



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Appeal to Arbitration, National Dispute

Greg Bell, Director
Industrial Relations
1300 L Street, NW
Washington, DC 20005
(202) 842-4273 (Office)
(202) 371-0992 (Fax)

VIA FACSIMILE AND REGULAR MAIL

February 8, 2008

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

National Executive Board

William Burrus
President

Cliff "C. J." Guffey
Executive Vice President

Terry Stapleton
Secretary-Treasurer

Greg Bell
Industrial Relations Director

James "Jim" McCarthy
Director, Clerk Division

Steven G. "Steve" Raymer
Director, Maintenance Division

Robert C. "Bob" Pritchard
Director, MVS Division

Sharyn M. Stone
Central Region Coordinator

Mike Gallagher
Eastern Region Coordinator

Elizabeth "Liz" Powell
Northeast Region Coordinator

William "Bill" Sullivan
Southern Region Coordinator

Omar M. Gonzalez
Western Region Coordinator

Re: USPS Dispute No. Q06C4QC08031764, APWU No. HQTG200715,
OTDL Priority Scheduling for Overtime Prior to Scheduling Casuals for
Overtime

Dear Mr. Tulino:

Please be advised that pursuant to Article 15, Sections 2 and 4, of the Collective Bargaining Agreement, the APWU is appealing the above referenced dispute to arbitration.

Sincerely,


Greg Bell, Director
Industrial Relations

USPS #: Q06C4QC08031764
APWU #: HQTG200715

Case Officer: Greg Bell
Step 4 Appeal Date: 12/3/2007
Contract Article(s): 8, Overtime; USPS
Failure to Use Overtime Desired List
(OTDL); USPS Use of Casuals;

cc: Resident Officers
Industrial Relations

File

GB/LB



February 8, 2008

Mr. Greg Bell
Director, Industrial Relations
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

HAND DELIVERED

**Re: Q06C-4Q-C 08031764
Washington, DC 20260-4100**

Dear Greg:

We met on a few occasions to discuss the above-captioned dispute which is pending at the fourth step of our grievance/arbitration procedures. Since the parties have been unable to resolve this pending dispute, in accordance with Article 15.2. Step 4, this constitutes the Postal Service's understanding of the issues involved and the facts giving rise to the interpretive dispute.

The interpretive issue presented is as follows:

Whether paragraph 7 of the Memorandum of Understanding (MOU) Re: Supplemental Work Force; Conversion of Clerk Craft PTF's, at page 290 of the 2006 USPS/APWU National Agreement, which requires full-time employees on the overtime desired list (OTDL) to be given priority scheduling for overtime work over casual employees doing overtime work, includes priority scheduling for penalty overtime prior to casual employees doing overtime work.

The background information is as follows:

As a result of the 2006 national negotiations between the USPS and the APWU, the parties agreed to certain new principles related to the supplemental work force. These principles are contained in the Memorandum of Understanding (MOU) RE: Supplemental Work Force/ Conversion of Clerk Craft PTF. In pertinent part, the parties agreed at paragraph 7 of the MOU,

"Full-time regular clerk craft employees on the Overtime Desired List (OTDL) shall be given priority scheduling for overtime work over casuals doing overtime work."

This MOU also provides that the parties will "meet and develop the appropriate contract language and implementation guidelines and instructions."

Subsequently, the parties developed Questions and Answers (Q&A) dated March 2, 2007, on the Supplemental Work Force MOU. In pertinent part, Q&As 27, 28 and 46, respectively, state:

Question 27: Are casuals paid at the overtime rate for hours worked beyond 8 hours in a service day?

Response: No. Casuals are paid at the overtime rate for hours worked beyond 40 in a service week

Question 28: Must full-time regulars on the OTDL be scheduled for overtime work prior to assigning casuals to work beyond 8 hours in a service day?

Response: No. Not unless the work in excess of eight hours in a day puts the casual into an overtime status.

Question 46: Do paragraphs 7, 8, 9 and 13 of the MOU apply to the Maintenance and Motor Vehicle Crafts in installations which have 200 or more man years of employment?

Response: Yes

The resulting agreed upon contract provision is found at Article 8, Section 5.H, which states:

"Full-time employees on the Overtime Desired List shall be given priority scheduling for overtime work prior to casual employees doing overtime work.

