C#09761

REGULAR ARBITRATION

In the Matter of the Arbitration between **UNITED STATES POSTAL SERVICE** and **NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO**	**GRIEVANT:** G. Francis **POST OFFICE:** Houston, TX **CASE NO:** S7N-3V-C 18003 GTS: 10421

BEFORE: Dr. J. D. Dunn, Arbitrator

APPEARANCES:

For the U. S. Postal Service: Ralph Harrison

For the Union: Golden Fagan

PLACE OF HEARING: MPO Annex, Houston, TX

DATE OF HEARING: 02-15-90

AWARD

The Postal Service violated Item 21-10 of the Local Memorandum of Understanding between the USPS and the NALC, Local 283, 1987-1990.

The Postal Service is directed to cease and desist its practice of assigning T-6 carriers to work other than their assignment as posted and awarded during installation-wide bidding, except as provided for in Item 21-10(a).

Management is further directed to review proper procedures for T-6 assignments with all carrier supervisors as soon as possible. Management shall notify the Union as soon as this action has been completed.

DATE OF AWARD: February 20, 1990 J. D. Dunn

THE ISSUE

In an attempt to agree upon a phrasing of the issue, the advocates discussed their perceptions of the issue informally with the Arbitrator for some three hours. Being unable to agree, they granted the Arbitrator the authority to phrase and decide the issue.

The issue at hand is related to the matter of installation-wide bidding. Item 21-10 of the Local Memorandum of Understanding states, as follows:

> T-6 and utility carriers shall work their assignment as posted and awarded during installation-wide bidding . . .

The Union contends that the Postal Service Management has adopted a cavalier attitude in regard to whether or not a mandate of Item 21-10 is honored when making T-6 carrier assignments. In this regard, the Union refers to a settlement dated October 27, 1989, documented by Arbitrator J. Earl Williams in CASE NO. S7N-3V-C 12274, GTS No. 9817. The SETTLEMENT there contained the following statement which is related to the issue at hand:

> Management stipulates that it will comply with the Local and National Agreements in daily assignments of T-6 carriers . . .

It is the Union's contention that the grievance at hand is still but another example of Management's disregard of the Item 21-10 mandate.

In compliance with the wishes of the parties, the Arbitrator phrases the issue, as follows:

> Did Management violate Item 21-10 of the Local Memorandum of Understanding when T-6 Mata was assigned to carry Route #7718 on 07-25-88?
>
> If so, what is the appropriate remedy?

THE FACTS OF THE GRIEVANCE

Mr. Mata, a T-6, was scheduled to carry Route #8201 on 07-25-88. This route (#8201) was the bid assignment of Grievant G. Francis (Note that she, not Mr. Mata, filed the grievance at Step 1). Mr. Mata did not grieve and why he didn't is of no relevance in this arbitration.

A grievance was properly filed at Step 1, and at Step 2. The matter was not settled prior to arbitration, and, as stated above, the parties have given the Arbitrator the authority to phrase the issue and decide it on its merits.

BACKGROUND

On 07-25-88, Management switched T-6 Mata from his scheduled route (#8201) and assigned him to carry Route #7718. Mr. Mata carried Route #7718 on 07-25-88. Who carried the route Mr. Mata was scheduled to carry (i.e., Route #8201)? It was carried by Mr. T. Johnson who was a Reserve Letter Carrier.

Route #8201 was the bid assignment, as was stated above, of Grievant G. Francis. Regular Carrier G. Francis did not work on 07-25-88. It was her non-scheduled day off. She grieved, nonetheless, that she should have been called in to work overtime. She was on the Overtime Desired List, and the FT City Carrier Overtime Record for July, 1988 shows that twelve hours of overtime were worked that day at her station. Two hours each of overtime were awarded to six carriers. (See Joint Exhibit #2, p.11).

DISCUSSION

The language of Item 21-10 is clear. As discussed above, it states specifically that, "T-6 . . . carriers shall work their assignment as posted and awarded during installation-wide bidding . . ." The Postal Service violated this clause of the Local Memorandum of Understanding. Item 21-10 uses the language shall. This language is mandatory. The Agreement was violated when Carrier Mata was switched from his assigned route and assigned another route.

Local Station Management now says, "Even if we did violate this clause, there was no damage. Carrier Mata, the T-6, did not even grieve." This argument, however, misses the point. The parties to the Collective Bargaining Agreement are the Postal Service and the Union, not the Postal Service and the Grievant. The Union has a legal obligation to represent all the employees in the bargaining unit. Additionally, there is always the danger that

a practice existing over an extended time may in some future date be held to be a binding past practice.

The Union is not representing its employees well when it sits idly by and takes no action to challenge a clear violation of the Agreement. In the matter at hand, the Union did grieve, and the parties agree the grievance was appropriately filed and processed.

The language of Item 21-10 contains an exception to the "shall work" sentence when it speaks of a "mutual trade." But this language does not in any manner give Management the right to unilaterally switch a T-6 from his/her assignment. Item 21-10(a) specifically states, "The sole purpose" of the "mutual trade" (i.e., one employee trading routes with another employee) must be to allow the regular carrier to work their own routes on their non-scheduled day.

OPINION

In the matter at hand, Management violated the Local Memorandum of Understanding. What then, is an appropriate remedy? Was the Grievant who was not called in to work eight hours of overtime damaged? She may have been, but the weight of the evidence does not show by a preponderance of the evidence that she was. Nor was it established that Management was obligated to award her any overtime.

Was Mr. Mata damaged? It may not have mattered to him which route he was assigned. The route he actually carried, although not

his assigned route that day was one of the five routes of his "brace of routes." He did not even file a grievance.

But was Reserve Letter Carrier T. Johnson damaged? Again, there is no evidence about his feelings, but he did not file the grievance. He was an RLC. He could have been assigned the route Mr. Mata carried. If this had been done, there would not have been a violation.

In effect, Management is saying there was no "harmful error"; therefore, no monetary remedy can be assessed. The Union says a monetary damage award is needed, because Postal Service Management will continue to violate the agreement if nothing other than a "slap on the wrist" is assessed. In this regard, the Union points to the agreement documented by Arbitrator J. Earl Williams.

While it is true that arbitrators are reluctant to assess monetary damages, the other side of the coin is that such awards have been issued and upheld. In regard to the authority of an arbitrator to fashion an appropriate remedy, the teachings of the United States Supreme Court are instructive:

> When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency. Nevertheless, an arbitrator is

> confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. . . . Steelworkers v. Enterprise Corp., 363 U.S. 593, 597.

It is my judgment that Management violated the Agreement (i.e., the Local Memorandum of Understanding). It is significant that the parties granted the Arbitrator the authority to define and decide the issue. The Arbitrator has done this, and he has followed the teachings of the United States Supreme Court in fashioning an appropriate remedy. It is set forth in the above award.