

C#06424

IN THE MATTER OF ARBITRATION BETWEEN)	OPINION AND AWARD
)	
National Association of Letter)	
Carriers)	
)	
-and-)	Case No. C4N-4C-C 3906
)	(Grievance of D. Haberman)
)	
U.S. Postal Service)	
Bemidji, Minnesota)	

The hearing in the above-matter was held in Bemidji, Minnesota on October 15, 1985 before Bernard Dobranski, designated as arbitrator in accordance with the procedures set forth in the collective bargaining agreement.

Appearances: Barry J. Weiner
For the Union

Dennis R. Hughes
For the Postal Service

Full opportunity to present evidence and argument was afforded the parties. The parties chose not to file post-hearing briefs.

ISSUE

The issue is whether the Postal Service violated the Voluntary Transfer/Reassignment Memorandum of Understanding between the U.S. Postal Service and the Joint Bargaining Committee to the National Agreement when it did not permit a voluntary transfer or reassignment to the Minot, North Dakota Post Office to the grievant, Douglas D. Haberman.

BACKGROUND FACTS

The basic facts derived from the testimony and exhibits are as follows:¹ The grievant, Douglas D. Haberman, is employed as a letter carrier at the Bemidji, Minnesota Post Office. The grievant has been employed by the Postal Service for approximately four years, approximately three of which have been spent as a letter carrier. On March 6, 1985, the grievant arranged for his wife to call Severson, the Postmaster at the Minot, North Dakota Post Office, to schedule an interview for possible vacancies at the Minot Post Office.² An interview was arranged for 3:00 P.M. on March 8.³

On March 8, 1985, the grievant was interviewed at the Minot, North Dakota Post Office. Present at the interview, in addition to the grievant, were Severson, the Supervisor of Postal Operations and one of the two carrier supervisors. The grievant explained that he was interested in the transfer because he was born and raised in the Minot, North Dakota area and wanted to return to be near to his family. In response to a question, the grievant indicated that no disciplinary action had ever been taken

1 At the hearing, the Union presented the testimony only of the grievant, and the Postal Service presented no witnesses.

2 The grievant learned from the president of the Minot branch of the NALC that there would be eight new hires in the carrier craft at the Minot Post Office and other possible changes because of planned retirements and light duty assignments.

3 According to the grievant, approximately a year and one-half before he had submitted a written request for a transfer to the Minot Post Office. In response, he received a letter indicating that there were no openings available at that time and that his letter would be kept on file for future reference.

against him and, in fact, he had received a letter of commendation from the Postal Service for a suggestion he had made.⁴.

According to the grievant, during the interview he asked the Postmaster how long the Postmaster would remain "at the helm" at Minot. The Postmaster "snapped back" to the grievant that this was a personal or private matter to which he would not respond. At the hearing, the grievant explained that he asked the question because he wondered "who he was going to be working for and how long," and when it was made clear that the Postmaster was offended by the question, he let it drop because he "did not want any hard feelings."

During the interview, the grievant also asked the Postmaster if there was anyone at the Minot Office who might be interested in mutual trade of offices with the grievant. The Postmaster replied that this was against his policy and the best he could do for the grievant would be to put him at the top of the list of new hires. According to the grievant, Severson asked him during the interview how soon he would be able to report to work, and the grievant replied, "if you give me the word, I can be here the next day." The grievant also asked a number of questions about the operation at the Minot Post Office. At the end of the interview, the Postmaster indicated that he wished to talk to Postmaster Storms of the Bemidji Post Office about the proposed transfer, and would call the grievant on Monday, March 11. He then arranged for the

⁴ On November 21, 1984, the grievant received a letter of commendation and a check for \$25.00 for a suggestion that he had submitted regarding the colorization of labels on carrier relay bags. (Union Exhibit 1.)

grievant to be given a tour of the Minot facility. Although at no time during the interview did the Postmaster make any promise that he would approve the transfer, the grievant's impression was that the Postmaster was favorably disposed toward him and looking forward to his coming to the Minot office to work.

