

REGULAR REGIONAL ARBITRATION PANEL

C#10123

In the Matter of Arbitration) GRIEVANT: G. Gonzalez
)
 between) POST OFFICE: Glendora, CA
)
)
UNITED STATES POSTAL SERVICE) CASE NO. W7N-5P-C 20191
)
 and) GTS - 15262
)
NATIONAL ASSOCIATION OF LETTER)
 CARRIERS, AFL-CIO)
)

BEFORE: JAMES T. BARKER, ARBITRATOR

APPEARANCES:

For the U. S. Postal Service: J. Carson Moore

For the Union: Thomas H. Young, Jr.

Place of Hearing : 255 S. Glendora Avenue, Glendora, CA

Date of Hearing : June 27, 1990

AWARD : The grievance is sustained.

The grievant's request for reassignment to the Cucamonga Post Office shall be granted and she shall be transferred as soon as possible, but no later than August 13, 1990, and shall be assigned a seniority date of September 23, 1990.

The request for reimbursement of mileage expenses at the I.R. S. rate prevailing during relevant periods of 1989 and of 1990 is granted.

James T. Barker
Arbitrator

Date of Award: July 13, 1990

Case No. W7N-5P-C 20191
GTS No. 15262
(Grievant: G.Gonzales)

Opinion and Award

The Issues

Whether employee Glenda Gonzalez was improperly denied a transfer under the provisions of the National Agreement, specifically, the Memorandum of Understanding between the parties contained at pages 192-194 of the current Agreement?

If so, what is the appropriate remedy?

Relevant Contractual Provisions

Article 13, Section 6 of the National Agreement, 1987-1990 provides:

Section 6. Transfers

A. Installation heads will consider requests for transfers submitted by employees from other installations.

B. Providing a written request for a voluntary transfer has been submitted, a written acknowledgement shall be given in a timely manner.

[see Memo, page 192]

The Memorandum of Understanding, dated July 21, 1987, relating to the subject "Transfers", provides, in relevant part:

Section 1. Reassignments (Transfers) to other geographical areas.

A. Installation heads may continue to fill authorized vacancies first through promotion, internal reassignment and change to lower level, transfer from other agencies, reinstatements, etc., consistent with existing regulations and applicable provisions of the National Agreement.

* * * *

Section 2. Local Reassignments (Transfers)

A. For local reassignment(s), managers will give full consideration to the work, attendance, and safety records of all employees who are considered for reassignment. An employee must have an acceptable work record, attendance, and safety record and meet the minimum qualifications for all positions

to which he/she requests reassignment. Both the gaining and losing installation head must be fair in their evaluations. Evaluations must be valid and to the point, with unsatisfactory work records accurately documented. * * * * *

B. The provisions of Section 1, paragraphs A,C,E,F,G,H, and I are applicable to local reassessments.

Pertinent Fact

I

The grievant has been employed as a City Carrier in the Glendora Post Office since November 8, 1983. She resides in Rancho Cucamonga. In late summer of 1989, the grievant applied for transfer to the Cucamonga Post Office, a recently created Branch Office, located approximately one mile from her home. The grievant's commute to the Glendora facility involves round trip travel totaling approximately eighteen miles. The request was received by Karen Losey, Manager, Employment & Training, Alhambra MSC, on August 21, 1989 and reviewed by her. By letter dated September 6, 1989, the grievant's reassignment request was denied. In pertinent part the letter stated:

The Cucamonga Post Office receives many requests daily for transfers and reinstatements. We consider all such requests when vacancies arise, but will accept only those with the needed skills and excellent attendance and performance records.

We have reviewed your Official Personnel Folder and have decided not to honor your request for reassignment.

The letter was signed by Karen Losey.

The denial was grieved and denied at Step 1 on September 19, 1989.

Thereafter, the grievant reviewed her OPF and discovered it contained reference to a Letter of Warning regarding attendance that should have been purged. She called this to the attention of Rose Benjamin, Supervisor of Delivery & Collection at the Glendora facility.

Subsequently, the grievant's reassignment request again became viable. In a letter from Karen Losey, dated November 2, 1989, she was advised that her request had been received.

The record establishes that the request for information form made available to Losey for her post-October 20, 1989 evaluation of the grievant's reassignment request, reflected a sick leave balance of 114 hours and that two pregnancies were considered as extenuating circumstances in relation to that leave balance. The information form also imparted that the grievant had never been issued a letter of restricted sick leave. It reflected also that she had received letters of warning dated August 16, 1988 and February 12, 1989, respectively, regarding her attendance. The information form also showed she had been tardy once during the preceding twelve months.

