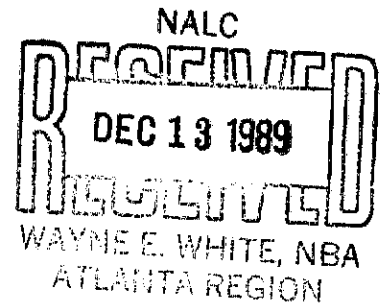


C# 89569



REGULAR ARBITRATION PANEL

In The Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER
CARRIERS

) GRIEVANT: CLASS ACTION

) POST OFFICE: St. Petersburg, FL

) CASE NO. S7N-3W-C 22758

BEFORE: Robert G. Williams, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Gerald E. Keegan

For the Union: Johnny W. Bournon

Place of Hearing: St. Petersburg, FL

Date of Hearing: November 2, 1989

AWARD:

The Grievance is hereby sustained with respect to an unassigned regular being temporarily transferred from one section to another to fill an opening in another employee's assignment. Management may assign an unassigned regular carrier to any vacant duty assignment for which there was no senior bidder in the same craft and installation. It is denied to the extent the Grievants could not prove Management would have used the Grievants on an overtime basis in lieu of PTF employees from the Zone-10 So. Section to do the Zone-9 Section work.

Date of Award:

December 8, 1989

Robert G. Williams

I. BACKGROUND

This case arose under the National Agreement effective from July 21, 1987 until November 20, 1990. Management transferred an unassigned carrier from his work section to another section in order to avoid overtime in the latter work unit. The Grievants who were available on the OTDL in the latter work unit protested this action, filed their standard form grievance on June 29, 1989 and properly processed it to this arbitration. An arbitration hearing was held on November 2, 1989 at which time the parties stipulated certain undisputed facts, introduced their evidence, examined all witnesses and argued their respective positions. The issue presented at the hearing was as follows:

Did Management violate the Agreement when it transferred an unassigned carrier from Zone 10-So Section to Zone-9 Section to avoid paying overtime to the Grievants available on the Zone-9 OTDL and, if so, what shall be the remedy?

Following the oral summations of the parties the hearing was closed.

II. FINDINGS

The Crossroads Station in the St. Petersburg, Florida installation is divided into three sections known as zones.

They are Crossroads Station Zones 9, 10-So.and 10-No. On or about April 26, 1989, three (3) employees including employee LeBlanc were notified they were being excessed out of Zone-9. Unassigned Regular Carrier LeBlanc was reassigned to Zone-10 So. He worked in his new zone until May 25, 1989 as the junior unassigned Regular Carrier. On the 25th he was transferred back to Zone-9 to fill an open assignment for a day. He worked eight (8) straight time hours plus two (2) hours of overtime and .35 units of penalty time in Zone-9 on the 25th. The Grievants were employees on the Zone-9 overtime desired list that were available to work the hours worked by the transferred employee on the 25th. They claim they should have worked these hours on an overtime basis. In the meantime, back in Zone-10 So., PTF Carriers worked their straight time hours and some overtime on a non-volunteer basis.

III. POSITIONS OF PARTIES

The Grievants contend employee LeBlanc was assigned to Zone-10 So.and should have worked his assignment. He was excessed out of Zone-9 to Zone-10 So and should have remained there under the Agreement. His assignment was Zone-10 So., not Zone-9.

Management contends, on the other hand, it had a right

to transfer employee Le Blanc from Zone-10 So. to Zone-9 to avoid paying overtime in Zone-10 So. as well as use employee LeBlanc's experience to fill a vacancy with an employee already knowledgeable about the route. The PTF employees from Zone-10 So. were better utilized there than in Zone-9. Management simply followed the economical and efficient course of action.

IV. DISCUSSION

The relevant provisions in the National Agreement applicable to this case include the following:

ARTICLE 12 PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENT

C. Special Provisions on Reassignments

4. Reassignment Within an Installation of Employees Excess to the Need of a Section

a. The identification of assignments comprising for this purpose a Section shall be determined locally by local negotiations. If no Sections are established by local negotiations the entire installation shall comprise the Section.

b. Full-time employees excess to the needs of a Section, starting with that employee who is junior in the same craft or occupational group and in the same level assigned in that Section, shall be reassigned outside the Section but within the same craft or occupational group. They shall retain their seniority and may bid on any existing vacancies for which they are eligible to bid. If they do not bid, they may be assigned in any vacant duty assignment for which there was no senior bidder in the same craft and installation....

(Emphasis Added)

ARTICLE 41 LETTER CARRIER CRAFT

Section 1. Posting

A.7. An unassigned full time carrier may bid on duty assignments posted for bids by employees in the craft. If the employee does not bid, assignment of the employee may be made to any vacant duty assignment for which there was no senior bidder in the same craft and installation.

C.4. The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment....

Section 2. Seniority

A. Coverage

1. This seniority section applies to all regular work force Letter Carrier Craft employees when a guide is necessary for filling assignments and for other purposes and will be so used to the maximum extent possible.

(Emphasis Added)

These provisions are controlling in this case.

Under Article 3, Management Rights, Management has the right and obligation to design the organization necessary to collect, sort, distribute and deliver the mail. In designing the appropriate organization, Management under the Agreement must define some organizational units as "installations" and within such units smaller organizational units are identified as "sections". Within "sections" Management identifies jobs as "assignments." In the event a dispute exists regarding an organizational unit as a "section" it must be resolved by local negotiations required by Article 12.5 C.4.a. If no sections are identified within an installation, the installation becomes a section for the purposes of the Agreement.

