C-27150

REGULAR ARBITRATION PANEL

UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	GRIEVANT: Class Action POST OFFICE: Long Beach, CA CASE NO. F01N-4F-C 06181521

BEFORE:		Nancy Hutt, Arbitrator
APPEARANCES:	Postal Service:	Nick Barson
	Union:	Barbara Stickler
PLACE OF HEARING:		Long Beach, CA
DATE OF HEARING:		March 13, 2007
DATE OF AWARD:		June 19, 2007
CONTRACT YEAR:		2001 -2006
TYPE OF GRIEVANCE:		Contract – Articles 3, 8

AWARD: The grievance is sustained. The Union substantiated violations of Article 8 of the National Agreement.

I.

INTRODUCTION

As parties to a collective bargaining agreement, the NALC and the United States Postal Service submitted this matter to arbitration after completion of the pre-arbitral process. A hearing occurred and both parties were afforded a full opportunity to present evidence and argument and to examine and cross-examine witnesses. All witnesses appearing for examination testified under oath.

The parties stipulated that the matter properly had been submitted to arbitration. The record consists of joint exhibits, Union exhibits and Employer exhibits. The parties elected to submit the matter on the basis of the evidence presented at the hearing and post-hearing briefs. The Union submitted a reply letter, which was considered as part of the record. Upon receipt, the record was closed. I requested additional time for the issuance of my Award.

II.

ISSUES

The Parties stipulated the Arbitrator has the authority to frame the issues:

Did Management violate Articles 3, 5, and 8 of the National Agreement and the JCAM when they established a policy that required non-ODL regulars to continually, repeatedly work mandatory overtime? If so, what is the appropriate remedy?

Union
Did Management violate Articles 3, 5, 7, 15, 19, 31 and 8 of the National Agreement and the JCAM when they unilaterally changed practices and established a policy that required non-ODL regulars to continually, repeatedly work mandatory overtime? If so, what is the appropriate remedy?

Employer
Did management violate the National Agreement when it required all Letter Carriers to be off the street by 1700 (5:00) P.M.?

III.

RELEVANT CONTRACT PROVISIONS AND REGULATIONS

ARTICLE 3 – MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provision of this Agreement and consistent with applicable laws and regulations:

3.1 To direct employees of the Employer in the performance of official duties;
3.2 To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
3.3 To maintain the efficiency of the operations entrusted to it;
3.4 To determine the methods, means, and personnel by which such operations are to be conducted.

ARTICLE 5 – PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8 (d) of the National Labor Relations Act which violate the terms of this Agreement or otherwise are inconsistent with its obligation under law.

ARTICLE 8 – HOURS OF WORK

Section 5. Overtime Assignments

When needed, overtime work for full-time employees shall be scheduled among qualified employees doing similar work in the work location, where the employees regularly work in accordance with the following:

A. Employees desiring to work overtime shall place their names on either the "Overtime Desired" list or the "Work Assignment" list during the two weeks prior to the start of the calendar quarter, and their names shall remain on the list until such time as they remove their names from the list. Employees may switch from one list to the other during the two weeks prior to the start of the calendar quarter, and the change will be effective beginning that new calendar quarter.

* * * *

D. 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.

* * * *

F. Excluding December, no full-time regular employees will be required to work overtime on more than four (4) of the employee's five (5) scheduled days in a service week or work over ten (10) hours on a regularly scheduled day, over eight (8) hours on a non-scheduled day, or over six (6) days in a service week.

G. 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 nor more than sixty (60) hours of work in a service week.

IV.

STATEMENT OF THE FACTS

In this case, the National Association of Letter Carriers challenged management's decisions at the North Long Beach Station to work non-OTDL employees rather than employees on the OTDL in violation of numerous contract provisions that resulted in the repeated requirement for carriers to work mandatory overtime. The Union also charged the Service failed to hire enough employees to assist the non-ODL employees. Management maintains pursuant to Article 3 the Service has the right to maintain the efficiency of operations and to determine the methods, means, and personnel by which those operations will be conducted. The parties were unable to resolve the grievance at

Step A of the grievance process. Thereafter, the Union appealed the dispute to the Step B Dispute Resolution Team. The Step B Team was unable to resolve the grievance and declared an impasse, and it was subsequently appealed to arbitration. The parties reached subsequent agreements and the grievance at hand became an ongoing violation and covers June 10, 2006 until the date of final resolution.

