C#15698

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration between UNITED STATES POSTAL SERVICE And NATIONAL ASSOCIATION OF LETTER CARRIERS	GRIEVANCE: "Four Hour" Work Rule POST OFFICE: Tacoma, Washington USPS CASE No.: E90N-6E-C 94021412 NALC SYSTEM NO.: 5085

BEFORE: Carlton J. Snow, Professor of Law

APPEARANCES: For the Employer: Ms. Larissa Omelchenko Taran
Ms. Marta E. Erceg

For the Union: Mr. Keith E. Secular

PLACE OF HEARING: Washington, D.C.

DATE OF HEARING: May 2, 1996

POST-HEARING BRIEFS: June 26, 1996

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the "four-hour work or pay" guarantee does not operate when transitional employees are called back, after a scheduled shift has been completed,to work additional time less than four hours. The grievance is denied. It is so ordered and awarded.

Date: 8-20-96

Carlton J. Snow
Professor of Law

IN THE MATTER OF ARBITRATION BETWEEN UNITED STATES POSTAL SERVICE AND NATIONAL ASSOCIATION OF LETTER CARRIERS ("Four Hour" Work Rule Grievance) (USPS Case No.: E90N-63-C 94021412) (NALC System No.: 5085)	ANALYSIS AND AWARD Carlton J. Snow Arbitrator

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from June 12, 1991 through November 20, 1994. A hearing occurred on May 2, 1996 in a conference room of the United States Postal Service headquarters located at 475 L'Enfant Plaza in Washington, D.C. Ms. Laressa Omelchenko Taran and Ms. Marta E. Erceg, Labor Relations Specialists, represented the U.S. Postal Service. Mr. Keith E. Secular, attorney, represented the National Association of Letter Carriers.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The advocates fully and fairly represented their respective parties. Mr. Edward J. Greenburg of Diversified Reporting Services, Inc. reported the proceedings of the

parties and submitted a transcript of 35 pages.

There were no challenges to the substantive or procedural arbitrability of the dispute, and the parties stipulated that the matter properly had been submitted to arbitration. The arbitrator officially closed the hearing on June 26, 1996 after receipt of the final post-hearing brief in the matter.

II. STATEMENT OF THE ISSUE

The issue before the arbitrator is as follows:

Are transitional employes in the NALC bargaining unit guaranteed four hours of work or pay when requested to return to work on a day they have worked for more than four hours, completed their assignment, and clocked out. If so, what is the appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 8 HOURS OF WORK

Section 8. Guarantees

C. The Employer will guarantee all employees at least four (4) hours work or pay on any day they are requested or scheduled to work in a post office or facility with 200 or more man years of employment per year. All employees at other post offices and facilities will be tuaranteed two (2) hours work or pay when requested or scheduled to work.

D. In the Letter Carrier Craft, any transitional employee who is scheduled to work and who reports for work shall be guaranteed four (4) hours' work or pay.

IV. STATEMENT OF FACTS

In this case, the Union challenged the decision of the Employer to deny a "call back" guarantee for transitional employes. The dispute began to take shape when, on November 8, 1993, the grievant, a transitional employe, clocked in at 0638. He cased and carried a route and, then, provided 1.82 hours of auxiliary assistance on another route. She clocked out at 1682. After clocking out, her supervisor instructed her to clock back in and to assist on another route. She clocked back in at 1689 and provided .92 hours of auxiliary assistance, clocking out at 1782. The Employer paid her for .92 hours of work on a second tour. She maintained that she should have received compensation for an additional 3.08 hours.

The Union filed a grievance and asserted that the grievant had been guaranteed four hours of work or pay after she clocked back in at 1689. The Union sought an additional 3.08 hours of pay at the penalty overtime rate for the grievant with an additional 2.9 hours of nighttime differential pay for work after 6:00 P.M. that would have been a part of the four-hour guarantee allegedly denied her. It is the position of the Union that the Employer violated the parties' collective bargaining agreement by not providing the grievant with four hours of work or pay. When the parties were unable to resolve their differences, the matter proceeded to arbitration.

V. POSITION OF THE PARTIES

A. The Union

It is the position of the Union that Article 8.8.D guaranteed the grievant four hours of work or pay. The Union contends that, when the grievant returned to work at the request of her supervisor, she activated a right to four hours of work or pay. It is the belief of the Union that Article 8.8.C gives guidance with regard to the intent of the parties in Article 8.8.D. According to the Union, the only difference between Article 8.8.C ad Article 8.8.D is that transitional employes receive a four-hour guarantee of work or pay regardless of office size. An individual must

report for work in order to activate the guarantee, according to the Union.

The Union argues that any ambiguity regarding the meaning of Article 8.8.D should be resolved within the context of how the parties have applied Article 8.8.C. A settlement agreement, describing rules for "call back" situations as they apply to part-time flexible employes, allegedly clarifies any questions about the contractual intent of the parties. Under the settlement agreement, part-time flexible employes allegedly receive a guarantee of work or pay if they clock out and leave the premises but, later, are called back to work. The Union maintains that the parties incorporated the settlement agreement into Handbook EL-401.

