

UNITED STATES OF AMERICA  
UNITED STATES POSTAL SERVICE  
VOLUNTARY LABOR TRIBUNAL ARBITRATION  
REGULAR PANEL

In the Matter of the  
Arbitration Between:

UNITED STATES POSTAL SERVICE

-and-

AMERICAN POSTAL WORKERS UNION

Case No. CLC-4C-C 26726  
Grand Forks, North Dakota

ARBITRATOR'S OPINION AND AWARD

APPEARANCES:

FOR THE UNITED STATES POSTAL  
SERVICE:

Judy Sorenson, Director,  
Employee & Labor Relations

FOR THE AMERICAN POSTAL WORKERS  
UNION:

Larry Grevais, National  
Business Agent  
Ed Jacobson, Local President  
Jim Vanyo, Witness

In addition to having a main postal facility in downtown Grand Forks, North Dakota, the Service also operates a substation known as the University Station servicing the University of North Dakota.

Two full-time clerks work at the University Station. One is a Clerk in Charge of a Finance Station, Level 6, who works from 8:15 a.m. to 4:45 p.m., Monday through Friday. This clerk primarily provides window service. The second position was a Window Distribution Clerk, Level 5. Prior to the filing of the present grievance, this clerk worked from 6:00 a.m. to 2:30 p.m., Monday through Friday. The principal duty of this clerk was the distribution of mail at the Station.

In addition, on Saturday the University Station is serviced by a back-up clerk, Level 5, who has Sundays and Thursdays off. Four days per week this clerk distributes mail at the main postal facility in Grand Forks. On Saturdays, this back-up clerk distributes mail at the University Station.

In January, 1984, Mr. Norman retired from position #211. Position #211 is the Level 5 clerk at the University Station. The Service posted the position with a split schedule; namely, the employee filling position #211 was to have Wednesdays and Sundays off. The Union has grieved the split schedule, noting in the Step 2 Grievance Form:

Position # 211 was posted with split days off-Sunday, Wednesday. This position had been a Saturday, Sunday days off, since the position was created many years ago. Management reason for changing the days off is so more City 3rd class mail will get worked on Saturday in the Main Office.

Article 8 Section 2C of the national agreement states: As far as practicable the five days shall be consecutive days within the service week.

It is our position that this Position is practicable to be a Monday-Friday (Sat., Sun. days off). All regular window positions in the Main Post Office, UND Station and AFB Branch are Monday-Friday work week. Position # 211 is a UND position. Not all clerks who work Saturday and Sunday in the Main PO have had City Scheme training as required. Changing the days off on Position # 211 was not part of the Staffing and Scheduling plan for tour 2.

The Union bases its grievance on an alleged violation of Article 8.2C of the National Agreement, which provides:

C. The employee's normal work week is five (5) service days, each consisting of eight (8) hours, within ten (10) consecutive hours, except as provided in Section 1 of this Article. As far as practicable the five days shall be consecutive days within the service week.

The Union maintains that it was "practicable" to schedule position #211 at the University Station for five consecutive days, namely Monday through Friday. The Union argues that such scheduling is "practicable" unless the split schedule demonstrably increases efficiency and that such was not the case in the present instance.

Article 8.2C is not new to this Arbitrator. In Springfield, Illinois (Class Action), Case No. CLC-4A-C 16335 (1983), this Arbitrator had occasion to interpret the "[a]s far as practicable" language of Article 8.2C. At pages 10 and 11 of that Opinion, this Arbitrator defined such language:

Article 8.2 is entitled 'Work Schedules' and in 8.2c, as emphasized previously at the beginning of this Opinion, utilizes the phrase 'as far as practicable' in describing the scheduling of consecutive five days. Ballantines Law Dictionary (3rd Ed. 1948) defines 'practicable' as 'feasible; workable; usable'. The same definition is offered in the Random House Dictionary of the English Language, namely 'capable of being done, affected, or put into practice, with the available means; feasible.' One definition of 'As', an adverb, in the Random House Dictionary is 'to such a degree or extent; similarly; equally'.

