C#07001

In the Matter of Arbitration Between	:	
	:	
UNITED STATES POSTAL SERVICE	:	
"Service"	:	S4N-3W-C 13100
and	:	(J. Longo)
	:	
NATIONAL ASSOCIATION OF LETTER CARRIERS Branch 3847	:	S4N-3W-C 13186 (G. Haines)
"Union"	:	
	:	Vero Beach, Florida
Before: James F. Scearce, Arbitrator	:	

This case involves a dispute over the involuntary movement of the grievants, J. Longo and G. Haines, from "hold-down" assignments to which they had successfully exercised their preference. The hearing was held on February 2, 1987 at the main postal facility at Vero Beach, Florida. Both parties were afforded a full opportunity to present, examine and cross-examine witnesses and to submit exhibits. The proceedings were recorded by notes of the arbitrator. Both parties closed argument at the hearing.

APPEARANCES

For the Union -

Robert M. Harkinson	Regional Administrative Assistance (Presenting)

For the Service -

John Rossi	Labor Relations Assistant (Presenting)

BACKGROUND

While there is a basic dispute over interpretation of the Agreement between the parties in these cases (which are directly related and, hence, addressed together) the underlying facts are not.

- Both employees were Part-time Flexible City Letter Carriers assigned to the Vero Beach (Florida) postal system at the outset of events.

- Routes 6006 and 6305 were vacant.

- Grievant Longo submitted a "Bid Form for Temporary Assignment" to cover Route 6006 as a "hold-down" until return of the incumbent carrier;* such form specified that submission of such request was in compliance with Article 41, Section 2.B. 3,4 and 5 of the Agreement (set out at pages 6 and 7 herein). The duration of the hold-down was July 8, 1985 to an indefinite end date, presumably depending on when the incumbent returned;* it was approved by proper authority and Longo commenced such duty.

*It is unclear whether Route 6006 and/or 6305 were permanently or temporarily vacant. The "incumbent" status is assumed by the arbitrator, but the difference is not relevant.

- Grievant Haines' bid to cover Route 6305 on July 9, 1985 under the same circumstances, was approved and commenced service on July 15, 1985.

- The Service had previously posted Route 6006 in June of 1985 for bid because it was being relinquished by the incumbent; the posting occurred June 15 and was withdrawn June 25, 1985 without a bid.

- By notice posted July 8, 1985 the Service announced that G.S. Haines (grievant herein) would be converted to full-time effective July 20, 1985 and assigned to Route 6006. It did so, thus removing Haines from the hold-down of Route 6305 and forcing Longo off the hold-down of 6006 and Haines onto such Route as a residual assignment.

Grievances were filed by the Branch on behalf of both employees protesting removal from the hold-down assignments. Both disputes were progressed through the three grievance-handling Steps without resolution and subsequently were sent to Step 4. While the grievances were eventually remanded back to Step 3 for further review, possible resolution or referral to arbitration, the parties at the National level directed these cases be handled in compliance with a decision by a National arbitrator in a case:

"We further agreed the parties at Step 3 are to apply to Arbitrator Mittenthal's decision for case number H1N-3U-C 13930 (copy attached) to these cases in order to resolve the grievances." (Jt Exs 2 & 3)

Subsequent review by the parties failed to resolve differences and the cases were set for arbitration before the undersigned.

POSITION OF THE UNION

The Service violated Article 41, Section 2.B.4 & 5 when it removed both employees from their hold-down assignments prior to the end of such bids. Grievant Haines was on his hold-down bid assignment as a PTF when he was made regular. The Service was not precluded from assignment of Grievant Haines to Route 6006 following termination of the hold-down bid of Grievant Longo; it could have done so on July 8, 1985 to be effective at a future date. The rationale and decision by National Arbitrator Mittenthal in Case H1N-3U-C 13930 is controlling here and is applicable to Grievant Haines who would have been left on Route 6305; Article 41, Section 2.B 4 & 5 protected Grievant Longo's right to remain on Route 6006 for the duration of that bid. The Service at Step 3 in the Haines case conceded error of removing Haines from Route 6305 but disputes the aggrieved employee's right to compensation demanded. It erroneously contends a right to have removed Grievant Longo from 6006 so as to force an unassigned regular

(Haines) to such route.

The Service should be ordered to compensate Grievant Haines at double time for all hours he was denied the opportunity to work on Route 6305 as part of his hold-down bid; Grievant Longo should be paid for the hours he would have worked on Route 6006 until that hold-down bid properly ended, plus time and one-half for all overtime hours worked on Route 6006 following his removal and until the hold-down properly ended. Furthermore, the Service should be directed to cease and desist from such improper practices in the future.

POSITION OF THE SERVICE

Article 41, Section 2.B.6(b) is the applicable provision here. Grievant Haines was converted to full-time status for the expressed purpose of covering Route 6006, which was vacant and for which no bids had been received. The provisions of the National Award in HlN-3U-C 13930 are applicalbe only to unassigned regulars, the definition of which is found in Article 41, Section 1.A.1. Grievant Haines was not an unassigned regular when the hold-down started and does not meet the criteria. The rationale advanced by the Union, if embraced, could result in a PTF staying on a hold-down assignment indefinitely. In any case, the remedy sought by the Union is without merit, undeserved and punitive in nature. Neither employee suffered any monetary

loss as a result of these events. As PTF's, neither were entitled to more than the hours offered them. The grievances should be denied.

CITED/RELEVANT PROVISIONS OF THE AGREEMENT

ARTICLE 41 - Letter Carrier Craft

Section 1 Posting

A.1. (In Pertinent part) ....The term "unassigned regular" is to be used only in those instances where full-time letter carriers are excess to the needs of the delivery unit and not holding a valid bid assignment.

