

**NE AREA REGULAR ARBITRATION PANEL
WESTERN NEW YORK DISTRICT**

In the Matter of the Arbitration between

UNITED STATES POSTAL SERVICE

- and -

Grievant: Class Action
Post Office: Tonawanda, NY
USPS Case No: B06C-4B-C 08318976
APWU Case No.: Tonawanda-CWHR

AMERICAN POSTAL WORKERS UNION

BEFORE: Stephen P. LaLonde, Arbitrator

APPEARANCES:

FOR THE U.S. POSTAL SERVICE: Francis E. McNamara, Advocate
James Craven, Witness

FOR THE UNION: Peter Coradi, Advocate
Michael Gallagher, Witness

PLACE OF HEARING: Tonawanda, NY

DATE OF HEARING: April 7, 2009

DATE OF RECEIPT OF BRIEFS: N/A

DATE OF CLOSE OF RECORD: April 7, 2009

DATE OF AWARD: May 18, 2009

RELEVANT CONTRACT PROVISIONS: Article 12, JCIM (Article 12)

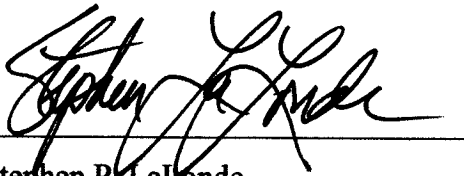
CONTRACT YEAR: 2006 - 2010

TYPE OF GRIEVANCE: Contract Interpretation

AWARD:

The grievance is sustained. The Service violated the Collective Bargaining Agreement when it exceeded two full-time regular clerks from the Tonawanda, NY Post Office effective November 24, 2007, as the final corrected Comparative Work Hour Report ("CWHR") and the report generated by the Union from the actual clock rings clearly demonstrate that the excession was not justified. The retreat rights of the two full-time regular clerks who were exceeded effective

November 24, 2007 shall be activated according to the process and requirements of Article 12. In addition, the affected employees shall be paid out of schedule pay and mileage, at the appropriate GSA rate, for the time of their excession and until they are returned to work at the Tonawanda, NY Post Office. The Arbitrator directs the Parties to meet within fourteen (14) days of the receipt of the Award to effectuate the terms herein. The Arbitrator shall retain jurisdiction in the event that the Parties cannot agree on the application of retreat rights and the awarded compensation contained within this Award.

A handwritten signature in black ink, appearing to read "Stephen P. LaLonde", written over a horizontal line.

Stephen P. LaLonde

Arbitrator

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I S S U E

Did the Service violate the Collective Bargaining Agreement when it exceeded two full-time regular clerks from the Tonawanda, NY Post Office effective November 24, 2007, as demonstrated by the Comparative Work Hour Report ("CWHR")? If so, what is the appropriate remedy?

S T I P U L A T I O N S

The following stipulations were made at the hearing:

1. The Service stipulated that the clock rings do show that the Service had to correct and recalculate the hours for the 30 days prior to the excession.
2. The Service stipulated that Timothy Northem and Laurie Ennis would testify (relative to pp. 14-18 of Joint Exhibit #2) that the data generated was based on the clock rings supplied by Service and that, essentially, the first two (2) reports were not accurate as the hours went up in the 30 day period after the excessing event and they would further testify that no volume data nor work hours nor scheme training figures were presented at either the July or August meetings.

R E L E V A N T C O N T R A C T P R O V I S I O N S

**ARTICLE 12
PRINCIPLES OF SENIORITY, POSTING AND
REASSIGNMENTS**

**JOINT CONTRACT INTERPRETATION MANUAL
(JCIM - ARTICLE 12)**

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE UNITED STATES POSTAL SERVICE (NEA)
& THE AMERICAN POSTAL WORKERS UNION (APWU)**

RE: EXCESSING ISSUES

The parties recognize that there may be disagreements over the question of whether an involuntary reassignment was contractually consistent, and to that end, the parties are committed to ensuring that the primary principle of dislocation and inconvenience to employees in the regular workforce shall be kept to a minimum by agreement to the following process.

