

C #13823

In the Matter of Arbitration Between :
UNITED STATES POSTAL SERVICE :
"Service" :
and :
NATIONAL ASSOCIATION OF LETTER CARRIERS :
"Union" :
Before: James F. Scearce, Arbitrator :
Grievant: Class Action
Post Office: Largo, FL
Case No.: N90N-4H-C 94022684
GTS 021543

Appearances:

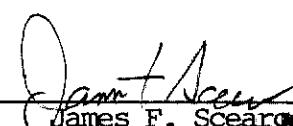
For USPS: Richard Kolenda, Labor Relations Specialist
For Union: O. E. Elliott, Exec. Vice President- Local 1477

Date of Hearing: June 1, 1994

Place of Hearing: MPO - Largo, Florida

Award:

Grievance is granted to the extent that a violation of Article 41, Section 1.A.2. has been demonstrated. The bid assignment of Carrier R. Speck at the Seminole Station in Largo, Florida will be posted for bid and filled as per the applicable cited provisions of the Agreement; this Order will not be unduly delayed.

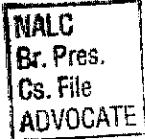

James F. Scearce
Arbitrator

Matthew Rose, NALC
National Business Agent

Date: July 15, 1994

RECAPTURED
JUL 18 1994
REMITTED

Region 9



BACKGROUND

This case arises out of a claim of a violation of Article 41, Section 1.A.2. relative to a duty assignment of a full-time carrier to a supervising position (204-B). It is apparently undisputed that Letter Carrier Richard Speck had been assigned to 204-B status off and on since 1989. On point here is such an assignment on July 3, 1993 and which continued without break through October 15, 1993, when he went back to the craft. He was returned to 204B status on October 30, 1993 and worked there through November 19, 1993.

A grievance was initiated on January 13, 1994 protesting the above-cited action and, in particular, the return of Speck to 204-B status after two weeks on his bid assignment in late October, 1993. According to the Union, this violated the four-month limit on such assignments established in the Agreement. The Union demanded that Speck's carrier assignment be posted for bid; in subsequent discussions, the Union demanded compensation for the employee (a PTF) who, it contends, would have been awarded such assignment if properly handled. The Service's denial of such demand at all steps of the grievance-handling procedure now brings this matter to arbitration for final review and disposition.

POSITION OF THE UNION

The Agreement is specific in limiting details of craft employees to 204-B status to four months and compelling posting of the craft position involved if this time limit is exceeded. The Service's actions in this case, i.e. returning the grievant to his bid position for two weeks before his resumption as a 204-B, is a subterfuge in an attempt to avoid application of Article 41, Section 1.A.2. While the Service may assert that Speck was not needed in management during that period, the record shows that it was forced to require supervisors to work their off-days at overtime rates during the time he was returned to the craft. This demonstrates Speck was needed and that the Service paid a high price in order to avoid application of the applicable contract provision. As soon as it felt it could safely do so, the Service returned him to the supervisory status. While some arbitrators hold that the four months cited in Article 41, Section 1.A.2. must be continuous, others find that it need not be -- particularly where contrivance may be involved. Any attempt for the Service to assert that the grievant's move was intended to allow training of another 204-B is without merit, since the other 204-B (Smith) was actually running the function involved by himself. The fact is that Carrier Speck had become a mainstay as a supervisor for management at this Station and the ploy used here was intended to avoid the

intent of the Agreement. Article 41, Section 1.A.2 should be enforced, Speck's assignment should be posted for bid and allowed to be filled according to the Agreement and the successful employee should be compensated \$250 for loss of income incurred.

POSITION OF THE SERVICE

The Union is obliged to prove a violation of the Agreement by the events cited in this case; it cannot do so. Speck was returned to his bid assignment because he was not needed in the supervisory assignment at that time. The Service had anticipated that one of its supervisors (Pepper) was going to be on sick leave; as it turned out, he did not use such leave and was available at that time. Another 204-B (Smith) required training and was used during the time Speck was returned to the craft. Had Speck been needed, he would have been retained. No violation has been demonstrated here, but even if such had been, no monetary award would be called for or proper.

CITED/RELEVANT PROVISIONS OF THE AGREEMENT

ARTICLE 41 - LETTER CARRIER CRAFT

Section 1. Posting

A.2. . . .

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 regular. 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.

(Jt Ex 1)

THE ISSUE

Did the Service violate the Agreement and specifically Article 41, Section 1.A.2. in the manner in which it assigned Carrier Richard Speck during the period of July 3November 19, 1993; if so, what is the appropriate remedy?

DISCUSSION AND FINDINGS

The Union will prevail in this dispute on the matter of whether a violation occurred, but not insofar as the monetary remedy is concerned. It is simply too convenient that Carrier Speck would be needed up to just before the four-month limit would take effect and then be returned to 204-B status for a couple of weeks. The Service's explanation that he was not needed fails when it is pointed out that the Service had to press regular supervisors into duty on their days off during this hiatus. The Service's assertion that it would have kept the grievant in 204-B status had he been needed is tantamount to an admission that it would have knowingly violated the fourmonth limit if it chose to do so; in fact, it did so anyway. While the Service also asserted that an overriding need existed for Speck to work his route for the two-week period involved,

it offered no proof in that regard. The record indicates that his return to the craft the second time -- on November 29, 1993 -- followed a period when he took annual leave (November 20-26, 1993) presumably while in 204-B status. (The need for his return to his route at that point is obvious -- the onslaught of Christmas mail.)

Both parties offered prior arbitration awards in support of their contrasting positions. This is not a case where the carrier involved requested return to his/her bid assignment to protect it -- a right clearly protected by the Agreement -- nor is it a case where the Service was alternating employees for training purposes. Carrier Speck obviously was well-trained and competent. I am persuaded that the return of Carrier Speck to his bid assignment on October 15, 1993 for a two-week period before returning him to the 204-B post was a pretextual attempt to avoid application of Article 41, Section 1.A.2. It is unfortunate that Speck himself may be the loser in this case, but the Agreement is clear as to what is to be required: his bid assignment is to be posted per Article 41 and filled and, given no other alternative action, he is to be an unassigned regular. I am obliged to issue just such an order, which is to be carried out without delay. The Union's demand for compensation to the awardee of such bid assignment is not affirmed.