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IN THE MATTER OF THE ARBITRATION)
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 between)
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THE UNITED STATES POSTAL SERVICE)
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 and)
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THE AMERICAN POSTAL WORKERS UNION)

REPORT AND DECISION OF ARBITRATOR

In these proceedings, a single grievance was submitted for an Award to James P. Martin, selected by the parties to serve as Impartial Arbitrator herein. A hearing was held at Lansing, Michigan on April 6, 1983, at which the parties were fully heard. The following appearances were entered:

UNION

Carl Thunell, Advocate
Jerry Warnell, Assistant Advocate
Charles Wendland, Witness

POSTAL SERVICE

L. G. Handy, Labor Relations Specialist
Dennis M. Teffner, Labor Relations Representative

The parties waived the filing of post hearing briefs and submitted the matter for an Award based on the evidence adduced and the arguments made at the hearing.

ISSUE

On April 14, 1982, a large volume of flats were in the building by 10:30 p.m. at the latest, and Union witnesses recognized that the mail could not be handled with the regular crew and hours. The assumption was made by the Union witnesses that overtime would be needed. One hour of mandatory overtime was finally called at 12:30 a.m. on April 15, 1982, for the entire 5:00 p.m. to 1:30 a.m. crew. Another crew left at midnight, and many of those employees had signed up on the overtime desired list. According to the Union those employees on the overtime desired list should have been used first, in accordance with Article VIII Section 5. Failure to call the overtime early enough to utilize those employees was claimed to be a case of mismanagement, which does not excuse the Postal Service from complying with the Agreement. According to the Postal Service, the decision was made by the Tour 3 Superintendent who curtailed the mail, and sometime just before 12:30, when the Tour 1 supervisor had taken over, the decision was reversed and a determination was made to use overtime to move the mail. By 12:30, only the 5:00 p.m.- 1:30 a.m. crew was available for this purpose, and that crew received one hour notice, from 12:30 a.m to 1:30 a.m. when the shift ended

and the overtime commenced, that one hour would be needed from all employees, whether on the overtime desired list or not. The Service's position was that because an entire crew was utilized, management was not required to select employees from the overtime desired list. Service documents reflected the fact that management had been poor that evening, and the Union alleged that this was no basis for the Contract violation. The Service contended that management's competence had no bearing on the problem involved in this grievance, and that the decision to work overtime, a unilateral management prerogative, was made at a time when only those who were selected were available to be used.

APPLICABLE 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;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;
- E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and
- F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

Article 8.5

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, on leave or on light duty 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, only in an emergency situation will a full-time regular employee be required to work over ten (10) hours in a day or six (6) days in a week. In addition, no full-time regular employee will be required to work overtime on more than five (5) consecutive days in a week.

DISCUSSION

The Service did not point out the provision of the Agreement which allows it to disregard Article VIII Section 5 when it uses an entire shift. Such a right may exist, but it was not called to the attention of the Arbitrator.

That, as a basis for denying the grievance, does not pass muster as a valid reason. The Union's contention that acknowledged poor management on the evening in question was the reason for the non-compliance with the Contract was not sustained by the evidence presented. The Superintendent of Mails testified that the Tour 3 Superintendent decided to curtail the mail until he went off duty at midnight, and the Tour 1 Superintendent decided about 12:30 that he would use overtime to work the mail. It is the unilateral and unchallengeable right of management to determine if overtime is to be used, and when that overtime is to be worked. The Agreement in Article VIII Section 5 provides who management is to select to work it, but if and when overtime has to be worked remains discretionary with management. From the testimony presented, at the time the grievants were available to work overtime, a decision was made to curtail rather than to work overtime. After the departure of the grievants, the decision was reversed, and overtime was called. At this time, none of the grievants could have been used to perform the overtime. Evidence presented at the hearing gave no basis for sustaining the grievance.

Were the Union to be able to make a case of arbitrary, capricious or discriminatory bases for management decisions on overtime, then a management decision, otherwise

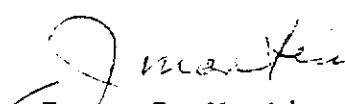
unchallengeable, can be reversed. Substantial evidence would have to be presented to show that the decision on overtime was made for a reason other than business reasons, and no such showing was made in this case. The Union claimed management ineptness in not realizing the need for overtime early enough to use the grievants. On the contrary, a decision was made concerning the excess mail in the building, and that decision was to curtail it. The later reversal of that decision by a subsequent Tour Superintendent does not make the original decision arbitrary nor capricious, nor does it even make it wrong. It might have been poorer business practice to work the overtime than to curtail the mail, but that is not capable of being the basis for a Union grievance.

No evidence being presented to show that management violated the Contract, the grievance must be denied.

AWARD

That the grievance shall be and hereby is denied.

July 19, 1983
Lake Bluff, Illinois


James P. Martin
Impartial Arbitrator