

AMERICAN POSTAL WORKERS UNION, AFL-CIO

GRIEVANCE
STATUS LETTER
(CENTRAL REGION)

1981

GRIEVANT—PERSON OR UNION FROM LINE 8 (LAST NAME FIRST)

CLASS ACTION		APWU-USPS NATIONAL GRIEVANCE
WORK LOCATION CITY AND ZIP CODE FROM LINE 10		#
Des Moines, IA		USPS REGIONAL GRIEVANCE
CONTRACT ISSUE	CRAFT	# C7C-4D-C 33984 and 33986
Article 8 - Overtime	Clerk	APWU REGIONAL GRIEVANCE
TO	DATE	# NONE
	February 13, 1992	APWU LOCAL GRIEVANCE
		# 77-90-5653 and 77-91-679

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

D/A: 2/7/92 - Reg.
SUSTAINED
ADVOCATE:
Carl F. Casillas

PYMT. # 502331

PYMT. # 502332

- WITHDRAW FROM STEP 4 OR ARBITRATION
- SETTLEMENT
- ARBITRATION AWARD
 - NATL. CERTIFICATION
 - LOCAL CERTIFICATION

Arbitrator's Statement - John C. Fletcher
\$996.09 -- D/H: January 23, 1992

ATTACHED IS DOCUMENTATION IN SUPPORT OF ACTION INDICATED.

Management required Tour 2 employees, who were not on the Overtime Desired List to work overtime on February 28, 1990, and January 30, 1991 without making an effort to contact Tour 2 employees who were on the Overtime Desired List, and who could have reported early to perform the work.

The APWU pointed out that there existed a past practice and policy to call employees at home to report early when additional help was needed on the Tour. In addition, they pointed out a pecking order for working ODL employees had been developed, which management did not follow on the dates in question.

The Union further contended that Article 8, Section 5, Paragraph G of the National Agreement prohibits requiring employees not on the Overtime Desired List to work overtime unless all available employees on the ODL have worked up to twelve hours per day or sixty hours in the service week.

The Service, however, argued that scheduling problems dictated the manner in which overtime was worked on the two dates in question. They stated, that under Article 3 of the National Agreement, management has a right and the obligation to schedule employees efficiently and according to operational needs.

(Continued on Page Two)

JAMES P. WILLIAMS, COORDINATOR
CENTRAL REGION, APWU, AFL-CIO
330 SOUTH WELLS STREET, ROOM 1402
CHICAGO, ILLINOIS 60606

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

JPW:lkw

With regard to the remedy requested, the Service maintain that it was outside the bounds of the National Agreement, and not within the authority of the arbitrator. The Service further stressed that additional compensation requested by the Union was an unachieved demand at the negotiating table. Thus they said: "What the Union is seeking here is to gain something through arbitration which it failed to secure in negotiation."

Management objected to the introduction of the APWU settlements developed by the LAMPS team which governed overtime procedures. However, the arbitrator stated: "With regard to the merits of the matter the record is manifestly clear that the pecking order established by LMOU and the LAMPS settlement was not followed when non-ODL Tour 2 employees were required to work overtime, and there were ODL employees available who had not (and would not) reach the twelve and sixty limits provided in the National Agreement..."

Although much of the Service's arguments suggest that these grievances were being pursued on behalf of the wrong individuals, (in that they are seeking penalty overtime pay for the non-ODL List employees) the arbitrator stated: "The issue here is that non-ODL employees were forced to work overtime before the pecking order of assigning overtime from the ODL was exhausted before twelve and sixty maximums were reached. A fair reading of the Agreement and the MOU at page 187 makes it clear that non-ODL employees are entitled to have their wish to not work overtime protected until such time as they may be properly force assigned to work overtime."

Thus he reasoned, the non-ODL employees were injured when they were improperly forced to work overtime. He referred to a prior arbitration award by Arbitrator Howard, E7C-2A-C 31397, which his remedy provided certain non-ODL employees who were improperly forced to work overtime be paid at the penalty overtime rate, rather than the regular overtime rate.

Therefore, he sustained both grievances, instructing the Postal Service to pay penalty overtime rate for the hours that the non-ODL employees were required to work overtime, while ODL employees were available.

