE PUT BACK ONLINE. MR. JACKSON TESTIFIED THE DISTANCE BETWEEN WHERE THE STATION IS FROM THE P&DC DOES NOT MATTER. WHAT MATTERS IS THAT THE PROJECTED MAIL VOLUME AND THAT THE ORIGINATING MAIL IS RECEIVED WHEN SCHEDULED. THE MANAGEMENT STEP A REPRESENTATIVE DISCUSSED THIS IN HIS DECISION ON PAGE 230 OF JOINT EXHIBIT 2

ARBITRATOR DILTS C-26675

- FURTHER, THE MANAGEMENT STEP A REPRESENTATIVE DISCUSSES, ON PAGE 232 OF JOINT EXHIBIT 2, THE CONCERN FOR THE CARRIERS' SAFETY. MANAGEMENT POINTS TO THE FACT CARRIERS HAD BEEN BRINGING UNDELIVERED MAIL BACK TO THE STATION, DUE TO DARKNESS AND THEIR CONCERN FOR THEIR OWN SAFETY. AFTER WHICH, THE UNION POSITION WAS THE CARRIERS SHOULD NOT RECEIVE DISCIPLINE. AS THE MANAGEMENT STEP A REPRESENTATIVE MAINTAINED: "YOU CAN'T HAVE IT BOTH WAYS. UTILIZE THE 12-HOUR LIST AND KEEP CARRIERS OUT PAST DARK, BUT ALLOW THEM TO BRING BACK MAIL WHEN THEY DEEM SAFETY AS AN ISSUE. WE ARE IN THE DELIVERY BUSINESS. BY WORKING WITHIN THE WINDOW OF OPERATION WE ARE ABLE TO GET ALL MAIL DELIVERED SAFELY AND IN A TIMELY MANNER AND ALL COLLECTION MAIL DISPATCHED TO THE PLANT FOR TIMELY PROCESSING."

ARBITRATOR DILTS C-26675

- DURING THE PROCESSING OF THIS GRIEVANCE, THE UNION HAS ADDRESSED THE COLLECTION BOX OUTSIDE OF THE P&DC AS AN EXAMPLE OF MAIL ARRIVING AT THE PLANT AS LATE AS 8:00 P.M. UNDER CROSS EXAMINATION, MR. JACKSON EXPLAINED THIS BOX IS SCHEDULED FOR COLLECTION EVERY HALF HOUR AND THE VOLUME IS SUCH THAT IT CAN BE PROCESSED MANUALLY. THIS WAS ALSO DISCUSSED IN THE STEP A REPRESENTATIVE'S DECISION. IN ADDITION, THE UNION ATTEMPTED TO SHOW THE DISPATCH SCHEDULE. THIS DOCUMENT SHOWS MANAGEMENT RECEIVES MAIL TO PROCESS AT ALL TIMES DURING THE DAY. HOWEVER, MR. JACKSON GAVE UNREBUTTED TESTIMONY THE DISPATCHES ON THIS PROFILE INCLUDE MANY THINGS. THESE THINGS ENTAIL ALL TYPES OF MAIL AND EQUIPMENT. MR. JACKSON ALSO TESTIFIED THIS PROFILE DOES NOT LIST WHAT IS ON THE TRUCK IDENTIFIED. CLEARLY, THIS PROFILE DOES NOT CONFLICT WITH THE NECESSITY TO HAVE ALL ORIGINATING MAIL DISPATCHED FROM THE STATIONS AS SCHEDULED

ARBITRATOR DILTS C-26675

- CLEARLY, THERE IS AN OPERATIONAL NECESSITY TO HAVE ALL OF THE ORIGINATING MAIL TO THE P&DC NO LATER THAN THE FINAL DISPATCH FROM EACH OF THE STATIONS. THE MANAGEMENT STEP B REPRESENTATIVE ARTICULATES THE NEGATIVE IMPACT TO THE POSTAL SERVICE WHEN THE ORIGINATING MAIL IS NOT RECEIVED BY THE P&DC AS SCHEDULED. THE NEGATIVE IMPACT WAS ONE OF THE FACTORS WHICH CONTRIBUTED TO THE INEFFICIENT SERVICE BEING PROVIDED TO OUR CUSTOMERS. STATION MANAGER SCHROER TESTIFIED TO THE COMPLAINTS HE HAD RECEIVED FROM CUSTOMERS. MR. SCHROER EXPLAINED THE EXTERNAL FIRST CLASS IS AN INDEX WHICH GAUGES THE POSTAL SERVICE'S PERFORMANCE. HE TESTIFIED THE EXFC INDEX WAS BELOW 95. MR. SCHROER EXPLAINED THIS SCORE WAS LOW AND RESULTS IN A LOSS OF REVENUE, CONSISTENCY, AND CUSTOMER SATISFACTION .

ARBITRATOR DILTS C-26675

- THEREFORE, MANAGEMENT HAD AN OBLIGATION AND A RIGHT TO ADDRESS THIS DEFICIENCY . IN DOING SO, MANAGEMENT CONTACT THE UNION AND INVITED THE UNION REPRESENTATIVES TO A MEETING TO DISCUSS THIS MATTER, PRIOR TO MANAGEMENT'S ANTICIPATED ADHERENCE TO THE FINAL DISPATCH. IN FACT, NALC REGIONAL ADMINISTRATIVE ASSISTANT DAN PITTMAN WAS IN ATTENDANCE . MR. PITTMAN TESTIFIED HE HAD NO PROBLEM WITH MANAGEMENT IMPLEMENTING A WINDOW OF OPERATION, AS LONG AS IT DID NOT VIOLATION THE NATIONAL AGREEMENT

