cc: LaSalle

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS UNION

Grievant: MALCOLM BRATCHER

Post Office: WILMINGTON, DE P&DC

Case No.: C00T-1C-C 06046240
MT-02-01-06

Before: RANDALL M. KELLY, Arbitrator

Appearances:

For the Postal Service:

DEBORAH KELLEY-BROWN, Labor Relations Specialist
JOHNNIE A. BARNETT, Manager of Maintenance
MARK C. HASTINGS, Supervisor, Maintenance Operations

For the Union:

WILLIAM LaSALLE, National Business Agent
DOUGLAS RITTER, Technical Advisor
DOMINICK LOMBARDI, Maintenance Craft Director
LISA DRISCOLL, Mail Processing Equipment Mechanic

Place of Hearing: Wilmington, Delaware

Date of Hearing: May 13, 2010

Date of Award: July 11, 2010

Relevant Contract Provisions: Article 16

Contract Year: 2000-2006

Type of Grievance: Contract

AWARD

1. That for reasons set forth herein, Management violated the 1995 settlement agreement (Jt. Exh. 3) when it ignored its terms during the period between December 31, 2005 and January 20, 2006 by not even soliciting a second MPE to work on various tours;
2. That the Service is to cease and desist from implementing the 1995 settlement agreement;
3. That Mail Processing Equipment Mechanics improperly denied the opportunity to work are to be compensated for lost hours at the straight time rate (the remedy

agreed to in the 1995 settlement) as jointly determined by the Union and management;
4. I will retain jurisdiction over the implementation of the remedy; and
5. The grievance is sustained.

Randall M. Kelly

Stipulated Issue:

Did the Postal Service violate Article 15 and the Step 2 Settlement Agreement dated March 21, 1995 (Jt. Exh. 3) by failing to schedule two MPE Mechanics per Tour in the Wilmington P&DC between December 31, 2005 and January 20, 2006? If so, what shall be the remedy?

Background Facts and Circumstances of the Dispute:

The Grievant, Malcolm Bratcher, is employed as a Mail Processing Equipment Mechanic, PS-08, in the Wilmington P&DC. He is also a Union Shop Steward.

According to the Union, it filed an Article 7 grievance in 1994 claiming that management was using Electronics Technicians (ETs) to do Mail Processing Equipment Technician (MPE) work in the Wilmington P&DC. The parties settled that grievance with a Step 3 Settlement dated March 21, 1995 with the undertaking that, "Management will make every attempt to schedule a minimum of two (2) MPEs per tour. Both parties realize that special circumstances may arise that have to be addressed" (Jt. Exh. 3).

There were no significant problems with scheduling two MPEs per tour for many years and, according to the Union, when there was a tour when two MPEs were not scheduled; management settled the ensuing grievance by paying a MPE.

However, in late 2005, the Union became aware that management was routinely not scheduling two MPEs per tour, especially on Tour 3. In fact, the Service stipulated that it did not schedule two MPE's per Tour during the grievance period, December 31, 2005 through January 20, 2006. The Grievant, as Steward, filed the instant grievance on January 19, 2006 (Jt. Exh. 2). The Union pursued the grievance through the contractual grievance-arbitration procedure. Not being resolved, the matter is properly before me for final and binding arbitration pursuant to the terms of the National Agreement.

OPINION

The facts themselves are not in dispute. Former Craft Director and current Steward, Dominick Lombardi, testified that he was a steward in 1994 when the issue first came up in the Wilmington P&DC. According to Lombardi, there was a lot of MPE work at the time and instead of scheduling a second MPE per tour, management used ET's to do the MPE work. The Union grieved and the parties settled that grievance with a Step 3 Settlement dated March 21, 1995. The named MPE received three hours pay at the straight time rate and the parties agreed that, "Management will make every attempt to schedule a minimum of two (2) MPEs per tour. Both parties realize that special circumstances may arise that have to be addressed" (Jt. Exh. 3).

According to Lombardi, the "special circumstances" was understood to mean that if management asked several MPE's to stay for another tour and they all declined, the Union would not insist on compliance as long as management tried. According to Lombardi, the agreement worked well for the first year. After that, management was not always scheduling a second MPE per tour and the Union filed many grievances. According to the Union, these grievances were always settled, typically with payment to the affected MPE.

However, Lombardi testified that in 2004-2005, Management did not even try to schedule MPE's on many tours. And, management never asked to renegotiate the settlement, they just ignored it. The Service stipulated that management did not approach the Craft Director to renegotiate the settlement during 2005-2006.

Lombardi testified that the reason for the Union's concern is that MPE work is different from ET work. Per Lombardi, MPE work is probably 40% mechanical and 60% electronic. For example, MPE's work on the strappers, flat sorters, hamper dumpers, APC's, etc. There are about 30 ET's in Wilmington but only about 8-10 MPE's (they are in the process of hiring more). ET's can "work down", so because of their greater numbers, it is easier to simply use the ET's on overtime.

