

REGULAR PANEL

In the Matter of the Arbitration
Between
UNITED STATES POSTAL SERVICE
And
NATIONAL ASSOCIATION OF LETTER
CARRIERS

Grievant: Class
Post Office: Eastside Station, Mpls
USPS Case No: E06N4E-C 12206721

BEFORE: HARRY N. MACLEAN, ARBITRATOR

APPEARANCES;

For the Postal Service: Steven Stromquist, Labor Relations Specialist

For the Union: Rich Anderson, Arbitration Advocate

PLACE OF HEARING: Minneapolis, MN Post Office

DATE OF HEARING: October 11, 2012

DATE OF AWARD: November 19, 2012

RELEVANT CONTRACT PROVISION: Article 8.5.G

CONTRACT YEAR: 2010-2016

TYPE OF GRIEVANCE: Contract

AWARD SUMMARY

The grievance is sustained. The implementation of a Window of Operations that institutionalizes the simultaneous scheduling of overtime for employees on the Overtime Desired List and non-Overtime Desired List on a regular and ongoing basis violates Article 8.5.G of the National Agreement.

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I. INTRODUCTION

This matter was heard at the main Minneapolis post office on October 11, 2012. Both parties were given the opportunity to present oral and documentary evidence, and all witnesses testified under oath as administered by the Arbitrator. Briefs were mailed on November 1, 2012, and received by the Arbitrator on November 3.

The parties stipulated that the steps of the grievance procedure had been followed and that the matter was properly before the Arbitrator for a final and binding decision. The Step B team framed the issues as: Did Management violate the National Agreement by forcing non-overtime carriers to work overtime off their assignments without working the overtime desired list carriers to twelve (12) hours? If so, what is the appropriate remedy? The Service proposed another issue at the hearing, but in the Arbitrator's view it is best to adopt the issue agreed upon by the Step B team.

II. FACTS

On April 10, 2012, Minneapolis Postmaster Gina Hellerman sent a letter to the president of NALC Branch 9 stating that a window of operations was being officially implemented for the 33 Minneapolis stations and branches. The letter stated:

No customer is satisfied with the delivery of mail late into the evening. It is not practicable to deliver mail at times when our customers do not want it (Ex: 6:00 PM and beyond) or when businesses are closed and not available to receive it. Such practices can not be reasonably considered efficient or economical.

Reasonable parameters for delivery of the mail must be established, communicated and acted upon by the Postal Service. These parameters on the 'Operational Window' must be rooted in valid and legitimate business reasoning.

It is my intention to apply the principles set forth by Arbitrator Mittenthal (H4C-NA-C-30) and numerous other arbitrators as they define Management's contractual rights as well as obligations on accordance with Article 3 and Article 8 of the National Agreement. This notice will serve to establish and communicate Management's intentions in regard to the simultaneous scheduling of OTDL carriers and non-OTDL carriers.

The Operational Window in Minneapolis customer service will be considered open when 80% of the respective route's caseable mail volume is anticipated to be available to be cased by a carrier. It will be considered closed fifteen

minutes prior to the Dispatch of Value's scheduled departure. (Arbitrator Williams: "... it is clear that the operational window closes when the time for completion of mail delivery occurs and at the time immediately preceding the dispatch of value from the delivery unit".) These parameters provide for a maximization of the utilization of the OTDL carriers while delivering mail in an efficient and effective manner to our customers.

Each of the respective station's DOV is based on the integration of transportation, mail processing, delivery and the collection of the daily mail. These functions must be integrated to succeed in the timely delivery of the mail. Failing of one, fails them all and fails our customers. Collections can not fall prey (sic) to the constraints of Article 8.5.g.

Management acknowledges and recognizes the obligation to make every effort to minimize the mandating of non-OTDL list carriers in accordance with Article 8.5. However, it can not be considered reasonable to deliver mail well into the evening hours. Any such practice must be minimized and wherever possible eliminated.

