REGULAR ARBITRATION PANEL

28162 A+B

In the Matter of the Arbitration	*	
between:	*	Grievant: Class Action
United States Postal Service	*	Post Office: Brooklyn, NY
and	*	USPS Case No: A06N-4A-C 08317386
	*	A06N-4A-C 08371611
National Association of Letter Carriers, AFL,CIO	*	NALC Case No: 08NC726 08NC860

BEFORE: Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Robert E. Ocasio

For the Union: Vincent Calvanese

Place of Hearing: Postal Facility, Brooklyn, NY

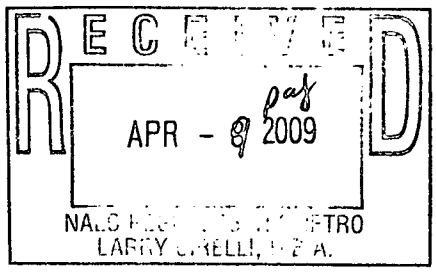
Date of Hearing: February 11, 2009

Date of Award: April 7, 2009

Relevant Contract Provision: Article 8

Contract Year: 2006

Type of Grievance: Contract



Award Summary:

On two successive days, the Employer mandated Letter Carriers, not on the Overtime Desired List, to work overtime. The Union alleged a violation of Article 8. The Agency argued the scheduling was necessary to meet their Window of Operations. The Employer argued their scheduling permissible as per Article 3 authority. The evidence proved a violation of the Parties Agreement and both grievances were sustained.

Lawrence Roberts

Lawrence Roberts, Panel Arbitrator

SUBMISSION:

This matter came to be Arbitrated pursuant to the terms of the Wage Agreement between United States Postal Service and the National Association of Letter Carriers Union, AFL-CIO, the Parties having failed to resolve this matter prior to the arbitral proceedings. The hearing in this cause was conducted on 11 February 2009 at the postal facility located in Brooklyn, NY, beginning at 9 AM. Testimony and evidence were received from both parties. A transcriber was not used. The Arbitrator made a record of the hearing by use of a tape recorder and personal notes. The record was closed on March 12 following the timely submission of post hearing briefs by the respective Advocates. The Arbitrator is assigned to the Regular Regional Arbitration Panel in accordance with the Wage Agreement.

OPINION

BACKGROUND AND FACTS:

The matter herein involves two separate class action grievances. Both were filed on behalf of Letter Carriers working at a Brooklyn, NY Postal facility, the GPO Station. The instances bringing rise to both disputes occurred on 11/12 August 2008. Since the facts and circumstances of both grievances are virtually identical, both cases were combined for arbitration.

The matter involves the scheduling of Letter Carriers, not on the Overtime Desired List, to work overtime on both days. In fact, the Parties stipulated this occurred. In addition, the Parties also stipulated the facility was working under a Window of Operation. However, there was a disagreement regarding the specific time relative to that Window of Operation.

The Union insisted those Letter Carriers on the overtime list could have been scheduled in such a way to comply with completing the mail delivery in a timely manner on both days. According to the Union, the Employer mandated Letter Carriers not on the Overtime Desired List to work off their assignments without first utilizing ODL Letter Carriers in conjunction with Part Time Flexibles and TE Carriers to the maximum extent possible. As a defense, the Employer argued that it is Management's right to operate within a Window of Operation and hence, there was no violation.

The above resulted in the filing of these two grievances. The basic facts were not in dispute. It was the scheduling procedure that brought rise to both disputes. The Parties were unable to resolve either of the disputes mentioned above.

It was found the matter was properly processed through the prior steps of the Parties Grievance-Arbitration Procedure of Article 15, without resolve. The Step B Team reached an impasse on each of the respective issues. Therefore, the matter is now before the undersigned for final determination.

At the hearing, the Parties were afforded a fair and full opportunity to present evidence, examine and cross examine

witnesses. The record was closed on March 12 following the timely submission of post hearing briefs by the respective Advocates.

JOINT EXHIBITS:

1. Agreement between the National Association of Letter Carriers Union, AFL-CIO and the US Postal Service.
2. Grievance Package (A06N-4A-C 08371611)
3. Grievance Package (A06N-4A-C 08317386)
4. JCAM

UNION'S POSITION:

It is the contention of the Union the distribution of hours on both of these days resulted in a violation of Article 8 of the Parties Agreement. Additionally, the Union cites a violation of the Joint Contract Administration Manual.

The Union asserts Management's defense in this matter is based on a self proclaimed Window of Operation. The Union is not challenging the Window of Operation. Instead, the Union claims the violation is based on how Management has scheduled Letter Carriers in order to comply with their operational goals. According to the Union, the Window of Operation must be for a valid operational reason.

While the Union recognizes the Management Rights provision of Article 3, it is their argument that this language is subject to other provisions of the Parties Agreement, namely Article 8. The Union argues the Employer deliberately created a situation which prevents the observance of Article 8 and the Window of Operation and the Employer cannot be excused from its contractual obligations in that regard.

