

C#09402

REGULAR ARBITRATION PANEL

In The Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO

) GRIEVANT: Class Action

) POST OFFICE: Melbourne, FL

) CASE NO: S7N-3W-C 19954

BEFORE: Robert G. Williams, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Angela N. Ferguson

For the Union: Charles Windham

Place of Hearing:

U.S. Post Office
640 E. New Haven Ave.
Melbourne, FL

Date of Hearing:

August 23, 1989

AWARD:

The Grievance is hereby sustained in accordance with this opinion. ODL employees available on October 14 and 28, 1988 shall receive additional pay of 1.23 hours at the applicable rate for each day. ODL employees available on October 15, 1988 shall receive additional pay of 0.67 hours at the applicable rate. This Arbitrator retains jurisdiction in the event a dispute arises regarding the implementation of this award.

Date of Award:

September 29, 1989

Robert G. Williams

I. BACKGROUND

This case arose under the National Agreement effective from July 21, 1987 to November 20, 1990. On October 14, 15 and 28, 1988 Management required Regular Carriers to work on their off-days. The Grievants on the Overtime Desired List (ODL) protested this action, filed their standard form grievance on December 29, 1988 and properly processed their case to this arbitration under the Agreement. An arbitration hearing was held on August 23, 1989 in Melbourne, Florida. At the hearing the parties were given full opportunity to stipulate undisputed facts, introduce evidence, examine witnesses and argue their respective positions. The issue presented at the hearing was as follows:

Did the Service violate the Agreement when it scheduled Regular Carriers to work on their off-days rather than ODL employees and, if so, what shall be the remedy?

The parties presented oral arguments in support of their positions. Each party was given until August 30, 1989 to submit citations in support of their respective cases. The hearing was closed following this submission date.

II. FINDINGS

The material facts in this case were not disputed by the

parties and were stipulated at the hearing. This case arose at the Melbourne, Florida, Satellite Beach Branch. During October 1988, this Branch had twenty-five (25) regular routes with two (2) auxiliary routes of two (2) hours each on each day. Vehicles were available only for each of these routes. In October 1988 the work force at this Branch consisted of thirty-two (32) Regular Carriers and eight (8) Part Time Flexible (PTF) Carriers. Mail was delivered to this installation on or before 6:00 a.m. (0600 hours) and had to be dispatched out of this facility by a 5:00 p.m. (1700 hours) operational window. Finally, the reference volume for this facility was 285 feet on October 14, 15 and 28, 1988.

On October 13, 1988 one hundred and eleven (111 ft) feet of third class mail was delayed and not delivered on the 13th. On October 14, 1988 the actual volume was 553 feet (including the 111 ft. of delayed mail from October 13th). This volume was 268 feet in excess of the 285 ft. reference volume ($553 - 285 = 268$). This volume was anticipated by Management the day before. The workforce present on the 14th was 23 Regular Carriers and 7 PTFs. Five (5) Regular Carriers were not available and four (4) were on their off days. One PTF was not available. Route 33 was vacant, but was filled by a PTF from another office. Route 25 also was vacant, but was filled by a PTF and T-6. On

October 14, 1988 thirteen (13) employees were available on the Overtime Desired List (ODL). Two (2) of them were limited to no street duties and worked only eight (8) hours. Seven (7) were scheduled and worked ten (10) hours. One (1) Regular Carrier besides the two (2) with street limitations also was limited and worked only eight (8) hours. One (1) PTF worked 7:50 hours and the other 7:15 hours. Both started at 0900 hrs. As a result of this overtime work, employees on the ODL had 24:50 unused hours at the end of the workday on October 14, 1988. Regular Carriers Dillon and Roper were not on the ODL but were required to work on their off days.

