

C#10587

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration between
UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

)
) GRIEVANT: Class
) POST OFFICE: Casselberry, FL
) USPS NO.: S7N-3W-C 30348
) NALC NO.: GTS 13000
)

BEFORE: Dennis R. Nolan, Arbitrator

APPEARANCES:

For the USPS: William G. Roberts, Jr., Labor Relations Representative.

For the Union: Chuck Windham, Regional Administrative Assistant.

PLACE OF HEARING: Casselberry, FL

DATE OF HEARING: January 11, 1991

AWARD: The grievance is sustained. The Employer shall, on request of the Union, conduct such route counts and inspections are necessary to determine whether there is enough work to justify another full-time position in the Casselberry post office. If the parties are unable to agree on the implementation of this award, they are to bring their disagreements to me as soon as possible for a final decision.

DATE OF AWARD: February 9, 1991.



Dennis R. Nolan, Arbitrator

OPINION

I. Statement of the Facts.

The Union filed this grievance on June 22, 1990 to protest Management's failure to combine certain PTF and segmentation work into a full-time position. The parties could not resolve the dispute in the grievance procedure, and the Union demanded arbitration. The arbitration hearing took place in Casselberry, Florida on January 11, 1991, at which time both parties appeared and had full opportunity to testify, to examine and cross-examine witnesses, and to present all pertinent evidence.

Like many Florida post offices, the Casselberry post office has undergone significant growth and change in recent years. The Union claims that this has created enough work to justify at least one additional full-time position. While it never established the exact boundaries of the position it seeks, it did establish that there are several auxiliary routes staffed by part-time flexibles, that part-time flexibles and casuals do several hours of segmentation each day, and that carriers on several routes work a substantial amount of overtime. It therefore claims that the Employer should maximize full-time employment by combining several auxiliary routes with some segmentation work.

The auxiliary routes mentioned by the Union's grievance are numbers 838, 847, and 849. Uncontradicted testimony at the hearing established that Route 849 is technically part of a recent bid combining that auxiliary route with numbers 844 and 848. The successful bidder does not carry it, however. Instead, a PTF spends about 7½ hours per day on it. (The Union claims that route now takes over 8 hours a day, but the last route count and inspection was slightly under that amount. In addition, Supervisor Larry Putchinski, called as a witness by the Union, testified that it takes less than 8 hours a day.) Total auxiliary route time is about 16 hours a day. Segmentation takes about 10½ hours a day, but must be completed within 3 to 4 hours of the 5:30 a.m. starting time so that carriers can deliver the segmented mail.

The Employer denied the grievance at Step 2 for three reasons: (1) Route 849 is already part of another full-time route and cannot be part of two routes; (2) the auxiliary routes are not close enough to one another to be combined efficiently; and (3) the post office was about to move into a new building, making creation of a new position inadvisable at that time because there would have to be minor adjustments made to a number of routes. The Employer maintains those arguments in arbitration, and adds that the only way to create a new position is through the complex procedures of the M-39. The first step is a route count and inspection, which the Union never requested. In addition, it argues that impending automation will eliminate segmentation and will reduce times generally; creating a new position now will therefore only mean a reduction in work later. It should be noted that the move to the new building is now complete, but Management has done nothing to change routes except to adjust starting times.

In sum, a great deal of work in Casselberry is performed by PTFs and casuals. If their hours could be strung together, there would be ample work for a full-time employee. The Union did not challenge Management's testimony that the work could not be strung together: geographical dispersion prevents easy merging of auxiliary routes (unlike Arbitrator Scearce's award in case no. S1N-3W-C 12023, Brandon, FL, 1/28/84), timing requirements make it impossible to combine all segmentation work. What remains to be determined is whether Route 849 must be evaluated to determine whether it alone justifies a full-time position, and whether it is possible to combine some segmentation work with one or more of the auxiliary routes to create another full-time position.

II. The Issue.

Did Management violate the Agreement by failing to combine certain auxiliary routes and segmentation time into a full-time position? If so, what shall the remedy be?

III. Pertinent Contractual Provisions.

ARTICLE 3 MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;
- E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and
- F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

ARTICLE 7 EMPLOYEE CLASSIFICATIONS

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, conversion will be made.

ARTICLE 15

GRIEVANCE-ARBITRATION PROCEDURE

Section 4. Arbitration

A. General Provisions

6. All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. . . .

ARTICLE 19

HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions. . . .

