

FAILURE TO AWARD A POSTED VACANCY TO THE
SENIOR QUALIFIED BIDDER

V
* RA-1115A-73
E. Williams
Vicksburg, Ms.
NBS-2737

ARTICLE XLI, SECTION 1, D
ARTICLE XLII, E, SECTION 1(2)

C#03015-

An Arbitration in the Matter of:
THE UNITED STATES POSTAL SERVICE
and
THE NATIONAL ASSOCIATION OF LETTER CARRIERS
BRANCH 94, VICKSBURG, MISSISSIPPI

COPY

GRIEVANCE NO. NB-S-2737

E. WILLIAMS
VICKSBURG, MISSISSIPPI

ISSUED: December 9, 1977

THE GRIEVANCE

In this case the Union protests Management's action is assigning a posted vacancy to an employee who has less seniority than the Grievant.

BACKGROUND

On July 2, 1974 the Vicksburg, Mississippi Postmaster posted a notice which read, in pertinent part:

"SUBJECT: RURAL ROUTE VACANCIES DATE: July 2, 1974
TO: ALL EMPLOYEES

Our rural routes Nos. 2 and 6 will be vacant effective July 20. All career employees of the office, including substitute rural carriers of record, may apply for these routes, but regular rural carriers in this office will receive priority consideration over other employees submitting application.

...."

The 1973 National Agreement provided the order of eligible bidders in Article XLII, E, Section 2:

"Section 2. - Assignment Procedures

1. The initial assignment of a new rural carrier in an office is to the residual route left vacant after required posting.
2. When it has been determined to fill the rural carrier vacancy, first consideration shall be given to reassigning an excess rural carrier from another office within 100 miles whose route has been affected by consolidation.
3. The following shall be the order of consideration when no rural carrier is reassigned from another office pursuant to the consolidation of his route:
 - a. Post the route for all rural carriers at the vacancy post office, including stations and branches, in accordance with Section 1 of this Part.
 - b. Post the residual vacancy for full-time career employees at the post office where the vacancy exists.
(Underscoring added.)

The Grievant, a City Letter Carrier for twenty-four years, bid on the position in accordance with this procedure.

On July 15, 1974 the Vicksburg Postmaster wrote to the Grievant as follows:

"SUBJECT: APPLICATION FOR RURAL ROUTE

DATE: July 15, 1974

TO: Mr. Euphytee Williams
601 Adams Street
Vicksburg, Mississippi, 39180

Reference is made to your bid forms dated July 9 for Rural Route No. 2 as your first choice and Rural Route No. 6 as your second choice. Bids for these routes were opened this morning as specified in the advertisement bids. Regular rural carriers were to receive priority consideration; for this reason Route 2 has been awarded to the only rural carrier who submitted a bid.

You were the senior bidder for Route 6; however, existing instructions specify that assignment will be made of the senior qualified employee meeting the qualifications. As you know, your removal from the Postal Service is scheduled for July 18, as a result of my decision on charges which constitute general incompetence to perform carrier duties. For this reason, this is to advise that I am unable to award Rural Route 6 to you as the senior qualified employee.

You have the right to appeal this decision under the Grievance Arbitration Procedure as set forth in Article XV of the 1973 National Agreement, within 14 days of your receipt of this letter.

/s/

J. W. Schilling
Postmaster"

In a memo dated July 16, 1974 to all employees the Postmaster wrote:

"This is to advise the results of bids received for Rural Routes 2 and 6, submitted in response to notice posted July 2, 1974.

Regular rural carriers received priority consideration and Rural Route 2 is thus hereby awarded to Mr. William B. Jennings, the only rural carrier submitting a bid. Mr. Jennings will be reassigned from Rural Route 7 to Route 2 effective August 3, 1974, and Route 7 will now be posted for bids at the earliest possible date.

Route 6 cannot be awarded until the senior qualified bidder is determined. For this reason, Route 6 will be served by rural substitutes from July 20, 1974 until this determination can be made."

Presumably the delay in awarding the vacancy on Rural Route 6 was to await the adjudication of a grievance filed by Williams protesting his removal. The removal action was subsequently reduced to a fourteen-day suspension, and, on August 27, 1974, the vacancy was awarded to a Vicksburg Post Office clerk who was also eligible to bid on the vacancy but was less senior than the Grievant.

CONTENTIONS

The Union maintains that the Grievant was the "senior qualified bidder" as provided for in Article XLII, E, Section 1, (2) which reads:

"The posted route shall be awarded within 10 days to the senior qualified bidder."
(Underscoring added.)

It claims that the senior qualified bidder need not compete among other bidders as to the degree of his qualifications. If the parties intended such an arrangement, it says, they would have used the "best qualified" criteria as is required of substitute rural

carriers of record when there are no qualified bidders from among the full-time career employees from the other crafts in the Post Office.

The Union says that the qualifications required of eligible bidders on rural route vacancies are inherent in the city letter carrier occupation and that any carrier who successfully retains his employment as a city letter carrier is automatically qualified to perform the duties of a rural carrier. The Union argues that the Grievant was disciplined for his conduct as a letter carrier and that this did not disqualify him from successfully bidding on a rural route if he were the most senior bidder. As far as the Union is concerned, the Grievant, by virtue of the fact that he is employed as a city letter carrier, cannot be deprived of the right to bid on a rural route on the basis of previous disciplinary action.

