

NATIONAL ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION.

between .
.
UNITED STATES Postal Service .

AND .

AMERICAN POSTAL WORKERS UNION .
AFL-CIO .
.

.CASE NO.: Q94C-4Q-C 96096822
. Q94C-4Q-C 96096823

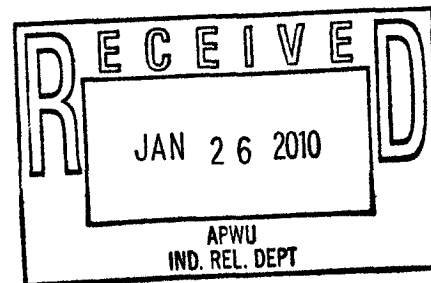
. ARTICLE 7.3.B

BEFORE: Linda S. Byars

APPEARANCES:

For the APWU: Anton G. Hajjar

For the USPS: Brian M. Reimer



Place of Hearing: Washington, D.C.

Date of Hearing: June 9, 10 and July 14, 2009

Post-Hearing Briefs: Received October 6, 2009

Award Summary

Article 7.3.B applies only to the relationship between full-time employees and part-time employees with no fixed work schedule. The Postal Service does not have an obligation to combine the hours of non full-time employees, i.e. part-time regular, part-time flexible, transitional and/or casual employees and the regularly scheduled overtime hours of full-time regular employees, to maximize the number of full-time employees pursuant to Article 7.3.B of the National Agreement. Therefore, the Grievances are denied.

BACKGROUND

On January 3, 1996 and August 13, 1996 the Postal Service appealed regional level cases, B90C-1B-C 94059109 and I94C-1I-C 96014614, as interpretive issues, and by letters dated June 23, 2004 the Postal Service initiated Step 4 Grievances Q94C-4Q-C 96096822 and Q94C-4Q-C 96096823. By letter dated July 8, 2004, the APWU acknowledged receipt of the dispute filed by the Postal Service, and on February 23, 2009 the APWU provided a statement of its understanding of the issue involved in the Grievances and the facts giving rise to the dispute. By letter dated February 24, 2009, the Postal Service set forth its understanding of the issues involved and the facts giving rise to the dispute. By letter dated February 25, 2009, the APWU appealed the Grievances to arbitration, and by letter dated May 1, 2009 the Grievances were scheduled for arbitration.

The Grievances came before the Arbitrator at hearing on June 9, 10 and July 14, 2009 in Washington, D.C. With the agreement of the Postal Service, the record remained open for additional evidence (APWU Exhibit 54) provided by electronic mail on August 3, 2009. The Arbitrator received the post-hearing briefs by electronic mail on October 6, 2009. The parties agree that the Grievances are properly at arbitration. [Transcript p. 9.] The Arbitrator requested

and the parties granted an extension of two-weeks for rendering the decision.

STATEMENTS OF ISSUE

As Proposed by the APWU

Does the Postal Service have an obligation to combine the hours of non full-time employees, i.e. part-time regular, part-time flexible¹, transitional and/or casual employees and the regularly scheduled overtime hours of full-time regular employees, in order to maximize the number of full-time employees pursuant to Article 7.3.B of the National Agreement? [Transcript pp. 12-13.]

As Proposed by the Postal Service

Does Article 7.3.B apply only to the relationship between full-time employees and part-time employees with no fixed work schedule? [Transcript p. 30.]²

OPINION

The APWU and the Postal Service state the issue in terms of Article 7.3.B, which provides in pertinent part:

The Employer shall maximize the number of full-time employees and minimize the number of part-

¹ The terms "part-time flexible" and "part-time employees with no fixed work schedule" are used interchangeably.