Consistent with Article 12, Section 4.D and the Joint Contract Interpretation Manual, the APWU Regional Coordinator may request from the Area Manager, labor relations, a comparative work hour report (CWHR) sixty (60) days after the time of an employee(s) involuntary reassignment.

If a dispute/disagreement occurs upon the union's receipt of the CWHR as to whether the excessing was justified and/or whether retreat rights should be activated, the issue will be referred to the parties at the Area/Regional level (Article 12 Manager/designee and the regional Coordinator/designee) with all the appropriate documentation for resolution. If there is no resolve, then the issue will be scheduled for immediate arbitration utilizing the review form signed by the parties and/or similar form.

Mike Gallagher 2/19/08
Mike Gallagher Date
Eastern Region coordinator
American Postal Workers Union

Elizabeth Powell 2/19/08
Elizabeth Powell Date
Northeast Regional Coordinator
American Postal Workers Union

James M. Craven 2/15/08
James M. Craven Date
Labor Relations Specialist, NEA

POSITIONS OF THE PARTIES

UNION POSITION

The Union claims that the Service violated the Collective Bargaining Agreement ("CBA") when they excessed two (2) full-time regular ("FTR") clerks from the Tonawanda, NY Post Office.

The excession was effective November 24, 2007. The Union notes that Article 12.4.C of the CBA provides that in situations of excession the Union can request that a Comparative Work Hour Report ("CWHR") for the facility from which the excession is being made. The CWHR can be requested by the Union sixty (60) days after the effective date of the excession. According to the Joint Contract Interpretation Manual ("JCIM") jointly entered into by the Parties, the CWHR will document all work hours utilized on a daily basis for a period of thirty (30) prior to the date of excession and thirty (30) days after the effective date. The Union notes that the requirements of Article 12 are also referenced and expanded upon the in the JCIM in which the Parties have agreed on mutual understand and application of contractual provisions. The Union also opines that the JCIM is both mandatory on the Arbitrator as well as the Parties.

If the CWHR does not provide data that supports the stated business conditions upon which the excession was based, then the CBA provides that the exceded employees can activate their retreat rights. If the Service denies the activation of retreat rights, then an employee has the right to utilize the grievance-arbitration process to render a final determination.

In the matter of the instant Arbitration, the Union made a timely and proper request for the CWHR but there was a considerable delay from the Service in providing it. The Union also points out that they made several e-mail requests to meet with the Service to discuss the report. These requests were made on March 6, April 23 and May 6, 2008. It was not until March 6, 2008 that the Service finally provided a CWHR to the Union. Upon review however, the Union found significant errors and discrepancies in the report provided by the Service. For example, after the excess date, the Union found that overtime hours were significantly increased. In addition, the Union found that overall hours also were substantially increased (+77.72) after the effective date but the Union contends that with 2 less FTRs, the overall hours should actually have dropped approximately 320 hours given that the 2 exceded FTRs each worked a 40 hour week for the 4 weeks of the post-excession 30 day period.

The Union alleges that the hours reported by the Service for the 30 day period prior to the effective excession date had been artificially inflated by 194 hours. The Union asserts that the Service deliberately did this to attempt to claim that the overall work hours had actually gone

down as a result of the excession. The Union states that the Service CWHR lacks credibility and accuracy compared to the calculations done by the Union because the Union based its compilation of data on the actual employee clock rings.

The Union points out that on March 11, 2008 they informed the Service that the Union's review of the actual clock rings revealed that the Service had erred in counting 127.5 hours against the clerk craft in the 30 day period prior to the effective date of excession when, in fact, those hours were worked by craft employees who were performing Level 17 supervisory duties which are not and should not be counted as clerk craft work. This error also had the effect of incorrectly inflating the overall work hours for the 30 day pre-excession period.

