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In the Matter of Arbitration Between UNITED STATES POSTAL SERVICE And AMERICAN POSTAL WORKERS UNION, AFL-CIO	OPINION AND AWARD Nicholas H. Zumas, Arbitrator Class Action Grievance H1C-4K-C 27344/45 Des Moines, Iowa

BACKGROUND

This is a Step 4 appeal to the National Level arbitration pursuant to the provisions of Article 15 of the National Agreement between United States Postal Service (hereinafter "Service") and American Postal Workers Union, AFL-CIO (hereinafter "Union"). Hearing was held in Washington, D.C. on February 7, 1985, at which time testimony was taken, exhibits offered and made part of the record, and argument was heard. The post-hearing brief of the Service was received on March 28, 1985. The post-hearing brief of the Union was received on April 8, 1985.

APPEARANCES

For the Service: Thomas B. Newman

For the Union: Gerald "Andy" Anderson

STATEMENT OF THE CASE

This is a Class Action grievance initiated in Des Moines, Iowa on behalf of Full-Time Regular employees, on the Overtime Desired List (ODL) who were bypassed in favor of casual employees utilized in an overtime status. The Union, on behalf of Grievants, alleges that this was in violation of the National Agreement.

The parties failed to resolve the matter during the various Steps of the grievance procedure. Because the issue involved an interpretation of the National Agreement, the Union appealed the dispute to the National Level, pursuant to the provisions of Article 15, Section 4(D) of the National Agreement.

ISSUE

The parties have stipulated that the question to be resolved is whether the Service violated the National Agreement when it utilized casual employees on overtime on the days in question instead of scheduling Full-Time Regular employees who are on the Overtime Desired List (ODL).

STATEMENT OF FACTS

The essential facts are not in dispute: Because of the receipt of "contest" mail from two major publishing houses in

Des Moines, Iowa, mail volume in the Des Moines Post Office was unusually heavy during the week of January 14, 1984. As a consequence of this heavy mail volume, local management utilized many employees on overtime during this week. Grievants were Full-Time Regular MPLSM Operators, Level 6, who are not scheduled in for overtime on January 17 and 18, 1984 (their non-schedule days). They were, however, on the ODL, and presumably were available to work overtime. Grievants were not called. Instead, local management utilized casual employees who worked approximately 11 hours on each of the days in question.

The Union, on behalf of Grievants, asserts that they were denied the opportunity to work, and that they be compensated in an amount equivalent to overtime earnings received by the casual employees, including a night differential.

APPLICABLE CONTRACT PROVISIONS

Article 7-Section 1-B-1

> "The supplemental work force shall be comprised of casual employees. Casual employees are those who may be utilized as a limited term supplemental work force, but may not be employed in lieu of full or part-time employees."

Article 8-Section 5

> When needed, overtime work for regular full-time employees shall be scheduled among qualified em-

ployees doing similar work in the work location where the employees regularly work in accordance with the following:

> (A) Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an "Overtime Desired' list.
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> * * *
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> (D) If the voluntary 'Overtime Desired' list does not provide sufficient qualified people, qualified full-time regular employees not on the list may be required to work overtime on a rotation basis with the first opportunity assigned to the junior employee.

POSITION OF THE UNION

The Union argues that local management's utilization of casual employees for overtime duty on the dates in question instead of calling Grievants was prohibited by that portion of Article 7, Section 1-B-1 stating:

> "Casual employees . . . may not be employed in lieu of full or part-time employees."

The Union contends that this section mandates that if an assignment (such as overtime) is available, full and part-time employees must receive priority over casual employees.

The Union also contends that the parties, by agreeing to Article 8, Section 5, provided an overtime work benefit

to full-time regular employees, giving a first preference to those full-time employees who are on the ODL, and secondly to those full-time employees who are not. Since casual employees are not covered by the National Agreement, they are not entitled to any of the benefits, including overtime, as provided in Article 8, Section 5.

In further support of its position, and as justification for the remedy requested, the Union refers to a January 13, 1975 settlement in Case No. AB-N-2476 between James Gildea, then Assistant Postmaster General and Francis S. Filbey, then President of the Union, which stated, in part:

> "When, for any reason, an employee on the 'Overtime Desired' list, who has the necessary skills and who is available, is improperly passed over and that other employee not on the list is selected overtime work, the employee who was passed over shall be paid for an equal number of hours at the overtime rate for the opportunity missed."

In anticipation of the Service's reliance on Arbitrator Mittenthal's awards */ relating to the respective rights of full-time employees and part-time flexible employees, the Union asserts that those Awards are distinguishable in that part-time flexible employees are covered under the National

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*/ Awards in Case Nos. M8-W-0027 and M8-E-0032.

Agreement, part of the regular work force, and qualified for most contractual benefits -- as opposed to casual employees who are entitled to no benefits under the National Agreement.

POSITION OF THE SERVICE

The Service takes the position that the Union has failed to meet its burden of showing any contractual violation; and that there is nothing in the National Agreement that prohibits the Service from utilizing casual employees for overtime work instead of full-time employees on the ODL.

