

NATIONAL ARBITRATION PANEL

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In the Matter of the Arbitration )  
between )  
UNITED STATES POSTAL SERVICE )  
and )  
NATIONAL ASSOCIATION OF ) Case No. Q06N-4Q-C 11111196  
LETTER CARRIERS, AFL-CIO )  
and )  
NATIONAL POSTAL MAIL HANDLERS )  
UNION, AFL-CIO - INTERVENOR )

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BEFORE: Shyam Das

APPEARANCES:

For the Postal Service: Syeda H. Maghrabi, Esq.  
Redding C. Cates, Esq.

For the NALC: Keith E. Secular, Esq.

For the NPMHU: Matthew Clash-Drexler, Esq.

Place of Hearing: Washington, D.C.

Date of Hearing: March 20, 2015

Date of Award: September 21, 2015

Relevant Contract Provisions: Article 12, Sections 4 and 5

Contract Year: 2006-2011

Type of Grievance: Contract Interpretation

Award Summary:

The grievance is denied.

A handwritten signature in black ink, appearing to read "Shyam Das". The signature is fluid and cursive, with a horizontal line underneath it.

Shyam Das, Arbitrator

BACKGROUND

Q06N-4Q-C 11111196

This grievance involves a carrier who was excessed and involuntarily reassigned on May 21, 2010 from the North Bergen, New Jersey installation to the Elizabeth, New Jersey installation. Ten days later a carrier in the North Bergen installation retired, thereby creating a vacancy in that installation. Grievant sought to exercise his contractual right to retreat to North Bergen when the carrier retired.

The NALC took the position that the excessed carrier in the Elizabeth installation must be retreated back to the North Bergen installation so he could bid on assignments posted at that installation. The Postal Service took the position that the excessed carrier may only be returned to a residual vacancy. In July 2010, the NALC filed a grievance, and it was appealed to arbitration at the regional level. In March 2011, while the case was pending at regional arbitration, the NALC elevated the grievance to the national interpretive step. At arbitration, the NPMHU intervened in support of the NALC's position.

The stipulated issue in this case is whether Article 12, Section 5.C.5.b.(6) of the 2006 National Agreement is violated when involuntarily reassigned city letter carriers are required to exercise their retreat rights specifically on residual vacancies in the level from which they were excessed in their original installation.

There are two levels in the city carrier craft: CC1 and CC2. Generally, the CC1 carrier delivers mail on the same route five days per week and the CC2 carrier covers a string of five routes per week. CC2 carriers earn higher pay than CC1 carriers. The term "unassigned regular" is used in those instances where a full-time letter carrier does not hold a duty assignment with set duties. Unassigned regular positions are level CC1 positions and have regularly scheduled hours and days off.

Article 41 of the parties' 2006 National Agreement outlines the way in which a vacancy is filled through the bidding process. When a CC1 or CC2 vacancy arises in an installation, it either must be posted for bid or reverted. Subject to certain limitations, the Postal Service determines whether a position should be posted as a vacancy for bid or should be reverted. If the Postal Service decides not to revert a position, the vacancy must be posted within 30 days of the date it becomes vacant. Vacant assignments not under consideration for

reversion must be posted for bid within 14 days of creation of the duty assignment or the vacancy, unless otherwise locally negotiated. Once a vacant duty assignment is posted for bid, a notice inviting bids will be posted for 10 days, unless otherwise locally negotiated. The senior qualified bidder shall be the successful bidder and once placed in the vacant position, his or her position becomes vacant. Then that vacant duty assignment goes through the same Article 41 process (reversion or posted for bid). This continuance of the Article 41 process is referred to as a "chain of bidding." If a vacancy is posted for bid, but no one successfully bids on it, then it becomes a residual vacancy. When a vacancy first occurs, there are three possibilities: reversion, a residual vacancy (if no one bids), or a chain of bidding followed by reversion or a residual vacancy.<sup>1</sup>

Cited provisions of Article 12 of the applicable 2006 NALC National Agreement are as follows:

**ARTICLE 12  
PRINCIPLES OF SENIORITY, POSTING AND  
REASSIGNMENTS**

\* \* \*

**Section 4. Principles of Reassignments**

**A. A primary principle in effecting reassignments will be that dislocation and inconvenience to employees in the regular work force shall be kept to a minimum, consistent with the needs of the service. Reassignments will be made in accordance with this Section and the provisions of Section 5 below.**

\* \* \*

**C. When employees are excessed out of their installation, the National Business Agent of the Union may request at the Area level a comparative work hour report of the losing installation 60 days after the excessing of such employees.**

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<sup>1</sup> In a small installation the process may be completed relatively quickly, but in a larger installation, it might take a year or longer.

