

C#05136

ARBITRATION AWARD

January 4, 1985

UNITED STATES POSTAL SERVICE

-and-

Case No. H1C-4K-C 17373

AMERICAN POSTAL WORKERS UNION

Subject: Permanent Reassignment from One Craft to Another -
Applicability of Posting Requirements

Statement of the Issues: Whether the provisions
of Article 13, Section 5 apply to the facts of this
case? Whether a letter carrier vacancy attributable
to the permanent reassignment of a carrier to the
clerk craft pursuant to Part 540 of the Employee &
Labor Relations Manual must be posted for bids to
the clerk craft?

Contract Provisions Involved: Articles 3, 13, 14, 19,
21 and 30 of the July 21, 1981 National Agreement.
Part 540 of the Employee & Labor Relations Manual;
and the P-11 Handbook.

Appearances: For the Postal Service,
Thomas B. Newman, Labor Relations Executive, Arbitration
Branch, Central Region; for the APWU,
Gerald "Andy" Anderson, Assistant Director, Clerk
Division.

Statement of the Award: The grievance is denied.

BACKGROUND

This grievance stems from the reassignment of an injured Letter Carrier to a clerk craft position in the Ottumwa, Iowa Post Office. The APWU urges that the resultant carrier craft vacancy should have been posted for bids by people in the craft craft. It believes the Postal Service's refusal to do so was a violation of clerks' rights under Article 13, Section 5 of the National Agreement. The Postal Service disagrees. It insists Article 13 was not applicable to the situation in this case.

V. W. Pickrell was a full-time regular Letter Carrier. He injured his back while on duty, a compensable injury. He was unable to perform his carrier work from April 30, 1982 to October 22, 1982, because of his injury. He was then placed on temporary light duty, $5\frac{1}{2}$ hours a day manually distributing SCF letters and flats and $2\frac{1}{2}$ hours a day casing mail for city letter routes. A medical examination in November 1982 revealed that his injury would permanently prevent him from performing carrier work.

Management created a clerk craft job for him consistent with his physical restrictions. It described the job, a full-time regular Distribution Clerk, as a "limited duty... assignment." It offered him the job, pursuant to Part 546.14 of the Employee & Labor Relations Manual (ELM), in late February 1983. Its offer noted that if he "refuse[d] to accept this position", Management "will so advise the Office of Workers Compensation Program for action deemed warranted." Pickrell accepted the offer on March 8 and began work as a limited duty Distribution Clerk in late March. He retired in May 1983, just two months later.

The job he filled had not previously existed as a full-time position. It was not created through local negotiations on light duty assignments. Indeed, there is no evidence of any agreed-upon light duty assignments in Ottumwa. The Local Memorandum of Understanding is silent on this subject.* In

* The specific items for local negotiations, according to Article 30-B-15, -16 and -17, include "number of light duty assignments within each craft or occupation group to be reserved for temporary or permanent light duty assignment", "method to be used in reserving light duty assignments so that no regularly assigned member of the regular work force will be adversely affected", and "identification of assignments that are to be considered light duty within each craft ..."

addition, the job Pickrell filled did not prevent anyone in the clerk craft from being awarded this position. Nor did it require the reversion of a full-time clerk position.

Pickrell's acceptance of this limited duty Distribution Clerk job resulted in a Letter Carrier vacancy. Management apparently posted this vacancy for bids by the carrier craft. The grievance from the APWU complains that the carrier vacancy should have been posted for bids by the clerk craft. Its complaint is based on the following language from Article 13, Section 5:

"When it is necessary to permanently reassign an ill or injured full-time regular...employee who is unable to perform the regularly assigned duties, from one craft to another craft within the office, the following procedures will be followed:

A. When the reassigned employee is a full-time regular employee, the resulting full-time regular vacancy in the complement, not necessarily in the particular duty assignment of the losing craft from which the employee is being reassigned, shall be posted to give the senior of the full-time regular employees in the gaining craft the opportunity to be reassigned to the vacancy, if desired."

In other words, the APWU maintains that when Pickrell was unable to perform his regular Letter Carrier work because of injury and was "permanently reassign[ed]" from carrier craft to clerk craft, the resultant carrier vacancy should have been posted to the "gaining craft" (i.e., the APWU unit) rather than the "losing craft" (i.e., the NALC unit).

The Postal Service says this contractual analysis is in error. It stresses that there are two distinct ways by which an injured employee can be permanently reassigned from one craft to another. It recognizes that one path is Article 13 and it concedes that had Article 13 been the path followed here, the APWU grievance would have merit. It insists, however, that the other path is Part 540 of the ELM and that when the reassignment is made pursuant to Part 540, the cross-posting requirements of Article 13, Section 5 are inapplicable. It emphasizes that Pickrell's reassignment in this case involved Part 540, not Article 13. Its position, accordingly, is that the carrier vacancy resulting from Pickrell's move did not call for posting the vacancy to the "gaining craft" (i.e., the APWU unit).

The relevant portions of Part 540, specifically 546 (Re-employment of Employees Injured on Duty), read in part:

".11 General. The USPS has legal responsibility to employees with job-related disabilities under 5 U.S.C. 8151 and the Office of Personnel Management's (OPM) regulations, as outlined below.

