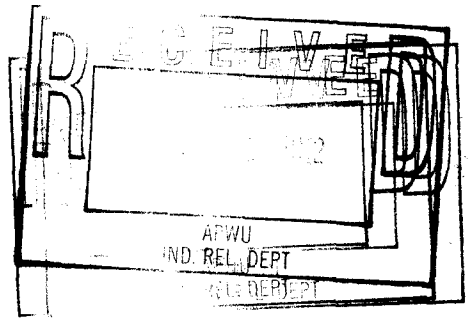
NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	)	
	)	
between	)	
	)	
UNITED STATES POSTAL SERVICE	)	Case Nos. Q11C-4Q-C 11322481
	)	Q11C-4Q-C 11322494
and	)	
	)	
AMERICAN POSTAL WORKERS UNION, AFL-CIO	)	
	)	

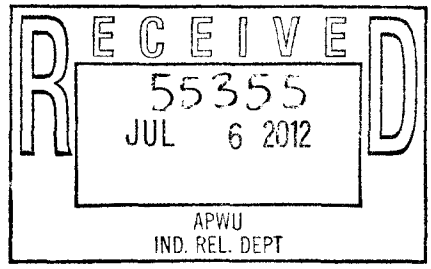
BEFORE: Shyam Das



APPEARANCES:

For the Postal Service:	John C. Oldenburg, Esquire
For the APWU:	Melinda K. Holmes, Esquire

Place of Hearing:	Washington, D.C.
Date of Hearing:	December 13, 2011
Date of Award:	June 29, 2012
Relevant Contract Provisions:	Articles 7, 8, 34, 37, 39 and the Non-Traditional Full-Time (NTFT) Duty Assignment MOU
Contract Year:	2010-2015
Type of Grievance:	Contract Interpretation



Award Summary:

The grievance in Case No. Q11C-4Q-C 11322481 is denied.

The grievance in Case No. Q11C-4Q-C 11322494 is sustained. The issue of remedy is remanded to the parties, and I retain jurisdiction to resolve any remedial disputes.

Shyam Das, Arbitrator

At issue in this National Arbitration are two Step 4 grievances filed by the APWU in August 2011. Both arise in connection with the Postal Service's implementation of the "Non-Traditional Full-Time (NTFT) Duty Assignments" Memorandum of Understanding (NTFT MOU) negotiated as part of the 2010-2015 National Agreement.[1]

The parties were unable to agree on a joint statement of the issue in either case and authorized the arbitrator to frame the issues. The parties' respective statements, read together, provide a sufficient basis on which to discern the crux of the present disputes:

Case No. Q11-C-4Q-C 11322481

> UNION: Did the Postal Service violate the National Agreement when it converted part-time employees in August 2011 and made them unassigned regulars with non-traditional full-time work schedules?
>
> POSTAL SERVICE: When the Postal Service did not have duty assignments available for the placement of those part-time employees slated to be converted to full-time status by the agreed-upon date for that conversion, did the Postal Service violate the 2010 National Agreement when these employees were converted to full-time status on the target date and were placed as unassigned employees into NTFT schedules, rather than "traditional" schedules, until such time as these employees did secure bid positions?

Case No. Q11C-4Q-C 11322494

> UNION: Did the Postal Service violate the National Agreement by not allowing excessed employees to retreat into non-traditional full-time duty assignments in accordance with the NTFT Duty Assignment MOU?
>
> POSTAL SERVICE: After the newly-developed NTFT positions became available for posting and bid and while the placement of the former part-time (and now converted to full-time) employees into their initial duty assignments was in process, did the Postal

[1] The 2010 National Agreement was tentatively agreed to on March 11, 2011; ratified by the APWU membership on May 11, 2011; and executed by the parties on May 23, 2011.

Service violate the 2010 National Agreement when the Service did not permit the exercise of retreat rights until initial local placement of the converted employees was completed?

The NTFT MOU states in relevant part:

The parties agree to the following rules concerning Non-Traditional Full-Time (NTFT) duty assignments:

1. No Clerk or MVS employee who at the signing of this Agreement, has a full-time regular work schedule of 40 hours a week will be involuntarily reassigned to occupy a NTFT duty assignment of less than 40 hours a week. However, such employees may be reassigned to occupy a NTFT duty assignments of 40-44 hours a week, so long as those assignments have at least two (2) scheduled off days, with no scheduled work days of less than six (6) hours or more than ten (10) hours. All other employees, including current PTR's, PTF's, and any career employees hired after the signing of this Agreement, may be assigned to any residual NTFT duty assignment in accordance with Articles 37 or 39, respectively.

