

## REGULAR ARBITRATION PANEL

In the Matter of the Arbitration )	Grievant: Joseph Mahon
)	
between )	Post Office: New Haven CT.
)	
The U.S. Postal Service )	Case Number: B11N-4B-C 15296403
)	
and )	Union Number: 19-615-15-ALL
)	
The National Association of )	DRT Number: <i>14-348272</i>
Letter Carriers, AFL-CIO )	
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**RECEIVED**

Before: Donald J. Barrett, Arbitrator

FEB - 5 2016

Appearances:

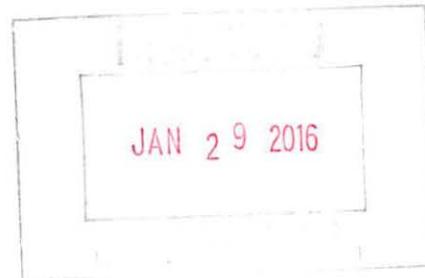
VICE PRESIDENT'S  
OFFICE  
NALC HEADQUARTERS

For the U.S. Postal Service: Cindy A. Esposito, Labor Relations Specialist (A)

For the National Association of Letter Carriers: Joseph Mahon, Arbitration Advocate

Place of Hearing: Wallingford CT Postal Facility

Date of Hearing: January 12, 2016



Award: This grievance is denied

Date of Award: January 23, 2016

AWARD SUMMARY

The Union was unable to meet the standard burden of proof that the Service violated the Agreement by not assigning the grievant to overtime on his own route on July 29, 2015.

There is no evidence provided that the Service acted maliciously, or arbitrarily when assigning overtime to the grievant on route 1850, as the grievant was on this overtime list, and had been on requested Union time earlier that day, with a CCA covering his own route's street duties.

2.

**STATEMENT OF PROCEEDINGS:**

This grievance was presented at a hearing on January 12, 2016 at the postal facility located at Wallingford, CT pursuant to the provisions of the 2011-2016 Collective Bargaining Agreement, also known as the Agreement, or Contract between the National Association of Letter Carriers, also known as the Union, and the US Postal Service, also known as the Service, or Management.

Counsel for each party was prepared to present their respective positions at hearing, were articulate, and professional. Counsel was afforded the opportunity to present argument, evidence, and witnesses on behalf of, and in support of the respective positions.

Counsel stipulated at hearing that they would rely upon the case file, Joint Exhibit 2, and their respective Opening/Closing Statements, to support their positions without the need to call witnesses. The parties were given as much time as they desired to offer arguments, and counter arguments as they deemed necessary to support their position. Both counsel took ample opportunity to do so.

The grievant, Mr. Mahon acted as his own counsel/Union representative at hearing.

**JOINT EXHIBITS:**

Joint 1 – The parties National Agreement, inclusive of the Joint Contract Administrative Manual. (J-CAM)

Joint 2 – The parties Moving Papers, Pages 1-50

**STIPULATED FACTS NOT IN DISPUTE:**

The parties did not agree to any stipulated facts.

3.

**ISSUE AS FRAMED BY THE PARTIES AT HEARING:**

The parties agreed that the Step B Team's issue would be the issue at hearing to be decided by the arbitrator.

"Did management violate Articles 15, 19, and 41 of the National Agreement when on July 29, 2015 Management refused to allow the Grievant to work his bid assignment? If so, what shall the remedy be?"

**BACKGROUND:**

On July 29, 2015, the grievant, a Union steward was granted 6 hours of Union time for the purpose of investigating issues related to the grievance procedure of the Agreement. After first casing his route, 1680 for 2.29 hours, the grievant began his Union time. After 5.92 hours of Union time, the grievant was instructed to perform another 1.79 hours of overtime on Route 1650.<sup>1</sup>

During the period of Union time, the Service instructed a City Carrier Assistant (CCA), Mr. Grant to deliver on the street the grievant's route 1680. The CCA was unable to finish route 1680 in the allotted time. The CCA also worked .91 units assisting another route this date during the same period of time he was employed. (10:09 – 18:13)<sup>2</sup>

**CONTRACT PROVISIONS RELIED UPON:**

Article 15 – Grievance-Arbitration Procedure

Section 1. Definition

"A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment.

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<sup>1</sup> See J-2, Page 25

<sup>2</sup> See J-2, Page 26

#### **4.**

A grievance shall include, but is not limited to, the complaint of an employee or the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.”<sup>3</sup>

#### **Article 19 – Handbooks and Manuals**

“Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper’s Instructions.”<sup>4</sup>

#### **Article 41 – Letter Carrie Craft**

- 1. C.4. “The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to Carrier Technician assignments, unless the local agreement provides otherwise.”<sup>5</sup>**

#### **POSITION OF THE PARTIES IN THE MATTER BEFORE ME:**

“The National Association of Letter Carriers”

The Union maintains that the Service refused to allow the grievant, Mr. Mahon to work his bid assignment on July 29, 2015, and instead assigned the grievant’s street duties from his route, 1680 to a CCA, Mr. Grant.