West's Blacks Law Dictionary, (4th Ed., 1957) defines 'practicable' as:

Practicable is that which may be done, practiced, or accomplished, that which is performable, feasible, possible; and the adverb practicably means in a practicable manner. Streeter v Streeter, 43 Ill. 165; Lauck v Reis, 310 Mo. 184, 274 S.W. 827, 832; Unverzagt v Prestera, 339 Pa. 141, 13 A.2d 46, 48.

These definitions of 'practicable' and 'as' when read in context with the 'efficiency' provision of Article 3 lead to the conclusion that the bargain between the parties is as follows. 'Efficiency' guides the scheduling of employees. If it is 'practicable' consistent with 'efficiency', consecutive days off will be scheduled. When the consecutive days off interfere with 'efficiency', then split days will be utilized.

This definition is not unique to this Arbitrator.

Arbitrator Arnold Zack agreed with this definition in Portland, Maine, Case No. NIV-1KC-2860 (1982) where, in denying an Article 8.2C grievance, he noted at page 3:

Clearly it is 'possible' to make the assignment change the Union seeks here. But the standard agreed to by the parties is not the possibility but the 'practicability' of such an assignment as would assure two consecutive days off.

Similarly, Arbitrator McAllister, in Mound, Minnesota (Dale Koenhen), Case No. C1C-4-C 21326 (1984), noted at page 5:

Article 8, Section 2C, does not mandate or guarantee employees five (5) consecutive work days. Practicable means that which may be done or that which is feasible, possible. Article 3 bestows upon the Postal Service broad managerial rights. While a schedule of five consecutive days is always possible, it is not always feasible.

Arbitrator Collins, in Baldwin, New York (G. Fredericks), Case No. N1C-1M-C 2595 (1982), though granting the grievance, noted:

Management has basic responsibility for scheduling, but its discretion in this area is limited by Article 8, and in particular by the express requirement in Section 2 C that there will be consecutive days off 'as far as practicable.'

In any case the burden on the Union of proving that a consecutive days-off schedule is practicable is a heavy one. Yet on the present record the Union appears to have satisfied that heavy burden.

Article 3 of the National Agreement, entitled "Management Rights," reserves management rights in the Service "subject to the provisions of this Agreement and consistent with applicable laws and regulations." Among the rights reserved are:

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

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

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

The question here is whether the Union has sustained its burden of proof in maintaining that under the present circumstances Article 8 limits the right of the postal facility at Grand Forks, North Dakota to schedule position #211, the Level 5 full-time clerk at the University Station, as a split shift.

In presenting an alleged contractual violation, the initial burden is on the party claiming that a violation has occurred, herein the Union. Hercules Galion Products, Inc., 52 LA 1026 (McIntosh, 1969); Weatherhead Co., 37 LA 60 (Pollock, 1961). But once a prima facie claim is established, the burden then shifts to the opposing party, herein the Service. Vickers, Inc., 43 LA 1256 (Bothwell, 1964); Tenneco Oil Co., 44 LA 1121 (Merrill, 1965). This shifting of the burden of proof was spelled out by Arbitrator Bothwell in Vickers, Inc., supra at 1262, when he wrote:

First the Union as the complaining party has the burden of going forward initially with evidence showing a prima facie case -- presenting evidence which, if believed, would sustain the complaint. This is true unless, as in discharge cases, the Company has the substantive burden of proof.

Second, once the union as the complaining party has made out a prima facie case the burden of going forward with evidence shifts to the company as the responding party. The company then has two choices: A. The company may present rebutting evidence, or an affirmative defense, and thereby shift the burden of going forward with evidence back to the Union. B. The company may rest without presenting rebutting evidence, and let the arbitrator decide whether he wishes to credit the Union's evidence. The arbitrator may choose to believe or not to believe the Union's evidence, and on that issue of credibility the case rests.

The question here is what must the Union, the party having the burden, actually prove. Here the Union must introduce proof which, if believed, would indicate that it would

have been "practicable", as that term has been defined at pages 3-5 of this Opinion, to give position #211 consecutive days off. Then the burden would shift to the Service to rebut the Union's case.