During the hearing, the parties reached the following five **STIPULATIONS**

1. If called to testify, other carriers would testify the same as Tymeka Nicholson and Joyce Price. [Both witnesses testified credibly the mandatory overtime had a negative impact on their family life and stress level. Both employees had children and needed to make last minute arrangements for others to pick their children up at school or daycare and missed school programs etc]

2. If called, the steward would testify that the mandatory overtime forms were all completed the same way.

3. The non-OTDL worked prior to OTDL working 12 hours. [This stipulation was researched in the file of 8,000 pages]

4. Throughout the time period management did not work OTDL employees on their non-scheduled days up to 5 PM prior to requiring non-OTDL employees to work overtime. [This fact is reflected throughout the documentation]

5. Non-OTDL employees throughout worked more than 8 hours on their days off on occasion.

As background, the Manger of Human Resources issued a Memorandum on May 26, 2006, to Local NALC Presidents in the Santa Ana District, to discuss "our

commitment to continue on improvement of customer services and to getting our carriers off the street by 1700." C. Miller, President, NALC Branch 1100, attended the meeting and testified, it was apparent the real purpose behind the meeting was to advise the Union "what had already been decided unilaterally" by management. In response to the meeting, Miller sent a letter to District Manager Ahern, which is set forth in pertinent part:

> Branch 1100 is in accord with the District's desire to improve customer service and believes that it is possible to achieve this goal while maintaining contract compliance....Later starting times, improperly adjusted routes and staffing shortages are self inflicted wounds that have adversely impacted the Postal Service's ability to complete deliveries at a reasonable time. Under the current reporting times a "1700 window of operation" will compress the number of hours available to the overtime desired list and cause mandatory overtime to those not on the list....This will adversely affect Letter Carriers in many ways....overtime hours will erode a Letter carriers quality of life and time spent with their families....day care facilities...added stress and strain...we deserve what we bargained for, an eight hour work day, forty hour work week, where overtime is the exception not the rule....open ended nature of this proposal where mandatory overtime becomes the rule rather than the exception....."

Miller suggested the hiring of additional carriers and an earlier start time would help alleviate the forced overtime.

District Manager Ahern testified the operational window was started to improve customer service and establish a consistency of delivery, and not necessarily for the

timely delivery of mail. The operational window was implemented to better serve the customers and maintain the goal with the nationwide 24-hour clock. In order to prepare for the changes, Manager Ahern first met with his staff to consider the impact of the operational window, then spoke with managers and Postmasters and discussed a plan with the Union. After all the briefings the Postmasters were instructed to inform the supervisors and stewards. Ahern testified, "We tried to come up with a collaborative method before rolling it out." Moreover, the Union's suggestions were considered by the Manager and Postmaster Snavely, but the 6:00 AM start was not considered practical based on the morning mail delivery according to the Postmaster. Manager Ahern indicated additional "letter carriers, approximately 20 carriers, were hired last year in Long Beach" and "the goal of improving customer service was reached" and there was "consistent improvement each quarter over the prior years performance." Management admitted the overtime rate increased after the implementation of the 1700 window, but it was "not thought the process would reduce overtime, it was not cost effective." Lastly, Manager Ahern stated the operational window was still in effect, but had been expanded based on the Union's request to Postmaster Snavely.

Union Officer John Jackson testified the North Long Beach Station was understaffed, which contributed greatly to the forced overtime. In support of the claim, Jackson pointed out the figures denoted on the Function 2B Unit Carrier Staffing Document (p. 53) as proof the staff was less than required for the Service imposed compliment. The numbers show the Station was 3.9 employees short, which works out to be 31.2 hours on a daily basis. Additionally, Management reverted 14 RLC positions the

prior year and admitted during the grievance procedure each day starts already 40 hours down. (Pgs 138, 146) In response, Postmaster Snavely testified during his discussions with Union President Miller, it was clear the Union had concerns over the compliment and the disruptive nature of the operational window for carriers. According to the Postmaster, he made a commitment to minimize disruption. He met with the stewards and managers and asked them to determine the operational window for the next day depending on the morning work load. Presently, the Postmaster stated, there are 70 limited duty carriers in Long Beach and 26 new hires to the compliment.