On October 14, 1988, eighty-three (83ft.) of third class delayed mail was carried over to October 15, 1988. On October 15, 1988 the actual volume was 448 ft. (including the 83 ft. of delayed mail from October 14th). This volume was 163 ft. in excess of the 285 ft. reference volume ($448 - 285 = 163$). This volume was anticipated by Management the day before. The workforce present on the 15th was 22 Regular Carriers and 7 PTFs. Seven (7) Regular Carriers were not available and four (4) were on their off- days. One (1) PTF was not available. Again, Route 25 was vacant, but filled with a PTF and T-6. On October 15, 1988 twelve (12) employees were available from the ODL. One (1) of these twelve (12) was not available for street duties. Five

(5) worked ten (10) hours and three (3) between nine (9) and ten (10) hours. One PTF worked 7:30 hours and the other on the ODL 6:00 hours. As a result of this overtime work, employees on the ODL had 21:67 unused hours at the end of the workday on October 15, 1988. Regular Carrier Roper, however, was not on the ODL but was required to work eight (8) hours on his off-day.

On October 27, 1988 130 ft. of third class delayed mail was carried over to October 28, 1988. On October 28, 1988 the actual volume was 445 ft. (including the 130 ft. of delayed mail from October 27th). This volume was 160 feet in excess of the 285 ft. referenced volume ($445 - 285 = 160$). This volume was anticipated by Management the previous day. The workforce present on the 27th consisted of 24 Regular Carriers and 6 PTFs. Three (3) Regular Carriers were not available and six (6) were on their off-days. On October 28, 1988 thirteen (13) employees were available from the ODL. Two (2) worked ten (10) hours and three (3) worked between 9:00 and 10:00 hours. Three (3) Regular Carriers on the ODL worked 8:00 hours, while two (2) T-6s or unassigned employees on the ODL worked 8:00 hours and another 8:22 hours. As a result of this work, employees on the ODL had 35:78 unused hours. Regular Carriers Rentfro and Tiller were not on the ODL but were required to work on their off-days.

The Grievance in this case was brought on behalf of all ODL employees. They claim they should have been worked on an overtime basis rather than call in Regular Carriers on their off days. As a class they claim five (5) days at eight (8) hours for a total of forty (40) hours at penalty rates for the time the five (5) Regular Carriers were required to work on their off-days. The proceeds of this recovery to be equally distributed to employees on the Overtime Desired List (ODL).

III. POSITIONS OF PARTIES

The Union contends Management failed to utilize the employees available on the ODL before calling in employees not on the ODL on their off-days. Citing Arbitrator Britton's award in U.S. Postal Service and NALC, Case No. S4N-3D-C 39490/41456 (Britton 1988), the Grievants contend ODL employees must be scheduled before non-ODL employees even when Management is trying to meet an operational window. Regular Carriers on ODL may be required to work twelve (12) hours per day and sixty (60) hours in a service week. PTF employees on the ODL have the same limitations. The Grievants further contend Management is required to use pivoting to utilize ODL employees before calling non-ODL employees. They cite Arbitrator Bowles in U.S. Postal Service v. NALC, Case No. C8N-4K-C 15166 (Bowles 1981) and U.S. Postal Service and NALC, Case No. H8N-5H-C 17682 (Aaron 1983)

for this argument. According to the Grievants, pivoting could have been followed to utilize employees from the ODL, but was not. Management also held PTF employees in abeyance after scheduling non-ODL employees on their off-days. The PTF should have been fully utilized. None of the ODL employees were worked in excess of ten (10) hours at penalty overtime rates. They must be worked at these rates before calling non-ODL employees. The Grievants, therefore, conclude they should have been utilized to the fullest extent before non-ODL employees were scheduled on their off-days.