It is uncontested that prior to the change in January, 1984 position #211 was scheduled to work Monday through Friday. Also, the back-up clerk worked at the main office four days per week and worked at the University Station on Saturdays. This left four clerks at the main office on Saturdays. In the past, this arrangement allegedly did not hamper service at the University Station even though the back-up clerk did not work regularly at this facility and was therefore not completely familiar with it.

In addition, the Union presented the following chart covering three accounting periods before and seven accounting periods after position #211 was changed to a split shift in January, 1984:

	Curtailed		Vol Mon	Curtailed Mon	Avg. Daily Volume Del
	Vol Sat	Sat			
<b>AP 10-83</b>					
Week 1	254	0	280	3	291
2	361	16	287	60	300
3	239	82	253	0	278
4	248	0	Holiday	384 Tues	288
<b>AP 11-83</b>					
Week 1	265	77	252	57	303
2	302	24	301	67	303
3	242	15	232	56	263
4	320	58	252	71	291

	Vol Sat	Curtailed Sat	Vol Mon	Curtailed Mon	Avg. Daily Volume Del
<b>AP 12-83</b>					
Week 1	299	155	271	74	312
2	275	62	229	31	290
3	339	11	233	14	295
4	263	78	217	46	291
<b>AP 13-83</b>					
Week 1	315	182	Holiday 374	Tues 5	375
2	425	172	307	220	372
3	311	180	328	74	349
4	292	92	310	0	398
<b>AP 1-84</b>					
Week 1	292	74	291	34	354
2	281	156	Holiday 379	Tues 208	364
3	361	123	267	76	370
4	325	229	315	141	340
<b>AP 2-84</b>					
Week 1	301	242	352	118	376
2	329	496	324	387	359
3	330	347	353	328	378
4	456	337	353	208	381
<b>AP 3-84</b>					
Week 1	371	195	295	99	370
2	277	169	355	51	319
3	296	58	315	12	413
4	330	67	467	8	401
<b>AP 4-84</b>					
Week 1	267	0	Holiday 430	Tues 109	421
2	428	381	Holiday 460	Tues 58	429
3	374	346	420	190	450
<b>AP 5-84</b>					
Week 1	347	110	312	70	340
2	416	384	411	301	407
3	344	175	431	132	391
4	288	140	342	82	344
<b>AP 6-84</b>					
Week 1	335	35	Holiday 373	Tues 79	382
2	404	272	398	124	413
3	367	90	339	97	388
4	396	158	391	80	374

	Curtailed		Vol Mon	Curtailed	Avg. Daily Volume Del
	Vol Sat	Sat			
AP 7-84					
Week 1	319	25	395	89	
2	380	82	413	124	341
3	407	121	363	83	413
4	299	52	332	71	386
					346

The columns contain the following respective figures for each week: volume of mail delivered on Saturday, volume of curtailed mail on Saturday, volume of mail delivered on Monday, volume of curtailed mail on Monday, and average daily volume of mail delivered. Curtailed mail is mail available for delivery which the carriers are unable to deliver. The above figures, though organized by the Union, were taken from the Service's Form 3923.

An analysis of the above chart shows that there was no significant decrease in curtailed mail relative to volume of mail delivered on Saturdays and Mondays after position #211 was given a split shift. This suggests that the scheduling change did not enhance the efficiency of the Service. Therefore, this Arbitrator believes that this evidence satisfies the Union's burden of proof.

Postmaster Kolander testified that positions which become vacant are routinely reviewed by the Service. The retirement of Mr. Norman gave the Service an opportunity to review position #211. Postmaster Kolander maintained that the split schedule was designed to increase efficiency.

