

REGULAR ARBITRATION

SOUTHERN REGION

USPS - NALC

C# 11001

In the Matter of Arbitration) Case #: S7N-3 -C-33573
Between) G.T.S. #: 004420
United States Postal Service) Jordan North
Farmerville, Louisiana) (Grievant)
and)
Branch 136)
National Association of)
Letter Carriers) Case File Closed:
AFL - CIO) April 25, 1990

Before Irvin Sobel, Arbitrator of Record

Appearances:

For the National Association of Letter Carriers (NALC, Union)
Collier James, Regional Administrative Assistant
Nashville, Tennessee

For the United States Postal Service (Service, Employer, Management)
Connie Hartley
Labor Relations Representative
Shreveport, Louisiana

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Preliminary Statement:

Pursuant to Article 15 of the National Agreement (N/A) between the parties, a hearing was conducted on April 16, 1990 by the aforesighted arbitrator of record. Each party was accorded full opportunity to introduce all evidence deemed relevant to its case, examine and cross examine witnesses, and to argue its position. The parties eschewed post hearing briefs and concluded the hearing with oral arguments. However, the Union advocate requested the hearing file be kept open in order to provide him opportunity for submission of additional case citations.

The issue as stipulated by mutual acquiescence of the parties was stated as follows:

Did the Employer violate the National Agreement when it did not call-in the grievant on his Non-Scheduled days? If so, what is the appropriate remedy?

Facts In Case:

On September 14, 1990 the following a first step denial on September 12th by Mr. W. Killen, Superintendent of Postal Operations at the Farmerville, Louisiana Post Office, a grievance was introduced at the 2nd step appeal level on behalf of the grievant. That grievance contended:

The Farmerville Post Office have been using a clerk from Monroe Post Office to carry the grievant's route, the dates are August 14, 21, 26 and September 4 and 11, 1990. The grievant is N/S on Tuesdays and this is when they have a clerk come in and work his assignment.

The Farmerville Post Office, under the Contract has no right to deny the grievant his bid assignment on his N/S day, he has ask that he be allowed to work overtime and is

more than willing to work on his N/S day. The grievant was and has been available to work on his N/S day but Management refused to call him in, they bring in a clerk from Monroe, Louisiana to try and serve the overtime. They are allowing a clerk to do carrier work, you cannot cross crafts, you can not bring in a clerk from another office to carry mail.

In denying the grievance Ms. Jeannitte Price, SPO at the Monroe, Louisiana Postal Installation contended:

At the Step 2 meeting I contacted Mr. Nolan, Postmaster of Farmerville via telephone. On the speaker telephone Mr. Nolan, Mr. Castagnetta and I attempted to develop the facts in this case. At the Step 2 meeting the Union did not exchange any supporting documents for this grievance. However, the Union did submit a request for additional information to me on October 1, 1990. I have mailed that request to the Postmaster of Farmerville for a request. During the Step 2 meeting I gave Mr. Killen, SPO; Statement from Mr. Nolan, Postmaster; copies of time cards. On October 23, 1990 Mr. Castagnetta demanded that Carrier North be allowed to work all the overtime on his route. The Union stated that this grievance can only be resolved with the hiring of a PTF or casual. Management will not satisfy the request of the Union at this time.

In his statement of Additions and Corrections to Ms. Price's 2nd step denial Mr. Joseph Castagnana, President Branch 136 stated:

On October 1, 1990 the USPS step two designee and myself had a step two meeting, during this meeting I gave the facts of this case to Ms. Price, I also ask for more information after talking to the Farmerville Postmaster, what I received was just some time cards please note that the time cards had no NAMES ON THEM, I had requested Mr. Brantly's and Mr. Hart's, I asked the step two designee if she knew which one was which, her reply was NO I ask if she could get back in touch with the Postmaster in Farmerville and let me know which one was which, as of this date the only information I received was the step two answer to our meeting.

In the step one 2608 that Mr. Killen the SPO of Farmerville admits that he is using a Clerk from Monroe to do Carrier work in Farmerville just to save the overtime, we say he is using a Clerk to Circumvent Art. 8 of the National Contract. He also states that they have a PTF. This PTF

is not used to the full limits in that office. The time cards both show that only on one day did someone made less than 8 hours. The time cards have no names so therefore is no good. The work schedule shows that the Clerk is scheduled to come to work as a carrier, this is crossing crafts. The PTF carrier Mr. Hart is not working a full carrier job, they are using clerks to work carrier hours.

Management in Farmerville Post Office is circumventing the Contract by allowing Clerks to do Carrier work and using the MSC cap on hiring as a catch all out.

