



C# 04735

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)
) Grievant: Michael S. Bracken
 between)
)
UNITED STATES POSTAL SERVICE) Post Office: Hartford, Conn.
)
)
 and) Case No: NIN-1J-C 18287
NATIONAL ASSOCIATION OF)
LETTER CARRIERS)
)

Before Herbert L. Marx, Jr. , Arbitrator

Appearances:

For US Postal Service
Thomas A. Migge, Labor Relations Executive

For Union:
Robert A. Jinks, Local President

Date of Hearing: February 27, 1985

Place of Hearing: Hartford, Conn.

Award: The Postal Service violated Article 8 of the National Agreement and Item 14 of the Local Memorandum of Understanding when on March 29, 1983 local management utilized a Zone 19 regular full-time Carrier on overtime performing Carrier work in Zone 5 on Route 524 on his non-scheduled day. The remedy is that eight hours' straight time pay shall be divided among as many as eight Zone 5 Carriers who worked that day and were on the Overtime Desired List.

Date of Award: March 15, 1985

O P I N I O N

The United States Postal Service and the National Association of Letter Carriers agreed that the issue to be resolved by the Arbitrator is as follows:

Did the Postal Service violate Article 8 of the National Agreement and/or Item 14 of the Local Memorandum of Understanding when on March 29, 1983 local management utilized a Zone 19 regular full-time Carrier on overtime performing Carrier work in Zone 5 on Route 524 on his non-scheduled day? If so, what shall be the remedy?

Peter Sheridan, a full-time Regular Carrier assigned to Zone 19, was on the Overtime Desired List. He was called in to work on his scheduled day off on March 28, 1983. The Postal Service stated in the grievance procedure and during the arbitration hearing that he was called "in error" -- that is, according to the Postal Service, he was actually not required for work in Zone 19.

Since Sheridan reported for duty, the Postal Service assigned him to a vacant Carrier route in Zone 5, where he worked for eight hours. On that date, there were three Zone 5 Carriers on their scheduled day off who were on the Overtime Desired List. Two had been called in to work, and one was not available.

Item #14 of the Local Memorandum of Agreement states that "The Overtime Desired List for the Carrier craft will be by unit."

Item #18 states that a "section shall be defined as a unit", and there is no disagreement between the parties that "section" is synonymous with "zone" in the Hartford Post Office. Thus, there is no disagreement that separate Overtime Desired Lists are maintained for Zone 5 and Zone 19, and there are no interchangeable rights to overtime in these zones.

The Union argues that Sheridan was improperly assigned to overtime work in Zone 5. In the absence of an available Zone 5 Carrier on his scheduled day off, the Union says the work of the vacant route should have been divided among those on the Overtime Desired List in Zone 5 who were at work that day. The Union further contends that there was available work for Sheridan in Zone 19, if the Postal Service found it desirable to assign him work in view of the guarantee of eight hours' work under Article 8, Section 8. B., which reads as follows:

When a full-time regular employee is called in on the employee's non-scheduled day, the employee will be guaranteed eight hours work or pay in lieu thereof.

As a parallel situation, the Union refers to a recent grievance settlement concerning "improper overtime assignment" involving interchange of Carriers among two zones, in which all regular Carriers in the two zones were compensated with three hours' pay (Step 1 grievance, Hartford, January 25, 1985).

The Postal Service argues that Sheridan, having been called in to work for the day, was properly assigned a vacancy in Zone 5, since no Zone 5 employee on the Overtime Desired List on his scheduled day off was available for the work. The Postal Service further states that it properly determined that it did not have work for Sheridan on Zone 19. Further, according to the Postal Service, Article 3 retains for

the Postal Service the right to take such action in these circumstances.

The pertinent portion of Article 3 reads as follows:

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

* * *

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

Finally, the Postal Service contends that it was more efficient to have a single Carrier deliver the route on his regular tour than to split up the route among other Carriers to perform the work on an overtime basis.

There are three preliminary matters for comment prior to a determination of the issue. First, it is not for the Union to determine that Sheridan could have or might have been assigned to auxiliary or other work in Zone 19. It is for the Postal Service to determine what work shall and shall not be performed. The answer does not lie in the possibility of utilizing Sheridan's service in other work in Zone 19.

