C # 10717

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	**Grievant:** Ronald Krawczyk
between	
UNITED STATES POSTAL SERVICE	**Post Office:** Farmington, NH
and	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	**Case No:** N7N-1K-C 30298 **NALC Case No:** 024RGK **NALC GTS No:** 6761

Before Jonathan S. Liebowitz **, Arbitrator**

Appearances:

For US Postal Service:

Michael J. Donahue, Manager, Labor Relations

For Union:

Carl Soderstrom, Trustee, Branch 34

Date of Hearing: March 5, 1991
The case was discussed in a conference call with the advocates on March 13, 1991.

Place of Hearing: P.O., 133 Washington Street, Dover, NH

Award: On the particular facts and circumstances of this case, and for the reasons explained in the Opinion, this grievance is denied.

Date of Award: March 16, 1991

Jonathan S. Liebowitz

Jonathan S. Liebowitz
Arbitrator

Opinion

This case arises in the Farmington, NH Post Office; there is one regular route and one auxiliary route. Mr. Krawczyk, the grievant, is the only full-time regular Letter Carrier in the office. There are two PTF Letter Carriers. The grievance arises because on Saturday, March 24, 1990, one of the PTF Letter Carriers, Robin McKuhen, was granted Annual Leave and Mr. Krawczyk was required to work overtime on his non-scheduled day delivering his route. He was paid overtime at time and one-half for so doing; while the grievance papers requested that he be paid double time, the Union's position, at hearing and in discussion of the case in a conference call with the advocates on March 13, 1991, is that it seeks a declaration of rights and not a monetary remedy because this was the first time that this occurred.

Neither Ms. McKuhen nor Postmaster Hersey testified at the hearing; the reason for the request for, and grant of, annual leave to Ms. McKuhen does not appear in the record. Until the Step 2 management response to this grievance, there was no overtime desired list (OTDL) in Farmington. Mr. Krawczyk had not requested the overtime, per management's Step 2 response, he answered negatively when asked if he "wished to be placed on the overtime desired list." Nor is "work assignment" overtime involved here. There is no Local Memorandum of Understanding in the Farmington Post Office.

While Mr. Krawczyk testified initially to similar occurrences prior to March 24, 1990, that testimony was mistaken; he

also testified to such occurrences after that date. But the Postal Service maintains, and the Union does not dispute, that events after March 24th are not part of this grievance. In fact, the Union advised that they are part of one or two other grievances which are in the steps of the contractual grievance procedure.

The Union contends that granting annual leave to a PTF carrier so as to require the working of involuntary overtime by the regular carrier is a poor business decision and contrary to the intent of the National Agreement to minimize assignments of involuntary overtime to full-time regular employees. The Union points out that this date did not fall within the choice vacation period(s) referred to in Article 10.3 of the National Agreement. It cites Article 10.3.D.4: "The remainder of the employee's annual leave may be granted at other times during the year, as requested by the employee." The Union emphasizes the word "may" and argues that the Service was not required to grant annual leave to the PTF carrier on the date in question; it could have required her to work and thus spared the grievant, the regular carrier, from being assigned to work his route on a non-scheduled day.

The Postal Service sees the dispute as involving its right to grant annual leave; under Article 10, including 10.3.D.4, that right is clear; the Service also cites its Article 3 Management Rights; the Union points out that they are subject to the provisions of the Agreement. It is also clear that the PTF carriers

possess a right to contract benefits and that absence on annual leave, or on sick leave for that matter, on any of grievant's non-scheduled days would necessitate his being required to work his route. The Service cites in particular the last paragraph of the Joint Statement on Overtime between the USPS and the NALC dated June 8, 1988:

> When full-time regular employees not on the Overtime Desired List are needed to work overtime on other than their own assignment, or on a non-scheduled day, Article 8, Section 5.D, requires that they be forced on a rotating basis beginning with the junior employee. In such circumstances management may, but is not required to seek volunteers from non-OTDL employees.

Thus management argues that it could properly require grievant to work on his non-scheduled day as he is "the junior employee." However, he is the only regular Letter Carrier assigned to that office.

The provision just cited parallels the language of Article 8.5.D of the National Agreement, with the addition of the language about seeking volunteers. The Postal Service also maintains that, so far as this grievance reveals, this was an isolated instance on a single day; the Union's position is that it seeks a declaration of rights to apply to such circumstances in the future.

The Union submits the award of Arbitrator Zumas in National Level Case H1C-4K-C 27344/45, November 21, 1985, and a Northeast Regional memorandum dated February 7, 1986, pertaining to that

award. The Union also submits the National Level award of Arbitrator Mittenthal, H4N-NA-C-21 (5th issue), June 26, 1986.

I have studied those awards and the provisions of Article 8, with particular reference to Article 8.5, of the National Agreement, as well as of the Memorandum of Understanding Re: Article 8 which appears at PP. 187-189 of the National Agreement. The "Letter Carrier paragraph" in the Memorandum provides:

> In the Letter Carrier Craft, where management determines that overtime or auxiliary assistance is needed on an employee's route on one of the employee's regularly scheduled days and the employee is not on the overtime desired list, the employer will seek to utilize auxiliary assistance, when available, rather than requiring the employee to work mandatory overtime.

