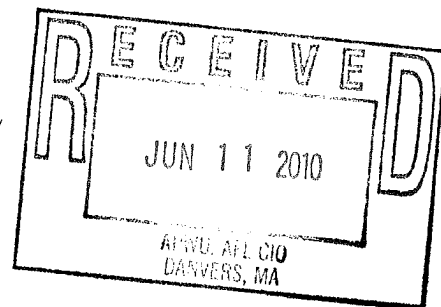


REGULAR ARBITRATION PANEL
South Jersey District



In the Matter of an Arbitration
Between
United States Postal Service
And
American Postal Workers Union

Grievant: Class
Post Office: Monmouth, NJ P&DC
Case No.: A06T1A 09196224
Local No.: JMS-09-160
Before: Robert Tim Brown, Arbitrator

Appearances:

For the Postal Service: Karen Patterson, Labor Relations Specialist
For the Union: Richard Logan, National Business Agent, APWU
Place of Hearing: Eatontown, NJ
Dates of Hearing: April 14, 2010
Date of Award: June 4, 2010 (extended due date)
Relevant Contract Provisions: Articles 7, 15, 19
Contract year: 2000-2006
Type of Grievance: Contract (Maintenance Scheduling)

Award Summary:

The Service violated the agreement and the incorporated MS 47 Handbook when it failed to cover and staff the maintenance routes required by its local staffing plan. It is directed to pay overtime as a remedy as detailed herein.

A handwritten signature in black ink, appearing to read "RTB".

Robert Tim Brown, Esq., Arbitrator

cc: Richard Logan, Karen Patterson, Manager Labor Relations (Pittsburgh), John Dirzius, Kevin B. Rachel, Greg Bell, Grievance and Arbitration Processing Center (Chester).

AWARD

The undersigned heard this case under the auspices of the South Jersey Regular Arbitration Panel established to resolve contractual disputes between the United States Postal Service and the American Postal Workers Union, AFL-CIO. Hearing was held on April 14, 2010 at the USPS Eatontown, NJ facility. Labor Relations Specialist Karen Patterson represented the Service, and APWU National Business Agent Richard Logan represented the APWU and the Grievants. I have reviewed the cases submitted by the parties, and the record and the testimony in this case. An extension until today was granted for submission of this award.

The issue was:

Did the Postal Service fail to comply with the National Agreement and the MS-47 Handbook by failing to maintain staffing and follow prescribed cleaning frequencies during the period covered by the grievance, and, if not, what shall the remedy be?

INTRODUCTION: The central issue in this case concerns the obligations of the Service in a situation in which regular custodians are absent from work, and that presents obstacles to staffing maintenance routes that are scheduled in accord with the facility's most recent Handbook MS-47 custodial staffing package. Certain routes were in fact not covered. The Union asserted that the Service was strictly obliged to schedule as much overtime as was needed to cover all of the scheduled routes while the Service asserted that the facility was being adequately cleaned and the most recent staffing package included more personnel than were needed to get the work done. The Service asserted that it was its prerogative alone to schedule overtime and there was no showing that the facility was not being adequately cleaned. The Union, in rejoinder, asserted that while complaints of inadequate cleaning had in fact been received, the Service was in any event forbidden from changing custodial staffing without promulgating a new staffing package with all of the procedural requirements that went with doing that. The Union did not offer proof that specific areas were not clean, and that did not become an issue in this case.

This grievance was initially filed on April 1, 2009, and stated, according to management form 2608, as follows:

The Union is requesting that overtime be used for the completion of the custodian routes, specifically the dates in question are February 14 to March 13 of 2009. The Union states Management has violated the CBA by not providing coverage for these routes. The Union wants these routes covered and if overtime is needed it should be used. Union claims that management is not cleaning per the MS 47.

In response, management stated:

It is management's responsibility to provide a safe and healthy environment. The necessary number of custodians are assigned each day. There has not been a day during this period that management, knowingly, did not have sufficient custodian coverage. Management is staffing the custodians as needed.

The grievance was, accordingly, denied.

The Union had submitted an information request for "PM completion reports" on March 24, 2009, and this was complied with shortly thereafter. At step 2 the Union alleged that numerous routes had not been completed, as shown in those reports, from February 14 to March 20, 2009. It alleged that of 425.2 hours scheduled, 143.5 hours were not completed, and demanded compensation at \$36.4479/hour.

