

C# 03044

E8N-2P-C-1386
Class Action
Olyphant, PA

USPS-NALC BACKLOG ARBITRATION PANEL

EASTERN REGION

WILLIAM J. LeWINTER, ARBITRATOR

IN THE MATTER OF ARBITRATION)
)
 BETWEEN)
)
 UNITED STATES POSTAL SERVICE)
 (Olyphant, Pennsylvania))
)
 A)
 N)
 D)
)
 NATIONAL ASSOCIATION OF LETTER)
 CARRIERS, BRANCH NO. 1562)

Case No. E8N-2P-C1386
Hearing: February 16, 1983
Scranton, Pennsylvania

OPINION AND AWARD

Representing the Employer:

John A. Higgins, Labor Relations Representative

Representing the Union:

Gerald M. Janci, Local Business Agent

Facts

During the negotiations for the 1978 National Agreement, the Employer and the Union entered into the Memorandum of Understanding of July 21, 1978 wherein two 10 minute break periods were granted. The employer took the position that the breaks would be instituted "Initially, one week prior to the countweek", and included this position in its "Utilization of New Mail Count and Route Inspection Procedures" manual on September 26, 1978. A Mail Count and Route Inspection (Inspection) was scheduled at Olyphant, Pennsylvania for April 14, 1979. The breaks were implemented on April 7, 1979. Following the Inspection, the Union

filed a grievance on the conduct thereof. On May 24, 1979, at the second step of the grievance procedure, the Employer sustained the grievance and cancelled the result of the mail count. On June 11, 1979, the Employer cancelled the two 10 minute breaks pending a new Inspection. The Union filed the instant grievance over cancellation of the breaks. The Employer then scheduled a new Inspection for September 22, 1979 and re-instated the two breaks on September 15, 1979. The parties were unable to resolve the matter, and it was assigned to arbitration. Thereafter, the matter was placed on the Backlog for expediated treatment. Hearing was held before William J. LeWinter, Panel Arbitrator, on February 16, 1983 at Scranton, Pennsylvania, at which time the parties were accorded full opportunity to present witnesses for direct and cross examination and such other evidence as was deemed pertinent to the proceedings.

Discussion

The Union argues that the Award of Arbitrator Benjamin Aaron in the National Panel Case No. N8-NAT-0023 (1980) is controlling. The Employer argues that the Aaron Award applies solely to unilateral action on the part of the Employer; and since the cancellation of the April 14 Inspection resulted from Union activity, request or demand (filing of the grievance as to Inspection procedures), the Inspection was not cancelled by unilateral act of the Employer. Therefore, the Employer argues the cancellation of the two breaks was proper, because they were not to be instituted until one week before the utilized Inspection of September 22.

A reading of the Aaron Award demonstrates that the unilateral act of which he speaks is the unilateral act of cancelling the breaks, not the act of cancelling the Inspection. The first Inspection in the case decided by Arbitrator Aaron was scheduled, but never held. He states on page 5:

The right of the Postal Service to cancel a previously scheduled count and inspection is not at issue; it clearly possesses that right (JX-6, JX-7). As previously noted, however, under the terms of the 1978 Memorandum of Understanding, breaks are initiated one week before a scheduled count and inspection. The only question to be decided in this case is whether the language of the Memorandum of Understanding permits the Postal Service to cancel those breaks if it also cancels the count and inspection. (Emphasis supplied).

Therefore, Arbitrator Aaron limited his discussion to the unilateral cancellation of the breaks by the Postal Service after any type of cancellation of the Inspection. The fact that no Inspection was held before cancellation in the Aaron Award case and that an Inspection was held and the results thereafter cancelled is not germane. The issue decided by Arbitrator Aaron was the same as here: the Employer unilaterally cancelled the breaks. The Aaron Award renders such unilateral act a violation of the parties' contract. The basis of that Award is explicit therein and needs no further explanation on my part. The Employer unilaterally cancelled the two breaks after the cancellation of the Inspection results in violation of the parties' agreement.

As to remedy, the Union requests an alternative decision: either payment for the time denied as break time at time and a half from June 11, 1979 to September 24, 1979, or compensatory

time. It argues that without remedy the grievance procedure is worthless. The Employer argues that since break time involves a period of time during which no services are provided, it should not be required to pay for denial of services.

The Employer's argument ignores the basic facts of labor-management relations. It had every right to refuse to pay for non-working time during negotiations. In fact, it agreed to permit two 10 minute breaks during paid time, when the employee is "on the clock". Once it agrees to pay for time when no services are to be provided, it cannot be heard to argue that its violation of the contract by denying the breaks has no value. However, the arbitrator is unable to assess paid damages in this case. No evidence was presented as to whether or not the breaks would actually have extended any day into overtime. No evidence was presented as to the hours actually worked or whether any overtime was worked during the period. While it is quite likely that some overtime was worked, I am bound by the evidence presented at the hearing. I cannot speculate and have no proof that any of the days involved would warrant 20 minutes overtime pay.

In the alternative, the Union is quite correct in arguing that a sustained grievance without any remedy renders the grievance-arbitration procedure worthless when such remedy is possible under the circumstances. In this case, compensatory time is an available remedy. From the Employer's point of view it may result in overtime in some instances or it may result in no cost at times when the work load would present the opportunity to absorb 20

minutes time within the normal work day. From the Union's point of view it would provide the rest periods negotiated for and validate the grievance process.

Compensatory break time will be ordered; however, by expression of the effect on the parties, the actual compensatory times must be monitored. There is no evidence in the record to establish a plan. The grievant cannot be permitted to decide just when the compensatory time will be taken to guarantee overtime wages. Likewise management cannot be permitted to assign the compensatory time solely to avoid overtime and possibly deny the rest time when needed. Accordingly, the parties are directed to discuss the manner in which compensatory time will be taken, or if mutually agreed to, paid for. As to the remedy of this case, the parties are free to resolve it as they mutually see fit. In the event they cannot agree, the arbitrator will retain jurisdiction over the question of the remedy of compensatory break time and will direct a hearing be held at the request of either the Union or the Employer.

AWARD

The grievance is sustained. Compensatory break time shall be given in accord with the principles set forth in the foregoing Opinion. The parties are directed to discuss the remedy in this case and are free to resolve it in any way they mutually see fit. In the event they are unable to come to agreement, the arbitrator shall retain jurisdiction solely over the question of the remedy of compensatory

break time, and a hearing will be scheduled at the request of either party hereto.

Respectfully submitted,

William LeWinter
William LeWinter, Arbitrator
February 23, 1983