ARBITRATORS OPINION/MERITS OF THE CASE

- BEFORE PROCEEDING TO THE SPECIFIC CONTRACT LANGUAGE, FACTS, AND CIRCUMSTANCES WHICH ARE CONTROLLING IN THIS MATTER, THIS ARBITRATOR NOTES THAT BOTH PARTIES PROVIDED NUMEROUS REGIONAL ARBITRATION CITATIONS. TWO NATIONAL LEVEL AWARDS WERE ENTERED INTO THIS RECORD. ONE OF THE AWARDS, A DECISION BY CARLTON SNOW IN INVOLVES A MATTER OF SUBSTANTIVE ARBITRABILITY THAT IS ONLY TANGENTIALLY RELATED TO THE FACTS AND CIRCUMSTANCES OF THIS CASE AND IS THEREFORE NOT PARTICULARLY INSTRUCTIVE TO THIS ARBITRATOR. THE DECISION OF ARBITRATOR MITTENTHAL CONCERNING SIMULTANEOUS SCHEDULING OF OTDL AND NON-OTDL EMPLOYEES FOR OVERTIME IS INSTRUCTIVE. FURTHER, THE REASONING OF ARBITRATOR MITTENTHAL IN THAT MATTER IS ALSO PERSUASIVE CONCERNING THE ISSUES RAISED HERE, PARTICULARLY IN LIGHT OF A SUBSEQUENT REGIONAL DECISION BY ARBITRATOR DILEONE KLEIN

ARBITRATORS OPINION/MERITS OF THE CASE

- IN THAT CASE, THE APWU ARGUES THAT IN THE 1984 NEGOTIATIONS NEW OBLIGATIONS WERE PLACED UPON MANAGEMENT TO JUSTIFY THE SIMULTANEOUS SCHEDULING OF OTDL AND NON-OTDL EMPLOYEES FOR OVERTIME. ARBITRATOR MITTENTHAL REJECTED THIS UNION CONTENTION, REASONING THAT WHATEVER THE PARTIES' PRACTICES WERE CONCERNING THE SIMULTANEOUS SCHEDULING OF EMPLOYEES PRIOR TO THE NEGOTIATIONS OF 1984 WOULD REMAIN THEIR PRACTICES UNDER THE NEW CONTRACT LANGUAGE. EVEN THOUGH THIS CITED CASE INVOLVES A MEMORANDUM OF UNDERSTANDING BETWEEN THE SERVICE AND THE APWU, THIS ARBITRATOR IS PERSUADED THAT ARBITRATOR MITTENTHAL'S DECISION IN THAT MATTER PROVIDES GUIDANCE WHICH IS APPLICABLE HERE

ARBITRATORS OPINION/MERITS OF THE CASE

- THE PARTIES ACKNOWLEDGE THAT SIMULTANEOUS SCHEDULING MUST BE SUPPORTED BY "LEGITIMATE" OR "VALID" REASONS . THEIR QUARREL IS WHETHER THE MEMORANDUM NEGOTIATIONS, SPECIFICALLY, THE EXAMPLES DISCUSSED IN THOSE DECEMBER 1984 NEGOTIATIONS, RESULTED IN AN AGREEMENT THAT SIMULTANEOUS SCHEDULING WAS WARRANTED ONLY WHERE ". . . NECESSARY TO MEET THE DISPATCH SCHEDULES, SERVICE STANDARDS, AND OTHER TIME CRITICAL REQUIREMENTS IDENTIFIED IN THE FACILITY OPERATING PLAN." APWU ALLEGES THERE WAS SUCH AN AGREEMENT. THE POSTAL SERVICE SAYS THERE WAS NOT.

ARBITRATORS OPINION/MERITS OF THE CASE

- ARBITRATOR MITTENTHAL' S DELINEATION OF THE OF THE MINIMUM STANDARDS FOR SIMULTANEOUS SCHEDULING INCLUDES THE ITEMS ARGUED BY MANAGEMENT IN THE ARBITRATION OF THIS GRIEVANCE. HOWEVER, WITHOUT SPECIFICALLY STATING THAT THE SIMULTANEOUS SCHEDULING OF OTDL AND NON-OTDL EMPLOYEES IS AN EXCEPTION TO ARTICLE 8 ARBITRATOR MITTENTHAL PLACES A BURDEN ON MANAGEMENT TO DEMONSTRATE THAT THE REASONS FOR THE SIMULTANEOUS SCHEDULING ARE LEGITIMATE OR VALID REASONS. MANAGEMENT ARGUES AT BOTH FORMAL STEP A AND STEP B THAT THE UNION HAS NOT SHOULDERED ITS BURDEN OF PROOF IN THIS MATTER TO SHOW THAT THE REASONS FOR THE SIMULTANEOUS SCHEDULING ARE LACKING IN VALIDITY OR LEGITIMACY.

ARBITRATORS OPINION/MERITS OF THE CASE

- AS ARBITRATOR DILEONE KLEIN OPINED IN HER DECISION IN THE FARGO, NORTH DAKOTA CASE:
  - ARTICLE 8.5 AND THE ARTICLE 8 MEMORANDUM BALANCE THE NEEDS OF MANAGEMENT TO MEET DELIVERY STANDARDS THROUGH THE ASSIGNMENT OF OVERTIME WITH THE WISHES OF EMPLOYEES WHO WANT TO WORK OVERTIME AND THOSE WHO DO NOT. ARTICLE 3 GIVES MANAGEMENT THE RIGHT TO ESTABLISH A WINDOW OF OPERATIONS FOR PICK-UP AND DELIVERY OF MAIL, HOWEVER, THE IMPLEMENTATION OF SUCH A WINDOW MUST BE ACCOMPLISHED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 8.5 IN ITS ENTIRETY.

ARBITRATORS OPINION/MERITS OF THE CASE

- THE IMPLEMENTATION OF A WINDOW OF OPERATIONS CANNOT BY THAT FACTOR ALONE ESTABLISH AN INSUFFICIENT NUMBER OF QUALIFIED ODL EMPLOYEES AND THEREBY JUSTIFY FORCING NON-ODL EMPLOYEES TO WORK OVERTIME WHEN THERE ARE ODL CARRIERS WHO HAVE NOT BEEN UTILIZED TO THE FULLEST EXTENT. THE CARRIERS ARE ENTITLED TO THE PROTECTIONS OF ARTICLE 8.5. THE ARBITRATOR FINDS FROM THE EVIDENCE THAT MANAGEMENT WAS UNABLE TO SHOW THAT THERE WAS NO REASONABLE ALTERNATIVE TO MEETING THE 4:30P.M. WINDOW OF OPERATIONS OTHER THAN "A COURSE OF ACTION WHICH CONTRAVENED ARTICLE 8.5.G."