When the above is considered in concert with the facts and circumstances of a respective or particular case; Management has established good cause for the simultaneous scheduling of list and non-list employees without maximizing the list to the limits set forth in Article 8.5.G. Mail arrival profiles, dispatch schedules, staffing availability and other daily conditions. . . are valid and legitimate operational considerations justifying Management's actions in the simultaneous scheduling of overtime for OTDL and Non-OTDL carriers.

Hellerman's letter establishing the Window of Operations (W00) went into effect at the Eastside station on May 14, 2012. There, the carriers are scheduled to start at 7:00 A.M. The Dispatch of Value (DOV) truck on Monday through Friday is scheduled to leave at 5:40, so the WOO closes 15 minutes earlier at 5:25. On May 14, the DOV was made, but in order to do so OTDL and non-OTDL carriers were simultaneously scheduled on overtime. None of the OTDL carriers worked over 11 hours. Seven OTDL carriers started half an hour early to case up vacant routes. Eleven non-OTDL worked overtime off their assignments. Two OTDL carriers were called in to work on their scheduled day off. In fact, it was stipulated at the hearing that OTDL was not "maximized" to 12 hours on May 14 and that carriers not on the OTDL worked off their assignments.

Hellerman testified that she established the WOO for all 28 carrier stations in Minneapolis on May 14 for two reasons: (1) To get the mail delivered and the carriers off the street and (2) To get the mail to the plant on time. She stressed that prior to the WOO she had received a lot of complaints from customers who were getting their mail after 6 P.M. Since the WOO was put into effect, she has received almost no complaints about late delivery. Although there is a truck which leaves at 7 P.M., it is important to have 90% of the mail on the 5:40 truck for a DOV. Although the critical entry time at the plant is 6 to 8 P.M., the majority of the mail needs to get to the plant on the 5:40 truck in order for it go be processed on time for next day delivery.

The evidence indicated that staffing in Minneapolis has declined from 55 part-time flexibles and 80 transitional employees on October 31, 2011, to 36 PTFs and 75 TE's on February 27, 2012. As of April 17, 2012, there were 64 combined PTFs and TE's in Minneapolis.

Allen Damerow is a supervisor, customer service at the Eastside station and was responsible for scheduling employees on May 14. He noted that most of the mail at the station is available at 6:30, so the WOO is from 6:30 to 5:40. While there is a 7 P.M. truck, the station has an agreement with the plant that provides that 90% of the mail will go on the 5:40 truck so that it can be properly processed and sorted. The later truck is mainly for mail deposited at the one window which remains open until 6:30 and mail deposited in the parcel collection box.

Damerow testified that on the day in question the station had 4 open routes; two due to unscheduled carrier sick leaves, one due to previously scheduled sick leave, and one due to scheduled annual leave. Additionally, another 2 hours had to be covered on one route and one hour covered on another route. He gave each OTDL carrier as much overtime as they could handle and still be back between 5:25 and 5:40 to make the DOV. Eleven non-OTDL carriers were then assigned the rest of the overtime. The result was that all of the carriers returned on time for the DOV and the mail was sent to the Minneapolis processing and distribution plant on time. The two sick leaves, amounting to 16 hours, were the only unanticipated absences that morning. He did not consider curtailing mail that day.

Damerow noted that May 14 was a Monday, which is the heaviest day of mail. If he had not mandated overtime for the non-OTDL carriers on May 14, the carriers would have returned around 6:30, which would have missed the DOV. Damerow testified that under the WOO the station will normally have to force overtime in order to meet the DOV. There may some days, such as Tuesday and Friday, in which it won't be forced, but on Mondays and Saturdays overtime will normally have to be forced. If no one calls in sick on those days, overtime might not have to be forced.

Damerow also testified that prior to the WOO he always maxed out the list carriers for 12 hours. Under that approach, the instances of simultaneous scheduling were very infrequent. He very seldom forced overtime. Since the WOO has been established, he had not received any customer complaints about late delivery.

