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REVIEW COMMITTEE DECISION

Review Committee File Nos. 1079, 1145, 1148, 1188, 1241, 1245, 1269, 1272, and 1305
East Bay Division Grievance Nos. D.Gr/C 1-71-2, 1-72-1, 1-71-12, 1-72-4, 1-72-5,
1-73-6, 1-73-11, and 1-73-14
North Bay Division Grievance No. D.Gr/C 4-72-17

Statement of Facts

These grievances all involve the assignment of employees to work overtime when other employees were available to work but were not utilized. In most cases, the reason for the improper overtime assignment was an error on the part of the Supervisor.

In Review Committee File No. 1079 involving prearranged overtime, the Joint Statement of Facts stipulates that "If (supervision) had been aware of the mix-up in assignments between Mr. Guy and the grievant, they would have certainly assigned the grievant to work. . ."

In Review Committee File No. 1145, the Joint Statement of Facts indicates that the General Foreman had the on-call list but overlooked the fact that the grievants had signed the list.

In Review Committee File No. 1148, the Division stated in answering the grievance, "The grievant was not called due to an administrative error on the part of the on-call Supervisor," admittedly, a deviation from their established Crew Emergency Call-Out Procedures.

In Review Committee File No. 1188, the Union stated that the Company has repeatedly violated the Agreement in similar instances. The Company replied, "The Supervisor did not comply with instructions previously issued for Point Arena concerning Troubleman upgrades."

In Review Committee File No. 1241 involving prearranged overtime, the Joint Statement of Facts stipulates that the reason the grievant was not called was due to an administrative error on the part of the Division.

In Review Committee File No. 1245, the Union claimed that on July 15, 1972, the Company upgraded a Lineman to Subforeman for emergency overtime when they should have used the Subforeman on the call list. The Company replied, "The emergency overtime assignment on July 15, 1972, was in accordance with Title 212 of the Physical Agreement and the guidelines for emergency callout for Electric Department employees in East Bay Division."

In Review Committee File No. 1269, the grievants were working overtime along with all other available Gas Service employees and were sent home because they were scheduled to work the next morning; and supervision felt that in the interests of continuity of service this action was necessary.

In Review Committee File No. 1272, the Union alleges that a crew from the Walnut Creek Service Center was called out to work emergency overtime in the Concord area. The Company replied, "The Supervisor followed the guidelines for emergency callout for Electric Department employees in East Bay Division."

In Review Committee File No. 1305, the overtime question was emergency prearranged overtime and later became emergency overtime; and the wrong employee was called.

The significant details of the cases are as follows:

In No. 1079, the General Foreman made the original assignment on a Thursday of a crew including an upgraded Fieldman to a job including prearranged overtime on the following Sunday. However, on the intervening Friday, the Field Foreman assigned grievant, a regular Fieldman, to the crew taking the upgraded Fieldman off the job for the day but telling him he could work the overtime on Sunday.

In No. 1145, the General Foreman admittedly overlooked the fact that the grievants had signed the list. However, in his opinion, the one grievant was not qualified at the time to handle the problem due to lack of experience in operating the radio equipment. He did not consider the other grievant because on several occasions in the past the grievant had mentioned to him that he did not like dispatch work.

In No. 1148, the Joint Statement of Facts is sketchy; but it appears that two Apprentice Linemen were called out for overtime, and one of them was upgraded to Lineman. The regular Linemen on the call-out list were not called. The call-out list was established under the Division's established Crew Emergency Call-Out Procedures which states that the Company is required to "meet its obligation in making overtime assignments to those who volunteer."

In No. 1188, the Joint Statement of Facts is even more sketchy; and the partially consistent statements of Company and Union alluded to above shed only a small amount of light on the circumstances.

In No. 1241, the grievant was not assigned the prearranged overtime due to an administrative error on the part of the Company. The log book during this period of time was not updated and supervision made the assignment based on the old records which showed another Equipment Operator having the least amount of prearranged overtime. If the book would have been updated, supervision would have called the grievant.

In No. 1245, the Joint Statement of Facts indicates that on July 15, 1972, it was necessary to form several crews. The on-call Supervisor called all of the employees who had signed up on the regular sign-up sheet; but due to the fact that they needed several crews, they called employees from a supplemental sign-up list. In making up a second crew, the Supervisor upgraded a Lineman to Subforeman who had signed up on the original sign-up sheet. The grievant was the No. 1 Subforeman for a callout on the supplemental list.

In No. 1269, the facts indicate that a major outage occurred on Friday, December 8, 1972; and all available employees were called to restore service to approximately 11,000 customers. Both grievants were scheduled to work their regular shifts the next day. Supervision felt that in the interest of service these two employees should go home and rest while other employees continued through the night. Additionally, the Joint Statement of Facts indicates that on Saturday at the end of the grievants' shift there was overtime work available and both grievants refused.