The terms "installation" and "section" are important words for understanding the seniority system under the

Agreement. They define the organizational units in which an employee earns seniority and the organizational units for exercising their seniority. The principles of seniority are set out in Article 12, but these principles are implemented in the various craft articles. See Article 12.2.A. For the Letter Carrier Craft, seniority begins from the date of appointment to the craft. Seniority is accumulated in an installation. It may be exercised to claim job rights to assignments, overtime work and the like. In other words, employees earn installation seniority and exercise it to move or avoid moving between sections in that installation and to claim assignments within a section. Management designs the organizational structure and employees use their seniority, skill and abilities to claim work available in sections within an installation.

The National Agreement, however, does not extend this seniority concept to all employees. The craft distinguishes between regular carriers and part time carriers and their seniority. Article 41.2 B.1. and 2. provide:

Section 2. Seniority

B. Definitions

1. Seniority for bidding on preferred...duty assignments... shall be restricted to all full-time

regular city letter carriers.

2. Part-time regular letter carriers are considered to be a separate category and seniority for assignment and other purposes shall be restricted to this category.

In other words, the parties have adopted two seniority systems, one for regular carriers and another for part time flexible (PTF) carriers. Aside from due process and equal protection problems with this dual system, it requires the coordination of two inconsistent systems under the Agreement. It complicates the administration and application of the Agreement. Therein lies the problem in this case.

On May 25, 1989, Management was faced with filling some assignments in the Zone-10 So. Section and an assignment in the Zone-9 Section. A Regular Unassigned Carrier (Employee LeBlanc) and several PTFs were available from the Zone-10 So. Section. The Grievants were available from the OTDL in the Zone-9 Section. Various options were available to Management. They decided to fill the Zone-9 Section assignment with the unassigned carrier from the Zone-10 So. Section. The Zone-10 So. Section assignments were filled by PTF Carriers from the Zone-10 So. Section. The Grievants from the Zone-9 Section OTDL claim they should have worked the open assignment in the

Zone-9 Section. This claim raises the issue in this case. Did Management violate the Agreement when it temporarily transferred an unassigned regular carrier from one section to another? Clearly, Management had no right to temporarily transfer such an unassigned regular. Article 12.5.c.4.b. provides in reference to full-time carriers excessed to another section that they may bid on existing vacancies. Then it provides:

....If they (excessed carriers, unassigned carriers) do not bid, they may be assigned in any vacant duty assignment for which there was no senior bidder in the same craft and installation....

Article 41 includes similar language. Article 41.1.A.7 after referring to the right of unassigned full-time carriers to bid on vacancies provides that:

....If the employee does not bid, assignment of the employee may be made to any vacant duty assignment for which there was no senior bidder in the same craft and installation.

Under both Article 12 and 41 Management has the right to assign an unassigned regular to any assignment in an installation that had no senior bidder. A vacant assignment is a term of

art under this agreement. It refers to assignments with no employee regularly assigned to it for a duration or indefinitely. It is different from an open assignment which has an employee assigned to it, but that employee is absent or temporarily unavailable for some reason. The latter assignment is open temporarily, but is not vacant. Under Article 12 and 41 Management has the right to assign an unassigned regular employee to a vacant assignment, but not to a temporarily open assignment. The Agreement simply does not have a general temporary transfer clause for regular carriers. Specific language must be found to permit such personnel changes. If Management could temporarily transfer regular carriers in this manner, they would be treated just like PTF carriers. Under the Agreement, PTF carriers have few rights. They may be transferred anywhere in an installation at Management's discretion, it appears. Nevertheless, in this case Management should not have transferred employee LeBlanc from the Zone-10 So. Section to the Zone-9 Section to fill a temporary opening.

Does this result mean the Grievants would have been called to perform the open work in Zone-9 Section on an overtime basis. Not necessarily. Management could have assigned the PTF carriers from the Zone-10 So. Section to the Zone-9

Section work or worked the Grievants on overtime. The parties have not cited nor has this Arbitrator found any provisions restricting Management's right to assign PTF employees anywhere in an installation including transferring them from one section to another. Management could have used the Zone-10 So. Section PTF employees to work in the Zone-9 Section and not use the Grievants from the Zone-9 Section overtime desired list. On the other hand, Management could have concluded the PTF employees were not sufficiently experienced to do the work so the Grievants would have been called on an overtime basis. The Grievants have the burden of proving that Management would have used them, not the PTF carriers. Of course, they can't prove Management would have followed one course of action or another. They would have to guess which is no proof at all, just speculation. If PTF employees had the same rights as regular carriers, they could not be moved from one section to another to fill a temporary opening. Unfortunately, these Grievants suffer one of the consequences of maintaining dual seniority systems.

V. AWARD

The Grievance is hereby sustained with respect to an unassigned regular being temporarily transferred from one

section to another to fill an opening in another employee's assignment. Management may assign an unassigned regular carrier to any vacant duty assignment for which there was no senior bidder in the same craft and installation. It is denied to the extent the Grievants could not prove Management would have used the Grievants on an overtime basis in lieu of PTF employees from the Zone-10 So. Section to do the Zone-9 Section work.

Robert L. Williams