

C# 10638

REGULAR ARBITRATION PANEL

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IN THE MATTER OF THE ARBITRATION
Between

UNITED STATES POSTAL SERVICE
And

NATIONAL ASSOCIATION OF LETTER CARRIERS

* GRIEVANT:
* Janet S. Synoground
*
* POST OFFICE:
* Paris, Arkansas
*
* CASE NUMBER:
* S7N-3B-C-30508
* GTS-004623
* * * * * * * * * * * * * * * * *

BEFORE: P. M. WILLIAMS, ARBITRATOR, SOUTHERN REGION

APPEARANCES:

FOR THE POSTAL SERVICE:

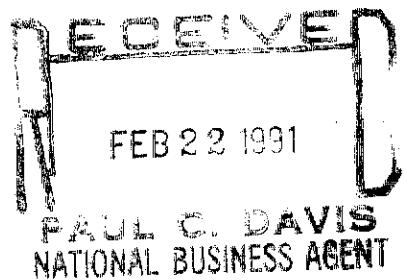
Larry Hensley, Manager, Labor Relations, Little Rock, AR

FOR THE NATIONAL ASSOCIATION OF LETTER CARRIERS:

John W. Hogue, Local Business Agent, Little Rock, AR

PLACE OF HEARING: Post Office, Paris, AR

DATE OF HEARING: January 15, 1991



DECISION AND AWARD

BACKGROUND:

The parties have no dispute over the facts. Rather they agree the grievance states the problem by alleging that the postmaster decided to change carrier's day off and reposted the grievant's route to show a different day off. They also agree the grievant didn't vacate the route or request the reposting of it.

In the past it has been the practice at the Paris post office that the senior carrier would, if he or she chose to do so, have Saturdays as his or her regular non-scheduled day.

Since late 1989, when the senior carrier opted to change crafts to accept a limited duty assignment that was available at another office, the grievant has been the senior carrier at the station. She was also the successful bidder to City Route 2, which the senior carrier had vacated when he changed crafts.

Before the postmaster unilaterally made the change in the non-scheduled days of City Route 2 to Sunday and Monday, which was effective June 16, 1990, its regular non-scheduled days had been Saturday and Sunday.

The Union stipulated that under the staffing and circumstances existing at the station the change in the grievant's day off was efficient and likely improved the operation of the station. It added however this was irrelevant because of the existing policy, which it said could only be changed as a result of negotiations for that purpose.

All interested parties appeared at the hearing where they were given an opportunity to present such evidence, through the testimony of witnesses and exhibits, as was deemed appropriate under the circumstances. Neither called a witness. Rather each agreed to the essential elements of the opening statement of the other. That is to say the Employer agreed that the practice at the station was for the senior letter carrier to have Saturday and Sunday as non-scheduled days and that the postmaster unilaterally changed the practice without negotiating with the Union over the change. It also agreed that the grievant was the senior carrier. The Union on the other put forth the stipulation recited above.

POSITION OF THE PARTIES:

National Association of Letter Carriers (Union):

The Union contended that in unilaterally changing the non-scheduled days of City Route 2 the Employer had violated Article 41 (1)(A)(3) of the National Agreement (NA). It asked that the route's non-scheduled days of Saturday and Sunday be restored. It waived its earlier request for compensation for the grievant. It requested that the grievance be sustained as amended.

United States Postal Service (Employer):

The Employer contended that it had the authority to change the non-scheduled days of a carrier employee, and that its right in that regard was made clear by Article 41 (1)(A)(6) of the NA. It asked that the grievance be denied and that the action of the postmaster be affirmed.

ISSUE: Did the Employer violate the terms of the NA and applicable rules and regulations when it unilaterally changed the non-scheduled days of City Route 2 from Saturday and Sunday to Sunday and Monday, and if so, what is the proper remedy?

OPINION:

The parts of Article 41 of the NA that have either been cited by the parties or which I find relevant here are as follows:

"Article 41 LETTER CARRIER CRAFT

"Section 1. Posting

A. In the Letter Carrier Craft, vacant craft duty assignments shall be posted as follows:

"*** 3. The existing local procedures for scheduling fixed or rotating non-work days and the existing local method of posting and of installation-wide or sectional bidding shall remain in effect unless changes are negotiated locally. ...

4. No assignment shall be posted because of a change in starting time or in non-scheduled days (except as provided in Section 1.A.5 below). No overtime payment will be made for a permanent change in starting time."

- "5. Whether or not a letter carrier route will be posted when there is a change of more than one (1) hour in starting time will be negotiated locally.
6. When a fixed schedule non-work day is permanently changed, the new non-work day shall be posted. ..."

The essential thrust of the Union's position in this case is to the effect that because for a number of years the local policy allowed the senior letter carrier to have Saturday as a non-scheduled work day (it goes without saying that Sunday is also a non-scheduled day at the station), the Employer must continue the policy in effect unless and until, in negotiations, the Union agrees it need not do so.

I understand where the Union is coming from and what it is saying. Moreover, I am able to agree that its notion has more than a small amount of plausibility. However, I nevertheless believe it relies too strongly on the precise language of §1(A)(3), rather than giving appropriate consideration to the subject matter of §1, which is "Posting", and also to the more specific subject of sub-section (A), which relates to when "vacant craft duty assignments shall be posted...".