Second, the fact that Sheridan was indeed guaranteed eight hours' work or pay, having been called to work in error, does not mean that the Postal Service may assign him as it sees fit, if such assignment interferes with the agreed-upon rights of other employees under the National Agreement. Third, the circumstance (that is, a vacant route) is not a particularly unusual or unanticipated situation and certainly does not rise to the level of "emergency" described in Article 3. F.

There is no question that overtime at Hartford is to be divided by zones, at least to the degree that employees on the Overtime Desired List are available.

While the Postal Service may well be correct in stating that it was more "efficient" from a mail delivery viewpoint to assign Sheridan rather than use Zone 5 Carriers on a daily overtime basis, the provisions of Article 5 make no allowance for this. Article 5 states in pertinent part:

When needed, overtime work for regular full-time employees shall be scheduled . . . in accordance with the following:

• • •

C. . . .

2.a. . . . in the letter carrier craft, when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the /overtime desired/ list.

It follows that the Arbitrator must necessarily conclude that a Zone 19 Carrier, even if entitled to eight hours' work or pay, was improperly assigned to work on overtime in Zone 5 to the detriment of Carriers in Zone 5 on the Overtime Desired List on a daily basis.

As a remedy, the Union seeks one hour's overtime pay for each of eight Carriers in Zone 5 on the Overtime Desired List who were at work on March 28, 1983 (or a division of eight hours among a lesser number of Carriers, if there were not eight so available). The Postal Service argues that, if a remedy must be reached, the terms of Paragraph 1 of the "1975 National Agreement, Article VIII, Section 5. C. 2, National Association of Letter Carriers".

This 1975 "Agreement" reads in pertinent part as follows:

The United States Postal Service and the National Association of Letter Carriers, AFL-CIO, agree to the following principles to be used in the application of Article VIII, Section 5.C.2.

1. When recourse to the overtime desired list is necessary, if an administrative error is made by the Employer and an individual not on the list is used in lieu of an individual on the list, four hours pay at the applicable straight time rate will be paid to the grievant, provided eight hours work was involved.
2. Administrative errors, for the purposes of these guidelines, are characterized by good faith on both sides. An example would be a situation in which a supervisor, with some reason, "assumed" an individual was on the overtime desired list when in fact he was not.
3. When recourse to the overtime desired list is necessary, and for an impermissible reason the Employer utilizes a carrier not on the list in lieu of one on the list, eight hours at applicable straight time rates will be paid to the grievant, provided eight hours work was involved.
4. Impermissible reasons, for the purposes of these guidelines, are characterized by a fundamental misunderstanding of the National Agreement, by repeated improper behavior, or by outright abuse. An example would be passing over a carrier who had never served a particular route before on the ground that he was not qualified or that someone not on the list was better qualified; or passing over someone because he had filed grievances in the past.
5. In certain cases several grievants may share the award, and in other cases the parties may determine to award other than the grievant, for example to the carrier on the list with the fewest hours for the quarter. . . .

The Arbitrator expresses some puzzlement, as have other arbitrators in reviewing the same subject, as to the survival in 1985 of the 1975 "Agreement". At the arbitration hearing, however, neither party raised any question as to its present applicability.

The Arbitrator finds that this situation was not an administrative error as defined in Section 2. It is closer to an "impermissible reason" described in Section 4; that is, the deliberate use of a Carrier in work controlled by an entirely separate Overtime Desired List. On this basis, the remedy in Paragraph 3 is appropriate.

A W A R D

The Postal Service violated Article 8 of the National Agreement and Item 14 of the Local Memorandum of Understanding when on March 29, 1983 local management utilized a Zone 19 regular full-time Carrier on overtime performing Carrier work in Zone 5 on Route 524 on his non-scheduled day. The remedy is that eight hours' straight time pay shall be divided among as many as eight Zone 5 Carriers who worked that day and were on the Overtime Desired List.



HERBERT L. MARX, JR., Arbitrator

DATED:

STATE OF NEW YORK)
)ss:
COUNTY OF NEW YORK)

On this 15th day of March, 1985, before me personally came and appeared Herbert L. Marx, Jr., to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



ELEANOR C. PULEO
NOTARY PUBLIC, State of New York
No. 31-4730237
Qualified in New York County
Commission Expires March 30, 1986