

28149

Regular Arbitration Panel

In the Matter of the Arbitration)
)
 between) Grievant: Class Action
)
 United States Postal Service) Post Office: Nashville, TN
)
 and) USPS Case No: H06N-4H-C 08191123
)
 National Association of Letter Carriers,) NALC Case No. B4-00141-08
 AFL-CIO

Before: Roberta J. Bahakel, Arbitrator

Appearances:

For the U.S. Postal Service: Ms. Dorthea Chatman

For the Union: Mr. Chris Verville

Place of Hearing: Nashville, TN

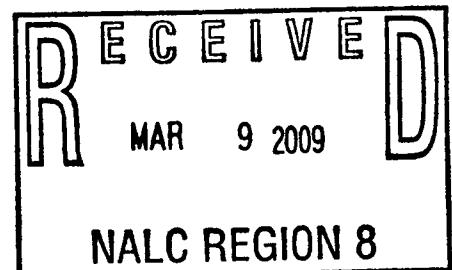
Date of Hearing: January 8, 2009

Date of Award: March 6, 2009

Relevant Contract Provision: Article 5, 8, 19, 41

Contract Year: 2006 - 2011

Type of Grievance: Contract



Award Summary:

Management assigned a new utility route to Arcade station. The Union argued that the subsequent change in the carriers' non scheduled Saturdays was a violation of the National Agreement and past practice. Based on the testimony and evidence presented the grievance is upheld and non scheduled Saturdays are to be returned to the carriers effective March 28, 2009.

Roberta J. Bahakel
Roberta J. Bahakel

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BACKGROUND

In February of 2008 a grievance was filed by the Union in regard to Management changing the non scheduled day for the carriers at the Arcade Station from Saturday to another day in the week. The Arcade Station has four full time regular carriers and since 2002 each of the carriers has had Saturdays and Sundays as their off days. The Step B team settled this grievance on April 9, 2008 and directed Management to restore the carriers' routes to non scheduled Saturdays. On May 5, 2008 the current grievance was filed after Management assigned a utility route with a T-6 carrier to Arcade Station. As a result of this new route being assigned, the full time regular carriers had to bid down their off days which resulted in two of the carriers retaining Saturday as their non scheduled day, one carrier having Monday as his non scheduled day and one carrier having Tuesday as his non scheduled day.

The Arcade station is unique in that it is a small station with approximately 80% of its deliveries being to businesses in downtown Nashville. In 2002 the station manager met with the Union and in exchange for the carriers absorbing the route of a retiring carrier, Management agreed to give all the full time regular carriers Saturday as their non scheduled day. Part of the reasoning behind this change was that approximately 50% of the businesses were closed on Saturdays and it was easier for the regular carrier who was familiar with the route to deliver the route on Monday through Friday. Management was to have PTFs and TEs deliver the mail to apartments and to the open businesses on Saturdays. As time has gone by there are fewer PTFs and TEs in Nashville who are available to help out and due to the small size of the Arcade station, it is only allotted one PTF/TE. In addition, most of the regular carriers at Arcade are on the overtime desired list. Because of these factors the available PTF's are being assigned to other stations on Saturdays and the full time regular carriers are having to come in and carry mail on their non scheduled day. Because only a percentage of the routes are delivered on Saturdays Management is having to pay the regular carriers guaranteed pay of 8 hours when it does not take them a full eight hours to deliver their routes.

Management sees this as inefficient and in early 2008 it sent a letter to the Union stating that due to operational needs the regular carrier's non scheduled days were being changed.

This triggered the grievance filed in February of 2008. When the B Team received this grievance, it resolved the grievance stating that the change of the carriers' non scheduled day was a violation of Article 5 of the National Agreement and the carriers were returned to non scheduled Saturdays beginning April 12, 2008. Management complied with this resolution, but On April 21, 2008, Rick Hendrick, Manager of Customer Service Operations, sent a letter to the Union informing them that effective May 10, 2008 Management was assigning a new utility route to Arcade station and that the carriers on the new string, which was all of the full time regular carriers, would participate in a rundown for their non scheduled day by seniority. This triggered the current grievance.

ISSUE

Did Management violate Articles 5, 8, 19 and 41 of the National Agreement when they arbitrarily changed the carriers' non scheduled day? If so, what is the appropriate remedy?

CONTRACT PROVISIONS

ARTICLE 3

MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;

ARTICLE 8

HOURS OF WORK

Section 2. Work Schedules

- C. The employee's normal work week is five (5) service days, each consisting of eight (8) hours, within ten (10) consecutive hours, except as provided in Section 1 of this Article. As far as practicable the five days shall be consecutive days within the service week.