The management step 2 decision read as follows:

UNION STATEMENT OF FACTS:

The Union contends that management has violated the above Articles of the Collective Bargaining Agreement, specifically Articles 14, 15, 19 and 30; when mgt failed to complete all Tour 1 custodian PM routes from 2/14/2009-3/13/2009 in violation of CBA Article 19 (MS-47).

Union contends mgt violated CBA Article 15 by failing to comply with local Step 1 settlement signed in 2006 which states that mgt will staff the building with proper amount of custodians needed to complete all routes and to keep building clean per MS 47.

Union cites MS-47 §116 in part, "Once a custodian staffing level is determined using the procedures in this handbook, that staffing level must be maintained."

Union seeks remedy to pay 1 hour at the overtime rate for every hour that the route was not completed to Monmouth P&DC custodians on the overtime desired list,

lump sum of \$5, 230.27, comply with step 1 settlement, comply with MS-47, and to make the grievant whole in every way.

Discussion:

It is Management's contention that Union's argument mandating the use of overtime is incorrect, union is reminded management is within compliance as per the Contract (CBA) specifically Article 8.5 Overtime Assignments, which states in pertinent part, "when needed (emphasis added), overtime work for regular full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance ..." Management does not reject the use of overtime, however it is used when needed per management's discretion as management is within compliance with the Contract, specifically Article 3, Management Rights, which states in pertinent part, "The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations: (A) To direct employees of the Employer in the performance of official duties; (B) To hire, promote, transfer, assign, and retain employees in positions within the postal Service and to suspend, demote, discharge or take other disciplinary action against such employees; (C) To maintain the efficiency of the operations entrusted to it; (D) To determine the methods, means and personnel by which such operations are to be conducted;"

As such Management determined the staffing (personnel) by which such operations in regards to maintenance are conducted; for Union to dissent with the staffing set forth for Maintenance is untimely. As cited herein, Management is within their right and within compliance of staffing, additionally Union does not contractually dictate the use of overtime; as per 2608 provided to union at step 2, "Union is requesting that overtime be used for the completion of the custodial routes, specifically the dates in question ...the union states, management wants these routes covered and if overtime is needed, it should be used. It is management's responsibility to provide a safe and healthy environment. The necessary number of custodians are assigned each day. There has not been a day

during this period that management knowingly did not have sufficient custodial coverage. Management is staffing the custodians as needed."

To cite MS-47 §116 in part, "Once a custodian staffing level is determined using the procedures in this handbook that staffing level must be maintained. " as done by union above does not show non compliance by management; management has staffed per staffing package the number of employees sufficient in maintenance, again dissent with the staffing is untimely.

Union has alleged violation of Article 5, but has not specifically identified the basis of this claim. Union has failed to identify and indicate how management violated this provision.

Union has alleged violation of Article 8 but has failed to specifically identify the basis of this claim. Union has failed to identify and indicate how management violated this provision.

Union has alleged violation of Article 14 but has failed to specifically identify the basis of this claim. Union has failed to identify and indicate how management violated this provision.

Union has alleged violation of Article 15 but has failed to specifically identify the basis of this claim. Union has failed to identify and indicate how management violated this provision.

Union has alleged violation of Article 19, but has not specifically identified the basis of this claim. Union has failed to identify and indicate how management violated this provision. Nowhere in the detailed statement of facts/contentions of the grievance does the Union even mention a handbook or manual. Management is not required to guess as to which of the approximately 300 handbooks and manuals the Union is referring to. Union's reference to cite MS- 47 §116 as done above is rejected and denied as set forth in arguments as stated herein.

Additionally union refers to alleged violation of MS-63 but has failed to specifically identify the basis of claim. Union has failed to identify and indicate how management violated this provision.

Union has alleged violation of Article 30 but has failed to specifically identify the basis of this claim. Union has failed to identify and indicate how management violated this provision.

Union has alleged violation of "Employee and Labor Relations Manual, JCIM 2007, LMOU" Yet again union has not specifically identified the basis of this claim. Union has failed to identify and indicate how management violated this provision. Nowhere in the detailed statement of facts/ contentions of the grievant does the union mention exactly how management violate this other than citing this template language used on all Step 2 Grievance Appeal Forms.

In regards to prior settlement referenced by union; management is within compliance as management has supplied the building with adequate staffing per the staffing package for Monmouth Maintenance at Monmouth P&DC; therefore this step 1 settlement is not violated. Further if union is contending staffing should be as it was in 2006 union is reminded that the economic and mail volume factors which have effected the Service at Monmouth P&DC and again, per Management rights management has determined staffing for the Monmouth P&DC where it may not be exactly as it was in 2006 it is the staffing for maintenance currently and such alleged dissent is untimely .

