

REGULAR ARBITRATION PANEL

In the Matter of Arbitration Between:

UNITED STATES POSTAL SERVICE

Post Office: Buffalo, N.Y.

-And-

USPS No. B01N-4B-C 05187029

NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO

NALC No. 813.05

Re: R. Dubravec – Simultaneous Scheduling

Before: Dennis J. Campagna, Esq.

Hearing Date: May 12, 2006

APPEARANCES:

A. For the Service:

Francis E. McNamara, Labor Relations Specialist & NEA

B. For the Union:

Lawrence M. Kania, NALC Advocate

David J. Grosskoff Jr., NALC Technical Advisor

THE ISSUE

Did management violate the National Agreement when they mandated the Grievant, a Non-Overtime Desired List employee to work her non-scheduled day when the OTDL carriers were not maximized to 12 hours. If so, what is the appropriate remedy?

AWARD SUMMARY

For the reasons noted and discussed below, it is the conclusion of this Arbitrator that the Service violated Article 8.5(G) the National Agreement when it mandated the Grievant to work on September 20, 2005, her scheduled day off when OTDL Carriers were available and not maximized to the 12 hour limit.

As a remedy, the Service is directed to award the Grievant an additional 50% pay for the day at issue, amounting to 4 hours of straight-time pay, and eight (8) hours of administrative leave to be used at the Grievant's convenience. The Arbitrator shall retain jurisdiction in the unlikely event that the parties reach a stalemate on the implementation of this Award.

RELEVANT CONTRACT LANGUAGE

ARTICLE 3 Management Rights

The Employer shall have 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 letter carriers and other designated employees; and
- F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e. unforeseen circumstances or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature."

Article 8.5 Overtime Assignments

When needed, overtime work for full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

- A. Employees desiring to work overtime shall place their names on either the "Overtime Desired" list or the "Work Assignment" list during the two weeks prior to the start of the calendar quarter, and their names shall remain on the list until such time as they remove their names from the list. Employees may switch from one list to the other during the two weeks prior to the start of the calendar quarter, and the change will be effective beginning that new calendar quarter.
- B. "Overtime Desired" lists will be established by craft, section or tour in accordance with Article 30, Local Implementation.
- C.1. (RESERVED)
- C.2.a. When during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the "Overtime Desired" list.
- D. If the voluntary "Overtime Desired" list does not provide sufficient qualified people, qualified full-time regular employees not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee.

- E. Exceptions to C and D above if requested by the employee may be approved by local management in exceptional cases based on equity (e.g., anniversaries, birthdays, illness, deaths).
- F. Excluding December, no full-time regular employee will be required to work overtime on more than four (4) of the employee's five (5) scheduled days in a service week or work over ten (10) hours on a regularly scheduled day, over eight (8) hours on a non-scheduled day, or over six (6) days in a service week.
- G. Full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the "Overtime Desired" list:
 - 1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.F); and
 - 2. excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.

However, the Employer is not required to utilize employees on the "Overtime Desired" list at the penalty overtime rate if qualified employees

on the "Overtime Desired" list who are not yet entitled to penalty overtime are available for the overtime assignment.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO, and
National Association of Letter Carriers, AFL-CIO)

Re: Article 8

Recognizing that excessive use of overtime is inconsistent with the best interests of postal employees and the Postal Service, it is the intent of the parties in adopting changes to Article 8 to limit overtime, to avoid excessive mandatory overtime, and to protect the interests of employees who do not wish to work overtime, while recognizing that bona fide operational requirements do exist that necessitate the use of overtime from time to time. The parties have agreed to certain additional restrictions on overtime work, while agreeing to continue the use of overtime desired lists to protect the interests of those who seek to work limited overtime. The parties agree this memorandum does not give rise to any contractual commitment beyond the provisions of Article 8, but is intended to set forth the underlying principles which brought the parties to agreement.

