C# 09422

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION Between	GRIEVANT: Class Action
UNITED STATES POSTAL SERVICE	POST OFFICE: Dallas, Texas
And	
NATIONAL ASSOCIATION OF LETTER CARRIERS	CASE NUMBER: S7N-3A-C-1859

BEFORE: P. M. WILLIAMS, ARBITRATOR, SOUTHERN REGION

APPEARANCES:

FOR THE POSTAL SERVICE:
J. B. Reeves, Labor Relations Assistant

FOR THE NATIONAL ASSOCIATION OF LETTER CARRIERS:
George White, Local Business Agent

PLACE OF HEARING:
Main Post Office, Dallas, TX

DATES OF HEARING:
September 15 and 22, 1989

DECISION AND AWARD

BACKGROUND:

What happened and led up to this grievance being filed at the Brookhollow Station is not in dispute. For a great many years the regular non-scheduled days for routes 4729 and 4735 at the Station had been Saturday and Sunday. The carriers regularly assigned to the routes each retired. Thereafter the Employer posted both routes for bid indicating that each was to have a starting and ending time on Monday of 0400 to 1230 hours; a starting and ending time on Saturday, Tuesday, Wednesday, Thursday and Friday of 0500 to 1330 hours; with Sunday and a rotating day being the non-scheduled days. The successful bidders for the two routes were not among the more senior of the Station's letter carriers because those in the latter group did not bid for the routes. It is alleged by the Union however that the more senior carriers would have made bids had the Employer followed the past practice of the routes having fixed non-scheduled days of Saturday and Sunday.

A grievance was filed on October 5, 1987. It requested that the Employer "... rescind posting of 9-26-87, for these routes and re-post with Saturday-Sunday non-scheduled days.", claiming that, "... this posting is not in accordance with the National and Local Agreement as cited. Posting is also contrary to long standing Past Practice." The grievance was denied at all Step levels and is properly at the level of arbitration for a decision on its merits.

At the first hearing it initially appeared that all parties having an interest in the outcome of the matter were present. However as the hearing progressed it became known that he successful bidders for the two routes were not aware that the hearing was to take place. When I learned that they had not be told of the hearing it was recessed after both parties had been given an opportunity to present such evidence as was deemed appropriate under the circumstances. A week later the hearing reconvened. The two carriers most likely to be adversely if the grievance was sustained were present. Each was examined by each of the parties. Each was also given an opportunity to fully express himself concerning the matter at hand. Thereafter each party made a closing argument to complete the hearing.

POSITION OF THE PARTIES:

National Association of Letter Carriers (Union):

The Union claimed that routes 4729 and 4735 at Brookhollow Station fell within the purpose and intent of Item #2 of the Local Memorandum of Understanding (LMU) and Article 41 of the National Agreement (NA), therefore it was improper for the Employer to unilaterally change the non-scheduled days on each route from fixed days of Saturday and Sunday to Sunday and a rotating day. It asked that grievance be sustained by the earlier bids being rescinded and the routes reposted to show their scheduled starting hour to be the same on each scheduled day, and also showing that the non-scheduled days were to be as they were before September 26, 1987, i.e., Saturday and Sunday.

United States Postal Service (Employer):

The Employer contended the Union was attempting to obtain in arbitration a result which it was unable to obtain in negotiations. It claimed no violation of either the LMU or the NA had occurred as a result of what it had posted regarding the two routes; claiming also that it had acted within its authority. It asked that the grievance be denied.

ISSUE: Did the Employer violate Articles 15 or 41 of the NA, or Item #2 of the LMU when it changed the non-scheduled days of Brookhollow Station routes 4729 and 4735 from fixed days to rotating days, and the starting time on Monday to an hour earlier than it was the remaining days of the week, and if so, what is the proper remedy?

OPINION:

As partial support for the position it took the Union relied on a Item #2 of the LMU, it provides as follows (the underlined segment is said to be the most important part to the Union's case):

"ITEM #2. THE ESTABLISHMENT OF A REGULAR WORK WEEK OF FIVE DAYS WITH EITHER FIXED OR ROTATING DAYS OFF.

"Routes scheduled on a 40-hour, 6 day week will be grouped and will be scheduled on a rotating basis so that at intervals each member of the group, including reserve letter carriers, T-6's and unassigned regulars, has a long weekend off (Friday, Saturday and Sunday). (This section will not apply to routes on fixed work schedules.)

Before proceeding it seems appropriate to note that the caption for Item #2 of the LMU is a direct quote from a portion of Article 30 of the NA. It thus might be helpful to a complete understanding of this opinion to quote here the part of Article 30 that precedes the quotation. Article 30 begins as follows:

"LOCAL IMPLEMENTATION

"A. Presently effective local memoranda of understanding not inconsistent or in conflict with the 1987 National Agreement shall remain in effect during the term of this Agreement unless changed by mutual agreement pursuant to the local implementation procedure set forth below.