Greg Drazowski is the manager of distribution operations at the Minneapolis P&DC. He testified that mail processing at the plant is a 24-hour operation. Most of the mail comes to the plant from the stations in the late afternoon. It can't all come in at the same time, and so all of the pieces must fit together. Agreements are entered into with the various stations for delivery of mail, and this involves setting up schedules for the trucks and determining DOVs for the stations. The mail arrives at different times, it is put into the system, processed and sent out to the delivery units to get dispatched and delivered. If there is a variance in the DOV, it will impact the entire system. All of the agreements are linked together.

Samantha Hartwig is a carrier at Eastside station and a union steward. She testified from documents that in October 13, 2011, there were 55 PTFs and 80 TEs. On February 27, 2012, there were 36 PTFs and 75 TEs. On April 14, 2012, there were no PTFs and 63 TEs. So there are fewer carriers to deliver the same amount of mail. On May 14, 2012, if management had assigned all of the overtime to those on the OTDL list, the mail would have made the last truck at 7 PM.

Mike Zagaros, the president of Local Branch 9, testified that the other 27 carrier offices had the same issue as Eastside; the simultaneous scheduling of OTDL and non-OTDL carriers as a result of the establishment of the WOO on May 14. Grievances from many of these stations are outstanding. Zagaros referenced the settlement of a grievance on November 23, 2011, with Postmaster Hellerman. One of the issues in that settlement

was the use of non-OTDL carriers on overtime before the list carriers had maxed out at 12 twelve hours. In the settlement, the parties agreed that the Service would cease and desist from violating the National Agreement. The parties also agreed to some cash payments.

Hellerman testified that when she took over as postmaster there were many problems that needed to be addressed, and the grievances in the settlement were some of them. The settlement was not intended to be binding.

IV. ANALYSIS AND CONCLUSION

The issue before the Arbitrator is: Did Management violate the National Agreement by forcing non-overtime carriers to work overtime off their assignments without working the overtime desired list carriers to twelve (12) hours? If so, what is the appropriate remedy? Since this is a contract interpretation case, the Union has the burden of proof of establishing the contract violation.

It is important to begin with the contract language in dispute. Article 8 of the National Agreement addressed Hours of Work. Article 8.5 addresses overtime, and Article 8.5.B establishes overtime desired lists. Article 8.5.D states that:

If the voluntary "Overtime Desired" list does not provide sufficient qualified people, qualified full-time regular employees not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee.

Article 8.5.G was modified in 1984, and it reads:

Full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the "Overtime Desired" list:

1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5 F); and
2. excluding December shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week. However, the Employer is not required to utilize employees on the Overtime Desired" list at the penalty overtime rate if qualified employees on the

“Overtime Desired” list who are not yet entitled to penalty overtime are available for the overtime assignment.

The parties entered into a Memorandum of Understanding regarding Article 8. It states in pertinent part:

Recognizing that excessive use of overtime is inconsistent with the best interests of postal employees and the Postal Service, it is the intent of the parties in adopting changes to Article 8 to limit overtime, to avoid excessive mandatory overtime, and to protect the interest of employees who do not wish to work overtime, while recognizing that bona fide operational requirements do exist that necessitate the use of overtime from time to time. The parties have agreed to certain additional restrictions on overtime work, while agreeing to continue the use of overtime desired lists to protect the interests of those employees who do not want to work overtime, and the interests of those who seek to work limited overtime. The parties agree this memorandum does not give rise to any contractual commitment beyond the provisions of Article 8, but is intended to set forth the underlying principles which brought the parties agreement.

The new provisions of Article 8 contain different restrictions than the old language. However, the new language is not intended to change existing practices relating to the use of employees not on the overtime desired list when there are insufficient employees on the list available to meet the overtime needs. For example, if there are five available employees on the overtime desired list and five not on it, and if 10 work hours are needed to get the mail out within the next hour, all ten employees may be required to work overtime. But if there are 2 hours within which to get the mail out, then only the five on the overtime desired list may be required to work.

