

C# 16778

ARBITRATOR'S OPINION AND AWARD  
for  
USPS/ NALC REGULAR ARBITRATION

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In the Matter of Arbitration  
Between:

United States Postal Service

and

National Association of  
Letter Carriers

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Grievant: Jeffrey Gingrich

Post Office: Lancaster, PA

Case #: C94N-4C-C-96078073

BEFORE: Lawrence Roberts, Arbitrator

FOR THE UNION: Mr. Allen Stuart

FOR THE POSTAL SERVICE: Mr. John A. Hoffman

PLACE OF HEARING: Postal Facility, Lancaster, PA

DATE OF HEARING: April 17, 1997

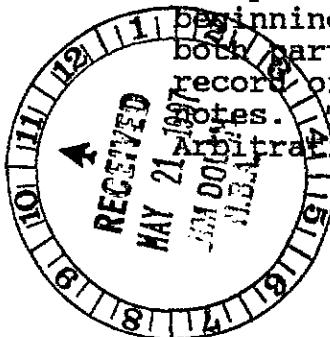
AWARD: The Grievance is sustained.

DATE OF AWARD: May 17, 1997

RELEVANT CONTRACT PROVISION: Article 25 - Article 41

SUBMISSION:

This matter came to be Arbitrated pursuant to the terms of the Wage Agreement between United States Postal Service and the National Association of Letter Carriers, AFL-CIO, the Parties having failed to resolve this matter prior to the arbitral proceedings. The hearing in this cause was conducted on 17 April 1997 at the postal facility located in Lancaster, PA, beginning at 9 AM. Testimony and evidence were received from both parties. A transcriber was not used. The Arbitrator made a record of the hearing by use of a tape recorder and personal notes. The Arbitrator is assigned to the Regular Regional Arbitration Panel in accordance with the Wage Agreement.



OPINION

BACKGROUND AND FACTS:

The dispute herein involves the temporary assignment of the Grievant from a bargaining unit position to that of a temporary, non-bargaining unit assignment. That non-bargaining unit assignment would include those job duties normally assigned to an Employee in a supervisory position with the Service.

According to the vernacular of the Agreement, when a letter carrier is temporarily detailed to a supervisory position, that assignment is known as a "204b" detail. There are two separate Articles of the Agreement which specifically address such temporary assignments.

Article 25 addresses higher level assignments in a general sense, while Article 41 discusses the Letter Carrier Craft and its various categories, in more specific terms.

The Grievant in this case was temporarily assigned from the job of Letter Carrier to that of a supervisor position. Specifically, that temporary assignment began on 12 March 1996 and ended 22 April 1996. At issue in this case is the rate of pay received by the Grievant for his temporary assignment during that period.

Since a Standard Grievance Form was not included in the Grievance Package, the Grievance Appeal To Step 3 is referenced which states the reasoning for the Grievance to be:

**"Designee Spruill's interpretation of the 204b assignment and the appropriate pay is erroneous."**

**CORRECTIVE ACTION REQUESTED:**

**Pay Carrier Gingrich back pay at a Level 16. Cease and desist bringing carriers to higher level positions without paying them higher level pay."**

The above grievance has been properly processed through the various steps of the grievance procedure. Being unable to resolve the Grievance, the matter is now before the undersigned for disposition.

**JOINT EXHIBITS:**

1. 1994-1998 Agreement between the National Association of Letter Carriers, AFL-CIO and the US Postal Service.
2. Grievance Package

UNION'S POSITION:

The Union objects to Management's position and insists the Grievant remained a member of the bargaining unit even when temporarily assigned to a supervisory position.

The Union also asserts the Employer did not have a documented training program as they suggested which would allow them to deny the higher rate of pay.

The Union respectfully requests the instant Grievance be sustained and the Grievant be awarded the higher rate of pay.

COMPANY'S POSITION:

The Employer argues the Union does not have standing in this case. Specifically, under Article 1, the Employer recognizes the National Association of Letter Carriers as the exclusive bargaining representative for all employees in the bargaining unit. The exclusions as set forth in Section 2 of the Agreement are excluded from the bargaining unit.

The Employer raises a point that the Grievant was temporarily a member of the management team at which time he was not subject to the terms of the Agreement.

The Service also claims the Grievant was in training for those days when he did not receive the higher pay level. Being in training, the Employer felt he was not doing the higher level work and was therefore not entitled to the higher level of pay.

According to their interpretation, the Employer believes they had the right to assign whatever pay level deemed appropriate as long as the Grievant was assigned to a management position.

THE ISSUE:

Whether or not the Postal Service compensated the Grievant at the appropriate rate of pay during the period in question? If not, what is the proper remedy?

PERTINENT CONTRACT PROVISIONS:

ARTICLE 1  
UNION RECOGNITION

Section 1. Union

The Employer recognizes the National Association of Letter Carriers, AFL-CIO as the exclusive bargaining representative of all employees in the bargaining unit for which it has been recognized and certified at the national level --City Letter Carriers.

