C#08530.

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	**GRIEVANT:**	Dinah Miller
between	**POST OFFICE:**	Houston TX
UNITED STATES POSTAL SERVICE	**USPS CASE NO:**	H1N-3U-C 28621
and	**NALC CASE NO:**	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO		

BEFORE: Raymond L. Britton, *Arbitrator*

APPEARANCES:

For the U.S. Postal Service:	Lawrence G. Handy
For the Union:	Richard N. Gilberg
Place of Hearing:	USPS Headquarters
Date of Hearing:	July 13, 1988

AWARD:

For the reasons given, the grievance is denied.

Date of Award: December 13, 1988

Raymond L. Britton

ISSUE

Did the Postal Service violate Article 8, Section 8, Paragraph C of the 1981 National Agreement when a part-time flexible employee was scheduled to report for work, was called at home prior to leaving for work and informed that the employee's services were not needed that day, and who subsequently was not paid for four (4) hours? If so, what is the appropriate remedy?

HISTORY OF THE PROCEEDINGS

The parties failed to reach agreement on this matter, and it was submitted to arbitration for resolution. Pursuant to the contractual procedures of the parties, the undersigned was appointed as Arbitrator to hear and decide the matter in dispute.

At the commencement of the Hearing, it was stipulated by the parties that this matter was properly before the Arbitrator for decision and that all steps of the arbitration procedure had been followed and that the Arbitrator had the authority to render the decision in this matter. After the Hearing, it was agreed that the parties would submit Post-Hearing briefs to the Arbitrator by placing such briefs in the mails not later than thirty days after receipt of the Transcript of the Hearing. The Transcript, prepared by Diversified Reporting Services, Inc., Washington, D.C., was received by the Arbitrator on August 4, 1988. The Post-Hearing Brief filed by the United States Postal Service (hereinafter referred to as "Employer") was received by the Arbitrator on October 18, 1988. The Post-Hearing Brief filed by the National Association of Letter Carriers, AFL-CIO (hereinafter referred to as "Union") was received by the Arbitrator on October 24, 1988.

SUMMARY STATEMENT OF THE CASE

Dinah S. Miller (hereinafter sometimes referred to as "Grievant") is a part-time flexible carrier at the Foster Place Station of the Post Office in Houston, Texas. On October 12, 1983, a grievance was filed protesting the failure of the Employer to compensate her for that date and after a Step 1 meeting, the grievance was denied by Supervisor Ronald E. Smith. Pursuant to Article 15 of the National Agreement, the grievance was appealed to Step 2 of the grievance procedure alleging a violation of, but not limited to, Articles 8, 10, 15, and 19 of the National Agreement, and stating in relevant part as follows (Joint Exhibit No. 2):

> *Carrier Miller is aggrieved because she was officially scheduled to report for duty on 10-12-83 and was arbitrarily called at home by Supv. C. Wren (at 7:00 A.M.) and told not to report for duty. This was done in spite of the fact that management told her that 10-10-83 (Columbus Day) would be her N/S day and there was available work for her.*

Corrective Action Requested: That Carrier Miller be paid four (4) hours at the applicable rate for day (date) 10-12-83.

On November 3, 1983, a Step 2 meeting was held, and on that date, Labor Relations Representative D. Heath denied the grievance, stating in relevant part as follows (Joint Exhibit No. 2):

* * *

I find no violation of the N.A. In accordance with Article 7 Sec. 1(A)2, PTF employees shall be assigned to regular schedules of less than (40) hrs. in a service week, or shall be available to work flexible hours as assigned by the Employer during the course of a service week. Additionally, it should be pointed out that during the service week 10/8-14/83, both the grievant and PTF Driver were scheduled to work 4 days.

On November 17, 1983, the Union appealed the grievance to Step 3 of the grievance procedure. On December 16, 1983, in a letter to National Business Agent Joseph Z. Romero, the grievance was denied by Labor Relations Representative John A. Hyatt, who stated in relevant part as follows (Joint Exhibit No. 2):

* * *

Based on information presented and contained in the grievance file, the grievance is denied. There is no contractual requirement to schedule PTF's 5 days a week.

On April 7, 1984, the grievance was referred to Step 4 of the grievance procedure. On May 1, 1987, in a letter to Assistant Secretary-Treasurer Halline Overby, the grievance was denied by James W. Bledsoe, who stated in relevant part as follows:

* * *

The Postal Service has long taken the position that part-time flexible employees in an office of this size are to be scheduled to work a minimum of four (4) hours each pay period. Thus, they may be scheduled to work less than five (5) days per week, and in accordance with Article 8, Section 3, they may be scheduled to work less than forty (40) hours per normal workweek. In a case such as the one at hand where the PTF employee was notified prior to reporting for work that a previously scheduled workday was canceled, it is the Postal Service's position that no guarantee applies. Accordingly, the grievance is denied.

