

C#03633

IN THE MATTER OF THE ARBITRATION BETWEEN:)
United States Postal Service)
and)
National Association of Letter Carriers)
AFL-CIO, Branch 283)

Opinion and Award

in

SIN-3U-C 14096
A. Guillory (Class)
Houston, Texas

ARBITRATOR:

J. Fred Holly

HEARING DETAILS:

Date: July 12, 1983
Place: Houston, Texas

POST HEARING BRIEFS:

Date of Submission: August 1, 1983

APPEARANCES:

For the Employer:

Charles Gonzales, Labor Relations Representative

For the Union:

Prissy Grace, Local Business Agent

ISSUE:

The stipulated issue follows:

Did the Postal Service violate the National Agreement by assigning a T-6 Carrier outside his bid assignment? If so, what is the proper remedy?

BACKGROUND:

On September 18, 1982, T-6 Carrier, T. Quinters, was moved by supervision from his brace (routes 2207, 2217, 2235, 2215 and 2202) to serve route 2214. On the morning of the 18th Management received a sick call from a T-6 Carrier who was assigned to carry route 2217 on that date. Thereupon, the Superintendent of Station Operations approached Mr. Quinters and asked him if he would mind carrying the absentee's route. Mr. Quinters agreed to do so. At that point in time Mr. Quinters had completed casing his own route (2217). He then cased and carried the absentee's route (2214). Route 2217 was carried by PTF Carrier Cisneros.

The subject grievance was filed in protest of the assignment of Mr. Quinters to a route outside his brace. The grievance requested a cessation of the "practice" and the granting of administrative leave to PTF Carrier Cisneros. At the hearing the latter claim was withdrawn by the Union advocate.

PERTINENT CONTRACT PROVISIONS:

Article 41, Section 1, C 4 of the National Agreement provides:

4. The successful bidder shall work their duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to T-6 and utility assignments, unless the local agreement provides otherwise.

The Local Memorandum of Agreement at Supplemental Agreements A, 10 provides:

10. T-6 and utility carriers shall work their duty assignments as posted and awarded during installation-wide bidding.

UNION CONTENTIONS:

The major contention of the Union is that Item A 10 of the Local Agreement uses the strongest possible language in providing that T-6 Carriers shall work their duty assignments as posted and bid. This provision contains no exceptions, and it was deliberately worded by the negotiators to omit the "unanticipated circumstances" language contained in Article 41, Section 1, C 4 of the National Agreement. Further, says the Union, if the Arbitrator agrees that unanticipated circumstances may give supervision the right to move a T-6 from his/her bid assignment such would be inapplicable here since true unanticipated circumstances did not exist. The supervisor who made the move was unable to "explain anything that was sudden, unusual and not of a recurring nature." The fact is that this was a "normal" response of Management since this was the third time during the month of September 1982 that this same T-6 had been moved from his brace.

Next, the Union contends that it was unnecessary to move the T-6 to fill the vacancy since other "legal" options were available. A part-time employee could have been assigned to the vacant route. PTF Carrier Cisneros could have cased and carried the vacant route and returned to the Station in time to make his assigned collection run. Also, assistance, if necessary, could have been obtained from employees on the overtime desired list.

Moreover, says the Union, no significance can be attached to the Employer contention that the T-6 volunteered for the disputed assignment. There is nothing in the Local or National Agreement that sanctions such a voluntary change.

Finally, the Union challenges the Employer position that the issue is moot since the practice has been changed. The Union must police the Agreement, and it has no assurance that the Employer has changed the practice. A favorable arbitration award is necessary to guarantee its demise.

EMPLOYER CONTENTIONS:

The Employer contends that Management's action in this case was permissible under the provisions of Article 41, Section 1, C 4 of the National Agreement which allows temporary changes in assignment. It further provides that such changes may be required by unanticipated circumstances, and the same rule applies to T-6s "unless the Local Agreement provides otherwise." The Employer then asserts that "underlying circumstances" necessitated the change in the disputed assignment. When the sick call was received, all other Carriers had assignments with the exception of PTF Cisneros, who was not scheduled to report until 4:30 p.m. to make a collection run. Moreover, Mr. Cisneros was unable to report earlier than 10:00 a.m. Hence, he did not have time to case and carry the vacant route and meet his 4:30 p.m. assignment. Moreover, the vacancy

was unanticipated and the "practice" was not a usual one. In fact, the practice has been abandoned and this renders the issue herein moot.

