MCC 481
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In the Matter of the Arbitration between

NATIONAL POST OFFICE MAIL HANDLERS, WATCHMEN, MESSENGERS AND GROUP LEADERS, DIVISION OF THE LABORERS' INTERNATIONAL UNION OF N.A., AFL-CIO

-and-

UNITED STATES POSTAL SERVICE

Case No. MC-C-481
E. Alford
St. Louis, MO

C# 00940

OPINION AND AWARD

Appearances:

For the USPS- David G. Karro, Esq.

For the Mail Handlers Union - Marcellus Wilson, Adm. Technical Ass't.

BACKGROUND:

Pursuant to the provisions of the National Agreement in effect at the time that this grievance arose, this case was properly processed through the steps of the grievance procedure. The Parties stipulated that the matter in dispute was before the Arbitrator for a final and binding decision.

The hearing was held at USPS Headquarters in Washington, DC on July 27, 1979. At that time, these parties were represented as indicated above, and they were given full opportunity to present testimony, other evidence and argument in support of their respective contentions. By agreement, the Postal Service submitted a post-hearing brief. A transcript of the proceeding was made and available in the consideration of this issue.

THE ISSUE:

Although these Parties did not agree upon a definition of the matter in issue, the grievance raised by the Union is set forth in Jt. Exhibit 5, a letter dated June 15, 1977 from the Union's National Director to the Assistant Postmaster General in the Employee and Labor Relations Group. In the letter, the Union

stated the issue as follows:

> "It is the position of the Union that once management posts a holiday schedule, which, either by inclusion or omission, schedules Mail Handlers to work on the holiday, management cannot avoid paying holiday pay to these Mail Handlers by thereafter notifying them that they are not to report for duty on these days despite the schedule."

STATEMENT OF THE CASE:

As stated above, the issue in this case is whether Management at the St. Louis Post Office violated Article XI, Section 6, of the 1975 Agreement when it failed to notify Tour 2 Mail Handlers in the outgoing letter section that they need not report for work on New Years Day or their designated holiday.

The Union, in effect argued that these employees were entitled to work on the holiday unless that employee is specifically told not to come in on the holiday. Management took the position that unless an employee is told he is to work on the holiday the employee is off on the holiday.

PROVISIONS OF THE AGREEMENT IN CONTENTION:

Article XI, Section 6 of the 1975 Agreement states:

> 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 the 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.

Article XLIII, Section 9 of the Agreement reads:

> Subject to the provisions of the National Agreement, the Employer will determine the number and categories of employees needed for holiday work. Within these categories, the Employer will select volunteers by seniority. If there are not sufficient volunteers, inverse seniority will be used to select employees to work on the holiday.

In late 1975, the St. Louis Post Office requested tour 2 employees in the outgoing letter section who desired to volunteer to work the New Year's holiday or their designated holiday to place their signature on a posted list in one of three columns; the first being for those who wished to work on December 30, 1975; the second being for those who wished to work on December 31, 1975; and the last being for those who wished to work on January 1, 1976. The posting then went on to state:

> Signing this list does not constitute assurance that you will be selected but merely expresses a desire to work.

The posting also contained the following statement:

> A schedule of employees selected will be posted no later than Wednesday, December 24, 1975.

The completed posting indicated that two Mail Handlers volunteered to work on Tuesday, December 30, 1975. No one volunteered to work on Wednesday, December 31, 1975 in this classification. Two Mail Handlers also volunteered to work on January 1, 1976.

On December 24, 1975, the Post Office posted a holiday schedule. The posting required seven Mail Handlers to report for work on January 1, 1976. The two who had volunteered were included among the seven who were named. The posting did not require any Mail Handler to work that tour on December 30, 1975 or on December 31, 1975.

On Tuesday, December 30, 1975, C.W. Closson, who had volunteered to work on that day did report for work. That was his designated holiday. He had not been told that he need not report that day, but as stated above, the holiday schedule did not indicate that he was to work on December 30, 1975. No other employee whose designated holiday fell on December 30, 1975 reported

for work that day. No employee who was not designated to work on January 1, 1976 reported for work on that day.

It was the position of the Union that the Post Office did not excuse employees from working on January 1, 1976 and for that reason those employees should be paid. The same is true of those employees who were not specifically excused on Tuesday, December 30, 1975, which was their designated holiday. The Union alleged that at St. Louis, the postal authorities consistently had served notice on those who were to report on holidays as well as those who were not to report. The Union argued that on December 29, 1970, two Mail Handlers, who had volunteered to work on January 1, 1976, were told orally that they were not expected to report. One of the volunteers was absent that day and did not receive such verbal instruction. He reported for work on January 1, 1976 and worked for a little while before being sent home. According to the Mail Handlers, proper notification should have been given in writing on December 24, 1975 to all employees who were not expected to repirt for work. That is the way it was done on another floor and for another group of employees.

OPINION:

The claim made in this case by the Union is clearly inconsistent with the language and intent of the two provisions of the 1975 Agreement quoted above. It is clear that the whole thrust of the holiday scheduling provisions is to provide as many employees as possible with the holiday or their designated holiday as a day of rest. The part-timers and the casuals are to be employed where possible despite the requirements in other parts of the agreement to grant priority in work assignments to the career employees. The Union was not able to point to any language in Section 6 of Article XI which implied that notice that employees are not to work on the holiday or designated holiday is required by the Agreement. The language of this provision as well as the language of Article XLIII, Section 9, also quoted above, just does not place an affirmative duty upon management to indicate which employees will not be needed on a holiday.

Because of the lack of support found in the language of the Agreement, the Union relied upon a claim that at St. Louis there was a consistent past practice of notifying both the employees who were to report as well as the employees who were to stay at home and enjoy the holiday. In supprt of this contention the Union submitted three exhibits which management agreed could be placed in the record as Joint Exhibits 10, 11, and 12. It is true that the second paragraph in Jt. Exhibit 10 does state that the employees whose designated holiday for Christmas, 1975, fell on December 23 need not report for work on that day. However, this same Exhibit

requires certain employees to report for work on December 25th, but it does not state that all other employees need not report for work on that date. Similarly, Joint Exhibits 11 and 12 do not consistently inform employees that they need not report for work on the holidays in question.

Joint Exhibit 1, the document on which those who volunteered to work on the New Year's Holiday or their designated holiday were asked to sign up warned that affixing one's name to that sheet did not constitute a direction to report for work or as stated, "an assurance that you will be selected..." It goes on to clearly state that on December 24, 1979 a schedule of those volunteers who were selected would be posted. That selection was made and appears in the posting made on that date. In view of this clar language on the sign up sheet as well as the posted schedule, a reason why any Mail Handler who did not see his name on the schedule should have assumed he was to work on the holiday or his designated holiday is very difficult to understand.

In fact, only one employee actually did show up for work on the holiday or his designated holiday. That is clear and convincing evidence that all other employees received due notice and were fully aware that absent any further word from their employer they could not be considered AWOL for failing to report for work on the holiday or on their designated holiday.

A W A R D

The grievance processed to arbitration as Case No. MC-C-481, and which arose at the St. Louis Post Office must be and hereby is denied.

Howard G. Gamser

HOWARD G. GAMSER, ARBITRATOR

Washington, DC
December 22, 1979