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	(GRIEVANT:
)	Class Action
between	(
)	
UNITED STATES POST OFFICE	(POST OFFICE:
)	Des Moines, IA
and	(50318-9998
)	
AMERICAN POSTAL WORKERS UNION	(CASE NO:
)	C7C-4K-C 33984
	(C7C-4K-C 33986
)	

Before John C. FLETCHER, Arbitrator

APPEARANCES:

For USPS: Mr. Daniel Garza, Manager Labor Relations
Ms. Marcia G. Grant, Labor Relations Rep.
U. S. Postal Service
1165 Second Avenue
Des Moines, Iowa 50318-9998

For APWU: Mr. Carl Casillas, National Business Agent
American Postal Workers Union
6301 Rockhill Road, Room 315
Kansas City, Missouri 64131-1117

Place of Hearing: Des Moines, Iowa

Date of Hearing: January 23, 1992

AWARD:

Grievances C7C-4K-C 33984 and C7C-4K-C 33986 are sustained. The Grievants listed in these cases are entitled to be paid the penalty overtime rate for the hours they were required to work overtime when ODL employees were available and not contacted. Grievants are to be awarded the difference between the regular overtime rate received and the penalty overtime rate.

Date of Award: February 7, 1992



John C. FLETCHER, Arbitrator

7001 T FCT 1/20/92

OPINION and AWARD

C7C-4K-C 33984 - Class Action
C7C-4K-C 33986 - Class Action
Des Moines, Iowa

BACKGROUND:

On February 28, 1990, several Tour 2 employees not on the Overtime Desired List were required to work overtime for up to two hours. The Union contended that Management was required to work Tour 3 ODL employees before force assigning non-ODL Tour 2 employees to work. APWU filed a grievance seeking an additional one hours pay for each hour non-ODL employees were required to work - (Case C7C-4K-C 33984). On January 30, 1991, two Tour 2 employees, not on the ODL, were required to work overtime. The Union contended that Tour 3 ODL employees should have been called in early rather than force assign non-ODL employees to work. It filed a grievance contending that each should be allowed three times their straight time rate of pay for each hour worked - (Case C7C-4K-C 33986). Both Grievances were discussed at Step 2 on May 8, 1991, without settlement. They were timely appealed to Step 3 and on to this arbitration where they were heard in a single consolidated evidentiary hearing.

STIPULATIONS

At the commencement of the consolidated evidentiary hearing the parties' Advocates entered into a number of stipulations. These were:

1. On the dates involved in both Grievances employees not on the ODL were required to work overtime.
2. Tour 3 employees on the ODL were not contacted at home to report early on the dates involved in both Grievances.
3. With regard to the January 30, 1991 Grievance, certain Tour 3 ODL employees were scheduled (the day before, January 29, 1991) to come in two hours early, being told to report at 5:30 P.M. instead of 7:30 P.M.
4. On January 30, 1991, two Tour 2 employees, not on the ODL remained at work for two hours beyond their assigned ending times.
5. On both February 28, 1990 and January 30, 1991 management scheduled simultaneous assignments of both ODL employees and non-ODL employees.

Additionally the parties' advocates indicated that the two Grievances selected to be progressed to arbitration are representative of 23 other live grievances which will be disposed of on the basis of the Award rendered in this matter.

THE ISSUE

APWU's Advocate asks that the issue in this arbitration be framed as:

Whether or not the terms of the National Agreement were violated when Management required Clerks who had not placed their names on the Overtime Desired List to work overtime on February 28, 1990 and January 30, 1991, at a time when there were employees on the ODL who had not worked up to twelve hours in a day or sixty hours in a service week? And if so what shall be the remedy?

And, while the Service expresses no disagreement with the basic statement of the Issue, it suggests that if there was in fact a violation of the Agreement:

Are the remedies requested in the two Grievances appropriate and available within the boundaries of the National Agreement?

THE POSITION OF THE PARTIES

The Position of APWU

APWU stresses that the facts in these Grievances are not disputed. Tour 2 employees not on the Overtime Desired List were required to work overtime on February 28, 1990 and January 30, 1991 and no effort was made to contact Tour 3 employees who were on the Overtime Desired List to report early. In this installation, APWU points out, there exists a practice and policy to call employees at home to report early when additional help is needed on a Tour. A pecking order for working ODL employees has been developed, which was not followed on either date.

