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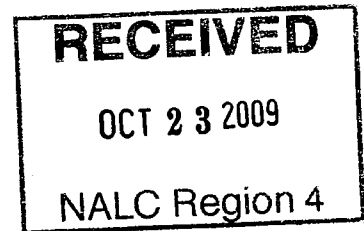
REGULAR ARBITRATION PANEL

CORRECTED COVER PAGE

In the Matter of Arbitration ()
 between ()
 UNITED STATES POSTAL SERVICE ()
 and ()
 NATIONAL ASSOCIATION OF ()
 LETTER CARRIERS ()

Grievant: Class Action
 Post Office: South Mountain, Phoenix, AZ
 USPS Case No: E06N-4E-C 09257643
 NALC Case No: SM0912

BEFORE: Jonathan S. Monat, Ph.D., Arbitrator
 For the U.S. Postal Service: Tina Aldana
 For the Union: Lyn Liberty
 Place of Hearing: South Mountain Post Office, Phoenix, AZ
 Date of Hearing: September 15, 2009
 Date of Award: October 15, 2009
 Relevant Contract Provision: Article 11
 Contract Year: 2006-2010
 Type of Grievance: Contract



Award Summary:

Management violated the National Agreement when they assigned Transitional Employees from South Mountain Station to another unit within the Phoenix installation and then forced non-volunteers at South Mountain to work during the holiday schedule, May 23, 2009. Each of the four grievants shall be granted eight (8) hours of administrative leave at his discretion, subject to the condition that Management must be given thirty days advance notice in order to plan for each absence. Furthermore, only one grievant at a time may take the administrative leave and only one per week.

Jonathan S. Monat, Ph.D.
 Arbitrator

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STIPULATIONS

The parties stipulated that the matter was properly before the Arbitrator for a final and binding decision under the terms of the National Agreement (NA)(J1). Admitted to the record were the Moving Papers (J2(1-142), the LMOU and the JCAM, Article 11. The Union submitted two and the Agency five arbitration decisions. The parties agreed that the facts were not in dispute. Villa, Drozdowski, Camargo and Guzman are the four employees affected. All evidence and testimony were admitted under oath duly administered by the Arbitrator at the time of witness testimony. Oral briefs were offered by the parties and the hearing closed upon the completion of oral arguments.

ISSUES

The issue before the Arbitrator is that phrased in the Step B Decision (J2:1):

“Did Management violate the National Agreement when they assigned Transitional Employees from South Mountain Station to another unit within the Phoenix installation and then forced non-volunteers at South Mountain to work during the holiday schedule? If so, what is the appropriate remedy?”

PERTINENT CONTRACT PROVISIONS

ARTICLE 11 - HOLIDAYS

Section 6. Holiday Schedule

- A. The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Tuesday preceding the service week in which the holiday falls.
- B. As many full-time and part-time regular schedule employees as can be spared will be excused from duty on a holiday or day designated as their holiday. Such employees will not be required to work on a holiday or day designated as their holiday unless all casuals and part-time flexibles are utilized to the maximum extent possible, even if the payment of overtime is required, and unless all full-time and part-time regulars with the needed skills who wish to work on the holiday have been afforded an opportunity to do so.
- C. An employee scheduled to work on a holiday who does not work shall not receive holiday pay, unless such absence is based on an extreme emergency situation and is excused by the Employer.
- D. Qualified transitional employees will be scheduled for work on a holiday or designated holiday after all full-time volunteers are scheduled to work on their holiday or designated holiday. They will be scheduled, to the extent possible, prior to any full-time volunteers or non-volunteers being scheduled to work a non-scheduled day or any full-time non-volunteers being required to work their holiday or designate holiday. If the parties have locally negotiated a pecking order that would schedule full-time volunteers on a non-scheduled day, the Local Memorandum of Understanding will apply.

LOCAL MEMORANDUM OF UNDERSTANDING

ITEM 13

THE METHOD OF SELECTING EMPLOYEES TO WORK A HOLIDAY

The method of selecting employees to work on a holiday shall be as follows to comply with Article 11, Section 6, of the National Agreement.

- A. Casuals
- B. Part-time flexibles
- C. Volunteers to work from those carriers entitled holiday or designated holiday by seniority.
- D. Volunteers whose scheduled day off would call for overtime pay by seniority.
- E. Transitional Employees.
- F. If there still exists a need to perform essential services and additional employees are needed, this shall be done in the following manner:
 - 1. Full-time regulars who do not volunteer on what would otherwise be their non-scheduled day by inverse seniority.
 - 2. All other non-volunteer full-time regulars by inverse seniority.
- G. Employees on approved annual leave in conjunction with a holiday will be required to work only in an unforeseen and nonrecurring emergency.

ITEM 18

THE IDENTIFICATION OF ASSIGNMENTS COMPROMISING A SECTION, WHEN
IT IS PROPOSED TO REASSIGN WITHIN AN INSTALLATION EMPLOYEES
EXCESS TO THE NEEDS OF A SECTION

- A. Each carrier station in the city of Phoenix, Arizona, shall comprise a section.
- B. The General Mail Facility will be a section.

