

SUMMARY

C# 00150

AIRS CASE NUMBER 4972

ARBITRATOR: B. CUSHMAN DECISION: DENIED DECIDED: 85/09/09

LOCATION: RICHMOND, VA LOCAL: RICHMOND LOCAL

USPS NUMBER: 24V-2U-C 394 ADVOCATE: J. SMITH

ARTICLE 15.04.A ARTICLE 37.03.A

Arbitrator denied grievance as untimely filed. Union became aware of facts giving rise to the grievance before 14 day period to file ran out. That the Union did not come to the realization that previously held views as to the application or interpretation of the contract were erroneous does not extend the contractual time period within which a grievance must be filed. A change of mind by party as to its legal position does not become retroactive for purposes of timeliness.

1972

In the Matter of Arbitration:

UNITED STATES POSTAL SERVICE)	E4V-2U-C 394 (Class Action)
and)	Reversion of Positions
)	Richmond, Virginia
AMERICAN POSTAL WORKERS UNION,)	OPINION AND AWARD
AFL-CIO)	

ARBITRATOR: Bernard Cushman, Esq.

APPEARANCES:

For the Postal Service:

Wayne T. Boothe
Labor Relations Representative

For the Union:

John E. Smith
National Business Agent, APWU,
Motor Vehicle Division

The United States Postal Service, herein referred to as "the Postal Service," and American Postal Workers Union, AFL-CIO, herein referred to as "the Union," are parties to a National Agreement. The parties submitted this dispute to arbitration before this Arbitrator. A hearing was held at the MCS in Richmond, Virginia on August 20, 1984. Full opportunity to present evidence and to examine and cross-examine witnesses was afforded both parties. The entire record has been carefully considered by the Arbitrator.

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THE ISSUE

The parties stipulated that the issue was:

Did the Postal Service violate the National Agreement when it reverted said positions in the notice and, if so, what should the remedy be?

The Postal Service representative stated without objection that the terms "said positions" included the positions stated in the Step 2 answer. Those positions were Runs 103, 123, 124, 126 and 127.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 15

GRIEVANCE-ARBITRATION PROCEDURE

Section 1. Definition

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Unions which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

Section 2. Grievance Procedure--Steps

Step 1:

(a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. The employee, if he or she so desires, may

be accompanied and represented by the employee's steward or a Union representative. The Union also may initiate a grievance at Step 1 within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. In such case the participation of an individual grievant is not required. A Step 1 Union grievance may involve a complaint affecting more than one employee in the office.

CONTENTIONS OF THE PARTIES

The Union contends that the grievance was timely filed because the Union filed as soon as it learned of two agreements reached at the National level between its National Union representative and Postal Service representatives which the Union concluded made the reversions previously initiated by management at the Richmond facility invalid. The Union says that up to the point that it had learned about these agreements, the Union had thought the reversions were not in conflict with the Agreement. Now that the Union filed as soon as it learned otherwise, the Union should be deemed to have filed the grievance when it first became aware of "the facts giving rise to the grievance." Thus, the provisions of Section 2 of Article 15 were satisfied, according to the Union. The Union also states that its grievance was general in nature and that the Union did not furnish Runs to the Postal Service as those which it was grieving. The Union says that in addition there were other Runs improperly reverted which were not

identified. The Union claims that the grievance discussion was on two separate levels with the Union talking generally and the Postal Service specifically. The two levels never intersected, asserts the Union. The Union also asserts that the reversions and subsequent reassignment of portions of the reverted Runs to part-time drivers are not separable actions. The Union contends further that the Postal Service continues to make improper reversions and reassessments.

The Postal Service contends that at Step 2 the Union was asked to specify the reversions that the Union contended were violations of the contract and the Union did so. The Postal Service asserts that these position reversions which the Union alleged were improper were set forth in the Step 2 decision. The dates during which the reversion notices were posted all antedated the 14 days period provided for in Article 15 of the Agreement. The Postal Service contends further that the issue stipulated at this hearing relates specifically to the reversions which were specified in the Step 2 notice and that the Union may not properly be permitted to unilaterally stray from that stipulation. The Postal Service says that the Union may not be said to have filed a timely grievance when the Union concludes after the 14 days period that now realizes there was a sustainable grievance based on its current view of the proper interpretation of

the Agreement. The Postal Service states that the agreements at the National level cited by the Union are irrelevant. The Postal Service asserts that those agreements dealt with posting, not with reversions, and are not material to this case.

