

Regular Arbitration Panel

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In The Matter of Arbitration Class Action Grievance

 between

United States Postal Service

 and USPS Case No.: C01N-4C-C
 06029484
National Association of Letter
Carriers, AFL-CIO NALC Case No.: BR050861

: : : : :

Before: Linda DiLeone Klein

Appearances

For the Postal Service: Christopher L. Beebe
For the Union: Todd Brew

Place of Hearing: Cleveland, Ohio
Date of Hearing: March 17, 2006
Date of Award: May 1, 2006
Relevant Contract Provision: Articles 7, 19 and 41
Contract Year: 2001-2006
Type of Grievance: Contract

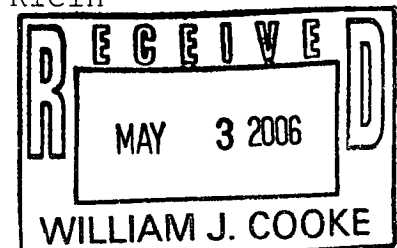
Award Summary: The Postal Service shall cease and desist from reverting positions without applying the cited provisions and/or measures set forth in its manuals.

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VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

Linda Di Leone Klein
Linda DiLeone Klein



ISSUE

Did the Postal Service violate the National Agreement when it reverted Routes 30022 and 30026 at the Midpark Station? If so, what is the appropriate remedy?

APPLICABLE CONTRACT 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:

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., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature." [sic]

Article 7

Employee Classifications

. . .

A. The Employer shall staff all postal installations which have 200 or more workyears of employment in the regular work force as of the date of this Agreement with 88% full-time employees in the letter carrier craft. [sic]

B. The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations; however, nothing in this paragraph B shall detract from the USPS' ability to use the awarded full-time/part-time ratio as provided for in paragraph 3.A. above.

. . . .

D. Where a count and inspection of an auxiliary city delivery assignment indicates that conversion to a full-time position is in order, conversion will be made.

Article 41

Letter Carrier Craft

Section 1. Posting

A. . . .

1. . . .

When a position is under consideration for reversion, the decision to revert or not to revert the position shall be made not later than 30 days after it becomes vacant. If the decision is made not to revert, the assignment must be posted within 30 days of the date it becomes vacant. The Employer shall provide written notice to the Union, at the local level, of the assignments that are being considered for reversion and of the results of such consideration.

. . . .

Handbook M-39

Administration of City Delivery Service

141 Minor Adjustments

141.1 Route Adjustment Without Special Inspection

141.11 Minor Adjustments

141.111 The routes must be maintained in reasonable adjustment throughout the year. In order to fulfill this requirement, local managers may find it necessary to make minor route adjustments, to provide relief, add deliveries, capture undertime, etc.

141.112 When considering if a mail count and route inspection is necessary, review the nature and scope of the adjustments needed. If the review discloses that only minor adjustments are necessary, the adjustments should be made from current management records and information.

. . .

242 Evaluation and Analysis

242.1 General

242.11 Importance of Route Adjustments

Route adjustments are a very important part of the city delivery service and the promptness and efficiency with which they are made depends directly on the use made of mail count records and route inspection reports. Careful analysis of the data developed will assist the delivery service manager in determining poorly laid out routes and areas for service improvement. In addition, the route adjustments play a prominent part in maintaining regularity of deliveries and in conserving workhours. If minor adjustments have been made throughout the year as needed, few adjustments will be required after each count and inspection period.

. . .

243.22 Routes Less than 8 Hours.

On routes where the evaluated time is less than 8 hours, make permanent additions by transferring territory through a realignment of the territory in the delivery unit. This realignment could reduce or eliminate an existing auxiliary route, reduce a regular route to auxiliary status, or eliminate it entirely. [sic]

. . . .

27 Special Route Inspections

271 When Required

Special route inspections may be required when one or more of the following conditions or circumstances is present:

. . . .

b. Excessive undertime.

. . . .

