

27487

**REGULAR ARBITRATION PANEL IN THE MATTER  
OF THE ARBITRATION, BETWEEN:**

**GRIEVANT:**

CLASS ACTION

**THE NATIONAL ASSOCIATION OF  
LETTER CARRIERS:**

**- AND -**

USPS # CO1N-4C-C-06264126

**UNITED STATES POSTAL SERVICE:**

NALC # 0R083106DB

**BEFORE:**

DANIEL A. OLIVER, Arbitrator

**APPEARANCES:**

**FOR THE U.S. POSTAL SERVICE:**

Kathleen Pollock

**FOR THE UNION:**

David Ditchey

**HEARING HELD AT:**

Canton, OH

**DATES OF HEARING:**

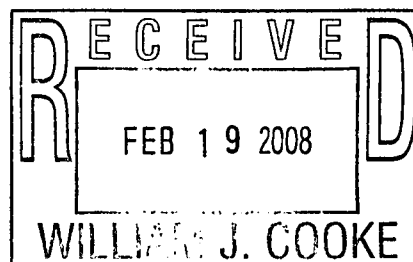
April 27, 2007, October 12, 2007

**ISSUE:** Did management violate Article 8.5 of the National Agreement when non-Overtime Desired List (non-ODL) carriers were forced to work overtime before maxing out carriers on the Overtime Desired List (ODL)? If so, what is the appropriate remedy? This is a representative contract case arising from Duber Station in Canton, Ohio. The incident date is August 31, 2006. As written on the original grievance document (form 8190), did management violate article 8.5 of the JCAM when they forced carriers to work overtime that were not on the Overtime Desired List (ODL) and did not work the Overtime Desired List (ODL) up twelve (12) hours a day or sixty (60) hours in a service week.

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The position of the United State Postal Service is that the burden of proof is on the NALC and they must prove their case by a preponderance of evidence that management was arbitrary and capricious and in violation of the contract.

The position of the NALC is that this is a "window of operation" (WOO) case with letter carriers who are not on the Overtime Desired List (ODL) were forced to work overtime when carriers on the ODL were not permitted to work up to the limitations as set forth in Article 8.5 of the National Agreement. The NALC also regards this as a "staffing" case. The NALC freely admits that the Postal Service under Article 3 of the National Agreement has the right and duty to staff its operations.

On August 31, 2006 at the Duber Station, Non-Overtime Desired List (non-ODL) letter carries: Boggs, Williams, Hammond, Tomsho, Diloreto, Campbell, and Kinder were required to work overtime. The NALC contends that this was not an isolated incident and, in fact, occurred with regularity in the Canton area.

Article 8 of the JCAM contains language that supports the position of the NALC, as follows:

8-15 Mandatory Overtime - One purpose of the Overtime Desired List (ODL) is to excuse fulltime carriers not wishing to work overtime from having to work overtime. Before requiring a non-ODL carrier to work overtime on a non-scheduled day or off his/her own assignment on a regularly scheduled day, management must seek to use a carrier from the ODL, even if the ODL carrier would be working penalty overtime. Futher, page 8-26 in a MOU concerning overtime which states "recognizing that excessive use of overtime is inconsistent with the best interest of Postal Employees and the Postal Service, it is the intent of the parties in adopting changes to Article 8 to limit overtime, to avoid excessive mandatory overtime, and to protect the interests of those employees who do not wish to work overtime, while recognizing that

bonafide operational requirements do exist that necessitate the use of overtime from time to time. The parties have agreed to certain additional restrictions on overtime work, while agreeing to continue the use of the Overtime Desired List (ODL) to protect the interests of those employees who do not want to work overtime, and the interests of those who seek to work limited overtime."

The JCAM quotes arbitrator Mittenthal in a 1986 case that an employee on the ODL does not have the option of accepting or refusing work over eight (8) hours on a nonscheduled day, ...instead an employee on the ODL must be required to work up to twelve (12) hours in a day and sixty (60) hours in a week before management may require employees not on the ODL to work overtime. The award does not extend to situations involving a letter carrier working on his/her own route on a regularly scheduled day.

