C# 6364
A-E

IN THE MATTER OF THE ARBITRATION

between

UNITED STATES POSTAL SERVICE	)	H1N-5G-C 2988
	)	H1N-5F-C 3026
and	)	H1N-5G-C 5195
	)	H1N-5K-C 14166
NATIONAL ASSOCIATION OF	)	H1N-5K-C 14167
LETTER CARRIERS, AFL-CIO	)	(Overtime Distribution)

Before
Neil N. Bernstein
Arbitrator

APPEARING:

FOR THE SERVICE:

Mr. Edward Keonjian
Field Director
Human Resources
United States Postal Service
P. O. Box 3047
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FOR THE ASSOCIATION:

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OPINION OF THE ARBITRATOR

This proceeding involves five separate grievances which have been consolidated for resolution of a common issue.

I

In all five cases, the Union grieved that the Service at various specific locations had failed to discharge its contractual obligation to distribute overtime opportunities "equitably". The Union based its contention on quarterly overtime distribution reports showing a substantial disparity in overtime hours worked between the various carriers on the "Overtime Desired" list. For example, in case H1N-5G-C 5195, the Union claimed a contractual violation because the report for the quarter ending March 31, 1982 at the Mesa Center California Station showed that the lowest carrier on the list worked only 9 hours of overtime in the quarter, while the carrier at the other extreme worked 83.38 overtime hours during the same time period. The Union sought compensation for every carrier who worked less than the median number of overtime hours.

At the fourth step of the grievance proceeding, the Service adopted the general position in all the grievances that the contract obligated it to allocate overtime solely on the basis of equal opportunities for each carrier, without consideration of the hours worked.

Therefore, the parties agreed to submit the cases to National Arbitration solely for resolution of a single issue, which they have stipulated as:

"Does the following statement represent a correct interpretation of the contract: The number of opportunities offered, not hours worked, is the criterion to determine equitable distribution of overtime to employees on the 'Overtime Desired' List?"

The parties also agreed that, after resolving this single issue, the Arbitrator is to remand the cases to the parties for further factual exploration and consideration.

II

The applicable provisions of the collective bargaining agreement are the following:

2.a. Only in the letter carrier craft, when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the list.

b. During the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the list.

c. In order to insure equitable opportunities for overtime, hours worked and opportunities offered will be posted and updated quarterly.

The hearing evidence indicated that these sections have been in the collective bargaining agreements between the parties without significant change since 1973.

III

The Union argues that the basic standard in the contract is "equitability" which means justice and fairness; moreover, subparagraph c of Article 8.5.C.2 specifically refers to both hours worked and opportunities offered. In addition, the Union

asserts that the Service's position is inconsistent with the fact that overtime is distributed in other crafts on a rotating basis, while letter carriers are to utilize an equitable distribution.

Secondly, the Union introduced a large number of regional arbitration decisions on the issue. It claimed that the weight of authority supports the Union's position.

Finally, the Union relies on a May 24, 1984 step 4 settlement by the parties of a similar grievance from Milwaukee, which it contends is controlling and supports its position.

IV

The Service claims that the language of the agreement is unambiguous and only requires it to distribute overtime opportunities equitably without any consideration of hours worked.

Moreover, it contends that it cannot distribute available overtime hours evenly because of wide fluctuations in delivery needs and personnel availability. Also, considerable flexibility of assignment works to the benefit of both the Service and the carriers.

In addition, the Service argues that its position is supported by many decisions of regional arbitrators and that most of the decisions submitted by the Union are not on point.

Finally, the Service claims that subsection c of Article 8.5.C.2 is intended merely to produce information and not to affect the clear criterion in subsection b.

V

The Arbitrator agrees with the Union that the number of opportunities offered should not be the principal criterion to

determine the correctness of the distribution of overtime to employees on the "Overtime Desired" list.

