

In the Matter of the Arbitration :
between :

AMERICAN POSTAL WORKERS UNION)
:
and)
:
UNITED STATES POSTAL SERVICE)
:
)

CASES NO. HLC-5F-C 1004

Colorado Springs, Co

OPINION AND AWARD

CH 939

Appearances:

For the USPS - Robert L. Eugene, Labor Rel. Specialist
Denny Jackson, Acting Mgr., Cust. Svces.

For the APWU - Kenneth D. Wilson, Administrative Aide
Jon Mumir, Local President
Mike Benner, Pres., SDM Division

Background:

These cases came on for arbitration pursuant to the provisions of the current collective bargaining agreement and a jointly signed letter dated May 25, 1982.

By agreement, the matter in issue was defined as follows:

"Did management violate Article 8 and Article 19 of the National Agreement when it changed the grievants' schedules on October 30, 1981, and October 23, 1981, respectively, and, therefore, are the grievants entitled to out-of-schedule pay for the period they worked from October 30, 1981 and October 23, 1981, until they were placed in preferred duty assignments, either by bid or by assignment to residual vacancies?"

These Parties also agreed upon a stipulated set of facts which they believed were pertinent to the proper disposition of this dispute;

"1. The grievance is timely and properly before the Arbitrator.

"2. The grievants were converted from part-time flexible status to full-time regular status on August 22, 1981. They were allowed to work regular schedules as follows:

a. Anderson - 0900 hours to 1800 hours, Monday, Tuesday, Wednesday and Friday, and 0800 hours to 1700 hours on Saturday, and off on Thursday and Sunday.

b. Bendekovic - 0830 to 1730 M, T, W, F; 0630 - 1500 SA; off TH, SU

"3. The grievants' duty status at that time was unassigned, as they had not achieved preferred duty assignments by bidding or by assignment to residual vacancies at that time.

"4. In October of 1981, management changed the schedules in the following manner:

a. Anderson - Oct 30, 1981 to 2200-0630, TU-WE off.

b. Bendekovic - October 23, 1981 to 2200 - 0630, TU-WE off.

"5. The grievants were officially assigned to the new schedules until they were placed in new duty assignments, either by bid or by assignment to residual vacancies."

The Parties also stipulated at the opening of this hearing that there were two grievances properly before the Arbitrator. The first involves L. Anderson and the second G. Bendekovic. Both work out of the Colorado Springs Post Office.

Contentions of the Parties:

According to the Union, the case is a simple one. The issue posed is whether Anderson and Bendekovic, who were converted from part-time flexibles to full-time regulars and assigned a set of duty hours on August 22, 1981, and who had their schedules changed without the benefit of a bid or a residual vacancy, entitled to out-of-schedule overtime.

The Union contended that the failure to pay the out-of-schedule overtime violated Article 8, Section 4.B of the current National Agreement. Additionally, the Union argued that, pursuant to Article 19 of the Agreement, Handbook EL-401's terms and conditions have become part of the National Agreement. According to the Union, the provisions of that Handbook decree that employees similarly situated to the grievants herein are eligible for and should receive out-of-schedule overtime.

It was the Union's position that the Postal Service could not distinguish between permanent changes made in the schedules of unassigned regulars as against changes made in the schedule of full-time regulars. Such distinction is not provided for in the provisions of Article 37, Section 3 which deals with the posting and bidding for duty assignments in the Clerk Craft.

Finally, the Union addressed the documentation submitted by the Employer in support of its position. The Union asserted that certain arbitration awards cited by the Employer were issued prior to the publication of EL-401, and the other documents do not relate to the subject matter of unassigned regulars and also pre-date the provisions of EL-401.

Management contended that the Union's reliance upon the provisions of EL-401 was misplaced. Management took the position that EL-401 was not a Handbook issued pursuant to Article 19, and the Postal Service had taken the position that, when the directives contained in that Handbook were published for supervision, no changes relating to wages, hours or working conditions of bargaining employees were made by its terms. The Union filed no grievance, under Article 19, because this Handbook was issued.