The Union reiterates the fact that they were continuing to make formal requests to meet with the Service to talk about the CWHR and their concerns about the accuracy of the report. It was not until July 18, 2008 (after a delay of 4 months) that the Service and the Union had their first meeting on the CWHR. Subsequently, there was a second meeting on August 28, 2008. Neither meeting reached any agreement over the concerns raised by the Union and on September 4, 2008 APWU Eastern Region Coordinator, Michael Gallagher ("Gallagher") wrote to Service representative James Craven ("Craven") that the corrected CWHR reports did not substantiate the Service decision to excess and reassign the individuals at issue. Gallagher further indicated that, as far as the Union was concerned, the retreat rights should be activated for the individuals who were excessed.

At the same time as the September 4, 2008 letter, Gallagher also requested that Craven sign the Direct Appeal to Arbitration form in order to move this dispute directly to Arbitration per the process agreement contained in the MOU on Excessing Issues (cited above). The Union notes that it took almost 2 months more before Craven signed the form. The Union contends that the MOU that was designed to move these excession disputes directly to Arbitration in a timely manner has, in actuality, been an exceedingly long and frustrating process with the result that it is only now that the Arbitration has occurred (April 2009) when the excession occurred on November 24, 2007, some 17 months afterward. What now occurs in Arbitration is an unacceptable delay in the process (which was designed to expedite these types of issues) and also

there is a dearth of information and documentation due to the fact that the MOU skips over the normal grievance process so there are no Steps 1, 2, or 3 documentation to highlight the development and rationales of the case.

The Union points out that the first two CWHRs generated by the Service contained substantial errors that negated their worth for an accurate evaluation of the overtime and overall hours in the 30 day periods before and after the excession date. The Union notes that the third CWHR generated by the Service and the Union's report generated from clock rings both demonstrate that hours increased after the excession date. The Union asserts that if the excession was warranted, the total number of hours should have decreased by approximately 320 hours because of the excession of two FTR clerks. Not only were overtime hours increased after the excession date (by 240 hours), but PTF overtime also increased by 20 hours during this time. The Union contends that the Service has a clear contractual obligation to reduce overtime and PTF hours in order to minimize the impact of any contemplated excession. This was certainly not done.

For all of the above, the Union requests a finding that the CWHRs clearly show that the Service decision to excess two (2) FTR clerks at Tonawanda, NY was not justified. Further, they request that the retreat rights of the 2 individuals be activated and that they be made whole including payment of out of schedule pay, travel pay and mileage.

SERVICE POSITION

The Service notes that the context of the presentation of this case is confusing. The genesis of the matter goes back to March 2007 when a Function 4 Review was conducted at the Tonawanda facility. On June 7, 2007 a report was issued regarding the Review. Based on that Review, the Service (in July 2007) projected excessing four (4) FTR employees from the Tonawanda facility. As it turned out, the Service only excessed two (2) FTRs (Clark and Joya) on November 24, 2007.

In the instant situation, the Service is hampered in the evaluation and presentation of the case due to the requirements and procedures outlined in the joint Memorandum of Understanding on

Excessing Issues signed in February 2008 (“Fast Track MOU”). The Service points out that this Fast Track MOU was signed after the November 2007 excessing decision at the Tonawanda facility.

The Service notes that the last two (2) CWHRs (one from the Service and one calculated by the Union) appear to be accurate and may indicate that excessing might have been improper. However, the Service opines that the explanation for the increased hours can be found in the increased volume for the Christmas holiday season and the fact that there was substantial scheme training going on during the same period of time. The Service notes that this explanation was not mentioned during the meeting with the Union over this issue but also notes that the Union did not request this information. Additionally, the Service states that the Tonawanda, NY facility still has a substantial number of FTRs present and if the grievance were to be granted and the two excessed FTRs were allowed retreat rights, then the impact of that would be to drastically reduce available work hours for the PTFs in the office to minimal amounts.

