C#09472

REGULAR ARBITRATION PANEL

SOUTHERN REGION

In The Matter Of The Arbitration between UNITED STATES POSTAL SERVICE (St. Petersburg, Florida) and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO, BRANCH 1477 (St. Petersburg, Florida)	GRIEVANT: Dennis F. Sanders POST OFFICE: St. Petersburg, Florida CASE NO.: Postal Service: S7N-3W-C 22611 NALC: 1477-104-12-89 GTS #11685

BEFORE: F. Jay Taylor, ARBITRATOR, Southern Region

APPEARANCES:

For the U. S. Postal Service:	William Daigneault Labor Relations Representative, Field
For the National Association of Letter Carriers:	Johnny W. Bourlon President, Branch 1477

PLACE OF HEARING: U. S. Post Office
St. Petersburg, Florida

DATE OF HEARING: October 26, 1989

AWARD:

The grievance is sustained. The Grievant, Dennis Sanders, shall be paid for .93 units of overtime at the appropriate overtime (not penalty) rate.

DATE OF AWARD: November 15, 1989

The grievance was heard at the United States Post Office in St. Petersburg, Florida, on October 26, 1989, before F. Jay Taylor, Contract Arbitrator.

The parties were professionally represented by competent and experienced Advocates. They stipulated that the procedural steps of the grievance procedure as outlined and prescribed in the National Agreement have been complied with and that the issue was 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, both Mr. Daigneault (Agency) and Mr. Bourlon (Union) 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 Union had each received a full, fair, and impartial Hearing.

The Grievant, Dennis Sanders, testified that he, too, was satisfied with the state of the Record and that he had nothing further to add in support of his claim. He likewise testified that he had been fully and fairly represented by his Union, The National Association of Letter Carriers, in the proceedings.

The Hearing was tape-recorded by the Arbitrator for his use in preparing the FINDINGS and AWARD in the case. The parties presented closing arguments and waived the right to file post-Hearing Briefs.

THE ISSUE:

Did Management violate Article 8 of the National Agreement when Carrier Anthony Wood, who was not on the Overtime Desired List, worked .93 hours of overtime in lieu of the Grievant, Dennis Sanders, who was on the Overtime Desired List? If so, what is the appropriate remedy?

PERTINENT PROVISIONS OF THE NATIONAL AGREEMENT:
(Joint Exhibit No. 1)

ARTICLE 8

HOURS OF WORK

. . .

Section 5. Overtime Assignments

When needed, overtime work for regular full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

A. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an "Overtime Desired" list.

B. Lists will be established by craft, section, or tour in accordance with Article 30, Local Implementation.

C.1.a. Except in the Letter Carrier Craft, when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected in order of their seniority on a rotating basis.

b. Those absent or on leave shall be passed over.

2.a. Only in the Letter Carrier Craft, when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the list.

b. During the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the list.

c. In order to insure equitable opportunities for overtime, overtime hours worked and opportunities offered will be posted and updated quarterly.

d. Recourse to the "Overtime Desired" list is not necessary in the case of a letter carrier working on the employee's own route on one of the employee's regularly scheduled days.

D. If the voluntary "Overtime Desired" list does not provide sufficient qualified people, qualified full-time 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.

E. Exceptions to C and D above if requested by the employee may be approved by local management in exceptional cases based on equity (e.g., anniversaries, birthdays, illness, deaths).

F. Excluding December, no full-time regular employee will be required to work overtime on more than four (4) of the employee's five (5) scheduled days in a service week or work over ten (10) hours on a regularly scheduled day, over eight (8) hours on a non-scheduled day, or over six (6) days in a service week.

G. Full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the "Overtime Desired" list:

1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.F); and

2. excluding December, shall be limited to no more than twelve (12) hours of

work in a day and no more than sixty (60) hours of work in a service week.

However, the Employer is not required to utilize employees on the "Overtime Desired" list at the penalty overtime rate if qualified employees on the "Overtime Desired" list who are not yet entitled to penalty overtime are available for the overtime assignment.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO, and National Association of Letter Carriers, AFL-CIO)

Re: Overtime

Recognizing that excessive use of overtime is inconsistent with the best interests 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 employees who do not wish to work overtime, while recognizing that bona fide operational requirements do exist that necessitate the use of overtime form time to time. The parties have agreed to certain additional restrictions on overtime work, while agreeing to continue the use of overtime desired lists 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 parties agree this memorandum does not give rise to any contractual commitment beyond the provisions of Article 8, but is intended to set forth the underlying principles which brought the parties to agreement.

The new provisions of Article 8 contain different restrictions than the old language. However, the new language is not intended to change existing practices relating to use of employees not on the overtime desired list when there are insufficient employees on the list available to meet the overtime needs. For example, if there are five available employees on the overtime desired list and five not on it, and if 10 work hours are needed to get the mail out within the next hour, all ten employees may be required to work overtime. but if there are 2 hours within which

to get the mail out, then only the five on the overtime desired list may be required to work.

