C# 09529

REGULAR ARBITRATION

USPS-NALC

SOUTHERN REGION

In the Matter of Arbitration	)	Case #S4N-3V-C-59607
Between	)	GTS 6481
United States Postal Service	)	A. Trejo
Houston, Texas	)	(Grievant)
and	)	
Branch 283	)	
National Association of Letter	)	
Carriers AFL-CIO	)	File Closed: 9/11/89

Before Irvin Sobel, Arbitrator of Record

Appearances:

For the National Association of Letter Carriers (NALC, Union)

D.R. Beardsley
Local Representative,
Houston, Texas.

For the United States Postal Service (Service, Employer, Management)

Carolyn Shirkey
Labor Relations Representative,
Houston, Texas.

Preliminary Statement:

This hearing of the enumerated contract issue was held pursuant to Article 15 of the National Agreement between the parties. On April 4, 1987, respectively the Union filed a grievance alleging the Employer had violated the parties' collective bargaining agreement by improperly changing the grievant's schedule. The parties, unable to resolve the matters, assigned them to final and binding arbitration. The hearings were conducted by the aforecited arbitrator on September 14, 1989 at the Houston Main Post Office Annex. At the hearing the parties were accorded full opportunity to present witnesses for direct and cross examination and introduce such other evidence and argumentation each deemed pertinent to the issues under consideration. No issues of arbitrability, timeliness, or defect of form were raised during the proceedings and the record was closed as of the termination of the hearing.

Issue:

The parties submitted the following issue for resolution by the arbitrator.

Did the Employer violate the National Agreement (LMRA) when it changed the report-in time of A. Trejo from 6:00 a.m. to 9:00 a.m.? If so what is the appropriate remedy?

Facts in Case:

On April 8, 1987, The Union introduced the enumerated grievance which is the subject of this arbitration hearing. It stated:

> From February 28, 1987 through March 13, 1987 Mr. Trejo worked out of schedule. His regular reporting time was 6:00 a.m. Station Manager Teague changed his reporting time to 9:00 a.m. In September of 1986 his reporting time was changed from 5:30 to 6:00 a.m.
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> It requested:
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> Mr. Trejo be paid time and a half of overtime from February 28, 1987 through March 13, 1987 for out of schedule pay for the following days..... March 2nd, 3rd, 10th, 11th and 12th of 1987.
>
> The Employer designee's 2nd Step denial stated:
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> I find no violation of the articles cited above. Management can change the grievant's schedule. Article 41, Section 1 A 5 addresses the change of more than one hour when the (sic) is in need of posting because of the change. This is not the case here. Therefore, there is nothing that would prohibit management from doing this. Grievance is denied. The Union failed to provide any documentation to substantiate grievance.
>
> Relevant Contract Provisions
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> Article 41.1 A(5)
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> Whether or not a letter carrier route will be posted when there is a change of more than one (1) hour in starting time shall be negotiated locally.
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> 434.6 Out of Schedule Overtime
> .61 Definition
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> .611 "Out of schedule overtime" is a premium paid to an eligible full-time employee for time worked outside of, and instead of, the employee's regularly scheduled workday or workweek when the employee is working on a temporary schedule at the request of management.
>
> .612 "Out of schedule overtime" hours cannot exceed the unworked portion of the employee's

regular schedule. Any hour worked which result in paid hours in excess of 8 hours per service day or 40 hours per service week are to be recorded as regular overtime-se 434.1.

.613 If notice of a temporary schedule change is given to an employee by Wednesday of the preceding service week, the employee can be limited to 8 hours per service day but would be paid "out of schedule overtime" for those hours worked outside of, and instead of his regular schedule.

Arbitrator's Discussion:

Position of the Parties

The above cited statements notonly provide the essence of each parties argumentation but also state their respective positions so amply that no further amplification is deemed necessary.

Opinion and Award

Stripped of the various side issues and side arguments, the sole issue in the instant grievance is whether the three (3) hour change in the grievant's work schedule was a temporary or permanent one. By Steward Carl Love's own admission, he regarded the Letter of February 12, 1988 from Ms. Teague, Manager of the Fairbanks Station stating, "Carrier route 4020 has been re-calculated. The new evaluation of Route 4020 necessitates a change in your reporting schedule (6:00 a.m. to 9:00 a.m.)", as a permanent reassignment. The Union's argument that the Letter did not specify whether the change was permanent or temporary was negated by Love's admission that in his fifteen years experience as Chief Steward at the Fairbanks Station when a formal written statement of change was instituted, he had always regarded the

change in hourly assignment as a permanent one. That view was reinforced by Station Manager Teague's unrebutted testimony that she never had made temporary changes in hourly assignments.

The actions of the grievant and the Union seemingly indicated that both initially regarded the change, which went into effect on February 28 as a permanent one, which "didn't work out". According to testimony from both protagonist (Trejo and Teague) it did not "work out". Although the last day the grievant worked on the 9:00 a.m. schedule was March 12, the grievant did not introduce the grievance until April 2 (1987) and the Union formally reduced the matter to writing on April 4.

The Union did not challenge Management's right under Article 41 to effectuate the change. The fact that the change didn't work out and three weeks later the grievant's schedule reverted back to his original one, does not by itself render the change a temporary one. It was proven temporary only by hindsight or "retrospective tautology", and rather than penalizing the Employer it and its Station Manager for effectuating the change they conceivably might be commended for their prompt recognition that the change was a "bummer". If Management is to be penalized for every act it took to improve its efficiency under its prerogatives granted by Article 3, it either on one hand could become less innovative or on the other conceivably might stubbornly resist admitting it made an error restoring the grievant's hours.

A subsequent statement by another Supervisor over two years later (5/22/89) on a Postal Service Hours adjustment record,

"Please pay employee A. Trejo 12.5 hours out of schedule pay (overtime included)", cannot serve as a rationale for sustaining the grievance. Although this payment represented a settlement of a grievance, it transpired two years after the enumerated grievance and neither the underlying situation nor the rationale for settlement was ever established by the Union. Whether and in what manner some employer representative, at some stage of the grievance procedure, chose to settle that grievance is completely irrelevant to this grievance.

The Employer obviously chose not to settle this grievance even though settlement would have been far less expensive for it than continuing its passage through the grievance procedure to its final destiny at this hearing.

Given the fact that the Houston Local Memorandum of Understanding (LMRA) does not require posting of a change in hours as permanent, the Employer's Letter must be presumed as a valid notice.

The Class Action "Out of Schedule Premium Pay" decision cited by the Union (S1N-3U-C-31898, Arbitrator Edmund S. Schedler) as precedential involves facts which render that cited decision "favorable to the Union", clearly inapplicable to the instant grievance. The reporting time changes cited in the decision were clearly designed to accommodate the Christmas rush period. Arbitrator Schedler found that regardless of what Management alleged as to the permanence of that move, nature of the changes as indicated by their starting and ending dates which clearly coincided with the peak mail period clearly demonstrated

their temporary nature . The facts involved in a Step 4 agreement of November 26, 1989 (N8-W-0096) cited by the Union are so clearly different from those of the instant grievance that this favorable settlement also must be regarded as irrelevant to the issue at hand.

For the above reasons the grievance will be denied.

Award:

The grievance of Adolph Trejo is hereby denied.

Tallahasse, Florida
October 4, 1989

This is a certified true copy of Arbitration Award

Irvin Sobel, Arbitrator