In No. 1272, the on-call Supervisor misinterpreted the Distribution Operator's call believing that the trouble was in Walnut Creek and not the Concord service area. The Distribution Operator again called the on-call Supervisor and stated that no one had taken care of the outage. Inasmuch as too much time had already elapsed, he instructed the Distribution Operator to call the Walnut Creek Supervisor even though the Distribution Operator had told him the trouble was in the Concord service area.

In No. 1305, a prearranged overtime assignment was scheduled for May 20, 1973; and the crew assignments were made on May 18, 1973. On May 19, 1973, a replacement Lineman was needed; and the Supervisor utilized the prearranged overtime call-out list when he should have used the emergency overtime call-out list.

Correction Sought by the Union

The correction sought by the Union in each of the cases is that the grievant who should have been called for the overtime assignment should be paid for the day as though he had worked it.

Discussion

As the Statement of Facts clearly brings into focus, the issue in these cases concerns the assignment of an employee to overtime work and the contention of another employee that he was improperly upgraded and that the other employee should have received the assignment instead. Likewise, the correction sought by the Union is clear in their request that the employee who did not receive the assignment be payed for the work performed for that period of overtime.

These cases have been on the Review Committee agenda for a considerable period of time and much discussion and thought has gone into solving this issue. The Committee has considered various approaches as a possible modification of the strict language of the Labor Agreement. For instance, the Company proposed that, where the mistake was innocent and has not occurred before within a reasonable period, the employer should not have to pay double for that particular instance. The Union, taking a somewhat different approach but with basically the same idea in mind, has suggested that the employer would be excused from the double payment only where the Supervisor could demonstrate that he had exercised every possible care to insure that the right person was called out but that he simply was not.

In situations as this, the Review Committee believes that even if an acceptable accommodation to the problem could be reached, it would likely create more problems in the future than it would solve through disposition of these cases. If such be the case, then the Committee believes that it is better to dispose of the cases by returning to the strict language of the Labor Agreement.

With this in mind then, three sections of the Labor Agreement become pertinent to the issue and the decision here. The first, Section 3.1, provides:

"Company is engaged in rendering public utilities services to the public. The Union and the Company recognize that there is an obligation on each party for the continuous rendition and availability of such services.

The other provisions of the Labor Agreement pertinent here deal directly with the issue of assignments to overtime work. In the first instance where the overtime work is "prearranged," that is notice of the assignment has been given before the conclusion of the previous work period, the Labor Agreement provides in Section 208.16:

"Prearranged overtime work should be distributed among employees in the same classification in the same location as equally as is practicable."

And in the final section dealing with the assignment of emergency overtime work, Section 212.1:

"Employee shall not be required to be on call. However, Company, with Union's cooperation, shall establish schedules for employees who volunteer to be readily available for duty in case of emergency. Assignment of emergency work shall be distributed and rotated as equitably as practicable among employees in the same classification and in the same location who have volunteered to be available. The time during which an employee is available for duty shall not be considered as hours worked."

These sections distinctly place obligations both on the employer and the employee. With regard to the assignment to overtime, it is significant to note that the obligation of the Company in making such assignment out of order rests on the impracticability of assigning the eligible employee to the work. Failing to do this, even an excusable error on the part of the Supervisor is no defense to payment of the eligible employee.

The troublesome aspect of these cases then lies not in the direction of the obligation of the Company, but rather in the question of what is practicable and what is not. That question must be decided on the merits of each individual case, and a broad general rule cannot be laid down that would produce satisfactory results in all cases. Initially, the decision in this regard lies in the hands of the Company, but following performance of the work subject to challenge through the grievance procedure.

One final comment must be made with regard to many of the call-out plans utilized in the Divisions. It should be recognized that such plans are merely the mechanical implementation of the provisions of the Labor Agreement. They do not and cannot modify the provisions of the Labor Agreement and must be read in the light of merely providing a scheme to implement the intent of the parties expressed in the basic Labor Agreement. To this end, although the plans differ in the various Divisions, we do not see this Decision as doing violence to the various plans concocted and implemented in the Divisions because of their particular circumstances to insure the "equitable distribution" of overtime among the employees who are entitled thereto by reason of the quoted provisions of the Labor Agreement.

Decision

Only a brief summary of facts of each of the grievances involved in this Decision have been set out above. However, even from this scanty presentation

it is apparent that the issue of "practicability" has not been touched upon by the local committees. For this reason, this Decision returns the grievances to the Divisions concerned to test the assignment, as should have been done initially on the grounds of whether or not the Company has carried its burden of demonstrating that the assignment was based on impracticability as opposed to any other reason. If the Company is unable to demonstrate that impracticability was the reason for failing to assign grieved overtime to the grievants in each case, then the grievance should be closed by the Division Joint Grievance Committee in favor of the grievant. If the Union and the Division Management at that level cannot resolve the dispute or issue with regard to impracticability, then the cases should be returned to us for final resolution.

FOR UNION:

W. H. Burr
E. R. Sheldon
L. N. Foss

By



Date November 23, 1973

FOR COMPANY:

J. A. Fairchild
H. J. Stefanetti
L. V. Brown

By



Date November 23, 1973