

CH 11087

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AUG 16 1991

REGULAR ARBITRATION PANEL

JIM EDGEMON, NBA  
National Association Letter Carriers

In the Matter of the Arbitration )  
between )  
UNITED STATES POSTAL SERVICE )  
and )  
NATIONAL ASSOCIATION OF )  
LETTER CARRIERS, AFL-CIO )

GRIEVANT: R ISBELL  
POST OFFICE: SEATTLE,  
WASHINGTON  
CASE NO:  
(Management) W7N-5R-C 26833  
(Union) GTS No. 4569

BEFORE: Gary L. Axon, ARBITRATOR

APPEARANCES:

For the U. S. Postal Service:

Tom Avey  
Labor Relations Representative  
United States Postal Service  
2535 Midway Drive  
San Diego, CA 92199-9409

For the Union:

Jim Williams  
Regional Administrative Asst.  
National Association of Letter  
Carriers  
PO Box 84386  
Vancouver, WA 98684-0386

Place of Hearing:

Seattle, Washington

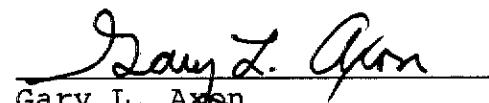
Date of Hearing:

August 1, 1991

AWARD:

The Postal Service violated the National Agreement when it denied Grievant's request for a mutual exchange. Postal Service is ordered to approve the exchange without delay and to accomplish the trade in an expeditious manner. The Arbitrator will retain jurisdiction for a period of sixty (60) days to resolve any issues arising out of the remedy so ordered. The grievance is sustained.

Date of Award: August 14, 1991

  
Gary L. Axon  
Arbitrator

I. STATEMENT OF ISSUE

The parties were unable to agree on a precise statement of the issue. Based on the submissions of the parties, the Arbitrator formulates the issue to read:

Did the Service violate the National Agreement when it denied a two-way mutual exchange which would have sent Grievant Isbell from Seattle, Washington to San Diego, California? If so, what is the appropriate remedy?

II. RELEVANT CONTRACTUAL PROVISIONS

Article 3 - Management Rights

The employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

...

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service. . . .

...

Article 41 - Letter Carrier Craft

Section 2.E Change in Which Seniority is Modified

When mutual exchanges are made between letter carriers from one installation to another, the carriers will retain their seniority or shall take the seniority of the other exchange, whichever is the lesser.

**Employee & Labor Relations Manual**

...

## 512 Reassignment

512.4 Mutual Exchanges. Career employees may exchange positions (subject, when necessary, to the provisions of the appropriate collective bargaining agreement) if the exchange of positions is approved by the officials in charge of the installations involved. Part-time flexible employees are not permitted to exchange positions with full-time employees, nor bargaining-unit employees with nonbargaining-unit employees, nor nonsupervisory employees with supervisory employees. Mutual exchanges must be between positions at the same grade. An exchange of positions does not necessarily mean that the employees involved take over the duty assignments of the positions.

### III. STATEMENT OF FACTS

Grievant Isbell is employed as a letter carrier in Seattle, Washington. He first went to work in Seattle as a casual on July 11, 1988, and later received his career appointment on August 27, 1988. Prior to going to work in Seattle, Grievant had been employed as a letter carrier for a short time in 1968. As the result of an accident involving a Postal Service vehicle in 1969, Grievant was terminated. He filed a grievance but later withdrew the grievance and went to work for Western Airlines. Grievant worked for Western Airlines for seventeen years.

Grievant's previous Postal Service work history was reviewed at the time of his 1988 application for employment by Postal Service management in Seattle. With full knowledge of the circumstances of his prior employment in 1968, Grievant was hired as a letter carrier in Seattle. During the initial employment

process, Grievant advised the Postal Service his goal was to move to San Diego as soon as an opening in the post office became available in San Diego.

Grievant passed his probationary period and attained permanent status. By November 14, 1988, Grievant's evaluations rated him as meeting or exceeding expectations. (Un. Ex. 6). During and after his probationary period Grievant's operation of Postal Service vehicles was observed on numerous occasions. The results of the observations were recorded on a Form 4584, "Observation of Driving Practices." (Mgt. 2, Ex. 7 - 14). On some of the forms Grievant was rated as exhibiting safe driving practices and on other observation areas, improvement is needed was noted. Grievant has never had an accident or been disciplined for unsafe driving during his employment in Seattle. His private driving record shows no violations. (Un. Ex. 3).

In a request dated September 29, 1989, Grievant requested a mutual exchange or trade, whereby he would go to San Diego and a carrier from San Diego would move to Seattle. The exchange was worked out between the two carriers because of their own personal needs to trade job sites. Postal Service regulations allow, but do not require, management to approve a mutual exchange of positions between two carriers in different cities.