In the view of the Union, Management did not exhibit good faith. According to the Union, the evidence in this case will show the Agency could have scheduled properly and complied with both their own operational goals as well as Article 8 of the Parties Agreement.

The Union requests that those ODL Letter Carriers that were denied the opportunity to work on those days be made whole. In addition, the Union also requests those Letter Carriers mandated to work on those days be compensated at an additional seventy five percent of the straight time rate.

COMPANY'S POSITION:

The Service believes the burden of proof in this matter rests with the Union. According to the Service, the Union must demonstrate that a violation of the National Agreement occurred and secondly, that the requested remedy is allowed by that same Agreement.

According to Management, there is no dispute regarding the facts of this case. Instead, the Agency insists the issue involves Management's right to operate within a Window of Operations. And the Service points out that such a Window of Operation has existed at this installation for more than a decade. It is the view of the Agency this Window provides the Postal customer with the best possible service and the timely delivery of mail.

Management states the establishment of a Window of Operations, at times, impacts Letter Carriers not on the Overtime Desired List. In fact, the Employer mentions that, in order to meet the Window of Operations, it has sometimes been necessary to use non-ODL Letter Carriers simultaneously with ODL Letter Carriers, PTF Carriers as well as TE's.

According to Management's argument, a violation of Article 8.5.G did not occur. It is the Agency's position that, on the days in question, there were no Employees "available" to avoid scheduling non-ODL Letter Carriers without scheduling past the Window of Operations. The Employer insists the hours worked by the non-ODL Letter Carriers could not have been covered by PTF's and TE's.

Management also mentions there should be no question of whether their right to establish and maintain a Window of Operation is valid.

The only question before the Arbitrator, according to the Agency, is whether the mail could have been delivered in timely fashion without forcing non-ODL Employees to work overtime simultaneously with ODL Carriers.

The Employer respectfully requests both grievances be denied in their entirety.

THE ISSUE:

1. Did Management violate the provisions of Article 8.5.G of the National Agreement when they required NON-OTDL Letter Carriers on 11/12/ August 2008 to work overtime? If so, what shall the remedy be?

PERTINENT CONTRACT PROVISIONS:

ARTICLE 3
MANAGEMENT RIGHTS

ARTICLE 8
HOURS OF WORK

SECTION 5. Overtime Assignments

DISCUSSION AND FINDINGS:

The issue in this matter was focused on a window of operation at the GPO Station in Brooklyn. Inherently, the Agency, at any facility is allowed contractually, via Article 3, to impose such a requirement. That specific issue has already been decided at the National level.

As a result, a plethora of cases have been decided regarding the various specifics regarding implementation. The undersigned, as a party to several of those disputes, has rendered several decisions on this specific matter.

And all of those decisions have required striking a balance between the meaning and intent of the Management Rights

provision of Article 3 versus the scheduling procedure outlined in Article 8. Other arbitrators have faced similar situations. But the common denominator faced by all is really determined by the unique set of facts and circumstances found to be relevant in each case.

In my considered opinion, the intent of the negotiators is to strike a balance between the Article 3 rights of Management when compared to the negotiated objectives of the Union as outlined in Article 8. For when considering the scale of justice, regarding the intent of the negotiators, both Articles must be weighed equally.

The inherent right of Management seems overwhelming, in that, the Service retains a unilateral power to control the means and methods of operation. Simply put, so long as any of their decisions are reasonable, the Postal Service is contractually permitted to control any decision. Yet, such controls are offset by the limiting provisions of any other negotiated Articles and/or Sections.

In this case, that proverbial scale becomes balanced by Article 8. And with respect to that Article, the Joint Contract Administration Manual states **"The parties have agreed to certain additional restrictions to overtime work, while agreeing to**

continue the use of overtime desired lists to protect the interests of those employees who do not want to work overtime and the interests of those who seek to work overtime." And this becomes the crux of the issue here today.

With that outline, the burden of the Union is to prove that certain bargaining unit Employees were mandated to work, without option. In this case, their burden was easily satisfied. In fact, the Parties stipulated that certain bargaining unit Employees were scheduled to work, on the dates in question. Those Letter Carriers were not a part of the overtime desired list.

The burden then shifts to the Employer to prove that operational circumstances required such scheduling to meet operational goals. Specifically, that proof required a showing that such scheduling was necessary to meet a delivery window of operation.

Initially, the record unveiled a conflict between the Parties regarding the basic definition of the Window of Operation in Brooklyn. In February 2007, the Vice President of the New York Metro Area defined that Window to be 5:00 pm. That mandate required all Letter Carriers to return from the street by that time each day. The District Managers were advised this

to be the established window of operation to **"provide the best possible service and timely delivery to our customers each day."** That statement goes on, directing District Managers to **"coordinate planning and scheduling to support this objective and ensure consistent application in all delivery units"** and ordering that any use of overtime must be administered in accordance with Article 8 of the National Agreement.

