C#06060

ARBITRATION AWARD

May 12, 1986

UNITED STATES POSTAL SERVICE

-and-

NATIONAL ASSOCIATION OF LETTER CARRIERS

Case Nos.
H4N-NA-C-21 (3rd issue)
H4C-NA-C-27

-and-

AMERICAN POSTAL WORKERS UNION

Subject: Arbitrability - Proper Scope of 60-Hour Work Limitation - Pay Consequences of Application of 60-Hour Limitation where Employee Sent Home Before End of Tour on Regularly Scheduled Day

Statement of the Issues: Whether the Unions' claims in this case are arbitrable? Whether, assuming the dispute is arbitrable, the 60-hour limitation is an absolute bar to an employee working beyond 60 hours in a service week? Whether, assuming such a bar, an employee sent home in the middle of his tour on a regularly scheduled day is entitled to be paid for the remainder of his scheduled day?

Contract Provisions Involved: Article 7, Section 1; Article 8, Sections 1, 2, 4, 5 and 8; Article 15, Section 4; Article 19; and the Article 8 Memorandum of the July 21, 1984 National Agreement.

Appearances: For the Postal Service, J. K. Hellquist, General Manager, Labor Relations Division, Central Region; for NALC, Keith E. Secular, Attorney (Cohen Weiss & Simon); for APWU, Darryl J. Anderson, Attorney (O'Donnell Schwartz & Anderson).

Statement of the Award: The grievances are arbitrable and are granted to the extent set forth in the foregoing opinion. Article 8, Section 5G2 does establish an absolute bar against employees working more than 60 hours in a service week. The question raised as to the pay consequences of this bar is remanded to the parties for further consideration. Should they be unable to resolve the matter within a reasonable period, any of them may return the problem to national level arbitration for a final ruling.

BACKGROUND

These grievances concern the meaning of the 60-hour work limitation in Article 8, Section 5G2. The Unions insist this limitation is an absolute ceiling on the number of hours an employee may work in a service week and must be honored in all cases regardless of the pay consequences. The Postal Service disagrees, asserting that an employee may work more than 60 hours when necessary to complete his tour on a regularly scheduled day at straight time rates. It also alleges that the Unions' claim is not arbitrable. Both the arbitrability question and the merits (assuming the dispute is arbitrable) are before me for decision.

To better understand the issue in these grievances, it would be helpful to consider a hypothetical example. Suppose "X" is a full-time regular on the overtime desired list (ODL). Suppose further that his regular schedule for a given week was Monday through Friday on day tour and that he worked the extra hours indicated below:

	S	S	M	T	W	Th	F
Hours Scheduled			8	8	8	8	8
Extra Hours		8	4	4	4	4	
Actual (Total) Hours		8	12	12	12	12	8

His eight hours' work on Sunday, a non-scheduled day, was paid for at the overtime rate (time and one-half) pursuant to Article 8, Section 4B. His extra four hours' work on Monday through Thursday, scheduled days, was paid for as follows: two hours at the overtime rate (time and one-half) pursuant to Article 8, Section 4B, and two hours at the penalty overtime rate (double time) pursuant to Article 8, Section 4C.

The Unions emphasize that "X", as of the end of his Thursday tour, had worked a total of 56 hours. They argue that the 60-hour limitation in Article 8, Section 5G2 prohibited Management from working him more than four hours on Friday, his final scheduled day. They believe that Management was obligated to send him home after four hours on Friday and that he would nevertheless have been entitled to eight hours' pay for the day under the terms of Article 8 and the Employee & Labor-Relations Manual (ELM).

The Postal Service contends, at the outset, that the grievances are not arbitrable because "the result sought [by

the Unions] would require changes to existing contract language." Moreover, it has a quite different view of Article 8, Section 5G2. It says the 60-hour limitation is not an absolute bar to an employee working more than 60 hours in a service week. It regards this limitation as an overtime administration rule, as a means of determining the point at which Management must cease using someone from the ODL and assign available overtime instead to a non-ODL employee. It stresses that no overtime is involved in the situation before the arbitrator, that "X" simply completed his final scheduled day at straight time rates. It maintains that the 60-hour limitation cannot reasonably be read, under the circumstances of this case, to prohibit "X" from finishing this regularly scheduled day even though he thereby worked 64 hours in the week. Any other conclusion, it notes, would deny "X" his right to five service days, each consisting of eight hours, in his service week. It states also that to grant these grievances would be to provide "X" with eight hours' pay on Friday for four hours' work, a result which would improperly add a new guarantee provision to the terms of Article 8, Section 8.

