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REGULAR ARBITRATION PANEL

IN THE MATTER OF ARBITRATION

between

UNITED STATES POSTAL SERVICE

and

**NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO**

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) **GRIEVANT: Class Action**
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CASE NOS.
USPS: B01N-4B-C
07234099

NALC: CILO
12 0607

Before: Robert T. Simmelkjaer, Esq.
ARBITRATOR

APPEARANCES

FOR THE USPS

Joseph Panek, Labor Relations Specialist

FOR THE NALC

Ronald P. Augustus, Local Business Agent

Place of Hearing: Waterbury, CT
Date of Hearing: November 9, 2007

AWARD

**Management did not violate Article 7.1.B.1 when they hired two
(2) casual employees at the Torrington, CT Post Office.**

December 5, 2007


Robert T. Simmelkjaer

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**John J. Casciano, NBA
NALC - New England Region**

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**VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS**

BACKGROUND

Pursuant to the procedure for arbitration contained in the Collective Bargaining Agreement between the United States Postal Service (hereinafter "the Service") and the National Association of Letter Carriers, AFL-CIO (hereinafter "the Union"), the undersigned was selected to hear and determine the following

ISSUE: Did Management in the Torrington, CT Post Office violate the National Agreement, specifically Article 7.1.B.1 when they hired two (2) casual employees in lieu of career employees?
If so, what shall be the remedy?

At the hearing, the parties were given ample opportunity to present their respective positions, including testimonial and documentary evidence. The record consists of two (2) Joint Exhibits. In addition, the parties submitted several arbitration awards.

RELEVANT CONTRACT PROVISION**ARTICLE 7****EMPLOYEE CLASSIFICATIONS****B. Supplemental Work Force.**

1. The supplemental work force shall be comprised of casual employees. Casual employees are those who may be utilized as a limited term supplemental work force, but may not be employed in lieu of full or part-time employees.

CONTENTIONS OF THE PARTIES

UNION POSITION

The Union, which has the burden of proof in this contract interpretation grievance, argues that Torrington, CT management hired two (2) casual employees in lieu of career employees during a "normal period" not characterized by heavy mail volume or the prime vacation leave period. Although "a few carriers were absent due to injury, a removal had occurred, and the Torrington staffing was down two carriers," the Union contends that the Service hired the casuals primarily to avoid the higher cost of career employees and their Union representation.

As a remedy, the Union has sought the reimbursement of all carriers on the OTDL and those PTFs who could have worked the hours management allocated to the casual employees.

Mr. Timothy Thibault ("Thibault"), Chief Shop Steward, testified that mail volume was normal in March-April 2007 when the two casuals were hired. Moreover, the prime time vacation period had not begun as it was scheduled from the second week in June through the third week in September 2007.

According to Thibault, the management of the Torrington Post Office knew that it had 48 carriers authorized, but only 46 in its staffing complement. Although Postmaster Dotson had requested that the USPS District Office fulfill the 48 carrier authorization, the complement was never

brought up to 48 carriers. In his recollection, the casuals performed carrier work, but at a lower salary and without benefits or Union representation.

On cross-examination, Thibault acknowledged that the two casuals hired, Robin Smith and Donata Hilton, had been Rural Carrier Associates (RCAs) prior to their appointment as casuals. In other words, they were "dual appointments" and so identified on their appointment documents.

In reviewing the status of the carriers who were not available, Thibault acknowledged that the following absences were outside the normal pattern:

- Beavers: motor vehicle accident
- Cuevas: broken leg (long-term illness)
- Godenzi: maternity leave
- Cassotto: Notice of Removal, pending arbitration

Whereas there was a "general feeling" that Beavers would not return to his route, until his route was vacated, he still "owned it." Similarly, Cassotto's route could not be posted, if at all, until his grievance was adjudicated. Also, Godenzi retained her route while on maternity leave.

On redirect examination, Thibault testified that, given Beavers' motor vehicle accident, there was "a possibility that he would never return." Since the two injuries and the maternity leave were covered under the FMLA and such FMLA issues occurred routinely throughout the year, Thibault maintained that Torrington management should have anticipated such occurrences and been able to handle these matters without hiring casuals.

SERVICE POSITION

The Service relies on Arbitrator DAS's Award in Case No. Q98C-4Q-C00100499 (C-22465) (2001) to support its position that the casuals were hired in the appropriate circumstances. The award, inter alia, states:

Generally, casuals are utilized in circumstances such as heavy workload or leave periods; to accommodate any temporary intermittent service conditions; or in other circumstances where supplemental workforce needs occur. Where the identified need and workload is for other than supplemental employment, the use of career employees is appropriate.