The Service indicated that the nature and procedures of the Fast Track MOU system have not provided them with full documentation due to the rapid move to the Arbitration level and skipping over other steps that historically have been essential in the presentation and development of the documentation and case record. The Fast Track MOU eliminates these steps which creates a vacuum in case development until the Arbitration hearing where Parties may hear or see documents, reports, *et.al.*, for the first time. What this creates for the Parties is an Arbitration hearing with a very myopic focus. While the concept is good and well-intentioned, its effect is to hamper the administration and preparation of normal and customary grievance records.

FINDINGS & OPINION

The Fast Track MOU process to expedite resolution of excession disputes has clearly failed in this instance. There was a 17 month delay in getting the issue to Arbitration which is not what the Parties intended when they signed the Fast Track MOU. This is further reflective of undue delay when one considers that there were no grievance Steps 1, 2 or 3 to slow the process. These

delays contravene both the letter and spirit of the Fast Track MOU and, if this situation is an exemplar for how the process works, then the Parties need to revisit the specific agreement and either modify its operation or enter into a clear reaffirmation and commitment to expedite these issues. Timeliness is also paramount in this process given the fact that delays only deepen the void between raising the issue and bringing it to resolution when it is all done in the absence of documentation (grievance steps or otherwise) and where time only makes what little information there is increasingly stale. Undue delay also only serves to increase potential liability to the Parties and the affected employees which was the direct opposite of the Fast Track MOU's intent.

The demonstrated and admitted inaccuracies in the first two CWHRs generated by the Service reveal that the initial decision and attempts at justification of that decision were without proper foundation. The original Service claims that the increased hours after the excessing event were due to the Christmas period volume demands and to scheme training were unpersuasive both in light of the requirements of Article 12 and also in light of the fact that these claims were not substantiated by the Service when the claims were made nor were they substantiated at any point later in the process.

While the third CWHR supplied by the Service does not exactly match that of the one the Union generated from actual clock rings, they are close enough and the data is in agreement on the critical points. The total hours at Tonawanda were not reduced by the approximate 320 hours (in the post-30 day period) that would have been the result of the excession of the two FTR clerks if the original CWHRs were done correctly. Also there would not be an increase in overtime hours during this 30 day post-excession period nor should one see PTF overtime increase as well. Prior to excessing any FTRs, the Service has the clear contractual obligation to reduce overtime hours and PTF hours in order to minimize the impact on FTR clerks. This was not done.

Based upon review and consideration of the evidence and testimony presented, the Union has met its burden of proof and the grievance must be sustained.

BASED ON THE EVIDENCE AND TESTIMONY PRESENTED BEFORE ME AND BY REASON OF THE FOREGOING, I MAKE THE FOLLOWING

A W A R D

The grievance is sustained. The Service violated the Collective Bargaining Agreement when it exceeded two full-time regular clerks from the Tonawanda, NY Post Office effective November 24, 2007, as the final corrected Comparative Work Hour Report ("CWHR") and the report generated by the Union from the actual clock rings clearly demonstrate that the excession was not justified. The retreat rights of the two full-time regular clerks who were exceeded effective November 24, 2007 shall be activated according to the process and requirements of Article 12. In addition, the affected employees shall be paid out of schedule pay and mileage, at the appropriate GSA rate, for the time of their excession and until they are returned to work at the Tonawanda, NY Post Office. The Arbitrator directs the Parties to meet within fourteen (14) days of the receipt of the Award to effectuate the terms herein. The Arbitrator shall retain jurisdiction in the event that the Parties cannot agree on the application of retreat rights and the awarded compensation contained within this Award.

A F F I R M A T I O N

I affirm on my oath as Arbitrator that the foregoing is my Opinion and Award in this matter and that I am the individual described herein who has executed this document.

DATE OF AWARD:

May 18, 2009



Stephen P. LaLonde

Arbitrator