C 6142

In the Matter of Arbitration Between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Case No. S1N-3W-C 48118
Class Action/Sandra M. Coleman
Miami, Florida

Before the Arbitrator **Raymond L. Britton**

APPEARANCES

John A. Hyatt, Labor Relations Representative *for the Employer*
Q. L. Pittman, Senior Regional Administrative Assistant *for the Union*

ISSUE

Did management violate Article 41 of the National Agreement? If so, what should be the remedy?

HISTORY OF THE PROCEEDINGS

The parties failed to reach agreement on this matter, and it was submitted to arbitration for resolution. Pursuant to the contractual procedures of the parties, the undersigned was appointed as Arbitrator to hear and decide the matter in dispute.

The date for the Hearing of this matter was set for January 14, 1986, and the Hearing was held on that date in the General Mail Facility, 2200 NW 72nd Ave., Miami, Florida, commencing at 9:00 o'clock a.m. At the commencement of the Hearing, it was stipulated by the parties that this matter was properly before the Arbitrator for decision and that all steps of the arbitration procedure had been followed and that the Arbitrator had the authority to render the decision in this matter. At the close of the Hearing, both the United States Postal Service (hereinafter referred to as "Employer") and the National Association of Letter Carriers, AFL-CIO (hereinafter referred to as "Union") agreed to present oral closing arguments in lieu of the submission of Post-Hearing Briefs.

SUMMARY STATEMENT OF THE CASE

On October 17, 1984, Sandra M. Coleman, a parttime flexible letter carrier at the Miami Beach Post Office (hereinafter sometimes referred to as "Grievant"), addressed two requests to the Carrier Supervisor (Joint Exhibit No. 2). The first states: "I am requesting (as my first choice) an inner-station bid on Rte. #50 for the duration of its vacancy." The second states: "I am requesting an inner-station bid on utility #8 floating assignment for the duration of its vacancy."

On October 20, 1984, the date on which the bids were to become effective, the Grievant was transferred to the Coral Gables Post Office. On October 25, 1984, as a result of this transfer, a class action grievance was filed at Step 1 on behalf of NALC Branch 1071, and after a Step 1 meeting, the grievance was denied by Supervisor Ed Carter. Pursuant to Article 15 of the National Agreement, the grievance was appealed on November 2, 1984 to Step 2 of the grievance procedure alleging a violation of, but not limited to, Article 41 of the National Agreement, and stating in relevant part as follows (Joint Exhibit No. 2):

> *Carrier Coleman placed an interstation bid on two assignments at the Miami Beach office. On the effective date of the bids, Oct. 20, 1984, carrier Coleman was transferred to the Coral Gables Branch. Union investigation reveals that Coleman was the senior bidder on one assignment and the only carrier to place a bid on the other assignment. The Union is of the opinion that the carrier should not have been moved from the Miami Beach Station.*
>
> *CORRECTIVE ACTION REQUESTED: Return carrier Coleman to the interstation bid. Compensate her for any out of schedule overtime worked. In the future, honor the interstation bids submitted.*

Following a Step 2 meeting on November 20, 1984, Postmaster Designee Stephen H. Murray denied the grievance stating in relevant part as follows (Joint Exhibit No. 2):

> * * *
>
> *The grievant will be returned to her interstation bid. However, her request for reimbursement is inappropriate and outside the realms of the National Agreement.*

On April 26, 1985, the grievance was appealed to Step 3 of the grievance procedure, at which time the Union stated in relevant part as follows (Joint Exhibit No. 2):

> * * *
>
> *Management has refused to bargain in good faith in the instant case. You have admitted that the Union's grievance has merit by moving carrier Coleman back to Miami Beach and placing her on intrastation bid. The Union does not understand your rationale that the remedy is inappropriate and outside the realms of the*

National Agreement. Management violated Article 41 knowingly and blatantly with the attitude of "if you don't like it, file a grievance." The Union is of the opinion the remedy requested is the only *appropriate remedy.*

On June 18, 1985, in a letter to National Business Agent Wayne E. White, the grievance was denied by James Greason, Jr., Labor Relations Division, who stated in relevant part as follows (Joint Exhibit No. 2):

* * *

Based on information presented and contained in the grievance file, the grievance is denied. The grievant was returned to the unit; however, there are no provisions for compensation.

* * *

On June 27, 1985, the grievance was appealed to arbitration.

Provisions of the National Agreement effective July 21, 1984, to remain in full force and effect to and including 12 midnight July 20, 1987, (hereinafter referred to as "National Agreement") (Joint Exhibit No. 1) considered pertinent to this dispute by the parties are as follows:

ARTICLE 15

GRIEVANCE-ARBITRATION PROCEDURE

Step 2: (d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. . . .