² In its February 24, 2009 letter, the Postal Service stated the issue to include Article 37 and the various Maximization Memoranda of Understanding. [Joint Exhibit No. 1, p. 3.] At arbitration, the Postal Service agrees that Article 7.3 is the controlling language and that the Arbitrator must also decide the issue as stated by the APWU. [Transcript pp. 31-32.]

time employees who have no fixed work schedules in all postal installations. . . . [Joint Exhibit No. 1.]³

The Postal Service maintains that the issue was decided in 1986 as a national level interpretive issue when Arbitrator Daniel Collins concluded that the Article 7.3.B provision is about the relationship between full-time regular employees and part-time flexible employees and not as the APWU submits, a broad requirement that the Postal Service maximize full-time regular employees while minimizing all non full-time regular employment and overtime. The claim before Arbitrator Collins arose under the 1981-1984 National Agreement but turned on the identical language of Article 7.3.B that is in the 1990 and 1994 National Agreements. In the case before Arbitrator Collins, the APWU maintained that the creation of two 24-hour part-time regular custodial positions in the same six-day period was a violation of the full-time maximization requirement set forth in Article 7.3.B and that Article 7.3.B took precedence over the handbook provision, Section 243.u of the MS-47 Handbook, on which the Postal Service relied.

The APWU maintains that Arbitrator Collins' interpretation of Article 7.3.B was not essential to

³ The APWU points out that one of the regional level cases, B90C-1B-C 94059109 that the Postal Service appealed as an interpretive issue, was filed under the 1990 National Agreement. However, the APWU agrees with the Postal Service that the contractual language relied upon, Article 7.3.B, is the same in both the 1990 and 1994 National Agreements. [Transcript p. 5.]

deciding the grievance before him and is therefore not controlling in the instant case. However, as Arbitrator Collins opines, a "pivotal question" to deciding the case before him was ". . . whether 7.3 B establishes two separate requirements - one to maximize (sic) full-time employment at the expense of all part-time employment, whether regular or flexible, and the other to minimize part-time flexible employment in favor of full-time and part-time regular employment - or instead establishes a single requirement to maximize full-time employment only at the expense of part-time flexible employment." [Postal Service Exhibit No. 7, p. 7.] Arbitrator Collins concluded that since Article 7.3 B is ". . . in the form of a single sentence without any indication, either in terms of grammar or punctuation, that it was intended to have disjunctive parts," the absence of any reference to part-time regular employment suggests that it did not apply to part-time regular employees. [Postal Service Exhibit No. 7, p. 8.] Because management in the case before Arbitrator Collins used two regular part-time, not flexible part-time employees, to fill the custodial work in question, Arbitrator Collins found no violation of Article 7.3.B.

In the instant case, the APWU takes its argument several steps further than in the case before Arbitrator Collins by maintaining that maximizing the number of full-time employees

expressed in Article 7.3.B requires not only the minimizing of part-time employees who have no fixed work schedules, as expressed in Article 7.3.B, but also requires the Postal Service to combine the regularly scheduled hours of part-time regular and flexible employees, casuals and transitional employees, the regularly scheduled hours of supervisors performing bargaining unit work, and the regularly scheduled overtime hours of all employees, including full-time regular employees, in order to fulfill the first part of the Article 7.3.B provision.⁴ [APWU Post-Hearing Brief p. 37.] However, as the Postal Service maintains, to interpret the first part of the Article 7.3.B provision as urged by the APWU would eliminate any need for, or meaning to, the remainder of the sentence, as the APWU's interpretation of the first part of the Article 7.3.B provision includes part-time employees with no fixed work schedule.

Contrary to the APWU's argument, the Postal Service interpretation does not make the maximization requirement

⁴ The APWU's request for remedy and its statement of issue express this position or a similar position. Neither the statement of issue expressed by the APWU at the beginning of the arbitration hearing or in its February 23, 2009 position statement includes "the regularly scheduled hours of supervisors performing bargaining unit work." At times during the arbitration hearing and as part of its post-hearing brief, the APWU maintained as follows: "Although the Union does not maintain that all work hours of all non-full-time employees must be counted toward the creation of duty assignments in all circumstances, it is the Union's position that when the Postal Service uses these classifications **in a manner which violates the National agreement** to defeat its maximization obligations, those hours then must be considered in the creation of duty assignments." [APWU's Post-Hearing Brief, p. 26.] The APWU's modified position will be addressed later in this Opinion.