Management contends it merely was adhering to a 6:00 a.m. (0600 hrs) delivery schedule and an operational window of 5:00 p.m. (1700 hrs). This window was a valid deadline. Vehicles also were limited to one vehicle per route and twenty-five and one-half (25½) routes existed. These routes had to be cased and delivered between 6:00 a.m. and 5:00 p.m. Employees working on one route were not available for another route. Postal customers expect consistency in delivery times. Staffing is a complex situation with a lot of variables. Management does not know the number of employees who will be present each day. Pivoting can be used to balance workloads and that is what Management was doing on the three disputed days. The objective was to move the mail. Management relied on the experience of

the Regular Carriers over PTFs and others to meet its scheduling deadlines. In support of its position, Management cited U.S. Postal Service v APWU, Case Nos. 34C-3U-C 7824 and 8101 (Marlatt 1987) which held the Service has the burden of proving the existence of an operational window justifying disregarding overtime provisions. Finally, Arbitrator Marlatt granted an overtime priority to ODL employees who could have worked overtime when non-ODL employees worked overtime. No overtime payments were awarded. According to Management no compensation remedy is appropriate in this case.

IV. DISCUSSION

The manning process is the bridge between Management's rights and employee rights under a collective bargaining agreement. Once Management determines the type and quantity of work that must be performed and when it must be performed, then employee rights to claim the available work are triggered under the collective bargaining agreement. The parties to the National Agreement recognize this process:

ARTICLE 3 MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and

consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;

B. To hire, promote, transfer, assign and retain employees in positions within the Postal Service...;

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the method, means, and personnel by which such operations are to be conducted;

....

Under this language Management has the right to decide what work must be performed and when it must be performed. No where in the National Agreement are Employees or the Union granted these rights or responsibilities. Once these decisions are made by Management the National Agreement describes the process of deciding which employees are entitled to the determined work identified as jobs or positions. Of course, Management is required to exercise its rights competently and in good faith, not in a manner that defeats employee rights under the National Agreement.

The assignment of overtime work is one of the processes triggered by Management's scheduling of work.

ARTICLE 8 HOURS OF WORK

Section 5. Overtime Assignments

When needed, overtime work for regular full-time employees shall be scheduled among qualified employees... in accordance with the following:

B.2.d. Recourse to the "Overtime Desired" list is not necessary in the case of a letter carrier working on the employee's own route on one of the employee's regularly scheduled days.

D. If the voluntary "Overtime Desired" list does not provide sufficient qualified people, qualified full-time regular employees not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee.

G. Full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the "Overtime Desired" list:

1. May be required to work up to (12) hours in a day and sixty (60) hours in a service week....

(Emphasis Added)

Clearly, this language is designed to work volunteers on an overtime basis before requiring overtime from employees who prefer not to work the additional time. This language, however,

does not change Management's right to determine what and when work will be performed as long as this right is exercised competently and in good faith.

The manning process requires certain volume and productivity information about the work to be performed and the people who will perform this work. In the Postal Service volume is expressed in "feet of mail." Actual volume, forecasted volume as well as reference volume are expressed in "feet of mail." In this case the reference volume for the Satellite Beach Branch in October 1988 was 285 feet. On October 13 the delayed mail was 111 feet; on the 14th it was 83 feet and; on the 27th it was 130 feet. This volume of mail was cased and delivered on 25.5 routes with mail arriving at 6:00 a.m. and departing at 5:00 p.m. These arrival and departure times were a segment of the transportation sequence used by the Service to process mail throughout its system. Sorting and transportation activities had to occur at certain times for the mail to arrive by 6:00 a.m. in Satellite Beach. It had to depart by 5:00 p.m. to be transported and sorted for delivery to other postal facilities. Management who designed the means and methods for sorting, transporting and delivering mail in that area of Florida established these arrival and departure times for Satellite Beach. This meant Satellite Beach had to case and deliver its first class mail

through 25.5 routes between 6:00 a.m. and 5 p.m. These time parameters established by higher Management were limitations on Local Management's scheduling discretion.

