

C# 06883

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)
 between) Grievant:
UNITED STATES POSTAL SERVICE) Post Office: Lewiston, Maine 04240
 and)
NATIONAL ASSOCIATION OF LETTER) Case No: Impasse Case
CARRIERS, AFL-CIO)
) N4N 1K I 901237

Before Harry Grossman , Arbitrator

Appearances:

For US Postal Service: None

For Union: John J. Pimentel, Jr., Regional Admin. Asst., NALC

Date of Hearing: February 10, 1987

Place of Hearing: Lewiston, Maine 04240

Award: The impasse is resolved in favor of the adoption of the Union's proposal at issue at the Lewiston, Maine Post Office.

It is ordered that the Union's proposal be incorporated into the local Memorandum of Understanding forthwith upon receipt by the parties of this Award.

Date of Award: FEB. 26 1987

OPINION AND AWARD

Introduction

The undersigned Arbitrator was selected by the parties in accordance with the provisions of Articles 15, GRIEVANCE-ARBITRATION PROCEDURE, and 30, LOCAL IMPLEMENTATION, of the 1984 National Agreement between them, to resolve an impasse in their local negotiations of a certain proposal advanced by the Union and declared by the Employer to be unacceptable to it. A hearing in the matter was scheduled at Lewiston, Maine, on February 10, 1987. The Arbitrator and the Union's advocate duly appeared, but a message was conveyed by the latter that the Employer had chosen not to be present or represented. Guided by such rules as are contained in Policies, Functions and Procedures of the Federal Mediation and Conciliation Service, Office of Arbitration Services, Section 1404.14(a), and Voluntary Labor Arbitration Rules of the American Arbitration Association, Rule 27, this Arbitrator proceeded with the arbitration Ex Parte and heard evidence and representations from the Union.¹

The Issues

Three (3) issues to be addressed were agreed to between the Union and the Arbitrator, as follows:

1. These rules cited permit an arbitrator to proceed in the absence of any party who, after due notice, fails to be present or to obtain a postponement.

1. Whether or not a trial period proposed by the Carriers Union, Branch 241, for inclusion in the Memorandum of Understanding to implement Article 41, Section 1.C of the National Agreement falls within the scope of Article 30B, item 22, local implementation relating to seniority, reassessments and posting.

2. Whether or not the Union's proposal is excluded from local negotiation and local implementation as being inconsistent or in conflict or varying the terms of the 1984 National Agreement.

3. If the Union's proposal is found not inconsistent or in conflict or to vary the terms of the 1984 National Agreement, whether or not it shall be included/continued as a resolution of the local negotiation impasse.

The Proposal in Dispute

The NALC Branch 241 proposal which is the subject of this impasse was numbered 21.11 of the local implementation, headed Carrier Posting. It consisted of five (5) sections lettered (A) to (E). Section (E), the only one in controversy, reads as follows:

(E) Assignment of successful bidder:

A. When a carrier is the senior bidder within his delivery unit, he may be detailed, upon written request to the Supervisor of Delivery and Collections, for a period not to exceed three (3) working days in the new assignment (except T-6), prior to being awarded the bid position.

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B. If, after working the new assignment on a detail basis, the senior bidder desires to cancel his bid, and remain on his old assignment, he must do so immediately upon termination of the detail. No request for bid cancellation will be honored once a carrier is officially placed in his new bid assignment by the Supervisor of Delivery and Collections. In the event a successful bidder cancels his bid, the second bidder in seniority shall be awarded the assignment, and so on down the line of seniority.

C. A successful bidder's old assignment will not be posted until he has been officially placed in his newly won assignment by the Supervisor.

D. In the case of a T-6 position bid, a period of 5 to 6 working days in the new assignment - so that the carrier will get to try out each route at least once.

The Union's advocate represented that locally, there was no objection by the Management to the inclusion of Section (E) in the Memorandum of Understanding, but rather that higher Postal Service authority caused it to be rejected. This was borne out by a letter from M.F. Miller, Program Manager, Contract Administration, USPS Northeast Regional Office to the Union's National Business Agent, dated September 13, 1985, reading as follows:

This will confirm our impasse resolution discussion in which we were unable to resolve the item in the Local Memorandum of Understanding allowing a successful bidder three (3) working days to return to a previous assignment.

It continues to be the position of the United States Postal Service that said item(s) are inconsistent or in conflict with the 1984 National Agreement. Therefore, the Postmaster, by receipt

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of a copy of this letter, is notified that the item(s) are no longer considered to be in force and effect, and are not to be applied. The Postmaster will also inform the local union.

Position of the Union

The Union established that a provision for a three (3) working day trial period with the right of the successful bidder to return ("retreat") to his previous assignment has been part of the local supplemental agreement at the Lewiston, Maine, Post Office since 1968; that it has never been contested prior to 1985; that the 1981 Memorandum of Understanding under Article XXI, Section II, contained the identical provisions as were proposed in 1985 under Article 21.11 (Union Exs. 1, 2); that local Postal Management still continues to abide thereby notwithstanding the opposition of higher USPS authority in causing the impasse.

