C#06821

ARBITRATION AWARD

February 10, 1987

UNITED STATES POSTAL SERVICE

-and-

NATIONAL ASSOCIATION OF LETTER CARRIERS

Case Nos.
H1N-3U-C-35720
H1N-3U-C-36151

Subject: Jury Duty - Combination of Jury Duty and Postal Duty - Arbitrability

Statement of the Issues: Whether the claims made by NALC in this case can properly be dismissed from national level arbitration on the ground that such claims do not raise "interpretive issues under this [National] Agreement..."?

Whether the claims made by NALC can properly be denied on the grounds of res judicata or collateral estoppel?

Whether Management violated the Employee & Labor Relations Manual and hence the National Agreement when it required two Houston employees to report to a postal facility at their regular starting time and work several hours before scheduled jury duty at a local courthouse?

Contract Provisions Involved: Article 3; Article 15, Section 4; and Article 19 of the July 21, 1981 National Agreement, and Section 516.3 of the June 15, 1982 Employee & Labor Relations Manual.

Appearances: For the Postal Service: C. B. Weiser, Attorney, Office of Field Legal Services, Southern Region; for NALC: Keith E. Secular, Attorney (Cohen Weiss & Simon) and Devon Lee Miller, Staff Attorney, NALC.

Statement of the Award: The grievances are denied.

BACKGROUND

These grievances protest Management's action in requiring two Houston employees to report to a postal facility at their regular starting time and work several hours before leaving for scheduled jury duty. NALC insists this action was improper under the terms of Section 516 of the Employee & Labor Relations Manual (ELM) and was hence a violation of the National Agreement. It believes emloyees cannot be compelled to report to work before they report for jury duty. The Postal Service disagrees and urges, moreover, that NALC's claim is not arbitrable.

Prior to 1980, the Harris County, Texas courts expected jurors to appear at the courthouse at 8:00 a.m. Postal employees did not have to report to work before scheduled jury duty. For instance, many employees start their tours between 6:00 a.m. and 7:00 a.m. Management felt it would be impractical and burdensome for such employees to report to work and leave immediately (or a short time later) for jury duty. However, employees who were relieved from jury duty early were required to return to work where it was feasible for them to do so and where an appreciable part of their tour hours would still have been available to them. None of these arrangements were challenged by NALC.

This dispute has its roots in a 1980 decision by Harris County authorities to stagger the reporting time of jurors. Many were still called upon to appear at 8:00 a.m. Others, however, were told to appear at 10:00 a.m. or 12 noon. Sometime after this change was made, Management determined that employees who were supposed to begin jury duty at these later times must first report to work provided a meaningful amount of work could be performed between their reporting and their leaving for jury duty. Consider, for example, an employee scheduled to begin his tour at 6:30 a.m. and jury duty at 12 noon. Management claimed it had the right to have him report at 6:30 a.m. and work several hours before leaving for jury duty.

This new policy prompted a number of grievances, all challenging Management's right to require employees to report for work before jury duty. The first case involved employee Alvarez and was heard in expedited arbitration (S8N-3A-C-21580). Arbitrator Schedler held that Management's new policy was "a clear violation of Section 516 of the [ELM]..." even though he observed elsewhere that "neither the National Agreement nor Section 516 allow or prohibit the Employer from assigning an

employee to duty prior to jury duty" and that "where the National Agreement is silent on a matter, or where the regulations do not dispose of a matter, then the Employer can do as it pleases..."

Schedler based his decision, his reading of Section 516, on "public policy." He stressed the need of the courts for jurors who were able to remain alert and attentive throughout the time they were hearing a case. He suggested that this "public" need could not be met if Management were free to require employee-jurors to report to work before jury duty. He ordered the Houston post office to return to its pre-1980 practice of permitting employee-jurors to go directly to jury duty without first reporting to work. The Federal District Court set aside this award on the ground that the arbitrator "exceeded the bounds of his authority as circumscribed by the [A]greement and submission."

