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C# 935

ARBITRATION AWARD

June 12, 1987

UNITED STATES POSTAL SERVICE

-and-

Case No. H1C-4E-C-35028

AMERICAN POSTAL WORKERS UNION

Subject: Hours of Work - Light Duty Assignments for Full-Time Regulars

Statement of the Issues: Whether full-time regulars on light duty assignments, resulting from an off-duty illness or injury, are guaranteed eight hours' work (or pay) on every day they are scheduled to work or forty hours' work (or pay) in every week they are scheduled to work? Whether Management's action in sending such employees home prior to the end of a scheduled tour on account of lack of work and then not paying them for the full tour was a violation of the National Agreement?

Contract Provisions Involved: Article 7, Section 1; Article 8, Sections 1, 2, 3 and 8; Article 13, Sections 1, 2, 3 and 4; Article 19; and Article 30, Paragraph B of the July 21, 1981 National Agreement. Article XIII of the Cleveland Local Memorandum of Understanding.

Appearances: For the Postal Service, R. Andrew German and Suzanne Hassell Milton, Attorneys, Office of Labor Law; for APWU, Darryl J. Anderson, Attorney (O'Donnell Schwartz & Anderson).

Statement of the Award: The grievance is denied.

BACKGROUND

This grievance urges that full-time regulars on light duty assignments, resulting from off-duty injury or illness, are entitled to no less than eight hours' pay for each scheduled tour and forty hours' pay for each scheduled week. The APWU insists that Management violated these employees' rights when it sent them home before the end of their scheduled tours and refused to pay them for the hours they did not work. Its claim rests on the "work week" provisions of Article 8. The Postal Service insists that there is no work (or pay) guarantee on light duty assignments, that the "work week" for these employees was governed by Article 13 rather than Article 8, and that Management's actions did not violate the National Agreement.

To understand this dispute, some general observations about Article 13 are in order. This article establishes a means of providing "light duty" to regular work force employees who cannot perform their assigned duties due to illness or injury but who nevertheless wish to continue working and are capable of handling light duty. An employee must satisfy certain conditions before he can request temporary reassignment (Section 2A) or permanent reassignment (Section 2B) to light duty. Assuming he meets the relevant conditions, he may submit a "request" for reassignment.

Management is not required to grant the request. Its obligation is to "show the greatest consideration..." to the request and to "reassign such employees to the extent possible..." (Section 2C). The employee, in other words, does not have an absolute right to reassignment. He has a right only to the "greatest consideration...", to "careful attention" to his request. When a reassignment to light duty is made, Management shall make "every effort...to reassign the ...employee within the employee's present craft or occupational group..." (Section 4A). But the actual reassignment - that is, "type of assignment, area of assignment, hours of duty, etc." - "will be the decision of the installation head..." (Section 4D). The latter is to be guided by the doctor's report, the employee's ability to perform the work, and so on.

The number of light duty assignments is subject to local negotiations but the parties are expected to consider, among other things, "good business practices" and "past experience" (Section 3C). When a light duty assignment is "established from part-time hours", it may consist of "8 hours

or less in a service day and 40 hours or less in a service week" (Section 3B). And, perhaps most important of all, "the light duty employee's tour hours, work location and basic work week shall be those of the light duty assignment and the needs of the service..." (Section 3C).

There are other contractual requirements as well. Article 19 incorporates the ELM (Employee & Labor Relations Manual), Section 546.141, which imposes additional responsibilities upon the Postal Service with respect to "employees with job-related disabilities." Management "must make every effort toward assigning...[such] employees to limited duty consistent with the employee's medically defined work limitation tolerances..." The requirement of "greatest consideration..." in Article 13, Section 2C has grown to "every effort..." for this class of employee. Section 546.141 speaks of these employees, following their reassignment, being on "limited" duty. Hence, a differentiation has been made by Management between "light" and "limited" duty.

This dispute involves the Cleveland post office. Article XIII-A of the Local Memorandum of Understanding provides for a variety of light duty assignments, including twenty-five in "letter primary" on tour 3 and another twenty-five in "letter primary" on tour 1. These assignments were filled by a group of full-time regulars, some of whom were on "light" duty and others on "limited" duty. Between September 17 and October 21, 1984, there was not enough "letter primary" work to keep all of these people occupied for a full tour. Management sent the "light" duty employees home when they ran out of work. Consequently, on many scheduled tours, these employees worked more than four but less than eight hours. They were not paid for the time they lost from their scheduled tours. Management, however, retained the "limited" duty people for the full eight hours on each of their scheduled tours.