If a review of the report does not substantiate that business conditions warranted the action taken, such employees shall have their retreat rights activated. If the retreat right is denied, the employees have the right to the grievance-arbitration procedure.

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## Section 5. Reassignments

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### C. Special Provisions on Reassignments

In addition to the general principles and requirements above specified, the following specific provisions are applicable:

\* \* \*

#### 4. Reassignment Within an Installation of Employees Excess to the Needs of a Section

\* \* \*

- c. Such reassigned full-time employee retains the right to retreat to the section from which withdrawn only upon the occurrence of the first residual vacancy in the salary level after employees in the section have completed bidding. Such bidding in the section is limited to employees in the same salary level as the vacancy. Failure to bid for the first available vacancy will end such retreat right. . . .

\* \* \*

#### 5. Reduction in the Number of Employees in an Installation Other Than by Attrition

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- b. Reassignments to other installations after making reassessments within the installation:

\* \* \*

- (6) Employees involuntarily reassigned under b(1) and (2) above, other than senior employees who

elect to be reassigned in place of junior employees, shall be entitled at the time of such reassignment to file a written request to be returned to the first vacancy in the level, in the craft or occupational group in the installation from which reassigned, and such request shall be honored so long as the employee does not withdraw it or decline to accept an opportunity to return in accordance with such request.

In the Clerk Craft, an employee(s) involuntarily reassigned shall be entitled at the time of such reassignment to file a written request to return to the first vacancy in the craft and installation from which reassigned. . . . The employee(s) shall have the right to bid for vacancies within the former installation and the written request for retreat rights shall serve as a bid for all vacancies in the level from which the employee was reassigned and for all residual vacancies in other levels for which the employee has expressed a desire to retreat. . . .

\* \* \*

8. Reassignment -- Part-Time Flexible Employees in Excess of Quota (Other than Motor Vehicle)

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- e. Part-time flexibles reassigned to another craft in the same installation shall be returned to the first part-time flexible vacancy within the craft and level from which reassigned.
- f. Part-time flexibles reassigned to other installations have retreat rights to the next such vacancy according to their standing on the part-time flexible roll in the losing installation but such retreat right does not extend to part-time flexibles who elect to request reassignment in place of the junior part-time flexibles.
- g. The right to return is dependent upon a written request made at the time of reassignment from the losing installation and such request shall be

honored unless it is withdrawn or an opportunity to return is declined.

(Underlining added.)

#### NALC POSITION

The NALC argues that Article 12, Section 5.C.5.b.(6) makes no reference to "residual" vacancies; therefore, under the plain language of the provision the Postal Service obligation to honor the employee's request to retreat is triggered as soon as the "first vacancy" occurs in the employee's level and craft in the original installation. It explains that this does not necessarily mean that in all cases the employee must be returned to the original installation immediately. The precise timing of the reassignment is on a case-by-case basis and is governed by "the primary principle" set forth in Article 12, Section 4.A, that "in effecting reassessments...dislocation and inconvenience to employees...will be kept to a minimum, consistent with the needs of the service."

The NALC points out that Section 5.C.5.b.(6) permits excessed employees to request to return to "the first vacancy," not "the first residual vacancy." It argues that these terms are not synonymous. A first vacancy occurs immediately and a residual vacancy will not be established until a chain of bidding has been completed and no one bids on a posted assignment. Section 5.C.5.b.(6) does not require that an excessed employee be placed in a specific, permanent bid assignment. It simply requires the Postal Service to honor an employee's request to return to the first vacancy, which is a flexible formulation that allows an employee to be accommodated while the bidding process is underway.