* * *

3. There will no longer be Part-Time Flexible (PTF) employees working in Function 1 or in post offices Level 21 and above.

* * *

5. There will no longer be Part-Time Regular (PTR) employees in the clerk craft.

6. There will no longer be Part-Time Regular (PTR) and Part-Time Flexible (PTF) employees in the motor vehicle craft. Management may create Flexible Non-Traditional Duty assignments to replace PTR and PTF duty assignments.

7. Employees occupying FTR duty assignments (traditional and NTFT) in postal installations which have 200 or more man years of employment in the regular work force, career employees in mail processing operations, transportation and vehicle maintenance facility operations will have consecutive days off, unless otherwise agreed to by the parties at the

local level. For employees occupying NTFT duty assignments, if the NTFT schedule has 3 or more scheduled days off, at least 2 must be consecutive.

8. In Function 1, no more than 50% of all duty assignments in the facility may be NTFT duty assignments of 30-48 hours, unless otherwise agreed to by the parties at the local level.

9. In Function 4, Management may create as many clerk NTFT duty assignments of 30-48 hours in a facility as is operationally necessary.

* * *

17. Excessed employee with retreat rights (under 12.5.C.4 or 12.5.C.5) may decline the opportunity to retreat to non-traditional full-time assignment without relinquishing the right to retreat to posted traditional full-time regular duty assignments.

Other relevant provisions of the 2010 National Agreement include the following provisions that remain unchanged from the 2006 National Agreement:

ARTICLE 7
EMPLOYEE CLASSIFICATIONS

Section 1. Definition and Use

A. Regular Work Force. The regular work force shall be comprised of two categories of employees which are as follows:

1. Full-Time. Employees in this category shall be hired pursuant to such procedures as the Employer may establish and shall be assigned to regular schedules consisting of five (5) eight (8) hour days in a service week.

2. Part-Time. Employees in this category shall be hired pursuant to such procedures as the Employer may establish and shall be assigned to regular schedules of less than forty (40) hours in a service week, or shall be available to work flexible hours as assigned by the Employer during the course of a service week.

* * *

ARTICLE 8
HOURS OF WORK

Section 1. Work Week

The work week for full-time regulars shall be forty (40) hours per week, eight (8) hours per day within ten (10) consecutive hours, provided, however, that in all offices with more than 100 full-time employees in the bargaining units the normal work week for full-time regular employees will be forty hours per week, eight hours per day within nine (9) consecutive hours. Shorter work weeks will, however, exist as needed for part-time regulars.

* * *

ARTICLE 37
CLERK CRAFT

Section 1. Definitions

* * *

B. Duty Assignment. A set of duties and responsibilities within recognized positions regularly scheduled during specific hours of duty.

* * *

H. Residual Vacancy. A duty assignment that remains vacant after the completion of the voluntary bidding process.

I. Conversion. The act of changing the status of a part-time flexible employee to full-time or part-time regular by appropriate personnel action (Form 50).

On June 28, 2011, after the signing of the 2010 National Agreement, the parties jointly drafted and agreed to a series of Questions and Answers (Q&As), which included the following:

QUESTIONS & ANSWERS

These questions and the responses thereto are not intended to alter, amend, or change in any way the terms of the 2010-2015 agreement.

* * *

NTFT's

25. What is a reasonable timeframe for PTF's in Function 1 and in offices level 21 and above be converted to full-time?

ANSWER: It is expected that all PTF's in Function 1 and in offices level 21 and above will be converted to full-time by August 23, 2011. Any exceptions will need to be discussed and mutually approved at the national level.

26. What is a reasonable timeframe for clerk and MVS PTR's to be converted to full-time?

ANSWER: It is expected that all PTR's in the Clerk and MVS crafts will be converted to full-time by August 23, 2011. Any exceptions will need to be discussed and mutually approved at the national level.

* * *

31. Are employees in NTFTs and traditional duty assignments considered all one category for excessing and retreat rights purposes?