On Monday, March 11, Postmaster Severson spoke to the grievant - apparently by telephone - and indicated that the request for transfer would not be granted. According to the grievant, the Postmaster gave no specific reasons for this decision, but simply said the grievant would "just not fit in with the organization" at the Minot Post Office. The grievant was puzzled and flabbergasted at this response. It represented "a 180 degree turn around in attitude on the part of the Postmaster." On March 8, the interview date, everything seemed positive about the requested transfer. In fact, one of the carrier foreman who accompanied the grievant on his tour of the facility after the interview told the grievant that he was "looking forward to seeing [him]." On March 11, however, he was told he would not "fit in."

On March 12, 1985, the grievant repeated in writing the request for voluntary transfer which he had made during the interview on March 8. (Union Exhibit 2).

Sometime thereafter, Postmaster Storms of the Bemidji Office provided performance evaluations performed by her and by Malterud, the Supervisor of Deliveries and Collections, on the grievant.⁵

⁵ No evidence was presented as to the precise date that these documents were received by Postmaster Severson, but the Postal Service representative, during his opening comments, indicated that they were received in Minot on March 18, 1985.

(Joint Exhibits 4 and 5.) Both documents evaluated the grievant's performance as satisfactory in six of the seven categories evaluated. Both also rated the grievant unsatisfactory in terms of attitude. Both documents further provided a negative answer to the question as to whether the grievant had received any letters of commendation, despite the fact that the grievant in fact had received such a letter on November 21, 1984. Supervisor Malterud commented on his form that the grievant was "Difficult to motivate, very set in his own ways and very much Union orientated (sic)." (Joint Exhibit 4.) Postmaster Storms commented that "Mr. Haberman's biggest problem is attitude. Difficult to motivate. Very strong Union. Seems to dislike any managers. Likes to argue with management." (Joint Exhibit 5.)

On March 21, 1985, Severson denied the grievant's request for transfer. (Joint Exhibit 3.) The denial stated:

- 1 In reply to your request for transfer the following items were noted in your interview held in my office March 8, 1985.
- 2 When asked at the interview if disciplinary action had ever been taken against you, you replied no. However, you stated you had some good things--a suggestion that you stated the Postal Service had only given you \$25.00 for the award but you felt it was much more valuable than that and due to the fact of only receiving \$25.00 for the award you may submit another suggestion, but you would have to consider it.
- 3 During the interview you asked me when I would retire. When I inquired if you would seek my job you stated no. I was embarrassed at your question and felt you had no right to question my private life.
- 4 The Performance evaluations we have refer to you as difficult to motivate, very set in your ways, appears to dislike any manager and is argumentative with management, and has an unsatisfactory attitude. Since we are a model unit and we do expect carriers to work to their full capacities, also to make obvious short cuts and pivot routes when asked, it is our feeling you would not fit into our organization and we will not consider your request at this time.

On April 10, 1985, the instant grievance was filed requesting that the grievant be given permission to transfer to the Minot, North Dakota Post Office with a seniority date which would be "set ahead of all new hires subsequent to the March 8, 1980 interview with Postmaster Severson." The grievance was denied at various steps of the grievance procedure and is now properly before the arbitrator for resolution.

In addition to the exhibits referenced above in the narration of background facts, the following exhibits were introduced at the hearing:

Joint Exhibit 1, the National Agreement in effect between the parties.

Joint Exhibit 6, a copy of the Voluntary Transfer Memorandum of Understanding (also included in Joint Exhibit 1).

Joint Exhibit 7, Section 261.311(a)-(f) of the P-11, Personnel Operations Handbook.

Employer Exhibit 1, a written employer's statement submitted as part of the Postal Service's opening comments.

Employer Exhibit 2, a copy of Article 12.6 of the National Agreement.

It is upon this evidence that the case now comes before the arbitrator for resolution.

POSITIONS OF THE PARTIES

Union Position

The Union asserts that when the Postal Service agreed with the Union to incorporate Postmaster General Bolger's unilateral policy on Voluntary Transfers into the National Agreement it did so with a purpose. The purpose was to provide or create enforceable standards or criteria in the National Agreement with respect to transfer requests. When the standards set forth in

that Memorandum of Understanding are examined, it is clear that a violation occurred in the instant case.