The Steward of Record, Evelyn de la O, testified concerning the voluminous documentation that reflects "continuous violations of Article 8" for 7 ½ months. The Steward tracked overtime on a daily basis. The file consists of charts that illustrate the mandated overtime, the hours auxiliary assistance could have worked beyond the hours clocked and the hours those on the OTDL could have worked up to the contractual limits pursuant to Article 8. The violations of Article 8.5.G occurred almost daily. (See pages, 149-154, 1547, 2116, 2539, 2592, 2630, 2681, 2818, 2892 as a few examples) Moreover, the Steward testified that "mandatory overtime was a practice" and that "management knew one week in advance the routes on bottom (p. 389) would be down" and still mandated overtime. The majority of violations were when someone non-OTDL was required to work off their assignment. (p. 2931) and the documentation reflects "the

overtime hours were mostly for vacant assignments." [The majority of stipulations entered by the parties were generated during the testimony of the Steward.][1]

Steward de la O testified presently the OTDL carriers clock in at 7:00 AM and the non-OTDL carriers begin at 7:30 AM. According to the Steward, the trucks that deliver mail to the North Long Beach Station arrive at 5:00 AM, 6:40 AM and last at 8:20 AM. She also testified the last truck leaves North Long Beach Station between 6:00 PM and 6:15 PM. Based on the schedules, the Steward testified the Service could comply with the contract and still have good customer service by changing start times.

VI.

POSITIONS OF THE PARTIES

Union's Position

The Union advanced the following arguments to support its position that the Service violated the National Agreement by the continuous and repetitive violations of Article 8 and the lack of staffing.

The Union contends that management violated Article 8 on a regular basis when carriers not on the OTDL were mandated to work overtime prior to maximizing carriers who were on the OTDL. The Employer stipulated that "the non-OTDL worked prior to OTDL working 12 hours", which is a violation of Article 8.5.G. The Union contends that the overtime charts from June 10, 2006 through March 2, 2007 support the daily violations of Article 8.5.G. The list includes the carriers not on the OTDL who were

[1] The Service notes the majority of documents referred to by the Steward were hand written notes and argues the Union presented no evidence or testimony to demonstrate the information contained in these hand written documents were accurate. The Steward testified she got the information from the daily work sheets, Form 3996's and/or carrier daily performance reports (pgs. 149 – 155, 157 – 162)

mandated to work overtime as well as those on the OTDL who were available to work the overtime along with available auxiliary assistance. The Union contends since the start of the operational window of 1700 that management has continuously violated the contract.

The "Letter Carrier Paragraph" in the Article 8 Memorandum of Understanding supports the intent of the parties to designate mandatory overtime as the exception.

> Re: Article 8
>
> 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 interests 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 Union argues the Service cannot work non-OTDL carriers every delivery day when there are OTDL carriers available. The forced overtime on a continual basis is not "time to time" as negotiated between the parties. Management violated the Letter Carrier Paragraph.

Article 8.5.G provides that full-time employees not on the OTDL may not be required to work overtime until all available employees who signed up for overtime have worked up to 12 hours in a day or 60 hours in a week. In furtherance of this claim, the Union presented evidence from Steward Evelyn de la O, who tracked the overtime violations at the North Long Beach Post Office. The charts track the hours of overtime from June 10, 2006 thru March 2, 2007, which show violations daily. The Union asserts

during the 7 ½ months since the 5 PM delivery cut-off unilaterally required by the Service, violations of Article 8.5.G occurred on a continuous basis and not from "time to time".

The testimony of Ahern that managers were directed to bring employees in on their days off to cover down assignments provides further support that management was engaged in multiple violations of the contract. Twenty years ago, National Arbitrator Aaron determined the mandating of employees to work their days off, prior to pivoting routes, was a violation. (Case # H8N-5B-C 17682) Arbitrator Aaron found the position of the Service was mistakenly predicated on Article III, which is expressly made subject to provisions of the National Agreement, including Article 8.

The Union contends the Service violated Article 8 when OTDL employees on their non-scheduled days did not work up to 5:00 PM prior to working non-OTDL employees. This means the OTDL employee went home at 3:30 PM and not at 5:00 PM or 6:00 PM so that the non-OTDL employees were forced to work. If the Service was concerned with customer service, the start time of all carriers would be 6:30 AM or 7:00AM, which means that those who chose to work overtime would be able to do so. Additionally, the documentation proves violations of Article 8.5.F when non-OTDL employees were forced to work overtime on six days of the work week. The overtime reports demonstrate the percentages ranged from 10% to 25 % of overtime use per week. Excessive overtime violates the intent of Article 8.

The Service failed to adequately staff the Station, which led to excessive use of overtime and resulted in continuous violations of Article 8. North Long Beach was short

3.9 employees. The Employer was short 79 hours a day. Had sufficient employees been hired, non-OTDL employees would not have been mandated 217 days during the 7 ½ months period. The record demonstrates that had there been adequate staffing, the non-OTDL employees would not have been forced continuously and repeatedly to work overtime.

The Union seeks as a remedy for its grievance that the arbitrator find that the Service violated the National Agreement from June 10, 2006 until the date of decision "when they changed practices and established a policy that required non-OTDL regulars to continually, repeatedly work mandatory overtime - that the remedy portion be remanded to the parties with the arbitrator retaining jurisdiction.