The relevant terms of the 1984 National Agreement state:

Article 7 - Employee Classifications

"Section 1. Definition and Use

A. Regular Work Force. The regular work force shall be comprised of two categories of employees which are as follows:

1. Full-Time. Employees in this category ...shall be assigned to regular schedules consisting of five (5) eight (8) hour days in a service week..." (Emphasis added)

Article 8 - Hours of Work

"Section 1. Work Week

The work week for full-time regulars shall be forty (40) hours per week, eight (8) hours per day within ten (10) consecutive hours, provided, however, that in all offices with more than 100 full-time employees in the bargaining units the normal work

week for full-time regular employees will be forty hours per week, eight hours per day within nine (9) consecutive hours...

"Section 2. Work Schedules

C. The employee's normal work week is five (5) service days, each consisting of eight (8) hours, within ten (10) consecutive hours, except as provided in Section 1 of this Article...

"Section 5. Overtime Assignments

G. Effective January 19, 1985, full-time employees not on the 'Overtime Desired' list may be required to work overtime only if all available employees on the 'Overtime Desired' list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the 'Overtime Desired' list:

1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay...); and

2. excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week ...

"Section 8. Guarantees

A. An employee called in outside the employee's regular work schedule shall be guaranteed a minimum of four (4) consecutive hours of work or pay in lieu thereof where less than four (4) hours of work is available...

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

C. The Employer will guarantee all employees at least four (4) hours work or pay on any day they are requested or scheduled to work in a

post office or facility with 200 or more man years of employment per year..." (Emphasis added)

Article 8 - Memorandum

"Recognizing that excessive use of overtime is inconsistent with the best interests of postal employees and the Postal Service, it is the intent of the parties in adopting changes to Article 8 to limit overtime, to avoid excessive mandatory overtime, and to protect the interests of employees who do not wish to work overtime, while recognizing that bona fide operational requirements do exist that necessitate the use of overtime from time to time. The parties have agreed to certain additional restrictions on 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 limited overtime. The parties agree this memorandum does not give rise to any contractual commitment beyond the provisions of Article 8, but is intended to set forth the underlying principles which brought the parties to agreement..." (Emphasis added)

DISCUSSION AND FINDINGS

The Postal Service claims these grievances are not arbitrable because to grant what they seek "...would require changes to existing contract language." It notes the Unions' insistence that employees be sent home at the end of 60 hours' work even though they are then in the midst of a regularly scheduled day at straight time rates. It contends that cutting short a regularly scheduled day would improperly change the definitions of both a work week under Article 8, Sections 1 and 2C and a full-time employee under Article 7, Section 1. It states, referring to the hypothetical example, that the Unions would permit "X" to work just four hours on Friday and would thus deny him part of his regularly scheduled five days, "each consisting of eight (8) hours", in a service week. In its opinion, such a result conflicts with the language of the National Agreement.

This argument is not persuasive. To begin with, Article 8, Sections 1 and 2C refer to a "normal work week..." The plain implication is that there may occasionally be an abnormal

work week, something other than five days "each consisting of eight (8) hours." Assume for the moment that Article 8, Section 5G2 is an absolute bar to employees working beyond 60 hours in a week. The application of this prohibition might well result in an employee working less than eight hours on a regularly scheduled day. In the hypothetical, for instance, the prohibition would force Management to send "X" home after four hours on Friday, his last regularly scheduled day. Such a result would not change the definition of a "normal work week." It would merely demonstrate that a "normal work week" is not a constant, that deviations are possible. Other provisions of the National Agreement may impact an employee's schedule and cause him to work less than eight hours on a regularly scheduled day. Hence, the Unions could prevail here without effecting any change in the language of Article 8, Sections 1 and 2C.