**Section 2. Exclusions (in pertinent part)**

The employee group set forth in Section 1 above does not include, and this Agreement does not apply to:

1. Managerial and supervisory personnel;

**ARTICLE 25  
HIGHER LEVEL ASSIGNMENTS**

**Section 1. Definitions**

Higher level work is defined as an assignment to a ranked higher level position, whether or not such position has been authorized at the installation.

**Section 2. Higher Level Pay**

An employee who is detailed to higher level work shall be paid at the higher level for time actually spent on such job. An employee's higher level rate shall be determined as if promoted to the position. An employee temporarily assigned or detailed to a lower level position shall be paid at the employee's own rate.

**Section 3. Written Orders**

Any employee detailed to higher level work shall be given a written management order, stating beginning and approximate termination, and directing the employee to perform the duties of the higher level position. Such written order shall be accepted as authorization for the higher level pay. The failure of management to give a written order is not grounds for denial of higher level pay if the employee was otherwise directed to perform the duties.

**ARTICLE 41  
LETTER CARRIER CRAFT**

2. Letter carriers temporarily detailed to a supervisory position (204b) may not bid on vacant Letter Carrier Craft duty assignments while so detailed. However, nothing contained herein shall be construed to preclude such temporarily detailed employees from voluntarily terminating a 204b detail

and returning to their craft position. Upon return to the craft position, such employees may exercise their right to bid on vacant letter carrier craft duty assignments.

The duty assignment of a full-time carrier detailed to a supervisory position, including a supervisory training program in excess of four months shall be declared vacant and shall be posted for bid in accordance with this Article. Upon return to the craft the carrier will become an unassigned regularly. A letter carrier temporarily detailed to a supervisory position will not be returned to the craft solely to circumvent the provisions of Section 1.A.2.

Form 1723, Notice of Assignment, shall be used in detailing letter carriers to temporary supervisor positions (204b). The Employer will provide the Union at the local level with a copy of Form(s) 1723 showing the beginning and ending of all such details.

MEMORANDUM OF UNDERSTANDING  
Re: Transfers (IN PERTINENT PART)

The parties agree that the following procedures will be followed when career Postal Employees request reassignment from Postal installations in one geographical area of the country to Postal installations in another geographical area. Local reassessments (reassignments within the same MSC, Division, or to adjacent MSC's or Divisions) are covered by the provisions of Section 2 of this memorandum.

Section 1. Reassignments (Transfers) to other geographical areas.

A. Installation heads may continue to fill authorized vacancies first through promotion, internal reassignment and change to lower level, transfer from other agencies, reinstatements, etc., consistent with existing regulations and applicable provisions of the National Agreement.

B. Installation heads will afford full consideration to all reassignment requests from employees in other geographical areas within the Postal Service. The requests will be considered in the order received consistent with the vacancies being filled and type of positions requested. Such request from qualified employees, consistent with the provisions of this memorandum, will not be unreasonably denied. Local economic and unemployment conditions,, as well as EEO

factors, are valid concerns. When hiring from entrance registers is justified based on these local conditions, an attempt should be made to fill vacancies from both sources. Except in the most unusual of circumstances, if there are sufficient qualified applicants for reassignment at least one out of every four vacancies will be filled by granting requests if sufficient request from qualified applicants have been received. In offices of less than 100 man-years a cumulative ratio of 1 out of 6 for the duration of the National Agreement will apply.

C. MSC's will maintain a record of the requests for reassignment received in the offices within their area of responsibility. This record may be reviewed by the Union on a annual basis upon request. Additionally, on a semiannual basis local Unions may request information necessary to determine if a 1 out of 4 ratio is being met between reassessments and hires from the entrance registers in all offices of 100 or more man-years.

D. Managers will give full consideration to the work, attendance, and safety records of all employees who are considered for reassignment. An employee must have an acceptable work, attendance, and safety record and meet the minimum qualifications for all positions to which they request reassignment. Both the gaining and losing installation head must be fair in their evaluations. Evaluations must be valid and to the point, with unsatisfactory work records accurately documented. An employee must have at least one-year of service in their present installation prior to requesting reassignment to another installation. Employees reassigned to installations under the provisions of this memorandum must remain in the new installation for a period of one year, unless released by the installation head earlier, before being eligible to be considered for reassignment again, except in the case of an employee who requests to return to the installation where he/she previously worked. Employees serving under craft lock-in periods per the provisions of the National Agreement must satisfy those lock-ins prior to being reassigned to other installations."

DISCUSSION AND FINDINGS:

This case involves a bargaining unit Letter Carrier being temporarily detailed to a supervisory or "204B" position. The grievance arose in objection to the rate of pay received by the

Grievant during the time of the temporary detail.

Initially, the Service argued that since the Grievant was temporarily assigned to a managerial position, any and all rights granted to him through the Parties Agreement were automatically negated. I disagree. While it may be questionable whether an Employee in such an assignment may retain all the rights granted to them under the Wage Agreement, the Employee may at any time terminate his or her temporary assignment and return to the bargaining unit and exercise any of his or her bargained for rights. In addition, the rights of the Employee that were in effect at the time of the temporary assignment cannot be infringed upon.