The Postal Service argued that, in any event, it had followed the dictates of that Handbook. This Guide did not provide that regular work schedules could not be changed on a temporary or permanent basis to meet the operational needs of the

service. Since the Guide does not provide that permanent change in schedule require the payment of out-of-schedule compensation, the changes made in the schedules of the Grievants, with whom this case is concerned, would not require that this additional compensation be paid. These Grievants were reassigned permanent changes in their hours of work. The Service contended that management rights, as set out in Article 3 of the National Agreement, as well as other provisions of the Time and Attendance Manual and the Employee and Labor Relations Manual made it clear that Management had not bargained away its right to make the changes in schedules with which we are here concerned nor had it issued any directive or publication which would bar it from assigning unassigned regulars to permanent schedule changes due to operational needs.

Management also addressed some of the documentation which the Union submitted in support of its case. It was the position of the Postal Service that Notice No. 114, resulting from the issuance of the Groettum decision, dealt with temporary schedule changes and the instant case, as the USPS alleged, was concerned with a permanent schedule change.

As to the provisions of Article 37, the Postal Service took the position that there are two types of full time regular employees, assigned and unassigned. For the latter classification the Postal Service argued that no language precludes the Service from making a permanent change in the fixed schedule of such employees. The fact that Section 3-F-10 of that Article provides for how changes in schedule could be made by bid or residual assignment for such unassigned regulars does not mean there could not be other means for making such changes. Changes in schedules for unassigned regulars were not always made, by practice, to a vacant assignment.

The Postal Service also adduced testimony for the purpose of establishing that there were bona fide operational reasons for making these schedule changes at the Colorado Springs Post Office.

OPINION OF THE ARBITRATOR:

As stated earlier, this case is concerned with the question of whether the National Agreement provides that these two grievants, who were converted from part-time flexible positions to full-time regular positions and then assigned a set schedule of hours of work, could have that schedule changed,

without the benefit of their bidding for such a change in assignment or required to fill a residual vacancy, and not be considered entitled to out-of-schedule overtime.

Article 8, Section 4-B of the National Agreement reads as follows:

"B. Overtime shall be paid to employees for work performed only after eight (8) hours on duty in any one service day or forty (40) hours in any one service week. Nothing in this Section shall be construed by the parties or any reviewing authority to deny the payment of overtime to employees for time worked outside of their regularly scheduled work week at the request of the Employer." (underlining supplied by the writer)

The dispute arose when these two unassigned regular employees at the Colorado Springs Post Office, who were converted to this regular status in the Clerk Craft on August 22, 1981, and were at that time assigned regular duty hours and days off, were subsequently reassigned to changed hours of work, on a different shift and with other days off.

The Union protested that these employees were due payment for time worked outside their regularly scheduled work week, albeit that change in assignment may have been made to meet operational needs of the Service. In effect, the USPS argued that this was a permanent change, and as such these employees were not entitled to receive such overtime pay.

The implementation of scheduling practices and the payment of premium pay is guided by the provisions of Handbook NL-401, which was issued in March of 1981. As stated in the prefatory comment on its first page, this Guide is provided as a management tool to enable supervisors not only to comply with the requirements of the FLSA but also "...postal policy and established contractual agreements." Although this Publication does state that it does not address every question of policy relating to time and attendance, it goes on to state the major topics of concern to each line supervisor and manager are addressed.

This Handbook does provide guidance as to how Management shall comply with "established postal policy and established contractual agreements" regarding out-of-schedule assignments of

"Unassigned Regular Full-Time Employees Out-Of-Schedule." Specifically, under the heading of III Premium Situations, this Handbook states as follows:

"5. Unassigned Regular Full-Time Employees Out-Of-Schedule. All unassigned regular full-time employees must be assigned regular work schedules. When not assigned to a posted position, employees assume as their regular work schedule the hours worked in their first week of the pay period in which the change to unassigned regular occurred. When a part-time flexible (PTF) employee is converted to full-time regular, and is not assigned to a full time bid position, the employee becomes an unassigned regular. (See Article VII, Section 3 of the National Agreement.)

"These employees are assigned regular work schedules and are eligible for out-of-schedule overtime. Temporary rescheduling must be compensated at the appropriate premium rate(s).

"A management-directed permanent assignment of an unassigned regular to a specific posted position which went unbid in accordance with provisions in the National Agreement, requires no payment of out-of-schedule overtime."