First of all, although the Service is correct in noting that the section talks only of the distribution of "overtime opportunities", the goal that the section mandates is the "equitable" distribution of those opportunities and not (as the Service seems to contend) the "equal" distribution. There is a significant difference between the two phrases: "equal" is objective and precise, while "equitable" is subjective and indeterminate. In other words, the parties who drafted the relevant contractual language went to great lengths to select a rather vague standard, which was to distribute overtime "fairly".

It should be added, although it is irrelevant for determination of the narrow issue before the Arbitrator, that the agreement does not even obligate the Service to distribute overtime "fairly", only to make "every effort" to do so. There can be no doubt that the parties intended that the Service would have to utilize a great deal of judgment and not just apply a rigid procedure (which is the case with the other crafts) in the actual distribution of overtime opportunities. However, in doing so, the Service was obligated to at least try very hard to make its distribution as fair as possible.

That leads to the second question which is to whom the distribution should be "fair". The Arbitrator concludes that the parties intended that the distribution should be "fair" to the carriers on the overtime list without regard to the Service. The Service would appear to have no particular interest in how the

overtime is distributed so long as competent carriers can be found to do the work. It should matter not to management (unless it is trying to play favorites) whether one employee does it all or if overtime is split among many. It is only the individual carriers on the list who are directly concerned with how overtime is distributed. Therefore, the contract must be construed as setting forth as the goal to which the Service should strive in distributing overtime opportunities that it should make "every effort" to make that distribution appear to be fair from the standpoint of the carriers who appear on the list.

This leads to the the next question, which is what distribution of overtime hours would be fairest to these carriers? To answer that question, the Arbitrator asked himself why the carriers placed their names on the "Overtime Desired" list in the first place. He decided that they got on the list for an obvious reason -- to earn extra money. He intends no disrespect to the members of the carrier craft, but he does not believe a substantial segment of their number sign up for overtime for the thrill of walking more routes or the pleasure of spending more time in uniform. They volunteer for overtime to earn extra money; therefore, the fairness of the overtime opportunity distribution must be appraised in terms of its impact on the distribution of the resulting overtime pay. Moreover, in the absence of evidence of contrary intent, the Arbitrator has to assume that the fairest distribution of a pot of money would be to divide it as equally as possible among all of the designated claimants.

Once one accepts those premises, the ultimate resolution of the question posed is relatively straight forward. Under Article 8.4A, overtime pay is earned on the basis of hours worked; therefore, if the hours of overtime worked or offered are divided equally, the resulting pay earned (or available to be earned) should also be substantially equal. On the other hand, there is no substantial correlation between relative number of overtime opportunities offered and overtime compensation. One carrier could have gotten 10 8-hour overtime opportunities while another was awarded 10 1-hour assignments. The first carrier would have been able to earn eight times as much as the second. All other things being equal, no one other than the first carrier would regard that result as "fair" or "equitable".

This conclusion also provides a possible explanation for Article 8.5.C.2.c. That section sets out a procedure to check on the manner in which the Service is actually distributing overtime to make sure that the Service is trying to be "equitable". If the posted evidence shows hours worked to be drastically uneven and the disparity is not explainable in terms of opportunities offered but rejected (which would also be posted), that information would presumably pressure the Service to explain the disparity; perhaps, if the difference could not be justified, the Service might have to undertake corrective action in the next quarter. Obviously, as the Union argues, if hours worked are irrelevant to appraising the equitability of the overtime distribution, the parties who drafted the agreement would not have included the specific reference to it in the mandatory posting section.

The Arbitrator has read all of the arbitration decisions offered by the parties. He remains convinced that the reasoning set forth above (which is different from that used by the regional arbitrators who came out with the same result) is the most reasonable way to answer the issue posed.

THE AWARD

The Arbitrator holds that it is not a correct interpretation of Article 8.5.C.2.c to conclude that the number of opportunities offered not hours worked is the criterion to determine equitable distribution of overtime to employees on the "Overtime Desired" list.

The five cases consolidated in this proceeding are remanded to the parties for further factual exploration and consideration of remedies, if they would be appropriate.

Neil N. Bernstein
Arbitrator

August 14, 1986.