Union 's remedies are rejected and denied as Mgt is within compliance with said contractual articles as stated above and union has failed to specifically identify alleged violations as stated above. As stated in prior paragraph no non compliance issue of prior settlement exists nor is grieving of staffing timely, management rejects and denies union's unspecified basis of claim of violation of MS47 as such management is within compliance of cited section. Union's template remedy seen on all step 2 appeals of, "make grievant whole in every way" is arbitrary, capricious, and punitive; union has ailed to identify the "grievant" further the remedy as claimed herein is unsupported, rejected and denied..

Based on these arguments I am denying this grievance.

[It appeared that the timeliness argument was based on the mistaken perception that the union was challenging the 2006 staffing package, and in the additions and corrections below, and at hearing it became clear that the Union was relying on a

2008 package, then current, and asserting that it was being disregarded at the facility].

In its additions and corrections in response, the Union asserted that it was relying not on the 2006 staffing package but on the current April 28, 2008 staffing package promulgated by management, which it said included 3 more positions than did the 2006 package. It also, in addition to asserting that the handbook relied upon had been identified prior to step 2 as the MS-47, cited a 2006 local settlement which stated:

Management will staff the building with the proper amount of custodians needed to complete all routes, and to keep the building clean and safe as per the MS-47.

It asserted that the article 3 management rights are all subject to more restrictive provisions anywhere in the agreement, and asserted that the neither the cited local agreement nor the MS-47 handbook used the terms “clean and safe” and “complete all routes” in the disjunctive, e.g. both requirements had to be met.

At step 3, the Service stated:

The Union requests that [sic]

After full discussion and consideration of all facts and other evidence of record in this case it is determined that the grievance is denied.

Local management found the grievance was untimely. In addition to the arguments proffered by management in its Step 2 answer, The Union has not established a nexus between the completion of the route in question and the cleanliness or safeness of the building. If there is no proof of unclean or unsafe conditions then the purpose for the status of the route is a moot

The record does not constitute a preponderant showing of any violation of the National Agreement. There is no contractual basis for the remedies the Union seeks.

The 2008 staffing package referred to above was apparently promulgated in accord with a national settlement early in 2008, which provided in part:

1. Arbitrator Das in the above captioned case, directed the Postal Service to rescind the 2001 version and to reinstate the 1983 MS-47 handbook.

In reinstating the 1983 MS-47, the Postal Service will complete within 30

days of the signing of this agreement the custodial staffing packages which determine custodial staffing and scheduling of work. The custodial staffing package(s) will be prepared according to the principles of the 1983 MS-47. This is without prejudice to the position of either party regarding any issue of timely compliance with the reinstatement of the 1983 MS-47.

While the Union at step 2 provided specific numbers of hours it alleged had been skipped, management never supplied any of its own calculations for this.

TESTIMONY:

Steward Raymond Glasser identified the route sheets in the case file, and testified that the summary which concluded those reports was the basis for the pay calculations on which the union based its remedial demand. He testified that the missed routes were primarily bathrooms, and said the reason for the bypass of the routes was that two custodians were out on leave without pay, which he regarded as an ordinary occurrence.

He testified that the new staffing package done in 2008 was the result of the issuance of a national award by Arbitrator Das which invalidated a 2001 revision of the MS-47 handbook and required a reversion to a 1983 document, as a result of which the national settlement referred to above directed that new packages be issued nationally, of which the 2008 package was one. He took no issue with the staffing levels set out in the 2008 package. He said that the custodian level for this large facility went back to 15 custodians, and new employees were hired meet that staffing level.

He said that the period was not a high vacation period, and the lapse only spanned a short period, during which overtime on rest days could have been used to cover the work. During that period, he said, no overtime at all was scheduled, which meant to him that management had made no effort to cover the shortage. He said none of this was seasonal, such as lawn care, and all was cleaning. He said that management informed him that no overtime was to be scheduled, and that the rest rooms were "clean enough."

He said that trash cans overflowed, bathrooms were dirty, toilet paper and soap ran out, and complaints were made.

On cross examination, he said that on the route sheets, where a zero appeared, no one was assigned to complete the route, and that occurred 84 times on the pages in the file.

