

IN THE MATTER OF ARBITRATION BETWEEN

United States Postal Service, *
Lemay Branch *
St. Louis, Missouri, *
Employer *
and * Class Action
National Association of Letter Carriers * Case No. C4N-4K-C4007
AFL-CIO *
Dan Gould Branch, No. 343, *
Union *

APPEARANCES:

For the Employer: Ron Midkiff
Labor Relations Representative

For the Union: John Haake
President Branch 343 N.A.L.C.
Keith Gentry
Union Officer

DECISION AND AWARDPreliminary Statement and the Issues

MAX ROTENBERG, Arbitrator: The issues before me for resolution stem from the Employer's failure and refusal to grant grievants Jackie Craig and Ken Aubuchon, part-time flexible schedule letter carriers (PTFS carriers), their respective requests for work assignments routes that were temporarily vacant due to vacations of the regular carriers on those routes. The Union claiming the Employer's action is violative of Articles 3

violative of Articles 3 and 4 of the National Labor Agreement between the parties invoked the grievance procedure March 14, 1985¹ which culminated in this arbitration. The Employer denies that its action violates the contract. The Union's appeal from step 1 to step 2 "Standard Grievance Form" states,

"Pursuant to Article XV of the National Agreement, we hereby appeal to step 2 the following grievance.

Violation: Including but not limited to National (art. & sect.) 3 & 41 local (art. & sect.)

Facts: What Happened - Management denied the carriers request for assignments of 5-day duration or more.

Union Contentions: Reasons for Grievance - Violation of the contract.

Corrective Action Requested: The carriers denied the assignments be compensated for all work outside of the schedule at the time and 1/2 rate, and Management at Lemay be instructed to cease denying assignments to the letter carriers when it violates the contract."

The decision in step 2 dated May 7 received by the Union May 18 states,

"The subject step 2 grievance was discussed with you on April 25, 1985 in accordance with Article 15, Section 2 of the 1981 National Agreement.

Based upon the facts and arguments presented by the Union, I find that management has not breached Articles 3 and 41 of the 1981 National Agreement to which you have made reference. Accordingly, this grievance is denied.

The remedy requested by the Union is inappropriate. PTFS employees are not entitled to out-of-schedule pay. Management agrees that open routes should be posted for PTFS employees in accordance with Article 41, Section 2-B4. However, there is no monetary consideration for PTFS employees. Accordingly, this grievance is denied."

¹All dates here are in 1985 unless otherwise indicated

A letter dated May 23 from the Union to the Employer states in relevant part,

"...There is nothing in the contract that says a PTF employee is not entitled to monetary award when they are denied certain rights under the contract.

The Union is not requesting 'out of schedule' pay in this grievance. The Union is requesting that the grievants be paid at the time and 1/2 rate for all work performed outside the schedule of the assignments requested and denied. This corrective action is requested because of the blatant and arbitrary action by management in violating the contract. Pay also for work denied on the assignment."

The Union's appeal to step 3 states,

"Violation: Including but not limited to National (Art. & Sect.) 3 & 41 Local (Art. & Sect.)

Reasons for Appeal: Denial of the step 2 Appeal.

Corrective Action Requested: Same as the step 2 Appeal. Plus pay for work denied on the assignment requested."

The decision in step 3 dated June 26 received by the Union on the same date states,

"Pursuant to the terms and obligations as set forth in Article 15 of the 1981 National Agreement, management and union designees met at Step 3 of the grievance procedure. The results of that meeting on the above referenced case, are as follows:

The grievant is a PTFS employee, and as such, is not entitled to out-of-schedule overtime. The remedy requested is inappropriate and therefore, the grievance is denied."

In a letter dated July 3 to the Employer, the Union states,

"In regard to your denial at Step 3 on the above case, the Union is not requesting what the Postal Service has defined as 'out of schedule' overtime.

The Union is requesting time and 1/2 pay for the grievants as a penalty for Management's violation of the contract."

At the hearing of the dispute in St. Louis, Missouri September 5, the parties were afforded full opportunity to present evidence, examine and cross-examine witnesses and to present argument in support of their respective positions. The ruling regarding the admission of several documents in evidence which was deferred is now made, that these documents are received. Post Hearing Briefs received September 16 and 17 which I found helpful were duly considered. The parties did not agree on the precise language of the issues involved. Upon a full consideration of the entire record, I believe the issues may best be stated as follows:

The Issues

1. Is the Employer's failure and refusal to grant grievants Jackie Craig and Ken Aubushon work assignments, route no. 2605 and route no. 2516 respectively, violative of Contract Article 3 and/or Article 41?
2. If so, what is an appropriate remedy?