Management's third step denial by Richard R. Wiese more directly addressed the salient issue. Mr. Wiese contended:

Based on information presented and contained in the grievance file, the grievance is denied. A review of this grievance file indicates that the grievant is not entitled to the remedy requested for the following reasons: There is no contract guarantee for an employee to work on off day overtime. Management may use employees from another craft within the guidelines of Article 7, Section 2. The grievance was filed untimely for the incident of August 28, 1990. Mr. Hart normally works the grievant's route on his off day. Mr. Brantley works auxiliary route when needed. The grievance alleged a violation of Article 8, Section 5 and 41, Section 1 C 4, however, the file does not support this. Management has acted in accordance with Article 3 in this case.

RELEVANT CONTRACT PROVISIONS

Article 7.2 - Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own

scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

Position of the Parties:

The essence of each party's position has been developed in the already cited interchanges. Because the additional facts and arguments deemed relevant by this arbitrator to his decision will be developed by him the body of his Opinion only a brief summary of each party's contentions will be stated at this juncture.

Position of the Union:

The Union contended that Full Time Regular Letter Carrier Mr. Jordan North of the Farmerville, Louisiana Post Office had been denied his rightful opportunity to work overtime on his Non-Scheduled (N/S) days by the Employer's improper utilization, as his replacement, of Mr. Boone Brantley, formerly of the Farmerville, Louisiana Post Office but since August 11, a PTF clerk at the Monroe, Louisiana MSC installation. The provisions of Article 7, frequently used to justify such intercraft movements does not apply to Mr. Brantley who is a Clerk at another installation. Management's decision to allow Mr. Brantley to transfer served to create the so called "emergency" situation which the Employer then attempted to use

to justify its actions. By Superintendent of Postal Operations Killen's own statement in denying the grievance Brantley was used to avoid the payment of overtime to the grievant.

Any application of Article 7 to allow a clerk to perform carrier's functions applied only to clerks in the Farmerville office. The Farmerville NALC, as well as the American Postal Workers Union (APWU), given the small size of the Farmerville office and the limited number of employees had never objected to such cross clerk and carrier activities and PTF clerks frequently carried routes and PTF carriers functioned as clerks. Brantley was temporarily loaned back periodically to the Farmerville office to cover short term assignments, but from August 11th was not officially affiliated with the Farmerville establishment.

A number of arbitral decisions support the Union's cited view of the matter, including a step 4 decision signed by the Postal Service Representative.

The Employer's by raising the issue of lack of timeliness as a basis for denying the grievance is attempting to avoid an adverse ruling on the substantive issue. Assuming that September 12th is the date of the filing of the grievance, even if August 28th were to be deemed untimely, the "alleged" violations continued on September 4, 11, and 25 and thus the grievance encompassing these dates cannot be deemed to have been introduced in an untimely manner. The Employer's 2nd and 3rd step replies did not raise the issue of arbitrability and thus the "surprise" introduction of the issue at the hearing should not be considered. Moreover the failure by the Employer to furnish the Union with the dated time cards it had requested made it

impossible for the NALC to determine when and if a violation had taken place.

The Employer's Position:

The Employer contended that the Union's untimely introduction of the grievance regarding Brantley's working North's route on the latter's non-scheduled day on August 28th, meant in essence that it had waived its rights to grieve the matter even though the practice continued after that date.

Moreover, the crossing of craft lines had become a frequent if not continuous past practice at the Farmerville Post Office. Not only were inter-office craft shifts almost a daily occurrence at Farmerville but PTF also carriers and clerks had been shuttled from Monroe to Farmerville and vice-versa, in order to enable the employees in each postal unit to work as close to forty hours as possible. Although PTF Brantley had officially transferred to Monroe he continued to work in Farmerville and no one in the Union, including North in his capacity as a Steward, had protested his frequent appearances in Farmerville until the grievance was filed. While in larger fully staffed facilities such practices are infrequent and eventuate temporarily when there is a surplus of workers in one craft and a shortage in the other, inter-craft transfers were the rule in a small establishment such as Farmerville. In such a small establishment atmosphere the PTF's especially "swing" from one craft to the other and as a result their classification as either Clerks or Carriers is a matter of convenience rather than defining any continuous functional

responsibility. Brantley, who "swung" between Clerk and Carrier activities and even craft designations had carried the grievant's route seven to eight times on North's N/S days. In fact on February 1990 North had protested against being assigned to his route on his N/S days.