The new provisions of Article 8 contain different restrictions than the old language. However, the new language is not intended to change existing practices relating to use of employees not on the overtime desired list when there are insufficient employees on the list available to meet the overtime needs. For example, if there are five available employees on the overtime desired list and five not on it, and if 10 work hours are needed to get the mail out within the next hour, all ten employees may be required to work overtime. But if there are 2 hours within which to get the mail out, then only the five on the overtime desired list may be required to work.

The parties agree that Article 8, Section 5.F.1., does not permit the Employer to require employees on the overtime desired list to work overtime on more than 4 of the employee's 5 scheduled days in a service week, over 8 hours on a nonscheduled day, or over 6 days in a service week.

Normally, employees on the overtime desired list who don't want to work more than 10 hours a day or 56 hours a week shall not be required to do so as long as employees who do want to work more than 10 hours a day or 56 hours a week are available to do the needed work without exceeding the 12-hour and 60-hour limitations.

In the Letter Carrier Craft, where management determines that overtime or auxiliary assistance is needed on an employee's route on one of the employee's regularly scheduled days and the employee is not on the overtime desired list, the employer will seek to utilize auxiliary assistance, when available, rather than requiring the employee to work mandatory overtime.

In the event these principles are contravened, the appropriate correction shall not obligate the Employer to any monetary obligation, but instead will be reflected in a correction to the opportunities available within the list. In order to achieve the objectives of this memorandum, the method of implementation of these principles shall be to provide, during the 2week period prior to the start of each calendar quarter, an opportunity for employees placing their name on the list to indicate their availability for the duration of the quarter to work in excess of 10 hours a day. During the quarter the Employer may require employees on the overtime desired list to work these extra hours if there is an insufficient number of employees available who have indicated such availability at the beginning of the quarter.

The penalty overtime provisions of Article 8.4 are not intended to encourage or result in the use of any overtime in excess of the restrictions contained in Article 8.5.F.

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO**

This Memorandum of Understanding represents the parties' consensus on clarification of *interpretation and issues pending national arbitration regarding letter carrier overtime as set forth*

herein. In many places in the country there has been continued misunderstanding of the provisions of Article 8 of the National Agreement; particularly as it relates to the proper assignment of overtime to letter carriers. It appears as if some representatives of both labor and management do not understand what types of overtime scheduling situations would constitute contract violations and which situations would not. This Memorandum is designed to eliminate these misunderstandings.

1. If a carrier is not on the Overtime Desired List (ODL) or has not signed up for Work Assignment overtime, management must not assign overtime to that carrier without first fulfilling the obligation outlined in the "letter carrier paragraph" of the Article 8 Memorandum. The Article 8 Memorandum provides that "... where management determines that overtime or auxiliary assistance is needed on an employee's route on one of the employee's regularly scheduled days and the employee is not on the overtime desired list, the employer will seek to utilize auxiliary assistance, when available, rather than requiring the employee to work mandatory overtime." Such assistance includes utilizing someone from the ODL when someone from the ODL is available.
2. The determination of whether management must use a carrier from the ODL to provide auxiliary assistance under the letter carrier paragraph must be made on the basis of the rule of reason.; For example, it is reasonable to require a letter carrier on the ODL to travel for five minutes in order to provide one hour of auxiliary assistance. Therefore, in such a case, management must use the letter carrier on the ODL to provide auxiliary assistance. However, it would not be reasonable to require a letter carrier on the ODL to travel 20 minutes to provide one hour of auxiliary assistance. Accordingly, in that case, management is not required to use the letter carrier on the ODL to provide auxiliary assistance under the letter carrier paragraph.
3. It is agreed that the letter carrier paragraph does not require management to use a letter carrier on the ODL to provide auxiliary assistance if that letter carrier would be in penalty overtime status.
4. It is further agreed that the agreement dated July 12, 1976, signed by Assistant Postmaster General James C. Gildea and NALC President James H. Rademacher, is not in effect. In cases where management violates the letter carrier paragraph by failing to utilize an available letter carrier on the ODL to provide auxiliary assistance, the letter carrier on the ODL will receive as a remedy compensation for the lost work opportunity at the overtime rate.