ADDRESSING ARTICLE 8.5.G

- REMEMBER 8.5.D? IF THE VOLUNTARY "OVERTIME DESIRED" LIST DOES NOT PROVIDE SUFFICIENT QUALIFIED PEOPLE, QUALIFIED FULL-TIME REGULAR EMPLOYEES NOT ON THE LIST MAY BE REQUIRED TO WORK OVERTIME ON A ROTATING BASIS WITH THE FIRST OPPORTUNITY ASSIGNED TO THE JUNIOR EMPLOYEE.
- THE ARBITRATOR JUST SHOT THAT DOWN WITH THIS STATEMENT:
  - THE IMPLEMENTATION OF A WINDOW OF OPERATIONS CANNOT BY THAT FACTOR ALONE ESTABLISH AN INSUFFICIENT NUMBER OF QUALIFIED ODL EMPLOYEES AND THEREBY JUSTIFY FORCING NON-ODL EMPLOYEES TO WORK OVERTIME WHEN THERE ARE ODL CARRIERS WHO HAVE NOT BEEN UTILIZED TO THE FULLEST EXTENT .

ARBITRATORS OPINION/MERITS OF THE CASE

- OF THE REGIONAL ARBITRATION AWARDS ENTERED BY THE RESPECTIVE PARTIES, IT IS THIS DECISION OF ARBITRATOR DILEONE KLEIN, THAT THIS ARBITRATOR FINDS MOST PERSUASIVE .'
- MANAGEMENT BEARS THE BURDEN TO SHOW THAT THEIR ACTIONS IN THIS MATTER WERE, AS ARBITRATOR MITTENTHAL REQUIRED, LEGITIMATE AND VALID. THE BURDEN OF PROOF IS DISCHARGED BY THE UNION WHEN IT IS DEMONSTRATED THAT ARTICLE 8 IS VIOLATED, MANAGEMENT IS THEN OBLIGED TO OFFER THE AFFIRMATIVE DEFENSE CONTEMPLATED IN THE NATIONAL LEVEL AWARD BY ARBITRATOR MITTENTHAL AND CONTEMPLATED IN THE REGIONAL LEVEL AWARD BY ARBITRATOR DILEONE KLEIN

ARBITRATORS OPINION/MERITS OF THE CASE

- MANAGEMENT HAS ADDRESSED THE UNION' S COMPLAINTS CONCERNING THE VIOLATION OF ARTICLE 8 OF THE 2001 NATIONAL AGREEMENT . MANAGEMENT'S FORMAL STEP A POSITION STATES:
  - DUE TO NUMEROUS VACANCIES EXPERIENCED AT THE JAMES CREWS STATION BECAUSE OF SICK CALLS , MILITARY LEAVE, LIMITED AND LIGHT DUTY IT IS SOMETIMES NECESSARY TO SIMULTANEOUSLY SCHEDULE OTDL AND NON-OTDL, A SITUATION THAT OTHERWISE WOULD RESULT IN VIOLATION OF ARTICLE 8.5, IN ORDER TO MEET THE FINAL DOV. THE FINAL DOV AT JAMES IS 6:00 P.M. MANAGEMENT HAS ESTABLISHED 5:30 AS THE TIME CARRIERS NEED TO BE BACK IN ORDER TO MEET THE FINAL DOV. THIS IS A RELIST EXPECTATION AND SINCE IMPLEMENTATION HAS BEEN THE NORMAL DELIVERY STANDARD AND HAS BEEN CONSISTENTLY ENFORCED AS SHOWN IN THE ACCOMPANYING TACS REPORTS

ARBITRATORS OPINION/MERITS OF THE CASE

- MANAGEMENT HAS MADE AN ATTEMPT TO COMPLY WITH ARTICLE 8. FIRST EVERY EFFORT IS MADE TO MAXIMIZE THE OTDL WITHIN THE WINDOW INCLUDING ALLOWING EARLY START TIMES BY OTDL WHEN MAIL VOLUME IS AVAILABLE. OTDL CARRIERS ARE PERMITTED TO WORK PAST 5:30 P.M. AS LONG AS THEY RETURN PRIOR TO DISPATCH AT 6:00 P.M. WITH 66 ROUTES IT WOULD NOT BE FEASIBLE TO HAVE ALL THE CARRIERS RETURN JUST PRIOR TO DISPATCH. THEY ARE ALSO ALLOWED TO STAY AND PERFORM OTHER DUTIES IF AVAILABLE. ALL OTDL CARRIERS ARE SCHEDULED PRIOR TO SCHEDULING NON-OTDL CARRIER AND THEN THEY ARE SCHEDULED ON A ROTATING BASIS BY JUNIORITY.

ARBITRATORS OPINION/MERITS OF THE CASE

- WHAT IS SEEMINGLY MISSED IN THIS CONTENTION IS THE SPECIFIC LANGUAGE OF ARTICLE 8. ARTICLE 8, SECTION 5, PARAGRAPH D SPECIFICALLY STATES :
  - D. IF THE VOLUNTARY "OVERTIME DESIRED" LIST DOES NOT PROVIDE SUFFICIENT QUALIFIED PEOPLE, QUALIFIED FULL-TIME REGULAR EMPLOYEES NOT ON THE LIST MAY BE REQUIRED TO WORK OVERTIME ON A ROTATING BASIS WITH THE FIRST OPPORTUNITY ASSIGNED TO THE JUNIOR EMPLOYEE

