

CBR 83-4
5/20/83

Addendum No. 9

File Under: Article 13.

AIRS 36

1.

7.

19.

21.

C# 936

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE

Case No. HIC-5D-C 2128

and

AMERICAN POSTAL WORKERS UNION

APPEARANCES: Howard J. Kaufman, Esq., for the Postal Service
Gerald "Andy" Anderson, for the Union

- DECISION

This grievance arose under and is governed by the 1981-1984 National Agreement (JX-1) between the above-named parties. The undersigned having been jointly designated by the parties to serve as sole arbitrator, a hearing was held on 22 October 1982, in Washington, D. C. Both parties appeared and presented evidence and argument on the following issue, as determined by the arbitrator:

In transferring Marie Akins, a rural carrier, to a full-time regular position in the clerk craft, did the Postal Service violate Article 1, Section 2 or Article 13 of the 1981-1984 National Agreement?

If so, what is the appropriate remedy?

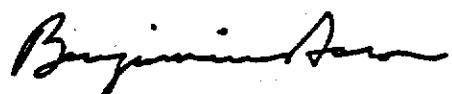
A verbatim transcript was made of the arbitration proceedings, and each side filed a post-hearing brief. Upon receipt of both briefs, the arbitrator officially closed

the record on 17 December 1982.

On the basis of the entire record, the arbitrator makes the following

AWARD

In transferring Marie Akins, a rural carrier, to a full-time regular position in the clerk craft, the Postal Service did not violate Article 1, Section 2, or Article 13 of the 1981-1984 National Agreement. The grievance is denied.



Benjamin Aaron
Arbitrator

Los Angeles, California
24 January 1983

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE

Case No. HLC-SD-C 2128

and

AMERICAN POSTAL WORKERS UNION

OPINION

I

Prior to 1978, the National Agreement covered four unions: the APWU, the NALC, the Mail Handlers, and the Rural Letter Carriers. The 1978-1981 National Agreement (JX-2) covered only the first three unions; and the present 1981-1984 National Agreement (JX-1) covers only the APWU and the NALC. Thus, Article I (Union Recognition), Section 2 (Exclusions) of the 1978-1981 Agreement expressly excluded the Rural Letter Carriers, and the same provision in the 1981-1984 Agreement excludes both the Rural Letter Carriers and the Mail Handlers. At the time of executing the 1981-1984 Agreement, the Postal Service and the APWU and the NALC also entered into the following Memorandum of Understanding (UX-3):

It is understood by the parties that in applying the provisions of Article VII [Employee Classifications], XIII [Assignment of Ill or Injured Regular Work Force Employees] of this agreement, cross craft assignments of employees, on both a temporary and permanent basis, shall be continued as they were made among the six crafts under the 1978 National Agreement.

Article 21 (Benefit Plans), Section 4 (Injury Compensation), of the 1981-1984 Agreement provides as follows:

Employees covered by this Agreement shall be covered by subchapter I of Chapter 81 of Title 5, and any amendments thereto, relating to compensation for work injuries. The Employer will promulgate appropriate regulations which comply with applicable regulations of the Office of Workers Compensation Programs and any amendments thereto.

An identical provision had been included in the 1978-1981 Agreement.

Article 19 of the 1981-1984 Agreement provides:

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least sixty (60) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting believe the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Unions upon issuance.

Subsequent to the execution of the 1978-1981 Agreement, the Office of Personnel Management (OPM) promulgated new regulations (Part 353--Restoration to Duty)--concerning

an agency's duty to reemploy employees injured while on duty (Ex. A to Postal Service post-hearing brief). These regulations were binding on the Postal Service. They provided in relevant part:

§353.303 Position to which restored.

An employee is entitled to be restored to employment in the following order. . . .

(a) To the position to which promoted while he was injured or on military duty, or, if that position is not available, to a position of like seniority, status, and pay;

(b) To the position he left because of injury. . . or, if that position is not available, to a position of like seniority, status, and pay;

(c) To the next best available position for which he is qualified. . . .

§353.306 Partially recovered injured employees.

Agencies must make every effort to restore, according to the circumstances in each case, an employee or former employee who has partially recovered from a compensable injury and who is able to return to limited duty.

