

REGULAR ARBITRATION PANEL

C # 09910

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-GIO

GRIEVANT: Class Action

POST OFFICE: St. Petersburg, FL

CASE NO: S7N-3W-C 23248

BEFORE: James F. Searce, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Angela Ferguson, Labor Relations Rep.
(Presenting)

For the Union:

J. D. Jewell (Witness)

Place of Hearing:

Johnny W. Bourlon, Pres. Branch 1477
(Presenting) R. Renshaw (Witness)
MPO, St. Petersburg, FL

Date of Hearing:

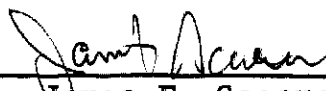
November 21, 1989 (Briefs followed)

AWARD:

The grievance is denied.

Date of Award:

March 10, 1990


James F. Searce

BACKGROUND

According to the record presented, on or about April 21, 1989 the Service posted for bid Reserve Letter Carrier Position #342 with duty hours of 0001-0830 (Monday) and 2200-0630 (Tuesday-Saturday). An objection apparently was raised by the Union, whereupon the bid was taken down and held in abeyance pending discussions with the Union. On May 16, 1989 the bid was reactivated and effectuated May 20, 1989. By date of May 24, 1989 an unfair labor practice charge was filed by the Union with the National Labor Relations Board contesting the Service's actions. Time limits on filing this grievance apparently were held in abeyance. By letter dated June 30, 1989 the NLRB deferred further proceedings on the charge in favor of arbitration under the terms of the Agreement.

By date of June 21, 1989 the instant grievance was effectuated protesting the Reserve Carrier position, contending instead that a "Night Router" position should have been posted and demanding that such adjustment be made. Inability of the parties to adjust differences in this regard in the other Steps of the grievance handling procedure now brings it to this arbitration proceeding for review and disposition.

POSITION OF THE UNION

The Service has improperly put into affect a Reserve Letter Carrier position who essentially performs the same duties as a Night Router, except that such employee is not assigned to a specific set of routes as required by the router memo of understanding, works without instruction or direction and is not obliged to maintain records of work

performed. The use of such position affords the Service the opportunity to hide overburdened routes. The incumbent of such position is also being used to perform the Night Router's duties one night per week. There has never been a Night Reserve Letter Carrier at this facility and the Service is thus in violation of established past practice. The Service violated Article 5 of the Agreement and Article 41, Section 3.M when it failed to discuss this matter with the Union. It is in violation of Article 41, Section 1A.1 by the creation of a Night Reserve Letter Carrier -- a position not provided under this Section of the Agreement. Except for the night when the Night Reserve Letter Carrier relieves the Night Router, he is being used as a PTF Carrier. The manner in which the Service has used the improper position foregoes its obligations under Part 122 of the M-39 Handbook relative to scheduling a carrier; there are no carrier supervisors on duty at that time. The Service should be directed to revert the Night Reserve Letter Carrier position and post a bid for Router.

POSITION OF THE SERVICE

Contrary to the Union's claim, the disputed reserve position does not perform the same duties as a Router; it covers a broader scope of duties. This is precisely why a reserve position was used. The incumbent of this position performs the same as any of the other 90 or so Reserve Carriers in the St. Petersburg postal system. Use of a Reserve Carrier at night relieves further congestion on days and allows for an unencumbered work environment for the affected

employee. Nothing in Article 41 or elsewhere in the Agreement prohibits the Service from posting an additional Reserve Carrier position; no consultation with the Union is required in doing so. The Service is not precluded from taking such action merely because it may not have had a Reserve Carrier so assigned previously. The mere fact that the disputed reserve carrier position may not be in a status to deliver a route does not alter this being a letter carrier position under Article 41. The Union can demonstrate no violation of the Agreement.