The NALC contends that its interpretation of Section 5.C.5.b.(6) is reinforced by related provisions of Article 12. It asserts that there are recurring references to retreat rights throughout Article 12 which clearly show that retreat rights are not presumptively linked to the completion of the bid process and the establishment of a residual vacancy. One example is Article 12, Section 4.C, which requires the Postal Service to provide the Union, upon request, a comparative work hour report 60 days after an excessing event. Depending on the review of

the work hours report an employee may have his or her retreat rights activated. The NALC explains that these retreat rights are not contingent upon the existence of residual assignments, but on the continued existence of work hours which had been projected to decline. Another example cited by the NALC is the provision in Article 12, Section 5.C.5.a.(5), under which an employee reassigned to a different craft within the same installation is to be "returned at the first opportunity to the craft from which reassigned." The retreat right in this situation, the NALC notes, is made contingent on the existence of the first work opportunity, not the establishment of a residual vacancy.

The NALC also points to Article 12, Section 8, which covers the excessing of part-time flexible employees (PTFs) in the same installation or to other installations. The language in paragraphs e, f, and g, providing for the exercise of retreat rights by these employees is virtually identical to the wording of Section 5.C.5.b.(6). PTFs do not occupy specific duty assignments and do not bid on assignments. The only PTF vacancies that can exist are vacancies in the complement, not a residual vacant duty assignment. The NALC argues that the fact that the retreat rights of PTFs are defined in the same contractual language as that which appears in Section 5.C.5.b.(6) further illustrates that Section 5.C.5.b.(6) retreat rights likewise do not depend on the existence of a residual vacancy.

The NALC stresses that one section of Article 12 does expressly restrict the exercise of retreat rights to residual vacancies. Section 5.C.4 covers reassignments within an installation of employees excess to the needs of a section. Paragraph c of this section allows such reassigned full-time employees to retreat, but "only upon the occurrence of the first residual vacancy in the salary level after employees in the section have completed bidding." The NALC argues that this is the exception which proves the rule. It shows that the drafters of Article 12 knew how to link retreat rights to residual vacancies when they intended to do so.

The NALC stresses that any ambiguity in the meaning of the specific reassignment rules set forth in Article 12, Section 5.C must be resolved in accordance with the "principles of reassignments" set forth in Section 4. The four basic "principles of reassignment" set forth in Section 4 were negotiated in 1973 and purposefully placed in a new section

preceding the specific reassignment rules in Section 5 to reflect the parties' specific intent that these principles would "overarch the rest of the provisions of Article 12," as testified to by Postal Service witness Brian Gillespie -- one of the negotiators -- in a 2000 national arbitration hearing in Case No. H0C-NA-C 12.

The most fundamental principle is the first, set forth in paragraph A: "[a] primary principle in effecting reassessments will be that dislocation and inconvenience to employees in the regular work force shall be kept to a minimum, consistent with the needs of the service." According to the NALC, management's position in this case is in direct conflict with this primary principle, for the following reasons. First, involuntary excessing invariably causes inconvenience and dislocation because employees, as a minimum, will have to travel longer distances from home to get to work and will incur additional costs. Second, the deferral of an excessed employee's return to the original installation until a residual vacancy is available prolongs inconvenience and dislocation to the employee. Finally, the return of an excessed employee prior to the completion of the bidding process can be accomplished in a manner which is consistent with the needs of the Postal Service.

The NALC argues that in a typical situation, a vacancy leaves at least 40 hours of work to be assigned while the bidding process is underway. In these situations, the excessed employee would simply be treated as an "unassigned regular" and assigned whatever work was available until the bid process was completed, after which they would be permanently assigned either by bidding or by involuntary assignment. The NALC recognizes that there may be some situations where there is not sufficient work and advocates for a case by case approach, which it contends is consistent with the language of Article 12, Section 4.A.

