REGULAR ARBITRATION PANEL

09852

In the Matter of Arbitration	) Grievant: Class Action
Between	) Post Office: Flint, Mi.
UNITED STATES POSTAL SERVICE	) Case No. J06N-4J-C10310295
And	) DRT# - 06-179866
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	) Local #1027219

BEFORE: Thomas J. Erbs, Arbitrator

APPEARANCES:

U.S. Postal Service: Crystal Thornton - Labor Relations Specialist
Union: David H. Miller - Advocate

Place of Hearing: Flint, Michigan

Date of Hearing: February 15, 2012
Briefs Received: February 24 and March 2, 2012.
Date of Award: March 20, 2012

Contract Provisions: Article 7

Contract Year: 2006

Type of Grievance: Contract

Award: The grievance is sustained. D. Martinez met the maximization requirement of Article 7. The senior PTF shall be converted to Full-time flexible as quickly as administratively possible.

Thomas J. Erbs, Arbitrator

OUTLINE OF CASE

The instant grievance is classified as a Class Action, however, it involves the work hours of PTF Denice Martinez and Management's failure, according to the Union, to follow the maximization requirements of Article 7. Although the grievance centers around the hours of Ms. Martinez apparently she is not the most senior PTF according to the Step B record.

The Step B grievance record contains the following "**Undisputed Facts**":

1. City Carrier D. Martinez is a PTF employee at the Flint, MI, Southeast Annex Post Office, with a seniority date of 03-05-2005.
2. With the exception of Pay Period 12, week 2, it is undisputed that PTF D. Martinez met the maximization requirements of Article 7 for the period from Pay Period 3, Week 2, 2010 through Pay Period 16, Week 2, 2010, a period of 27 weeks.
3. In Pay Period 12, Week 2, PTF D. Martinez worked a total of 33.91 hours, including 1.91 hours of overtime.
4. PTF D. Martinez applied for, and was approved, eight (8) hours of annual leave for 06-04-10, during Pay Period 12, Week 2.
5. Management paid PTF D. Martinez 6.09 hours of annual leave for 06-04-10.
6. The Flint, MI installation has in excess of 125 man years.
7. Time extensions were mutually agreed to.

On June 2, 2010 Martinez requested eight (8) hours of annual leave on a 3971 which was approved. The Supervisor, according to the record on some unknown date, filled out the bottom of the 3971 with 6.09 hours. She did this because she did not think she could credit Martinez with more than forty (40) hours in a week if some hours were annual leave. There is no evidence as to whether she informed Martinez only 6.09 of leave would be approved. Martinez had worked 33.91 hours during the first four (4) days of the week including 1.91 of overtime.

The parties have cited the applicable language from Handbook F-21 as follows:

323.6 **Part-time Flexible**

a. A part-time flexible employee who has been credited with 40 hours or more

of paid service (work, leave, or a combination of work and leave), in a service week is not granted paid annual or sick leave during the remainder of that service week. Absences in such cases are treated as nonduty time, not chargeable to paid leave of any kind. Supervisors should avoid granting leave resulting in the requirement for overtime pay.

b. Part-time flexible employees who request leave on days that they are scheduled to work, except legal holidays, may be granted leave provided they can be spared. Leave charged cannot exceed 8 hours on any one day. The installation head may also consider a request for annual leave on any day a part-time flexible is not scheduled to work. The 40 hours paid service in a service week may not be exceeded.

The Union did not file a grievance alleging Martinez improperly only received 6.09 of annual leave instead of the 8 that she had requested.

On June 4, 2010, the date that PTF Martinez took annual leave, two (2) Transitional Employees (TE), worked eight (8) hours each during the same period of time when Martinez would have been working but for her annual leave.

