

REGULAR ARBITRATION PANEL

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In the Matter of the Arbitration	)	Grievant: Class Action
between	)	Post Office: Salt Lake City, UT
UNITED STATES POSTAL SERVICE	)	USPS Case No: E06N-4E-C 09206345
And	)	DRT No. 02 131200
NATIONAL ASSOCIATION OF	)	NALC Case No: 09253
LETTER CARRIERS, AFL-CIO	)	

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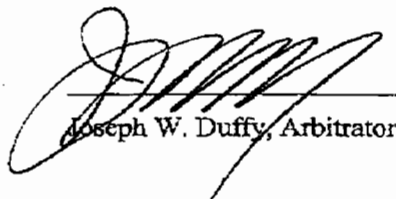
BEFORE: Joseph W. Duffy, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Nancy Oman  
For the Union: Coby Jones  
Place of Hearing: Salt Lake City, UT  
Date of Hearing: September 24, 2009  
Briefs: November 6, 2009  
Date of Award: November 25, 2009  
Relevant Contract Provisions: Article 3, 8  
Contract Year: 2006-2011  
Type of Grievance: Assignment of non-ODL Carriers when ODL Carrier available

**Award Summary**

The arbitrator found that the employer violated the National Agreement when it failed to call in an ODL Carrier on his non-scheduled day and non-list carriers worked off assignment overtime that day. The arbitrator awarded the following remedy: 1.) Pay ODL Carrier Gonzales for eight (8) hours of missed overtime opportunity, and; 2.) Pay the non-ODL Carriers at fifty percent (50%) of the straight time rate for all off-assignment hours worked on March 11, 2009.

  
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Joseph W. Duffy, Arbitrator

### Introduction

This arbitration took place at the Postal Facility located at 1760 W. 2100 S., Salt Lake City, UT 84199. At the start of the hearing, the parties agreed that the grievance is properly before me for a final and binding decision on the merits.

The hearing proceeded in an orderly manner. The advocates did an excellent job of presenting the respective cases. Both parties had a full opportunity to call witnesses, to introduce documents into the record and to make arguments. Witnesses were sworn under oath and subject to cross-examination by the opposing party.

The parties introduced three joint exhibits (J1-J3) into the record. A total of three witnesses testified at the hearing (Shop Steward Denton Taylor, Carrier Brian Gonzales & Station Manager Darlene Jones). Following the testimony, the parties elected to submit post-hearing briefs by simultaneous mailing to me and to each other, postmarked by November 3, 2009. I received the last brief on November 6, 2009, postmarked by the agreed deadline, and then closed the record.

### Issue for Decision

The parties agreed to the issue statement as established by the Dispute Resolution Team ("DRT") as follows:

Did Management violate the National Agreement when non-list carriers worked off assignment overtime, and if so, what is the appropriate remedy?

### Background

The essential facts are not in dispute. On March 11, 2009, management at the South Salt Lake Station knew in advance that three routes had to be covered because of Carrier absences for annual leave or sick leave. In addition, the Station has a 0.75 auxiliary route (Route 19) that has to be covered daily. On the morning of March 11, two Carriers called in sick and so two additional routes had to be covered.

Management attempted to call in PTF Cassidy, but he did not answer his phone. Management did not call in Carrier Gonzales who is on the ODL and who was on his scheduled day off. Carrier Gonzalez testified that he was available to work on March 11, but he did not get a call. (J2, p. 36)

The employer used three TE Carriers to cover some of the vacant routes and used ODL Carriers assigned to work that day to provide approximately twelve hours of auxiliary assistance

overtime. About four and one-half hours of work remained after assigning the TEs and the ODL Carriers on duty. The employer then assigned four non-ODL Carriers to cover the remaining 4.5 hours. Testimony from the Station Manager established that some of those non-ODL Carriers volunteered for the overtime.

The union filed a grievance over the employer's failure to call in the ODL Carrier on his scheduled day off before assigning off-assignment overtime to non-ODL Carriers. The Step B Team reached an impasse on May 29, 2009 and this arbitration followed.

