

C# 05821

IN THE MATTER OF ARBITRATION BETWEEN

United States Postal Service,
Toledo, Ohio

Employer

Case No. C4N-4F-C 5526

and

National Association of Letter
Carriers AFL-CIO,
Toledo, Ohio, Branch 100

Union

APPEARANCES:

For the Employer: Janice M. Hussey
Labor Relations Representative
435 S. St. Clair
Toledo, Ohio 43601-9406

For the Union: Robert T. Newbold
Local Business Agent
602 Dearborn
Toledo, Ohio 43605

DECISION AND AWARD

Preliminary Statement and the Issue

MAX ROTENBERG, Arbitrator: The Issues before me for resolution stem from the Employer's action on March 2, 1985¹ bumping grievant from his assigned letter carrying route and changing his work starting time thereby reducing his scheduled work hours from eight to six. The Union claiming the Employer's action is violative of the 1984 National Agreement (the contract).

¹All dates are in 1985 unless otherwise indicated.

between the parties, invoked the contract grievance procedure on March 6 which culminated in this arbitration. The Employer justifies its action as being in full conformity with the contract. At the hearing of this dispute in Toledo, Ohio on November 11, the parties were afforded opportunity to present evidence, examine and cross-examine witnesses and present argument in full support of their respective positions. Several submissions made by the parties to the arbitrator were duly considered.

The Issues

1. Whether the Employer's action in bumping grievant from his assigned route and changing his work starting time thereby reducing his scheduled hours from eight to six is violative of the 1984 National Agreement?
2. If so, what is an appropriate remedy?

Summary of Evidence

Grievant, a Part-time flexible (PTF) letter carrier has been in the Employer's Postal Service since April 28, 1984. Sometime prior to March 2 grievant exercised his preference by use of his seniority as a PTF Carrier pursuant to contract Article 41 Section 2.B.4.5. to be assigned to a temporarily vacant route (509). On March 2 he was scheduled to work this route. Also on that date a carrier telephoned the Employer's office reporting her sick leave. The open route at that time was an auxiliary route of less than eight hours. Management called in full-time

carrier, Fetterman from the Over-time Desired list on his day off to replace the employee that called in her sick leave. Carrier Fetterman was placed on his route thus bumped utility carrier Perry and Perry then bumped grievant which resulted in a change in grievant's starting time from 7 a.m. to 9 a.m. and a reduction in his work hours from eight hours to six. PTF carriers Shiffler and Strock each of less seniority than grievant worked more hours than grievant on March 2 (Shiffler worked 8 hours and approximately 24 minutes; Strock worked 7 hours and approximately 58 minutes.) There is evidence by the Employer to the effect that grievant refused management's offer on March 2 to transfer to another post office (Kenwood) for eight hours work. Grievant denied this. His version of the offer episode is that, about a month after the March 2 bumping, management offered to transfer him without specifying the location and that he declined that offer.

In a settlement of a grievance in Step 4 of the grievance procedure in Case No. N8-N-0176/N8NIJC-6643 Hartford, Connecticut involving essentially the same issue as here the parties agreed that, "In the office in question...To enable the utility carrier to achieve the essence of his bid assignment, he will be allowed to displace an employee who has opted to cover an assignment under the provisions of Article 41, Section 2 B.3.4. and 5. as long as such route is one of the utility carrier's string of routes and if none of the other routes in his string are

available." Similar settlement agreements in the fourth Step of the grievance procedure are in Case HIN-4K-C 12279, St. Louis, Missouri; Case No. HIN-5D-C 6601, Portland, Oregon.

In a memorandum of October 30, 1981 from James F. Brzenski, MSC Manager/Postmaster, Toledo, Ohio, to Postmasters City Delivery Offices Station Managers, the Postmaster states,

"Article 41, Section 2 B.3.4. and 5. of the 1981 National Agreement enumerates that part-time flexibles may exercise a preference by seniority for available full-time craft duty assignments in anticipated duration of five days or more in the unit to which they are assigned. In order to clarify our position concerning this craft article, the following is submitted. When a part-time flexible selects a vacant assignment in accordance with this craft provision, the part-time flexible must be assigned to the schedule of the regular carrier's route for which he is covering during the absence. This includes the SDO schedule of that route..."

