

USPS-NALC CONTRACTUAL GRIEVANCE PROCEEDINGS
ARBITRATION OPINION AND AWARD

C# 01647

.....
In the Matter of Arbitration
Between:

THE UNITED STATES POSTAL SERVICE
Livingston Station
Columbus, Ohio Branch

-and-

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO
Branch 78
.....

Case No. C8N 4F C 13593

George Hamilton
Columbus, OH

Decision Issued:
August 11, 1981

APPEARANCES

For the Postal Service:

D. J. Shipman
Thomas Doddridge

Robert Hoersdig

James See

Labor Relations Executive
Labor Relations Field

Representative
Labor Relations Field
Assistant

Manager, Livingston Station

For the Union:

Chris Terry
Doug Gulley
M. L. Barry
[Greg Hamilton, Grievant,
Absent from Hearing]

EEO Officer, Branch 78
Vice President, Branch 78
Witness

Jonathan Dworkin, Arbitrator
16828 Chagrin Boulevard
Shaker Heights, Ohio 44120

BACKGROUND

The grievance states a claim by a part-time flexible carrier that he was entitled to receive out-of-schedule overtime pay when he was assigned to work on his regular day off. The dispute was reviewed in each of the preliminary grievance levels. It remained unresolved, and was then appealed to regional arbitration. The hearing took place on April 10, 1981 in Columbus, Ohio. At the outset, the Postal Service contended that the issue in dispute was not arbitrable. The Employer concedes that the governing Collective Bargaining Agreement provides out-of-schedule overtime pay for full-time employees. However, it points out that Grievant was not a full-time employee. He was classified as a part-time flexible, and as such, he was excluded from the benefit. The Postal Service concludes that since Grievant's demand is for payment of out-of-schedule overtime to which he was not contractually entitled under any circumstances, and since an arbitrator has no authority to expand contractually defined allowances, the Arbitrator lacks jurisdiction to award the relief demanded.

The Representative of the Postal Service stated the jurisdictional objection, and moved for an order to limit the scope of the April 10 hearing to that issue alone. Furthermore, solely for the purpose of testing arbitrability, the Postal Service admitted all of the facts upon which the grievance was founded.

The Arbitrator determined that the Employer's jurisdictional argument was substantive, and not trivial; that it was not

asserted for purposes of delay. The request to limit the hearing to the threshold issue was agreed to. It was understood that in the event that the ruling on the issue were to be favorable to the Union, the case would be reset for a full hearing on its merits.

FACTS

Grievant was a part-time flexible letter carrier whose seniority date was May 15, 1978. In November, 1979, Grievant exercised his seniority to successfully bid for a full-time route assignment that had become temporarily vacant at the Livingston, Ohio Station. He obtained the route in accordance with Article XLI, Section 2 B 4 of the Agreement, which provides:

4. Part-time flexible letter carriers may exercise their preference by use of their seniority for vacation scheduling and for available full-time craft duty assignments of anticipated duration of five (5) days or more in the delivery unit to which they are assigned.

Article XLI, Section 2 B 5 provides that once the Employee was granted the temporary full-time assignment, he was entitled to retain that position for the duration of the vacancy. The Sub-section states:

5. A letter carrier who, pursuant to sub-sections 3 and 4 above, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration.

The full-time route included rotating days off. Saturday, January 5, 1980, was one of the scheduled non-working days.

At that time, Grievant still held the assignment. Therefore, he was entitled to anticipate that he would not be scheduled for January 5. Such expectation was derived from the statement in Article XLI, Section 2 B 5 that a part-time carrier who bids into a full-time craft vacancy, "shall work that duty assignment for its duration." The Employee did not receive his day off on January 5. Instead, Management of the Livingston Station directed him to work. January 11 was substituted as his non-workday. This created an out-of-schedule assignment which, according to the Union, triggered the Employee's right to obtain premium wages for January 5.

CONTENTIONS

The Union persuasively argues that a temporary duty assignment is inclusive of its normal schedule. This interpretation was amplified by a 1979 Memorandum of Understanding. The Memorandum constituted a Fourth Step settlement of a grievance which arose in Kaysville, Utah, and it was jointly executed by an authorized representative of the Postal Service, and the Assistant Secretary Treasurer of the National Union. The following portion of that settlement is material to this controversy:

We mutually agree that the meaning and intent of Article XLI, Section 2B.4, of the 1978 National Agreement is to have part-time flexible letter carriers assume the hours of duty and the schedule of work days of the full-time carrier whose assignment is being covered.

We also agree that except for the right to exercise seniority for covering full-time craft duty assignments of anticipated duration of five (5) days or more, part-time flexible letter carriers are not entitled to more than what is provided in Article VIII, with respect to paid hours of work.

