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File Under: Article 8.4.
Article 19. ELM

AB-W-502

Case No. HBT-4H-C-10343

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In the Matter of the Arbitration
between

OCT 22 1982

AMERICAN POSTAL WORKERS UNION

OFFICE OF
PRESIDENT

and

OPINION AND AWARD

UNITED STATES POSTAL SERVICE

APPEARANCES:

For the APWU - Mr. James Adams, Administrative Aide

For the USPS - Mr. J. K. Hellquist, Mgr. Arb. Branch
Central Region

STATEMENT OF THE CASE:

There does not appear to be any dispute about the operative facts which gave rise to this grievance. The aggrieved worker, R. Edwards, an employee with long service at the Post Office in Kansas City, received an on-the-job injury on August 27, 1979. He was treated for that injury on that day. At the treatment center, arrangements were made for the Grievant to receive further therapy at 10:00 AM on various succeeding work days. These were days on which his work schedule called for him to be at work until 4:00 PM. The Postal Service requested that the Orthopaedic Clinic, at which Mr. Edwards was being treated, change his treatment appointments so he would be attended to after the end of his scheduled work day. A grievance was filed after the Postal Service caused his medical appointment times to be changed.

The Union contended that Mr. Edwards had the right to be treated for this injury while he was on the clock. Since the Postal Service changed his treatment times so he had to remain at work until 4:00 PM, the end of his scheduled shift, and then go to the clinic for his required treatment, the Union claimed that he should be considered still at work until his treatment had been completed on each day it was scheduled after his working hours.

Accordingly, the Union asserted that Mr. Edwards should be compensated for the additional time he was allegedly in a pay status on each day he was treated, and his pay for that period of time should be calculated at overtime rates for the time so spent. The Union argued that the Postal Service had no right to change the time at which he was scheduled to be treated by the attending doctor. The APWU claimed that, if the Postal Service, had not interfered with the treatment schedule which the doctor had established, it would not have incurred an overtime obligation.

The Employer raised three contentions with regard to this grievance. The first was that the Union was not in the proper forum when it asked an arbitrator to decide a question of liability under the Fair Labor Standards Act or under the Federal Employees Compensation Act. According to the Employer, these statutes are enforced by the U. S. Department of Labor, and it is to that Federal Agency the Union should turn if the Employer is being charged with improperly implementing these laws.

The second Employer contention was that the provisions of Section 519.62 of the Employee and Labor Relations Manual are dispositive of this claim. Since the Union did not avail itself of the opportunity to challenge the substance and impact of that provision of the Manual, as provided in Article XIX of the National Agreement, the Union cannot in this proceeding contest the application of that provision to the case at hand.

Finally, the Employer claimed if the Union was attempting to establish that entitlement was to be found because of the requirements of Article VIII, Section 4 of the National Agreement, that provision only requires overtime for "work performed", and this Grievant was not at work after 4:00 PM on the day for which the overtime is now being sought. He had completed his tour and was at the doctor's office for treatment after 4:00 PM.

OPINION:

To appropriately dispose of the claim which was raised in this case it is not necessary to determine whether or not there has been compliance with the requirements of the two federal statutes governing overtime payments and compensation claims. As the spokesman for the USPS pointed out, those allegations may be addressed to the U. S. Department of Labor. In this arbitration proceeding, the Arbitrator is charged with determining the rights of the aggrieved and of the Postal Service as those rights and obligations are defined in the 1978 National Agreement. The Agreement which was in effect at the time this grievance was submitted.

To that end, the Arbitrator believes that the matter in issue should be viewed and processed in accord with the facts and circumstances which triggered the grievance. Specifically, the Union is seeking overtime pay for this Grievant for the period on August 30, 1979, between 4:00 PM and 7:30 PM, when, according to the Union, the Grievant should have been regarded as still on the clock because he was directed to report for such treatment by his Employer after he had completed his regular eight hour tour of duty.

