

C# 16082

ARBITRATION DECISION AND AWARD

In the Matter of the Arbitration)
between)
Class Action)
UNITED STATES POSTAL SERVICE)
POST OFFICE:)
and)
Laffayette, CO)
NATIONAL ASSOCIATION OF)
CASE NO:)
E90N-4E-C95004550)
LETTER CARRIERS, AFL-CIO.)
GTS No: 006616)

BEFORE: Louis M. Zigman, Esq. - Arbitrator

APPEARANCES:

For the Postal Service: Marsha Boyle
For the Union: Andrew T. Petersen

Place of Hearing: 7500 53rd Place
Denver, CO 80266

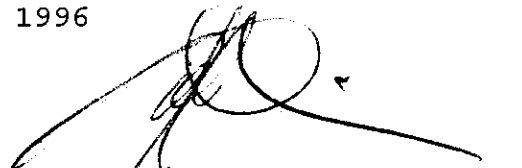
Date of Hearing: December 4, 1996

AWARD:

The grievance is sustained.

The Postal Service shall compute the number of hours worked by PTF Marie Lyons between the period of August 6, 1994 to August 19, 1994 and shall pay that amount to the letter carriers who were on the Overtime Designated List and who would have been selected to have worked some or all of those hours had Ms. Lyons not been given those hours.

Date of Award: December 5, 1996


Louis M. Zigman, Esq.

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3) Class Action
4 between)
5 UNITED STATES POSTAL SERVICE) Post Office:
6 and) Lafayette, CO
7) Case No:
8 NATIONAL ASSOCIATION OF LETTER) E90N-4E-C95004550
Carriers) GTS. No: 006616

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1 Introduction

2 This matter was heard by Louis M. Zigman, Esq.,
3 neutral arbitrator on December 4, 1996 in Denver, CO.
4 The Postal Service was represented by Marsha Boyle and the
5 Union was represented by Andrew T. Petersen.

6 Both parties were afforded an opportunity to present
7 evidence and to examine witnesses. After the close of the
8 hearing both parties made closing argument.

9 Based on the evidence and contentions of the parties,
10 I issue the following decision and award.

11 Issue

12 The parties agreed on the following:
13 Was the detailing of PTF, Marie Lyons, from the Louisville
14 Post Office to the Lafayette Post Office done for the reason
15 of preventing overtime?

16 . If so, what is the appropriate remedy?

17 Background

18 The grievance in the above captioned matter was filed
19 as a class action on behalf of several different letter
20 carriers at the Lafayette, CO postal facility. The reason for
21 the grievance was premised on the fact that PTF Marie Lyons
22 had been detailed to the Lafayette station during the week of
23 August 6, 1994 and for two days in the following week.

24 According to the letter carriers and the union, the
25 detailing of PTF Lyons was done for the reason for preventing
26 overtime. As such, the letter carriers asserted that the
27 Postal Service violated the collective bargaining agreement.

28 The Service, on the other hand, denied that Lyons was
 detailed to the Lafayette postal facility for the purpose of
 preventing overtime and as such, the Service asserted that the

1 grievance should be denied.

2 It should also be noted that this grievance was
3 processed through the grievance procedure and that the
4 grievance was eventually sent to Step IV. However, on
5 October 31, 1995, the grievance was remanded back from Step IV
6 on the basis that the grievance did not involve any
7 interpretive issues pertaining to the National Agreement.

8 More particularly, the Service took the position that
9 the detailing was not done "solely" to avoid payment of
10 overtime and therefore, because of this fact, the Service
11 asserted that there was no violation of the agreement.

12 Inasmuch as the parties agreed that there was no issue
13 of national interpretation they agreed to remand the dispute
14 back for arbitration and it was eventually referred to the
15 undersigned for resolution.