The same type of analysis can be made with respect to Article 7, Section 1. That provision defines full-time employees as those who are "...assigned to regular schedules consisting of five (5) eight (8) hour days in a service week." Being "assigned to" such a regular schedule is one thing; actually working this schedule is quite another. The fact that a full-time employee works less than eight hours on one of his regularly scheduled days does not change his status and does not alter the Article 7, Section 1 definition. He remains a full-time employee because he was "assigned to" the appropriate schedule for full-time employees. Hence, the Unions could prevail here without effecting any change in the language of Article 7, Section 1.

These observations reveal that the Postal Service argument cannot be evaluated without first interpreting the "normal work week" and "full-time employee..." definitions. Its arbitrability claim is based on a faulty view of these definitions. Neither Article 7, Section 1 nor Article 8, Sections 1 and 2C stand in the way of the Unions' construction of Article 8, Section 5G2. The crucial issue here is the breadth of the 60-hour limitation in Section 5G2. Is that limitation applicable in any and all circumstances as the Unions believe? Or is that limitation inapplicable to work on a regularly scheduled day at straight time rates as the Postal Service believes? This dispute raises "interpretive issues" under Articles 7 and 8 and is therefore arbitrable. A decision in the Unions' favor would not require the arbitrator to go beyond the language of the National Agreement. Such a decision would be "limited to the terms and provisions of..." Articles 7 and 8 as cited above. What the Postal Service seems

to be saying is that the Unions' view of the 60-hour limitation would be inconsistent with the "normal work week" and "full-time employee..." definitions. But this argument is not supported by a fair reading of these definitions.*

Turning to the merits of the dispute, the parties disagree on the scope of Article 8, Section 5G2. This provision says ODL employees "...excluding December, shall be limited to...no more than sixty (60) hours of work in a service week." These words clearly establish a ceiling on the number of hours an ODL employee may work during a week. They flatly prohibit anyone working more than 60 hours. That was, initially at least, the Postal Service's position as well. In the April 5, 1985 letter which prompted these grievances, the Postal Service stated that "12 hours per day and 60 hours in a service week are to be considered upper limits beyond which full-time regular employees are not to be worked." That is precisely the view the Unions take in this arbitration.

However, the Postal Service has qualified its position. It regards Section 5G as an overtime rule, as a means of determining the point at which Management must cease using someone from the ODL and assign available overtime instead to a non-ODL employee. It maintains that when an ODL employee is working a regularly scheduled day at straight time, he should be allowed to complete his day even though it takes him beyond the 60-hour limitation. It believes such an arrangement is permissible because the disputed work (i.e., the hours beyond 60) involved straight time hours and because Section 5G was largely concerned with overtime hours.

This argument is undermined by a variety of considerations. First, Section 5G1 and 2 speak only of "hours" or "hours of work." Nowhere in this portion of 5G is any distinction drawn between straight time hours and overtime hours. The 60-hour ceiling was obviously intended to count all hours worked, whether straight time or overtime. The Postal Service does not really challenge these observations. Rather, it says the 60-hour limitation should only come into play

* The Unions state too that an employee sent home before the end of a regularly scheduled day on account of the 60-hour limitation is entitled to eight hours' pay. Its position is that he must be paid for whatever hours he is not allowed to work that day. That claim also raises "interpretive issues" and is arbitrable.

when the hours in excess of 60 are overtime hours. But nothing in the language of 5G2 suggests that the 60-hour limitation could only be triggered by an overtime assignment. Had that been the parties' intention, they surely would have so.

If Section 5G meant only to "defin[e]...the relationships involving the overtime desired list...", as the Postal Service asserts, the parties would have stopped with 5G1. For the relationship between non-ODL and ODL employees was fully spelled out by the end of 5G1. The extra language in 5G2, the 60-hour ceiling, obviously had some larger purpose. It has nothing to do with the relationship between non-ODL and ODL employees.

Thus, what the Postal Service seeks in this case is to add another exception to the 60-hour limitation. Section 5G2 presently says "excluding December...", Management may not work ODL employees beyond 60 hours. Now the Postal Service asks that this exclusion be enlarged to encompass certain straight time hours as well. But, as I have already explained, the language of 5G2 simply does not support this additional exclusion.