In that memorandum, the Postal Service acknowledges that transfers are beneficial to the Postal Service and not just to postal employees. Moreover, all managers are expected to adhere to the guidelines set forth in that memorandum. The memorandum also acknowledges an uncertainty concerning potential performance of transferees, but adds that management reaction to these potential problems cannot be to establish a blanket prohibition on transfers, or to implement other harsh limitations on transfers. Furthermore, and most significantly, requests from qualified employees are not to be unreasonably denied and sound judgement must be exercised by all employing managers. If there are sufficient qualified applicants for transfer, normally at least one out of every five entry level craft vacancies should be filled by the granting of a transfer request. Evaluations must be valid and to the point, with unsatisfactory work records accurately documented. Gaining installation managers must not deny deserving and qualified employees opportunities for reassignment because of unfounded reservations concerning performance. Denials must be based on reasonable cause, such as documented poor performance, recent disciplinary action, excessive absenteeism, local employment conditions, etc. (Emphasis supplied by the Union.) The effect of all these requirements is that unreasonable denials are prohibited and management's discretion is not unfettered.

When the reasons given in the denial letter are examined in light of these requirements, it is clear that the denial of the

request for transfer was improper. For example, there is nothing in the second paragraph of the denial letter that would provide any basis for the denial. Similarly, paragraph 3 of the letter which refers to the grievant's question during the interview about possible retirement of the Postmaster contains no basis for the denial. The unrefuted testimony of the grievant provided a satisfactory explanation for the question and no grounds existed for a denial on this basis. More significantly, there is nothing set forth in paragraph 4 of the denial letter which provides a reasonable basis for the denial. The very term attitude by itself is an ambiguous one and one fraught with many subjective overtones and reactions. A reason based on some subjective perception of the grievant's attitude is not satisfactory; rather something more objectively ascertainable must be used before the request can be denied. In this case, nothing - not even a scintilla of evidence - has been introduced specifically about his attitude and why it made him unfit for the transfer. Similarly, there is no evidence that the grievant was not working to his full capacity and was not capable of taking obvious shortcuts and pivot routes if asked.

The Union further argues that it is perfectly clear that the decision to deny was based on the performance evaluations of Postmaster Storms and Supervisor Malterud from the Bemidji Office. Certainly it was not based on the interview because, as the grievant's unrefuted testimony demonstrated, his impression was that the March 8 interview went very well and that the Minot Post Office, which had vacancies was looking forward to his transfer to

fill one of them. Subsequently, the grievant was informed by a telephone call that the transfer request was denied because he "wouldn't fit in with our organization."

Because the evaluations were obviously the reasons for the denial, the arbitrator should examine them very closely. Such scrutiny demonstrates that they are not an adequate basis for the denial. Although these evaluations are ostensibly independent, it is clear that Postmaster Storms and Supervisor Malterud collaberrated in their evaluations. This is most obvious in the comment section where the language used is very similar. Moreover, both evaluations incorrectly state that the grievant did not receive any letters of commendation. Furthermore, the ratings in each of the seven catagories of evaluation are identical. The only reason for the transfer denial could have been the unsatisfactory rating of the grievant's attitude set forth in the two evaluations. However, neither evaluation provides any specific or valid evidence for that rating. Rather, each merely contains general comments about the fact that the grievant was allegedly difficult to motivate and very set in his own ways.

Because the Postal Service presented no witnesses in this case, the Union could not ask any of the participants in the decision about how much weight was given to the various factors, including how much weight was given to the comments of Storms and Malterud which referred to the grievant's very strong Union orientation. These comments are particularly astounding ones and there presence alone in the performance evaluation should be sufficient to strike down the Postal Service decision. No

stronger evidence of bias or animus on the part of Postmaster Storms and her supervisor to the Union could be provided.

It is clear from the circumstances that the Postal Service exercised its discretion in an unreasonable and discriminatory manner and in clear violation of the standard set forth in the Memorandum of Understanding and of Article 12, Section 6, and therefore the grievance should be sustained. The Union strongly urges the arbitrator, in light of the evidence of record, including the uncontraverted evidence of vacancies available on March 8 to strike down the Postal Service decision and sustain the grievance.

As a remedy, the Postal Service should grant a transfer effective March 8, 1985 or thereabouts, and make the grievant whole for all the rights and benefits which he would have received as of that date but for the employer's violation of the contract. As regards this remedy, the Union urges the arbitrator to reject the Postal Service argument the arbitrator does not have the authority to impose such a remedy. It is clear that the arbitrator does have such authority and may instruct the Postal Service to grant the transfer.

As regards the arbitration awards submitted by the Postal Service in support of its position, the Union argues that they are irrelevant to the issues before the arbitrator and should thus not be relied upon by the arbitrator.