In the Spring of 1983, the Service performed a staffing and scheduling audit of the facility at Grand Forks. At that time, efficiency studies indicated that the facility may have been overstaffed. This study suggested that less distribution clerks and more mail handlers were needed. This caused both the Union and Service some concern.<sup>1/</sup>

There is no question that Postmaster Kolander has been attempting to improve efficiency. The postal facility at Grand Forks has experienced an annual increase of 11% in mail handling. It is also true that the route structure has changed. The Grand Forks Post Office had previously used 36 regular postal routes and two auxillary routes; it now utilizes 38 regular postal routes. Nevertheless, in attempting to deliver an increasing volume of mail with the same basic route structure, Postmaster Kolander has found it necessary to improve efficiency, particularly at the main postal facility at Grand Forks, which receives mail Monday through Saturday.

There are 17 positions at the main facility. On Tour II, 16 of these positions work Wednesday; only six of these positions work Saturday. The six positions which work Saturdays include a timekeeper and five clerks. While all of these clerks

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<sup>1/</sup> There was some evidence that the Service and Union agreed that the Union would not grieve the use of additional mail handlers which Postmaster Kolander wished to hire if the Service would give as many clerks as possible consecutive days off. Postmaster Kolander testified that no firm agreement of such a nature was reached. This Arbitrator concludes that, even if such an agreement existed, the Service was not required to give clerks consecutive days off in every instance. Thus, the Arbitrator's decision does not rest on whether or not there was such an Agreement.

distribute mail part of the day, some of these clerks also provide window service. Postmaster Kolander concluded that position #211 could therefore be spared more easily on Wednesdays than on Saturdays.

Also, Postmaster Kolander noted that the Clerk in Charge of Finance, Level 6, is not on duty at the University Station on Saturday. Presumably, this clerk had sufficient knowledge of the operations of the University Station to guide the back-up clerk. According to Postmaster Kolander, the presence of position #211, who regularly worked at the University Station with the Level 6 clerk, would mean that the back-up clerk would have less questions and would work more efficiently on Saturday.

According to Postmaster Kolander, the above factors would lead to a more efficient and timely distribution of bulk business mail or third class mail so that more mail would be available for delivery on Monday. This is important because no mail is distributed on Sunday and bulk business/third class mail must be distributed within a 48 hour time limit. Thus, when more bulk business/third class mail is distributed on Saturday and is available for delivery on Monday the facility can avoid "delayed" mail.

In addition to setting forth the rationale for giving position #211 split days off, Postmaster Kolander also attacked the accuracy of the chart prepared by the Union. See pages 7-9 of this Opinion.

Postmaster Kolander suggested that the chart prepared by the Union is not dispositive since it fails to take into account the hours spent in delivering the mail or the fact that there are now 38 regular postal routes, including the two auxillary routes which have been upgraded.

Postmaster Kolander also claimed that the figures in the chart are misleading because immediately after position #211 was filled Mr. Norman's replacement was still learning the job and was therefore not working efficiently. For example, many addresses on letters sent to the University are incomplete. Often letters are simply addressed to a professor or fail to list the Post Office box within the addressee's department. Because of Mr. Norman's experience, he was able to distribute such mail quickly. His replacement, however, could not be expected to be as familiar with the addresses.

Postmaster Kolander also noted that the chart failed to distinguish between pre-sorted mail and mail which had to be sorted at the postal facility.

There is some logic to these observations. However, while Postmaster Kolander was a sincere administrator concerned with efficiency, he failed to support his conclusions with stastical evidence. The chart prepared by the Union from figures taken from the Service's Form 3923 suggests that splitting the days off for position #211 did not significantly change either the volume of mail being curtailed on Saturdays or Mondays or efficiency in delivery. Postmaster Kolander has

claimed that these figures are misleading. His rebuttal, however, simply consists of conclusory statements. Noting the fact that position #211 was scheduled to work Monday through Friday for a number of years together with the chart introduced by the Union, it becomes obvious that the Service failed to meet its burden of rebuttal.

