

C-27134

REGULAR ARBITRATION PANEL

In the Matter of Arbitration)	
)	Grievant: Beverly Newman
between)	
)	Post Office: Milford
UNITED STATES POSTAL SERVICE)	
)	USPS Case No: B01N4BC07036847
and)	DRT # 14-051288
)	
NATIONAL ASSOCIATION OF LETTER)	
CARRIERS, AFL-CIO)	

BEFORE: EILEEN A. CENCI

APPEARANCES:

For the U.S. Postal Service: Anthony Salzo, Jr.

For the Union: Patricia Joseph

Place of Hearing: Milford, CT

Date of Hearing: May 23, 2007

AWARD: Management violated Article 11 of the National Agreement by forcing Beverly Newman to work her NSD day on 11/22/06. The Service is ordered to pay the grievant an additional 50% of her base hourly straight time rate for all the hours she was required to work on November 22, 2006.

Date of Award: June 23, 2007

Regular Regional Arbitration Panel

Eileen A. Cenci

Eileen A. Cenci

RECEIVED

JUN 27 2007

John J. Casciano, NBA
NALC - New England Region

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VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

OPINION

STATEMENT OF PROCEEDINGS:

This matter was arbitrated pursuant to the grievance and arbitration provisions of a collective bargaining agreement (National Agreement) in effect between the United States Postal Service (Service) and the National Association of Letter Carriers (NALC or Union). A hearing in this matter was held before me on May 23, 2007 in Milford, Connecticut. The parties appeared and were given a full and fair opportunity to be heard, to present evidence and argument and to examine and cross examine witnesses. The Union called the grievant and steward Alfred Curry to testify and the Service called Supervisor James Bickford. All witnesses testified under oath. At the conclusion of the testimony the parties made oral arguments and submitted prior arbitration awards in support of their respective positions and the record was closed at that time.

ISSUE:

The parties agreed to adopt the issue statement from the B team:

Did Management violate Article 11 of the National Agreement by forcing Beverly Newman to work her NSD day on 11/22/06, prior to using all casual and PTF employees to the maximum extent possible?

If so, what should the appropriate remedy be?

FACTS:

The grievant is a full-time regular letter carrier with over 20 years of seniority. She was informed on November 13, 2006 that she would be required to work on November 22, 2006, which was her non-scheduled (NS) day and the day before Thanksgiving. She spoke to both supervisor James Bickford and to the postmaster, reminding them that this was the first year since her mother died and that she had made plans to drive her father to New Jersey where they would spend the

holiday with family. The grievant was informed by the postmaster that every available body was needed and that she would have to work.

After the holiday schedule was posted but before the holiday, steward Alfred Curry spoke to management about compliance with Article 11 and ways to cover the work without requiring the grievant to work on her NS day. He suggested that people be brought in pre or post tour before or after the holiday schedule, but management did not adopt that suggestion.

The grievant worked as scheduled on November 22, 2006 and as a result she was unable to make the trip to New Jersey to spend Thanksgiving with her family. She instead spent the holiday alone. She later learned that a carrier with less seniority, Tricia Wagner, had been excused from working on November 22, 2006 (U.4).

The clock rings for November 22, 2006 show that two casuals worked on that day, for a total of 6.03 and 7.07 hours. The two casuals were assigned to case over 20,000 pieces of delayed mail that had accumulated in the Milford Post Office. Four PTF's worked for 8 or more hours, though none worked for a full ten hours (U. 1). Each of those PTF's had a route to case and deliver.

Supervisor Bickford testified that the grievant was required to work because there was an open eight-hour shift on the day in question. Staffing needs could not have been met by bringing in PTF's and casuals earlier to case mail and then having them go out on a route, as the Union has suggested. Most of the mail that has to be cased arrives at 7:00 a.m. or later, and he likes to have some people available later in the day.

The parties stipulated that Milford is a 125 man-year office.

POSITIONS OF THE PARTIES:

National Association of Letter Carriers [Union]

The Union maintains that the Service failed to maximize casual and PTF employees as required by Article 11.6B, and that it did not follow the "pecking order" established in the Local MOU. None of the casual or PTF employees were utilized for the maximum permissible number of hours. With a little advance planning, casuals could have been brought in earlier to case delayed mail and been available to perform the grievant's duties on her NS day. The Local MOU was also violated when a carrier with less seniority than the grievant was excused and the grievant was forced to work.

The grievance should be sustained and the grievant should be paid an additional 50% of her base hourly straight time rate for all the hours she was required to work on November 22, 2006.

United States Postal Service [Service]

The Service argues that management did bring in all employees to work what they believed was the maximum extent possible. Using PTF and casual employees pre and post tour to case mail would not have addressed the problem management faced, since they needed to get an entire route delivered. The National Agreement and Local MOU were not violated and the grievance should be denied.

CONTRACT

Article 11 Holidays

Section 6. Holiday Schedule

- A. The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Tuesday 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.

Joint Contract Administration Manual (JCAM)

Article 11.6B

The intent of Article 11.6 is to permit the maximum number of full-time regular, full-time flexible and part-time regular employees to be off on the holiday should they desire not to work while preserving the right of employees who wish to work their holiday or designated holiday.

LOCAL MEMORANDUM OF UNDERSTANDING

Article 11 Methods of Selecting Carriers to Work on a Holiday

In keeping with the intent of the National Agreement to allow as many carriers as possible to enjoy holidays, the following holiday scheduling procedure will be followed.

1. Casuals
2. Part-time flexible volunteers
3. Assignment of PTF's by juniority
4. Full-time and part-time regulars on a volunteer basis to work their holiday or designated

holiday

5. Transitional employees (TE's), to the extent possible, will be scheduled for work on a holiday or designated holiday after full-time volunteers are scheduled to work on their holiday or designated holiday.
6. Full-time and part-time regulars volunteer, on a seniority basis to work the holiday or designated holiday which occurs on their non-scheduled day.
7. Full-time and part-time regulars on a juniority basis to work the holiday or designated holiday which occurs on their non-scheduled day.
8. Full-time and part-time regulars on a juniority basis to work the holiday or designated holiday which occurs on their non-scheduled day.
9. Full-time and part-time regulars on a juniority basis to work their holiday or designated holiday.

DISCUSSION:

The Union has established by a preponderance of the evidence that Article 11.6B was violated when the grievant was forced to work on her non-scheduled day, November 22, 2006. It does not appear that casuals and PTF's were utilized to the maximum extent possible, since none of them worked for a full ten hours. While each of the PTF's worked more than 8 hours and delivered a route, the two casuals were assigned only to case delayed mail. While management has broad authority to make decisions as to how and when work will be performed, it also has an obligation to comply with the provisions of Article 11. Management has not satisfactorily explained why delayed mail could not have been cased prior to November 22, or by bringing in casuals and PTF's earlier on that day. Had the large volume of delayed mail been cased earlier, the casuals would have been available to cover more of the grievant's duties on November 22, 2006.

Even more significantly, management has not denied the Union's claim that an employee with less seniority than the grievant was excused, while the grievant was required to work on her NS day. The pecking order set forth in the Local MOU was violated by that decision. The grievance is sustained and the Service is ordered to pay the grievant an additional 50% of her base hourly straight time rate for all the hours she was required to work on November 22, 2006.