C#09484 A+B

REGULAR ARBITRATION

NALC-USPS

SOUTHERN REGION

C#09484 A+B

In the Matter of Arbitration	)	Case #S7N-3S-C-19170
Between	)	GTS 011357
United States Postal Service	)	(Class Action)
Fort Lauderdale, Florida	)	and
and	)	#S7N-3S-C-19171
Local 2550	)	GTS 011358
National Association of Letter	)	J. Kelly
Carriers AFL-CIO	)	(Grievant)
	)	Record Closed: August 21, 1989

Before Irvin Sobel, Arbitrator of Record

Appearances:

For the National Association of Letter Carriers (NALC)

Don McMahon

President, Local 2550 NALC,

Fort Lauderdale, Florida.

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

Jerry Foster

Labor Relations Assistant,

Fort Lauderdale, Florida

Preliminary Statement:

The hearings of the above enumerated issues were conducted pursuant to Article 15 of the National Agreement (LMRA) between the parties. On November 1 and 11, 1988, the Union filed written grievances alleging the Employer violated the LMRA in each of the two instances. The matters were moved to the arbitral level and assigned to this Arbitrator on August 8, 1989. At the hearings the parties were accorded full opportunity to present witnesses for direct and cross examination and introduce such other evidence and argumentation each deemed pertinent to resolution of the issues. Both parties made closing statements and the hearing file was closed as of August 21, 1989.

Case #S7N-3S-C-19170 - Class Action

Issue:

Did the Employer violate the LMRA by not posting the Overtime Opportunities Offered List (OOOL) by pay period. If not, what is the appropriate remedy.

Facts in Case:

On November 1, 1988, after a First Step denial of Supervisor W. Samuels (204-B), the Union reduced the following grievance to written form. It stated:

> On October 20, 1988, Management in Plantation Branch failed to properly post overtime opportunities list as required by the National Agreement.

The Union contended:

> Overtime opportunities offered list must be properly posted. Management must abide by the LMU (Local Memorandum of Understanding) and the National Agreement.

Jerry Foster in his 2nd Step denial formulated the Employer's position. He stated:

> Management agrees that"Overtime Opportunities offered" list are to be posted and updated quarterly as required by Article 8.5-C2C of the National Agreement. However, there is no requirement to update such lists weekly as requested by the Union. No contractual violation has been demonstrated.

Arbitrator's Discussion:

Position of the Parties:

The Union's Position:

The Union essentially contended that the language of the LMU is neither inconsistent nor in conflict with the LMRA. It argued that nothing in the latter document precludes the posting of the list more frequently than that specified in the LMRA. In short, the LMRA's three (3) month requirement should be interpreted as a "not less than" stipulation. It also argued that the list, even if kept on a pay period basis, was not always made available at request to either individual carriers or the Union.

The Employer's Positions:

The Employer advocate argued that the language of the National Agreement (LMRA) is specific and any requirement for the posting of that list with greater frequency than three (3) months is contrary to the LMRA. Management faithfully lived up to the requirements of the Section C(2) of the LMU whose wording was

negotiated in 1973 and never altered, by maintaining the OOOL on a pay period basis and making it reasonably available to the carriers and the Union. The Employer also argued that the Union, over the intervening fifteen (15) year period, had neither challenged nor grieved the Employer's failure to post the list on a pay period basis.

Opinion and Award:

This is another case of the parties, each emphasizing a different "Agreement", making an Alice in Wonderland type of argument of "It is what I say it is". However, the Employer's specification of "what is" is more compatible with the LMRA, and even the LMU, than the Union's.

The contested provision of the LMU, namely, Section 5, C2, provides:

> "The following lists shall be maintained at all letter carriers sections:
>
> 1. An overtime desired list.
> 2. An overtime hours worked by pay period.
> 3. Overtime offered."

