

C#03855

ARBITRATION AWARD

November 14, 1983

UNITED STATES POSTAL SERVICE

-and-

Case No. H8N-5B-C 22251

NATIONAL ASSOCIATION OF LETTER
CARRIERS

Subject: Disqualification of Employee from Bid Assignment -
Temporary Disability

Statement of the Issue: Whether the Postal Service's action in disqualifying an employee from her earlier bid assignment, and declaring such assignment to be vacant, was a violation of the National Agreement where the employee in question was unable to perform the full scope of her bid assignment due to temporary disability?

Contract Provisions Involved: Articles 3, 13, 19 and 41
of the July 21, 1981 National Agreement.

Appearances: For the Postal Service,
D. James Shipman, Manager, Arbitration Branch
(Central Region); for NALC, Richard N. Gilberg,
Attorney (Cohen, Weiss & Simon).

Statement of the Award: The grievance is granted.
M. McCollom should be placed in the bid assignment
she held between late December 1980 and July 1981.
She should be reimbursed for any wages or other
benefits she lost by reason of this violation.

BACKGROUND

This grievance protests the Postal Service's action in disqualifying an employee, temporarily disabled by reason of an on-the-job injury, from her bid assignment. NALC claims this disqualification and the subsequent posting of her bid assignment as a vacancy were a violation of the National Agreement. The Postal Service disagrees.

Marilyn L. McCollom was hired as a part-time flexible city carrier in the Redondo Beach, California Post Office in December 1978. She strained her back while lifting a heavy bag of mail in late January 1980. This work-related injury resulted in her being totally or partially disabled from late January 1980 to July 16, 1982. For this entire period, she was unable to perform the full scope of letter carrier work. She was assigned, on many occasions, to limited duty consistent with her restrictions. Such assignments typically involved three or four hours' work per day.

McCollom was automatically converted from part-time flexible to full-time regular city carrier on November 29, 1980. She thus became eligible to bid on full-time regular vacancies. She bid for such a vacancy, Swing #12 relief route. She was awarded this bid assignment in December 1980 notwithstanding the fact that she was then physically unable to perform the full scope of the assignment. She was still disabled.

Some seven months later, Management disqualified her from this bid assignment on account of her physical inability to perform the work. Its letter of July 22, 1981 read in part:

"This is official notification that you are being disqualified from your present bid assignment because of your physical inability to perform the full duties of the position to which assigned.

"The position of Carrier requires that an employee be able to perform heavy lifting 45 pounds and over, not to exceed 70 pounds, and to have full physical capacity for standing, reaching and walking.

"Examination of your medical documentation... certifies that you only have limited capacity to

perform some or all of the above cited position requirements, thereby necessitating this disqualification action from your current bid assignment.

"Effective July 25, 1981, you will be carried on the rolls as an unassigned regular..."

Management then declared McCollom's bid assignment vacant and posted it for bids. NALC promptly grieved, complaining that McCollom's bid assignment "is not vacant as long as she is on the rolls of the Postal Service in a L.W.O.P. [leave without pay] or other approved leave status." McCollom was fully recovered from her injury in July 1982. Management would not allow her to return to her previous bid assignment, Swing #12 relief route. That bid assignment had been filled by someone else in August 1981.

DISCUSSION AND FINDINGS

The critical provision in this case is Article 13, Section 4H:

"When a full-time regular employee in a temporary light duty assignment is declared recovered on medical review, the employee shall be returned to the employee's former duty assignment, if it has not been discontinued." (Emphasis added)

These words, on their face, seem to apply to McCollom. She was a "full-time regular" who had apparently been placed on "temporary light duty..." She had earlier been awarded a bid assignment on Swing #12 relief route. When she recovered, she sought to be "returned to...[this] former duty assignment."

The Postal Service recognizes in its brief that the "reservation of duty assignment" set forth in this provision, if applicable to McCollom, would support her grievance. It argues, however, that Article 13, Section 4H is not applicable here. It contends that McCollom received a limited duty assignment pursuant to Chapter 540 of the Employee & Labor Relations Manual (ELM). It believes Article 13 pertains only to those on light duty. Its position, accordingly, is that because McCollom was on limited (rather than light) duty, she can assert no rights under Article 13 and she was not entitled to "reservation of [her] duty assignment."

There are several difficulties with this argument. Article 13 is much broader than the Postal Service is willing to admit. Its purpose, according to Section 1B, is to provide "full-time regular...employees who through illness or injury are unable to perform their regularly assigned duties" a means of "reassignment to temporary or permanent light duty or other assignments." These words draw no distinction between injury on or off the job. They also speak not just of "light duty" but of "other assignments" as well. Indeed, Section 2B1 specifically allows employees who have suffered "injury on the job" to request reassignment to "light duty or other assignments."* Thus, Article 13 does cover employees such as McCollom who have been injured on the job. There are portions of Article 13 which expressly state that they do not apply to employees injured on the job.** However, no such exclusionary language is found in Section 4H. Its "restoration of duty assignment" would seem to apply to injured employees regardless of where the injury occurred.

