

C#10345

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In the Matter of the Arbitration
between

The United States Postal Service
and

National Association of Letter
Carriers, AFL-CIO

Grievant: Class Action

P. O.: Concord, NH

Case No. N7N-1K-C 25723
GTS No. 6057

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Before: Edward Levin, Arbitrator

Appearances:

For United States Postal Service: Michael Donahue,
Advocate; Beatrice R. Guzman, Superintendent Postal
Operations.

For National Association of Letter Carriers, AFL-
CIO: Mike Fox, National Business Agent, James
Brierly, Letter Carrier; Ron Lafond, Letter
Carrier; Michael Blais, Letter Carrier.

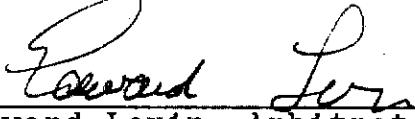
Date of Hearing: September 26, 1990

Place of Hearing: Manchester, NH

Award:

1. The Postal Service did not violate the National
Agreement when it assigned overtime to a volunteer
carrier not on the overtime desired list.
2. The grievance is denied.

Date of Award: October 16, 1990


Edward Levin, Arbitrator

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NALC - NEW ENGLAND REGION

In accordance with the provisions of the collective bargaining agreement between the United States Postal Service (Postal Service) and the National Association of Letter Carriers, AFL-CIO (Union), the undersigned was designated Arbitrator to hear and determine the following issue:

1. Did the Postal Service violate Article 8 of the National Agreement by requiring two carriers not on the Overtime Desired List to work overtime?
2. If so, what shall be the remedy?

A hearing was held on September 26, 1990 at the facilities of the United States Postal Service located at Manchester, New Hampshire at which time the parties were afforded opportunity to present testimony, documentary evidence and oral argument in support of their respective positions.

BACKGROUND

On September 11, 1989, Ron Lafond and James Brierly were assigned as Letter Carriers. Before they left on their routes, they requested assistance. Mr. Lafond was denied one half hour of street assistance and Mr. Brierly was denied 2.75 hours of street assistance. It was noted that Mr. Lafond's reference volume was 14.28 feet of Mail and on the day in question he had 14.5 feet of mail, approximately four inches over his reference volume. On that date Mr. Brierly worked and was paid for 27 minutes overtime, and Mr.

Lafond worked and was paid for 21 minutes overtime. Neither Mr. Brierly nor Mr. Lafond were on the overtime desired list

UNION POSITION

The Union states that, on the day in question, Mr. Lafond requested auxiliary assistance before he left on his route because he was leaving later than usual. His Supervisor refused the request and claimed he had ample time to deliver his route. Mr. Lafond followed the orders of his supervisor and delivered all his mail, however, it took him 21 minutes over his eight hours. The following day he filed a grievance claiming that he was required to work overtime even though he was not on the overtime desired list.

Mr. Brierly testified that he requested 2.75 hours of assistance based on his volume of mail; the fact that he left late; and in order to return on time without working overtime. Mr. Brierly acknowledges that management authorized 2.0 hours of auxiliary help which was used to deliver the beginning of his route.

Michael Blais, the Letter Carrier who was sent out to assist Mr. Brierly in his street delivery stated that he worked 2 hours and 16 minutes of street time on route D-7, Mr. Brierly's route, on the date in question.

The Union claims there were Letter Carriers on the overtime desired list available to work the overtime but was unable to document this fact nor name those individuals who

were available.

The Union argues that management violated the National Agreement by requiring Letter Carriers not on the overtime desired list to work overtime under the guise of "the rule of reason." The Union notes that both Letter Carriers clearly asked for street assistance because they were late in leaving on their routes, in order to return on time and avoid overtime.

The Union believes management knew that both carriers were leaving later than their normal times and would not be able to complete their route without working overtime. Management had sufficient time to schedule another carrier who was on the overtime desired list to avoid the carriers going into overtime status.

The Union asks that the two letter Carriers who worked overtime be granted \$7.00 pay for the overtime worked and that those employees on the overtime desired list who should have been called to work the overtime be compensated appropriately.

POSTAL SERVICE POSITION

The Postal Service contends that in the case of Mr. Lafond, the time allotted to complete his delivery was adequate. The Postal Service estimates that the additional time it should have taken Mr. Lafond to complete his route, based on the volume of mail he was carrying, did not amount

to more than three or four additional minutes of work. When examined in the light of the time it takes to fill out a 3997 form requesting auxiliary assistance the difference in time is de minimis.

In the case of Mr. Brierly, the Postal Service granted auxiliary assistance and the first loop of his route was assigned to another letter carrier. The remainder of Mr. Brierly's route should have taken him 2 hours and 15 minutes. This would have allowed Mr. Brierly to complete his route and return to the office before his schedule ended at 3:00 pm.

The decision to deny additional assistance to the two letter carriers was based on management's examination of the amount of work to be done and in discussion with the carriers.

The Postal Service notes that the burden of proving a contract violation is on the Union. The evidence shows that in the case of Mr. Brierly, the Postal Service provided more auxiliary assistance than was requested. In Mr. Lafond's case, based on reasonable assumptions, management determined that no additional auxiliary assistance was necessary for him to complete his route. The Postal Service contends that the estimation of mail volume is not an exact science and there may be miscalculations from time to time. In this case the miscalculation is minuscule and was not done in an arbitrary manner.

The Postal Service points to the memorandum of Understanding between the Union and the Postal Service dealing with the application of the overtime desired list, which states:

....

The determination of whether management must use a carrier from the ODL to provide auxiliary assistance under the letter carrier paragraph must be made on the basis of the rule of reason...

....

The Postal Service maintains that, in this case, it would be a violation of "the rule of reason" to send an employee out for 20 minutes work when he would have had to travel 20 minutes to and from the assignment.

The Postal Service therefore asks that the grievance be denied.

ARBITRATOR'S OPINION

The Arbitrator finds that "the rule of reason" applies here. It would have taken approximately the same amount of time to send out auxiliary assistance as the amount of auxiliary assistance needed to complete the routes on time.

Management's explanation of their reasoning appears plausible. In one case auxiliary assistance was provided. In the other case the amount of mail taken by the carrier was insufficiently over the reference volume to conclude that the work would not have been completed on time.

Finally, there was no showing by the Union that there

were overtime desired list carriers available to be called for auxiliary assistance on the date and time in question.

For these reasons the Arbitrator finds that the Postal Service did not violate Article 8 of the National Agreement. The grievance is denied.

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