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REGULAR REGIONAL ARBITRATION

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| In the Matter of the Arbitration) | Grievant: Christina L. Clark |
|) | Post Office: Chester, WV |
| between) | USPS Case #CO6N-4C-08247600 |
|) | C |
| UNITED STATES POSTAL SERVICE) | BRANCH Case #080614 |
|) | |
| and) | DRT #13-106721 |
|) | |
| NATIONAL ASSOCIATION OF) | |
| LETTER CARRIERS, AFL-CIO) | |
|) | |
|) | |

BEFORE: Tobie Braverman ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Linda M. Revetta

For the Union: Timothy W. McKay

Place of Hearing: Weirton, WV

Date of Hearing: December 2, 2008

AWARD: The grievance is sustained. The Grievant shall be assigned to the Wheeling, West Virginia post office pursuant to her transfer request effective as soon as possible pursuant to the terms of the MOU paragraph E. The Grievant is awarded back pay equivalent to one hour per work day based upon a five day work week from August 20, 2008 to the date of her actual transfer to the Wheeling, West Virginia post office. The Grievant is also awarded reimbursement equivalent to sixty-four miles per day at the applicable IRS mileage rate based upon a five day work week for the period referenced above.

Date of Award: January 2, 2009

PANEL: USPS Eastern Area/ NALC Regions 6, 11 and 13

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Award Summary

Article 12 Section 6 MOU relating to transfers requires that evaluations for employee transfer requests must be valid, to the point, and that unsatisfactory work records be accurately documented. A transfer may not be denied based upon a transfer evaluation which incorrectly references current discipline when no discipline exists. An employee incorrectly denied transfer is entitled to reimbursement for additional mileage and commuting time incurred as a result of the denial.


Tobie Braverman

The instant case is submitted to the Arbitrator pursuant to the terms of the grievance arbitration provisions of the Collective Bargaining Agreement of the parties. Hearing was held at Weirton, West Virginia on December 2, 2008. The parties stipulated that the matter is properly before the Arbitrator. The parties further stipulated that the issue before the Arbitrator for decision is as follows:

Did the Postal Service violate the Article 12 of the National Agreement when it denied the Grievant's transfer request, and if so, what is the appropriate remedy?

FACTS

The Grievant began her employment as a PMR carrier in November, 1997. She has been employed as a PTF carrier assigned to the Chester, West Virginia post office since February 21, 2004. Beginning in 2005, the Grievant began her efforts to transfer to a post office closer to her home. She has requested a transfer annually on eReassign. In January, 2008 the Grievant initiated transfer requests to the Wellsburg, Follansbee, or Wheeling, West Virginia post offices. The Grievant testified that the reason for the requested transfers was to enable her to work closer to her home in West Liberty, West Virginia. The Grievant further testified that her current commute is forty-five miles each way, and the requested transfers would have enabled her to shorten her commute, saving both time and money.

The instant grievance arises specifically out of the Employer's denial of the Grievant's reassignment request to the Wheeling, West Virginia post office. That request was denied by letter dated May 20, 2008 based upon the Grievant's "unacceptable attendance and safety record".

While the Chester Postmaster, Joe Heymann, consented to the Grievant's reassignment, the receiving Postmaster at Wheeling, Randal J. Link, did not accept the transfer.

The testimony of the two Postmasters at hearing as to the Grievant's work record was markedly different. Postmaster Heymann, who has supervised the Grievant on a full time basis since June, 2007 and who supervised her occasionally in his previous assignment when the Grievant worked as extra help, testified that the Grievant was an excellent hard working employee. Heymann testified that the Grievant routinely worked six days per week, and that her absences were almost always scheduled in advance so that he could plan accordingly. He was unaware of any motor vehicle accidents, and only learned of the Grievant's two minor accidents after Postmaster Link inquired about them. Heymann testified that he had never disciplined the Grievant for any reason, and while he approved the requested reassignment, he hated to lose her.

The Postmaster of the Wheeling, West Virginia post office, Randal Link, testified that while he had never worked with or supervised the Grievant, he did review her work, attendance and accident records as well as speak with Postmaster Heymann before determining that he would not accept the Grievant's requested reassignment to his office. Lynch testified that after reviewing the Grievant's attendance and accident records, he determined that they were unacceptable. In analyzing the Grievant's attendance records, he determined that she had nine separate incidents of sick leave in a seventeen month period and was utilizing sick leave faster than she was accumulating it. To Lynch, this pattern of absences sporadically scattered throughout the year, indicated that the Grievant was not regular in attendance. Lynch contacted Postmaster Heymann to determine if any of the absences were protected by FMLA leave, and upon learning that they were not, determined that the Grievant's attendance record was unacceptable. Lynch further

testified that the fact that the Grievant had two motor vehicle accidents, albeit minor, indicated to him that the Grievant's safety record was unacceptable. He testified that to be acceptable, an employee should have no motor vehicle accidents within the past five years, but one accident might be acceptable in a long term employee. The Grievant's record of two accidents within the last five years was unacceptable.

