C#10550

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION Between	GRIEVANT: M. A. O'Neal /CLASS
UNITED STATES POSTAL SERVICE	POST OFFICE: Chattanooga, TN
And	
NATIONAL ASSOCIATION OF LETTER CARRIERS	CASE NUMBER: S7N-3F-C-28908

BEFORE: P. M. WILLIAMS, ARBITRATOR, SOUTHERN REGION

APPEARANCES:

FOR THE POSTAL SERVICE:
R. Wayne Ray, Labor Relations Representative

FOR THE NATIONAL ASSOCIATION OF LETTER CARRIERS:
Ray Winters, Local Business Agent

PLACE OF HEARING: Main Post Office, Chattanooga, TN

DATE OF HEARING: November 27, 1990

DECISION AND AWARD

BACKGROUND:

The grievant is employed as a full time city letter carrier and assigned to the East Ridge Branch, Chattanooga, TN. His seniority in the letter carrier craft began November 30, 1970. He had signed the Overtime Desired List and October 6, 1989 was his regular non-scheduled day.

The parties have no dispute over what happened on October 6, 1989 at the station. Rather it is the Employer's method of solving the dilemma of what to do about the mail that would have been cased by a full time router employee, Bill Redfield, but for his being temporarily assigned to a 204B supervisor position on that date that has created the situation upon which the Union claims the Employer has violated the CBA and applicable rules and regulation. It therefore filed the instant the grievance and requested pay for the grievant, and also that a cease and desist order be issued to prevent future, similar violations.

The parties agree that the grievance has been timely and properly processed throught the grievance-arbitration procedure and that it has been assigned to me for purposes of my rendering a decision and award.

All interested parties appeared at the hearing and were given an opportunity to present such evidence, through the testimony of witnesses and exhibits as was deemed appropriate under the circumstances. The grievant did not testify at the hearing. Rather the Union's sole

witness was the steward from the station who had processed the grievance to steps 1 and 2 of the grievance-arbitration procedure. All witnesses were placed under oath and were cross-examined by the opposing party.

POSITION OF THE PARTIES:

National Association of Letter Carriers (Union):

The Union contended that the router positions at the station are regular full time positions and as such must be filled whenever a vacancy occurs in one. It said on October 6, 1990, when regular router Bil Redfield was temporarily assigned to a 204B supervisor position, rather that fill the position by calling the grievant to come in on his regular non-scheduled day, the Employer curtailed the bulk business mail (BBM) that normally would have been cased by router Redfield, and it also assigned his collection duties to another station to do. It said it should have called the grievant in to perform the router duties, claiming that he was available and able to perform them. Also claiming that the Employer was unable to curtail BBM mail to avoid covering the regular router assignment. It asked that the grievant be paid for 8 hours at the overtime rate and that I issue a cease and desist order to the Employer directing that it not resort to such a procedure in the future in the event a similar situation arises.

United States Postal Service (Employer):

The Employer contended the procedure it had used to temporarily solve the problem that was created in the router position by router Redfield moving up into a 204B slot was reasonable and proper under the circumstances. It said its action should be affirmed because it action was not in violation of the terms of the CBA. It asked that the grievance be dened.

ISSUE: Did the Employer violate the terms of the National Agreement (NA), and applicable rules and regulations when it curtailed BBM mail that would have been cased by router Redfield on October 6, 1989 but for his temporary 204B supervisor assignment, and if so, what is the proper remedy?

OPINION:

The Union's contentions in its appeal to step 2 succinctly express the problem that it finds in the Employer's action, therefore it seems appropriate to quote what it said, which was:

"Router positions were set up as route adjustments for routes that were overburdened. Therefore, these positions should be filled each and every day when mail is available on the string of routes within the router assignment. Article 41 is specific in that routes should be covered and the assignment was not covered. Curtailment of mail is not a legal adjustment to a route and therefore in this case it is not reasonable that curtailment of mail should be administered when there is a vacant 8 hour assignment that should have been offered to the carrier that was up on the stations (sic) OTDL."

The requested relief it asked for in the step 2 appeal was as follows:

"Pay the carrier who was up on the OTDL for October 6, 1989 (Marvin O"Neal) 8 hours at the overtime rate. Mr. Arbitrator issue a cease and desist order against the Postal Service for not meeting their agreement to provide permanent adjustments with routers as outlined in various MOU'S between the Postal Service and this Union. Mr. Arbitrator make this carrier/Union whole!!!!"