FACTS AND CONTENTIONS

Effective October 1, 2005, Route 30022 was vacated by Carrier Balogh; Mr. Balogh had previously bid on that route in August 2005 and the "comment" on the posting notice indicated that the assignment "may be subject to change due to minor route adjustments"; the subsequent award notice contained the same comment. Also on October 1, 2005, Route 30026 was vacated by Carrier Goliat.

On October 11, 2005, the Postmaster sent a letter to the Branch President for the purpose of notifying the Union that Routes

30022 and 30026 were among nine routes under consideration for reversion; in the letter, the Postmaster requested Union "input prior to a decision".

On October 19, 2005, the Union was notified by letter that the positions were being reverted that same day.

Per the Workhour Workload Report covering March 17 through October 17, 2005, Route 30022 reflected a "projected total time" of 7:21 hours and an "actual total time" of 7:55 hours. During that same time frame, Route 30026 had a "projected total time" of 7:47 hours and an "actual total time" of 7:39 hours.

The Union also provided a similar report for auxiliary Route 30001; between March 18 and October 17, 2005, the "projected total time" was 3:17 hours and the "actual total time": was 2:57 hours.

The Union initiated a grievance at Informal Step A to protest the reversion of Routes 30022 and 30026. The grievance was denied and subsequently discussed by the parties at the Formal Step A level. Management's position at Formal Step A was that the "documents showed the routes were under 8 hours". The matter was not resolved.

Per the parties' Dispute Resolution Procedure, the case was heard at Step B and on January 13, 2006, the Step B Team issued a decision impassing the grievance and notifying the National Business Agent of the right to appeal it to arbitration.

At Step B, Management's Representative claimed in part:

Notification was sent to the union advising them throughout this entire process. The union has the burden of establishing a contractual violation through probative evidence.

Management did not institute a "blanket" policy to revert all available assignments upon their vacancies. This decision, as well as all others, was considered on an individual basis, depending upon the operational needs of this unit. There is no signed agreement guaranteeing a set number of Routes in any unit.

Cut backs are necessary to achieve greater efficiency and flexibility in the workforce, and management is tasked to assign employees in the most efficient manner.

. . .

The Postal Service satisfied the 88% full-time employee requirement.

Certainly the union could have verified the validity of the data provided. Administrative Vice President James M. Hopkins is the union representative for Formal Step A for Midpark Post Office and his name appears on the PS Form 8190 as having heard the grievance at the Formal Step A. Certainly he would know if there whether or not there was an auxiliary route available to combine and "maximize" to create a full-time assignment. [sic]

. . .

The union has failed to discharge its burden of proving a violation of Articles 7 or 41 through the preponderance of the evidence. No evidence that would indicate that the decision to revert Routes 30022 and 30026 was arbitrary or capricious has been presented in the grievance package. Management acted in accordance with Article 41 and the National Agreement for legitimate business reasons.

The union has alleged that there is a verbal agreement with Postmaster Hsu that no route would be reverted

unless it was less than 7:30. But there's no evidence of this agreement, in the Step B package.

The USPS Team member therefore requests that this grievance is denied in its entirety.

The NALC "B" Team member claimed in part:

The NALC Team member contends that management violated Article 41 of the National Agreement when they reverted route 30022 and route 30026 at the Midpark Post Office. Furthermore, management has failed in their responsibilities as provided for in Handbook M-39 Management of Delivery Services to keep all routes as 8 hour assignments.

The union adamantly argues that "if" all of the data (3999, 1838, 1813, Unit Feedback Report, MSP Route Report etc., etc.) is available, as management contends AND more importantly, was "used" to determine that a "reversion" was justified, than these reports would be at management's fingertips and readily available to "establish" their proof that these routes are not necessary. Management has failed to present these reports in any of the Steps of the Dispute Resolution Process and consequently will not be permitted at the Arbitration. Again, a simple letter is not a "reason" to eliminate two full-time assignments and create two auxiliary assignments.

. . . .

The Job ID for route 30022 shows that the "last" inspection completed on this route was 6/21/97 and the "last" adjustment was 3/4/80. The Job ID for route 30026 shows that the "last" inspection was 11/5/79 and the "last" adjustment was 3/4/80. Furthermore under the Comments, the following appears: MAYBE SUBJECT TO CHANGE DUE TO MINOR ROUTE ADJUSTMENTS REVERT WHEN VACANT PER LTR FROM POSTMASTER DTD 10/11/05. . . .

