

(REGULAR

ARBITRATION PANEL

C# 10515

In the Matter of the Arbitration
between
UNITED STATES POSTAL SERVICE
and
NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO BRANCH 15

GRIEVANT: D. Mello/Class Action
POST OFFICE: East Providence, R.I.
MANAGEMENT CASE NO. N7N-IF-C 30478
UNION CASE NO. GTS-6873-82-81

BEFORE: Harry B. Purcell

ARBITRATOR:

APPEARANCES:

For the U. S. Postal Service: Thomas F. Boutier
Labor Relations Representative

For the Union: Mark O'Rourke
Vice President, Branch 15, NALC

Place of Hearing: USPO, 24 Corliss St., Providence, R. I.

Date of Hearing: December 10, 1990

AWARD:S: ISSUE NO. 1

"The grievance(s) is/are arbitrable."

ISSUE NO. 2

"The Employer did not violate Article 8, Section 5.
(A) of the contract regarding the Overtime Desired
List. The grievance(s) is/are denied."

RECEIVED

JAN 7 1991

NALC - NEW ENGLAND REGION

Date of Award: December 31, 1990


(Signature of Arbitrator)

ARBITRATION PROCEEDING

REGULAR REGIONAL ARBITRATION PANEL

IN THE MATTER OF ARBITRATION)

- Between -)

UNITED STATES POSTAL SERVICE)

- And -)

NATIONAL ASSOC. OF LETTER CARRIERS, AFL-CIO)

USPS CASE NO. N7N-IF-C 30478)

NALC CASE NO. GTS-6873-82-81)

GRIEVANT: D. Mello/Class Action)

SUBJECT POST OFFICE: East Providence, R.I.)

HEARING LOCATION: USPO, Providence, R.I.)

HEARING DATE: December 10, 1990)

AWARD DATE: December 31, 1990)

AWARD
OF THE
ARBITRATOR

FOREWORD

The Parties to this Arbitration Proceeding are the United States Postal Service (hereinafter referred to as "Employer") and the National Association of Letter Carriers AFL-CIO (hereinafter referred to as "Union"). A hearing was conducted in this matter at 10:00 a.m., on December 10, 1990 and was completed at approximately 1:30 p.m., on that same day. The hearing was held at the U.S. Post Office, 24 Corliss Street, Providence, R. I. The hearing was not recorded by a court reporter. The oath was administered to all witnesses called to give testimony. The Parties were given full opportunity to present all of the testimony evidence and proofs that they wished to offer in support of their respective Positions. The Arbitrator is satisfied that all conditions essential to a full and proper hearing and disposition of the matters placed before him have been met.

REPRESENTATIVES OF THE PARTIES

Appearing For The Employer

Thomas F. Boutier, Labor Relations Representative

Appearing For The Union

Mark O'Rourke, Vice President, Branch 15, NALC

THE ISSUES BEFORE THE ARBITRATOR

(NOTE: At the outset of this Arbitration Proceeding on December 10, 1990 the Employer raised the procedural question of arbitrability of the grievance. Although no indepth hearing on that question followed, the Arbitrator believes that, since the question was raised, it must be addressed by him in order to protect the integrity of the entire Award.)

ISSUE NO. 1

"IS THE GRIEVANCE(S) ARBITRABLE?"

POSITION OF THE EMPLOYER

The Employer's entire position on this procedural matter of arbitrability rests upon the contention that the subject dispute(s) were disposed of at a pre-arbitration conference between the Parties. In testimony to that the Employer offers the Leahy (USPS) letter of Marco (NALC) which is attached hereto as APPENDIX "A". It asks that the grievance(s) be held to be non-arbitrable.

POSITION OF THE UNION

The Union's position was presented with equal brevity. It challenges the Employer's contention and offers the Marko (10/24/90) letter (NALC) to the Davis (USPS) letter, said by Marko to have been dated 10/4/90. (See APPENDIX "B") The Union asks that the grievance(s) be held to be arbitrable.

DISCUSSION AND FINDINGS

It is generally accepted that the party challenging the arbitrability of a grievance (quite naturally, as in this case, the employer) bears a heavy burden of proof due to the U.S. Supreme Court's long standing admonition regarding the "presumption of arbitrability" and that "doubts concerning arbitrability must be resolved in favor of the grievance". Here, the Employer has presented nothing that constitutes "proof" of the soundness of its Position.