By letter of December 7, 1989, signed by Losey, the grievant was informed:

We have reviewed your Official Personnel Folder and have decided not to honor your request for reassignment because of your attendance.

This denial was grieved, the Union contending that management had violated the National Agreement in unreasonably denying the grievant's reassignment request. The grievance was denied at Step 3.

II

The testimony of Tom Anderson, Branch President of Local 1439, and evidence of record, establishes that the complement of the newly created Cucamonga Branch Office was comprised of seventy transferees from the Ontario Post Office. According to the testimony of Anderson, in June 1989, in the early stage of the operation of the Cucamonga office, the grievant worked one day on assignment at Cucamonga. He and the grievant conversed. He learned that she lived near the facility and gained insight into her experience with the Postal Service.

Anderson further testified that, in September, following denial of the grievant's reassignment request, he became aware that Rogello Welch had been transferred to Cucamonga from another facility. He observed the work of Welch and learned that he was new and inexperienced. According to Anderson's testimony, he spoke to the Postmaster of Cucamonga and was told that Welch had been hired as a new PTF; that the Postmaster had received a telephone call from Karen Losey was being assigned to Cucamonga on September 23, 1989. Anderson testified that his conversation with the Postmaster confirmed that Welch had not never requested a transfer in writing and that the Postmaster had never reviewed his records for safety, leave and the like.

The record contains a signed statement by Anderson to this effect. The Postmaster of Cucumonga was not called as a witness at the arbitration.

Karen Losey testified that at time in question the administration of transfer requests was under her supervision and control. She received and reviewed the grievant's reassignment request. It was one of several that had been received in the time period proximate to September 6, 1989. All were turned down. Losey testified that, although not set forth in her September 6 letter, attendance was the reason for denying the grievant's request.

Losey further testified that subsequent to September 6, she received a telephone call from Anita Guzik, Secretary of Branch 24, inquiring as to the reason for the denial of the grievant's reassignment request. According to Losey she cited the grievant's unsatisfactory attendance.

In this regard, Losey testified the grievant's attendance, as reflected on the Form 3972 Absence Analysis records, disclosed seven instances of leave in connection with nonschedule days during the period February 27, 1988 and August 26, 1988. This totaled 52 hours of sick leave, combined with 28 hours of LWOP, in

one sequence (pay period 6, 1988) and .10 hours of late reporting (L), in another (pay period 11, 1988). Moreover, Losey considered seven other instances of leave, including:

.50 LWOP - 3/12/88	.15 L - 6/1/88	.10 L - 6/14/88
.14 L - 10/13/88	1.14 SL - 12/2/88	8.00 SL - 12/6/88
5.50 SL - 12/30/88	16.00 EAL - 1/25-26/89	.10 L - 2/21/89

Losey testified that a period of substantial annual leave usage from pay period 1, commencing December 19, 1987, through pay period 4, ending February 7, 1988, was not assessed adversely to the grievant in her evaluation of the grievant's attendance because that leave was for maternity purposes.

Losey further testified that she had not investigated to determine factors associated with the leave used in pay period 6, 1988. The grievant testified that it was pre-scheduled leave approved by her supervisor, necessitated by surgery. Losey testified that such emergency leave is considered an unscheduled absence, even if approved.

The evidence also discloses that the grievant's name was listed in the 1989 Perfect Attendance Recognition section of the June 1990 Alhambra Postal Exchange. Losey discounted the significance of this listing because it reflects only sick leave usage, and because an employee could be absent, and if not compensated as sick leave for that absence no sick leave usage would be reflected.

The record establishes that the grievant used no sick leave from pay period 1, commencing December 17, 1988 through pay period 26, ending December 15, 1989. Losey conceded this in her testimony. She testified that she was aware of the grievant's leave record, including her 1988-1989 leave record when she signed the letter of December 7, 1989, denying the grievant's reassignment request.

Losey testified that her decision was based on the conclusion reached that the grievant's attendance was not satisfactory. She testified that her decision

would have been the same had no reference to letters of warning been contained in the information material provided for her review.

III

The evidence reveals that between June 17, 1988 and November 18, 1989, sixteen employees were transferred to the Cucamonga station. Included in this number was Regilio Welch, whose transfer was effective September 23, 1989, and Dianne Oliver, who was transferred on November 18, 1989. Three additional employees, including Arnulfo Ramirez, Jr., were added in February 1990.