7. An unassigned full-time carrier may bid on duty assignments posted for bids by employees in the craft. If the employee does not bid, assignment of the employee may be made to any vacant duty assignment for which there was no senior bidder in the same craft and installation. In the event there is more than one vacancy due to the lack of bids, these vacancies may be filled by assigning the unassigned full-time carriers, who may exercise their preference by use of their seniority.

Section 2. Seniority

B. Definitions

3. Full-time reserve letter carriers, and any unassigned full-time letter carriers whose duty assignment has been eliminated in the particular delivery unit, may exercise their preference by use of their seniority for available craft duty assignments of anticipated duration of five (5) days or more in the

delivery unit within their bid assignment areas, except where the local past practice provides for a shorter period.

4. Part-time flexible letter carriers may exercise their preference by use of their seniority for vacation scheduling and for available full-time craft duty assignments of anticipated duration of five (5) days or more in the delivery unit to which they are assigned.

5. A letter carrier who, pursuant to sub-sections 3 and 4 above, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration.

6. Relative Seniority Standing

(b) Part-time flexible letter carriers shall be converted to full-time positions of the same designation and PS salary level in the order of their standing on the part-time flexible roll.

(Jt Ex 1)

THE ISSUE

(As stipulated to by the parties)

Did the Service violate the Agreement and/or related regulations when it removed Grievant G. Haines off a hold-down of Route 6305 and put him on Route 6006 thereby displacing Grievant J. Longo; if so, what is the appropriate remedy?

DISCUSSION AND FINDINGS

The Service raises a defense at this hearing which is apparently contrary to its own conclusions at both Step 3 and Step 4 -- at least where Grievant Haines is concerned. The Step 3 representative conceded that Haines was an unassigned regular and should have been allowed to hold-down the Route 6305 bid through its duration and then be placed on Route 6006; he took exception to the double time pay demand, contending instead that no loss of pay was demonstrated. This same Step 3 representative took the position that the Service committed no error insofar as Grievant Longo was concerned since he was a PTF, Route 6006 was vacant and the Service properly removed him for assignment of the route to a PTF who went regular. This, of course, was Haines, whom the Service already conceded was improperly removed from Route 6305. Hence, such rationale is a non sequitur, since Haines could not occupy both 6305 as a bid hold-down and 6006 as an assigned route at the same time. Only where the hold-down on 6305 concluded prior to that on 6006 does this question come into play. At Step 4, both the Service and Union concluded the arbitrator's decision in H1N-3U-C 13930 was applicable. (See page 4 herein). Now, the Service contends that since Haines was a PTF at the start of the hold-down, the above-cited decision at arbitration in applicable. (Arbitrator Mittenthal concluded that both

Section 1.A.7 and 2.B.5 were capable of being applied where an unassigned regular was already on a hold-down when a residual vacancy occurred to where he/she was to be assigned: make the assignment and let it occur at the close of the hold-down.)

While the Union contends that the matter of Haines' status has already been disposed of at Steps 3 and 4, i.e. he should have been considered an unassigned regular, Article 41, Section 2.B.4&5 were violated by removal of Longo -- who was a PTF -- and Haines -- even if he was a PTF -- from their hold-down bids, since such contract provisions are clear in providing for PTF's to work bid hold-downs for their duration. (See page 7 herein) As regards the duration of these hold-downs, Haines was to commence on July 15, 1985 and was deemed to be "indefinite" or at least some question existed as to when it would end. (Jt Ex 4). It was "Awarded" as written by the Service -- Longo's was to extend from "7-8-85" to "?" and similarly approved. (IBID) The argument is advanced by the Service that such hold-down might extend indefinitely; it appears that such condition is in the control of the Service by setting an end date to the hold-down. In the case involving Haines, the Service was clearly aware of its intent to convert him the day before he submitted his bid (July 9, 1985) and a week before the hold-down commenced. Longo's hold-down bid was

dated the same day that the Service executed the notice of its intent to convert Haines to full-time status. It would seem apparent that the Service could have limited the hold-down of Route 6006 by setting an end date on such assignment. I find nothing ambiguous about the intent of Article 41, Section 2.B. 3,4&5: they protect hold-down bids for their duration. In sum, I find merit to the Union's claim that the Service erred by removing both grievants from their hold-downs, given the fact-situation that existed in this case.

Having so concluded, however, I find no basis to issue a monetary award for either employee. The demand as regards Haines is clearly punitive in nature since no loss of pay has been demonstrated. In my opinion, the legitimacy of punitive damages in an administrative proceeding such as arbitration is in doubt and, if supportable at all, arises only when the terms and intent of a collective bargaining agreement are blatantly, arrogantly or repetitively violated placing the offended party in a position of having to sue for damages or incurring undue expenses at arbitration. Insofar as Longo is concerned, the Agreement is clear in the Service's obligation to PTF employees: it does not mandate overtime or even a 40-hour work week and interest on earnings is not deemed an appropriate subject for consideration. It is appropriate, however, to call the Service's

attention to the need to comply with the Agreement in this regard or face the potential for a more substantive adverse decision than is set out in the Award below if repeated.

AWARD

The Service violated the Agreement by the removal of the aggrieved employees from their hold-down assignments as it did in this case. While such violations are significant and the Service is admonished to cease and desist in such practice, a monetary award is not supported by the facts or arguments raised since no loss has been demonstrated.

James F. Scearce
Arbitrator

Atlanta, Georgia
April 8, 1987