

C# 10713

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION)

between)

UNITED STATES POSTAL SERVICE)

and)

AMERICAN POSTAL WORKERS UNION)

CLASS ACTION

ST. CHARLES, MISSOURI

C7C-4Q-C 10587

APPEARANCES:

For the U.S. POSTAL SERVICE:

For the UNION

Place of Hearing:

Date of Hearing:

James P. Martin

Donald L. Baker

Carl Casillas

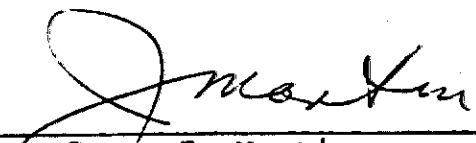
St. Charles, Missouri

July 6, 1990

AWARD:

That the Grievance is allowed; that within 30 days, Management is to create four full-time positions, to be filled by the senior PTF's; that within another 30 days, Management is to create four full-time positions on a temporary basis to determine the feasibility of converting them to full-time; that the remedy is prospective only.

July 20, 1990


James P. Martin
Impartial Arbitrator

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ISSUE

Was Management in violation of the Agreement and more particularly Article 7.3 B, in the manner in which it staffed its Facility with full-time and part-time Flexible Clerks? If so, what is the remedy?

NATURE OF CASE

At the time of the filing of the Grievance, in July of 1988, St. Charles had a total complement of 64 Clerks, 43 full-time and 21 part-time Flexibles. At the time of the Arbitration Hearing, that number had increased to 68 Clerks, with 42 full-time and 26 part-time Flexibles. The original percentage of part-time Flexibles was 33% of the entire Clerk work force, and at the time of the Hearing, that had increased to 39%. St. Charles does not fall within the 200 man-year of employment category, and is not affected by the requirement for 90% full-time employees, set out in Article 7.3A.

The Union asks that Management be required to maximize the number of full-time employees, in accordance with Article 7.3B. No claim was made that there was an entitlement to an increase in the full-time Clerks as a

result of the application of Article 7.3C, but only that the overall statistics revealed a lack of any attempt to maximize the full-time employees. Among the items of evidence presented were almost 37,000 hours worked by PTF's in the 11 months (24 pay periods) preceeding the Grievance, an average of 700 to 800 part-time Flexible hours worked per week, substantial Casual hours worked in addition to this, and an actual decrease in the percentage of full-time employees from 67% to 62% in the two years between the filing of the Grievance and the Arbitration Hearing. Evidence was also presented of the use of PTF's through the day, with many sequential part-time Flexible assignments. Examples given were PTF's who worked from 2:00 a.m. to 8:00 a.m., immediately followed by another PTF working a shift starting at 8:00 a.m. While the eight in ten, five days per week for six months did not apply in the scheduling, the Union felt that the sequential scheduling could easily have been changed to allow a number of PTF's to meet the requirements of Article 7.3C. The original request in the Grievance was that the total hours worked by PTF's would justify the creation of 17 full-time positions, but this claim was reduced by the Union at the Arbitration Hearing at which point a request was made that ten part-time

Flexibles be converted to full-time. The Union evidence called attention to the average reduction in hours of part-time Flexibles from eight at the beginning of the week down to six towards the end, with the suggestion that it was possible that the schedule was manipulated to avoid any PTF's falling within the standards of Article 7.3C. Finally, the Union presented evidence that part-time Flexibles averaged between 35 and 40 hours per week, with Management presenting evidence that the average was 31 hours per week.

The only other evidence presented by Management, other than calling attention to facts set out in the joint exhibits, was the contention that the normal PTF schedule was 2:00 a.m. to 9:00 a.m., and that only BBM and other uncommitted mail was available on site at midnight, with no first class mail available to be worked at that time.

According to the Union,^{while} St. Charles did not fall under the 200 man-years qualification of Article 7.3A, Article 7.3B imposed an equal if unspecified obligation upon Management to maximize the number of full-time employees. It is obvious from the statistics presented at the Hearing that Management has failed to maximize, and has failed to give any reason for not doing so. While Management claims the need for flexibility, the figures show such a tremendous

disparity between part-time and full-time that it is obligatory on the part of Management to prove its need for flexibility, and the simple declaration that it needs more flexibility is insufficient. In the face of the Union's prima facie demonstration that more part-time Flexibles should be converted in order to maximize the full-time composition of the work force, Management must demonstrate its need for such an out-of-line PTF and Casual force. Both Arbitrator Garrett and Arbitrator Gamser confirmed the obligation that the Contract imposes upon Management to maximize, Management has not acted to maximize, and an Award should issue which requires maximization, with compensation to those employees harmed by Management's failure to maximize at an earlier time.

According to Management, raw statistics do not begin to justify the Union's claim of non-maximization. Management, under Article 3, has the right to manage, and the duty to do so well. It is necessary that there be flexibility, in order for Management to most efficiently run the operation. Management has maximized the full-time positions to the greatest extent consistent with efficiency, and the statistics presented by the Union reveal nothing which would contradict this. While part-time Flexibles

worked many hours, those hours could not be divided into full-time positions, because the need for part-time Flexible hours is concentrated at certain times, and the creation of more full-time positions would not enable Management to get the work done when the work was required to be done. The Grievance is without merit, and should be denied.