16 Material Facts

17 Chris Stroup, a supervisor at the Lafayette post
18 office, testified that when he was making out the schedule for
19 the week of August 6, 1994, he noticed that there were several
20 letter carriers who were going to be off work during the week
21 of August 6 and August 13, 1994. In looking at the schedule
22 and in estimating the anticipated mail volume for that period,
23 Stroup felt that the staffing level was very thin and that he
24 needed to plan for that situation.

25 Stroup indicated that he had several different options
26 for covering the routes. As for example he had the option of
27 selecting letter carriers from the Overtime Desired List
28 (OTDL); the option of assigning overtime to other PTF's who
were assigned to the Lafayette post office; the option of
using the concept of pivoting; and finally the option of

1 splitting shifts.

2 Stroup testified that he decided to ask the postmaster
3 at the Louisville postal facility for a PTF. According to
4 Stroup, in making his decision, he considered his various
5 options along with the goals of the Lafayette post office in
6 meeting productivity standards and in terms of the goals of
7 keeping overtime to a minimum. In noting the rationale for
8 his decision, Stroup pointed out that while he could have used
9 regular full-time letter carriers on the OTDL he rejected that
10 option because that would have meant a great deal of overtime
and it would have completely pushed that goal out of whack.

11 Stroup also noted that the Lafayette facility had
12 loaned one of their regular letter carriers, Klepman, to the
13 Louisville facility as Klepman was also qualified to work as a
14 204B.

15 Jo Ellen Hawkinson, one of the union stewards,
16 testified that when she asked the Lafayette postmaster why he
17 detailed Lyons into their facility, the postmaster told her
that it was done to avoid overtime.

18 The evidence also disclosed that there was overtime
19 worked by the regular letter carriers during the weeks before
20 and after the time when Lyons worked at the Lafayette post
21 office in August, 1994. The evidence disclosed that there was
22 even some overtime worked during the period while Lyons was
23 working at the Lafayette facility. However, the evidence
24 demonstrated that there would have been more overtime had
25 Lyons not worked at the Lafayette post office on those seven
26 days.
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Positions of the Parties

Union's Position

The union asserted that the evidence demonstrated that PTF Lyons was detailed to the Lafayette post office for the purpose of preventing overtime. As such, the union asserted that the Service's actions constituted a violation of the collective bargaining agreement.

While the union did not dispute the fact that the Service can detail/loan PTFs from one facility to another, under certain situations, nevertheless the union asserted that the Service could not do so when the purpose of the assignment is to prevent or to curtail overtime.

As support for its position the union noted the agreement by the Service as to the language of the submission issue and the union also pointed to a Step IV decision dated July 3, 1972, along with a decision of arbitrator Sobel in Case No. S7N-3-C-33573 (GTS 004420).

While the union also agreed that the Service can give PTFs overtime assignments over the regular letter carriers on the OTDL, nevertheless the union asserted that this is limited to situations where the overtime is distributed amongst qualified employees at the particular location. Inasmuch as Lyons was from a different location, i.e. a different city and postal facility, the ability to assign her the work as a means of preventing overtime at the Lafayette facility constituted a violation of the agreement.

In this respect the union pointed to the language in VIII, Section 5, and to the decision of arbitrator Mittenthal in Case Nos. M8-W-0027 and M8-E-0032 (1980).

1 In pointing to the evidence in this case, the union
2 asserted that the evidence demonstrated quite clearly that the
3 decision to detail Lyons to the Lafayette post office was done
4 with the express purpose of preventing overtime at the
5 Lafayette postal facility.

6 In support of this position the union pointed to
7 Stroup's testimony and explanation for his rationale in having
8 requested Lyons to be detailed/loaned to Lafayette.

9 As additional support, the union pointed to Hawkinson's
10 testimony wherein she was told by the Lafayette postmaster
11 that they had requested the PTF in order to avoid overtime.

12 In view of the foregoing, the union maintained that the
13 evidence supports the grievance and therefore the grievance
14 should be sustained.

15 As a remedy for this contractual violation the union
16 sought an order directing the Service to pay the amount of
17 hours worked by Lyons during her detail during the seven days
18 in August, 1994, to the letter carriers who were then on the
19 OTDL and who would have been assigned those hours and would
20 have received compensation for those hours.