ARBITRATORS OPINION/MERITS OF THE CASE

- SPECIFICALLY, MANAGEMENT IS AUTHORIZED TO FORCE CARRIERS NOT ON THE OTDL TO WORK OVERTIME, BUT ONLY IN THE CASE WHERE "OVERTIME DESIRED LIST DOES NOT PROVIDE SUFFICIENT QUALIFIED PEOPLE, . . ." IT IS CLEAR THAT MANAGEMENT RECOGNIZES THAT THERE ARE STAFFING PROBLEMS AT JAMES CREWS. SICK LEAVE, LIMITED DUTY AND LIGHT DUTY MAY BE THINGS WHICH ARE DIFFICULT TO PLAN, HOWEVER, NO EVIDENCE WAS PROFFERED IN THIS RECORD TO SHOW THE NATURE OF THE LIMITED OR LIGHT DUTY ASSIGNMENTS AND WHETHER PLANNING WAS POSSIBLE FOR THESE EMPLOYEES' SITUATIONS. "MILITARY LEAVE“ IS SPECIFICALLY IDENTIFIED, AND IS A LONGER-TERM ISSUE AND IN DECEMBER OF THE YEAR, NATIONAL GUARD SUMMER CAMPS ARE NOT THE SORT OF PROBLEM THAT RESULTS IN THIS SORT OF GRIEVANCE . MILITARY LEAVE IS OR SHOULD BE A PREDICTABLE NEED WHICH COULD BE REASONABLY ANTICIPATED BY MANAGEMENT.’ IF MANAGEMENT IS TO RELY ON SUCH ISSUES AS CAUSE FOR IMPLEMENTING THE EXCEPTION IN ARTICLE 8, SECTION 5, PARAGRAPH D IT IS INCUMBENT UPON MANAGEMENT TO DEMONSTRATE THOSE ISSUES WITH A PREPONDERANCE OF THE CREDIBLE EVIDENCE

ARBITRATORS OPINION/MERITS OF THE CASE

- IN CAREFUL EXAMINATION OF THE RECORD MADE AT FORMAL STEP A AND STEP B THERE IS NOTHING IN THE RECORD EXCEPT BROAD GENERALITIES CONCERNING THE PLANT'S REQUIREMENTS, AND WITHOUT SPECIFIC DATA SHOWING THE PLANT'S REQUIREMENTS AND HOW ABIDING BY ARTICLE 8 COULD OR COULD NOT BE ACCOMMODATED, WHICH WAS NOT EVEN ADDRESSED IN MR. JACKSON'S TESTIMONY, THIS ARBITRATOR IS LEFT WITH LITTLE UPON WHICH TO BASE A FAVORABLE RULING FOR THE POSTAL SERVICE .

ARBITRATORS OPINION/MERITS OF THE CASE

- AS WAS THE CASE IN THE MATTER BEFORE ARBITRATOR DILEONE KLEIN, THE RECORD IN THIS MATTER SHOWS A RATHER ARBITRARY CUT-OFF POINT OF 5:30 P.M. TO MEET THE OPERATIONAL WINDOW. WITHOUT THE DEVELOPMENT OF SUCH CLEAR EVIDENCE DURING THE GRIEVANCE PROCEDURE NO ARBITRATOR OPERATING UNDER THE LANGUAGE OF ARTICLE 15 OF THE NATIONAL AGREEMENT COULD PROVIDE THE RELIEF FROM ARTICLE 8 THAT THE SERVICE SEEKS HERE . THAT DOES NOT MEAN THAT THERE IS NOT GOOD CAUSE FOR THE 5:30 P.M. CUT OFF AND THAT EARLIER BEGIN TOUR TIMES OR GREATER STAFFING IN THE CARRIER CRAFT ARE NOT REASONABLY POSSIBLE. WHAT IT MEANS IS THAT THE PROOF OF THOSE CONTENTIONS ARE NOT FOUND IN THE RECORD DEVELOPED AT FORMAL STEP A OR STEP B OF THE GRIEVANCE PROCEDURE

ARBITRATORS OPINION/MERITS OF THE CASE

- FRANKLY, IN THIS ARBITRATOR'S CONSIDERED OPINION, THE EVIDENCE ENTERED INTO THE RECORD BY MR. JACKSON AND MR. SCHROER WHICH WAS EXCLUDED AS NEW ARGUMENT OR NEW EVIDENCE WOULD HAVE ALSO FALLEN SHORT OF MEETING MANAGEMENT'S OBLIGATION TO PERSUADE THIS ARBITRATOR THAT THEIR NOT COMPLYING WITH ARTICLE 8'S REQUIREMENTS WERE BASED ON VALID OR LEGITIMATE NEEDS OF THE SERVICE, AS PROVIDED-FOR UNDER ARTICLE 3 OF THE 2001 NATIONAL AGREEMENT. FURTHER, SUPPORTING THE RECORD OF EVIDENCE REVIEWED TO THIS POINT, IS THE FACT THAT IT APPEARS THAT THE PRACTICES OF MANAGEMENT CONCERNING SIMULTANEOUS SCHEDULING OF THE OTDL WITH NON- OTDL CARRIERS HAS RATHER CONSISTENTLY RESULTED IN GRIEVANCE . FURTHER, THE RECORD SHOWS THAT THESE GRIEVANCES HAVE BEEN RESOLVED, IN THE MAIN, BY GRANTING THE UNION'S GRIEVANCES . THIS EVIDENCE ALONE IS NOT CONVINCING, BUT IT IS CERTAINLY INDICATIVE OF AN ONGOING PROBLEM IN THIS INSTALLATION

ARBITRATORS OPINION/MERITS OF THE CASE

- UNION'S CONTENTION THAT 12 HOURS AND 60 HOURS ARE ABSOLUTES: MANAGEMENT, AT STEP B COMPLAINS, THAT THE UNION HAS TAKEN THE POSITION THAT THE 12 HOUR AND 60-HOUR MANDATES IN ARTICLE 8, SECTION 5, PARAGRAPH G ARE ABSOLUTES AND MANAGEMENT VIOLATES THE REQUIREMENTS OF ARTICLE 8 IF OTDL EMPLOYEES ARE NOT OFFERED THESE HOURS . THIS ARBITRATOR IS NOT PERSUADED THAT THE UNION HAS TAKEN THIS POSITION, BUT CLEARLY, MANAGEMENT HAS THE RIGHT TO SCHEDULE SIMULTANEOUSLY, BUT IN SO DOING MANAGEMENT ASSUMES THE BURDEN TO SHOW THAT IT SCHEDULED SIMULTANEOUSLY FOR "LEGITIMATE" OR "VALID" REASONS AS IDENTIFIED IN THE MITTENTHAL AWARD. IN THIS CASE, MANAGEMENT SIMPLY DID NOT PROVE THE LEGITIMACY OR VALIDITY OF ITS REASONS FOR THE AGGRIEVED SIMULTANEOUS SCHEDULING.