ANSWER: Yes.

* * *

33. May an excessed FTR clerk or MVS employee (who was FT at the signing of the 2010 CBA) decline to retreat to a NTFT duty assignment of less than 40 hours or more than 44 hours/week without losing her retreat rights?

ANSWER: Yes. Excessed employees with retreat rights, whether to the section (Article 12.5.C.4) or to the installation and/or craft (Article 12.5.C.5) may decline their right to retreat to any NTFT duty assignment without relinquishing

their right to retreat to any posted traditional FTR duty assignment.

* * *

43. Are the clerk craft NTFT full-time flexible assignments a duty assignment which must be posted for bid or a category of unencumbered employees?

ANSWER: These are bid duty assignments and employees who successfully bid for, or are involuntarily assigned to, these assignments are encumbered, and not unencumbered, employees.

As set forth in the June 2011 Q&As, the Postal Service agreed that the conversion of PTRs and PTFs (collectively PTs) to full-time would be accomplished by August 23, 2011, unless the parties agreed to an exception. Subsequently, the parties did agree to extend the conversion date to August 27, 2011, which coincided with the end of a pay period.

Patrick Devine, Acting Manager for Contract Administration relating to the APWU, testified that approximately 9,000 PTs were converted to full-time pursuant to the NTFT MOU. He noted that the nuts and bolts of how that was going to be accomplished were not discussed during negotiations and are not addressed in the NTFT MOU or any other agreement. The Postal Service, he stated, had anticipated having the necessary NTFT duty assignments -- where the bulk of the converted PTs were expected to be placed -- by the August 27, 2011 conversion date. When it became clear that would not be administratively possible, the Postal Service sought -- without success -- to obtain the Union's consent to further extend the conversion date. As a practical matter, Devine testified, the Postal Service operationally could not have placed all 9,000 converted employees into traditional regular ("five and eight and 40") schedules, as the Union contends was required under the National Agreement. That would have eliminated the flexibility the Postal Service had in scheduling those employees when they were PTs without providing the flexibility the NTFT MOU was designed to provide. In order to retain the needed flexibility while completing the process of establishing the new NTFT assignments, Devine testified, the Postal Service placed the converted employees in unassigned regular (albeit NTFT) schedules. He added that as a result

of this scheduling the Postal Service had to pay a significant amount of out-of-schedule premium when it became necessary to work those employees for additional hours beyond their designated schedule. This experience, however, did enable the Postal Service to better shape the NTFT assignments that began to be established and filled in October 2011.

APWU President Cliff Guffey testified that the parties had past experience converting a large number of PT employees to full-time. In the 2000 National Agreement, they agreed to convert to full-time all PT employees in 200 or more man-year offices, and a significant number of PTs then were converted at one time. If the Postal Service did not have duty assignments for them, Guffey stated, they were converted to unassigned regulars, with work schedules governed by Article 8, that is five eight-hour days. He stressed that the parties in the 2010 National Agreement did not change the definition of "full-time" for purposes of conversion of PTs to full-time. Short of converting the PTs into residual assignments (including NTFT residual assignments), he insisted, the Postal Service could only convert them to unassigned regulars. There is no provision, he said, to convert PT employees to an NTFT category, because there is no such category. NTFT is just a duty assignment.

On cross-examination, Guffey acknowledged that the definition of full-time in Article 7.A.1 and what the NTFT MOU permits "probably" is "an anomaly," although not the only one in the contract. He also agreed that under the National Agreement there could be an "unassigned NTFT," but not in the circumstances at issue here.

UNION POSITION

The APWU contends that the plain meaning of the NTFT MOU requires that the Arbitrator sustain both of the Union's grievances. Although the concept of non-traditional full-time duty assignments is a departure, the parties took care in the MOU to fit this new concept into the traditional context of the National Agreement and its bedrock principal of seniority. Accepting the Postal Service's position in these grievances, the Union asserts, would require an intrusion into the parties' bargain by adding terms that cannot be found in any shared expression of their intent.

The Union insists there is no agreement to reserve the first NTFT duty assignments created by the Postal Service for the employees converted to full-time in August 2011. What the parties did negotiate and agree to in the NTFT MOU was that excessed employees can retreat to NTFT duty assignments immediately. The parties also left untouched the requirement under the National Agreement that part-time employees who were converted to full-time and were not placed in residual vacancies should have been made unassigned regulars with traditional full-time schedules.