The issue of the establishment of WOOs and the resulting simultaneous scheduling of OTDL and non-OTDL carriers to work overtime is a contentious one between the parties and one that has resulted in many arbitration awards. There are two lines of cases on the issue, each one reaching a different result.

One line of cases is exemplified by Arbitrator DiLeone Klein in Case No. JOIN-4J-C O6223922 (2007). In that case management “forced” twenty-two non-OTDL employees to work on a particular day because of sick call-ins, although there were five PTFs on the OTDL list who worked less than twelve hours. Management, as in this case, had earlier established a DOV and WOO, which involved the carriers being off the street

by 1700 hours between April and October and 1630 from November through March. Arbitrator Klein, after analyzing the staffing and hours for the day in question concluded:

When the above testimony of Management is viewed as a whole, it becomes apparent that March 23, 2006 presented a situation where mandatory overtime was to some degree unavoidable due to the three carriers who called in for unscheduled sick leave. However, this situation was not “unforeseen.”

Although Article 8.5.D gives Management the right to require non-ODLS to work overtime if the ODL list does not provide sufficient “qualified” people, Management in Sheboygan pre-determined that the list was insufficient on March 23 based solely on the 1645 dispatch of value which, for all intents and purposes, could not have been met by all carriers that day. . . It appears to the Arbitrator that Management relied on the window of operations/dispatch of value to utilize the provisions of Article 8.5.D rather than fulfill its obligation under Article 8.5.G. and the “Letter Carrier Paragraph” of the above-cited Memorandum.

Klein quoted her opinion in an earlier case, Case No. I94N-4I-97122042, in which she stated:

Management, by the manner in which it applied the 4:30 P.M. Window of Operations, created an artificial “insufficiency” of qualified ODL employees and thereafter relied on that “insufficiency” to justify implementing the provisions of Article 8.5.D. . .

Article 8.5.D sets forth the exceptions for scheduling overtime pursuant to Article 8.5.G. In this case, the application of the 5:30 window resulted in Article 8.5.D being implemented when overtime was necessary even though the ODL employees had not been worked to the extent set forth in Article 8.5.G. Although simultaneous scheduling of overtime for ODL and non-ODL employees is permitted under certain circumstances, the 4:30 Window was implemented in a manner whereby the application of Article 8.5.D became the rule rather than the exception. The use of non-ODL employees should be limited to situations where the ODL does not provide sufficient qualified employees. In this case, it cannot be held that the 4:30 Window was a time critical situation on such a regular, continuous basis. (emphasis added).

In her opinion, Arbitrator Klein cites with approval the opinions of four other Arbitrators. In Case No. W4N-5C 42082, Arbitrator Levak held that:

Further, in order to find in favor of the Service, the Arbitrator would have to conclude that the Beverly Hills management-imposed 4:30 p.m. Operation Window is binding the Union and somehow overrides the overtime language of the National Agreement. That conclusion, too, is not possible. Such a unilaterally imposed managerial objective, however, soundly grounded in good business practice, cannot override express employee rights granted by the National Agreement. Article 3, Management Rights, allows some unilateral action, but does not aid the position of the Service, since this case involves clearly expressed specific employee rights.

In Case No. S4N-3U-C 1272, Arbitrator LeWinter wrote:

The matter here is not whether the window is desirable, nor whether it is the best approach for the parties. I have no jurisdiction to make such decisions. . . . When as here a party claims that the contract is violated, any practice which contravenes the contract must fall before it. . . . Therefore, if the Union's claims as to the contractual requirements of Article 8 conflict with the window, the window policy must fall before the contract.

In Case No. B01n-4B-C 050906712, Arbitrator LaLonde quoted with approval the language of Arbitrator McConnell in Case No. N4N-1R-C 3367 on the same issue.

These situations were not an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

And it is Management's responsibility to meet its manpower needs without violating the agreement.

Protection of the right of employees not to work overtime is a guarantee under the agreement:

In his award, Arbitrator LeWinter wrote:

What is critical here is the reinforcement of the understanding that the utilization of the non-ODL carriers should be in situations which are "unforeseen circumstances" or circumstances that call

for “immediate action” all of which are premised on the fact that these would be non-recurring situations.

