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NALC and USPS Regular Arbitration Panel

In the Matter of the Arbitration

Between

The National Association of Letter Carriers

And

The United States Postal Service

Case No.: B06N-4B-C 08257683
08169C7 Class Action
DRT No.: 14-107056

Before: Marilyn H. Zuckerman, Esq., Arbitrator

Appearances:

For the Service: Miles P. Walcott

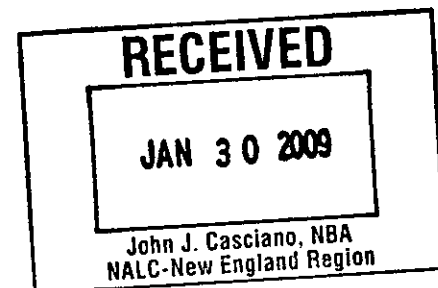
For the Union: Jerry McCarthy

Date of Hearing: December 11, 2008

Place of Hearing: Boston, MA

Briefs Received: January 12, 2009

Date of Award: January 30, 2009



Award

The Postal Service violated Article 12 of the National Agreement and the September 11, 2007 Memorandum of Understanding Re: Transitional Employees when the Service reassigned three full-time regular carriers who were declared excess to the needs of the section while retaining ten transitional employees at the Quincy MA station in June 2008. To remedy this violation of the National Agreement and the MOU, the Arbitrator orders the Service to:

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NALC HEADQUARTERS

- (1) Cease and desist from violating the National Agreement by excessing full-time letter carriers and using transitional employees when Management has not demonstrated that there was insufficient work to support the full-time positions; and
- (2) Pay any and all expenses incurred by the full-time letter carriers who were excessed from the Quincy MA Post Office in June 2008 including mileage and/or MBTA costs from June 17, 2008 until they returned to the Quincy, MA Post Office or declined to return to the Quincy, MA Post Office.

Background

In April 2008, the Service conducted route inspections of letter carrier routes in Quincy, MA and abolished five letter carrier routes and one combination route (truck/carrier route). After some moving around of personnel from that process, two part-time flexible carriers (PTFs) were transferred out and three full-time regular carriers were excessed in June 2008. At that time, the Service retained ten transitional employee carriers (TEs) in the Quincy, MA office. Each TE worked an average of over thirty hours per week.

At arbitration, the parties stipulated that on June 12, 2008, the three full-time letter carriers in the Quincy, MA Post Office received letters that they were being excessed on June 17, 2008. These carriers were Michele Kenneally, Rene Amador and Richard Parker. Each of these employees was assigned as a letter carrier in another office within Eastern Massachusetts.

Since June 2008, one of these carriers has exercised retreat rights to a full-time letter carrier position in Quincy, MA. Another of these carriers was offered a job back in Quincy and declined. And the third carrier does not want to return to Quincy.

Stipulated Issue

Did Management violate Article 12 of the National Agreement and the September 11, 2007 Memorandum of Understanding Re: Transitional Employees—Additional Provisions when they reassigned full-time regular carriers who were declared excess to the needs of the section while retaining ten transitional employees at the Quincy station? If so, what shall be the remedy?

Positions of the Parties

The Service.

The Union maintains that since the ten transitional employees remained in the Quincy, MA Post Office and each of these TEs worked an average of over thirty hours per week, the three excessed full-time letter carriers could have remained and been gainfully employed as unassigned regulars. The Service argues that this is not the case. The Service maintains that there were many factors that contributed to the decision to retain the TEs in the Quincy, MA Post Office.

First, the Service points out that the two week period utilized by the Union to count the TE hours was from June 14, 2008 to June 26, 2008. This is when the excessed employees were released, but it was also during the prime time vacation period when the Quincy, MA Post Office had to allow up to sixteen carriers off for vacation. According to the Service, the carrying of many of these routes (partial or whole) was performed by the TE carriers. At the arbitration hearing, it was established that some of them would set

up routes, but the Service maintains that much of the set up work had already been done by carriers who were pivoting; that is, taking turns throwing small amounts of mail.

Secondly, the Service argues that when the three regular letter carriers were excessed from the Quincy, MA Post Office in June 2008, three PTF carriers were on hold downs of temporary vacant assignments which allowed the Service to use TEs to back fill these positions.

Third, at the time of the excessing of the three regular letter carriers, the Quincy Post Office had a carrier on military leave and a carrier on a higher level assignment performing supervisory work. These were two more vacant positions that had to be back filled.

Finally, the Service maintains that at the time there were three limited duty carriers in the Quincy Post Office who could perform partial letter carrier functions such as casing mail. The TEs were utilized to carry mail for these limited duty carriers.

