

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)	Grievant: Class Action
between)	Post Office: Des Moines, IA
UNITED STATES POSTAL SERVICE)	Case No. E00C-4E-C 03158314
and)	Local Griev: 0318760
AMERICAN POSTAL WORKERS)	
UNION, AFL-CIO)	

Before: George T. Roumell, Jr., Arbitrator
Appearances:

For the U.S. Postal Service:	Marcia Grant Labor Relations Specialist
For the Union:	Robert D. Kessler National Business Agent

Place of Hearing: 1165 Second Ave., Des Moines, IA 50318

Date of Hearing: July 12, 2006

Date of Award: September 15, 2006

Relevant Contract Provision(s): Articles 3, 7, 8 and 15

Contract Year: 2000-2003

Type of Grievance: Contract

AWARD: The grievance is timely. The grievance is denied in all respects except as to the Ron Lauder situation. As to Ron Lauder, for the reasons set forth in the Opinion, for pay period 13 week 1 2003, the matter is remanded to the parties to negotiate a monetary remedy based upon the guidelines set forth in the Opinion for the excess hours Mr. Lauder worked over his scheduled hours in said pay period. The Arbitrator will keep jurisdiction for a period of 120 days to resolve any disputes as to the monetary relief to be given, if any, as to the Lauder violation for pay period 13 week 1 2003.


 GEORGE T. ROUMELL, JR.
 Arbitrator

ARBITRATION OPINION AND AWARD

Issues Presented

Was the grievance timely?

Did the Service violate the National Agreement when it worked part-time regular clerks beyond their bid schedule for the period in question? If so, what is the appropriate remedy?

Background

The Des Moines, Iowa Post Office has numerous stations throughout the area it serves wherein distribution and window clerks are employed. Among those employed are part-time regular clerks with bid assignments. These bid assignments are for periods of less than 40 hours.

On May 1, 2003, then APWU Branch President Lance A. Coles wrote Bernie Engelhaupt, Manager of Customer Services at Des Moines, the following letter:

Dear Mr. Engellhalulpt:

The Des Moines Iowa Area Local, APWU has been tracking the part-time Regulars. As I made you and Postmaster Goodrich aware at past Labor Management meetings, many of the PTR's are working outside their hired hours.

I have enclosed copies of our tracking.

PTR hours should not be altered on a day-to-day and week-to-week basis and their work hours should not be extended on a regular or frequent basis.

As you can see from the tracking, their hours are altered regularly and frequently. The work hours for several of these PTR's is not an occasional altering.

I know that PTR's are being discussed, at least by station managers, in regard to the bids that are split between the Plant and Customer Service.

Prior to any discussion of adding more PTR's I would ask that you at least start using the current PTR's as they were hired for. Some of the tracked hours show the need for full-time work, not part-time.

I show the following PTR's hired hours as: Kathy Mills – 24; Deb Forcht Funaroi – 31; Deb Jones – 26; Pam Jones – 24.5; Kathy Labertew – 24; Ron Lauder – 24; J.A. Ilrath – 29; S.J. Swain – 24; Deb Moede -1- 24; H.D. Nguyen – 24; K. Patwa – 31.5; p Pam Reichart –22; Evelyn Samuel – 24; Barb Slater – 31.5 and E. Smith-Peno – 30.

I am requesting that these PTR's work within their bids, and this continuous altering of their bids stop immediately. If you need employees to work more hours, then we need to talk about posting full-time positions instead of these PTR positions.

Please let me know if you need more information and would like to talk about this.

Thank you.

Subsequently, the Des Moines APWU filed the following grievances in 2003 protesting the working of part-time regulars beyond their bid schedules:

1. 03-18744 PP 5 WK 1
2. 03-18745 PP 5 WK 2
3. 03-18746 PP 6 WK 1
4. 03-18747 PP 6 WK 2
5. 03-18748 PP 7 WK 1
6. 03-18749 PP 7 WK 2
7. 03-18750 PP 8 WK 1
8. 03-18751 PP 8 WK 2
9. 03-18752 PP 9 WK 1
10. 03-18753 PP 9 WK 2
11. 03-18754 PP 10 WK 1
12. 03-18755 PP 10 WK 2
13. 03-18756 PP 11 WK 1
14. 03-18757 PP 11 WK 2
15. 03-18758 PP 12 WK 1
16. 03-18759 PP 12 WK 2
17. 03-18760 PP 13 WK 1

There was a challenge by the Service as to grievances that were listed 1 through 16 above as not being timely and for a variety of reasons the Union withdrew these grievances. However, Gr. 03-18760 is the grievance that is now before this Arbitrator. It is also noted that, as to this grievance, the Service has again raised the timeliness issue.

