

C# 06904

ARBITRATION DECISION

IN RE

United States Postal Service  
Sedalia, Missouri

C4N-4K-C-9215  
Class Action

and

National Association of Letter Carriers,  
AFL-CIO, Branch 139

DISPUTE:

Denial of PTF bids for five day vacancies.

Arbitrator:  
Daniel G. Jacobowski, Esq.  
March 6, 1987

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JURISDICTION

APPEARANCES: USPS: Terry L. Nichols, employment and services supervisor, Columbia. NALC: James McNeil, regional administrative assistant, St. Louis.

HEARING: Conducted on February 3, 1987, at Sedalia, on this contract grievance dispute, pursuant to the procedures and stipulations of the parties under their national agreement.

ISSUE

QUESTION: Did the employer violate the contract in denying 2 PTF bids for five day vacancies? - Where instead, management claimed the five days were broken and reduced to four, by its assignment of one of the days to a new unassigned regular full-timer.

CASE SYNOPSIS: Two PTF's were denied their bids for two five day vacancies the week of September 21, 1985. Management claimed that no five day vacancies existed, since the five days were reduced to four, because of its assignment of one of the days in each to an unassigned regular full-timer, newly promoted. He worked five different routes that week, one on each day. The other four days of the two vacancy routes, were spread among several PTF's. Management defends its assignment of the regular full-timer, as being within its rights, and its obligations to provide him 40 hours full-time. The union requests backpay reimbursement to the two PTF's.

CONTRACT PROVISIONS APPLICABLE: At issue is Article 41.2 B4.

ARTICLE 41 - LETTER CARRIER CRAFT

"Section 2. Seniority...B. Definitions...

4. Part-time flexible letter carriers may exercise their preference by use of their seniority for vacation scheduling and for available full-time craft duty assignments of anticipated duration of five (5) days or more in the delivery unit to which they are assigned."

The union also claimed violations of Articles 3 on management rights, and 19 on manuals (but cited no sections). It cited 41.1 A1 on the distinctions between reserve carriers and unassigned regulars.

In defense of its assignment of the full-timer, management cited Articles 3 on management rights, 7.1 A and 8.1 and 3 on full and part-time distinctions and the priority of scheduling full-timers for 40 hours, and 41.1 A7 and 41.2 B3 on the right to assign full-timers with no bid assignments to any vacancy. Having particular

emphasis, 41.1 A7 reads as follows:

"7. An unassigned full-time carrier may bid on duty assignments posted for bids by employees in the craft. If the employee does not bid, assignment of the employee may be made to any vacant duty assignment for which there was no senior bidder in the same craft and installation. In the event there is more than one vacancy due to the lack of bids, these vacancies may be filled by assigning full-time carriers, who may exercise their preference by use of their seniority."

#### **BACKGROUND - FACTS**

On Tuesday, September 17, 1985, two PTF's submitted bids for two temporary five day vacancies in the following week of September 21. On Wednesday, their bids were denied or not implemented in the posted schedule. When confronted, the supervisor explained his reason, that the vacancies were less than five days and had been reduced to four, since one day in each vacancy had been assigned to a newly promoted unassigned regular full-timer, and that management then had the right to so assign the various individual days.

The key background elements in the supervisor's explanation or reasons are the following. Cox, had been only recently promoted to regular full-time status, but not yet assigned to any regular full-time job or route. The two vacancies, on routes 3 and 11, arose because the regular carriers assigned those routes were on annual leave that week. PTF Scott, the more senior, had bid for route 3. PTF Moellman, had bid for route 11. That week of September 21, the supervisor had assigned Cox to work on five different routes, but including one day on 3 and another day on 11. The other four days of each route were assigned among several PTF's, including Scott, but not Moellman. Scott, that week, worked two days on 11 and one day on 3.

The union noted that there were actually five vacancies that week, four due to leaves and one due to a retirement. Routes 7 and 12 were also vacant that week due to leaves taken by their regular carriers. Those two routes were substantially filled by two other senior PTF's, Dameron and Simons. The fifth vacancy existed on the utility route which had just been vacated by Wise, who in turn had just bid for or been assigned to route 16 which had been vacated earlier due to a retirement.

