

C#01695-

MATTER OF U. S. POSTAL
SERVICE
(League City, Texas)

and

NATIONAL ASSOCIATION OF
LETTER CARRIERS

REGIONAL ARBITRATION:

RESCHEDULING OF JURY
SERVICE

Aggrieved: Alice M. Hise
Case # S8N-3U-C 16418
League City, TX

Hearing held at the MPC in League City,
Texas, on November 16, 1981

For the Postal Service: Neal D. O'Brien, Regional Labor
Relations Executive

For the Union: Prissy Grace, Local Business
Agent

AWARD
December 30, 1981

The grievance of Alice M. Hise is sustained.
Declaration is made that Postmaster Percy Bergeron
violated Hise's rights under the National Agreement
when, without her knowledge, he caused a district judge
to postpone her scheduled jury service.

OPINION

The aggrieved is Alice M. Hise, a regular FT letter
carrier attached to the MPO in League City, Texas. In
late March or early April, 1980, she received summons
for jury duty in the Galveston County Courthouse begin-
ning on Monday, April 14. She immediately told her
supervisor. In the week previous to April 14 she chanced

to see Postmaster Percy Bergeron and mentioned that she would be off on jury duty. Bergeron responded, "Oh no you won't. I wrote a letter to the court to get you off." Later in the day Hise learned that her jury duty was postponed to Monday, May 19.

The postponement came about because of a letter written by Bergeron to the Judge of the 122d District Court. The letter was dated April 8 and recited that "3 of my city letter carriers will be off on ... April 14 on sick leave. I would appreciate your kind consideration if you would excuse Mrs. Alice M. Hise from jury duty as per the attached copy of Jury Summons." Bergeron explained that he had 8 city routes and 12 carriers and that if Hise were not excused, he would have to bring in an employee on overtime.

The letter was returned to Bergeron with a note dated April 10: "This juror has been re-scheduled for May 19, 1980 -- same time, same place." Hise actually served as juror for 4 days beginning May 19. She worked as scheduled during the week beginning April 14 and lost no pay because of her jury service. She was frank to testify that if Bergeron had asked her, she probably would have agreed to have her jury duty postponed.

Hise initiated a grievance complaining that Bergeron

changed her jury duty without her knowledge or authorization. Essentially, she claims that her contract and civil rights were interfered with. The grievance is now appealed to arbitration. Originally, Hise asked that Bergeron be required to apologize to her. The parties agree that this remedy cannot be granted because Bergeron has retired. Remaining for decision is Hise's request for a declaration that Postmaster Bergeron did wrong and that Management in the League City Post Office be instructed not to repeat the wrong.

The Postal Service agrees that Bergeron should have talked with Hise before requesting that her jury service be excused or postponed. But the Postal Service asserts that the grievance is not arbitrable because jury duty is not mentioned in the National Agreement and Bergeron did no act forbidden by the contract. On the merits it is pointed out that only the judge had authority to excuse or postpone Hise's jury service. Suggestion is made that Hise could have gone to the judge and requested reinstatement of the original date for jury service. It is pointed out that Hise suffered no economic loss and that she admits that whether she served on April 14 or May 19 was immaterial to her.

A joint exhibit was put in evidence at the hearing showing absences on April 14. Out of 12 carriers, 2 were

on SL, a 3d was on limited duty and unable to case or carry his/her route, a 4th was on regular day off with a doctor's appointment, and Hise would have been the 5th carrier off if she had responded to the jury summons.

Local Business Agent Prissy Grace and Chief Union Steward Barbara Gonzalez testified that it was common for carriers to be called in for overtime when 3-4 absences occurred. Postal clerks were sometimes called upon to carry the mail. Gonzalez said that Bergeron had occasionally asked employees to change doctors' appointments. Hise testified that she did not know she could go to the judge and have the postponement nullified. When she learned of the change, she did not have time to go to the judge. The absence situation was worse when she did jury service in May.

The stipulated issue between the parties is:
"Was there breach of the National Agreement in the Postmaster's request to reschedule Hise's jury service under the circumstances proved in this case?"

Ruling. Jury duty by postal employees is dealt with in Section 516 of the E&LR Manual under the heading of "Court Leave." Section 516.31 defines "court leave" as "the authorized absence (without loss of, or reduction in, pay, leave to which otherwise entitled, credit for time or service, or performance rating) of an employee

from work status for jury duty or for attending judicial proceedings in a non-official capacity as a witness on behalf of a state or local government." "Court leave is granted only to full time and part-time regular employees."

