

AMERICAN POSTAL WORKERS UNION, AFL-CIO

GRIEVANCE
STATUS LETTER
(CENTRAL REGION)

GRIEVANT—PERSON OR UNION FROM LINE B (LAST NAME FIRST)		APWU-USPS NATIONAL GRIEVANCE
FREEMAN, Laura		#
WORK LOCATION CITY AND ZIP CODE FROM LINE 10		USPS REGIONAL GRIEVANCE
Des Moines, IA		# G7C-4K-C 22863
CONTRACT ISSUE	CRAFT	APWU REGIONAL GRIEVANCE
ART. 19 - Sunday Premium Pay	Clerk	# 9022
TO	DATE	APWU LOCAL GRIEVANCE
	December 29, 1995	# 77-89-4772

DIRECTOR, INDUSTRIAL RELATIONS
AMERICAN POSTAL WORKERS UNION, AFL-CIO
1300 L STREET, N.W.
WASHINGTON, D.C. 20005

D/A: 12/19/95 - Reg.
DENIED
ADVOCATE:
Carl F. Casillas

PYMT.# 504052

- WITHDRAW FROM STEP 4 OR ARBITRATION
- SETTLEMENT
- ARBITRATION AWARD
 - NATL. CERTIFICATION
 - LOCAL CERTIFICATION
- Arbitrator's Statement - John C. Fletcher
\$1238.50 - D/H: Novmeber 16, 1995

ATTACHED IS DOCUMENTATION IN SUPPORT OF ACTION INDICATED.

The arbitrator stated, "Grievant was not entitled to Sunday premium pay during the period she chose to have her work schedule changed to conform to court service hours, and was not scheduled to, or did not work, or perform jury duty on Sundays."

cc: NBA St. Louis Div. Office, APWU
President, Des Moines, IA A/L (0044), APWU

CENTRAL REGION, APWU, AFL-CIO
330 SOUTH WELLS STREET, ROOM 1402
CHICAGO, ILLINOIS 60606

OPINION AND AWARD

187-4I-C 90022224 - Laura Freeman - Des Moines, Iowa

Background:

On February 28, 1989, the herein Grievant, Ms. Laura Freeman, a Tour 3 Clerk, regularly scheduled from 2:30 p.m. to 11:00 p.m., with Monday - Tuesday non-scheduled days, was summoned for a six-month period of Federal Jury Duty, to commence on March 20, 1989. On March 1, 1989, Grievant submitted a 3189 requesting a temporary schedule change to accommodate her jury service. The new schedule she desired was 8:00 a.m. to 4:30 p.m., with Saturday - Sunday as non-scheduled days, to be effective between March 11, 1989 through September 8, 1989. Her 3189 was approved by her Supervisor that same date. (Subsequently a revised 3189 was filed changing Grievant's starting time an to hour earlier, but keeping the same non-scheduled days.)

Sometime after the second 3189 was received, an Accounting Technician submitted a handwritten note to Grievant's Supervisor, stating:

Please get word to Laura Freeman that she will be compensated for night differential during her schedule change but not for Sunday premium (per attached).

Attached was a two page Memorandum from the MSC Manager/Postmaster, dated September 21, 1984, on the subject of "Court Duty Leave." The pertinent section of the Memo read:

If the employee's postal schedule conflicts with the court duty schedule, the employee does have the option of requesting the work schedule be changed temporarily to conform to the hours of court service. When such a request is approved and the employee's regular schedule included night differential, the employee will receive full compensation per their regular schedule. However, if an employee whose regular

schedule includes Sunday premium requests a temporary schedule change including a change in days off, making Sunday a non-schedule day, he/she will not receive Sunday premium per the temporary schedule. Sunday premium is paid on court leave duty only when there is actual court service or work hours performed.

Sometime after receipt of the above, an undated grievance was appealed to Step 2, contending that:

Grievant was summoned to Federal Jury Duty from March 1989 to Sept. 1989 Mon.-Fri. Grievant normally has Mon. Tues. off & works from 1450 to 2300. When Grievant received her paycheck on March 31, 1989, Grievant noticed she did not receive Sunday Pay. The Union contends that according to the EL&R Manual, employees who exercise a temporary change of schedule receive full compensation for the period of court service.