Opinion and Award:

Three fundamental questions must be addressed and answered before the instant grievance can be resolved. These are: 1) Was the grievance at issue untimely introduced and if not what dates of the alleged infractions fall within the parameters of the grievance; 2) What was the status of the past practices at the Farmerville Post Office in regard to the utilization of PTF Brantley prior to his moment to the Monroe, Louisiana Post Office on August 11th; 3) Was there an emergency in a contractual sense at the Farmerville Post Office on the particular dates Brantley replaced North; 4) Was the utilization of PTF Brantley on the dates at issue violative of the National Agreement?

Timeliness:

The Employer contended that the Union failed to file the grievance against the Employer's utilization of PTF Brantley on August 28th in a timely fashion and thus it's failure to do so for the first date of the alleged violation meant that the NALC sanctioned the practice on a continuing basis. The Union, however, pointed out that the grievance at issue in this hearing, which cites September 4 as the date of violation, was filed in a timely fashion

and thus not only encompasses the dates in which Brantley carried North's route after August 28th on his N/S days but also established the grievance as a continuing violation. Consequently August 28th date should be restored as a date of violation.

Two Form 2608's (Grievance Summary Form - Step 1) were filed by Superintendent of Postal Operations (SPO) W. J. Killen on September 12, 1990. The first, (Mgt. Exhibit #1) which cites August 28 as the date of violation denies the grievance on the grounds of untimeliness. The Union filed a second grievance on the same date citing September 4 as the date of violation. That Form 2608, which is an integral part of the grievance file (JT Exh. #2) was denied by Killen who stated, "B. F. Brantley was a Clerk/Carrier here in Farmerville before transferring to Monroe. We are using him as a lend in as needed until we are allowed to hire in the new F. Y. Brantley is used on North's N/S on straight time in lieu of overtime for regular carriers".

The record thus supports the arbitrability of this grievance with the date of the alleged infraction beginning on September 4th. SPO Killen's denial of the grievance encompassing August 28th introduced on September 12th on behalf of the grievant, who is also the NALC Union Steward in Farmerville, is hereby affirmed. Mr. North was definitely aware of the fact that Mr. Brantley had carried his route on his N/S day by the early morning of August 29th and he as the Union Steward could easily have filed his grievance in a timely fashion. The Union's rationalization that he signified his intention to grieve by asking for the time cards encompassing the August 28th

date does not provide an acceptable rationale for incorporating the August 28th date within the parameters of the grievance.

Past Practices:

The exigencies of operations, given the limited size of the staff, at the Farmerville Post Office required considerable inter-craft mobility between the PTF's in that office. At the beginning of 1990, in an operation involving one full time route, and two auxiliary routes, in addition to the normal clerical duties, there were two full time employees who did not "swing" (the grievant and Clerk Allen) and three PTF's, namely Hart (Ken), Brantley, and Silmon. Of the three PTFs Ken Hart and Boone Brantley were more likely to be performing carrier functions, including carrying the grievant's route on his N/S days. PTF Clerk Silmon was more likely to be performing clerical functions although he was capable of performing and occasionally did perform as a carrier on Auxiliary routes. In short, due to days off, continuing illness, temporary sick leave, annual leave, and shifts in work loads, PTF Clerks performed carrier duties and vice versa for those designated as PTF carriers. PTF Brantley prior to his transfer to Monroe had been variously designated for official reasons as a PTF Carrier and Clerk without changing his essential swing like functions.

Carlton Hart joined the work force as a PTF Clerk in 1990. In addition to this inter-craft transferability at Farmerville between the PTFs, however designated, the Farmerville employees were sometimes assigned to Monroe as well as PTFs from Monroe working in Farmerville. All in all these frequent craft and even station

changes were designed to accord PTFs as close to forty (40) hours of work as possible and were not only sanctioned by the Union but, given the small size of the component at Farmerville, also by the National Agreement. In a period in February during which Mr. North felt he could not continue to work his N/S days, Mr. Brantley and Ken Hart worked his route but subsequently the grievant signified his desire to resume carrying his route on overtime during his N/S days if no one were available to do so.

In short, prior to Mr. Brantley's transfer to Monroe as a PTF Clerk there was no question that inter-craft transfers to meet daily contingencies were not only the prevailing practice but also were tolerated, if not encouraged by the two Unions, in order to accord the PTF's full time employment. In fact the craft designation of the PTF's were a matter of temporary official classification rather than accurately reflective of their true functions.

This rough "equilibrium" in which inter-craft transfers took place on almost a daily basis, when there was more work in one craft than workers, was disrupted by the accession of Mr. Carlton Hart as a PTF Clerk. This potentially diluted the opportunities for full time employment by the PTF's so that after Brantley went on loan to Monroe he subsequently applied for a permanent transfer and shortly thereafter on August 11 was officially transferred to that office.¹

1 It is hard to determine whether the accession of Carlton Hart was directly related to Brantley's being more frequently "borrowed" by the Monroe office or whether Hart's accession was independent of Brantley's status and in fact preceeded his very frequent borrowing by Monroe.

