

C# 10062

MODIFIED ARTICLE 15 PANEL

This Award shall not be cited as precedent in any future arbitration proceedings accruing outside of this test office. It may, however, be cited as precedent in any future arbitration proceeding accruing within this test office.

In the Matter of the Arbitration :
between : Grievant: Class Action
UNITED STATES POSTAL SERVICE : Post Office Albany, GA
and : Case No. S7N-3D-C 88024
NATIONAL ASSOCIATION OF LETTER CARRIERS : (Local #23WBU898A)

Before: James F. Scearce, Arbitrator

Appearances:

For US Postal Service: James Jones, Labor Relations Rep.
(Presenting)
T. E. Smith, W. Monroe (Witnesses)

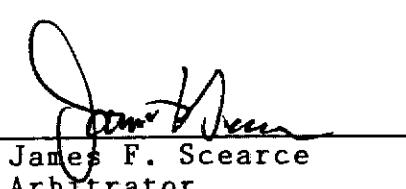
For Union: Charles Windham, Regional Adm. Assistant
(Presenting)
P.D. Erickson (Witness)

Place of Hearing: MPO - Albany, GA

Date of Hearing: April 5, 1990 (Briefs followed)

Award:

Case S7N-3D-C 88024 was not disposed of by the
Findings and Award in S7N-3D-C 16898.


James F. Scearce
Arbitrator

Date of Award: June 20, 1990

BACKGROUND

On October 17, 1989 the undersigned heard Case S7N-3D-C 16898, a "Class Action" grievance which took issue with the Service's distribution of overtime/opportunities during Quarter 2 of 1988 (April-June). The case was assigned off the Regional Panel. In that grievance, the Union contended that the Service had an obligation to equalize overtime opportunities and/or hours worked on overtime during that quarter and had failed to do so; it demanded compensation for letter carriers whose accrued overtime hours worked during that quarter fell below a computed average. While finding substance to the Union's broader claim that Service management in the Albany postal system did not appear to exercise sufficient attention to the ensuring of a fair and equitable distribution of overtime opportunities, this arbitrator denied the remedy being sought; also, I found no basis to impose any alternative remedy since the Union specifically sought the equalization of hours and presented its data to that end.

Unbeknown to this arbitrator at the time of the October, 1989 hearing or the subsequent issuance of the Award in that case (S7N-3D-C 16898), in the fall of 1988 the parties at Albany had effected the Union-Management Pairs Program (UMPS) as an alternative to the established grievance handling procedure; such program was to commence in January of 1989. Essentially, all grievances other than those dealing with removal or grievances already scheduled for arbitration were placed in suspension so as to allow the UMPS team to review them toward

the possibility of settlement without need of established grievance-arbitration.* An UMPS "settlement" addressing the implementation of the Overtime Desired List (ODL) for three (3) quarters (not identified) was effected on May 18, 1989. The relevant case numbers identified in such settlement were UMPS 23 WB U 89 8A and Regional Case S7N-3D-C 16898 (the case heard by the undersigned as previously described). Such settlement stated:

"The parties agree that they cannot reach an agreement and are hereby forwarding this case to the next UMPS level.

This UMPS case will be held in abeyance pending decision of Regional Case #S7N-3D-C 16898 by arbitration. Case #S7N-3D-C 16898 was remanded to UMPS Team for a resolution but the UMPS Team was unable to reach a mutual resolution."

(Jt Ex 2)

By date of May 31, 1989 -- thirteen (13) days later -- a second UMPS settlement was signed by the same officials on the same subject (Overtime Desired List), but this time only making reference to UMPS case # 23 WB U 89 8A; such settlement stated:

"The parties agree that they cannot reach an agreement and are hereby forwarding this case to the next UMPS level.

All disputes on the overtime desired lists starting back in April of 1988 through March of 1989 will be held in abeyance pending the decision coming from UMPS Case # 23 WB U 89 8A which deals with October-November-December overtime desired list in Albany, GA.

(IBID)

*The elements of the UMPS program are not essential to consideration and disposition of this matter and will not be developed here.

The instant case (S7N-3D-C 88024) now before this arbitrator is limited to the procedural question of the scope of the Award in S7N-3D-C 16898. The parties' positions are as set out hereafter.

POSITION OF THE UNION

The Service asserts the procedural defense that the Union's grievance S7N-3D-C 88024 concerning the application of the ODL is made moot by the Award in S7N-3D-C 16898; as such, it must bear the burden of proof for such defense. The Service cites the substance of an UMPS settlement dated May 18, 1989 wherein 16898 was referenced. While acknowledging as much, the Union need only point to the May 31, 1989 settlement effected by the same two officials, to show that the earlier settlement was in error which was corrected by the latter. Furthermore, it should be pointed out that 16898 was already in the regional arbitration process and thus excluded from the UMPS program. Finally, the Service seeks to ascribe more importance to the UMPS settlement(s) than is appropriate: the parties only agreed to "hold in abeyance" the advancing of disputes involving application of the ODLs from April, 1988 through March of 1989 pending the decision in case # 23 WB U 89 8A ; there is no agreement stated or implied that such decision would dispose of any or all other ODL cases. Even the earlier settlement upon which the Service relies contains the same "held in abeyance" provision and could not reasonably be construed to dispose of Case # 23 WB U '89 8A. The Union representative on the UMPS team (Erickson) testified that the intent of the May 31, 1989 settlement was to correct the error in the earlier one, and that the "held in abeyance" provision

in the May 31, 1989 settlement was to await disposition of Case #23 WB U 89 8A to see if such decision could dispose of all other ODL disputes during April, 1988 - March, 1989 period. Since 16898 was arbitrated many months after the May 31, 1989 settlement agreement, if the Service felt it was to represent and settle all other ODL grievances, it had ample time to raise such claim. There is no reference anywhere in the case file or Opinion/Award of 16898 that would suggest the alleged test case status the Service now asserts. The purpose of the May 31, 1989 settlement agreement was precisely as it was stated: to not proceed on any other ODL cases until disposition of # 23 WB U 89 8A, which is styled as S7N-3D-C 88024. The Service's contention that 16898 disposed of that case should be rejected, clearing the way to proceed with 88024.

