

IN THE MATTER OF THE  
ARBITRATION

United States Postal Service  
Houston, Texas

Employer

-and-

National Association Letter  
Carriers,

Union

OPINION AND AWARD

CH 03542

Re: SIN-3U-C 1824  
H. Salinas  
Houston, Texas

RECEIVED

MAY 16 1983

Before:

Robert W. Foster, Arbitrator

JOE Z. ROMERO  
NATIONAL BUSINESS AGENT  
N. A. L. C.  
DALLAS REGION # 10

APPEARANCES

For the Employer:

Holloway Adair, Jr., Labor Relations Representative

For the Union:

Priscilla Grace, Local Business Agent

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PRELIMINARY STATEMENT

The undersigned was appointed to arbitrate a dispute between the United States Postal Service (Employer) and the National Association of Letter Carriers (Union) arising out of a grievance pursued by the Union on behalf of Carrier H. Salinas (Grievant) to this arbitration proceeding according to the National Agreement between the parties. A hearing was held on February 11, 1983 in Houston, Texas, attended by the Grievant and the above-named representatives of the parties who were accorded full and equal opportunity to present evidence and arguments. Both parties elected to file post-

hearing briefs which were received on March 22, 1983 thereby closing the record and bringing this matter before the arbitrator to render a final and binding decision according to the terms of the National Agreement between the parties.

ISSUE

Whether the Employer violated the National Agreement by requiring Grievant to work his non-schedule day on October 10, 1981? If so, what is the appropriate remedy?

PERTINENT PROVISIONS

Article 3

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

- A. To direct employees of the Employer in the performance of official duties;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted.

Article 11, Section 6

- A. The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Wednesday preceding the service week in which the holiday falls.
- B. As many full-time and part-time regular schedule employees as can be spared will be excused from duty on a holiday or day designated as their holiday. Such employees will not be required to work on a holiday or day designated as their holiday unless all casuals and part time flexibles are utilized to the maximum extent possible, even if the payment of overtime is required, and unless all full time and part time regulars with the needed skills who wish to work on the holiday have been afforded an opportunity to do so.

Article 15, Section 4(6)

All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited 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.

Article 19

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, 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.

Article 30

B. 13. The method of selecting employees to work on a holiday.

Employee and Labor Relations Manual

519 Administrative Leave

519.1. Definition. Administrative leave is absence from leave authorized by appropriate postal officials, without charge to annual or sick leave and without loss of pay.

519.2. Events and Procedures for Granting Administrative Leave.

- .21 Acts of God
- .22 Civil Disorders
- .23 State and Local Civil Defense Programs
- .24 Voting or Registering to Vote
- .25 Blood Donations
- .26 Funeral Services
- .27 Postmaster Organizations

Houston Local Memoranda

Item 13: The Method of Selecting Employees to Work on a Holiday.

Holidays

In scheduling employees to perform on their holiday or day designated as their holiday, the following sequences shall be followed:

- A. PTF and Casuals shall be utilized to the maximum extent possible.
- B. Volunteers whose holiday or designated holiday is the day in question shall be scheduled in by seniority.
- C. Volunteers whose non-scheduled work day is the day in question shall be scheduled by seniority.
- D. Non-volunteers whose non-scheduled work day is the day in question shall be scheduled in by juniority.

STATEMENT OF THE CASE

Grievant, who has been a letter carrier since 1966 and was on the overtime desired list at the time that the incident given rise to this grievance occurred, was told by the acting manager of the station on Thursday afternoon, October 8, 1981 that he was required to work on his non-scheduled day, Saturday, October 10. Since the following Monday was the Columbus Day holiday, and Grievant was not scheduled to work on the previous Friday, he had planned a four day trip with his family which was frustrated by being force to work on October 10.

According to Grievant's testimony, when he was told of the October 10 assignment by the acting manager, who did appear to testify at the arbitration hearing, Grievant complained on the grounds that he didn't have to work since he was non-scheduled

and that management should first ask for volunteers according to the Local agreement. Grievant testified that the acting manager responded with the statement that since Grievant was on the over-time desired list it was not necessary to seek volunteers or ask carriers junior to Grievant to work. Grievant recalled that at the time he was given the disputed assignment he was "almost sure" that junior carrier Lopez was present at the station, as well as another carrier junior to Grievant, who was not required to work on October 10.

