

C# 11185

IN THE MATTER OF THE ARBITRATION BETWEEN:

The United States Postal Service
Saint Paul, MN

and

American Postal Workers Union
Saint Paul, MN

Appearances

For the Postal Service:

Roger B. Rubin
Labor Relations Representative
United States Postal Service
Main Post Office--Room 409
180 East Kellogg St.
Saint Paul, Minnesota 55101-9402

For the Union:

Lawrence J. Gervais
National Business Agent
American Postal Workers Union
One Appletree Square--Suite 140
Bloomington, Minnesota 55420

C4C-4C-C 6399--M. Rasmussen

Statement of Jurisdiction

The hearing here in question came on before Mr. Robert F. Grubb as sole and Impartial Arbitrator under the terms of Article 15 of the Collective Bargaining Agreement between the Parties dated July 21, 1984, as a regular regional arbitration. The Parties agreed that the grievance had been duly filed, that all procedural matters were in proper order and that the question in issue was properly before the Arbitrator for final and binding award.

The Issue

The issue in this case is whether the Postal Service violated the terms of the National Collective Bargaining Agreement between the Parties when, under circumstances more fully set forth below, it ceased using the Grievant as an acting Supervisor because, according to the Postal Service, she was a "Union person".

Background Facts and Positions of the Parties

The Grievance in this case charges Management at the Circle Pines, MN Post Office, an independent installation in the MSC, St. Paul, MN, with

discriminating against the Grievant because of Union activity. The Grievance goes on to state:

"On May 30, 1985 the Grievant was told that she could no longer be temporarily assigned to any higher level position as had been done in the past. The reasons given by Postmaster Brown and SPO Hiller is that the Grievant is a "Union person", that she was the only clerk who has called the Union, and that she was the same as a Steward.

These anti-Union, anti-worker actions and statements will not be tolerated by this Union. The Grievant is not an elected official, or representative of the Union. Even if the Grievant was an appointed Steward, which she is not, that in and of itself would not make her ineligible to perform higher level work (ELM 911.3). These vile maneuvers and remarks smack unmistakably of Union-busting at its despicable best. Obviously, management has singled out the individual who has "called the Union" to make an example of what the consequences may be if anyone dares to be involved with or contact their Union. All this with the blessings of E&LR in St. Paul. ELM 911.1 provides that employees have the right to freely, and without fear of penalty or reprisal, to form, join, or assist a labor organization. This has clearly been violated. The only reason given the Grievant for not being scheduled to higher level assignments is her Union affiliation.

Remedy requested: In the future, there shall be no discrimination against the Grievant due to membership in, or participation in her Labor organization. There will be no change in the working conditions of the Grievant due to such aforementioned activities. This will include temporary scheduling of the Grievant as a 204B as was done prior to the Circle Pines post office being represented by the St. Paul, Min. Area Local of the American Postal Workers Union. Make Grievant whole."

The Union alleges that Management has here violated Section 911.1 of the Employee and Labor Relations Manual which is incorporated into the National Agreement by virtue of Article 19. Section 911.1 states:

"Each postal employee has the right, freely and without fear of penalty or reprisal, to form, join or assist a labor organization or refrain from any such activity. Each employee shall be protected in the exercise of such rights. Except as specified in 911.3, this right extends to participation in the management of the organization and acting as organization representative. It includes presentation of the organization's views to officials of the USPS, officials of Executive Branch, the Congress or other appropriate authority."

The Postal Service urged throughout the Grievance procedure that it has the exclusive right to determine who will or will not be detailed to

supervisory positions, based on a variety of factors including the employee's ability to function within the position and represent Management in the supervision of others. The Postal Service also said that there is no contractual foundation for the Union to participate in the selection process for acting Supervisor. At the hearing the Postal Service argued that the issue is not arbitrable, essentially for the same reason as set forth above--that it has the exclusive right to decide who shall be a Supervisor and that the Union has no right to question its determination. The Arbitrator, at the hearing, stated that he would reserve his decision on the question of arbitrability. He now determines that, under the circumstances here present, the issue presented is clearly arbitrable.

