

2788

## REGULAR REGIONAL ARBITRATION

In the Matter of the Arbitration ) Grievant: Edward A. Ricker  
                                      )  
                                       Post Office: Austintown, OH  
                                       )  
                                       between )  
                                       )  
                                       ) USPS Case #CO1N-4C-06138320  
UNITED STATES POSTAL SERVICE )  
                                       )  
                                       ) BRANCH Case # BR385-06-201  
                                       )  
                                       ) DRT Case #11-074824  
                                       )  
                                       )  
                                       )

BEFORE: Tobie Braverman ARBITRATOR

### APPEARANCES:

For the U.S. Postal Service: Ronald V. Zimcosky

For the Union: David A. Ditchey

Place of Hearing: Youngstown, OH

Date of Hearing: July 15, 2008

AWARD: The Grievance is sustained. The Grievant's change of schedule request was improperly denied. The Employer is ordered to deny change of schedule requests only after considering operational needs specific to the request and weighing them against the needs of the employee making the request. This should be done in consultation with a union steward whenever practicable. The basis for denial of the request must be specifically stated.

Date of Award: September 30, 2008

PANEL: USPS Eastern Area/ NALC Regions 6, 11 and 13

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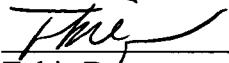
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VICE PRESIDENT'S  
OFFICE  
NALC HEADQUARTERS

### Award Summary

Where the B Team has reached resolution on grievances regarding schedule change requests, those resolutions must be followed as binding within the installation. In deciding schedule change requests, specific operational needs must be balanced against the needs of the employee in each specific request. Employment which results in an employee submitting frequent and regular schedule change requests does not constitute a conflict of interest without a showing of some additional conflict with Postal Service employment.



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Tobie Braverman

The instant case is submitted to the Arbitrator pursuant to the terms of the grievance arbitration provisions of the Collective Bargaining Agreement of the parties. Hearing was held at Youngstown, Ohio on July 15, 2008. The parties filed post-hearing briefs which were received by the Arbitrator on August 27, 2008. The parties stipulated that the matter is properly before the Arbitrator. The parties further stipulated that the issue before the Arbitrator for decision, as stated by the Dispute Resolution Team, is as follows:

The issue of this grievance is one of non-compliance with a previous Dispute Resolution Team Decision. Did the Management violate Articles 5, 8, 15, 16, 19 and 41 of the National Agreement when management denied a change of schedule for the Grievant, and if so, what is the appropriate remedy?

### **FACTS**

Edward A. Ricker (hereinafter referred to as the "Grievant") has been employed by the Employer as a letter carrier for thirty years. He has additionally worked as a volunteer or part-time firefighter with the Austintown Fire Department for thirty-two years. The testimony presented at hearing demonstrated that the Grievant has never missed work or been late for work as a result of his employment as a firefighter. Further, he has never been unable to complete his route due to his fire department employment. He has, however, frequently and regularly requested changes of schedule to adjust his start and end tour times by one half hour so that he can report for duty at the fire department by 4:00 p.m., the regular shift starting time for his shift there. The evidence demonstrated that the Grievant's requests for a change of schedule have been frequent,

with twenty-seven requests within a five month period between May and the first week of October, 2006. The Grievant testified that he is in charge of scheduling the part-time firefighters for the Austintown Fire Department. As a result, he generally tries to schedule himself for Tuesday through Thursday, days on which the mail volumes are generally lower. These days sometimes coincide with his days off from the Postal Service, but on many days they do not, and it is necessary to schedule himself to begin work at the fire department at 4:00 p.m. On those dates, depending upon his scheduled start time at the post office, he requests a change of schedule to allow himself to arrive at the fire department on time.

The issue of change of schedule requests has been a long standing dispute between these parties in the Youngstown installation and in the Austintown post office which is within the Youngstown installation. In the past several years there have been a number of grievances filed regarding denial of change of schedule requests. On two prior occasions the Dispute Resolution Team resolved the grievances and articulated standards and requirements which should be followed in processing change of schedule requests. In a December 29, 2003 resolution in case #385-03-337, the B Team resolved the grievance upon the following basis: "Management, upon receipt of the request for change of schedule, should meet with the union steward to discuss any concerns for the day or days of the schedule change and the conditions of the needs of the service before denying any such request. If the work load of that particular day allows, the change of schedule should not be unreasonably denied." In Case #385-06-136, the B Team, in a grievance filed by this Grievant, reached a resolution dated August 16, 2006, which stated that "Management is to cease and desist from failing to write a 'reason' on the PS Form 3189 after it is submitted and checked 'Disapproved.' A 'reason' must be specific and explained to the

employee.”

The Grievant filed the change of schedule request which gave rise to this grievance on May 10, 2006 requesting to adjust his work hours to start and end his tour one-half hour earlier on May 17, 2006. The request was agreed upon by the Union Steward, but was denied by the Employer on May 12, 2006. The basis for the denial was stated as “needs of service, conflict of interest - outside employment.” The instant grievance then ensued requesting that the Employer cease and desist in denying the Grievant’s change of schedule requests and awarding the Grievant out of schedule pay.

