

## **NORTHEAST AREA REGULAR ARBITRATION PANEL**

## **In the Matter of the Arbitration**

between

## UNITED STATES POSTAL SERVICE

and

## NATIONAL ASSOCIATION OF LETTER CARRIERS

JUL 10 2017

# RECEIVED

John J. Casciano, NBA  
NALC - New England Region

Before:

Jonathan I. Klein,  
Arbitrator

### Appearances:

For the Postal Service:

Vernon N. Tyler, Jr.  
Labor Relations Specialist

For the NALC:

Charles Carroll  
NALC Advocate

**Place of Hearing:**

Hartford, Connecticut

Date of Hearing:

June 14, 2017

Date of Award

July 6, 201

#### **Relevant Contract Provisions:**

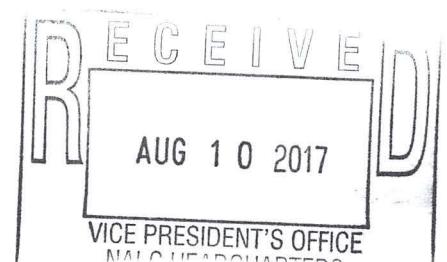
Article 12

### Contract Year:

2011-2016

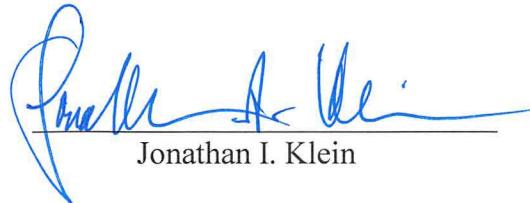
### Type of Grievance:

## Contract



**AWARD SUMMARY**

The Union presented sufficient evidence to satisfy its burden of proof that the Postal Service violated Article 12 of the National Agreement as a result of unreasonably denying the grievant's transfer request. Accordingly, the grievance is sustained as set forth in the Award.



Jonathan I. Klein

**STATEMENT OF FACTS**

The grievant, Mark Pfeifer, has been a letter carrier at the Danielson, Connecticut post office since April 27, 1996. On January 9, 2017, the Postal Service notified the grievant that it was considering his request for reassignment to a letter carrier position at the Lehi, Utah post office. (Joint Ex. 2, at 11). The Postal Service subsequently issued the following notice, dated January 17, 2017, to the grievant informing him that his transfer request had been denied:

Your request to reassign to the Salt Lake City District has been reviewed by the Selecting Official.

In accordance with the MOU regarding transfers, an employee must have an acceptable work, attendance, and safety record and meet the minimum qualifications for all positions to which they request reassignment. The Postal Service reviews the records to determine if your record is suitable. Due to your unacceptable safety record, your request for reassignment for the following choice(s) has been denied:

\* LEHI (UT) POST OFC - INSHD (UT), CARRIER (CITY), Level 01

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NALC Case No. 9217**

We would like to thank you for having expressed a desire to reassign to the Salt Lake City District and regret that a more favorable decision could not be granted.

If you have additional choice(s) within this request that have not been closed or withdrawn, they will continue to be considered in date order as vacancies arise.

(Joint Ex. 2, at 10).

The Union filed a grievance on January 26, 2017, to protest an alleged violation of Article 12 of the National Agreement as a result of the Postal Service's denial of the grievant's transfer request. (Joint Ex. 2, at 8). A Formal Step A meeting was held on January 26, 2017, and the grievance was progressed to Step B on February 1, 2017. The Step B Dispute Resolution Team subsequently declared an impasse on February 17, 2017. (Joint Ex. 2, at 1-6). The parties proceeded to arbitration and a hearing was conducted on June 14, 2017, at which time the parties were afforded full opportunity to present documentary evidence, direct and cross-examine witnesses, offer rebuttal testimony and present argument. Each party presented an oral argument and several arbitration awards in support of their respective positions.

