

In the Matter of Arbitration Between :  
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UNITED STATES POSTAL SERVICE :  
"Service": S1N-3W-C 12023  
and :  
Karen Pasco  
NATIONAL ASSOCIATION OF LETTER :  
CARRIERS: Branch 599 :  
"Union" :  
TAMPA  
Brandon, Florida  
Before: James F. Scearce, Arbitrator :  
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This case involves a dispute over whether or not the Service violated Article 7 of the Agreement and the rights of the grievant, Karen Pasco, a part-time flexible (PTF) carrier at the time of events germane to this dispute. The hearing was held on September 14, 1983 at the main postal facility at Tampa, Florida. Both parties were afforded a full opportunity to present, examine and cross-examine witnesses and to submit exhibits. The proceedings were recorded by notes of the arbitrator. Both parties closed argument at the hearing.

## APPEARANCES

For the Union -

R. Wallace Shop Steward (Witness)

K. Pasco Grievant (Witness)

For the Service -

## BACKGROUND

At the time of events germane to this dispute, the grievant was a part-time flexible (PTF) carrier assigned to duties in the Brandon, Florida, postal system.

The record of this case is clear enough that an auxiliary route (#17) existed in the downtown area of Brandon and was serviced by one of several PTF's. The form used to evaluate routes (PS 1840-B) shows that Route 17 consisted of a total of three hours and 33 minutes although the specific time frame when the form was executed is not so clearly in evidence. In March of 1981, another auxiliary route (#18) was established in the downtown Brandon area more or less contiguous, or at least proximal, to Route 17; total time for Route 18 at that time was apparently only three hours and a few minutes.

An "adjustment" was made to both routes after evaluation sometime after the March, 1981, initiation of Route 18, such that total time on each route was now five hours, twelve minutes (Route 17) and for Route 18 five hours, seventeen minutes. (Un Exs 1 & 2) Such routes were and had been serviced by the grievant as well as other PTF's.

A grievance was initiated on July 3, 1982 contending that the routes should have been combined, allowing for a full-time route and a bid potential for the grievant. The Service claimed procedural infirmities in the execution/prosecution of this grievance as well as dismissing any merits therein. The matter was handled at all steps of the grievance procedure without resolution; it comes now to arbitration for final disposition.

#### POSITION OF THE UNION

By virtue of the creation of Auxiliary Route 18 in March of 1981 and its location adjacent to Auxiliary Route 17, by July of 1982 the time on both routes was such that the opportunity existed to establish a regular route of eight hours; such action is contemplated by Article 7, Section 2.A.1 of the Agreement. If this had occurred, it would have permitted the grievant to become a full-time carrier. Article 7, Section 3.B of the Agree-

ment mandates such action. The Service should be directed to combine such routes and to make the grievant a full-time carrier from August 21, 1982, compensating her for all back pay in the process.

#### POSITION OF THE SERVICE

This claim is procedurally defective for the following reasons:

It is untimely. Route 18 was established in March of 1981 and it is obvious that the grievant was aware of such action. Failure on her part or the Union to file a grievance within 14 days makes it improper to be considered.

The claim is moot. The two auxiliary routes are now regular routes; additionally, the grievant has been made a full time carrier. (The record shows the latter occurred on May 14, 1983.)

Even if the Union's arguments are considered, they are without merit. Article 7, Section 2.A has no relevance to this matter, since all work was within the same craft. Article 7, Section 3 recognizes the existence of conditions which calls for auxiliary routes; it does not, as the Union asserts, call for a combination of auxiliary routes and neither does any other contractual language. The Service purposefully established both auxiliary routes with the expectation that they would separately develop into full routes. Such judgment was

within the Service's rights to make and subsequent events have proven out in this regard. The Service had cause not to combine such routes for another reason: while they may have coincidentally been proximal to each other, they were divided by a major highway. Such judgments are reserved to management under Article 3 of the Agreement.

CITED/RELEVANT PROVISIONS OF THE  
AGREEMENT (MERITS)

ARTICLE 3 - MANAGEMENT RIGHTS  
(Not reproduced here for sake of brevity)

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.

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Section 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.

1. All available work within each separate craft by tour has been combined.

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### 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.