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<sup>3</sup> See Agreement, Page 67

<sup>4</sup> See Agreement, Page 90

<sup>5</sup> See Agreement, Page 120

5.

In addition, instead of assigning the grievant overtime on his own route, which the Agreement, and numerous national awards, and Step 4 decisions mandate, the Service instructed the grievant to work nearly 2 hours overtime on another route, 1650.

The Union contends further that the Service had a contractual obligation, once they determined that overtime was necessary on the grievant's own route, to assign that overtime to the grievant because he is on the "work assignment" overtime list, yet failed to do so.

The Union argues that the sole reason for the Service assigning the grievant to another route for overtime was their displeasure with a previous grievance found favorable for the grievant. The Union argues further that the Service has violated the Agreement, and other submitted awards, and asks that this grievance be sustained in their favor, the grievant be paid an additional half time for the time he spent on another assignment, that the Service cease future violations of this sort, will cease from issuing contradicting instructions to the grievant, and allow letter carriers to work their bid assignments.

"The US Postal Service"

The Service maintains that the Union has failed to meet its burden of proof that the Service violated the Agreement, or addendums there to.

The Service maintains further that the grievant requested 35 hours of Union time on July 29, 2015, and that they approved 6 hours that day for him, and assigned a CCA to perform the street duty portion of the grievant's route, after the grievant performed the "casing" of the route in the office first.

The Service argues that neither carrier supplied a PS Form 3996 requesting additional assistance for the route that morning, leaving the Service to have every reason to believe the route would be completed timely.

The Service argues further that the grievant is a member of three different overtime lists in the office, including the "split list", whereby a carrier will perform part of another route, and that on July 29<sup>th</sup>, the Service had a right, and a need to assign the grievant to overtime performing this "split."

## 6.

The Service contends that there is no violation of the Agreement, or parts thereof, that the grievant is simply attempting to manipulate the various overtime lists to his advantage, and that this grievance should be denied in its entirety.

### **OPINION & DECISION OF THE ARBITRATOR:**

The great American humorist Will Rogers once said, "All I know is just what I read in the papers."

The matter placed before the arbitrator is somewhat the same thing. The parties have relied, with the exception of statements made at hearing, almost exclusively on the moving papers - the case file containing the grievance(s), the pleadings, contentions of each party, and contractual citations.

The arbitrator is tasked with determining the validity of the alleged violations to the parties National Agreement based upon that information provided to him, and must distinguish his reasoning, and decision from within the four corners of that Agreement, and supplements alone.

The arbitrator must also employ, hopefully, sound reasoning for his decision, utilizing experience, logic, precedent, and respect for the parties positions, and their continued working relationship.

A basic premise in all arbitral proceedings is that one party over the other shall bear the burden to prove their allegations against the other party.

Burden of proof, "refers to the responsibility placed upon... the parties to prove to the satisfaction of the arbitrator the truth or correctness of allegations made..."<sup>6</sup>

Burden of proof is, "the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause."<sup>7</sup>

Such is a starting point for an arbitrator to determine who bears this burden, and proceed to the facts to determine if that burden has been met.

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<sup>6</sup> Evidence & Proof in Arbitration, M. Scheinman, ILR Press, 1970

<sup>7</sup> See Black's Law, 6<sup>th</sup> ed. 1996

7.

There is no dispute that in the instant matter before me, the Union bears this burden alone. They have alleged that the Service has violated the Agreement by not allowing the grievant to work overtime on his own route on July 29, 2015.

The Union states, "... that management refused to allow the grievant to work his bid assignment route 1680 (which Management gave to a CCA as auxiliary assistance)...."

To accept this offering one would need to ignore the fact that on this date, the grievant requested 35 hours of Union time to investigate possible grievance issues, and the Service granted the grievant 6 hours of Union time that same day, after the grievant cased his route for 2.29 hours.<sup>8</sup>

There is no question as to the importance placed by the Union upon their right to be granted Union time for this purpose. It is a hard fought right granted by the Agreement, confirmed and upheld by law.

The grievant, without dispute is a full time letter carrier who holds a bid on route 1680, and is also a Union steward in his office. Therefore the occasion may arise when he seeks time away from his route to investigate possible issues related to the grievance procedure. He did this on July 29<sup>th</sup>, and time was granted. Now comes the tricky part. While granting the grievant his request for Union time, the Service still has an obligation to deliver his route 1680. In order to do this, they assigned it to a Career Carrier Assistant. (CCA)

There is no evidence of record that, either while the grievant was casing his route that morning, or upon the CCA leaving the office with the route, anyone, the grievant, the CCA, or Management determined that overtime would be needed on route 1680 that day.

There was no PS Form 3996, Request for Assistance submitted by anyone as evidenced by the record. Therefore a reasonable conclusion must be that while the grievant was on Union time in the office, the CCA would timely deliver this route.

