Schneider #8

EXPEDITED ARBITRATION

IN THE MATTER OF THE ARBITRATION
BETWEEN,

Employer

-and-

Union

Grievant: Employee 1

BEFORE:	Karen Bush Schneider, Arbitrator
PLACE OF HEARING:	Some Road City, MI
DATE OF HEARING:	January 17, 2001
DATE OF AWARD:	January 19, 2001
RELEVANT CONTRACT PROVISIONS:	Article 3, Article 8.5, and Article 15 of the National Agreement.
CONTRACT YEAR:	1998-2000
TYPE OF GRIEVANCE:	Contract

AWARD SUMMARY

The Grievance is denied.

Karen Bush Schneider, Arbitrator

ISSUE PRESENTED

The parties stipulated that the issue be framed as follows:

> Did the Employer violate Article 8.5 of the National Agreement in denying Grievant the opportunity to work certain overtime from December 1, 1998 to January 1, 1999?

The Grievant and Union respond, "Yes."

The Employer responds, "No."

The Union has the burden of proof in this matter.

THE UNION'S/GRIEVANT'S CASE

Grievant was hired by the Employer on or about May 30, 1981. In July of 1997, Grievant bid on, and was awarded, a clerk assignment in the Employer's City, Michigan, installation. *(See* Joint Exhibit "7.") Among other things, Grievant's bid required that he have knowledge of the City City Scheme. (Id.) It identified Grievant's primary duties as including mail preparation, mail processing, mail distribution, general clerical duties, AISU, and Express.

Grievant received training for his position, which training included maintaining address information records, schemes, reports, CBU, and NDCBU diagrams, 621 s, and class labels, and distributing case diagrams and case labels. These functions were customarily thought of as AIS clerk duties. Grievant was scheduled to work on Mondays from 4 a.m. to 12:30 p.m. and on Tuesdays through Fridays from 5 a.m. to 1:30 p.m.

Despite Grievant's training in AIS and the scope of his job description, he was assigned mail processing functions. AIS duties were performed by another employee.

In May of 1998, the Employer posted a Notice of Vacancy in Assignments for an AIS Clerk. *(See* Joint Exhibit "5.") The bid described the hours of duty as 8 a.m. to 4:30 p.m. Mondays, Tuesdays, Thursdays, Fridays, and Saturdays. Although Grievant had the seniority and qualifications to bid on the position and receive it, he did not do so because he did not wish to work on weekends for family reasons. The position was awarded to one, Employee 2, on or about June 6, 1998. (Id.)

In December of 1998, the Employer assigned overtime to Employee 2 in connection with various AIS and AMS functions. Grievant contends that that overtime should have been assigned to him as he was the most senior AIS Clerk. Grievant asserts that he should have been offered 34.44 additional hours of overtime work.

The Union presented the testimony of witnesses, Employee 3 and Employee 4, each of whom had occupied the AIS Clerk position before Grievant assumed it. Witnesses Employee 3 and Employee 4 testified that they routinely performed anywhere from one to five hours of AIS work daily when they occupied the position. Employee 4 testified, however, that in 1997 he bid off the clerk position since the AIS work had been removed from the position by the Employer and given to another employee.

EMPLOYER'S CASE

Supervisor 1, the lead Supervisor in Customer Service in City, testified that in December of 1998, the Employer was preparing for an AMS street.

The facts in this matter are not in dispute. Grievant was absent on 15 days between the period of April 7, 2000 and October 1, 2000. While no one questions the legitimacy of his absences, they were nonetheless "unscheduled" and potentially disruptive to the Employer's business. Grievant had been warned in April of 2000 and again in July of 2000, that his absenteeism was a problem, that his attendance was considered "irregular," and that he could be subject to discipline. Although the Employer apparently considered assessing more severe discipline after the October 1, 2000 unscheduled absence, it settled on a Letter of Warning in an effort to take a serious, but nonetheless corrective, step towards getting Grievant to conform to the Employer's attendance expectations.

There is ample arbitral authority in support of the proposition that an employer has a legitimate expectation that employees will get themselves to work on time and as a regularly scheduled. Unexpected absences (those where the employee gives notice of absence shortly before the beginning of a shift) have a tremendous impact on the efficiency of an employer's business. Not only is productivity affected, but also the morale of the absent employee's co-workers who must "pick up the slack" in the employee's absence.

In cases of excessive absenteeism, the legitimacy of an employee's absence is typically not a defense. An employee's value is not measured simply by his performance on the job, but by his ability to get to work on a regular basis. An employer must be able to rely on an employee and that reliance factor, in large part, will be a measure of the employee's value to the enterprise.

It is undisputed that the employee in this case had 15 instances of absence in a six month period. He had been counseled on two occasions that his attendance was considered "irregular' and could give rise to disciplinary action. Despite the warnings, Grievant was absent on seven additional days following the July, 2000 counseling. In other words, more than half of the absences listed on his Letter of Warning occurred after his second oral warning.

Further, the Grievant already had one Letter of Warning on his record. Considering the relatively short tenure of his employment with the Employer, a second Letter of Warning, this time for irregular attendance, was not out of line. There was just cause for the discipline.

AWARD

The grievance is denied.

Karen Bush Schneider, Arbitrator