

C# 10945

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration  
between  
UNITED STATES POSTAL SERVICE  
and  
NATIONAL ASSOCIATION OF LETTER  
CARRIERS, AFL-CIO

Grievant: Class Action  
Post Office: Buffalo, NY  
Case No: 6.91\*  
NALC Case No: MAF-05.91-GK-C  
NALC GTS No: 5589

Before Jonathan S. Liebowitz, Arbitrator

Appearances:

For US Postal Service: Kathleen J. Dittenhoffer  
Manager, Labor Relations

For Union: Patrick F. Gorman, Sr.  
Assistant Secretary-Treasurer, Branch 3

Date of Hearing: May 14, 1991

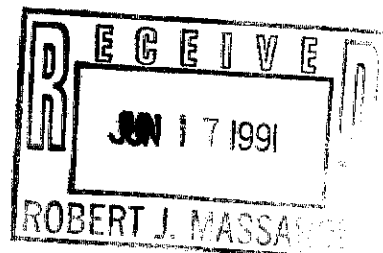
Place of Hearing: P.O., 1200 William Street, Buffalo, NY

Award: The grievance is sustained under Article 8.8.B of the National Agreement. Carrier Staerker shall be compensated three hours' pay at her overtime rate applicable on January 3, 1991.

Date of Award: June 12, 1991

*Jonathan S. Liebowitz*  
Jonathan S. Liebowitz  
Arbitrator

\* Mod. 15 case heard in regular arbitration.



Award

This is a Modified Article 15 case heard in regular arbitration. The grievance cites Article 8.8.B and states that on January 3, 1991, Carrier Gloria Staerker was called in to work on her non-scheduled day, that she informed (Supervisor) Klink that she could only work five hours, that Klink told her to come to work and to fill out a 3971 for a different schedule. The Union contends that management is clearly in violation of Article 8, that there were other Carriers working that day who were on the Overtime Desired List who could have covered the five hours of work. It seeks that Carrier Staerker be paid an additional three hours of overtime.

Supervisor Klink's Step 1 grievance summary states that he called Staerker on her non-scheduled day, that she informed him that she could only work until 12:30, five hours, because she had to pick up her daughter at the airport and no one else was available to do so. Klink states that he told her to come to work and to fill out a 3971 for the different schedule, and that she agreed and worked her own route which would have given her eight hours' work had she been able to complete her shift. Per Klink, all other Carriers worked at least one hour of overtime. The grievance summary states management's position that Ms. Staerker had an emergency situation and the Union's position that employees should be given work for, and paid for, eight hours' work on their NSD. The Union's grievance worksheet says that the

contract calls for a full-time Carrier called in on a day off to be guaranteed eight hours' pay.

Management's Step 1-A decision states its position that grievant was offered a full eight-hour tour but requested to be excused for three hours due to personal reasons; all employees on the OTDL were working a minimum of one hour each for that day.

The Step 2 grievance appeal reiterates the Union's remedy request.

Management's Step 2 decision states its position that the circumstances involved negate the eight-hour guarantee in that the Carrier was requesting to be allowed to leave for legitimate personal reasons.

Article 8.8.B states:

When a full-time regular employee is called in on the employee's non-scheduled day, the employee will be guaranteed eight hours work or pay in lieu thereof.

The Union maintains that the requirement of that section is clear.

Management argues clarification by a Step 4 agreement, H4N-2D-C 40885, November 14, 1988, stating that an employee may waive the guarantee only in cases of illness or personal emergency. Management argues that grievant left work because of an unforeseen circumstance, inability to obtain a ride from the airport for her daughter, not of a recurring nature and a personal emergency, one which released grievant from work and the Postal Service from its obligation to pay a full eight hours' pay.

Per the Union, station management was aware before grievant came to work that she could not work a full eight hours; there was no emergency or "medical" that would require her to not work her full eight-hour guarantee.

The Service submits an award by Arbitrator Linda Di Leone Klein, USPS and APWU, C1C-4B-C 9628, February 10, 1984. In that decision, Arbitrator Klein quoted ELM Section 432.63, not submitted here. That section as quoted in her opinion states:

Pay Computation. As a general principle, when an employee is told to clock out by management prior to the end of the guarantee period, such employee will be compensated for the hours of the guarantee period at the rate of pay he would have received had he actually worked such hours. There are, however, conditions under which employees will not be compensated for the remaining hours of the guarantee period. Generally, this would occur when an employee requests to leave the postal premises because of an illness or for personal reasons or leaves without proper authorization.