BACKGROUND

Four transitional employees with the South Mountain Post Office - pay location 040 - were assigned to work at two other offices in the city of Phoenix on Memorial Day, 2009. This required that four Full-Time Regular employees were forced to work on their designated holiday at South Mountain. TE carriers were assigned to other offices following the May 23rd holiday. The Union did not grieve the

latter assignments. The Union initiated Informal Step A on June 12, 2009, but the parties were unable to resolve the dispute through Step B. The Step B Team issued its decision on July 29, 2009. Its decision was to impasse the dispute. The Union elevated the dispute to arbitration. A hearing was held at the South Mountain Post Office on September 15, 2009.

POSITION OF THE NALC

On May 23, 2009, four Temporary Employee City Letter Carriers (CLC) whose duty station was South Mountain were assigned to Cactus Station for the day. Drozdowski, Camargo, Guzman and Villa were required to work on their SDO in violation of Article 11.6 of the NA. The JCAM states: "The intent of Article 11.6 is to permit the maximum number of full-time regular, full-time flexible and part-time regular employees to be off on the holiday should they desire not to work while preserving the right of employees who wish to work their holiday or designated." In addition, the LMOU contains the local "pecking order" for selecting employees to work on holidays.

By scheduling four Temporary Employees to report to another unit and duty station, management prevented the maximum number of full-time employees off at South Mountain. Management has demonstrated a willful disregard for their contractual obligation to provide for the maximum number of employees off on a holiday schedule. Supporting evidence includes the fact that four (4) TEs started hours later. This was not an emergency situation as the affected employees were notified the Tuesday prior to the holiday week. By moving the TEs from South Mountain to two other installations and then forcing non-volunteers to work their SDO/Designated Holiday is a violation. Management is incorrect to state that the TEs may be assigned as it sees fit since all TEs work for the entire Phoenix Post Office. The Union does not agree that "installation" means the entire Phoenix Post Office.

POSITION OF THE POSTAL SERVICE

The Postal Service argued that the practice of assigning TEs to work at other units within the Phoenix installation is not new. It has not been grieved in the past. The National Agreement was not

violated when the TEs were scheduled in advance to work at another unit within the employing installation - Phoenix Post Office - based upon the operational needs of the Service. The JCAM, 7-11, states that "Transitional Employees may be assigned outside their employing post office within the same district on an occasional basis."

The Union failed to demonstrate that management violated the NA when the Service scheduled TEs in a manner consistent with the NA and past practice. The Union is grieving only May 23, 2009, not the other days when TEs were sent to other offices prior to May 23rd. The TE award at the back of the JCAM was not referenced by the Union because it does not help the Union's case. There are no restrictions in the TE award on how TEs are assigned. There is no contract language provided by the Union in support of its argument.

The Q & A document for NALC TEs (J2:38) asks: "Can TEs be assigned temporarily outside their employing post office (installation) to another post office (installation) within the district. This is not the point since management did not move TE carriers outside of the installation. Phoenix is the installation and each office within the installation is a station. The LMOU, Item 18 states: "A. Each carrier station in the city of Phoenix, Arizona, shall comprise a section." The TE's were moved within the installation from one station (section) to another station (section). Under its Article 3 rights to manage, management determined that it was necessary to assign the TEs to Cactus and Pecos stations within the Phoenix installation.

All TEs in Phoenix work for the entire Phoenix Post Office, the installation as a whole. As such, they are not restricted to any one specific unit within the installation. A pay location and a finance number are assigned to each TE for administrative purposes without compromising management's rights to assign the TEs as it sees fit. Management argued that the practice of assigning TEs to work at other units within the installation is an established past practice, one that the Union has not grieved.

Qualified TEs were used to the extent possible. Hosford, Montes and Williams worked over

seven (7) hours each at Cactus Station while Cano worked almost five (5) hours at Pecos Station. While three of them worked virtually full-time and one half-time on May 23rd, it is up to Management to determine the best utilization of the employees. Even if Cano were sent to South Mountain for four hours, the situation for the full-time employees mandated to work at South Mountain would not have changed. The Union's claim that PTF's could have been used is without merit. Two PTFs were on annual leave on which they were entitled to bid and the third on light duty with an ankle injury.

ARBITRATOR'S FINDINGS AND OPINION

The scheduling of letter carrier craft employees on a holiday is treated separately in the National Agreement from scheduling on a regular workday. Article 11.6.B. requires Management to publish its holiday schedule on the Tuesday prior to the service week on which the holiday falls. "As many full-time and part-time regular schedule employees as can be spared will be excused from duty on a holiday." They "will not be required to work on a holiday unless all casuals and PTFs are utilized to the maximum extent possible, even if the payment of overtime is required."

The JCAM 2009, 11-3, established a "pecking order" which must be followed in the scheduling of holiday assignments. However, under Article 31, the parties are allowed to establish a local "pecking order" which, in this case, the parties have done. The LMOU (J3), Item 13 states: "The method of selecting employees to work on a holiday *shall be* as follows to comply with Article 11, Section 6, of the NA. The Arbitrator has reproduced this pecking order on page 2 of this decision. Transitional employees are the fifth category in priority. Only after TEs are fully utilized can Management require FTR non-volunteers to work on their non-scheduled day and only in an unforeseen and non-recurring emergency, can employees on approved annual leave be required to work.