Conscious staffing decisions on the part of the Service have implications for the number of individuals handling overtime assignments when coupled with the creation of WOOs. Neither of these actions negate the inherent contractual rights under article 8.5 regarding the utilization of ODL and non-ODL carriers. The use of non-ODL carriers for forced overtime in situations that are clearly not unforeseen or not of an emergency nature clearly violates the language and intent of the National Agreement. (emphasis added).

In Case No. JOIN-4J-C O6223922 , Klein concluded that:

Under the circumstances of this case, it must be held that Management lacked good cause to schedule non-ODL employee for overtime on March 23 prior to utilizing the ODL carriers to the fullest extent and prior to scheduling PTF to carry mail as well. The Postal Service erroneously relied on the window of operations and dispatch of value to justify forcing the non-ODL carriers to work overtime prior to maximizing the ODL carriers; it was obvious that the goals pertaining to the window of operations/dispatch of value could not be met that day.

A good example of the other line of cases is one issued by Arbitrator Williams in Case No. S4N-3W-C 54086. Concerning the application of Article 8.5.G in cases where an operational window has been established. The Arbitrator wrote:

In summary, it is clear that the concept of an operational window is valid in the minds of all the arbitrators referenced. It is also clear that there should be proof of the existence of the same. Assuming that such a window exists, it is clear that the operational window closes when the time for completion of mail delivery occurs and at the time immediately preceding the dispatch of value from the delivery units. This means that a carrier is not available to work overtime, if such overtime would cause the carrier to miss the dispatch of value, or it would result in the untimely delivery of the mail.

Williams discussed a number of cases, such Case No. S4N-3V-C, in which Arbitrator Searce wrote: “Clearly it was not the intent of the drafters of the

Agreement or the memorandum to delay mail delivery or processing in order to provide overtime work opportunities.”

Arbitrator Lurie wrote two frequently cited awards on the issue at hand. In Case No. C98-4C-C 0012094 (2002), Lurie noted first that the non-OTDL carriers should be used as a last resort because it is “an extraordinary imposition on the lives of those mandated, taking time away from time spent parenting and with family; from maintaining friendships; from important personal business; and from avocations, diversions, rest and relaxation.” He then held that under the Mittenthal award the Service may use non-OTDL carriers if to do so would serve “operational directives.” The window of operation, according to Lurie, is a “prime operational objective.” Lurie then states that the test on whether Article 8.5.G has been violated is whether or not management “made a good faith assessment of the maximum work that could be performed by OTDL Carriers (and casuals and PTFs for Work Overtime) toward the operational objectives, and assigned overtime accordingly.” The burden of proof on this issue appears to be on the union.

In Case No. K01N-4K-C 06201761 (2007), Arbitrator Lurie relies on the Mittenthal award for the proposition that the right of a non-OTDL carrier to be mandated only if all available employees have first worked 12 hours in a day “is subject to dispatch schedules, service standards, and other time critical requirements.” He wrote that:

The formalization of the time-critical service standard into ubiquitous 10-hour windows of operation has not subsequently altered Arbitrator Mittenthal’s fundamental decision.

Correspondingly, the Arbitrator finds that exigent circumstances and emergencies are not prerequisites to mandating.

In Case No. B01N4BCO4027979, Arbitrator Wooters upheld the use of an operational window to mandate overtime for non-OTDLs:

The two Memoranda of Understanding relative to Article 8 make it clear that in such scheduling matters, management may take valid operational concerns into account. The “example” cited in the Memorandum on Overtime, for example, makes it clear that where work must be completed within a certain time frame, simultaneous scheduling of employees of employees may be required, rather than giving all of the work to those employees first in contractual pecking order.

Where there is no convincing evidence that the operational concerns are not bona fide, I believe that Article 8.5.G is a directive to front line supervisors and managers relative to managing existing resources. Whether an employee is “available” or not is determined based on existing staffing and operational needs, not the staffing and policies that the Union and even local management might prefer. Article 8.5.G is not the vehicle for challenging those policies and practices.

