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SUSTAINED

Arbitration

Opinion and Award

in the

Grievance of
Catherine Sheehy
MIAMI, FLA.

IN THE MATTER OF THE ARBITRATION BETWEEN:)
United States Postal Service)
and)
American Postal Workers Union, AFL-CIO)
Local 1898)

C# 00344

The subject matter in dispute was referred to the undersigned Arbitrator for a final and binding award. A hearing was held in Miami, Florida, on September 9, 1973, at which time the parties were given full and equal opportunity to present evidence and argument. A post hearing brief was submitted by the Employer on October 10, 1973, and by the Union on October 15, 1973, at which time the hearing was declared closed.

APPEARANCES:

For the Employer

Donald J. Cowan, Assistant District Manager, Labor Relations

For the Union

Thomas E. Byerly, Regional Representative

ISSUE:

The subject matter in dispute poses the following issue:

Was the Grievant improperly denied placement at a higher step level? If so, what should the remedy be?

BACKGROUND:

Portions of the Labor Agreement in effect when this grievance arose, and of the Postal Manual, which are pertinent to the determination of the issue provide as follows:

HEADING: APPLICATION OF SALARY RATES

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Labor Agreement, Article IX, Section 4. Granting Step Increases. The Employer will continue the program of granting step increases for the duration of this Agreement.

Postal Manual, Section 753.312. Employee Re-appointed or Reinstated. A former postal employee reappointed or reinstated under an appointment not limited to 1 year or less shall be placed in step 1 of the salary level of the position or, in the discretion of the appointing officer, in any higher step which is less than one full step above the highest basic compensation received as a postal employee....

BACKGROUND:

The Grievant was an employee of the Postal Service, Lincoln Rural Station, Chicago, Illinois from November 9, 1967 to February 25, 1969. After resigning this job, she moved to Miami, Florida, and was rehired by the Postal Service there on September 15, 1969, for work in the Biscayne Annex. *

In July of 1972, the Grievant formally requested that her "step-pay levels" be restored. When rehired by the Postal Service, the Grievant had been placed in a Grade 5 position at salary step level 1. Granting of this request would have resulted in placing the Grievant at a higher step level within Grade 5. Upon denial of the Grievant's request, a grievance protesting the denial was filed and is the subject of this arbitration.

UNION CONTENTIONS:

The Union offers the following contentions in support of the Grievant:

~~Reconsidered~~

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1. Upon being rehired by the Postal Service in Miami, the Grievant was told verbally that her past step increases would be restored when she became a full time regular clerk. Inasmuch as the Postal Manual gives the appointing officer discretion to take this action, the Grievant took the verbal statement as fact, and relied upon it. Therefore, the Postal Service should not be allowed to deny currently that which was promised in the past.

2. The Postal Service in Miami has granted requested step increases to other employees whose work history is similar to that of the Grievant. Specifically, employees Klein, Freeman, Musio and Mangan received such increases in mid-1972. In addition, employee Strachman was granted a step increase in July of 1972, and since 1970, carriers Chambers, Blum and Ruscoff plus two clerks received step increases. All of these employees had been rehired at a time close to or later than the date of the Grievant's rehire date, and in the cases of Klein, Freeman, Musio and Mangan, had received verbal promises of the increases when rehired.

3. Based on the foregoing, it is evident that the Employer's past practice in using the discretion reserved to it has been to grant such step increases for rehired employees. In the absence of a presentation by the Employer of any criteria considered with respect to the Grievant's request which would justify a denial, it must be concluded that the denial was an arbitrary, capricious and discriminatory abuse

of discretion. Such action is improper, and the Grievant should be awarded the requested step increase.

EMPLOYER CONTENTIONS:

The Employer offers the following contentions in support of its action:

1. Under provisions of the Labor Agreement, Article IX and Section 753.312 of the Postal Manual, the Employer has complete discretion to grant or deny step restoration to rehired employees.

2. In the presence of clear and unambiguous language reserving discretion in such matters, the Employer may not lose the discretionary right due to past practice.

3. Prior to 1970, it was the practice of the Employer to exercise discretionary rights in such a manner as to grant step increases to most employees when rehired. Since that date, the Employer's practice has been to deny these step increases due to a number of considerations such as rate structure compression, budget restrictions, and the unusually large number of transfer requests. Such a change was based on reasonable business considerations and cannot be deemed arbitrary or capricious.

3. Evidence and testimony introduced at the hearing shows that, although step increases may have been granted infrequently prior to mid-1972, after that date only one such increase has been granted. This increase was erroneously granted to employee Strachman and cannot be considered as binding. Increases granted to employees Klein, Freeman,

Musio and Mangan because of strong assertions they were promised such increases when rehired.

4. Granting increases in cases of these four employees cannot be considered as establishing a binding practice of granting increases to all rehired employees. In addition, the four cases cannot be considered binding with respect to the Grievant, as she was told only that employees rehired "usually" get such increases, not that they are "always" granted.

5. Therefore, it should be concluded that the Postal Service has exercised its discretion validly in denying the requested step restoration, and the grievance should be denied.

DISCUSSIONS AND FINDINGS:

In this case the Grievant is seeking credit for service which accrued while serving in the Chicago Post Office prior to her reemployment in the Miami Post Office. Her request must be granted for two reasons. First, because at the time of her reemployment in Miami she was led to believe by a Miami personnel employee that her step would be restored. Second, and more important, she was reemployed in the Miami Post Office on September 15, 1969, more than a year in advance of the adoption of the restrictive policy which is currently in effect in the Miami Post Office.

Testimony of top management employees of the Miami Post Office established that prior to November 1970, consideration was given to requests for step restoration and we "did restore prior to that date."

Obviously, to fail to restore for the Grievant was inconsistent with prevailing 1969 policy and cannot be permitted. Accordingly, the grievance must be granted.

AWARD:

The Arbitrator hereby Awards as follows:

**THE ARBITRATOR
RULED:**

The Grievant was improperly denied placement
at a higher step level. Her grievance is
sustained and the requested relief granted.

Knoxville, Tennessee
October 30, 1973


J. Fred Holly, Arbitrator