

August 19, 2008

Cert. #: TBD

Jim C Sherfey
LETTER CARRIERS
NATIONAL BUSINESS AGENT
NALC
2484 Pruden Blvd
Suffolk, VA 23434-1406

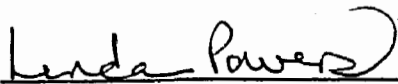
Decision:	PRE-ARBITRATION
USPS Number:	K06N-4K-C 07364664
NALC Number:	7907CC164
Step A Meeting Date:	
Date Received at Step R:	06-06-2008
Step R Decision Date:	08-19-2008
Issue Code:	
Grievant:	CLASS ACTION
Installation:	GAITHERSBURG, MD 20879-9998

Based on our discussions the grievance is resolved as follows:

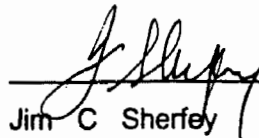
T. Muse will receive a lump sum payment of \$112.50 and M. Moore will receive a lump sum payment of \$75.00. This fully resolves the grievance.

Both parties agree that this settlement is non-precedent setting, unless specifically agreed to in writing, and will not be cited by either party in any subsequent grievance or arbitration.

Sincerely,



Linda Powers
Labor Relations Specialist
(area)



Jim C Sherfey

Date:

8/19/08



National Association of Letter Carriers (AFL-CIO)

REQUEST FOR ARBITRATION

DATE: June 02, 2008

TO: Labor Relations Processing Center
United States Postal Service
Post Office Box 9799
Chester, PA 19013-9799

FROM: NATIONAL BUSINESS AGENT
Timothy W. Dowdy
2484 Pruden Boulevard #A
Suffolk, VA 23434

DISPUTE RESOLUTION PROCESS REQUEST FOR ARBITRATION

USPS NO: K06N4KC07364664
NALC DRT NO: 13-101005
BRANCH GRIEV. NO: 7907CC164
CLASS
ROCKVILLE, MD
DECISION RECEIVED: 05/05/2008

Dear Sir or Madam:

Pursuant to the provisions of the NALC/USPS Joint Dispute Resolution Process, I hereby appeal the above referenced grievance to arbitration.

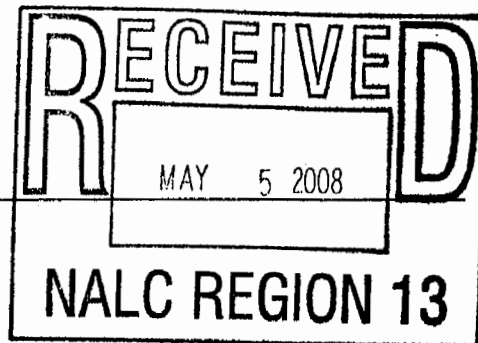
Sincerely,

A handwritten signature in cursive script that reads "Timothy W. Dowdy".

Timothy W. Dowdy
NATIONAL BUSINESS AGENT

cc: Branch President, NALC
Step B Team
Postmaster

CAPITAL METRO AREA
NALC/USPS STEP B
DISPUTE RESOLUTION TEAM



STEP B DECISION

CAPITAL METRO AREA
NALC/USPS STEP B
DISPUTE RESOLUTION
TEAM

DISTRICTS
CAPITAL
BALTIMORE
NORTHERN VIRGINIA

DECISION: IMPASSE
USPS GATS #: K06N-4K-C 07364664
GRIEVANT: Class Action
BRANCH GRIEVANCE NUMBER: 79-07-CC164
BRANCH: 3825
INSTALLATION: 23-3530
DELIVERY UNIT: Montgomery Village
STATE: Maryland
DATE STEP A INITIATED: 09/14/2007
STEP A MEETING DATE: 04/18/2008
DATE RECEIVED AT STEP B: 04/21/2008
STEP B DECISION DATE: 04/30/2008
ISSUE CODE: 11.6100

ISSUE:

Did Management violate Article 11.6.B of the National Agreement when the non-volunteer carriers were scheduled to work their designated holidays on September 1, 2007 and if so, what is the appropriate remedy?

DECISION:

The Step B Team has decided to declare an IMPASSE. The NALC National Business Agent may appeal this grievance to arbitration within fourteen (14) days after receipt of this joint report. The Step B Team has considered all arguments and evidence in the case file and any of this material may be cited in the event of arbitration.