Article 8.5 G states that full time employees not on the ODL may be required to work overtime only if all available employees on the ODL have worked up to 12 hours in a day or 60 hours in a service week.

Gary Lee Bumgardner, Jr., a regular carrier at the Duber Station, and the NALC steward in August of 2006, testified in this case. Mr. Bumgardner investigated case and filed a grievance at Step one. It was Gary Bumgardner who offered Union Exhibit 1, his work sheet for August 21, 2006. Mr. Bumgardner indicated that there was always a rumor of a "WOO" that is to say that everybody had to be back in by 5:00 p.m. during August and September of 2006. However, only one time in that two month period did he come into the station at 5:00 p.m. He also indicated that the mail truck would not leave until after 6:00 p.m. during that time. In his view, the "WOO" was not consistently enforced. He also indicated that he was on the ODL and was often one of the many carriers who worked past 5:00 p.m. on a regular basis. Union Exhibit 1, indicates that there were 16.95 hours available for the Overtime Desired List (ODL) carriers to work, and that 30.97

hours were forced, rather than utilizing the 16.95 hours of ODL time available. None of the ODL carriers worked twelve (12) hours. Only two of the ODL carriers worked eleven (11) hours. Twelve ODL carriers worked at the Duber Station on August 31, 2006. Seven carriers were forced to work overtime and they were not on the ODL. Evidence in this case is clear that there was significant work past the 5:00 p.m. "WOO".

Management points out that both management and letter carriers work to provide customer service. It is national policy. Further, Management has a 24 hour clock under which all operations exist. There is apparently a nationwide goal "window of operation" (WOO) to have all carriers back by 5:00 p.m. There is a target to have mail processing at least fifty percent (50%) completed by 6:00 p.m. and the final cancellation by 8:00 p.m. According to Ms. Pollock, there can not be a lot of variation in the process or the Personal Service will fail in its mission to serve the customer. Therefore, management created a "WOO."

Ms. Pollack admits that there is no question that Article 8 Mandates management use available employees on the ODL before assigning work to employees not on the list. At the hearing, evidence was presented as to what carriers were on certain lists. There is a ten (10) hour list and a twelve (12) hour list and a work assignment list, all as allowed by JCAM. Further, there is an added parameter that is Article 8.5 F, which says that excluding December that no full time regular carrier will be required to work overtime on more than four (4) of the employees five (5) scheduled days in a service week or work over ten (10) hours on a regularly scheduled day, or over six (6) days in a service week. In Article 8.5 D, if the voluntary ODL does not provide sufficient qualified people, qualified fulltime regular employees not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee.

Management admits that on Thursday, August 31, 2006, Management did schedule carriers to work overtime who were not on the ODL. However, they contend that they did not do this for arbitrary and capricious reasons but rather they did it for legitimate business reasons as to satisfy the "WOO." Management also contends that it did not schedule non-ODL employees to avoid payment of either overtime or penalty overtime. It is Management's position that it was in the process of hiring and had been in the process of hiring for some time and therefore was acting in good faith.

In a 2006 case from Stamford, CT, case # B01N4BC06083627, Arbitrator Wooters found that the "WOO," an operational policy must only be non-arbitrary and reasonably related to some legitimate business purpose. In that case, he found that there was no evidence that the national goals were not legitimate. Applying those goals, on a temporary basis, there was an increase in the number of forced overtime. He also found that management did use "all available" ODL employees within one day before forcing non-ODL carriers to work. None of that is the case at the Duber Station. Although the national goal is a good one, management was required to properly forecast and staff to meet that goal. Temporary logistics problems are sometimes unavoidable. In the current case, it appears that the problems were far more than temporary and were ongoing for probably as long as a year. Those problems occurred on a daily basis at the Duber Station.