The reference volume for Satellite Beach establishes this Branch's normal capacity for casing and distributing mail. On the average each route has 11.18 feet of reference mail to case and deliver each day ($285 \div 25.5 = 11.18$ feet). Of course, Local Management has access to the actual reference volume for each route. This referenced volume for each route must be cased and delivered. The time to case this referenced volume is determined or approximated on PS Form 1840, Summary of Count and Inspections, as standard office time for casing. Street time is similarly calculated. Given this information casing productivity can be determined for each route by dividing route reference volume by standard casing time equals a rate of feet of mail cased per hour. For example, if the reference volume for a route was 11.18 feet and the standard casing time was 3:73 hours, the rate for casing that route would be 3.0 feet per hour. The standard delivery time for such a route would be approximately 4:27 hours to make an eight (8) hour day. Dividing the route's reference volume of 11.18 feet by 4:27 hours equals a delivery rate of 2.62 feet per hour. Everyone familiar with the letter carrier craft

recognizes that casing time is directly related to volume because every piece of mail must be handled. Delivery time, on the other hand, is not directly related to volume. Delivery to a patron essentially takes the same time whether a bundle is small, medium or large. At best, changes in volume increase delivery time in increments substantially less than increases in casing time for the same increase in volume. For example, a 10% increase in casing time for increased volume may produce only a 1 or 2% increase in delivery time for that same increase. In any event this information is or should be available and reliable for each route at the Satellite Beach Branch.

The process of manning an organization on a daily basis involves certain basic steps. Initially, Management must determine the alternative schedules for performing the work. In this case, Management could schedule all work between 6:00 a.m. and 5:00 p.m. Or, the delayed mail could be cased after employees returned from their routes. Or, the delayed mail could be cased before 6:00 a.m. Or, the delayed mail could be cased both after returning from routes and before 6:00 a.m. the next day. Each alternative must be analyzed to determine which schedule would be most effective and efficient. The remaining steps in the manning process must be taken for each alternative

to determine which is the most effective and efficient.

First, is a sufficient work force present to fill required positions? At this branch 25.5 routes or 26 positions must be filled to produce at least the referenced volume for the branch between the hours of 6:00 a.m. and 5:00 p.m. Each route has one vehicle so no more than one employee can deliver mail with that vehicle at the same time. This precludes pivoting routes as a means or method of casing and/or delivering mail on a route. Management's right to use or not use this method will be discussed later. In any event, since only one case exists per route, only one employee can case mail for a route at the same time. To case and deliver 25.5 routes at least 26 employees are required. The first step in the manning process, therefore, is to determine the number of employees required and whether they are going to be available and are present on a given day to case and deliver standard reference volume or less. This includes fully utilizing PTF employees. If they are not present, Management must call in sufficient ODL employees on their off-days to meet this headcount manning requirement. If that source is exhausted without filling the requirement, junior employees not on the ODL may be required to work under Article 8.5(D) on a rotating basis. As long as the volume of mail does not exceed reference volume, the manning process is complete.

On many occasions such as those in this case the actual volume exceeds the normal planned referenced volume. The second step in the manning process is to determine the additional hours required to case and process the mail in excess of the referenced volume. This step must be applied to Management's alternative work schedules. Using the Branch's productivity for casing, Local Management can analyze each alternative. For example, using a casing rate of 3.0 feet per hour, the following additional casing hours can be estimated:

Alternative #1 All mail processed between
6:00 a.m. and 5:00 p.m.

<u>Date</u>	<u>Excess of Reference</u>		<u>Casing Rate</u>	<u>Required Casing Hours</u>
10/14	268 ft.	÷	3.0 ft.	89.33
10/15	163 ft.	÷	3.0 ft.	54.33
10/28	160 ft.	÷	3.0 ft.	53.33

Alternative #2 Delayed Mail Cased on Day Delayed after
Carriers Return from Route

<u>Date</u>	<u>Excess of Reference</u>		<u>Casing Rate</u>	<u>Required Casing Hours</u>
10/13	Delayed mail 111 ft.	÷	3.0 ft.	37.0
*10/14	Regular Mail 157 ft.	÷	3.0 ft.	52.33
	Delayed Mail 83 ft.	÷	3.0 ft.	27.67
10/15	Regular Mail 80 ft.	÷	3.0 ft.	26.67
	Delayed Mail 12 ft.	÷	3.0 ft.	4.00
10/27	Delayed Mail 130 ft.	÷	3.0 ft.	43.33
10/28	Regular Mail 30 ft.	÷	3.0 ft.	10.00
	Delayed Mail 60 ft.	÷	3.0 ft.	20.00

- * This calculation assumes the feet of delayed mail is in addition to the day's regular mail. For example, on 10/14/88 regular mail was 157 feet and an additional 83 feet was delayed. Of course, if the 157 feet includes the 83 feet, the regular mail would require 27.67 less hours of work to case ($52.33 - 26.67 = 24.66$). The evidence simply was unclear on this point.