Position of the Parties:

There is no dispute between the parties to the explicit provisions outlined at paragraph 7 of the MOU, Article 8, Section 5.H, or the Questions & Answers. Here, the dispute involves the intent of the parties over the meaning of "overtime work." That is, does the agreed upon requirement to give priority scheduling for "overtime work" to OTDL full-time employees over casual employees doing overtime work, include penalty overtime.

In the APWU's view, the answer to this question is yes. The APWU asserts that penalty overtime is merely a rate of pay. The APWU points to the "Mittenthal Awards" in support of its position. In particular, Case Numbers H4N-NA-C-21 and H4C-NA-C-23, regarding the effect of penalty overtime pay on holiday scheduling.

It is the Postal Service's position that the priority scheduling for overtime for full-time employees on the OTDL over casual employees working overtime does not include priority scheduling for penalty overtime. Simply, had the parties intended or bargained for this clause to include "penalty" overtime priority scheduling also, they would have expressly done so.

The parties have a long history of disputes over the overtime provisions of Article 8. Overtime pay is paid at a rate of one and one-half (1-1/2) times the basic hourly straight-time rate. Penalty overtime pay is paid at the rate of two (2) times the basic hourly straight-time rate of pay. By definition there is a distinct difference in compensation between postal overtime and penalty overtime. See Article 8.4.A, 8.4.C, ELM Section 434.13. This distinction would require, in the Postal Service's view, a specific articulation, including "penalty" overtime, if the intent or negotiated bargain was to subject itself to this additional financial liability.

Historically speaking, the penalty overtime provisions of Article 8 first appeared in the 1984-1987 USPS-APWU/NALC National Agreement, as a deterrent. Penalty overtime does not apply in the month of December, and is paid to full-time regular employees when required to work overtime [a] on more than four (4) of the employee's five (5) scheduled days in a service week; or [b] for work over ten (10) hours of a regularly scheduled day; or [c] for work over eight (8) hours on a non-scheduled day; or [4] over six (6) days in a service week. See Articles 8.4.C, 8.4.D and 8.5.F. Moreover, the penalty overtime provisions included in Article 8.4 were not designed to encourage or result in the use of any overtime in excess of the restrictions listed in Article 8.5.F, which explicitly states that "no full-time regular employee will be required to work overtime" in situations

that trigger the penalty overtime payout. See MOU Re: Article 8. Rather, penalty overtime is meant to discourage working excessive overtime and it is not an employee entitlement or guarantee. It is a management punishment for exceeding certain contractual overtime limits. The use of the term, "penalty" suggests this by definition, which states, in part: "a forfeit, esp. a sum of money, required for an offense. The disadvantage or painful consequences resulting from an action or condition."¹

For these reasons, the Postal Service did not explicitly or impliedly intend for the priority overtime scheduling provision at paragraph 7 of the above-referenced MOU to include priority scheduling for penalty overtime work over casuals doing overtime work.

Step 4 time limits were waived by mutual consent.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Hércules", written in a cursive style.

Mary Hércules
Labor Relations Specialist
Contract Administration (APWU)

¹ Webster's II New Riverside University Dictionary, copyright 1984 Houghton Mifflin Company.



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Article 15 - 15 Day Statement of Issues and Facts

Greg Bell, Director
Industrial Relations
1300 L Street, NW
Washington, DC 20005
(202) 842-4273 (Office)
(202) 371-0992 (Fax)

VIA FACSIMILE AND REGULAR MAIL

February 8, 2008

Ms. Mary Hércules
Labor Relations Specialist
U.S. Postal Service
475 L'Enfant Plaza SW
Washington, D.C. 20260

National Executive Board

William Burrus
President

Cliff "C. J." Guffey
Executive Vice President

Terry Stapleton
Secretary-Treasurer

Greg Bell
Industrial Relations Director

James "Jim" McCarthy
Director, Clerk Division

Steven G. "Steve" Raymer
Director, Maintenance Division

Robert C. "Bob" Pritchard
Director, MVS Division

Sharyn M. Stone
Central Region Coordinator

Mike Gallagher
Eastern Region Coordinator

Elizabeth "Liz" Powell
Northeast Region Coordinator

William "Bill" Sullivan
Southern Region Coordinator

Omar M. Gonzalez
Western Region Coordinator

Re: APWU No.HQTG200715, USPS No. Q06C4QC08031764

Dear Ms Hércules:

On December 11, 2007, we met to discuss the above-referenced dispute at Step 4 of the grievance procedure. The parties mutually agreed to submit their written statements no later than February 8, 2008. The following represents the APWU's understanding of the issues to be decided, and the facts giving rise to the interpretive dispute.