The enabling clause of Article 1, excludes certain personnel from the negotiated language of the Agreement. Similar language can be found, in most, if not all labor agreements. There are certain managerial and supervisory personnel excluded from the terms and conditions of any labor agreement.

The instant grievance, however, involves a bargaining unit Employee being temporarily assigned to a supervisory position. In this case, the Parties Agreement, specifically via the language of Articles 25 and 41, addresses procedures to be followed when making temporary supervisory assignments to bargaining unit employees. It is that language that must be followed by the Service when assigning temporary supervisory

positions to bargaining unit Employees.

Contrary to the Employer's position, the language of Article 1 does not sever that bargaining unit employee who accepts a temporary supervisory position, from the Agreement. Rather, Articles 25 and 41, specifically address the treatment of those bargaining unit Employees accepting positions that are temporarily supervisory in nature. Bargaining unit Employees retain their negotiated rights in effect at the time when chosen for a position of temporary supervisor and those rights cannot be violated while in the temporary position. It is only when a bargaining unit Employee accepts a permanent supervisory position that the language of Article 1 engages and recognizes that position as totally management rather than one represented by the bargaining unit.

According to the Agreement, any bargaining unit Employee may accept a position of temporary supervisor. The acceptance of such temporary assignment however does not negate the terms and conditions of other Articles and Sections of the Agreement with respect to that Employee. As an example, I reference Article 41, Section 1, Paragraph 2. According to the Agreement:

"Letter carriers temporarily detailed to a supervisory position (204b) may not bid on vacant Letter Carrier Craft duty assignments while so detailed. However, nothing contained herein shall be construed to preclude such temporarily detailed employees from voluntarily terminating a 204b detail and returning to their craft

position. Upon return to the craft position, such employees may exercise their right to bid on vacant letter carrier craft duty assignments."

By that language, a bargaining unit Employee has the right to relinquish a temporary position and return to their respective craft in order to bid on vacant assignments. In fact, the language of Articles 25 and 41 collectively address the temporary assignment of bargaining unit Employees to supervisory positions. To conclude otherwise would only repel the clear language of the Agreement.

The crux of the Grievance in this case is the pay level of the Grievant while assigned to the temporary position. The Union contends that the Grievant is entitled to the higher level of pay to which he was originally assigned. I agree.

Article 25 contains language specifically addressing temporary and higher level assignments. Article 41 details specifics to the letter carrier craft. The language of Article 41 Section 1, Paragraph 2 is controlling in this case. In pertinent part the language orders that:

"Form 1723, Notice of Assignment, shall be used in detailing letter carriers to temporary supervisor positions (204b). The Employer will provide the Union at the local level with a copy of Form(s) 1723 showing the beginning and ending of all such details."

Of greatest significance, albeit paramount to this case, is the fact that the Agreement requires the Employer to provide a PS Form 1723 for temporary supervisory positions showing the

beginning and ending of all such details. That language is controlling in the instant case.

In this case the Employer was unable to present any 1723's, other than the two which were provided in the record. The Supervisor also testified that the Overtime Desired List was accurate and agreed the Grievant was temporarily assigned as a 204B. The absence of the 1723's and the Supervisor's testimony regarding the Overtime Desired List clearly support the Union's position in this case.

Article 25 Section 2 of the Wage Agreement states:

"An employee who is detailed to higher level work shall be paid at the higher level for time actually spent on such job. An employee's higher level rate shall be determined as if promoted to the position. An employee temporarily assigned or detailed to a lower level position shall be paid at the employee's own rate."

The Employee was detailed to the temporary supervisor position at a prescribed level of pay and he is entitled to that pay.

Section 3 Article 25 states:

"Any employee detailed to higher level work shall be given a written management order, stating beginning and approximate termination, and directing the employee to perform the duties of the higher level position. Such written order shall be accepted as authorization for the higher level pay. The failure of management to give a written order is not grounds for denial of higher level pay if the employee was otherwise directed to perform the duties."

The two 1723's in the record indicate the Grievant was assigned to a pay level 16; the record shows the period of time for which the Grievant was assigned; and the Wage Agreement requires that he be paid at the higher level of pay.

Being that the Grievant was assigned as a 204B for the entire period of 12 March 1996 to 22 April 1996, he is entitled to the higher level 16 rate of pay for the entire period. He received the higher level pay for 21 March 1996 and from 6 April 1996 to 22 April 1996. Therefore he is entitled to the difference between the pay he received and pay level 16 for the period of 12 March 1996 through 20 March 1996 and for the period of 22 March 1996 through 5 April 1996.

The Grievance is sustained in accord with the above.

AWARD

The Grievance is sustained.



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Lawrence Roberts, Panel Arbitrator

Dated: May 17, 1997  
Fayette County  
Uniontown, PA