REGULAR ARBITRATION

SOUTHERN REGIONAL PANEL

USPS - NALC

C# 10559

In the Matter of Arbitration	)	Case #S7N-3N-C-28049
Between	)	G.T.S. #004015
United States Postal Service	)	Charles T. Fradella
Gretna, Louisiana	)	Grievant
and	)	
Branch 2730	)	
National Association of Letter	)	Grievance File Closed:
Carriers AFL-CIO	)	November 16, 1990

Before Irvin Sobel, Arbitrator of Record

Appearances:

For the United States Postal Service (Service, Management, Employer)

Ms. Bonnie Wallace

Labor Relations Representative

New Orleans, Louisiana

For the National Association of Letter Carriers (NALC, Union)

Mr. George Cooper

Local Business Agent

Baton Rouge, Louisiana

Background:

At an arbitration hearing conducted at Gretna, Louisiana on November 16, 1990 the undersigned was authorized by the signatory parties to the National Agreement (N/A) to decide whether the Employer violated the 1987-90 N/A when it changed the route assignments of Technician 6 (T-6) Charles T. Fradella. The parties appeared, examined, and cross examined witnesses. At the hearing the Employer presented the matter of "Res Judicata" as a threshold issue. The Service argued that the matter was already adjudicated in a companion grievance and thus was not properly before the aforecited arbitrator.

The parties stipulated the following substantive issue:

> "Did the Employer violate the National Agreement when it changed two of the bid routes of the grievance (T-6) assignment? If so, what is the appropriate remedy?"

Facts in Case:

On March 1, 1990 the Employer posted the following routes namely 5618, 5619, 5620, 5623, and 5625 as the revised route assignments of the grievant T-6 Charles Fradella. On March 22, 1990 after a 1st step denial by Supervisor Williams, the Union introduced a written grievance on behalf of the grievant. The NALC contended, therein, that the grievant was a successful bidder of a specified group of routes, namely Routes 5316, 5317, 5318, 5319, and 5320. By revising the grievant (sic) T-6 combination Management violated the N/A through preventing the grievant from working his properly bidded combination.

The Union requested:

> The grievant (sic) T-6 combination be restore (sic) back to the original bidded position, and a monetary reqward be giving (sic) to the grievant, and asset (sic) at time and half for each hour worked out of his original combination, and for non schedule day worked out of combination.

Management's 2nd and 3rd step replies were addressed before a companion grievance (S7N-3N-C-28049) was adjudicated. The 2nd step denial by Postmaster Camile E. Darensbourg stated:

> On Thursday, April 5, 1990, you met with me to discuss the subject grievance. Article 41, Section C4 does not prohibit Management from changing bid assignments. During route adjustments, nineteen City Routes were adjusted with changes made to each bid assignment. This is Managements rights under Article Three 3D of the National Agreement to determine the methods, means and personnel by which its operations are conducted.
>
> Prior to changes in T-6 combinations, this office had nine (9) such positions. After changes were made, the office had nine (9) such positions. None of the T-6 combinations were abolished. The National Agreement and the Local Memorandum of Understanding do not prohibit changes made to T-6 combination, and Management is not required to revert the grievants' bid assignment to its former group of routes. Your grievance is denied. Should you desire to appeal this Step Two Decision, please furnish this office with a copy of that appeal.

Position of the Parties:

With the exception of the citation of the doctrine of "res judicata" (the matter has been decided) by the Employer advocate, the essence of each party's position has already been stated in the above citation of Facts. Accordingly, in the interests of avoiding repetition, only a barebones summary of each party's position will be stated at this point.

The Union's Position:

The Union contended that the Employer violated Article 41.1 C4 by unilaterally changing the combination of the grievant's bid routes. It argued that although three of the grievant's routes were left intact, Management had no right under the agreement to do what it did namely to remove entire routes from his T-6 combination. The Union also agreed that the Employer violated Article 1-B, Part. 4, Line H which states: "If a T-6 duty assignment is involved the route number of the T-6 duty assignment and the route number (sic) of the congruent routes shall be designated." If contended that Management's citation of Article 3 as the source of its power to change routes was incorrect since that right is and was subject to modification by other sections of the agreement which limit that right.

The Employer Position:

The Employer contended that no provisions in the N/A, or in any related documents thereto, which prohibit a change in a T-6 route combination exist and/or can be cited by the Union. Part. 242.123 of the M-41 allows local Management to adjust routes within the zip code area it serves even though there may be more than one zip code attached to the station. The changes were not ordered by Gretna Management until they were necessitated when two stations were combined into one when the new post office was occupied. The changes represented a efficient way to resolve all the problems resulting from the combination of two groups of carriers and were in the interest of all concerned, namely both the employees and the Service.

The Employer further contended that a decision by Arbitrator P. M. Williams (S7N-3C-C-28050) over a companion grievance involving the same fact situation and contentions namely a route combination change for T-6 Leinwars which denied that grievance was dispositive of the instant matter. It, therefore, argued that the issue be treated as a threshold issue before taking up the sustantive matter and the grievance be declared by this arbitrator as not properly brought before him.

The Threshold Issue:

In his decision of September 13, 1990 Arbitrator P. M. Williams denied grievance (S7N-3N-C-28050) introduced by the Gretna Branch of the Union on behalf of the aforecited T-6 Leinwars. He stated:

> I know of no requirement, and none has been cited to me, in either the N/A or the Local Memorandum of Understanding (LMU), or the handbooks and manuals of the Employer which tends to be persuasive to me that the Employer is without authority to implement such changes in route assignments of T-6 carriers as it deems appropriate for purposes of promoting the efficiency of the Service. Moreover, in this case the Union has failed to challenge the Postmaster's statement that the changes were made necessary because of the occupancy of the new building and the fact that the grievant was among the junior employees who were in T-6 assignments.
>
> I am of the opinion, and so find, the Employer did not violate the terms of the NA, or the LMU, or its handbooks and manuals, when it changed the routes of the grievant's T-6 combination. His grievance which claims to the contrary should be and the same hereby is, denied.
>
> There being to contractual basis upon which the grievance may be sustained as it has been filed and processed through the grievance arbitration procedure I am constrained to deny it. Had the relief requested been different, perhaps it would have been sustainable, perhaps not.

The identical nature of the circumstances between the grievances introduced two days apart, the sameness of the remedy requested by the Union in each, and their common origin in Postmaster Darensbourg's directive of March 1, 1990 in which he revised the T-6 assignments all provide a sound basis for invoking the doctrine of "res judicata", or the matter has been decided.

Arguendo, assuming this arbitrator were (underlining by this arbitrator) in total disagreement with Arbitrator Williams' cogently reasoned and well written decision he still could not, given the application of the principle of "res judicata", take up the substantive merits of the grievance. This principle is not designed as a vehicle for a mutual admiration society, of fellow arbitrators. Instead, it is fundamental to the stability and viability of the arbitral process itself. The doctrine is designed to forestall one of the parties from introducing multiple grievances involving the same matter. This is analagous to the person who not liking the taste of the "first bite of the apple" tries other apples, until he perhaps finds one which has a taste more to his liking.

For the above cited reasons this arbitrator lacks jurisdiction over the above cited matter. The grievance is, therefore, denied without reference to its substantive merits.

Award:

The grievance of T-6 Charles Fradella is hereby denied.

Tallahassee, Florida
January 24, 1991

This is a certified true copy of Arbitration Award

Irvin Sobel

Irvin Sobel, Arbitrator