The San Diego carrier who wanted to trade positions with Grievant in Seattle is named Nancy Lee Runion. Grievant and Runion met with San Diego management to discuss the requirements for making a trade. Grievant filed the paperwork which included such

items as his personnel folder, absence analysis form, injury compensation file, medical file and driving record.

On April 13, 1990, Seattle management approved the trade for Runion to move to Seattle. (Un. Ex. 4). The approval was subject to San Diego management approving Grievant for a position in San Diego.

On June 4, 1990, Corky Eastlick, Manager of Personnel Services (acting) denied Grievant's request for a "transfer." In her letter of denial Eastlick wrote:

Reference is made to your request for transfer to the San Diego, CA Post Office.

A careful review has been made of your Official Personnel Folder, the evaluation by your immediate supervisor, your attendance, medical and safety records. Please be advised we will not consider you for transfer to this office at this time. The main reason for this decision is your safety record.

Thank you for your employment interest at the San Diego Post Office.

(Jt. Ex. 4, (H); Emphasis added)

Grievant went to San Diego to ascertain why his request for a trade was disapproved. Grievant was told to furnish additional information and his request for the mutual trade would be reconsidered.

Grievant furnished the additional information. On July 10, 1990, Eastlick wrote to Grievant she was reaffirming her original decision. (Jt. Ex. 2(G)). The Union filed a grievance alleging the request for transfer was "unreasonably denied." The Union cited management's reliance on the Form 4584s to deny the

exchange when in fact Grievant had never been disciplined, had never had his driver's license revoked or had not received a step increase deferral while in Seattle.

At Step 3, the Postal Service official framed the issue in terms of a denial of a transfer request and quoted extensively from the transfer "Memorandum of Understanding." (Jt. Ex. 2(C)). The Union elevated the case to arbitration. At the arbitration hearing the advocates stipulated that the transfer "Memorandum of Understanding" was not at issue. The stipulation was entered into to cure any misunderstanding arising out of the way this grievance was processed through the grievance procedure. As such, the parties agreed the case was properly before the Arbitrator as an issue of a mutual exchange or trade of positions between the two carriers.

The Postal Service called one witness Ms. Eastlick, to testify about her decision to deny Grievant's request for an exchange of positions. Eastlick testified that an advisory committee consisting of the medical officer, manager of safety and health and the director of San Diego City Operations reviewed Grievant's paperwork. The vote of the advisory committee was 2 - 1 in favor of approving the trade. According to Eastlick, the manager of safety and health voted to disapprove the exchange.

Eastlick next testified with respect to her own decision to deny the trade based on Grievant's safety record. Eastlick described a "safety profile" which she constructed from her review of the written records. Two primary factors caused Eastlick to

conclude Grievant had the propensities of an unsafe operator of vehicles. First, Grievant was terminated in 1969 because of an accident. Second, in the eighteen month period after being hired in Seattle Grievant received nine Postal Service Form 4584s, five of which were negative.

Responding on cross-examination to questions from the Union advocate regarding Seattle management's evaluation of Grievant as having an "outstanding" safety record, Eastlick stated she could not reconcile the evaluations with the Form 4584s. Eastlick maintained her position Grievant had a deficient "safety profile" even after reviewing additional information Grievant submitted in support of the reconsideration of his request for a trade.

Grievant Isbell testified that since being employed in Seattle he suffered no vehicle accidents, no industrial accidents, no denial of step increases and had received safe driver awards. Further, Grievant stated that he had not been disciplined by Seattle management and had received good performance evaluations. Grievant concluded by explaining the reason for wanting to move to San Diego was to get married to a woman who lived in San Diego.

Union and management were given the full opportunity to present testimony and argument at the arbitration hearing held on August 1, 1991. The grievance is now properly before the Arbitrator for decision.

IV. POSITION OF PARTIES

A. The Union

The Union recognizes that approval of mutual exchanges or trades is discretionary with management. However, management must not act in an arbitrary and capricious manner when it exercises its discretion to deny a trade. In the present case, Union submits management acted in an arbitrary and capricious fashion by zeroing in on the Form 4584s and ignoring the facts which established Grievant was a safe driver. Union offered six major reasons in support of its position that management wrongfully exercised its discretion to deny the trade.

First, Eastlick rejected the vote of her own advisory committee which recommended 2 - 1 to approve the trade. No valid reason was offered by Eastlick for failing to abide by the advisory committee's recommendations.

Second, the Postal Service acted improperly when it based its decision to deny the trade, in part, on an accident which occurred over twenty years ago. When Grievant was re-hired in Seattle, the 1968 accident was no longer relevant.

