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In the Matter of the Arbitration
between
The United States Postal Service
and

National Association of Letter
Carriers, AFL-CIO
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Before: Edward Levin, Arbitrator

Appearances:

For United States Postal Service: Howard Wingard,
Labor Relations Representative.

For National Association of Letter Carriers, AFL-
CIO: Jules Cohen.

Date of Hearing: April 23, 1991

Place of Hearing: Elizabeth, NJ

Award:

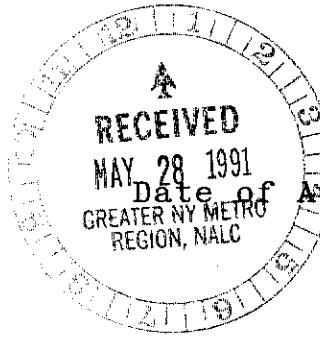
1. The Postal Service violated Article 8 and 41 of the National Agreement when it assigned work to Letter Carriers in the Elizabeth Post Office on June 30, July 1, 3, 10 and 11, Independence day Weekend, 1989.
2. CORR routers shall be paid \$50.00 for each day they were taken off their bid assignment.
3. Carriers not on the Overtime Desired list shall receive administrative time off for the amount of time they worked overtime.
4. Overtime shall be paid to those letter carriers on the Overtime Desired list who should have been called out to work overtime.
5. The Arbitrator finds it appropriate to retain jurisdiction on the implementation of this award for the individual employees involved in this arbitration for which actual testimony or documentary evidence has not been received regarding the amount of compensation they are entitled to.

C# 10873

Grievant: Class Action

P. O.: Elizabeth, NJ

Case No. N7N-1P-C 25356
GTS No. 6595



Award: May 22, 1991

Edward Levin
Edward Levin, Arbitrator

In accordance with the provisions of the collective bargaining agreement between the United States Postal Service(Postal Service) and the National Association of Letter Carriers, AFL-CIO(Union), the undersigned was designated Arbitrator to hear and determine the following issue:

1. Did the Postal Service violate Article 8 and 41 of the National Agreement when it assigned work to Letter Carriers in the Elizabeth Post Office on June 30, July 1, 3, 10 and 11,¹ Independence day Weekend, 1989?
2. If so, what shall be the appropriate remedy in accordance with the National Agreement?

A Hearing was held on April 23, 1991 at the facilities of the United States Postal Service located at Elizabeth, NJ at which time the parties were afforded opportunity to present testimony, documentary evidence and oral argument in support of their respective positions.

CONTRACT LANGUAGE

ARTICLE 8

Section 5(1)

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.

¹ These dates are a result of the parties agreement to incorporate several grievances involving the interpretation of the same contractual provisions.

ARTICLE 41

Section 1(C)(4)

The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment...

ARTICLE 3

Section 3(C)

To maintain the efficiency of the operations entrusted to it...

Section 3(D)

To determine the methods, means, and personnel by which such operations are to be conducted...

ARTICLE 11

Section 6(A)

The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Tuesday preceding the service week in which the holiday falls.

STIPULATION

1. Management took CORR routers off their assignment on the 1989 Independence Day Weekend.

UNION POSITION

During the July, 1989 Independence Day weekend CORR routers at the Elizabeth post office were taken off their assignments to carry street routes. Mail was available for the routers to work and no emergency or unforeseen circumstances existed. This action was planned in advance by management in violation of Article 41 section 1,C,4 of the National Agreement which states, "The successful bidder shall work the duty assignment as posted."

During the same time period carriers who were not on the Overtime Desired list were ordered to work overtime while carriers on the list were available, in violation of Article 8 of the National Agreement. This was done in violation of National Awards, step 3 decisions and promises made by local management to the Union.

The Union points out that management did not deny violation of the contract but refused to pay CORR routers, or carriers not on the Overtime Desired list who were forced to work overtime.

The Union asks as remedy that CORR routers be paid \$50.00² for each day they were taken off their bid assignment; that those on the Overtime Desired list be paid based on the overtime worked by those carriers not on the Overtime Desired list, and grant time off with pay to those carriers not on the Overtime Desired list who were required to work overtime. The Union argues that a remedy is necessary to prevent management from violating the contract in the future. If there is no remedy there is nothing to curb management from doing the same thing in the future.