DISCUSSION:

After carefully reviewing all the facts and documentation in this case, the Dispute Resolution Team was unable to reach common ground in their discussion of this grievance. The Team members could not agree whether or not Management had violated the National Agreement in this instance.

EXPLANATION:

Five Full-time regular non-volunteer carriers were scheduled by Management to work their 'designated holiday' on Saturday, September 1, 2007 at the Montgomery Village Branch in Gaithersburg, Maryland. The office has forty-one (41) full time routes, one eight (8) hour collection and one four (4) hour auxiliary route. On Saturday,

September 1, 2007, the office used 336 workhours of which 65.63 hours were overtime. No penalty overtime was used. All the carriers returned to the office before 18:00pm.

The Union contends that there were forty-eight (48) carriers scheduled by Management on September 1, 2007 to cover the forty-one (41) routes, one four (4) hour auxiliary and one eight (8) hour collection. Three of the scheduled carrier were either on limited duty or light duty making them unavailable to carry their assignments. This, left forty-five (45) non-restricted carriers scheduled to cover a total of forty-two and one-half (42.5) routes. The Union contends that Management, by requiring the two senior non-volunteer carriers to work on their designated holidays, overscheduled their workforce in violation of Article 11.6. B which reads:

11.6. Section 6. Holiday Schedule

B. As many full-time and part-time regular schedule employees as can be spared will be excused from duty on a holiday or day designated as their holiday. Such employees will not be required to work on a holiday or day designated as their holiday unless all casuals and part-time flexibles are utilized to the maximum extent possible, even if the payment of overtime is required, and unless all full-time and part-time regulars with the needed skills who wish to work on the holiday have been afforded an opportunity to do so.

The Union claimed that seven (7) regular carriers worked less than eight (8) hours that day and that the two (2) Transitional Employees (TE's) and Part-Time Flexible (PTFs) employees were not maximized up to 12 hours and that all the TEs, PTFs and ODLs were not scheduled in as early as possible on that day. Finally the Union argued that if the seven regular carriers who had taken leave, totaling 4.96 hours, that day had instead worked up to eight hours, and the TEs and PTFs had been maximized to 18:00, approximately 10 additional hours, the total workhours, (4.96+10.12=15.08) would have been available so that the two senior non-volunteer carriers, (M. Moore, 6.01 and Muse, 8.86) would not have had to work. The Union requested that the two senior carriers cited each be paid eight (8) hours of Administrative leave or otherwise be made whole.

Management contends that Article 3 of the National Agreement gives them the exclusive right, subject to the provisions of the agreement to maintain the efficiency of the operation entrusted to it and to determine the methods, means and personnel by which such operations are to be conducted.

ARTICLE 3 MANAGEMENT RIGHTS

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

- A. To direct employees of the Employer in the performance of official duties;
- B. 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;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;
- E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and
- F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., 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.

This is what they did, they claimed, when they made the Holiday schedule for September 1, 2007, following the guidelines in Item #13 of the LMOU for the method of selecting employees to work. Management contends that they did use the PTFs and TEs to the maximum extent possible. The contention of the Union that if certain carriers had not taken leave, and the TEs and PTFs were utilized beyond 18:00, they would have been available to work the hours of two senior carriers cited is dismissed by Management as "speculation". Finally, Management stated that the fact that they were successful in their scheduling is born out by the fact that the unit used 336 workhours that day, which is 4 hours less than base, indicating that the scheduling decisions made by Management did maintain the efficiency of the operations, a task they were mandated to do.

NALC Representative's Position

The NALC Step B Representative agrees with all contentions, additions/corrections and the remedy requested of the NALC's Formal Step A Representative and would like to add the following:

Article 11.6.B of the National Agreement is the controlling provisions for Holiday Scheduling, absent a Local Memorandum of Understanding (LMOU). It directs Management in the proper application of Holiday scheduling, and posting, and is the minimum 'pecking' order which Management shall adhere to when selecting employees for Holiday work. It reads:

The intent of Article 11.6 is to permit the maximum number of full-time regular, full-time flexible and part-time regular employees to be off on the holiday should they desire not to work while preserving the right of employees who wish to work their holiday or designated holiday.