Third, Eastlick incorrectly applied the Form 4584s to deny the exchange. As stated on the Form 4584, the purpose of using the form is to "improve driving practices" in order to assist in the elimination of driving practices which cause accidents. The 4584 is not intended to serve as the exclusive basis on which a safety profile can be constructed.

Fourth, even if the 4584s are relevant they reveal areas of improvement needed which are minor. For example, parking practices and failure to lock the door do not equate to an unsafe driver. It should also be noted that the majority of the 4584s show Grievant to be exhibiting safe and professional driving practices.

Fifth, Eastlick acted improperly when she ignored Seattle management's evaluation of Grievant with respect to safety as "outstanding."

Sixth, Eastlick acted arbitrarily when she failed to follow-up with Seattle management to resolve any conflicts she observed in Grievant's safety record as either a safe or unsafe employee.

In sum, Union concluded Postal Service acted in an arbitrary and capricious manner by ignoring the facts of Grievant's overall good safety record and denying the trade based on minor problems noted in the Form 4584s.

#### **B. The U. S. Postal Service**

The Postal Service's position in this case is basic and straightforward. Specifically, the decision to approve or deny a mutual exchange is discretionary with management. As long as the Postal Service gives "due consideration" to the request for a trade and acts reasonably, no contract violation exists. If there is room for doubt, as to whether or not Postal Service acted correctly, the Arbitrator must defer to the judgment of management.

The Postal Service relied on the award of arbitrator Thomas Levak in Case No. W7N-5S-C 20674 where Levak defined the standard of review in cases involving mutual trades. Levak wrote as follows:

One other point: Article 41.2.E and EL-311 Section 512.4 do not themselves set forth a clear substantive right to a mutual exchange; they merely set forth the effects of such an exchange once the exchange has been considered and approved. (For example, those provisions do not state words to the effect of, "Mutual exchanges between employees in the same grade shall be granted.") Thus the only requirement under those provisions is that due consideration be given such requests. The established rule is that where a "due consideration" provision is at issue, management's determination must stand unless the union can prove that the determination was arbitrary and capricious or was made in bad faith. It seems to the Arbitrator that in the instant case the Union has not met that burden of proof.

(Award pp 8 - 9)

Applying these principles to the instant case, Postal Service argues it not only gave Grievant due consideration once, but a second time when it allowed Grievant's request for reconsideration. In addition, an independent review of the decision by Rochelle Eastman, Field Director, Human Resources, in San Diego, concurred with Eastlick that Grievant's driving record justified the denial of the trade. (Mgt. 1, Ex. 38).

The Postal Service also points out it did not "make up" the negatives in Grievant's driving record. Nor were the safety problems trite or trivial matters. They were valid safety concerns considered by management in San Diego.

The second aspect of the Levak test is that the decision to deny a trade must stand unless it is established management's action was "arbitrary and capricious or was made in bad faith." From the viewpoint of Postal Service, the Union failed to demonstrate management acted arbitrarily and capriciously. San Diego management is allowed to make its own evaluation regardless of what Seattle management may have done with Grievant. In other words, San Diego management is not bound by Seattle management's evaluation of Grievant's safety record.

Since there were sufficient safety concerns in Grievant's record to call into question his ability to operate a vehicle safely, Eastlick correctly denied the trade request of this employee. The Arbitrator should hold Postal Service gave "due consideration" to the request for a trade and acted reasonably in evaluating the records. Therefore, Postal Service submits the Arbitrator should deny the grievance.

**V. DISCUSSION AND FINDINGS**

At the outset of this discussion two points need to be recognized. First, this case concerns the denial of a request for a mutual exchange. It does not concern the transfer "Memorandum of Understanding." Second, there is no dispute that neither the contract or regulations mandate that a request for a mutual exchange must be approved by Postal Service managers. The decision to approve or deny a trade is discretionary.

This Arbitrator concurs generally with the standard of review set forth from the quoted portion of the Levak award. In Case No. W7N-5R-C 21649, this Arbitrator also held that in situations where management has discretion to approve or deny benefits, Union has the burden to demonstrate management acted in an arbitrary and capricious manner. The Union can meet its burden of proof by demonstrating Postal Service managers made their decision without a reasonable basis in fact.

Turning to the record before this Arbitrator, the initial factor to be considered is Grievant's 1968 accident. Eastlick cited this incident as one of the grounds for denial of the trade. In the judgment of this Arbitrator, the use of an accident which occurred over twenty-two years ago, where there have been no intervening accidents in the twenty-two year period, as justification to deny the trade strikes this Arbitrator as an arbitrary and capricious decision. Not only is the incident stale, but may correctly be considered moot in light of the fact Postal Service re-hired Grievant in 1988 with full knowledge of the 1968 accident.