BACKGROUND

A. The Instant Grievance

On September 20, 2005, Rose Dubravec, the Grievant herein, was forced to work on her day off. It is undisputed that the Grievant was not on the overtime desired list (ODL). In this regard, the Union contends that had the Service assigned an additional one-half hour of work from the Grievant's route to the OTDL carriers, it would have been unnecessary to force the Grievant in, and all the mail at the Tonawanda, New York facility would have been delivered by 5:30 p.m.

Following the Service's directive to the Grievant noted above, the Grievant filed a timely grievance protesting said directive. In her grievance, the Grievant sought the following remedy:

Cease and Desis, pay Dubravec 50% more for 8 hours worked and 8 hours administrative leave, pay OTDL 8 hours at the overtime rate.

(See DRT Packet, page 2)

In their Formal A Response, the Service noted:

The Union argues that all OTDL carriers did not work up to 12 hours. It is true that all carriers did not work up to 12 hours and were not scheduled 12 hours as they would not have been able to deliver by 5:00 p.m. On this day 3 carriers worked past 5:00 p.m. while only working 10:16 hours see (Ortolano) on sheet. This time past 5:00 p.m. was not planned by management and illustrates how carriers in this position are unable to deliver by 5:00 when working 12 hours. The two PTFs on this sheet Lilley and HY were involved in helping with collections on this day. To assign additional hours to max overtime would have been to schedule delivery past 5:00 intentionally.

(Id., page 3)

Denial of this grievance at the lower administrative levels of the Grievance Procedure resulted in an appeal to the Dispute Resolution Team, ("DRT"). In its stated position, the Union noted that the question at issue is:

Whether or not management at the Tonawanda Post Office has the contractual right to require letter carriers not on the overtime desired list to work overtime prior to exhausting available letter carriers on the overtime desired list to the limits established in Article 8.5G.

In response, the Service raised the following defense:

The Management at the Tonawanda Post Office found that in order to meet the needs of its customers, and to meet the 5:00 Window of Operations, they had to mandate the Grievant, a Non-OTD list employee, to work on her Non-Scheduled Day (9/20/2005). That is the basis for this case.

Given the foregoing, it is clear that the central point for both the Union as well as the Service is the continuing viability and particular application of the Service's "window of operation" under the facts and circumstances as they existed on September 20, 2005.

DISCUSSION

A. The Arbitrator's Task in This Matter

This is, first and foremost, a contract interpretation case involving a single grievant, Carrier Rose Dubravec. Given its non-disciplinary nature, it is well established arbitration precedent that the Union carries the burden of proof under the preponderance of the credible evidence standard. Accordingly, in order to prevail, the Union must demonstrate that it is more likely than not that by forcing Carrier Dubravec, who all agree is not on the Overtime Desired List ("OTDL"), to work on September 20, 2005, her non-scheduled day, violated Article 8, Section 5 of the National Agreement.

Arbitrators seek to interpret collective bargaining agreements so as to reflect the intent of the parties. Intent is determined from a review of various sources, including the express

language (or lack thereof), statements made by the parties to the agreement, bargaining history, past arbitration decisions, and in some cases, past practice.

With the foregoing basic principles in mind, we now review the circumstances that gave rise to the instant grievance.

B. The “Rules” Involving Simultaneous Scheduling

The rules regarding the Service’s right to schedule OTDL and Non-OTDL personnel simultaneously are well established, and involve a careful balancing between the rights of Non-OTDL employees against forced overtime, and the right of the Service to carry out its mission. These rules are as follows:

1. The Language of Article 8.5(G)

Section 8.5(G), the focal point of this case, provides:

Full-time employees not on the “Overtime Desired” list may be required to work overtime only if all available employees on the “Overtime desired” list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the “Overtime Desired” list:

1. *may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.F); and*
2. *excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.*

(Emphasis added)

The operative word “available” has particular significance in this case, for if it can be shown that OTDL employees were or reasonably could have been “available”, then the use of non-OTDL employees is in violation of Article 8.5(G). Indeed, the questions of

“availability” and “simultaneous scheduling” of OTDL and non-OTDL employees has been the subject of numerous disputes and subsequent arbitration awards.