By letter dated April 3, 1987, the Union authorized and requested arbitration of the grievance.

Provisions of the National Agreement effective July 21, 1981, to remain in full force and effect to and including 12 midnight July 20, 1984, (hereinafter referred to as

"National Agreement") (Joint Exhibit No. 1) considered pertinent to this dispute by the parties are as follows:

ARTICLE 3

MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary actions against such employees;

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted;

E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

ARTICLE 7

EMPLOYEE CLASSIFICATIONS

Section 1. Definition and Use

A. Regular Work Force. The regular work force shall be comprised of two categories of employees which are as follows:

1. Full-Time. Employees in this category shall be hired pursuant to such procedures as the Employer may establish and shall be assigned to regular schedules consisting of five (5) eight (8) hour days in a service week.

2. Part-Time. Employees in this category shall be hired pursuant to such procedures as the Employer may establish and shall be assigned to

regular schedules of less than forty (40) hours in a service week, or shall be available to work flexible hours as assigned by the Employer during the course of a service week.

ARTICLE 8

HOURS OF WORK

Section 8. Guarantees

A. An employee called in outside the employee's regular work schedule shall be guaranteed a minimum of four (4) consecutive hours of work or pay in lieu thereof where less than four (4) hours of work is available. Such guaranteed minimum shall not apply to an employee called in who continues working on into the employee's regularly scheduled shift.

B. When a full-time regular employee is called in on the employee's non-scheduled day, the employee will be guaranteed eight hours work or pay in lieu thereof.

C. The Employer will guarantee all employees at least four (4) hours work or pay on any day they are requested or scheduled to work in a post office or facility with 200 or more man years of employment per year. All employees at all other post offices and facilities will be guaranteed two (2) hours work or pay when requested or scheduled to work.

ARTICLE 15

GRIEVANCE-ARBITRATION PROCEDURE

Section 4. Arbitration

* * *

A. General Provisions

* * *

(6) All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. . . .

* * *

ARTICLE 19

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 sixty (60) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe 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 sixty (60) 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 the Unions upon issuance.

POSITION OF THE PARTIES

The Position of the Union

It is the position of the Union that the Grievant was entitled to be paid the four hour guarantee for October 12, 1983, since she had been scheduled to work that day, even though management decided at the last minute that it did not need her services.

The Position of the Employer

The Employer takes the position that the Grievant had no contractual entitlement to the claimed four hours of pay for not working.

OPINION

Here, the parties have requested that the Arbitrator determine whether, under the provisions of Article 8, Section 8, Paragraph C of the National Agreement (hereinafter sometimes referred to as "Article 8.8C" or "Section 8C"), the Employer is required to pay a part-time flexible employee under circumstances in which the employee was initially scheduled to work and then told not to report. Initially, it is noted by the Arbitrator that the provisions of Article 8, Section 8, Paragraph C of the 1981 National

Agreement here in question first appeared in the 1971 National Agreement and, at that time, the provision was the second of two paragraphs of Article 8. It is further noted that although the language of Article 8.8C specifies either a four-hour or two-hour guarantee, depending upon the size of the post office or facility, for the purposes of this Opinion, reference to a four-hour guarantee herein will suffice.

In this matter, the Union seeks to demonstrate that the plain language of the National Agreement expressly requires management to guarantee an employee at least four hours work or pay on any day they are requested or scheduled to work, as provided under the terms of Article 8, Section 8C. To trigger this guarantee, the Union urges, an employee is not required to begin working, or even to report for work. The language is not ambiguous, according to the Union, and a literal application of Section 8C to the facts of this case resolves it in the Union's favor. Further, the Union argues that it would be preposterous to suggest that an employee's pay entitlement is somehow nullified within the clear meaning of Section 8C if management calls and tells the employee not to report for work. The Union contends that to adopt this reasoning would be to reduce the Section 8C reference to *requested or scheduled to work* to mean nothing more than *actually worked*. This interpretation, the Union asserts, is entirely inconsistent with the position taken by the parties over the years.

Notwithstanding the aforedescribed position of the Union to the contrary, the Arbitrator, for the reasons hereinafter given, cannot properly agree that the language of Article 8.8C is subject to the literal interpretation attributed thereto by the Union. For to find otherwise would, in the considered judgment of the Arbitrator, lead to results clearly not intended by the parties. By way of illustration, Article 8.8C states that the guarantee is for *all employees* without reservation. Thus, following the reasoning of the Union, a literal interpretation of the language in question would require that the Employer compensate every postal worker--whether regular, flexible, or casual, and whether full-time or part-time--for four hours any time that employee is requested or scheduled to work. If so viewed, all scheduled employees would be able to remain away from their duty station for any reason and demand the guarantee. And while many of those employees would unquestionably run afoul of other provisions of the National Agreement and postal regulations and thereby incur disciplinary action or other financial disincentives, to allow *all employees* to claim such a guarantee would not, it seems to the Arbitrator, promote the objective sought by the parties in drafting this provision.