The sole reason cited by Eastlick for denial of the exchange was "safety." Grievant's work record is otherwise considered acceptable for purposes of a mutual exchange. Primary to Eastlick's decision was her construction of a "safety profile" on Grievant. There is no such document in Grievant's file. The safety profile was solely the creation of Eastlick.

The unfavorable safety profile was built on two factors. The first was the 1968 accident which has previously been addressed by the Arbitrator. The second element of the profile was grounded on five Form 4584s which Eastlick viewed as negative. None of the 4584s reported any accidents or traffic tickets. Four of the observations were related to parking incidents and the other noted a concern with respect to exiting the post office building. The Form 4584 does not use the term "negative" but refers to "Driving Practices To Be Improved." Grievant was not disciplined in any fashion by Seattle management for the driving practices recorded on the 4584s.

The Form 4584 is used to aid in the elimination of driving practices which cause accidents. The primary purpose of the form "is to improve driving practices." The title to Section B is "Driving Practices To Be Improved." While driving practices noted as needing improvement on the form are not disciplinary, Postal Service is free to take action against the offending employee. In the Grievant's case no discipline was issued for any of the driving practices recorded on the 4584s.

Grievant's supervisors and station manager co-signed an "Evaluation - Transfer Request" dated January 3, 1990, which rated Grievant as "Outstanding" in the category of "Safety Record." (Mgt. 1, Ex. 6). The managers also wrote on the form "No Accidents." Randy Martin, Station Manager, also wrote a personal letter to Eastlick which stated as follows:

Mr. Isbell worked as a letter carrier at the Queen Anne Station from Oct. 1989 to April 1990. During this time period Ron was observed many times operating postal vehicles, some of which were noted on form 4584. He was found making some errors at different times. These were brought to his attention and corrected. He was not found repeating the same mistakes or others. If he had been, further disciplinary action would have been taken. His driving and other safety practices were good.

(Mgt. 1, Ex. 34; Emphasis added)

Grievant's probationary evaluations also rated Grievant as a "safe driver." (Un. Ex. 6).

The Arbitrator finds Eastlick took five driving observation reports containing a few minor areas noting where Grievant needed to improve, and elevated them to the status of a profile of an employee with a safety problem. Neither the instructions on the Form 4584 or their use by Seattle management demonstrated the "Observation of Driving Practices" were to be accorded that kind of weight. If the driving practices noted as needing improvement had resulted in disciplinary action, the Arbitrator would have been faced with an entirely different issue concerning Grievant's ability to drive safely.

Moreover, Eastlick's conclusions were in direct conflict with the Grievant's rating of "Outstanding" in the category of "Safety Record" by his Seattle managers. While Eastlick testified she could not reconcile what she observed as a conflict between the Form 4584 and the supervisory evaluations, Eastlick made no attempt to contact Seattle management to resolve her doubts about Grievant's safety record. When faced with the type of record at

issue, the manager, at a minimum, should contact the evaluator in an attempt to resolve the concerns. This is particularly true when the manager's own advisory committee has recommended the exchange.

It should also be recalled Grievant's state of Washington driving record which was provided to San Diego officials showed no violations. Further, Grievant had no vehicle or industrial accidents during this term at Seattle. He had received safety commendations and step increases while working in Seattle. In spite of what Eastlick termed "negatives" on the Form 4584s, Grievant was never ordered to take remedial training by Seattle managers. Manager Martin's follow-up letters to Eastlick explaining the "negatives" on the 4584s reinforced the conclusion Seattle management considered Grievant a safe operator.

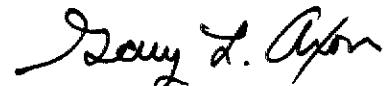
Based on the foregoing the Arbitrator is compelled to conclude the "safety profile" Eastlick created on Grievant was without any reasonable basis in fact. Further, it is clear Eastlick ignored the evaluations which rated Grievant as a safe employee and elevated the Form 4584s to a level which negated his overall good safety record. As such, the Arbitrator must conclude the determination to deny Grievant's request for a mutual trade was arbitrary and capricious.

Accordingly, the grievance must be sustained and the relief request granted.

AWARD

The Postal Service violated the National Agreement when it denied Grievant's request for a mutual exchange. Postal Service is ordered to approve the exchange without delay and to accomplish the trade in an expeditious manner. The Arbitrator will retain jurisdiction for a period of sixty (60) days to resolve any issues arising out of the remedy so ordered. The grievance is sustained.

Respectfully submitted,



Gary L. Axon  
Arbitrator  
Dated: August 14, 1991