#### Discussion

The union contends that on March 11, 2009, sufficient total station overtime existed to justify calling in the ODL Carrier. The employer contends that no eight-hour assignment was available on March 11 to justify bringing in the ODL Carrier who has an eight-hour guarantee under Section 8.8B of the National Agreement.

The Step B Team agreed to the following facts:

- The case file shows that on this day, four (4) non-list carriers worked 4.36 hours off assignment overtime.
- These same non-list carriers had been scheduled to carry 4.50 hours off assignment overtime. This establishes that at the time the plan was made Management knew they were scheduling off assignment overtime.
- Management attempted to call in PTF Cassidy but was unable to reach him.
- Management did not attempt to call in ODL carrier Gonzales.
- The total overtime worked by scheduled ODL carriers was 12.57 hours.

(J2, p. 2)

The principle has long been established in the collective bargaining relationship between these parties that the ODL exists to excuse full-time Carriers who do not wish to work overtime from working overtime. The parties agreed in a Memorandum of Understanding on Article 8 that the terms of Article 8 "...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." One of the means the parties agreed on for achieving that objective is the ODL. (JCAM, p. 8-27)

The employer argues that on the morning of March 11, when it assessed the need for coverage and overtime, it assigned work to TEs and ODL Carriers and then had only 4.5 hours remaining to be covered. The employer contends it had no obligation to adjust the plan in a way that ODL Carrier Gonzales could be called in and given eight hours of work by reducing the hours assigned to the other ODL Carriers.

The union argues that by calling in Carrier Gonzales and adjusting the plan, the employer would have met all of its operational goals without violating the National Agreement. The union argues that, in addition, the employer would have avoided paying penalty overtime to three ODL Carriers who worked overtime on March 11.

In reviewing the record in this case, I found the union's arguments persuasive. The union pointed out that on March 11, ODL Carriers worked 12.57 hours of overtime and WAL Carriers worked 4.36 hours of off-assignment overtime (4.5 hours scheduled). The total is 16.93 hours. The union argued that Carrier Gonzales could have carried Route 19 for 4.5 hours and then taken some of the hours worked by the ODL Carriers so they would not have had to work off-assignment and penalty overtime would not have been incurred. The union contends that the off-assignment overtime for the WAL Carriers could have been avoided if Carrier Gonzales had been called in to work. In addition, Carrier Gonzales could have done the work earlier in the day, thus helping to avoid any issues with late dispatch.

The employer, most likely, could have assigned the work as it did if it had called Carrier Gonzales and had not been able to reach him. The employer is not entitled, however, to assume an ODL Carrier is unavailable because the Carrier is on a scheduled day off. As the union Step B representative in this case argued, the only way to determine whether an ODL Carrier who is on a non-scheduled day is available is to call the Carrier.

The facts of Article 8 cases vary greatly and so each case requires individual consideration. Based on the record presented in this case, I find that the employer violated the National Agreement when it failed to call Carrier Gonzales on his non-scheduled day to prevent the off-assignment mandate. The employer clearly could have made the adjustments that the union described and avoided the contract violation.

The employer contends that some or all of the non-ODL Carriers who worked overtime on March 11 volunteered. The fact that the employees volunteered, however, does not justify a violation of the National Agreement.

The union submitted Step B decisions from the Salt Lake City Installation, decided on May 5, 2009. The union contends those decisions are controlling precedent in this case and points out that the decisions were referred to in the Step B decision in this case. (J2, p. 2). The employer disagrees that the Step B decisions control. The employer also argues that the Step B decisions cited are not part of the case file in this case and were submitted with the post-hearing brief, which is not permitted under Article 15.

In reaching my decision in this case, I have not relied on those Step B decisions. I find that my interpretation of Article 8 resolves this case without the necessity of considering the arguments made by the parties about issue preclusion and collateral estoppel.

Award

Based on the entire record submitted by the parties, I find that management violated the National Agreement when non-list Carriers worked off assignment overtime on March 11, 2009. I have considered the parties' arguments on remedy contained in the closing briefs. I find that the appropriate remedy is as follows: 1.) Pay ODL Carrier Gonzales for eight (8) hours of missed overtime opportunity, and; 2.) Pay the non-ODL Carriers at fifty percent (50%) of the straight time rate for all off-assignment hours worked on March 11, 2009.

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