C#10710

REGULAR ARBITRATION PANEL

SOUTHERN REGION

IN THE MATTER OF THE ARBITRATION between UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	GRIEVANT: Robert C. Albano POST OFFICE: Daytona Beach, FL CASE NOS.: Postal Service ~~S~~7N-3R-C 32353 Union GTS #13440

BEFORE: F. Jay Taylor, ARBITRATOR, Southern Region

APPEARANCES:

For the U. S. Postal Service: Larry A. Budd
Manager, Customer Services

For the NALC: Don Southern
Regional Administrative Assistant

PLACE OF HEARING: U. S. Post Office
Daytona Beach, Florida

DATE OF HEARING: February 20, 1991

AWARD:

(1) The grievance is sustained.

(2) The Service is directed to pay the Grievant, Richard Albano, thirty-one (31) hours at the straight time rate and six (6) hours at the overtime rate--this being the difference between wages he earned for the period from July 23, 1990, through August 4, 1990, and the wages he would have earned during that period of time had he been assigned the hours that were normally worked by the Carrier regularly assigned to Route 1820.

DATE OF AWARD: March 15, 1991

The grievance was heard in Daytona Beach, Florida, on February 20, 1991, before F. Jay Taylor, Contract Arbitrator, Southern Region.

Both parties were professionally represented by competent and experienced Advocates. They stipulated that the procedural steps of the grievance procedures as outlined and prescribed in the National Agreement have been complied with and that the subject grievance is properly before the Arbitrator for hearing and adjudication.

The Advocates were afforded an opportunity to offer all relevant evidence, both oral and documentary, and to examine and to cross-examine the witnesses, all of whom testified under oath. At the conclusion of the Hearing, Mr. Southern on behalf of the Union and Mr. Budd on behalf of the Service, stated that (a) they had no further proofs to offer in support of their respective contentions; that (b) subject to the objections entered into the Record, they were satisfied with the state of the Record; and that (c) the Postal Service and the NALC had each received a full, fair and impartial Hearing.

The Grievant advised the Arbitrator that (a) he was satisfied with the state of the Record; and that (b) he had been fully and fairly represented by his Union in the proceedings.

The Advocates elected to make closing arguments in lieu of filing post-Hearing Briefs. The proceedings were tape-recorded by the Arbitrator for use in preparing the FINDINGS and AWARD in the case.

THE ISSUE:

The parties were unable to frame the wording of the issue and have thus empowered the Arbitrator to do so.

After reviewing the oral and the documentary evidence, the Arbitrator is charged with determining the appropriate monetary remedy including the wages the Grievant would have earned if he had worked the normal hours of a craft duty assignment for which he was the successful bidder by exercise of his seniority rights.

STATEMENT OF THE CASE:

The basic facts of this case are not in dispute, only the application of these facts to the pertinent provisions of the National Agreement. The Grievant, Robert Albano, worked as a PTF City Carrier assigned to the Downtown Unit of the Daytona Beach, Florida, Post Office. In July 1990, under the provisions of Article 41, Section 2B, Mr. Albano, exercising his seniority rights, was temporarily assigned to a hold down job on Route 1820 during the time frame July 23, 1990, through August 4, 1990.

The Union complained, however, that the Grievant as the successful bidder was not allowed to work the schedule of the hold down Route nor was he allowed to work the duty assignment for its duration. Mr. Albano frequently was given a much later starting time than the regular starting time assigned to the Route and during the second week he was taken off the assignment altogether. Work that should have been performed by the Grievant, work that was ordinarily performed by the incumbent of

Route (1820) was performed by other Employees, one of whom was a PTF City Carrier who had less seniority than Albano.

It is also important to note that hours assigned to the unassigned regular carriers during the same time frame were fully accounted for and in no way should have affected Mr. Albano's hold down duty assignment hours worked. The Grievant was thus deprived of his rights that are set forth in the Collective Bargaining Agreement.