A Step 2 meeting on the grievance occurred on December 27, 1989. On January 3, 1990, it was denied on the basis that Grievant would be entitled to Sunday premium pay only if she actually worked on Sunday. The denial rejected APWU's argument that Section 434.34 of the ELM covered Sunday premium pay, on the contention that because that section specifically included night differential pay, it, therefore, excluded all other elements of premium pay. The denial also noted that:

At the Step 2 meeting management cited a pre-arbitration withdrawal (with prejudice) agreement (A8-W-0449/W8C5KC-5125) which involved a request for Sunday premium pay on behalf of an employee who had elected to have his work schedule changed temporarily, to conform to hours of court served (*sic*). As a result of the schedule change the employee did not work on Sunday. The union Step 2 designee maintained that although the withdrawal was with prejudice, it was not precedent setting. It's management's position that the union is procedurally barred from re-litigating this issue due to its withdrawal of the previous grievance (with prejudice) at the National level.

Additions and corrections, filed by APWU, noted that withdrawal relied upon by the Service was outdated. Further, that the ELM had been changed since that case had

been withdrawn, thus the withdrawal was moot." Timely appeal was made to Step 3, where the grievance was denied on the grounds that because:

[She] did not work on Sunday, she is not entitled to Sunday premium payment. The grievant was compensated for night differential, as specified in Section 516 of the Employee and Labor Relations Manual.

Further appeal was taken to Step 4. In a decision dated June 26, 1990, the Step 4 Designees' agreed:

The issue in this grievance is whether the grievant is entitled to Sunday premium payment.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. The parties at this level agree that Section 434.3 of the ELM should be applied to the fact circumstances.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

On May 5, 1993, the matter was again considered at Step 3, and denied. The denial stated that because:

[The] grievant did not work on Sunday, she is not entitled to Sunday premium pay.

Timely appeal was perfected to this arbitration.

THE POSITION OF THE PARTIES

The Position of the American Postal Workers Union:

APWU stresses that Grievant was granted an approved change in schedule because of jury service, for the purpose of Court Leave. Section 516.111 of the ELM defines Court Leave. This section reads:

516.111 Court Leave. Court leave is the authorized absence from work status (without loss of or reduction in pay, leave to which otherwise entitled, credit for time or service, or performance rating) of an employee who is summoned in connection with a judicial proceeding, by a court or authority responsible for the conduct of that proceeding, to serve as a juror or to serve as a witness in a non-official capacity on behalf of a state or local government, or witness in a non-official capacity on behalf of a private party in a proceeding to which the Postal Service is a party in interest. The court proceeding may be located in the District of Columbia, a state, territory, or possession of the United States, including the Commonwealth of Puerto Rico, the Canal Zone, or the Trust Territory of the Pacific Islands.

And specifically specifies that Court Leave will be without loss or reduction in pay. If Sunday premium pay is not included, employees that have effected schedule changes to accommodate Court Leave will suffer a reduction in pay to which otherwise entitled, it is argued.

Further, Section 516.44 c. of the ELM, allowing for temporary schedule changes, contemplates that full compensation will be allowed in these circumstances. Full compensation must also include Sunday premium pay, it is argued, or it is not full compensation. Section 516.44 c. reads:

c. Temporary Change in Schedule. Employees who choose to have their work schedules changed temporarily to conform to court service hours submit Form 3189, *Request for Temporary Schedule Change for Personal Convenience*, as soon as possible, together with Form 3971, requesting such schedule change to the appropriate postal official at their

installation. (See 232.23, Handbook F-21, *Time and Attendance*.) Such request states that the schedule change is for the employee's personal convenience and is agreed to by the local union. Employees who exercise this option receive full compensation for the period of court service including any applicable night differential.

APWU, citing *HIC-5K-C 27458*, Block, Arb., (1986), emphasizes that it was held there that:

The very purpose of Court Leave pay is to protect against the loss of such wages. It is, in the words of the ELM, an authorized absence "without loss of pay, or deduction in pay"

Further, Section 434.33 of the ELM reading:

434.33 Leave. If an employee is on leave for any part of the tour, normally she or he is not entitled to Sunday premium or the leave hours. However, Sunday premium to which the employee is normally entitled is continued while in continuation of pay (COP) status, is on military leave, or is on court leave. An eligible employee also continues to receive the Sunday premium to which he or she is normally entitled when she or he is rescheduled due to a compensable disability in lieu of placement in a COP status.

specifically provides for Sunday premium for court leave, APWU stresses.

