

C#09416

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION
Between

UNITED STATES POSTAL SERVICE

And

NATIONAL ASSOCIATION OF LETTER CARRIERS

GRIEVANT:
Philip Box

POST OFFICE:
Bryan, Texas

CASE NUMBER:
S7N-3V-C-15665

BEFORE: P. M. WILLIAMS, ARBITRATOR, SOUTHERN REGION

APPEARANCES:

FOR THE POSTAL SERVICE:
Dan Heeth, Labor Relations Representative

FOR THE NATIONAL ASSOCIATION OF LETTER CARRIERS:
Robert Hinson, Local Business Agent

PLACE OF HEARING:
Main Post Office, Bryan, TX

DATE OF HEARING:
September 26, 1989

DECISION AND AWARD

BACKGROUND:

The grievant was employed as a full time regular letter carrier at the Bryan Post Office. His craft seniority date is April 23, 1966.

The facts are undisputed. On or about June 27, 1987 the Vehicle Operations Maintenance Assistant (VOMA) position became temporarily vacant as a result of the regular assigned employee being granted a 60 day leave of absence to visit Russia. The grievant learned of the upcoming vacancy and on June 21st submitted a bid for it despite there being no posting of the vacancy for bidding. His bid was rejected by the Employer.

A grievance was filed requesting, "Carrier Box be placed in vacant VOMA position immediately, given whatever training necessary and be paid at the higher level including O.T. used by other employees performing the duties of the position for the duration of this vacancy.

The reason given for filing the grievance was: "Carrier Box was entitled to bid on this position although notice inviting bids was never posted nor was a copy given to the local union. Carrier Box was the senior, qualified, eligible, available employee in the immediate work area to bid on this temporarily vacant higher level position. Employer should place particular emphasis upon carrier advancement opportunities and assist employees to improve their own skills through training."

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JOE Z. DOMERO
NATIONAL REPRESENTATIVE
DALLAS REGION #10

At Steps 1 and 2 the Employer alleged the grievance was untimely and therefore not arbitrable. At Step 3 however the timeliness issue was not raised, nor was it at the arbitration hearing. The objection therefore is deemed waived.

All interested parties appeared at the hearing where they were given an opportunity to present such evidence and argument as was deemed appropriate under the circumstances. The grievant appeared but as a result of the stipulation of the parties concerning what had happened his testimony was unnecessary. Each party made a closing argument to complete the hearing.

POSITION OF THE PARTIES:

National Association of Letter Carriers (Union):

The Union contended that in failing to give effect to the grievant's bid (request to be placed in the temporarily vacant VOMA position) the Employer had violated Articles 25 §4, 33 §1, and 41 §1B & D. It asked that the grievance be sustained and that he be paid for any difference in earnings for the period June 27 to August 26, 1987.

United States Postal Service (Employer):

The Employer contended no violation of an Article of the National Agreement (NA) occurred as a result of its failing to select the grievant to fill the temporary vacancy in the VOMA position. It asked that the grievance be denied.

ISSUE: Did the Employer violate the terms of the NA when it failed to select the grievant to fill the temporarily vacant VOMA position, and if so, what is the proper remedy?

OPINION:

The Articles of the NA cited by the Union contain the following language:

Article 25 §4:

"Section 4. Higher Level Details

"Detailing of employees to higher level bargaining unit work in each craft shall be from those eligible, qualified and available employees in each craft in the immediate work area in which the temporarily vacant higher level position exists. However, for details of an anticipated duration of one week (five working days within seven calendar days) or longer to those higher level craft positions enumerated in the craft articles of this Agreement as being permanently filled on the basis of promotion of the senior qualified employee, the senior, qualified, eligible, available employee in the immediate work area in which the temporarily vacant higher level position exists shall be selected."

Article 33 §1

"Section 1. General Principles"

"The Employer agrees to place particular emphasis upon career advancement opportunities. First opportunity for promotions will be given to qualified career employees. The Employer will assist employees to improve their own skills through training and self-help programs, and will continue to expand the Postal Employee Development Career concept."

Article 41 §1B & D
"Section 1 Posting

"B. Method of Posting

"1. The notice inviting bids for Letter Carrier Craft assignments, and to such other assignments to which a letter carrier is entitled to bid, shall be posted on all official bulletin boards at the installation where the vacancy exists, including stations and branches, as to assure that it comes to the attention of employees eligible to submit bids. Copies of the notice shall be given to the local Union. When an absent employee has so requested in writing, stating a mailing address, a copy of any notice inviting bids from the craft employees shall be mailed to the employee by the installation head.