M-39 HANDBOOK

141.1 Route Adjustment Without Special Inspection

.11 Minor Adjustments

.111 The routes must be maintained in reasonable adjustment throughout the year. In order to fulfill this requirement, local managers may find it necessary to make minor route adjustments, to provide relief, add deliveries, capture undertime, etc.

211 SELECTING PERIOD FOR MAIL COUNTS AND ROUTE INSPECTIONS

211.1 In order to achieve and maintain an appropriate daily workload for delivery units and routes, management will make at least annual route and unit reviews consisting of an analysis of items listed in section 214, and workhours, volumes, and possible deliveries. Items listed in section 213 may also be utilized in the review. These reviews will be utilized to verify adjustments which have been taken by management, or need to be taken by management, in order to maintain efficient service. The results of the review will be shared with the local NALC President, or designee, and the regular letter carrier(s) serving the route(s) that require adjustment. In some units it may be necessary to proceed with mail counts and route inspections on one or more routes. These inspections will be conducted between the first week of September and May 31, excluding December.

243.2 Providing Relief to Routes

.21 Routes of More than 8 Hours. If, after correcting improper practices, a route still shows a total daily time consistently in excess of 8 hours on most days of the week, plan to provide permanent relief by transferring the workload or providing temporary relief on heavy days, as follows:

a. Temporary relief must be provided in the most efficient and economical manner, either by using auxiliary assistance in the office or on the street or by authorizing necessary overtime.

b. Permanent relief may sometimes be provided by reducing carrier office time. Consider items such as additional firm holdouts, relocating of vehicle parking, withdrawal of mail by clerks or mailhandlers, providing a cart system for accountable items, etc. Where actual transfer of territory is required, see 243.23.

350 REQUESTS FOR ADDITIONAL ROUTES

When additional auxiliary routes are needed, requests for authority to establish these routes must be submitted to the sectional center manager together with the Forms 1840, 1840-A, or 3999-B and 3998 for the post office or delivery unit. Requests for establishment of auxiliary routes incident to extensions of service must be made in accordance with 611, *Postal Operations Manual*.

611 Establishment, Extensions and Conversions

.124 New Routes and Positions. New regular delivery routes and positions must be authorized by the designated district or sectional center office. Postmasters at delivery offices may establish city auxiliary routes, incident to extensions of new service as provided in 611.123. New auxiliary routes required, due to route adjustments, must be approved in advance by the designated district or sectional center office.

M-41

CHAPTER 9 MAIL COUNT AND ROUTE INSPECTION [Not Reprinted]

IV. The Union's Position.

The Union argues, in brief, that there is enough work performed by PTFs and casuals in the Casselberry post office to justify at least one full-time position. Many routes are burdened by overtime, there are several auxiliary routes carried by PTFs, and other PTFs and casuals do a lot of segmentation work every day.

The Union suggests several possibilities of creating a new position, in particular making Route 849 a separate regular route, combining several auxiliary routes, and adding some segmentation work to one or more auxiliary routes. While the Union did not offer a clear package of work that would create a full-time position, it argues that the Agreement obliges Management to adjust routes to keep them at eight hours a day and to maximize full-time employment. It should have done so here.

The Union therefore requests the arbitrator to order Management to establish a new full-time position. In the alternative, it requests an order to Management to conduct the necessary route count and inspections to determine whether a new position is justified.

V. The Employer's Position.

The Employer raises a series of arguments. First, it points out that the Union bears the burden of proof in contractual case and asserts that it failed to meet that burden.

Second, the pending move to a new building justified denial of the grievance.

Third, it argues that combining functions to create a new position is not feasible. Route 849 is already part of a full-time position and thus cannot be sliced off and combined with other auxiliary routes. The cited auxiliary routes are not located close enough to be combined into a single full-time position. Segmentation must be completed early in the morning, so those hours are not available for combining with auxiliary routes.

Fourth, the only way to create a new position is to follow the procedures of the M-39 and M-41 handbooks, which are incorporated in the Agreement by Article 19. Article 7, Section 3.B.'s general statement is meaningless without criteria and procedures, and the Handbooks and other parts of the Agreement spell out those criteria and procedures. These require a route count and inspection, and the Union has never requested one. Without that evidence, it is impossible to know whether there is enough work available for a new full-time position. The process must begin with a request to the Sectional Center Manager, who has to get further approval. In order to convert a PTF job to a full-time one, the Union must meet the requirements of Article 7, Section 3.C., and this it did not do.

