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ALBERT EPSTEIN 1/11/82  
Article VIII & XIX Overtime

Lost

14683 (C8C-4F-C)

ARBITRATION AWARD

FROM THE OFFICE OF  
JOHN P. RICHARDS  
DIRECTOR  
INDUSTRIAL RELATIONS  
APWU AFL-CIO

In the Matter of the Arbitration)

Between )

UNITED STATES POSTAL SERVICE )  
Cincinnati, Ohio )

And )

AMERICAN POSTAL WORKERS UNION )

CASE NO. C8C-4F-C 14683

ALBERT A. EPSTEIN  
ARBITRATOR

MAUDE L. MALLARD OVERTIME GRIEVANCE

THE PROCEEDINGS

The above parties, unable to resolve a grievance filed by the Union on behalf of Clerk Maude L. Mallard with reference to her claim for overtime compensation, submitted the matter to the undersigned for arbitration under the terms of their labor agreement.

A hearing on the matter was held at the Post Office Annex Tower in Cincinnati, Ohio, on August 13, 1981. Both parties were represented and fully heard, testimony and evidence were received, the Union made an oral closing argument and the Postal Service submitted a post hearing brief.

APPEARANCES

FOR THE UNION:

Mr. Jack J. Panzeca

Regional Representative

Mr. Bill Parker

Treasurer

FOR THE POSTAL SERVICE:

Mr. Lawrence G. Handy

Labor Relations  
Representative

THE ISSUE

I.

Was the grievance timely filed under the terms of Article XV of the Labor Agreement between the parties?

II.

If so, did the Postal Service schedule Maude L. Mallard outside of her regularly scheduled work week and fail to compensate her for overtime pay during the period from June 2, 1979, to January 5, 1980?

PERTINENT LABOR AGREEMENT  
PROVISIONS

"ARTICLE VIII

"Section 4. Overtime Work

"B. Overtime shall be paid to employees for work performed only after eight (8) hours on duty in any one service day or forty (40) hours in any one service week. Nothing in this Section shall be construed by the parties or any reviewing authority to deny the payment of overtime to employees for time worked outside of their regularly scheduled work week at the request of the Employer."

"ARTICLE XV

GRIEVANCE-ARBITRATION  
PROCEDURE

"Section 2. Grievance Procedure - Steps

Step 1. (a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative. The Union also may initiate a grievance at Step 1 within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. In such case, the participation of an individual grievant is not required. A Step 1 Union grievance may involve a complaint affecting more than one employee in the office."

"ARTICLE XXXVII

CLERK CRAFT

"Section 3. Posting and Bidding

A. Newly established and vacant clerk craft duty assignment shall be posted as follows:

3. When it is necessary that fixed schedule day(s) of work in the basic work week for a craft assignment be permanently changed, the affected assignment(s) shall be reposted."

"EMPLOYEE & LABOR RELATIONS  
MANUAL

"434.6 Out of Schedule Overtime

- .611 'Out of schedule overtime' is a premium paid to an eligible full-time employee for time worked outside of, and instead of, the employee's regularly scheduled workday or workweek when the employee is working on a temporary schedule at the request of management."

DISCUSSION AND OPINION

The Postal Service relies primarily upon the threshold issue of timeliness contending that the grievance was filed far in excess of the time limits permitted under the terms of Article XV for the filing of a grievance.

The instant case arises upon a claim by the Union that on February 13, 1980, the Union was first made aware that Clerk Maude Mallard had been working outside of her regularly scheduled work week at the request of management at the Cincinnati, Ohio, Post Office Annex since June of 1979. It claims that on June 21, 1975, as a result of a successful bid, the grievant was assigned to a Level 5 position in the Central Markup Unit. It notes further that on June 2, 1979, the grievant's assigned off-days were changed from Sunday/Monday to Sunday/Friday. On January 5, 1980, the grievant's schedule was returned to the Sunday/Monday off-days. The Union contends

that during the period from June 2, 1979, to January 5, 1980, in violation of the terms of Article VIII of the Labor Agreement, the Postal Service had scheduled the grievant outside of her regularly scheduled work week and that she was therefore entitled to overtime pay for that period.

