C#09421

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION Between UNITED STATES POSTAL SERVICE And NATIONAL ASSOCIATION OF LETTER CARRIERS	GRIEVANT: Class Action (Nine Letter Carriers) POST OFFICE: Fort Worth, TX CASE NUMBER: S7N-3A-C-3892

BEFORE: P. M. WILLIAMS, ARBITRATOR, SOUTHERN REGION

APPEARANCES:

FOR THE POSTAL SERVICE:
Willie R. Hargis, Labor Relations Representative

FOR THE NATIONAL ASSOCIATION OF LETTER CARRIERS:
Alex Alcorta, Local Business Agent

PLACE OF HEARING:
Main Post Office, Fort Worth, TX

DATE OF HEARING:
September 21, 1989

DECISION AND AWARD

BACKGROUND:

The grievants were employed as full time regular letter carriers at the Ridglea Station, Fort Worth, Texas. Prior to the Veterans Day Holiday, 1987 each signed a list posted by their supervisor indicating a willingness to work on the holiday. They were not assigned duties on the Holiday however. Rather 5 PTF carriers and 5 T-6 carriers were selected to work that day. Each of the selected employees was junior in seniority to the grieving employees.

The grievance recites the following as "the facts":

"On 10/22/87, a list was posted asking for carriers who might be interested in coming in on the Wednesday Holiday (no Wed. compers) and casing routes to list their names. A Holiday work schedule was originally posted working 10 regular carriers, 2 T-5's and 5 T-6's, and 3 carriers who have their own routes. The Union brought to Management's attention that such posting and assigning should be done by seniority, from most senior on down. Another schedule was posted working only 5 T-6's and 5 PTF's. These 10 did work on 11/11/87."

A grievance was filed on November 23, 1987. It requested as follows:

"That the following employees be paid 8 hours each, at straight-time rate, since they should have been entitled to work 11/11/87 by virtue of their seniority: (Names deleted). In addition that all violations of Article 41 cease and desist.

The grievance was denied at all Step levels and is properly at the level of arbitration.

All interested parties appeared at the hearing where they were given an opportunity to present such evidence and argument as was deemed appropriate under the circumstances. The steward appeared for the grievants and testified on their behalf. All witnesses were placed under oath and were cross-examined by the opposing party. Each party made a closing argument to complete the hearing.

POSITION OF THE PARTIES:

National Association of Letter Carriers (Union):

The Union claimed the Employer was in violation of Article 11, §6A & B and also Article 41, §2A(1). The essential thrust of its complaint was that the Employer was under a duty to use carrier employees who volunteered to work the holiday on the basis of those employees' seniority standing, and because in this case that was not done the employees who were deprived of the opportunity to work should be paid for the day lost at regular rates of pay. It asked that the grievance be sustained.

United States Postal Service (Employer)

The Employer contended no violation of either Article 11 or Article 41 of the NA, or of the Local Memorandum of Understanding (LMU) had occurred as a result of its scheduling carrier employees to work on November 11, 1987. It asked that the grievance be denied.

ISSUE: Did the Employer violate the terms of the National Agreement or the LMU as a result of scheduling letter carrier employees to work November 11, 1987, a holiday, and if so, what is the proper remedy?

OPINION:

The Union cites Article 11, §6 A & B as having been violated, and also Article 41, §2A(1). Those sections provide as follows:

"Article 11, §6 Holiday Schedule

"A. The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Tuesday preceding the service week in which the holiday falls.

"B. As many full-time and part-time regular schedule employees as can be spared will be excused from duty on a holiday or day designated as their holiday. Such employees will not be required to work on a holiday or day designated as their holiday unless all casuals and part-time flexibles are utilized to the maximum extent possible, even if the payment of overtime is required, and unless all full-time and part-time"

"regulars with the needed skills who wish to work on the holiday have been afforded an opportunity to do so."

"Article 41 §2 Seniority

"A. Coverage

"1. This seniority section applies to all regular work force Letter Carrier Craft employees when a guide is necessary for filling assignments and for other purposes and will be so used to the maximum extent possible. ..."