The second case involved employee Ramirez and was heard in regular regional arbitration (S1N-3U-C-26508). Arbitrator Caraway held that Management's new policy did not violate Section 516 of the ELM. He stated that Management could require Ramirez to report and work part of his tour before being released for jury duty. He seemed to say that this kind of arrangement was within the contemplation of Section 516 although he did not really explain this point or offer any analysis of the pertinent ELM language.

The present case involves employees King and VanNatter and was heard in national arbitration. It concerns the same contractual issues as were posed in the expedited and regular regional cases. King was summoned for jury duty at 12:15 p.m. on April 24, 1984. His regular starting time was 6:00 a.m. Management insisted he report and work the beginning of his tour before leaving for jury duty. He reported at 6:00 a.m., clocked out at 9:59 a.m., began jury duty at 12:15 p.m., and was excused at 3:45 p.m. His total postal work and jury service that day, excluding travel time, came to 7 hours and 29 minutes. VanNatter had a similar experience on May 7, 1984, although his total postal work and jury service came to 7 hours and 57 minutes.

Article 19 of the National Agreement provides that "those parts of all...manuals...that directly relate to wages, hours or working conditions...shall be continued in effect..." It provides further that Management "shall have the right to make changes [in such manuals] that are not inconsistent with this Agreement and that are fair, reasonable, and equitable..."

The ELM is obviously a "manual" within the meaning of Article 19. Its "court leave" provisions, Section 516, are the basis of this arbitration:

> ".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...
>
> ".333 Combination of Court Service and Postal Duty
>
> a. Employees Who Report for Court Service and Are Excused Early. If an employee reports for court service and is excused by the court for the balance of the day, or performs court service for only part of that day, the employee is entitled to full compensation for the day in question. The employee is required to report to the postal installation for the balance of the postal tour of duty, provided: (1) an appreciable time of the tour is involved and (2) it is feasible to report to work and complete the tour. The combined court service and postal duty may not exceed 8 hours. (This limitation does not apply to employees exercising the option provided in 516.334a1.)
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> b. Employees Who Serve A Full Day In Court. Employees serving a full day in court service are not required to report to their postal duties.
>
> ".334 Accommodation 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 completion of their court service.)

b. Performance of Postal Tour of Duty in Addition to Court Service. If employees work their full postal tours of duty in addition to performing court service, their court service is not charged to court leave as the court service is performed outside of their postal tours of duty... If employees choose to work their full postal tours of duty in addition to performing court service, but are required to be in court beyond the starting time of their scheduled tours, they report for duty as soon as possible after completion of court service and work the remaining hours of their scheduled tours..."

An arbitration hearing was held in Washington, D.C. on September 11, 1986. Post-hearing briefs were filed by the parties on December 31, 1986 and January 5, 1987.

DISCUSSION AND FINDINGS

The Postal Service asserts that these grievances should be dismissed (1) because they involve subject matter inappropriate to national level arbitration and (2) because they concern issues previously decided by regional level arbitration and a Federal District Court and hence, under res judicata or collateral estoppel principles, should not be reviewed at the national level.

The first argument is without merit. Article 15, Section 4D(1) states that "only cases involving interpretive issues under this [National] Agreement or supplements thereto of general application will be arbitrated at the National level." Article 19 incorporates existing "manuals...of the Postal Service...directly relate[d] to wages, hours or working conditions..." The ELM is such a "manual." Its regulations with respect to "court leave", Section 516, have in effect been made part of the National Agreement. NALC contends that Section 516 prohibits Management from requiring an employee to report to work before scheduled jury duty. The Postal Service disagrees. That is an "interpretive issue...under this Agreement..." and is therefore a proper subject for national level arbitration.

The second argument is not persuasive. It is true that Article 15, Section 4A(6) commands that "all decisions of an arbitrator...be final and binding." It is true that Arbitrator Caraway ruled that Management did not violate Section 516 by

requiring an employee to report to work before scheduled jury duty. It is true that Arbitrator Stephens in a later Section 516 dispute, also a regular regional arbitration case out of Houston, affirmed Caraway's decision. But a careful reading of the Caraway award shows that his ruling was largely a fact conclusion. There was no real analysis of Section 516. There was no response to the kind of argument NALC makes in the present case. Given these circumstances, I do not believe res judicata or collateral estoppel bars my consideration of the merits of the instant grievances.