The Union stresses that the sole expression of the parties' agreement on the process to convert employees is found in the joint Q&As, and not in the NTFT MOU, and turns primarily on the date of the conversion. There is no other agreement setting up the process for the conversion or reserving NTFT duty assignments for the employees converted to full-time in August 2011. In particular, the Postal Service's ability to have residual NTFT duty assignments prepared for the conversion never was proposed or discussed in negotiations or in any of the agreements such that it could be implied as the parties' shared intent. The NTFT MOU presents the Postal Service an opportunity, but it does not require that the Postal Service actually create any NTFT duty assignments at all. That is purely a matter of the Postal Service's own internal priorities which were not a matter negotiated with the Union beyond overall interest in the general opportunity offered by such NTFT duty assignments. Moreover, the Postal Service was the driving force on both the timing of the conversion and the implementation of NTFT duty assignments. That the Postal Service did not meet its internal goals does not justify imposing the consequence of those failings on the Union through an otherwise unsupported interpretation of the parties' agreements.

The Union also points out that the parties agreed to the August 2011 conversion with the experience of having converted some 9,000 employees in 2007, without the possibility of NTFT duty assignments and without restrictions on retreat rights, and without causing excessing events. There was no agreement on a special process of converting employees into NTFT assignments and bypassing all the other rules of conversions and posting that the Postal Service admits otherwise apply. There is no justification, the Union argues, for implying an

agreement to convert employees directly into the new NTFT assignments. The Union contends there is no evidentiary or logical basis on which to predict that the converted employees eventually will end up with NTFT duty assignments. Only the Postal Service can create and properly post NTFT duty assignments, and allow employees to determine through bidding based on seniority which employees will work the schedules embodied in the duty assignments. The present situation of employees forced to work schedules they may never have as a part of their duty assignment harms employees.

The Union contends that the NTFT MOU recognizes the contractual right of excessed employees to retreat into NTFT duty assignments, with the only modification being that the employee cannot be penalized for refusing to bid on the non-traditional duty assignments. The Postal Service's qualification that it will permit employees to retreat into NTFT duty assignments only in the future is impossible to reconcile or justify against the explicit language of the parties' agreements allowing such opportunities in the present. Furthermore, no evidence supports the Postal Service's claim that allowing employees to exercise their retreat rights will result in 9,000 excessing events, or even one excessing event. Permitting retreat rights to NTFT duty assignments cannot, therefore, reasonably be assumed to be unworkable or to result in any additional excessing.

The Union stresses that Article 8 of the National Agreement requires that part-time employees converted to full-time -- including in mass conversions like in 2011 -- and who are not placed into a duty assignment be made unassigned regulars with traditional full-time schedules. Absent the Postal Service availing itself of the opportunity provided by the NTFT MOU to create NTFT duty assignments, there is no such thing as an NTFT schedule for the newly converted employees. Rather, the traditional rule and traditional schedule in accordance with Article 8 controls and applies. There is no such thing as an NTFT schedule. NTFT exists only within the strictures of the NTFT MOU and only as a duty assignment, not a schedule. This was specifically agreed upon and acknowledged in the jointly agreed to June 28, 2011, Q&As, as follows:

43. Are the clerk craft NTFT full-time flexible assignments a duty assignment which must be posted for bid or a category of unencumbered employees?

ANSWER: These are bid duty assignments and employees who successfully bid for, or are involuntarily assigned to, these assignments are encumbered, and not unencumbered, employees.

Accordingly, the APWU requests the Arbitrator sustain both grievances and remand the remedy to the parties, retaining jurisdiction over remedy for at least 120 days to ensure implementation or to resolve any remedial disputes.

EMPLOYER POSITION

The Postal Service contends that its determination to place the newly converted PT employees as unassigned full-time regular employees with NTFT schedules comported with the new 2010 National Agreement. Articles 7 and 8, upon which the Union relies, to the extent they declare that a full-time regular schedule consists of "five and eight and 40," do not reflect the reality regarding full-time regular work schedules created by at least two MOUs contained in the 2010 National Agreement, including the NTFT MOU at issue here.