As a result of the denial of the transfer, the instant grievance was filed. The Union seeks that the Grievant be granted the requested transfer and be compensated for both her additional travel time and additional mileage expenditures as a result of the denial of the requested reassignment.

POSITIONS OF THE PARTIES

Union Position: The Union contends that it has met its burden of proof to establish that the Employer violated the provisions of the National Agreement and related Memorandum of Understanding by rejecting the Grievant's transfer request while failing to specify the standards by which her attendance and safety record were measured. The Grievant was never informed specifically what the problem was with her safety and attendance records. Without this information, the Grievant cannot attempt to remedy her conduct in order to become an acceptable transfer candidate. The process utilized violates the MOU and the Grievant must therefore be awarded the transfer and compensated for lost time in travel and for her additional mileage expenditures.

Employer Position: The Union has failed to meet its burden of proof to demonstrate that

there has been any violation of either the National Agreement or the MOU. The evidence presented at hearing demonstrated that Postmaster Link gave full consideration to the Grievant's transfer request. The Grievant was rejected for transfer based upon her safety and sick leave record. These are valid factors to be considered pursuant to the MOU. The MOU indicates that the Grievant's work, attendance, and safety records must be acceptable to the gaining installation. In this case, the Grievant's attendance and safety records were not acceptable to Postmaster Link. Although the Grievant's records in these areas may have been acceptable to the Postmaster Heymann, they were not acceptable to Postmaster Link, and after due consideration, he properly rejected the Grievant for transfer. The Grievance should be denied.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 12 - PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS

Section 6 Transfers

- A. Installation heads will consider requests for transfers submitted by employees from other installations.
- B. Providing a written request for a voluntary transfer has been submitted, a written acknowledgment shall be given in a timely manner.

MEMORANDUM OF UNDERSTANDING RE: TRANSFERS

- B. Installation heads will afford full consideration to all reassignment requests from employees in other geographical areas within the Postal Service. The requests will be considered in the order received consistent with the vacancies being filled and type of positions requested. Such requests from qualified employees, consistent with the provisions of this memorandum, will not be unreasonably denied.
- D. Managers will give full consideration to the work, attendance, and safety records of all employees who are considered for reassignment. An employee must have an acceptable work, attendance, and safety record and meet minimum qualifications for all positions to which they request reassignment. Both the gaining and losing installation head must be fair in their evaluations. Evaluations

must be valid and to the point, with unsatisfactory work records accurately documented.

E. Installation heads considering employees for reassignment will contact the installation head of the losing installation and arrange for mutually agreeable reassignment and reporting dates. A minimum of thirty days' notice to the losing office will be afforded. Except in the event of unusual circumstances at the losing installations reasonable time will be provided to allow the installation time to fill vacancies, however, this time should not exceed ninety days.

DISCUSSION AND ANALYSIS

As in all contractual interpretation cases, the burden of proof is on the Union in this case to demonstrate that the Employer has breached the terms of the National Agreement by a preponderance of the evidence. In this case, the Union must demonstrate that the Employer was obligated to accept the Grievant's transfer request based upon the language of Article 12 Section 6 and the related MOU. The language of Article 12 Section 6 gives little guidance as to the requirements for transfer. The MOU, however, provides that transfer requests may not be unreasonably denied, and must be based upon considerations of acceptable work, attendance, and safety records. The MOU further requires that the postmasters of both the gaining and losing installations must be fair in their evaluations, and that the evaluations and transfer determination must be based on valid documented work records. The question in this case then, is whether the Union has demonstrated that the Employer's denial of the transfer request was unreasonable based upon consideration of the Grievant's work, attendance and safety records, or that the evaluations were unfair and/or not based on valid documented work records.

There is little dispute in this case that the Employer's determination to deny the Grievant's transfer request was based upon valid records regarding her attendance and safety record. The

question here is not what is included in the records or their validity, but rather the appropriate import to be attributed to them. The Grievant's Postmaster at Chester, who had supervised the Grievant for approximately eleven months when her transfer request was denied, testified that the Grievant was an excellent employee whose sick leave usage was acceptable and generally requested sufficiently in advance to allow for adequate planning. He further testified that the Grievant generally worked six days per week, and could be relied upon to lend a hand when necessary. The receiving Postmaster at Wheeling, however, testified that when he examined the Grievant's sick leave usage, he found it to be unacceptably high since she had nine separate occasions of absence in a seventeen month period. Although Postmaster Link did determine that none of the incidences of sick leave had been approved as FMLA leave, he did not discuss either the reasons or circumstances surrounding the incidents of sick leave usage with either the Grievant or Postmaster Heymann. Had he done so, he would have learned that at least two of the leave incidences were for the Grievant's serious medical conditions, one for an unexpected bout with Bell's Palsy and the other for Carpal Tunnel surgery, which would have likely been approved for FMLA leave had the Grievant understood the import of making application for the FMLA leave.