Management contends that the Grievant is not qualified to perform the duties of a city letter carrier and, certainly, should not be permitted to bid on a rural route. It says that the Grievant has been disciplined on a number of occasions for rule infractions that go directly to his capacity to perform his job. It cited several incidents which it considered major transgressions and for which the Grievant was disciplined. The Service maintains that the Grievant is not qualified to perform the job and, therefore, the vacancy was awarded to a less senior bidder.

Management cites the language of Article XLI, Section 1, Part D which reads:

"City letter carriers shall continue to be entitled to bid or apply for all other positions in the U. S. Postal Service for which they have, in the past, been permitted to bid or apply"

It says that this means that out-of-craft employees who desire the vacancy are permitted to apply. It distinguishes these "applicants" from those in the craft who, it says, "bid" on the vacancy. It then extends this view to the notice accepting applications for Rural Route 6 which states, "The successful applicant will be required to meet the qualification standards of rural carrier." The six "Inservice placement general requirements" Management refers to are:

"The candidate's total education, training and experience must clearly demonstrate:

1. Ability to read, understand, and apply written instructions, such as The Postal Manual.
2. Ability to perform basic arithmetic computations.
3. Ability to prepare reports and maintain records.
4. Ability to communicate effectively with patrons.
5. Ability to work effectively without close supervision.
6. Ability and desire to serve the public effectively as a representative of the Federal Government."

The Service maintains that the disciplinary actions taken against the Grievant prove that he does not meet these qualifications.

The parties stipulated the issue in this case to be:

"Did the Postmaster at Vicksburg, Ms. violate the terms of the 1973 National Agreement by not awarding Rural Rt. 6 to the Grievant?"

FINDINGS

Management's argument that the Grievant must be treated as an applicant rather than as a bidder is not sound. Article XLI, Section 1, Part D gives city letter carriers the right to bid or apply for jobs outside the city letter carrier craft. The posting here deals with such bids. Indeed, the Postmaster wrote the Grievant that he was the most senior bidder that responded to the posting for Rural Route 6. The Service strains when it attempts to disqualify the Grievant on the basis that he was an applicant and, therefore, was subject to some qualification standard not required of a bidder.

There is no question, then, that the plain language of the Agreement gives the Grievant the right to bid on the posted vacancy. There is no dispute that he was the senior bidder. The question to be answered here is whether or not he was the senior qualified bidder. Management gave considerable testimony on its view concerning the performance of the Grievant as a city letter carrier. Since it felt the necessity to discipline the Grievant for poor performance on more than one occasion, Management judged that he was not qualified to perform the duties of a rural carrier.

There is an important distinction between senior qualified bidder and best qualified bidder. The distinction is obvious and does not need elaboration here except to say that the first words of each phrase deal with the nature of the standards of the competition for the job. The adjective "qualified" implies two conditions. The first condition is that the candidate is eligible to bid and the second is that he is able to perform the work. Since the Grievant was eligible, the issue narrows to whether or not he could perform the duties of a rural letter carrier. There can be no contest on his qualifications vis-a-vis those of the junior employee who was awarded the job. The language of the National Agreement precludes a contrary determination since the vacancy involved here was clearly to be awarded to the senior qualified bidder and not the best qualified bidder.

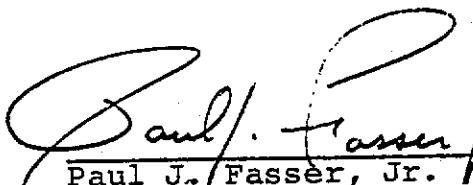
The Grievant passed his Civil Service Examination when he first qualified as a Post Office employee in 1949. He was upgraded from a career substitute city letter carrier to a full-time career and served continuously for twenty-four years. The very fact that he successfully retained his job as a city letter carrier qualifies him to perform the duties of a city letter carrier. Whatever the problems of poor performance that Management claims it has with the Grievant, the hard fact is that he is still employed at the Vicksburg Post Office as a city letter carrier. Other than pointing up the instances of disciplining the Grievant for poor performance as a city letter carrier, Post Office Management has brought forth no evidence that the Grievant is not qualified to perform the duties of a rural letter carrier.

During the selection process for purposes of filling the vacancy on Rural Route 6, the Union was adjudicating a removal action against the Grievant. The removal was later reduced to a suspension and the Grievant was returned to work effective the same date (September 14, 1974) that the junior bidder was awarded the job.

When he did not award Rural Route 6 to the Grievant while the removal action was pending, the Postmaster acted properly. However, once the removal action was dropped, and absent a specific contrary showing by the Service, the Grievant remained the senior qualified bidder and should have been awarded the job. Under these circumstances, the Postmaster was in violation of the National Agreement when he failed to award the Grievant the posted vacancy assignment for Rural Route 6.

AWARD

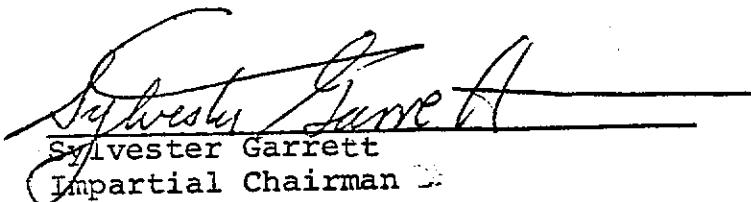
The grievance is sustained. Grievant Williams will be awarded Rural Route 6 effective September 14, 1974 and will be made whole for any loss of earnings that he may have suffered for the period involved.



Paul J. Fasser, Jr.

Associate Impartial Chairman

APPROVED:



Sylvester Garrett
Impartial Chairman