The "Modified Work Week" MOU first agreed to in 2001 varies what previously constituted a full-time regular schedule, and hence effectively broadened the category of a full-time regular employee. An individual working under the aegis of this MOU, although still held in the MOU to be a full-time regular employee, simply did not work the schedule outlined in Articles 7 and 8. Indeed, the MOU itself, in paragraph 5, overtly recognized that this then uniquely permitted modified work week was "inconsistent" with the National Agreement.[2] The NTFT MOU, the Postal Service asserts, works an even more radical alteration of the substantive reality of what constitutes a full-time regular employee -- in terms of the number of employees

[2] Paragraph 5 states: "Except as provided for in this MOU or the Modified Work Week Guidelines, no modified work week program can be inconsistent or in conflict with the National Agreement."

potentially affected; the discretion afforded management to create such positions; and the wide variance from the fixed and rigid nature of schedules central to the Articles 7 and 8 definitions of full-time regular. APWU President Guffey, when asked whether the NTFT schedule regime would even be possible if the requirements of Article 7 were to be followed as written, ultimately had to concede that the inherent clash between the two systems of "full-time" regular employee -- "full-time" ultimately being defined by examining the schedules being worked -- was "probably an anomaly." That, indeed, is the only logical conclusion to draw when the NTFT MOU plainly declares that traditional and non-traditional full-time NTFT duty assignments, despite their differences, are equally full-time regular duty assignments.

Thus, the Postal Service argues: (1) when it is understood that the NTFT MOU was silent about how the part-time employee conversion at issue was to proceed; (2) when it is established that positions created under the NTFT concept enjoy full-time regular status as much as do positions established in the "traditional" schedule mode; (3) when it is realized that the thrust of the 2010 National Agreement as a whole has worked a genuine modification of the Articles 7 and 8 definitions of full-time regular employees, which the language of those articles do not capture; and (4) taking into account APWU President Guffey's acknowledgement that circumstances could arise under the National Agreement permitting the proper existence of an "unassigned" NTFT employees -- it follows that the manner in which management accomplished the mandated conversion of the designated PT employees into full-time regular status by making them unassigned NTFT employees was faithful to the National Agreement.

Moreover, the Postal Service stresses, the conversion of this PT work force in the designated facilities and functions ended what was by far the most flexible scheduling arrangement to which management once had access -- a flexibility that had acquired greater importance in the Postal Service whose workforce had been appreciably downsized by attrition. When postal management faced the unanticipated reality that the NTFT positions would not be available for bid by the conversion target date, the Union's position on how the conversion could take place would have had the Postal Service face the prospect -- contrary to the whole march to flexibility which underlay the overall bargain struck in the NTFT MOU -- of dealing for a number of critical months with the most inflexible scheduling arrangement possible. The Postal

Service argues that the temporary placement of these former PTs as unassigned NTFT employees worked no essential injustice and was wholly consistent with the goals and concepts of the NTFT MOU. The converted former PTs, unlike the pre-existing core of regular full-time employees, were unprotected by the MOU against ultimate involuntary placement into NTFT bid positions. They were the natural pool from which the NTFT workforce mainly would be drawn. Indeed, the MOU expressly contemplated that the NTFT positions essentially would replace the PT positions that no longer existed, and provided in the motor vehicle craft that replacement could consist of a one-for-one substitution of flexible NTFT positions for the discontinued PT positions.

Accordingly, the Postal Service maintains that, viewing the National Agreement as a whole, its conversion of the PT employees as required by the NTFT MOU was done in a manner that did not violate, but rather comported, with the 2010 National Agreement.

The Postal Service also contends that it did not violate the 2010 National Agreement when it did not permit the exercise of retreat rights by employees excessed out of an installation until after the initial local placement at that installation of PT employees converted under the NTFT MOU was completed. The Postal Service stresses that its action was limited to these circumstances and does not constitute a general repudiation of those provisions of the National Agreement which the Postal Service readily concedes clearly create retreat rights and continue them in existence in other contexts.