The Union contends that Article 8, Section 5, Paragraph G of the National Agreement prohibits requiring employees not on the ODL to work overtime unless all available employees on the ODL have worked up to 12 hours per day or sixty hours per week. In his matter, on the two days involved neither the 12 nor the 60 maximums had been reached, it is argued.

APWU also points out that there is no evidence, and the Service has not alleged that an operational window existed which necessitated scheduling ODL and non-ODL Clerks at the same time so as to complete a task, which would fit within a recognized exception to the language of Article 8.5.G as contained in

the second paragraph of the MOW found at page 187 of the National Agreement.

APWU maintains that the LMOU and several Step 2 LAMPS settlements have established a pecking order for overtime assignments in this facility. This pecking order was not followed when Management required Tour 2 non-ODL employees to work when ODL employees were available and not called. Additionally, the practice and the policy in the facility, as well as the Step 2 LAMPS settlements indicated that employees should be called at home (with some living just across the street) before forced overtime is accomplished.

With regard to the remedies requested in the Grievances, APWU maintains that the Arbitrator has the authority to award exactly that which is claimed and there are a number of Regional and National Awards which support this conclusion. Moreover, in this facility a practice has developed under which penalty overtime payments are made to employees for overtime scheduling violations. Triple time overtime will discourage further violations of the Agreement, the Union urges.

In support of its several arguments, APWU cites the following arbitrations;

H4C-NA-C-19	Mittenthal	April 16, 1986
H4N-NA-C-21	Mittenthal	June 9, 1986
S4C-3D-C 24637	Caraway	March 17, 1988
S4C-3F-C 53812	Bennett	May 22, 1988
E7C-2G-C 1087	Ables	April 5, 1989
E4C-2H-C 12870	Williams	August 25, 1989
E7T-2J-C 25646	Klein	July 9, 1990
S7C-3W-C 14020	Schedler, Jr.	August 20, 1990
C7C-4B-C 20871	Newman	October 1, 1990
H4C-NA-C 30	Mittenthal	January 14, 1991
E7C-2A-C 31397	Howard	March 26, 1991
S7C-3B-C 32276	Sherman	April 22, 1991
C7C-4K-C 33908	Benn	October 21, 1991

The Position of USPS

The Service argues that APWU has the burden of proof in this matter and that this burden cannot be met. Scheduling problems dictated the manner in which overtime would be worked on the two dates in question. Under Article 3 of the National Agreement, Management has the right and the obligation to schedule employees efficiently according to operational needs. On one of the dates Tour 3 employees had already been scheduled and the work projections were such that additional employees from Tour 2 would be needed. Other times, overtime was not determined to be needed until it was too late to call in Tour 3 employees and have them in place at the time the work was required to be completed.

The Service stresses that the Step 2 Settlements are not admissible and are not precedent setting, therefore they must be ignored in this Arbitration.

With regard to the remedy requested, the Service maintains that it is outside the bounds of the National Agreement and not within the authority of the Arbitrator. Overtime and Penalty Overtime are specifically dealt with in the National Agreement and those Grievants involved in these cases who were required to work overtime were compensated correctly, as provided within the National Agreement. Nothing more is required. The Services stresses that, on its face the additional compensation sought is a penalty. Similar penalties were demanded by APWU in negotiations and were not agreed to. Thus, what the Union is seeking here is to gain something through arbitration which it failed to secure in negotiations.

In support of its arguments the Service cites the following arbitrations:

S4N-3D-C 6714	Schedler, Jr.	July 6, 1986
C4C-4B-C 13687	Porter, Jr.	June 25, 1987
C4C-4R-C 30751	Martin	July 14, 1988
E4N-2G-C 6806	Jacobs	November 14, 1988
W7N-4Q-C 10845	Snow	December 19, 1991

DISCUSSION

Over the objection of the Service, the Step 2 LAMPS settlements offered by APWU are being accepted into evidence in this Arbitration. It is noted with regard to Step 2 settlements the National Agreement states:

Any settlement or withdrawal of a grievance in Step 2 shall be in writing or shall be noted on the standard grievance form, but shall not be a precedent for any purpose, unless the parties so agree or develop an agreement to dispose of future similar or related problems.