There was also a representation that the issue of PTRs working in excess of scheduled hours has continued spawning continuing grievances which apparently have been filed on a weekly basis until it was suggested to the Local Union that a final grievance be filed in 2004 for the purposes of holding in abeyance not only the subsequent grievances that were filed but the final grievance until the underlying issue was resolved in the present grievance. By agreement of the parties, this has been done though the Service has still reserved the timeliness issue as to this grievance. Depending on the results of this arbitration, the Arbitrator is under the impression that the parties will then attempt to resolve the pending grievances.

Gr. No. 03-18760 was discussed at Step 1 on June 17, 2003, denied that day, and appealed to Step 2 on the same day. The grievance as stated in the Detailed Statement of Facts in the Step 2 grievance appeal reads in part:

On the following dates 5/31, 6/2 - 6/6, of P.P. 13, Wk. 1, the following PTR's, Pam Jones, Ron Lauder, Judy McIlrath, Susan McSwain, and Barb Slater, worked in excess of their regular schedules. The Union contends this is a violation of the National Agreement and that part-time regulars cannot be used outside of their bid schedules except in unpredictable or emergency situations and that they should not extend their hours on a casual or regular basis. Arbitrator Dennis said that several recent decisions explicitly stated that the Postal Service cannot use PTR's beyond their bid hour limits if any other employee is available to perform the required work, regardless of the overtime that needs to be paid to those who do the work. ...

The Corrective Action Requested as set forth in the Step 2 grievance appeal reads:

That Management stop altering PTR's bid hour's on a day to day and week to week basis and their work schedule should not be extended on a regular or frequent basis and that this continuous altering of their bids stop immediately. The Union also contends that since PTR's are not eligible to sign the overtime desired list that all clerks on the overtime desired list affected by excessive use of PTR's be paid and that they be made whole for loss of pay and other entitlements.

Management's Step 2 answer, which reserved the timeliness issue raised at Step 1, reads in part and sets forth the issue and management's position:

In accordance with Article 15.2 of the National Agreement, we met at Step 2 to discuss the above captioned grievance. The grievance is being denied based on the following:

The issue in this grievance is whether the National Agreement was violated when part-time regular clerks were allowed to work outside their normal bid assignment.

Management understands the facts in the case to be that part-time regular clerks Pam Jones, Ron Lauder, Judy McIlrath, Susan McSwain, and Barb Slater worked outside of their regular assignment during pay period 13, week 2 of fiscal year 2003. The Union alleges that when PTR's are worked beyond their normal end tour, it creates an overtime bypass situation.

The union alleges that this is a violation of Articles 7, 8 and 15 of the National Agreement and that "numerous grievance settlements up to an arbitration have stated that PTR's will not be utilized for extra hours if regular full time employees on the overtime desired list are available."

Management at the local level has determined that this grievance was not filed in a timely manner as the Step 1 meeting date of June 17, 2003 indicates. An appeal was made to Step 2 on the same day.

After reviewing the evidence and arguments it is determined there is no violation of the National Agreement. Management did attempt to utilize clerks on the overtime desired list through the Des Moines P&DC, but no OTDL clerks were available. Management did utilize the part-time regular employees within the limits of the National Agreement. Part time regular employees were scheduled for less than 40 hours in a service week, in accordance with Article 7 of the National Agreement. In agreement memo signed by Carol McCrarey and James McCarthy on January 19, 1999 part time regulars are "normally to be worked within the schedules for which they are hired. They can occasionally be required to work beyond their scheduled hours of duty. However, their work hours should not be extended on a regular or frequent basis." The part time regular employees were occasionally required to work beyond their scheduled hours but were not extended on a regular or frequent basis. Therefore the grievance is denied.

During the step 2 meeting the Union Representative provided no other arguments or evidence in support of their stated position.