The Union points out that management knew about the Independence Day holiday long in advance and can not claim an unforeseen circumstance or emergency. There is no showing of an increase of mail volume. Even if there was an

² This \$50.00 amount is based on other settlements of similar disputes in the past.

increase in mail volume all that had to be done was for management to call more carriers on the Overtime Desired list to perform the overtime work. Nor has it been shown that on the dates in question there was no mail for the CORR routers to work. The Union concedes that if there was no work for the routers they could be sent out, but maintains there was work for them to do on their bid assignments and therefore should have been left to perform that work.

The Union observes that management does not deny having required carriers not on the Overtime Desired list, or routers, to work.

The Postal Service failed to observe the requirements of the National Agreement as well as other agreements and awards and therefore must be required to comply with some form of remedy in order to preclude them from repeating this violation.

The Union noted that the \$50.00 per day was arrived at in other disputes of a similar nature that have been settled with the Postal Service. The Union finds that compensatory time for those who were not on the Overtime Desired list who were forced to work would be an equitable settlement for ignoring this status and forcing them to work, and would be consistent with arbitration remedies under similar circumstances.

The Union asks the Arbitrator to retain jurisdiction over any disputes over the application of any remedy ordered

by the Arbitrator.

POSTAL SERVICE POSITION

The Postal Service denies any violation of Article 8 or Article 41 Section 4(1)(C)(1) of the National Agreement. The Postal Service believes that its July 4 strategy was consistent with its management rights under Article 3(C) and (D) and Article 11 Section 6 (A) of the National Agreement in which the Employer is granted the right to determine the number and categories of employees needed for holiday work. The action of management was consistent with the needs of the service and therefore did not violate the contract.

The Postal Service notes that it is the obligation of the Union to prove violation of Article 8 and Article 41. The Postal Service fails to see any evidence that Article 8 was violated or that Article 8 was applicable on any of the days in question.

Concerning the remedies, the Postal Service considers the demand for a remedy consisting of \$50.00 per employee as being arbitrary and an expansion of the Agreement to include remedies never contemplated or authorized by the National Agreement. The Union is not asking for a remedy but a penalty. The Postal Service insists that the employees in question were properly compensated for the work they performed and nothing further is due them.

The overtime work for carriers was not ordered. Certain

carriers were asked if they wanted to pivot. Those that took longer than 8 hours were paid for the additional time. They were not ordered to work overtime.

The Postal Service argues that Article 7(2)(C) provides the Postal Service with the authority to assign people when there is an unanticipated demand. The Postal Service made the determination that there was an unanticipated demand and proceeded under its authority.

ARBITRATOR'S OPINION

The preponderance of evidence, particularly the unrefuted testimony of Shop Steward, Jane Flynn, that the Superintendent of Delivery and Collection came to her before the weekend, on June 29, 1989, concerning a management directive regarding the use of CORR routers on the street for the weekend and that carriers would be required to pivot regardless of whether or not they were on the Overtime Desired list. This was also reiterated in the testimony of Stacey Drootin, Branch President, who related how the Acting Manager of Customer Service told her the same thing.

The evidence of record also persuades the Arbitrator that the so-called Fourth of July strategy was conceived before the actual events of the week-end and was not based, at its inception, on the conditions that may later have arisen on the dates in question.

The claim that CORR routers were used while work was

available on their bid assignment was not credibly refuted, nor was the explanation for having non-Overtime Desired list carriers pivot beyond their regular eight hours, convincing. Nor, was there a convincing explanation for why Overtime Desired list employees were not called in to work the overtime.

Accordingly, the Arbitrator finds that the Postal Service violated Article 8 and 41 of the National Agreement when it assigned CORR routers to deliver mail; letter carriers not on the Overtime Desired list to work overtime; and for failing to call in letter carriers on the overtime desired list to work necessary overtime. There is no evidence that management made an attempt to obtain employees on the Overtime Desired list or PTF's to do the work before resorting to the CORR routers and other carriers to go on the street or work overtime.

Concerning the remedy, the Union presented settlements of disagreements of a similar nature, where \$50.00 for using CORR routers to deliver mail while they had work to perform on their bid position. Also there is precedent in prior arbitrator's awards to grant those employees not on the Overtime Desired list, administrative leave for the overtime hours they worked.

Inasmuch as a number of grievances were consolidated into one case and there was no evidence taken on each of the individuals involved on the dates in question, the

Arbitrator finds it appropriate to retain jurisdiction on the implementation of this award for each individual employee involved in this arbitration, for which actual testimony or documentary evidence has not been received.

File # 1144