"B. There shall be a 30-day period of local implementation to commence October 1, 1987 on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the 1987 National Agreement.

"1. ...
"2. The establishment of a regular work week of five days with either fixed or rotating days off."

The parties agree that the language of Item #2 of the LMU has been there for a number of years. No one could recall exactly how long however. It was also agreed that the language was intended to cover the business routes of the Dallas installation at a point in time when the delivery schedules of those routes were limited to Monday through Friday. The purpose of the language was to provide the carriers of those routes with fixed work schedules of only the days when the routes were to be delivered, thus their non-scheduled days were automatically set at Saturday and Sunday.

Presumably the carrier employees at the installation viewed these business routes as the choice ones, thus making them available only to the most senior of employees because of the bidding process. Over the years however, as the city grew in area and the stations and routes grew in number many of the business routes were necessarily adjusted to include residential deliveries. The incumbent carriers on the routes so adjusted were not however asked to alter their non-scheduled days. Rather their regular work schedule remained the same despite their route being adjusted to a six day one. The Saturday work was performed by PTF's or unassigned regular carriers, and not by them.

When the "old-timers" assigned to routes 4729 and 4735 retired (as did a few other employees similarly situated) the Employer determined that in the interest of efficiency it would not perpetuate what the Union has referred to as the "Past Practice" as it related to specific routes because the situation responsible for the creation of the so-called "fixed work schedules" no longer existed, i.e., work on the routes was no longer restricted to Monday through Friday. Rather the actual regular work schedule for each of them was Monday through Saturday. Consequently, with any promise it made to the "old-timers" over because of their retirement, and with a continuing need to improve efficiency, the Employer adjusted the routes to better fit-in with the other routes at the station and upon doing so it posted them for bid.

(Routes 4729 and 4735 are not the only routes at Brookhollow Station that were affected by the Employer's decision, they are however the only routes involved in this grievance. There are other grievances pending on this same issue. Therefore this matter needs more than a mere decision. Rather the parties should be given a detailed explanation as to why I believe the grievance ought to be denied.)

The Employer official responsible for including the final parenthetical sentence in Item #2 of the LMU was a witness at the hearing. It was his testimony that the inclusion was made to benefit the senior men who were then (and had been a long time) assigned to the business routes. The Union did not disagree with what he said. Neither did it disagree with his claim that routes 4729 and 4735 were no longer exclusively business routes with no Saturday deliveries, but rather were routes also having residential customers that regularly received mail on Saturday. It neither agreed nor disagreed however with his statement that Item #2 was not in conflict with the NA. But it, as well as he, seemed to be somewhat "iffy" about whether what he said was an accurate assessment of the actual situation. Despite their ambivalence however both were very clear that Item #2's language had been a part of the LMU for a long time and that the purpose for it was as he said it was. And each acknowledged it was an accepted fact that the carriers of the "business routes" were deemed to have fixed non-scheduled days, although other carriers at the installation were said to have rotating non-scheduled days.

Discussing first the parties' suggestion that the NA authorizes them to negotiate on either a fixed or a rotating basis for the carriers non-scheduled days, and that it might be improper for them to have both a fixed and also a rotating basis for those days in Dallas.

It is my recollection that an arbitration award in a national case is to the effect that so long as a provision in an LMU in not inconsistent or in conflict with the NA, its terms (the LMU's) may nevertheless relate to matters not specifically included within the NA's terms. Thus, assuming my recollection is correct, if the NA is silent both in language and implication, it is possible for an LMU's terms to have validity even though the subject matter therein is beyond the scope of the 22 items listed in Article 30.

In applying the facts here to Item #2 I find nothing in its language that suggests to me it is either inconsistent or in conflict with the provisions of the NA. I say this even though Article 30 authorizes "The establishment of a regular work week of five days with either fixed or rotating days off.", and clearly the "days off" for routes 4729 and 4735 were, actually and practically speaking fixed, and there is no dispute about other routes having rotating "days off." However, having said this is not to also say that the terms of the LMU either are or should be deemed responsible for the establishment of the non-scheduled days for those routes. It is only to say that Item #2 was not necessarily either the controlling factor or the sole means for setting the non-scheduled days for the business routes. To the contrary I believe that Item #2 can take no credit or blame for the setting: rather the days were automatically set because the businesses were neither open nor in operation on week-ends. This meant no need existed to either deliver or collect mail on those days. Consequently the successful bidders had no cause to think in terms of working on Saturday or Sunday, there regular work week did not begin until Monday and it ended on Friday.