As I look at the totality of this case I am struck by the question "how did it get so bad" at Duber Station? This isn't a case where carriers are dogging it. This isn't a case where carriers are problem carriers with serious absentee issues. This isn't a case of isolated emergency situations. Duber Station appears to be a typical post office that would be right at home anywhere in America; staffed by quality carriers who value their jobs and by supervisors who try hard to meet all of the deadlines. Somewhere there appears to be a logjam, that is to say there is way too much

time taken for forecasting and staffing. Management cannot seem to hit the ground running. That places an undue hardship on those carriers who are on the non-ODL. That should not be the case on a consistent basis over an extended period of time. This arbitrator believes very strongly in Article 3; that article appears in every collective bargaining agreement that this arbitrator is familiar with. Every company owner wants to manage his/her business how they see fit. That is how it should be. After all, it is that owner who is taking a risk of loss and normally signed his/her name on the bottom line on lots of debt. But, with Article 3 comes a certain amount of responsibility. Article 8 is part of that responsibility.

While the "WOO" is certainly an admirable goal, this arbitrator questions whether or not it was realistic at the Duber Station on the date in question. According to Union #5, there were 159 instances of carriers out past 5:30 p.m., 33 instances of carriers out past 6:00 p.m., and five instances of carriers out past 6:30 p.m. from July 8, 2006 to September 18, 2006. This arbitrator was moved by the testimony of Pam K. Kinder a 23 year carrier who was not on the ODL. She is an employee that wants to work forty (40) hours. In August and September of 2006, she frequently was required to work overtime. That caused her personal problems. She had other plans and appointments and frequently had to change those at a personal level. According to her "you don't have a schedule any more." Even on her days off she was forced to work. She saw no emergency situation that justified the amount of overtime that she was forced to work. She also indicated that this was a common occurrence for a couple of months and not a one time daily thing.

Gloria Miller testified in this case that the overtime issue has been a problem for a long time at Duber Station. She has served as the local Union President for the last four years and the formal A designee in this case. It is her view, and that of the NALC, that Management simply did not properly staff the Duber Station. This is not an isolated incident. In her view, Management

forced 30.97 hours of overtime when 16.95 hours could have been worked by the ODL employees. Therefore, fourteen hours appear to be forced although not an emergency, and 16.95 hours were not okay to be forced. Ms. Miller indicates that if there had been something unforeseen or an emergency it would have been okay to force workers to work overtime. However, the forced overtime in this case was not due to unforeseen matters. In her view, Union #2 the Duber Station forced overtime list from 8/29/06-9/2/06 shows a pattern of forced overtime. In her view, Union Exhibit #3 which is the Duber Station forced overtime list for various states, likewise shows the same pattern of forced overtime. According to Ms. Miller, the "WOO" for Spring of 2006 was 6:00 p.m. and it was changed such that on August 31, 2006 it was 5:00 p.m. When it went from 6:00 p.m. to 5:00 p.m. no additional staffing was hired. That is to say no PTF's were hired. If they couldn't maintain the 6:00 p.m. "WOO" in the Spring of 2006, how could they possibly perform a 5:00 p.m. "WOO" in August and September of 2006? Exhibit 9, which is a daily schedule for Canton Duber Station for Thursday, August 31, 2006, shows that there were no casuals or PTF's in the unit and the unit is a 22 route station. Ms. Miller points out that Union Exhibit #4 clearly demonstrates a problem at the Duber Station because this exhibit was a cease and assist agreement relative to exactly that same issue that is wrongfully forcing carriers that are not on the ODL to work in violation of Article 8. Ms. Miller testified that joint Exhibit 6 which are sections from the handbook, handbook EL-312, in particular page 7, in section 211.1, shows that the installation head that's responsible for forecasting the recruitment requirements in the installation sufficient to assure that there are qualified persons available..... Under cross-examination, Ms. Miller did admit that management Exhibit #3, employee master record, does show that management was in the process of hiring a new person, Marcus Reed (PTF). It was clear that Ms. Miller, an honest and forthright witness, indicated that Management was "forcing everyone everyday." And although management relies upon the rule of reason, she does not believe it applies because Management has caused the problem due to poor staffing and forecasting.

