

C#00203

LOCAL ARBITRATION

C1T-4F-C 27336
PAUL BAUERLE

CINCINNATTI BMC
APRIL 27, 1984

APPEARANCES

POSTAL SERVICE

Howard E. Byrne, Labor Relations, Central Region

UNION

Gary Kloepfer, President, Tri County Ohio Area Local

ARBITRATOR

James P. Martin

ISSUE

Was the Postal Service in violation of the Agreement when it denied a change of schedule to the grievant for a jury duty assignment on January 13, 1984? If so, what is the remedy?

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NATURE OF CASE

The grievant was a full time regular maintenance employee, qualified for Court Leave. On December 26, 1983 the grievant received a notice to report for jury duty beginning Friday, January 13, 1984. At that time, the grievant was on a work schedule on Tour 3, 2:00 p.m. to 10:30 p.m. and had Saturday and Friday as his scheduled off days. After discussions with various members of Management, the grievant filed a request for a schedule change with Saturday and Sunday as days off for the week ending January 13th, and for a change of Tour from Tour 3 to Tour 2 for January 13th only, which was denied, on the basis that the Postal Service would not grant a change in schedule for the grievant unless it was accomodate a conflict between his work schedule and his jury duty. None was evident, since the grievant was scheduled off for the day he was to report for jury duty. The grievant served only one day of jury duty, and worked six consecutive days during that work week, Sunday through Thursday for the Postal Service, and Friday on jury duty.

The Union contended that the Postal Service at the facility has had an established practice of allowing employees to change their schedule in order to accomodate jury duty,

a right granted employees under the E & LR Manual, Paragraph 516.334a. In accordance with this past practice, the Union insisted that Management was required to grant the grievant his request, in order to avoid him having to work six days in a week, including the jury duty. As a remedy, the Union asks that the employee be given overtime for Sunday, January 8th and jury leave for Friday, January 13th. According to the Postal Service, a conflict must exist before the employee is allowed the options provided in E & LRM, Paragraph 516.334a. No conflict existed between the grievant's schedule and his court duty day, and the employee therefore had no right to have a schedule change made. The only practice which might have been established at the facility was to allow schedule changes where conflict did exist. Had the grievant been scheduled for petit jury for two or three weeks, then a schedule change would have been granted, because it would have been very difficult for the grievant to work, in effect, without any days off. Where the jury duty was a single day, there was no right to create a conflict in order to avoid a single day's extra duty. The grievance is without merit and should be denied.

APPLICABLE CONTRACT PROVISIONS

.33 Granting Court Leave

.331 Pay Status Requirement. Court leave is granted only to eligible employees who, except for jury duty or service as a witness in a non-official capacity on behalf of a state or local government would be in work status or on annual leave. An employee on LWOP when called for such court service, although otherwise eligible for court leave, is not granted court leave, but may retain any fees or compensation received incident to court service.

.332 Employee on Annual Leave. If an eligible employee while on annual leave is summoned for jury duty or service as a witness in a non-official capacity on behalf of a state or local government while on annual leave, the employee's annual leave is cancelled and the employee is placed on court leave for the duration of such court service. Employees who are not entitled to court leave must use annual leave or LWOP for the period of absence from duty for such court service.

.333 Combination of Court Service and Postal Duty

a. Employees Who Report for Court Service and Are Excused Early. If an employee reports for court service and is excused by the court for the balance of the day, or performs court service for only part of that day, the employee is entitled to full compensation for the day in question. The employee is required to report to the postal installation for the balance of the postal tour of duty, provided: (1) an appreciable time of the tour is involved and (2) it is feasible to report to work and complete the tour. The combined court service and postal duty may not exceed 8 hours. (This limitation does not apply to employees exercising the option provided in 516.334a1.)

b. Employees Who Serve A Full Day In Court. Employees serving a full day in court service are not required to report to their postal duties.

c. Employees Excused from Court Service For An Extended Period. Employees excused from court service for an entire day or days are not entitled to compensation for such days unless they actually perform service as postal employees.