The Service notes that the Delivery Service Staffing Analysis ("DSSA") for Torrington, CT was 48 and therefore down two carriers. It further notes that four carriers were absent for an extended period, including two long-term injuries, a disciplinary action, and a maternity leave. With two additional carriers absent in March-April 2007, the daily absentee rate of 3-4% was exceeded. Therefore, management received permission to hire two RCAs as dual appointees (i.e., casuals/RCAs).

According to the Service, the hiring of the two casuals addressed a "temporary condition" since all of the four absentees were likely or might possibly return to work.

Postmaster Fred Dotson ("Dotson") testified that he hired the two casuals because the Torrington staffing complement was temporarily down six employees. He recalled that without these 6 carriers, his daily

operation had become problematic with carriers returning late from their routes and the station missing the 6:00 p.m. truck dispatch.

PM Dotson acknowledged that his DSSA authorization was 48 carriers or 1680 total weekly hours.

With two carriers absent due to injuries, one for maternity leave and one subject to a Notice of Removal, PM Dotson testified that he needed immediate replacements to reduce the excessive use of overtime.

Once RCAs Smith and Hilton were hired, they not only covered days off for the rural craft but also assisted in carrier deliveries. Both Hilton and Smith were hired for 90 days. Hilton, who eventually became a Transitional Employee ("TE"), worked 40 hours as a letter carrier and 8 hours as a RCA. Smith continued to work as a RCA for several offices, but was "more out than in." In PM Dotson's view, he effectively had only 1-1/2 casuals to assign given their schedules.

While he expected Cuevas, Beavers, and Godenzi to return, he expected the Service would prevail in removing Cassotto. "Since I expected them to return I could not post these still permanent positions."

On cross-examination, PM Dotson acknowledged that he did not request permission to hire PTFs prior to hiring the two casuals. He could not recall the last time he had asked the District Office to meet his 48 carrier complement. According to PM Dotson, he would not have been allowed to hire replacements based upon a higher percentage of FMLA usage unless the problem was continuous.

DISCUSSION

Considering the evidence in its entirety, the Arbitrator is persuaded that management's use of the casuals in the Torrington, CT Post Office around March-April 2007 met the DAS Award criteria for such use by "accommodat[ing] any temporary intermittent service conditions; or in other circumstances where supplemental workforce needs occur."

While the Union has correctly noted that the continued and repeated use of casuals to cover predictable and recurring events would constitute a contract violation unless such use was consistent with the DAS Award and Downes Memorandum, which both allow the use of casuals "without limitation" and under emergent "other circumstances," the Arbitrator finds that the use of two casuals in the instant case was proper.

The evidence of record established that the conversion of two Rural Carrier Associates to dual appointment casual status provided partial coverage for four regular carriers out on extended leave. These regular carriers were absent for the following reasons:

1. Robert Beavers: Out indefinitely due to a motor vehicle accident
2. Robert Cassotto: Administrative leave pending removal
3. Francisco Cuevas: Extended leave broken leg
4. Christine Godenzi: Maternity Leave

The testimony of Postmaster Dotson established that, with the exception of Cassotto, who had been issued a Notice of Removal, the

expectation of management was that three carriers would return to work following their leaves of absence. Whereas the Union has argued that since the Service routinely encounters long term illness or injury, it should have hired two PTFs to not only cover the four carriers but also fulfill its 48 carrier complement, the Arbitrator notes that had two full-time employees been hired in the absence of actual vacancies, the Service could have exceeded its 48 carrier complement once one or more of the carriers on leave returned.

On the one hand, the DSSA staffing analysis indicates that the Torrington, CT Post Office had experienced a shortage of two carriers (one PTF/ one Regular Route Carrier) for an undetermined period of time. Clearly, had the Torrington Office been maximized at 48 carriers, the operational disruption caused by the four carriers on extended leave could have been minimized. On the other hand, there is no evidence that a nexus existed between District management's understaffing of the Torrington, CT Post Office and the decision of local management to hire two casuals on a dual appointment.

PM Dotson provided credible testimony that the cumulative impact of having four carriers absent on long term leave simultaneously combined with his excessive use of overtime led to the dual appointment of two RCAs as carriers. Although PM Dotson corroborated the testimony of Chief Steward Thibault that two of the carriers, Beavers (out for a motor vehicle accident) and Cassotto (out on a NOR) might never return, the fact remains

that until their situations were resolved their positions were not vacant and therefore management had only temporary absences to fill.

