Window of Operations Arbitrations – Pro Union

Arbitrator Raymond L. Britton, E90N-2C-C 92021627/93000229/92021628 (C-13181)

Determinative of this matter, is whether the overtime used on November 29, 1991, was in accordance with article 8 and the Memorandum of understanding in the National Agreement. Specifically applicable hereto is the language of the Article 8, Section 5.G of the National Agreement. Therein, it is expressly provided that full-time employees not on the "overtime desired" list may be required to work overtime"…only if all available employees on the …" list have worked up to twelve hours in a day."

In adopting this language, the parties have clearly expressed their intent to condition the working by Non-ODL employees on overtime on ODL employees working up to 12 hours, and avoiding, as much as possible, requiring that employees perform overtime service contrary to their indicated desires.

The difficulty with according the Employer's argument as to the existence of a 5:00 O'clock operational window persuasive force is that it is not convincingly demonstrated by the evidence presented that such an operational window existed.

Not only does contrary testimony indicate that in the past management was not concerned with whether carriers delivered mail in the dark, but there is testimony that the alleged 5 p.m. operational window simply did not exist.

Arbitrator Ernest E. Marlatt, S4C-3U-C 7824/S4C-3U-C 8101 (C-0920)

The postal service argues that it was necessary to spread some of the overtime to non-ODL employees because of the "Window" constraints, that is to say, if there were not enough volunteers to get the work out by a recognized deadline, then other employees would have to be utilized or the deadline would be missed. This argument is valid and the "window" exception is recognized.

But it is not up to the Union to disprove the existence of a window. Article 8.5 governs the distribution of overtime, and if the Postal Service alleges it had to disregard these provisions because of a time window, then the Postal Service has the burden of proof to show the time constraints under which it operates as to that specific occurrence.

Arbitrator William J. LeWinter, S4N-3U-C 1272 (C-7049)

In addition to Article 8.5.C.2.D, management relies here on the "operating window" as a defense. The window is a policy whereby management sets an area of time, the window, in which delivery operations "MUST' take place. From the explanation given at the hearing, I must conclude that the window is a management policy that is unilaterally generated.

I have not been given any reference to the window as a part of the collective bargaining agreement. The only contractual connection provided by the employer arises from an arbitration opinion by Arbitrator Marlatt. Arbitrator Marlatt goes on to state that the employer has the burden of proof of the existence of the window. At no time, however, is there a definition of any contractual status of the window. I would assume "is recognized" refers to a past practice approach; however, the operations window appears to remain a unilateral decision of management. 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.

My authority is derived from the collective bargaining relationship as it defines the enforceable contract obligations of that relationship. It is the duty of the employer to operate in as effective a manner as possible. That will not permit, however, a violation of its agreements.

Arbitrator James F. Scearce, S4N-3F-C 37898 (C-7401)

Article 8, Section 5.G is one such new provision and establishes the potential that fulltime employees may be required to work overtime but "only" if those employees on the 12 –hour ODL have worked up to 12 hours in a day.

The afore-cited Memorandum was not intended to go beyond Article 8 and, in fact, recognizes overtime as a necessity due to "bona fide operational requirements." It reiterates the commitment to not require overtime work of employees when there are sufficient employees on ODL's to meet overtime needs.

In the instant case, the Service raises the defense that it had a "normal operational window" of 5:00 PM for "service reasons". The Agreement is the result of arms-length bargaining and cannot be ignored or altered merely to satisfy the whim or fancy of local management.

If the drafters of the document had not intended to allow a four-hour overtime list, it would have been excluded. The intent of article 8, Section 5G is clear enough of its face, as is the Memorandum.

Arbitrator Raymond L. Britton, S4N-3D-C 39490/41456 (C-8021)

While there is some dispute between the parties as to whether there is an operational "window", the arbitrator, even if he were to assume, without deciding, that such an operation exists, could not rightfully find that such advances the position of the employer.

The objective of management to promote the efficient delivery and dispatch of the mails is, of course, laudatory. However, notwithstanding such a commendable objective, the Employer is still obligated to adhere to the terms of the National Agreement as fashioned by the parties during the negotiations process.