Section 516.32. "Court leave is granted only to eligible employees who, except for jury duty or service as a witness in a non-official capacity on behalf of a state or local government would be in a work status or on annual leave."

Section 516.331. According to Section 516.33, an employee may be required to report for postal duty if he/she is excused for the day or performs court service for only part of the day. But an employee serving a full day in court is not required to report for postal duties. Section 516.334 allows employees the option to work postal tours in addition to performance of court service or to have work schedules changed temporarily. When an option is exercised, the employee is allowed to retain court fees for the hours charged to court leave. Otherwise, "Employees who receive jury or witness fees for court service while on court leave remit such fees to the appropriate postal official." Section 516.341. In sum, the E&LR regulations assume that postal employees will be called for and should perform jury service, and provide that no loss in pay (or other entitlements) will be suffered.

The National Agreement says nothing of jury duty, but Article X, Section 2, states:

The leave regulations in Subchapter 510 of the Employee and Labor Relations Manual, insofar as such regulations establish wages, hours, and working conditions of employees covered by this Agreement shall remain in effect for the life of this Agreement.

Article XIX states:

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable and equitable. ...

It is clear that the E&LR regulations concerning court leave (jury duty) ^{are} a beneficial term of employment and are a part of the National Agreement. The regulations are in full effect and are not inconsistent with the National Agreement.

Article XV, Section 1, defines a grievance as "a dispute, difference or complaint between the parties related to wages, hours and conditions of employment." Sections 2 (Steps 3 and 4) and 4 provide for appeals of grievances to arbitration. Section 4(6) limits arbitrators' decisions "to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended or modified by an arbitrator." Section 4(9) states, "Any dispute as to arbitrability may be submitted to the arbitrator and be

determined by such arbitrator. The arbitrator's determination shall be final and binding."

The Postal Service's contention that Hise's grievance is not arbitrable must be rejected. Performance of jury duty without loss of pay is a part of the National Agreement. Hise was called for jury duty, and Bergeron interfered with the service she expected to perform. The meaning and significance of the E&LR regulations as a part of the National Agreement must be considered to determine whether Hise's contractual rights were violated.

The Postal Service cites a Texas statute (TRCS Art. 2120) and Texas cases as declaring that an impaneling judge has authority and discretion to excuse or postpone service by individual jurors. The authority and discretion of the district judge are conceded. But this does not resolve the question whether Bergeron did wrong. Bergeron caused the district judge to exercise his authority and discretion to postpone Hise's jury service. Absent Bergeron's request and representations, Hise would have performed her jury service as originally scheduled. I find that Hise had no reasonable opportunity, after she learned what Bergeron had done, to seek out the district judge and re-establish her original schedule for jury duty.

While jury summonses usually come at an inconvenient

time and many consider the duty a chore, one cannot overlook that jury service is a civil right. It is regarded as an assurance of ~~fairness~~ in judicial proceedings and as a protection of liberty, particularly in criminal cases. This aspect of the right adds to the importance of the contract right created in the E&LR regulations.

I hold that Postmaster Bergeron violated Hise's contractual right when he cause the impaneling judge to postpone Hise's jury duty without her knowledge. It is immaterial that Hise suffered no economic loss.

The Postal Service has the right to require an employee to cooperate in obtaining a postponement of jury duty in stringent circumstances. I have a doubt about the stringency here, since the same number of absences have been taken care of in the past with overtime, postal clerks or substitutes. Assuming that the circumstances were stringent, Bergeron should still have spoken to Hise and requested her cooperation. She may have had something to say about the circumstances or her own situation. The fact that Hise probably would have agreed to Bergeron's request does not take away from the fact that Bergeron interfered with her right and duty without her knowledge. This was a breach of the National Agreement.

At the hearing the Postal Service objected to consideration of the E&LR regulations because they were not brought up in the steps of the grievance procedure. The grievance papers show that Articles X and XIX of the

National Agreement were cited and relied upon. The parties all knew that jury service without loss of pay was involved and that the right was provided for in postal regulations (the E&LR Manual). The reference to Articles X and XIX could only mean that the Union was relying on the right to perform jury service without loss of pay as set forth in the postal regulations. The Union did not violate Article XV, Section 2, Step 2(d), in citing the pertinent E&LR sections, and there was no unfairness or surprise to the Postal Service.

There was no evidence that the present management of the League City Post Office is of a mind to do what Bergeron did. Thus an instruction to management is not called for. An award declaring that Bergeron's action was a violation of Hise's contractual rights is a sufficient remedy.

Lennart V. Larson, Arbitrator
Lennart V. Larson
Dallas, Texas