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(Jt Ex 1)

### THE ISSUE

1. Has the Service demonstrated that the grievance is improper for consideration on the basis of timeliness or mootness?
2. If the answer to Issue 1 is in the negative, did the Service violate the Agreement by the manner in

which it established and executed Route 17 and 18 in the Brandon, Florida, postal system at the time of events germane to this dispute; if so, what is the appropriate remedy?

#### DISCUSSION AND FINDINGS

The procedural questions raised by the Service do not bar consideration of the merits of this case. While it is true that the Union filed its claim well after Route 18 was established, the record presented in this case would tend to support its claim that, at that point in time, an eight hour route could not have been developed from both 17 and 18. Even if it had, the dispute could be said to qualify as a grievable "continuing violation." What would be limited, if such violation was demonstrated, would be the extent of liability. In point of fact, the Union established the point of liability to begin after the filing of the grievance, i.e. it requested back pay and benefits from August 21, 1982 forward -- well after the filing. (While the Union's decision to do so is unusual, the Union asserted in the hearing it sought to be reasonable.) The Union sought to bar such procedural defenses pointing to the fact that the Service did not raise timeliness after

its Step 2 answer. Such defense lacks merit or force: a literal reading of the Agreement at Article 15, Section 3(b) obliges the Service to raise the issue of timeliness "...at Step 2, or at the step at which the employee or Union failed to meet the prescribed time limits..." which the Service did. Nothing in the Agreement requires the repeated citation of such defense. The Service's claim of mootness is likewise unpersuasive: a finding of error on the Service's part would be applicable over whatever period of time the grievant remained in a part-time status -- regardless of whether she eventually qualified as a full-time regular or not.

As to the merits questions, the Union's citation of Article 7, Section 2.A. is well-taken, when considered in conjunction with Section 3.B. of this same Article. In this regard, the location of Route 17 and 18 must be considered. I note the Service's arguments concerning the expansion potential of established auxiliary routes and, where they are separated by distance, a valid basis can be envisioned. But expansion potential is obviously prospective in nature and not a certainty. We now have the privilege of the experience of hindsight to demonstrate that both routes did, indeed, mature into full-blown routes.

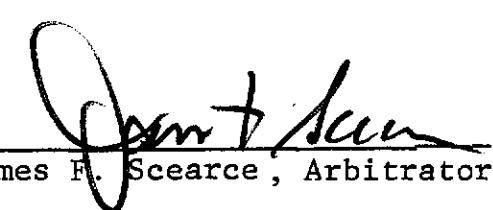
We also have a clear indication that, not long after they established Route 18, a sufficient amount of service existed to warrant the establishment of one full-time regular route. Again, 20/20 hindsight now tells us that, eventually, both routes would probably have been re-defined and re-drawn to set up two (2) such full-time positions. We are obliged, however, to assess the situation at the time of the grievance filing. In so doing, the conclusion must be reached that the Service could have established one such full-time route and hence an opportunity for a bid position -- the clear intent of maximization as set out in Article 7, Section 3. I am unimpressed by the defense that a major highway or city thoroughfare would have divided such route: surely, an employee capable of being entrusted with Public mails could handle the hazards of crossing a major business intersection. It should also be noted that the postmaster's comments in the Step 2 answer, i.e. that part-time flexibles at that facility worked fixed schedules, is not a proper defense against the charges raised in the grievance.

In sum, I conclude error on the Service's part in not establishing a full-time route from Routes 17 and 18 as demanded in the grievance. I am not empowered to award the relief to the grievant herein unless it can be demonstrated that had a bid for such route been posted, she would

have met the bid requirements found in Article 41. If such circumstances are determined to have existed, the grievant will be compensated at the appropriate straight-time rate for any hours not worked at straight-time from August 21, 1982 until she achieved full-time status. Hours she may have worked at overtime are not relevant here.

#### AWARD

Issue 2 is held in the affirmative; the Service violated the Agreement by failing to maximize use of full-time carriers as it relates to Auxiliary Routes 17 and 18 during the period cited in the grievance. The remedy shall be as set out in the DISCUSSION AND FINDINGS section of this document.



James F. Scearce, Arbitrator

Atlanta, Georgia

January 28, 1984