My view of the matter is reinforced by the recent negotiations. NALC President Sombrotto testified that the following remarks were made at the bargaining table at the time the 5G2 concept was discussed:

> "The idea of the twelve- and sixty-hour restrictions were that no employee would be either required or to volunteer to work over sixty hours and that management's representative, the then Postmaster General, made it clear that those were absolute limitations that would not and could not be violated..." (Emphasis added)

This testimony was not contradicted by any Management witness. Hence, the purpose of 5G2 was to create an absolute bar against employees working more than 60 hours.

Moreover, Management can avoid the kind of problem posed in the hypothetical example by limiting ODL employees to no more than 20 hours' overtime during a week. This was acknowledged by the Postal Service in questions and answers it prepared on the impact of the 1984 National Agreement:

"16. If overtime is needed on a non-scheduled day, and the appropriate employee on the ODL will exceed the 60 hour week limit if he is scheduled to work his non-scheduled day, is he still scheduled to work the overtime?

No. Since the work hour guarantees of Article 8, Section 8 would apply, this employee would exceed the 60 hour limit designated in Article 8, Section 5.G.2. Therefore, he is not considered to be available and would not be scheduled for this overtime assignment."

Such arrangements would be consistent with one of the parties' main objectives in making the Article 8 changes, namely, "to limit overtime..."*

For these reasons, my ruling is that Article 8, Section 5G2 is an absolute bar to employees working more than 60 hours in a week. Management was required to send hypothetical "X" home after four hours on Friday, after he had completed 60 hours of work in the week.

There remains the pay issue, the pay consequences of strict enforcement of the 60-hour limitation. Whether an employee sent home on a regularly scheduled day before the end of his tour, on account of the 60-hour ceiling, is nevertheless guaranteed a full eight hours' pay for the day? Or, referring to the hypothetical example and assuming "X" is sent home after four hours' work on Friday because he has at that point completed 60 hours, whether he is entitled to pay for the other four hours he did not work that day?

The Unions rely on Section 432.6 (Guaranteed Time) of the ELM. That provision states in part:

".61 Explanation. Guaranteed time is paid time not worked under the guarantee provisions of collective bargaining agreements for periods when an employee has been released by his supervisor and has clocked out prior to the end of a guaranteed period..." (Emphasis added)

* See the first paragraph of the Article 8 Memorandum.

According to this "explanation", the ELM does not provide an independent basis for the payment of "guaranteed time." It refers back to the "guarantee provisions" of the National Agreement. It calls for payment of "guaranteed time" only to the extent that the disputed hours are "paid time not worked" under such "guarantee provisions." Hence, the Unions' claim cannot be sustained on the basis of the ELM alone.

The "guarantee provisions" are found in Article 8, Section 8. Only one such provision, Section 8C, seems relevant to the issue raised in this case:

> "C. The Employer will guarantee all employees at least four (4) hours work or pay on any day they are requested or scheduled to work in a post office or facility with 200 or more man years of employment per year. All employees at other post offices and facilities will be guaranteed two (2) hours work or pay when requested or scheduled to work." (Emphasis added)

This clause shows that the guarantee for "X" on Friday, his last scheduled day in the week, was "at least four (4) hours ...pay..."* The underscored words, however, are ambiguous. They could be interpreted to mean a flat four-hour guarantee for anyone fitting this Section 8C description. Or they could be interpreted to mean a guarantee of no less than four hours, perhaps more where past practice or some other contract clause so dictates. The parties did not provide the arbitrator with any detailed argument as to the proper interpretation of Section 8C. Nor did they offer any evidence as to what the practice had been when employees are sent home after four hours on a regularly scheduled day through no fault of their own but rather through the operation of some contract clause. That practice, if one exists, might prove to be a compelling consideration in this case.

For these reasons, a final ruling on the pay issue at this time is not possible. This matter is remanded to the parties for further consideration in light of this discussion.

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* This discussion shall assume the hypothetical case concerns a post office with "200 or more man years of employment per year."

AWARD

The grievances are arbitrable and are granted to the extent set forth in the foregoing opinion. Article 8, Section 5G2 does establish an absolute bar against employees working more than 60 hours in a service week. The question raised as to the pay consequences of this bar is remanded to the parties for further consideration. Should they be unable to resolve the matter within a reasonable period, any of them may return the problem to national level arbitration for a final ruling.

Richard Mittenthal

Richard Mittenthal, Arbitrator