2 Mail Counts and Route Inspections

211.1 In order to achieve and maintain an appropriate daily workload for delivery units and routes, management will make at least annual route and unit reviews consisting of an analysis of items listed in section 214,

and workhours, volumes, and possible deliveries . . .
(BOLD added)

14 Adjustments

141 Minor Adjustments

141.11 Minor Adjustments

141.111 The routes must be maintained in reasonable adjustment throughout the year. In order to fulfill this requirement, local managers may find it necessary to make minor route adjustments, to provide relief, add deliveries, capture undertime, etc.

27 Special Route Inspections

When required

Special route inspections may be required when one or more of the following conditions or circumstances are present:

b. excessive undertime.

Management did not complete or attempt any of the above "responsibilities" to maintain 8 hour assignments. Instead, they waited until the routes were "vacated" and simply-reverted them.

. . .

While Postal management has the basic power to "manage" under Article 3, it must act in accordance with applicable laws, regulations, contract provisions, arbitration awards, letter of agreement and memoranda. Consequently, many of the management rights enumerated in Article 3 are limited by negotiated contract provisions and in particular regarding this grievance, Article 19 and 41.

. . .

The within matter was subsequently submitted to the Arbitrator on March 17, 2006, at which time all interested parties were in

attendance for the introduction of evidence and the examination of witnesses. The parties then made closing arguments and submitted numerous awards in support of their respective positions.

The Union contends that even though the Postal Service has the right to revert vacant routes, they nevertheless have established various guidelines in the M-39 which should be followed; for example, minor route adjustments may be made throughout the year to address the matter of "undertime". This was not done here; instead, says the Union, the routes were simply reverted; prior to the reversion, there was no unit review and there was no attempt to use one route to adjust the other or to consider making adjustments by taking deliveries from the auxiliary route or assigning collection duties to bring the routes up to eight hours.

Circumstances have changed since this grievance was filed, says the Union. There was a route inspection at the Station and adjustments were made; the Union acknowledges that the "routes were properly handled as a result of the route inspection", consequently, it would "serve no purpose to repost the position" at this time. However, as a remedy for the violation in the instant case, the Union asks that the Postal Service be directed to cease and desist from reverting assignments without following the proper steps set forth in the applicable manuals.

The Postal Service contends as follows:

The reversions were handled according to Article 41.1.A.1. It is undisputed that the Union was provided in a timely manner with the required notification that the routes were under consideration for reversion. It is undisputed that the Union was provided in a timely manner with the required notification that the decision had been made to revert. What the Union has challenged is the Service's right to revert at all.

The Union claims that the Service must have a 'reason' to revert, or must somehow prove that reversion is warranted. The Union claims these routes were not under 8 hours or, that if they were, the Service should have taken action to bring them up to eight hours rather than revert. We've reviewed all of the provisions the Union offered in support of these arguments, and we disagree.

The contract places no restrictions whatsoever on reversion, other than upon the process itself. In the absence of any such restrictions, Article 3 controls.

As it regards the M-39, the Postal Service argues that while it provides guidelines for adjustments, it does not require Management to make those adjustments prior to deciding to revert a position.

As it regards Article 7, the Postal Service maintains that there is no language which provides that "maximized positions cannot be reverted".

As for the Special Route Inspection provision of the M-39, the Postal Service claims that by the use of the term "may", such a procedure for addressing "undertime" is permissive. Furthermore, a regular route inspection was planned for March 2006, therefore, it would have been inefficient to perform special inspections on the routes in question in September or October of 2005, states

Management. The Postal Service asks the Arbitrator to note that after the planned inspection, two full time routes and one auxiliary route were eliminated from the unit. This shows that the reversions were justified, adds Management.

The Postal Service asks that the grievance be denied.

OPINION

The parties entered into the following stipulation at the hearing:

Management timely notified the Union that the routes were under consideration for reversion and Management timely notified the Union that the positions had in fact been reverted.