".14 Disability Partially Overcome

".141 Current Employees. When an employee has partially overcome a compensable disability, the USPS must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerances... In assigning such limited duty, the USPS should minimize any adverse or disruptive impact on the employee. The following considerations must be made in effecting such limited duty assignments:

- b. If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned, within the employee's regular hours of duty, other work may be assigned within that facility.

".2 Collective Bargaining Agreements. Reemployment under this section will be in compliance with applicable collective bargaining agreements. Individuals so reemployed will receive all appropriate rights and protection under the applicable collective bargaining agreement."

DISCUSSION AND FINDINGS

The APWU argument seems, at first blush, to be supported by the language of Article 13, Section 5. Pickrell was an "injured full-time regular..." carrier who was "unable to perform the regularly assigned duties" and who was thereafter "permanently reassigned...from one craft to another...", i.e., from carrier craft to clerk craft. In this situation, Section 5 appears to require that the resultant carrier vacancy be posted for bids in the "gaining craft", i.e., the APWU unit. If Article 13 said nothing else on this subject, the APWU would prevail.

The difficulty with the APWU's argument is that it views Article 13, Section 5 in isolation. That section is merely one part of a comprehensive set of rules with respect to reassignment of ill or injured employees. The "permanent reassignment" mentioned in Section 5 is obviously the "permanent reassignment" described in detail elsewhere in Article 13. The several provisions of this article are interrelated. What action constitutes a "permanent reassignment" cannot be determined from the language of Section 5 alone. One must look elsewhere in Article 13 to find the answer to this question. Hence, a close reading of this article is essential to an understanding of the scope of Section 5.

To begin with, Article 13 concerns employees who are "unable to perform their regularly assigned duties" on account of "illness or injury" (Section 1B). They have a right to seek "permanent reassignment" to "light duty" work (Section 2B1). That right, however, comes into play only if the employee makes a "voluntary request" for reassignment (Section 2B1). Moreover, the request relates only to such "light duty assignments" as have been established through "local negotiations" (Section 3). Given these circumstances, the "installation head" must show the "greatest consideration" to such request and must reassign the employee "to the extent possible" (Section 2C). "Every effort" is to be made to reassign "within the employee's present craft" (Section 4A). But if that is not possible, "consideration" is to be given to reassignment "to another craft" (Section 4A). The employee is entitled to this reassignment only if he meets "the qualifications of the position to which [he]...is reassigned" (Section 4B).

When Section 5 speaks of how to fill a vacancy caused by permanent reassignment of an employee from one craft to another, it is clearly referring to the "permanent reassignment" discussed in Sections 1, 2, 3 and 4. Here, Pickrell was not the subject of such a "permanent reassignment." He made no "voluntary request" for reassignment following his injury. He was offered reassignment because of the Postal Service's obligation under Part 540 of the ELM to make work available to employees injured on the job. He accepted the offer. His reassignment was to a clerk position which was created by Management for him alone. He was not placed on a "light duty assignment" which had been established through "local negotiations." There were no such "light duty assignments" in Ottumwa. In short, Pickrell's case does not fit the language of Article 13. His was not the kind of "permanent

"reassignment" contemplated by this article. It follows that the vacancy arising from his reassignment did not have to be filled through the Article 13, Section 5 posting procedures. There has been no violation of the National Agreement.

The APWU suggests that Pickrell was somehow coerced into accepting reassignment. It cites the terms of Management's February 1983 offer: "If you accept this offer, it will be effective March 19, 1983. If you refuse to accept this position, we will so advise the Office of Workers Compensation Programs for action deemed warranted." These words were meant to inform, not to coerce. Management was required by Part 546.72 of the ELM, after an employee has refused an offer of reassignment within his medical limitations, to "advise the individual that [his]...refusal may result in the termination or reduction of compensation benefits..." and to "notify the OWCP district office...of the [employee's] declination..." Management's letter to Pickrell merely sought to comply with this requirement.

One final note is appropriate. Part 540 of the ELM was a response to the fact that the Postal Reorganization Act placed all Postal Service employees under the coverage of the Federal Employees Compensation Act (FECA). Part 540 was a means of implementing the injury compensation program set forth in FECA. It concerns employees who suffer job-related disabilities; it requires the Postal Service to make "every effort" toward placing an injured employee on "limited duty" consistent with his work limitations.* Management must make that "effort" even though no "request" has been submitted by the employee and even though no "light duty assignments" have been negotiated by the local parties. At the arbitration hearing, it was stipulated that Pickrell was offered and accepted reassignment pursuant to Part 546.14 of the ELM. His reassignment was plainly not based on the provisions of Article 13. There is nothing in the language of Part 540 which demanded that the carrier vacancy resulting from his reassignment be posted for bids to the "gaining craft", i.e., the APWU unit.

* By contrast, Article 13 requires "every effort" in reassigning an injured employee within his craft but only "consideration" to reassignment to another craft. Pickrell's right to reassignment under Part 540 was thus much larger than it would have been under Article 13.

AWARD

The grievance is denied.

Richard Mittenthal

Richard Mittenthal, Arbitrator