

REGULAR ARBITRATION PANEL

In the Matter of Arbitration	)	GRIEVANT:	Class Action
	)	POST OFFICE:	Jonesboro, AR
Between	)		Main Post Office
UNITED STATES POSTAL SERVICE	)	CASE NO.:	G06C-4G-C 09039040
and	)	NALC NO.:	RG0142008
NATIONAL ASSOCIATION OF LETTER	)		
CARRIERS	)		

BEFORE: **Glenda M. August, Arbitrator**

APPEARANCES:

For the USPS: John W. Merritt

For the ~~NALC~~  
APWU: Robert Kessler

Place of Hearing: Main Post Office Jonesboro, AR 72401

Date of Hearing: September 21, 2010

Date Briefs Received: November 1, 2010

Date of Award: November 25, 2010

Relevant Contract Provision: Articles 3, 7, 12

Contract Year: 2006-2011

Type of Grievance: Contract

**AWARD:** The grievance is sustained. Management did violate Article 7.3b when it failed to convert several PTF's to full-time regulars. The 3 senior ptf's at the Jonesboro Post Office shall be converted to full-time.

*Glenda M. August*

\_\_\_\_\_  
GLENDA M. AUGUST  
Arbitrator

**I. ISSUE**

Did Management violate Article 7.3b when it failed to convert several PTFs to full-time regulars? If so, what is the appropriate remedy?

**II. RELEVANT CONTRACT PROVISIONS**

**ARTICLE 3  
MANAGEMENT'S RIGHTS**

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;
- E. To prescribe a uniform dress to be worn by designated employees; and
- F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

**ARTICLE 7  
EMPLOYEE CLASSIFICATIONS**

**Section 3. Employee Complements**

- B. The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations; however, nothing in this paragraph B shall detract from the USPS' ability to use the awarded full-time/part-time ratio as provided for in paragraph 3.A. above.

- C. A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six month period will demonstrate the need for converting the assignment to a full-time position.

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

**Section 5. Reassignments**

**A. Basic Principles and Reassignments**

When it is proposed to:

1. Discontinue an independent installation;
2. Consolidate an independent installation (i.e., discontinue the independent identity of an installation by making it part of another and continuing independent installation);
3. Transfer a classified station or classified branch to the jurisdiction of another installation or make an independent installation;
4. Reassign within an installation employees excess to the needs of a section of that installation;
5. Reduce the number of regular work force employees of an installation other than by attrition;
6. Centralized mail processing and/or delivery installation (Clerk Craft only);
7. Reassignment motor vehicles;
8. Reassignment part-time flexibles in excess of quota; such actions shall be subject to the following principles and requirements.

**III. FACTS**

In the Jonesboro, AR Post Office, for a period of 28 weeks, most of the ptf's worked 6 days per with, and with the exception of a few isolated day, their shifts were 8-12 hours per day. The record revealed the ptf's worked 39 hours or more over a 6 month period (8 hours within 10 per day). The Union filed this instant grievance alleging the Postal Service violated Article 7 by failing to

convert PTFs in the Jonesboro, AR Post Office to full time.

#### **IV. UNION CONTENTIONS**

The Union contended that from March 1, 2008, through September 12, 2008, PTFs at the Jonesboro, AR Post Office worked 8 hours within 10 for 6 days each week totaling more than 39 hours per week over the 28 week period. According to the Union, under Article 7 of the National Agreement, and pages 39 and 40 of the JCIM, the parties have agreed that conversions are required if a PTF works 5 eight hour days each service week over a six month period with 39 hours being sufficient to constitute 40 hours and paid leave must be considered. The Union noted that in addition, the work must be performed within the employees' assigned craft and installation. The Union also noted that according to the JCIM, hours worked in a withheld position during the review period cannot be utilized for proving conversion was necessary. The Union argued that although Management utilized various scheduling methods to avoid the need to maximize, such as changing non-scheduled days, sending PTFs home after 7 hours at the end of the week to keep them below 40 hours, the record of PTF work hours still reflects the need to convert PTFs to full-time. The Union further argued that although the Jonesboro Post Office went under Article 12 Withholding during the time frame reviewed, the PTFs were not working in withheld assignments. The Union noted that Management did not withhold any assignments in that office until October 1, 2008, after the September 12, 2008, end date of the review period.