ARBITRATORS OPINION/MERITS OF THE CASE

- IT IS TRUE, AS MANAGEMENT ALLEGES, THAT THERE IS NO ABSOLUTE REQUIREMENT THAT OTDL CARRIERS MUST BE OFFERED 12 HOURS A DAY, OR 60 HOURS PER WEEK BEFORE NON-OTDL EMPLOYEES ARE ASSIGNED OVERTIME . MANAGEMENT MUST PROVE, PURSUANT TO THE MITTENTHAL AWARD, THAT IT HAD "LEGITIMATE" OR "VALID" REASONS FOR SCHEDULING THE NON-OTDL CARRIERS TO OVERTIME ASSIGNMENTS BEFORE EXHAUSTING THE RESOURCES PROVIDED FOR ON THE OVERTIME DESIRED LIST . IT IS ALSO TRUE THAT THE EXISTENCE OF A WINDOW OF OPERATIONS DOES NOT GIVE MANAGEMENT LICENSE TO SIMULTANEOUSLY SCHEDULE OTDL AND NON-OTDL EMPLOYEES TO OVERTIME . MANAGEMENT MUST SHOW THE LEGITIMACY OF THE WINDOW OF OPERATIONS, AND IT MUST PROVIDE THOSE ARGUMENTS, WITH SUPPORTING EVIDENCE IN THE APPROPRIATE PLACE IN THE GRIEVANCE PROCESS SO AS TO MAKE IT ADMISSIBLE AT ARBITRATION, IF MANAGEMENT IS TO PREVAIL IN ARBITRATION . IT IS THEREFORE THIS ARBITRATOR'S CONSIDERED OPINION, THAT THIS GRIEVANCE MUST BE SUSTAINED ON ITS MERITS .

ARBITRATOR ROBERTS C-31146

- 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 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.

ARBITRATOR ROBERTS C-31146

- 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.

ARBITRATOR ROBERTS C-31146

- 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 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.

ARBITRATOR AUGUST C-32315

- MANAGEMENT'S CONTENTIONS:
  - IN THE INSTANT CASE, MANAGEMENT CONTENDED THAT THEY ONLY MAINTAINED THE EFFICIENCY OF THE OPERATIONS ENTRUSTED TO IT, BY UTILIZING THE PERSONNEL NECESSARY TO MEET THE CUSTOMERS' NEEDS THAT ARE CONSISTENT WITH APPLICABLE LAWS AND REGULATIONS. MANAGEMENT FURTHER CONTENDED THAT ON THE DATE IN QUESTION, JUNE 15, 2015, THEY MET THEIR WINDOW OF OPERATIONS (WOO) IN ORDER TO MAKE TIMELY DISPATCH OF THEIR OUTGOING MAIL. ACCORDING TO MANAGEMENT, THEY UTILIZED SIMULTANEOUS SCHEDULING AND THEREFORE THERE WAS NO VIOLATION OF THE NATIONAL AGREEMENT WHEN THEY SCHEDULED NON-OVERTIME DESIRED LIST (OTDL) EMPLOYEES TO PERFORM OVERTIME ON JUNE 15, 2015.

ARBITRATOR AUGUST C-32315

- IT WAS THE POSITION OF MANAGEMENT THAT ON THE DATE THAT IS THE SUBJECT OF THE INSTANT GRIEVANCE, ODL CARRIERS WORKED OVERTIME ON THEIR OWN ROUTES, CASED OTHER ROUTES, OR CARRIED MAIL ON OTHER ROUTES AND ALL FULL-TIME CARRIERS AND CITY CARRIER ASSISTANTS RETURNED TIMELY TO THE OFFICE TO MAKE THE DISPATCH OF VALUE (DOV). MANAGEMENT CONTENDED THAT EACH GRIEVANCE MUST STAND ON ITS OWN FACTS AND CIRCUMSTANCES AND IN THE CASE AT BAR ODL CARRIERS WERE MAXIMIZED TO THE WOO AND THEY DISPUTED WHETHER ANY RETURNING ODL CARRIERS COULD HAVE BEEN SENT BACK OUT TO DELIVER MAIL WITHIN THE RULE OF REASON.
    - THIS IS NOT ARTICLE 8.5.D LANGUAGE

ARBITRATOR AUGUST C-32315

- MANAGEMENT, WHILE DENYING A VIOLATION OF ARTICLES 8 AND 15, ALSO CONTENDED THAT THE UNION CANNOT DEMONSTRATE ANY AGREED UPON CONTRACT PROVISION FOR GRANTING ADMINISTRATIVE LEAVE UNDER THE CIRCUMSTANCES PRESENTED. THEY FURTHER CONTENDED THAT THE EMPLOYEE AND LABOR RELATIONS MANUAL (ELM) SECTION 519 DID NOT PROVIDE FOR GRANTING ADMINISTRATIVE LEAVE UNDER THE CIRCUMSTANCES OF THIS GRIEVANCE. MANAGEMENT ARGUED THAT THE REMEDY REQUESTED BY THE UNION IN THIS CASE IS UNJUSTIFIABLE AND UNJUST ENRICHMENT FOR ONLY ·ONE DAY OF AN ALLEGED VIOLATION. REGARDING THE VIOLATIONS ALLEGED BY THE UNION, MANAGEMENT CONTENDED THAT CARRIER KROPP, WHO TRANSFERRED FROM THE WOODBINE STATION, AND WHO THE UNION ALLEGED WAS ON THE WORK ASSIGNMENT ONLY LIST, WAS IN FACT ON THE OVERTIME DESIRED LIST