Although Postmaster Link determined that the Grievant's sick leave usage was unacceptable, he did not articulate a clear standard for acceptable sick leave usage except to state that he looks for sick leave usage patterns, and an employee should be accumulating sick leave faster than it is being used. There was no evidence presented, however, and none can be readily discerned from the Grievant's attendance records, to demonstrate any pattern in her sick leave usage. Further, the evidence presented at hearing demonstrated that the Grievant has used slightly

less than one half of the sick leave that she has accumulated in her four and one half years of employment. Although in the limited seventeen month period examined the Grievant had utilized more sick leave than she accumulated, this period did not reflect the Grievant's overall usage during the course of her employment. It is not clear why Link reviewed only the last seventeen months rather than the Grievant's full period of employment, but had he reviewed all of the records, he would have been aware that overall, the Grievant was not using sick leave faster than she was accumulating it. Based upon the Grievant's entire sick leave record, there is no showing that the Grievant is using sick leave at an unacceptable rate based upon Postmaster Link's standard since she is not utilizing sick leave faster than she earns it. Finally, it must be noted that the Grievant has never been disciplined in any way for her sick leave usage by either her current or former supervisors.

Postmaster Link's second articulated reason for rejecting the Grievant's transfer application was her accident record. Link testified that a record of two at fault motor vehicle accidents within a four year period was sufficient by itself to render her unacceptable for transfer. Postmaster Heymann testified, however, that he was unaware of the Grievant's previous accidents and had done several unannounced safety inspections of the Grievant which she had passed. The two accidents in question occurred in June, 2004 and September, 2005. Both resulted in minimal damage. The 2004 accident resulted in \$25.00 damage to a plastic basketball hoop, and the 2005 accident resulted in a total of \$550.00 damage to the LLV and the private vehicle. The Grievant was neither cited nor disciplined in either incident, and has had no further accidents since 2005. Link apparently determined that the severity of the accidents was not relevant. The mere fact that any accidents occurred was sufficient in his opinion to disqualify the Grievant.

Even if it is accepted that Postmaster Link's conclusion that the presence of accidents alone is sufficient to deny the transfer, it is important to note Link's evaluation does not comport with the requirements of the MOU. Although the Grievant has never been disciplined for either her attendance or either of the two accidents, Postmaster Link's evaluation indicates "Yes" in response to question 4 regarding attendance which asks "Is discipline current...?". In fact there was no evidence presented to demonstrate that the Grievant has ever been disciplined for her attendance. As with the attendance issue, Postmaster Link responded in response to question 3 under the evaluation document's safety record category that discipline was current. As with the attendance, however, there was no extant discipline, current or otherwise. The MOU, quoted at length above, specifically provides that "[e]valuations must be valid and to the point, with unsatisfactory work records accurately documented." Although Link's evaluation indicates in response to questions under all three categories covered by the evaluation that discipline is current, there is no discipline in existence. Under such circumstances, the Arbitrator is hard pressed to conclude that the evaluation is based on accurately documented work records. The evaluation itself is therefore faulty and cannot be accepted as a basis for denying the transfer. The evaluations do not comply with the dictates of the MOU requiring accurate documentation of unsatisfactory work records.

The Union has requested that the Grievant be compensated for both her additional time and mileage expense as a result of the longer commute to which she was subject as a result of being denied the requested transfer. The testimony presented at hearing demonstrated that the commute from the Grievant's home to the Chester post office is approximately forty-five miles and takes between forty-five minutes to one hour depending on traffic. The commute to Wheeling

is approximately thirteen miles and takes between twenty minutes and one half hour. Since the Grievant was wrongly denied the transfer, she is entitled to compensation for her lost time and mileage. There are, however, two unknowns which affect the compensation to be awarded. First, while the Grievant routinely worked six days per week at Chester, there is no evidence to demonstrate that she would have worked a sixth day at the much larger Wheeling office. Further, according to the terms of the MOU, the actual transfer would be completed only after the Chester office was given up to ninety days to complete a replacement. The Grievant would not be entitled to compensation until such time as the transfer might reasonably have taken place had it been approved in the first instance. She is therefore not entitled to compensation for the period of ninety days after the date on which her transfer request should have been approved.

AWARD

The grievance is sustained. The Grievant shall be assigned to the Wheeling, West Virginia post office pursuant to her transfer request effective as soon as possible pursuant to the terms of the MOU paragraph E. The Grievant is awarded back pay equivalent to one hour per work day based upon a five day work week from August 20, 2008 to the date of her actual transfer to the Wheeling, West Virginia post office. The Grievant is also awarded reimbursement equivalent to sixty-four miles per day at the applicable IRS mileage rate based upon a five day work week for the period referenced above.

Dated: January 2, 2009



Tobie Brayerman, Arbitrator