

C#09888

REGULAR ARBITRATION

USPS - NALC

SOUTHERN REGION

In the Matter of Arbitration	)	Case	#S7N-3W-C-88015
Between	)		#S7N-3W-C-88016
United States Postal Service	)	GTS	#011709
and	)		#011710
Altamonte Springs Branch	)	Howard Milner	
National Association of Letter	)	(Grievant)	
Carriers AFL-CIO	)	Hearing File Closed	
	)	September 9, 1989	

Before Irvin Sobel, Arbitrator of Record

Appearances:

For the United States Postal Service (Service, Employer, Management)

John Rossi

Labor Relations Representative,

Orlando, Florida.

For the National Association of Letter Carriers (NALC, Union)

Judson "Jud" Vaughn

Regional Administrative Assistant,

Atlanta, Georgia.

Preliminary Statement:

The hearing of the enumerated issues was conducted pursuant to modified Article 15 of the National Agreement (LMRA) between the parties.

The Union filed a written grievance on behalf of Part Time Flexible Carrier (PTF) Howard Milner alleging the Service violated the National Agreement (LMRA) by changing the grievant's work schedule in order to avoid payment of Continuation of Pay (COP) for the period in which the grievant was required to take physical therapy for an on the job injury. The parties unable to resolve the issues through the Modified 15 (UMPS) procedure assigned the matter to final and binding arbitration. The two enumerated grievances were consolidated at the hearing. The hearing was conducted by the above cited Arbitrator on September 18, 1989 at the Altamonte Springs, Florida Main Post Office. At the hearing the parties were accorded full opportunity to present witnesses for direct and cross examination and introduce such other evidence and argumentation each deemed pertinent to the resolution of the matter under consideration. No issues of arbitrability, timeliness or defect of form were raised by either party.

The Arbitrator would like to thank the parties for their forbearance in waiting for the abnormally delayed decision. Their understanding of the reason for the delay, namely, my wife's protracted hospitalization and lengthy convalescence as well as their continued expressions of sympathy and concern is deeply appreciated.

Issue:

Did the Employer violate the National Agreement when it altered the work schedule of PTF Carrier Howard Milner? If so, what is the appropriate remedy?

Relevant Contract Provision

Article 8 - Hours of Work

Section 4 - Overtime Work

B. Overtime Work

Overtime shall be paid to employees for work performance only after eight (8) hours of duty in any one service day or forty hours in any one service week. Nothing in this Section shall be construed by the parties in any reviewing authority to deny the payments of overtime to employees for time worked outside of the regularly scheduled work week at the request of the Employer.

Article 21 - Benefit Plans

Section 4 - Injury Compensation

Employees covered by this Agreement shall be covered by subchapter I of Chapter 81 of Title 5, and any amendments thereto relating to compensation for work injuries. The Employer will promulgate regulations which comply with the regulations of the Office of Workers Compensation Programs (OWCP) and any amendments thereto.

Article 7 - Employer Classifications

Section 2 - Part Time

Part time Employees in such category shall be hired pursuant to such procedures as the Employer may establish and shall be assigned to regular schedules of less than forty hours in a service week. Workers shall be available to work flexible hours as assigned by the Employer during the course of a service week.

Position of the Parties

The Union Position:

The Union contended that the Employer deliberately altered the grievant's work schedule in order to forestall payment of COP. Since the Office of Worker's Compensation Programs (OWCP) had authorized payment of COP the Employer violated the spirit if not the intent of Article 21.4 by "swinging" the grievant's work schedule in such a manner as to preclude the grievant's obtaining pay for the time in which he was undergoing physical therapy. That therapy was a condition of employment. The grievant was put "off the clock" for the hours in which he was undergoing treatment and accordingly, required to return to his route to complete his eight hour work schedule. On days in which no therapy was scheduled the grievant worked his normal straight eight hour schedule. Thus, when undergoing treatment Milner was within the Employer's jurisdiction for more than eight hours and, accordingly, as stipulated by Article 8.4 is entitled to overtime.

