

C# 10414

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: GMF Boston, MA
CASE NO: N7N-1E-C 29413
(GTS # 6564)
6616

BEFORE: DANIEL G. COLLINS

ARBITRATOR

APPEARANCES:

For the U. S. Postal Service: Michael Powers, Manager, Quincy Post Office

For the Union: Carl Soderstrom, Trustee, Branch 34

Place of Hearing: GMF Boston, MA

Date of the Hearing: November 7, 1990

AWARD: Management at the West Roxbury Post Office did not violate Article 8.5 of the National Agreement on November 25, 1989. The grievance is denied.

Date of Award: November 15, 1990

Daniel G. Collins
(Signature of Arbitrator)

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The Issue

The parties did not agree on a precise issue. The Arbitrator finds the issue to be whether management at the West Roxbury Post Office violated Article 8.5 of the National Agreement on November 25, 1989 when employees who were not on the overtime desired list ("ODL") were utilized to work overtime although employees on the ODL had worked less than 12 hours that day and, if so, what shall be the remedy?

Facts

Article 8.5 provides in part as follows:

G. Full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the "Overtime Desired" list:

1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.F); and
2. excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.

It is undisputed that on November 25, 1989--the Saturday following Thanksgiving--overtime was worked by Carriers who were not on the ODL while Carriers on the ODL worked less than 12

hours.

The Parties' Positions

The Union argues that the facts make out a clear violation of Article 8.5. The Union asks that the employees on the ODL be paid at the applicable rate for all hours on November 25 up to 12 that they did not work, that employees not on the ODL who were required to work overtime be paid at the penalty rate, and that the Service be ordered to cease and desist violating Article 8.5 at West Roxbury. The Postal Service argues that overtime for the employees on the ODL was maximized within the limits of legitimate operational needs--the "operational window"--of the West Roxbury Post Office. The Union replies that neither the National Agreement nor applicable regulations recognize any operational window and that even assuming for purposes of argument that such a concept was relevant, there was no operational window here--management had never given any notice that there were only certain operating hours at West Roxbury.

Discussion

The parties have provided the Arbitrator with 31 arbitration decisions, some at the national level, dealing with the meaning and application of Article 8.5. Unfortunately the national level decisions, all by Arbitrator Richard Mittenthal, did not have occasion to deal with the precise point at issue here, though they did emphasize the Services' duty under 8.5 to maximize, up

to 12 hours, the working time of employees on the ODL before overtime is assigned off the list.

A number of arbitrators at regional levels have recognized the concept of a "window of operations." While that term may suggest a more firmly structured concept than is the case, there is, in this Arbitrator's view, a sound basis for the concept--the common-sense necessity of accommodating Article 8.5 with the Postal Service's right, recognized in Article 3, to conduct efficient operations utilizing its personnel and facilities in a manner intended to best serve its customers and its obligation under Article 14.1 to ensure that such operations are safe. Stated another way, it is only reasonable to read the National Agreement as recognizing that the maximization of work time for ODL employees must be accomplished within the parameters of safe operations conducted at the times the Service in good faith determines to be appropriate, to service its customers. In practical terms that means that Article 8.5 cannot be read to require the Service to deliver mail at times when there are no business customers to receive it, or at times when no residential customers want it, or under circumstances where delivery is dangerous or just plain inefficient.

The evidence establishes that as long as memory reaches--at least 17 years--with the exception of one period not here relevant the West Roxbury Post Office has closed, for delivery and delivery support functions, at 5:00 p.m. The Union argues that management never announced this fact; the Arbitrator

believes that it is not necessary to announce what everyone concerned has always known. Furthermore the 5:00 p.m. closing hour, particularly on a winter Saturday evening, can hardly be said to constitute an abuse of management's discretion to make determinations as to how best to service postal customers. The principal thrust of the Union's case before the Arbitrator is that management had improperly refused to extend the closing hour on November 25; the Arbitrator, for the foregoing reasons, does not agree with that contention.

In reaching the foregoing conclusion the Arbitrator has taken into consideration several Step 3 decisions finding Article 8.5 violations at West Roxbury. The Arbitrator does not think, though, that such decisions are binding here, nor does he regard them as persuasive of the Union's claim.

The Union argues that management at West Roxbury was derelict in failing to bring Carriers in early in November 25. The Arbitrator does not agree. Management had no reason to have early reports--the overtime problem was created by 20 hours of unscheduled leave being taken on November 25.

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named Parties, and dated 1987-90 and having been duly sworn, AWARDS as follows:

Management at the West Roxbury Post Office did not violate Article 8.5 of the National Agreement on November 25, 1989. The grievance is denied.

Daniel G. Collins

Daniel G. Collins, Arbitrator

State of New York)
) ss.:
County of New York)

I, Daniel G. Collins, affirm, on my oath as arbitrator, that the foregoing is my award.

November 15, 1990
Dated

Daniel G. Collins

Daniel G. Collins, Arbitrator