Article 11.6.B provides the scheduling procedure for holiday assignments. Keep in mind that Article 30.B.13 provides that "the method of selecting employees to work on a holiday" is a subject for discussion during the period of local implementation. The Local Memorandum of Understanding (LMOU) may contain a local "pecking order." In the absence of LMOU provisions or a past practice concerning holiday assignments, the following minimum pecking order should be followed:

- 1) All casual and part-time flexible employees to the maximum extent possible, even if the payment of overtime is required.
- 2) All full-time regular, full-time flexible and part-time regular employees who possess the necessary skills and have volunteered to work on their holiday or their designated holiday—by seniority.
- 3) Transitional employees
- 4) All full-time regular, full-time flexible and part-time regular employees who possess the necessary skills and have volunteered to work on their non-scheduled day—by seniority.
- 5) Full-time regular, full-time flexible and part-time regular employees who possess the necessary skills and have not volunteered on what would otherwise be their non-scheduled day—by inverse seniority.
- 6) Full-time regular, full-time flexible and part-time regular employees who possess the necessary skills and have not volunteered on what would otherwise be their holiday or designated holiday—by inverse seniority.

The Memorandum of Understanding dated October 19, 1988 (M-00859) provides:

The parties agree that the Employer may not refuse to comply with the holiday scheduling "pecking order" provisions of Article 11.6 or the provisions of a Local Memorandum of Understanding in order to avoid payment of penalty overtime. The parties further agree to remedy past and future violations of the above understanding as follows.

Under these guidelines it is reasonable for Management to expect utilizing PTF and TE employees to cover additional work hours, as a result of employees 'Holiday/Designated Holiday'. Management in this instance chose to simply over schedule, as supported Union document #7, and avoid the payment of penalty overtime, as supported by Management document #6, and place 'a body per route' with extra employees available. Had Management properly applied the Article 11.6 provisions, as presented by the Union, only three (3) of the five (5) 'Designated Holiday' non-volunteer employees forced to work on September 1, 2008, would have been necessary, as supported in the case file. This would have permitted the two (2) senior employees to be off on their 'Designated Holiday'. Thus, two (2) senior employees were improperly scheduled to work their designated Holiday, on September 1, 2008, resulting in a violation of Article 11.6, and this Step B Representative submits that the remedy requested be granted.

USPS Representative's Position


The USPS Step B Representative agrees with all contentions, addition/corrections provided by the Formal Step A Representative and would like to add the following: It is very easy to become a 'Monday-morning Quarterback' when dealing with the question did Management properly schedule employees for a particular day. Local Management, in this case, properly posted the Holiday schedule and then selected employees to work that day according to the pecking order in the LMOU. The Union makes the argument that if certain carriers had not taken leave and if more carriers had come into work earlier and if the TEs and PTFs had worked longer, then enough potential workhours might have been available to eliminate the need for two of the five forced in non-volunteer carriers. This is the easiest sort of argument for the Union to make because they have the benefit of hindsight, saying what should have been done after the fact based on what actually did happen. Management had to deal with what might happen five days in the future when they made their schedule and although the Union claims a violation of Article 11.6.B. because they think that certain employees should have been excused from work, they conveniently forget 11.6.A. which reads:

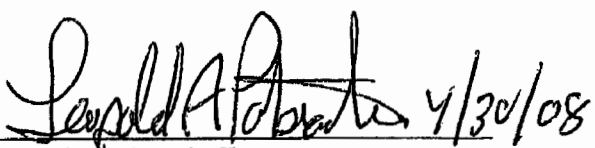
11.6.A Section 6. Holiday Schedule

A. The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Tuesday preceding the service week in which the holiday falls.

Management, not the Union after the fact, determines the number and categories of employees needed for holiday work. Management's documentation shows that they scheduled forty-two (42) carriers to cover forty-two and one-half (42.5) routes on September 1, 2007 according to the LMOU. The case file shows that certain TEs, PTFs and ODLs were scheduled in early to be available late to assist routes on the street and the TEs, PTFs and ODLs did work overtime that day, as required. Management performed their scheduling duties in accordance with Articles 3 and 11.6 of the National Agreement. For all the reasons mentioned above, this grievance must now be denied.

Case File Inventory:
PS Form 8190-3 pages
Union's Packet-35 pages
Management's Packet-14 pages


Tonya L. Detrick
NALC Step B Representative


Leopold A. Potsiadlo
USPS Step B Representative

USPS GATS #: K06N-4K-C 07364664

CC: Step A Parties
District Labor Relations
National Business Agent
Capital Metro Labor Relations