

REGULAR ARBITRATION PANEL

C#11011

In the Matter of Arbitration)
Between)
UNITED STATES POSTAL SERVICE)
and)
AMERICAN POSTAL WORKERS UNION,)
AFL-CIO)

OPINION AND AWARD

Nicholas H. Zumas, Arbitrator

Grievant: Nancy Flaherty

Case No.: E7C-20-C 17702/17421

Appearances:

For U.S. Postal Service: Thelma Cartledge

For Union: Linda L. Coleman

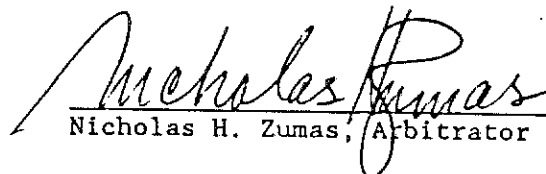
Place of Hearing: Capitol Heights, Maryland

Dates of Hearing: February 8 and July 6, 1990

Post-Hearing Responses: July 25, 1990

Award: Grievance sustained. Management is ordered to place Grievant at Level 5-Step J. Grievant is to be reimbursed for the difference between Step B and Step J. There shall be no interest on the back pay.

Date of Award: October 8, 1990


Nicholas H. Zumas, Arbitrator

STATEMENT OF THE CASE

This is an arbitration proceeding pursuant to the provisions of Article 15 of the National Agreement between United States Postal Service (hereinafter "Service") and American Postal Workers Union, AFL-CIO (hereinafter "Union").

At the commencement of the first hearing, Management asserted that the grievance was untimely and therefore not arbitrable. The Union was given an opportunity to respond in writing. After review of the response, it was this Arbitrator's finding that the dispute was arbitrable, and that a hearing on the merits be scheduled. At the July 6, 1990 hearing on the merits, testimony was taken, exhibits were offered and made a part of the record and oral argument was heard.

Grievant, a long-term employee who had resigned, returned to employment. Upon her return, Grievant was given entry level pay. The Union, on behalf of Grievant, contends that Grievant, as a reinstated employee, was entitled to be paid at the next higher step than she was paid at the time of her resignation. Management contends that Grievant was properly paid according to a Directive that reinstated employees would be paid at the entry level rate.

The parties, having failed to resolve the matter during the various Steps of the grievance procedure, referred the dispute to this Arbitrator for resolution.

ISSUE

The parties have stipulated that the question to be resolved is whether the Service violated the National Agreement when it failed and refused to place Grievant, a reinstated employee at Step J-Level 5; and if so, what should the remedy be.

STATEMENT OF FACTS

Grievant, a Distribution Clerk, was first hired on April 9, 1977. She resigned from the Service on February 20, 1987. At the time of her resignation, Grievant was a Level 5-Step I. She returned to employment on January 30, 1988, within one year from the date of her resignation. When she returned, Grievant was paid Level 5-Step B, the first step of the grade of the position.

This salary determination was based on a November 30, 1987 Directive reading:

"Regulations governing the determination of starting salaries for former employees who are reinstated are found in the Employee and Labor Relations Manual, Section 422.21a. In the past, we experienced problems from variances in starting salaries of reinstated employees, which these regulations facilitate. To alleviate these problems and control our cost per workhour,

effective immediately, all reinstated employees will be paid at the rate for the first step of the grade of the position for which they are hired."

Section 422.21a reads:

"Reinstatement. A former postal employee may be placed in the first step which is less than one full step above the highest former basic salary (augmented by any general increases since the date of separation) -- providing the new basic salary does not exceed the maximum step of the grade." (Underscoring added)

William Shane, Manager - Personnel Services at the Southern Maryland Division, was the drafter of the above quoted Directive. Shane testified that this Directive became necessary because various Managers were inconsistently applying Section 422.21a due to the "may" reference in Section 422.21a. Since that Section was not mandatory, Shane testified that Management had the option in Grievant's case to either disregard that provision and give basic Level 5-Step B, or apply the formula as set forth in the Section. Shane further testified that even though reinstated employees were given credit for prior service with respect to retirement purposes, no such credit was given for pay purposes.

The Union, on behalf of Grievant, contends that placing Grievant eight steps below what she had achieved prior to her resignation was arbitrary and capricious; that Grievant returned to employment within the one year limit; and otherwise has met all of the requirements. The Union further argues that the Directive, in effect, nullified Section 422.21a, which was impermissible.

FINDINGS AND CONCLUSIONS

After review of the record, it is this Arbitrator's finding that Management impermissibly failed to give Grievant credit for prior service.

Section 422.321c of the Employee & Labor Manual defines Creditable Service and outlines the method of determining pay for employees who are reinstated or reemployed within one year. That Section reads:

"Prior Service. Employees reinstated or reemployed to a career position within 52 weeks of separation are allowed credit (not in excess of 52 weeks) for prior service providing:

- (1) An equivalent increase was not received at the time of reinstatement or re-employment.
- (2) The prior service was not under a casual or temporary appointment."

The identical issue was considered by Arbitrator Jacobs in Case No. E4C-2D-C 2341 (Hanna). This is the only reported case provided by the parties. In sustaining that grievance, Arbitrator Jacobs held:

"The ELM at Section 422.32, referenced by the Union appears to address the subject of credit for advancement for Step increases. [Subsection c] grants a reinstated or reemployed employee with up to 52 weeks of prior service providing (1) and (2) are not applicable. Section 422.21a indicates that ...'a former postal employee may be placed in the first step which is less than one full step above the highest former basic salary...' This would indicate that [Grievant], who was only off the payroll for sixteen weeks should be given credit, up to fifty-two (52) weeks, for her prior service.

The Union is requesting that the Grievant's Salary Schedule Step be adjusted so that it would reflect a Level 5, Step J, which would have a rate of \$11.91 per hour. They reasoned that she was

on Step I when she resigned, and according to Section 422.2 of the ELM, she should have been given credit for past service and placed on the first step which is less than one full step above the highest former basic salary or Step J. According to the ELM at Section 422.321 and cross referencing that Section to Article 9, Section 2, of the Agreement, which changed the numbers to letters, she would be entitled to fifty-two (52) weeks of credit for prior service. That is the extent of the remedy ordered in this matter."

Thus, while the permissive provisions of Section 422.21a allowed Management at the Southern Maryland Division to pay employees at the entry level who have been separated for more than 52 weeks, such Directive has no application to employees, such as Grievant, who have returned to service within 52 weeks of their separation, assuming that they otherwise qualify. The Creditable Service provisions of Section 422.321c do not give Management that option for qualified employees.