

C# 10597

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION

Between

UNITED STATES POSTAL SERVICE

And

NATIONAL ASSOCIATION OF LETTER CARRIERS

GRIEVANTS: CLASS

Dickey Grooms &

Jerry Gillihan

POST OFFICE:

Camden, TN

CASE NUMBER:

S7N-3C-C-30101

BEFORE: P. M. WILLIAMS, ARBITRATOR, SOUTHERN REGION

APPEARANCES:

FOR THE POSTAL SERVICE:

Carolyn Shirkey, Labor Relations Representative, Field

FOR THE NATIONAL ASSOCIATION OF LETTER CARRIERS:

Andy Barnett, Local Business Agent

PLACE OF HEARING: Post Office, Camden, TN

DATE OF HEARING: December 13, 1990

DECISION AND AWARD

BACKGROUND:

The grievants are employed as letter carriers and assigned to the post office, Camden, TN. One is a full time regular carrier, the other is a part time flexible carrier.

The parties have no dispute over what happened and precipitated the filing of the instant grievance. On May 26, 1990, the office had 3 regular routes, and three full time regular carriers were assigned to them. Regular carrier Pierce was on annual leave. Carrier Cary was off duty on his regular non-scheduled day. Carrier Grooms was on duty and was performing his regular assigned duties on route #2.

After working approximately 2 hours PTF carrier Eubanks, who apparently had been casing route #3, tendered his resignation to superintendent of postal operations Christopher (SPO), making it effective immediately and leaving the office at about 0900 hours. PTF carrier Gillihan was on duty at the time and was casing route #1. PTF clerk Weatherly was also on duty. Before transferring into the clerk craft she had worked as a rural letter carrier associate for about 2 years.

When carrier Eubanks left the SPO instructed carrier Grooms to case route #3 rather than complete the casing and delivering of route #2. He assigned clerk Weatherly to deliver a portion of route #2 (around the town square and on Main St), then he (the SPO) completed the casing and delivering of the remainder of route #2's mail. He finished the route at approximately 1430 hours.

Carrier Grooms completed the casing which PTF carrier Eubanks had started on route #3. He then delivered that mail, working a total of 8.75 hours on the 26th, which was a Saturday. PTF carrier Gillihan apparently completed all of the work on route #1. He worked a total of 8.0 hours. By his own admission the SPO worked 4.0 hours on route #2.

The grievance asks for pay for the hours the SPO worked and that it be divided between carriers Grooms and Gillihan, whom, it was alleged, could have and should have been assigned to do the work the SPO improperly performed.

The parties agree the grievance has been timely and properly processed through the grievance-arbitration procedure and that it has been assigned to me for purposes of my rendering a decision and award.

All interested parties appeared at the hearing and were given an opportunity to present such evidence, through the testimony of witnesses and exhibits as was deemed appropriate under the circumstances. All witnesses were placed under oath and were cross-examined by the opposing party. The parties made closing statements to end the hearing.

POSITION OF THE PARTIES:

National Association of Letter Carriers (Union):

The Union conceded that the resignation of PTF carrier Eubanks created a unique situation. It contended however his leaving work did not create an emergency situation of the type contemplated by Article 1, Section 6 of the National Agreement. Rather, it claimed ample time remained in the work day for the grievants to complete whatever work was required to properly deliver the mail that day. It said the SPO's claim of PTF clerk Weatherly being incapable of delivering more mail than was assigned to her to deliver was not true. It also said the SPO's performing bargaining unit work was improper, therefore the grievance should be sustained, and it asked that I so order.

United States Postal Service (Employer):

The Employer contended that Article 1, Section 6 of the NA plainly covered what had been done in this instance. It claimed the resignation of Mr. Eubanks, without prior notice, created an emergency which required an immediate response otherwise the day's mail would not be delivered not the raw mail collected. It also contended the means used by the SPO to meet the emergency were appropriate and were authorized under the circumstances. It said the grievance was without merit and should be denied, which it asked that I do.

ISSUE: Did the Employer violate the terms of the NA and applicable rules and regulations on May 26, 1990, when the SPO performed 4 hours bargaining unit work, and if so, what is the proper remedy?

