

Robert W. Foster 10/17/84 Won
Art. 7 & 8 - Crossing Crafts & OT Assign
AIRS #4063

IN THE MATTER OF THE
ARBITRATION BETWEEN

OPINION AND AWARD

United States Postal Service
Fort Myers, Florida

S1C-3W-C-17074
Class Action

Employer

C# 251

-and-

American Postal Workers Union

Union

Before:

Robert W. Foster, Arbitrator

APPEARANCES

For the Employer:

Walter Flanagan, Regional Labor Relations Specialist

For the Union:

R.J. Erskine, National Vice President

PRELIMINARY STATEMENT

The undersigned was appointed to arbitrate a dispute between the United States Postal Service (Employer) and the National Association of Letter Carriers (Union) arising out of a class action grievance pursued by the Union to this arbitration proceeding according to the National Agreement between the parties. A hearing was held on July 27, 1984 in Fort Myers, Florida, attended by the Grievant and the above-named representatives of the parties who were accorded full and equal opportunity to present evidence and arguments. Both parties elected to file post-hearing briefs which were received by September 17, 1984, thereby closing the record and bringing this matter before the arbitrator to render a final decision according to the terms of the National Agreement.

ISSUE

Whether the Employer violated the National Agreement by assigning part-time flexible Letter Carriers to Clerk Craft work while not utilizing clerk craft employees who were on the Overtime Desired List. If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

ARTICLE 7--EMPLOYEE CLASSIFICATIONS

Section 2. Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken.

1. All available work within each separate craft by tour has been combined.
2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employees' knowledge and experience, in order to maintain the number of work hours of the employees' basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

ARTICLE 8--HOURS OF WORK

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.

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 of 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 a week.

ARTICLE 37--CLERK CRAFT

F. Results of Posting

2. The successful bidder must be placed in the new assignment within 21 days except in the month of December. The local agreement may set a shorter period.

STATEMENT OF THE CASE

This Grievance alleges that the Employer violated the National Agreement by utilizing carriers in the clerk craft while "there is not insufficient work in the carrier craft, as in Article 7.2(B)." The requested remedy is that employees on the Overtime Desired List who did not work eleven and one half hours on the days in question be compensated for missing opportunities.

The Grievance was denied on the ground that management was within its rights under Article 7, Section 2(A) and (B).

The parties stipulated, as established by Union-produced schedules and time cards, that on December 6, 7 and 8, 1982, part-time flexible letter carriers were utilized in the clerk craft at straight-time pay while some clerk craft employees who were on the Overtime Desired List were not scheduled for overtime. The parties stipulated to the obvious fact that there was an unusually heavy volume of mail during this Christmas season.

This was emphasized by a Union witness who told of extra trucks coming in, trays of mail piled by carrier cases, and both clerks and carriers working overtime in their respective crafts. It was also agreed that there had been a practice in the Fort Myers office to use part-time flexible carriers in the clerk craft during the Christmas rush in December and that employees are not normally granted annual leave during this period.

The job description of carrier craft employees was received in evidence that included the statement: "Substitute city carriers may be assigned to perform clerical duties and may be required to pass examinations on schemes of city primary distribution."

DISCUSSION AND OPINION

The answer to the issue raised by this Grievance begins with an interpretation of the relevant contract language and ends with an analysis of the factual circumstances under which management made the disputed assignments to PTF carriers.

A careful reading of Article 7, Section 2 reflects a general contractual limitation on the right of management to assign employees to work across craft lines. As indicated by the prefatory word "normally," followed by the enumerated exceptions to the restriction, it is evident that the contracting parties intended something less than a fixed, rigid rule by granting to management a degree of flexibility when the prescribed conditions of Paragraphs B and C are met. Thus, as recognized by other arbitrators who have dealt with this question, management's right to cross craft lines is limited to a showing of either "insufficient work" for the classification or that work was "exceptionally heavy" in one occupational group and light in the other.

Likewise recognized by other arbitrators, the clear implication is that the qualifying conditions be unusual and reasonably unforeseeable. Moreover,

once the parties through the bargaining process delineated the agreed upon conditions under which management could cross craft lines, the arbitrator is without authority to grant management a greater degree of discretion in order to maximize efficiency in the allocation of work assignments.