Pertinent hereto in this regard, is the language of Article 8, section 5.G of the National Agreement which expressly provides that "…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 hours in a day or sixty hours in a service week…"

Under Sub - section 2 thereof, it is further provided that employees on the overtime desired list "excluding December, shall be limited to no more than twelve hours of work in a day and no more than sixty hours of work in a service week

Although such action may have been taken to further the efficiency of postal operations, it nevertheless cannot rightfully be allowed to stand if, as a result thereof, the provisions of the National Agreement are violated. For regardless of its underlying motives, it remains the responsibility of management to conform to and stay within the confines of the language agreed upon between the parties.

Arbitrator Thomas F. Levak, W4N-5C-C 42082 (C-8707)

With regard to the Operational Window argument, there are no operational window standards in any Handbook or Manual, nor is that matter covered by the National Agreement as an exception to the overtime provisions.

The arbitrator would not that while he has made a careful study of the exhibits and the arguments of the parties, this case turns upon a relatively simple fact: The National Agreement and its incorporated Memorandum of Understanding require that overtime work be assigned in a certain manner.

Management argues that it is entitled to do so to meet the demands of its unilaterally declared operational window. The arbitrator cannot agree with that position. Absolutely nothing within the National Agreement supports management's reasoning. In order to find in favor of the service, the arbitrator would have to conclude that the management-imposed 4:30 pm operational window is binding on the Union and somehow overrides the overtime language of the National Agreement. That conclusion, too, is not possible.

Such a unilaterally imposed 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.

Arbitrator Francis T. O'Brien, B90N-4B-C 93046424/94009276 (C-13686)

The right not to work overtime is contractually safeguarded, but it is not an absolute right. Obviously, there are situations in which management can properly order carrier not on the ODL to work overtime.

But, at the same time, if the overtime desired provisions of article 8.5 is to be read as having any meaning at all, it must be interpreted within the context of requiring that management make a good faith effort to avoid forcing those who are not on the ODL to work overtime.

Arbitrator Walter H. Powell, C94N-4C-C-96058968 (C-17181)

Article 8 deals with overtime. It covers the establishment of the overtime-desired list and the use of ODL carriers. There are advantages to those who sign up for overtime, and the rights to those not on the ODL are equally protected.

Conflict between the proper interpretation of article 8 and it utilization are magnified when management attempts to create an exception. If a carrier is not on the ODL, management must not assign overtime to that carrier without first fulfilling the obligation outlined in the article 8 memorandum. Granted that management is given leeway to act within a rule of reason. However, arbitrary assignment of overtime to non-ODL carriers when ODL carriers are available is in contradiction to the intent of article 8.

Arbitrator Linda DiLeone Klein, I94N-4I-C 97122042

The dispute which arises here is in essence a "clash" between the right of Management to maintain the efficiency of its delivery operations and the application of the overtime provisions which have been negotiated and agreed upon by the parties.

After establishing the 4:30 window of operations, the postal Service relied on the provisions of article 8.5.D. to justify assigning overtime to employees who were not on the ODL rather than ODL employees who had not been assigned overtime to the extent set forth in article 8.5.G. In other words, ODL employees must have exhausted their overtime obligations prior to forcing non-ODL employees to work overtime. As it relates specifically to the instant case, the arbitrator finds that management, by the manner in which it applied the 430 PM window of operations, created a artificial "insufficiency" of qualified ODL employees and thereafter relied on the insufficiency to justify implementing the provisions of article 8.5.D.

The postal service appears to have determined that any time an ODL employee had to be scheduled for overtime and if that assignment would extend beyond 430 PM, there was automatic justification for concluding that sufficient qualified ODL carriers were not available and that Non-ODL carriers would therefore be forced to work overtime. It appears to the arbitrator that management applied the 430 PM window in a manner, which circumvented the provisions of Article 8.5.G.

Article 8.5.D sets forth the exception for scheduling overtime pursuant to article 8.5.G. In this case, the application of the 430 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 the article 8.5.G.

Although simultaneous scheduling of overtime for ODL and Non-ODL employees is permitted under certain circumstances, the 430 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 legitimate and/or time critical situations where the ODL does not provide sufficient qualified employees. In this case, it cannot be held that the 430 window was a time critical situation on such a regular, continuous, routine basis.