The carrier who was "up on the OTDL" apparently was the grievant, although that fact was not directly proved at the hearing. In all events however the parties agree that he was not assigned to the router classification. What makes the latter important will be apparent in a moment.

The Local Memorandum of Understanding between the parties was not made a part of the record by either of them. Thus if it makes provision for, or mention of the router position regarding any particular situation or circumstance that fact is unknown to me at the time of this writing.

On July 21, 1987, in a Memorandum of Understanding between the parties at the national level, the parties agreed as follows (NA, page 216):

"Re: Router, Carrier Craft

1. Router is a level 5 city letter carrier assignment.

2. Router duties consist of casing, routing and sequencing of mail for a specific group of routes. Assignments may include specific street duties as reflected in the assignment posting.

3. Router assignments shall be formed and bid as full-time duty assignments. Part-time router work assignments may be utilized consistent with 4 below.

4. The number of full-time router assignments shall be determined consistent with Article 7, Section 3 of the National Agreement.

5. The notice inviting bids shall include a listing of routes for which router's duties will be performed by posted assignment.

6. A router may be temporarily moved from his/her bid assignment only in 'unanticipated circumstances', pursuant to the provisions of Article 41, Section 1.C.4. of the National Agreement.

7. A level 5 replacement router may be utilized where practical to cover the nonscheduled days off of other router assignments.

..."

A part of the problem that gave rise to this dispute, or so it seems to me, goes back a number of years to the time when the overtime

provisions of the NA were the same for both the American Postal Workers Union represented employees and those represented by this Union, and to before the time that many of the senior letter carriers first began to complain about the number of hours they were required to work despite the fact that they had not signed the OTDL, and did not want to work more than 8 hours or on their non-scheduled day.

I shall not recite the history of the development of the changes that have occurred over the ensuing years as a result of negotiations at the national and local levels on the issue of overtime in the letter carrier craft. I will say however that insofar as that craft is concerned a significant change has been made in the means that a letter carrier is to use to make up what he perceives is a missed overtime opportunity, and in my opinion, what he may do is not inclusive of the means that were used in this case. But for reasons that will become known in a moment I will leave this subject and move to another, noting as I do that no other employee, be he or she a router or regular carrier employee worked 5 1/2 hours of the 8 hours that are claimed by the grievant in this case, thus 2 separate situations would be involved if this facet of the dispute were pursued to a conclusion.

The steward who processed the grievance said that in a few past and somewhat similar situations he had successfully prevailed upon a few supervisors to pay regular carrier employees who had not been called on their regular non-scheduled day to work a vacant router position. In his and the Union's view this was important event because, per them, this was a recognition by management of the rightfulness of the claim that what was done in this instance was incorrect.

I understand what their claim was, as well as why it was made; however I am unable to accept their notion that mere payment for a claimed violation of the NA rises to the level of being a legitimate interpretation of the NA to the end that in all subsequent situations such a result is mandated. Rather I believe, and so find, any such payment as they have mentioned that was made before the level of step 3, or in an arbitration proceeding (which they said was the case), is of no consequence to this matter. Rather whatever happened earlier is deemed non-precedential and of no effect here.

The Union cited two regional awards of arbitrator Raymond Britton. I have studied each award and have reached the conclusion that while the subjects which were before him are similar they nonetheless are not indentical to that which is before me, therefore I am not obliged to follow his lead insofar as this decision is concerned.

Before proceeding into the few final reasons why I believe the Union's position in this case is flawed perhaps it should be noted that a great deal could be said about the provisions of Article 8 insofar as this case is concerned. To do so however would not alter the result. Moreover, in my opinion, such a discussion might serve to obscure the thrust of this award and I do not want that to happen. Rather I believe the Union wants a direct answer to what it obviously perceives is a real problem and one which it thinks will continue into the future unless an appropriate solution and/or explanation is forthcoming.

The nub of the problem in this matter, or so it seems to me, is that the grievant and the steward, and presumably the Union, have the notion that as a result of the parties at the national level creating the router classification within the letter carrier craft that fact necessarily serves to give the right to the full-time regular letter carrier work force to move into and out of full-time router positions in the same manner and to the same extent that they do within their own regular assignments. If that is their notion I am unable to agree that that was the intent of the parties when the router classification was created.

