C# 11270

REGULAR ARBITRATION PANEL

WESTERN REGION

UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	GRIEVANT: ETHERINGTON POST OFFICE: MONTEREY PARK CASE NO: W7N-5P-C 26075

BEFORE: WILLIAM EATON, Arbitrator

APPEARANCES:

U. S. Postal Service: VIRGINIA MALONE
Labor Relations Rep.
U. S. Postal Service
Alhambra Management
Sectional Center
15421 Gale Avenue
City of Industry, CA 91715

Union: MANUEL L. PERALTA, Jr.
Regional Administrative Assistant
National Association of Letter Carriers, AFL-CIO
3636 Westminster Avenue #A
Santa Ana, CA 92703

Place of Hearing: Monterey Park, California

Date of Hearing: September 13 1991

AWARD: The Employer did not schedule holiday routes on July 3 1990 in violation of the National Agreement. The grievance is denied.

Date of Award: October 9 1991

WILLIAM EATON, Arbitrator

STATEMENT OF THE CASE

The issue to be determined in this arbitration is whether the Employer scheduled holiday routes on July 3 1990 in violation of the National Agreement, and if so what the remedy shall be. Hearing was held at the Monterey Park California Post Office on September 13 1991. At that time the Grievant was not present, and no witnesses were called to testify. The matter was presented upon stipulated facts and introduction of documentary evidence, and was submitted to the Arbitrator upon oral argument at the close of the hearing.

Holiday Schedule

The dispute arose during the week of June 30 1990, which included the July 4 holiday. The Grievant, a T-6 Carrier, was regularly assigned to a string of routes which included route No. 41. The regular Carrier on that route was Carrier Jaime Dillard.

July 3 would have been a regularly scheduled day in the Grievant's rotation but for the holiday. However, pursuant to the provisions of Article 11 of the National Agreement, July 3 was his designated holiday. Dillard was non-scheduled on July 3, his normal rotating day off, and July 4 was his holiday. Both Carriers volunteered to work on July 3. Dillard worked overtime for the entire tour, while the Grievant worked eight hours at straight pay and received holiday pay for July 4. Neither worked

on July 4, and it is stipulated that both were properly compensated.

Pursuant to the provisions of Article XI of the Local Memorandum of Understanding, the priorities for holiday scheduling, insofar as they are relevant to this dispute, were: Casuals, Part Time Flexibles, Volunteers whose designated holiday it is, and volunteers whose designated holiday it is not. Notice was properly posted on Tuesday of the preceding week for employees wishing to work their designated holiday, which notice both the Grievant and Dillard properly signed for the July 3 work, and both were scheduled in a timely manner for the routes which they worked.

The Grievant was assigned route 16, not one of his regular string of five routes, while Dillard was assigned route 41, which was one of the Grievant's regular routes, and was also Dillard's assigned route as a regular Carrier.

The Union contends that it is the assignment of the Grievant to route 16, which was not one of his regular string, which constitutes the violation at issue.

Contract Provisions

ARTICLE 41

LETTER CARRIER CRAFT

C. Successful Bidder

4. The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to

T/6 and utility assignments, unless the local agreement provides otherwise.

The Standard Position Description for Carrier Technician, PS-6, includes the following relevant provisions:

> BASIC FUNCTION. As principal carrier for a designated group of not less than 5 letter routes, delivers mail on foot or by vehicle on the routes in his group during the absence of the regularly assigned carrier, and provides job instruction to newly assigned carriers.
>
> DUTIES AND RESPONSIBILITIES
>
> (a) Serves any route in his group during absence of the regular carrier and performs complete and customary duties as described in KP-11.

ARGUMENTS

Union

The Union protests the decision as to where the Grievant was assigned to work. The straight time pay which he received was correct, and there is no dispute about that. The dispute is that he was moved off of his regular string of routes which he would have worked absent the holiday.

The Union contends that, despite the holiday, the Postal Service is still bound by the provisions of Article 41.1.C.4 of the National Agreement, and that these provisions require that the Grievant work his posted route 41. Instead, he was bumped to route 16, not one of his regular string of routes.

The Employer should incur a liability for this violation. Had Dillard been moved off his regular route 41, he would not have been an additional cost to the Employer.

Article 11 of the Local MOU sets forth the "pecking order" for holiday work. This not only sets a priority for who works, which is agreed, but also prescribes where they are to work. The Union has submitted Step 4 decisions and national policy directives from the Postal Service demonstrating that a T-6 is not to be moved outside regular bid assignment except for unforseen circumstances.

The Notice to Volunteers for work on July 3 was posted the previous Tuesday as required, indicating that the Employer had full knowledge of who wished to work, and where their normal work assignments would be at least seven days in advance. Hence, there were no "unanticipated circumstances," and thus no basis for an exception to the provisions of Article 41.1.C.4.

Given the violations shown, the Grievant should receive at least a 50% premium for the work required off his regular assignment.

Postal Service

The Postal Service has two obligations to fulfill on holidays, both of which were met on July 3 1990. The first obligation is to post work for a holiday in a timely manner, which it is agreed was done by Tuesday of the preceding week.

The second obligation is to adhere to the negotiated "pecking order" as set forth in the local MOU. That obligation was also fulfilled.

The issue raised by the Union is scheduling versus assignments. But there is nothing in the National Agreement to show an obligation regarding assignment for volunteer work on a holiday or a non-scheduled day. The only obligation set forth in the LMOU pecking order is in regard to work. There is no obligation in regard to assignment.