**STATEMENT OF ISSUE**

The stipulated issue in this case as set forth by the Step B Dispute Resolution Team is as follows:

Did management violate the National Agreement Article 12.6.2.A, The Transfer Memo 2.A and the DRT Decision B11N-4B-C

17179969 dated 11/29/16 by continuing to deny [the] transfer for carrier [Pfeifer].

### **RELEVANT CONTRACT PROVISIONS**

Article 12 of the National Agreement entitled “Holiday Work,” provides, in part, as follows:

\* \* \*

#### **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.

### **CONTENTIONS OF THE PARTIES**

#### **Union's Contentions**

The Union acknowledges that transfer requests may be denied by the Postal Service. However, denials must be completely documented and fully explained by management in accordance with the Transfer Memorandum set forth in Article 12 of the National Agreement. In the instant case, the only reply by management to the grievant's transfer request indicates that it was denied because of an unacceptable safety record. The Union questions which incidents were counted against the grievant. It notes that the grievant was involved in a no fault motor vehicle accident; a bee sting incident; and he fell during icy weather. The Transfer Memorandum places

certain procedural obligations upon management. The Union asserts that management failed to follow the Transfer Memorandum as a result of its failure “. . . to fully explain the denial in detail and [it] considered non at fault safety incidents.” (Union Opening Statement, 1). According to the Union, it is inappropriate to hold not at fault accidents against the grievant.

Although the Postal Service has the right to deny a transfer request, it must be based upon a complete investigation of all the facts and a total consideration of all factors. The Postal Service failed to comply with this procedural requirement. The record establishes that the grievant “. . . is an excellent employee and has received the highest praise from his supervisors and co-workers.” (Union Opening Statement 1-2). The Union asserts that management did not conduct an objective evaluation of the grievant’s work record. The Union also argues that it “does not know what the Postal Service based its decision on” as there is no rationale expressed by management. It notes that the grievant’s safety record is not contained in the joint case file. The Union claims that “[t]he actions of the Postal Service are arbitrary and capricious in that the ham-handed denial failed to meet the minimum requirement of investigation and review.” (Union Opening Statement, 2). For each of the aforementioned reasons, the Union requests that the grievance be sustained, and the arbitrator order an immediate transfer of the grievant. The Union also seeks a monetary remedy to offset the grievant’s rent during the period that the transfer was unjustly denied in the event that the arbitrator determines management’s actions were arbitrary and capricious.

**Management's Contentions**

The Postal Service initially points out that the Union bears the burden of proof in a contract case and “[t]hroughout the grievance procedure the union has been unable to carry that burden.” (Postal Service Opening Statement, 1). It asserts that management at the Lehi, Utah facility acted entirely within its managerial discretion and in accordance with Article 3 of the National Agreement. In the instant case, management determined in accordance with its exclusive right under Article 3 that the grievant’s safety record was not acceptable. According to the Postal Service, “. . . only the management official considering the request can properly determine if such record is ‘unacceptable’ to him or her.” (Postal Service Opening Statement, 1).

The Postal Service does not dispute the fact that the denial of the grievant’s transfer request simply states that it was “due to your unacceptable safety record.” However, “. . . the union fails to provide any evidence that such a response violates the CBA [as] it simply notifies the employee of management’s decision.” (Postal Service Response to Union’s Arguments, 1). The Postal Service further asserts that the Transfer Memorandum does not identify either the number or type of accidents which meet the criteria for approving or denying a transfer request. Furthermore, the Transfer Memorandum “doesn’t say that you can’t use no fault accidents.” It does provide the gaining office with the exclusive authority in making such a decision. The Union had failed to provide any evidence that management’s decision was either arbitrary or capricious. The Union argues that no request was made by the gaining office to clarify the grievant’s work and safety record. The Postal Service notes that the grievant’s work record was

not the basis for management's decision and there is no requirement to clarify a safety record, especially one that is clear as in this case. Although the Postal Service acknowledges that the grievant is a good employee, it is undisputed that he was involved in three, on-duty accidents during 2014. The Postal Service maintains that "... such a record can reasonably be characterized as an unacceptable safety record." (Postal Service Opening Statement, 2). It asserts that Article 12 does not require management to explain or clarify the reason why a transfer request was denied.