2. The 1984 Memorandum of Understanding

The December 1984 MOU provided an interpretative format for Article 8 in a manner that balanced the needs of the Service to mandate overtime with the desires of those employees who do not wish to work overtime and the desires of those employees who seek to work limited overtime. Relevant to the instant matter, the MOU provides: “[T]he new language is not intended to change existing practices relating to the use of employees on the overtime desired list when there are insufficient employees on the list available to meet the overtime needs. For example, if there are five available employees on the overtime desired list and five not on it, and if 10 work-hours are needed to get the mail out within the next hour, all ten employees may be required to work overtime. But if there are 2 hours within which to get the mail out, then only five on the overtime desired list may be required to work.”

In his 1997 Opinion, Arbitrator Snow noted:

The undisputed purpose of the “Letter Carrier Paragraph” in the December 1984 Memorandum of Understanding was to protect full-time Letter Carriers from involuntary overtime where alternatives were available and feasible.

[Case No. C-17270, Snow, September 1997]

3. The Window of Operation

Numerous Arbitration Awards on the subject of the Service’s right to establish a Window of Operation have been consistent in the Service’s right to establish its Operational Window as a Service “Goal” in order to effectuate the timely delivery of mail as well as the timely dispatch of mail brought back to the station by Carriers. There is a long and well-established history behind the creation of this Operational Window that demonstrates that its creation is directly attributed to the Service’s goal of satisfying

customer demands in an ever increasing competitive industry. Indeed, arbitration cases supplied by both the Service and the Union demonstrate that the concept and implementation of the Operational Window has been accepted as a reasonable exercise of Management's rights under Article 3 of the National Agreement. Thus, in Case No. B01N4BCC04104119 (Campagna, Buffalo, New York), I concluded:

Accordingly, the establishment of the Operational Window does not, in and of itself, violate the National Agreement. However, once the Service establishes its Operational Window, it must be prepared to provide the necessary resources to carry out its mission, and the manner and method it chooses to do so cannot violate the terms of the National Agreement.

In this same general regard, Arbitrator Daniel Collins noted:

[A]rbitrators at the regional levels have recognized the concept of a "Window of Operations." While that term may suggest a firmly structured concept than is in this case, there is, in this Arbitrator's view, a sound basis for the concept – the common sense necessity of accommodating Article 8.5 with the Postal Service's right, as recognized in Article 3, to conduct efficient operations utilizing its personnel and facilities in a manner intended to best serve its customers and its obligations under Article 14.1 to ensure that such operations are safe. Stated another way, it is only reasonable to read the National Agreement as recognizing that the maximization of work time for OTDL employees must be accomplished within the parameters of safe operations conducted at times the Service in good faith determines to be appropriate, to service its customers. In practical terms that means that Article 8.5 cannot be read to require the Service to deliver mail at times when there are no business customers to receive it or at times when no residential customers want it, or under circumstances where delivery is dangerous or just plain inefficient.

(Case N7N-1E-C 29413)

While agreeing with the Service's right to establish its Window of Operation, Arbitrator Gary Wooters cautioned:

I agree with the Union that management may not establish a window of operation for the sole purpose of avoiding its responsibilities under Article 8.5(G). An arbitrary or invidious motivation may make what otherwise would be a proper exercise of management rights into a contract violation.

[Case No. B01N4BC04027979 (Wooters, Danbury, CT)]

The Union agrees that the Service has the right to implement an Operational Window. However, it asserts that the quid pro quo for this right is the obligation on the part of the Service to properly staff its facilities in order to remain in compliance with the terms of the National Agreement. (See NALC Contract Administration Unit, "Overtime, Staffing and Simultaneous Scheduling, May 2006) Arbitrator Wooters rendered the following opinion regarding the balance between the Service's right to establish its Window and the Union's position on proper staffing:

Management does not disagree with the Union contention that having additional staffing would make scheduling, including compliance with Article 8.5G easier. This does not mean, however, that management violates Article 8.5G when tight staffing limits the number of available ODL carriers.