Moreover, says the Employer, the Union's requested remedy is inappropriate. To hold that T-6 Carriers and all other full-time Carriers will carry their bid assignments, would be violative of Article 41, Section 1, C 4 of the National Agreement which states that unanticipated circumstances may require temporary changes in assignment.

Finally, the Employer contends that the Union improperly raised the applicability of the Local Memorandum for the first time at the hearing. Since this consideration was not addressed or presented during the grievance process, it is now estopped from presenting it in arbitration. Moreover, if the Union had expressed this concern at Steps 2 or 3 Management would have considered it to be an interpretative issue and would have referred it to Step 4 of the grievance procedure under the provisions of Article 15, Section 4, B 5 of the National Agreement.

DISCUSSION AND FINDINGS:

This grievance must be sustained for either one of two reasons. First, Article 41, Section 1, C 4 provides that a successful bidder shall work his/her duty assignment unless unanticipated circumstances may require a temporary change in assignment. The Employer, as previously noted relies heavily on this language and contends that the disputed temporary assignment was required by unanticipated circumstances.

The only unanticipated circumstance revealed by the record is an unanticipated absence which was made known on the morning in question. Unanticipated absences of this nature occur in the Postal Service with considerable frequency and Management is fully experienced in covering such vacancies. In other words, such a vacancy in and of itself hardly constitutes a circumstance of such proportions to justify the invocation of emergency procedures which would suspend basic contractual provisions. More to the point, however, is the fact that under the National Agreement, unanticipated circumstances do not automatically sanction a temporary change in assignment. The clear wording of the clause is that such circumstances may require a temporary change in assignment. This is permissive language, and it contemplates that Management will order such a temporary change only if other alternative means are unavailable or unworkable, the temporary assignment being a matter of last resort.

It is clear from the evidence that supervision did not seek to fill the vacancy by surveying alternative solutions. It took the easy course and did what it had twice done previously in the same week of this action. Such actions meet neither the letter nor the spirit of Article 41, Section 1, C 4 of the National Agreement. To Management's credit, however, is the fact that it has recanted since September 1982 and T-6 Carrier assignments at the Station are no longer being temporarily changed.

Secondly, the Local Memorandum of Understanding speaks unequivocally on this issue. It holds that T-6s "shall work their duty assignments as posted and awarded during installation-wide bidding." This language is mandatory and no exceptions to it are enumerated in the Memorandum. Moreover, the negotiators of the National Agreement provided in Article 41, Section 1, C 4 that the Local Agreement might contain provisions different than those set forth in the National Agreement. This clearly means that the Local Agreement can go beyond the provisions of Article 41, Section 1, C 4 of the National Agreement and the local provisions will be honored. Hence, the quoted provision of the Local Memorandum prohibits that which was done in the instant case.

It may be true, as the Employer contends, that the issue is moot in view of Management's recantation. I am unwilling to dismiss the grievance on this ground, however, since the Union has no assurance that the "practice" will not be reinstituted at some future date by some subsequent Manager. A positive ruling will put an end to the matter.

Finally, there is nothing in the record to prove that the Union did not raise the issue of the applicability of the Local Memorandum prior to the hearing. Moreover, the Employer did not raise the defense in the hearing and addressed it only in the post hearing brief. Therefore, this defense is not available to the Employer.

AWARD:

The Arbitrator hereby Awards as follows:

The Postal Service violated the National Agreement and the Local Memorandum of Understanding by assigning a T-6 Carrier outside his bid assignment. The Employer shall desist in such action in the future.

Knoxville, Tennessee
August 5, 1983


J. Fred Holly, Arbitrator