28543

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

GRIEVANT: Class Action

POST OFFICE: Indianapolis, Indiana

USPS CASE NO: J01N-4J-C 09291811
NALC CASE NO: DRT 06-138439

BEFORE: David A. Dilts, Arbitrator

GREAT LAKES REGIONAL PANEL

APPEARANCES:

For the U.S. Postal Service:	Mark A. Moore
For the Union:	Paul A. Toms
Place of Hearing:	U.S. Postal Offices, 3939 Vincennes Rd., Indianapolis, IN
Date of Hearing:	November 6, 200
Date of Award:	December 6, 2009
Relevant Contract Provision:	Article 8
Contract Year:	2006
Type of Grievance:	Contract Interpretation

AWARD SUMMARY

The Union demonstrated with a clear preponderance of the evidence that carriers on the OTDL were not maximized, while a carrier not on the list was worked on his non-scheduled day. The Service contends that this was done for legitimate business reasons and is therefore not a violation of Article 8.5.C.2.a. In this particular case the Window of Operation was established before the Dispatch of Value, and for purposes of this grievance does not exempt management from maximizing carriers on the OTDL, under the specific facts and circumstances of this grievance. Therefore this Arbitrator has no alternative save to sustain this grievance and order the requested remedy to make the carriers on the OTDL (Goode and Isaac) whole for lost hours of overtime on the subject day.

David A. Dilts, Arbitrator

ISSUE

The Step B Team framed the issue as:

Did Management violate Article 8.5.C.2.a, 8.5.D and 8.5.G of the 2006-2011 National Agreement when it required Letter Carrier Laker, who is not on the Overtime Desired List (OTDL) to work on his/her non-scheduled day, prior to maximizing the available carriers? If so, what shall the remedy be?

BACKGROUND

The facts in this case are not in substantial dispute between these parties. The Union initiated a grievance on March 11, 2009 alleging that Management violated Articles 8.5.C.2.a, 8.5.D and 8.5.G of the National Agreement when Carrier Laker was required to work his non-scheduled day of February 20, 2009 instead of maximizing the OTDL carries in the Shelbyville Post Office. There were two carriers on the OTDL list whose hours were not maximized on February 20, 2009.

The Union filed a timely informal Step A grievance which was denied, as was the subsequent appeal to Formal Step A. The B Team declared the grievance at impasse and the National Business made a timely appeal to arbitration. The parties stipulated that the present matter is properly before this Arbitrator pursuant to the requirements of Article 15 of the 2006 National Agreement. Hearings in this matter were conducted on November 6, 2009 and the

record in this case was closed upon the conclusion of those hearings.

UNION'S POSITION

It is the Union's position is that the Management in the Shelbyville, Indiana Post Office did willfully violate the 2006 National Agreement on February 20, 2009. The intent of the parties is clear in the provisions of Article 8 of the National Agreement. National arbitrations are abundant concerning overtime issues. Arbitrators have consistently upheld that Management has limited authority to schedule "simultaneous" overtime instead of assigning all overtime hours to OTDL carriers. Consistently those same arbitrators have ruled that it must be a "valid business reason" in order to do so. The Union contends that Management may not impose a policy that is in conflict with the National Agreement. It is further argued that Management's attempt to set and/or establish a window of operation (WOO) that is one hour prior to its stipulated Dispatch of Value (DOV) is a clear violation of Management's obligation under Article 8.5.C.2.a. The Union contends that Management may set any WOO they wish as a goal, and such goals are admirable and certainly necessary in order fort the Postal Service to attempt to accomplish their requirement of delivering all mail daily. However, it should be noted goals are not cast in stone and due to circumstances that may arise during the course of any day may not be met. The's position is simple, if Management is faced with complying with the National Agreement or meeting their self-imposed unilateral goals, it is the National Agreement which is the binding constraint.

The Union respectfully requests that this grievance be sustained in its entirety. The remedy sought by the Union in this case is that Management be ordered to cease and desist violating Article 8 of the 2006 National Agreement and that the hours of OTDL carriers Goode and Isaac be maximized to eleven hours at the appropriate rate of pay for the work denied them on February 20, 2009.

POSTAL SERVICE'S POSITION

The Union bears the burden to prove that Management failed to comply with Articles 8.5.C.2.a, 8.5.D and 8.5.G of the 2006 National Agreement. The Union fail to meet its burden of proof in this case.

On February 19, 2009 Management recognized that it would be short of employees for February 20, 2009 and scheduled Carrier Laker (who was not on the OTDL) to work on his non-scheduled day which was February 20, 2009. Without scheduling Carrier Laker for February 20, 2009 it was clear to Management it would not be able to meet its WOO for that date. Rather than mandate one carrier, as was done, the Union would have had Management mandate overtime for six carriers, including four who were not on the OTDL. This is clearly inefficient and an unreasonable intrusion on at least four carriers who were not on the OTDL. What the Union asks of the Arbitrator is absurd.