The Postal Service further argues that the Union's requested remedy of \$100.00 per week is nothing less than an arbitrary request for unjust enrichment. The Postal Service cites several arbitration awards which clearly state that the purpose of a remedy is to restore the employee to the "status quo ante." The remedy requested by the Union would not restore the status quo ante, but instead would amount to an unjust enrichment for the grievant. In the event that the arbitrator rules in favor of the grievant, the only appropriate remedy would be to grant the transfer in accordance with the procedure outlined in the Transfer Memorandum. However, based upon the evidence presented in this case it is clear that management did not violate the National Agreement or the Transfer Memorandum when it denied the grievant's request for a transfer. Therefore, the grievance should be denied in its entirety.

**OPINION AND ANALYSIS**

The issue before the arbitrator concerns the grievant's request for a transfer from the Danielson, Connecticut post office to the Lehi, Utah post office. Article 12.6 of the National Agreement sets forth the contractual provisions regarding voluntary transfers and incorporates the following Memorandum of Understanding on Transfers into the contract:

**Re: Transfers**

The parties agree that the following procedures will be followed when career postal Employees request reassignment from Postal installations in one geographical area of the country to Postal installations in another geographical area. Local reassessments (reassignments within the same MSC, Division, or to adjacent MSCs or Divisions) are covered by the provisions of Section 2 of this memorandum.

**Section 1. Reassignments (Transfers) to other geographical areas.**

\* \* \*

- 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 the minimum qualifications for all positions to which they

request reassignment. Both the gaining and losing installation heads must be fair in their evaluations. Evaluations must be valid and to the point, with unsatisfactory work records accurately documented. An employee must have at least one-year of service in their present installation prior to requesting reassignment to another installation. . . .

\* \* \*

(Joint Ex. 2, at 12-14)

The Joint Contract Administration Manual (JCAM) specifically provides on page 12-46 that transfer requests from qualified employees will not be unreasonably denied. Consistent with the above Memorandum of Understanding, and as previously stated by this arbitrator in *USPS - and- NALC*, Case No. B11N-4B-C 17330871 (Arb. Jonathan Klein)(June 29, 2017), a “qualified” employee is an individual who meets the minimum qualifications for the position to which they request reassignment. The Postal Service acknowledges that the grievant is a “good employee” and there is no question that he meets the minimum qualifications of a letter carrier, the position to which he seeks reassignment. As a qualified employee seeking reassignment, the Postal Service is required to comply with the negotiated procedural requirements to be used by managers in evaluating transfer requests.

The Postal Service maintains that management acted within its discretion under Article 3 of the National Agreement when it denied the grievant’s transfer request. While the Union acknowledges that transfer requests may be denied by the Postal Service, the Memorandum of Understanding on Transfers qualifies management’s exclusive right to transfer and assign

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employees to positions within the Postal Service by directing managers to take into account the work, attendance and safety records of employees who are considered for reassignment.

The JCAM specifically provides that managers will give “full consideration” to the above factors in evaluating transfer requests. Additionally, an employee’s work, attendance and safety records must be “acceptable” as stated in the Memorandum of Understanding on Transfers. The arbitrator determines that the standard of “acceptable” work, safety and attendance records must be objectively viewed based upon that which is expected of a reasonable employee. In this context, “acceptable” means that an employee’s performance as it relates to the aforementioned factors is satisfactory and otherwise meets the employer’s reasonable and objective expectations. Therefore, management cannot require a standard which is higher than “acceptable” in evaluating an employee’s request for reassignment. The arbitrator further finds that management’s contractual obligation to give full consideration to transfer requests means that their decision must be based upon objective reasons and it must not be unreasonable.