The Arbitrator has no idea what was contained in the above referred to Davis (USPS) letter of 10/4/90 since the letter was not entered into the hearing record. Neither does the Leahy (USPS) Letter, standing alone, constitute "proof" of anything. The Leahy letter is undated, contains no details of any mutually agreed upon settlement terms but only the following Employer declaration:

"Upon full discussion and consideration of this matter, it is determined that this grievance is resolved. Management acted appropriately in allowing carriers on A/L [Annual Leave] to place their names on the "ODL" [Overtime Desired List] by phone."

Considerably more than just the above unsupported assertions of the Employer would be needed to sustain the Employer's non-arbitrability claim.

* * * * *

ISSUE NO. 2

"Did the Employer violate Article 8, Section 5.(A) of the contract regarding the Overtime Desired List? If so, what shall be the remedy?"

APPLICABLE CONTRACT PROVISIONS
(In Pertinent Part)

ARTICLE 8
HOURS OF WORK

Section 5. Overtime Assignments

- A. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an "Overtime Desired" list.

BACKGROUND OF THE DISPUTE

Essentially, what is involved here is whether or not an employee, or employees, desiring to work overtime must personally and physically enter his/her/their name(s) on the Overtime Desired List ("ODL") that is posted, or passed around, by the appropriate supervisor, pursuant to Article 8, Section 5.(A). of the contract. What happened here was that three employees (M. Goulding; G. Zannini; and F. Botelho) were on annual leave as the cutoff date for "ODL" registering for the first calendar quarter of 1990 was drawing near. Although he was under no obligation to do, supervisor S. Barbosa telephoned Goulding, Zannini and Botelho at their homes to inquire of them whether or not they wanted to be on the "ODL". All three of the employees advised supervisor Barbosa that they did wish to have their names on the "ODL" and all three did perform overtime work following their return from annual leave. Upon learning that the three employees in question had accepted overtime assignments the Union, or more specifically Union Steward Mello, filed a formal grievance challenging the propriety of the three employees in question working overtime.

ISSUE NO. 2

POSITION OF THE UNION

The Union's position requires no lengthy description. Union Steward Mello testified after the three employees in question had started working overtime following their returning from annual leave, and his learning that their names were not on the "ODL", he filed a grievance. Mello argued that the names in question were added to the "ODL" after he filed the grievance and that their names were added to the "ODL" by supervisor

Barbosa. Mello testified that he believes employees Goulding, Zannini and Botelho "lied" in saying that they had authorized supervisor Barbosa to place their names on the "ODL" and that, in any event, it is a violation of the contract for an employee not to personally sign the "ODL". The Union asks that the grievance be sustained and that, as remedy, the total overtime compensation paid to the three employees in question during the period 2/19/90 to 3/30/90 be divided, as appropriate, between those employees who were properly on the "ODL".

ISSUE NO. 2

POSITION OF THE EMPLOYER

The Employer contends that it is an absurdity for the Union, or Mello, to hold that an employee is prohibited by the contract from authorizing his/her supervisor to place his/her name on the "ODL". It concedes that supervisor Barbosa added the names in question to the "ODL" but only after he had called each of the three employees on the telephone and was instructed by each of them to do so. The contract does not specify that an employee who wishes to have his/her name on the "ODL" must personally and physically sign the list. The Employer attributes the grievance filing to Steward Mello's significant antipathy towards the three employees in question which sentiment he did not deny at the hearing but, in fact, clearly demonstrated by accusing them of being "liars". The Employer asks that the grievance(s) be denied.

ISSUE NO. 2

DISCUSSION AND FINDINGS

The Arbitrator is persuaded that the grievances is/are without merit and must, therefore, be denied. The Arbitrator also found it to be rather incongruous that the obvious circumstances underlying this matter should provoke Steward Mello to so aggressively act in a reverse role of a union steward, specifically, to act against, rather than for, employees he represents. Of course, Mello could argue that in his protesting the overtime worked by Goulding, Zannini and Botelho he was influenced by his obligation to represent all members of the bargaining unit not just the few. In this case however, such an argument cannot prevail against the palpable evidence. There is no evidence that anyone except Mello was upset by what happened, or saw anything out of order in the overtime working by Goulding, Zannini or Botelho. The question wasn't asked of Goulding who has worked at the subject facility for 9 years, but Botelho (26 years service) and Zannini (3 years) both testified that they always had their names on the "ODL". Since they were off duty at the time their overtime interest, or disinterest, had to be known, it was quite natural in view of their past demonstrated desire to be on the "ODL" and the fact that they represented a significant percentage of the customary number of overtime volunteers (about 13%, or 3 out of 23) - for it to occur

to supervisor Barbosa that he should telephone them to determine their overtime or non-overtime preference. All three testified quite forthrightly at the Arbitration Proceeding that they did instruct Barbosa to put their names on the "ODL". Indeed, Goulding testified that he would have filed a grievance if he had not been called to work the overtime he did. The Arbitrator is inclined to believe that it would be the better part of wisdom to have all employees wishing to be on the "ODL" to personally sign their names to it since such would, in all likelihood, eliminate the possibility of future disputes in the matter. He does not feel that such personal signing is necessary, or that it is required by the contract.


