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ARBITRATION PANEL

C # 10984

In the Matter of the Arbitration
between
UNITED STATES POSTAL SERVICE
and
NATIONAL ASSOCIATION OF LETTER
CARRIES, AFL-CIO

GRIEVANT: Sarah Ayotte
POST OFFICE: Waterbury, Ct.
MANAGEMENT CASE NO. N7N-IJ-C 36720
UNION CASE NO. 20-2-91

BEFORE: Harry B. Purcell

ARBITRATOR:

APPEARANCES:

For the U. S. Postal Service: Armand Gagnon
Labor Relations Assistant


For the Union: Edward Halloran
Local Business Agent, NALC

Place of Hearing: USPO, Waterbury, Ct.

Date of Hearing: July 26, 1991

AWARD: The Employer did not violate the contract when
it changed the Grievant's schedule on January
22, 1991. The grievance must be, and hereby
is, denied.

Date of Award: July 29, 1991


(Signature of Arbitrator)

ARBITRATION PROCEEDING

REGULAR REGIONAL ARBITRATION PANEL

IN THE MATTER OF ARBITRATION
- Between -
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- And -
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

USPS CASE NO.: N7N-IJ-C 36720
NALC CASE NO.: 20-2-91
GRIEVANT: Sarah Ayotte

SUBJECT POST OFFICE: Waterbury, Ct.
HEARING LOCATION: USPO, Waterbury, Ct.
HEARING DATE: July 26, 1991
AWARD DATE: July 29, 1991

ARBITRATOR: Harry B. Purcell

AWARD
OF THE
ARBITRATOR

FOREWORD

The Parties to this Arbitration Proceeding are the United States Postal Service (hereinafter referred to as "Employer") and the National Association of Letter Carriers, AFL-CIO (hereinafter referred to as "Union"). A hearing was conducted in this matter at 10:00 a.m., on July 26, 1991 at the USPO, 135 Grand Street, Waterbury, Ct., and was completed at 10:30 a.m., on that same day. The Proceeding was not recorded by a court reporter. The oath was administered to the single witness called by the Union to give testimony. The Employer presented no witnesses. The Parties were given full opportunity to present all of the evidence, testimony and proofs that they wished to offer in support of their respective Positions. The Arbitrator is satisfied that all conditions essential to a full and proper hearing and disposition of the matter placed before him have been met.

REPRESENTATIVES OF THE PARTIES

Appearing For The Employer

Armand Gagnon
Labor Relations Assistant

Appearing For The Union

Edward Halloran
Local Business Agent, NALC

THE ISSUE BEFORE THE ARBITRATOR

"Did the Employer violate the contract when it changed the Grievant's schedule on January 22, 1991? If so, what shall be the remedy?"

BACKGROUND OF THE DISPUTE

Sarah Ayotte (hereinafter referred to as "Grievant") is a regular Letter Carrier at the Waterbury, Ct., postal facility with approximately 9½ years of service. Her regular hours of work were, and are, 6:00 a.m. to 2:30 p.m. By letter from the Employer dated January 18, 1991 and received by the Grievant on the following day of January 19, 1991, the Grievant was instructed that her schedule for Tuesday, January 22, 1991 was being changed for that day to 11:00 a.m., to 7:00 p.m.; that she was to report to a Waterbury doctor at 5:00 p.m., on that day for a "fitness for duty" examination; and that she was being placed on paid "Administrative Leave" for the entire day of Tuesday, January 22nd. The Grievant complied with the instructions contained in the letter but two days later on January 24, 1991 the matter was orally grieved but went unresolved and resulted in a formal written grievance being filed by the Union on February 1, 1991. The dispute which, essentially, related to the question of whether or not the Grievant was properly compensated for the unworked day of January 22nd, continued without resolution in the meetings of the Parties subsequently held concerning it and thus was referred to this Arbitration Proceeding.

ALLEGED APPLICABLE REGULATIONS

(NOTE: The Regulations are incorporated into the subject contract by it's Article 19.)

(SEE APPENDIX "A")

POSITION OF THE UNION

The Union's Position must be stated here with unusual brevity because its presentation at the Hearing was an uncommonly brief one. Indeed, the entire Arbitration Proceeding consumed less than thirty (30) minutes from start to finish. Essentially, the Union rests its case upon two basic points, both relating to "Out of Schedule" provisions of the ELM Regulations (Section 634.6, et seg) (See Appendix "A"). Firstly, the Union points out that the Employer concedes that it did not notify the Grievant prior to the immediately preceding Wednesday (January 16th) that the Grievant's schedule for January 22nd was being changed. The notice was thereby flawed and the work schedule change was improperly ordered. Secondly, the Grievant was entitled to work her normal schedule on January 22nd. Accordingly, the Union asks that the grievance be sustained and that "the Grievant be paid as if worked from 6:00 a.m. - 11:00 a.m., at the straight time rate. From 2:30 p.m. - 4:30 p.m. at the time and one half rate, and from 4:30 p.m. - 7:00 p.m., at the penalty or double time rate in accordance with Article 8 of the National Agreement." (Quoted from the Union's typed closing statement.)

