

REGULAR ARBITRATION

In the Matter of the Arbitration

Grievant: Class Action

Between

Post Office: Hawaii Kai Station

UNITED STATES POSTAL SERVICE

Case No. F11N-4F-C 13249784

And

DRT NO: 01-281964

National Association of Letter
Carriers, AFL-CIO

Union No. 05182013ML

BEFORE: Donald E. Olson, Jr.

APPEARANCES:

For the U.S. Postal Service: Steven Stromquist

For the NALC: James D. Henry

Place of Hearing: Downtown Station, Honolulu, HI
335 Merchant Street, 96813

Date of Hearing: March 17, 2015

AWARD: The grievance is sustained.

Date of Award: April 29, 2015

PANEL: Pacific Regular


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Award Summary

The Employer is directed to place employees back to their original tour starting time, which was changed on May 18, 2013. Out-of-Schedule Premium pay awarded.


Donald E. Olson, Jr. Arbitrator

OPINION OF THE ARBITRATOR

PROCEDURAL MATTERS

This arbitrator held a hearing on March 17, 2015, at the postal facility located at 335 Merchant Street, Honolulu, HI, 96813. The hearing commenced at 9:00 a.m. The case number assigned this dispute was *F11N-4F-C 13249784*.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to make opening statements, to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The advocates fully and fairly represented their respective parties. There were no challenges to the substantive or procedural arbitrability of the dispute, and was properly before this arbitrator. Mr. Steve Stromquist represented the United States Postal Service, hereinafter referred to as “the Employer”. Mr. James D. Henry, Regional Administrative Assistant, Region 1, represented the National Association of Letter Carriers, AFL-CIO, hereinafter referred to as “the Union”. The parties introduced two (2) joint exhibits, all of which were received and made a part of the record. The Employer introduced one (1) exhibit, which was received and made a part of the record. The parties submitted the matter on the basis of evidence presented at the hearing. The Employer’s advocate made an oral closing argument, while the Union advocate submitted a post-hearing brief. The Union’s brief was received by this arbitrator on March 30, 2015, at which time the hearing record was closed. This written opinion and award will serve as this arbitrator’s final and binding decision regarding the instant dispute.

ISSUE(S)

The parties stipulated the issue(s) to be determined are those outlined in the Step B decision. The Step B decision issue(s) were:

“Did management violate Articles 3, 5, and 19 of the National Agreement, when they arbitrarily changed the city carrier’s begin tour

time of 7:00 a.m. and 7:30 a.m. moving it later to 8:00 a.m.
and if so/not what is the appropriate remedy?

RELEVANT PROVISIONS OF THE NATIONAL AGREEMENT

The relevant provisions set forth in the National Agreement are Articles 3, 5, 15, 19, as well as Section 122.11.b of Handbook M-39, and Section 434 of the ELM.

BACKGROUND

On May 18, 2013, management at the Hawaii Kai Station in Honolulu, Hawaii, informed the carriers working at that station that all carriers start time would be changed to 8:00 a.m. Prior to this notification, the carriers start time was 7:00 a.m. and 7:30 a.m. Thereafter, a grievance was filed claiming the Employer had violated Article 3, 5, and 19 of the National Agreement. The grievance was processed through the grievance machinery without it being resolved. The Dispute Resolution Team declared an impasse on August 27, 2013. Thereafter, the Union appealed the matter to arbitration.

UNDISPUTED FACTS

- 1) Time limits have been extended by mutual agreement to file this grievance.
- 2) On Saturday, May 18, 2013, City Carriers begin tour time , at Hawaii Kai Station was changed to 8:00 a.m.
- 3) May 18, 2013, letter carriers at the Hawaii Kai Station continued to begin their tour at 7:00 a.m., 7:15 a.m. and 7:30 a.m. either by completing a revision form or in response to management scheduling.
- 4) Two distribution clerks begin tours at 2:00 a.m. and one distribution clerk at 3:00 a.m.
- 5) Prior to May 18, 2013, the Ciity Carriers at the Hawaii Kai Station experienced little to no standby time.
- 6) The distribution clerks at Hawaii Kai Station have been sorting mail for from 5-6 hours before the carriers begin tour.
- 7) Distribution clerks have 80% of the mail distributed to the carriers cases by 7:00 a.m.

- 8) Station manager, Erling Ericksen, cited “compression” at the plant and reduction in F-4 hours and clerks at Hawaii Kai Station as well as elimination of stand-by time.
- 9) The M-39 section 122 states that in establishing carrier schedule, fix schedules to coincide with receipt and dispatch of mail. At least 80 percent of the carriers’ daily mail to be cased should be on or at their cases when they report to work.”
- 10) Customer Service Supervisor, Cheryl Ann Gomes, stated the MVS driver is delayed in his rounds having to wait for carriers returning late from their routes because of the later start time.
- 11) Station Manager, Erling Ericksen, authorized the change in the carrier begin tour time to 8:00 a.m.
- 12) Hawaii Kai Station is the only Honolulu office with letter carriers starting at 8:00 a.m, whereas other Honolulu offices are starting carriers earlier.

Erling Ericksen, USPS Station Manager

Alvin Matsumura, NALC-Step A Rep.