"2. Posting and bidding for duty assignments and/or permanent changes in fixed non-work days shall be installation-wide, unless local agreements or established past practice provide for sectional bidding or other local method currently in use.

"3. The notice shall remain posted for 10 days, unless a different length for the posting period is established by local negotiations.

"4. Information on notices shall be shown as below and shall be specifically stated: (The remainder is deleted as being unnecessary.)

"D. Other Positions

"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, including the positions listed below and any new positions added to the list:

SP 2-188 Examination Specialist
SP 2-195 Vehicle Operations-Maintenance Assistant"

In grievances involving contract interpretation the Union is the moving party and as such it is charged with having to show that the remedy requested is available as a result of something that is either stated or implied, or can be inferred from the language of the NA, or from the handbooks and manuals that relate to it as a result of Article 19. Moreover, in a case such as this it must also show that the grievant was qualified to perform the work and that he would have performed it but for the Employer's failing to give him such an opportunity.

Insofar as the latter proof is concerned the parties stipulated that the grievant "was the senior, qualified, eligible employee and that he was in the immediate work area." Moreover, satisfactory proof was made that he applied for the position. The question then becomes: Does the language of the NA state that he should have been selected because of his "application" for the VOMA position?

Union Exhibit 1 was a Step 4 decision dated July 8, 1982. In part the decision stated as follows:

**** The issue in this grievance involves the filling of a VOMA vacancy of five days or more.

"The grievance is settled in full in that temporarily vacant VOMA positions shall be filled in accordance with Article 25, Section 4 of the National Agreement. ..."

Based on the above quoted decision and my interpretation of Articles 25 and 41 I am constrained to say that the Employer's argument against the applicability of Article 25, §4 to this dispute is not well taken. Therefore to the extent it asked that the grievance be denied on the basis of §4 not applying I will decline to accept its argument as being a complete defense to the grievance. It seems to me, and I so find, §4 is very much applicable here as is the stipulation of the grievant being the senior, qualified and eligible employee in the work area.

I say the latter because but for the stipulation I would have been unable to find that he met the "qualification" test because the grievance tends to indicate that maybe he was not qualified when it makes the request that he be "given whatever training is necessary". Ordinarily that kind of a request would strongly suggest to me that training was necessary before he would be fully qualified to perform the VOMA position duties, and this would necessarily mean that he might not be the senior qualified employee insofar as both his Craft and the Motor Vehicle Craft were concerned, which I believe is the thrust of §4. But the issue of qualification is admitted, consequently I will not dwell on it.

§4 is about as difficult to understand as any language I have been exposed to in collective bargaining agreements. But after carefully studying it I think I am safe in saying that its thrust is relatively simple although its verbage is far from being simple. Ignoring for purposes of illustration the seniority and other standards used to find the right person, the basic reality of §4 is that in the less than 5 day temporary vacancy situation the Employer is granted discretion, whereas in the more than 5 day situation it is not. Rather it must fill the temporary vacancy by using the same employee that would be the successful bidder if the vacancy was a permanent one, assuming he or she would bid for it.

In this case the Employer's stipulation, or so it seems to me, places the grievant in the category of being the front runner for the position had the temporary vacancy been posted for bid. Moreover, Article 41 §1 D, or so it seems to me, gives him the right to make a bid for the VOMA position. The two circumstances, again so it seems to me, combine to warrant my finding (1) that he had a right to make a bid and (2) that he would have been the successful bidder. Under such circumstances I am of the opinion that his grievance has merit and that it therefore should be, and it hereby is, sustained.

On the basis of the entire record in this case the undersigned makes the following

AWARD

The grievance is sustained in part in accordance with the opinion expressed above. The grievant shall be paid the difference, including any overtime worked by the employee who filled the temporary vacancy in the VOMA position, between what he was scheduled to earn in his letter carrier position and that which he would have earned had he been awarded the VOMA temporary vacancy. The rates and comparison to used are for the period June 27th to August 26th, 1987. The Employer shall initiate appropriate action to begin the processing of the backpay due not later than 15 days from the date of this award.

IT IS SO ORDERED.



P. M. Williams
Arbitrator

Dated at Oklahoma City, Oklahoma
this 8th day of October, 1989.