The union made no requests for additional information and there is no outstanding requests for information relating to this case.

Though Management's answer referred to Step 2 answer pay period 13 week 2 of fiscal year 2003 as the Step 2 appeal states, the issue was pay period 13 week 1.

As indicated, this grievance covers only the one week in dispute for, as already noted, as set forth in the Step 3 denial by the Service, "Subsequent repetitive grievances filed on this issue should be held in abeyance pending the outcome of this case." The grievances, including the understanding as to the last grievance filed in 2004, have been held in abeyance on this basis.

Discussion

The basis for the Service's claim that the instant grievance is untimely is a reference to Article 15, Section 2, wherein both Steps 1 and 2 require that the grievance be presented "within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance."

There are at least three reasons that the timeliness argument as such fails. The period covered was the week beginning May 31, 2003 and ending June 6, 2003. A grievance presented on June 17, 2003 and appealed on the same day would seem to be within 14 days of at least some of the dates in the week in question, namely, pay period 13, week 1. So, as a fact, at least as to some of the dates, the grievance is within the 14 days.

Secondly, there was a request for information from some of the station managers from the Union concerning clock rings which the Union President at the time explained was the reason for any delay in filing this grievance. Under the circumstances, this would bring the grievance within the "first became aware of" language of Article 15, Section 2, Steps 1 and 2, thereby making the grievance timely. *See*, Arbitrator Fragnoli's discussion in *Case No. G98C-4G-C 00021839 (2002)* on this point at page 7.

Third, in the view of this Arbitrator, this is a continuing grievance. Even if it was not timely for the two reasons already stated, the grievance would be timely on the proposition given the history behind the grievance and the subsequent history after the grievance that it was a continuing grievance for the issue continues to be a problem between the parties and arises,

according to the Union, on a weekly basis which is the traditional definition of a continuing grievance. Actually, it is unnecessary to even rely on the continuing grievance concept because the first two reasons – timely as a matter of fact and timely because of the “first became aware of” language. It is for these reasons that the grievance is timely. The Award will so note.

The parties are in agreement that Article 7, Section 1, provides for two classes of regular work force, namely, a full-time clerk, assigned “to regular schedules consisting of five (5) eight (8) hour days in a service week” and a regular part-time employee, assigned “to regular schedules of less than forty (40) hours in a service week or shall be available to work flexible hours as assigned by the employer during the course of a service week.” Thus, part-time employees are in two categories – what the parties refer to as regular part-time and flexible part-time. The employees involved in this dispute are regular part-time employees whose bid assignments were less than 40 hours.

Before addressing the specific facts involved in this grievance, some reference should be made to arbitral authority as well as a 4th Step settlement between the parties addressing the issue involved here as well as a memorandum issued by the Service on the point.

In 1982, in a National Award in *Case No. H8T-2F-C 6605*, in concluding that the part-time regular who was the grievant in that case could have his hours reduced, Arbitrator Mmrittenthal at pages 4-5 of the opinion wrote:

... Article VII, Section 1-A-2 does not establish minimum weekly hours for a part-time regular. It simply says that part-timers “shall be assigned to regular schedules of less than forty (40) hours in a service week ...” Those “regular schedules” can encompass any number of hours less than 40. There is no minimum, no floor.

* * *

The critical sentence is found in Article VIII, Section 1, “Shorter work weeks will ... exist as needed for part-time regulars.” These words plainly imply that a part-time regular’s work week is not necessarily fixed. His work week may be “shortene[ne]d” as the “need[s]” of postal operations dictate. And, as those “need[s]” change again, his work week could surely be extended to what it originally was. For “shorter work weeks” are to “exist” only for such time “as” they happen to be “needed.” The parties thus appear to have accepted the idea that the work week of part-time regulars was subject to change. Had they intended to freeze the work week

of such employees, as the Union contends, they would hardly have embraced the concept of “shorter work weeks ... as needed.” Nothing in the National Agreement points to such a freeze. Neither Article VIII nor any other contract provision prohibits the Postal Service from reducing the work week of a part-time regular because of operational need[s]”.

