

## REGULAR ARBITRATION

In the Matter of the Arbitration	)	Grievant: Class Action
between	)	Post Office: NHV-Allington, CT
United States Postal Service	)	Case No. B11N-4B-C 14063706
and	)	DRT No. 14-297681
National Association of Letter Carriers, AFL-CIO	)	Union No. 1900714ALL
	)	

BEFORE: James R. Collins, Arbitrator

## APPEARANCES:

For the U. S. Postal Service: Scott Duell, Labor Relations Specialist

For the Union: Charles Carroll, Arbitration Advocate

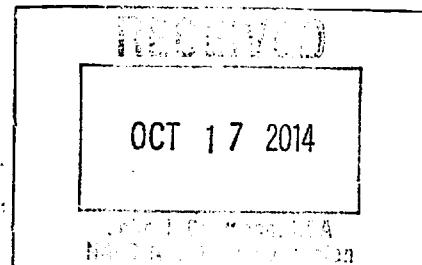
Place of Hearing: Wallingford, Connecticut

Date of Hearing: September 17, 2014

AWARD: The grievance is granted.

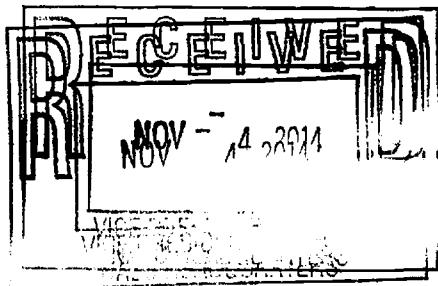
Date of Award: October 13, 2014

PANEL: NALC Region 14/USPS Northeast Area Regular Panel

Award Summary

The grievance is granted. Management violated Article 8.5.C.2 by failing to make the overtime desired list equitable, as Step B Decisions show Management has failed to do for years.

James R. Collins



**Issue<sup>1</sup>**

Did management violate the National Agreement, Article 8.5.C.2, 15.3 and 41 of the National Agreement when during the fourth quarter of 2013 they failed to make the overtime desired list equitable and if so, what is the proper remedy?

**Summary of the Evidence**

The evidence showed that there were nine Letter Carriers at the NH-Allington Post Office on the overtime desired (OTDL) at the end of the fourth quarter of 2013; that the number of OTDL hours worked by the nine carriers during the quarter ranged from 3.50 hours (Joe Mahon) to 127.25 hours (Tim Wyman); that the total number of OTDL hours worked was 787; and, that the average per carrier was 87.44 hours. The Union contends that the three carriers with the fewest OTDL hours were not made equitable by the end of the quarter: Joe Mahon, Jim McGee (32.5 hours) and Don Myers (57 hours). Based on 90% of the average per OTDL carrier, the Union determined that McGee, Mahon and Myers were, respectively, 46.25, 75.25 and 21.75 hours short of the average. The Union also offered evidence that the three could have worked, respectively, 24.5, 24.5, and 21.5 hours of OTDL overtime during the fourth quarter. The evidence showed that carriers Mahon and McGee were both stewards and that Carrier Mahon worked approximately 346 hours of union time during the quarter. The record does not reveal how many hours of union time Carrier McGee worked during the fourth quarter. Carrier Myers was out of work for six full weeks during the fourth quarter due to injury.

There have been many Step B Decisions, going back to 2008, resolving Union allegations of inequitable quarterly distributions of overtime to OTDL carriers in the NH-Allington Post Office. In the 11/12/13 Step B Decision resolving a grievance alleging failure to equitably distribute overtime during the third quarter of 2013, the grievant, Jim McGee, received 26.25 hours of pay at time-and-one-half, after the Union had requested 35.50 hours to get him up to 90% of the average hours of the carriers on the OTDL. The average was 91.258 hours and was calculated without including Carrier Mahon, due to his union activity. In the quarter, Carrier McGee had worked 167.12 hours at the overtime rate and 16.26 at the penalty rate and spent 63.06 hours on union time, as a steward.

In the 7/29/13 Step B Decision resolving a grievance alleging failure to equitably distribute overtime during the second quarter of 2013, four grievants received hours ranging from 1.50 to 13.25 hours, for a total of 20.75, at time-and-one-half. In the "Explanation" section, the Step B Team stated:

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<sup>1</sup> At hearing, the parties stipulated that the issue would be as stated in the Step B Decision.

The case file includes as undisputed facts a summary of hours worked and a list of eighteen (18) OTDL carriers. The OTDL carriers worked 1586.75 hours. The Union divided the total hours worked by the number of carriers remaining on the list to reach an average of 99.17 hours. OTDL carriers Mahon and Cesanek were not counted for equitability due to Union business and extended Sick Leave.