One of the Step 2 LAMPS settlements offered by APWU, when fairly read, can only be characterized as "an agreement to dispose of future similar or related problems." For instance, Settlement No. 77-88-4038 contains an opening introductory sentence reading:

THE ORDER IN WHICH OVERTIME IS TO BE SCHEDULED IS AS FOLLOWS:

Additionally, this settlement and all of the others submitted by APWU, were settlements developed by the local LAMPS team. For whatever their reasons, intentional or inadvertent, the team did not see fit to include within the text of the settlements customary language that the product of the settlement could not be cited or relied on in when handling future matters, as

is usually the situation in regular Step 2 settlements which, one party or the other does not want to be a precedent or have cited in future arbitrations.

With regard to the merits of the matter, the record is manifestly clear that the pecking order established by the LMOU, and the LAMPS settlement was not followed when non-ODL Tour 2 employees were required to work overtime and there were ODL employees available who had not (and would not) reach the twelve and sixty limits provided in the Agreement and dealt with in National Arbitration Awards. Instead, what seems to be the real issue here is the question of whether or not those non-ODL employees required to work overtime when ODL employees were available are entitled to receive additional compensation because the Agreement, National Arbitration Awards and the locally established pecking order were not followed on the two dates of the Grievances. And if entitled to additional compensation, what additional compensation would be appropriate?

Arbitration S4C-3F-C 53812 (Bennett 1988), considered a matter in which the primary issue concerned was the remedy. In that case remedial authority standards as articulated by Hill and Sinicropi in *Remedies in Arbitration*, (BNA 1981), as well as Awards of several respected Arbitrators, were referenced. From S4C-3F-C 53812, Hill and Sinicropi and other texts on the subject (Elkouri and Elkouri *How Arbitration Works*, 4th Ed. BNA 1985 and Fairweather, *Practice and Procedure in Labor Arbitration*, 2nd Ed 1986) there can be no question that the standard is well established that:

An arbitral appointment carries with it the inherent power to specify an appropriate remedy and if an Arbitrator has the power to decide a contract violation this power must carry with it the power to award a remedy.

The Service has not been able to persuasively demonstrate that this standard would be inappropriate in this matter.

Much of the Services' arguments on this point suggest that these Grievances are being pursued on behalf of the wrong individuals. It infers (as their arguments were understood by the Arbitrator) that if any party may have been injured it was the employees on the ODL who were not used when non-ODL employees were required to work. It well may be correct that ODL employees were injured when non-ODL employees were required to work, but that is not the issue in this Arbitration. The issue here is that non-ODL employees were forced to work overtime before the pecking order of assigning overtime from the ODL was exhausted and before the 12 and 60 maximums were reached. A fair reading of the Agreement and the MOU at page 187 makes it clear that non-ODL employees are entitled to have their wish to not to work over time protected until such time as they may be properly force assigned to work overtime. For example the first sentence of the MOU states:

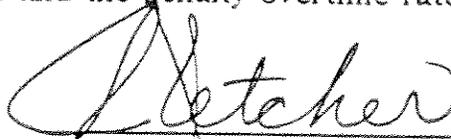
Recognizing that excessive use of overtime is inconsistent with the best interests of postal employees and the Postal Service, it is the intent of the parties in adopting changes to Article 8 to limit overtime, to avoid excessive mandatory overtime, and to protect the interests of employees who do not wish to work overtime, while recognizing that bona fide operational requirements do exist that necessitate the use of overtime from time to time.

(Underlining added.)

Thus non-ODL employees may also be injured when they are improperly forced to work overtime and payment of only that which the Agreement establishes as payment for overtime worked does not protect their wish to not work overtime and will not discourage future violations of the Agreement. Almost this same situation occurred in Arbitration E7C-2A-C 31397 (Howard, 1991) and the remedy provided there required that certain non-ODL employees improperly forced to work overtime be paid at the penalty overtime rate rather than the regular overtime rate. That remedy is appropriate in this matter and it will be the one awarded here.

A W A R D

Grievances C7C-4K-C 33984 and C7C-4K-C 33986 are sustained. The Grievants listed in these cases are entitled to be paid the penalty overtime rate for the hours they were required to work overtime when ODL employees were available and not contacted. Grievants are awarded the difference between the regular overtime rate received and the penalty overtime rate.



John C. FLETCHER, Arbitrator

Mt. Prospect, IL
February 7, 1992