(Id.)

4. Simultaneous Scheduling – Balancing Service Needs Against Contractual Rights

As the foregoing discussion demonstrates, it is well established arbitration precedent that while the Service is entitled to reasonably broad discretion in carrying out its mission, such discretion cannot be used to undermine the unambiguous language of Article 8.5(G). Indeed, had the parties intended to grant the Service unbridled discretion, including the right to virtually ignore Article 8.5(G), they could have easily done so. The fact that they chose not to do so is telling. In this regard, while Arbitrator Herbert Marx sanctioned the Service's use of its Window of Operation, he rendered the following guidance:

1. The Window [of Operation] policy, while legitimate, does not, by itself, invalidate Article 8.5(G);
2. The Agreement requires the Postal Service to provide reasonable and convincing evidence of lack of "availability", after making the best advance scheduling decisions, before non-OTDL employees may be involuntarily assigned overtime on other than their own routes.

(Case B01N4BC04013454, (Marx, Lancaster, New York).

Similarly, Arbitration Mittenthal held that absent “emergency or unforeseen circumstances”, employees on the ODL list must be assigned to work overtime to the full extent of their obligation under Article 8.5(G):

When Management does not “seek” anyone from the ODL and instead requires a carrier to work “mandatory overtime” on his route on his regularly scheduled day even though he has not signed up for such “work assignment” overtime, it has violated the Memorandum.”

[Case No. H4C-NA-C 19 & 21]

In a similar fashion, the Overtime MOU “[o]bligates management to seek to use auxiliary assistance, when available, rather than requiring a regular letter carrier not on the Overtime Desired List to work overtime on his/her own assignment on a regular scheduled day.” (Joint Statement on Overtime between the USPS and the NALC dated June 6, 1988).

Finally, and in keeping with its obligation to exhaust all reasonable efforts to avoid mandating overtime for Carriers not on the OTDL, Arbitrator Aaron in Case H8N5BC17682 provided that Management has an obligation, where not inconsistent with their obligations under Article 8, “[t]o split up a route to be carried by [employees on the OTDL] . . . “ (See also the letter agreement between Daniel Magazu, Grievance and Arbitration Labor Relations, USPS, and Vincent Sombrotto, then President, NALC, dated March 1, 1993. The letter states, *inter alia*, that the question of whether Management violated the National Agreement by calling in a carrier on his nonscheduled day to deliver an uncovered route rather than pivoting the route was addressed and resolved by Arbitrator Aaron.) In this later regard, Arbitrator Aaron ruled that the Service violated Article 8.5(G) when “[i]t assigned a carrier not on the Overtime Desired list to carry a route on overtime on his non-scheduled day rather than splitting up the route between available carriers from the list.” Arbitrator Aaron noted that the Service must have “good cause” before going off the list.

Given the foregoing, it is evident that the exercise of Management in its rights as set forth under Article 3 must be reviewed and decided on a case-by-case basis using the “good faith” analysis suggested by Arbitrator Aaron.

C. Review of the Instant Matter Under the Guidelines Set Forth Above

In order to succeed in this case, it must be shown that the Service’s decision to force the Grievant, a non-OTDL employee, to work overtime on September 20, 2005.

Accordingly, the Union must establish a prima facie case, demonstrating that given the fact that a Non-OTDL employee was forced to work overtime, there were other reasonable alternatives that the Service chose to ignore. Once a prima facie case has been established, it is then the Service’s burden to make a “good faith” showing that its decision to impose simultaneous scheduling was required due to the lack of other reasonable and available alternatives.

In the instant matter, the Union has established its prima facie case by showing that:

- On September 20, 2005, the Grievant, a Non-OTDL carrier, was forced to work on her day off;
- The Service could have, but chose not to assign an additional one-half hour of work from the Grievant’s route to available OTDL carriers. Had the Service done so, the Grievant would not have been forced in and the mail at the Tonawanda, N.Y. facility would have been totally delivered by 5:30 p.m. at the latest;
- There were 22.41 hours available that carriers on the OTDL could have worked, and finally,
- Six (6) carriers on the OTDL did not even work 10 hours.