The facts in Baldwin, New York (Fredericks), Case No. N1C-1M-C 2594 (Collins) (1983) are similar. In that grievance, Arbitrator Collins noted at page 4 and 5:

The Baldwin Post Office at the end of 1980 with 17 regular clerks was able to give as many as 11 to 12 clerks consecutive days off. Yet with only one less regular clerk in 1982, only eight clerks have consecutive days off - a reduction of about 30%. At the same time, while the Postmaster stated reasons for posting the job at issue with split days off was to reduce overtime, the documented evidence submitted without contradiction by the Union establishes that overtime has remained at a relatively consistent level.

Prior to the time position #211 was given a split shift, the back-up clerk, who worked at the main postal facility four days per week, was assigned to work at the University Station on Saturdays. During this time, the back-up clerk worked without the presence of either the Level 6 or Level 5 clerk. The Union's chart, which covers a time before and after position #211 was rescheduled, indicates that said rescheduling did not result in decreased curtailed mail or increased efficiency in delivery and the Service has failed to rebut this evidence.

The facts in the present grievance are far different from those in Portland, Maine, Case no. NIV-1KC-2860 (Zack) (1982). There the split schedule involved the position of a mechanic at the Service's Motor Vehicle Facility. In Portland, Maine, supra, the Service posted the position with a split schedule because a mechanic working on Saturdays would operate without a skilled mechanical supervisor, the mechanic or a supervisor would have to secure parts from a stock room thus infringing on the responsibilities of the stockroom attendant, and such mechanic could not work on a hoisted vehicle without being in violation of the Collective Bargaining Agreement. In light of these various considerations, it was not "practicable" for the Service to post this position with a consecutive schedule.

Similarly, in this Arbitrator's Opinion in Springfield, Illinois (Class Action), Case No. CLC-4A-C 21326 (1983) there was an entirely revised schedule based on a new scheme of operation. This schedule dictated that due to efficiency considerations, it was not "practicable" to provide consecutive days off.

Because of the figures presented by the Union and the fact that the Service had followed the consecutive days scheduling at the University Station several years previous to the scheduling change at issue, there is no basis to make the conclusions expressed by Postmaster Kolander without some numerical analysis.

The parties negotiated the language of Article 8.2C. This Arbitrator has recognized that practicability is to be determined by examining whether a split schedule increases efficiency. If any given facility is to be the recipient of this bargain as interpreted by this Arbitrator and others, the Service must be prepared to rebut any *prima facie* case of an Article 8.2C violation made by the Union. Just as the Union cannot easily meet its heavy burden in proving an Article 8.2C violation, neither can the Service rebut the Union's *prima facie* case by making mere conclusory statements. This concept applies no matter how sincere such statements are made. It is for these reasons that the Arbitrator must grant the grievance.

In the Step 2 Grievance Appeal Form, the Union requested the following corrective action:

We request that Position #211 be reposted with a Monday - Friday work week--Saturday-Sunday days off. we also request that the clerk awarded the position be paid out of Schedule pay from his previous shift for all time worked on Position #211 until it is reposted with Saturday and Sunday as days off.

Following the lead of Arbitrator Collins in Baldwin, New York (G. Fredericks), Case No. NLC-1M-C 2594 (1982) this Arbitrator will order the reposting of the position on a consecutive day basis but will not award back pay. There was a voluntary aspect in the employee's decision to bid for position #211, even though the position was offered with a split schedule in violation of the parties' Agreement. Such employee was not

ordered to work out of schedule as such for he voluntarily made the bid. Therefore, it would be inequitable to award out of schedule back pay.

Finally, Article 8.2C only requires the Service to post position #211 with consecutive days off. Article 8.2C does not require that position #211 be scheduled work Monday through Friday. Management has the right to schedule employees consistently with other provisions of the Agreement. See the Management Rights clause in Article 3 of the Agreement, quoted in relevant part at page 5 of this Opinion.

The Award which follows is based upon the above analysis.

AWARD

1. The grievance is granted. Position #211 at University Station at Grand Forks, North Dakota is hereby ordered reposted.

2. The reposting shall provide that said position have two consecutive days off, but this Award does not specify the two consecutive off days since this is within management's discretion.

3. There shall be no monetary award.

  
GEORGE T. ROUMELL, JR.

Arbitrator

Dated: September 27, 1984