In *USPS -and- NALC*, Case No. B11N-4B-C 17330871, this arbitrator referenced the following opinion by Arbitrator Kathy L. Eisenmenger in *USPS -and- NALC*, Case No. H98-N-4H-C 00084826 (Arb. Eisenmenger)(June 19, 2003), in support of the above analysis regarding management’s full consideration of transfer requests:

The contractual obligation requires a ‘full consideration’ based on three specific factors: work, attendance and safety. By the use of the terms ‘full consideration’ and the overall tenor of the contractual provisions, the decision to grant or deny the request must be reasonable and based on objective reasons. Thus, the standard of review is higher than a mere avoidance of abuse of

discretion or arbitrary and capricious action. Furthermore, the National Agreement requires that an employee have ‘acceptable’ work, attendance and safety records. By the use of the term ‘acceptable,’ the National Agreement prohibits a manager from instituting a higher standard than what would constitute an acceptable record for a reasonable employee. For example, a locally-established set of criteria of a perfect record or even an exemplary record would violate the contractually mandated standard of an objective reasonable standard of what constitutes acceptable work, acceptable performance or acceptable safety records. The word ‘acceptable’ is synonymous with satisfactory and adequate. Therefore, it would be contrary to the express terms of the National Agreement to impose a standard higher than acceptable (meaning satisfactory or adequate) on employees when requesting a transfer to another geographical area. Lastly, all three factors of work, attendance, and safety are to be considered in tandem, not merely individually. The terms ‘full consideration’ require a ‘whole person’ approach when evaluating an employee’s transfer request. One single factor cannot be given a halo affect unless the negative impact of that one factor seriously outweighed the other two.

*Id.*, at 6-7.

The Postal Service emphasizes that the grievant’s transfer request was not denied on account of his work record. The parties agree that the grievant is an excellent employee as it concerns his work performance. The evidence of record establishes that management denied the grievant’s request for a transfer due to his allegedly unacceptable safety record. The joint case file reveals that the grievant was involved in the following on duty incidents: a motor vehicle accident in which he was struck from behind by another vehicle while at a stop light; a slip and fall during a snowstorm; and a bee sting which he reported to management. Management’s

position set forth in the Step B Decision provides the following information relative to the grievant's safety record:

Additionally, the Union's own documents support the Grievant has in fact what may be considered an unacceptable safety record. Specifically, the Union interviewed the Grievant and during this interview the Grievant confirmed the following:

'In September 2014, I was at a red light on the corner of Westcott and Main near the Memorial school. A Fed Ex supervisor was behind me & ran into the back of my mail truck - he did not even slow down. It push[ed] my mail truck into the SUV in front of me - it was not my fault.'

'I also had a trip & fall during a snow storm at 6 PM few years ago and tripped over a hidden landscape stone. It was dark & the snow covered the stone. I sprained my thumb on my right hand.'

\* \* \*

I had a bee sting also but I'm not allergic.'

(Joint Ex. 2, at 6).<sup>1</sup>

In Case No. H98-N-4H-C 00084826 referenced above, Arbitrator Eisenmenger discussed a Memorandum for Area Managers (M-01223), dated August 27, 1993, which states, in relevant part:

\* \* \*

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1. At the arbitration hearing, the parties agreed that the grievant's safety record reflects three on-duty incidents. Additionally, the grievant's slip and fall, bee sting incident and motor vehicle accident occurred on January 21, 2014, September 21, 2014 and September 25, 2014, respectively.

Where an employee requests a transfer, the responsible official at the gaining installation needs to look at the qualifications of the ‘whole’ individual. By this we mean that we need to determine whether the individual possesses the necessary job experiences and other qualifications to fill the needs of the vacancy. *We would also strongly suggest that where there are one or two questions with regard to the viability of the employee for the position, i.e., such as a low sick leave balance, that it is incumbent upon responsible management to obtain additional information into that situation.* (Italics supplied).

