

TEs working in lieu of PTFs

The language previously in Article 7.1.C.1.b of the National Agreement that dealt with the requirement to work PTF carriers at the straight-time rate of pay prior to working transitional employees is now in Article 7.1.B.3 of the National Agreement. This language states:

Over the course of a **pay period**, the Employer will make every effort to ensure that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to transitional employees working in the same work location and on the same tour, provided that the reporting guarantee for transitional employees is met (emphasis added).

Stewards have been dealing with grievances regarding the working of casuals in lieu of PTFs for years and are now having to deal with a new twist in the language. The differences in the language, “service week” in one provision and “pay period” in the other, has caused confusion for some union activists. While the “in lieu of” language in Article 7.1.B.3 is slightly different than the language regarding a PTF’s right to work at the straight time rate prior to casuals, there is no substantive difference in what a steward has to show to prevail in a grievance on this issue.

A steward needs to be able to show the PTF carrier worked fewer than 40 hours at the straight-time rate of pay for the week in question and he or she was available to work at the straight-time rate when a TE carrier was worked instead. It doesn’t matter if the PTF works more hours than the TE or that the PTF works more than 40 total hours for the week. The issue is straight-time hours. Should management argue that the work performed by the TE and the PTF was done simultaneously, the union will need to show how all, or a portion of, the work done by the TE could have been done by the PTF when he or she was available at the straight-time rate of pay.

As stated in the *JCAM*, the parties agreed to the following in the Step 4 Settlement E90N-4E-C 94026528, February 12, 1996 (M-01241):

The issue in these grievances involves the scheduling priority to be given part-time flexible employees over transitional employees. During our discussion, we mutually agreed as follows: During the course of a **service week**, the Employer will make every effort to ensure that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to transitional employees working in the same work location and on the same tour, provided that the reporting guarantee for the transitional employee is met (emphasis added).

As shown by the above Step 4, even when the contractual language itself says “pay period,” management’s obligation is during the course of a service week. The term “pay period” instead of “service week” has not changed what stewards have to show to make their case in this type of grievance. While a violation does not occur until the end of the pay period, if there is a violation in Week 1,

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it can’t be made up or fixed in Week 2. The only difference is that the language allows the union 14 days from the end of the pay period to file a grievance.

In cases where a clear contractual violation can be shown, a “make whole” remedy involving the payment at the appropriate rate for the work missed would be appropriate for the available, qualified PTF carrier who had a contractual right to the work. This would include pay at the straight-time rate up to 40 hours for the week for the hours the PTF should have worked and an agreement that these hours count toward the maximization provisions of Article 7.

Don’t let the language in Article 7.1.B.3 confuse you. This is not new language; it is simply that most stewards are used to dealing with grievances concerning casuals and not TEs. If you have any questions on this issue, contact your NBA’s office for assistance. ☒