The supervisor supplied no other specific reasons of problems or efficiency as to why he so split up the days on these vacancies and denied the bids of the two PTF's. The supervisor has since retired and was not present at the hearing. Management's testimony was supplied by the postmaster who has been there since 1978. He presumed the supervisor's judgment was based on skills and efficiency but had no specifics. However, he did describe that week as one of turmoil. He also stated that Cox had just recently been promoted early to full-time from his prior PTF status, at the request and as a favor to the union, and expressed some resentment against this grievance by the union, when management had exerted its effort and obligation to supply 40 hours of work to Cox. He acknowledged that the supervisor had a reputation of being strong on management rights. He denied any contract violation.

As to specific local practices on these matters, the parties supplied no specific evidence of any local memorandum of agreement (LMU) between them. According to the postmaster, this was the first time they've had an unassigned regular, at least for many years. Normally, a PTF is not promoted to full-time until a specific regular vacancy develops. At the time according to the union, there were 20 city routes, 19 regular and one auxiliary. There were also three utility jobs.

The evidence indicated that at the time there was a certain looseness and flexibility in the preparation and posting of weekly schedules, and in the posting and bidding for temporary vacancies by PTF's. The evidence was similar from both sides, that the Wednesday weekly schedules, might not be posted in some instances until a Thursday or Friday, and could be changed after as later changes or needs developed. Accordingly, the typed prepared schedule did not necessarily reflect the actual changes and assignments which later took place that week. Temporary "hold down" or five day vacancies were not routinely posted, but instead most frequently made aware of by word of mouth. PTFs supplied written notes of their bids in a variety of manner and location, no formalities were established.

Cox, characterized by management as an unassigned regular only recently promoted, actually had been converted to full-time on July 20, 1985, from his prior PTF status. He thought he had been promoted because of the route 16 retirement vacancy. On the September weekly schedules, his name was still listed at the bottom with the other PTFs. While a PTF prior to July, 1985, he had bid for five day vacancies, when he had become aware of them or had seen them on the vacation scheduling sheet. However, he had not bid on any since, since his supervisor told him he couldn't do so as an unassigned regular. Initially after converted to full-time, he said he was being used on fill-ins wherever needed. On the two weeks prior to September 21, he had bid or been assigned for the two full weeks to route 16 which had earlier become vacant due to a retirement. From the schedules supplied and the testimony, the route 16 retirement vacancy had first been filled by a bid from a route 19 carrier who worked it the week of August 31. However, he changed his mind and was back in route 19 in the next two weeks of September 7 and number 14, when 16 was worked by Cox. For the week in dispute, September 21, route 16 was filled by the bid of a utility person, whose utility route was then one of the five vacancies in that week.

Certain additional observations are noted and apparent from the four September weekly schedules supplied, although, keeping in mind management's testimony that the weekly typed schedules do not always reflect later changes made. The schedules do indicate that five day vacancies were not in all instances otherwise filled by one PTF for the full five days. This was so on a number of instances, but not always. For example, the September 28 typed schedule week, shows two routes vacant with annual leave; but only one of them was scheduled for the full week by one PTF; the other was distributed among several. Also the days of the prior week's utility vacancy, were similarly distributed among the several PTFs. Cox worked different routes each of his five days that week.

The junior PTF bidder, Moellman, testified that this was his first five day hold down bid, and he had been employed as a PTF for only one month. The supervisor told him his bid was denied because Cox had been assigned one day in the week, breaking the five days. Since then, Moellman has successfully bid and received other vacancies. Ultimately, the time records for the week of September 21 show that Cox, the full-timer, worked five days for 42.97 hours, Moellman worked five days for 39.08 hours, and Scott worked four days for 35.98 hours. Both PTFs had originally been scheduled four days, but Moellman was called in on a fifth.

#### **ARGUMENT**

**UNION:** A brief summary of the union's main points are the following. Routes 3 and 11 were both five day vacancies, properly bid for by the two PTFs. Cox could have been assigned by the employer to any of the other vacancies, or at least the utility vacancy. By assigning Cox one day in each, the employer violated the bid rights of the two PTFs under Article 41.2 B4, and abused the Article 3 management rights by failing to adhere to the 41 provisions. Management has incorrectly characterized Cox as an unassigned regular and incorrectly misapplied its claim of a discretion to assign him

under 41.1 A7. More correctly, Cox was a full-time reserve carrier under the definition of 41.1 A1. The union requests make whole backpay reimbursement to the two PTFs for the hours of the routes denied them, and for overtime for the actual hours they worked outside of those route hours.