In response, the Service maintained that the foregoing was not a feasible alternative because:

- First, “[t]here are simply not enough ODL carriers available to get the mail out within the required time. (Service brief at page 12)
- “The entire problem is availability of the mail, availability of specific carriers to deliver the available mail, the availability of work after the deliveries if we were to max the ten hour ODL – a mantra of AVAILABILITY!” (Id., page 14 - Emphasis in the original) In this same general regard, the Service noted that given the 48 routes to be covered in the Tonawanda Post Office and that 8 carriers were unavailable due to leaves, the Tonawanda, New York Office was down approximately 16.6% in its coverage of routes, a situation the Service deems “unusual or emergent” and “hardly regular.” (Id., page 11)

Following a careful review of the Service’s response in light of the record evidence in this case, I must respectfully find the foregoing reasons proffered by the Service unconvincing because:

- First, the Service has not demonstrated the type of exigent circumstances required under the *Mittenthal* and *Marx* decisions. In this regard, while acknowledging that 8 carriers had reported off on September 20th, the Service has not shown that this was an “unusual” or unforeseen event of the type requiring a deviation from Article 8.5.
- Second, the Service chose not to utilize employees on the OTDL due to the fact that even with their assistance, the Operational Window of 5:00 p.m. would not be met. However, this claim is inconsistent with the Service’s position that its Operational Window “is not an absolute bar, it is a goal, a plan”. (See Service Brief at page 19) This point has particular significance in the instant matter where the parties agree that the forced overtime assignment at issue was not a regular occurrence. Moreover, where, as here, the Service chose to establish its Operational Window at 5:00 p.m., it was their obligation to provide the necessary resources to implement its Window, and their failure to do so resulted in a violation of Article 8.5(G).

Given the foregoing, I find and conclude that the Service's decision not to utilize the services of Carriers on the OTDL who were available to perform overtime services on September 20, 2005 was arbitrary and capricious, thereby violating Article 8.5(G).

D. The Appropriate Remedy:

Having established under the specific facts of this case that the Service violated Article 8 of the National Agreement when they mandated the Grievant to work 8 hours of overtime on September 20, 2005, there remains a question of an appropriate remedy. In addition to a monetary remedy, the Union seeks a cease and desist order. As to the former, a "make whole" remedy consisting of an additional 50% pay for the day (amounting to four hours pay at her straight time rate), and eight (8) hours of administrative leave to be used at the Grievant's convenience is in order. However, given that this grievance is not of the "class action" variety, the Union's request for a cease and desist order is not appropriate and is therefore respectfully denied.

CONCLUSION AND AWARD

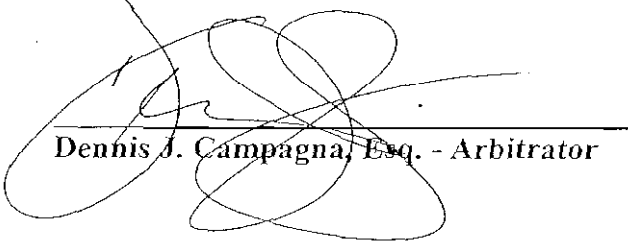
For the reasons noted and discussed above, it is the conclusion of this Arbitrator that the Service violated Article 8 f the National Agreement when it mandated the Grievant to work 8 hours of overtime on September 20, 2005 when OTDL Carriers were available and not maximized to the 12 hour limit.

As a remedy, the Service is directed to award the Grievant an additional 50% pay for the day at issue (amounting to four hours pay at the Grievant's straight-time rate), and eight (8) hours of administrative leave to be used at the Grievant's convenience.

The Arbitrator shall retain jurisdiction in the unlikely event that the parties reach a stalemate on the implementation of this Award.

I, Dennis J. Campagna, do hereby affirm that I am the individual described in and who executed this instrument, which is my Conclusion and Award.

Dated: August 12, 2006
Buffalo, New York



Dennis J. Campagna, Esq. - Arbitrator