Whatever the cause of Brantley's transfer, nevertheless, it was recognized that his loss created a potential for considerable disruption during a period of annual leave and afterwards Hart's illness, and as a result Farmerville Management explicitly was given the right to "borrow" Brantley for a few hours per week.¹ On this basis namely a potential shortfall of workers Farmerville Management had "put in" for an additional PTF and/or Casual but at the time of the incident(s) which led to the grievance the Monroe MSC had already turned down the request. This belied SPO Killen's justification for using Brantley on the grievant's N/S days, namely, that his utilization was as expedient, justified by the "emergency" which resulted from the temporary inability to fill the post.

No genuine "emergency" existed on the grievant's N/S dates in which PTF Brantley worked the entire day. As the too numerous to cite arbitral citations offered by the parties as support for their respective positions would attest, an "emergency" exists only after the Employer has made all the contractually sanctioned moves within its powers to staff its positions and still finds itself unable to find enough employees to do so. One such contractually sanctioned method of staffing, if the so called shortfall of employees falls on a given employee's N/S day, is to call in that employee on that day

¹ It was difficult to ascertain whether the Union officials either at Farmerville or in Monroe either knew about these arrangements or sanctioned them.

even it means the payment of overtime. The grievant was the only person on an N/S day when Brantley was called in, and since he was known to be available on those days he should have been called in before Brantley's utilization.

Arguendo assuming an emergency existed it was one caused by the Monroe MSC's failure to authorize a replacement at Farmerville for Mr. Brantley. However, the Employer's first step response itself belies any notion of an emergency as justification for its action. SPO Killen explicitly stated that Brantley was brought "in on straight time in lieu of overtime for the regular carrier".

That argument based upon Management's exercise of its Article 3 prerogative to make manpower adjustments in the interest of efficiency is invalid. Countless arbitrators, including National Arbitrator Mittenthal and this one, have explicitly stated that Management cannot use its Article 3 prerogatives of making manning adjustments to minimize overtime if that exercise of authority is limited by other terms of the National Agreement.

The Propriety of Utilizing Brantley:

Absent any emergency Management's attempted to justify its utilization of Mr. Brantley through its establishment of a prior past practice. Had Brantley continued to be a PTF clerk in the Farmerville installation post there would have been no question of the propriety of his performing the grievant's functions on the day in question. In fact, although statements by the Farmerville NALC seemed at times to indicate that any crossing of craft lines to cover the grievant's route on his day off would have been in violation of

the N/S it also failed to list September 18 as one of the days it was contesting. That was the date in which Farmerville PTF Clerk Silmon worked the grievant's route. Thus by indirection the Union recognized the past practice but based its argument upon the fact that the past practice involved covered only inter-craft transfers within the Farmerville Post Office. PTF Brantley was officially on the Monroe installation's rolls and the Union in allowing him to be borrowed for short stints generally as a carrier on auxiliary routes, did not endorse a change in his official work place.

None of the citations justifying inter-craft substitution on grounds of shortage in one craft and oversupply in the other by the able Employer representative encompass such transfer across different installations. In fact the only decision cited by either of the parties regarding such an inter post office transfer was a 1972 step 4 decision of July 3, 1972 by M. Wilson Murphy, Employer Labor Relations Division, which stated, "The grievance is sustained as the incidental detailing of part time flexible employees from another post office for the sole reason of avoiding overtime will be discontinued."

Notwithstanding, the able Employer advocates' contentions that the size of the postal unit was not specified in that decision that citation does not limit its applicability to small post offices and hence the decision must be accepted for its precedential value.

The utilization of Mr. Brantley on September 25, in place of the grievant is not sanctioned by the fact that on Friday, September 28th PTF carrier Hart had to be called in because of illness to replace North. The Employer submitted no evidence that the grievant had not been able to perform his functions on the 25th.

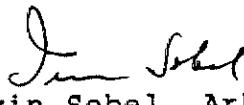
For all the above reasons the grievance, encompassing September 4, 11 and 25, will be sustained.

Award:

The grievance of Regular City Carrier (RT 4122) Jordan W. North is hereby sustained. The grievant will receive twenty-four (24) hours of back pay at overtime rates or thirty-six (36) hours at straight hourly pay at his prevailing rate as of the date of the infractions.

Tallahassee, Florida
July 30, 1991

This is a certified true
copy of Arbitration Award


Irvin Sobel, Arbitrator