The NALC argues that the Postal Service's past practice argument falls short of establishing a consistent, nationwide past practice accepted and followed by both parties. The Postal Service's single witness, Manager Robert Brenker, acknowledged on cross examination that he could recall only two instances involving the potential excessing and retreat of letter carriers under Article 12, both occurring during his tenure as an NALC officer in Portchester, New York in the early 1970s. The first instance, when letter carrier routes were motorized, was

in 1973 and no letter carriers were excessed in Portchester. Brenker also acknowledged that he did not know how many carriers may have been excessed, or subsequently exercised retreat rights, anywhere else in Westchester County, where Portchester is located. The second instance involved the automation of central forwarding in 1974 which took work from letter carriers that may have led to excessing. However, Brenker acknowledged that no letter carriers were excessed out of Portchester. The Postal Service's evidence corroborates the testimony of NALC Vice President Lew Drass that there has been very little excessing in the letter carrier craft. Moreover, the NALC points out that Brenker also admitted that successive NALC national officers consistently disagreed with management's approach to retreat rights during meetings of the national Article 12 work group about which he testified.

The NALC refutes the Postal Service's argument that the NALC's position is inconsistent with those provisions of Article 12 in the 2006 National Agreement requiring that employees be excessed and retreat within their pay levels.<sup>2</sup> The NALC argues that its interpretation of Section 5.C.5.b.(6) would not result in excessed carriers being returned to a different pay level. The grievant in this case was a CC1 carrier when he was excessed. The carrier who retired shortly thereafter was also a CC1. Thus, the first vacancy in North Bergen, which grievant sought to return to, was a CC1 position. Moreover, at the time the grievance arose there was a CC2 at North Bergen who was junior to the grievant. If the grievant had been returned in a timely manner, he would have had the right to exercise his seniority to outbid this CC2 employee for an available CC1 vacancy. It was the deferral of the grievant's return that created the possibility that the residual vacancy would be the CC2 position. Under the restrictive terms of the 2006 contract, the grievant could no longer be retreated once that had occurred. The NALC maintains that the Postal Service's arguments reflect a hypothetical scenario, not the facts of this case. Under the NALC's approach, a CC1 carrier could be retreated as a CC1 "unassigned regular." That carrier would remain a CC1 while the bidding process was underway. While there are scenarios where the employee ultimately would obtain a CC2 assignment which becomes vacant during a bid cycle -- either by successful bid or by

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<sup>2</sup> As noted at the hearing, the NALC points out that this pay level issue is relevant only because the present grievance arose under the 2006 Agreement. The current Agreement was modified to eliminate pay levels as a restriction on excessing and retreat of letter carrier craft employees.

involuntary assignment as a junior employee -- those results would follow from the operation of other contractual provisions.<sup>3</sup> The NALC argues that a reassignment of a CC1 carrier to a CC2 position within the installation after his return as a CC1 does not present a conflict with Section 5.C.5.b.(6).

The NALC also stresses that under its position, Section 5.C.5.b.(6) may be applied on a case-by-case basis so as not to conflict with the Postal Service's right to revert carrier assignments or to lead to a "second excessing" of the same employee. For example, if the Postal Service is in the process of reverting an assignment, delaying the return of a previously excessed employee may be justified and the NALC's approach does not preclude this result. Moreover, the Postal Service does not have unfettered discretion to revert letter carrier route assignments. Reversions must be justified by current data establishing that the route consists of less than eight hours work. If the rules are properly applied, when the first vacancy occurs the Postal Service will have an objective basis for knowing whether the potential retreat of an excessed carrier will conflict with the needs of the service. Similarly, if the Postal Service reasonably predicts that returning an employee to an unassigned regular position would obligate the Postal Service to pay out-of-schedule premium pay to the employee on a recurring basis, management could cite the scheduling problem as a reason why honoring the employee's request to return would not be consistent with the needs of the Postal Service.

#### NPMHU POSITION

Intervenor NPMHU supports the NALC's position in its post-hearing brief and submitted a letter in lieu of its own post-hearing brief. The NPMHU argues that the plain language of Article 12, Section 5.C.5.b.(6) does not include language restricting retreat rights to when a position is not filled through the bidding process, nor does it include a "residual" vacancy limitation. The provision makes it clear that the Postal Service shall allow an excessed employee to retreat or return to his or her former installation once there exists the "first vacancy" in the excessed employee's level at the former installation. The NPMHU contends that the Postal Service's proposed interpretation requires the Arbitrator to read "residual" into a provision

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<sup>3</sup> See, Article 41, Section 1.A.7 and Section 1.C.

in which it does not appear. This would fundamentally change the plain meaning of the contract and would exceed the Arbitrator's authority.