In early 1985, extensive discussion took place among the Postal Service, APWU, and NALC representatives concerning the new provisions of Article 8 negotiated as part of the Joint Bargaining Committee in the 1984 Agreement between the Postal Service, the APWU, and the

NALC. One of the matters discussed was the simultaneous scheduling of overtime work for employees on the overtime-desired list and employees not on this list. During those discussions the parties acknowledged that simultaneous scheduling must be supported by legitimate or valid reasons. Specific examples of valid operational reasons discussed included but were not limited to: failure to meet dispatch schedules, service standards, and other time critical requirements identified in the facility operating plan. The language of Article 8 and its MOUs, not only establishes the *status quo ante* for the scheduling of simultaneous overtime, but memorializes management's right to establish a "window of operations" for each of its facilities. As such, the concept of a "window of operation" does not in and of itself violate Article 8. Therefore, the question of whether a contractual violation has taken place can only be determined through application of Article 8.5.G to the particular fact circumstances of any given day. In order to prevail on a grievance concerning "operational windows," the Union must be prepared to prove one of the following:

(1) That the Postal Service assigned a letter carrier not on the OTDL to work overtime when a casual, PTF, or another carrier on the OTDL was "available" to work the overtime at issue within the operational window and using the rule of reason cited in paragraph 2 of the MOU.

(2) That the "operational window" was either an unreasonable exercise of Management's Article 3 rights, or else that it was merely a stratagem to avoid recourse to the OTDL.

None of the evidence presented by the Union in this case establishes such violations. The Union has an extremely heavy burden in cases of this nature, and Management is confident that when the evidence is fully evaluated, that the Arbitrator will find that the Union's burden has not

been met. Therefore, Management respectfully requests that the grievance be denied in its entirety.

ARBITRATOR'S OPINION

The case before this Arbitrator is one involving the proper allocation of overtime under the provisions of Article 8 of the 2006 National Agreement. The facts in this case are not in substantial dispute. The parties agree that Carrier Laker, a non-OTDL employee, was scheduled on February 19, 2009 to work overtime on his non-scheduled day (February 20). There were two employees on the OTDL, Carriers Goode and Isaac, whose hours were not maximized on February 20, 2009. The result was a grievance claiming that Management violated Articles 8.5.C.2.a, 8.5.D and 8.5.G of the 2006 National Agreement.

As recognized by both parties in this case, the facts and circumstances surrounding the simultaneous scheduling of non-OTDL employees and OTDL employees for overtime will differ, and must be resolved on a case-by-case basis.

The circumstances complicating this case are (1) a dispatch of value (DOV) at 18:00 and (2) a window of operations requiring carriers be off of the street by 17:00. There is no dispute that Management has the right to plan for and execute the DOV at the time it deems fit for the efficient operation of the service within certain parameters which are not at dispute in this case. It is also not at dispute that Management has the right to establish a window of operations (WOO). What is at dispute, is whether the window of operations takes precedence over the provisions of Article 8 in cases such as these. It is the Union's position that the WOO is a

Management prerogative, but must be exercised such that no right under the National Agreement is compromised by its provisions except for legitimate business necessity. Management's position that unless the Union can show that the WOO resulted in an unreasonable exercise of Article 3 rights or was merely a stratagem to avoid recourse to OTDL its implementation is not a violation of Article 8 of the National Agreement.

Therefore, the specific facts and circumstances of this case will be weighed against the rights of Management under Article 3 of the National Agreement, and the rights of OTDL employees under Article 8 of the National Agreement.

February 19, 2009 Decision to Work Carrier Laker

The testimony of Patty Klimet, the Shelbyville Postmaster was forthcoming and credible. She testified to the reasoning that went into her decision to have Carrier Laker work the overtime on February 20, 2009. Her testimony was that she had three routes down on February 20, and she knew that these routes were going to be down in time on February 19 that she could make arrangements to cover them.

Further, she testified that she had three employees on the OTDL, Carriers Conrad, Goode and Isaac. Carrier Conrad had a separated shoulder and was on sick leave on February 20. This left her with only two OTDL employees active on February 20, these were Carriers Goode and Isaac.

Ms. Klimet, determined that there was about 8 hours of work to be done on February 20, 2009 which was sufficient to bring in Carrier Laker on his non-scheduled day. The fact that there

was sufficient work for a person to be called-in on their non-scheduled day was one consideration. Ms. Klimet believed that this was more sensible from an efficiency standpoint, and an employee convenience standpoint. Her only other option would be to require four other employees not on the OTDL to work up to another two hours after their regular shift, so that the OTDL employees' hours could be maximized. Ms. Klimet also testified that she was concerned about the timing of deliveries and that customers may be inconvenienced to have their mail delivered towards the end of the business day, rather than when they would normally have received their mail.