Losey testified that Ramirez' request was received on the same date that she received the grievant's initial request. He was authorized to transfer on December 7, 1989 but there were no present vacancies. The transfer was later approved and made effective on February 24, 1990.

The evidence of record establishes that Diane Oliver commenced her employment as a city carrier on November 24, 1980. At the time her request for reassignment was reviewed she had a sick leave balance of 20 hours. Two pregnancies and surgery in 1988, with complications, had contributed to her sick leave usage. She had not been tardy in the preceding twelve months.

The Form 3972 relating to Oliver shows 16 hours of sick leave usage by Oliver in pay periods 12 and 13 1988, involving a contiguous Friday/Saturday absence. It also reflects 24 hours of sick leave in pay period 15, 1988; and 2.5 hours of late reporting on Monday, following a non-scheduled day. For the period thereafter her Form 3972 reflects no absences.

Losey testified that she applied the same standards and analysis in reviewing the grievant's reassignment request as she applied to all others. She denied that disparate treatment. Losey testified that in the course of her duties she has

evaluated many reassignment request from the standpoint of attendance and she considered the grievant's "not satisfactory."

The Contentions of the Parties

1. The Position of the Union

The Union contends that the Postal Service violated the Memorandum of Understanding contained in the National Agreement by making an inappropriate decision not to transfer the grievant. It is the view of the Union that an objective review of the grievant's transfer request and her attendance record would not lead to the conclusion that her attendance was unsatisfactory.

The Union emphasizes that the reason given for denying the grievant's request to transfer from the Glendora postal facility to a facility closer to her home was "attendance". In this regard the Union asserts that postal management used "attendance" as a cloak for denying the grievant's request for other reasons which it did not document. Accordingly, argues the Union, the validity of the denial must rest upon a determination of whether, in fact, pursuant to a fair evaluation of the grievant's attendance record, viewed over a reasonable time period, the grievant's attendance could properly be declared "unsatisfactory".

In the view of the Union, the grievant's attendance record measured over a period of eighteen months preceding her transfer request was entirely satisfactory by any reasonable standard. Moreover, her attendance record for 1989 was recognized as "perfect" in the June 1990 issue of Postal Exchange. She used no leave during the calendar year 1989.

Referencing the documentary evidence of record, and the testimony of Karen Losey, the Union asserts that Losey failed to adequately inform herself of circumstances accompanying certain of the grievant's maternity-related absences which accounted for two of seven absences associated with unscheduled days, and

did not accord sufficient consideration to the grievant's leave balance of 114 hours at the time her transfer request was denied.

Further, the Union contends the evidence of record shows a disparity of attitude towards the grievant. In this respect, the similarities in the attendance record of Dianne Oliver and that of the grievant are noted by the Union, which points out that every single absence depicted on Oliver's Form 50 was associated with an unscheduled day.

Additionally, the Union cites evidence showing that sixteen employees have been transferred to the Cucamonga Post Office since the grievant's application, thus establishing the occurrence of vacancies at that facility.

In the circumstances, the Union requests the grievance be sustained and the transfer be made retroactive to September 6, 1989 when the grievant's initial request should have been granted, with seniority at the new station measured from September 10, 1989. Moreover, the Union seeks mileage compensation to the grievant and a cease and desist order to the Postal Service.

Submitted for consideration are three opinions and awards issued at the regular regional arbitration level.

2. The Position of the Postal Service

In the view of the Postal Service the grievance should be denied.

The Service contends that transfer requests such as the one at issue here are governed by Section 2 A of the Memorandum of Understanding and that acceptable attendance is one of the considerations to be taken into account in determining whether or not to approve a specific request.

To give perspective to the grievant's request, the Postal Service notes that an extensive system is in place for tracking transfers, a system involving a detailed administrative review procedure. It stresses that there exists no

contractual right to transfer; merely an implied obligation on the part of management to fairly evaluate transfer requests and to abstain from arbitrary and capricious dispositions. The Service asserts that the Union failed to show the grievant's request was not fairly evaluated.

In this respect, the Postal Service notes that the determination is made at the local level; that each request is reviewed and determined based on which of the competing requests is comparatively better or best. The Postal Service notes that the grievant's request was considered in conjunction with another such request and a decision was reached on objective grounds based on the conclusion of Losey, the reviewing authority, that the grievant's attendance record was unacceptable and the competing application comparatively superior. In this respect the Postal Service stresses that Losey evaluated the grievant's attendance dating from December 19, 1987, and found it unsatisfactory due, in part, to the number of sick leave and other absences accompanying unscheduled days. It discounts the significance of the "perfect" attendance record cited in the Postal Exchange, citing the testimony of Karen Losey.