It is indicated by the record submitted that the parties recognized early in the history of Article 8 that the language therein did not precisely express their intentions. In November 1971, shortly after ratification of the National Agreement, the parties entered into an agreement in which they specified that ". . . . the first full paragraph of article VIII, section 8, shall be interpreted by the parties to provide that a part-time flexible employee who has completed his work assignment, clocked out and left the premises and who is subsequently called in to work on that same service day shall be entitled to the call-in guarantee provisions provided for by the first full paragraph of article VIII, section 8, commencing November 13, 1971." Thus, despite the

clear statement in Article 8, Section 8A that it applied only to those with "regular schedules," the parties subsequently determined that it would also apply to those without regular schedules, and specifically, part-time flexibles. The same agreement specified that it ". . . . in no way alters or affects the meaning or application of the provisions of the second full paragraph of said article . . . ."

The language problem was touched upon, though not specifically addressed, in the award of arbitrator Sylvester Garrett in Case No. N-E-123 (December 1, 1972), the first national award dealing with Article 8, Section 8. After thoroughly examining Article 8, arbitrator Garrett concluded that ". . . . practically speaking, ... the second paragraph of Section 8 relates only to part-time employees with flexible schedules . . . ." In responding to the Employer's reliance on the Garrett award, the Union argues that the plain meaning of Article 8, Section 8C, together with the Garrett opinion and the very nature of the PTF work force clearly mandate that PTF employees are not *call-in* employees. With this view, the Arbitrator has no disagreement, and indeed, the Employer has stated on numerous occasions that PTFs are not required to wait at home for the Employer to call and request their services. At the same time, having concluded that PTFs are not to be treated as call-in employees, it seems clear from the foregoing analysis that the language of Article 8, Section 8C cannot be read as literally as the Union requests.

As it would appear from the foregoing that a history of disagreement exists over the meaning of the language of Section 8C, it is therefore necessary that the entire Section be examined. Article 8 is entitled "Hours of Work" and Section 8 is entitled "Guarantees." Section 8A addresses the guarantee available to regular employees who are called in outside their regular work schedule. Section 8B covers the guarantee for a full-time regular employee who is called in on a nonscheduled day. While the parties to the National Agreement did not define the term *guarantee* therein, an explanation of the term may be found in the Employee & Labor Relations Manual. At Part 432.61, it is stated that "Guaranteed time is paid time, not worked under the guarantee provisions of collective bargaining agreements for periods when an employee has been released by the supervisor and has clocked out prior to the end of a guaranteed period." It is clear from this language that the use of the term *guarantee* implies that an employee who is working will be paid for the specified minimum time period even though the employee is told to clock out before having worked an amount of time equal to the specified minimum. Seemingly, when the parties drafted Section 8C, their intent was to avoid the harsh consequences of having an employee who reported for work suffer the inconvenience of being told upon arrival that his services were not required. Indeed, there is support for this view in the Garrett award wherein the arbitrator, in presenting the Union's arguments, states that the Union ". . . . urges that the second paragraph of Article VIII, Section 8 . . . . was intended by the negotiators to provide a guarantee only for employees other than those with regular schedules." Further, in referencing the testimony of Union President Rademacher, who was a principal negotiator on behalf of the Union in 1971, arbitrator Garrett states that ". . . . the Postal Service proposed the language which ultimately became the first paragraph of Article VIII, Section 8 (in response to a broad Union demand covering *all* employees which was submitted some months

earlier) . . . ." With this background, it is difficult to accept the notion that the parties intended, as the Union now urges, that PTFs receive a generous guarantee of four hours work or pay even under those circumstances, such as arose in the instant grievance, where they do not report for work.

Another award, cited by the Employer as supportive of its view, is discounted by the Union as being irrelevant to the present case. In Case No. H8C-5D-C-15429, dated October 25, 1982, arbitrator Gamser was called upon to address the question of whether certain employees were entitled to be paid as if they had worked on a given day. In that case, arbitrator Gamser was concerned with the provisions of Article 11 of the National Agreement; nevertheless, his comments are instructive, since he dealt with the situation faced by employees who were scheduled and then unscheduled and who believed that they "were guaranteed those holiday hours and they should be paid as if they had worked the holiday." While arbitrator Gamser based his conclusion that the grievance be denied upon the language in Article 11, he makes an observation that is relevant to the matter at hand. Specifically, he pointed out that:

> *It is axiomatic that if guarantees or vested rights are to be created by the application of the provisions of an agreement, it is incumbent upon the beneficiary of such rights or guarantees to see to it that these are clearly spelled out in the agreement and not to be discerned by inference or innuendo. For this reason, merit must be found in the argument of the Employer that specific provisions were written into the F-21 Time and Attendance Handbook and to the E&LR Manual . . . . which clearly define when payment is to be made for time not worked as well as when guarantees and penalties are imposed for time worked which was not properly scheduled.*

The Arbitrator is in agreement with this view. For, as discussed herein, Article 8, Section 8C of the National Agreement, like the provision addressed by arbitrator Gamser involving a situation similar to that now before this Arbitrator, lacks the "clearly spelled out" language that would support the Union's argument that PTFs are entitled to a guarantee whether or not they report for work.

