

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)

between)

UNITED STATES POSTAL SERVICE)

and)

AMERICAN POSTAL WORKERS)
UNION, AFL-CIO)

Grievant: Class Action

Post Office: Des Moines, IA

USPS Case #: E98C-1E-C 99307168

APWU Case #: 779915712

BEFORE: James P. Martin, Arbitrator

APPEARANCES:

For the USPS: Janet S. Ades

For the APWU: Lance Coles

Place of Hearing: Des Moines, IA

Date of Hearing: December 2, 2003

Date of Award: December 26, 2003

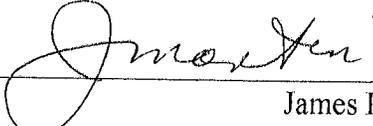
Relevant Contract Provisions: Article 8.2.c

Contract Year: 1998

Type of Grievance: Contract

Award Summary

Management did not violate the agreement when it changed the scheduled days off and starting hours for employees in the CFS. Management did not violate the LMOU requirement for meaningful consultation with the union. The grievance is denied.


James P. Martin

ISSUE

Did management violate the national agreement when the grieved positions were reposted because of changes in the start time and non-scheduled days? If so, what is the remedy?

Did management fail to have meaningful consultation with the union prior to the reposting, and thereby violate the LMOU. If so, what is the remedy?

NATURE OF CASE

As of the time of the grievance, the employees in the CFS all had consecutive days off and had had them for a number of years. The standard for the unit was to have the mail processed back into the mail stream for delivery the day after it received it. However, by summer, 1999, the unit was five to eight days behind in processing the mail it received. This meant a direct delay in delivery of that same five to eight days. The CFS mail was generated by the carriers, who returned the mail at the time of sorting. This mail arrived back at the CFS units commencing at approximately 12:30 p.m., and from all stations by the end of the day. The unit was closed on Sunday, which meant that all employees had to have Sunday/Monday or Saturday/Sunday days off, in order for the days off to be consecutive. The starting time for some CFS employee shifts was 1 a.m. on, with 3 a.m. and 4 a.m. for others. Eventually, management requested an audit, which was accomplished in August, 1999. Based upon that audit, management changed all but six employees to non--consecutive days of, and changed the scheduled start time to late morning. Prior to implementing these changes, management held several meetings, in order to have the

union involved and consulted.

According to management, the union was consulted, recommendations for changes accepted and made, and other recommendations rejected. According to the union, it had no meaningful consultation with management, since when it arrived for the meetings, it was told that it was a "done deal", and management had no interest in any input for change. Upon the implementation of the chief changes in late September/early October, this grievance was filed, and has proceeded to this arbitration.

CONTENTIONS

According to the union, the contract is clear in that off days should normally be consecutive, and management has not, through any steps of the grievance, provided justification why these days off had to be changed to split off days. The bids in the CFS unit were created with consecutive days off and continued in this manner for several years. The union has provided prima facie evidence that management has failed to provide any valid reason for changing the off days, and would not entertain any offers from the union on that subject, which shifts the burden to management to prove that there was a need to change these long-established consecutive off days to split off days. Management has failed to show that it was not feasible nor practicable to post bids with consecutive off days. The union was not afforded meaningful consultation. Management had no justification for the changes made. There were part-time flexibles and detailed employees

available to work who could have been scheduled to allow the consecutive off days to remain. The grievance is meritorious, and it should be allowed, with remedy as requested in the grievance.

According to management, consecutive days off did not work with the CFS. The unit was seven to eight days behind in its work. The employees were not there when the mail was. Management listened to the union suggestions, but the suggestions had no validity. Assigning PTF's and detailing employees to the CFS was only a Band-Aid remedy. There was no option to the splitting of days off. The grievance is without merit, and should be denied.

APPLICABLE CONTRACT PROVISIONS

Article 8.2.c

LMOU, Article 8

DISCUSSION

There was a plethora of cases cited concerning the situation here involved. The practically universal arbitral opinion is that the union must present a prima facie case, and management must thereafter assume the burden of rebutting it. In this case, and in almost every case to which I was referred, the union proved a prima facie case by showing that employees were not assigned to consecutive days off, and management was thereupon responsible for showing that it was not

practicable. In this case, management proved the need to schedule non-consecutive days off, in spades.