Even the Union concedes that the Postal Service has some flexibility with respect to a part-time regular’s schedule. It acknowledges that the number of hours in his original weekly schedule can be increased. It protests only the situation in which the number of hours is decreased. Its argument nevertheless recognizes that the work week for a part-time regular is subject to change. The logic of the National Agreement, particularly Article VIII, indicates that this change can be in either direction. The Union’s attempt to limit the change to a “longer” work week flies in the face of the Article VIII, Section reference to a “shorter” work week.

Against the background of the Mittenthal opinion cited above, on January 19, 1999, Rodney Lambron, for Carol E. McCrarey, Grievance and Arbitration Labor Relations, and James McCarthy, Assistant Director, Clerk Craft Division, American Postal Workers Union, signed a settlement agreement at the 4th Step in the following cases:

H90C-1H-C 96012968
H90C-1H-C 95058437
H94C-1H-C 97055829
Class Action
Ft. Myers Beach FL 33913-9998

This Agreement in part read:

After reviewing this matter, it was mutually agreed to the following:

- Part-time regulars are regular work force employees who are assigned to work regular schedules of less than 40 hours in a service week.
- Part-time regular schedules should not be altered on a day-to-day or week-to-week basis.
- Part-time regulars are normally to be worked within the schedules for which they are hired. They can occasionally

be required to work beyond their scheduled hours of duty. However, their work should not be extended on a regular or frequent basis.

It was also agreed that part-time employees who are expected to be available to work flexible hours as assigned during the course of a service week should be classified as part-time flexibles.

Following this Agreement, William J. Downes, the Service's then Manager of Contract Administration APWU/NPMHU Labor Relations, on March 31, 1993, issued the following memorandum to supervision throughout the country on the subject of PTR Clerk Craft Employees. The cover letter to the memorandum read in part:

As a result of the recent MOU regarding transitional employee issues and part-time flexible conversions, increased interest has been expressed concerning the hiring of part-time regular employees in the clerk craft.

The attached memorandum, addressing issues related to the hiring and utilization of PTRs in the clerk craft, is provided for your information and further dissemination as you deem appropriate.

Under "Scheduling," the following paragraph is set forth in Mr. Downes' memorandum:

In keeping with their "regular" status, PTRs' schedules should not be altered on a day-to-day or week-to-week basis. They are normally to be worked within the schedules for which they are hired. However, PTRs can be permanently scheduled for any number of day(s) per week from one to six. There is no minimum number of hours for which they can be scheduled, except as provided in the preceding paragraph, and they can occasionally be required to work beyond their scheduled hours of duty. While arbitral authority supports each of these conclusions, care should be taken not to extend PTRs' work hours on a regular or frequent basis.

In addition, Mr. Downes made the following observation concerning changes in part-time regular schedules on a permanent basis and the need to re-post when he wrote:

Their category and the normally scheduled hours of duty, in whole hour increments, for which they were hired are established on their Form 50, recorded in Blocks 66 and 67. However, as operational experience and needs change over time, there is no requirement that PTR assignments be reposted in order to make permanent

changes in their hours, designated days off, or duties. Again, while a series of national and regional arbitration decisions affirm management's right to permanently change the hours of a PTR schedule, such changes should not be made on a day-to-day or week-to-week basis. Changes in their hours are accomplished through entry on their Form 50 in blocks 79 and 80. (APWU was unsuccessful in its attempt in 1987 negotiations to obtain contract language that would require reposting when such hour changes were made.)

The Downes memorandum and the Ft. Myers Beach 4th Step settlement became the basis for the following in the June 2004 USPS-APWU Joint Contract Interpretation Manual as to Article 8:

- 2. Can the hours of part-time regular employees be expanded on a temporary or day-to-day basis?

Response: Part-time regular hours may be temporarily expanded beyond their fixed schedules only in emergency or unanticipated circumstances.