In Case No. E06N-4E-C 10031362 (2010), Arbitrator Jacobs found that since management was justified in establishing a window of operation it qualifies as a “legitimate operational rule,” and therefor under the Mittenthal award it is a valid reason to mandate overtime for non-OTDL carriers.

Simplified, the Klein line of cases essentially holds that even when a WOO is established the Service can only mandate overtime for non-ODL carriers when there is an unusual or unforeseen circumstances. The Williams line of cases holds that windows of operations are legitimate operational rules and justify mandating overtime for non-OTDL carriers. If the WOO mandates that carriers be back by 5 p.m., then carriers who would not be back by that time are not “available” and therefor mandating non-OTDL is justified. There is no way to reconcile these two different lines of cases.

In the Arbitrator’s view, there are several weaknesses in the Williams’ line of cases. The first is its reliance on the Mittenthal awards and the MOU.

Arbitrator Mittenthal issued two national awards concerning the new language in Article 8.5.D and G. The first Mittenthal award is found in Case Nos. H4C-NA-C-19 H4N-NA-21, issued in 1986. In this case both the APWU and the NALC were parties. The issue concerned the right, under the new language of employees on the ODL to refuse work over 8 hours on a non-scheduled day, work over six days in a service week, and overtime on more than four or five scheduled days in a service week. The APWU argued that the employees had such a right of refusal. The Service and the NALC argued that the employees did not have such a right of refusal. Mittenthal held that employees did not have a right of refusal, in part because it would impact the rights of employees not on the list.

This dispute is significant not just for those who have placed their names on the ODL. It also has a derivative impact on full-time regulars not on the ODL. For they can be required to work overtime only if all

available and qualified employees on the ODL have reached the twelve-hour day and sixty-hour week limits. The APWU view of ODL employees' rights would make non-ODL employees less susceptible to an overtime draft.

Mittenthal wrote further:

In short, non-ODL employees can be drafted for overtime at precisely the point at which ODL employees have exhausted their overtime obligation. Such symmetry assures the availability of someone to work the needed overtime.

In conclusion, Mittenthal wrote that: "The non-ODL employees may not be required to work overtime until the ODL employees have exhausted their overtime obligation under 5G."

This case is relevant because it reinforces the basic principle that non-OTDL employees may not be forced to work overtime until the OTDL employees have worked their 12 hours a day or 60 hours a week. The case does not directly address the question of when, if ever, non-OTDL and OTDL employees may be simultaneously scheduled.

The second Mittenthal award does consider this issue, but somewhat indirectly. In Case No. H4C-NA-C 30, Arbitrator Mittenthal addressed the question of whether two grievances were properly before him for a national award on an interpretive issue. He held that the question of whether simultaneous scheduling of overtime for OTDL and non-OTDL employees is a violation of Article 8 was not properly before him. The second issue was whether the MOU contained standards for simultaneous scheduling. Mittenthal held that this issue was properly before him. In discussing the MOU, he wrote:

What those "practices" are I do not know. The Memorandum cites just one "example" of a situation in which "practices" would justify simultaneous scheduling. That "example," viewed in light of the Memorandum as a whole, suggests the considerations which are likely to influence this type of scheduling decision. They include "bona fide operational requirements," "interests of employees" and so on. If this case were simply a dispute over the nature of such "practices" or the application of a "practice" to a particular scheduling situation, I would most likely find that there was no "interpretive issue" under the National Agreement. These would be essentially fact questions. They therefor would be a proper subject for regional arbitration.

It is important to note that in this award Mittenthal was not attempting to define or set forth the conditions in which simultaneous scheduling could take place. In fact, he stated that if the dispute was over the meaning of such terms as bona fide operational requirements it would not be a subject for a national award. Mittenthal made it clear that he was not articulating or applying such a standard, but merely deciding whether the issue was properly before him. Therefore, this award has very little, if any, precedential value in determining when in fact the Service can simultaneously schedule non-OTDLs and OTDLs.