Finally, the Union argues, that others in the facility have been paid Sunday premium when on Court Leave. Specifically, it references the case of Scott M. Young, an employee in the facility that requested a schedule change from April 1, 1994 through April 26, 1994 because of jury duty. A grievance was filed when he was not allowed 32 hours of Sunday premium pay during that period. On June 1, 1994, Form 2243 was processed allowing 32 hours of Sunday premium in settlement of Grievance No. 77-94-9896. The instance is not isolated, APWU argues, in referencing other cases where Sunday premium was allowed for Court Leave.

The Position of the United States Postal Service:

The Postal Service argues that if Grievant had been scheduled to work on Sunday and had performed jury duty on a Sunday she would be eligible for Sunday premium. However, Grievant requested and received a schedule change, by which she would not be scheduled for Sunday work. Under applicable regulations she would only be entitled to night differential, and not any other premium pay, it insists. Referencing Section 434.34.c., of the ELM, the Service contends that the language used states:

Employees who exercise this option (temporary schedule change) receive full compensation for the period of court service, including any applicable night differential.

If it was intended to pay Sunday premium, as well as night differential for "the period of court service" then Sunday premium would have been included. That Sunday premium was not specifically included is significant, the Service says.

Further, this issue has been at Step 4, and withdrawn by APWU with prejudice, the Service argues. APWU is barred from pursuing it anew at the Regional level, and the Arbitrator must accord full weight to the Step 4 withdrawal.

With respect to APWU's argument that others have been paid Sunday premium when on Court Leave, the Service notes that these payments were the result of lower level Supervisor's settlements, they were mistakes that are not supported by Agreement language or Handbook and Manual provision, and they cannot be considered a precedent and binding on the Postal Service.

DISCUSSION

At the arbitration hearing the parties' Advocates' stated the issue before the Arbitrator in slightly different language. These differences will not be repeated here, because the parties Step 4 Designees in their June 26, 1990 decision, framed the issue on the National Level as:

[Whether] the grievant is entitled to Sunday premium payment.

And, this Arbitrator feels obligated to accept this as the correct statement of the issue before him.

Further, the Step 4 decision stated that:

The parties at this level agree that Section 434.3 of the ELM should be applied to the fact circumstances.

And again, this Arbitrator feels obligated to do what the Step 4 Designees directed, apply Section 434.3 of the ELM to the fact circumstances present in this case. But, before doing so, it is necessary to observe that two elements should not be confused and considered the same - "Court Leave" and "Temporary Change in Schedule" to conform to court service hours. "Court Leave" is defined in Section 516.11 of the ELM as the "authorized absence from work status." "Temporary Change in Schedule" is an accommodation to have the work schedule conform to the hours of court service. It is obvious, from careful study of the ELM provisions dealing with both, that differing entitlements and guarantees are present for each.

As noted, above, the Step 4 Designees directed that Section 434.3 of the ELM be applied to the fact circumstances of this case. Section 434.33, applies the Sunday premium to employees on leave. That Section, repeated here for convenience, states:

434.33 Leave. If an employee is on leave for any part of the tour, normally she or he is not entitled to Sunday premium or the leave hours. However, Sunday premium to which the employee is normally entitled is continued while in continuation of pay (COP) status, is on military leave, or is on court leave. An eligible employee also continues to receive the Sunday premium to which he or she is normally entitled when she or he is rescheduled due to a compensable disability in lieu of placement in a COP status.

Fairly read, Section 434.33, clearly provides for Sunday premium when on Court Leave. The question is, though, does Section 434.33 provide for Sunday premium when an employee, is not scheduled to work on Sunday, because of a temporary change in schedule authorized as an accommodation by Section 516.44 c., of the ELM. For three reasons, it is this Arbitrator's belief that the answer must be, "No."

The first is found in the language of 434.32. That Section tells us that "It is important to note that only those employees who have been *scheduled* to work on a Sunday are eligible to receive the premium." And, "If the employee has not been scheduled, then she or he is not eligible for Sunday premium." When an employee effects a temporary change in schedule that non-schedules Sunday he or she is no longer scheduled to work on Sunday. The language of Section 434.32, would clearly, then, extinguish eligibility for Sunday premium.

