

C#00944

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JULY 1987

MATTER OF U.S.
POSTAL SERVICE
(Dunedin, Florida)

and

AMERICAN POSTAL
WORKERS UNION

COORDINATED SOUTHERN REGION
AMERICAN POSTAL WORKERS UNION
REGIONAL ARBITRATION: AFL-CIO

CONVERTING PTF'S TO FTR'S

Class Action
Case # SLC-3W-C 38156

Hearing held at the PO in Dunedin,
Florida, on January 30, 1986.
Post-hearing briefs postmarked March 9, 1986.

No. 37
frym

For the PS:

Holloway Adair, Labor Relations
Executive

For the Union:

R.J. ("Ranny") Erskine, National
Business Agent
Mario Micoli, President of
Suncoast Area Local

AWARD
August 5, 1987

The Union's grievance is sustained. Local Management at the Dunedin, Florida, PO is directed to establish two FTR clerk positions beyond those existing on June 22, 1984, and to fill them by the senior PTF clerks. After the positions are filled and a reasonable period has elapsed, Local Management should consider in good faith whether an additional FTR clerk position should be created.

OPINION

At the hearing Postmaster Milton E. Knellinger identified a chart showing the staffing of the Dunedin PO in 1984. This showed that a total of 38 letter carriers were attached to the

PO, 26 of them FT regulars (PS-5), 7 of them PT flexibles (PS-5), and 5 Technicians (PS-6). Also attached were 19 postal clerks, 11 of them FTRs and 8 PTFs (all PS-5). In addition, two custodians (PS-3) were employed.

The instant grievance arose under the National Agreement for 1981-1984. Article 7 is entitled "Employee Classifications" and § 1 defines full-time (FT) employees as those "assigned to regular schedules consisting of five (5) eight (8) hour days in a service week"; and part-time (PT) employees as those "assigned to regular scheduled of less than forty (40) hours in a service week, or ... [are] available to work flexible hours as assigned ... during the course of a service week."

Section 3 deals with "Employee Complements" and reads in part as follows"

A. The Employer shall staff all postal installations which have 200 or more man years of employment in the regular work force as of the date of this Agreement with 90% full-time employees.

B. The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations.

C. A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six month period will demonstrate the need for converting the assignment to a full-time position.

On or about June 22, 1984, Walter Jones, a window clerk at Dunedin and Union steward, initiated a grievance. The Step 2

Grievance Appeal form stated, "PTF employees ... have worked 8 within 10 for the same 5 days for a period of 6 months (13 pay periods) and have not been converted to regular." Article 7, § 3B and C, was cited. Requested remedy was "that the three (3) senior PTF's be converted to regular." The step 2 answer by PM Knellinger denied the grievance and stated the following reason:

The timecards were furnished to the APWU President and Shop Steward for the past 13 pay periods. You compiled an employee work schedule which clearly shows no PTFS Clerk working 8 within 10 hours on the same 5 days each week and the same assignment over a six month period.

The step 3 answer was also negative and stated:

Based on information presented and contained in the grievance file, the grievance is denied. The graphs of the hours do not show that any PTF employees have met the requirements for conversion to regular.

The grievance is now appealed to arbitration.

Jones identified a sheaf of "Employees' Work Schedules" (56 pages) on which he and Local President Mario Micoli and another Union member had drawn lines showing hours worked by PTF clerks. The period covered by the sheets was from November 26, 1983, through June 1, 1984. Fourteen pay periods (2 weeks) were covered. Knellinger had supplied Jones with all the PTF clerks' time cards. The Employees' Work Schedules show hours of the day and night across the top. In the left hand column are the days of the service week, from Saturday through Friday.

In the upper right hand corner Jones and his helpers wrote the numbers of the pay periods (25 and 26 in 1983, 1-12 in 1984) and the week (1 or 2). They also wrote in the left column the names of PT clerks working on particular days. Opposite the names Jones and his helpers drew horizontal lines matching the hours at the top of the page that the clerks had worked.

No question is raised about the accuracy of Jones' and his helpers' compilation. Jones testified that only straight time hours were represented by the lines. Lunch time might be included. Letter carriers were sometimes used as clerks, but their hours were not on the sheets. Hours spent on bargaining unit work by supervisors or 204b temporary supervisors were not included.

The names of 7 PTF clerks appear on the 56 Employees' Work Schedules. Examination of the sheets discloses that they usually start work at 4 a.m., although 2 and 3 a.m. times are not uncommon. Later starting times, between 6 a.m. and 12 noon are frequent. Fifty percent or more of the shifts were 3 hours. Almost all the others were for 6 hours.

A reduced (compressed) version of the 56 Employees' Work Schedules shows total hours worked each day by the 5 to 7 PTF's. On two days no hours were worked (Sundays in the Christmas and New Year's weeks). Otherwise, the PTFs worked from 12 to 62-1/4 hours a day. The average appears to be in the range of 30-40 hours.