21 Service's Position

22 The Service maintained that the decision to detail
23 Lyons from the Louisville postal facility to the Lafayette
24 postal facility was not done for the sole reason for
25 preventing overtime. As such, the Service maintained that was
26 no violation of the collective bargaining agreement and that
27 the grievance should therefore be denied.

28 In pointing to Stroup's testimony, the Service asserted
that there were several different reasons for his decision in
having Lyons detailed to the Lafayette facility. While

1 acknowledging that her assignment did have some effect on
2 overtime, nevertheless the Service maintained that the
3 decision was not made for the "sole" purpose of avoiding
4 overtime. In the Service's view, Stroup's decision was based
5 on his overall evaluation of staffing needs; the fact that he
6 couldn't tell what the mail volume would be ten days later;
7 and because of other variables which might have occurred
8 between the time he scheduled the carriers and what might
ultimately occur.

9 As such, according to the Service, Stroup's concern was
10 not limited to the preventing of overtime but rather in making
11 sure that the delivery of mail would not be affected. As the
12 Service characterized Stroup's rationale, he was dealing with
13 operational problems and operational needs rather than simply
14 looking at the prevention of overtime.

15 As further support for its position the Service noted
16 that it loans out PTFs on a frequent basis and that
17 management, under Article 3, has the right to manage its
18 operations and to schedule overtime as it deems necessary.
19 Therefore the Service maintained that it had every right to
have utilized PTF Lyons at the Lafayette facility in August.

20 And finally, the Service pointed to several different
21 arbitration awards which the Service asserted supported its
22 position. Those awards included awards from arbitrators
23 Mittenthal, Aaron, Foster, Stevens, Searce, Klein and
24 Epstein.

25 For all of these reasons, the Service maintained that
26 the evidence failed to demonstrate a contractual violation and
27 therefore the Service asserted that the grievance should be
28 dismissed.

1 Pertinent Contractual Language

2 Article 8.5 - Overtime Assignments

3 When needed, overtime work for regular full-time
4 employees shall be scheduled among qualified employees doing
5 similar work in the work location where the employees
6 regularly work in accordance with the following:

7 A. Employees desiring to work overtime shall place
8 their names on either the "Overtime Desired" list or the
9 "Work Assignment" list during the two weeks prior to the start
10 of the calendar quarter, and their names shall remain on the
11 list until such time as they remove their names from the
12 list..

13 Analysis and Conclusion

14 In considering this dispute I would like to point out
15 that I have limited my analysis to the issue placed before me
16 by agreement of the parties:

17 "Was the detailing of PTF Lyons from the Louisville
18 post office to the Lafayette post office done for the reason
19 of preventing of overtime? If so, what is the appropriate
20 remedy?"

21 In limiting my analysis to this specific issue, I am
22 not making any generalization nor am I making any
23 interpretation of other language in the collective bargaining
24 agreement.

25 In so doing I am adhering to the general arbitrable
26 principle of keeping the issue as narrow as possible, rather
27 than expanding beyond the parties' expressed statement of the
28 issue.

 Furthermore, in noting that this grievance was remanded
back to the grievance procedure by the parties on the basis
that there was no interpretative issue pertaining to the
National Agreement and that the issue involved the question of
whether the detailing was done for the purpose of avoiding the
payment of overtime, it again appears that the issue before me

1 is rather limited and narrow in scope and that it deals with a
2 narrow factual question.

3 Turning to that question, i.e. of whether the decision
4 to detail Lyons was done for the reason of preventing
5 overtime, I found that the evidence is persuasive that the
6 decision was indeed made for that purpose. As noted above,
7 supervisor Stroup testified exactly to this point.