POSITION OF THE SERVICE

The Union agreed that 16898 would represent all similar ODL cases for the period involved, doing so by the May 18, 1989 settlement agreement. When the Award was issued, the Union was not pleased with the result and now tries to renege on its agreement. The Service's representative on the UMPS team (T. Smith) was unequivocal in his statement of understanding the intent of the settlement agreement. Per Smith, Erickson executed such agreement because he was confident of his position. Had the Service lost, it would have adhered to its commitment, rather than attempting to claim otherwise. The Director of Customer Services (Monroe) also had the same understanding and is certain that if the Union had seen fit to call its chief steward at Albany (B. Brettel) he would have testified to as much himself.

Had the Union intended for the May 31, 1989 settlement agreement to supersede the one dated May 18, 1989, it could have stated as much in such accord; obviously, such provision was not included. The proper interpretation of both the May 18 and May 31 settlement agreements was to use 16898 as the test case for all other cited grievances. Such procedure is not uncommon and greatly expedites the resolution of similarly-situated disputes. The Union should not now be allowed to abrogate this commitment. The Award in 16898 should be cited as dispositive of the issues in 88024 and, hence, UMPS case #23 WB U 89 8A and such grievance should be held moot.

THE ISSUE

Are the settlement agreements dated May 18 and May 31, 1989 properly construed to mean that the disposition of S7N-3D-C 16898 by the Award dated January 3, 1990 also disposed of S7N-3D-C 88024; if not, what is the proper remedy?

DISCUSSION AND FINDINGS

The scope of the Award in this matter extends only to the question as to whether or not S7N-3D-C 88024 can be heard on its merits. At issue is the intent of the two settlement agreements dated May 18 and 31, 1989. The Service contends that the principals to such agreements had a meeting of the minds in that regard, i.e. that the Award in 16898 would dispose of (1) the issue in 88024 and (2) all disputes involving ODL's from April of 1988 through March of 1989. While both T. Smith and W. Monroe attested to as much, only Smith was involved in the drafting of

the settlements. The Service also contends that, had the Union called the chief shop steward (Brettel), he would have supported the Service's position; the Service argues that the Union disdained doing so because it knew this would be the case. Of course, the Service had the option of calling Brettel and, as the Union points out, since the Service advanced this affirmative defense to proceeding on the merits of 88024, it has the burden of proof. For its part, the Union claims that the May 18 settlement inadvertently referenced Regional Case S7N-3D-C 16898, pointing out that this matter was not even part of the UMPS program and that the May 31 settlement corrected such error. While both parties assert that the settlements are clear on their faces as to intent, neither is correct. Had the Service wanted it to be made manifest that 16898 was a "test case" or that the Award of such case was to settle all outstanding grievances (or just the one styled #23 WB U 89 8A), it could have insisted on language to accomplish just that. Had the Union intended the language to convey the purpose of waiting to see if the Award in 16898 would be used to apply to the instant UMPS case (or the same rationale to be applied to other ODL cases after disposition of #23 WB U 89 8A by arbitration, as the Union contends the May 31, 1989 settlement states) much more definitive language to that end could have been used.

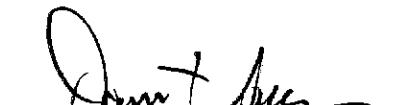
The parties are in direct disagreement in this regard; as a consequence, I am obliged to look to the language of the two settlements in order to derive a conclusion. In doing so, I am unable to find support for the Service's asserted intent, and

it should be noted that it is the Service which raises the procedural matter here. Whatever such provision may have had as its intent, it is overreaching to conclude that "held in obedience pending the decision" can be extrapolated to mean "settles all issues," "disposes of the issues," or "is the test case" for one or all other grievances. As a consequence, the more narrow interpretation of "wait and see" must be applied. As the Union points out, four and one-half months transpired between the execution of the last (May 31, 1989) settlement and the hearing of 16898 -- plenty of time to perfect the terms of the settlement(s). As regards 16898, the undersigned was not aware of the existance of the two settlements and recalls no reference to the conclusions drawn in 16898 as representing a test case. As it was, the denial decision drawn in 16898 focused primarily upon the scope and quality of the remedy being sought, i.e. to "equalize" overtime hours and/or opportunities. It stands to reason that application of the Award in 16898 beyond the scope of that grievance would anticipate that the other case(s) would be substantially similar so as to provide for the same rationale/conclusion. It is not known what was being sought in 88024.

In sum, I do not find a demonstrated basis to conclude that the findings and Award in 16898 was intended to be dispositive of the issues in 88024.

AWARD

Case S7N-3D-C 88024 was not disposed of by the findings and Award in S7N-3D-C 16898.



James F. Scearce
Arbitrator

Atlanta, Georgia
June 20, 1990