The Postal Service points out that the Union's own interest in the adoption of the NTFT concept was that it would serve as an effective means by which the need to excess full-time 40-hour per week employees out of an installation would be forestalled in the first place. Moreover, the NTFT MOU was not the only bargaining innovation in the 2010 National Agreement that sought to avoid excessing or at least to lessen its effects. The "Minimizing Excessing" MOU strongly directed management and the Union to discuss options "such as modifying work schedules" -- the very essence of what an NTFT position makes possible -- to prevent involuntary excessing. That MOU further provided that when excessing still is needed, the maximum radius within which management may undertake excessing as a right is 50 driving

miles -- a task that is extremely difficult to accomplish under present conditions. A third MOU entitled "Transfer Opportunities to Minimize Excessing," as revised in the 2010 National Agreement, permits an employee who belongs to an installation and a craft within that installation undergoing excessing to choose to transfer to a vacancy at another installation within the specified geography. Freed from various restrictions and principles that ordinarily apply to a transfer request, Clerk Craft employees exercising this option under the MOU further enjoy the significant benefit of carrying their installation seniority to the new installation. They may, as provided by paragraph 7 of the revised MOU, also seek transfer to residual positions that are otherwise withheld for future excessing.

Against this background, the Postal Service asserts, the creation of the thousands of NTFT positions needed to accommodate the swelled ranks of full-time employees -- all of whom needed a duty assignment -- raised the specter of an unknown number of exercises of retreat rights by employees seeking their return to an installation from which they had previously been excessed. The consequence of retreat rights being exercised in these circumstances could be that the less senior newly converted full-time employees could lose out to the more senior employees with retreat rights and therefore could be subject to a new and disruptive round of excessing, an event which is not only expensive to the Postal Service but also a poor reward to the newly converted employees supposedly enjoying the benefits of becoming full-time. The only other equally unpalatable possibility -- due to the restrictive 50-mile radius for excessing -- is that needed excessing potentially could not be accomplished, and the installation, effectively, would be forced to retain a workforce larger than its true complement needs. Either of these consequences is inherently contrary to the very scheme that the groundbreaking 2010 National Agreement created. That is the reason why management's decision to temporarily suspend the exercise of retreat rights in those places in which the newly converted, former PT employees were securing their first bid assignments did not violate the 2010 National Agreement.

Accordingly, the Postal Service urges that the APWU's two grievances be denied.

FINDINGS

Retreat Rights (Case No. Q11C-4Q-C 11322494)

The Postal Service acknowledges that excessed employees, as a general matter, are entitled to exercise retreat rights based on seniority to fill NTFT duty assignments. Indeed, that is implicit in paragraph 17 of the NTFT MOU. There is no contractual provision that supports the Postal Service's action in precluding employees from exercising such retreat rights until initial local placement of the converted PT employees was completed. The Postal Service asserts, in support of this restriction, that the exercise of such retreat rights would lead to a large number of the newly converted employees being excessed -- contrary to the goals and concepts of the NTFT MOU and other cited MOUs -- or to an installation having to retain a workforce larger than its true needs. Even assuming that might be the result -- and the Union stresses the lack of evidentiary support for the Postal Service assertion -- such a result was equally predictable when the parties negotiated the NTFT MOU as it was when the Postal Service unilaterally determined to disallow the exercise of retreat rights. Yet, the Postal Service did not raise, let alone obtain the Union's agreement to impose such a restriction on the right of excessed employees to exercise their acknowledged retreat rights.

Accordingly, the grievance in this case must be sustained.

Scheduling of Converted Employees (Case No. Q11C-4Q-C 11322481)

Resolution of this grievance raises different and more complex issues. On the present record, it is reasonable to conclude that -- although not specifically addressed in the NTFT MOU or other written agreement -- the parties during their negotiations contemplated that the Postal Service would have established NTFT duty assignments before it was required to

convert PTs to full-time.[3] Stated differently, the parties did not contemplate that there would be an interim period between conversion and establishment of NTFT duty assignments in which the Postal Service neither had the scheduling flexibility previously associated with PTFs and PTRs or that provided by the NTFT MOU. The Union's argument that the Postal Service is not required to establish any NTFT duty assignments at all theoretically may be correct, but, in context of the actual circumstances in which this conversion was to occur, seems somewhat disingenuous. No reasonable basis has been shown for concluding the parties anticipated the possibility that the mass conversion of 9,000 PTs to full-time in August 2011 initially would be accomplished by creating 9,000 additional traditional full-time schedules (five eight-hour days), as the Union now contends was required under the National Agreement. The evidence supports an inference that both parties understood the symbiotic relationship between the agreed conversion of PTs to full-time and the Postal Service's implementation of the newly authorized NTFT duty assignments.