The Employer's Position:

The Employer, emphasizing the grievant's status as a Part Time Flexible (PTF), contended that it had every right under Article 7.1A(2) to split the grievant's work assignment, COP which ultimately is paid by the Service, is to compensate for pay lost as a result of an on the job injury but in this case of the grievant no wages were lost. Notwithstanding the grievant's split working day, the grievant was employed and compensated for forty hours per week. Moreover, it was the grievant who chose to schedule his therapy at a time which would normally cause his work schedule to be split if he were to

complete an eight hour work day. Thus, the Union's request for compensation at overtime is incompatible with Article 8.4 which states that overtime is to be paid only for time worked.

In short, Management's position was fully stated by Employer 3rd step designee J. M. Mulkey who denied the grievant. He argued:

Management's position is that there is no contractual violation since the grievant is a PTF and may be scheduled for less than eight (8) hours in a service day and may be split as long as the Employer is guaranteed two (2) hours per day.

Opinion and Award:

The dominant facts in determining the resolution of this grievance is the grievant's status as a PTF. As a PTF the Employer had the right under Article 7.2 of the LMRA to "swing" the worker's shift. That already cited provision states that Employees in the PTF category "should be available to work flexible hours as assigned by the Employer during the course of a service week".

Article 3 of the National Agreement grants the Employer the right to schedule and assign employees unless limited by other clauses in the contract. Article 7.2 covering the statute of PTFs not only does not limit the Employer but also clearly accords Management the right to schedule PTFs flexible hours. Thus, despite the fact that the grievant worked a split schedule only on the days he was scheduled for therapy it was he who had determined his therapy schedule. That schedule given the time Milner would complete his therapy would still have necessitated the grievant's return to work to be compensated for eight (8) hours regardless of whether the time spent at therapy was compensated on a COP basis or not. In fact, on Friday the Employer

did not schedule the grievant to return to his work station after his therapy and as a consequence PTF Milner did receive the COP to which he was entitled.

To accord the grievant that which the Union requested would compensate him at an overtime rate for work which he did not perform.

Unlike the case cited by the Union (H8T-4H-C-10343) decided by Arbitrator Gamser in which the grievant was ordered by the Employer to schedule her therapy session after completion of her work day despite the fact that the normal hours for therapy at the Orthopedic Clinic were 11:00-2:00, it was the grievant who scheduled his therapy. In the case cited above, Gamser stated:

Management in making such an arrangement without the concurrence of the Employee, arbitrariness determined that the employee's time away from his assigned duties would be restricted by the same three and a half additional hours that he was required to be at the clinic. That therapy was a condition of employment which the Employee was receiving as a matter of right and at the expense of the Employer because of the conditions under which he was injured.

Notwithstanding the rectitude of the Union's contention that the Employer deliberately altered the grievant's schedule only on the days on which the grievant was scheduled for therapy to avoid payment of either COP and/or overtime, Article 7.2 covering the status of PTF employees is nevertheless governing. That Article in conjunction with Article 3 the Management Rights clause, accords the Employer the right to assign PTF's flexible hours and the fact that the Employer invoked its contractual rights to minimize its outlays does not mean that the LMRA has been violated. The grievant, despite the fact that the Employer is not obligated to offer PTFs forty hours of employment, was compensated for forty hours per week.

For all of the above reasons set forth above, the grievance advanced by the Union on behalf of Mr. Milner is denied. The undersigned makes the following ruling.

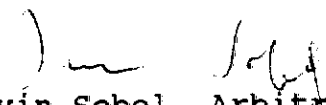
Award:

The grievance of Carrier Howard Milner is denied.

Tallahassee, Florida

March 8, 1990

This is a certified true
copy of Arbitration Award


Irvin Sobel, Arbitrator