My reading of the July 21, 1987 Memorandum of Understanding (MOU) does not persuade me that this notion is what the parties intended was to happened among and within the router positions, if, and I assume it to be factual, by urging the notion the Union is also claiming that the Employer has agreed to restrict itself to filling router vacancies only by using full-time regular letter carriers, and also to fill any and all vacancies that might occur in the position without regard to other alternatives that might be available at the time. Rather the language persuades me that while routers are indeed letter carrier employees and may be assigned temporarily outside of their regular job assignment, including the performance of street duties among other things, the routers nevertheless are deemed a separate employee group for many other purposes, and this is inclusive of the right to maximize their earnings within their work assignment to the exclusion of other letter carrier employees who are not included within it.

If the latter is true, as I believe it to be, it seems to me that such fact necessarily means (for purposes of this case) that the grievant as the "up on the OTDL", had no right to require (assuming the Employer had not made a determination to curtail the BBM) that he be assigned to perform Mr. Redfield's duties. Rather any right he might otherwise have to require a specific assignment in a given circumstance did not reach the router positions, at the very least if ever at all, until the provisions of Article 8 had been applied and/or exhausted among the router employees, and until the Employer had canvassed its PTF force seeking someone who could perform the necessary duty at non-overtime rates.

The primary basis for my conclusion in this regard stems from the July 21, 1987 MOU that is quoted above. It seems to me that in creating bid positions of a full-time nature, and also creating part-time router positions, and capping that creation off by also providing that a replacement router may be utilized to cover non-scheduled days off of other router assignments, the conclusion is inescapable that the parties were not creating a position to which regular full-time letters carriers were given an exclusive right to move into and out of at will insofar as overtime work was concerned. Rather, it seems to me the thrust of the MOU is to provide job protection to the employees who bid to become routers, and its language may not be interpreted to grant rights to the non-router employees for the purpose of allowing them to move into that position whenever it might be economically beneficial to make such a move, which I believe is what this case is all about.

In conclusion it bears emphasizing that on October 6, 1989 the situation at Chattanooga was for routers to case only BBM, and possibly perform collection duties. Router Redfield was promoted into a 204B

slot for the day. The Employer was faced with deciding how best to proceed insofar as the work that he would normally perform was concerned. It opted to curtail the BBM that he would have cased because it need not be delivered on the 7th. Moreover, it assigned his collection duties to another station where they were efficiently perfomed as a result of that station's location and the stops along the collection route.

The Union asserts that the Employer was unable to curtail the BBM and thus avoid the need to fill the router vacancy. Had the grievant here been a full-time router off duty on a regular non-scheduled day or a PTF one, or had Mr. Redfield not been working as a 204B supervisor, perhaps the Union's argument would have merit. But that was not the situation. Rather the grievant here is a full-time regular city carrier assigned to a regular route who was off work on his regular non-scheduled day. It is his claim that the router duties of casing the BBM must be performed and that the Employer has no other option, including the fact that it must call him to come in and work. I simply am unable to agree. I know of no provision in the NA or in any of the Employer's operational manuals, and none has been cited to me, that places or tends to place upon the Employer a restriction to the end that it may not decide to curtail BBM whenever a valid need exists to do so. To the contrary, in my experience one of the most often used means of solving a delivery problem that is caused by a lack of available manhours in the delivery workforce is to curtail BBM. Moreover, the Employer is not required to process mail by working employees on an overtime basis, if that operation can be temporarily and efficiently be postponed.

In sum I am of the opinion, and so find, the Employer did not violate the terms of the NA or its applicable rules and regulations when it curtailed BBM mail on October 6, 1989, and failed to fill the router vacancy created by router Redfield being temporarily promoted to a 204B supervisor position. The grievance which claims to the contrary should be, and the same hereby it, denied.

On the basis of the entire record in this case the undersigned makes the following

AWARD

The grievance is denied in accordance with the opinion expressed above.

IT IS SO ORDERED.

P. M. Williams
Arbitrator

Dated at Oklahoma City, Oklahoma
this 12th day of January, 1991.