It seems to me, and I hasten to add the record is more sketchy than I would like insofar as a comparison of City Routes 1 (#1) and 2 (#2) is concerned, that while indisputably there is a policy in effect at the station that the senior carrier will be given an opportunity to have an assignment which includes Saturday as a non-scheduled day, the import of the policy necessarily is inclusive of the fact that the policy will continue and/or exist only so long as at least one duty assignment at the station has Saturday as a non-scheduled day. And it also seems to me that in the absence of clear language in the NA to such an effect (which is the situation) the policy is not cast in stone, nor must it unalterably remain in effect until the Union agrees, in negotiations, that it may be changed.

It strikes me that if what is last said were not the case the resulting effect would be to deprive the Employer of its right to "maintain the efficiency of the operations entrusted to it", and to "determine the methods, means, and personnel by which such operations are to be conducted", which Article 3 (C) and (D) of the NA specifically authorizes. I will briefly explain below what I mean.

Here the Union has stipulated that what the postmaster did "under the current staffing and circumstances" was efficient; the implication of the stipulation being that continuation of the prior policy was less efficient. It may not be said therefore that what was done by him was either an arbitrary or an unreasonable exercise of his managerial discretion. Rather it would seem, and again I note that the record is somewhat sketchy concerning precisely how and by whom the Saturday mail was delivered before the non-scheduled day of #2 was changed, that at least one of his basic considerations was to better serve the station's customers with the existing complement of employees at a point in time when the station was a PTF carrier short, which he was endeavoring to remedy.

Returning briefly to the language of Article 41 (1)(A)(3) and (6) which seems to suggest that what happened regarding #2 was not

necessarily contractually wrong, rather the change merely brought about a need for the route to been reposted.

Based on what I know about #1 and #2 it seems to me that had #2 been reposted the strong probability exists that the grievant would not have gained any relief as a result, unless perhaps it may be said that a case could have been made for the other full time regular carrier at the station (there were but 2 working there) to somehow have been forced to give up #1 and to bid for #2. (But the rhetorical question might then be asked: If #1 did not have Saturday as a non-scheduled day [which seems to have been the case], what benefit could reposting of #2 have been to the grievant, she necessarily would have been reassigned to it?)

There is another implication to the Union's notion and I will move to it in a moment. First however it should be said that the record does not suggest that reposting and/or forcing the other carrier off of #1 was a viable possibility. Consequently, I need not consider that potentiality as a possible solution to the dilemma facing the postmaster at the time. I must note however that having stipulated that the change which was made in #2 was for efficiency, the Union necessarily assumed for itself the burden of proving (1) that negotiation on the issue at hand was required before the policy could be altered, and (2) that at any negotiation of that issue the fact that efficiency of operations was directly involved did not provide it with a compelling reason for not vigorously asserting and sticking with an unwritten seniority benefit of the senior carrier at the station.

I use the term "compelling reason" to illuminate the fact that even if the Union is correct in its notion that negotiations were required before the Employer could deviate from the disputed policy, the Union nevertheless would be in a poor position to insist upon a continuation of the policy when operational needs seemed to indicate that at least a temporary change was in order. This leads me to another point I believe needs mentioning, and it is the content of Article 41 (1)(A) (6) and its reference to a permanent change in a fixed scheduled non-work day.

I believe that in directing that a reposting must occur if a change is to be permanent the parties at the national level intended that reposting need not occur if the change is temporary, or likely to be so. Moreover, because all of §1 (A) relates to the subject of posting and/or reposting it does not seem unreasonable to me, assuming the best for Union's claim, that only if the change is permanent is the Employer required to negotiate on the issue of depriving the senior carrier of the right to have Saturday as a non-scheduled day. Moreover, in mandating reposting (negotiations) only for permanent changes it seems to me the language of subparagraph (6) negates reposting (negotiations) in a situation where the change is to be temporary.

Going now to what may have served as part of the reason for the Union's position here. I refer to the possibility that the policy did not necessarily follow or go along with a specific route assignment, but rather it tracked the senior carrier to whatever route he or she happened to be assigned as result of being the successful bidder. It is to be quickly stated that the record here makes only oblique reference that such a circumstance might have been in place at this station.

I note however that the situation existed in the station where the grievance on which arbitrator J. Earl Williams rendered a decision arose. The Case Number was S8N-3F-C-25866 (Lanior City, TN). The year was 1983. The Union cited the award to me in support its position here which is why I mention the case and the possibility of a similarity. It is important to say however that there the Union argued that the Employer had made no claim of a service need for its deviation from the similar policy. Moreover, the arbitrator specifically found that though the Employer had asserted an operational need for the change it had offered no evidentiary proof to support its contention. In view of the Union's stipulation here the factual situation in the two cases is clearly not the same, thus even if the policy tracked the grievant and not the route in this case the Lanior City case would have no precedential value here.

Under the circumstances of this record I am constrained to say I of the opinion, and so find, the Employer did not violate the terms of the NA and applicable rules and regulations when it changed the non-scheduled day of #2. The grievance, as of the date of its filing therefore should be, and the same hereby is, denied. The denial however shall be without prejudice to the Union, at its option, to re-file the grievance in the event the Employer is now able to efficiently return to the status quo ante as a result of either employing a PTF letter carrier at the station, or now being able to utilize other employees in such a way as to allow the senior carrier to have Saturday as one of her regular non-scheduled days.

On the basis of the entire record in this case the undersigned makes the following

AWARD

The grievance is denied in accordance with the opinion expressed above. However, at the option of the Union it may re-file the grievance under the conditions and in accordance with the opinion expressed above.

IT IS SO ORDERED.



P. M. Williams
Arbitrator

Dated at Oklahoma City, Oklahoma
this 20th day of February, 1991.