The Postal Service's contract analysis would produce a true anomaly. It would grant the "reservation of duty assignment" to someone injured off the job but would deny this "reservation of duty assignment" to someone injured on the job. In other words, the employee with the lesser equity would be protected while the employee with the greater equity would not. That could hardly have been what the parties intended.

Chapter 540 establishes an "injury compensation program." It refers to "employees injured on duty" and requires that they be placed on "limited duty" once they have partially overcome their disability. But these Chapter 540 rights cannot reduce the scope of Article 13. There is nothing in the National Agreement which would prevent an employee from exercising rights, if applicable, under both Chapter 540 and Article 13. It is true that Chapter 540 speaks only of "limited duty" while Article 13 speaks of "light duty." But, absent any explanation of the functional

* Section 2B1 applies only to requests for "permanent", as opposed to "temporary", reassignment.

** See, for example, Section 2B2 and Section 4G, both of which state: "These procedures shall not apply to cases where the employee's medical condition arose out of an occupational illness or injury."

difference between these terms, I believe this is a distinction without a difference. McCollom was restricted to three or four hours' work per day with no heavy or moderate lifting. She was plainly on "light duty" even though it may have been called "limited duty" by Management.

For these reasons, it would appear that McCollom was entitled to the protection of Article 13, Section 4H and that she therefore had a right to "return...to...[her] former duty assignment" when she was declared recovered in July 1982.

The Postal Service resists this conclusion on other grounds as well. It relies heavily on Article 41, Section 1C:

"1. The senior bidder meeting the qualification standards established for that position shall be designated the 'successful bidder.'

"2. Within ten (10) days after the closing date of the posting, the Employer shall post a notice indicating the successful bidder...

"3. The successful bidder must be placed in the new assignment within 15 days except in the month of December.

"4. The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment..." (Emphasis added)

It argues that this provision "must be read as constructing a mutuality of obligation." That is, Management "must work the employee in the job as posted, and the employee, in turn, must work in that job." It realizes that there may be "temporary alterations." However, it insists that "at some point the Postal Service may properly determine that the employee is not fulfilling the obligation, and move to disqualify the employee from the position..." It urges that Management properly disqualified McCollom after she'd failed to work her bid assignment for seven months.

Article 41, Section 1C4 provides that "the successful bidder shall work the duty assignment as posted." McCollom was awarded the bid assignment in question in late December 1980; she was disqualified in July 1981, some seven months later. The parties realized that "unanticipated circumstances" might prevent a successful bidder from promptly

working her bid assignment. Surely, a physical disability would qualify as an "unanticipated circumstance." Management then would have to make a "temporary change in assignment." It would select someone, presumably under Section 2B, to fill this available duty assignment until the disabled person could return.

The question remains as to whether Management could, after filling the duty assignment in this fashion for some period, declare the assignment vacant and post it for bids. NALC says Management cannot take such action. It believes Management's choices were either to fill the duty assignment through Article 41, Section 2B or to disqualify McCollom on the ground of permanent disability under Article 13.* The Postal Service, on the other hand, claims Management had a right under Article 41, Section 1C to declare this duty assignment vacant after some reasonable period of time. It stresses that the "unanticipated circumstances" demand only a "temporary change in assignment." It contends that Management's action in declaring McCollom's bid assignment vacant was justified.

Even assuming that the Postal Service's contractual position on Article 41, Section 1C is correct**, I do not think Management was entitled to declare McCollom's bid assignment vacant in July 1981. She had held her bid assignment seven months as of the date of her disqualification. That seems too short a period given (1) the fact that she had a temporary disability, a back sprain, (2) the fact that one of the examining physicians had noted her prognosis was "good", and (3) the fact that she was apparently working on light (or limited) duty during some of these seven months. Moreover, the "temporary" period contemplated by Article 41, Section 1C4 must be read in light of the "reservation of duty assignment" granted to those on "temporary" light duty under Article 13, Section 4H.

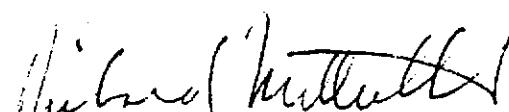
For these reasons, the finding is that McCollom was improperly disqualified from her bid assignment in July 1981. Her rights under Article 13, Section 4H were violated.

* NALC asserts that such a disqualification for permanent disability could not be justified by the evidence in this case.

** I make no ruling on this issue.

AWARD

The grievance is granted. M. McCollom should be placed in the bid assignment she held between late December 1980 and July 1981. She should be reimbursed for any wages or other benefits she lost by reason of this violation.


Richard Mittenthal, Arbitrator