Following the Downes memorandum and the 4th Step settlement in the Ft. Meyers Beach cases noted above, there have been a series of Regional arbitration opinions upholding grievances where the bid schedule of part-time regulars have been frequently and consistently (for a variety of reasons) extended without permanently being changed, resulting in monetary relief. *See, e.g., Case No. H94C-1H-C 99141942 et al* (Dennis, 2000); *Case No. HJP9351CC et al* (Neveu, 2000); *Case No. C98C-4C-C 99243854* (Plant, 2003). Likewise, on the facts, there have also been denials of such grievances. *See, e.g., Case No. E0C-2U-C 1456 et al* (Cushman 1996); *Case No. D94C-1D-C 98037399* (Wolf, 1999). And there were at least two opinions submitted to this Arbitrator where the arbitrator found a violation, namely, that part-time regular employees "worked hours in addition to their regular schedule hours on a recurring basis," where the arbitrators chose not to issue a monetary award. *See, Case No. A94C-4A-C 98096* (Marx, 1999); *Case No. E00C-1E-C 950 17912* (Render, 1999).

It is against this general background that the Arbitrator addresses the facts as they were presented to him on this record for pay period 13, week 1, 2003. In doing so, this being a contract dispute, the Union has the burden of proof to establish that there was a violation. *Case No. G94C-1G-C 98112614* (Baldovin, 2000) at page 1.

For the week involved, the Union is making allegations as to five part-time regulars employed at various stations, namely, Pam Jones, Ron Lauder, Judy McIlrath, Susan McSwain and Barbara Slater. The Union points out that the names vary from week to week.

Pam Jones and Ron Lauder in the week in question in 2003 worked in the South Des Moines Station. Roberta Wilson was the supervisor at that station at the time. Ms. Wilson testified that the station had two PTRs, namely, Pam Jones and Ron Lauder. As to Pam Jones, she was a window clerk. Her schedule was on Saturday from 915 to 1345, four and one-half hours. On Monday through Friday, her schedule was 1300 to 1715, from 1:00 to 4:15 p.m. In other words, she was scheduled for 25 hours and 45 minutes on a weekly basis. In terms of the clock rings in the post offices, she was scheduled for 4.5 hours on Saturday and 4.25 hours Monday through Friday for a total of 25.75. As it turns out, on Saturday, May 31, 2003, she worked 4.63 hours using clock rings. On Monday, June 2nd, 4.53 hours, Tuesday, June 3rd, 4.49 hours, Wednesday June 4th, 4.44 hours, Thursday, June 5th, 8.28 hours, and Friday, June 6th, 4.32 hours for a total of 30.69 hours. Ms. Wilson testified the reason for extending the hours on each day except Thursday, June 5, 2003 was because "it's merely clearing the lobby and closing the drawer out and getting off the clock." As to June 5, 2003, Ms. Wilson testified that there "was no one window qualified and they were short a second window clerk that day." Ms. Wilson stated she made efforts to get another person by calling Cindy Lam, a supervisor in charge of window clerks, to attempt to get a window clerk from the pool but she was not able to obtain a window clerk.

When the Arbitrator reviews the case of Pam Jones, the Arbitrator is not convinced that there was a basis for relief. What was involved was working virtually minutes beyond Ms. Jones' scheduled time that depended on the number of customers in the lobby. It may be that the Service could change her schedule permanently to accommodate this to a point. The number of people in the lobby is unpredictable and, with such few minutes involved, even if there was a technical violation, there is no basis for any remedy.

As to the issue of June 5, 2003, how frequently does this happen with Ms. Jones? The June 5, 2003 incident may have come within the frequent situation and, therefore, not a violation. Without a showing that this is recurring as to Ms. Jones, this Arbitrator cannot find any violation. Furthermore, Ms. Wilson maintains she made an effort to get a replacement but was unsuccessful

in doing so.

The evidence did indicate that there were clerks at the stations who were both distribution and window trained; that when a window trained person was needed, a distribution person with the training would be placed on the window and a clerk with scheme training would be placed in distribution. But there was no evidence that this was a possibility on Thursday, June 5, 2003. Nor was there any evidence that there was anybody in the clerk pool or anyone on the overtime list that was available that had the window training. Furthermore, as indicated, this Arbitrator reviewed a one-week period. There is no evidence that this was a consistent pattern as to Ms. Jones except for the few minutes that she worked beyond her schedule to clear up the lobby, which the Arbitrator has already addressed.