In the Union's view, the four long-term emergent absences combined with the pre-existing understaffing of the Torrington Post Office based on the DSSA required management to hire two full-time carriers to fulfill its 48 carrier complement, however, in the Arbitrator's opinion, Article 7.1.B.1 does not stand for the proposition that management must maximize its staffing complement before it can utilize casuals.

Under these circumstances, the Arbitrator finds that the Service's actual use of 1-1/2 casuals to assist in mail delivery until the status of the carriers who were injured, on maternity leave, or involved in the disciplinary process, could be resolved was appropriate. Unlike those situations where the status of the absent carrier is under management's control, occurs on a routine or predictable basis, or supplants work that a full-time carrier could perform on a long-term basis, Article 7.1.B.1, as interpreted by Arbitrator DAS, permits the hiring of casuals to cover emergent or intermittent absences "without limitation."

Undoubtedly, the Union would prefer that a full-time employee be hired whenever the return of an incumbent employee is doubtful. And, although the Union has correctly noted that the shortage in staffing at the Torrington, CT Post Office exacerbated the coverage of the absent carriers, the DSSA is a management generated document whose application is independent of management's rights under Article 7.1.B.1 to hire casuals in

appropriate circumstances. While the extended absence of employees at some level is predictable and could be accommodated by the availability of part-time flexible employees, the magnitude and confluence of these type absences in the instant case combined with the probability that at least two of the carriers would return in the near future justified, in the Arbitrator's opinion, management's use of casuals to supplement carriers during this temporary coverage situation.

The DAS Award and Downes Memorandum clearly differentiate two categories in which casual employee use is appropriate, namely "heavy workload and leave periods" such as the Christmas holiday and prime vacation periods and "temporary intermittent service conditions." The use of casuals in Torrington falls into the latter category given the concentration of unpredicted long-term absences that the current complement of carriers could not efficiently manage.

Moreover, management's use of casuals in the instant case was de minimus. Although casuals Hilton and Smith were both hired for 90 days on dual appointments, Hilton worked for 40 hours as a carrier and 8 hours as a RCA and Smith's availability was limited as she continued to work predominately as a RCA.

The instant case is distinguishable from Arbitrator Cenci's decision in Case No. B01N-4B-C 07022264 (2007) because management in that case hired a casual seven years after the two employees, whose duties the casual had been hired to perform, "had reached maximum medical

improvement and accepted rehabilitation job offers..." As Arbitrator Cenci further noted:

The medical restrictions of those two limited duty employees were no longer temporary, fluctuating or subject to frequent revisions; instead their limitations were long-term, predictable and ongoing. The staffing needs created by the long-term medical restrictions of two employees and the planned retirement of two others are not the type of temporary, intermittent conditions that can be staffed by the supplemental work force. Management had the ability and the obligation to foresee these ongoing needs, plan for them and staff the New London Post Office accordingly by using career employees.

In the instant case, the probability existed that two of the four carriers absent on long-term leave would return and there was a possibility that all four carriers would assume their prior positions – none of which were officially vacant.

Case No. E98N-4E-C 00290172 et al. (2004) decided by Arbitrator Frankman is distinguishable because she concurred with the Union that "there had been no change in the distribution of annual leave time over the course of the year; there were no noteworthy changes in the workload; and there were no other events or requests for leave time that would support the hiring of casuals instead of career employees." In the instant case, the simultaneous, extended absence of four carriers constitutes an unanticipated event.

Case No. E98-4E-C 00173149 (2004) is a Clerk Craft Case where Arbitrator Bosland sustained a grievance based upon management's atypical use of a casual to fill a PTF vacancy before and after the choice

vacation period when it had never before used a casual in this manner. Moreover, he found a proximate relationship between the hiring of the casual and the repeated denials of local management's request to fill a PTF vacancy. The case is distinguishable from the instant case in that the prime vacation period was a predictable and recurring event for which management had not previously utilized a casual before and after; thus, a lack of justification for continued use was discerned.

The instant award is in accord with Arbitrator Deinhardt's decision in Case No. B01N-4B-C 07012288 (2007) where she cited this Arbitrator's Award in Case No. B94C-1B-C 98030958 (2002) et al. and found:

arbitrators have held that casuals may be used to provide a supplemental work force in circumstances where there are temporary shortages of carriers due to career carriers being on leave or otherwise unavailable for regular duty. There is no requirement in the Agreement or in arbitral precedent that the shortages be unanticipated or unusual, only that they be as a result of, inter alia, periods of heavy workload or leave.

Accordingly, the instant grievance is denied.