Operations Support Clerk John Seery testified that he worked on the route sheets as part of his regular job at the facility, and he explained the methodology of the route sheets in the file. He detailed the frequency codes attached to the various tasks, and noted that c=the code which meant “bypass by computer,” meant that no-one was assigned to the route. He said the omissions of coverage were well know to management, and generally were conscious supervisor decisions.

On cross-examination, he said that until the period in issue in this case, routes not covered at straight time were covered on overtime, but management stopped doing that, which triggered the filing of this grievance.

[Some of the details are omitted, because management did not place in question the numbers in detail, although the next witness did question methodology].

Maintenance Supervisor Joseph Wawrzynski testified that his view of the MS-47 handbook was that it provided minimum and maximum coverage levels, and that so long as the minimum levels were covered, no violation occurred. He said that in all cases, the minimum standard was met. He testified that in many cases, routes shown as uncovered were covered on other tours, eg. A bathroom not cleaned on tour 1 was cleaned on tour 2. He said there were enough custodians working to get the job done. He said he did not recall telling the Union that tasks needed only to be done every 24 hours.

He said that 8 years ago, according to the 2001 plan, they had fewer people in the complement than they had at present, and that in his view that meant the facility was now, under the 2008 plan, overstaffed, and could stand the absence of 2 custodians without covering their work with overtime. He speculated that the zeroes on the route sheets might really correctly have been other codes omitted by the Clerk who entered the numbers, but he had no numbers of his own to offer.

He testified that for bathrooms, one route, done on one tour, was for cleaning while the other two were policing, not cleaning. He said that in practice, if cleaning is done at the end of a tour, bathroom cleaning can be skipped on the next tour. He said that the staffing package was done at a higher level, and that if he could get the work done at

the minimum level in the MS-47, in his view that was acceptable. He acknowledged on March 11, no Custodian at all was working. He said that at times when staffing was short, one person covered all routes.

POSITIONS OF THE PARTIES:

Postal Service

The Service asserted that supervisory testimony established that the zeroes on the route sheets were not input correctly, and did not mean that the routes were not covered. The Advocate asserted that according to management, that entry could just be the absence of other coded. The Advocate also argued that it was not possible to cover 16 hours of work in a tour when 2 of the employees scheduled to do that work were missing. Additionally, one employee did work overtime during the applicable time period.

The Advocate argues that there were no statements in file attesting to the bathrooms being dirty, nor was there anything else to show that cleaning was not adequate each day. This meant, the Advocate argued, that the Union had not proved its case.

Union:

The Advocate argued that Art. 19 of the agreement incorporates USPS handbooks and manuals into the agreement, including the MS-47 and its sect 116, which requires that facilities maintain staffing levels and cover routes using overtime as necessary. The Union argued that management as much as admitted that it had not followed these principles, and had instead employed an ad hoc measure of the number of employees needed to cover the work needing to be done, thus abandoning the requirements of the MS-47 handbook. The Advocate noted that the supervisor had testified that in his view, because the staffing had been set above the bare minimum, the facility could revert to the old minimum when employees were absent, and thus avoid having to schedule employees on overtime.

The Advocate argued that once the schedules are set according to the MS-47 guidelines, they must be maintained, and local management does not have the option of simply dropping scheduled tasks at will. The standard is not whether the facilities are successfully cleaned, but rather whether the schedules are followed and the routes are covered, with the number of employees required by the plan to be scheduled.

DISCUSSION:

It is by now well established that Art. 19 of the National agreement requires local compliance with the MS-47 Handbook for custodial operations. That document provides a means for establishing custodial tasks and schedules and for calculating required staffing levels based thereon. Once established, those tasks, schedules and staffing levels may not be unilaterally changed, or even changed in part, without re-doing the entire scheme, pursuant to an established procedure. That scheme was not changed for this facility in this case; Rather, employees were absent, and management, assertedly in a departure from recent practice, had declined to cover the work on overtime.

It does not appear from the many awards submitted by the Union, including National awards, that the adequacy of cleaning is ever the standard against which compliance is to be measured in these kinds of cases, and management here has not really come to grips with this issue.