The Service argues that the ten TEs were not working in permanent biddable assignments. When their work went away or fluctuated due to less vacation time being utilized by the remaining full-time letter carriers or other carriers returning to their assignments from military leave or from details or injuries, the work of the TEs was reduced to fewer hours.

In support of the argument that the excessing of the three full-time regular carriers in the Quincy MA Post Office was in keeping with the National Agreement, the Service cites Article 3, Management Rights, Article 12.5.C.4 allowing for reassignment within an installation of employees excess to the needs of the section and Article 30.B.18 which also allows for the excessing of employees.

The Service also cites the Award of National Arbitrator Snow in Case No.: H0C-NA-C 12 (2001). This case dealt with an interpretation of Article 12.5.C.5 (a)(2) which states:

When for any reason an installation must reduce the number of employees more rapidly than is possible by normal attrition, that installation:...

(2) Shall, to the extent possible, minimize the impact on regular workforce employees by separation of all casuals.

Arbitrator Snow found that this language allowed the Employer discretion in separating casual employees. The Service in the present case argues that this language refers to transitional employees as well.

Therefore, the Service concludes that the present grievance should be denied.

The Union.

The Union maintains that when the three full-time letter carriers were excessed from the Quincy, MA Post Office in June 2008, the ten TEs who remained were working in excess of three hundred hours each week. According to the Union, these TEs covered assignments that the three excessed carriers could have covered. These TEs reported at 8 a.m., set up routes and delivered mail working eight hour days plus overtime on some days. The clock hits for the weeks after the excessing of the three letter carriers demonstrate that TEs began their days casing mail (Operations 720 or 722) and then went out to deliver these routes (Operations 719 or 721). See Joint Exhibit #2.

The Union argues that a TE can not occupy a hold down assignment, while an unassigned regular or a PTF can. Any vacation of over forty hours is considered a vacancy that is filled by a hold down bid. See Article 41.2.B.3. Furthermore, the Union maintains that vacations happen every year and TEs have only been utilized for approximately one year. The Union argues that if the three full-time letter carriers were

retained, they could have bid the vacation hold downs and any other assignments that became available.

The Service argues that the ten TEs were retained because they were covering carriers on limited duty and long term absences. However, the Union argues that the sheer number of transitional employees retained in Quincy demonstrates that there was sufficient work to support full-time positions. While Management claimed eleven vacant assignments as its rationale, the Union maintains that these were full-time positions which should have been filled by full-time unassigned regulars as provided in Article 41.2.B.3.

In support of the Union's contention that the excessing of the three full-time regular carriers in the Quincy, MA Post Office violated the National Agreement, the Union cites Article 12 and the September 11, 2007 Memorandum of Understanding between the US Postal Service and the National Association of Letter Carriers, AFL-CIO, Re: Transitional Employees—Additional Provisions. More specifically, the Union cites Article 12.5.C.4 and Article 12.5.B.1.B, Principles and Requirements:

1. Dislocation and inconvenience to full-time and part-time flexible employees shall be kept to a minimum consistent with the needs of the service.

From the Memorandum of Understanding which is part of the National Agreement, the Union cites:

ARTICLE 12

Reassignment of Career Employees Outside of a Section, Craft or Installation.

a. Prior to reassigning career employees outside of a section, the craft, or installation, management will offer impacted career employees, on a seniority basis, the opportunity to work any existing letter carrier craft transitional assignments within the installation. ...

TE Hire versus Excessing

A full-time letter carrier may not be excessed and the resulting vacancy filled by a TE, except where management can demonstrate that, as a result of legitimate operational changes, there is insufficient work to continue to support a full-time position. For example, management may not abolish a full-time route position and excess the full-time letter carrier and hire or assign one or more TEs to perform the work of the abolished position unless management can demonstrate that the work cannot be performed on a full-time basis in compliance with the requirements of the National Agreement.

The Union concludes that the National Agreement and the Memorandum of Understanding are clear that the three full-time letter carriers who were excessed from the Quincy, MA Post Office should not have been excessed because Management did not demonstrate that there was insufficient work to support the full-time positions. As a remedy, the Union asks the Arbitrator to order the Service to:

- 1) Cease and desist from violating the National Agreement by excessing full-time letter carriers and using TEs when Management has not demonstrated that there was insufficient work to support the full-time positions;
- 2) Pay any and all expenses incurred by the three employees who were excessed from the Quincy, MA Post Office on June 17, 2008 including mileage, MBTA costs and time to travel from June 17, 2008 until they returned to the Quincy Post Office or declined to return to the Quincy Post Office; and
- 3) Pay all three carriers \$25 per day from June 17, 2008 when they were improperly excessed until the day that they returned or declined to return to the Quincy Post Office.