Gordan "Gordie" Gonzalez , a supervisor at the Duber Station for the past 3 years, and a postal service employee for 23 years testified in this case. He was a believable witness in this arbitrator's view. He arrives at work at 3:45 a.m. which is impressive to this arbitrator. It takes him several hours to prepare for the carriers to come in. Each Wednesday he makes up a schedule for the next week which begins the following Monday. He makes adjustments as necessary. He does try to comply with Article 8. He indicated that he does try to work in the ODL first. In respect to the overtime desired lists, they apparently do not need signed and they are valid for two quarters or even as long as a year. He does allow carriers to remove their names. He also tries to rotate his people so they are treated fairly. Normally he does not have a problem with scheduling but he did during the summer of 2006. He admitted that he had no PTF's and no casuals. At that time, he had three people on annual leave and one person on limited duty who could only carry for two hours. He also had one carrier who was on military leave. He also indicated that Mr. Bumgardener was out with an FMLA issue. One carrier called off for a few days and a Mr. Webber was on light duty. The problem was alleviated a little when a PTF did come on board early in September of 2006. He did indicate that he did try to comply with the 60 hour rule. In his view, the rule of reason should apply and that should allow forcing of overtime. Noteworthy to this arbitrator, however, is that he testified that for the entire summer he was unable to get PTF's or casuals from any other station to help him out. That is a serious management problem in this arbitrator's view. Further, this arbitrator does not see any of the matters brought up by this witness to be unforeseen or an emergency. It appears to be poor planning on behalf of certain people in Management at higher levels. In cross-examination he admitted that 2006 was the worst period of time "ever." He also admitted signing Union Exhibit #4, the cease and assist order because that problem existed even as far back as January of 2006. Since 2005, he didn't have a PTF for more than a year. It took a year to hire the first PTF, Mr. Reed, who began working September of 2006. He admitted that his unit was having staffing problems. He also admitted that in the Summer of 2006, forcing overtime was "everyday."



William Donaldson, Postmaster in Canton for the past three years, a witness with a very nice demeanor and a witness who is very articulate, testified in this matter. Since he has a twenty-four (24) hour clock certain things have to be met, one of those being that everybody has to be back in by 5:00 p.m. and he does not want to have any bad customer service. At 8:00 p.m. all the processing should be complete. Mr. Donaldson appears to be a "good guy" and is a believable witness. A best case scenario, it takes 3-5 months to hire a PTF. He has been trying to hire PTF's since he came here three years ago. From this view, management has done everything they could not to force overtime.

This case is not dissimilar to a case that this arbitrator heard regarding the Country Fair Station in the Canton District of Ohio. The "WOO" is an excellent goal and the Postal Service should be commended for that goal and there is no question that the NALC fully supports it. However, at the same time, the Postal Service must adequately forecast its needs to accomplish the goal. It must adequately staff its post offices to accomplish the goal. This has not occurred in Canton, Ohio. Obvious, to this arbitrator, as in the Country Fair Station case, in an effort to be profitable, management, at some level, has taken the position that they will meet the "WOO" goal with current staffing. In a perfect world that would seem just fine. However it is not a perfect world and there are many circumstances in which the current staffing just cannot meet the workload. So in the Country Fair Station case as in the case, Management has taken the position that it can force overtime on non-ODL carriers on a regular and consistent basis, everyday, in fact. Simply Management cannot invoke all of its powers under Article 3 without regard to the rights of the carriers set forth in Article 8. The two articles must be read in *pari materia*. One article does not have any greater weight or power over the other article. Simply, management has failed to properly forecast and staff its operations at the Duber Station and in particular on August 31, 2006, the subject of this arbitration. They had every opportunity to do so and have failed to do

so hoping, that an arbitrator, would find somehow, using the rule of reason or some other rule, that Management had acted in good faith. While this arbitrator does not believe that Management has acted in bad faith, this arbitrator does not believe that management has acted in good faith either. This arbitrator believes that the NALC has proven its case by a preponderance of evidence and that Management has violated the provisions of Article 8 and for that reason, the grievance is sustained and that the carries that were not on the ODL , but were forced to work overtime on the day in question, shall be granted administrative leave equal to the amount of overtime they were forced to work on August 31, 2006.

February 12, 2008

  
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Daniel A. Oliver, Arbitrator