This dispute involve issues concerning whether it is a violation of Article 8, Section 5.H, of the National Agreement when the Postal Service does not schedule full-time employees on the Overtime Desired List (OTDL) for overtime work prior to casual employees doing overtime work, and if so, what is the appropriate remedy.

Article 8, Section 5.H, of the National Agreement provides the following:

Full-time employees on the Overtime Desired List shall be given priority scheduling for overtime work prior to casual employees doing overtime work.

It is the Postal Service's position that "priority scheduling for overtime" for full-time employees on the OTDL does not include priority scheduling for penalty overtime before using a casual employee to work overtime.¹ The APWU disagrees. The Employer's actions are contrary to applicable provisions of the

¹ For casual employees overtime is only paid for work performed in excess of 40 work hours in any one service week.

collective bargaining agreement, past practice, and national-level decisions and settlements.

It is the APWU's position that the provision of Article 8, Section 5.H, is clear and unambiguous; the Employer is required to schedule full-time employees on the Overtime Desired List for overtime work *before* using casual employees for overtime work – regardless of whether such employees are entitled to be paid at the regular overtime rate or penalty overtime rate. Moreover, it is a violation of Article 8, Section 5.H, when the Postal Service does not schedule OTDL employees (regardless of the rate of pay such employees may be entitled to) for overtime work before casual employees.

In regard to the remedy, it is the APWU's position that all affected employees on the OTDL who were not scheduled for overtime work at the penalty overtime rate should be granted two-and-one-half times the basic hourly straight-time rate. The remedy should be applied retroactively *on a nationwide basis* to all employees on the Overtime Desired List who were denied the opportunity for overtime work at the penalty overtime rate. The records shows that the Employer at the national level (1) willfully and intentionally decided to violate the contract by scheduling casuals for overtime work rather than scheduling employees on the OTDL for overtime work at the penalty overtime rate; (2) implemented this disputed practice nationwide; and then (3) initiated this dispute at the national level. The culpability lies with the Employer at the national level, as opposed to varying degrees of culpability at the local level. This dispute is national in scope and a national remedy should include all employees negatively impacted by the Postal Service's blatant violation of Article 8, Section 5.H. To the extent that the Employer has chosen not to schedule employees on the OTDL at the penalty overtime rate, it has done so knowing full well of the consequences and possible liability.

Work Week

The work week for full-time employees is forty (40) hours per week and eight (8) hours in a service day. An employee's normal work week is five (5) service days, each consisting of 8 hours.

Overtime Work

The collective bargaining agreement between the parties require that overtime be paid to employees for work performed in excess of eight (8) hours in any service day and/or in excess of forty (40) hours in any service week. In other words, overtime is paid for time spent in a pay status in excess of 8 hours in a service day and/or 40 hours in a service week. Time in a pay status includes actual work hours and paid leave. Full-time employees who are scheduled and report to work on their non-scheduled day receive overtime pay for hours worked that day regardless of their pay status the remainder of the week.

The parties historically and simply refer to time worked in excess of 8 hours in any service day, and/or in excess of 40 hours in any service week, and/or on one or both non-scheduled days as "overtime work."

Rate of Pay for Overtime Work

Under the terms of the collective bargaining agreement, full-time employees are entitled to be paid for work performed in excess of 40 hours in a service week and/or in excess of 8 hours a service day, either “at the regular overtime rate of pay of one and one-half (1 ½) times the basic hourly straight-time rate” and/or “at the penalty overtime rate of two (2) times the basic hourly straight-time rate.”

Full-time employees are entitled to be paid at the penalty overtime rate for any work beyond the following limits stated in Article 8, Section 5.F, excluding December²:

- Overtime worked on more than four of the employee’s five scheduled days in a service week;
- Work over ten hours on a regularly scheduled day;
- Work over eight hours on a non-scheduled day; or
- Work over six days in a service week.