Alternative #3 Case Delayed Mail Before 6:00 a.m. of
Next Day

<u>Date</u>	<u>Excess of Reference</u>	<u>Casing Rate</u>	<u>Required Casing Hours</u>
10/14	Delayed Mail 111 ft. ÷	3.0 ft.	37.00
	Regular Mail 157 ft. ÷	3.0 ft.	52.33
10/15	Delayed Mail 83 ft. ÷	3.0 ft.	27.67
	Regular Mail 80 ft. ÷	3.0 ft.	26.67
10/28	Delayed Mail 130 ft. ÷	3.0 ft.	43.33
	Regular Mail 30 ft. ÷	3.0 ft.	10.00

Alternative #4 Case One-half Delayed Mail on Day Delayed and
Remainder the Next Day Before 6:00 a.m. or Other
Combination

<u>Date</u>	<u>Excess of Reference</u>	<u>Casing Rate</u>	<u>Required Casing Hours</u>
10/13	Delayed Mail 55 ft. ÷	3.0 ft.	18.33
10/14	Delayed Mail 56 ft. ÷	3.0 ft.	18.67
	Regular Mail 157 ft. ÷	3.0 ft.	52.33
	Delayed Mail 41 ft. ÷	3.0 ft.	13.67
10/15	Delayed Mail 42 ft. ÷	3.0 ft.	14.00
	Regular Mail 80 ft. ÷	3.0 ft.	26.67
	Delayed Mail 12 ft. ÷	3.0 ft.	4.00
10/27	Delayed Mail 65 ft. ÷	3.0 ft.	21.67
10/28	Delayed Mail 65 ft. ÷	3.0 ft.	21.67
	Regular Mail 30 ft. ÷	3.0 ft.	10.00
	Delayed Mail 30 ft. ÷	3.0 ft.	10.00

This analysis shows an estimated number of casing hours required

to case delayed and other regular mail in excess of referenced volume for each work schedule alternative.

The third step in the manning process is to determine which employees are available to work these additional casing hours. Of course, available straight time employees would be used first, before any overtime would be scheduled. The Agreement in Article 8.5(C)(2)(d) permits Management to require a carrier to work overtime on the employee's route on one of the employee's regularly scheduled days without resorting to the ODL. The next source of employees is the ODL. During the hours of 7:00 a.m. to 3:30 p.m. these ODL are working their regularly scheduled hours and are not available for overtime work at the same time. They are working their regular straight time hours. Within the 6:00 a.m. delivery and 5:00 p.m. departure parameters ODL employees could work the hour before and the hour after their regular shift on an overtime basis. For delayed mail these employees could work overtime before 6:00 a.m. and after returning from their route for the 5:00 p.m. operational window. In other words, an ODL employee could work two (2) hours of overtime between the delivery and departure parameters and another two (2) hours entirely or partially outside of these parameters before 6:00 a.m. and after 5:00 p.m. In this case, on October 14th thirteen (13) employees were available on the ODL; on the 15th

twelve (12) were available and; on the 28th thirteen (13) were available. Within the delivery and departure parameters these ODL employees could work 24-26 hours of overtime. In addition, they could work another 24-26 hours of overtime outside of these parameters before exhausting their twelve (12) hour day. Once these hours are exhausted, of course, Management may call in non-ODL employees on a rotating basis beginning with the junior employee under Article 8.5(D).