A grievance was filed on behalf of full-time regulars who were on "light" duty and who were sent home before the end of their scheduled tours. The APWU believes these employees were entitled to eight hours' work (or pay) on each of their scheduled tours and that Management violated Article 8 by sending them home with less than eight hours' pay. It argues that full-time regulars have a right under Article 8, whether on normal duty or light duty, to eight hours' work (or pay) for each scheduled tour and forty hours' work (or pay) for each scheduled week. The Postal Service disagrees.

DISCUSSION AND FINDINGS

The APWU complaint rests largely on the terms of Article 8 (Hours of Work) which reads in part:

"Section 1. Work Week

The work week for full-time regulars shall be forty (40) hours per week, eight (8) hours per day within ten (10) consecutive hours, provided, however, that in all offices with more than 100 full-time employees in the bargaining units the normal work week for full-time regular employees will be forty hours per week, eight hours per day within nine (9) consecutive hours. Shorter work weeks will, however, exist as needed for part-time regulars.

"Section 2. Work Schedules

C. The employee's normal work week is five (5) service days, each consisting of eight (8) hours, within ten (10) consecutive hours, except as provided in Section 1..." (Emphasis added)*

The APWU maintains that Article 8 guarantees full-time regulars eight hours' work a day and forty hours' work a week. It insists this guarantee applies to all full-time regulars, regardless of whether they are on their normal assignment or on a light duty assignment. It believes that nothing in Article 13 detracts from the scope of the Article 8 guarantee. It urges, accordingly, that Management's action in sending these employees home on various occasions before the end of their scheduled tour, before they completed eight hours' work, was improper under the National Agreement.

This argument fails because of the discretion granted Management by Article 13 in dealing with employees on light duty assignments, because of certain guarantee language found in Article 8 itself, because of the apparent widespread practice supporting the Postal Service's position, because of a Step 4 concession made by a responsible APWU official at the national level, because of the NALC interpretation of

* Article 8, Section 3 says "part-time employees...may be scheduled for less than eight (8) hours per service day and less than forty (40) hours per normal work week." Article 7, Section 1A1 says "full-time" employees "shall be assigned to regular schedules consisting of five (5) eight (8) hour days in a service week."

the language in question, and because of prior arbitration awards. All of these factors join to support the Postal Service's view that the National Agreement does not guarantee full-time regulars on light duty assignments eight hours a day or forty hours a week.

Consider, to begin with, the terms of Article 13, Section 3B:

"Light duty assignments may be established from part-time hours, to consist of 8 hours or less in a service day and 40 hours or less in a service week. The establishment of such assignment does not guarantee any hours to a part-time flexible employee." (Emphasis added)

Light duty assignments can be constructed in different ways. They may be created from full-time hours; they may be created "from part-time hours." Section 3B concerns only the latter situation. Nothing in the record shows how the light duty assignments in the "letter primary" area of the Cleveland post office were established. Nevertheless, assume for the moment that a light duty assignment is constructed from part-time hours and assume further that a full-time regular fills this assignment. Section 3B states that, in these circumstances, the light duty assignment could properly be something less than eight hours a day or forty hours a week. That reality plainly undermines the APWU argument. Full-time regular status, by itself, does not necessarily guarantee the eight and forty "work week" set forth in Article 8. Or, to put the proposition somewhat differently, Article 8 does not provide full-time regulars with the kind of broad, all-encompassing guarantee urged by the APWU.*

Article 13, Section 3C is even more to the point. It reads in part:

"...The light duty employee's tour hours, work location and basic work week shall be those of the light duty assignment and the needs of the service, whether or not the same as for the employee's previous duty assignment." (Emphasis added)

* The second sentence in Section 3B with respect to part-time flexibles does not alter the validity of my comments.

These words reveal that the "tour hours" and "basic work week" of a light duty employee are based not just on the original "light duty assignment" but also on the "needs of the service." The "tour hours" and "basic work week" are not always a constant. They can be varied with the "needs of the service." That was made clear in Case No. H1C-3T-C-18210 where it was held that "'tour hours' for 'light' duty personnel can be determined on the basis of legitimate Postal Service needs." This holding referred to a change in the employee's tour (i.e., tour 3 to tour 1), not to a change in the length of the tour. But I see no reason why "tour hours" should not also cover the number of hours worked. The "needs" in question relate to the operating requirements, the amount of work available, and so on. Where there is no work for a light duty employee, the "needs of the service" may well dictate sending the employee home. This is the kind of variance contemplated by Section 3C. It follows that Section 3C, like 3B, allows a departure from the eight and forty "work week" set forth in Article 8.