There can be no doubt that pursuant to Article 3 and Article 41.1.A.1., the Postal Service has the contractual right to revert a vacant position. Article 41.1.A.1. specifies the manner in which the reversion process will be implemented and Article 3 outlines Management's right to maintain the efficiency of operations and to determine the methods, means and personnel by which those operations will be conducted; reversion is encompassed in the exercise of those rights.

The Postal Service notified the Local President that the routes in question were under consideration for reversion; the Postal Service offered the Union the opportunity for input; and the Postal Service timely notified the Union that the decision had been

made to revert Routes 30022 and 30026. The provision in the applicable Collective Bargaining Agreement does not require Management to cite the reasons for the decision on reversion in the notice to the Union. The decision to revert rests solely with Management and no specific explanation or defense thereof is required by contract. The only restriction on Management relates to compliance with the reversion process itself.

The following excerpt from the decision of Arbitrator Suardi in Case No. E01N-4E-C 05175789 is persuasive here:

It is noteworthy that the drafters of the National Agreement selected reversionary language dealing with positions, not routes. While there is an inescapable correlation between a route and the person who fills it, it does not follow that Management's consideration of a reversion is tied exclusively to carrier performance, even performance which consistently holds a route at or near eight (8) hours per day. Had the parties desired more detailed limits on Management's discretion regarding reversions, they could have said so. They did not.

Since the parties have stipulated that Management complied with the procedural requirements of Article 41.1.A.1, what remains of the grievance is the Union's claim that Management breached its implied duty of fair dealing.

The above referenced language reflects the essence of the case before this Arbitrator. The Union recognizes Management's authority to revert a position, however, the Union maintains that Management is obligated by the cited manual provisions to, at the very least, consider minor route adjustments to address "undertime" prior to reverting the position.

As stated by Arbitrator Brand in Case No. F94N-4F-C 99228978, there may be "logically combinable portions" of other positions which may be utilized to bring a route up to a full eight hour assignment.

In the instant case, the Postal Service did not even consider applying the provisions of Section 141, 242, 243 or 271 of the M-39 prior to reverting the two positions/routes in question. The Arbitrator is of the opinion that Management "breached its implied duty of fair dealing" in this matter. It cannot be ignored that the undertime on both routes was less than thirty minutes.

Proof that no consideration was given to making minor adjustments to the affected routes can be found in Management's argument relating to the station's route inspection which was scheduled for March 2006. Even though two full-time positions were ultimately eliminated after the March 2006 route inspection of the entire station, this future event should not have been factored into the decision making process regarding the reversion occurring in October 2005.

As acknowledged by Management, the last inspection of the station was "a while ago". Furthermore, there was no evidence to rebut the contention of the NALC "B" Team member regarding the last adjustment to the routes having been made in 1980. This was the case even though the 2005 posting notice and the 2005 award notice

for Route 30022 refers to the position possibly being subject to change due to minor route adjustments. Clearly, this did not occur and no adjustments were made or even considered.

Under such circumstances, it must be held that the Postal Service did not act in good faith when it reverted the positions rather than attempt to combine portions of the affected routes to retain one position; there was also the option of transferring duties from the auxiliary route to one or both of the affected routes. These considerations were not made due to the anticipated unit route inspections. What may occur in the future does not relieve Management of the obligation to make minor adjustments periodically and to act based on present conditions. Management failed to comply with its own handbooks and manuals.

Although Article 3 and Article 41.1.A.1. provide Management with the authority to revert a position, it is reasonable to conclude that the M-39 has relevance in terms of what might be done when considering reverting a position. As argued by the Union, the M-39 provides for options, rather than reversion, for routes with undertime.

Having concluded that Management "breached its implied duty of fair dealing", the remaining issue is one of remedy. However, because route inspections were conducted after the grievance was appealed to arbitration and because the Union acknowledged that the

.. "routes were properly handled as a result of the inspection", the original remedy has, in effect, been rendered moot. Therefore, the extent of any remedy is to direct the Postal Service to cease and desist from reverting positions without applying the cited provisions and/or measures set forth in its manuals.