.334 Accommodation of Employees Called for Court Service

a. Employee Options. Employees who are eligible for court leave and who have a conflict with court duty and work schedules have the following options:

- (1) Work their postal tours of duty in addition to performing court service.
- (2) Have their work schedules changed temporarily to conform to the hours of court service. (Employees who do not choose this option may not have their work schedule changed and are expected to report for postal duty upon completion of their court service.)

b. Performance of Postal Tour of Duty in Addition to Court Service. If employees work their full postal tours of duty in addition to performing court service, their court

service is *not* charged to court leave as the court service is performed outside of their postal tours of duty. Accordingly, employees may retain any fees or payment received incident to such court service. If employees choose to work their full postal tours of duty in addition to performing court service, but are required to be in court beyond the starting time of their scheduled tours, they report for postal duty as soon as possible after completion of court service and work the remaining hours of their scheduled tours. The hours of court service which overlap the employees' scheduled tours of duty are charged to court leave and the employees remit to the Postal Service that portion of court fees received for the hours charged to court leave. The combined court leave and postal work hours may not exceed 8 hours.

c. *Temporary Change in Schedule.* Employees who choose to have their work schedules changed temporarily to conform to court service hours submit, as soon as possible, a request for such schedule change in writing to the appropriate postal official at their installation. Such request states that the schedule change is for the employee's personal convenience and is agreed to by the local union. Employees who exercise this option receive full compensation for the period of court service, including any applicable night differential.

.335 Overtime. No overtime is allowed for court service performed while an employee is on court leave or for a combination of postal work and such court service.

.342 Court Service Outside of Regular Working Hours or Regular Working Days. Employees who perform court service outside of their basic work week (on scheduled days off) or outside of their scheduled tour of duty, for which no court leave is granted, may accept and retain the jury or witness fees. (If the employee's basic work week is Monday through Friday, the employee is placed on court leave for any absence while serving as a juror or witness in a non-official capacity on behalf of a state or local government during this period. The employee is entitled to retain fees received for court service on Saturday and/or Sunday. The same rule applies to employees assigned to other basic work weeks, whether the scheduled non-work days are fixed or rotating.) The basic work week for *rural carriers* is Monday through Saturday, except that rural carriers who serve either "J" or "K" routes are considered to be in a scheduled non-work status on the 1 day each week (or every 2 weeks) in which they are given relief. A rural carrier serving a "J" or "K" route who performs court service on a scheduled non-work day (relief day), for which no court leave is granted, may accept and retain the jury or witness fees.

DISCUSSION

Arbitrator Gamser's decision was cited to me by the Union, and the Postal Service acknowledged it, but attempted to distinguish it from the case in hand. Arbitrator Gamser found that a past practice of interpreting Paragraph 516.344 as the Union requests that it be interpreted herein may not be changed by the local facility. He also found that "work schedule" was applicable to both days of work and hours of work. No overall interpretation of the meaning of Paragraph 516 was made.

In this case, the Postal Service has claimed that Arbitrator Gamser's Award does not apply, because there has been no past practice shown of granting schedule changes for periods of time as short as that requested by the grievant in this case, namely, one day. It acknowledged that it had regularly granted requested schedule changes under the employee option when the jury duty was for a substantial period of time, and would therefore subject an employee to working for weeks at a time without any days off, or working 16 hours a day, Postal Service plus jury duty, for inordinate lengths of time. Thus, by its own admission, the Postal Service has established its interpretation of the applicable paragraph of the E & LRM to allow what the grievant requests in this

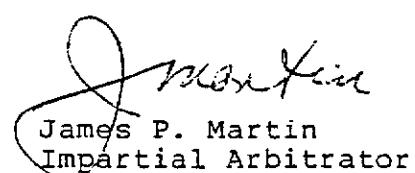
case, with a restriction to substantially longer periods of time than here requested. Such a distinction does not exist in the Manual, and there does not appear to be any justification for the establishment of a time period for the granting of the employee option, granted without time constraints in the E &LRM. Argument at the hearing was to the effect that it would be an unwarranted imposition for an employee to serve seven weeks without a day off or work 16 hour days consistently. While being required to work for six days in a week is hardly a severe enough imposition upon an employee to demand relief as a matter of justice, to allow the Postal Service to decide that one is inadequate would allow them to decide that six weeks and four days is inadequate where seven consecutive weeks would require the Postal Service, injustice or as an appropriate application of employee rights, to grant the employee the option to change his schedule to conform to the jury schedule. If the employee has a right to change his schedule to perform the jury duty, he has a right unlimited by the extent of time involved. The decision by the Service to deny the greivant's request was an unwarranted limitation of the employee's rights under Paragraph 516.334, as already established through a past practice at the facility. The grievance is therefore allowed.

Had the grievant's request been granted, he would have worked for the Postal Service for four days and spent one on jury duty. He would have been required to remit to the Postal Service his court fees, and receive his full pay for the week. Accordingly, the appropriate remedy is that requested: the grievant is to receive eight hours pay at the overtime rate, and that amount is to be reduced by the amount of jury duty fees actually received by the grievant for his service on January 13th.

AWARD

That the grievance shall be and hereby is allowed; that the grievant is to receive eight hours pay at overtime rates, reduced by the amount of jury duty fees received by him on January 13, 1984.

July 6, 1984
Lake Bluff, Illinois


James P. Martin
Impartial Arbitrator