Employer's Position

The Service contends the implementation in Long Beach of an operational window and the 24-hour delivery clock was in accordance with Article 3 of the National Agreement. The Pacific Area implemented the 1700 operational window to reduce customer complaints and to be in line with the Postal Service Headquarters 24 hour clock. The Union was included in the process for suggestions. However, the Service maintains that the staffing and office complements are the exclusive right of management as articulated in Article 3.

The customer complaints in Southern California concerning late deliveries were a serious issue, which was considered by the Service during the implementation of the operational window. These complaints were raised in public newspapers and the Postal Service was attacked by a California Congressman to attempt to eliminate the criticisms

and protests over late deliveries and inadequate customer service in general. In response, the Santa Ana District Manager, G. Ahern, conducted a meeting with his staff concerning the nationwide implementation of the operational window to get carriers off the street earlier. The local Union President agreed that the letter carriers should not be out so late. In response, Manager Ahern testified he solicited suggestions from the Union President prior to making any firm decision. According to Ahern, the Union suggested bringing the carriers to work as early as 6:00 AM and hiring more carriers. The District and Postmaster determined the early start was not feasible based on the nationwide 24 hour clock and the mail delivery by truck to the various stations. It is an accepted fact that start times should coincide with the arrival of mail at the station and at 6:00 AM, as suggested by the Union, there would be insufficient mail for processing. Therefore, Management made the final decision as to the methods and means in accordance with Article 3.

In support of the action taken, the Service suggests this case is similar to three awards issued by Arbitrator Lurie that states the following:

> The right of management to place a higher priority on the completion of work within a window of operation than it places on the protection of the interests of employees who do not wish to work overtime was explicitly presumed by Arbitrator Mittenthal, when he rendered this decision in 1990. The Article 8.5.G 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. The formalization of the time-critical service standard into ubiquitous 10-hour windows of operation has not

substantially altered Arbitrator Mittenthal's fundamental declaration.

> Management has the right to assess, prospectively, the amount of time-sensitive work the OTDL Carriers can accomplish during the window of operation and to mandate non-OTDL Carriers to perform the remainder of the work, on overtime, within the window. (Cases # K01N-4K-C 06201761; K01N-4K-C 06201784; K01N-4K-C 06201804)

In line with Arbitrator Lurie's reasoning, the Service offered the language of Arbitrator Britton to show there is no merit to the Union's claim that Article 8.5.G is controlling in this case.

> And while the Arbitrator agrees that management must make every effort to avoid assigning overtime to those employees who do not wish to work it, he also recognizes that the overtime provisions of Article 8 must be read in conjunction with Article 3, which requires that the Employer "...maintain the efficiency of the operations entrusted to it." In light of the foregoing, it is the considered judgment of the Arbitrator that the Union has not met its burden of proving that a violation of the National Agreement occurred in this instance. (Arbitrator Britton, Case # H90N-4H-C 94006550, July 8, 1994)

The Service submits Article 3, Sections A, B, C, and D provided management the right to initiate a District-wide policy that required all carriers to be off the street by 1700 hours. Management has the exclusive right under Article 3 to direct employees in the performance of official duties and to determine the personnel by which such operations are to be conducted.

VII.

DISCUSSION

This grievance presents a controversy over the balance between the rights of management and Article 8 of the National Agreement. In the grievance before me, the Union argues the repeated and continuous violations of Article 8, including excessive overtime, were a direct result of the newly established operational window and Management's failure to adequately staff the carrier craft at North Long Beach Station. The Service takes the position that the launching of the 1700 operational window, established to provide better customer service, is within the exclusive rights of management. The parties negotiated the National Agreement specifically reserving the right of management to manage and direct the work force, but management's rights are not absolute, and under these facts Article 8 takes precedence.

In response to customer complaints concerning the inconsistency of mail delivery and to coincide with the Nation-wide 24-hour clock, an operational window of 1700 was implemented District-wide. Although management has the right to determine the methods, means and personnel to conduct the operations, it is noted these rights are *subject to* the remaining provisions of the National Agreement. Herein, Management claims legitimate business reasons for the overtime scheduling is justified by Article 3. I disagree and for the following reasons, find that the Service violated Article 8 of the National Agreement.

On a national level, an agreement was reached to make changes in Article 8 to "limit the amount of overtime, to avoid excessive mandatory overtime, and to protect the

interests of employees who do not wish to work overtime." The stipulation in this agreement was that bona fide operations requirements do necessitate using overtime from time to time, (i.e. occasionally or intermittently). The Service's claim that the window of opportunity was implemented in order to improve customer service is certainly a bona fide reason for the changes, but not an acceptable rationalization for the creation of excessive and continuous mandatory overtime. The use of overtime from *time to time* does not begin to compare with daily forced overtime which occurred for approximately seven (7) months.