The Service initially contended that (a) Management was not obligated to assign a PTF Carrier the full duties and hours that the incumbent Carrier would have worked; that (b) its first obligation was to the unassigned regular Carriers; that (c) not all PTF Carriers are equally qualified and another PTF Carrier was assigned to work Route 1820 the second week because he was better qualified and worked more efficiently; and that (d) the Service's obligation was to its customers and that the contested work assignments were made in a manner to best serve the Route.

The Service, however, retreated from this position and at the Arbitration Hearing stipulated that Mr. Albano was improperly taken off the hold down duty assignment July 23 - August 4, 1990 (Route 1820). The Service further stipulated that the sole question presented to the Arbitrator for resolution was that of remedy.

Thus, it is established that the Grievant should have worked the hold down duty assignment for its duration; that Mr. Albano in working the assignment for its duration "stands in the shoes" of the Route's incumbent and on a temporary basis has

the same full-time rights and status held by the incumbent Carrier. This means that the PTF successful bidder not only assumes the work of the Route including the work schedule, but for the duration of the assignment the PTF must be treated as a full-time Employee even though classified as a part-time flexible Employee.

What work schedule, therefore, should have been assigned to the Grievant and what wages were lost because he was improperly taken off the bid assignment? Because of so many variables this is most difficult to assess. The Union contends that the hours lost totaled 61, including 2-1/2 hours at the overtime rate. The Service, however, contended that 61 hours far exceeds any monetary losses experienced by the Grievant. As a result of its calculation the Agency contends that the "absolute most" lost hours that Mr. Albano could claim would be nine, none at the overtime rate.

At the Arbitration Hearing, the 3997 forms covering the period July 23-August 4, 1990, were introduced into evidence as joint exhibits. And during the Hearing the hours worked, duty assignments, and reporting times for the T-61, Unassigned Regulars, and PTF's at the Daytona Downtown Station were reviewed in great detail. The Union supported calculation totaled 61 hours lost (2-1/2 at the overtime rate) as noted above. The Service, after reviewing the same documents, calculated the number of lost hours at 8.10.

Thus, as charged by the parties, the Arbitrator has once again studied the 3997 documentation and recalculated the

possible hours lost by Mr. Albano resulting from having been improperly removed from his bid assignment and the failure of Management to allow the Employee to work the same schedule of the incumbent Carrier. My calculation differs from that posed by both the Union and the Service.

One glaring deficiency in the Agency's calculation is found in the comparison of hours actually worked by Albano with the hours worked by a second PTF (junior to the Grievant) who was assigned Route 1820 for an entire week. The problem with this comparison is that the fewer number of hours worked credited to the Grievant was for a six day work schedule while the second PTF's work schedule included only five days. Obviously this is not a creditable comparison.

On the other side of the coin it was difficult to follow the Union's reasoning that if Albano reported for work at 10:00 a.m. and worked until 5:00 p.m. that he should be credited with 3-1/2 lost hours since the bid assignments starting time was 7:30 a.m. Further, under this scenario, the Union argued at least one hour should be credited overtime. And there were other variable calculations on both sides of the table which differed from my understanding of hours actually worked and hours lost by virtue of Management not allowing the Employee to assume the full work schedule of the incumbent Carrier.

In the Union's original grievance the remedy requested was 40 hours at the straight time rate which included ten hours at the overtime rate. I find this figure much closer to my own calculations than the 61 hours requested by the Union at the

Arbitration. At the same time my calculations (made with the assistance of my accountant wife) exceeded the nine hours which the Service argued as "max."

In any event I have concluded that Richard Albano, as a result of the Employer's action, was deprived of 37 hours which should have been assigned as a part of the incumbent Carrier's regular work schedule. Of the 37 lost hours, 6 hours should be paid at the overtime rate. This, in my view, is the appropriate remedy and it is so ordered.

F. Jay Taylor, Arbitrator