Taking what is last said a step farther. I find nothing in the NA which tends to suggest that the Employer was unable to establish the original business routes as it did. Moreover, its limitation was only to make those routes subject to the bidding procedure with the conditions of the regular work schedule of Monday through Friday being communicated to the successful bidders, which it also did. I also believe that under the terms announced in the bid invitation it was unnecessary for the routes to be categorized as either having fixed or rotating days off. Rather the posted regular work schedule itself was to the effect that 40 hours of work would be available within five consecutive days of a 7 day period and that announcement was sufficient to make any additional reference to non-scheduled days redundant. Stated differently, the routes were posted as being manned only Monday through Friday, there was no need to also announce that the non-scheduled days were Saturday and Sunday because no other days were available.

It seems clear to me therefore that the final parenthetical sentence of Item #2 was and is, as to the business routes, a wholly unnecessary addition to the LMU, and under the circumstances it adds nothing to its real meaning. It would be incorrect to say therefore that the effect to be given the sentence makes the entire Item #2 inconsistent or in conflict with the NA because in point of reality it has no effect on the thrust of what Item #2 provides.

More will be said about this in a moment. First however I want to move to another and related subject, i.e., the verbage of the controersial sentence itself because the Union seems to believe its intent was to nail down forever the right of the senior employees to enjoy the luxury of always having all week-ends as non-scheduled days. The sentence states as follows:

"(This section will not apply to routes on fixed work schedules.)"

It seems to me that before the Union's position here may be sustained, if one assumes that the just quoted language is to be given contractual effect (which is not a valid assumption), the sentence necessarily must be interpreted as going far beyond what its words actually state, the thrust of which simply is to indicate that the section is not apply to the carriers who were then assigned to the business routes.

The Union would have me believe that the sentence has overtones regarding the benefits to be derived from seniority, and also that it puts certain limitations on the Employer's right to direct the enterprize. I am unable to agree with the Union's notion for reasons already discussed, but it also needs to be said that I do not find the sentence ambiguous. Therefore I find no cause to speculate about what may or may not have been its intent. Neither is it necessary for me to look to what has been a past practice in order to see whether it has the hidden meaning suggested by the Union. To me its words are clear, and they indicate but a single thing to me, which is: that the carriers then and thereafter assigned to the business routes are to be excluded from the group that periodically is to be provided with a three day week-end off, i.e., a Friday, Saturday and Sunday off.

It seems to me the Union overlooks a most important factor, which is, if the language was intended to have the effect of perpetuating both the delivery points of a route and its non-scheduled days (which is what I believe the Union implies is the case), the inescapable result to be attached to that meaning is to put Item #2 in the posture of being inconsistent and in conflict with the terms of the NA because it would then infringe on the Employer's retained rights as set out in Article 3. Thus to agree with what it projects as the meaning to be attributed to Item #2 is to automatically, in my view, nullify Item #2 because an LMU cannot be inconsistent or conflict with the NA. The Union's entire premise is destroyed if its argument is accepted, and it then would find itself no better off than it would be if the language had not been put in Item #2 in the first place. I believe that while the Union may have inadvertently put itself in a Catch-22 situation it nevertheless finds itself in one, which adds yet another flaw to its argument.

In conclusion and to return briefly to my belief that the sentence under discussion was redundant and without meaning, and therefore added nothing to Item #2 one way or the other. It seems to me the fact that the parties believed its addition was necessary underscores still another important and yet undiscussed circumstance. It being that they each seemed to recognize at the time the presence of an underlying factor insofar as the then business route carriers were concerned. The factor being the Employer's right to make such changes in the routes as business condition dictated. By agreeing to the addition of the sentence therefore was for them to memorialize the fact that so long as the routes had fixed schedules the carriers assigned to them would not fall under the ambit of the major thrust of Item #2. But to imply, as the Union apparently does, that the sentence expresses their agreement that fixed work schedules were to perpetually be a part of the routes is to go much farther than I believe the Employer would have ever gone.

The routes involved here no longer have fixed schedules. Rather their schedules were changed twice, the first time without apparent objection from the Union. I find the last change and the one which precipitated the grievance was for reasonable cause and well within the Employer's right under the NA. Moreover, the change was made without adversely affecting the carriers who previously had been assigned to the routes. Under the circumstances and in the absence of clear language in the NA to prohibit the Employer from re-posting the routes involved here I am constrained to find that no violation of Article 15 or 41 has occurred. The grievance therefore should be, and the same hereby is, denied.

On the basis of the entire record in this case the undersigned makes the following

AWARD

The grievance is denied in accordance with the opinion expressed above.

P. M. Williams
Arbitrator

Dated at Oklahoma City, Oklahoma
this 5th day of October, 1989.