The NPMHU also disputes the Postal Service's contention that the NALC's position would require it to create an unassigned regular position. Because the returning employee will not hold a duty assignment at the time he or she returns to the installation, the employee temporarily will assume the status of an unassigned regular with a fixed schedule, the schedule of the first vacancy triggering retreat rights, a status that will end at the conclusion of the bidding process. Any potential costs to the Postal Service are minor compared to the adverse impact on the employee who has been excessed out of the installation and are part of the Postal Service's contractual commitment to minimize "dislocation and inconvenience to employees" in the reassignment process. Moreover, as explained by the NALC, its proposed interpretation is not inconsistent with the Postal Service's right to revert a position and would not lead to additional excessing.

#### POSTAL SERVICE POSITION

The Postal Service contends that the 2006 National Agreement requires excessed carriers to exercise their retreat rights on the first residual vacancy in their level in their original installation. The contract should be read as a whole, and, if possible, every word and every provision should be given effect. The NALC's interpretation ignores the fact that the level of the first vacancy will be unknown until the Article 41 bidding process is complete, and it results in a residual vacancy. When a duty assignment becomes vacant in an installation, making it a "first vacancy," three possibilities ensue: the vacancy can be reverted, it can become a residual vacancy, or it can be filled through the Article 41 bidding process. Only once there is a residual vacancy will the Postal Service know whether it will be "in the level" and if the employee is able to exercise his or her retreat rights to the position.

The Postal Service stresses that the term "returned to the first vacancy" in Section 5.C.5.b.(6) must be harmonized with the phrase "in the level...in the installation from which reassigned..." and this language must be read in the context of the entire National

Agreement, specifically Article 41. The only way the above phrase can be given meaning is to wait until the Article 41 process concludes with a CC1 or CC2 residual vacancy.

The Postal Service contends that its interpretation is consistent with the intent of Article 12.4.A, which provides: "A primary principle in effecting reassessments will be that dislocation and inconvenience to employees in the regular work force shall be kept to a minimum, consistent with the needs of the service." (Emphasis added.) The NALC's interpretation would cause an increased rate of excessing and disruption. The excessed employee could only come back into a new unassigned regular position until the Article 41 bidding process is complete. The Postal Service stresses that not only is there no contractual obligation to create these new unassigned regular positions to accommodate retreat rights, but this course of action is operationally inefficient for at least two reasons. First, retreating an excessed employee prior to a residual vacancy can potentially lead to a second excessing if Management decides to revert a vacancy during the Article 41 bidding process. Second, unassigned regular positions do not have a set duty assignment and any change to their schedule to meet operational needs would require out-of-schedule premium pay. Since an unassigned regular carrier without a set duty assignment is more likely to be needed to work outside his or her regularly scheduled hours, premium pay is more likely to be paid. This adverse financial impact is inconsistent with the needs of the Postal Service.

The Postal Service maintains that it has a longstanding practice of retreating employees to residual vacancies. The relevant language in Article 12.5.C.5.b.(6) has appeared unchanged in the National Agreement since 1963. Since that time there were at least two earlier excessing events involving NALC members -- one in 1973 relating to motorizing city carrier routes in Westchester County, New York, and another in 1974 relating to the central forwarding system. Robert Brenker, Manager of Strategic Complement Reassignment at Postal Headquarters, testified that on those occasions -- when he was an NALC local official in Portchester, New York -- the Postal Service took the position it always has taken that excessed employees could only retreat back to a residual vacancy in their original installation. The Postal Service points out that while the NALC tries to argue that "there's not much excessing" in the bargaining unit, this does not preclude the establishment of a customary practice. Moreover, in

recent years, beginning in 2008, the Postal Service met with the NALC leadership as part of Article 12 work group meetings, and maintained its position that retreat rights can be exercised only on residual vacancies.

The Postal Service acknowledges that it has an obligation to honor an excessed employee's request to return to his or her original installation in a manner which minimizes disruption to the employee consistent with the needs of the Postal Service. The NALC's position, according to the Postal Service, could increase disruption because the operational and staffing needs of the Postal Service cannot be known with any certainty until a vacancy goes through the Article 41 process, and either a reversion or a residual vacancy results from the process. The outcome of the Article 41 process could be realized right away (in the case of a smaller installation) or up to a year later (for a larger installation).