In support of its contention that Article 8.8.C and Article 8.8.D should be accorded the same meaning, the Union relies on a settlement agreement concerned with "call back" rights of transitional employes when they are notified prior to clocking out that they should return to work. It is the position of the Union that, because "call back" rights of transitional employes are the same as career employes when they are notified prior to clocking out of their need to return to work, it is reasonable to conclude that Article 8.8.C and Article 8.8.D should be accorded the same meaning.

B. The Employer

The employer maintains that it would be a wrong-headed interpretation to read a "call back" guarantee into Article 8.8.D of the parties' agreement. Management contends that going back on the clock when requested to do so is not at all the same as being scheduled to work, two different events the Union allegedly has confused. The Employer asserts that such an interpretation of the parties' agreement produces a nonsensical result which would mean that a transitional employe would receive a guarantee each and every time an individual clocked out and was asked to clock back in, no matter that an employe merely stepped away from the clock for a few seconds. There allegedly is reasonable arbitral authority in support of the Employer's position.

It is also the position of the Employer that Handbook EL-401 as applied by the Union is not relevant to transitional employes. The Employer contends that Handbook EL-401 predates the creation of the transitional employe classification and that, therefore, references to "all employees" could not possibly include transitional employes. Moreover, the Employer contends that verbiage in Article 8.8.C is broad enough to allow for a "call back" provision, while language in Article 8.8.D would not allow a call back. More specifically, the Employer contends that the "request to work" language in Article 8.8.C permits "call back" rules for part-time flexible employes, as evidenced by a Step 4 Settlement Agreement. In the opinion of the Employer, Article 8.8.D

is far more restrictive and contains a limited "schedule and report" rule which would disallow applying provisions to transitional employes that are applicable to part-time flexible employes. It is the position of the Employer that, if transitional employes were granted the same "call back" guarantees as part-time flexible employes, the Employer would be placed in the untenable position of violating Article 19 of the parties' agreement. Article 19 allows provisions in manuals to apply to employes as long as the provisions are consistent with other rights guaranteed by the agreement, and the Employer contends that an extension of "call back" rights to transitional employes would be inconsistent with the plain language of Article 8.8.D of the parties' agreement.

VI. ANALYSIS

A. The Meaning of Article 8.8.D

Probably no document ever has been written that was completely free of interpretive questions. People express themselves with ambiguity in collective bargaining agreements just as they do in actual conversations, but the intensity of negotiating an agreement covering thousands of workers and the high level of expertise among competing negotiators significantly reduce interpretive needs for these particular parties. When, however, it becomes necessary to make a choice of meaning, an arbitrator's search is for the meaning the parties gave language at the time they negotiated it into existence. Using an objective standard of reasonableness, an arbitrator applies well established rules in aid of interpretation. The Restatement (Second) of Contracts makes clear that "the primary search is for a common meaning of the parties" and that

> The objective of interpretation in the general law of contracts is to carry out the understanding of the parties rather than to impose obligations on them contrary to their understanding. (See, § 201, comment c, 84 (1981)).

A fundamental rule of interpretation is that ambiguous language is given its clear meaning. As Restatement (Second) instructs, "in the absence of some contrary indication, therefore, English words are read as having the meaning given them by general usage, if there is one." (See, § 202, comment e, 89 (1981)). In the absence of contrary evidence, words in an agreement are given their clearly expressed meaning

(1) because it is a rational approach to problem-solving; (2) because doing so avoids inadvertently altering the parties' agreement by adding concepts to the document; and (3) because the objective of contract interpretation is to give significance to each part of an agreement while remaining faithful to the whole document.

Nor is an arbitrator isolated from relevant circumstances surrounding the meaning of language in a labor contract. Language is read in light of the totality of circumstances, and standard rules of interpretation permit "reference to the negotiations of the parties, including statements of intention and even positive promises, so long as they are used to show the meaning of the writings." (See, Restatement (Second) of Contracts, § 212, comment c, 127 (1981)).

The dispute in this case centers on the applicability of a specific contractual provision, namely, Section 8.8.D. It states:

> D. In the Letter Carrier Craft, any transitional employee who is scheduled to work and who reports for work shall be guaranteed four (4) hours' work or pay. (See, Joint Exhibit No. 1, p. 24 , emphasis added.)

Both parties maintained that Article 8.8.D is clear on its face, but they offered different interpretations of its meaning.

Unsuccessful in resolving their differences at the bargaining table, the parties referred their contract dispute to interest arbitration. A highly regarded interest

arbitration panel produced the verbiage at issue in this case and made it a part of the Interest Arbitration Award on June 12, 1991. (See, Joint Exhibit No. 1, p. 258). In the Interest Arbitration Award, the panel members indicated that an existing contractual provision applied to transitional employes by including explicit language in the provision to that effect. The parties also incorporated by reference into their collective bargaining agreement the Interest Arbitration Award itself.