As for the District Court ruling, it merely found that Schedler had exceeded his authority and set aside his award. The Court made no attempt to interpret Section 516. For interpretation of the National Agreement is a function for the arbitrator, not the courts.

NALC urges, on the merits, that Management "lacks any authority..." to require employees to report and work before scheduled jury duty. It alleges that Section 516 consists of a full set of rules regarding "post jury duty work" but "omits from its scope any mention of Management requiring employees to report in advance of jury duty for Postal Service work." Its position is, in short, that Management can only do that which its Section 516 rules allow it to do. It relies also on certain rules in 516.333a and b, for example, "Employees serving a full day in court service are not required to report to their postal duties." It maintains that because the length of jury duty is not known in advance, Management risks violating this rule each time it asks an employee to report and work before jury service. To this extent, it believes Management's post-1980 policy in Houston is "inconsistent with certain specific provisions..." in Section 516.

NALC's argument, in my opinion, misreads Section 516. The rules on which it relies are found in 516.333. That clause addresses the employee who appears for jury duty at a time which effectively precludes his reporting to work at the start of his tour. It deals with the question of whether and under what circumstances he is obliged to return to work after being released early from jury duty. It deals also with the question of whether he is obliged to work after "...serving a full day in court service." The present case, however, involves the question of whether an employee is obliged to report to work before jury duty in some situations. The answer to this latter question cannot be found in 516.333 because that provision was directed at a quite different problem.

It is true that Section 516 does not expressly refer to postal work being performed before jury duty. But 516.334a clearly concerns the employee who has a "conflict" between his "work schedule" and his "court duty." Such employees are given two, and only two, "options." Either they (1) "work their postal tours of duty in addition to performing court service" or they (2) "have their work schedules changed temporarily to conform to the hours of court service." The grievants in this case did not choose the latter option. They therefore were expected to "work their postal tours of duty in addition to..." jury duty. Ordinarily, this means employees must return to work after being released early from jury duty provided the practicality test in 516.333a is met. But the language of 516.334a(1) is surely broad enough to encompass also employees who have time to work some part of their regular tour before the start of jury duty. In other words, 516.334a(1) impliedly authorizes the very action taken by Management in this case. It permits Management to require employees to "work their...tours...", at least that part of a tour not impacted by jury duty, "in addition to performing..." jury duty.*

It follows that Management did not violate Section 516 of the ELM by requiring the grievants to report for work before their scheduled jury duty. True, these arrangements may result in an employee spending more than eight hours on his combined postal work and jury service. But that did not happen in the present case. Even if it had, that would not violate any part of the Section 516 rules. For the eight-hour limitation in 516.333a refers only to employees who return to work after being released early from jury duty.

NALC's final argument rests on "past practice." It asserts that the pre-1980 practice at the Houston post office of not requiring employees to report to work before scheduled jury duty should be considered binding on Houston Management. This claim ignores the circumstances behind this practice. Prior to 1980, Harris County expected all jurors to appear for jury duty at or about 8:00 a.m. In these circumstances,

* For these reasons, Arbitrator Aaron's awards in Case No. H1C-NA-C-6 and Case No. H1N-NA-C-3 are distinguishable from the present case.

it would not have been practical for Management to require employees to report at 6:00 a.m. (or later) if they had to leave for jury duty within an hour or so. But Harris County changed its jury scheduling in 1980 and began to stagger jurors' starting times. Some jurors were asked to report at 8:00 a.m., others at 10:00 a.m., still others at noon. For the first time, it became practical for Management to require some of these employee-jurors to report to work before their scheduled jury duty. There was no binding practice in this situation.

AWARD

The grievances are denied.

Richard Mittenthal, Arbitrator