What is extraordinary in this case is how management could have allowed the situation to continue for as many years as it did. A quotation from the audit recommendations is pertinent:

"The largest factor contributing to the continual delayed mail situation in Des Moines, which has been pointed out in every previous audit, is the refusal to approach the issue of the clerks scheduled days off. It has never been and will never be operationally feasible to give all clerks either Saturday/Sunday or Sunday/Monday off. While rotating days off is the most beneficial and fair schedule, the local APWU agreement prohibits it here. The unit should be closed on Sunday, and the second non-scheduled days must be assigned according to the processing needs of the unit. For maximum efficiency we recommend that the jobs be posted as follows: three clerks will have either Saturday/Sunday, Sunday/Monday, Sunday/Tuesday, or Sunday/Friday off, and four clerks will have either Sunday/Wednesday or Sunday/Thursday. This gives the supervisor 18 or 19 clerks every day, and a total of 15 when maximum annual leave is scheduled...."

Back in 1999, when this grievance arose, and to which time this discussion is oriented, there was a remarkable failure of management to manage. As the audit noted, management refused to approach the issue of scheduled days off, which was patently disruptive of the service's mission.

The idea behind running a Postal Service is to deliver the mail. In the CFS unit, that mission was totally ignored, in favor of granting consecutive days off when they could not possibly be justified by the needs of the service. Both the consecutive days off and the early morning scheduling practically made a farce of the postal service's mission to have the CFS mail back in the mail stream on the following day. On the subject of start times, all the clerks were working before any mail arrived to be worked. Of course when you are five to eight days behind, there is always mail there to be worked. But that mail is not what should have been there to be worked. The audit recommendations which were put into effect made sense, finally. The mail began to arrive about 12:30 p.m., and the clerks began to arrive one hour before that. The previous schedule was as ridiculous as having distribution clerks arrive at midnight, and the first mail delivery to be 5 AM. The distribution clerks would have three hours of their shift to work the mail, but, of course, within a few days, they would be so far backlogged that there would be mail waiting for them to work each night at midnight. The same applies here. Management has completely justified the need to change the starting times of the schedules.

The need for non-consecutive days off is equally clear. On Saturday, since Sunday is an obligatory day off for everyone, the unit worked with no more than half its complement. On Monday, the heaviest mail day of the week, once again the unit operated with no more than one half its complement. To continue for years to give consecutive days off, Saturday/Sunday or Sunday/Monday, was a great convenience for the clerks, but a disgraceful level of service for the customers. The CFS unit had to be staffed to perform its functions, and that required non-consecutive days off. However you define "as far as practicable", being unable to deliver the mail

within eight additional days certainly meets any rational definition.

When management met with the union to discuss union proposals, it told the union, according to the union, that it was a "done deal". Since the principal object of the union was to protect the consecutive days off for its members, it is easy to see why it felt it was not listened to. Whatever suggestion the union might have had, if it included consecutive days off, management properly had no interest in listening. The staffing for the CFS unit was assigned, as the union has urged for years, to be full-time. The union's proposal was to use PTFs and detailed employees to allow the CFS clerks to have consecutive days off. This flies in the face of its general attempt to avoid the use of PTFs, and give the work to full-time employees. First management determines the staffing that is necessary in a unit, and then it has the flexibility of PTF employees to fill in the chinks and gaps which nevertheless results from non-perfect assignment of full-time employees.

The record clearly reflects that the union was given an opportunity for meaningful consultation. The main point the union tried to make was rejected by management out of hand, because of the years gone by with the union recommendation in practice, and a disgraceful service record for the unit. On other matters, the union was heard, and changes were made by management in response to the union's input. The fact that the union could not persuade management to continue its disgraceful record of non-delivery of mail is not synonymous with being denied meaningful consultation.

Evidence was submitted that many if not almost all CFS employees bid out of the unit, because of

their unhappiness with management's treatment of them. What this has to do with management's claimed violation of the agreement is not clear. What was clear was that due to inept management, the incumbent CFS employees had a multi- year long break in scheduling, and postal customers got a years long disgraceful mail delivery record. Management's correction of priorities in this case did not constitute a violation of the agreement, and the union did have its right to meaningful consultation honored, even though its efforts were unsuccessful. Based on this, the grievance must be denied.

AWARD

Management did not violate the agreement when it changed the scheduled days off and starting hours for employees in the CFS. Management did not violate the LMOU requirement for meaningful consultation with the union. The grievance is denied.