As to Ron Lauder, he is a scheme person. His schedule is Saturday through Friday, Zone 15, from 6 to 10 a.m., which means he is scheduled for 24 hours a week. On the week in question, Mr. Lauder took annual leave on Saturday. On Monday, June 2nd, he worked 9.1 hours, June 3rd 6.7 hours, June 4th 6.55 hours, June 5th 7.45 hours, and June 6th 5.94 hours, for a total of 35.74 hours. Mr. Lauder's case seemed to be the focus of the grievance because there was an indication, as evidenced by pay period 13, week 1, that Mr. Lauder consistently works beyond his fixed schedule.

There was a debate about whether a person could fill in who did not have the specific scheme needed at the station involved. Mr. Lauder was a scheme person. Ms. Wilson acknowledged that during the period involved she had two qualified employees off, namely, full-time regular employees. She needed four or five qualified clerks to get the first class mail out. Two were on annual leave. She did call for help but was not able to get the help she needed. Ms. Wilson maintained that someone without scheme qualifications would be "virtually useless."

The fact is until about six weeks prior to the hearing in this matter, Mr. Lauder kept on working more than four hours in a day because he was scheme qualified. This was recently changed because a clerk who was on military leave in Iraq had returned. More will be said about Mr. Lauder later in this Opinion.

Judy McIlrath is employed at the Beaverdale Station. Her schedule time is on Saturday 933 to 1333 and Monday through Friday, 1215 to 715. This means that on clock time she is scheduled 29 hours a week – four hours on Saturday and five hours Monday through Friday. On

the week in question, Judy McIlrath on Saturday worked 7.88 hours, on Monday June 2nd she worked 5.21 hours, Tuesday 5.49 hours, Wednesday, June 4th 5.06 hours, Thursday, June 5th 5.07 hours and Friday, June 6th 5.68 hours, for a total of 34.39 hours. Arlene Staley testified that Judy McIlrath was a window clerk, window trained. Her schedule indicates that she was to work at the South Des Moines Station on Saturday. According to Ms. Staley, apparently Judy McIlrath was working at Beaverdale on Saturday; that there was a need for extra persons on Saturday but “often when they were denied extra help on Saturday, they had to extend Judy’s time.”

Ms. Staley explained that Judy McIlrath was the only person besides an individual that she identified as “Dan” who could close out the station; that if Dan was not present, Judy would have to close out the station. Again, the issue with Judy McIlrath is that, except for Saturday, the time she worked over was measured in minutes and seemed to be related to the customers in the lobby. This Arbitrator suggested in regard to Pam Jones this Arbitrator does not believe that there is a basis for relief if the working over was for a short period related to customers in the lobby. The Saturday 7.88 does present a problem. If it only happens on occasion, then there is not a violation. This means that since the Service does have a full-time regular clerk, Dan, working on Saturday, and it is only when Dan is absent that the situation arises as to Ms. McIlrath, this may be infrequent and, therefore, not a violation. And if it is frequent, then this is up to the Union to show that there was a window clerk trained on the overtime desired list at the station available who could close the station. This was not shown. For this reason, the Arbitrator is not persuaded that there was a violation in the Judy McIlrath situation.

This brings the Arbitrator to S.J. McSwain and Barbara Slater, both of whom worked at the Pleasant Hill Station. Rick Kimbley was the Manager of Customer Service. Susan McSwain was scheme qualified. Barbara Slater was window qualified. Susan McSwain was scheduled Saturday through Friday from 1300 to 1700, or four hours a day, for a total of a schedule of 24 hours. On the week in question, Susan McSwain worked 4.4 hours based on clock rings Saturday 4.88 hours, on Monday, June 2nd, 5.17 hours on Tuesday, June 3rd, 4.6 hours on June 4th, 4.76 hours on June 5th and 4.93 hours on June 6th, for a total of 28.74 hours. According to Mr. Kimbley, Ms. McSwain is the closing clerk and her leaving the building depended on carriers’ return times as she was responsible for checking in things from the carriers and could not leave until the carriers returned. As Mr. Kimbley explained, Ms. McSwain could

not leave until the carriers arrived and he could not predict when the carriers could be returned. Mr. Kimbley stated that there was some discussion about changing Ms. McSwain's schedule because she was working over every day, but claims it was the best schedule at the time.

As one views the situation as to Ms. McSwain, she was exceeding her hours every day except the Saturday hours were exceeded by a few minutes. This was not true for the rest of the week. Yet, with the exception of Tuesday, June 3rd, she never exceeded her hours over one hour. Mr. Kimbley also suggested that at the time of day involved, nobody from the overtime desired was available because no one is available at that time of day. The Union offered no proof to the contrary.