Postal Service Position

The Postal Service argues that an examination of the requirements of Article 12.6 and the Memorandum of Understanding

makes it clear that no violation of either the agreement or the Memorandum of Understanding occurred. The burden of proof is on the Union and it has not met that burden. Even the grievant's testimony established that the Postal Service provided an opportunity for an interview with the grievant, and that following that interview, an evaluation which mirrored the language of the memorandum of Understanding occurred and a proper and reasonable decision was made on that basis. Thus, it is clear that the March 21, 1985 denial letter met the criteria of the Memorandum of Understanding.

The Union suggests that because Postmaster Storms and Supervisor Materud forgot to include in their evaluations a reference to the letter of commendation received by the grievant that this somehow rendered the decision to deny him a transfer an unreasonable one. However, it is clear from the denial letter itself that The letter of commendation was included by the Postmaster in the evaluation he made and thus was properly considered.

The Union has the burden of proof in this case and it has presented no evidence which disputes the Postal Service contention that the grievant had an attitude problem. Moreover, the Union argues that the grievant's union affiliation was a potential factor in the decision to deny him the transfer but the Union has provided no evidence to demonstrate that the denial was for that reason.

Moreover, the Postal Service points out that the grievant admitted that he asked the Postmaster when he was going to

retire. In addition, the installation heads have the ultimate decision to approve or not approve the power because Article 3 gives the exclusive right of transfer and reassignment to management.

In short, Postmaster Severson met the criteria established in the Memorandum of Understanding relating to former Postmaster General Bolger's letter of April 6, 1979, by providing opportunity for the grievant to interview for the position assigned at the Minot, North Dakota Post Office. No arbitrary or capricious methods were employed by the Postal Service, but instead a very strict procedure for considering transfer or reassignment was implemented.

Furthermore, it is clear that the terms and provisions of the agreement do not provide the arbitrator with the authority to grant the Union remedy of reassigning the grievant to the Minot Post Office. The remedy requested by the Union is outside the scope of powers granted to the arbitrator under the National Agreement, and would amount to the arbitrator's adding or including new language to the agreement. At best, the arbitrator can decide if the evaluation was completed properly and, if not, the arbitrator can only require that it be done properly.

Finally, in support of its position, the Postal Service submitted three arbitration awards, including one previously rendered by this arbitrator.

For all of these reasons, the grievance should be denied.

DISCUSSION AND OPINION

Article 12 of the National Agreement provides employees with the right to transfer. Specifically, Article 12.6 requires installation heads to consider requests for transfers submitted by employees from other installations and requires written acknowledgement shall be given in a timely manner to written requests for submitted voluntary transfers. In furtherance of this provision, the parties entered into a memorandum of understanding wherein they agreed that the policy and guidelines set forth in the Postmaster's Memorandum of April 6, 1979 on Requests for Voluntary Transfer/Reassignment were to remain in effect during the life of the Agreement. (Joint Exhibit 6). The purpose of these guidelines was to create enforceable standards or criteria with respect to transfer requests and all managers are expected to adhere to the guidelines. Paragraph C of those guidelines, for example, states that "Prior to hiring from entrance registers, installation heads will afford full consideration to all transfer requests from within the Postal Service. It goes on to state that "Such requests from qualified employees will not be unreasonably denied." and that "Sound judgment must be exercised by all employing managers." Moreover, Paragraph D indicates that both of the gaining and losing installation heads must be fair in their evaluations, evaluations must be valid and to the point, and gaining installation managers must not deny deserving qualified employees opportunities for

reassignment because of unfounded reservations concerning performance. Furthermore, Paragraph E requires that responsible managers must give specific reasons for denial of transfer requests and that denials must be based on reasonable cause.

After a careful examination and evaluation of the evidence and the comparison of that evidence with the standards set forth in the Memorandum of Understanding and Article 12.6, it is my conclusion that the grievance should be sustained. My reasons for this conclusion are as follows:

It is clear from the evidence, especially the March 21, 1985 denial letter, that the basis for the denial of the grievant's transfer request was his personal interview on March 8 and his performance evaluations. An examination of the reasons stated in the denial letter reveals no reasonable basis, however, for the denial.