Current Columbia, South Carolina Manager of Maintenance Johnnies Barnett testified that he was the Manager of Maintenance Operations in Wilmington for 3.5 years including 1995 when he negotiated the settlement at issue. He testified that the grievance settlement arose out of a situation with a particular MPE working alone on a tour. There were usually 4-5 MPE's working on each tour, but on occasion, there was only one. At the time, the MPE's were Level 7 and ET's could not "work down". Now they are Level 8 and ET's can "work down" to cover ET work (Svc. Exh. 1).

According to Barnett, the settlement was clearly meant to be non-precedent setting. It was intended to address that one MPE and not continue on "ad infinitum". Both parties recognized that it would not always be possible to schedule two MPE's because of equipment, staffing, annual leaves or sick leaves and the "special circumstances" language was meant to cover these situations.

Supervisor of Maintenance Operations Mark Hastings testified that the staffing and equipment in the plant in 1995 was radically different from the staffing and equipment today. In 1995, there were LSM's, Model G's, 881 Flat Sorters, and conveyors for the MPE's to work on. Now, ET's can "work down" and there is far less need for MPE's on the workroom floor.

MPE Mechanic Lisa Driscoll testified that there was, in fact, different equipment in 1995. But, she insisted that there is plenty of equipment in the plant requiring operative and reactive maintenance on "running tours" and preventive maintenance when the equipment is not actually in use. According to Driscoll, there is still plenty of work for two MPE's on each tour.

The Service position is set forth in the Step 2 decision, as follows:

> Management's position is no contractual violation. The settlement in question is approximately twelve years old. The settlement concerns management making an effort to schedule two MPE's per tour. There has been so much change since this settlement was signed. The MPE's are now a higher level 8 & 7 verses 6 and qualified to perform more duties than they were twelve years ago. The machinery has changed. New machinery has been added and old machinery has been deleted. There are more ET's per tour most of which were MPE's years ago. The ET's can address most of the duties, functions and skills that the MPE's would encounter. There is no requirement to schedule two MPE's per tour. The grievance at hand really concerns the grievant not getting overtime. Overtime is not guaranteed. In fact there have been occasions when there is overtime scheduled on the non-scheduled day of the MPE however, it is not a requirement. Management determines the need to schedule overtime not a twelve year old settlement which was not precedent setting and involving other issues. The union has failed to articulate how articles 2, 3, 4, 5, 6, 7, 9, 14, 15, 17, 19, 30, 31, 38, the ELM, LMOU, and the MS47 have been violated and should be barred from any argument on that issue. Based on the above this grievance is **denied.**

According to the Service, this is really a case about overtime for MPE's. They are grasping at straws to get additional overtime for their small group at the expense of other employees and efficiency. The settlement cannot remain enforceable forever when underlying circumstances change. Today, as opposed to 1995, the equipment has changed, the staffing has changed and ET's can "work down" to efficiently do the work.

In addition, the National Agreement clearly provides that Step 2 settlements are not precedent setting.

Finally, according to management, it would be difficult, if not impossible; to schedule two MPE's every tour. There are currently only two MPE's scheduled on many tours with different non-scheduled days. Since the plant is a seven day a week operation, if would require forcing MPE's to regularly work seven days and, one of the MPE's is not on the OTDL.

The first issue is whether the 1995 settlement agreement sets a precedent still enforceable in 2005. Article 15.2. Step 2 of the National Agreement provides:

> (e) Any settlement or withdrawal of a grievance in Step 2 shall be in writing or shall be noted on the standard grievance form, but shall not be precedent for any purpose, unless the parties specifically so agree or develop an agreement to dispose of future similar or related problems.

Again, in the settlement the parties agreed that, "Management will make every attempt to schedule a minimum of two (2) MPEs per tour. Both parties realize that special circumstances may arise that have to be addressed" (Jt. Exh. 3).

This does not specify that the settlement will set a precedent, but it certainly is an agreement that addresses the future. I find that it is an agreement to dispose of future similar or related problems and is enforceable as such. As with an analogous past practice, it can only be discontinued through bargaining. There may be very good reasons to discontinue the scheduling of two MPE's per tour and the Service has espoused them in this hearing, but management has to request bargaining with the Union and bargain in good faith before unilaterally discontinuing the system.

Accordingly, I find that the Service violated the 1995 settlement agreement when it ignored its terms during the period between December 31, 2005 and January 20, 2006 by not even soliciting a second MPE to work on various tours. MPE's improperly denied the opportunity to work are to be compensated for lost hours at the straight time rate (the remedy agreed to in the 1995 settlement) as jointly determined by the Union and management. I will retain jurisdiction over the implementation of the remedy.