In his decision, Arbitrator Mittenthal elucidated the meaning of the term "auxiliary assistance" in the Letter Carrier paragraph of the MOU. He stated that for example, management may use a part-time flexible carrier or an unassigned regular at straight time to perform the extra work on the regular carrier's route. Or management may "pivot" a portion of the route, i.e., reassign the extra work to some other carrier whose work is relatively light that day; management may also assign the extra work at overtime rates to some carrier on the OTDL. It is clear that not all of these alternatives are available in the circumstances of this case; the Union adds here that management could also employ a casual employee to deliver Mr. Krawczyk's route on his non-scheduled day (Saturday). But I have noted that issues

of staffing are recognized to be within the area of management right under Article 3 of the National Agreement.

It is also clear that the PTF Letter Carriers have contractual rights to leave under Article 10 of the National Agreement. See also Section 321 of the F-21 Manual, submitted by the Union. Thus the question at issue involves the balancing of the rights appearing in the provisions of Articles 8 and 10 of the National Agreement, as construed and applied in the above-cited National Awards, on the facts of this particular case.

The Union's reference to the lack of a Local Memorandum of Understanding in Farmington pertains to designation of leave outside the choice vacation period(s) covered by the National Agreement. For example, the National Agreement provides in Article 10.3.C that duration of the choice vacation period(s) shall be determined pursuant to local implementation procedures. At this writing, those procedures do not exist in the Farmington Post Office. But the Union argues that this was not prime vacation time as to which the PTF letter carrier would have the right to a scheduled vacation; the Union terms this grant of annual leave as incidental and subject to the "may" provision of Article 10.3.D.4. But the Service maintains that this case shows just an isolated instance which was within its rights to assign and that the Union has not met its burden of proving a violation of the National Agreement on the facts shown. The Union maintains that it has demonstrated enough to call for a remedy by way of a declaration of rights.

Extensive discussion of the various provisions of the National Agreement is unnecessary here. But a reading of the provisions of Article 8.5, including 8.5.D, .F and .G, of the MOU, and of the submitted awards, supports the Union's position as to the parties' intent. For example, the MOU begins as follows:

> Recognizing that excessive use of overtime is inconsistent with the best interest of postal employees and the Postal Service, it is the intent of the parties in adopting changes to Article 8 to limit overtime, to avoid excessive mandatory overtime, and to protect the interests of employees who do not wish to work overtime, while recognizing that bona fide operational requirements do exist that necessitate the use of overtime from time to time. The parties have agreed to certain additional restrictions on overtime work, while agreeing to continue the use of overtime desired lists to protect the interests of those employees who do not want to work overtime, and the interest of those who seek to work limited overtime. The parties agree this memorandum does not give rise to any contractual commitment beyond the provisions of Article 8, but is intended to set forth the underlying principles which brought the parties to agreement.

Management's argument based upon the last paragraph of the Joint Statement on Overtime seems consistent with the provisions of the MOU which follow those just quoted:

> The new provisions of Article 8 contain different restrictions than the old language. However, the new language is not intended to change existing practices relating to use of employees not on the overtime desired list when there are insufficient employees on the list available to meet the overtime needs. For example, ...

The Union points out that Mr. Krawczyk has a fixed schedule while the PTF carriers do not; it argues that the PTF carrier who was granted leave could have been assigned to work on the Saturday in question.

Based upon the provisions of the National Agreement and of the awards, cited above, were this a case involving repeated occurrences of this event, it would be fair to say that unless there were a valid reason to schedule one of the two PTF Carriers to be off on one of the regular's non-scheduled days, the office should avoid such a schedule; that is, having to require Mr. Krawczyk to work on one of those days on overtime. In an office of this size, however, some flexibility is required. These observations are appropriate per the submissions and the discussions at hearing and in the conference call. They respond to the parties' positions.

But this grievance involves only a single instance. Events alleged to have occurred after the date in question are not a part of this grievance and therefore not before me. The issue boils down to whether or not the Union, which has the burden of proof on a contract case, satisfied that burden by its showing or whether it fell short as the Postal Service maintains.

The burden of proof as to this single, first instance could be resolved either way. One way is that the Union established a prima facie case in its showing of the scheduling that occurred here and that it was up to management to prove justification, that is, the reasons for granting the annual leave to the PTF

carrier. Or it may be concluded that it is part of the Union's case to show that management acted without justification.

In this single instance, I conclude that not enough has been shown to substantiate the view that management violated the intent of the National Agreement in the assignment of Mr. Krawczyk on the day in question. We do not have sufficient evidentiary information to sustain such a finding. Therefore, on the limited facts and circumstances of this particular case, this grievance should be denied.

Award

On the particular facts and circumstances of this case, and for the reasons explained in the Opinion, this grievance is denied.

Dated: March 16, 1991

Jonathan S. Liebowitz
Arbitrator