

REGULAR ARBITRATION PANEL

C# 1094)

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO

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* Grievant: Vince Spickler
* Post Office: Watervliet, NY
* Case No.: N7N-1W-C-37842
* GTS 5508
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BEFORE RODNEY E. DENNIS, Arbitrator

APPEARANCES

For US Postal Service

CHERYL HOFT-JENKINS - Labor Relations
Representative

For Union

WILLIAM B. COOK - Secretary, Branch
358, NALC

Place of Hearing: Watervliet, N.Y.

Date of Hearing: July 9, 1991

Award: Nick Bragin shall be paid five
hours at the time and one-half
rate. The remainder of the grie-
vance is denied.

Date of Award: July 15, 1991

BACKGROUND OF THE CASE

On Friday, February 22, 1991, Letter Carrier Kevin Clairmont called in sick. This left Route 1 uncovered. The Superintendent of Mails needed to find a replacement to cover the route. There were two Letter Carriers on scheduled days off. One was Nick Bragin and the other was the Grievant, Vince Spickler. According to Management, Vince Spickler was called, but there was no answer. The Supervisor then called Nick Bragin and persuaded him to come in for three hours to case the route to be delivered.

Bragin worked three hours and requested five hours LWOP for the remainder of the tour. The route was delivered by two casuals and a PTF. There were other changes in Carrier assignments that day in order to ensure that the mail was delivered. As a result of the activities of February 22nd, a grievance was filed by the Local President. That grievance contended that (1) Vince Spickler should have been called to cover the vacancy, but was not; (2) Nick Bragin should not have been called and allowed to work three hours; (3) Linda Dewey should not have been moved from her regular route; and (4) other procedures other than those employed could have solved the problem before it began.

The Union Representative argued that cooperation between Union and Management is essential to a smoothly running operation. A part of the grievance was the demand that an overtime desired list be properly prepared, posted, and maintained. Considerable discussion of the grievance took place, with no final resolution of the issues. The case ultimately was scheduled for arbitration.

THE ISSUE

Did Management violate the National Agreement, Articles 8.5, 8.8, and 15, by the manner in which it covered a Carrier's sick leave on February 22, 1991? If so, what shall the remedy be?

FINDINGS

The case before me is a Contract case and, as such, the Union has the burden of proving that its position is the correct one. It has to present sufficient probative evidence to tip the scales in its favor. If it is unable to accomplish this, its case is lost. If it can, then obviously it carries the day and is successful in accomplishing what it set out to do. The level of proof required in the instant case is the lowest. The Union need only prevail by a preponderance of the true facts.

In regard to the issue of whether the Supervisor called the Grievant and could not get him, the Supervisor said he did and the Grievant says he did not. The Union presented as a witness the Grievant's father, who lives in the same house. He said no call came in that he heard. Given his relationship to the Grievant, this witness was somewhat suspect. In addition, as it turns out, he was also hard of hearing. At best, the parties have achieved a standoff. Under the circumstances, the Union must tip the scales in its favor. It did not and I can only conclude that it has not carried its burden of proof on this issue. Thus, I cannot decide in its favor. (As an aside, I must also state that I found nothing in the record to persuade me that the Supervisor had to call the Grievant at all. There was no overtime desired list or any other procedure in effect that required the Grievant be called before Bragin.)

The second issue in this case is a bit more complicated. Here, I find that a Contract violation did take place. Article 8, Section 8.B, governs this issue. It reads as follows:

- B. When a full-time regular employee is called in on the employee's non-scheduled day, the employee will be guaranteed eight hours work or pay in lieu thereof.

I find nothing in this Article that would allow the Supervisor to negotiate an agreement with an employee whereby the employee is only required to work three hours if he is called in on his scheduled day off. The Article clearly states that the called-in employee gets eight hours of work or pay in lieu of. No deals involving partial shifts are authorized. The parties addressed this issue on November 14, 1988, at Level Four, in two cases, H7N-2D-C-40885 and H4N-2M-C-33087. A statement of agreement was issued. The pertinent part of that agreement reads as follows:

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in these cases. The issue in these grievance is whether management may solicit employees to work less than the contractual guaranteed provided for in Article 8, Section 8. Management may not solicit employees to work less than their call in guarantee, nor may employees be scheduled to work if they are not available to work the entire guarantee. However, an employee may waive a guarantee in case of illness or personal emergency. This procedure is addressed in the F22, Section 222.14 and the ELM, Section 432.63.

That decision clearly addresses the proper interpretation of Article 8, Section 8.B. A Supervisor cannot do what the Supervisor in this case did. The Postal Service therefore is required to pay Nick Bragin an additional five hours at the time and one-half rate.

The fact that Bragin signed a Form 3971 asking for five hours off because of personal reasons has no impact in this instance. His need to work on his house was by no means a personal emergency, as contemplated in the Level Four agreement.

In the final analysis, the parties to this dispute should be put on notice that all terms and conditions of the Agreement must be implemented by Management and enforced by the Union. Operating outside the terms of appropriate rules, regulations, and procedures can only lead to misunderstandings and future grievances.

AWARD

Nick Bragin shall be paid five hours at the time and one-half rate. The remainder of the grievance is denied.


Rodney E. Dennis
Arbitrator

July 15, 1991