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- MANAGEMENT TESTIFIED THAT THERE WERE LEGITIMATE AND VALID REASONS OF OPERATIONAL NECESSITY FOR ESTABLISHING A WINDOW OF OPERATIONS INCLUDING CONSISTENT CUSTOMER SERVICE AND THE NEED TO GET ALL CARRIERS BACK TO THE STATION TO TIME TO MEET THE DISPATCH OF VALUE (DOV). THEY CONTENDED THAT ALLOWING ODL CARRIERS TO WORK 12 HOURS AND MISS THE DOV WOULD RESULT IN GROSS INEFFICIENCY BECAUSE TRUCK SCHEDULES ARE SET UP TO MAXIMIZE PLANT PROCESSING CAPABILITIES WHICH ARE GEARED TOWARDS CUSTOMER SERVICE. ON JUNE 15, 2015, MANAGEMENT MAINTAINED, THE SUPERVISOR'S NEED TO MEET THE REQUIRED DEADLINES MADE HIM DECIDE TO AFFECT ONE NON-ODL CARRIER AND SCHEDULE HIM IN ON HIS NON-SCHEDULED DAY BECAUSE THEY WERE ALREADY SPLITTING ONE ROUTE. ACCORDING TO MANAGEMENT, IF THEY HAD NOT SCHEDULED THE NON-ODL, NON-SCHEDULED CARRIER, THEY WOULD HAVE AFFECTED FOUR NON-ODL CARRIERS IF THEY HAD TO SPLIT TWO ROUTES.

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- MANAGEMENT CONTENDED THAT THE WINDOW OF OPERATION AT WEST STATION IS 18:00 HOURS AND THE DOV IS 18:20. THEY FURTHER CONTENDED THAT IT WAS NECESSARY TO SCHEDULE THE NON-ODL, NONSCHEDULED CARRIER IN ORDER TO MEET THE DOV ON JUNE 15, 2015. MANAGEMENT ASSERTED THAT THEY HAD THE ABILITY AS WELL AS THE RIGHT TO SIMULTANEOUSLY SCHEDULE EMPLOYEES WHEN THERE IS A LIMITED AMOUNT OF TIME TO COMPLETE WORK/OVERTIME WHICH WHEN DIVIDED AMONGST MULTIPLE CARRIERS CAN BE COMPLETED IN TIME TO MEET THE SERVICE'S OPERATIONAL OBJECTIVES. THEY NOTED THAT THE POSTAL SERVICE WAS IN A COMPETITIVE BUSINESS AND IF THEY DID NOT MEET THEIR COMMITMENTS THEIR CUSTOMERS WOULD SEEK OUT THE SERVICES OF THEIR COMPETITORS.

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- MANAGEMENT CITED THE PVS TRUCKS SCHEDULES ON PAGE 174 OF THE JX-2 AS THE REASON FOR IT'S SETTING 18:00 HOURS AS IT'S WINDOW OF OPERATIONS. THIS DISPATCH THEY SAY MAY OR MAY NOT PROVIDE CARRIERS 12 HOURS OF AVAILABLE WORK, BUT THE REASONING HAS NOTHING TO DO WITH OVERTIME BUT IS SET BASED ON SERVICE STANDARDS. MANAGEMENT ARGUED THAT THE UNION HAD NOT DEMONSTRATED THAT THE WOO WAS AN ILLEGITIMATE DEADLINE OR THAT IT COULD NOT REALISTICALLY BE MET. REGARDING THE LANGUAGE OF THE NATIONAL AGREEMENT, MANAGEMENT ARGUED THAT THE INTENT OF THE PARTIES TOOK INTO CONSIDERATION SITUATIONS WHERE ODL CARRIERS WOULD BE WORKED LESS THAN 12 HOURS BEFORE THEY WOULD FIND THE NEED TO GO "OFF OF THE LIST". MANAGEMENT CITED THE LANGUAGE USED-"UP TO 12 HOURS"- AND ARGUED THAT THE NEGOTIATORS WERE AWARE OF SUCH CIRCUMSTANCES, OR THEY WOULD HAVE SIMPLY STATED THEY "MUST WORK 12 HOURS BEFORE GOING OFF THE LIST

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- MANAGEMENT FURTHER ARGUED THAT IN THE PREVIOUS STEP B AND OTHER DECISIONS, THEY MAY HAVE IMPROPERLY FORCED NON-ODL CARRIERS WHEN THERE WERE ODL'S AVAILABLE. THEY MAINTAINED THAT WASN'T THE CASE IN THE INSTANT GRIEVANCE. MANAGEMENT HELD THAT WHEN THEY PROPERLY MAXIMIZED THE ODL TO THE DOV, ARTICLE 8 PERMITS THE USE OF NON-ODL CARRIERS WITH NO MENTION OF ANY ADDITIONAL PENALTY. FINALLY, MANAGEMENT INSISTED THAT AN OPERATIONAL WINDOW IS A REASONABLE EXERCISE OF MANAGEMENT'S RIGHTS UNDER ARTICLE 3 AND THAT ARTICLE 8 DOES NOT OVERRIDE THEIR POWER TO DETERMINE THE MOST EFFICIENT AND ECONOMICAL MEANS TO SCHEDULE CARRIERS AS LONG AS THEIR ACTIONS ARE NOT ARBITRARY AND CAPRICIOUS. AFTER CITING ARBITRAL DECISIONS IN SUPPORT OF THEIR POSITION, MANAGEMENT REQUESTED THAT THIS ARBITRATOR BE COMPELLED TO DENY THE GRIEVANCE IN ITS ENTIRETY.

ARBITRATOR'S DISCUSSION

- ARTICLE 8.5.G
- 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.
- THIS CONTRACT CASE INVOLVES ALLEGED ON-GOING VIOLATIONS OF ARTICLE 8 AT THE NASHVILLE, TENNESSEE INSTALLATION FOLLOWING NUMEROUS STEP B DECISIONS THAT ISSUED "CEASE AND DESIST" ORDERS REGARDING VIOLATIONS OF ARTICLE 8 AND 15. SPECIFICALLY THE UNION ALLEGES THAT MANAGEMENT AT THE WEST STATION IN NASHVILLE, TENNESSEE VIOLATED THE NATIONAL AGREEMENT WHEN NON-ODL AND WAO CARRIERS WERE MANDATED TO WORK OVERTIME ON AND OFF THEIR ROUTES BEFORE MAXIMIZING CARRIERS ON THE ODL TO 12 HOURS AS REQUIRED BY THE NATIONAL AGREEMENT AND JOINT CONTRACT ADMINISTRATION MANUAL.