CITED/RELEVANT PROVISIONS OF THE AGREEMENT AND RELATED DOCUMENTS

AGREEMENT

Article 3 - Management Rights*

Article 5 - Prohibition of Unilateral Action*

Article 19 - Handbooks and Manuals*

Article 41 - Letter Carrier Craft

Section 1. Posting

A. In the Letter Carrier Craft, vacant craft duty assignments shall be posed as follows:

. . . .

All city letter carrier craft full-time assignments other than letter routes, utility or T-6 swings, parcel post routes, collection routes, combination routes, official mail messenger service, special carrier assignments and night routers, shall be known as full-time Reserve Letter Carrier duty assignments. The term "unassigned regular" is to be used only in those instances where full-time letter carriers are excess to the needs of the delivery unit and not holding a valid bid assignment.

. . . .

*Not reproduced here for sake of brevity.

Router Memorandum of Understanding (Addendum)

Re: Router

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 posting.
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 may be utilized where practical to cover the nonscheduled days of other router assignments.

Date: July 21, 1987

(Jt Ex 1)

LOCAL MEMORANDUM OF UNDERSTANDING

11. A router will work the bid assignment as posted until completion of all router reference mail or router reference time for that router assignment, as shown on the router control form and PS Form 1840. A router may not be moved from the bid assignment except in emergency situations as referred to in Article 3.F of the National Agreement. If there is insufficient router reference mail for a full tour of duty (8 hours), upon completion of the available router reference mail the router may be assigned additional duties to insure a full eight hours work, or be offered the option of using annual leave or leave without pay (LWOP) for completion of the tour of duty.

(Jt Ex 4)

ROUTER PROJECT GUIDELINES*

(Jt Ex 3)

MANAGEMENT OF DELIVERY SERVICES (M-39)*

M-41 HANDBOOK*

THE ISSUE

Did the Service violate the Agreement, related regulations and understandings when it established and filled a bid position for a Reserve Letter Carrier with night work hours; if so, what is the appropriate remedy?

DISCUSSION AND FINDINGS

The Union has presented extensive record and arguments in support of its claims in this case. Essentially, its position rests upon three premises: the Service has never assigned a Reserve Carrier as was done in this case and thus is foreclosed from doing so by prior, established practice; no discussion was held with the Union prior to the decision to establish the assignment; the Service is barred from effectuation of the position by the Agreement. The Union opts to label the disputed bid as a "Night Reserve Carrier Position;" The Service merely refers to it as a Reserve Carrier -- the same as the other 90 or so in the St. Petersburg postal system. The Union concedes that if the disputed position had been established for a Reserve Carrier with day hours as is the case for others, no dispute would have arisen. Thus, it is the novel hours for the reserve bid that is at issue here.

*No reproduced here for sake of brevity.

Insofar as the Union's position on past practice is concerned, Article 3 recognizes that the Service retains the right to determine the "methods, means and personnel" by which functioning of postal operations is to take place. (This, of course, is subject to the caveat that doing so does not violate other provisions of the Agreement.) It is inappropriate to equate a privilege or benefit that has taken substance outside of the terms of the Agreement (and which meets the well-established and generally accepted criteria for a past practice) with so basic a decision-making as the determination of how many employees and their work schedule. In essence, I find no substance to the claim that the Service was somehow barred by the fact that it may not have used a Reserve Carrier as in this case before.

The Union also asserts that the Service was obliged to discuss this "new" assignment prior to its effectuation. In point of fact, the Service did, although apparently not before the Union filed its original unfair labor practice (ULP) with the National Labor Relations Board.* Per the Service, it felt no obligation to discuss this matter because it perceived its actions as no different from other Reserve Carrier positions established. Whether or not it is found that a violation occurred in this action depends upon whether it is found that the Service otherwise violated the Agreement or other accords and regulations. Such discussion will follow.

*Per the Union the original charge was withdrawn when the Service agreed to discuss this matter; a second charge was filed when the Service later executed the bid. It apparently is this second charge that was deferred under the "Collyer Doctrine."