Arbitrator Mittenthal determined that non-OTDL carriers may not be required to work on an overtime status until the OTDL carriers have exhausted their overtime obligation under Article 8, Section 5.G. The parties have stipulated, "The non-OTDL worked prior to OTDL working 12 hours." The operational window does not justify the bargained language found in Article 8.5.G. The regular use of non-OTDL employees was negotiated to be limited to "time to time" circumstances. A review of the exhibits clearly demonstrates non- OTDL employees being used over and over in violation of Article 8.5.G. as well as other sections of Article 8.

In the case at hand, Management implemented a 1700 Window of Opportunity with little regard to the ramifications of this decision on employees. While the Postmaster testified that "we worked with employees that presented problems with the scheduling" it appears that not enough consideration was given to exactly how the Window of Opportunity was going to translate into excessive and forced overtime for employees in general at North Long Beach. As stated by Arbitrator DiLeone Klein

> Article 8.5 and the Article 8 Memorandum balance the needs of Management to meet delivery standards through the assignment of overtime with the wishes of employees who want to work overtime and those who do not. Article 3 gives Management the right to establish a window of operations for pick-up and delivery of mail, however, the implementation of a Window of Operations cannot by that factor alone establish an insufficient number of qualified ODL employees and thereby justify forcing non-ODL employees to work overtime when there are ODL carriers who have not been utilized to the fullest extent. The carriers are entitled to the protections of Article 8.5. The Arbitrator finds from the evidence that Management was unable to show that there was no reasonable alternative to meeting the 4:30 PM Window of Operations other than a course of action which contravened Article 8.5.G. (Case # I94N-4I-C 97122042, February 1, 2001)

As articulated by Arbitrator Klein, the parties crafted an agreement whose purpose, in part, was to protect employees from being forced into working overtime on a daily basis.

The circumstances at the North Long Beach Station impacted the employees to such a degree that excessive and forced overtime became the norm. The "window of operation" compressed the number of hours available with obvious results. The documents provided me by the parties suggest that reasonable alternatives exist to alleviate some of the forced overtime with respect to carrier hours and staffing and still reach the goal to have the carriers back from the street by the designated hour. Article 3 does not give the Postal Service an unfettered right to violate bargained-for limitations in Article 8 of the National Agreement.

The Union contends there were insufficient numbers of employees to adequately complete the routes and to serve the public. In this case, I did not receive persuasive evidence that the understaffing at the North Long Beach Station was intentional or mean-spirited by management. Both Union and management witnesses agree the staffing was impacted by limited and light duty employees, route adjustments, the loss of reserve letter carrier positions, a need for new hires and a few other factors. Although adequate staffing is the responsibility of management, the evidence is persuasive that management was not only trying to rectify the problem, but in fact, hired additional employees. It is outside my authority to direct the Service regarding its exclusive right to hire personnel; however, the testimony was convincing the staffing issue is being resolved in an effort to abide by the working hours and conditions agreed to between the parties. If the complement requirements for the letter carrier craft at the North Long Beach Station continue to be understaffed, the Union has the grievance procedure available for any violations.

Additional allegations and issues are raised by the parties in the 8,000 pages of documentation reviewed and the closing briefs submitted. For example, whether the meeting on May 31, 2006, was a negotiation or an informational discussion and whether management had an obligation to discuss and consider in good faith any suggestions the union offered concerning the window of operation. A bona fide effort to explore alternatives that would mutually satisfy the parties is certainly preferable to a unilateral decision. However, the record did not provide me persuasive evidence one way or the other as to how the process concerning the implementation of the "window of operation"

commenced regarding the various ideas and alternatives that passed between the parties.

The overtime violations were illustrated by the Union over and over and the Service does not contest the overtime infractions in general, only that Article 3 takes precedence. The overtime violations significantly impacted the employees who suffered not only from the constant interference with their personal lives, but from the continuous overtime, which was not their choice in the first place. The actions by management violate the letter carriers contractually bargained for rights concerning working conditions and hours of employment. The overtime violations warrant redress by the Postal Service.

VIII.

AWARD

The grievance is sustained. The Union substantiated violations of Article 8 of the National Agreement starting from June 10, 2006 when non-OTDL regulars continually worked mandatory overtime. The remedy portion is remanded to the parties. I will retain jurisdiction.

Nancy Hutt, Arbitrator

DATED: June 19, 2007
San Francisco, CA