

ARBITRATION AWARD

C# 01637

In the Matter of the Arbitration)
)
Between)
)
UNITED STATES POSTAL SERVICE)
Northfield, Minnesota)
)
And)
)
BRANCH 911, NATIONAL ASSOCIATION OF)
LETTER CARRIERS)

ALBERT A. EPSTEIN
ARBITRATOR

CASE NO. C8N-4C-C12068
Class Action
Northfield, MN

BREAK TIME COMPENSATION GRIEVANCE

THE PROCEEDINGS

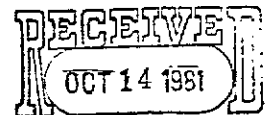
The above parties, unable to resolve a class grievance filed on behalf of the letter carriers at the Northfield, Minnesota, Post Office, relating to the appropriate remedy for a wrongful denial of break time, submitted the matter to the undersigned for arbitration under the terms of their labor agreement.

A hearing on the matter was held on September 25, 1980, at the Post Office in Northfield, Minnesota. Both parties were represented and fully heard, testimony and evidence were received, the Union filed a post hearing brief and the Postal Service waived its right to file a brief.

APPEARANCES

FOR THE POSTAL SERVICE:

Mr. D. J. Shipman



NATIONAL BUSINESS AGENT
CENTRAL REGION
Labor Relations
Representative

FOR THE UNION:

Mr. David W. Noble

National
Representative

THE ISSUE

What is the appropriate remedy for the Postal Service's erroneous denial of break time to Northfield, Minnesota, letter carriers during the period from November 17, 1979, to April 23, 1980?

DISCUSSION AND OPINION

There is no dispute as to the facts upon which this grievance is based but there is a difference of opinion as to the remedy which is appropriate in this matter. In 1978, the Postal Service and the Union agreed to incorporate provisions in their National Agreement providing that carriers receive two ten-minute breaks each day, and it was further agreed that such breaks would be implemented one week prior to the count week. In the Fall of 1979, a count was conducted at the Northfield, Minnesota, Post Office and the carriers there were permitted to have two ten-minute breaks each day from beginning one week before that count until November 17, 1979. As a matter of past local practice, one ten-minute break had already been permitted in Northfield prior to the 1978 agreement so only one additional break was implemented one week before the count.

On November 16, 1979, the carriers were told that the

count that had been conducted earlier in the Fall had been cancelled, and that during the period from November 17, 1979, until a new count was conducted, no Northfield letter carriers would be permitted to take any breaks. On December 8, 1979, the carriers were told that they could resume their past practice of taking one ten-minute break each day. On April 7, 1980, Arbitrator Benjamin Aaron issued an award, after conducting a hearing on the grievance filed by the Union with reference to the Postal Service's action in discontinuing the break periods. He held that the Postal Service may not unilaterally discontinue the two ten-minute break periods negotiated in the Memorandum of Understanding during the 1978 negotiations, when the count and inspection implementing the break periods is cancelled.

The reference to the Memorandum of Understanding relates to Paragraph 6, Sub-paragraph 2, which provides that the carriers at the delivery unit will receive two ten-minute break periods (unless the local union opts to have the carriers in the delivery unit take one of the ten-minute break periods during office time). If two ten-minute breaks are taken on the street, they will be separate from each other. Breaks must be separate from lunch period.

On April 24, 1980, the Northfield, Minnesota, carriers were again permitted to have two daily ten-minute breaks so that the instant grievance involves the erroneous denial of break time during the period from November 17, 1979, to April 23, 1980.

The Union argues that the grievants should be paid compensation for the total break time denied them during the relevant period at the rate of one and one-half times the regular pay. The Postal Service contends that the overtime provisions of the National Agreement do not permit overtime payments for lost break time, but the Union points out that there have been previous decisions which found that payment of overtime was an appropriate remedy. In the alternative, the Union argues that even if the payment of overtime is not an appropriate remedy, some remedy should be granted. It notes that the letter carriers were deprived of a substantial amount of break time during the relevant period; that they were granted that break time under the terms of the National Agreement; that management erred and then admitted that it was wrong. It suggests that the arbitrator could make the carriers whole for the relevant period by granting compensatory time off, such as in the form of double breaks for an amount of time equal to the time the carriers were deprived of breaks, or such time could be granted to them in blocs of hours or days.

The Union contends that to find the carriers are not entitled to a remedy making them whole would be to deprive the grievance arbitration procedure and the terms of the National Agreement of any meaning, and that management, under such circumstances, would be free to ignore its contractual commitments. Therefore, the Union requests that the arbitrator order that the grievants be paid overtime for the lost break times, or alternatively some other remedy which the arbitrator may fashion which he deems appropriate.

The Postal Service takes the position that the Union's request is not within the framework of the labor agreement.

It is clear that Arbitrator Aaron's award held the Postal Service action to be erroneous and that the grievants are entitled to a remedy covering the break periods which were denied them during the period from November 17, 1979, to April 23, 1980. The only issue before this arbitrator is which remedy is appropriate. I find after studying the matter that the payment of overtime pay at the rate of one and one-half times the carrier's regular pay is not an appropriate remedy within the meaning of the labor agreement or within the meaning of the Memorandum of Understanding between the parties. However, there is no question that an appropriate remedy must be fashioned.

Under all of the circumstances, it is my finding that all of the carriers who suffered a loss of break time within the meaning of the Aaron award should be granted compensatory time off either in the form of double breaks for an amount of time equal to the time in which they were deprived of breaks or in blocs of hours or days, at the option of the United States Postal Service. One or the other of these forms of compensation should be established and promptly put into effect by the U. S. Postal Service in Northfield, Minnesota. An Award will issue accordingly.

A W A R D

The appropriate remedy for the Postal Service's erroneous denial of break time to Northfield,

Minnesota, letter carriers during the period from November 17, 1979, to April 23, 1980, is for the Postal Service to grant those carriers adversely affected compensatory time off. This time off may be granted in the form of double breaks for an amount of time equal to the time that the carriers were deprived of their breaks during the relevant period, or in blocs of hours or days at the option of the United States Postal Service in Northfield, Minnesota.

Albert A. Epstein

ALBERT A. EPSTEIN
ARBITRATOR

CHICAGO, ILLINOIS
OCTOBER 6, 1981