In terms of the MOU, the Service argues that the phrase “bona fide operations” in the following sentence makes it clear that the Service can simultaneously schedule if necessary to meet the requirements of a WOO.

Recognizing that excessive use of overtime is inconsistent with the best interests of postal employees and the Postal Service, it is the intent of the parties in adopting changes to Article 8 to limit overtime, to avoid excessive mandatory overtime, and to protect the interest of employees who do not wish to work overtime, while recognizing that bona fide operational requirements do exist that necessitate the use of overtime from time to time. (emphasis added).

Critical in this sentence is the phrase “from time to time.” These are words of limitation; they indicate that simultaneous scheduling will not occur on an ongoing and regular basis, but only on specific occasions when operational requirements necessitate it.

The Service also points to the example in the MOU setting forth a fact situation in which there are five OTDL employees and five non-OTDL employees available to work. The MOU states that if there were 10 hours of work and only two hours to perform it in, the five non-OTDL employees could not be scheduled along with the five OTDL employees to perform the work. However, if there was only one hour to perform the work, the five non-OTDL employees could be scheduled along with the OTDL employees even though the OTDL employees had not been maxed out on hours. One must be careful in drawing a broad conclusion from this specific example because it does not contain all the pertinent facts, such as whether or not the one-hour hypothetical was a rare or occasional occurrence, or whether it was occurring regularly and on an ongoing basis as a result of a management operational decision. I don't think even the Union

would claim that the Service could not simultaneously schedule on occasion, or “from time to time,” based on unusual or unforeseen circumstances.

A central flaw in the Service’s case and in the cases supporting it is well put by Arbitrator Klein in Case No. JOIN-4J-C O6223922, in which she states that under this approach—where a WOO mandates overtime for non-OTDL employees on a regular basis—the exception will swallow the rule. If all you have to find is a valid operational reason to uphold simultaneous scheduling, then you really have no restriction at all. The Arbitrator accepts the bona fide basis for the WOO in this case. In fact, the testimony was consistent and unchallenged that the WOO increased efficiency and that it resulted in the mail being delivered earlier and a marked decrease in customer complaints. The evidence regarding the processing of mail at the plant and the necessity of making all of the pieces of the puzzle fit was thorough and impressive. However, these reasons run right up against a right of the employees to limited forced overtime. The MOU specifically “protects the interests of employees who do not wish to work overtime,” and in the Arbitrator’s view this is an important protection. Employees sign up to work 8 hours a day and 40 hours a week. They have two days off a week. To force overtime on a regular and ongoing basis is a serious diminishment of the right to that schedule. Thus, mandating overtime is approved only from “time to time.”

This points to another critical fact in this case. The letter from Postmaster Hellerman makes it absolutely clear that the Service is aware that the imposition of the new WOO will result in ongoing simultaneous scheduling. In the second paragraph Hellerman states:

This notice will serve to establish and communicate Management’s intentions in regard to the simultaneous scheduling of OTDL and non-OTDL carriers.

Further on, Hellerman writes:

When the above is considered in concert with the facts and circumstances of a respective or particular case; Management has established good cause for the simultaneous scheduling of list and non-list employees without maximizing the list to the limits set forth in Article 8.5.G.

Hellerman is making the case for simultaneous scheduling because she is aware that the imposition of the WOO will require it under the current staffing. The WOO will reduce by almost an hour the time the carriers are out delivering mail. The letter assumes that this compression of the window will necessarily result in the scheduling of non-OTDL carriers to work overtime prior to the OTDL carriers maxing out at 12 hours on a regular and ongoing basis.

The evidence supports this finding. Damerow's testimony indicated that prior to the imposition of the WOO there were very few instances of simultaneous scheduling. While on May 14 there were two unscheduled sick calls, the reason for the forced overtime was the reduction in hours for delivery of the mail. To put it another way, if the carriers had stayed out another hour, as was the previous practice, there would have been no forced overtime for non-OTDL carriers.