Given this information Management now can analyze its scheduling alternatives. Alternative #1 requires 89.33 additional hours on the 14th between 6:00 a.m. and 5:00 p.m.; the 15th 54.33 hours and the 28th 53.33 hours. Sufficient head count were present for these days to work the 25.5 routes at this branch. On the 14th 30 employees were available (23 Carriers and 7 PTFs). The four (4) "available straight time employees" could work 32 hours and the thirteen (13) ODL employees another 26 hours for a total of 58 hours, far short of the 89.33 hours required. Junior off day employees would have to be called if the space was available to work them efficiently. On the 15th, 29 employees were available (22 Carriers and 7 PTFs). This left three (3) "available straight time employees" who could work 24 straight time hours and the twelve (12) available ODL employees who could work 24 hours

within the delivery and departure parameters. This would produce forty-eight (48) additional hours, but would be short of the 54.33 hours required. A similar analysis would result for the 28th. In both instances a junior off-day employee would be required.

Alternatives #2 and #3, when analyzed, produce different results. Sufficient head count were present on each of the disputed days. The 111 feet of delayed mail on the 13th requires 37.0 hours to case. If four (4) straight time employees were available on the 13th as were available on the 14th, they could work 32 straight time hours. If the available ODL employees were the same on the 13th as they were on the 14th, these ODL employees could only work 26 hours outside of the parameter times if they were fully utilized during those times. The 111 ft. of delayed mail could have been worked on the 13th by 30 hours of straight time employees on their regular shift and 26 hours by ODL employees. The Regular mail on the 14th, however, required 52.33 casing hours between 6:00 a.m. and 5:00 p.m. The four (4) straight time employees could not work on this excess regular mail while others were casing it during their shift. ODL employees only could provide 26 casing hours during this time. Regular mail would have to be delayed on the 14th and/or employees on their off days called in to work their routes

and/or free employees. The mail delayed on the 14th was 83 feet and would take 27.67 casing hours. Alternative #2 requires 90 additional hours on the 14th ($52.33 + 27.67 = 90.00$). Alternative #3 requires 89.33 casing hours on the 14th ($37.00 + 52.33$). Under either alternative the additional straight time employees could produce 32 hours during their regular shift, but cases would be fully utilized during the morning hours of the shift so the necessary equipment would not be available for them to case regular mail to be delivered that day. They only could work delayed mail after other carriers left their cases to deliver their routes. ODL employees only could provide about 26 hours within the Regular mail parameters. These hours would be one-half of those required for regular mail on the 14th. Regular employees not on the ODL could be called in to work their route freeing up employees on the ODL to work multiple routes casing mail beginning at 6:00 a.m. and/or freeing up carriers from working routes on a Regular Carrier's off day. In any event, the excess regular mail on the 14th was 157 feet which is 55% higher than referenced volume ($157 \div 285 = .55$). Since only about 2 additional hours for casing is available from 6:00 a.m. to 5:00 p.m., Management is limited by time and equipment from increasing its manpower for casing. If routes take approximately four (4) hours to case, two (2) additional hours of casing is a 50% increase in capacity. When

actual mail volume exceeds a facilities' capacity to case it within delivery and departure parameters, mail must be curtailed. Throwing more labor hours at such volume does not work.

On the 15th under Alternative #1 4.0 hours were needed to case delayed mail, while 26.67 hours were needed under Alternative #3. The regular mail on the 15th was 80 feet and required 26.67 casing hours. Three (3) additional employees were available to assist during the regular shift and twelve (12) employees were available from the ODL. The ODL employees could cover 24 casing hours from 6:00 a.m. to 5:00 p.m. and another 24 hours for casing delayed mail. The straight time employees could produce 24 hours during their shift. Management had 48 hours available from 6:00 a.m. to 5:00 p.m. which was ample for regular mail and most of the delayed mail.