AWARD

ISSUE NO. 1

"The grievance(s) is/are arbitrable."

ISSUE NO. 2

"The Employer did not violate Article 8, Section 5.(A) of the contract regarding the Overtime Desired List. The grievance(s) is/are denied."


Harry B. Purcell
Arbitrator

December 31, 1990



UNITED STATES POSTAL SERVICE
NORTHEAST REGIONAL OFFICE
WINDSOR, CT 06006-0001

Mr. John J. Marco
National Business Agent, NALC
111 Everett Ave.
Chelsea, MA 02150

RE: N7N-1F-C 30478, ⁷⁹78,80
D. Mello
Providence, RI 02914-9998

Dear Mr. Marco:

On July 25, we met with John Pimentel to discuss the above captioned grievances at Step 3 of our contractual grievance procedure.

These grievances pertain to the alleged violation of Article 8 of the National Agreement in that management allowed carriers to work overtime who had not personally signed the ODL during the sign-up period.

Upon full discussion and consideration of this matter, it is determined that this grievance is resolved. Management acted appropriately in allowing carriers on A/L to place their names on the ODL by phone.

Very truly yours,


James E. Leahy
Labor Relations Programs Analyst, Pr.

cc: Postmaster
Regional Mgr. Labor Relations
Grievance/Arbitration Branch NER
FD/HR w/case file

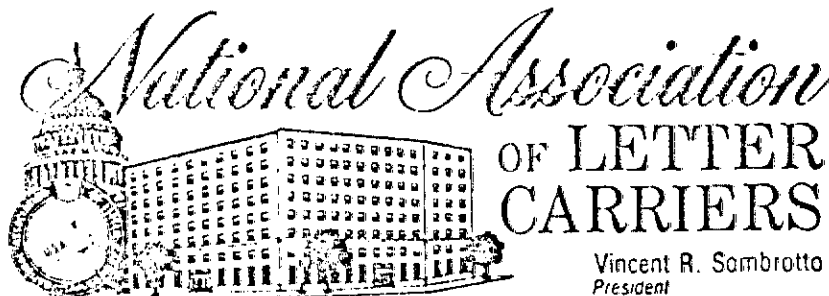
RECEIVED

AUG 20 1990

NALC - NEW ENGLAND REGION

APPENDIX "A"

Francis J. Connors
Executive Vice President
Lawrence G. Hutchins
Vice President
Richard P. O'Connell
Secretary Treasurer
Halline Overby
Asst. Secretary Treasurer
Brian D. Farris
Director, City Delivery
George Davis, Jr.
Director, Safety & Health



William M. Dunn, Jr.
Director, Life Insurance
Robert Vincenzi
Director, Health Insurance
Walter E. Couillard
Director of Retired Members
BOARD OF TRUSTEES
James G. Souza, Jr.
James Worsham
Michael J. O'Connor

JOHN J. MARCO, National Business Agent
111 Everett Avenue
Chelsea, Massachusetts 02150
Telephone: (617) 884-2843-2847

October 24, 1990

Mr. John F. Davis
Acting Regional Manager
Labor Relations
United States Postal Service
6 Griffin Road North
Windsor, CT 06006-0001

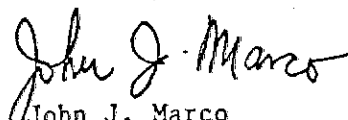
Re: N7N-1F-C-30478,79 & 80/D. MELLO
N7N-1K-C-29650, 30027, 30028/CLASS

Dear Mr. Davis:

This is in reference to your letter of October 4, 1990 which was received in my office on October 9, 1990, and referred to the above referenced cases which were certified for arbitration by myself.

A review of the files shows that no agreement was reached on the above captioned cases. Therefore, the union's certification of these cases should remain in effect.

Sincerely,


John J. Marco
National Business Agent

JJM:db

APPENDIX "B"