Supervisor Hodges testified that she was the Management designee at the Informal A. She testified Martinez was not scheduled to work on June 4 but acknowledges this was because her request for annual leave had previously been approved. She testified the 204B who entered the 6.09 hours for Martinez could not enter 8 hours because that would have violated the F-21.[1]

The parties also entered into the record step 4 settlements. Excerpts are as follows:

"For conversion under the provisions of the Article 7, Memorandum of Understanding, leave will be counted toward the 39 hour requirement provided it is not taken solely to achieve full-time status. In addition, all other provisions of the Article 7, Memorandum of Understanding must be met in order to convert the senior part-time flexible to full-time." (M-01047)

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[1]1. F-21-323.6(a) "a part-time flexible employee who has been credited with 40 hours or more of paid service (work, leave, or a combination of work and leave), in a service week is not granted paid annual or sick leave during the remainder of that service week..."

"We further agreed that for the purposes of meeting the six (6) month requirements of Article 7.3.C, approved annual leave does not constitute an interruption in assignment except where the annual leave is used solely for purposes of rounding out the workweek when the employee would otherwise not have worked. (M-00913)

The Union is not requesting a monetary remedy as the senior PTF has been paid. The request is that the senior PTF be converted to Full Time Flexible without further delay.

UNION CONTENTIONS

The Union states the sole issue is whether or not the evaluation criteria has been met regarding the full maximization of a Full time flexible. According to the undisputed facts the only day at issue in this six (6) month period is June 4, 2010. Through all steps of the grievance procedure Management agreed that Martinez met the criteria except for that one (1) day. "Management argues the 6 month criteria of the 1987 MOU was broken June 4, 2010 when she was paid only 6.09 hours of Annual."

The Union points out the only reason that Martinez "was paid less than 8 hours" was because of annual leave and that is irrelevant here. "It is undisputed that Denice Martinez was approved 8 hours of Annual Leave in advance and as such did not work on June 4, 2010." The undisputed testimony in the record indicates that Martinez "would have otherwise worked on June 4, 2010, had it not been for the approved leave request."

The Union has presented evidence that the hours Martinez would have worked were actually worked by Transitional Employees. That meets the criteria. "Management could not provide evidence or testimony that supports the notion that Martinez requested leave solely to round out the work week for pay purposes."

On the day of the hearing Management attempted to make new arguments in regard to withholding and excessing. "No withholding or excessing issues were addressed or disclosed at any previous steps." Since these comments were made only in the opening statement, and no evidence was presented, the Union states "no weight should be given to issues regarding excessing and withholding in this case."

The only reason Management denied this grievance is because Martinez was not paid for the full eight (8) hours of leave which had been requested. "The Union argues this is a technicality that does not take away from the fact that PTF Martinez would have otherwise worked at least 8 hours on 6/4/2010 had she not requested 8 hours leave for that day."

The parties, in a Step 4 settlement, have agreed that time spent on approved paid leave does not constitute an interruption of the six (6) month period. "The exception is when the leave is used solely for purposes of rounding out the work week when the employee otherwise would not have

worked." Here Martinez would have worked.

The maximization criteria provides that when there is a need for a Full time flexible the senior PTF is to be maximized and will be converted to a Full time flexible. The parties have also agreed that approved leave does not break this six (6) month criteria period.

The Union notes that had Martinez only worked thirty two (32) hours before Friday, June 4, instead of having overtime, "then she would had been paid 8 hours of leave for that day and there would be no dispute over the 6 month criteria being met." There is nothing in the MOU, nor in any Step 4 settlements, "which indicate that the 6 month conversion criteria can be broken by a payroll technicality."

The Union requests that the senior PTF at the Flint installation be converted immediately to Full time flexible. It cites four arbitration decisions, including two National level awards, to support its various positions.

POSTAL SERVICE CONTENTIONS

The Postal Service states that in accordance with Handbook F-21 a PTF who has been credited with forty (40) hours or more of paid service is not granted annual or sick leave for the rest of the service week. Forty (40) hours pay in a week may not be exceeded. Although the Grievant asked for eight (8) hours of annual leave she only was granted 6.09 and the Union failed to file a grievance contesting the granting of only 6.09 annual leave.