The Postal Service argues that Article 12.4.C is irrelevant to the instant dispute because retreat rights under that section are automatic; there is no "first vacancy" and no "request by the employee," per se, to honor. If the Union requests a comparative work hour report under Article 12.4.C, and the report shows that there is sufficient work in the installation for the excessed employees to perform, then the excessed employee can be returned to his or her original installation automatically. Since the comparative work hour report is a before-and-after snapshot of the work in the installation, and is used to substantiate Management's excessing decision, it is assessing the "needs of the Postal Service."

The Postal Service also argues that the NALC's comparison pertaining to PTFs is not relevant to this interpretive matter. PTF positions are not duty assignments and are not required to be posted for bid under Article 41, and therefore, PTF residual vacancies do not, and have never, existed.

The Postal Service insists that the most reasonable interpretation of Section 5.C.5.b.(6) is to retreat employees into a residual vacancy. The ambiguity from the omitted term "residual" only can be resolved by adopting the most reasonable interpretation.

The Postal Service notes that none of the parties advocates a plain language reading of Section 5.C.5.b.(6). Such a reading would violate Article 41, which allows management the option to revert the vacancy or to post it for bidding. Retreating an employee to the "first" vacancy without posting it for bid also potentially could violate the seniority provisions of the contract if a more senior carrier than the excessed carrier wanted to bid for that vacancy.

The Postal Service asserts that the NALC does not take the literal, plain language reading of "first vacancy," but rather contends that the Postal Service is obligated to return the employee to the work available in the original installation -- not to a specific position. However, the National Agreement does not impose an obligation on the Postal Service to create a new unassigned regular position simply to effectuate retreat rights. Moreover, a newly created unassigned regular position is not a vacancy.

In contrast, the Postal Service takes a straightforward interpretation of requiring involuntarily assigned city letter carriers to exercise their retreat rights specifically on residual vacancies in the level from which they were excessed in their original installation. Even the NALC admits to the reasonableness of this interpretation in some circumstances, taking the position that whether or not the employee would get to return prior to the establishment of a residual vacancy would have to be determined on a case-by-case basis.

### FINDINGS

The retreat right provided for in Section 5.C.5.b.(6) is "to be returned to the first vacancy in the level, in the craft. . .in the installation from which reassigned." Not only must there be a vacancy in the level, but the right provided for in this provision is to be returned "to the first vacancy." Section 5.C.5.b.(6) does not state that an excessed carrier has a right to be returned to the installation when there is a vacancy (or a vacancy occurs) -- which in effect is what the NALC argues for in this case -- but to be returned to the vacancy.<sup>4</sup> Moreover, it is

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<sup>4</sup> The provision in Article 12, Section 4.C, cited by the NALC does not tie the activation of retreat rights to a vacancy. Basically, that provision serves to undo the excessing which resulted in the

undisputed that until returned to the installation from which the carrier was excessed, in this case North Bergen, a carrier has no right to bid on any vacancy that occurs at that installation.<sup>5</sup>

There is no dispute that Section 5.C.5.b.(6) does not apply so as to require that a reassigned employee be placed in the first vacancy in the level that arises at the former installation. For example, on the facts of this case, grievant had no right to be returned directly to the vacancy created by the retirement of the CC1 carrier at North Bergen. The parties agree that vacancy had to be posted -- if not reverted by the Postal Service -- and filled through the seniority and bidding process in Article 41. The parties further agree that if the Postal Service does not exercise its right to revert a position, all succeeding vacancies in the chain of bidding similarly are to be filled by posting. On the basis of the record in this case, the only vacancy at North Bergen that grievant could be returned to from Elizabeth, consistent with the National Agreement, would be a residual vacancy. If there was some other vacancy he could be returned to, his retreat rights under Section 5.C.5.b.(6) would be triggered by the existence of that vacancy. The reason he only can be returned to a residual vacancy is not because the wording of Section 5.C.5.b.(6) limits his right to return "to the first vacancy" to a residual vacancy, to the exclusion of other vacancies, but because there is no other vacancy that he can be returned to consistent with application of Article 41.