Discussion and Decision

The Arbitrator concludes that the Service violated Article 12 and the September 11, 2007 Memorandum of Understanding Re: Transitional Employees when, on June 17, 2008, the Service reassigned three full-time regular carriers who were declared excess to the needs of the section, while retaining ten transitional employees at the Quincy Station. The Service violated the Memorandum of Understanding because Management did not demonstrate that there was insufficient work to support the three full-time positions.

The Arbitrator understands that the Service conducted route inspections in April 2008 of the letter carrier routes in Quincy, MA and that as a result, five letter carrier routes and one combination route (truck/carrier route) were abolished. Two part-time flexible (PTF) carriers were transferred and the three full-time regular letter carriers who are involved in the present case were excessed to other facilities in June 2008. Management retained the ten transitional employees in the office and each of them worked an average of over thirty hours per week at that time.

While the Service argues that the need for the TEs to work that many hours was temporary, Management has not demonstrated that there was insufficient work to continue to support the three full-time carrier positions. The Service has this burden pursuant to the language in the Memorandum of Understanding on Transitional Employees dated September 11, 2007 which became part of the National Agreement. The MOU states specifically:

TE Hire versus Excessing

A full-time carrier may not be excessed and resulting vacancy filled by a TE, except where management can demonstrate that, as a result of legitimate operational changes, there is insufficient work to continue to support a full-time position. For example, management may not

abolish a full-time route position and excess the full-time carrier and hire or assign one or more TEs to perform the work of the abolished position unless management can demonstrate that the work cannot be performed on a full-time basis in compliance with the requirements of the National Agreement.

It was not enough for the Service to argue at arbitration that once prime time vacations were completed in the Summer of 2008, the ten TEs who were retained were not needed as much. The Service allows full-time letter carriers to take prime time vacations every year. Why were the TEs needed to cover in 2008? The Union was persuasive that a vacation of more than forty hours would have been filled by a hold down assignment under the terms of Article 41 for which TE's could not bid and regular letter carriers and PTFs could. Similarly, if the Quincy Post Office had a full-time letter carrier on military leave and another on a detail performing supervisory work, these were positions that could have been filled by other full-time letter carriers.

It stands to reason that if the Service had enough work to keep ten TEs working an average of more than thirty hours per week per employee, the Service had enough work to keep three full-time letter carriers working forty hours per week per carrier. In order to excess these three full-time carriers, the Service would have had to demonstrate specifically why there was insufficient work for them in June 2008. The Service would also have had to demonstrate that Management offered the three full-time regular carriers the work of the transitional employees before the regular carriers were excessed from the Quincy MA Post Office. See the Memorandum of Understanding at Article 12:

Reassignment of Career Employees Outside of a Section, Craft or Installation.

(a) Prior to reassigning career employees outside of a section, the craft, or installation, management will offer impacted career employees, on a seniority basis, the opportunity to work any existing letter carrier craft transitional assignments within the installation....

While the Service argues that the National Snow Award is applicable in the present case, the Snow Award was decided before the September 11, 2007 MOU was agreed upon and became a part of the National Agreement. The Snow Award interpreted the language in Article 12.5.C.5 (a)(2). In the present case, the alleged violation of the National Agreement is at Article 12 and the Memorandum of Understanding. The Service violated Article 12 of the National Agreement and the MOU by excessing the three full-time carriers from the Quincy, MA Post Office in June 2008 and retaining the ten TEs because the Service did not demonstrate specifically that there was insufficient work for the three full-time carriers. The Service also did not demonstrate that the work of the transitional employees was offered to the three full-time regular carriers before they were excessed. One of the carriers has since returned to the Quincy Post Office on retreat rights and the other two have declined to come back to the office. Therefore, by way of remedy to the Service's violation of Article 12 and the MOU, the Arbitrator orders the Service to:

- 1) Cease and desist from violating the National Agreement by excessing full-time letter carriers and using TEs when Management has not demonstrated that there was insufficient work to support the full-time positions; and
- 2) Pay any and all expenses incurred by the three employees who were excessed from the Quincy, MA Post Office on June 17, 2008 including mileage and MBTA costs (but excluding travel time) from that day until they returned to the Quincy Post Office or declined to return to the Quincy Post Office. The Arbitrator declines to award the additional requested payment of \$25 per day for these carriers.

January 30, 2009