DISCUSSION, FINDINGS AND CONCLUSIONS

The grievance in this case was filed at Step 1 on January 14, 1985. The grievance stated:

Management is abolishing and reverting regular preferred duty assignments to stop the regular employee from bidding on these assignments and to stop PTF from going regular. However they are hiring PTF off the street. Management uses the word abolition and reverting to bump regular employees from their assignments, but not the terminology abolition. There have been no reduction in assignments. (See attached copy of step 1 Grievance Worksheet)

The grievance requested:

Post all abolished and reverted assignments that PTF have been hired to fill.

The Step 2 decision denied the grievance as untimely as well as on the merits and recited the following:

Records reflect notices advising of these reversions were posted on bulletin boards as follows:

Runs 103 and 123	11-30-84 to 12-10-84
Run 124	12-16-83 to 12-27-83
Run 126	10-22-82 to 11-01-82
Run 127	09-07-84 to 09-17-84

Raymond Randolph, President of the Motor Vehicle Craft for Operations, testified that in December of 1984 an article appeared in the National Union's newspaper which indicated that there were two decisions which bear on the validity of the revisions involved in this proceeding. These were agreements in letter form. One was dated May 17, 1983 and directed from the Acting Director of the Office of Grievance and Arbitration, George S. McDougald, to William Burrus, Executive Vice President of the National Union. That letter read as follows:

On May 2, 1983, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented, as well as the applicable contractual provisions, have been reviewed and given careful consideration.

The question raised in this grievance is whether or not a dispute exists between the American Postal Workers Union, AFL-CIO (APWU), and the U.S. Postal Service relative to the interpretation of language contained in Article 37, Section 3.A.1 and 2, of the 1981 National Agreement.

The APWU interprets the referenced provisions of the National Agreement as requiring that decisions to revert vacant duty assignments must be made within 21 days after the assignment becomes vacant. The Union stated that failure to revert the position within 21 days requires the posting of the vacant position. Additionally, it was the position of the APWU that, if the vacant duty assignment is not filled through the posting provisions and the vacancy is not being withheld pursuant to Article 12 of the National Agreement, the assignment is to be then filled by one of the following means:

- A. The assignment of an unassigned regular.

B. The conversion to full time and assignment of the senior machine qualified PTF to machine vacancies.

C. The conversion of the senior PTF to full time and assignment to the vacant position.

There does not appear to be a serious interpretive dispute between our respective organizations relative to the contractual provisions with which this grievance is concerned. There is no question that the language in Article 37, Section 3.A.1, provides that all vacant duty assignments, except those excluded by the provisions of Article 1, Section 2, shall be posted within 21 days unless such vacant duty assignments are reverted or where such vacancy is being withheld pursuant to Article 12.

Moreover, Article 37, Section 3.A.2, provides in pertinent part that "The decision to revert or not to revert the position shall be made not later than 21 days after it becomes vacant" With this provision and the provision referenced in the preceding paragraph in mind, it is the Postal Service's view that there is a contractual obligation to post a vacant duty assignment within 21 days unless a decision is made within the specified time limits to revert the position. Further, it is our position that the posting of the position fully satisfies the requirements of Article 37, Section 3.A.1 and 2. If for some reason, such as the absence of bids or qualified bidders, the vacant duty assignment is not filled through the posting provisions of Article 37, the vacancy shall be filled by assigning an unassigned regular. Another means of filling such a vacancy would be through the conversion of a PTFS employee in accordance with applicable provisions of Article 37.

Although the latter action is certainly an option which may be taken in many instances, it is not mandatory under the provisions of Article 37, Section 3.A.1 and 2.

The second document was dated October 1, 1984 and in letter form was signed by both William E. Henry, Jr., Director of the Office of Grievance and Arbitration, and William Burrus, referred to above. The text of that letter read as follows:

On August 30 you met with Frank Dyer in prearbitration discussion of HIC-NA-C 81, Washington, D.C. The question in this grievance is whether the Postal Service may revert a vacant duty assignment once it has been posted for bid and no bids are received.