As regards the March 8 interview, there is nothing in the first or second paragraph of the March 21 denial letter which could provide a reasonable basis for the denial. Perhaps the Postmaster concluded that there was something wrong with the grievant because he was not satisfied with the \$25.00 award. It is difficult to understand, however, especially in the absence of any explanation, why this would provide a basis for the denial of a transfer.

Similarly, Paragraph 3 of the letter which refers to the grievant's question during the interview about the possible retirement of the Postmaster contains no reasonable basis for the denial. The unrefuted and convincing testimony of the grievant

provided a satisfactory explanation for the question and no grounds exist for a denial on this basis. As the grievant explained it, the question was a perfectly natural one and as soon as it became clear to him that it seemed offensive to the Postmaster, he ceased pursuing it.

One could argue that this conversation suggested that the grievant desired a transfer because he wished to be Postmaster at the Minot office someday. Such an interpretation seems somewhat farfetched, however, and even if it were true I am not aware what is wrong with such a motive on the part of the grievant. Nor has the Postal Service provide any explanation as to why such a motivation might be improper.

Moreover, it should be noted that according to the grievant - whose testimony was not rebutted by testimony of any Postal witness and whom I found a credible witness on this point - the Postmaster, although he did not promise that he would approve the transfer, created the impression in the grievant's mind that he was very favorably disposed toward the grievant and looking forward to his coming to the Minot office to work. Thus, the lack of interest in the grievant was not derived from the interview but by events that occurred thereafter.

Rather, it was the grievant's performance evaluations which mainly contributed to the denial of his request for transfer. In this regard, Paragraph 4 of the letter states:

The Performance evaluations we have referred to you as difficult to motivate, very set in your ways, appears to dislike any manager and is argumentative with management, and has an unsatisfactory attitude. Since we are a model unit and we do expect carriers to work to their full capacities, also to make obvious shortcuts in pivot routes when asked, it

is our feeling that you would not fit in to our organization and we will not consider your request at this time.

I do not agree with the Postal Service that this provides a reasonable basis for the denial. For example, the term "unsatisfactory attitude" is a very ambiguous one and fraught with many subjective overtones and reactions. The same hold trues for the other characterizations of the grievant set forth in this paragraph. These comments are very subjective, lack specificity, and are open to arbitrary and subjective judgments. In the circumstances, I do not believe reasons derived from second hand subjective perceptions of the grievant's attitude provides a satisfactory basis for the denial; rather, something more objectively ascertainable must be used before the request can be denied. In this case, nothing - not even a scintilla of evidence - was introduced specifically about the grievant's attitude or the difficulty in motivating him, his being set in his ways or any of the other matters referred to in this paragraph. Similarly, there is no evidence that the grievant was not working to his full capacity and was not capable of taking obvious shortcuts and pivot routes if asked.

Moreover, I note that both performance evaluations relied upon refer to the grievant's union affiliation. For example, Postmaster Storms's evaluation indicates that the grievant is "Very strong Union", and Supervisor Malterud's evaluation refers to the grievant as "Very much Union orientated." I found the presence of these comments very disturbing and there presence in the evaluations, and the possible use made of them makes even


clearer the dangers of reliance on strictly subjective factors. These comments on the grievant's union affiliation suggests that they also may have been a factor in the decision to deny him transfer. The Postal Service had the opportunity to provide testimony as to why they were there and clear up any negative inference that might be derived from their presence but chose not to do so.

Finally, the Postal Service argues that the arbitrator does not have that authority or power to provide the remedy requested by the Union, and provides arbitration awards in support of this view. I have carefully examined those awards, including the one issued by this arbitrator in Case No. C8N-4C-C 5208 on December 12, 1980, and cannot agree. As indicated above, there was no reasonable basis for the denial of the request and in fact the Postal Service decision to deny the request was an arbitrary and capricious one. In such circumstances, an arbitrator may fashion a remedy which makes the grievant whole for the contractual violation suffered. As requested by the Union, the remedy for the violation in this case is that the Postal Service should grant the transfer, effective March 8, 1985 or thereabouts, and make the grievant whole for all the rights and benefits which he would have received as of that date but for the Postal Service violation of the contract.

AWARD

For all the reasons set forth above, the grievance of D. Haberman is sustained, and the remedy requested by the Union and set forth above in the Discussion and Opinion section is granted.

Grosse Pointe Park, MI 48230
August 25, 1986



Bernard Dobranski
Arbitrator