In my view, such a mandate is reasonable and in accordance with the guidelines of the Parties Agreement. However, the burden falls upon local Management to prove that steps were taken to actually implement such a directive.

Initially, the Parties were in disagreement as to the actual close of that Window of Operation. However, this particular matter had already been settled by **Arbitrator Joseph A. Harris** in **Case Number A01N-4A-C 07132074** on **15 November 2007:**

> **"Chiossone's position is that a "delivery window" is not the same as a "window of operation." Thus he wanted to "maintain both issues." In reality, a "delivery window" is identical to a "window of operations." However, he testified that his meaning of a "Window of Operations" is that carriers will clock out by the WOO deadline. This meaning is in clear violation of Article 8. This, scheduling policies he put into place to ensure that carriers clocked out by 5:30 PM - including bringing in, on their non-scheduled days, four full-time regular letter carriers who were not on the ODL (without maximizing available ODLs - were enacted in pursuit to a contractually invalid personnel policy."**

Both case files herein contain the following 10 April 2007 letter to the President of the Brooklyn NALC from the above mentioned Postmaster:

> "The Windows of Operation in Brooklyn has been established at 5:30 PM by several regional arbitrators, most recently Arbitrator Deinhardt. My letter referred to a delivery window of 5:00 PM. It is our service goal to have all carriers off the street by 5:00 PM. The Window of Operation that has been established at 5:30 PM is in compliance with Article 8 as per the recent arbitrations in our area over the last several years. Every effort is being made to maintain both operational issues."

Additionally, Arbitrator Harry R. Gudenberg, in Case Number A01N-4A-C 07132082, dated 2 November 2007 ruled that:

> "It was not disputed that there has been a WOO in Brooklyn for many years with a 5:30 PM off the street goal.
>
> In February 2007 local management issued a directive that all carriers should be off the street by 5:00 PM. Management said this change did not change the WOO and work was available for the carriers when they returned and remained on the clock until 5:30 PM."

A Supervisor testified that many operational changes were made to support the 5:00 PM window. According to his testimony, all the processing procedures were "bumped up" by a half an hour. The mail processing procedure was revised to ensure completion by 6:00 AM. The motor vehicle schedules were adjusted to meet that processing bump of a half hour time

change. He went on to state that reports were reviewed every day to ensure compliance.

Yet, a TACS report, submitted by the Employer, identified over 350 Brooklyn routes, the preceding month, which did not meet the 5:00 benchmark.

Additionally, the Employer's brief emphasized the following testimony made by another Management witness. **"Un-rebutted testimony by Baez stated that the earlier trucks brings parcels for the station and with the limited clerk and Mail Handler staffing his station enlists, there simply is not enough mail sorted earlier to warrant bringing carriers earlier."**

This is paramount. By the Employer's own admission, delivery time was actually hampered by limited Clerk and Mail Handler staffing. Such evidence clearly erodes any argument made by the Agency in this case.

The Parties stipulated the Overtime Desired List was not maximized on either of the two days in question. Initially, that statement, in and of itself, satisfies the Union's initial burden of proof in this matter. The burden then shifts to the Employer to provide sound reasoning for the scheduling mandate.

Furthermore, I don't believe the crux of this issue becomes the precise time of the Window of Operation, as argued by the Employer. Instead, it becomes one of whether or not the Employer maximized all of their other operational opportunities to reach the goal of a timely delivery of mail.

By citing a Window of Operation, Management first assumes the burden of certain specific prerequisites. The Employer must show that certain managerial actions were implemented that would allow the mail to be delivered by a specific time of day. And when Management, by their own admission, admits that certain areas of the process were under-staffed, Article 3 cannot be overpowering so as to offset the negotiated provisions of Article 8.

By arguing a Window of Operation defense, the Employer assumes a certain burden of proof. It becomes Management's burden to prove that the necessary resources were provided to implement the Window of Operation. As mentioned above, an Employer witness mentioned that certain processes were moved back a half hour to allow such implementation.

However, a Customer Service Supervisor provided contradictory testimony. He stated that limited staffing prevented Management from allowing Letter Carriers to begin

their day at an earlier time. It also seemed suspect to me that the last DPS didn't arrive until 8:30 AM. Management went through all the effort to bump up other various processing times by a half hour, yet still delayed the entire process waiting for a final truck of DPS mail.

It was Management's burden of proof to show operational changes were made that would allow compliance with their own Window of Operation on these days. And by their own admission, other areas of staffing fell short, thus preventing meeting their own proclaimed Window of Operation. The Agency's defense in this matter was certainly not supported by the evidence. Instead, the Union proved that a violation of Article 8.5 had occurred on the two days in question.

Therefore, the instant grievance is sustained and the requested remedy granted.

AWARD

The instant grievance is sustained and the requested remedy is granted.

Dated: April 7, 2009
Fayette County PA