Article 8.8.D on page 24 in the body of the parties' collective bargaining agreement has been lifted directly from the Interest Arbitration Award found on page 258 of the parties' labor contract. Instead of using the applicable provision granting a guaranteed time for all employes and applying it to transitional employes, the Interest Arbitration Panel drafted a specific provision covering transitional employes. The existing provision applicable to"all employes" is set forth in Article 8.8.C,and it states:

> C. The Employer will guarantee <u>all employees</u> at least four (4) hours work or pay on any day they are requested or scheduled to work in a post office or facility with 200 or more man years of employment per year. All employees at other post offices and facilities will be guaranteed two (2) hours work or pay when requested or scheduled to work. (See, Joint Exhibit No. 1, p. 24, emphasis added.)

The parties, then, followed Article 8.8.C with a specific provision covering transitional employes in the Letter Carrier Craft as described in Article 8.8.D of the agreement.

As is apparent, the existing provision applicable to all employes is stated differently from the new provision

applicable to transitional employes. Article 8.8.C states that an employe may be scheduled or requested to work in order to receive four hours of work or pay. The design in Article 8.8.D is different and provides that a transitional employe "who is scheduled to work and who reports for work" shall be guaranteed four (4) hours of work or pay." (See, Joint Exhibit No. 1, p. 24). If the Interest Arbitration Panel had determined that it intended a guarantee covering all regular employes to apply in exactly the same way to transitional employes, it would have been simple for the Panel to have added the benefit to Article 8.8.C. But it did not do so, and the implication of the Panel's decision must be honored.

This was an Interest Arbitration Panel comprised of highly astute individuals who collectively represent decades of experience in collective bargaining. The chairman is internationally renowned for his intellectual rigor, his keen insight into collective bargaining, and his linguistic skills. The collective wisdom of the panel was outstanding, and its reputation must be considered in interpreting the language of the parties' agreement. The stature of the panel adds support to a conclusion that the panel members were sensitive to the issues and said exactly what they meant to say. What the Panel did not say must also be honored.

Article 8.8.D makes clear that a transitional employe must fulfill two requirements in order to receive the guarantee of the provision. First, a transitional employe must be scheduled to work. Second, a transitional employe must

report to work. There is nothing in Article 8.8.D that makes reference to being requested to work. This missing element could not have been lost on the Interest Arbitration Panel and helps show the difference between Articles 8.8.C and 8.8.D. A transitional employe can be requested to work on short notice, and no guarantee applies. With its high level of expertise, the Interest Arbitration Panel must be presumed to have been aware of this distinction. It is reasonable to conclude that it was the intent of the Panel to exclude transitional employes from a guarantee when requested to work additional hours. It is not reasonable to conclude that Articles 8.8.C and 8.8.D essentially mirror each other to the point that transitional employes receive the same rights as other employes. Such an interpretation would add a term to the parties' agreement which is contradicted on its face by language in the agreement.

B. Impact of Handbook EL-401

The Employer argued that relevant language in Handbook EL-401 did not apply to transitional employes because it predated the creation of transitional employes and also because it is not material covered by Article 19 of the parties' agreement. It is correct that, when Handbook EL-401 came into existence, the reference in the material

to "all employees" did not encompass transitional employes. This fact, however, is not dispositive in determining whether such language applies to transitional employes. The more important question is whether language in EL-401 conflicts with or is consistent with express provisions in the parties' National Agreement. Moreover, Article 19 of the collective bargaining agreement is applicable because arbitral precedents held that EL-401 is, in fact, a handbook within the coverage of Article 19. (See, Case No. H4N-NA-C 21 and 27 (1987)).

The Interest Arbitration Panel was keenly aware of existing manuals and the potential effect they had on transitional employes. The agreement of the parties must be interpreted in view of circumstances surrounding the transaction, namely, the panoply of administrative regulations. The parties have agreed that handbook provisions may supplement the National Agreement to the extent the provisions are consistent with the agreement. It is reasonable to infer that the Interest Arbitration Panel's awareness of such potentially applicable provisions was a factor in its decision to provide a separate provision for transitional employes in Section 8.8.D.

The National Agreement provides the general framework within which rights of transitional employes exist. It is not the role of an arbitrator to re-make that framework. To apply the "call back" provision of Handbook EL-401 to transitional employes would be accomplishing just such a result. Such rebuilding would need to take place in negotiations

between the parties. It is not within a grievance arbitrator's authority to expand rights of transitional employes without contractual support. Such rights cannot be expanded in contradiction of clear language in an interest arbitration award drafted by a high level panel of experts in collective bargaining. The more rational conclusion is that the Interest Arbitration Panel meant what it said and said what it meant, while also leaving out of the Award what it did not intend to include.

Actions of both parties led them into the arena of interest arbitration. They chose a highly regarded panel to continue the collective bargaining process as representatives of the parties. There are well established criteria and general standards that guide interest arbitrators in their decision-making process. (See, e.g., Block and Rothschild, Interest Arbitration (1988)). No evidence suggested that the Award was founded on anything other than a rational basis. It is reasonable to conclude that the Panel was aware of the issue raised in this dispute and clearly decided against the position for which the Union now contends. The bargain reached by duly appointed representatives of the parties now must be honored.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the "four-hour work or pay" guarantee does not operate when transitional employees are called back, after a scheduled shift has been completed, to work additional time less than four hours. The grievance is denied. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: 8-20-96