There is no dispute that the Grievant first received attention and medical treatment because of this on-the-job injury while he was on the clock on the day he was injured. This was August 27, 1979. The following day, August 28, 1979, he was also treated at 11:00 A.M., while on the clock and during the hours of his scheduled tour. The documentary evidence submitted revealed that the regular and usual treatment hours at the Orthopaedic Clinic were from 10:00 AM until 2:00 PM. When the Grievant was first seen by the doctor, further arrangements were made to have him report during those regular treatment hours. At the specific request of the Employer, in which the Grievant apparently did not join, special treatment hours were arranged to begin after his tour of duty had been completed at the postal facility.

When the Union learned that Mr. Edwards was not to be paid overtime for reporting to and remaining at the Clinic from 4:00 PM until 7:30 PM, a grievance was filed as soon as his pay-check indicated such payment was not made.

At the only Step 3 meeting where a definitive response to this grievance was received from Management, it was stated that, "Management is not contractually obligated to approve employee requests to attend medical treatments or medical appointments during work hours when other times are available..."

The unrebutted evidence in this record established that it was not the Employee who requested that the hours of treatment be arranged or changed in any fashion whatsoever. Management conceded that it arranged to have his treatment time changed until after 4:00 PM. Management, in making such an arrangement without the concurrence of the employee, unilaterally determined that the employee's time away from his assigned duties and his assigned or scheduled tour of duty would be restricted by some three and one-half additional hours that he was required to be at the clinic. This treatment was a condition of employment which the employee was receiving as a matter of right and at the expense of the employer because of the conditions under which he was injured.

The Union pointed out that the treatment that this Grievant was directed by the doctor to undertake was designed to limit and minimize the Postal Service's liability to this employee caused by his on-the-job injury. The employee was not in a position where he could prudently ignore the additional treatment prescribed by a competent medical authority. According to the E&LR Manual, Section 547.1, an employee faces charges of absenteeism if he or she fails to report for prescribed medical treatments required because of an on-the-job injury.

Relating the direction by this Employer that the Grievant report for treatment after his tour was completed to the contractual requirement, in Section 4 of Article VIII, that overtime must be paid for time spent at work after eight hours on duty, the Undersigned must find that, at the Employer's direction, Mr. Edwards was required to spend an additional three and one half hours undergoing directed medical treatment after his scheduled tour was over. That was time spent at the direction of the Employer and in pursuance of the Employer's obligation to minimize liability for on-the-job compensable injuries. The Grievant's normal off duty time was restricted, in this fashion, at the direction of the Employer.

The USPS argued that the Service is faced with instances of connivance wherein employees seek to receive treatment on-the-clock when the attending physician has previously proposed that treatment be received after the employees' duty hours are over. It contended that the Service has an obligation as well as a right to restrict such a practice. That issue has not been properly raised in this case. No evidence was introduced to the effect that Mr. Edwards proposed to the attending physician that the time he was to receive therapy should be scheduled during his normal duty hours when other arrangements had been previously made. That is opposite from the fact picture emerging from this record.

One additional contention of the Postal Service requires attention. It was argued that, pursuant to the requirements of Article XIX of the National Agreement, the APWU could not claim a contractual right to such overtime payment since Section 519.62 of the E&LR Manual contemplates that overtime for time spent receiving treatment for a compensable injury can only be earned on the day that the injury occurs for time spent receiving treatment on that day after the employee's scheduled hours of work are over. It must be noted that this specific provision of the E&LR Manual, to which the Employer made reference, deals with how overtime liability may be incurred on the day that the injury is received and first treated. It does not address time spent on subsequent days when the

employee, still in a pay status, is directed by the attending physician, to report after his scheduled tour for additional therapy.

For all the reason set forth above, the grievance advanced by the Union on behalf of Mr. Edwards must be sustained, and the Undersigned makes the following

A W A R D

This grievance is sustained. The Postal Services shall pay to this Grievant for the three and one half hours which he spent at the conclusion of his regularly scheduled tour of duty on or about August 30, 1982 receiving therapy for his on-the-job injury. This sum shall be paid at the overtime rate which Mr. Edwards was eligible to receive as of that time.

Howard G. Gamser

HOWARD G. GAMSER, ARBITRATOR

Washington, DC
October 21, 1982