Priority Scheduling for Overtime Work

In addition to Article 8, Section 5.H, there are at least three (3) other negotiated provisions in the collective bargaining agreement that govern priority scheduling for “overtime work” for employees on the Overtime Desired List. However, pursuant to Article 8.5.G, the only time that the Employer is permitted not to utilize an employee on the Overtime Desired List at the penalty overtime rate is if another OTDL employee is available to work overtime who is not yet entitled to the penalty overtime rate of pay.

1. Pursuant to Article 8, Section 4.G (Overtime Work Transitional Employees), the Employer is required to schedule employees on the Overtime Desired List for overtime work ***before*** utilizing transitional employees in excess of eight (8) work hours in a service day.³

There is no disagreement between the parties that the Employer is required to schedule employees on the Overtime Desired List for “overtime work” ***before*** using transitional employees for overtime work – regardless of whether OTDL employee are entitled to be paid at the penalty overtime rate.

2. Pursuant to Article 8, Section 5 (Overtime Assignments), when “overtime work” is needed, the Employer is required to schedule employees on the Overtime Desired List for overtime work ***before*** using non-OTDL full-time employees to work overtime.

² Part-time flexible employees are paid at the penalty overtime rate for all work in excess of ten (10) hours in a service day or fifty-six (56) hours in a service week.

³ For transitional employees overtime is only paid for work performed in excess of 40 work hours in any one service week.

There is no disagreement between the parties that the Employer is required to schedule employees on the Overtime Desired List for "overtime work" *before* using non-OTDL employee for overtime work, regardless of whether OTDL employees are entitled to be paid at the penalty overtime rate.

3. Pursuant to Article 8, Section 5.G, the Employer is not required to schedule an employee on the Overtime Desired List at the penalty overtime rate if an employee on the Overtime Desire List who is not yet entitled to penalty overtime pay is available for the overtime assignment.

The record and the parties' history is clear that when the parties intended to permit the Employer not to schedule an employee on the Overtime Desired list at the penalty overtime rate, they negotiated such exclusion in the collective bargaining agreement.

Background

During the 2006 national negotiations, the parties reached agreement on several major changes concerning the supplemental work force, and conversion of part-time flexible clerk craft employees. The parties agreed that:

- Clerk craft casuals employment will not be considered "in lieu of full or part-time employees" in installations of 200 man years or more;
- Casual employees may be hired for a term not to exceed 360 calendar days; and
- The number of casuals that may be hired nationwide within the APWU bargaining unit will be increased from 5.9 percent to 6 percent, except for accounting periods 3 and 4.

However, the APWU was successful in achieving the following restrictions on the employment and assignment of casual employees when hired to work in the APWU bargaining unit, and the conversion of part-time flexible employees:

- The conversion of all part-time flexible clerk craft employees to full-time regular, and the elimination of the part-time flexible clerk category, in 200 man-year installations;
- The number of casuals that may be employed within an installation in any reporting period shall not exceed 11 percent of the total number of clerk craft employees within that installation, except for accounting periods 3 and 4;
- The limit on the number of casual employees the Postal Service may hire within a district shall not exceed 6 percent (decreased from 15 percent) of the total number of career employees within a district covered by the National Agreement, except for accounting periods 3 and 4 (December);

February 8, 2008

Page 5

- Casuals may not normally work between the hours of 0500 and 1200 in mail processing operations;
- Casual employees are limited to assignments that do not require training or testing;
- In 200 man-year installations, career employees in mail processing operations, transportation and vehicle maintenance facility operations will have consecutive scheduled days off, unless otherwise agreed to by the parties at the local level;
- Full-time employees on the Overtime Desired List shall be given priority scheduling for overtime work prior to casual employees doing overtime work; and
- The total number of part-time regular employees shall not exceed 2.5 percent of the total number of career employees covered by the National Agreement.

It is the APWU's position that the Postal Service is attempting to achieve in national-level arbitration what it was unable to, and failed to, achieve in national-level contract negotiations. The Employer's action represents a pattern. Moreover, Article 8, Section 5.H, represents the final contract language that the parties were able to reach agreement on, and it represents what the parties bargained for, nothing more, and nothing less.