POSITION OF THE PARTIES

POSITION OF THE EMPLOYER

The Employer claims that since this is contract grievance the Union has the burden to prove a violation of the National Agreement by the preponderance of evidence. Moreover, the Employer argues that the Union has not submitted proof that any letter carrier has been forced to start at 8:00 a.m. According to the Employer the Union has asserted that management changed start times for all carriers, but with or no proof that it ever happened. In fact, the Employer maintains that since May 18, 2013, letter carriers at the Hawaii Kai station continue to begin their tour at 7:00 a.m., 7:15 a.m., and 7:30 a.m. by completing a revision form or in response to management scheduling. In addition, the Employer insists this grievance should be denied for the following specific reasons: 1) The Union has failed to show that any Hawaii Kai carrier actually started at 8:00 a.m. 2) The

National Agreement and the M-39 do not require that carriers start when 80% of the daily mail to be cased is at their cases. 3) Management's starting time change was not arbitrary. It was based on changing business needs which include parcel delivery service that is later arriving at the station, and 4) Article 3 gives the Employer exclusive right to direct employee in performance of their duties. To maintain the efficiency of the operations and to determine the methods, means, and personnel by which such operations are to be conducted. As such, the Employer asserts the grievance must be denied in its entirety.

POSITION OF THE UNION

On the other hand, the Union maintains that management at the Hawaii Kai station committed an inappropriate administrative action when it used an improper standard to establish a new starting time and changing the start time for Letter Carriers from 7:00 a.m. to 8:00 a.m. Moreover, the Union claim management has not shown any basis for changing the starting time. In addition, the Union asserts there is no evidence to indicate that the carriers were waiting on mail, and on stand by time. Additionally, the Union argues that management has failed to produce any evidence that would establish change in start times was necessary. Furthermore, the Union contends the decision to change the start times was made by the District Manager and the Postmaster. Additionally, the Union contends that management has failed to meet any of the criteria outlined in the Handbook M-39, Section 122.11, when it made the determination to change start times. Further, the Union avers that management's decision was arbitrary when it made the change to start times without a valid reason or proof to substantiate the change. As such, the Union insists that the grievance must be sustained.

DISCUSSION

This arbitrator has carefully reviewed the entire evidentiary record, the oral closing argument by the Employer's advocate, and the Union's post-hearing brief, and cited cases.

In the first place, this arbitrator finds that the Employer's management staff

at the Hawaii Kai Station violated Articles 3, 5, and 19 of the National Agreement when they arbitrarily changed the city carriers begin tour time of 7:00 a.m. and 7:30 a.m. moving it later to 8:00 a.m. effective on May 18, 2013. Clearly, the record is clear that at the time management decided to effectuate this change they had never attempted to discuss or negotiate this proposed change with the Union. In fact, the change was a unilateral decision made by management, which in fact violated the express rights set forth in Article 5 of the National Agreement, which in pertinent part reads as follows:

“The Employer will not take any actions affecting, wages, hours and other terms and conditions of employment as defined Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.”

This change by management regarding the employee’s tour start time was clearly a classic prohibited unilateral action involving “hours”. Of course, the Employer made a claim during the processing of this grievance that this was allowed under the guise of Article 3, which set forth its managerial rights. This arbitrator concurs with that claim, when in fact it is done properly, and not unilaterally. Undeniably, M-39 Section 122.1 entitled “Establishing Schedules” allows the Employer the express right to set employees work schedules, however, if a change for business reasons is contemplated, the Employer must not institute this kind of change unilaterally, as in this case. Section 8(d) mandates that the Employer cannot violate the terms of the National Agreement by taking unilateral action dealing with “hours” or that are otherwise inconsistent with its obligation under law.

Frankly, in simpler terms, once the Union made a prima facie case as they did, the burden of going forward with the evidence shifted to the Employer to prove that it complied with the express terms of Articles 5 and 19 of the National Agreement, as well as the terms set forth in Handbook M-39 dealing with “Establishing Schedules”. This arbitrator concludes once the burden of proof shifted to the Employer, it failed to prove there was an operational need to change the carrier’s starting time.

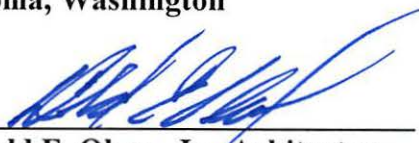
Since this arbitrator has found the Employer violated the express terms of Article 5 of the National Agreement, there is no need to dwell on about other possible Employer violations of the National Agreement dealing with Article 15.

As a result, based upon the evidentiary record and pertinent parts of testimony given at the hearing, this arbitrator concludes management at the Haiwii Kai Station violated Articles 3, 5, and 19 of the National Agreement, when they arbitrarily changed the city carrier's begin tour time of 7:00 a.m. and 7:30 a.m. moving it later to 8:00 a.m.

AWARD

The grievance is sustained. The Employer shall reinstate the employees starting tour time in effect on May 17, 2013. The Employer is directed to pay all the carriers out-of-schedule premium pay for any time they were scheduled for 8:00 a.m. and reported at 8:00 a.m. beginning May 18, 2013, until their start time was officially changed back or earlier. Furthermore, no carrier start times in the future will be established and fixed, unless the Employer's management at the Hawaii Kai Station follows the exact procedure set forth in M-39 Section 122.11. Moreover, management is ordered to cease and desist violating the aforementioned provision. The arbitrator will retain jurisdiction of this dispute for ninety (90) calendar days after the parties receive this opinion and award.

Dated this 29th day of April 2015.
Tacoma, Washington



Donald E. Olson, Jr., Arbitrator