C # 10899

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION	*	GRIEVANT:
Between	*	CLASS ACTION
	*	
UNITED STATES POSTAL SERVICE	*	POST OFFICE:
	*	DALLAS, TEXAS
And	*	(Spring Valley Station)
	*	CASE NUMBER:
NATIONAL ASSOCIATION OF LETTER CARRIERS	*	S7N-3A-C-31981
	*	GTS # 11399

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

APPEARANCES:

FOR THE POSTAL SERVICE:
John M. Vallie, Labor Relations Representative

FOR THE NATIONAL ASSOCIATION OF LETTER CARRIERS:
Sid Simmons, Local Business Agent

PLACE OF HEARING: Main Post Office, Dallas, TX

DATE OF HEARING: March 5, 1991

DECISION AND AWARD

BACKGROUND:

The grievance was presented at Step 1 on August 7, 1990 by the steward at Spring Valley Station. The Step 2 appeal was prepared the following day and sketchily alleged that Article 41.3-O of the National Agreement had been violated, stating that:

"*** On 6/2/90, Letter Carrier Posting 90-50 listed 2 positions as RLC assignments. ...

"The Union contends this is a violation of the National Agreement as sighted (sic). These two positions were established as Router positions.

"Corrective action requested: Re-post Job numbers 2138739 and 2138741 as Router positions. ..."

The Step 2 decision was issued on September 17, 1990, and stated in part as follows:

"*** A Step 2 meeting was held with you on August 28, 1990.

"FACTS:

"On June 2, 1990, Letter Carrier Posting No. 90-50 listed 2 positions as RLC assignments."

"UNION CONTENTIONS:

1. These two positions were established as router positions.

2. Management violated local and national agreement when router positions were posted as RLC positions.

"MANAGEMENT CONTENTIONS:

1. These 2 jobs were not ablolished (sic). They were vacated when employees bid on other jobs.

2. Management has the right to post vacant positions based on the needs of the service.

"REASONS FOR DENIAL:

"Article 3 gives management the right to maintain the efficiency of the operations entrusted to it and determine the methods and means by which such operations are to be conducted.

"There was no contractual violation.

"Grievance is denied.

"Time limits were extended by mutual agreement. ..."

The Appeal to Step 3 form contained the same language as had the Appeal to Step 2. The Step 3 decision stated in part as follows:

"*** Based on information presented and contained in the grievance file, the grievance is denied. This case does not involve abolishment since the assignments in question were not encumbered. The changes made in the vacant assignments before the posting were proper and do not violate the National Agreement. ..."

The grievance was referred to the DALLAS AREA RESOLVEMENT TEAM but could not be resolved. It was then referred to arbitration and in due course assigned to me for decision.

All interested parties appeared at the hearing where they were given an opportunity to present such evidence, through exhibits and the testimony of witnesses, as was deemed appropriate under the circumstances. All witnesses were placed under oath and were cross-examined by the opposing party. In lieu of closing statements the parties submitted post hearing briefs within 14 days after the date of the hearing. The record was declared closed on March 22, 1991.

POSITION OF THE PARTIES:

National Association of Letter Carriers (Union):

The Union contended that it was not notified, in writing or otherwise (as required by Article 41.3 of the National Agreement [NA]), when 2 Router positions were "reverted or abolished" by the Employer after

the occupants of those positions bid for reserve letter carrier status. It claimed the lack of notice of the reversion or abolishment of the position necessarily served as their continuing as open positions which should be posted for bid. It asked that the grievance be sustained.

United States Postal Service (Employer):

The Employer contended that by the Spring of 1990 the station's 8 auxilary routes had grown to near 8 hour routes and operational changes were undertaken to make certain adjustments to those routes in the interest of efficiency. It said that as a result of router duties being subject to specific scheduling station management concluded that current needs could best be served if it created 2 reserve letter carrier (RLC) positions, which was done. It said 2 carriers who had previously bid to be routers and were occupying those positions were the successful bidders for the newly created RLC positions and both were so assigned. It said the change in assignments improved the efficiency of the station by giving it added flexibility, and at the same time did not lessen the number of auxiliary routes. It also said that what had been done was identical to what had taken place in the Dallas area over the years therefore the grievance should be denied, which it requested that I do.

ISSUE: Did the Employer violate the terms of the NA and/or the Local Memorandum of Understanding when it failed to post for bid at the Spring Valley Station the router positions formerly held by the two carriers who were the successful bidders to the newly created reserve letter carrier positions at the station, and if so, what is the proper remedy?

OPINION:

Article 41.3-O of the NA provides as follows;

"O. The following provisions without modification shall be made a part of a local agreement when requested by the local branch of the NALC during the period of local implementation; provided, however, that the local branch may on a one-time basis during the life of this Agreement elect to delete the provision from its local agreement.

"When a letter carrier route or full-time assignment, other than the letter carrier route(s) of full-time duty assignment(s) of the junior employee(s), is abolished at a delivery unit as a result of, but not limited to, route adjustments, highway, housing projects, all routes and full-time duty assignments at that unit held by letter carriers who are junior to the carrier(s) whose route(s) or full-time assignment(s) was abolished shall be posted for bid in accordance with the posting procedures in this Article.