In this Contract interpretation case the Union has failed to carry its burden of proof that Management violated any provisions of the National Agreement. The Union has argued that Management has to ensure through every effort that qualified PTFs are utilized rather than TE employees. Management did this. The Union has gone to great lengths to show the hours Martinez could have worked but since she requested annual leave they failed to show that eight (8) hours was approved. Hours in excess of forty are treated as non-duty time and not counted.

Management has the right, under Article 3, to maintain an efficient operation. "The Union must establish that conversion would not effect the efficiency of the operation, but Management has shown the employee did not fit the criteria of working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six month period which would have demonstrated the need for converting the assignment to full-time position."

The Union has failed to prove that Management failed in any manner to abide by the Contract language in regard to converting a senior PTF. The calendar that has been introduced shows the hours that were worked and the 6.09 hours of annual leave.

Management made as much of an effort as it could in order to schedule the PTF for her hours. Martinez, however, took annual leave. Management gave priority to all the PTFs over any TEs in the station. Other arbitrators have upheld Management's position in that regard.

The Supervisor testified that PTF Martinez worked 33.1 hours. This is four (4) days not five (5) days and she was not scheduled on the other day. This meant the "Postal Service was well within 7.1.B.3 meaning the grievant (Martinez) didn't fit the criteria to be maximization (sic)." It is the Postal Service's position that the "grievant (Martinez) was not scheduled to work therefore the grievant (Martinez) submitted a leave slip to round out to 40 hours." There is no evidence in the record that Management used either of the TEs rather than Martinez. The PTFs were utilized to the maximum before any TE.

The Postal Service, after citing numerous arbitration decisions to support its position, requests that the grievance be denied in its entirety.

ISSUE

The issue as framed at Step B is:

Did PTF D. Martinez meet the maximization requirements of Article 7? If so, what is the proper remedy?

DISCUSSION

The parties have essentially agreed that the facts in the case are basically undisputed. PTF Martinez met the maximization requirements, or criteria, as established in Article 7 for the six months between Pay Period 3, Week 2 through Pay Period 16, Week 2 in 2010, except for the dispute as to one day in Week 2 of Pay Period 12. Management argues that the annual leave request by Martinez, which was only approved for 6.09 hours instead of 8 hours, constituted a break in the continuous work requirement of Article 7.3.C.[2]

Management argues that Martinez did not work on the day in question as a TE worked which means there was an interruption in the continuous assignment of PTF Martinez. Despite the TE working those hours Management, in its brief, ably argues that it made every effort to ensure that PTF employees were utilized prior to assigning any such work to the TEs. The Arbitrator agrees

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[2] 7.3.C. "A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six month period will demonstrate the need for converting the assignment to a full-time position."

with that contention and notes the Union does not attempt to rebut that argument in any respect.. The facts clearly establish that PTF Martinez, in all weeks other than Week 2 of Pay Period 12, was utilized by Management prior to any work being assigned to the TE.

The Arbitrator further recognizes that on June 4, 2010 the TEs worked and Martinez did not. The assignment of the TEs to perform the work on that day was not an attempt by Management to interrupt Martinez 's continuous six month work cycle required for maximization of a PTF. That finding, however, does not resolve the issue that is presented.

What Management is overlooking is that Martinez, prior to June 4, 2010, requested annual leave. Supervisor Hodges acknowledged that when this request was approved Martinez was therefore not scheduled to work. The failure to schedule her was not because there was no work to be performed but was solely because the leave request by Martinez had previously been approved. Admittedly the 204B only entered 6.09 hours as approved leave but there is no record, however, as to whether Martinez was ever advised of that decision. More importantly the parties have entered into the record settlements M-01047 and M-00913. These settlements state that leave, which obviously would include annual leave which has been approved, will be counted toward the hours requirement, and does not constitute an interruption of the six month assignment provided the leave is not taken solely to achieve full-time status nor to round out the workweek.