"virtually meaningless." To give meaning to the first part of Article 7.3.B requires only that it be interpreted as part of a complete sentence that requires the maximization of full-time regular employees in relation to part-time employees who have no fixed work schedule.

Also, as reasoned by Arbitrator Collins in the National case cited as controlling by the Postal Service:

The language of 7.3 B mentions only full-time and part-time flexible employment. Nowhere is there mention of part-time regular employment [casual or transitional employment, overtime hours, or supervisors performing bargaining unit work], and the absence of any such reference suggests that none was intended. [Postal Service Exhibit No. 7, p. 8.]

Even if the Collins' decision were considered dictum and not binding in the instant case, it is unreasonable to conclude from the language of Article 7.3.B that the parties intended it as an obligation to combine the regularly scheduled hours of all non full-time employees, the regularly scheduled overtime hours of all employees, and the regularly scheduled hours of supervisors performing bargaining unit work for the purpose of maximizing the number of full-time duty assignments. Moreover, as the Postal Service maintains, to accept the APWU's interpretation of Article 7.3.B of the National Agreement, the contractual limitations and restrictions on the use of casual and transitional employees, as well as the contractual disincentives for overtime usage,

would be almost entirely superfluous.

The APWU also submits that decisions in regional level "maximization" cases support its position. As the Postal Service maintains, national level decisions are not controlled by regional level decisions. Moreover, the regional level cases submitted by the APWU do not address the issue as put forward by the APWU in the instant case.

For example, in a 1993 case before Arbitrator John Caraway (APWU Exhibit No. 20, Case No. S7C-3W-C 32520), the issue involved the conversion of part-time flexible employees to full-time status, where the workforce in Umatilla Florida Post Office consisted of 75 percent part-time flexible employees. Arbitrator Caraway followed the reasoning of another regional arbitrator in Southern Region Case No. S1C-3W-C 38156 and ordered the conversion of a part-time flexible to full-time status. Arbitrator Caraway agreed with the line of reasoning that Article 7, Section 3.B expresses a general obligation on the part of the Postal Service to maximize the number of full-time employees and minimize the number of part-time employees, that Article 7.3.C is only one way in which the need for conversion is demonstrated, and that Article 7.3.B allows for other proofs.

Also, contrary to the APWU's argument, the Postal Service does not focus its argument on Article 7.3.C of the

National Agreement. To the contrary, the Postal Service maintains that Article 7.3.C is not involved in this case.

[Postal Service's Post-Hearing Brief, pp. 28 and 31.]

However, as the APWU points out, the Postal Service stated the following position in a 1978 letter with respect to Article 7.3.C of the National Agreement.

The need to establish a full-time assignment is not determined exclusively by the third sentence of Article VII, Section 3 [Article 7.3.C in the 1990 and 1994 National Agreements]. This provision merely sets forth a particular factual situation, the occurrence of which is considered to indicate that a full-time position is feasible.

* * *

This is not to say that there can not be other circumstances which might support the conclusion that a full-time position is warranted. However, whether such circumstances exist, will depend on the particular facts relevant to an individual office. This would include disputes as to whether various duties can be combined into a full-time assignment in a particular individual situation. Thus it involves a fact question and does not involve the interpretation of the National Agreement." [APWU Exhibit No. 18, p. 4.]

The Postal Service position, and the decision in this case, that Article 7.3.B does not include a separate obligation to maximize full-time positions other than by minimizing part-time flexible positions does not implicate the APWU's position that Article 7.3.C is but one way to demonstrate the obligation pursuant to Article 7.3.B, i.e., to maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules.