Fifth, the Agreement authorizes Management to use any of several means to provide relief -- curtailment, overtime, auxiliary assistance, and so on. That the Employer uses these methods proves nothing. Since they are authorized by the Agreement, they can not violate that Agreement.

Sixth and finally, the Employer asserts that impending automation will soon eliminate segmentation work and will reduce other office time. It would therefore be unwise to create new positions now, only to cut them back in a few years.

VI. Discussion.

There are at least two levels to this case. On one level it concerns the allocation of work in the Casselberry post office between full-time and part-time employees. More broadly, though, it represents just one more battle in an ongoing struggle between the parties over automation and job security. The Employer, recognizing that increasing competition and mechanization will drastically change its workload (and therefore its manpower needs) naturally resists creating new full-time positions. The Union, worried that those developments will endanger jobs, naturally wants to protect as many full-time positions as possible.

The starting place for analysis has to be the Agreement. The critical provision is Article 7, Section 3.B. Although the Union referred to other parts of Article 7, Section 3, none applies to this case: not 3.A., because this installation is too small; not 3.C., because no PTF works the required shifts; and not 3.D., because there has been no pertinent count and inspection. The

grievance stands or falls on the interpretation of Management's general obligation in 3.B. to "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." According to the Union, Section 3.B. requires the Employer to combine all available hours into full-time positions, without further ado. According to the Employer, Section 3.B. makes sense only in light of the specific provisions of 3.C. (relating to PTFs) and 3.D. (relating to auxiliary routes).

Both positions overreach themselves. On the one hand, Section 3.B. does impose a general obligation to maximize full-time employment, but Article 19 incorporates handbooks which specify how and when new positions are to be created. On the other hand, while the Agreement must be read as a whole, the Employer's attempt to make Section 3.B. a mere footnote to the succeeding sections would eliminate the general obligation altogether.

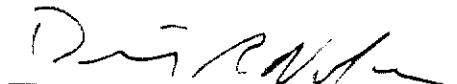
Section 3.B. stands as a binding commitment, however inconvenient the Employer now finds it. For the same reason, the Employer may not simply refuse to create a new position because it thinks the need for one will disappear in a few years. If it wanted to retain the flexibility to deal with fluctuations in its workload, it should not have agreed to such an explicit commitment to maximize full-time employment. Article 19 similarly stands as a procedural limitation on the Union's ability to gain new full-time positions, however frustrating the Union now finds those incorporated procedures. I conclude that the Agreement requires Management to use every good-faith effort to create full-time positions as needed, even if they may become redundant in the future, but that it must do so according to the procedures of the M-39 and M-41 Handbooks.

The Employer argues that those Handbooks require the Union to request a route count and inspection in order to set the process in motion. I find nothing in the Agreement or the Handbook provisions to require that. To the contrary, in Section 3.B. Management expressly took upon itself the obligation to maximize full-time employment. Similarly, in Section 141.11 of the M-39, it took upon itself the obligation of ensuring that routes are "maintained in reasonable adjustment throughout the year." In many cases the minor adjustments suggested in that section will suffice; when heavy use of auxiliary assistance and overtime continues over a long time, however, good faith compliance with Section 3.B. requires Management, not the Union, to gather the appropriate information to determine the need for additional full-time positions. The most that Management can demand from the Union is some prompting. Here the Union provided all the prompting that should have been necessary. Once the Union pointed out the amount of overtime work and work by PTFs and casual employees, the Employer should have initiated the route count and inspection in order to determine whether the Union's request for another full-time position was meritorious. I conclude that Management violated Article 7, Section 3.B. by not doing so.

That does not end the matter. The Union never established which hours could be combined to create a full-time position; it never dealt with Management's sound argument that it could not just willy-nilly slice off route 849 from the existing regular position, nor did it respond to Management's concerns that the segmenting work had to be done at certain times or that the auxiliary routes were not located close enough to permit their consolidation. As a result, I have no basis on which to direct the creation of a new position. The most that I can do on the record before me is direct Management, on request by the Union, to conduct the appropriate route counts and inspections necessary to evaluate the Union's claim that enough work exists for another full-time position. I shall therefore issue that limited order, and will retain jurisdiction in case the parties are unable to agree on the implementation of this award.

AWARD

The grievance is sustained. The Employer shall, on request of the Union, conduct such route counts and inspections are necessary to determine whether there is enough work to justify another full-time position in the Casselberry post office. If the parties are unable to agree on the implementation of this award, they are to bring their disagreements to me as soon as possible for a final decision.


Dennis R. Nolan, ArbitratorFebruary 9, 1991
Date