Damerow also testified that the WOO would in fact require simultaneous scheduling on a regular basis. He stated that there might be some Tuesdays and Fridays when it wouldn't be necessary, but that it would normally be required on Saturdays and Fridays. The Arbitrator finds this result to be contrary to the specific language of Article 8.5.G that non-OTDL may be required to work overtime *only* if the OTDL carries have worked 12 hours that day. The MOU strengthens this interpretation by allowing simultaneous scheduling only "from time to time."

Finally, the Arbitrator would comment on the rationale offered in several of the Williams's line of cases for allowing regular simultaneous scheduling. The cases point to Article 8.5.D which allows for forced overtime if there are not "sufficient qualified people" on the OTDL. Similarly, Article 8.5.G provides that forced overtime for non-OTDL employees is allowable only "if all available employees" on the list have worked 12 hours. Under the WOO, these cases argue, there are not "sufficient" people on the list to get the mail delivered by the DOV. Secondly, since the OTDL employees had to be back by 5:20, they were not "available" to work the 12 hours. Both of these arguments seem to be circular: it was the very imposition of the window that caused there to be insufficient employees and a lack of available employees. The Arbitrator agrees with Arbitrator Klein in her statement that the Service cannot rely on this "artificial" or "forced insufficiency" to justify simultaneous scheduling.

In summary, the Arbitrator finds that the WOO as applied in this case contravenes the provisions of Article 8.5.G. As Arbitrator LeWinter wrote in Case No. S4N-3U-C 1272, “any practice which violates the contract must fall before it.” For simultaneous scheduling to be contractually sound it cannot result from the imposition of a practice such as the WOO which institutionalizes simultaneously scheduling of OTDL and non-OTDL carriers on a regular and ongoing basis.

For the above reasons, the Arbitrator finds that the grievance must be sustained. The Service is directed to compensate the OTDL carriers at the Eastside station at the appropriate overtime rate for the hours improperly assigned to non-OTDL carriers on May 14, 2012.

The Union seeks an order directing the Service to cease from mandating non-OTDL carriers to work overtime prior to the OTDL carriers working 12 hours in a day or 60 hours in a week. That request is far too broad. The grievance in this case did not challenge the adoption of the WOO itself, but only to how it was applied to the Eastside station. Thus, the evidence related only to the scheduling of OTDLs and non-OTDLs at Eastside station. The Arbitrator’s award cannot extend beyond Eastside station. However, if becomes apparent in other cases that the situation is the same at other Minneapolis stations, a broader order might be appropriate.

IV. AWARD.

The grievance is sustained. The Service is directed to compensate OTDL carriers at the appropriate overtime rate for the hours improperly assigned to non-OTDL carriers at the Eastside station on May 14, 2012. The Service is further directed to cease the ongoing and regular scheduling of non-OTDL carriers to work overtime prior to the OTDL carriers having worked 12 hours in a day or 60 hours in a week at the Eastside station.

Signed this 18th day of November 2012.

In summary, the Arbitrator finds that the WOO as applied in this case contravenes the provisions of Article 8.5.G. As Arbitrator LeWinter wrote in Case No. S4N-3U-C 1272, “any practice which violates the contract must fall before it.” For simultaneous scheduling to be contractually sound it cannot result from the imposition of a practice such as the WOO which institutionalizes simultaneously scheduling of OTDL and non-OTDL carriers on a regular and ongoing basis.

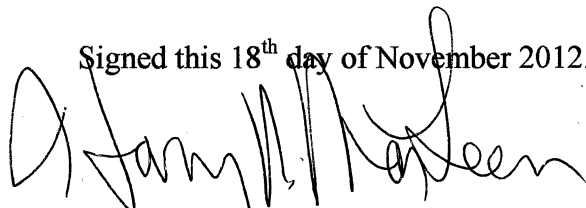
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Signed this 18th day of November 2012.



Harry N. MacLean