POSITIONS OF THE PARTIES

Union Position

The Union contends that Management's action is improper for a number of reasons. The first argument raised by the Union is that the issue of changing the carriers' non scheduled day was settled by the Step B team in its decision on April 9, 2008. The Union points out that the Step B decision states that:

“The documentation contained in the grievance file shows that a past practice exists concerning these routes being assigned the non-scheduled days as being Saturday and Sunday. The documentation also shows no acceptable contractual justification for changing the carriers' non scheduled day. The documentation contained in this grievance file shows the change in the carriers' non scheduled day was in violation of Article 5 of the National Agreement.”

The Union argues that the ruling in this Step B decision establishes a precedent in Nashville and that Management, by its current attempts to change the carriers' non scheduled day, is violating this Step B decision.

The Union also contends that while Management has the right under Article 3 of the National Agreement to manage the business, that its rights are limited by the requirement set out in the Joint Contract Administration Manual (JCAM) that it act in accordance with applicable laws, regulations, contract provisions, arbitration awards, letters of agreement, and memoranda. Based on this language the Union contends that Management is prohibited from changing the carriers' non scheduled day due to the parties agreements as stated in the JCAM. It points out the language in the JCAM in regard to changing past practice under Article 5 states:

“If the Postal Service seeks to change or terminate a binding past practice implementing conditions of employment concerning areas where the contract is silent, Article 5 prohibits it from doing so unilaterally without providing the Union appropriate notice. Prior to making such a change unilaterally, the Postal Service must provide notice to the union and engage in good faith bargaining over the impact on the bargaining unit. If the parties fail to agree, the union may grieve the change.

Management changes in such “silent” contracts are generally not considered violations if 1) the company changes owners or bargaining unit, 2) the nature of the business changes, or 3) the practice is no longer efficient or economical. The first of these has rarely arisen in Postal Service cases involving its numerous units.

A change in local union leadership or the arrival of a new postmaster or supervisor is not, in itself, sufficient justification to change or terminate a binding past practice."

The Union contends that Management never attempted to engage in good faith bargaining as required by the above section and also argues that because Management raised the issue that the changes were due to operational needs, the burden shifts to Management to show that changing the non scheduled day would result in a benefit to Management. The Union also contends that the changes in the carriers' non scheduled day were due to the fact that there was a new postmaster and that based on the above language such a change is not a sufficient reason to make a change in the established past practice.

Management Position

Management contends that the Union is trying to complicate the issue and that the Step B decision dated April 9, 2008 did not deal with the same identical issue as the case at bar. Management contends that the Step B team's decision in the first case dealt with a change in non scheduled days for the operational needs of the service and past practice, while the case here deals with the assignment of a new T-6 route to the Arcade station which resulted in a change to the carriers' schedules. Management argues that this grievance was not a unilateral change in wages, hours or any other working condition at the Arcade station, but is a change in non scheduled days which is not covered by Article 5. Management argues that there was a carrier run down on off days due to the creation of the new utility route which was completed in compliance with the National Agreement and the LMOU, Article 21, Section 1. It further argues that it has the right under Article 3 to maintain the efficiency of the operations entrusted to it and that Management determined that it was necessary to establish a T-6 utility position because it is more economical and efficient to do so. Because the T-6 position was a newly created position at the Arcade station, it necessitated the change of off days so the T-6 carrier could carry the routes on the string in the prescribed sequence.

Management argues that it was because the facts presented to the B Team in this case were different than those presented in April of 2008 that the team impassed the decision in the current grievance. In this case the T-6 position had been posted and Management argues that

the creation of the T-6 position warrants the change in days off because the nature of the T-6 position is that it is utilized on the regular carrier's scheduled day off. Based on this Management did a run down of non scheduled days based on seniority and the result was that two carriers still have Saturday off, one has Monday off and one now has Tuesday off. Management contends that this is in compliance with the Article 8 requirement that as far as practicable the five days shall be consecutive days within the service week.

Management also contends that the April 21, 2008 letter from Mr. Hendrick to the Union was Management's advance notice of the change that was being implemented by the addition of a utility position. Management contends that in the first case decided by the Step B team that the T-6 position had not yet been posted and was not considered, but that in this case the new position had received approval from higher Management and been approved by the complement committee. Management argues that the first Step B decision was based on the information in the grievance file and that there was nothing in the file yet about the utility position because the job had not yet been posted at that time. The April 21, 2008 letter was to notify the Union that there would be a new utility position assigned to Arcade station. Management argues that past practice is not an issue in this matter and that it was neither economical nor efficient to continue to require the regular carriers to work on their non scheduled day when the routes could be covered by a T-6 carrier. Management argues that the overtime at Arcade station has been cut in half since the T-6 position was established, which, at the Arcade station, will result in a savings of \$10,000 to the Postal Service. Management further argues that because this is a contract case that the Union has the burden of proof to show that Management violated the National Agreement.

DISCUSSION

I have reviewed the testimony and exhibits presented by the parties and studied the excellent briefs submitted by the parties, the last of which was received by me on February 18, 2009. No issue has been raised as to the arbitrability of this grievance, therefore it is properly before me for decision.