The parties agree that Article 8, Section 5.G.1., does not permit the employer to require employees on the overtime desired list to work overtime on more than 4 of the employee's 5 scheduled days in a service week, over 8 hours on a nonscheduled day, or over 6 days in a service week.

Normally, employees on the overtime desired list who don't want to work more than 10 hours a day or 56 hours a seek shall not be required to do so as long as employees who do want to work more than 10 hours a day or 56 hours a week are available to do the needed work without exceeding the 12-hour and 60-hour limitations.

In the Letter Carrier Craft, where management determines that overtime or auxiliary assistance is needed on an employee's route on one of the employee's regularly scheduled days and the employee is not on the overtime desired list, the employer will seek to utilize auxiliary assistance, when available, rather than requiring the employee to work mandatory overtime.

In the event these principles are contravened, the appropriate correction shall not obligate the employer to any monetary obligation, but instead will be reflected in a correction to the opportunities available within the list. In order to achieve the objectives of this memorandum, the method of implementation of these principles shall be to provide, during the 2-week period prior to the start of each calendar quarter, an opportunity for employees placing their name on the list to indicate their availability for the duration of the quarter to work in excess of 10 hours in a day. During the quarter the employe may require employees on the overtime desired list to work these extra hours if there is an insufficient number of employees available who have indicated such availability at the beginning of the quarter.

The penalty overtime provisions of Article 8.4 are not intended to encourage or result in the use of any overtime in excess of the restrictions contained in Article 8.5.F.

Date: Incorporated into December 24, 1984 Award.

STATEMENT OF THE CASE:

This case arises out of a dispute involving an overtime work assignment. The Union has charged the Service with violating both the spirit and the intent of Article 8, Section 5, of the National Agreement when a Carrier (Wood) who was not on the ODL was permitted to work .93 units overtime on May 23, 1989. The Union alleges that the overtime assignment should have been given to the Grievant, who was on the ODL and who was available to work.

The basic facts of the case are in dispute:

The Union Version: Carrier Wood reported for work on May 23 and cased his mail. After surveying the amount of the mail to be delivered on his Route (0953) (15.75 feet of mail in the flats), the Employee filled out Form 3996 requesting 2-1/2 hours of auxiliary assistance and placed it on his supervisor's desk. There was no further contact with the supervisor nor was Form 3996 returned to Mr. Wood. Wood had previously taken his name off the ODL and this was well known by the supervisor. A second carrier provided Mr. Wood with 1-1/2 hours of auxiliary assistance. Wood then assumed that he was authorized to work 1 hour of overtime. He returned to the Post Office shortly after 3:00 p.m. and worked .93 units of overtime cleaning up his route.

Much of the route involved deliveries in trailer parks. By May 23 many of the occupants had left the St. Petersburg area. Thus, there was considerable mail which was returned to the Office. Mr. Wood worked .93 units of overtime processing bulk

mail, forwarding mail, changing addresses, etc. Upon completing this work the Employee clocked out and left the premises.

The .93 units of overtime were certainly authorized. Mr. Wood had every reason to believe that this work was authorized. Since the work was authorized it was erroneously assigned to a Carrier not on the ODL. This time it should have been assigned to the Grievant who is on the ODL. That is the fault of the supervisor who even today refuses to admit his error. Therefore, Dennis Sanders, should be paid for .93 units of overtime at the penalty rate.

The Agency Version: If the overtime in question had been authorized, then the Union's claims would certainly have more merit. The truth is Anthony Wood worked .93 units of overtime which was not authorized by his supervisor. The supervisor did, indeed, receive Wood's request for 2-1/2 hours of auxiliary assistance on Route 0953 on May 23, 1989. After reviewing the mail volume the supervisor concluded that 1-1/2 hours of auxiliary assistance would be sufficient to complete servicing the route. Thus, 1-1/2 hours of auxiliary assistance was approved. Mr. Abramo testified that he so informed Wood. Furthermore, Wood was advised that "In the event it is not enough I will authorize the overtime for you to work. I don't think that you need it." Wood was also told if he clocked in early that he was "to go home--don't hang around--you cannot stop since you took your name off the ODL."

Mr. Abramo gave the Form 3996 directly to Wood who then gave it to Carrier Mueller who, in turn, worked 1-1/2 hours

providing auxiliary assistance on Route 0953. Wood told the supervisor that "when I get back, I'll go home." As the supervisor was leaving the Post Office at the end of his tour, shortly after 3:00 p.m., he met Mr. Wood at the rear door as he was checking in from his Route. At that time Abramo remarked to Wood: "See, I told you that you did not need 2-1/2 hours of auxiliary assistance." It was not until the next day, May 24, Abramo testified, that he learned that Wood had worked .93 units of overtime. When questioned as to why he worked, the unauthorized overtime, Wood responded: "I won't do it again."

The bottom line is that the .93 units of overtime worked by Wood was unauthorized. Therefore, the grievance in the case at bar has no merit. While it is true that Wood was paid for the .93 units of overtime it was only because the Agency was required to do so under the provisions of the Fair Labor Standards Act.