POSITION OF THE EMPLOYER


The Employer's Position must be described even more succinctly for the simple reason that it called witnesses to give testimony. Its cross - examination of the Grievant was limited to the single question: "Did you perform any work on January 22nd?" To which the Grievant replied: "No." It asserts that the "key word" or "words" in the applicable regulations are "work" and "worked". "Out of Schedule" pay only applies to "hours worked". The Grievant performed no work on January 22nd but she was paid for her normal eight (8) hours as if she had worked, because she had been put on "Administrative Leave" for that day by the Employer. The Union failed to meet its burden of proving any violation of the contract in this matter. The Employer asks that the grievance be denied.

DISCUSSION AND FINDINGS

The Arbitrator is obliged to find that the grievance is not well founded and that it must, therefore, be denied. The Arbitrator finds nothing in the contract or in the regulations that prohibits the right of the Employer to place an employee in a paid Administrative Leave status. Neither did the Union argue that such placement of the Grievant was done arbitrarily, capriciously, or discriminatorily. The Grievant performed no work on January 22nd but she was paid her regular compensation as if she had worked her normal work day of eight (8) hours. The "Out of Schedule" premium pay provisions of ELM 434.6, upon which the Union rather completely relies here, are restricted by its terms to "hours of work" or "hours worked" (the Arbitrator counts some fifteen (15) such references but he finds no reference whatsoever to compensation for hours not worked). Even if Section 434.612 b could be said to apply to the subject situation because the Employer did not give the Grievant notice of the temporary schedule change prior to the preceding Wednesday, such would not entitle the Grievant to any special compensation. The failure of the Employer to give timely advance notice of the change provides only that: "the employee is entitled to work her or his regular schedule." (underscoring added) That provision obviously is not meant to apply to an employee who is in a leave status, whether it be sick; annual; or administrative leave. That provision is addressing an employee who is working because it goes on to say: "any hours worked in addition to the employee's regular schedule..... are not considered as "out of schedule premium" hours. Instead they are paid as overtime hours worked in excess of 8 hours per service day or 40 hours per service week". (underscoring added). The Grievant was paid her regular rate for eight (8) hours for the service day of January 22nd even though she did not work any part of that day because the Employer had put her on Administrative Leave. As indicated above, the Arbitrator can only find under the contract and/or the regulations that premium pay of time and one-half or double time is required only for time worked under certain specified circumstances. He is unable to find any contract or regulations provision that requires the payment of either of those types of premium pay, for time not worked.

AWARD

The Employer did not violate the contract when it changed the Grievant's schedule on January 22, 1991. The grievance must be, and hereby is, denied.



Harry B. Purcell
Arbitrator

July 29, 1991

ELM REGULATIONS

434.6 Out of Schedule Premium

434.61 Policy.

434.611 "Out of schedule premium" is paid to eligible full-time bargaining-unit employees for time worked outside of, and instead of, their regularly scheduled workday or workweek when employees work on a temporary schedule at the request of management. Such notice is not required for "pool-type" employees.

434.612 Payment of "out of schedule premium" is dependent on timely notice being given by management of the temporary schedule change, as follows:

a. If notice of a temporary change is given to an employee by Wednesday of the preceding service week, even if this change is revised later, the employee's time can be limited to the hours of the revised schedule and "out of schedule premium" is paid for those hours worked outside of, and instead of, his or her regular schedule.

b. If notice of a temporary schedule change is *not* given to the employee by Wednesday of the preceding service week, the employee is entitled to work her or his regular schedule. Therefore, any hours worked in addition to the employee's regular schedule are not worked "instead of" her or his regular schedule. Such additional hours worked are not considered as "out of schedule premium" hours. Instead, they are paid as overtime hours worked in excess of 8 hours per service day or 40 hours per service week.

434.613 "Out of schedule premium" hours cannot exceed the unworked portion of the employee's regular schedule. If employees work their full regular schedule, then any additional hours worked are not "instead of" their regular schedule and are not considered as "out-of-schedule premium" hours.

434.614 Any hours worked which result in paid hours in excess of 8 hours per service day or 40 hours per service week are to be recorded as overtime (See 434.1).

434.615 Examples. See Exhibit 434.61.

Example: An employee is notified by Wednesday of the preceding service week to work a temporary schedule the following service week from 6:00 a.m. to 2:30 p.m., instead of her or his regular schedule from 8:00 a.m. to 4:30 p.m. The employee is paid 2 hours "out of schedule premium" for the hours worked from 6:00 a.m. to 8:00 a.m. and 6 hours straight time for the hours worked from 8:00 a.m. to 2:30 p.m. If, in this situation the employee continues to work into or beyond the balance of her or his regular schedule (2:30 p.m. to 4:30 p.m.), then she or he is to be paid for hours worked in accordance with Exhibit 434.61.

Hours Worked	Total Work Hours	"Out of Schedule Premium" Hours	Straight Time Hours	Overtime Hours
6:00 AM - 2:30 PM	8	2	6	0
6:00 AM - 3:30 PM	9	1	7	1
6:00 AM - 4:30 PM	10	0	8	2
6:00 AM - 5:30 PM	11	0	8	3

Exhibit 434.61, Computing Out of Schedule Premium Hours