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<sup>8</sup> See J-2, Page 2

## 8.

Further, there is no dispute that while the CCA was delivering route 1680, he also performed a “pivot” of another route for .91 units. In total, it appears the CCA than ran over the allotted time for route 1680, and this time otherwise could have been overtime for the grievant, as offered by the Union.<sup>9</sup>

However, to accept this premise one would have to find that the Service knew in advance that the CCA would go over the allotted time, and I find no proof that they did. While one could argue that giving the CCA a part of another route would incur additional time in total to deliver route 1680, or that a CCA is not as experienced on this route as the grievant, those factors alone do not supersede the right of the Service to make those management decisions, nor would it be advisable to take away, once approved Union time to leave the office mid- day and go to the route, particularly when, as stated above there is no evidence that the Service knew in advance there could even be the need for it.

There is no dispute that the grievant is on three different overtime lists in his office. That is his right, and the Service has an obligation to equitably administer each list. However, the grievant is also a Union steward who sought, and received Union time on July 29<sup>th</sup>. Without the advance knowledge of the need for additional assistance on route 1680 that day, the Service had no obligation to disturb the steward’s time to perform his Union duties.

While Article 41.1.C.4 states, “The successful bidder shall work the duty assignment as posted,”<sup>10</sup> Article 17.3 states, “When it is necessary for a steward to leave his/her work area to investigate.....a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and *such request shall not be unreasonably denied.*”<sup>11</sup>

The simple fact of this issue is that the grievant asked for, and was granted Union time on July 29<sup>th</sup>, and that because of that someone other than him was required to deliver his route on the street.

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<sup>9</sup> See J-2, Page 3

<sup>10</sup> See National Agreement, Page 120

<sup>11</sup> See National Agreement, Page 84

Apparently no one realized, in advance that the person covering this route would take longer to do so, thus creating a scenario whereby the grievant felt he should have been offered overtime on his own route instead of another route.

I am fully in agreement that the grievant was entitled to overtime on his own route (He is on that overtime list) if the need for overtime on his own route was known in advance – but as stated above there is no evidence of persuasion that this was known to anyone, and to offer that someone should have known is not a compelling reason to find for the grievant on this issue.

The Union argues that the grievant should not have been given a “pivot” on another route at the end of his work day on July 29<sup>th</sup>. Whereas I first find no factual circumstances for providing him overtime on his own route, and I do find that he is on the third overtime list<sup>12</sup> and there appears to have been a need for him on route 1650, I cannot find this a violation of the Agreement.

The Service maintains that they were attempting to provide an equitable overtime opportunity to the grievant on this particular list<sup>13</sup> and that the grievant is an advocate for doing so, I find to be an acceptable exercise.

The grievant is on three different overtime lists, and the Service has an ongoing contractual obligation to “make every effort” to equitably distribute overtime opportunities to the grievant, as well as all others on these lists. The Service also has an ongoing obligation to provide Union time to stewards performing their official duties. Sometimes these two obligations may appear to conflict. Such is the contractual language, “every effort will be made to distribute equitably the opportunities for overtime among those on the “Overtime Desired” list.”<sup>14</sup> To deny the grievant overtime opportunities because he is a Union official, or on Union time would be inappropriate, however the evidence of record is persuasive that the Service was attempting to fulfill that obligation to the grievant by offering him overtime on another route, from the list that he is on.

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<sup>12</sup> See J-2, Page 2

<sup>13</sup> See J-2, Page 7

<sup>14</sup> See National Agreement, Page 21

10.

The Union would argue that the Service had a choice of overtime assignments to choose from, and denied the grievant his right to work his own route overtime. As stated above, I do not find that to be the case.

I find no malicious intent to deny the grievant overtime on his route, instead find that the Service did not have the opportunity to even have such a choice, and in providing the grievant with overtime on another route were, in fact meeting their obligation pursuant to Article 8 of the Agreement.

There is little doubt that the grievant is in a unique position as a full time letter carrier on three different overtime lists, and also an active Union official who seeks, and is granted Union time. The grievant seeks this time, and also seeks overtime opportunities. This unique situation may present a challenge for the Service to provide equitable overtime opportunities to the grievant, as evidenced by the record before me.

However, as offered by the arbitrator in the beginning of his opinion, the burden rests with the Union to persuade this forum of a violation of the Agreement, those citations offered in the grievance, and at hearing, and though well intentioned, articulate, and professional, I simply cannot find that burden has been met, no matter the standard of proof employed.

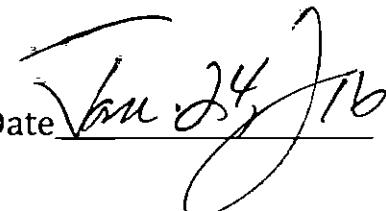
I do not find that the Service violated the Agreement in the instant matter before me.

**AWARD:**

This grievance is denied.



Donald J. Barrett, Arbitrator

Date  Jun 24 16