"That provision may, at the local NALC Branch's request during implementation, be made applicable (including the right to delete it) to selected delivery units within an installation. For purposes of applying that provision, a delivery unit shall be a postal station, branch, or ZIP code area. Any letter carrier in a higher level craft position who loses his/her duty assignment due soley to the implementation of that provision shall be entitled to the protected salary rate provisions (Article 9, Section 7) of this Agreement."

The LMU, Item 22, contained language that is the same as the second paragraph of ¶ 0 of Section 3, quoted above. The record does not show when the language was added to the LMU. My research discloses however that ¶0 of Section 3, Article 41, in its present form, actually became a part of the 1978-81 NA, and that in the 1975-78 NA the language was slightly different but of the same general thrust. In all events, dating back to at least 1978 the benefit seems to have been available to letter carrier employees.

The router classification did not become a part of the NA until 1987, when it did so as a result of a Memorandum (Memo) being attached to the NA.

The Memo concerning "Routers" contained the following language:

"Re: Router, Carrier Craft

1. Router is a level 5 city letter carrier assignment.

2. Router duties consist of casing, routing and sequencing of mail for a specific group of routes. Assignments may include specific street duties as reflected in the assignment.

3. Router assignments shall be formed and bid as full-time duty assignments. Part-time router work assignments may be utilized consistent with 4 below.

4. The number of full-time router assignments shall be determined consistent with Article 7, Section 3 of the National Agreement.

5. The notice inviting bids shall include a listing of routes for which router's duties will be performed by the posted assignment.

6. A router may be temporarily moved from his/her bid assignment only in 'unanticipated circumstances,' pursuant to the provisions of Article 41, Section 1.C.4. of the National Agreement.

7. A level 5 replacement router my be utilized where practical to cover the nonscheduled days of other router assignments.

Date: July 21, 1987."

Article 7, Section 3 referred to in ¶4 above provides as follows:

"Section 3. Employee Complements

A. The Employer shall staff all postal installations which have 200 or more man years of employment in the regular work force as of the date of this Agreement with 90% full-time employees.

B. The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations."

"C. A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six month period will demonstrate the need for converting the assignment to a full-time position.

D. Where a count and inspection of an auxiliary city delivery assignment indicates that conversion to a full-time position is in order, converversion will be made. ..."

The record does not reflect it but my experience with these parties tells me that the router classification was created to provide a specific need to meet a specific but nevertheless compelling problem which ultimately would be significantly reduced, if not entirely resolved in the next few years as the anticipated automated sorting of the mail came to fruition.

I shall not lengthen this discussion by going into significant detail about my notions in matters relating to routers. Rather I shall only say that I am not persuaded that either party at the national level looked upon the classification as being a permanent one or that once created it was to continue into perpetuity, which this Union seems to believe it must otherwise this grievance would not have been filed as a result of what happened here.

Stated simply, the station had 8 auxiliary routes and 3 router bid assignments. Carrier Newhouse worked Job # 2138739 (a router job) and spent an hour each day casing 4 different routes plus giving approximately an hour of street assistance on 3 routes each day, filling out the remainder of 8 hours on collection duties. Carrier Henderson worked Job # 2138741 (also a router job), and had similar but not identical casing and street assistance duties, plus doing collection duties too. Each carrier bid on Posting No. 90-50, both were successful and both were awarded the RLC jobs. The Union does not object to their receiving their new assignments. Rather its complaint is based on the notion that their prior positions were neither filled by similar bidding processes, nor abolished or reverted, or at least it was not notified of the latter events happening. Moreover, presumably because it was not so noted it claims the remedy for this contractual and technical violation lies in requiring that bids for the so-called 2 vacant router positions be posted.

In a case such as this the Union has the burden of showing a contractual violation not only of it not being notified that the 2 router positions were abolished or reverted, which the Employer admits it did not do, but it (the Union) must also show that the router positions at the station either were or are so closely akin to the "letter carrier route or full-time assignment" that is referred to in the middle paragraph of Article 41, Section 3-O that it must be said such are to be treated the same insofar as being permanent positions is concerned.

Other than making the allegation that that is the situation the Union made no proof that such was indeed a fact, or likely so. To the contrary its position was limited to its stating and repeating a time or two what has already been attributed to it.

In the absence of the Memo making reference to the fact that the coverage of Article 41, Section 3-O was to be applicable to Routers and because it (the Memo) was added many years after ¶0 was included in the NA I am not inclined to believe that ¶0 was intended to have application to this kind of situation. However, even if that were not true I nevertheless would not be inclined to sustain the grievance merely because the Employer failed to notify the Union that it was abolishing and/or reverting the two controversial positions. I say this because I am persuaded the Employer has such a right (albeit notice was to be given to the Union) in this sort of circumstance. Moreover, if I were to require that the notice be given at this late date it seems to me that by the time the successful bidder could be determined and be put in place, assuming the grievance were to be sustained, the entire matter would be moot and of no real benefit to any carrier employee. Thus such a remedy would be an exercise in futility even though a contractual violation may have occurred, which is far from a proven certainty.

I believe, and so find, there is no contractual basis upon which this grievance may be sustained, I therefore am constrained to deny it.

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

AWARD

The Employer did not violate the terms of the NA or the LMU when it failed to post the 2 Router positions for bid at Spring Valley Station.

The grievance is denied in accordance with the opinion expressed above.

IT IS SO ORDERED.

P. M. Williams
Arbitrator

Dated at Oklahoma City, Oklahma
this 11th day of June, 1991.