The APWU's theory of the case is further damaged by Article 8, Section 8C. This provision, entitled "Guarantees", states that the Postal Service "will guarantee all employees at least four (4) hours work or pay on any day they are... scheduled to work in a post office or facility with 200 or more man years of employment per year..." To guarantee only four hours to someone scheduled for eight strongly suggests that the parties never intended to guarantee eight. The language in Section 8C would be meaningless if, as the APWU claims, Article 8, Section 1 guarantees full-time regulars on light duty eight hours' work or pay on their scheduled days. Given the terms of Section 8C, I cannot read into Section 1 the kind of broad, far-reaching guarantee urged by the APWU.*

Support for this interpretation of Articles 8 and 13 can be found in past practice. Full-time regulars on light duty have often been sent home before the end of their scheduled tours because of a lack of work. Apparently this

* Note too that Article 8, Sections 1 and 2 make clear that eight and forty is the "normal work week", thus suggesting that an abnormal work week is possible. My observations regarding Article 8 should be considered in light of the fact that there was no work available for the aggrieved light duty personnel when they were sent home.

has happened throughout the country. The Postal Service offered testimony from Management personnel in Miami, Dallas, Detroit and Cleveland. That testimony, largely uncontradicted, reveals that full-time regulars in these cities were not paid for the time they lost when their scheduled tours were cut short. And the award in H1C-3T-C-18210 shows that this was true in Oklahoma City also. The APWU has not pointed to any community in which full-time regulars on light duty have actually received the eight and forty guarantee sought in this case.

There are other considerations as well which weaken the APWU's position. Consider, for instance, the Step 4 resolution in H8C-4B-C-34570. That case raised the question of "whether management properly allowed employees with job related injuries [i.e., limited duty people] to work while sending home employees with non-job related injuries [i.e., light duty people] due to insufficient work." The parties agreed in the Step 4 disposition letter that "there is no guaranteed amount of work hours for employees in a light duty assignment" and that hence "no national interpretive issue is... presented." This Step 4 letter was signed by the then Assistant Director of the Clerk Division of APWU, a national level official. The case was remanded to Step 3 in the belief that the rights of the light duty employees turned on a narrow question of fact, namely, whether these employees were sent home due to insufficient work. The APWU's view in this Step 4 disposition is completely inconsistent with its view in the present case.

Moreover, APWU is not the only union which is covered by this National Agreement. The National Association of Letter Carriers (NALC) is a party to the same National Agreement. Its carriers are subject to the same provisions of Articles 8 and 13. Yet, in its March 1980 contract administration manual, NALC stated that although "every effort — must be made by management to find eight (8) hours of light duty work for a carrier...there is no guarantee of eight (8) hours of light duty." These words contradict the APWU interpretation. And NALC conceded in a Texas regional arbitration in July 1983, S1N-3U-C-6155, that it "agrees with the Employer's assertion that there is no contractual requirement that Employees on light duty have a guarantee of an eight (8) hour day."

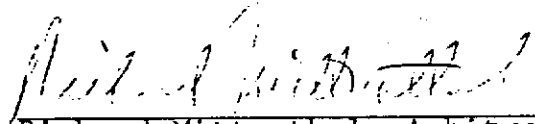
Numerous regional arbitration awards have reached essentially the same conclusion. They involved disputes between

1980 and 1984 in Chicago, Illinois (5 CPO 172); Hazelwood, Missouri (C8C-4K-D-14892); Monroe, Louisiana (S8N-3Q-D-21479); Florence, Alabama (S1N-3D-C-1110); Indianapolis, Indiana (C1C-4G-C-9500); and Corpus Christi, Texas (S1N-3U-C-14614). Chairman Garrett's awards, relied upon by APWU, are clearly distinguishable and do not demand a different result in the present case. Nor does the fact that light duty assignments were negotiated by the local parties in Cleveland (and later incorporated in a Local Memorandum of Understanding) call for a different ruling in the present case. The interpretation of Articles 8 and 13 in several Merit System Protection Board decisions is plainly in error.

For all of these reasons, my decision is that full-time regulars on light duty assignments in Cleveland during the time in dispute were not guaranteed eight hours a day or forty hours a week and that Management's action in sending them home on occasion before the end of their scheduled tours due to lack of work was not a violation of the National Agreement.

AWARD

The grievance is denied.


Richard Mittenthal, Arbitrator