These principles, articulated by arbitrator Block in Case No. A8-W-0656, are in no way diminished by arbitrator Mittenthal in M8-W-0027 and M8-E-0032 cited by the Employer. Those cases dealt solely with the question of whether Article 8, Section 5 creates an order of preference in the assignment of overtime. In holding that Article 8 describes how overtime will be distributed when full-time regulars are chosen to perform such overtime, and does not provide for an order of preference for full-time carriers on the Overtime Desired List over part-time flexible carriers, that case did not address the matter dealt with here of crossing craft lines as restricted by Article 7, Section 2. The only relevancy of Article 8, Section 5 to this case is that an improper cross assignment of PTF carriers to clerk craft work would give rise to a cause of complaint on the part of the clerks who had signed the Overtime Desired List and were not assigned to the available work of their craft that was performed by employees in the carrier craft.

Coming to the application of the evidence in this case to these contract standards set out above, it is true that the part-time flexibles were assigned to "available work in the same wage level for which the employee is qualified." But that is only a part of the total conditions under which the crossings of craft lines is permitted. Once it was shown that there was such a crossing of craft lines, management must demonstrate that this action was justified by all of the conditions set out in either Paragraph B or C of Article 7, Section 2. While the Employer has suggested that the heavy Christmas workload during the period in question resulted

in a shortage of vehicles used in carrying the mail, this alone does not establish that there was insufficient work in the carrier craft to be performed by PTF carriers as required by Paragraph B. Indeed, the evidence regarding this heavy workload and use of overtime in the clerk and carrier crafts indicate that there was an abundance of work in both crafts. As indicated above, the fact that management considered the clerk craft work to have had a higher priority in the interest of efficiency and the avoidance of curtailing the mail does not satisfy the condition that there was insufficient work in the carrier craft to be performed by PTFs.

By the same token, while it is true that the workload was "extremely heavy" during the period in question, the carrier craft was not "experiencing a light workload" that would have left the PTFs unemployed in their craft as required by Section 2(C). Moreover, this heavy workload in early December was by no means unusual or unforeseeable to the Postal Service.

The evidence of prior practice was uncertain as to the circumstances under which the Employer had utilized PTF carriers in the clerk craft during the Christmas rush. But, in any event, even a pattern of past practice cannot serve to alter the clear and unambiguous contract language of Article 7, Section 2 that limits the crossing of crafts to the conditions specified in the National Agreement.

And finally, I can find no significance in the absence of any reference in the 1975 Resolution reached by the Unions and the Postal Service at the national level to crossing of crafts of PTF employees. That document dealt with the improper passing over of employees on the Overtime Desired List, while this case turns on the application of Article 7, Section 2 and the exceptions stated therein.

Management's action in assigning PTF carriers to clerk craft work was undoubtedly motivated by the desire to avoid overtime payment to the clerks

while qualified PTFs were available to perform the work on straight-time. But the agreed-upon exception to the crossing of craft lines does not include such an economic objective as a justification for the otherwise prohibited assignment. Having concluded that neither of the two exceptions to the general rule prohibiting cross craft assignments under Article 7, Section 2 were present when the PTF carriers were assigned clerk craft work, it must be concluded that the assignments were improper and detrimental to those clerk craft employees on the Overtime Desired List who were available to perform the work on overtime.

There remains the question of the appropriate remedy to be fashioned by the arbitrator. While the Employer points out that no clerk craft employee was identified by the Union as being adversely affected on the dates in question, the Union did establish that there were some clerks on the Overtime Desired List who were not called in to work the maximum allowable overtime hours during the period when PTF carriers were assigned to clerk craft duties. It is these aggrieved clerks who were adversely affected by the improper assignment who must be made whole by payment at the overtime rate for the hours worked by the carriers in their craft on December 6, 7 and 8, 1982. That payment shall be divided equally among all of the clerks on the Overtime Desired List who were available for overtime assignment to this work. At the suggestion of the parties, the arbitrator retains jurisdiction to assist the parties should they encounter difficulty or disagreement in the implementation of this award.

AWARD

After careful consideration of the evidence and arguments of the parties, and based on the reasons set out above, the award is that the employer violated the National Agreement by assigning part-time flexible letter carriers to clerk craft work while not utilizing clerk craft employees who were on the

Overtime Desired List. The remedy is that the adversely affected clerks who had signed the Overtime Desired List and were available for the overtime assignment of this work shall be paid in equal amounts at the overtime rate for the hours of clerk craft work performed by the PTF carriers on December 6, 7 and 8, 1982.

Accordingly, this Grievance is sustained.

Robert W. Foster
Robert W. Foster

October 17, 1984

Columbia, South Carolina