ARBITRATOR'S DISCUSSION

- THE NATIONAL AGREEMENT AT ARTICLE 8 DEFINES HOW OVERTIME IS SCHEDULED WHEN OPERATIONALLY REQUIRED AND SECTION 5 OF THE ARTICLE, DESCRIBES THE PROCESS WHICH WAS AGREED UPON BY THE PARTIES. AN OVERTIME DESIRED LIST (ODL) WAS ESTABLISHED TO DISTINGUISH BETWEEN THOSE EMPLOYEES WHO REQUESTED TO BE VOLUNTARILY ASSIGNED TO OVERTIME ON ANY GIVEN DAY. MANAGEMENT AT THE WEST STATION IN NASHVILLE, TENNESSEE, ON JUNE 15, 2015, UTILIZED WAO, NON-SCHEDULED CARRIER ANDERSON FOR 8 HOURS OVERTIME WORK ON HIS SCHEDULED DAY OFF, PRIOR TO MAXIMIZING ODL CARRIERS TO 12 HOURS WORK.

ARBITRATOR'S DISCUSSION

- ADDITIONALLY, THE EVIDENCE OF RECORD (JX-2, PAGE 56-57, WEST STATION SCHEDULE AND OVERTIME DESIRED LIST) INDICATED CARRIER KROPP WAS SIGNED UP FOR WORK ASSIGNMENT ONLY, ALTHOUGH IT WAS ARGUED BY MANAGEMENT THAT MR. KROPP WAS ON THE OTDL 12-HOUR LIST. ON THE DAY IN QUESTION, MANAGEMENT ALSO UTILIZED MR. KROPP ON OVERTIME, OFF HIS REGULAR WORK ASSIGNMENT, PRIOR TO MAXIMIZING THE OTDL CARRIERS TO 12 HOURS. MANAGEMENT ARGUED THAT THEIR ESTABLISHED WINDOW OF OPERATIONS (WOO) AND DISPATCH OF VALUE (DOV) GAVE THEM THE RIGHT TO SIMULTANEOUSLY SCHEDULE ODL AND NON-ODL CARRIERS TO COMPLETE THE WORK ON JUNE 15, 2015, IN TIME TO MEET THE WOO AND SUBSEQUENT DOV. MANAGEMENT CITED ARTICLE 8.5D TO SUPPORT THEIR POSITION: D. IF THE VOLUNTARY "OVERTIME DESIRED" LIST DOES NOT PROVIDE SUFFICIENT QUALIFIED PEOPLE, QUALIFIED FULL-TIME REGULAR EMPLOYEES NOT ON THE LIST MAY BE REQUIRED TO WORK OVERTIME ON A ROTATING BASIS WITH THE FIRST OPPORTUNITY ASSIGNED TO THE JUNIOR EMPLOYEE.

ARBITRATOR'S DISCUSSION

- HOWEVER, ARTICLE 8.5G IS NOT SILENT IN REGARDS TO SIMULTANEOUS SCHEDULING. MANAGEMENT, BY VIRTUE OF THE NATIONAL AGREEMENT AT ARTICLE 3, HAS THE RIGHT TO MANDATE OVERTIME FOR NON-ODL CARRIERS, HOWEVER, IT MUST DO SO WHILE ADHERING TO THE REMAINING COVENANTS OF THE BARGAINING AGREEMENT. SPECIFICALLY, ARTICLE 8.5G STATES: 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.

ARBITRATOR'S DISCUSSION

- THE PARTIES WERE VERY SPECIFIC IN THEIR LANGUAGE AND GAVE NO SCENARIOS WHICH INCLUDED SIMULTANEOUS SCHEDULING "PRIOR" TO UTILIZING OTDL EMPLOYEES 12 HOURS IN A DAY OR 60 HOURS IN A WEEK. THERE IS NO WINDOW OF OPERATION MENTIONED, NOR DOES THE ARTICLE STATE THAT OTDL CARRIERS MUST FIRST BE UTILIZED 'UP TO THE "DISPATCH OF VALUE", IT STATES THEY MUST BE WORKED "UP TO 12 HOURS IN A DAY OR 60 HOURS IN A WEEK", PRIOR TO REQUIRING NON-ODL OR WAO CARRIERS TO WORK OVERTIME (MOT ON THEIR ROUTE). THE PARTIES WERE UNDOUBTEDLY AWARE OF TRUCK SCHEDULES, ABSENTEEISM, AND OTHER OPERATIONAL ISSUES PRIOR TO NEGOTIATING THIS AGREEMENT. THE LANGUAGE AT ARTICLE 8.5G WAS NEGOTIATED IN 1984 AND THAT SPECIFIC LANGUAGE, TO-DATE, HAS NOT CHANGED.

KNOW WHAT THEY WILL ARGUE

1. MANAGEMENT WILL TRY TO SPIN 8.5.D STATING THAT THEY WORKED EVERYONE TO MAX AND THAT THERE WAS NO ONE ELSE TO UTILIZE IN ORDER TO MAKE THE FINAL DISPATCH TIME

2. THEY WILL ALSO TRY TO ARGUE THAT WHILE THEY ARE DOING IT THIS WAY THE OFFICE IS RUNNING WAY SMOOTHER AND MORE EFFICIENT AND THAT UNDER ARTICLE 3, THEY HAVE THE RIGHT TO DO THIS

3. MANAGEMENT WILL BRING IN PEOPLE TO STATED THAT IF THEY ARE OFF THEIR 24-HOUR CLOCK AND ANY PART OF THE WHEEL IS NOT DONE ON TIME THIS WILL CAUSE THINGS TO BOTTLENECK IN THE PLANT AND THAT THE TIMES WILL NOW BE LATE