#### **POSITIONS OF THE PARTIES**

Union Position: The Union argues that it has met its burden of proof to demonstrate that the Employer has failed to abide by the two prior B Team resolutions which are binding in this case. Those resolutions taken together require that the Employer discuss a change of schedule request with the Union and provide a specific reason for its denial. The prior resolutions further establish that there is no limitation on the number of days for which an employee may request a change of schedule. The Grievant’s change of schedule requests were for limited periods of time in order to allow him to report for his part time position with the Austintown Fire Department in a timely fashion. Unless the needs of the Service prevented a change of schedule, they should have been granted. The Employer has not demonstrated that the needs of the Service dictate otherwise or that the Grievant’s part time employment conflicted with the needs of the Employer.

Employer Position: The Employer contends that it has not violated the terms of the two previous grievance resolutions. The resolutions do not require, but rather suggest, a consultation with the steward. Further, the Grievant's requests were submitted with such regularity that they were not in fact seeking a temporary change in schedule, but rather a permanent change in schedule to accommodate his part time employment. The change requests were made with such frequency that the Grievant's part time employment constitutes a conflict of interest with his primary Postal Service employment. Further, the request for a change of schedule is just that, a request, and the Employer is not obligated to grant it. On the day in question, the needs of the Postal Service dictated the denial of the Grievant's requested schedule change.

### **RELEVANT CONTRACTUAL 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; ...
- 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; ...

#### **ARTICLE 19 - HANDBOOKS AND MANUALS**

Those parts of all handbooks , manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, or equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

#### **ARTICLE 15 - GRIEVANCE - ARBITRATION PROCEDURE**

**Section 2 Formal Step B** ... The Step B team may 1) resolve the grievance 2)

declare an impasse 3) hold the grievance pending resolution of a representative case or national interpretive case or 4) remand the grievance with specific instructions.

#### **JCAM Page 15-8**

The Dispute Resolution Team must make a decision within 14 calendar days of receipt of the appeal from Step A ... The written step B decision must state the reasons for the decision in detail and include a statement of any additional facts or contentions not set forth in the grievance as appealed from Formal Step A. ... A Step B decision establishes precedent only in the installation from which the grievance arose.

#### **JCAM Page 8-6**

**Voluntary Schedule Changes** There may be situations in which full-time employees wish to have their regular schedules temporarily changed for their *own* convenience. Out-of-schedule premium is not paid when a change in a full-time employees schedule meets *all three* of the following criteria:

1. The requested change in schedule is for the **personal** convenience of the employee – not for convenience of management. ...
2. The employee has signed a Form 3189, Request for *Temporary Schedule Change for Personal Convenience*.
3. Management and the union's representative (normally the certified steward in the employee's work location) agree to the change and both sign the Form 3189. (emphasis in original)

#### **ELM §348.3 Between Postal Service and Private Industry**

A Postal Service employee may be employed concurrently as an employee in the private sector unless such employment has an adverse impact on postal operations or where conflicts of interest may be generated between the private employer and/or employee and the Postal Service.

### **DISCUSSION AND ANALYSIS**

As noted above, the Union contends that the denial of the Grievant's request for a temporary change of schedule was denied in violation of two previous B Team resolutions within the Youngstown installation. It is clear based upon the language of the JCAM cited above, that a

Step B resolution does indeed constitute binding precedent in the installation in which it arises in order to prevent repetitive grievances on issues which have been previously resolved. The question in this case then, is whether the Union has met its burden of proof to demonstrate by a preponderance of the evidence that the Employer has violated the B Team resolutions in case numbers 385-06-136 and 385-03-337.

The two resolutions, when read together establish a number of factors which are important in the determination as to whether a request for change of schedule has been properly denied. The 2003 resolution states that management should meet with the steward to discuss concerns raised by the change of schedule request before its denial, and requests should not be denied if the work load of the particular day permits the change. The B Team further stated in its explanation that requests should not be denied as part of a blanket policy or based on non-specific reasons, and reasonable decisions should be based on workloads and the facts of each case. In the 2006 resolution, the B Team reiterated that the reason for disapproval must be specific and explained. The Team further stated that it agreed that there should be no set limit for the number of change of schedule requests and further that there is no requirement that all requests be granted. The B Team finally indicated that “an explanation beyond the catch-all phrase ‘needs of the service’ should be given to the employee”, and requests should be reviewed and determined on a case by case basis.

The evidence demonstrated initially that there was no consultation between management and the union steward regarding denial of the Grievant’s change of schedule request. However, while the 2003 B Team resolution clearly encourages such a meeting, it does not constitute an agreement that such consultation is mandatory. The use of the word “should” instead of the more

mandatory “shall” indicates that the B Team meant to strongly encourage such consultation as a means of resolving what was clearly an ongoing dispute between the parties regarding change of schedule requests, but did not require it. The Arbitrator agrees with the Employer that the word “should”, while encouraging conduct, does not require it.<sup>1</sup> The failure to consult with the union steward, therefore did not constitute a breach of the B Team resolutions.