It is understood that the position of "Router" arose out of a need to stabilize the carrier route system: routes would become overburdened due to increased growth; letter carriers -- Routers -- would be assigned to either assist the bidholder in casing the route and getting such mail ready for street delivery, or assist in street delivery, or both. (Presumably, this relieved the need to constantly redefine and redraw the routes and to develop and learn new schemes.) Routers were given a bid assignment just as any other letter carrier, but such assignments were to assist in the casing of specific routes and only when, or if, Routers completed such bid assignments could they be diverted to other duties.

Such was the case here. The Night Router has a string of 16 specific routes for which he was obligated to case available mail. There were, however, twice that many routes and, per the Service, the Reserve Carrier could be used to case mail on those routes, as well as perform other, unspecified duties including assisting the Night Router if he was overburdened. Apparently, the job descriptions were identical for both Reserve Carrier and Router. The substantive difference is that the Router's scope of work is defined and limited* by the carrier routes he/she is assigned to assist whereas the Reserve Carrier is not. Both, however, are full time, bid carrier positions. Per the Service, it was just such flexibility that it had in mind when the reserve position in dispute here was established. The Union does not

*Unless such work is unavailable or constitutes less than an eight-hour tour; whereupon, routers may be assigned as needed.

dispute that Reserve Carriers are used on days to perform duties similar to Routers.

The Union cites Article 41, Section 1A1 in support of its claim that the Service cannot name a Night Reserve Letter Carrier position, pointing out that no such job is identified in this contract provision (See p. 4 herein). (To reiterate, the Service contends no such "night" position was posted or bid -- only a Reserve Letter Carrier position.) If the Union's literal application of Article 41, Section 1A1 is followed, the Service could not utilize Routers other than at night, since this provision identifies only "night routers;" yet, the Service asserts (and the Union does not refute) that there are 15-20 other Routers used in the St. Petersburg postal system (but only one at night) and the fact that relevant regulations and guidelines speak to Routers assisting in covering street duty attests to the intent of the parties to use such classification on all tours, as needed. Both Routers and Reserve Letter Carriers are bid positions; the distinguishing difference between them is that a Router is assigned a specific string of routes to service and cannot be diverted from such assignment until/unless such work is completed. The Reserve Carrier can be used as needed so long as doing so does not violate the rights of the other bid assignments. In this instance, Reserve Carriers on nights cannot be used to decrease the work on the assigned routes of the Router or in lieu thereof; to do so would violate such assignment. This does not preclude such use to facilitate the Router in meeting the obligations of his position, however.

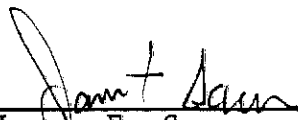
That is, if the Router requires such assistance to complete casing duties within the tour involved or to cover such assistance in his/her absence. The Service disdained the use of a second Router on this tour, contending that the need existed for more flexibility; thus, the Reserve could be used to put up mail on the other routes, but perform other carrier-support-related duties, as well.

The Union correctly observes that a part-time flexible (PTF) carrier could have been used in lieu of a Reserve Carrier; two factors augur otherwise. In the first place, had the assignment extended beyond six months, it would have had to be converted to a regular position anyway. Secondly, the Union is committed to the establishment of full-time, bid jobs which occurred here. The Service also argued that the use of the Reserves on nights lowered the potential need for overtime on the bid routes -- a position also embraced by the Union nationally. Whether the disputed assignment would represent a full-tour of work if the incumbent had been restricted to casing such other routes (as a Router) is problematic and not demonstrated on the record. Even if it was, the evidence presented does not support a conclusion that the Service was obligated to utilize such classification. The Union's observation on one point is credited; it is not clear how work for the Reserve Carrier on nights is laid out -- as compared to the Router who at least knows the scope of his assignment-- if casing on the assigned routes is available ; this, however, is not a matter for consideration in this case or before this forum.

In sum, I find no demonstrated violation of the Agreement as complained of in this case. The Award is drawn accordingly.

AWARD

Grievance is denied.



James F. Scearce
Arbitrator

Atlanta, Georgia

March 10, 1990