In sum, the Postal Service contends that the consideration given the grievant's attendance record was fair and proper and the grievance should be denied.

Analysis

It is concluded that the Postal Service violated the terms of the July 21, 1987 Memorandum of Understanding by denying the grievant's reassignment request.

The Memorandum of Understanding is a part of the 1987-1990 National Agreement, and is a successor, albeit modified, version of the memorandum on transfers contained in the 1984 National Agreement. On its face, the current Memorandum of Understanding, like its predecessor, sets forth specific guidelines

that must be applied by local management in considering and resolving transfer requests. "The purpose of these guidelines was to create enforceable standards or criteria with respect to transfer requests and all managers are expected to adhere to the guidelines." Arbitrator Dobranski, Case No. C4N-4C-C 3906, decided August 25, 1986. See also Arbitrator Lange, Case No. W7N-5M-C 11285, decided June 25, 1990 and Arbitrator Levak, Case No. W4N-5G-C 38526, decided June 28, 1988.

Section 2. A. of the Memorandum of Understanding governing local reassignments (transfers) requires both the gaining and the losing installation head be fair in their evaluations. Evaluations must be valid and to the point, with unsatisfactory work records accurately documented. In instances wherein the final determination rests with a duly designated MSC official, based on information and records imparted for that purpose, these obligations imposed by agreement of the parties perforce rest with the determining official.

Considerations grounded both in the literal language of the Memorandum of Understanding, and in the guiding spirit and intentment of the 1984 memorandum from which it gains its genesis, require that management abstain from implementing harsh, over-restrictive limitations on transfers, and that the reasons for denying a specific request for transfer be set forth in detail. Consistent with concepts of due process, generally, and the requirements of the National Agreement, specifically, arbitrary and capricious resolutions are impermissible.

Selectivity among competing transfer request is an essential element of the evaluation process; but uniform standards and criteria must be established and followed. "(N)othing within the guidelines or within the National Agreement restricts management from grading and ranking groups of transfer applicants and giving preference to those who have objectively superior records." Arbitrator Thomas F. Levak, Case No. W4N-5G-C 38526. However, each denial must have a rational

foundation. Citation of grounds or reason(s) for denial must be reasonably specific and management must be prepared to defend its resolution when appropriately challenged through the grievance process and under the terms of the National Agreement.

In Case No. W4N-5G-C 38526, Arbitrator Levak stated:

(3) Once a transfer request applicant demonstrates a satisfactory record, he has established a prima facie case meriting transfer. The burden then shifts to the Service to establish: (a) that any transfer request standards it utilizes are not harsh or unreasonable; and (b), that the specific denial is proper under the guidelines.

This Arbitrator is persuaded by the logic and correctness of this rationale believed fully applicable to the matter under consideration.

The record of this proceeding demonstrates that the sole ground specified by the Service for denying the grievant's reassignment request was "attendance." Accordingly, a determination of whether the denial was proper under the guidelines, and was neither harsh nor unreasonable, rests specifically upon whether the grievant's attendance was such as to have warranted the resolution reached by the Service.

An objective view of the grievant's attendance record depicts a satisfactory record of attendance measured from the scope of a two year period. Deficiencies that appear to have surfaced between May and December 1988, did not recur, either during the succeeding nine month period leading to September 1989, or in the eleven month period between December 1988 and December 1989, when her request was denied by Karen Losey. It is to be remembered that Losey testified that her disposition of the request would not have been different had the two letters of warning for attendance (arguably inaccurately depicted and referenced by Glendora management in the Request for Information form made available to Losey) not been

Included in her analysis. Accordingly, the determination reached by Losey must stand or fall on the basis of the attendance record depicted in the Forms 3972 covering 1988-1989.

In addition to the excellent attendance record compiled by the grievant in 1989, the evidence establishes a sick leave balance of 114 hours as of October 1989, this despite two instances of maternity leave and one absence necessitated by surgery. Losey testified forthrightly that she did not consider these adversely to the grievant in her evaluation of the grievant's over all attendance. Further, information available to Losey established that the grievant had never been on restricted sick leave and had only one instance of tardy (.10 hours - February 21, 1989) during the twelve month period preceding October 1989.

Upon this showing, it is concluded that the Union adduced evidence sufficient to establish satisfactory attendance on the part of the grievant, equating to a prima facie showing of a record meriting favorable consideration of her reassignment request. Clearly, her attendance record was "acceptable" (to apply the term appearing in Section 2 A of the MOU) at the time the request was considered and denied.