**EMPLOYER:** A brief summary of the employer's main points are the following. The two routes were not five day vacancies, but only four, since one day in each had been assigned to Cox. Since Cox was a new regular full-timer, the employer had the obligation to furnish him 40 hours work, and since unassigned with no bid assignment, it had the right to assign him wherever best needed according to its rights under Article 3 and 41.1 A7. The union's argument that he is a reserve carrier is irrelevant, since no bid vacancy assignment had yet been made for him, and since he had a right to 40 hours prior to PTF assignments. The situation was a one time unique occurrence, and the general practice otherwise has been to grant PTF bids when they can be coordinated with vacancies and operational needs. There was no contract violation. The grievance should be denied.

#### DISCUSSION

I have ultimately decided this case issue in favor of the union, in accord with and based upon the following analytical process and reasons.

1. First, upon initial review of the case, I did not find the evidence and submissions so overwhelmingly one sided, that they compelled a clear decision in either direction, without further extensive study and analysis.
2. I did study the many provisions of the contract as they relate to this issue, in Articles 7, the first part of 8, and Article 41 in particular, since many of the provisions do interrelate with each other, and since a number of the terms and concepts are recited in several sections. I have reference to such terms and concepts, among others, as full-timers, part-timers, vacancies, assignments, posting, bidding, the status of the full-timer and the PTFs, and the effect and rights of the parties flowing from the application of these provisions. One result of the study is the recognition that the provisions of the contract do not recite or express the application of all these matters to their full implementation, and in several instances in Articles 41 and 30, leave it to the parties to negotiate locally, which however was not done or not submitted here. Another result is that a number of questions can be posed and considerations raised, as related to this issue, beyond the main points articulated by the parties in their submissions.
3. Next, in applying the study of the provisions to the main points submitted by the parties, and within the context of the main frame work of the case as they outlined it, two broad weaknesses in the employer position become ascertainable and subject to scrutiny. One is that the employer position is premised on its presumptive interpretation and application of the provisions, without full convincing supporting proof, and without overcoming the challenge of provocative considerations to the contrary. Second, is that the employer position is not fully consistent with the purpose and spirit of the provisions, as conveyed by the sense of the provisions as a whole.
4. The crux of the issue around which this dispute revolved, is whether the employer's assignment of the full-timer nullified the five day vacancies and negated the bids of the PTFs. Was the assignment of the full-timer proper and within the employer's right, and does the claim of the PTFs evaporate in the face of a priority scheduling right of the full-timer?
5. Put in perspective, I do recognize and find that at the initial outset, the union has presented a *prima facie* case that the PTFs have a valid claim to the vacancies, except

.and but for the employer's assignment of the full-timer. If not for this denial, then the PTFs otherwise have a valid established claim. In a sense then, in this issue, the burden has shifted to the employer to prove its case that the assignment and denial were proper. The following points outline the determinates for this resolution.

6. The supervisor's initial reason and the employer's primary emphasis, seems to be more based upon the claim of bare rights involved; that the employer had the right to so assign the full-timer, which therefore eliminated the five day vacancy. The focus was more on rights then, rather than scheduling or operational difficulties as such.

7. While the employer made repeated reference to a prior obligation to first assign the full-timer his 40 hours of five eight hour days, the employer submitted no further specifics nor elaborations on why this was a problem which necessitated the full-timer's assignment in this manner to deprive the PTFs of their bid.

8. There was no direct evidence of any scheduling difficulties or operational needs that were encountered. At the most, the postmaster only presumed that the supervisor exercised his judgment on the basis of the best use for efficiency and the individual skills. The postmaster described the week as one of turmoil, but did not elaborate. He did describe the dispute as a unique one time occurrence, but that apparently was more in reference to the rarity of an unassigned regular with the PTFs' bids, rather than specific problems of scheduling or operation.