With reference to the claim of the Postal Service that the grievance was filed beyond the time limits of Article XV, the Union submits that the grievant was not a member of the Union (although the Union obviously represents all employees in the bargaining unit) so that the grievant was unaware of her contractual rights. The Union claims that because it did not have any copies of the notices changing the scheduled off-days, it did not become aware of the contract violation until the Union Steward accidentally learned of it on February 13, 1980. Thereupon the Union points out that it filed the grievance within the appropriate time thereafter so that the grievance is properly before the arbitrator under the terms of Article XV of the Labor Agreement.

The Postal Service, referring to the fact that the grievance was filed on February 20, 1980, contends that the grievant was well aware of the change in her off-day schedule on June 2, 1979, so that the grievance (which was ultimately filed on her behalf) was filed more than eight months after the incident giving rise to the grievance actually occurred. It maintains that the failure to file a timely grievance within the 14 day time

period (set forth in Article XV) bars the grievant from any remedy. It submits that the basic facts in this case are not in contention and that it was readily admitted by the grievant that she was well aware of the change when it occurred on June 2, 1979. The Postal Service points out that this knowledge must be charged to the Union as well as the grievant, and the Union cannot maintain that the time limit for filing a grievance over a situation which was known to the grievant is somehow extended until such time as the Union is officially notified of the grievant's claim. It notes that the schedule change was posted publicly and that the Union had access to the posting.

It is the Postal Service position that even if the violation is of a continuing nature, no possible remedy may result which would include a retroactive remedy more than 14 days prior to the filing of the grievance. In the instant case, it points out that the grievance was filed on February 20, 1980, seeking a return to the original schedule which existed prior to June 2, 1979, but the facts indicate that the grievant was returned to her original schedule on January 5, 1980, approximately 45 days prior to the filing of the grievance. The Postal Service also submits that the Union's failure to properly inform or educate the grievant of her rights, which existed under the contract even though she was not a Union member and may have had no knowledge of her rights, does not support any valid waiver of the time limits or lift the bar to a remedy going back more than 14 days prior to the filing of the grievance. It therefore

requests that the grievance be denied as untimely.

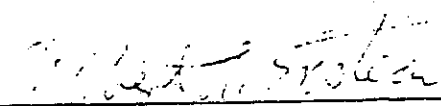
An examination of the testimony, evidence and arguments of the parties and of the pertinent Labor Agreement provisions as well as pertinent arbitral precedents indicates that the Postal Service is correct in its position. Although the Union properly points out that the grievant may have worked out of Schedule Overtime under the terms of the Labor Agreement and under the terms of the Employee & Labor Relations Manual and would be entitled to overtime for that period under the terms of the latter, the crux of the threshold issue in the instant case is whether the grievance was filed within the contractual limits.

I agree with the Postal Service that the grievant knew of her schedule change on June 2, 1979. The fact that she was not a member of the Union and that the Union may therefore not have learned of the alleged contract violation until February 1980, does not waive the time limits. There was no proof that the grievant was somehow induced to sleep on her rights and although she is not a Union member, she is bound by the provisions of the contract. Section 2 of Article XV in Sept. 1. (a) of the grievance procedure clearly provides that a grievance must be initiated within 14 days of the date upon which an employee or the Union first learned or may reasonably have been expected to have learned of its cause. The scheduled change was posted so that not only the grievant, but any Union officials working in the area would have access to that publication. In fact, any local Union official must be presumed to regularly read notices

posted on the official bulletin board. I support the position of the Postal Service that the Union's failure to properly inform or educate the grievant of her contractual rights does not support any contention that there was a waiver of the time limits. To permit the Union to file a grievance more than 8 months after the incident occurred where there is a 14 day contractual time limit, stretches the bounds of any possible equitable relief. I am therefore compelled to hold that the grievance was not timely filed and therefore the merits of the case are barred from consideration and an Award will issue accordingly.

A W A R D

The grievance in this matter was not filed within the time limits set forth under the provisions of Article XV Section 2, Step 1. (a) and the grievance must therefore be dismissed.

  
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ALBERT A. EPSTEIN  
ARBITRATOR

CHICAGO, ILLINOIS  
JANUARY 11, 1982