The APWU maintains that the principal purpose of Article 7.3.B of the National Agreement is to maximize the number of full-time employees and that this principal purpose should be given great weight. However, the Postal Service maintains that the purpose of Article 7 is to maximize full-time positions by minimizing the number of part-time employees who have no fixed work schedules, and the language itself supports the Postal Service position.

The APWU also submits, presumably as an alternative to its statement of issue, ". . . that the Postal Service must factor into its maximization calculation, not just the hours worked by part-time flexible employees, but hours improperly worked by casual, and transitional employees, and supervisors performing bargaining unit work, as well as part-time regular employee hours and overtime hours worked by full-time regular employees." [APWU Post-Hearing Brief, p. 3.] This position is not the one submitted by the APWU in either its position statement dated February 23, 2009 or in the issue it submitted at arbitration. The APWU's February 23, 2009 position statement includes the following:

That the Postal Service has employed part-time regular, part-time flexible, transitional, and casual employees in accordance with the National Agreement does not mean that these non-full-time employees may be utilized in such a way that their work hours need not be counted in determining whether there exists a full-time duty assignment which the Postal Service must post for bid. The

Postal Service's right to employ these non-full-time employees does not override its obligation to maximize full-time duty assignments under Article 7.3.B. [Postal Service Exhibit No. 1.]

Although the issue submitted at arbitration may incorporate the modified issue, the decision in this case remains the same.

For example, as the APWU points out, the use of casual employees for other than supplemental employment is a violation of the National Agreement. However, such is a violation of Article 7.1.B, as interpreted in the August 29, 2001 Award of Arbitrator Shyam Das (Case No. Q98C-4Q-C 00100499), and not a violation of Article 7.3.B. Violations of Article 7.1.B may be corrected in several ways, including the creation of full-time regular positions, without finding that Article 7.3.B must be interpreted as the APWU insists. Contrary to the APWU's argument, it is not the position of the Postal Service that it can avoid maximization through contract violations. Rather, it is the Postal Service's position that Article 7.3.B does not create an obligation to maximize full-time employees other than by minimizing the number of part-time employees who have no fixed work schedules.

The APWU also points to a 1971 Postal Service document intended to orient local management on the meaning of the 1971-1973 National Agreement, including the meaning of the

language at issue in the instant case. The document states as follows:

The intent is to maximize regular schedules even for part-time employees. We will use employees on a flexible schedule only when there is no other way to meet work load. [Union Exhibit No. 12.]

Although the language of the instruction may not be as clear as the contractual provision, it does not support the APWU's position that the language of Article 7.3.B requires combining the hours of all non full-time regular employees, the regularly scheduled overtime hours of all employees, and the regularly scheduled hours of supervisors performing bargaining unit work, as requested by the APWU in this Grievance.

The APWU also submits a Postal Service document entitled "Explanation of Articles of the 1973 National Agreement." However, as with the earlier instruction, the explanation of Article 7.3.B states a relationship between the "maximization commitment" and converting part-time flexible employees.

Contrary to the APWU's argument, the record does not demonstrate that the Postal Service assumed in the 1971 National Agreement, or at any time later, the unqualified obligation to maximize the regularly scheduled full-time work force under Article 7.3.B of the National Agreement. The decision in this case turns on the plain language of the contract, and the Article 7.3.B obligation to maximize full-

time employees is clearly qualified by the remainder of the provision. Moreover, as the Postal Service maintains, the record demonstrates that its position is supported by a consistent national past practice, a national arbitral award, as well as the parties' bargaining history. Accordingly, the Arbitrator finds for the Postal Service and makes the following Award.

AWARD

Article 7.3.B applies only to the relationship between full-time employees and part-time employees with no fixed work schedule. The Postal Service does not have an obligation to combine the hours of non full-time employees, i.e. part-time regular, part-time flexible, transitional and/or casual employees and the regularly scheduled overtime hours of full-time regular employees, to maximize the number of full-time employees pursuant to Article 7.3.B of the National Agreement. Therefore, the Grievances are denied.

DATE: November 11, 2009


Linda S. Byars, Arbitrator