Thus, Management must exercise its rights under Article 3 "to assign, to maintain the efficiency of the operations..." subject to Article 11.6.B. and LMOU, Item 13 restrictions. On the face of it, Management seems to have violated the NA and LMOU when it forced four letter carriers at the end of the

“pecking order” to work on Memorial Day, May 23, 2009. The clear and unequivocal language of the NA and LMOU states how holiday scheduling *shall* take place. There was no “dire emergency” found at the Pecos and Cactus stations, according to the testimony of Union Steward Baker, who knew of no past violations. There was no challenge to the Union’s claim that there was no emergency although Service witness Bubash testified that she did inform the MCSO that South Mountain was in “dire straits.” She was directed to send the TEs to the other stations nonetheless.

Management alleged there was no violation because all TEs are assigned to the Phoenix District and not to any particular facility in the District. Thus, TEs can be scheduled where and when Management finds their placement to be most efficient. There was some discussion and argument at the hearing about the organization of the Phoenix Post Office compared to other districts. No documentation was submitted that identified Phoenix as the installation or that TEs did not belong to a specific office.

The LMOU provides some guidance in Item 14 when it refers to Overtime Desired Lists (ODL) and that ODL “shall be posted by section, and each station in the City of Phoenix, Arizona shall comprise a section. No full-time regular shall work overtime outside his/her section except under a serious emergency situation.” No such situation existed at South Mountain on May 23rd. Also, LMOU, Item 18, in its title, states, “The identification of assignments comprising a section, when it is proposed to reassign within an installation employees excess to the needs of a section.

The evidence indicates and the LMOU implies that when a work schedule is made up at the section, the scheduler fills the section office needs ahead of other offices to which employees might be assigned. Ms. Bubash testified that she scheduled South Mountain first unless overridden by the MCSO. The MCSO calls in every morning “to see who can afford to be let go.” The South Mountain section is the pay location for the TEs and because the NA and the LMOU treat holiday scheduling separately from the scheduling of a regular day, the pecking order must be followed in that “section” when scheduling holidays. It is not disputed that TEs were moved on holidays before but there is no evidence to show if

FTRs were forced in to work the holiday.

The facts are that the bottom of the pecking order was not used to the extent possible including the use of overtime. The Overtime Alert sheets for the South Mountain facility show overtime was available among carriers who were not forced or were at the bottom of the pecking order (J2:82-84). Some carriers forced in to work May 23rd worked overtime while at least one TE (Cano) worked only 4.81 hours of regular time. The issue is not that overtime was used at Pecos and Cactus (J2:69-70) but that Management did not follow the pecking order at South Mountain including the use of non-penalty overtime at the bottom of the pecking order.

According to Arbitrator Olson's award (E90N-4E-C95043829), quoting Arbitrator Mittenthal, the phrase "even if the payment of overtime is required" obviously was to make clear that Management could not escape the mandatory scheduling procedure in Article 11, Section 6B on the ground that strict application of this procedure would call for "overtime" pay. The pecking order had to be followed without regard to labor cost considerations....The Post Service has never had an option in this matter. It had to honor the "pecking order" whenever it made up a holiday schedule" (at page 7). Arbitrator Mittenthal's conclusions have been widely accepted by other arbitrators. The Arbitrator in the instant case agrees, as well.

The language of this article of the NA and of the LMOU in Phoenix is clear and unequivocal about the pecking order. Scheduling of carriers on holidays without question is a separate procedure from scheduling on regular work days. Management chose to violate the pecking order when it sent the TEs from South Mountain to Pecos and Cactus stations before considering the needs at South Mountain, causing FTRs to be forced in to work a holiday on their SDO or holiday. There is no question that the intent of the parties in Article 11 and the LMOU was to maximize all casuals, PTFs and TEs to the maximum extent possible before forcing in FTRs. Management is obligated to follow the holiday pecking order at South Mountain and failed to do so here. One could argue that the grievants would have

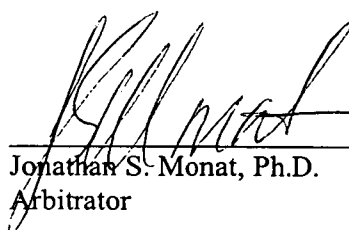
been forced to work in any event, the language of the NA and LMOU must be followed.

There is evidence and testimony (Letter Carrier Villa) that some FTR employees had made plans for Memorial Day and suffered harm because he/they were not able to attend planned functions. Based on arbitral opinion, the reasonable and appropriate remedy is to grant each of the four grievants eight (8) hours of administrative leave at his discretion, subject to the condition that Management must be given thirty days advance notice in order to plan for each absence. Furthermore, only one grievant at a time may take the administrative leave and only one per week.

AWARD

The grievance is sustained. The remedy shall be awarded as discussed in the last paragraph above.

October 15, 2009


Jonathan S. Monat, Ph.D.
Arbitrator