FINDINGS:

It is the finding of the Arbitrator, after a careful review of all arguments and contentions, weighing the oral and the documentary evidence, the well-reasoned arguments advanced by Mr. Bourlon on behalf of the Union and Mr. Daigneault on behalf of the Agency, the Arbitration cases cited, as well as a veritable legion of exhibits, all lead to the conclusion that the Union's claim is valid. I am persuaded that the Agency did, indeed, violate the provisions of Article 8, Section 5. And furthermore, since supervisory personnel at the Crossroads Station seemingly have been lax in implementing this language,

and enough "cease and desist" orders have been issued, I believe that a monetary remedy is appropriate.

There seems to be no argument as to the intent and meaning of Article 8, Section 5. This Contractual provision establishes clearly and unambiguously that Employees on the Overtime Desired List have a priority over Employees not on the ODL when overtime assignments are made by supervision. The circumstances when an Employee not on the ODL is assigned overtime are very restrictive. Therefore, in the instant case, if the .93 units were, indeed, authorized by Supervisor Abramo then the Grievant has a valid claim since he was on the ODL and Carrier Wood was not. As the Agency Advocate stated, the entire case rests on the instructions given to Carrier Wood. If he was authorized to work an extra hour of overtime then it is conceded that the Union's argument must prevail. I am persuaded that the .93 units of overtime in question was, indeed, authorized, at least the Carrier had good and sufficient reason to believe that it was authorized.

It is obvious that credibility lies at the very heart of this issue. And credibility is not easy to assess. When I studied and weighed the oral and the documentary evidence, I can only conclude that the Union version of events which transpired on May 23 was the more believable. Stated another way, I simply did not find the supervisor to be the more creditable witness.

Mr. Abramo testified that one hour of overtime for Wood was, indeed, authorized on May 23, but the authorization was conditional--"only if he needed it." Since he returned to the

Post Office shortly after 3:00 p.m., he obviously did not need it, the supervisor concluded. But the nagging question is how was this determination conveyed to the Carrier? Mr. Abramo testified that he told the Carrier that he (Abramo) would personally check the Route during the day to see if extra time was required. He failed to do so, however, contending that a meeting prevented him from going out on the street.

I have also credited Union Exhibit No. 7 (the 3996 Form in question) and Union Exhibit No. 7 (the Unit Daily Record for May 23, 1989). In U-2 under the column "Estimated Work" the "Approved" box is checked and in the "Overtime" box is written "60." In addition, the Form states that 1-1/2 hours of auxiliary assistance is approved. The supervisor may have meant that the 60 minutes were to be used only "if needed." But such a directive does not appear on the Form. The Form does include the notation: "If return early, Carrier not to work O.T." There is some question in my mind just when this notation was written. Then, too, did Wood even see the 3996 prior to leaving on his Route?

U-7 notes, beside the name of Carrier Wood, in the "Regular Work Hours" column "1/150." I interpret this to mean that Wood was authorized one extra hour to work his Route and 1-1/2 hours of auxiliary assistance was authorized.

The mail volume on Route 0953 on May 23 likewise makes it more likely that 2-1/2 hours were authorized rather than the 1-1/2 hours claimed by the supervisor. Unrefuted was the Carrier's testimony that 15.75 feet of mail was in the flats. Likewise,

there was additional mail which had been curtailed from the previous day. Even though the Supervisor contended that some of the mail was "Carol Wright" handouts it would certainly seem that assistance requested by Wood on May 23, was not unreasonable.

All of the above persuades me that a Contract violation did occur. What then is the appropriate remedy? The Union has requested .93 units of overtime at the penalty rate.

Arbitrator Mittenthal in a case decided on the National level (H4N-NA-C-21) ruled in that particular case that even though an Article 8, Section 5, Contractual violation had occurred, a monetary remedy was inappropriate: "Instead, the Postal Service should be ordered to cease and desist from any violation of the 'letter carrier paragraph.' Should the postal facility in question thereafter fail to comply with such an order, a money remedy might well be appropriate."

Arbitrator Caraway in a case (S4N-3E-C 48238) noted the National precedent set by Arbitrator Mittenthal. Mr. Caraway concluded that his "...authority therefore is limited to issuing a cease and desist order pertaining to any future violations. Failure to comply with this order in any future occasion could bring about a supportable basis for a money award."

My analysis of the instant case persuades me that the Sanders grievance is not an isolated instance at the Crossroads Station; that supervision has been extremely negligent in not "seeking" people from the ODL prior to making overtime assignments before requiring other Carriers to work mandatory overtime. Thus, in my view, something more than a cease and

desist order is necessary to get Management's attention. Furthermore, the Agency's case is aggravated by the testimony of the supervisor, parts of which I found not creditable.

Therefore, after due consideration, and for the reasons stated above, the undersigned, duly designated Arbitrator makes the following

AWARD

The grievance is sustained. The Grievant, Dennis Sanders, shall be paid for .93 units of overtime at the appropriate overtime (not penalty) rate.

F. Jay Taylor, Arbitrator

Dated at Ruston, LA
this 15th day of November, 1989