On the 28th under Alternative #2 delayed mail required 20.0 casing hours and under Alternative #3 43.33 hours. Four (4) additional employees were available to work during the regular shift and thirteen (13) were available from the ODL. Under Alternative #2 these employees easily could cover the excess regular and delayed mail. Under Alternative #3 ODL employees could almost case all of the delayed mail and the excess regular mail, 26 hours before 6:00 a.m. and 26 hours after 5:00 p.m. for a total of 52 hours. The additional

employees could cover the remaining time.

Finally, Alternative #4 shows the additional employees during the regular shift and ODL employees could cover all of the excess work on October 15 and 28. However, they could not cover the excess regular and delayed mail on October 14th as was the case with all of the other alternatives.

The purpose of this analysis is not to "Monday morning quarterback" Management. It is to illustrate the type of analysis which shows Management conducted the manning process competently and in good faith. Since the evidence did not show the distribution of off days for regular carriers, this Arbitrator had no way of knowing the number of carriers who were working their regular routes and could have been or were required to work overtime without resorting to the ODL. Article 8.5(C)(2)(d) is quite clear on this point. In this case this Branch had thirty-two (32) regular carriers. The distribution of off-days is critical to manpower scheduling and the manning process. Carriers on their regular schedule and route can be required to work overtime up to ten (10) hours if they are not on the ODL. Their routes should be covered for any excess volumes approaching 50% above reference volume (2 potential overtime hours per day \div 4 typical casing hours per day \times 100 = 50%). Employees on the ODL need to be able to cover their overtime work as well as

the overtime work of employees not on the ODL. This limits the Service's capacity to process excess volume to approximately 50% of reference volume. For example, if five (5) carriers are on their off-days and twenty-one (21) of the necessary twenty-six (26) carriers are working their regular route and twelve (12) employees are available on the ODL, the twenty-one (21) regular carriers can be required to work overtime to ten (10) hours without resorting to the ODL. ODL employees, therefore, may be required to cover overtime on only five (5) routes plus their own routes. In the case of twelve (12) ODL employees, it means their four (4) potential overtime hours would be divided between their routes and the routes of off day employees. For example, 2 hours to another route and 2 hours to their own route would limit capacity to an increase in volume of 50% (2 hours per route \div 4 typical casing hours \times 100 = 50%). Management's flexibility to schedule overtime, therefore, is largely determined by the distribution of off-days during the work week and the number of employees on the ODL. The following outline summarizes this manning process.

MANNING PROCESS

<u>Management's Manpower Requirements</u>	<u>Manpower Availability Sequence Under National Agreement</u>
1. Personnel present less than the number of routes to be staffed for at least 8 hours each	1. First, call in ODL employees on their off-days Second, call in employees not on the ODL on their off-days
2. Excess Mail Volume above Reference Volume between Delivery and Departure Parameters	2. First, available straight time employees Second, require carriers on their regular day and route to work overtime Third, ODL employees up to 12 hours Fourth, non-ODL employees on their off days
3. Delayed Mail Volume processed outside of delivery and departure parameters bracketing a carrier's regular shift	3. First, available straight time employees Second, carriers on their regular day and route may be required to work overtime contiguous with their regular shift and on work for their route Third, ODL employees up to 12 hours Fourth, non-ODL employees on their off days

This outline shows the important relationship between the distribution of off days among carriers and the number of employees on the ODL.

It also shows the sources of manpower before calling in non-ODL employees on their off days and serves as a useful checklist.

In this case the ODL Grievants claim they should have been assigned the overtime work on October 14, 15 and 28, 1988 rather than calling in non-ODL employees on their off days. Supervision in this case essentially adopted Alternative #1 and attempted to schedule all of the work between 6:00 a.m. and 5:00 p.m. He followed no sequence consistent with the National Agreement in manning the Branch. He called in non-ODL employees on their off days without fully utilizing his PTFs. Given the hours required to case the excess mail during these hours, he simply jammed the Branch with people and hoped to get the mail out. Of course, he did not get it all out and had to delay mail on each day. Under the other alternatives on October 14th, the regular mail simply exceeded the capacity of carriers to orderly case and deliver the mail between 6:00 a.m. and 5:00 p.m. unless numerous carriers were required to work overtime on their own routes. If PTFs were fully utilized, carriers were required to work overtime on their own routes and ODL employees were fully utilized, Management could be justified in calling in non-ODL employees on their off-days. The Supervisor, however, did not fully utilize his PTFs. On October 15 and 28, 1988 under