#### **V. MANAGEMENT'S CONTENTIONS**

Management argued that there was no dispute that the Southwest Area, which included the Jonesboro, AR Post Office, was under Article 12 Withholding effective June 3, 2008. According to Management, the review period offered by the Union would have included only 2 months of work hour information at the time withholding began. Management further argued that the Step 1 Management official denied the grievance due to the fact that the Postal Service was not converting jobs at Jonesboro due to the withholding requirement.

Management further argued that the Union did not outline the period challenged until the Step 3 Appeal.

## **VI. DISCUSSION AND OPINION**

The Union has argued that ptf employees at the Jonesboro, AR Post Office have consistently worked 8 to 12 hours per day on 5 to 6 days per week. The Union reviewed the work hours for all ptf employees at the Jonesboro office for a 28 week period, beginning March 1, 2008, and ending September 12, 2008. The information was charted and submitted as evidence in this instant grievance.

Management offered no rebuttal to the work hour information but stated it denied the grievance and failed to convert PTFs to full time in this Post Office because the Southwest Area, which included the Jonesboro, AR Post Office, was placed under Article 12 Withholding on June 3, 2008. According to the Postal Service's argument, Management at Jonesboro could not convert ptf employees to full-time due to the withholding requirement.

Article 7 of the National Agreement Addressed the issue of employee complements as follows:

### **ARTICLE 7 EMPLOYEE CLASSIFICATIONS Section 3. Employee Complements**

- B. The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations; however, nothing in this paragraph B shall detract from the USPS' ability to use the awarded full-time/part-time ratio as provided for in paragraph 3.A. above.
  
- C. A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six month period will demonstrate the need for converting the assignment to a full-time position

This Article provided that Management had an obligation to convert to full-time, any ptf positions working 8 hours within 10 on the same 5 day work week over a six-month period. The evidence submitted by the Union demonstrated up to 9 ptf employees consistently worked 5 to 6 days per week 8 hours within 10 and even up to 10 and 12 hours per day.

Management argued that those employees replaced some other employees on long-term leave, and at least one employee on higher level. However, the evidence showed the work hours rarely varied during this 28 week time frame, regardless of other staffing conditions.

Management's only argument throughout the process was that the Article 12 withholding

requirement place on them effective June 3, 2008, did not allow the ptf's to be converted to full-time at Jonesboro. This argument was not substantiated by the evidence since the review period began before Article 12 withholding was implemented and there was no evidence submitted which showed the PTFs were assigned to withheld positions. To the contrary, Management did not acknowledge any positions withheld in Jonesboro until October 1, 2008 after the review of PTF work hours was completed.

This argument has been refuted in previous arbitration decisions. Arbitrator Glynnis F. Gilder in two separate decisions addressed the argument by Management. In case number COOC4CC06029056, Arbitrator Gilder stated:

Further, Management contends the Newark facility is under Article 12 withholding; that any position being "backfilled" by a PTF employee would have been withheld under Article 12 and if a residual vacancy was created by conversion, it would likewise be withheld under Article 12. This is essentially a moot issue since nothing was introduced during the course of this grievance or at the grievance hearing that would show any evidence the Newark PTFs were working in positions being withheld under Article 12 or that any residual vacancies would be created by any PTF conversions.

In another case Arbitrator Gilder addressed grievance issues similar to the case at bar. In case number G98C4GC00127475 the arbitrator opined:

Since no Step 2 meeting was held and the case was not remanded back to Step 1 at the Step 3 meeting (which was conducted) for further factual/argument development, the Service is held to the evidence, testimony and argument that it submitted at Step 1

Basically this amounts to the affirmative defense of the Allen facility being under Article 12 withholding which "trumps" Article 7 maximization. However, no evidence was submitted to show that the PTF employees in question are currently working in residual vacancies properly withheld under Article 12 so that argument is rendered Moot.

This Arbitrator agrees with Arbitrator Gilder and her interpretation of the parties' intent regarding Articles 7, 12, and the JCIM. In order for Article 12 withholding to be considered an exception to conversion, the hours worked by the PTFs must be shown to have been worked in properly withheld positions under Article 12. In the case at bar Management failed to provide any evidence which proved that was the case at Jonesboro.

For the foregoing reasons, the grievance is sustained.

AWARD

The grievance is sustained. Management did violate Article 7.3b when it failed to convert several PTFs to full-time regulars. The 3 senior ptf's at the Jonesboro Post Office shall be converted to full time.

*Glenda M. August*

---

GLENDAM. AUGUST

Arbitrator

November 25, 2010

New Iberia, LA