4. THEY WILL BRING UP SAFETY AND STATE THAT EVEN CARRIERS SAY IT IS UNSAFE TO DELIVER IN THE DARK

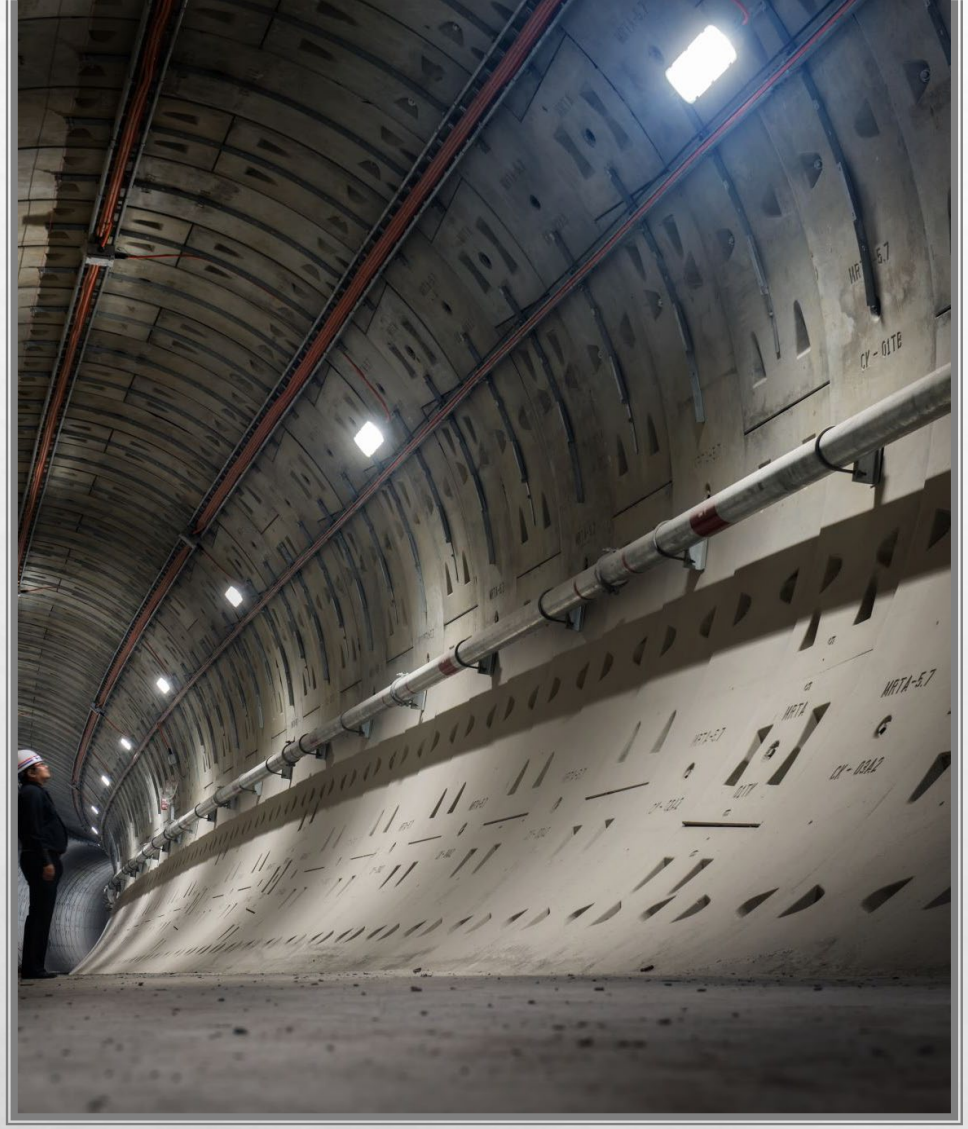
5. THEY WILL STATE THAT THE MAIL MUST BE OUT ON TIME FOR CUSTOMER SERVICE STANDARDS

MAKING YOUR CONTENTIONS

- PLAGIARIZE ALL OF THIS LANGUAGE IN THESE SETTLEMENTS IN YOUR GRIEVANCE
- NEVER BE FOOLED BY ANYTHING MANAGEMENT SAYS ABOUT WHY THEIR WAY WAS BETTER THAN THE CONTRACT FOR THE BETTERMENT OF THE POSTAL SERVICE
- ALWAYS USE THE DILEONE KLIEN ARBITRATION IN EVERY DOV AND OR WOO CASE
- IF YOU MAKE AN ISSUE/CONTENTION YOU BETTER BE ABLE TO SUPPORT THAT ISSUE WITH PROOF AND/OR DOCUMENTATION, OTHERWISE IT IS HOLLOW AND MEANINGLESS

MAKING YOUR CONTENTIONS

- IF MANAGEMENT STATES THAT THERE IS AN OPERATIONAL WINDOW ASK FOR THAT POLICY. IT HAS TO BE IN WRITING, THEY HAVE TO SHOW PROOF
- WITH CLOCK RINGS YOU CAN PROVE THAT MANAGEMENT WAS OR WAS NOT CONSISTENT WITH THE WINDOW OF OPERATIONS
- ARBITRATORS ARE TELLING YOU WHAT MANAGEMENT NEEDS TO WIN THE CASE. IF THEY DO NOT HAVE IT, MAKE THAT CONTENTION



CLOSING THOUGHTS

- IF ALL THE OTDL CARRIERS IN THE STATION ALL WORK 12 HOURS AND THERE IS STILL A ROUTE LEFT OVER TO CARRY, THAT IS WHEN 8.5.D. COMES IN. MANAGERS WILL TRY TO SPIN THIS AND SAY WHEN ALL CARRIERS WORK UP TO THE OPERATIONAL WINDOW THEN THEY CAN MANDATE
- MITTENTHAL SAYS 12 AND 60 ARE ABSOLUTES, YOU CAN NOT WORK PAST THEM
- IF MANAGEMENT IS CONSTANTLY VIOLATING, KEEP FILING. MAKE THAT ARGUMENT OF PATTERN