

C# 03223

Case No. N8-NE-0088

ARTICLE VIII, SECTION 182
ARTICLE XIX - EBLRM 516.3

In the Matter of the Arbitration between
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO
-and-
UNITED STATES POSTAL SERVICE

OPINION AND AWARD

HEADING: COURT LEAVE -
CHANGE OF WORK SCHEDULE

APPEARANCES:

For the USPS - Wyneva Johnson, Esq.
Sherryl A. Cagnoli, Esq.

For the NALC - Cohen, Weiss & Simon
by: Keith E. Secular, Esq.

BACKGROUND:

On May 14, 1979, the President of the Philadelphia Local of the NALC filed a grievance in which he alleged that the Management of the Philadelphia Post Office had changed the method of allowing employees to drop days in order to conform their work schedules to the days on which they were scheduled for jury duty. The Local Union alleged that the provisions of Section 516.334 of the Employee & Labor Relations Manual upon which the Employer relied to authorize such a change in practice had been misinterpreted and misapplied.

The grievance was processed through the requisites steps as provided for in the July 21, 1978-July 20, 1981, collective agreement and came on for arbitration before the Undersigned in Washington, DC. The parties were represented as indicated above. At the conclusion of the hearing, they decided to submit post-hearing briefs. These were received in timely fashion and the arguments contained therein fully considered.

THE ISSUE:

These parties were unable to agree upon a definition of the matter to be decided in this proceeding. However, from the contentions raised it can be ascertained that the issue could be stated as follows:

Shall a postal employee who is called to serve on jury duty or make a court appearance, covered by the provisions of Chapter 516 of the Employee & Labor Relations Manual, be permitted to change his or her work schedule to conform to the days on which this

what shall be the appropriate remedy for the unilateral termination of this practice by officials of the Philadelphia Post Office on or about July 8, 1978?

CONTENTIONS OF THE PARTIES:

The Union argued that the provisions of the Employee & Labor Relations Manual dealing with this subject, specifically Section 516.334-a-(2) and c, as well as .342 of this Manual, very explicitly grant employees the right to temporarily change their schedule so that their scheduled days of work conformed to the days that the employee must report in court. The Union also argued that the practice had existed, in the Philadelphia Post Office for many years, to allow such changes in an employee's work schedule, and the Employer could not unilaterally change this past practice without union consent pursuant to the requirements of Article V of the Agreement as well as Section 8(d) of the National Labor Relations Act as Amended.

The Postal Service also relied upon the provisions of Section 516.334-c of the Employee & Labor Relations Manual. It contended that this provision only allows an employee to change his or her hours of work to conform to the hours required for court service, and an employee may not change non-scheduled days to coincide with those that such employee must be present in court so that such days are treated as scheduled days of work. The Service also contended that the court leave provisions of the Manual and provisions for such leave in an earlier Manual, as well as USPS rules and regulations which were based upon provisions of the Federal Personnel Manual, which applied to all government employees, have never provided for such an accommodation of the employees' work schedules and to so provide would be to contradict the entire concept of court leave and the purpose for which it was intended.

OPINION:

Because, as will be discussed below, the determination of the critical issue raised in this case may be made on the basis of the initial contentions of the Union, reference need only be made to the following provisions of the 1978 Agreement and the Manual:

Article VIII provides, in pertinent part:

ARTICLE VIII
HOURS OF WORK

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

A. The employee's service week shall be a calendar week beginning at 12:01 a.m. Saturday and ending at 12 midnight the following Friday.

B. The employee's service day is the calendar day on which the majority of work is scheduled. Where the work schedule is distributed evenly over two calendar days, the service day is the calendar day on which such work schedule begins.

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 of this Article. As far as practicable the five days shall be consecutive days within the service week.

Article XIX provides:

ARTICLE XIX HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours, or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours or working conditions will be furnished to the Unions at the national level at least thirty (30) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe that the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within thirty (30) days after receipt of the notice of proposed change. Copies of those parts of all

new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished to the Unions upon issuance.

The relevant Manual provisions, as contained in Subchapter 516, and as they apply in pertinent part, read as follows:

516 Court Leave

* * *

516.3 General

.31 Definition. Court leave is the authorized absence (without loss of or reduction in, pay, leave to which otherwise entitled, credit for time or service, or performance rating) of an employee from work status for jury duty or for attending judicial proceedings in non-official capacity as a witness on behalf of a state or local government...