After reviewing the testimony and exhibits it is clear that while the issue stated by the B Team is the same for both cases, the fact situations underlying the grievances are not identical. Therefore, the ruling of the B Team in its April 9, 2008 decision does not necessarily establish a precedent for this grievance. The first grievance, which was resolved by the B Team, arose when Management notified the Union that due to the operational needs of the service the non scheduled days of the carriers at the Arcade station were to be changed. The finding of the B Team was that a past practice existed and that Management improperly attempted to change that practice. The current case arose when a new utility position was assigned to the Arcade station which caused all the routes on the swing for the utility route to bid down their off days so that the routes could be carried by the T-6 as a regular day on Saturday. While the changes originated from different actions by Management, the effect on the carriers was the same. Some of the carriers would lose Saturday as their non scheduled day.

It was clear from the testimony that the original agreement between the parties at the Arcade station, which was put into place in 2002, exchanged the absorption of one route for Saturdays off for the regular carriers. In addition, this would give the business routes the same carrier every week day, where the carrier was familiar with his customers, and have less experienced carriers deliver the mail on Saturdays when a number of the businesses were closed. Management was to staff the Saturdays with PTF or TE carriers. Because Arcade is a small station it only had one PTF assigned to the station. Any other PTFs or TEs who would come in to deliver mail on Saturday would be on loan from other stations. Over the years there were fewer PTFs and TEs available to be assigned to work at Arcade on Saturdays, so Management had to call in the regular carriers, most of whom were on the overtime desired list, to work their non scheduled day. Because approximately one half of the businesses are not open on Saturdays, the regular carriers were able to complete their routes in less than eight hours, but because they are full time regulars, Management is required to pay each carrier guaranteed time for eight hours, regardless of the number of hours the carrier actually works. The evidence showed that over a ten week period that Management paid over 468 hours of overtime just for Saturday work at Arcade station. In addition to the amount of overtime required to get the mail delivered, it is also hard on the carriers to have to carry mail six days a week for extended periods of time.

Because of these problems, Management determined that some changes had to be made. A new utility assignment was requested and approved for Arcade station which was posted and subsequently filled in May of 2008. At the time of the first DRT decision the utility job had not been posted and because of this was not considered by the B Team when making its decision. The B Team had the information about the assignment of the utility position when the second grievance came before them and the B Team impassed the grievance.

It is clear from the B Team decision that there was an established past practice as relates to the carriers at Arcade station having Saturdays as their unscheduled day. While Management cannot unilaterally change an existing past practice, the assignment of a new utility position is within Management's Article 3 rights. There is no question that under the National Agreement that Management has the right to set routes. Item 21 of the LMOU , Article XLI.1.A states that regular carriers will have a regular workweek of 5 days with fixed days off. This provision is not affected by the addition of the utility route in that both the new route and the existing routes still have fixed off days. As to the provisions of Article 8 that as far as practicable the five days shall be consecutive days within the service week, the testimony and evidence presented at the hearing showed that Management had a legitimate business reason for adding the new route to the Arcade station and that the changes caused only one route out of four to have non consecutive non scheduled days. Based on the evidence presented it is my determination that Management met the requirements of Article 8.

The Union cited numerous arbitration cases dealing with a change in an employee's non scheduled day. None of these cases dealt with the effect the addition of a new utility route might have on the change of non scheduled days.

After reviewing all of the evidence it appears that the question to be decided is whether Management's rights to assign routes under Article 3 overrides an established past practice which arose from a negotiated agreement regarding non scheduled days at Arcade station. It is clear from the evidence presented that Management has a justifiable business reason for adding a utility route to Arcade station, but where it has made an agreement with the Union whereby Saturday non scheduled days were offered in exchange for the carriers at Arcade absorbing a vacant route, it cannot unilaterally come in and alter that agreement by assigning a new route to the station that affects the carriers non scheduled day without renegotiating that

change with the Union. A past practice based on mutual agreement may be changed only by mutual agreement. The binding quality of the practice is not due to the fact that it is a past practice, but is due to the agreement on which it was based. Because Management negotiated with the Union in 2002 and offered the Saturday non scheduled day in exchange for the carriers absorbing a vacant route, any change in this agreement must be negotiated by the parties. Management's rights under Article 3 are limited by the agreement it has made with the Union.

Based on all of the foregoing it is my determination that Management did violate the terms of the National Agreement. The full time regular carriers at the Arcade station shall have their Saturday non scheduled day returned to them effective March 28, 2009.

DECISION

The grievance is granted. The full time regular carriers at the Arcade station shall have their Saturday non scheduled day returned to them effective March 28, 2009. No monetary award is made.

Done this 6th day of March, 2009.

Respectfully submitted,



Roberta J. Bahakel
Arbitrator