The Union further established that no problems with the trial period and retreat rights were discussed in the 1985 local negotiations; that the Union was simply tolds that local Management was impassing the issue "under orders."

In closing, the Union submitted three (3) Postal Service past arbitration awards, including one issued by the undersigned, and, additionally, a citation from the authoritative volume by Frank Elkouri and Edna Asper Elkouri, How Arbitration Works, Chapter 18, Standards in Arbitration of "Interests" Disputes, 745 at 749, "Prevailing

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Practice - Industry. Area, Industry - Area," 3rd Ed. BNA,
1973.

The Awards submitted were (1) by Arbitrator Bernstein in Case No. C8N-4B-C 7812, April 24, 1981; (2) by Arbitrator Caraway in Case No. S4N-3A-I 900204, August 18, 1986; and (3) by the undersigned in an unnumbered impasse case involving the Holyoke, Massachusetts, Post Office and NALC, January 2, 1987.²

These Awards and the Elkouri and Elkouri citation will be discussed below.

Discussion

On the issues before me, numbered 1 and 2, above, I had previously ruled in the Holyoke, Massachusetts, case, upholding a similar local implementation provision for a successful bidder's right to a three day trial period in a new assignment and to return to his former assignment. I held there that Article 41, Section 1.C of the National Agreement was lawfully augmented by the addition of the locally negotiated provision in the Memorandum of Understanding between the Postmaster and NALC allowing for a three (3) working day trial period for the "Successful Bidder" to either accept the successful bid or return to his previous assignment. In doing so, I concluded that the

2. This case has since been listed as No. N4N-1E-I 901235 in the Union's fee remittance to this Arbitrator.

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locally negotiated provision was an "addition" to the National Agreement's Article 41.C, Successful Bidder; that it fell within the scope of Item 22 of Article 30.B, "seniority, reassessments and posting"; and that it was not inconsistent or in conflict with Article 12, PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS, or Article 41, LETTER CARRIER CRAFT, Section 1, Posting. In short, I found that the National Agreement was silent on both trial periods and on the finality of a successful bid. Arbitrator Bernstein and Arbitrator Caraway ruled to the same effect in their awards arising out of disputes between the same parties in Paris, Texas and Detroit, Michigan, respectively. Nothing has been presented to me since to lead me to now reach an opposite conclusion on either of these first two issues.

I was not faced with issue numbered three above in the Holyoke, Massachusetts, arbitration as the locally negotiated Memorandum of Understanding duly executed by the Postmaster and the NALC Branch, contained the trial period and right to return provision. In that case, therefore, unlike this arbitration, the merit of the Union's proposal, apart from the question of inconsistency or conflict with the National Agreement, was not in issue. Here, however, because Management impasse the proposal, I am obliged to act on it as "final and binding arbitration" under Article

30.C, notwithstanding that I do so ex parte.³

On the merits of the Union's proposal, it has shown that trial periods and right to return upon award of a successful bid have been so longstanding at Lewiston, Maine, and elsewhere, as to have achieved the standing of a "prevailing practice," a standard commonly applied by Arbitrators in resolving interests disputes. Such practices should not be terminated by arbitrators lightly and without good reason. Here, I have no evidence that the "prevailing practice" has caused any serious problems to Management over all these years.

Next, I am persuaded by the logic of Arbitrator Caraway in his Paris, Texas arbitration, supra page 5, speaking of the interest of the Union's proposal, i.e., "to give a carrier . . . the opportunity to change his mind and return to his original route." Wrote Arbitrator Caraway, "It would be much better for purposes of the Postal Service that it have a carrier who is satisfied with the particular route that he is carrying. Should he become dissatisfied, then job performance, absenteeism and other problems could arise."

I might add also that the trend in modern commercial policy is clearly against the ancient caveat emptor (buyer

3. The arbitration process looks disfavorably upon awards solely by default. See AAA Rule 27, Labor Arb. Rules. Also see Elkouri and Elkouri, supra, 203-206.

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beware) concept, translated here into a labor relations policy of "All sales are final, No return," if the Union's proposal is rejected.

In my view these considerations outweigh any Management objections of administrative or record keeping problems, delay or uncertainty in filling vacancies, cost, etc.

Conclusion

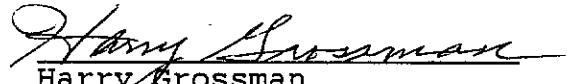
I conclude that the NALC Branch 241 proposal, SECTION II CARRIER POSTING, paragraph 5A through D (Union Ex. 1), was fair, reasonable, not inconsistent or in conflict or at variance with the National Agreement, and should be adopted (continued).

AWARD

The impasse is resolved in favor of adoption of the Union's proposal at issue at the Lewiston, Maine, Post Office.

It is ordered that the Union's proposal be incorporated into the local Memorandum of Understanding forthwith upon receipt by the parties of this Award.

Dated: FEB. 26 1987


Harry Grossman
Arbitrator