

REGULAR ARBITRATION PANEL

C#11182

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS
UNION, AFL-CIO

POST OFFICE: Mayaguez, PR

CASE NO.: N7C-1L-C 4201

GRIEVANT: Pablo Medina

BEFORE: Susan T. Mackenzie ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Martin I. Rothbaum,
Advocate

For the Union: Alberto Ortiz-Torres,
Advocate

Place of Hearing: GPO, Roosevelt Avenue
San Juan, Puerto Rico

Date of Hearing: November 15, 1988

AWARD: - In the absence of a sufficient demonstration that it was not practicable for the position under review to be scheduled on five consecutive days, the reposting of the "Notice of Vacancy in Assignment" (Announcement No. 002-87) dated September 15, 1987 with non-consecutive days off was violative of Article 8 of the National Agreement.

- The Postal Service is directed to repost the Notice (Announcement No. 002-87) with consecutive days off.

Date of Award: January 3, 1989

D. M.

Pursuant to the collective bargaining Agreement between the American Postal Workers Union, AFL-CIO and the United States Postal Service (hereinafter referred to respectively as the "Union" and the "Service"), the undersigned was designated as the Arbitrator to hear and render a binding decision on the following issue:

- Was the reposting of "Notice of Vacancy in Assignment" (Announcement No. 002-87) dated September 15, 1987 with different, non-consecutive days off violative of the National Agreement or the Local Memorandum of Understanding?
- If so, what shall be the remedy?

At the hearing the parties were accorded full opportunity to present witnesses, documentary evidence and arguments in support of their respective positions.

Agreement Language

NATIONAL AGREEMENT

ARTICLE 8 - HOURS OF WORK

Section 2. Work Schedules

C. The employee's normal work week is five (5) service days, each consisting of eight (8) hours, within ten (10) consecutive hours, except as provided in Section 1 of this Article. As far as practicable the five days shall be consecutive days within the service week.

LOCAL MEMORANDUM OF UNDERSTANDING

ITEM 2

THE ESTABLISHMENT OF A REGULAR WORK WEEK OF FIVE (5) DAYS WITH EITHER FIXED OR ROTATING DAYS OFF

All crafts: all installations

As far as practicable the five (5) days shall be consecutive within the regular service week. Days off will be fixed for all postal installations, except in the Cavalier Post Office where there is (Distribution Clerks will have rotating days off).

Background

On September 10, 1987 a "Notice of Vacancy in Assignment" (Announcement No. 002-87) was posted in the Mayaguez Post Office for a newly created position, Clerk, Finance Station PS-6, Marina Station, with Saturday and Sunday as scheduled days off. On September 11, 1987 the posting was cancelled but reposted on September 15, 1987, changing the scheduled days off to Tuesday and Sunday.

On September 23, 1987 a grievance was filed by the Union on behalf of Mr. Medina, who had bid on the original posting, protesting the change of days off as violative of the Article 8 requirement to have the work week five consecutive days as far as practicable. When unresolved, the matter was referred to arbitration, giving rise to this proceeding.

Positions of Parties

The Union takes the position that the reposting of the position under review with non-consecutive days off deprived grievant and other senior employees of better hours of work and better schedules and violated Article 8 of the National Agreement and Item 2 of the LMOU. It maintains that Saturday and Sunday days off was practicable in the situation under review. The Union asks that the grievance be granted and that the position be reposted with Saturday and Sunday as the scheduled days off.

The Employer takes the position that operational needs dictated the reposting of the "Notice of Vacancy in

"Assignment" under review with non-consecutive days off. It maintains that it was not practicable under the circumstances to have Saturday and Sunday as consecutive days off because of the need for a Clerk to work the window on Saturday at the Marina Station, and the generally heavy volume of work on Monday. In its view, the Union has failed to meet its burden of proof to demonstrate a contractual violation. The Postal Service asks that its position be sustained and the grievance denied.

Discussion

Article 8.2(C) of the National Agreement (and Item 2 of the LMOU) provides that the normal work week "shall be consecutive days within the service week. . .as far as practicable." (Emphasis added.) By use of the term, "shall"-language of command as opposed to a term of possibility such as "may"-the parties have indicated that five consecutive work days and two consecutive days off is the preferred and required scheduling, subject to the condition that consecutive days of work are to be scheduled "as far as practicable."

While circumstances may render five consecutive work days and two consecutive days off not practicable, the term, "practicable," implies something more than administrative convenience or mere efficiency. It places an affirmative obligation on management to demonstrate why consecutive days are not practicable if management elects a schedule with non-consecutive days.

The Arbitrator finds that in the case under review, there is an insufficient demonstration that two consecutive days off was not practicable. The original posting for Announcement No. 002-87 listed consecutive days off, but it was cancelled and reposted with non-consecutive days off. The Superintendent of the Mayaguez installation testified that a request had been made to the Division for a new position because of the need for a Window Clerk at the Marina Station; that prior to the approval of the third Clerk position at the Marina Station, a Part-time Flexible Clerk had been assigned to distribution work at that Station; that he decided to change the days off to Sunday and Tuesday because the two regular Clerks assigned to the station had Saturday and Sunday off, that the window at the Station had recently been opened on Saturday, and Monday was a "heavy day."

However, there was no evidence offered to indicate the extent of the variation in the volume of mail on various weekdays, nor why the continuation of the assignment of a Part-time Flexible Clerk on Saturday was not feasible. Indeed, it was not clear whether assignments to the window duties by Part-time Flexible Clerks prior to September 1987 was on regularly scheduled time or on overtime.

Based on the foregoing, the Arbitrator concludes that in the absence of a more compelling demonstration that it was not practicable to have consecutive days off, and pursuant to the language of Article 8, consecutive days off should have

been scheduled. It follows that the reposting of the "Notice of Vacancy in Assignment" (Announcement No. 002-87) dated September 15, 1987 with non-consecutive days off was violative of Article 8 of the National Agreement. The grievance is granted to the extent that the Postal Service is directed to repost Announcement No. 002-87 with consecutive days off.

AWARD:

- The reposting of the "Notice of Vacancy in Assignment" (Announcement No. 002-87) dated September 15, 1987 with non-consecutive days off was violative of Article 8 of the National Agreement.
- The Postal Service is directed to repost Announcement No. 002-87 with consecutive days off.

Dated: January 3, 1989


Susan T. MacKenzie
Arbitrator