8 While noting that Stroup had several different
9 operational options for covering the work during this
10 particular period of time, Stroup stated that he selected the
11 option of having a PTF detailed from the Louisville postal
12 facility because, in his own words, he wanted to keep the
13 overtime down. As he testified, he stated that if he had used
14 the overtime list that the goals of overtime at his facility
15 would have sky rocketed. Therefore to avoid overtime he
16 decided to seek a PTF from the Louisville facility, especially
17 since they had already loaned Klepman to them.

18 Stroup also acknowledged that he didn't have the option
19 of splitting shifts and/or of assigning additional overtime to
20 the other PTFs because they were already stretched so very
21 thin.

22 In view of the foregoing, it was rather clear and
23 apparent that Stroup's decision was made with the purpose of
24 ensuring that the mail be delivered and that the option of
25 using Lyons was to prevent and/or to diminish overtime.

26 Furthermore, and as noted above by Hawkinson's
27 testimony, the postmaster's explanation to her was consistent
28 with the live and direct testimony of Stroup. As such, the
postmaster's hearsay explanation was considered because it was
corroborative of Stroup's direct testimony.

1 . While I recognize the Service's contentions that
2 Stroup's decision was made in conjunction with other
3 considerations, i.e. staffing considerations; concerns for
4 other possible variables; and of the possibility of curtailing
5 mail, nevertheless the evidence is persuasive to the
6 undersigned that the Service's arguments are essentially based
7 on semantics. Certainly I cannot dispute the fact that Stroup
8 considered operational needs and the staffing, but in terms of
9 those considerations and in terms of the options available to
10 him, Stroup testified that he selected the use of the PTF
11 because that option allowed him to prevent and/or to diminish
12 substantially the overtime that would have been necessary had
13 he used the only other option that was available at that time,
14 i.e. the OTDL.

15 In making this decision, I am well aware of the fact
16 that PTFs are loaned back and forth to different postal
17 facilities and that this is a long-standing practice.

18 However, in view of the narrow scope of the issue as
19 defined by the parties, I am not making any findings which
20 affect that process. I am merely making a factual finding as
21 to whether the decision to detail Lyons was done for the
22 purpose of preventing overtime, which I agree it was.

23 As to the Service's assertion that the union is
24 speaking from both sides of its mouth in allowing PTFs to work
25 at other facilities to gain additional hours, while on the
26 other hand protesting the fact that these additional hours may
27 have some effect on lowering the amount of overtime at those
28 facilities, I note that the evidence demonstrated that the
29 union has not been grieving situations when PTFs have been
30 loaned for the purpose of filling out their hours. In other

1 words, the evidence demonstrated that there had been no other
2 grievances filed by letter carriers or by the union at those
3 facilities protesting the fact that PTFs were coming in and
4 possibly lessening their overtime hours.

5 As such, while the Service's argument is somewhat
6 interesting, nevertheless in terms of practicality I note that
7 there has been no such effort by the union to grieve those
8 details.

9 And finally, in having reviewed the arbitration awards
10 proffered by the Service, I did not find them on point with
11 the narrow issue placed before me.

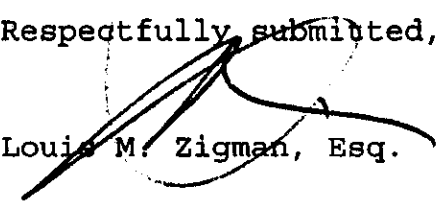
12 Simply put I am limited to a factual determination as
13 to whether the detailing of PTF Lyons was done for the purpose
14 of preventing overtime and I find that it was.

15 As such, I find that the grievance should be sustained.

16 As a remedy, I found that the union's request does
17 constitute an appropriate remedy for this violation and
18 therefore the Service will be directed to set aside the amount
19 of wages that were paid to Lyons for the hours she worked at
20 the Lafayette postal facility in the period between August 6
21 and August 19, 1994. The compensation should be distributed
22 amongst those carriers who were on the OTDL at that time, and
23 for those hours which they would have been assigned that work.

24 Respectfully submitted,

25 Dated: December 5, 1996

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27 Louis M. Zigman, Esq.
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