

AUG 3 1990
A. P. W. U.

REGULAR ARBITRATION PANEL

C# 10691

In the Matter of the Arbitration
between
UNITED STATES POSTAL SERVICE
and
AMERICAN POSTAL WORKERS
UNION, AFL-CIO

GRIEVANT: LOCAL
POST OFFICE: SANTA FE, NM
CASE NO: W7C-5S-C 3534

BEFORE: Gary L. Axon, ARBITRATOR

APPEARANCES:

For the U. S. Postal Service:

Ronald W. Marshall
Labor Relations Representative
United States Postal Service
1135 Broadway N.E.
Albuquerque, New Mexico 87101-9994

For the Union:

Leon E. Garcia, PhD.
American Postal Workers Union
P. O. Box 26441
Albuquerque, New Mexico 87125

Place of Hearing:

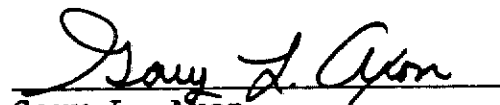
Santa Fe, New Mexico

Date of Hearing:

June 26, 1990

AWARD: Management acted in conformance with the National Agreement and Section 438 of the ELM when it refused to pay for the travel time at issue. The grievance is denied.

Date of Award: July 31, 1990



Gary L. Axon
Arbitrator

I. STATEMENT OF ISSUE

The parties stipulated to a statement of the issue which
read:

"Did the Postal Service violate the National Agreement when it refused to pay travel time for employees whose actual office of employment was other than Santa Fe? If so what is the proper remedy?"

II. RELEVANT CONTRACTUAL PROVISIONS

"ARTICLE 8

HOURS OF WORK

. . .

Section 2. Work Schedules

. . .

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.

. . ."

Employee & Labor Relations Manual

. . .

"438.111 Travel Time is time spent by an employee moving from one location to another during which no productive work is performed and excluding the normal meal time if it occurs during the period of travel.

438.112 Local Commuting Area is the suburban area immediately surrounding the employee's official duty station and within a radius of 50 miles.

. . .

438.131 General. The determination of whether travel time is compensable or not depends upon (1) the kind of travel involved, (2) when the travel takes place, and (3) the eligibility of the employee (see exhibit 438.13). The three situations that may involve compensable travel time are described below

438.132 Travel from Job Site to Job Site. The following applies:

a. Rule. Time spent at any time during a service day by an eligible employee in travel from one job site to another without a break in duty status within a local commuting area is compensable. (See 438.123 which makes the travel time noncompensable as commuting time when there is a break in duty status between the work performed in different locations.)

b. Eligibility. This type of travel time is compensable for all employees during their established hours of service on a scheduled workday. At all other times, this type of travel time is compensable only for employees who are entitled to receive overtime pay.

. . ."

III. STATEMENT OF FACTS

This case involves the use of "loaners" at the Santa Fe, New Mexico Post Office. Loaners are employees who work less than full-time at smaller postal facilities in the Santa Fe area and also work at the Santa Fe Post Office. Specifically, the communities of Pecos, Glorieta and Tisique which are 25 miles, 18 miles and 10 miles respectively away from the Santa Fe Post Office are at issue in the present case. (Jt. Ex. 4). Loaners are offered the opportunity to work additional hours at Santa Fe in order to give them more hours to fill out their workday. For

example, Martha Sena would work a few hours in Pecos and then go to Santa Fe to work additional hours. Sena testified she worked in Santa Fe because she was not getting enough hours at her base facility in Pecos. Sena was a part-time flexible assigned to the Pecos facility.

The work a loaner performs in the Santa Fe Post Office is strictly voluntary. Employees are not required to go from their home facility to work in Santa Fe to fill out their workday. The loaner system allows part-time workers at smaller offices to earn additional money. The Postal Service gains in that it has work which needs to be accomplished at the larger Santa Fe facility. By using loaners the need to recruit and train additional part-time workers is diminished. Loaners have never been paid for travel time between the home facility and the Santa Fe Post Office.

In a grievance appeal filed on January 7, 1988, the Union alleged travel time should be paid as follows:

"Loaners brought in from other cities and towns not being paid proper travel as required. They should be paid properly from two weeks back from Jan 5 and in future proper pay will be work hours from time they leave house till they get back plus proper mileage."
(Jt. Ex. 2, p 6)

David Naranjo, Postmaster (OIC) responded by letter dated January 14, 1988, which stated in relevant part:

". . .

After careful review of all pertinent facts and arguments in this case, it is my decision that no violation of the National Agreement

has occurred. I have had several discussions with the above mentioned employee(s) regarding their status in this office. They fully understand that the Santa Fe Post Office is providing supplemental hours to assist them due to the fact that their official duty stations can not provide them with enough workhours in most pay periods. They are fully aware that their assignments in Santa Fe are purely voluntary and they do not have to participate in the operation of this office if that is their desire.