The only management witness who testified at the hearing stated that he recalled that for some "vague" reason of needs that didn't occur until the end of day on Thursday, October 8, the previously posted schedule had to be changed to draw upon carriers from the non-schedule list to work on October 10. This witness testified that he couldn't recall whether carrier Lopez was still at the station when Grievant was given the assignment, and that he didn't remember whether he worked on October 8.

#### SUMMARIZED POSITION OF THE PARTIES

##### The Union

The Union claims that Item 13 of the Local Memorandum outlines the method of selecting employees to work on a holiday which management breached when it required Grievant to work because he was on the over-time desired list, rather than the available, junior carrier Lopez.

The Union cites the award of arbitrator Caraway arising out of this same disputed assignment in which management's position that

the over-time desired list was the proper method of scheduling employees on a holiday was rejected. The Union charges management with a change in practice and now arguing that carrier Lopez was not available to be schedule into work as the contract requires.

Because of the harm and inconvenience caused Grievant by being deprived of the long holiday weekend, the Union request that the arbitrator sustain the Grievance and that Grievant be given 8-hour administrative leave to use at his discretion due to the management error in schedule.

#### The Employer

The Employer contends that management followed the Local Memorandum in scheduling the Grievant to work on October 10, 1981, since there was a need for additional employees after the holiday schedule was posted and management so advised the Grievant and all other available non-scheduled, non-volunteer employee.

Management distinguishes the Caraway arbitration award from the instant situation on the grounds that there was no mention of recourse to the over-time desired list in this case where the holiday schedule failed to provide sufficient employees, leaving the only recourse of the holiday scheduling procedures as negotiated by the party. Thus, postal management's position is that all non-scheduled, non-volunteer employees that they were able to contact on the day in question were needed so that the juniority issue does not lend itself to the case at bar.

Additionally, the Employer reminds the arbitrator that he is without authority to grant the inappropriate remedy requested

by the Union since Article XIX outlines the provision for granting administrative leave. .

#### DISCUSSION AND OPINION

This grievance picks up where the Caraway award leaves off. It is clear from the findings in that case that the management misapplied the local memorandum when it utilized the over-time desired list to cover a holiday or day designated as a holiday when it failed to schedule by juniority among non-volunteers. In upholding the Union's position in that case that junior carrier Lopez should have been forced to work on the day in question, the clear implication is that Lopez was available at the time when senior Grievant in this case was forced to work, a fact that the Employer did not previously contest. Indeed, the fact that management thought at the time that resort to the over-time desired list was the appropriate method of procuring its manning requirements for October 10, without regard to seniority, explains why no effort was made to make the assignment by juniority as it was required to do. The different tact now taken by management that carrier Lopez was not available for the assignment is not only inconsistent with its previous position, but is contrary to the Union's evidence which was certainly not rebutted by the vague testimony of management's only witness who finally could not even recall whether he worked on the day that the assignment was made.

Having concluded that management violated the Local memorandum in forcing the non-volunteer, senior Grievant to work his non-scheduled work day, rather than scheduling by juniority, the more

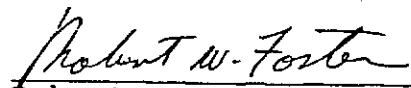
difficult question is the appropriate remedy. Management's advocate properly reminds the arbitrator that its jurisdiction is limited to an application of the National Agreement to the facts of record. At the same time, when an employer has been wronged by an mis-application of the agreement, aggravated in this case is by the last minute frustration of Grievant's four-day holiday plan, it becomes the arbitrator's duty to fashion the most appropriate remedy needed to make the Grievant whole. The Union has proposed a practical method of putting the clock back and placing the Grievant in as close a position as he would have been had his contract rights not been violated. Accordingly, the award will be to grant Grievant 8-hour administrative leave to use at his discretion within the next twelve months in order to provide the opportunity for him to enjoy a long weekend holiday as originally planned.

AWARD

After careful consideration of the evidence and arguments of the parties, and based on the reasons set out above, the award is that the Employer violated the National Agreement by requiring Grievant to work his non-scheduled day on October 10, 1981.

The remedy for this breach is to make Grievant whole by offering him 8-hour administrative leave to use at his discretion during the next twelve months.

Accordingly, the grievance is sustained.

  
Robert W. Foster, Arbitrator

May 12, 1983

Columbia, South Carolina