

C#01694

IN THE MATTER OF THE ARBITRATION BETWEEN:)
United States Postal Service) Opinion and Award
and) in
National Association of Letter Carriers) S8N-3D-C-14268
AFL-CIO) H. Parker
) Camilla, Georgia
)

Pursuant to the provisions of the current Labor Agreement between the above cited parties the subject matter in arbitration was assigned to J. Fred Holly for hearing and decision. A hearing was held in Camilla, Georgia on July 28, 1981, at which time the parties were afforded full and equal opportunity to present evidence and argument. The hearing was declared closed upon the receipt of post hearing briefs on August 24, 1981.

APPEARANCES:

For the Employer:

Roland McPhail, Labor Relations Executive

For the Union:

Robert M. Harkinson, Regional Administrative Assistant

ISSUES:

The subject matter in arbitration poses the following issues:

1. Did the Employer violate the provisions of Article VIII or XLI of the National Agreement by changing one of the Grievant's off-days from Saturday to Thursday?
2. Is the Grievant entitled to out-of-schedule premium pay for work performed on Saturdays between April 12 - October 4, 1980?

BACKGROUND:

In January 1980 an inspection team from the Albany, Georgia Section Center inspected and evaluated each of the full-time regular carrier assignments in the Camilla, Georgia Post Office. As a result it was decided, among other things, that non-scheduled work days of the Carriers would be changed. The changed assignments were posted for bid on February 19, 1980. Following Employer - Union discussions a second posting was made on March 26, 1980.

The Grievant is the senior full-time regular Carrier in the office. Prior to the change his scheduled off days were Saturday and Sunday. He bid for Sunday and Thursday off days and this bid was honored. On each posting the Grievant had an opportunity to bid on Sunday and Monday as off days, but he chose to bid for the split off days because he wished to retain his regular route and also because he did not wish to bump another Carrier from his assigned route.

On March 15, 1980, the Grievant filed a step one grievance in protest of the first posting. The grievance alleges that the Employer had violated Articles VIII and XLI of the National Agreement by the change in off days. The remedy request was to "change scheduled non-work days from Thursday to Saturday." In his Step 3 Appeal the Grievant added to the original request, "also requested is overtime for all days worked outside of schedule." In October 1980 the Grievant returned to his former off days of Saturday and Sunday.

The changes were precipitated by the inspection team's determination that this was necessary to provide a full-time regular employee (Cross) with a full eight (8) hour assignment in the Carrier Crafts on Mondays and Fridays. The purpose was to provide Cross with his contractually guaranteed 8 hours.

EMPLOYER CONTENTIONS:

The Employer contends that it is undisputed that Management, under Article III of the National Agreement, has the right to "revert, abolish and establish job assignments based on operational needs." In the instant case it was necessary, from an operational standpoint, to change off-day schedules at the Camilla Post Office. The fact that the change resulted in a savings of seven to eight hours of work per week demonstrates that the changes were practicable and operationally sound. Moreover, they were dictated by the need to provide the eight hours of work or pay guarantee to employee Cross.

Secondly, the Employer contends that there is no issue before the Arbitrator. This is true, says the Employer, because at Steps 1 and 2 of the grievance procedure the sole remedy sought was a change in the Grievant's scheduled non-work day from Thursday to Saturday. This was accomplished in October 1980; hence, the grievance is moot.

In his appeal to Step 3 the Grievant amended his grievance to include a request for overtime pay for all Saturdays worked. Such an amendment is contrary to the provisions of Article XV, Section 2(d) of the

National Agreement which requires that the remedy sought must be incorporated in the Step 2 appeal.

Finally, the Employer contends that Postal Service arbitration authority supports the Postal Service position. In Case No. C8N-4A-C-12232 Arbitrator William Haber held that "since the grievance has, in fact, been granted, the Arbitrator has no basis for an Award."

UNION CONTENTIONS:

The basic position of the Union is that the Employer, arbitrarily and without justification, changed the non-scheduled days of the Grievant. The Employer thereby created a temporary change of schedule. As a result the Grievant was inconvenienced and harmed, and he is entitled to overtime pay for the Saturdays which he was required to work. Such pay is mandated by Section 4 of Article VIII of the National Agreement which provides:

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 regular scheduled week at the request of the Employer.

The Union supports this position by contending that the change in non-scheduled days for the Grievant were temporarily changed. This is true, says the Union, because soon after the change a survey was made and the employee who had been accommodated was excused and the Grievant was returned to his regularly scheduled off days.

The Union also alleges that since a copy of the posting was not presented to the Union there was a violation of Section B(1) of Article XLI of the National Agreement.

Finally, the Union contends that the issue of overtime pay is before the Arbitrator. This issue was discussed without protest by the Employer at Step 3 of the grievance procedure, and the Employer did not raise the non-arbitrability issue until the arbitration hearing.

DISCUSSION AND FINDINGS:

The Employer correctly insists that Issue No. 1 herein has been rendered moot by the Grievant's return to Saturday as a non-scheduled day. This is the sole remedy which he sought at both Step 1 and Step 2 of the grievance procedure, and the requested remedy has been granted.

Issue No. 2 - the request for overtime pay for all Saturdays worked between April 12, 1980 and October 4, 1980 is not properly before the Arbitrator. This is true because Article XV, Section 2(d) of the National Agreement specifically requires that the written appeal of an adverse Step 1 decision to Step 2 must specify the remedy sought. The Step 2 appeal in this case specified only, "change scheduled non-work from Thursday to Saturday." Hence, under the arbitration provisions of the National Agreement the Arbitrator is without authority to consider the overtime request.

AWARD:

The Arbitrator hereby Awards as follows:

1. Issue No. 1 is moot.
2. The Arbitrator is without authority to consider Issue No. 2.

Knoxville, Tennessee
August 28, 1981



J. Fred Holly, Arbitrator