In further support of its position in this matter, the Union references Case No. H1N-5F-C-30285, dated August 6, 1986 (Union Exhibit No. 25A), in which arbitrator Mittenthal reviewed the provisions of Part 519 of the Employee and Labor Relations Manual. According to the Union, arbitrator Mittenthal's definition of the word "scheduled" emphasizes the correctness of the Union's position herein. Specifically, arbitrator Mittenthal stated that:

> *There is no indication that the word "scheduled" was used here as a term of art. Hence, it should be given its customary workplace meaning. Someone is "scheduled" on a certain day if he has earlier been directed to report that day.*

The Union contends that the Grievant obviously met this definition and, therefore, following arbitrator Mittenthal's definition, the Grievant was entitled to the Section 8C guarantee, since she had been "scheduled" to report for work.

It seems to the Arbitrator, however, that the Union fails to read arbitrator Mittenthal's opinion in its entirety, for within the same paragraph quoted with approval by the Union, arbitrator Mittenthal states "And once 'scheduled' in this manner, he is obligated to work." Thus, it appears that arbitrator Mittenthal, although addressing a provision of the Employee and Labor Relations Manual, recognized that it was inherent in the obligation of an employee seeking compensation that the employee report for duty as scheduled. The provision that arbitrator Mittenthal dealt with concerned the limited exception specified in Part 519 of the Employee and Labor Relations Manual that permits an employee to be compensated when he is prevented from reporting due to an Act of God. According to the record presented, that exception has been recognized by the Employer in this matter as an instance when a PTF would be entitled to a pay guarantee. It is also noted by the Arbitrator that the Employer additionally acknowledged that a PTF is entitled to a guarantee during a pay period in which the PTF is otherwise available to work but management elects not to use any PTFs. Thus, in the considered judgment of the Arbitrator, the Union's reliance on arbitrator Mittenthal's award fails to materially advance its position in this matter.

The Union further argues that the Employer's position herein is an attempt to transform the PTF work force into a "disadvantaged class" of standby, casual employees, in direct violation of the National Agreement and a series of prior agreements with the Union. According to the Union, if management's position were accepted, the Employer could schedule all of its PTFs to work every day of the week, and each morning, management would have the authority to call those employees it did not need and advise them not to report for work. The Union argues that, while these employees would be subject to discipline if they were not prepared to report for work as scheduled, under management's reasoning, the Employer would not be subject to any financial consequence for "unscheduling" employees, and the employees would receive no compensation for having made themselves available unless and until they actually worked.

This argument by the Union, in the view of the Arbitrator, overlooks both specific provisions of the National Agreement as well as at least one prior settlement agreement between the parties. Article 7 defines the various employee classifications and, in Section 1, makes a clear distinction between PTFs and the supplemental work force, which is comprised of casual employees. In Section 1, Paragraph 2, PTFs ". . . . shall be assigned to regular schedules of less than forty (40) hours in a service week, or shall be available to work flexible hours as assigned . . . ." In Article 8, Section 3, it is stated that "Part-time employees will be scheduled in accordance with the above rules, except that they may be scheduled for less than eight (8) hours per service day and less than forty (40) hours per normal work week." Thus, the cited sections indicate that the parties intended that PTFs be scheduled workers, although their schedule would not necessarily follow that of regular employees. In addition to the foregoing references within the National Agreement, the parties have entered into settlements with respect to the scheduling of PTFs. By way of example, a settlement dated September 30, 1982 (Union Exhibit No. 2) specifies that "Part-time flexible carriers cannot be required to 'stand-by' or remain at home, under threat of discipline, for a call-in on a nonscheduled day." Accordingly, the Union fear that PTFs might be required to sit at

home waiting for a call under a threat of discipline has no practical basis, since any attempt by management to enforce such a requirement upon PTFs would clearly violate the parties' settlement agreement.

In light of the above findings, the Arbitrator is required to conclude that the Union has not met its burden of showing by a preponderance of the evidence that the Employer violated Article 8, Section 8, Paragraph C of the 1981 National Agreement when a part-time flexible employee was scheduled to report for work, was called at home prior to leaving for work and informed that the employee's services were not needed that day, and who subsequently was not paid for four (4) hours.