OPINION:

I am of the opinion and so find, the Employer violated the terms of the NA on May 26, 1990 when the SPO performed bargaining unit work.

I will briefly explain below the reasons for my forming this opinion.

At the outset it is to be noted that management at the Camden office has not seen fit (using the SPO's term) "to implement" an overtime desired list (ODL). He gave no further explanation for failing to meet the requirements of the NA regarding overtime assignments and the use of the ODL to select the letter carrier who would be given those assignments.

The SPO's explanation for believing that he had no choice but to step in and fill the void created by the unexpected resignation and departure of PTF carrier Eubanks seemed to come about as a result of his notion that PTF clerk Weatherly did not know the names of the streets in the residential part of town, and that she would be unable to deliver mail there because name signs did not appear at each street corners, which necessarily meant that she could not deliver mail outside the downtown business area and along Main Street. He also said the dispatch time of the office was 1615 hours and that all work on the routes must be completed by then, which, per him, could not be accomplished without him going out onto the street himself, which he did.

The letter carriers are said to be scheduled to return from the street at 1530 hours. The record shows that on a heavy mail day it is not unusual for one or more of them to return to the office at 1700 hours. (The latter is a fact not disputed by the SPO). It can be said therefore that while it is desirable from an operations efficiency standpoint for carriers to return to the office in time for the raw mail to be processed for dispatching at 1615 hours, the fact remains that that does not always occur. Moreover, no claim was made by the SPO that delaying return of the raw mail as a result of the 1700 hour arrival at the office created an emergency situation which either was or is comparable to what allegedly happened here. It seems reasonable to conclude therefore that in times past the failure of a carrier to return to the office in time for his raw mail to be processed for dispatching was not considered to be anything more than a routine circumstance (albeit non-desirable), as distinguished from being an emergent one. And if that be the case; i.e., no emergency being created when raw mail is not dispatched, it should follow that the SPO's decision should not have been influenced by that fact, but he said it was so influenced. The question then becomes: did or could Ms. Weatherly's lack of familiarity with the streets of the town compound the problem of Mr. Eubanks' quitting to the end that the SPO could reasonably call the situation an emergency and thereby effectively cast aside the contractual commitment of the Employer that supervisors would not undertake bargaining unit work except in emergencies?

I believe, and so find, the question last posed must be answered in the negative for several reasons, not the least of which is occasioned by the fact that at the hearing the SPO admitted that he did not know, nor did he ask Ms. Weatherly whether she had knowledge of the streets of the town. His assertions concerning her limitations therefore are untrue at worst, and made from whole-cloth at best. Moreover, he used her as an excuse for what he did rather than as a legitimate reason for it. His conduct in that regard is nothing short of despicable, and is very much unbecoming of a supervisor.

It seems to me that even if Ms. Weatherly did not know the names of the streets in the town it would have been a simple matter to draw a map to provide her with whatever she might need in that regard. And it also seems to me that the grievants could have been utilized at least to the point of being paid at penalty overtime rates at less cost to the Employer than was its losing the regular services of the SPO for the time that vacated his regular duties and performed bargaining unit work. Simply put, the SPO's solution for solving what he claimed was an existing emergency situation was "penny poor and pound foolish" from an economic standpoint for the Employer. Moreover, absent an emergency it was a clear violation of the specific terms of the NA.

I am of the opinion, and so find, the situation under discussion and which occurred on May 26, 1990 at the Camden office did not come within the ambit of the exceptions that are listed in Article 1, §6, therefore the SPO erred when he undertook to perform bargaining unit work. Because of his error the grievance must be, and the same hereby is, sustained.

On the basis of the entire record in this case the undersigned makes the following

AWARD

The grievance is sustained in accordance with the opinion expressed above. The grievants shall each be paid for an additional two hours of work at the appropriate overtime rate for their respective classifications and the hours each actually worked for the date of May 26, 1990. Moreover, not later than 14 days after the date of this Award the Employer shall initiate the appropriate paperwork to accomplish payment of the pay provided for herein.

IT IS SO ORDERED.



P. M. Williams
Arbitrator

Dated at Oklahoma City, Oklahoma
this 2nd day of February, 1991.

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