This clear language in Handbook EL-401, with its reference to "full time bid positions" and "posted provisions" and unbid vacancies permitting management directed assignments, refers the reader to the pertinent provisions of Article 37, which deals with posting and bidding of vacancies for the Clerk Craft among other subjects of concern to that Craft. After dealing with the subject of filling of vacancies and the posting and bidding requirements to do so, Subsection 3-F-10, of that Article provides:

"10. An unassigned full-time regular employee should bid on duty assignments posted for bids by employees in the craft. If the employee does not bid, or is the unsuccessful bidder, such employee shall be assigned in any residual assignment. The employee's preference will be considered if there is more than one assignment available and shall be honored except where an employee can be assigned to any available duty assignment for which he/she is currently qualified (including scheme requirements)."

0073 0093 0842

The Postal Service sought to establish that no Article 19 of the National Agreement obligation was raised by its publication of Handbook EL 401. It claimed that nothing in the Handbook did not comply with the terms of that National Agreement. It also claimed that this Handbook did not stop the making of changes in regular work schedules on a temporary or regular basis due to operational reasons.

That is quite true, the Postal Service is not prohibited from making such changes in assigned hours of work. The question with which we are here concerned is whether when such changes are made does the Service undertake a premium pay obligation.

Recognizing this, the Service argued that this Guide required payment when a temporary change was made but not when the Service chose to make a permanent change in shifts, hours, or days off for Unassigned Regulars. That contention flies squarely in the face of the posting, bidding and filling of vacancy provisions of Article 37 of the National Agreement. The so-called "permanent" vacancies which Anderson and Bendeškovic were called upon to fill could only be filled, in compliance with Article 37, if they bid for such permanent vacancies, with different hours of work, which had been posted for their craft, or they were required to accept a residual assignment because they failed to bid or were unsuccessful bidders.

That is not what happened in this case. Both Anderson and Bendeškovic were assigned to new hours of work because the senior bidders for certain vacancies were not qualified on the schemes and the office was approaching the holiday season. As Article 37.3-F-3 requires, "When the duty assignment requires scheme knowledge,...If the senior bidder is not qualified on essential scheme requirements when posting period is closed, managing filling of the preferred assignment shall be deferred until such employee is qualified on the essential scheme requirements, but not in excess of 90 days."

Because of this contractual obligation, Management attempted to distinguish between being placed in a particular duty assignment and being placed in a schedule of hours and days off. That is a distinction that does not appear to find support in the filling of vacancy provisions of the National Agreement. The description of what motivated management to reassign Anderson and Bendeškovic other hours than those they worked in the first week

they became unassigned regulars established that this was caused by the existence and filling of permanent vacancies which the senior bidders were not as yet qualified to fill. Anderson and Bendekovic had their tours and days off changed to meet manpower needs of the moment. The testimony of the Acting Manager of Customer Services at Colorado Springs pointed out the existence of a manpower shortage at the time these two grievants had their assignments changed. The other requirement, "to assign regular work schedules" when they became unassigned regulars appears to have been overlooked.

Again, despite the contention that Anderson and Bendeko were given permanent rather than temporary assignments when their hours and days off were changed from those of their initial assignment in their first week in the new payroll status, the testimony of this same witness revealed that, as of the date of the arbitration hearing, one of them did bid a preferred bid assignment and was in a deferment period and the other was also in a deferment period after having been assigned a particular residual vacancy. From these subsequent assignments, it does not appear that either of these grievants could have been regarded as filling a permanent vacancy when they were assigned to Tour One.

For all the reasons set forth above, the Undersigned must find that these two grievants were temporarily assigned to out-of-schedule hours on October 23, 1981 and October 30, 1981 respectively, and that the USPS is obligated, under Article 8, Section 4-B of the National Agreement to pay them overtime for working outside their regularly scheduled work week at the request of the Employer. That obligation of the USPS shall cease or shall have ceased when proper schedule changes were made as required by the cited provisions of the National Agreement and the guidance contained in Handbook EL 401, or these employees are returned to their former schedules.

A W A R D

The grievances filed by the APWU on behalf of these grievants are sustained. The terms of the appropriate remedy are set forth in the paragraph of the Opinion immediately above.


HOWARD G. GAMSER, NATIONAL ARBITRATOR

Washington, DC
September 10, 1982