Following receipt of these newly-promulgated regulations, the Postal Service revised Subchapter 540 of its Employee Labor Relations Manual (ELM) and sent copies to the unions concerned. So far as it appears, the APWU registered no objections to the proposed revisions, which were published in Postal Bulletin 21215, dated 22 October 1979 (JX-8). Prior to that date, Forrest M. Newman, APWU's Director of Industrial Relations, had written to James C. Gildea, Assistant Postmaster General, Labor Relations Department, inquiring

whether rural carriers were entitled to light-duty assignment in the clerk craft under Article XIII of the 1978-1981 National Agreement. Gildea's reply, dated 26 July 1979 (JX-7), stated in part:

Such limited duty assignments are not made pursuant to Article XIII but pursuant to our mutual obligations under the Federal Employee's Compensation Act to return employees with job related injuries to duty subject to their medical restrictions.

Section 546.141 of the Postal Service revisions provided in relevant part:

CURRENT EMPLOYEES. When an employee has partially overcome a compensable disability, the USPS must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerances. . . . In assigning such limited duty, the USPS should minimize any adverse or disruptive impact on the employee. The following considerations must be made in effecting such limited duty assignments: . . .

b. If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned, within the employee's regular hours of duty, other work may be assigned within that facility. . . .

Richard Bauer, Program Manager of the Postal Service's Injury Compensation Division, testified that pursuant to the revised Section 546.141, security force personnel were subsequently put into mailhandler work, mailhandlers were transferred into clerk positions, and nonbargaining-unit employees were transferred to bargaining-unit work.

II

The present grievance arises from the following facts:

In August, 1979, Marie Akins, a rural carrier employed in the Bend, Oregon, postal facility, suffered an on-the-job injury. Thereafter, she was medically restricted to an assignment involving only limited bending and no lifting over 25 pounds. The Bend postmaster created a job for her in the clerk craft that met those medical restrictions, there being no jobs that could do so in the rural carrier craft. Specifically, Akins was permanently transferred to the clerk craft as a full-time regular and awarded a seniority date at the bottom of the full-time regular list. The APWU filed a grievance, claiming that the Postal Service had violated Article 13 (Assignment of Ill or Injured Regular Work Force Employees).

Initially, the Union conceded that the Postal Service must conform to government regulations in respect of providing work for employees partially disabled because of on-the-job injuries. It argued, however, that the Postal Service was obligated "to compensate the gaining craft for the enforced assignment of a full time regular from another craft." (JX-5) This, the Union maintained, should be accomplished by posting a full-time rural route carrier craft position for bid by clerk craft personnel. At the arbitration hearing, however, the Union changed its position. It charged that the Postal Service had violated Article 1, Section 2, and Article 13 of the 1981-1984 National Agreement, and it questioned whether the OPM regulations should prevail over

inconsistent language in its own Agreement with the Postal Service. Finally, the Union contended that even if the Postal Service were required to provide a position for Akins in the clerk craft, it was not required to give her a full-time regular position, and should have assigned her to a part-time flexible position.

III

It is obviously too late in the day for the Union to challenge the proposition that FECA regulations can augment or supplement reemployed persons' contractual rights. The language of Article 21, Section 4 of the 1981-1984 Agreement, previously quoted, makes clear that the rights of such persons can be augmented or supplemented by federal regulations, with which the Postal Service must comply. If the Union objects to the changes in the relevant revisions introduced by the Postal Service in purported compliance with government regulations, it may challenge them in accordance with the procedures set forth in Article 19 of the Agreement, previously quoted. This it failed to do. Moreover, it raised no objection to the statement in Gildea's letter of 26 July 1979 to Newman, previously quoted, which clearly anticipated the reason for the action taken by the Postal Service in the case of Akins. Finally, in the earlier steps of the instant grievance the Union conceded that the Postal Service was bound by government regulations.

The only question left, therefore, is whether the Postal

Service was required to assign Akins to a full-time regular position in the clerk craft, or whether, as the Union contends, it would have been sufficient to assign her to a part-time flexible position. The implication of this contention is that the Postal Service has, by its action, denied a part-time flexible in the clerk craft of an advancement to a full-time regular position, and that this is unfair.

The Union has failed to prove, however, that if Akins had not been assigned to a full-time regular position, a part-time flexible in the clerk craft would have been so assigned. In any case, the applicable regulations, previously quoted, make it clear that an employee who has partially recovered from an on-the-job accident, and for whom no work within prescribed medical limitations in his or her own craft is available, must be offered a position in another craft in the same work facility that minimizes "adverse or disruptive impact on the employee." Inasmuch as Akins had been a full-time regular rural carrier, the Postal Service was faithful to the applicable government regulation in assigning her to a full-time regular position in the clerk craft that met her medical restrictions.

The grievance is denied.



Benjamin Aaron
Arbitrator