As to Barbara Slater, her schedule was Saturday 933 to 1333, Monday through Friday 1230 to 1800 hours. On the clock, this meant that she was scheduled for 31.5 hours. On the week in question, Ms. Slater was on annual leave on Saturday and Monday. On Tuesday June 2nd, she worked 5.91 hours, on Wednesday June 4th 6.09, Thursday, June 5th 5.89, and Friday June 6th 5.67. According to Mr. Kimbley, Ms. Slater was the T-6 window clerk who takes care of the lobby, closes the lobby and does the bank deposit; that the reason she stays over every day is to clear the lobby and close it out. It is noted that as to Ms. Slater she was staying over for a matter of minutes, thereby falling into the same category as for instance Pam Jones.

In reviewing the case citations, some comparisons with what occurred at Des Moines in the week in question and the overall situation and the instances in which relief had been given are worth noting. In *Case No. G94C-IG-C 98112614* (Baldovin, 1999), the part-time regular was actually worked 40 or more hours in a six day week for a six hour day, six day a week schedule for a period of at least 27 weeks. In holding it was a violation, and rejecting the Service's contention "that no window qualified PTFs were on the rolls at Balcone Station or that because of the exigencies of the situation local management had no choice but to assign PTR F 40 or more hours per week", Arbitrator Baldovin granted the grievance, granted a cease and desist order and overtime to those who were on the overtime desired list.

Finding a violation in *Case No. C98C-4C-C 99243854*, Arbitrator Plant, noting that 29 part-time regulars were consistently worked beyond their scheduled hours, awarded a monetary remedy based upon the excess hours worked for "all employees on the OTDL at the various

stations of the instant case.”

There were two opinions by Arbitrator Irene Thomas, issued the same date, that perhaps puts this matter in perspective. In *Case No. A98C-4A-C 99139053* (Thomas, July 3, 2002), she granted the grievance and remanded the matter to the parties to determine the amount of monetary relief where she found that the part-time regular employees during pay period 24, 25 and 26 1998 were regularly worked beyond their scheduled hours without an explanation from the employer. On the other hand, on the same day, in *Case No. A98C-4A-C 99139159* (Dunn, July 3, 2002), she denied a similar grievance where she found that the PTRs were working “overtime, the OTDL employees were still on their regular shifts and therefore no basis for granting the grievance.”

In *Case No. H90C-1H-C 94065587* (Caraway, 1997), though there seemed to be a violation, the overtime was offered to full-time employees to perform the instructor duties and they all declined. On this basis, Arbitrator Caraway denied the grievance. It was this approach that caused the Arbitrator to conclude with a lack of proof there is no claim as to Pam Jones for the Thursday, June 5, 2003 work, even if the Union could establish that the working over was more than infrequent, which it did not.

It is based upon the above citations that this Arbitrator has reached the conclusion that the Service did not violate the contract as to Judy McIlrath, Susan McSwain, Barbara Salter and Pam Jones on pay period 13 week 1 (2003), based upon the evidence before him. On the other hand, there was a violation as to Mr. Lauder, particularly when one recognizes by analogy that *Case No. G94C-1G-C 98112614* (Baldovin, 1999) has similarities to the situation involving Mr. Lauder. One of the reasons Mr. Lauder was working out of his schedule on a consistent basis, even beyond the week before the Arbitrator, is because of leaves of absences, including the clerk that was sent to Iraq which the Service could have anticipated.

In summary, therefore, the only possible contractual violation claim that the Union may have in this situation is as to Mr. Lauder.

Having reached this conclusion as to Mr. Lauder, the Arbitrator notes that there have been some Regional decisions where a violation as to part-time regular employees working beyond their fixed schedules have been found, but the arbitrators concluded that there was no basis for a

monetary remedy. In this respect, the closing comments of Arbitrator Render in *Case No. E00C-01D-C 95017912* (1999) and the award he entered should be noted:

On the issue of the appropriate remedy, the Arbitrator has concluded that there basis no basis [sic] for making a monetary award in this case. The Arbitrator has no evidence before him about the identify [sic] of any employees who were on the overtime desired list, whether or not they worked overtime, and if so, how many hours, and if they were ever denied the opportunity to work overtime when they desired such work. In view of this state of the record, no monetary award is paid.