The Union nonetheless takes the position in this grievance that it was within the Postal Service's control to have established the NTFT duty assignments before the agreed conversion date, and that the Postal Service's failure to either accurately anticipate how long that would take before agreeing to the conversion date or to have established those assignments by that date is solely the Postal Service's problem. In the absence of residual assignments, the Union argues, the National Agreement requires the Postal Service to convert

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[3] This is reflected in the APWU's internal Q&As, dated March 16, 2011 just after tentative agreement was reached on both the NTFT MOU and the 2010 National Agreement. Q&A #4 reads, in part:

> 4) What happens if there are excessed full-time clerks who retain retreat rights or must be returned to the Clerk Craft from other crafts when part-time flexibles or part-time regulars in those installations are converted to full-time?
>
> Response: Excessed clerks will be offered any of the following prior to conversion to full time:
>
> • The opportunity to exercise a retreat to the newly created assignment.
>
> * * *
>
> (Emphasis added.)

former PTs to unassigned full-time regulars, and it stresses there is no NTFT category of employees, just an NTFT duty assignment. It relies on Article 7.1.A.1, which provides that full-time employees "shall be assigned to regular schedules consisting of five (5) eight (8) hour days in a service week." Yet, the APWU also recognizes that this language in Article 7 presents an anomaly in that the NTFT MOU authorizes the assignment of certain full-time employees, including those former PTs converted pursuant to the MOU, to non-traditional schedules that do not comport with that language (or the language in Article 8).[4] The category of full-time regular employees no longer is confined to employees assigned to traditional schedules as defined in Article 7. In this case, the converted employees who were not able to be placed in traditional or non-traditional full-time available residual vacancies became unassigned or unencumbered full-time employees, albeit with non-traditional full-time schedules. While the parties did not expressly provide for this in their agreement, they did not -- as previously indicated -- contemplate the situation in which this arose.

The Union cites the mass conversions that previously occurred in 2001 and 2007, stressing that on those occasions former part-time employees who were not placed in established full-time duty assignments were converted to unassigned regulars with traditional schedules conforming to Articles 7 and 8. But the context in which those conversions occurred was different. Both the volume of mail and the size of the workforce has diminished, and, more importantly for present purposes, the evidence does not show those conversions were similarly correlated to a contemporaneous agreement permitting the Postal Service to establish full-time duty assignments with non-traditional schedules.

It is important to stress that the converted employees in this case were not being directly converted into NTFT duty assignments to the possible detriment of other employees who might have exercised their seniority to obtain such assignments. Within a month or two after the conversion of former PTs to unassigned regular status, albeit with NTFT schedules, the

[4] The 2001 Modified Work Week MOU also authorized schedules departing from the traditional definitions in Article 7 and Article 8. In that earlier MOU, unlike the NTFT MOU, the parties explicitly recognized the inconsistency between what the MOU provided and what other provisions of the National Agreement provide.

Postal Service began to post the newly established NTFT duty assignments and senior employees (except those with retreat rights covered by the other grievance) were able to bid on those assignments. The converted employees also have no significant basis for complaint since they could be assigned under the NTFT MOU to residual NTFT duty assignments with equivalent schedules and had no reasonable expectation that they would, or would not, be placed in traditional schedules upon their conversion.

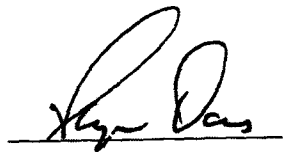
Therefore, in the particular context of what the Postal Service reasonably characterizes as the unique circumstances of the scheduling of the affected converted employees pending initial establishment of a significant number of NTFT duty assignments, I am not persuaded that the Postal Service violated the National Agreement as alleged in this grievance.

Accordingly, this grievance will be denied.

AWARD

The grievance in Case No. Q11C-4Q-C 11322481 is denied.

The grievance in Case No. Q11C-4Q-C 11322494 is sustained. The issue of remedy is remanded to the parties, and I retain jurisdiction to resolve any remedial disputes.



Shyam Das, Arbitrator