The Postal Service failed to demonstrate that the denial was proper under the guidelines of the Memorandum of Understanding.

It is clear from the testimony of Losey that the principal, if not entire, basis for her determination were the seven instances of absences in 1988, tied to non-scheduled days for the grievant. These were augmented by instances of sick leave tardiness, all in 1988. On the basis of this record, and in the face of the excellent record of attendance compiled by the grievant in the ensuing nine to eleven months, which were also a part of Losey's evaluation, Losey persisted in her appraisal that the grievant's attendance "was not satisfactory."

To be certain, the entire thrust of Losey's testimony suggests that she considered the grievant's attendance "unsatisfactory" in a comparative sense to the attendance of other applicants for reassignment coming to her attention in the course of her official duties to approve or disapprove transfer requests. However, it is not enough for the Service to rely upon generalized testimony and conclusionary declarations.

In the face of a record of attendance such as that possessed by the grievant, it was essential for the Postal Service to have come forward with specifics, showing that, either on an individual basis, taking into consideration a representative time period reasonable in length, the grievant's attendance was deficient and unsatisfactory; or, in a comparative sense, measured against other applicants for reassignment with whom the grievant was appropriately grouped and categorized, her attendance was inferior or not sufficiently meritorious to warrant approval. The Postal Service failed to make this necessary showing.

Moreover, militating against the Postal Service, and favorably to the Union, is the absence of any explanation of why, (1) in September 1989, in the immediate aftermath of the initial rejection of the grievant's reassignment request, Welch was employed at the Cucomonga facility, and (2), in light of the similarity of their attendance records, Oliver's request was approved and the grievant's rejected. Further, the objectivity and thoroughness of Losey's evaluation is brought into question by her concession that she had not explored the circumstances surrounding the grievant's surgery-related absence in pay period 6 of 1988. In its nature, this was an absence of a non-recurring nature which, fairly evaluated, could not reasonably have been viewed as casting doubt upon the willingness or ability of the grievant to maintain an "acceptable" attendance record. This was maternity-related surgery, and no showing was made why the

maternity absences of both the grievant and of Oliver were not counted against their attendance, but the grievant's absence for this specific surgery was weighed adversely.

Postal Management was required under the terms of the National Agreement and the Memorandum of Understanding to show that its application of the guidelines and its own standards to the grievant's transfer request were reasonable and fair. It failed to do so.

Accordingly, it is found on the basis of the evidence adduced that the grievant met all requirements for reassignment from the Glendale Post Office to the Cucamonga Post Office.

The record shows that approximately fifteen employees have been transferred to Cucamonga since the grievant initiated his request, and that transfers were effectuated after denial of that request. Accordingly, the remedy sought by the Union is found appropriate, with modification.

More specifically, the record also shows that an opening existed at the Cucamonga Post Office which was filled on September 23, 1989. The elapsed time between that date and September 6, 1989, is deemed sufficient to have permitted the losing and the gaining facility to have effectuated an orderly reassignment of the grievant to Cucamonga and her replacement at Glendora. Accordingly, for purposes of awarding seniority placement and mileage allowance the date of September 23, 1989 is utilized.

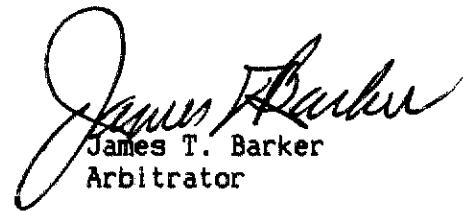
AWARD

The Postal Service violated the National Agreement and the Memorandum of Understanding, dated July 21, 1987, in denying the grievant's voluntary request for reassignment from the Glendora, California Post Office to the Cucamonga, California Post Office.

The grievant's request for reassignment shall be granted and effectuated as soon as possible, but in no event later than August 13, 1990, with seniority to the grievant at the Cucamonga Post Office of September 23, 1989.

The grievant shall be reimbursed for the mileage differential between travel from the grievant's home in Rancho Cucamonga to the Cucamonga Post Office and travel from her home to the Glendora Post Office between September 23, 1989, at the Internal Revenue rate prevailing during relevant periods in 1989 and in 1990. The parties shall calculate the sum due using appropriate records available to them.

The Arbitrator retains jurisdiction pending final resolution of all or any aspects of this remedy.



James T. Barker
Arbitrator

July 13, 1990