The Employer said it had not violated either Article 11 or 41, nor Item 13 of the LMU which provides as follows:

"ITEM 13 - THE METHOD OF SELECTING EMPLOYEES TO WORK A HOLIDAY.

"Management shall determine the number and category of employees needed for holiday work and for days designated as individual employee's holidays, and shall schedule employees by the following priorities;

a. Casuals, even if overtime is necessary.

b. Part-time flexibles, even if overtime is necessary.

c. Full-time and part-time regular employees in order of seniority, who have volunteered to work on the holiday or their designated holiday when such day is part of their regular work schedule. These employees would be working at the straight rate in accordance with Article 11, Section 4. ..."

One of the complaints of the Union stemmed from the fact that at the outset the Station Manager, who posted the first list that invited volunteers, did not indicate on the posting either the number of employees needed or their category, and the mistake was repeated on the second posting.

I understand what the Union is complaining about however I do not think such a minor flaw in procedure is of the magnitude that it ought to bring a windfall to the complaining employees when it was neither shown or alleged that any of the nine was misled by the mistake in procedure. As a matter of fact the first mistake was immediately corrected as a result of the steward's suggestion that what was being proposed as the schedule was improper. The error was repeated when the second list was posted, but again the mistake was de minimus and I am unable to think of a situation where that error could possibly have harmed the grievants. Rather the crux of their complaint reaches their non-selection to work, it does not reach the fact that they did not know in advance that the Employer was going to use 5 PTF employees and 5 T-6 employees to do the work of casing mail on the holiday. Moreover, had that knowledge been available they likely would have also known that the 5 junior of them had no complaint to make over what was done. To explain.

The parties agree that 5 PTF employees were selected to work the holiday. It seems to me therefore that that fact immediately elimi-

nates 5 of the grievants from being candidates for a sustaining award because even if everything the Union argues is correct (and it is not), the LMU gives the PTF employees a priority over full-time regular employees, which all agree these grievants all are. (See Item 13 (b).)

The Employer said it made a decision that the 40 routes at the station should be cased on the holiday. It concluded that 5 PTF employees and 5 T-6 employees could best do that work because they were more familar a greater number of the routes than were any others in the carrier group. It said the lists were posted because it needed to know who, if any, from among the full time regular carriers, including the T-6's, were interested in working because if an insufficient number of the T-6's opted not to work it have to schedule full time regular carriers to fill out the 10 employees it considered necessary to accomplish the casing task. When 5 T-6's volunteered to work along with the 5 PTF's there was no need for it to go to the list of full time regulars who had route assignments, and it did not do so.

The Employer also said Item 13 of the LMU supported its decision because it specifically provides it with the right to "determine the number and category of employees needed".

I believe it is important to emphasize that Item 13 is the LMU covering this Union. It is not an LMU for both this Union and the APWU. Therefore it is clear that when the language therein refers to "category of employees" the reference must be understood to be speaking of letter carrier employees, and no others.

That being true it cannot reasonably be said that the Employer was not acting within the scope of its authority when it made a decision to use T-6 carriers to case routes on a holiday. Moreover, when it is recalled that each such employee had recent casing experience on a minimum of 5 routes, whereas other full-time regular employees would probably have recent experience on no more than one or two, and all of the work to be performed was casing work, it also cannot be said that the Employer had no justification for making the decision to use employees who had the most experience for the job that was to be undertaken, i.e., the T-6's.

Under the existing circumstances I am of the opinion, and so find, the Employer did not violate the terms of the NA or the LMU as a result of its scheduling letter carrier employees to work November 11, 1987. The grievance which claims to the contrary therefore should be, and the same hereby is, denied.

On the basis of the entire record in this case the undersigned makes the following

AWARD

The grievance is denied in accordance with the opinion expressed above.

P. M. Williams
Arbitrator

Dated at Oklahoma City, Oklahoma
this 7th day of October, 1989.