Article 8, Section 5.H, is clear and unambiguous; the Employer is required to schedule full-time employees on the Overtime Desired List for overtime work before using casual employees for overtime work – regardless of whether such employees are entitled to be paid at the regular overtime rate or penalty overtime rate. Moreover, it is a violation of Article 8, Section 5.H, when the Postal Service does not schedule OTDL employees (regardless of the rate of pay such employees may be entitled to) for overtime work before scheduling casual employees for overtime work.

It is requested that the parties expedite this dispute to be heard in arbitration.

Sincerely,

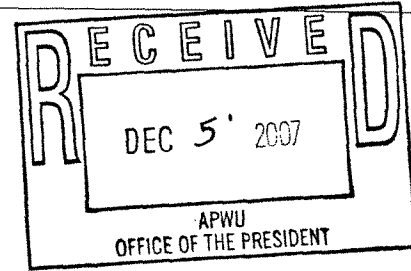

Greg Bell, Director
Industrial Relations

APWU #: HQTG200715
USPS #: Q06C4QC08031764

Dispute Date: 12/3/2007
Contract Articles: 8, Overtime; USPS Failure
to Use Overtime Desired List (OTDL); USPS
Use of Casuals;

cc: Industrial Relations

GB/LB



December 3, 2007

Mr. William Burrus
President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Certified Mail Number:
7003 1010 0000 6762 6038

Re: USPS Initiated Interpretive Dispute
Q06C-4Q-C 08031764

Dear Bill:

In accordance with the provisions of Article 15, the Postal Service is initiating an interpretive dispute at the fourth step of the grievance/arbitration procedures over the interpretation of the new contractual provision requiring priority scheduling for overtime work over casual employees working overtime, as contained in Article 8.5.H of the 2006 USPS/APWU National Agreement.

The interpretive issue presented is as follows:

Whether Article 8, Section 5.H of the 2006 USPS/APWU National Agreement which requires full time employees on the overtime desired list (OTDL) to be given priority scheduling for overtime work over casual employees includes priority scheduling for penalty overtime prior to casual employees doing overtime work.

The background information is as follows:

As a result of the 2006 national negotiations between the USPS and the APWU, the parties agreed to certain new principles related to the supplemental work force. These principles are contained in the Memorandum of Understanding (MOU) RE: Supplemental Work Force/ Conversion of Clerk Craft PTF. In pertinent part, the parties agreed at paragraph 7 of the MOU,

"Full-time regular clerk craft employees on the Overtime Desired List (ODL) shall be given priority scheduling for overtime work over casuals doing overtime work."

This MOU also provides that the parties will "meet and develop the appropriate contract language and implementation guidelines and instructions."

Subsequently, the parties developed Questions and Answers (Q&A) dated March 2, 2007, based on the Supplemental Work Force MOU. Q&As 27, 28 and 46, respectively, state:

"27. Are casuals paid at the overtime rate for hours worked beyond 8 hours in a service day? Response: No. Casuals are paid at the overtime rate for hours worked beyond 40 in a service week."

"28. Must full-time regulars on the OTDL be scheduled for overtime work prior to assigning casuals to work beyond 8 hours in a service day? Response: No. Not unless the work in excess of eight hours in a day puts the casual into an overtime status."

"46. Do paragraphs 7, 8, 9 and 13 of the MOU apply to the Maintenance and Motor Vehicle Crafts in installations which have 200 or more man years of employment. Response: Yes."

The resulting agreed upon contract provision is found at Article 8, Section 5.H, which states:

"Full-time employees on the Overtime Desired List shall be given priority scheduling for overtime work prior to casual employees doing overtime work."

It is the Postal Service's position that the "priority scheduling for overtime" for full-time employees on the OTDL does not include priority scheduling for penalty overtime before using a casual employee to work overtime.

In accordance with Article 15 of the national agreement under Step 4, the parties shall meet, no later than 30 days after initiating a dispute, in an effort to define the precise issues involved, develop all necessary facts and reach an agreement. Please have your designee contact me to schedule a mutually convenient time to conduct a Step 4 meeting. I can be reached at (202) 268-4356.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Hércules", with a stylized flourish at the end.

Mary Hércules
Labor Relations Specialist
Contract Administration (APWU)