\* \* \*

There is no documentary evidence contained in the joint case file that management obtained any additional information, or that it even looked into the situations surrounding the incidents noted in the grievant’s safety record. Under the circumstances, the arbitrator determines that management at the Lehi, Utah post office should have inquired into the nature of the grievant’s on-duty incidents/accidents in order to afford him a fair evaluation as required by the Memorandum of Understanding on Transfers. In the absence of this additional inquiry, the arbitrator finds that there is no evidence that management of the gaining installation had any knowledge whatsoever regarding the specifics of any of the incidents which it claims comprise an unsatisfactory safety record other than those indicated by the grievant during an interview conducted by the Union. According to the grievant’s interview responses reflected in Management’s Step B Position, the arbitrator finds that there is insufficient evidence that the grievant was at fault for any of the three on-duty incidents discussed above. The arbitrator determines that no fault accidents should not reflect negatively upon the grievant’s safety record. Such accidents can happen to anyone at any time. In this regard, the arbitrator notes the

following decision by Arbitrator Louis V. Baldovin, Jr. in *USPS -and- NALC*, Case No. G9ON-4G-C 94029299 (Arb. Louis V. Baldovin, Jr.) (June 26, 1994) which provides, in part, as follows:

I agree with the Union that a no fault accident should not negatively impact an employee's safety record. No fault determinations are made by Management after a thorough investigation. Management cannot be permitted to talk out of both sides of its mouth by saying that an accident which is not the employee's fault may be relied upon in concluding his safety record is unsatisfactory. To consider a no fault accident as part of an unsatisfactory safety record, as was done by Amarillo Management, is inconsistent with the fact that discipline is not issued for a no fault accident.

*Id.*, at 3-4.

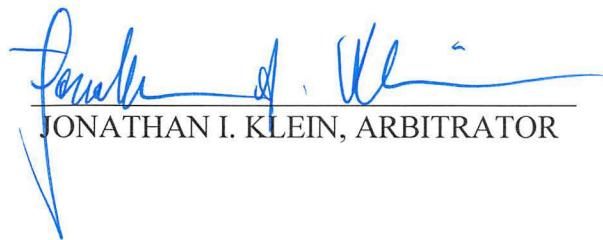
The "full consideration" of a transfer request which is required of management under the Memorandum of Understanding on Transfers involves a "whole person" approach and a fair evaluation based upon an employee's work, attendance and safety records. Management clearly failed to look at the qualifications of the "whole" individual in its evaluation of the grievant and it did not give his reassignment request full consideration. This is clearly evidenced by the fact that the Step B Decision contains the following undisputed fact as listed on the PS Form 8190: "The grievant has been an excellent employee, always pleasant, on time, completes assignments and does his work in a safe manner." (Joint Ex. 2, at 1). As such, the arbitrator concludes that the grievant's transfer request was unreasonably denied for the reason that management improperly determined that his safety record was unacceptable without first giving full consideration to this factor. It is particularly difficult in this case for the arbitrator to believe that

an employee who performs his job in a safe manner would then be categorized as an individual with an unacceptable safety record for purposes of considering his transfer request.

For each of the foregoing reasons, the Union has satisfied its burden of proof that the Postal Service violated Article 12 of the National Agreement by denying the grievant's transfer request. As a result of this contractual violation, management at the Lehi, Utah post office is ordered to accept the grievant's transfer request. The arbitrator notes that the JCAM specifically provides for such a remedy. The arbitrator further finds that the Union presented insufficient evidence to support its requested monetary remedy in this case. Accordingly, the grievance is sustained as set forth in the Award.

**AWARD**

The grievance is sustained. The Postal Service is ordered to effect a transfer of the grievant to a city letter carrier position, Level 01, at the Lehi, Utah post office within thirty (30) days from the date of this Award.



JONATHAN I. KLEIN, ARBITRATOR

Date of Issuance: July 6, 2017.