The out-of-schedule pay that Grievant seeks is defined in Section 434.611 of the Employee & Labor Relations Manual (ELM) as follows:

"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.

ELM Section 434.621, and the exhibit to which the Section refers, clarify that the premium is available only to full-time employees. Part-time regular, part-time flexible, casual, and temporary classifications are specifically excluded from the benefit. It is this unambiguous contractual limitation upon the scope of the Employer's obligation that forms the basis for the Postal Service's rejection of Grievant's claim. It is contended that irrespective of his assignment, Grievant remained a part-time flexible employee. As such, it is argued that he could not meet the essential eligibility prerequisite for the premium.

OPINION

Procedural and jurisdictional challenges to arbitrability, if successful, cause an employee to lose the right to full exposure

of his claim to the grievance machinery. They deprive an aggrieved member of the Bargaining Unit of his contractual privilege to final resolution. Such results tend to frustrate the purposes for which the grievance procedure was established-- the preservation of management-labor harmony through provision of an orderly structured method for settling disagreements. For those reasons, an assertion that a controversy is not arbitrable ought not to be lightly sustained. The party making such claim should be required to establish its position by evidence and/or arguments that are beyond reasonable dispute. Inconsistencies in evidence and contractual ambiguities should be resolved in a manner that would prevent divestiture of an employee's right to obtain a final award. However, when a grievance seeks relief that an arbitrator is contractually prohibited from granting, there is no alternative other than to summarily deny that grievance, irrespective of its merits. To do otherwise would require that the arbitrator alter or amend the governing Collective Bargaining Agreement in order to impose his personal view of justice upon the parties. The Agreement between the Postal Service and the National Association of Letter Carriers specifically prohibits an arbitrator's departure from its negotiated terms. Article XV, Section 4 A (6) provides:

All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator.

Construing the factual stipulations most favorably to the Union results in the following preliminary findings:

(1) Grievant was entitled to work the regular schedule of the full-time route that he obtained through bidding. He was also entitled to the days off that were incorporated into that schedule.

(2) The Postal Service's unilateral change of Grievant's regular schedule was probably violative of Grievant's contractual rights. Conceivably, the Employee may have been entitled to some remedy.

Notwithstanding the conclusion that Grievant may have had a legitimate claim to some remedy, the only question to be resolved in this case is whether, under any circumstances, this Arbitrator is authorized to award Grievant out-of-schedule overtime pay. The Arbitrator finds that the Agreement denies him the authority to issue such an award. No matter how the facts are interpreted, Grievant never became a full-time employee. Throughout the period preceding this grievance, the Employee's classification remained that of a part-time flexible carrier who was holding down a full-time assignment.

The out-of-schedule overtime allowance is available only to full-time employees, not to part-time flexibles. In order for there to be an award in this case directing the Postal Service to pay Grievant the out-of-schedule premium, the Arbitrator would have to amend the Agreement. He would have to find that

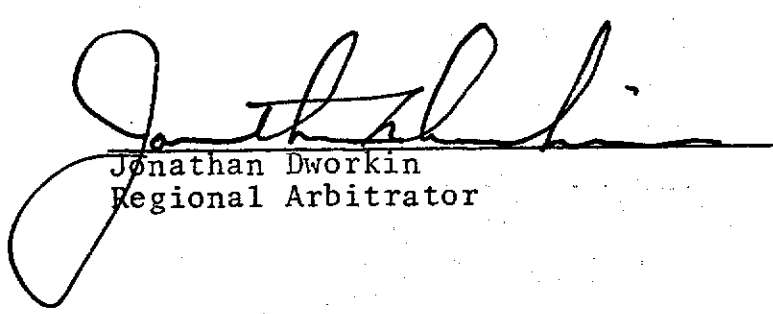
even though negotiated language clearly states that only employees in a full-time classification are entitled to the allowance, in some instances, a member of a part-time classification is also so entitled. Such amendments may result from bargaining, but they can never come about through arbitral fiat.

The Arbitrator does not find that Grievant is not due any relief. However, it is clear that there is no arbitral jurisdiction to grant the specific relief that his grievance requests. Accordingly, it is ruled that the Postal Service's jurisdictional argument is well-taken, and must be confirmed. The grievance therefore will be denied.

AWARD

The Arbitrator finds that Grievant was a classified part-time flexible employee who bid into a full-time route assignment. The Collective Bargaining Agreement does not provide for out-of-schedule overtime pay to part-time flexible employees. Therefore, the Arbitrator finds that he lacks jurisdiction to award Grievant the out-of-schedule overtime pay demanded. Accordingly, the grievance is denied for lack of arbitral jurisdiction to grant the remedy requested.

Decision Issued:
August 11, 1981



Jonathan Dworkin
Regional Arbitrator