* * *

ARTICLE 41

LETTER CARRIER CRAFT

* * *

Section 2. Seniority

* * *

B. Definitions

1. *Seniority for bidding on preferred letter carrier craft duty assignments and for other purposes for application of the terms of the National Agreement shall be restricted to all full-time regular city letter carriers.*

2. *Part-time regular letter carriers are considered to be a separate category and seniority for assignment and other purposes shall be restricted to this category.*

3. *Full-time reserve letter carriers, and any unassigned full-time letter carriers whose duty assignment has been eliminated in the particular delivery unit, may exercise their preference by use of their seniority for available craft duty assignments of anticipated duration of five (5) days or more in the delivery unit within their bid assignments areas, except where the local past practice provides for a shorter period.*

4. *Part-time flexible letter carriers may exercise their preference by use of their seniority for vacation scheduling and for available full-time craft duty assignments of anticipated duration of five (5) days or more in the delivery unit to which they are assigned.*

5. *A letter carrier who, pursuant to subsections 3 and 4 above, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration.*

* * *

Provisions of the Employee & Labor Relations Manual, Issue 9, dated September 2, 1983, considered pertinent to this dispute by the parties are as follows (Joint Exhibit No. 3):

434.6 Out of Schedule Premium

.61 Definition

.611 "Out of schedule premium" is paid to an eligible full-time bargaining unit employee for time worked outside of, and instead of, the employee's regularly scheduled workday or workweek when the employee is working on a temporary schedule at the request of management, provided that notice of the temporary change is given to the employee by Wednesday of the preceding service week.

* * *

POSITION OF THE PARTIES

The Position of the Union

It is the position of the Union that although the Grievant was the senior bidder on an interstation bid, she did not obtain the bid but was instead improperly transferred to another post office. The Union contends that this action by management was a violation of Article 41, Section 2 of the National Agreement. The Union further maintains that the Employer has admitted the violation and that the appropriate remedy is to compensate the Grievant for the hours she was unable to work as a result of the transfer.

The Position of the Employer

The Employer takes the position that the Grievant was aware that she was to be transferred to another station at the time she submitted the bids. The Employer maintains that her transfer was not a violation of the National Agreement and that management's discretion would be taken away if the Grievant were awarded overtime pay. The Employer further contends that the remedy now requested by the Union differs from that requested at Step 2, an action in violation of Article 15, Section 2 of the National Agreement.

OPINION

Determinative of this matter, in the considered judgment of the Arbitrator, is whether the Employer acted improperly in transferring the Grievant to the Coral Gables Station after she had submitted a bid for assignment to a vacant route at the Miami Beach Station.

In support of its position that it did not violate Article 41, Section 2 of the National Agreement in transferring the Grievant, the Employer maintains that the Grievant, a parttime flexible carrier, was aware that she was to be transferred to Coral Gables when she submitted her bid for the two vacant routes. Further, the Employer maintains that the Grievant was advised of the impending transfer on Tuesday, October 16, 1984, and that she did not submit her bid request until Wednesday, October 17, 1984. Since the bids were not to take effect until October 20, 1984, and since the Grievant was transferred to Coral Gables effective October 20, she was, according to the Employer, no longer entitled to bid on a position at the Miami Beach Station.

The difficulty with according the foregoing arguments of the Employer persuasive force in this matter, it seems to the Arbitrator, is that management at Miami Beach was aware on October 17, 1984, that the Grievant had submitted bids on two vacant routes. While some dispute exists in the testimony as to when the Grievant was actually advised of the transfer, management, having been made aware of the submission of the bids by the Grievant prior to her transfer, no longer had any valid reason for effectuating her

transfer to the Coral Gables Station. This is so inasmuch as it is clear from the record submitted that the Grievant was the senior bidder for one of the vacant routes and was the only bidder for the other vacant route, and, as such, was entitled to one or the other bid assignments. As the bids of the Grievant were properly submitted prior to her transfer to Coral Gables, this, in the considered judgment of the Arbitrator, materially reduces any merit that might otherwise be attributed to the Employer's argument that by being transferred on the effective date of the bid assignments, the Grievant was no longer eligible for such vacancies. Moreover, the Step 2 response of the Employer reveals that within a relatively short period of time after such response, the Grievant was subsequently returned to her interstation bid at Miami Beach thereby allowing a reasonable inference to be drawn that a possible error had occurred.

The remaining question to be addressed by the Arbitrator is the nature of the remedy to be applied under the circumstances here presented. In this connection, the record reflects that at Step 2 of the grievance procedure, the Union requested out of schedule pay for the Grievant, a remedy that it now agrees is inappropriate. In place thereof, the Union now requests that the Grievant be paid for up to forty (40) hours for the period of time from October 20, 1984 until the time that route 50 was filled permanently, or until the time the Grievant was made a regular carrier, whichever occurred first. The Employer challenges the right of the Union to request a remedy at the Hearing different from that which was requested at Step 2 on the grounds that modification of the remedy requested violates Article 15, Section 2 of the National Agreement. However, as no probative evidence has been presented by the Employer to establish that it has been prejudiced by this change in the position of the Union, no reasonable basis exists for accepting the Employer's challenge as valid. Nor does the Arbitrator find to be supported by the evidence submitted, the further contention of the Employer that an award of overtime compensation, under the circumstances here described, will diminish management's discretionary authority. Finally, inasmuch as the parties have stipulated as part of the issue that the Arbitrator shall determine the remedy and since it has been determined that the Employer violated Article 41 of the National Agreement by transferring the Grievant, the Arbitrator is constrained to conclude that the Grievant is entitled to be compensated for her loss.

AWARD

For the reasons given, the grievance is sustained, and the Employer directed to compensate the Grievant Sandra M. Coleman for the difference between the forty (40) hours that she could have worked and the number of hours that she actually worked commencing October 20, 1984, and continuing until the vacancy on route 50 was permanently filled or until the date on which the Grievant was made a regular carrier, whichever came first.

May 9, 1986

Original Signed
RAYMOND L. BRITTON

Raymond L. Britton, *Arbitrator*