At the close of the 7/29/13 Step B Decision, the Step B Team stated:

The case file includes numerous DRT and local grievance resolves showing overtime inequitably has been an ongoing violation in the Allington Post since the third quarter of 2008. Management has agreed locally to cease and desist and adhere to the mandates of the National Agreement in the future. Due to the continuing violation of the National Agreement, the Step B Team has determined the appropriate remedy is to pay the affected OTDL carriers the monetary award listed above.

### **Positions of the Parties**

#### Union

The Union contends that three carriers—Joe Mahon, Jim McGee and Don Myers—were not made equitable by the end of the fourth quarter of 2013; that Management made no attempt to equitably distribute the overtime during December, the last month of the quarter, despite a large discrepancy in the assignment of overtime during the first two months of the quarter; and, that this violated Article 8.5.C.2 of the Agreement. The Union requests, as a remedy, that Management pay Joe Mahon for 24.5 hours; Jim McGee for 24.5 hours; and, Don Myers for 21.5 hours.

#### Management

Management argues that the Union offered no evidence in support of their allegations; that there is no documentation establishing when the three carriers at issue worked relative to what hours they were offered; that opportunity is inextricable from availability; and, that the two stewards, Mahon and McGee, were often unavailable due to Union business.

### **Discussion**

Article 8.5, Overtime Assignments, Section C.2.b of the National Agreement provides, in full: "During the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the "Overtime Desired" list." Unfortunately, for reasons that are not clear from the record, the NHV-Allington PO has failed to meet this requirement nearly every quarter since 2008. As a result, there is a long line of Step B Decisions resolving the issue at the NHV-Allington at Step B of the grievance procedure. Article 15, Grievance-Arbitration Procedure, of the National Agreement compels me to be guided by these Step B decisions in

deciding the case before me. At page 15-8, the JCAM states, in part, about Article 15.2 Step B (c), as follows:

A Step B decision establishes precedent only in the installation from which the grievance arose. For this purpose, precedent means that the decision is relied upon in dealing with subsequent similar cases to avoid the repetition of disputes on similar issues that have been previously decided in that installation.

Following a careful review of the full record, including the Step B Decisions, I conclude that Management violated Article 8.5.C.2 of the National Agreement by failing to make the overtime desired list equitable during the fourth quarter of 2013. I am not persuaded by Management's argument that the Union's evidence was inadequate to prove its case. The evidence presented by the Union was similar to that presented in many of the prior cases where a violation was found, and I find it sufficient to establish that Management did not make every effort to distribute the OTDL opportunities equitably here.

Accordingly, I conclude that Management violated the Article 8.5.C.2 of the National Agreement when during the fourth quarter of 2013 they failed to make the overtime desired list equitable.

Turning next to the appropriate remedy, I note that two of the three grievants are Union stewards and that, in past Step B Decisions, stewards on the OTDL have frequently been excluded from the determination of who is entitled to overtime pay, and how much, when a violation has been found, because of the substantial time that they had spent on union activities during the quarter at issue. In the present case, I find that Steward Mahon is not entitled to any overtime payment, for that reason, as he worked 346 hours of union time during the fourth quarter of 2013. This is a significant number of hours, and Steward Mahon had been excluded from overtime payment for this reason on many occasions in the recent past. Moreover, there is nothing in the record indicating that Steward Mahon's circumstances were different this quarter than in the past.

With respect to Steward McGee, however, I find that he is entitled to overtime payment here, since he had received overtime payment in the 11/12/13 Step B Decision for the third quarter of 2013, despite having worked sixty hours of union time during the quarter; and, since there is nothing in the record indicating how many hours he worked on union time during the quarter.

Therefore, I conclude that only Carrier McGee and Carrier Myers are entitled to overtime payment due to Management's violations. As a remedy, Carrier McGee and Carrier Myers will each receive 7.5 hours of pay at the rate of time-and-one-half; and, Management shall cease and desist from violating Article 8.5.C.2 of the National Agreement. I have not granted the two

grievants the full number of hours requested by the Union, because most of the prior Step B Decisions have not done so and because of the limited availability of both carriers during the fourth quarter of 2013.

**AWARD**

The grievance is granted. Carrier Jim McGee and Carrier Don Myers will each receive 7.5 hours of pay at the rate of time-and-one-half; and, Management shall cease and desist from violating Article 8.5.C.2 of the National Agreement.



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James R. Collins