Contentions of Parties

The Union in substance contends. (1) Management has no right to change grievant's work starting time on a route assignment which he acquired by a successful bid pursuant to the contract. (2) Management's bringing in carrier Fetterman on over-time which caused grievant's bumping and a two hour shortage of his pay was unnecessary. (3) Grievant was treated unfairly when he was bumped off his route while subs of less seniority were allowed to work on non-bid routes more hours on March 2 than grievant. (4) The Union requests the award to require the Employer to pay grievant two hours pay.

The Employer in justification of its action contends (1) At the time of this incident grievant was a PTF employee who under the contract is required to be "available to work flexible hours as

assigned by the Employer during the course of a service week...may be scheduled less than eight (8) hours per service day and less than forty (40) hours in a normal service week..." Part-time Flexible employees are not guaranteed 8 hours work (2) Due to an unforeseen need to replace a carrier who on March 2 reported in her sick leave, management called in a full-time carrier from the Over-time Desired list on his day off. To properly utilize his services it was necessary to make two bumps the second of which was bumping grievant (3) Article 3 gives management the exclusive right to determine the methods, means, and personnel by which such operations are to be conducted. It is not efficient to have a PTF report at 7 a.m. and not to assign his work until 9 a.m.; nor is it efficient to schedule for over-time on a route which has less than eight hours of work. (4) In permitting carrier Fetterman to bump utility carrier Perry on March 2 and carrier Perry in turn to bump grievant, the Employer was following 3 settlements of grievances in Step 4 of the grievance procedure in three installations, Hartford, Connecticut, St. Louis, Missouri, and Portland, Oregon. (5) Grievant was telephoned prior to his starting time and told not to report for work until 9 a.m. (6) Management offered to send grievant to another post office (Kenwood) which had eight hours of work for him, but grievant refused the offer. (7) Grievant did in fact work 44.67 hours in the week of March 2 and received 4.67 hours of over-time. (8) The Union's proposed corrective action is inappropriate because grievant was compensated for all hours he worked on the date in question.

Analysis and Conclusions

The relevant parts of the contract provide:

"ARTICLE 3 MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means and personnel by which such operations are to be conducted;

ARTICLE 5 PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the national Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

ARTICLE 7 EMPLOYEE CLASSIFICATIONS

Section 1. Definition and Use

A. Regular Work Force. The regular work force shall be comprised of two categories of employees which are as follows:

1. Full-Time. Employees in this category shall be hired pursuant to such procedures as the Employer may establish and shall be

assigned to regular schedules consisting of five (5) eight (8) hour days in a service week.

2. Part-Time. Employees in this category shall be hired pursuant to such procedures as the Employer may establish and shall be assigned to regular schedules of less than forty (40) hours in a service week, or shall be available to work flexible hours as assigned by the Employer during the course of a service week.

ARTICLE 8 HOURS OF WORK

Section 2. Work schedules

Section 3. Exceptions

The above shall not apply to part-time employees.

Part-time employees will be scheduled in accordance with the above rules, except they may be scheduled for less than eight (8) hours per service day and less than forty (40) hours per normal work week.

Section 8. Guarantees

A. An employee called in outside the employee's regular work schedule shall be guaranteed a minimum of four (4) consecutive hours of work or pay in lieu thereof where less than four (4) hours of work is available. Such guaranteed minimum shall not apply to an employee called in who continues working on into the employee's regularly scheduled shift.

B. When a full-time regular employee is called in on the employee's non-scheduled day, the employee will be guaranteed eight hours work or pay in lieu thereof.

ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE

Section 4. Arbitration

A. General Provisions

(6) All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement,

and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator.

4. Part-time flexible letter carriers may exercise their preference by use of their seniority for vacation scheduling and for available full-time craft duty assignments of anticipated duration of five (5) days or more in the delivery unit to which they are assigned.
5. A letter carrier who, pursuant to subsections 3 and 4 above, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration."