9. The employer is not fully convincing in its characterization of the full-timer as an unassigned regular, and the right of his assignment it asserts which flows from his limbo like interim status. In challenge is the union's claim that his status more properly was that of a reserve carrier, and the slight variance in the descriptions used with the term unassigned regular in the three Article 41 provisions of .1 A1, .1 A7, and .2 B3.

10. Nor is the employer fully convincing that it had a right to assign the full-timer in this manner to any vacancy under 41.1 A7, on the premise that he had exercised no bid or had no bid assignment that week. The thrust of 7 is to an unassigned full-timer who fails to exercise a bid where bid assignments are available; which is not the exact situation of the full-timer here.

11. There are further provocative considerations in challenge of the employer's claim under 7. 7 presumes bid postings were available to the full-timer. Here there was no such evidence; the five day vacancies were not posted nor was evidence of any others submitted. He had just worked route 16 the prior two weeks. There was no evidence he was offered the utility vacancy.

12. There is some inconsistency by the employer regarding the full-timer. The supervisor told him he couldn't bid for five day hold downs. There was no evidence he was offered the bid or assignment of the utility vacancy. In a sense, the employer was regarding him as not having any available bid rights that week.

13. The employer is not fully convincing that it properly assigned the full-timer on the basis of single day vacancies or assignments in that week under 7. 7 makes reference to vacancies or duty assignments which could be bid. The employer offered no reason why the full-timer was not assigned the utility vacancy. The employer's assignments of the full-timer to differing day assignments, was not fully explained nor justified, as distinct from an assignment to the full expected term days of a vacancy.

14. The employer supplied no specific reasons why the bids of the two PTFs could not be honored, while the employer fulfilled its obligations to the full-timer by other assignments, notably the utility vacancy.

15. The employer position is inconsistent with the spirit of 41.2 A1 to provide bid rights. The introductory paragraph to the section, does provide the section is a guide when necessary for filling assignments, and contains the mandate that it be so used to the maximum extent possible. Its purpose and intent would seem to support the concept that the employer has a mandate to try to accomodate the PTF bids, if the scheduling latitudes so permit. Here, the employer has made no showing of any attempt to do so, where, the evidence exists that other scheduling assignments were available for the full-timer.

16. FINDING-CONCLUSION: In summary then, for the above reasons, I find and conclude that the employer has failed to prove and support its claim that its assignment of the full-timer was proper, and that it nullified the five day vacancies and negated the bids of the PTFs. Accordingly, the claim of the union is upheld, that the vacancies existed and that the PTF bids should have been honored.

17. A backpay award is appropriate and granted, directing the employer to reimburse the two PTFs, Scott and Moellman, for the pay difference between the lesser hours they worked that week, and the 40 hours of the two vacancies denied. The union's claim for additional backpay overtime for the hours they worked outside the scheduled hours of the vacancies, is denied.

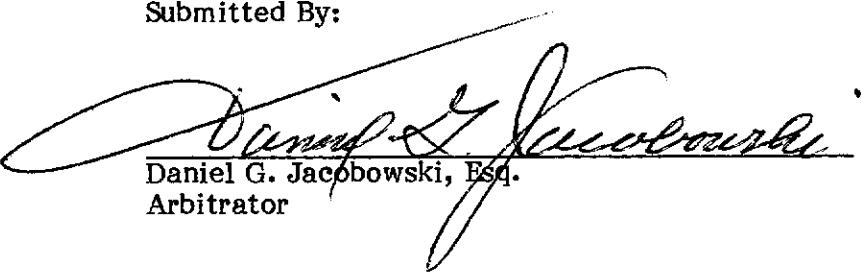
### **DECISION**

**DECISION:** In accord with the above, and within the circumstances of this case, the decision is made that the employer did violate the contract by its denial of the two PTF bids for the five day vacancies. The employer has failed to prove that its assignment of the full-timer was proper or was a proper basis for nullifying the five day vacancies and negating the bids. As to the main issue, the grievance of the union is sustained.

**AWARD:** An award is granted directing backpay reimbursement to the two PTFs for the difference of the vacancy hours denied them.

Dated: March 6, 1987

Submitted By:

  
Daniel G. Jacobowski, Esq.  
Arbitrator