The Service first argues that Article 8, Section 5 in no way requires it to use full-time regular employees before using casual for overtime work. The Service contends that Article 8, Section 5 only creates a priority order for overtime as between full-time regulars who are on the ODL as opposed to those who are not; not between full-time regular employees and other classes of employees. In support of its position, the Service cites the two awards by Arbitrator Mittenthal referred to above, and asserts that there is no distinction between part-time regular employees and casual employees insofar as the application of Article 8, Section 5 is concerned.

The Service next contends that the Union's reliance upon Article 7 does not support its position. */ The Service argues that the term "employed" means hired, not assigned or utilized. The Service asserts that this section, when looked at in its entirety and along with other provisions, makes it clear that had the parties intended "employed" to mean assigned, the term "utilized" and not "employed" would have been used. Moreover, the Service contends, since 1971 the term "employed" has referred to the number of casual employees that may be hired and the duration of their employment.

The Service further contends that the Union's argument concerning the status of a casual employee precludes the granting of a contractual benefit (overtime) is misplaced. The Service argues that the Union has never considered overtime as a "benefit" in prior negotiations; but rather has attempted to limit overtime assignments, again citing Arbitrator Mittenthal's finding that the purpose of Section 5 of Article 8 was to restrict mandatory overtime for full-time regulars (by establishing the ODL). The Service points to studies

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*/ ". . . casual employees may not be employed in lieu of full or part-time employees."

showing that approximately 7.1% of all casual employees' hours were overtime hours; and that this is proof that the Agreement does not prohibit casual employees from performing overtime work. In this regard, the Service points to Part 231.22 of the F-21 Handbook allowing casual employees to work overtime.

FINDINGS AND CONCLUSION

After review of the record, this Arbitrator finds that the grievance must be denied.

There has been no showing by the Union that the utilization of casuals on January 17 and 18, 1984, when the mail volume was unusually heavy due to the annual arrival of "contest" mail, rather than scheduling full-time regular MPLSM Operators to work overtime on their non-schedule days violated any provision of the National Agreement.

Casual employees are non-career employees who, as part of the Supplemental Work Force, perform duties assigned to bargaining unit positions on a limited term basis. They are not restricted to straight time worked, and may perform overtime. And as provided in Article 7, Section 1, these casual employees "may be utilized as a limited term supplemental work force, but may not be employed in lieu of full or part-time employees."

There is no restriction as to how such casual employees may be "utilized" (assigned), except that the Service is required to "make every effort to insure [sic] that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to casuals." It is also clear, as the Service contends, that the provision that casual employees "may not be employed in lieu of full or part-time employees" relates to the number of casual employees that may be hired and to the limited duration of their employment. The term "employed" means hired and not, as the Union contends, the manner in which they are assigned ("utilized") to perform work. The correctness of this interpretation becomes even more obvious when the parties referred to "utilized" and "employed", in different contexts, in the same sentence.

The Union's reliance on the contention that these Grievants were "passed over" in violation of Article 8, Section 5 is equally misplaced.

Arbitrator Mittenthal, dealing with the question of whether Article 8, Section 5 required that overtime must be offered to full-time regular employees before it can be offered to part-time flexible employees, stated:

> "[W]hen needed, overtime work for regular full-time employees shall be scheduled in a certain manner. This Section [Article 8, Section 5] deals with just one category of employee, full-time regulars. It describes

> how overtime will be distributed when full-time regulars are chosen to perform such overtime. There is an order of preference, but that order pertains only to overtime distribution among full-time regulars. Nothing in Article 8, Section 5 states expressly or by implication that overtime must be offered to full-time regulars before it can be offered to part-time flexibles. No such order of preference can be found in this contract language. Nowhere does Article 8 suggests that full-time regulars were to be given a monopoly on overtime***
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> The weakness in the Union's argument seems clear. It reads Article 8, Section 5 as if it said 'When needed, overtime work shall be scheduled among qualified regular full-time employees.' The Union transposes the underscored words in such way as to make it appear that Article 8, Section 5 represents an exclusive grant of overtime to full-time regulars. But that plainly is not what the contract says. Had the parties intended to establish an order of preference between full-time regulars and part-time flexibles, it would have been a simple matter to say so. They were, however, silent on that subject. That silence reenforces my view that their intention was merely to describe how overtime would be distributed when management chose to assign such overtime to full-time regulars." */

In this context, as it relates to the overtime provisions of Article 8, Section 5, there is no distinction between part-time flexibles and casual employees.

With respect to the Union's argument in this dispute

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*/ Cases MA-W-0027 and MA-E-0032.

that overtime is a benefit only the National Agreement to which casual employees are not entitled, reference again is made to the Mittenthal award on the point. He stated:

> "[g]iven this history, it is obvious that the real purpose of this contract clause was to restrict mandatory overtime for full-time regulars. Article 8, Section 5 had nothing to do with any order of preference between full-time regulars and part-time flexibles. There is not a shred of evidence that this subject was ever raised during the 1973 negotiations which lead to the current contract language. The Union's attempt here to enlarge full-time regulars' opportunity for overtime is the exact opposite of the 1973 negotiators' intent to reduce their exposure to overtime."

In summary, the evidence of record fails to show that the Service was contractually obligated to schedule full-time regular employees on the ODL rather than utilize casual employees on the dates in question and under the circumstances presented.

AWARD

Grievance denied.

Nicholas H. Zumas, Arbitrator

Date: November 21, 1985