AWARD

The service violated the provisions of the National Agreement and memoranda which appear to be part of the National Agreement by assigning part time regular employees work hours in addition to their regularly scheduled hours on a recurring basis. These assignments also violated the rights of employees on the overtime desired list. No monetary award is made.

In some ways, this award could apply to the Lauder situation. Mr. Lauder was scheme trained. Former Branch President Lance Coles suggested that persons from the plant could come to the stations and follow the scheme by what was referred to as a "pony." There was testimony by supervision that persons unfamiliar with the scheme would be slow and not able to perform. Then there was the problem that there are no scheme people on Tour 3; that BMC people do not toss mail.

The question, then, is whom on what overtime desired list could have been assigned to work the scheme at the South Des Moines Branch? Or could the Service, as suggested by Mr. Downes' memo, have permanently changed Mr. Lauder's hours during the period of the leave of absence? Or could it have been reposted? The point is there were a number of options. Likewise, it could be argued that, with such a clear violation, consistent with the comments of Arbitrator Baldovin in *Case No. C94C-1G-C 98112614*, there should be a monetary remedy. And in the case of Mr. Lauder, there was a clear, consistent violation which would suggest that something more than a cease and desist order, as suggested by Arbitrator Baldovin, is required.

But before there can be a monetary remedy as to the Lauder violation, there should be

identified the individual or individuals on the overtime desired list who were not working during the hours that Mr. Lauder worked in excess of his fixed four hours per day and thus could have worked during said hours, who had the knowledge or ability to work the scheme Mr. Lauder worked. This approach is the same approach that Arbitrator Baldovin used in *Case No. G94C-1G-C 98112614* when at page 10 he wrote, "In order to effectuate this remedy, the parties are directed to determine from available records which window qualified full-time regulars on the OTDL ... could have been assigned to work the hours worked by ... on the days he worked in excess of his six hours a day during the period specified" And that is the point. If nobody on the OTDL on any given day was available to work or did not have the knowledge or ability to do the scheme work that Mr. Lauder did, then for those hours there is no basis for a monetary remedy.

Given this guide, this Arbitrator will remand the matter back to the parties to determine the appropriate monetary remedy for the violation as to pay period 13, week 1 2003 involving the excess hours Mr. Lauder worked that week. If there is disagreement as to whether and to whom the monetary relief should be given, then this matter should be returned to the Arbitrator for resolution based upon his retention of jurisdiction.

It must be emphasized the only possible relief here is as to Mr. Lauder's situation because he was consistently assigned beyond his excess hours and the Service made no effort to change his hours permanently, even though the Service knew of the long-range needs as described in this Opinion. But before there is a monetary relief, the requirements set forth above must be followed.

The relief in the Award that follows as to Mr. Lauder only involves the excess hours he worked for pay period 13 week 1 2003, as that is the only week before this Arbitrator.

What this Opinion hopefully has done is address the basic issues in Des Moines. Claiming a violation because part-time regulars work some minutes over clearing the customer lobby or waiting for carriers to come in or working on an infrequent or unexpected basis, as described on the facts here, or where there were no other qualified clerks available, are not violations of the contract as claimed by the Union. The citations cited by the Union involve situations of the type involving Mr. Lauder -- situations that were consistent, anticipated over

some period of time. Except for Mr. Lauder, the Union made no valid, viable claim.

Again, hopefully, the analysis here will aid the parties in addressing all pending grievances in Des Moines.

A W A R D

The grievance is timely. The grievance is denied in all respects except as to the Ron Lauder situation. As to Ron Lauder, for the reasons set forth in the Opinion, for pay period 13 week 1 2003, the matter is remanded to the parties to negotiate a monetary remedy based upon the guidelines set forth in the Opinion for the excess hours Mr. Lauder worked over his scheduled hours in said pay period. The Arbitrator will keep jurisdiction for a period of 120 days to resolve any disputes as to the monetary relief to be given, if any, as to the Lauder violation for pay period 13 week 1 2003.



GEORGE T. ROUMELL, JR.
Arbitrator

September 15, 2006