APPLICABLE CONTRACT PROVISIONS

Section 3. Employee Complements

A. The Employer shall staff all postal installations which have 200 or more man years of employment in the regular work force as of the date of this Agreement with 90% full-time employees.

B. The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations.

C. A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six month period will demonstrate the need for converting the assignment to a full-time position.

D. Where a count and inspection of an auxiliary city delivery assignment indicates that conversion to a full-time position is in order, conversion will be made.

DISCUSSION

Management principally argues that it needs flexibility, that the Union has not proved the possibility of creating more full-time positions without its losing flexibility, and the obligation of the Union is to prove exactly what Management has to do in order to substantiate its claim that Management has not fully complied with Article 7.3B. I disagree, as did Arbitrators Garrett and Gamser (AB-N-3744, et al, and MC-C-9358, respectively). To quote Arbitrator Garrett: "The Postal Service deems the present case to be fundamentally important because the Union seeks to induce the Impartial Chairman to accept total hours worked by part-time Flexible Clerks as a determinitive criterion in applying the second sentence of VII, Section 3, without considering the particular reason why such hours were worked by part-time Flexibles." Nevertheless, Arbitrator Garrett found that an additional full-time temporary position should be created. As to the obligation of the Union to prove precisely what Management should have done, the following quotation from Arbitrator Garrett is pertinent: "An assertion by the Taunton Postmaster that inefficiency will result, without concrete documentation of the nature

and extent of such inefficiency, is not enough in the face of such Union evidence." Arbitrator Gamser commented upon the same facet of this case: "In the instant case, although the data submitted by the Union did not establish, as the Union claimed, that some 15 additional part-time Flexible Carrier positions could immediately be converted to full-time regular positions, the data regarding hours worked in the Carrier Craft by Regulars, Flexees and Casuals through the period ending May 18, 1978, certainly created a strong inference that the Postmaster at Toms River could re-establish his present Carrier work schedules and create at least four additional full-time assignments on a temporary basis with only a minimal, if any, impact upon efficiency or impairing required flexibility.

The evidence submitted by the Union in this case was not challenged, as raw data, by Management, but the inferences which were drawn by the Union were challenged. Arbitrators Garrett and Gamser both concurred that a showing could be made that the maximization of full-time employees had not been carried out, without precise identification of specific schedules on the part of the Union. In the Garrett case, there were 32 full-time Clerks and eight part-time, an operation smaller than St. Charles, in fact two-thirds

of its size, and with an 80% full-time - part-time ratio. Arbitrator Garrett nevertheless directed Management to raise the percentage, on an experimental basis, to determine if the staffing was less than maximum full-time. Arbitrator Gamser, in a case where eight of the 14 PTF grievants had already been made full-time in a matter of months prior to the continued Hearing, still ordered four more full-time temporary positions to be established. Staffing numbers were not set out in that Award, but it was obvious that he felt Management was far, far, away from maximizing its work force as of the time of the filing of the Grievance, in fact, as of the time of the Arbitration Hearing on that Grievance.

So to in this case, the evidence reflects an extreme level of flexibility available to Management, very handy for easy scheduling, but not in compliance with the obligations imposed upon Management by Article 7.3A. With only 62% of the Clerks being full-time, it is incumbent upon Management to justify these numbers, and to show that that level of flexibility is required. This was not done by Management at the Hearing, nor in any of the Answers given in the Grievance processing. In the absence of proof to establish the need for such flexibility, as did Arbitrator

Garrett, I must find that a simple assertion of the need for flexibility is not enough in the face of the Union evidence. I therefore find that Management is in violation of the requirements of Article 7.3B and did fail to maximize the number of full-time employees. That the original claim of the Union, that 17 additional full-time positions should be created, is obviously unsupported by the evidence, as the Union acknowledged at the Arbitration. It is obvious that Management values flexibility higher than Contract compliance, and a number must therefore be set, to effectuate compliance with Article 7.3B. Based upon the evidence submitted, and the lack of any Management evidence to the contrary, the finding is made that four additional full-time positions are to be created, with the four senior part-time Flexibles being placed in those positions, within 30 days of the date of this Award. That will have the effect of bringing the number of full-time Clerks up to 68%, still a long, long, way from 90%. While there is no magic in any given percent, the resulting percentage of full-time employees appears to be well within reason.

The creation of four additional full-time positions may still leave the St. Charles Post Office below its true maximization. Therefore, in accordance with the

Garrett and the Gamser Awards, Management is directed, within 90 days of the date of this Award, to create four full-time temporary positions, to determine the feasibility of converting them to full-time positions.

This Award will undoubtedly radically change the effort which must be expended by Management to schedule its work force. There is little need to expend effort or talent to schedule a work force if it is almost totally part-time. Any errors can be corrected promptly on the spot, for after two hours, those over-scheduled could be sent home. The "flexibility" desired by Management also results in a very relaxed attitude toward efficiency, and the result of the Award in this case should not be increased costs, but highly increased effort on the part of Management to work with the scheduling to maintain efficiency. Increasing the full-time work force and decreasing the part-time work force, even only 6%, as this Award does, Management may well expect to be put to the test in proper and efficient scheduling, but the Contract calls for maximization of full-time employees, not minimization of effort on the part of schedulers.

The Gamser Award should probably be read by Management in conjunction with this Award, because it is almost 100% pertinent to the findings and remedies set out here.