.33 Granting Court Leave

.331 Pay Status Requirement. Court leave is granted only to eligible employees who, except for jury duty or service as a witness in a non-official capacity on behalf of a state or local government would be in work status or on annual leave. An employee on LWOP when called for such court service, although otherwise eligible for court leave, is not granted court leave, but may retain any fees or compensation received incident to court service.

* * *

.334 Accomodation of Employees Called for Court Service

a. Employee Options. Employees who are eligible for court leave and who have a conflict with court duty and work schedules have the following options:

(1) Work their postal tours of duty in addition to performing court service.

(2) Have their work schedules changed temporarily to conform to the hours of court service. (Employees who do not choose this option may not have their work schedule changed and are expected to report for postal duty upon com-

* * *

c. Temporary Change in Schedule. Employees who choose to have their work schedules changed temporarily to conform to court service hours submit, as soon as possible, a request for such schedule change in writing to the appropriate postal official at their installation. Such request states that the schedule change is for the employee's personal convenience and is agreed to by the local union. Employees who exercise this option receive full compensation for the period of court service, including any applicable night differential.

* * *

.342 Court Service Outside of Regular Working Hours or Regular Working Days. Employees who perform court service outside of their basic work week (on scheduled days off) or outside of their scheduled tour of duty, for which no court leave is granted, may accept and retain the jury or witness fees. (If the employee's basic work week is Monday through Friday, the employee is placed on court leave for any absence while serving as a juror or witness in a non-official capacity on behalf of a state or local government during this period. The employee is entitled to retain fees received for court service on Saturday and/or Sunday. The same rule applies to employees assigned to other basic work weeks, whether the scheduled non-work days are fixed or rotating.)...

BACKGROUND:

The testimony adduced during the course of this hearing substantiated the Union's contention that for some twenty two years, if not longer, at the Philadelphia Post Office, employees were permitted, when serving as a juror or otherwise entitled to court leave under the then current provisions of a postal manual, regulations or the Federal Personnel Manual, to change their work schedules so that their scheduled days of work coincided with their scheduled days of court service. For example, a carrier who normally worked a scheduled which required him to work on Saturday and to be off on a Wednesday could file a a PS Form 3189, or its predecessor form, requesting a temporary schedule change for personal convenience. Such a request would be granted and permit the employee to have a work schedule from Monday through Friday for the length of time the employee was off on court leave. Such a request was routinely and consistently granted by postal supervisors. Thus, the employee would be paid for five days during the week, without working at his postal service job, and that employee would turn over to the postal service the amount he received as a fee for being present at court as a juror or a witness. The Saturday that the employee would normally have worked was regarded temporarily as a non-scheduled day.

In late April of 1979, the President of the Philadelphia Local of the Letter Carriers, NALC Branch 157, learned from an employee, who had requested a temporary change in work schedule to conform to his days required to attend at court, that management had refused the request that his schedule be so changed. The President of the Local protested this alleged unilateral change in policy without consulting with the Union. Management, according to the unrebutted testimony, conceded that there had been a change in policy in this regard at the Philadelphia Post Office.

OPINION:
(E&LR) A careful reading of Section 516.334-a-(2) appears to confirm that the Manual did provide for such a change. It provides "Employees who are eligible for court leave and who have a conflict with court duty and work schedules have the following options:... (2) Have their work schedules changed temporarily to conform to the hours of court service." (Underlining added by the writer)

The Manual uses the terms "work schedule" and "hours of service" to define the scope of the employee's right. Referring to how those terms are utilized in Article VIII, as quoted above, it should be noted that in Article VIII utilizes the term "hours of service" as a general heading below which are set forth separate subsections on days and hours of service over the course of a week and hours of work within individual days. Article VIII, Section 2 specifically utilizes the term "work schedule" so as to include both the concept of an employee's "service week in Subsection A, as well as the employee's "service day" which is referred to in Subsection B. As the Union pointed out, in earlier agreements, the contractual antecedents of Article VIII, dealing with Hours of Work, the term "work schedule" is defined so as to include both the employee's hours of work on a service day and his service days within a basic work week.

It should also be noted that the Form 3189, on which an employee in Philadelphia requested a change in schedule for personal convenience, when assigned court duties making that employee eligible for court leave, utilizes the concept of a change in an employee's "regular work schedule" so as to include both changes in beginning and ending times on a specified day as well as changes in scheduled days off.

