

REGULAR ARBITRATION

USPS - NALC

SOUTHERN REGION

C# 10430

In the Matter of Arbitration)	Case #S7N-3U-C-27345
Between)	GTS #11159
United States Postal Service)	<u>Class / Gonzalez</u>
League City, Texas)	
and)	
Branch 283)	
National Association of Letter)	Hearing File Closed:
Carriers AFL-CIO)	August 8, 1990

Before Irvin Sobel, Arbitrator of Record

Appearances:

For the National Association of Letter Carriers (NALC, Union)

Vernon Wade

President, Local 283

Houston, Texas

For the United States Postal Service (Service, Employer, Management)

Dan Heeth

Labor Relations Representative

Houston, Texas.

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JOE Z. ROMERO
NALC BUSINESS AGENT
DALLAS REGION #10

Preliminary Statement:

The hearing of the above enumerated matter was conducted pursuant to Article 9 of the parties' National Agreement (N/A). On February 23, 1990 after a first step denial on February 20, 1990 by Superintendent of Postal Operations (SPO) E. Adams, the Union filed a written appeal to step 2 contending that the Employer had violated the N/A by not providing Form 1723s on February 7, 1990, to the Temporary Supervisors (204-B's) Jaramillo and Tax. The parties unable to resolve the matter assigned it to final and binding arbitration. The hearing was conducted by this duly appointed arbitrator on August 8, 1990 at the League City, Texas Post Office. At the hearing the parties were accorded full opportunity to present witnesses for direct and cross examination and introduce such evidence and argumentation each deemed pertinent to the matter under consideration. The parties stipulated the following issue as the matter for resolution.

Did the Employer violate the National Agreement when it did not compensate Mr. Tax and Mr. Jaramillo as 204-Bs on February 2, 1990? If so, what is the appropriate remedy?

At the hearing no issues of arbitrability, timeliness, or defect fo form were raised by either party. The parties made closing statements and the hearing file was closed as of August 8, 1990.

Facts in Case:

On February 23, 1990 the Union introduced the cited grievance. Steward Barbara Gonzalez's accompanying statement stated the Union's contentions. She stated:

On February 7, 1990 at approximately 10 a.m. carriers Tax and Jaramillo were called to Postmaster's office along with SPO Adams and Supervisor Nolen. The said carriers were in craft uniforms and no 1723 was furnished to the Union that they were going to a management (or supervisor's) meeting. The meeting lasted approximately 30 minutes, Jaramillo returned to craft work but Tax met approximately 15 minutes at back dock with Postmaster and SPO before returning to assigned route.

Upon this Steward questioning Supervisor Nolen, she stated carriers were in "TRAINING".

Both these individuals have been trained for over 2 weeks. This is not the only time this has happened, and craft hours suffer because this time is charged to carrier craft instead of management.

Ms. Gonzalez requested the following corrective action:

Management provide the local Union with form 1723 showing the beginning and ending of all 204-B details. Carriers Tax and Jaramillo be paid at Higher Level pay, Tax \$.75 and Jaramillo \$.50.

In denying the grievant Management's 2nd step designee

Postmaster O. M. Escamilla stated:

Reviewing the information presented, I find no contractual violation. The Union's contention that the Acting Supervisors, 204-B's are completely trained is incorrect. Training is an on going process that may periodically require a meeting. As Postmaster, I still receive periodic training. When training occurs, higher level assignment may not be necessary. When craft employees are detailed to higher level, a completed form 1723, Higher Level assignment order, is always provided to the Union official. Grievance is denied.

Relevant Contract Provisions

Article 41 Section 1A2 - Posting

Form 1723 Notice of Assignment shall be used in detailing letter carriers to temporary supervisor positions (204-B). The Employer will provide the Union at the Local level with a copy of Form(s) 1723 showing the beginning and ending of such details.

Paragraph 417.23 Employee and Relations Manual (ELM) - Higher Grade

417.231 General Requirements

An employee who is temporarily assigned to a higher grade position must be assigned the primary on case duties and be directed to assure the major responsibilities of the higher grade position to be eligible for higher pay under the condition of this section.

Arbitrator's Discussion:

Position of the Parties:

The essence of each parties position is so well developed in their already cited statements that further amplifications under separate attribution would be redundant.

Opinion and Award:

Article 41 provides that whenever a carrier who has been designated as a temporary supervisor (204-B) is performing a supervisory function, that person must be provided with and fill out a Form 1723 in order to be compensated the additional amounts consonant with the higher supervisory status.

A number of arbitral awards including one involving the Houston area [(S1N-3U-C-39205) September 1986, Arbitrator Le Winter] as well as settlements within the same jurisdiction have established that the Form 1723 must be provided either before or concurrently with a detail as a temporary supervisor.

The issue confronted by Arbitrator Le Winter was when the Employer should issue a Form 1723 and whether it could issue it after the assignment had been completed.

However the status under the N/A of 204-B's who, as in the instant situation, are called off the floor for training or provision of information related to their supervisory responsibilities has also been in contention at the Houston Installation. Whether the Employer must sign a Form 1723 and adjust his "clock rings" and pay records accordingly when that individual is called off the floor for additional training as a 204-B was the subject of an arbitral decision by Arbitrator Elvis Stephens. As in the instant grievance the individual who raised the issue on behalf of the Union argued that the 204-B had already received at least two weeks of prior training as a 204-B.

Arbitrator Stephens' decision [(S1N-3U-C-) July 3, 1986] was primarily based upon the provision of the ELM already cited.

In essence Stephens ruled that the carrier in question was neither assigned "the primary and core duties of a supervisor" nor did he "assume the major responsibilities of the higher grade position". By admission of the grievant¹ the 204-B in question did

1 In both cases the grievants, were Union Stewards who raised the issue. The 204-B's in each case neither were a party to the grievances and did not appear at the hearings.

not give him or anyone else any instructions and throughout the period the individual concerned wore his carrier uniform. The arbitrator, therefore, given the admission that the 204-B issued no instructions, which was his basic duty as a 204-B, denied the grievance and stated, "The Union failed to prove a violation of the Agreement".

In this instant case as in the case decided by Stephens the two 204-B's, while being trained and "provided with information", were on the premises in carrier's uniforms.

The Union was unable to establish, in fact admitted that the two temporary supervisors (Jaramillo and Tax) performed no supervisory functions, issued no instructions and returned to their carrier functions at most within forty five minutes. The Employer, in fact, stated the training took less than twenty minutes.

Although the doctrine of "res judicata" was not invoked, at least formally, by the able Employer's advocate the similarities between the instant case and the one cited above decided by Stephens are striking. It would be unreasonable to require Management to fill out a Form 1723 every time it wanted to inform 204-B's regarding some matter or problem which they might have to confront while engaged in performing

their core duties, especially as when in the instant situation, the provision of information was of relatively short duration.

For all of the above reasons, the Union was unable to prove that the temporary supervisors were acting in their "core" capacity on the morning of February 7, 1990.

Award:

The Class/Gonzalez grievance of the Union is hereby denied.

Tallahassee, Florida

November 19 , 1990

This is a certified true
copy of Arbitration Award

Irvin Sobel

Irvin Sobel, Arbitrator