

C#06949

IN THE MATTER OF
THE ARBITRATION

between

UNITED STATES POSTAL SERVICE)
and) Case No. H1N-3D-C 40171
NATIONAL ASSOCIATION OF) MACON, GA
LETTER CARRIERS)

Decision of the Arbitrator

Before
Neil N. Bernstein
Arbitrator

APPEARING:

FOR THE SERVICE: Kevin B. Rachel,
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OPINION OF THE ARBITRATOR

This proceeding raises the question whether a non-bargaining unit employee who attends meetings of the Joint Labor-Management Safety Committee as the representative of the National Association of Letter Carriers is entitled to be compensated when those meetings are held outside of his regular working hours.

I

Article 14 of the applicable collective bargaining agreement between the Postal Service and the American Postal Workers Union and National Association of Letter Carriers (which will be referred to hereafter as the "APWU/NALC Agreement") provides for Joint Labor-Management Safety Committees at the national, regional and local levels. The local committees are to be made up of "one person from each of the Unions and appropriate management representatives". The local Safety and Health Committee is to meet at least quarterly and Section 14.7 specifically provides that "the meetings shall be on official time".

This proceeding involves the local Safety and Health Committee in Macon, Georgia. One of the members of the Macon chapter of the National Association of Letter Carriers is Guy Gregory, who does not work in the collective bargaining unit represented by the NALC and covered by the Agreement involved in this proceeding. Instead, he is a rural letter carrier, whose wages, hours and working conditions are determined by a different

agreement between the Postal Service and the National Rural Letter Carriers Association. The terms of that contract differ in many material respects from the terms of the APWU/NALC Agreement.

In 1982, Mr. Gregory was elected President of the Macon Branch of the National Association of Letter Carriers and he proceeded to appoint himself as the NALC representative on the Macon Safety and Health Committee.^{1/} He continued as the NALC representative at least through the April 16, June 12, July 16 and July 31, 1984 meetings of the Macon Committee.

Mr. Gregory, as a rural carrier, is compensated on the basis of an "evaluated schedule", which in effect is an artificial working schedule, calculated from his actual route, that would theoretically be exactly sufficient to enable him to deliver his route. If Mr. Gregory actually gets his route delivered before the end of his "evaluated schedule", he is allowed to stop for the day without loss of wages. If, on the other hand, he works beyond the termination time in his "evaluated schedule", he does not receive overtime compensation for the additional time, but he accumulates that time until he has a total of eight hours of excess time, at which point he receives a day off without loss of pay or allowances.

1/

The agreement between the Service and the National Rural Letter Carriers' Association does not provide for a local Safety and Health Committee. Presumably, therefore, the union that represents Mr. Gregory does not have a representative on the Macon Committee.

The instant dispute relates to the question of compensation to Mr. Gregory for serving as NALC representative on the Safety and Health Committee. There is no disagreement with respect to meetings that were held during his "evaluated schedule" times; a substitute carrier was engaged to complete his route and Gregory attended the meetings without loss of pay or allowances. However, when the meetings were held outside of Mr. Gregory's "evaluated schedule" times, the Service took the position that he was attending on his own time and refused to provide him with any compensation or credit toward a day of administrative leave. The instant grievance protests the failure to pay him for those meetings.

The Union originally attempted to file a grievance on Mr. Gregory's behalf, but withdrew it when the Service objected to the Union's right to represent him. Thereafter, it filed the instant grievance on August 8, 1984 as a "class" grievance protesting the failure to afford the NALC representative the same treatment as the representatives of the other unions. The grievance has been processed through the pre-arbitration steps in the parties' disputes procedure. When, in all such prior steps, the Service denied the grievance, the Union invoked arbitration of it in this proceeding.

II

The Union argues that the APWU/NALC Agreement obligates the Service to place the Union's representative to the Joint Safety and Health Committee on "official time" for all meetings.

There is no exception in this language for people who do not work in the bargaining unit, although there is such an explicit exception to other provisions in the same Article. Management has agreed that the Union can utilize someone who works outside the unit as its representative, and that he is entitled to be compensated when he attends committee meetings that are held during his regularly scheduled hours. There is no distinction in the Agreement, the Union argues, between those meetings and meetings held outside his regular schedule. Moreover, it maintains, such a distinction is irreconcilable with the scheme and purpose of Article 14.

Secondly, the Union contends that this grievance is not being presented on Mr. Gregory's behalf, and that he has nothing more than an incidental interest in the outcome. Instead, it asserts, the grievance was filed on behalf of "all members of the Branch who have an interest in their right to a safe working place". Therefore, they have a right to be represented on the Committee by the person of their choice, which right become illusory if the person they select is not compensated.

Finally, the Union argues that the Service is opposing this grievance simply to disadvantage the particular local union. There is no monetary benefit to the Service, because Gregory can be replaced by a city carrier who would be entitled to compensation. Gregory, as a former local president, may be considered an activist who could be a thorn in management's side. The pool from whom the Union can select its representative should not be reduced.