Relevant Contract Provision

"Article 3
Management Rights

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted;

E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

Article 15 Grievance-Arbitration Procedure

Section 2. Grievance Procedure - Steps

Step 2:

(a) The standard grievance form appealing to Step 2 shall be filed with the installation head or designee. In any associate post office of twenty (20) or less employees, the Employer shall designate an official outside of the installation as the Step 2 official, and shall so notify the Union Step 1 representative.

(g) If the Union representative believes that the facts or contentions set forth in the decision are incomplete or inaccurate, such representative should, within ten (10) days of receipt of the Step 2 decision, transmit to the Employer's representative a written statement setting forth corrections or additions deemed necessary by the Union. Any such statement must be included in the file as part of the grievance record in the case. The filing of such corrections or additions shall not affect the time limits for appeal to Step 3.

Section 4. Arbitration

A. General Provisions

(6) All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator.

Article 19 Handbooks and Manuals

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to

employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

Article 41
Letter Carrier Craft

Section 2. Seniority

B. Definitions

4. Part-time flexible letter carriers may exercise their preference by use of their seniority for vacation scheduling and for available full-time craft duty assignments of anticipated duration of five (5) days or more in the delivery unit to which they are assigned.

5. A letter carrier who, pursuant to subsections 3 and 4 above, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration."

Summary of Evidence

This summary is based on stipulations or a preponderance of the evidence. Sometime during the first two weeks in February, PTFS, grievant Craig requested a work assignment on route 2506 for a period of Monday, February 18 through Saturday, February 23 when the regular letter carrier on that route would be on vacation and PTFS grievant Aubuchon requested an assignment to work route 2516 for a period of Saturday, February 16 through Saturday, March 2, when the regular letter carrier on that route would be on vacation. Neither grievant Craig nor grievant Aubuchon was assigned to his respective route for the respective period requested. Thereafter, grievant Craig in writing requested a work assignment on route 2516. The writing dated

Wednesday, February 20, did not indicate the duration of the period desired. A witness for the Employer testified that unassigned regular carrier Robert M. Tierney with greater seniority than grievant Craig and grievant Aubuchon sometime prior to Tuesday, February 19 requested route 2506 (the same route which grievant Craig had requested) and that on February 19, Tierney had changed his mind and preferred route 2519 over route 2506. At no time during the period covered in grievant Craig's request for route 2506 did Tierney work this route. The route he did work this period was number 2519. The individual who worked route 2506 during that entire period was PTFS Shelby, a carrier from a different post office unit. Tierney was also involved in a third request for a work assignment. This one, an undated writing, requested route 2516 (the route which grievant Aubuchon had requested prior to February 16) and specified that the work was to start on Monday, February 25. Tierney worked route 2516, four out of five days including February 25. In requesting 2516 for a period from February 16 through March 2, grievant Aubuchon was motivated by the period included a long weekend, Friday, February 22 through Sunday, February 24.

PTFS employees work a flexible schedule as assigned. They are not entitled to "out-of-schedule overtime". They have no permanent assignment. They receive overtime after 8 hours in a day or 40 hours in a work week. They may express their preference for available 5 day or more duration work assignments by seniority. They are only guaranteed 4 hours "show up time". Full-time regular employees have a guaranteed 8 hours and

unassigned full-time regular employees have a superior claim (bid or preference) over PTFS letter carriers. Full-time regular employees are eligible for "out-of-schedule overtime".

Unassigned regular letter carriers and PTFS letter carriers are the only employees eligible to express a preference for work assignments under Contract Article 4, Section. 2.B.3.4.5.

Grievant Craig worked on Saturday, February 16 in excess of 8 hours. Grievant Aubuchon was not scheduled to work on Saturday, February 16. On Monday, February 25, grievant Aubuchon worked only 6 hours and 22 minutes. Had he been given route 2516, he would have worked 8 hours. On Tuesday, February 26, grievant Aubuchon worked 6 hours and 34 minutes. Had he been given route 2516, he would have worked 8 hours. On February 27 on route 2516, the regular letter carrier was still on vacation and grievant Aubuchon was not scheduled to work. On March 1, grievant Aubuchon worked a portion of route 2518 6 hours and 16 minutes.