The second requirement of the B Team resolutions is that a specific explained reason be given for each denial of a requested change of schedule. The B Team makes it clear that denials must be determined by actual work load requirements on a case by case basis and proffer an explanation beyond the recitation of the phrase “needs of the service”. In this case, the Employer did in fact utilize the “needs of the service” boilerplate language in denying the Grievant’s request. Although the Employer attempted well after the fact at hearing to explain the circumstances which necessitated the denial of the request through evidence concerning absences and leaves of other letter carriers on May 17, 2006, this information was neither included in the denial of the request as required by the B team resolution, nor presented at either Step A or B in processing the grievance. The explanation of “needs of the service” must therefore be rejected here. If in fact a change of schedule request is denied based upon workload considerations, pursuant to the B Team resolutions in this installation, further explanation of those considerations is required.

The Employer denied this request on the further basis of “conflict of interest - outside employment”. The Employer’s argues essentially that the Grievant’s schedule change requests

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<sup>1</sup> Such consultation, although not required, might well be helpful in stemming the tide of grievances on this issue.

are so frequent based upon his need to be at his part time fire department job by 4:00 p.m., that they have ceased being "temporary", but are rather requests for permanent weekly changes of schedule. Further, the Employer contends, the Grievant's work at the fire department has come to interfere with his Postal Service employment to such an extent that it constitutes a conflict of interest in violation of ELM §348.3. The evidence demonstrated that the Grievant did indeed request a change of schedule for one or two days nearly every week from May through the first week of October, 2006 in order to accommodate his need to be at work at the Austintown Fire Department by 4:00 p.m. While these requests can clearly be categorized as frequent and regular, they were not, as argued by the Employer, requests for a permanent change in schedule. The requested schedule changes varied from week to week both in number and the day of the week. While they clearly establish a pattern and were regular, there is nothing in the schedule change request language which limits either the number or frequency of requests for a schedule change, a fact noted by the B Team in the 2006 grievance resolution. Each request, standing alone, was for a one half hour change in schedule on a particular date. Each was for a limited duration and day, and therefore temporary.

While the Grievant clearly has made numerous schedule change requests in order to accommodate his fire department position, there is no evidence to demonstrate that there exists a conflict of interest between that position and his position as a letter carrier. The Grievant testified that he has never missed work, reported for work late or left work early without an approved schedule change in order to perform his part time firefighter duties. He further testified that on those occasions when he was unable to report to the fire department by 4:00 p.m., he had requested that the firefighter on the prior shift remain until he could arrive. While his frequent

change of schedule requests are clearly an inconvenience to the Employer, there was no showing that in fact the Grievant's firefighting duties have ever conflicted with his letter carrier duties in any way. The denial of the requested change on this basis was therefore not legitimate.

Although the Grievant's schedule change request in this case was not appropriately denied, it must be noted that, as the Employer argues, the request is just that, a request, and approval is not guaranteed. As noted by Arbitrator Elliott H. Goldstein in Case No. J90N-4J-C95039137:

[S]ince there is the retention of the approval or disapproval option in Management, it must also then have retained the ability to find out the circumstances for the request, and then make a judgment balancing the needs of the Service and the actual circumstances causing the employee to submit the form in the first place. ... [A] fair reading of the applicable regulations and Manual sections show that it is proper for Management to consider both operational needs or operational necessity and the reason the individual employee desires to have the temporary schedule change made. There must always be a balancing process, I specifically hold. (p. 25-26)

The Employer may deny requests for schedule changes based upon operational needs, but it must in fact consider specific operational needs at the time the request is reviewed, and deny the request only when necessary to do so after balancing those needs against the needs of the employee.

Pursuant to the B Team resolutions referred to above, it is preferable that this be done after consultation with the union steward, and the specific operational needs which necessitate the denial of the request must be stated in the denial.

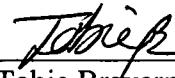
The Union has requested both a "cease and desist order" and a payment to the Grievant of one hour out of schedule pay as remedy in this case. The Arbitrator finds that the payment of one hour out of schedule pay is inappropriate. The dispute as to the manner in which schedule change requests are handled by the Employer has been of one of long standing between these parties. It has not, however, been arbitrated before. The parties have therefore had a long running dispute on

the point without definitive interpretation through the grievance process. Although the Employer failed to properly weigh the relevant considerations of operational needs versus the Grievant's needs for a change of schedule in this case, there was no evidence presented to demonstrate that the Grievant was harmed in any way. As noted above, the Grievant testified that on those occasions when his schedule change request was denied, he was able to arrange for the firefighter on the prior shift to remain on the job for an additional one half hour. The Grievant was compensated by the Employer for his hours of work, and there is not a sufficient showing that the Employer should be punished by having to provide the Grievant with additional payment in the form of a penalty.

### AWARD

The Grievance is sustained. The Grievant's change of schedule request was improperly denied. The Employer is ordered to deny change of schedule requests only after considering operational needs specific to the request and weighing them against the needs of the employee making the request. This should be done in consultation with a union steward whenever practicable. The basis for denial of the request must be specifically stated.

Dated: September 30, 2008

  
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Tobie Braverman, Arbitrator