Therefore this grievance is denied."
(Jt. Ex. 2, p 5)

The Union moved the case through the grievance procedure and ultimately to arbitration. A hearing was held at which time both parties were given full opportunity to present evidence and argument in support of their respective positions. The issue is now properly before the Arbitrator for decision.

IV. POSITION OF PARTIES

A. The Union

It is the position of Union that the ELM, Section 438.112 requires that employees who work at a home base other than Santa Fe must be paid for travel time when they travel from their home facility to Santa Fe to work. According to Union, Section 438.112 establishes a two part test for a local commuting area for which travel time need not be paid.

First, the local commuting area is a suburban area "immediately" surrounding the employee's official duty station. Citing to Webster's dictionary, Union argues a suburban area is an outlying part of a city adjacent to the city. The three cities in

neither adjacent to Santa Fe or a suburban of Santa Fe.

While the second test of a local commuting area of being within a radius of 50 miles is satisfied, Section 438.112 requires both tests be satisfied in order to excuse the employer from paying travel time from job site to job site.

Therefore, Union submits employees are entitled to travel time when traveling from their home facility to Santa Fe to perform work during the remainder of the workday.

B. The U.S. Postal Service

Management argues that loaners are volunteers seeking extra work to earn additional money. They are not required to take on additional work in Santa Fe after their work is completed at the home facility. In other words, loaners are asking for extra hours which the Postal Service makes available on a voluntary basis at another facility. Thus, no contractual right or provision of the ELM has been violated.

Management next argues the use of loaners is widespread. Travel time has never been paid. Employee Sena testified she did not expect to be paid travel time. Employees are not disadvantaged by working as a loaner because they are able to earn additional compensation over what they could normally earn at the base facility.

Based on the above reasons, the Arbitrator should deny the grievance.

V. DISCUSSION AND FINDINGS

The Arbitrator finds Union failed to prove by a preponderance of the evidence Management violated either the National Agreement or Section 438 of the ELM. The reasoning of the Arbitrator is set forth in the discussion which follows.

Two critical facts are present in this case which control the application of the appropriate regulations. First, Grievants were employed at base stations where there was not enough work to provide a full day of pay. In other words they were part-time employees. Second, Grievants went to the Santa Fe Post Office on a voluntary basis to earn additional money. Grievants were not directed or assigned by Management to report to Santa Fe after they had completed work at the base station.

The relevant portion of Section 438.132(a) of the ELM refers to "travel from one job site to another without a break in duty status" as compensable. In the instant case Grievants' duty status terminated when they completed work at the base station. Duty status would resume when they reported to Santa Fe to start up a new and separate job apart from the one completed at the home facility.

Grievants in the instant case could go home after finishing work at the base station. They were under no obligation to report to Santa Fe to work. Grievants in effect elected to take a "second job" at Santa Fe in order to earn additional money. Hence, it is the finding of the Arbitrator there was a break in duty status which places these Grievants outside compensable time

provisions of Section 438.132 requiring compensation for travel from job site to job site.

Moreover, Section 438.132(b) defines eligibility for travel pay as follows:

"b. Eligibility. This type of travel time is compensable for all employees during their established hours of service on a scheduled workday. At all other times, this type of travel time is compensable only for employees who are entitled to receive overtime pay."
(Emphasis added)

In order to be eligible for travel pay, the travel time must be "during their established hours." Grievants in the instant case were not traveling from job site to job site during established hours of service on a workday. Grievants established workday terminated pursuant to the schedule at the base facility. When Grievants traveled to the Santa Fe job site they were not traveling during their established hours of work. It would not be until they began work in Santa Fe did they go back on duty status. The employees were commuting to a job site to report for work. Under such circumstances the Arbitrator must conclude Grievants were not eligible for pay during travel from the base facility to Santa Fe because they were not in established hours of service when traveling to Santa Fe.

The Union cited case numbers S8C-3W-C-35032 and S8C-3W-C-35033 to bolster its interpretation of Section 438 of the ELM. The cited cases are factually distinguishable from the grievance before this Arbitrator. In the cited cases the arbitrator was dealing

with employees who were "assigned" to take training at a job site different from their base facility. Further, there was no break in duty status while the employees traveled to the training site. This is in sharp contrast to the case before this Arbitrator where all Grievants had a break in duty status and voluntarily chose to report to Santa Fe in order to earn additional money.

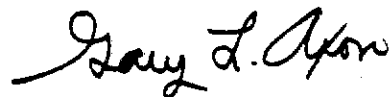
The Union also alleged Management violated Article 8, Section 2(c) by not paying travel time to these Grievants. Section 2(c) has no application to the present case. This provision deals with the scheduling of full-time regular employees during the normal work week. Grievants in this case were not shown to be full-time regular employees. Grievant Sena testified she was a part-time flexible during the period this grievance covers.

Accordingly, this grievance is denied and dismissed.

AWARD

Management acted in conformance with the National Agreement and Section 438 of the ELM when it refused to pay for the travel time at issue. The grievance is denied.

Respectfully submitted,



Gary L. Axon
Arbitrator

Dated: July 31, 1990