Alternatives #2, 3 and 4, even if carriers were not required to work overtime on their routes, the additional employees plus ODL employees could have covered the excess volume. The Union simply stated has shown that this Supervisor had "no method to his madness" on October 14, 15 and 28, 1988 before calling in non-ODL employees on their off-days and depriving these ODL Grievants of their desired overtime work. The Union has the burden of proving Management disregarded the sequence for assigning work and overtime under the National Agreement. It has met this burden. The Grievance must be sustained.

The Union has cited several cases in support of other arguments that are inconsistent with the reasoning in this case. Arbitrator Britton in U.S. Postal Service and NALC, Case No. S4N-3D-C 39490/41456 (Britton 1988) held Article 8.5 was violated even though Management was scheduling non-ODL employees to meet an operational window when ODL employees would not be available until after the operational window departure time. Arbitrator Britton did not discuss Management's right to schedule its operations under Article 3. Clearly, Management has the right to set cut-off times for transporting mail under Article 3. This means Management has a right to schedule manpower at times to meet such a departure time. There is no language in the National Agreement granting employees a veto

power over Management's determination of what work and when work will be performed. Establishing an operational window is not only one of Management's rights, it is an obligation of Management. Arbitrator Marlatt in U.S. Postal Service and APWU, Case Nos. S4C-3U-C 7824 and 8101 (Marlatt 1987) recognized the "operational window exception" but held Management has the burden of proving the requirement for such a window. Again, this holding ignores Article 3, Management Rights. Management has the right to schedule its operations. If it exceeds this right, the Union as the moving party contends a violation exists and has the burden of proving such a violation occurred. Often, alternative schedules for performing work may be reasonable. One may support a Grievant's case and another Management's case. If the Grievant has the burden of proof, he loses and Management has rightfully exercised its discretion. If Management has the burden, it must show the Grievant's alternative schedule was improper when it was not. Management loses and has no discretion, the very antithesis of Article 3. The Union is the moving party and has the burden of proving Management violated the National Agreement.

The Union has contended Management should have used pivoting as a method of further utilizing ODL employees. In

support of its position the Union has cited, U.S. Postal Service and NALC, Case No. H8N-5B-C 17682 (Aaron 1982) and U.S. Postal Service and NALC, Case No. C8N-4K-C 15166 (Bowles 1981). Both Arbitrators endorsed the use of pivoting as a method for using ODL employees rather than non-ODL employees. Now, pivoting is a method of performing work. Article 3 expressly includes Management's right to determine methods of operation. This right includes pivoting. Under the Agreement Management has the discretion to use or not use pivoting as a method of operation.

The Grievants on behalf of ODL employees available on October 14, 15 and 28, 1988 as a class are entitled to compensation. Thirteen (13) ODL employees were deprived of sixteen (16) hours of work on the 14th and 28th. Those available on each day are entitled to 1.23 hours ($16 \div 13 = 1.23$) at the applicable rate. Twelve (12) ODL employees were available on the 15th and are entitled to 0.67 hours ($8 \div 12 = 0.67$) or 40.2 minutes at the applicable rate. The Grievance must be sustained and a remedy adopted on this basis.

V. AWARD

The Grievance is hereby sustained in accordance with this opinion. ODL employees available on October 14 and 28, 1988

shall receive additional pay of 1.23 hours at the applicable rate for each day. ODL employees available on October 15, 1988 shall receive additional pay of 0.67 hours at the applicable rate. This Arbitrator retains jurisdiction in the event a dispute arises regarding the implementation of this award.

This the 29th day of September, 1989.

Robert M. Williams