There is no significant dispute between the parties as to the operative facts or the applicable provisions of the contract. Their differences lie in the interpretation of those facts and the applicable contract provisions and the conclusions to be drawn. The Employer's contentions appear not to give sufficient consideration to the contractual provisions in Article 41, Section 2.B. Subsections 4 and 5. In Contention (1) The Employer relies on contract Article 7 language that PTF employees "shall be available to work flexible hours as assigned by Employer during the course of a service week" and also relies on Article 8 language that PTF employees "may be scheduled less than eight (8) hours per service day..." This reliance I believe is misplaced because the provisions of contract Article 41 referred to above constitute a clear limitation on the Employer's scheduling of work assignments. The Employer also argues that grievant is not guaranteed eight hours pay in any service day. This is correct; the contract does not guarantee grievant eight hours work per day, any more than it guarantees that he be hired in the first

place. But once he is hired, he becomes entitled to certain rights under the contract including the right that when he "has selected a craft duty assignment by exercise of seniority pursuant to Subsections 3 and 4" of Section 2.B. of contract Article 41 "he shall work that duty assignment for its duration." (Underscoring supplied.) In this case it means that he shall work on that assignment with a starting time of 7 a.m. On the rights of PTF employees holding down an assignment pursuant to Article 41, Section 2.B. 4. and 5. See Memorandum of October 30, 1981 from James F. Brzenski, MSC Manager/Postmaster, Toledo, Ohio, To "Postmasters City Delivery Offices under Summary of Evidence above. Also See Arbitrator Alan Walt, Case No. C8N -4A-C8083 (1981).

Contention (2) emphasizes the facts that motivated management's action, the subject of this arbitration in substance that, an unforeseen incident of a carrier calling in her sick leave on March 2, followed by management replacing that employee with a carrier from the Over-time Desired list who was called in on his off day was entitled not only to eight hours but to eight hours of over-time, that a bumping sequence occurred which resulted in transferring grievant from an eight hour route to a route of less than eight hours. All this would be proper if the provisions of Article 41, Section 2 B.4. and 5. were not in the contract. The same is true with respect to contention (3) which relies on contract Article 3, "Management Rights". But these Management Rights by the very language of Article 3 are "subject to the provisions of this Agreement" including the parts

of Article 41 referred to above. To adopt the Employer's position in this case is tantamount to amending Article 41 to make it inapplicable to PTF employees.

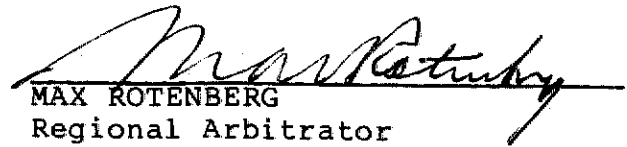
In contention (4) the Employer relies on three pre - arbitration settlements in which the Union accepted management's action of displacing an employee from an assignment under provisions of Article 41, Section 2 B.4 and 5. I believe that this reliance is also misplaced. The settlements in those cases were made under circumstances not available at the hearing in the instant case. All we know about those settlements is the result. Each of those settlements involved a location other than the one involved in the instant case and was made applicable to their respective facts. There is no evidence that the parties in those settlements intended to make them applicable to the instant case. It is not uncommon for parties to settle grievance disputes without giving up their respective rights in a different context and time. The contract here specifically contemplates that the parties will attempt to settle grievances, a process universally recognized as a worthy goal in labor relations, and failing to attain a settlement to resort to arbitration. The parties in those cases were successful in their efforts. In the case before us they were not and the dispute is now in arbitration. When a grievance reaches arbitration it becomes the arbitrator's duty to decide the case solely on the basis of the contractual provisions. Accordingly I concluded that the settlements do not govern the case before us.

Upon due consideration I concluded that the Employer's additional contentions 5, 6, and 7 are irrelevant. As indicated above there is a conflict of testimony regarding the Employer's claim that on March 2 management offered and grievant refused a transfer to another post office where there was eight hours work for him that day. This conflict need not be resolved since I find this episode irrelevant to the principal issue here whether the Employer's action here protested, violated the contract. Accordingly upon the record before me, I conclude that the Employer's action, the subject of this arbitration, is not permitted by the contract. With respect to Employer's contention that the Union's proposed remedy that grievant be awarded two hours pay is not appropriate, because he was compensated for all hours he worked March 2 I cannot agree. It is clear that the issue here is not whether grievant was compensated for the hours he worked on March 2, but rather whether he was improperly deprived of two hours work on that day. In view of the conclusion of this issue I believe that an appropriate remedy is that grievant be awarded two hours pay.

The Award

- (1) The grievance is sustained.
- (2) The Employer shall pay grievant two hours pay.

Dated at Minneapolis March 24, 1986.


MAX ROTENBERG
Regional Arbitrator