Summary of Contentions of Parties
Regarding Sufficiency of Grievant Craig's
Assignment Period for Route 2506

The Employer in substance contends that grievant Craig's requested assignment is not within the intent of Contract Article 41 which requires the assignment be for at least 5 days duration; that grievant Craig's requested one-week period included Monday, February 18, a holiday, non-work day which reduced the period to four days. While the Union contends grievant Craig's requested

assignment Monday, February 18 through Saturday, February 23 that Monday should be included in the period but even if Monday is not included, there is still a 5-day period.

Analysis and Conclusion Regarding Sufficiency
of Grievant Craig's Assignment
Period for Route 2506

The evidence shows that the assignment period requested for route 2506 was from Monday, February 18 through Saturday, February 23. Assuming without deciding that Monday, February 23 is not to be counted, the period is 5 days within the contemplation of the contract.

Summary of Contentions of Parties Regarding
Availability of Route 2506

The Employer in substance contends that unassigned regular carrier Robert M. Tierney with greater seniority than grievant Craig had route 2506 "held down" during the period in question. The Union contends in substance that the Employer's contention regarding non-availability of route 2506 is without merit. Tierney did not work route 2506 at any time during the week in question. In fact, during this period, Tierney worked route 2519. Moreover, the individual who did work route 2506 during the relevant period was Shelby, a PTFS carrier from a different post office unit.

Analysis and Conclusion Regarding
Availability of Route 2506

The Employer's contention regarding the issue of availability of route 2506 is unpersuasive and is not supported by the evidence. The evidence shows that at no time during the period covered in grievant Craig's bid for route 2506 did Tierney

work this route. Employer witness on cross-examination testified in substance that on February 29, Tierney told him that he had changed his mind and asked for route 2519 because he much preferred route route 2519 over route 2506. The evidence shows that Tierney worked route 2519 on February 19, February 20, February 22, and February 23. These were four out of five days of the week that was involved in grievant Craig's assignment request. The only employee who worked route 2506 was, PTFS Shelby from a different post office unit. I am not aware of and my attention has not been called to any provision in the contract which permits the Employer to acquiesce in what Tierney did here; while working one route he "held down" a second route concurrently, thereby preventing another qualified employee from exercising his rights under Contract Article 41. Additionally, the Employer did not offer any explanation for assigning route 2506 to PTFS Shelby for 4 days that were covered in grievant Craig's assignment request. On the basis of the above, I find route 2506 was available for assignment to grievant Craig. Accordingly, I also find that the Employer's action in failing and refusing to grant grievant Craig the work assignment on route 2506 for the period in question inconsistent with Contract Article 41, Section 2.B.4.5.

Contentions of Parties Regarding
Availability of Route 2516

The Employer in substance contends that route 2516 was not available for assignment to grievant Aubuchon for the period requested inasmuch as this route was "held down properly" by

unassigned regular carrier, Robert Tierney of greater seniority than grievant Aubuchon. The Union contention is stated in its brief thusly.

"For Route 2516 Management tried to convince the arbitrator that Route 2516 was not available because Tierney wanted Route 2516 on 2/25/85 and introduces Employer Exhibit 6 as hand written request by Tierney which was just dredged up for the arbitration case.

But this also does not wash.

1. Tierney is asking for Route 2516 beginning 2/25/85. Route 2516 was open beginning 2/16/85. Had management done what they were asked to do by Aubuchon and Steward Mosblech's request, Aubuchon would have worked Route 2516 for the duration according to the contract, Article 41, Section 2,B5."

Analysis and Conclusions Regarding Availability
of Route 2516

The evidence shows that grievant Aubuchon's request for work assignment was for the period February 16 through March 2 while Tierney requested that his assignment begin February 25. On February 16 the route was worked by PTFS Zittel. On February 19 the next work day the route was worked by grievant Craig. Both Zittel and Craig had greater seniority than grievant Aubuchon. Craig's request for the route is dated February 20 and did not specify the duration of the assignment. The date of Zittel's request is not disclosed in the record. Assuming Zittel's assignment request antedated Aubuchon's request, the work on route 2516 for February 19 should have been assigned to Zittel because of his greater seniority than Craig and Aubuchon or it should have been assigned to Aubuchon because Aubuchon's request was made several days before Craig's, but the work was not assigned to either. It was assigned to Craig. Moreover, the

