

C# 00201

IN THE MATTER OF THE ARBITRATION)
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 between)
)
 THE UNITED STATES POSTAL SERVICE)
)
)
 and)
)
 THE AMERICAN POSTAL WORKERS UNION)

C1C-4E-C 21318
CLASS ACTION

C1C-4E-C 21319
CLASS ACTION

C1C-4W-C 21320
CLASS ACTION

WOOSTER, OHIO
FEBRUARY 10, 1984

RECEIVED MAR 26 1984

APPEARANCES

POSTAL SERVICE

John L. Richardson, Labor Relations Specialist

UNION

Wayne Bertram, National Vice President

ARBITRATOR

James P. Martin

ISSUE

Was the Postal Service in violation of the National Agreement and specifically Articles 7 and 8, in its assignment of personnel the dates involved in the three grievances? If so, what is the remedy?

NATURE OF CASE

On June 26, 1983, eight clerks were excessed from the Wooster Post Office to Canton. During the week immediately prior to the excessing, training was being done in order to utilize the remaining employees in the positions to which they were transferred. Starting approximately June 18th, and continuing through the date of the hearing, the Postal Service utilized letter carriers and, in one case, a maintenance employee to do clerk work. The acknowledged reason for these assignments was to avoid overtime in the clerk craft, and the absence of an adequate number of clerks on the ODL. The Postal Service was reluctant to force clerks on overtime when they had a part time flexible carrier who had previously been a clerk and who was able to do the work. The essential need for additional time in the clerk craft was obviously over zealous excessing of clerks. Too few clerks remained to do the necessary work at Wooster, and the Postal Service resorted to crossing craft lines at regular pay rather than going to the employees in the clerk craft on overtime. Further, because of some clerks removing their names from the ODL, the Postal Service would have had to force clerks on overtime, whereas the part time flexible carrier desired the work.

The parties agreed that the provisions of Article 7.2B and C did not apply in this case.

The parties further agreed that there would be no need for computation of days and time involved, because the parties have an adequate record of these facts, should the decision be adverse to the Postal Service.

One additional clerk position was filled at Wooster in January, and the problem was reduced, though not eliminated. According to the Union, the Postal Service exceeded too many clerks, and reduced the work force of clerks below the level necessary to perform the work required. The Postal Service had no right to cross craft lines to get the work done, but was obligated to use clerks on overtime, until it brought the number of clerks at Wooster up to that necessary to do the required work. The Union acknowledged that Article 7.B and C were exceptions to the prohibition on crossing craft lines, but argued that the conditions of those two sub-paragraphs did not exist at Wooster, and the Postal Service was therefore totally wrong in crossing craft lines in order to avoid overtime, or the forcing of clerks on overtime.

According to the Postal Service, Article 8.5D gives the Postal Service permission to force employees on overtime, but does not require the forcing of employees on overtime. In addition, Article 8.5F limited the amount of time to which clerks could be forced, and the Service would be allowed to

use any employees needed in order to get the necessary work done. Finally, an Award in favor of the clerk craft employees who were not on the ODL, or who specifically removed their names from it, would be an unjust enrichment of those employees, and would be grossly inequitable.

APPLICABLE CONTRACT PROVISIONS

ARTICLE 8

HOURS OF WORK

Section 1. Work Week

The work week for full-time regulars shall be forty (40) hours per week, eight (8) hours per day within ten (10) consecutive hours, provided, however, that in all offices with more than 100 full-time employees in the bargaining units the normal work week for full-time regular employees will be forty hours per week, eight hours per day within nine (9) consecutive hours. Shorter work weeks will, however, exist as needed for part-time regulars.

Section 2. Work Schedules

A. The employee's service week shall be a calendar week beginning at 12:01 a.m. Saturday and ending at 12 midnight the following Friday.

B. The employee's service day is the calendar day on which the majority of work is scheduled. Where the work schedule is distributed evenly over two calendar days, the service day is the calendar day on which such work schedule begins.

C. The employee's normal work week is five (5) service days, each consisting of eight (8) hours, within ten (10) consecutive hours, except as provided in Section 1 of this Article. As far as practicable the five days shall be consecutive days within the service week.

Section 3. Exceptions

The above shall not apply to part-time employees. Part-time employees will be scheduled in accordance with the above rules, except they may be scheduled for less than eight (8) hours per service day and less than forty (40) hours per normal work week.

Section 4. Overtime Work

A. Overtime pay is to be paid at the rate of one and one-half (1½) times the base hourly straight time rate.

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.