Arbitrator Klein stated that as it relates to the issue of compensation, Article 8.8.B provides for a guarantee of eight hours' work or eight hours' pay in lieu thereof for a full-time regular employee who is called to work his or her non-scheduled day. She continued that there are, however, certain exceptions; when an employee asks to be relieved of his duty to work, management may likewise be relieved of its obligation to provide eight hours' work or pay; if the employee requests to leave work prior to the end of the guarantee period, he or she, in effect, waives the benefit bestowed by Article 8.8.B (Opinion, PP. 6-7).

In that case, Arbitrator Klein found that the employees were given a choice and that those who left early did so voluntarily and are not entitled to be paid for eight hours, but only for the hours they worked. She added that by opting to leave early, the employees indicated that they did not want to work a full tour and that under the circumstances of voluntary leave taking, management is relieved of any obligation to compensate the employees beyond the actual time worked.

Ms. Staerker's testimony is that when Mr. Klink called her, she told him of her availability; she had planned and intended to pick up her daughter; she did not try to get someone else to do that. Ms. Staerker submitted a Form 3971 stating that she was unable to work a full day and a revised schedule of five hours; Supervisor Klink approved it. According to Ms. Staerker, when the Shop Steward asked why she was going home early, Mr. Klink asked her to fill out a change stating that she was going home sick. She testified that the Shop Steward initiated the grievance and that she would not have filed it on her own.

Shop Steward Christine Zelli testified that when two Letter Carriers complained about a later call-in, Mr. Klink told her that he believed that, like the others, grievant got three hours' overtime and then was sick; there was nothing on the 3971 about being sick or an emergency, so Ms. Zelli grieved. Zelli quoted Klink as saying at Step 1 that it was an emergency; that the eight-hour guarantee does not apply in cases of sickness or an emergency.

Supervisor Christopher Klink testified that there was an emergency and that he used the OTDL to the maximum that day. According to Klink (and apparently contrary to the provision of the ELM quoted in the Klein award), the only exceptions to 8.8.B are emergency or illness. Mr. Klink testified that eight hours' work was available for grievant and that she worked her own route for five hours.

In closing, the Service argues a voluntary request to leave and, apparently in concert with the quoted ELM section, a waiver of the benefits of Article 8.8.B. It also maintains that Ms. Staerker claimed "an emergent condition" and benefitted from the early release.

But grievant foresaw and planned her early departure; this was not the sort of unforeseen, unplanned situation which may correctly be termed an "emergency." Rather, it was a planned departure from her work schedule.

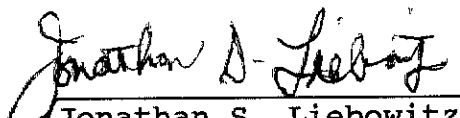
The unresolved question is how to reconcile the conflict between the Klein Award with its ELM citation and the Step 4 settlement, both submitted by the Service. The point was not argued nor were the two documents (ELM and Step 4) submitted. The only logical solution is to conclude the USPS and the NALC intended in the 1988 Step 4 settlement to modify, at least for present purposes, the 1984 USPS-APWU Klein Award. Otherwise, the Service's position here is internally inconsistent. Klink's treatment of the matter appears to be an effort to be consistent with the Step 4 settlement.

There are considerations both ways in this case. But in my view, since management did not demonstrate an emergency and since grievant was not ill, although there is evidence that supervision would have preferred to have it appear that way, the clear provisions of 8.8.B control; they override whatever arrangement Supervisor Klink may have thought he arrived at with Carrier Staerker. And the Step 4 settlement may be considered binding here since it was reached in a National Level case. Arbitrator Klein's award was in regular regional arbitration. Therefore, this grievance should be sustained.

Award

The grievance is sustained under Article 8.8.B of the National Agreement. Carrier Staerker shall be compensated three hours' pay at her overtime rate applicable on January 3, 1991.

Dated: June 12, 1991

  
Jonathan S. Liebowitz  
Arbitrator