In regard to employees working on a non-scheduled day or holiday, there is no obligation in regard to assignment, only that the employee be scheduled according to applicable regulations, and paid properly. There is no dispute concerning pay in this case.

The Step 4 decisions and Postal Service directives cited by the Union deal only with the right of assignment on regularly scheduled days, but do not address the question of work on a holiday.

Assignment of holiday work is a negotiable item, and the local Union has chosen not to negotiate the assignment of a pecking order, but only the right as to when it is scheduled. Once the scheduling obligation has been met, the means and personnel by which to accomplish the necessary work are up to Management.

It is Management's position that route 41 did not have to be scheduled at all, either for the Grievant or for the regular Carrier, Dillard. The route could have been cased by a Regular Carrier on duty, could have been carried on overtime, or could have been handled otherwise. Neither the Grievant nor

Dillard was entitled to work that route on a non-scheduled day in one case, or a designated holiday in the other.

In particular the provisions of Article 41.1.C.4 of the National Agreement relate to the rights of a successful bidder working a duty assignment on a regular basis. That is not the case here. The job description for the T-6 indicates that the Carrier there is entitled to work in the absence of a Regular Carrier. The Regular Carrier was not absent on the day in question.

In any event, an additional premium is not called for. Dillard received time and one-half for his work, and the Grievant was entitled only to regular time as a holiday volunteer which he was paid. Even if he had been assigned to route 41 he would have received no additional compensation, hence he has suffered no monetary harm and has no right to claim monetary compensation. Such compensation would be punitive in these circumstances.

The Postal Service maintains that the Union has shown no violation of the National Agreement or the Local Memorandum of Understanding, and that the grievance should be denied.

ANALYSIS

Article 41.1.C.4 of the National Agreement speaks to a "duty assignment as posted," for either a successful regular bidder or a T-6, "unless the local agreement provides otherwise," or in the case of "unanticipated circumstances."

Article 11 of the Local Memorandum of Understanding, providing for the holiday "pecking order," states that, "The following priorities will be used in scheduling for the Holidays or designated as Holidays for pay purposes," listing the order set forth above. There is nothing in the Article indicating what work assignments are to be made to those so scheduled.

The Union is correct in contending that there are no "unanticipated circumstances" involved in this dispute, in that the holiday volunteer schedule was properly posted, properly signed, and the work properly scheduled. The flaw in the argument is that neither the LMOU nor the National Agreement makes any provision for the assignment of Carriers volunteering for work on a nonscheduled day or a holiday. Under the Union's interpretation, both Dillard and the Grievant would have been assigned to the same route, route 41. The standard position description indicates that the T-6 is to carry one of his regular string of routes "during the absence of the regularly assigned carrier." Carrier Dillard was not absent on July 3 1990.

The Union has presented several Step 4 decisions, none of which appear to be directly relevant to the present dispute when carefully analyzed. Case NC-S-4362/N5-W-8220 was decided on January 17 1977. There it was agreed that the T-6 Carrier will not be moved off his string solely because he is "better qualified to carry another route." On June 9 1977, in Case No. NC-C-6334 5KC-470, dealt with a situation in which a T-6 Carrier's route assignment was temporarily changed because of a

vacancy on another route, it being held that this did not constitute an unusual circumstance within the meaning of Article 41. However, the decision also stated that it was not to be interpreted to imply that a T-6 Carrier "cannot be temporarily scheduled from one route to another within his string when a carrier is called in on his off day to carry his normal route, and the T-6 is moved to another route to cover an absence." This case apparently involved a T-6 who was working a normally scheduled work day, not one who was working voluntarily on a holiday or scheduled day off.

Similarly, in Case No. NC-S-12143/N5ET-19734, decided October 31, 1978, it was held that a T-6 Carrier's function is "to serve any route on his group during the absence of the regular carrier," and that as such the T-6 can be assigned "to other than a prescribed sequence, but to a route within his string when the regular carrier for that route is absent . . ." Again, this would appear to deal with a situation in which a T-6 was working a regularly scheduled day.

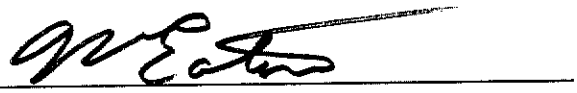
In Case No. H1N-4A-C 28381, decided June 4 1985, the parties agreed that the T-6 should not formally be moved off his regularly scheduled route "unless absolutely necessary and all other alternatives have been considered including the use of overtime and/or auxiliary assistance." Again, this appears to deal with a situation in which the T-6 was working a regularly scheduled day.

Finally, the Union cites a Step 4 decision of April 23 1987, including Case No. H4N-5R-C 30785 and other cases contending that a T-6 had been improperly assigned to case mail on several routes on a given day. It was once again held that the T-6 "should not normally be moved off the scheduled route unless absolutely necessary and all other alternatives have been considered including the use of overtime and/or auxiliary assistance." As in the previous cases, this appears to have involved a T-6 working a regularly scheduled day.

The Union has failed to cite any provision of the National Agreement, the Local Memorandum, or the cited Step 4 decisions which deals specifically with the holiday and non-scheduled day situation presented in this dispute. It is axiomatic that the moving party in a contract dispute has the burden of proving a violation. None having been proved, the grievance must be denied.

DECISION

The Employer did not schedule holiday routes on July 3 1990 in violation of the National Agreement. The grievance is denied.



WILLIAM EATON, Arbitrator

October 9 1991