Testimony. Jones testified that he had worked at Dunedin since 1970. He had been a window clerk for several years, and before that, a letter carrier. He was of the opinion that the amount of PTF clerk work justified creation of 3 FTR positions.

PM Knellinger testified that one of the PTF clerks (Turner) became a FTR in the middle of 1984. Knellinger had helped the clerks with their work, but this was infrequent.

FTR Clerk Sallie Wills testified that she was the time-keeper in the Dunedin office. FT distribution clerks generally worked 8-hour shifts starting at 2:30 or 3 a.m. One clerk came in at 6 a.m. Jones and another window clerk worked from 9 a.m. to 5:30 p.m. An exhibit was identified as listing hours of clerk work performed by letter carriers in Fiscal 1984 (total, 58-1/2 hours). The letter carriers' 8-hour shifts started at 7 a.m. (a few at 9:15 a.m.). Wills said that she did not record when a letter carrier, coming back from his route early, was assigned to clerk work.

Ruling. Section 3A of Article 7 has no application to this case. The Dunedin PO does not have 200 or more man years of employment, and the requirement of 90% FT employment cannot be imposed. It is generally understood that in the interest of efficiency and avoiding undue costs, smaller postal installations should not be held to the 90% requirement.

Nor is § 3C applicable. The Union does not contest that no PTF clerk can be pointed out in Jones' compilation as having

worked 8 hours within 10 on the same 5 days each week on the same assignment over a 6-month period.

Section 3B is applicable and expresses a general obligation on the part of the Employer. The PS "shall maximize the number of full-time employees and minimize the number of part-time employees." Section C states one way in which the need for converting an assignment to a FT position can be demonstrated. But § B allows for other proofs to demonstrate that part-time hours of a number of PTFs can be converted into one or more FT positions.

The compilation of Jones and his helpers is impressive. Taking the average of 30-40 PT hours per day 7 days a week and considering that half the shifts are 8 hours, one might infer that several FT clerk positions should be created. However, the inference must be drawn with caution, since the hours vary from day to day. Differing conditions and needs cause variation in the need for clerk hours beyond those worked by the FTs.

The Union points out that even if three new FT clerk positions are created in Dunedin, Management will still have ample flexibility. Article 7, § 2B, and Article 8, §§ 1 (last sentence), 2C (last sentence), and 3, and Article 37, § 3E9, of the contract are cited. Shorter days and weeks can be scheduled for remaining PTFs. FTRs can be assigned fixed or rotating shifts, and the work days need not be consecutive. If work in a particular assignment runs out, an employee may be assigned

to other available work. Reference is also made to a National Memorandum of Understanding of March 3, 1975, concerning relief and pool assignments.

I find from the evidence that two PT clerk positions in addition to those existing when the grievance was initiated are justified and required under Article 7, § 3B. PM Knellinger testified that one of the PTFs had been converted to a FTR clerk in the middle of 1984. If the conversion added to the number of FTRs employed on the date of the grievance, the present decision requires the conversion of one more PTF. If the 1984 conversion was simply a replacement for a former FTR, then this decision requires the conversion of two PTFs. After the conversions are made and time has elapsed, Local Management should review its experience and determine in good faith whether creation of another FTR clerk position can be made without undue impairment of flexibility and efficiency.

The decision of Impartial Arbitrator Sylvester Garrett at the National Level in Case # AB-N-3744 et al. (1976) has been read with care. I believe that the present Award and Opinion is consistent with the analysis and application of Article 7, § 3, in that opinion. Arbitrator William J. LeWinter's decision in Case # E1C-2B-C 15866 (1985) is distinguishable in that a local memorandum of understanding was held to limit proofs to those called for by § 3C. Apart from such holding, I do not think that the only way to prove violation of § 3B is to prove

the elements of § 3C. Arbitrator Marvin J. Feldman's decision in Case # C8C-4M-C 216 (1980) is also distinguishable. Specific finding was made that the grievance was pursued under § 3C language with no mention of § 3B language.

The PS argues strongly in its brief that the Union's case should stand or fall on the application of Article 7, § 3C. Cases are cited holding that an aggrieved may not in arbitration change the basis of his grievance. It is true that the Union's statements in the grievance papers speak of 8 hours within 10 for the same 5 days for a period of 6 months. However, the Union cited § 3B as well as 3C, and the Union's statement can be read as alleging that PTFs in the aggregate satisfied § 3C. I do not think that there was misunderstanding or lack of notice in the grievance procedure that the Union claimed under § 3B if no individual PTF satisfied § 3C. The two subsections are obviously closely related. Accordingly, I overrule the objection that the Union's claim should be limited to § 3C.

Lennart V. Larson, Arbitrator
Lennart V. Larson
Dallas, Texas