Here there is no contention from Management that the annual leave was taken solely to achieve full time status nor to round out the workweek. Nor would the facts support such a contention even if it had been made. The leave was requested several weeks before the end of the six month continuous work cycle. Neither Martinez, nor even Management, could know for sure whether she would be scheduled to work during the last month of the six month period. There is

absolutely no proof that the leave was taken solely to achieve full time status nor to round out the workweek.

All other provisions of Article 7 as to the criteria necessary for maximization of the senior PTF had been met other than that "glitch" due to the desire of Martinez to take earned annual leave. Arbitrator Dilts, in a somewhat analogous case involving a holiday during the applicable six month maximization period, had this to say:

> "Further, it is clear that the parties mutual intent was for the six months of 5 days and 40 hours on the same assignment to be interpreted as a need for conversion to a full time assignment. This is not a matter of seconds or even a single holiday in a six month period. The quantum of work for conversion is what the parties contemplated, not technical time keeping differences which do not substantively belie the underlying need for conversion. If the assignment is consistent, is delineated by the parties agreement memorialized by the words of Article 7.3.C then this Arbitrator has no authority to set aside their agreement on a mere, unanticipated technicality."[3]

There is no doubt that, in retrospect, PTF Martinez would have worked the assignment over a six month period except for her request for annual leave. Management, in the absence of Martinez, worked the TEs. The work of the assignment was there to be performed. The annual leave that was requested was 8 hours. The annual leave that was authorized was 6.09 hours. The only reason only 6.09 hours was authorized, rather than the 8 as requested, was because Martinez had worked overtime. Martinez worked overtime to accommodate the Postal Service work load. If she had not worked the overtime the Postal Service essentially has conceded she would have met the maximization criteria. The JCAM reflects an apparent similar position that these technicalities should not detract from the intent at maximization where it states a PTF "not working all or part of

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[3]J01N-4J-C06048690 - Dilts (2010). p 9 & 10.

a holiday or observed holiday does not constitute an interruption in the six month period."[4]

As Arbitrator Dilts stated the "quantum of work" was there on the assignment as demonstrated by the TEs performing the work in the absence of Martinez. To allege the overtime Martinez worked as an interruption in the continuous nature of the assignment would be absurd, nonsensical, and not supported by the Contract nor the handbooks. As stated by Arbitrator Lurie:

> The fundamental rule of contract interpretation is that a contract should be given the interpretation which will best effectuate the intent of the parties. Where that intention is clearly and unambiguously expressed, there is no need for interpretation. But where the literal application of the terms of the Agreement will yield an arbitrary result unrelated to the manifest purpose of the entirety of the provision, then the silence of the Agreement on the subject matter producing that arbitrary result is the proper subject of interpretation.[5]

The quotation above was in a case which also involved a holiday but could similarly apply to the approved annual leave request here especially since M-01047 and M-00913 specifically state that leave will be counted towards the requirement for maximization.

As previously indicated Management is not to be faulted for scheduling the TE on June 4 to work the hours when Martinez would have worked. Management did comply with their responsibilities to utilize the PTFs instead of TEs. However, that assignment does show that, but for the approved annual leave of Martinez, she would have worked those hours, instead of the TEs.

Based upon the record that has been presented the Arbitrator finds that the Union has demonstrated the need to convert the senior PTF to Full-time flexible.

Ruling: The grievance is sustained. The senior PTF shall be converted to Full-time flexible as quickly as administratively possible. The Union has stated that there is no request for a monetary

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[4]JCAM p. 7.2

[5]C01-N4-C02249623 - Lurie (2003). p. 4

remedy so none is provided.

Signed in the County of St. Louis, State of Missouri, this 20th of March, 2012.

Thomas J. Erbs, Arbitrator