The USPS argued that the use of the term "work schedule" in the current E&LR Manual as well as the one previously published clearly indicated that the parties were referring to the hours of work on a specific duty day. The Postal Service contended that an employee was entitled to change duty hours so as to avoid the need to serve eight hours in court and then spend additional hours on a postal duty tour, if those latter hours happened to fall outside the hours the employee was scheduled to be in court.

If one were to argue that the language of the Manual, as it was drafted and promulgated by the Postal Service, may have been ambiguous on this point, and management's intention had to be to restrict changes to hours in each service day on which an employee was scheduled to work as well as be present in court, then such ambiguity must be resolved in the Union's favor and support its position on the appropriate interpretation of intent. In the first place, management drafted the language

employed in the Manual, and under accepted rules for the interpretation of written documents any ambiguity must be resolved against the writer. More importantly, the unrebutted testimony in this record, as noted earlier, and a management concession on the record established that with such language or very similar language in former Manual provisions, postal regulations, and the Federal Personnel Manual when applicable to postal employees, the Postal Service in Philadelphia at least interpreted that language to permit employees to change their weekly work days to conform to the days in court. Such a consistent application and interpretation of the provisions dealing with the accomodation of employees called for court service indicated most clearly that the Philadelphia Post Office, at least, was in accord with the Union's position as to the intent of the language with which we are here concerned.

Having found that these parties in Philadelphia had agreed that the language in the E&LR Manual permitted employees to change their days off so as to have their temporary work schedule coincide with their days in court and their non-scheduled days coincide with the days in the week on which they were not required to be in court, the Undersigned must conclude that the provisions of Article XIX are applicable to this situation. Management was bound to continue in effect the implementation of the language of Subchapter 516.334-a-(2) of the E&LR Manual then in effect. Management did not have the right to make any unilateral change in the consistent past practice giving evidence of the accepted interpretation of those provisions of the Manual without following the procedure outlined in the second paragraph of Article XIX in order to effectuate such a change.

Although Management did argue that the Local Union in Philadelphia was furnished with notice of such an intended change in practice, in addition to the fact that the Union claimed not to having received such notice or having it called to its attention when this grievance was being processed, it obviously was not the type of notice served upon the National Union as provided for, under appropriate circumstances, in Article XIX.

For the reasons set forth above, it must be ultimately concluded, based upon the record made in this proceeding, that the postal employees in the Philadelphia Post Office were previously entitled and continued to be entitled to make a temporary change in their weekly work schedule to coincide their duty days with the days they were assigned to be on court leave. The Union sought to broaden such a conclusion to make it applicable to all employees of the Postal Service wherever they happened to be located. Evidence to demonstrate a consistent past practice of so interpreting the provisions of the E&LR Manual and the similar provisions covering court leave in earlier manuals, regulations and the Federal Personnel Manual was not sufficiently conclusive, as it was presented by the Union, to support the Union's position in this regard. The substantiation of the Union's claims in this regard must be established in other proceedings initiated at appropriate postal installations.

As to the remedy sought by the Union at the Philadelphia Post Office, it must be found that since Local Management unilaterally

and improperly altered its previous practice, it must be directed that the Philadelphia Post Office return to its former practice of permitting employees to change their work schedules to coincide with the days they are required to be in court where court leave is to be granted under the provisions of the E&LR Manual.

Therefore, after due deiliberation, the Undersigned makes the following

A W A R D

1. The Philadelphia Post Office must revert to its previous practice of permitting employees to make temporary changes in their work schedules so their days off shall coincide with the days of the week that such employees are not required to be in court under such circumstances which make them eligible for court leave pursuant to the provisions of Chapter 516 of the Employee & Labor Relations Manual currently in effect.
2. As to other postal installations, where it is established in an appropriate proceeding that the management of the installation consistently interpreted the provisions of the E&LR Manual and the related provisions of any earlier manual, regulation, or the Federal Personnel Manual, in the same manner as did management in Philadelphia, then, in that event, management must continue such practice or revert to such practice until and unless a change in the provisions of the E&LR Manual is made pursuant to the procedure outlined in Article XIX of the National Agreement.


HOWARD G. GAMSER, NATIONAL ARBITRATOR

Washington, DC
October 3, 1980