The second is found in the last sentence of 434.33. This sentence provides that an employee will continue to receive Sunday Premium when rescheduled due to a compensable disability. It makes no mention of entitlement to premium pay when

rescheduled due to court service. That the language covers one situation where rescheduling entitlement is provided, but does not cover another, must be significant.

The third is found in the language of Section 516.44 c., which concludes with the sentence, "Employees who exercise [the option of a temporary change in schedule will] receive full compensation for the period of court service including any applicable night differential." Two things are important here. If the sentence ended without the last five words, "including any applicable night differential" it would could fairly be read to include Sunday premiums. But it does not end at this point. The sentence includes a special, extraordinary, element of pay - night differentials - as a consideration of full compensation. If it were the intent to also include Sunday premium as a consideration of full compensation, then it would have been simple task to place language to that effect within the sentence. That such language was not included must be given significant weight.

The above conclusion is consistent with the result of the Withdrawal Agreement in Case No. A8-S-0415/S8C3FC-6494, dated June 17, 1980. That Agreement provided:

Based on a pre-arbitration discussion of Case No. A8-S-0415/S8C3FC-6494, the parties agree that as the grievant, Donald Sparkman, was not scheduled to work on Sunday and did not perform any court duty on Sunday, he is not entitled to receive any Sunday premium pay. Accordingly, the parties agree that this case is to be withdrawn from arbitration with prejudice and that the parties' records shall be noted accordingly.

In accepting the above as an authoritative indicator of the parties' understanding and application of the issue at the National level, the Arbitrator is aware that on appeal to Step 3, APWU argued, *inter alia*, that the language of the ELM had changed since 1980, thus it was proper to re-file on the same subject. The Arbitrator has been given nothing upon which to make a determination as to the validity of this argument. The

Organization has the burden in this area, and in this regard this burden has not been satisfied. Without something definitive to the contrary, the prejudicial Withdrawal Agreement must be accepted as precedent.

The Organization has cited several instances where employees were paid Sunday premium, and has offered documentary evidence in one case that this was done. It asks that this evidence be accepted as a correct application of applicable ELM provisions. The Service has acknowledged that such payments were made, but argues that they were clearly made in error, by supervisors that were unaware of the correct application of the ELM. Inasmuch as the September 21, 1984 Memorandum to all employees on the subject of Court Leave (the applicable paragraph quoted above at pages 2 and 3) clearly stated that employees called for jury duty that changed their schedules to make Sunday a non-scheduled day would not be eligible for Sunday premium, the Arbitrator accepts that those instances of payment relied upon by APWU as precedent setting were made in error. Clearly, such payments were at odds with the explicit written directive of the MSC Manager/Postmaster. Moreover, there was testimony from the Service's witness that it was not the practice in the facility to apply the ELM in the manner APWU is seeking. It is basic that errors in the application or interpretation of a written instrument are not forever binding upon either party. Moreover, the last sentence of Article 15, Section 2, Step 1 (b) provides that:

No resolution reached as a result of such discussion shall be precedent for any purpose.

Finally, the arbitration decision relied upon by APWU has been reviewed with care. In *HIC-5K-C 27458* Arbitrator Bloch stated:

The very purpose of Court Leave pay is to protect against loss of such wages. It is, in the words of the ELM, an authorized absence "without loss of, or reduction in, pay ..."

In this case Grievant was not on Court Leave for the entire period of her temporary change in schedule. Most of the time she was working. It was only for three relatively brief periods during the six months that she was under call for jury duty that she actually was absent from work on Court Leave. At the other times she was working under a temporary change of schedule and by reason of the last sentence of Section 516.44, c., of the ELM she was entitled to full "pay including any applicable night differential." While working under the change in schedule she was not on an authorized absence, nor was she scheduled to work on a Sunday. Thus, notwithstanding the wisdom of Arbitrator Bloch's words, there is no basis to award Sunday premium pay.

The grievance is without merit. It will be denied.

A W A R D

Grievant was not entitled to Sunday premium pay during the period she chose to have her work schedule changed to conform to court service hours, and was not scheduled to, or did not work, or perform jury duty on Sundays.



John C. FLETCHER, Arbitrator

Mt. Prospect, Illinois
December 19, 1995