evidence shows that Craig continued to work this route on February 20, February 21, part of February 25 and all of February 27. Presumably by reason of Craig's request of February 20. In the circumstances of this case it is reasonable to infer that had the Employer granted grievant Craig's request for route 2605 for the period of February 18 through February 23 as it was obligated to do under contract article 41, grievant Craig would not have made the request for Route 2516, especially in view of the overlapping of the periods in the two requests. Craig's original request covered February 18 through February 23 and Craig's alternate request was the period beginning February 20. The Employer may not now utilize grievant Craig's February 20 request for route 2516 as a defense for denying this route to grievant Aubuchon since Craig's request for route 2516 was brought about by the Employer's failure to grant Craig's initial request for route 2506 which has been found here to be violative of the contract. Similarly I believe the Employer's reliance on Tierney's February 2 request for Route 2516 as a justification for denying this route to grievant Aubuchon for the period of February 25 through March 2 is misplaced. Tierney's greater seniority over grievant Aubuchon is relevant only in the bidding stage for the route which in this case was on or before February 16. Aubuchon became entitled to route 2516 since on that date he was the only "eligible employee" who requested this route and a denial of the route to Aubuchon is in conflict with the Contract.

Any subsequent request for this route, even by an employee of greater seniority than Aubuchon may not defeat Aubuchon's right under Contract Article 41.

During the processing of the grievance prior to the hearing, the Union claimed the Employer's action also violated Article 3 of the Contract. However, during the hearing and in the Union's Post-Hearing Brief, there was no specific reference to Contract Article 3. In any event, I find no violation of Article 3. It having been found that the Employer's failure and refusal to grant the grievants their requests for work assignments and their respective selected routes for their respective duration periods is not permitted by the contract, the Award will provide appropriate provisions to make both grievants whole for any loss of pay and/or benefits as a result of the Employer's action or inaction. The Union's request that the Award include a provision requiring the Employer "to cease denying assignments to the letter carriers" in violation of the conflict is denied. I believe such a provision is outside the scope of the arbitrator. In any event, I believe such a provision would not be appropriate in this case.

Regional Arbitration Case No. C894FC13593 decided August 11, 1981, cited by the Employer, where Arbitrator Jonathan Dworkin found that PTFS employees are not entitled to receive out-of-schedule overtime is clearly distinguishable from the instant case. In that case, the Union claimed that a PTFS carrier was entitled to receive out-of-schedule overtime pay when he was assigned to work on his regular day off. The Union in that case

agreed with the Employer to limit the hearing to this issue with the understanding that in the event that that ruling from this limited issue were to be favorable to the Union, the case would then be rescheduled for a full hearing on its merits. In the case before me, the Union has early in the grievance procedure steps abandoned the claim that the PTFS employees be paid out-of-schedule overtime and at the hearing stipulated that PTFS employees are not entitled to out-of-schedule pay and thus removed this as an issue in this case. The remedy here is the traditional remedy for a labor contract violation such as is present here.

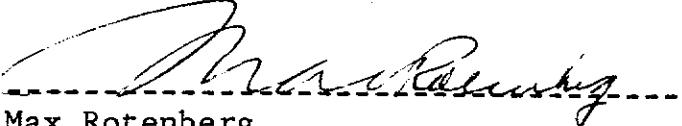
As to the Union's additional contention in substance that at no time prior to the hearing did the Employer assert the unavailability of routes 2506 and 2516 for assignment to grievant Craig and grievant Aubuchon, the record shows that the Union did not claim that the Contract provides a time limit in which the Employer may assert its defense, nor did the Union show that it was prejudiced by the Employer delaying the assertion of its defense until the hearing.

THE AWARD

1. The grievance is sustained.
2. The Employer shall make whole the two grievants for any loss in pay, or benefits as a result of the Employer's action or inaction herein involved.
3. In lieu of the remedy here provided, the parties by mutual agreement may fashion an appropriate remedy within 30 days from the date of the decision.

4. The arbitrator will retain jurisdiction of this case for 30 days from the date of this Award to assist the parties in effecting compliance with the Award in the event it becomes necessary.

Dated at Minneapolis, Minnesota this 1st day of November, 1985.



Max Rotenberg,
Regional Arbitrator