III

The Service argues that rural carriers cannot look to the APWU/NALC Agreement as a source of any rights, and that permitting them to do so would violate the exclusive status of the National Rural Letters Carriers' Association. Although this proceeding was instituted as a class action, the Service asserts that Mr. Gregory is the only member of the class. Moreover, there was no showing, it contends, that Section 14.7 was intended to cover any employee other than those in the bargaining unit.

It also points out that the Union is seeking for Mr. Gregory to be compensated on the basis by which rural carriers are compensated in their agreement, which shows that rural carriers' rights derive from the rural carriers' agreement.

Secondly, the Service argues that it would be forced to assume a greater burden than it agreed to if it is forced to compensate Gregory as a rural carrier for time of committee meetings. Rural carriers are compensated on an entirely different basis and also receive equipment maintenance allowances. In addition, rural carriers normally receive higher pay than city carriers, which would impose a still greater burden on the Service.

IV

The Arbitrator rules that the instance grievance must be denied, for the following reasons:

A

First of all, there is no one with proper standing on whose behalf the grievance can be brought.

The Union sought to process this grievance as a "class grievance" on behalf of the people in the bargaining unit who wish to be represented by Mr. Gregory. However, they are not injured because the Service is accepting Mr. Gregory as their representative in all respects even though he does not work in the unit.

The Union contends that the unit members are injured because the representative they selected is not being compensated when he attends meetings that are held outside of his regular working hours. However, there is no showing that in fact they have been unable to persuade Mr. Gregory or anyone else in a comparable position to serve on the committee because of the lack of compensation. Moreover, the Union recognizes that its representative would not be entitled to any compensation for attending meetings if he or she were not a postal employee. The Arbitrator can find no difference between that case and the one presently before him. In both cases, the Service would be refusing to compensate the Union's selected representative which might make it harder to induce that person to serve.

There is no doubt that the injured party in this case is Mr. Gregory. The only issue is whether his pay checks for the periods and his overtime credits have been properly computed.

Moreover, he appears to be uniquely situated and not simply one member of some broader class.

Therefore, Mr. Gregory is the only person who has standing to complain about the fact that he is not being compensated for attending Safety and Health Committee meetings that are held outside of his regular working hours. Since he is not a member of the bargaining unit covered by the APWU/NALC Agreement, questions regarding the correctness of the compensation he is receiving cannot be resolved in an arbitration proceeding instituted and processed under this Agreement.

B

Secondly, the APWU/NALC Agreement does not create any substantive rights for postal employees outside the bargaining unit covered by the APWU/NALC Agreement.

The Union's substantive argument rests solely on the fact that the APWU/NALC Agreement provides that all Safety and Health Committee meetings are to be held "on official time". It contends that this language should apply to all postal employees, whether they are inside or outside of the bargaining unit covered by that Agreement. When they are covered by a different agreement, the Union asserts that the "official time" characterization must be carried over from the APWU/NALC Agreement to theirs.

This argument is unpersuasive, for two reasons. First of all, the APWU/NALC Agreement explicitly states in Article 1.3 that it does not apply to a number of postal employees, specifically including rural letter carriers. Therefore, the "official

"time" characterization on which the Union relies is meaningful only for the employees covered by the Agreement.

Secondly, Mr. Gregory is a member of a different bargaining unit, which has a separate and distinct set of rules and regulations governing compensation for its members. The agreement covering that unit, which was placed into evidence in this proceeding, does not recognize the Joint Safety and Health Committee or provide for representation on that committee. Instead, the rural carriers' agreement provides that safety and health are proper subjects for discussion in labor-management meetings, which are to be attended by local stewards and not special Safety and Health representatives. It would be inconsistent with this arrangement to require the Service to compensate members of the rural carrier unit for attending meetings of different committees which were created by other unions to deal with the same problems on behalf of different employees.

C

Finally, the interpretation of the APWU/NALC Agreement put forward by the Union allows it to regulate the employment conditions of rural carriers in derogation of the rights of the National Rural Letter Carriers Association.

The issue before the Arbitrator involves the duties a rural letter carrier is entitled to compensation for performing. There is only so much compensation available to be paid all rural letter carriers and that any sums paid to one member of that unit are not available for payment to other members of the same unit for the duties they perform.

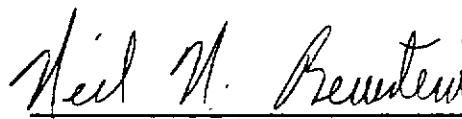
Therefore, the National Rural Letter Carriers Association is the union to determine whether to seek compensation for rural carriers for services that they render for other unions outside of their regular working hours, or whether that money should be allocated to something else of greater value to the unit as a whole. The National Association of Letter Carriers is not entitled to intrude itself into that determination. In effect, the NALC is trying through this grievance to bargain on behalf of and represent Mr. Gregory, which it is not entitled to do.

D

For all of the above reasons, the Arbitration concludes that the instant grievance must be, and it hereby is, denied.

THE AWARD

The Arbitrator denies the grievance filed on August 8, 1984 as a class grievance.


Neil N. Bernstein
Neil N. Bernstein
Arbitrator

Dated: April 8, 1987