The LMU requires only that the OOOL be "maintained" on a pay period basis. It does not specify "and posted" as the Union argues and it must be presumed that the parties who negotiated that wording in 1973 were fully aware of the implications of that omission. Had the posting stipulation been inserted into the LMU, it would have been in conflict with Article 8.5 (2)C of the National Agreement. However, nothing in the LMRA prevents the list(s) from being maintained on a pay period basis. In short,

the Employer must, under any interpretation of the 1973 LMU, keep the lists reasonably up to date on a pay period basis, and make the lists available for inspection, should any reasonable request be made by either a carrier or the Union.

This arbitrator could not ascertain, nor is he required to do so for the purpose of this decision, whether the Employer at the Plantation Station had either refused or made it difficult to procure the lists. It should be understood that any failure by Plantation Management to make the bi-weekly list available for inspection could provide the basis for subsequent grievances.

Award:

The Employer is not required to post the Overtime Opportunities List on a pay period basis. However, the requirement under the Local Memorandum of Understanding that the Employer maintain the list on a per pay period basis is not in conflict with the National Agreement.

Case #S7N-3S-C-19171 - Joe Kelly (Grievant)

Issue:

Did the Employer violate the National Agreement when it denied the grievant's bid for Job #611-7816 (Router, 26-2). If so, what is the appropriate remedy.

Facts in Case:

On November 1, 1988, after a First Step appeal denial on October 24, 1988 by Supervisor Sam Frances (204-B), the Union reduced the following grievance to written form. It contended:

> "Grievant was denied a successful bid on Job Slot #611-7816 Router (26-2)".

The Employer's 2nd Step Appeal designee, Jerry Foster, who denied the grievance, responded as follows:

> A review of Personnel records shows that grievant was designated a successful bidder for the 5th time (during the duration of the 1987 National Agreement) in June of 1988. Since the bid in question in the instant case was not an exception as listed in Art. 12.3A of the National Agreement, it was properly denied to the grievant. The Union has shown no evidence of a contractual violation. Furthermore, this grievance is procedurally defective, as it was not filed at Step 1 in a timely manner. Carrier N. Trice was awarded Router position 26-2 on bid results posted 9/14/88, and this grievance was not filed at Step 1 until 10/18/88.

Relevant Contract Provisions:

Article 12, Section 3A

To insure a more efficient and stable work force, an employee may be designated a successful bidder no more than five (5) times during the duration of this Agreement unless such bid:

1. Is to a job in a higher wage level.

2. Is due to elimination or reposting of the employee's duty assignment.

3. Enables an employee to become assigned to a station closer to the employee's place of residence.

Opinion and Award:

The Employer's attempt to dismiss the grievance on timeliness grounds was without merit. While it is true that the grievance was not filed at Step 1 until 10/18/88 the grievant was not officially informed of the denial of his bid until approximately a month after another carrier was notified he was the successful bidder. It was only at that juncture that the time clock for filing the grievance began "ticking", and therefore, the grievance was filed within the allowable time.

A review of the grievant's records established that the grievant had already made five (5) successful bids within the contractual period and the bid, which is the subject of this grievance was his sixth. Although the Union contested the reliability of the records and the rationale for Personnel Assistant Terry Hamilton's check of the bid records, since by her admission this is the first time she ever found a sixth bid, it was, neither able to discredit her enumeration, nor prove that

she was specifically ordered by her supervisor to check the girevant's bids.

Of the three (3) exceptions to the five (5) successful bid allowable limit only one, namely, that pertaining to proximity to the grievant's residence could he construed as potentially applicable to the grievant. However, it was clearly established that the grievant's work station, namely, Plantation, where the grievant was employed at the time of his denied bid, was the Service establishment closest to his residence.

Award:

The grievance of Mr. Joe Kelly is denied.

Tallahassee, Florida
November 13, 1989

This is a certified true copy of Arbitration Award

Irvin Sobel

Irvin Sobel, Arbitrator