It was mutually agreed to full settlement as follows:

1. Normally, a duty assignment, once it has been posted for bid, will be filled consistent with 524.1 of the P-11 Handbook.
2. There may be, on occasion, exceptions wherein the Postal Service may leave vacant a duty assignment after it has been posted and no bids were received or there were no successful bidders. However, these exceptions must be operationally justified, and will be limited to changes such as those occurring through mechanization and technological changes, transportation changes, etc.

Please sign and return the enclosed copy of this letter acknowledging your agreement with this settlement, withdrawing HIC-NA-C 81 from the pending national arbitration listing.

According to Randolph, the reading of these agreements convinced him and the Local Union that their original notion that the reversion of combination runs or mixed assignments could be effectuated at the discretion of the Postal Service was in error. He filed the instant grievance as soon as he read the agreements and came to that conclusion. Randolph testified that it was the intent of the Grievance to refer to

mixed assignment runs. He testified that those runs were composed of 6 hours of motor vehicle operation and 2 hours of work in mail processing. According to Randolph, after reverting those runs management from a week to a month thereafter hired part-time operators off the street to work what had formerly been the 6 hour motor vehicle operation portion of the reverted runs. Randolph claimed that since he only became aware of the illegality involved upon a reading of the above referenced agreements, that was the point at which he became aware of the "facts" within the meaning of Article 15, Section 2. Randolph testified further that the discussion at Step 2 took place between him for the Union and Wayne Boothe for the Postal Service. Randolph testified that the discussion took place on two levels which never met. He claimed that he did not give the positions or runs stated in the Step 2 decision to Boothe. Randolph testified that he was discussing the procedure as to what the Postal Service had done with reversions and then hiring part-timers as coming under the generalized language of the grievance while Boothe, on the other hand, was referring to the specific runs.

Boothe stated that during the Step 2 meeting he asked Raymond to identify the runs about which he was complaining. According to Boothe, Randolph gave him in response the runs which were ultimately specified in the Step 2 denial. Boothe

stated that he himself researched the dates during which the postings of reversions took place in connection with those runs but that the identity of the runs was given in the first instance by Randolph as the runs which were meant to be covered by the grievance. Boothe further stated that there had been a previous grievance filed concerning Run 126 at the time of the reversion and that that grievance had been denied at Step 2 and never appealed further in the grievance procedure. Boothe stated further that there was a grievance filed with regard to Run 127 at Step 1 which was not appealed to Step 2.

At the outset of the hearing the parties entered into a specific stipulation of the issue before the Arbitrator. As the Arbitrator understands it at that point the parties incorporated in that statement as the reverted runs in issue Runs 103, 123, 124, 126 and 127. The grievance was clearly untimely under the issue as framed by the parties.

The Union claimed that the grievance was timely because the Union filed the grievance as soon as it became aware of the letter agreements of May 17, 1983 and October 1, 1984 involving McDougald and Burrus on the one hand and Henry and Burrus on the other and set forth above. That contention is without merit. The Union learned of the cause of the grievance and the facts giving rise to the grievance prior to the time at which it became acquainted with the letter agreements.

The "facts" referred to in Article 15, Section 2 are the facts which underlie the grievance. That the Union did not come to the realization that its previously held views as to the application or interpretation of the contract were erroneous does not extend the contractual time period within which a grievance must be filed. A change of mind by the Union as to its legal position does not become retroactive for purposes of timeliness.

The Arbitrator finds that during the course of the grievance procedure and specifically at Step 2 the grievance was narrowed to the specific reversions identified by Randolph in response to the request of the Postal Service representative for specifics. In the light of the stipulation of the issue which was entered into at the hearing and on the basis of the entire record, the Arbitrator credits the statement of Boothe to the effect that Randolph did furnish him with the specific runs which were enumerated in the Step 2 denial. The Union in the grievance itself stated its grievance in more general terms but the function of the grievance procedure is, if possible, to narrow the issues and obtain the facts. The issue then became the narrower one stated at the opening of the hearing. The Arbitrator draws his jurisdiction from the Agreement and in a specific case from the statement of the issue where such an issue is stipulated by the parties. The

stipulation was not broad enough to authorize the Arbitrator to hear the more generalized claim subsequently asserted at the hearing by the Union.

AWARD

The grievance is denied as untimely.

September 9, 1985

Bernard Cushman

Bernard Cushman
Arbitrator