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Art. 8 - Holiday Schedule - Use of
OTDL Rather than Volunteers
cross ref. Art. 11

#0928

A8-W-1641

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... ARBITRATION AWARD

April 15, 1983 GER. GRIEVANCE BRANCH

UNITED STATES POSTAL SERVICE

-and- James Shipman

A8-W-1641

Case No. H8C-5D-C-14577

AMERICAN POSTAL WORKERS UNION

Gerald Anderson

Subject: Holiday Schedule - Use of "Overtime Desired List"
Rather than Volunteers

Statement of the Issue: Whether the Postal Service's action in selecting employees from the "overtime desired list" rather than volunteers to work on November 10, 1980, a designated holiday for the volunteers, was a violation of the National Agreement?

Contract Provisions Involved: Article VIII, Section 5 and Article XI, Sections 5 and 6 of the July 21, 1978 National Agreement and Article XI, Section 6 of the Local Memorandum of Understanding.

| <u>Grievance Data:</u> | <u>Date</u> |
|------------------------|-------------------------------------|
| Grievance Filed: | November 25, 1980 |
| Step 2 Answer: | December 5, 1980 |
| Step 3 Answer: | March 13, 1981 |
| Step 4 Answer: | April 27, 1981 |
| Appeal to Arbitration: | May 1, 1981 |
| Case Heard: | November 16, 1982 |
| Transcript Received: | December 1, 1982 |
| Briefs Submitted: | March 22, 1983 and April 9, 1983 |

Statement of the Award: The grievance is denied.

BACKGROUND

This grievance protests the Postal Service's action in selecting employees from the "overtime desired list" to work overtime on November 10, 1980. The APWU says others for whom November 10 was a holiday and who had volunteered to work that day had a superior claim to this work. It believes the Postal Service's failure to allow them to work was a violation of Article XI, Section 6 of the National Agreement. The Postal Service disagrees.

The essential facts are not in dispute. M. Avery, M. Bettman and D. Lane are full-time regular Distribution Clerks in the Bellview, Washington Post Office. They are scheduled off on Tuesdays and Wednesdays. The Veterans Day holiday fell on Tuesday, November 11, 1980. Pursuant to Article XI, Section 5-B, Monday, November 10 was considered a designated holiday for these three Clerks. That provision states: "When an employee's scheduled non-work day falls on a day observed as a holiday, the employee's scheduled workday preceding the holiday, shall be designated as that employee's holiday."

The holiday schedule was posted on Wednesday, November 5. Avery, Bettman and Lane had, prior to this posting, volunteered to work on Monday, November 10, their designated holiday. Management did not list them on the schedule to work that day. It apparently had no need of their services at the time of the posting. The parties stipulated at the arbitration hearing that the posted schedule, as of Wednesday, November 5, was "proper."

The problem arose when Management, sometime after Wednesday, November 5 but before Monday, November 10, decided it would need additional full-time regular Distribution Clerks on Monday, November 10. It chose seven such Clerks from the "overtime desired list." They worked at the time and one-half rate on Monday, November 10.* Their use is covered by Article VIII, Section 5 which reads in part:

"Overtime Assignments. When needed, overtime work for regular full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

* Monday, November 10 was not a designated holiday for any of these seven employees.

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.

B. Lists will be established by craft, section or tour in accordance with Article XXX, Local Implementation.

C. 1....when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected in order of their seniority on a rotating basis..."

10. Avery, Bettman and Lane did not work on Monday, November 10. They grieved, alleging that their right to work on their designated holiday was superior to the rights of other Clerks on the "overtime desired list." They maintain that because they had volunteered to work this holiday, they should have been chosen. Their claim rests largely on Article XI, Section 6:

"Holiday Schedule. The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Wednesday preceding the service week in which the holiday falls. As many full-time and part-time regular schedule employees as can be spared will be excused from duty on a holiday or day designated as their holiday. Such employees will not be required to work on a holiday or day designated as their holiday unless all casuals and part-time flexibles are utilized to the maximum extent possible, even if the payment of overtime is required, and unless all full-time and part-time regulars with the needed skills who wish to work on the holiday have been afforded an opportunity to do so. An employee scheduled to work on a holiday who does not work shall not receive holiday pay, unless such absence is based on an extreme emergency situation and is excused by the Employer." (Emphasis added)

A few remaining points should be noted. No employee for whom Monday, November 10 was a designated holiday was required to work that day against his wishes. The grievants worked on Tuesday, November 11, the Veterans Day holiday, and were paid time and one-half for their work. The Local

Memorandum of Understanding in effect in November 1980 had the following provision, Article XI, Section 6, with respect to holiday schedules:

"A. After determination has been made by Management as to the number of employees needed on a holiday or designated holiday, scheduling of employees will be accomplished in the following order:

1. Full or part-time regular employees who have volunteered to work the holiday.
2. Part-time flexible employees who have volunteered to work the holiday.
3. Casual employees.
4. Part-time flexible employees.
5. Full or part-time regulars who have not volunteered to work on the holiday by inverse seniority."