The NALC contends that when the first vacancy in the CC1 level arose at North Bergen, grievant should have been returned to North Bergen and treated as (given the status of) an unassigned regular. But that would not be returning grievant to a vacancy. The status of an unassigned regular does not constitute a vacancy.

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employee's involuntary reassignment. Article 12.4.C does not offer a useful analogy for purposes of resolving the issue in this case. Likewise, the provisions of Article 5.C.8 relating to retreat rights of excessed PTFs to PTF vacancies are not analogous due to the very different nature of PTF vacancies and how they are filled.

<sup>5</sup> The situation would be different in the case of an excessed clerk as separately provided for in the second paragraph of Section 5.C.5.b.(6).

Therefore, while Section 5.C.5.b.(6) does not use the term "residual vacancy," that is the only vacancy to which a carrier involuntarily reassigned to another location could be returned consistent with other provisions of the National Agreement.

The NALC points to the language in Article 12, Section 5.C.4.c which provides that an employee involuntarily reassigned to a different section in the same installation retains the right to retreat to the "first residual vacancy." Understandably, the NALC argues that if the parties had intended to limit the retreat rights in Section 5.C.5.b.(6) to the "first residual vacancy," they would have stated that as they did in Section 5.C.4.c. The language in issue in Section 5.C.5.b.(6) dates back at least to the 1963 Agreement. While the provision in that Agreement corresponding to the retreat rights now set forth in Section 5.C.4.c is not in evidence, the NPMHU did introduce an excerpt from the 1964 Agreement which includes that provision (Article 12.B.4.c) in its entirety as follows:

Such reassigned regular employee retains the right to retreat to the section from which withdrawn only upon the occurrence of the first vacancy. Failure to bid for the first available vacancy will end such retreat right.

Thus, it appears that the term "first vacancy" was used in both provisions relating to retreat rights at the time the language in Section 5.C.5.b.(6) at issue here originated.<sup>6</sup> More importantly, the only way in which Section 5.C.5.b.(6) can be applied to provide for a carrier to return from another installation to a "vacancy," consistent with the seniority provisions that both parties agree apply, is a return to a residual vacancy.

The evidence relating to past practice adds no real support to either parties' position. On the apparently rare occasions when carriers may have been excessed to other

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<sup>6</sup> There is no evidence as to when or under what circumstances the word "residual" was added to the provision now found in Section 5.C.4.c, but that provision as it appears in the 2006 National Agreement shows considerable revision from how it appeared in 1964. Section 5.C.4.c also differs from Section 5.C.5.b.(6) in that it provides for the right to retreat "upon the occurrence of" the first vacancy (1964) or the first residual vacancy (2006), rather than "to the" first vacancy, and refers to the excessed employee bidding on a vacancy in the section from

installations in the past, it appears that the Postal Service has taken the position it takes in this case regarding retreat rights. There is no evidence that the NALC agreed, and, at least in recent years, the NALC has asserted the position it does in this case. There is no evidence of the actual past application of Section 5.C.5.b.(6) that might be helpful in resolving the present dispute.

While the case-by-case approach advocated by the NALC attempts to recognize and harmonize the interests of both excessed employees and the Postal Service consistent with the general principle in Article 12.4.A, there is nothing in the language of Section 5.C.5.b.(6) -- including the words "such request shall be honored" -- that suggests such a case-by-case approach. There also is nothing in Section 5.C.5.b.(6) to suggest that when a vacancy in the level occurs at the carrier's former installation, the excessed carrier -- while not eligible to be placed in the vacancy or to bid on it -- is entitled to be returned to the former installation and to be given the status of an unassigned regular until either able to exercise seniority to bid into a vacancy or involuntarily assigned to a residual vacancy under Article 41. That might be a viable approach -- particularly with the case-by-case consideration proffered by the NALC -- but it is not what Section 5.C.5.b.(6) of the 2006 National Agreement provides for.

For all these reasons, this grievance must be denied.

AWARD

The grievance is denied.



Shyam Das, Arbitrator

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which the employee was reassigned. I hasten to add that Section 5.C.4.c is not at issue here, and that I am merely pointing out other differences in the wording of the two provisions.