

C#00245

ARBITRATION AWARD

In the Matter of the Arbitration)
Between)
U. S. POSTAL SERVICE) CASE NO. C8C-4H-C 17962
St. Joseph, Missouri)
And) ALBERT A. EPSTEIN
LOCAL 254 AMERICAN POSTAL) ARBITRATOR
WORKERS UNION)

MICHAEL POWERS GRIEVANCE

THE PROCEEDINGS

The above parties, unable to resolve a grievance filed by General Clerk Michael Powers, with reference to his claim for steward's seniority, submitted the matter to the undersigned for arbitration under the terms of their Labor Agreement.

A hearing on the matter was held at the Post Office in St. Joseph, Missouri, on November 17, 1981. Both parties were represented and fully heard, testimony and evidence were received and both parties made oral closing arguments.

APPEARANCES

FOR THE UNION:

Mr. James S. Romine,

National Representative

Mr. Michael Powers,

President of the Local

Mr. George Smith,

Steward

FOR THE POSTAL SERVICE:

Mr. Rodney Stone,

Labor Relations Executive

Mr. John W. Herleman,

Section Center Director of

Employees and Labor Relations

THE ISSUE

Was Michael Powers a certified steward entitled to steward's seniority under the terms of the Labor Agreement between the parties.

PERTINENT LABOR AGREEMENT PROVISIONS

"ARTICLE XV

GRIEVANCE-ARBITRATION PROCEDURE

"Section 2. Grievance Procedure - Steps

Step 1: (a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned of its cause. The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative

"(c) The installation head or designee will meet with the steward or a Union representative as expeditiously as possible, but no later than seven (7) days following receipt of the Step 2 appeal unless the parties agree upon a later date. In all grievances appealed from Step 1 or filed at Step 2, the grievant shall be represented in Step 2 for all purposes by a steward or a Union representative who shall have authority to settle or withdraw the grievance as a

result of discussions or compromise in this Step. The installation head or designee in Step 2 also shall have authority to grant or settle the grievance in whole or in part."

"ARTICLE XVII

REPRESENTATION

"Section 3. Rights of Stewards. When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and such request shall not be unreasonably denied. In the event the duties require the steward to leave the work area and enter another area within the installation or post office, the steward must also receive permission from the supervisor from the other area he/she wishes to enter and such request shall not be unreasonably denied.

"The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.

"While serving as a steward or chief steward, an employee may not be involuntarily transferred to another tour, to another station or branch of this particular post office or to another independent post office or installation unless there is no job for which the employee is qualified on such tour, or in such station or branch, or post office."

DISCUSSION AND OPINION

The grievant, who is the president of the Local, elected in January, 1980, was employed as a General Clerk at the St. Louis, Missouri Post Office. In May of 1980, he was surplused from

Tour II and assigned to Tour III. The Union claims that the grievant was acting as chief steward at the time, that there was another job available for him on Tour II and that he therefore should have remained on Tour II under the terms of Article XVII Section 3 of the Labor Agreement, which would give him "super-seniority." The Postal Service denied the grievance because it claims that the grievant had not been properly identified as a steward as required by the terms of Article XVII. It specifically refers to a letter of certification dated May 21, 1980 submitted to the Postmaster signed by the grievant as President of the Local, indicating the following listing:

Steward Tour One Gary Schemerhorn

Alternate George Smith

Clerk Craft President Michael Powers

The Postal Service points out that when the grievance arose, the Union was given an extension of one week to provide a document which would establish the alleged past practice of allowing the Clerk Craft President to act as chief steward. It notes that the Union was unable to produce such a document and that no one in management was aware of its existence. The Postal Service maintains that if the grievant was recognized as a steward, he would have been included on the May 21st list of stewards set forth

above which the grievant himself submitted. The Postal Service therefore contends that the grievant has not been identified as a steward and is therefore afforded no protection under the terms of Article XVII. It therefore requests that the grievance be denied.

The Union contends that the grievant, in accordance with Union practice, undertook and carried out the duties of chief steward on Tour II when he was elected president in January of 1980 and in fact was the only steward on duty from January, 1980 to May 21, 1980 when he was transferred to Tour III. The Union contends that the Postal Service never raised any question about the grievant performing steward functions until after the grievant was surplused. It maintains that the grievant was considered to be the chief steward, that he filed grievances and that there was no indication during the five month period when he served as steward that there was any challenge to his authority. It points out that if any question had been raised during that period, the grievant could have submitted evidentiary proof in writing. The Union notes that since the grievant was acting both as president of the local and as chief steward of Tour II, he was in effect wearing two hats, but officially used the more prominent title of Clerk Craft President. It therefore requests that the grievant be transferred back to Tour II and that he receive out-of-schedule overtime pay during the period when he was transferred from Tour II.

An examination of the testimony, evidence and arguments of the parties indicates that the grievant served as chief steward on Tour II. Despite the fact that the certification which he issued on May 21, 1980, referred to him as Clerk Craft President, it is significant to note that the other listings indicated a steward for Tour I, a steward for Tour III and an alternate steward, with no indication of a steward for Tour II. It must therefore be assumed that the grievant who submitted the certification, listed his title of Clerk Craft President without specifically setting forth that he was also the Tour II steward.

It is understandable that under these circumstances the grievant was in effect indicating his dual status because there was no specific mention of a Tour II steward. It appears that the grievant was in effect performing the steward functions on Tour II and under these circumstances, he should have been considered as a certified steward for purposes of seniority under the terms of Article XVII. While it is true that individuals other than stewards may file grievances, the record indicates that the grievant acted in this capacity as a steward and it was not essential that he should be specifically certified as a steward since he was in effect performing that service and since one could determine that status by reading the May 21 certification between the lines. It is my opinion that the postal service was too technical in its position that there was no actual specific certification of the grievant as a steward. I am therefore

compelled to uphold the grievance and an Award will issue accordingly.

A W A R D

Michael Powers was a certified steward entitled to steward's super seniority under the terms of the Labor Agreement between the parties.

The Postal Service Service is directed to transfer him back to Tour II and to compensate him for out-of-schedule overtime pay for the period in which he was improperly transferred to Tour III.

Albert A. Epstein

ALBERT A. EPSTEIN
ARBITRATOR

CHICAGO, ILLINOIS
APRIL 27, 1982