DISCUSSION AND FINDINGS

This grievance concerns the Postal Service's obligation regarding additional Clerk jobs which had to be filled on November 10, 1980. The APWU says the Clerks for whom November 10 was a designated holiday and who had volunteered to work that day should have been chosen pursuant to Article XI, Section 6. The Postal Service states that it had no such contract obligation and that it was within its rights in choosing Clerks from the "overtime desired list" pursuant to Article VIII, Section 5. The question here is which of these contract provisions, if either, Management was required to apply under the facts of this case.

The Postal Service's position at the arbitration hearing is a helpful starting point in this analysis. It acknowledges that had it known at the time the schedule was posted on Wednesday, November 5 that additional Clerks would be needed on Monday, November 10, it would have placed the aggrieved Clerks on the schedule. It concedes that their claim to the extra Clerk work on November 10 would, in these circumstances, be superior to the claim of anyone on the

"overtime desired list." This concession derives, it seems to me, from the Local Memorandum of Understanding. Article XI, Section 6A of this Memorandum describes the "order" in which people will be "scheduled" after Management determines "the number of employees needed on a holiday or designated holiday..." First priority on such a schedule is given to "full or part-time regular[s]...who have volunteered to work the holiday."

However, the Postal Service insists that its obligation to regular-volunteers ceases with the posting of the schedule. It stresses that Management did not become aware of the need for additional Clerks until after the November 5 posting. It believes it was then no longer bound by the Local Memorandum of Understanding. It urges that it was free, after November 5, to resort to the 'overtime desired list' to satisfy its needs on November 10.

The APWU maintains that Management's obligation to prefer regular-volunteers did not end with the posting of the holiday schedule. It states that this obligation continued to exist after the posting. It relies not on the Local Memorandum of Understanding but rather Article XI, Section 6 of the National Agreement.

A close reading of this provision does not support the APWU's case. Article XI, Section 6 consists of four sentences. Only the second and third have any possible application to this dispute. But the purpose of these sentences is to require, where possible, that full-time (or part-time) regulars be given their holiday off.* The second sentence calls for Management to "excuse" from holiday work "as many full-time and part-time regulars as can be spared..." The third sentence recognizes that these regulars may be required to work on their holiday. But it provides that this cannot happen "unless all casuals and part-time flexibles are utilized to the maximum extent possible" and "unless all full-time and part-time regulars... who wish to work on the holiday have been afforded an opportunity to do so." All regular-volunteers, in other words, must be used for holiday work before Management can compel regular, non-volunteers to perform such work. That is the only preference granted to regular-volunteers. Article XI, Section 6 allows them to exercise this right only in relation to regular, non-volunteers. Or, to express the point in terms of the present grievance, Article XI, Section 6 does not give regular-volunteers any right in relation to employees on the "overtime desired list."

* Throughout this discussion, the word "holiday" should be taken to mean the actual holiday or the designated holiday.

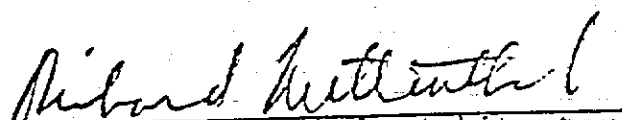
For these reasons, the APWU's reliance on Article XI, Section 6 seems misplaced. It attempts to bring this case within the ambit of this provision by arguing that the grievants "deserved to work rather than require employees from the overtime desired list." But, to repeat, regular-volunteers in the situation presented here do not have a preference over employees on the "overtime desired list." Their preference is limited in the manner set forth in Article XI, Section 6. The APWU seeks to enlarge this preference. That cannot be done without modifying or adding to the terms of the National Agreement.

None of the documents referred to by the APWU warrant a different conclusion in this case. The March 1974 Holiday Settlement Agreement relates almost entirely to holiday pay questions. It has no bearing on the issue raised by the instant grievance. The pre-arbitration settlement in Case No. AB-N-2476 was concerned with employees on the "overtime desired list" who were "improperly passed over by Management in the selection for overtime work assignments." That is not the situation here. Other grievance settlements contain statements that "the overtime desired list...is not applicable to holiday scheduling." But that appears to refer to the initial posted holiday schedule, not to later additions to the schedule due to changed circumstances.*

There has been no violation of the National Agreement.

AWARD

The grievance is denied.


Richard Mittenthal, Arbitrator

It would be true too of the Postal Service Northeast
internal memorandum concerning "holiday scheduling
procedure vs. overtime desired list."