C. Wherever two or more overtime or premium rates may appear applicable to the same hour or hours worked by an employee, there shall be no pyramiding or adding together of such overtime or premium rates and only the higher of the employee's applicable rates shall apply.

Section 5. Overtime Assignments

When needed, overtime work for regular full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

A. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an "Overtime Desired" list.

B. Lists will be established by craft, section, or tour in accordance with Article 30, Local Implementation.

C.1.a. Except in the letter carrier craft, when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected in order of their seniority on a rotating basis.

b. Those absent, on leave or on light duty shall be passed over.

2.a. Only in the letter carrier craft, when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the list.

b. During the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the list.

c. In order to insure equitable opportunities for overtime, overtime hours worked and opportunities offered will be posted and updated quarterly.

d. Recourse to the "Overtime Desired" list is not necessary in the case of a letter carrier working on the employee's own route on one of the employee's regularly scheduled days.

D. If the voluntary "Overtime Desired" list does not provide sufficient qualified people, qualified full-time regular employees not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee.

E. Exceptions to C and D above if requested by the employee may be approved by local management in exceptional cases based on equity (e.g., anniversaries, birthdays, illness, deaths).

F. Excluding December, only in an emergency situation will a full-time regular employee be required to work over ten (10) hours in a day or six (6) days in a week. In addition, no full-time regular employee will be required to work overtime on more than five (5) consecutive days in a week.

DISCUSSION

Arbitrator Bloch in Case #A8-W-0656, decided April 7, 1982, and quoted with approval by Arbitrator Mittenthal in Case #A8-E-1157, stated:

"...[Article VII,] Section 2 deals with, among other things, limited circumstances wherein the inherent proscription against crossing craft lines is inapplicable. Paragraph B...specifies that the eventuality of 'insufficient work' on a given occasion will justify the crossing of craft lines for the purpose of providing an employee an eight-hour day. [Paragraph] C...refers primarily to a situation where 'exceptionally heavy work' occurs in another occupational work group...[Paragraph] C... provides that, when such heavy workload occurs, and when there is at the same time a light load in another group, craft lines may be crossed.

"Taken together, these provisions support the inference that Management's right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforeseeable. There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel usage; this is not what the parties have bargained. That an assignment across craft lines might enable Management to avoid overtime in another group for example, is not, by itself, a contractually sound reason. It must be shown either that there was 'insufficient work' for the classification or, alternatively, that work was 'exceptionally heavy' in one occupational group and light, as well, in another.

"...the reasonable intent of this language [Paragraphs B and C is] ...not to provide means by which the separation of crafts may be routinely ignored but rather to provide the employer with certain limited flexibility in the face of pressing circumstances..." (Emphasis added)

What more is there to say? The above cases, cited to me by the Union, appear to answer the questions presented in these grievances as clearly as if they had been presented to Arbitrator Bloch for an Award. Given the facts in this case, I would be required to find that Arbitrator Bloch was wrong, his error continued by Arbitrator Mittenthal, or essentially state that the question presented by the Union has been answered, and in its favor. I do so. As set out almost two years ago, Article 7.2B and C set out the negotiated conditions under which craft lines can be crossed, and the facts in these grievances do not fit within those requirements. The grievances are allowed.

There remains the question of remedy. I concur with the Postal Service that employees who have taken their names off the ODL would be unjustly enriched if an Award were made which paid them. Therefore, the appropriate number of hours in each month involved, worked in the clerk craft by employees other than clerks, is to be paid at the overtime rate to those employees who were on the ODL. Since this is a penalty because of a Postal Service violation, it does not necessarily have to conform to reality. In other words, if there were 40 hours worked, only one clerk was on the ODL, and he had already worked 40 hours, he is to receive 40 hours at overtime rates. The payment is to be divided evenly among all clerks on the ODL for each month in question, month by month,

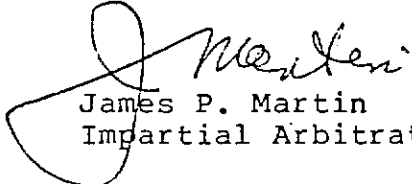
in that amount of hours constituting improper assignment under the terms of this Award.

Should the parties discover that they are less capable of calculating this then they felt they were at the hearing, jurisdiction is retained for 30 days, during which time either party may request further evidenciary hearings to make the precise determinations called for in this Award.

AWARD

That the grievance shall be and hereby is allowed, as set out above.

March 13, 1984
Lake Bluff, Illinois


James P. Martin
Impartial Arbitrator