Finally, Ms. Klimet took notice that the WOO established 17:00 as the goal for having her carriers off the street. Together with each of the above convenience and operational considerations Ms. Klimet determined that the best approach to get the mail out was to bring Carrier Laker in for February 20, 2009. As it turned-out, Carrier Laker worked 7.83 hours on February 20, which was about what was forecast by Ms. Klimet.

Operations on February 20, 2009

There was evidence entered into this record that shows what the hours of work were for each of the Shelbyville, Indiana carriers on February 20, 2009. The record of evidence shows that there were two OTDL carriers (Goode and Isaac) and four non-OTDL employees (Fischer, Chapman, Merritt, and Bruner available on February 20, 2009. The hours available upon completion of each of these employees' tours of duty are shown in the following table. The hours are calculated from the end of their tour on their assignments on February 20, 2009 to the

WOO and to the DOV on February 20:

Carrier	Hours available to: WOO	DOV
OTDL		
Goode	.06	1.06
Isaac	1.25	2.25
Non-OTDL		
Fischer	.81	1.81
Chapman	1.18	2.18
Merritt	1.24	2.24
Bruner	1.39	2.39
TOTAL	5.39	11.39

(source: Joint exhibit 2, pp. 3-13)

Clearly the record shows that being constrained to meet the WOO results in the Postal Service not being able to utilize the OTDL and the four non-OTDL employees to meet the delivery requirements on February 20, 2009. There is a maximum of 5.39 hours left after the carriers returned to the station and the time the carriers were to be off the street pursuant to the WOO. However, in consideration of the Dispatch of Value, which is clearly an operating requirement, not just a goal, there are a maximum of 11.39 hours and the 7.83 hours of work accomplished by Carrier Laker could be done with nearly three and one-half hours for travel and other requirements on the respective routes.

This Arbitrator is persuaded that the WOO, under these facts and circumstances is not the appropriate constraint. The WOO is a goal, subject to Article 3 discretion by Management, and is therefore not an operational constraint imposed on management by the conditions of the

business or the variance of the marketplace.

The evidence concerning hours that were available for February 20, 2009 clearly leaves no doubt that the delivery could be accomplished and the OTDL carriers' hours be maximized on February 20, 2009. The Postal Service would have this Arbitrator reject this fact, because of the inconvenience to the customer and inconvenience of having four carriers (Fischer, Chapman, Merritt, and Bruner) mandated who were not on the OTDL rather than the one (Laker).

Management's discretion ends, under these facts and circumstances, when it is clearly possible to meet the Dispatch of Value (an operational requirement) without denying the OTDL employees their contractual rights with respect to overtime under Articles 8.5.C.2.a, 8.5.D and 8.5.G . To rely upon the WOO (a goal without the weight of operational requirement) as the sole reason for going to Carrier Laker is a violation of Articles 8.5.C.2.a, 8.5.D and 8.5.G as alleged by the Union in this specific case.

However, the convenience arguments made by the Postal Service add to the gravity of the considerations weighed by Ms. Klimet. Customer convenience is of importance, and must be considered. In this case, the contract intervenes and overwhelms customer convenience in favor of the bargain struck between the National Association of Letter Carriers and the United States Postal Service and memorialized in the 2006 National Agreement at Articles 8.5.C.2.a, 8.5.D and 8.5.G.

Also considered by Ms. Klimet was the inconvenience of four of the non-OTDL employees in favor of mandating a single carrier to work overtime. In this case, the inconvenience of four carriers is an operational necessity if the bargain memorialized in Articles 8.5.C.2.a, 8.5.D and 8.5.G is to be observed.

The Arbitrator understands and commends Ms. Klimet's consideration for both her employees and the Service's customers, however, the old adage that "no good deed goes unpunished" seems sadly appropriate here. The first consideration is what the contract says, and even though there appears to be common sense reasons to handle this situation in a manner different that what the contract requires, the bottom line is that the parties (and this Arbitrator) are bound by the contract. While convenience, and consideration for the non-OTDL employees may have resulted in the actions herein grieved, the contract requires the OTDL employees receive the full consideration specified in the contract. This is essentially the result that was obtained in a similar matter before Arbitrator Klein (J06N-4J-C 08271610; BRGH 87208A8); and must be applied here.

Conclusion

For the foregoing reasons, this Arbitrator has no alternative save to sustain this grievance in its entirety and order that the two OTDL employees be paid for the remaining time denied them up to the eleven hours work at the appropriate rates of pay as requested by the Union.