Arbitrator Gamser stated in a National Award, Case Number A8-NA-0375:

It must be apparent that if the USPS were going to design a system which would insure the maintenance of standards of cleanliness and safety in its buildings, and provide such detailed guidance to the field as is contained in the MS-47 Handbook, the question of frequency of performance could not be left open ended. To do so would give no assurance whatsoever that such standards of cleanliness and safety would be met. If the office in charge at each postal facility or the responsible official in each region or district could set frequencies of performance, and lower them at will, a deterioration of cleanliness and safety standards could surely result. There is a Postal Service commitment to the maintenance of a clean and safe working environment. The Handbook criteria, both dealing with unit performance as well as frequencies, provide assurance that this commitment will be kept. Moreover, Section 116 of the 1983 MS-47 provided: Once a custodial staffing level is determined using the procedures in this handbook, that staffing level must be maintained. If conditions arise that warrant a change in staffing, the entire staffing procedure must be redone, i.e., new forms must be completed. ...the Arbitrator is of the opinion and must find that the provisions of Article XIX impose upon the Service a

duty to abide by the criteria or standards established in the MS-47 Handbook for both unit performance as well as frequencies."

The following language from the award is also instructive with regard to the means by which compliance with Art. XIX and MS 47 is to be measured:

By requiring that the Postal Service adhere to the standards or criteria for unit performance as well as frequencies contained in the MS-47 Handbook, this Arbitrator is not imposing a manning floor or any manning commitment on the Service in carrying out its maintenance responsibilities. The Service is required to instruct its facilities to employ these unit performance criteria and frequency standards in determining the number of man hours which will be required to perform the tasks at hand. Whether the man hours thus required are filled by employing overtime or by the reassignment of employees from activities in which they might otherwise have been engaged, not prescribed by standards or criteria in some other handbook, manual or published regulation, is a management decision.

That directive has since been implemented in Maintenance Management Order 21-91, which states in its Section 5, "Absences not covered by relief from the main office will be covered. . .in offices with multiple custodial positions [by having the staff] work additional hours, either extra hours for PTRs or overtime for FTRs"

Arbitrator Gamser had before him the question of whether the Service was required to meet the cleaning and custodial standards set out in MS-47. The Service had taken the position that the standards were mere guidelines and need not have been complied with literally, and Gamser rejected that position and held that compliance was required. The language quoted above, however, makes clear that it is the performance standards which dictate staffing. Staffing is determined by calculations derived from the performance standards, but there are variables such as seasonal tasks that may affect the need for particular staffing levels, and in addition, the tasks may be accomplished by assigning overtime and by detailing non-custodial employees to do the work.

The 2008 staffing standard cited in this facility in this case came about because of a much more recent award by Arbitrator Das, which invalidated a major change made by the Service in 2001.

The Union correctly argues that inadequate staffing inevitably affects the extent to which tasks can be performed, and evidence of understaffing would have provided strong support for a Union case based on testimony regarding an alleged failure to adhere to the requirements of the manual. Staffing must also be

calculated based on specific procedures set out in the MS-47.

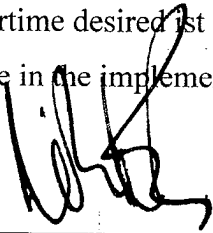
In this case, management evidently believed that it could still revert to lower staffing levels if it had the need, and in its judgment the current standard provided surplus staffing. In reality, the 2008 standard, like others elsewhere, is binding on the facility, and can only be modified by going through an elaborate set of procedures which, upon completion, are subject to challenge in the grievance procedure by the Union. No such process was undertaken here, nor is any such challenge present in this case. To the contrary, the Union is relying on the 2008 management-formulated standard in pursuing this grievance.

The existence of a previous local agreement acknowledging these rules strengthens the claim for a remedy.

As to the time period and the hours, the Union conceded at hearing that the grievance runs through October 13, not October 20, 2009. While the Service called the Union's methodology for measuring missed routes into question, it provide no alternate hard numbers, and management testimony on the route sheet notations was vague, e.g. that a zero might have been used instead of a 7, 8, or 9. It is too late for it to go back and do those calculations now.

For these reasons, the hours claimed by the Union in the grievance (but not any hours subsequent to October 13, 2009) will be used in calculation of the remedy.

CONCLUSION: The Union has met its burden of proving that the Service violated the National Agreement by failing to properly staff and complete maintenance routes between February 14 and March 13, 2009. The Service shall make the grievants whole for all the hours of required custodial work not performed in the facility on the hours and days in question, at the appropriate overtime rate, to be paid to the custodians on the overtime desired during the period. I retain jurisdiction to hear any dispute that may arise in the implementation of this award.


Robert Tim Brown, Esq., Arbitrator Dated June 4, 2010.