The first Union witness was Lora Reed, President of the St. Paul area local of the Union, who said that in April of 1984, Circle Pines had not been a part of the St. Paul area local, but had become so in November, 1984. At that time the Circle Pines employees had no LMOU. Local negotiations for an LMOU had continued from April 1984 until the end of April, 1985. At the meetings attempting to reach an LMOU, the Grievant had been present as an observer, but had no official capacity. She (the Grievant) had spoken on in answer to a question as to how vacations had been allocated in the past. The Grievant had called her a few times between April of 1984 and May of 1985 about Union members' rights under the Agreement. After extended negotiations, which included calling in the head of Labor Relations for the Postal Service at St. Paul, an LMOU had been arrived at. She also stated that the atmosphere in the Circle Pines Post Office had been hostile to the Union and to its members in particular. She then identified Union Exhibit #1 as a statement she had prepared for this case on June 11, 1985. The statement reads:

"On May 31, 1985, I received a phone call from Marlene Rasmussen, distribution clerk, Circle Pines, Minnesota. She stated she was not going to be scheduled for acting supervisory positions (204 B) in the future, because the Postmaster in Circle Pines, Sharon Brown, told her she was "the same as a Union steward". Mrs. Rasmussen asked where she, the Postmaster, got that idea and was told it was because she, Mrs. Rasmussen, was not a full negotiator. Mrs. Rasmussen explained that she was not a Union steward and in fact was just a Union member. She was told it was the same thing because she calls the Union.

I advised Mrs. Rasmussen to request a steward when she returned to work, which she did. I received a call from the Postmaster about the request, and said steward Mark Terrell would contact her and set up a meeting. I briefly discussed the problem and Postmaster Brown stated to me that Mrs. Rasmussen was the same as a steward because she calls the Union. I advised her that many people "call the union", members and non-members alike, which is their right under the law and the contract. The Postmaster said she had checked with Employee and Labor Relations in St. Paul and had been advised that it was okay to keep Mrs. Rasmussen from "acting" for that reason.

Early the following week I spoke with E & LR representative Leo Stoltz about this subject. He agreed that he had advised Postmaster Brown that it was okay to avoid acting supervisor details for Mrs. Rasmussen because she was the "same as a steward". I advised Mr. Stoltz that Mrs. Rasmussen is a member, not a steward, even if she was that is not a reason preventing her from being an acting supervisor and is probably a violation of the law. I also informed him that if being a member of the Union keeps one from being given opportunities for promotion, he would have few or no people to choose from in some offices because of 100% Union membership. I further advised him that there are stewards in St. Paul who are used as acting supervisors. He said he felt it was a good reason and cited the fact that Mrs. Rasmussen had "sat in" on local negotiations. I told him she "sat in" on her own time, as an observer. She was interested in the negotiations because it was the first Memorandum of Understanding ever negotiated for Circle Pines."

On cross-examination, Ms. Reed said that prior to the second meeting concerning the LMOU, the Grievant had called her a "few times" about Union matters. The Grievant had not been on the clock when she had been an observer at the first meeting on the LMOU.

The Union next called the Grievant as a witness. She said that she had been a regular clerk at the Circle Pines Post Office for 25 years, and

prior to May of 1985 she had been designated as an Acting Supervisor about "once or twice a month", sometimes more, sometimes less. She had been an acting Supervisor over a period of 18 years. She had once been acting Postmaster for 6 months and an acting Supervisor for 3 months. In all work as Supervisor she had never been told she was not doing a good job and once had received a certificate and a money award for her good work. She has not and never has had an official position within the Union. It had become obvious to her in May of 1985 that she was not being allowed to be a Supervisor at all and had spoken with the Postmaster and the Supervisor of Postal Operation about the fact. The Postmaster's answer had been, "You're a Union Steward." She had replied that she was not. The Postmaster had said, "You're the only clerk that has called the Union."

The Grievant next identified a statement she had written in June of 1985 as Union Exhibit #2. The statement set out the foregoing conversation which had been held on May 30, 1985. She had been made an Acting Supervisor once in August of 1985 when the Postmaster had been absent. She had been asked to do a Statement of Account which two Supervisors couldn't complete. She had agreed to it, but only at a higher level of pay. The job had lasted 2 or 3 hours. Since the Spring of 1986 she has gradually been called on to be an acting Supervisor more frequently, approximately 8 hours or more a month. She still calls the Union in St. Paul when she has questions, and Management knows about the calls because she usually tells them.

On cross-examination, the Grievant said that in May of 1985 Management had began training others as acting Supervisors. Others besides herself had been used as acting Supervisors in the past. She was then shown copies of some of her time cards and agreed that for the pay period of February 1-14, 1986 her cards showed higher level pay for 7.75 hours.

Discussion of the Issue

The Arbitrator agrees with the Postal Service that the selection of

acting Supervisors is a function of Management in which the Union plays no part, but that is not the issue here. The issue is whether the Grievant was discriminated against because of her Union activities. The discrimination in this case is so blatant that no time need be spent on discussing it. The Postmaster told the Grievant that she was not being called on to be an acting Supervisor any more because she was a "Union person". It appears obvious that the Circle Pines Management team, having never had to contend with a Union before, decided to fight it. In doing so they fell afoul of the clear language of Section 911.1 of the ELM. The only reason the Grievant lost time in a higher level was because of her Union activities. There was not even a pretense by the Postal Service that the Grievant was not a competent Supervisor. It must still believe she is because she is now being used at a higher level.

Award

The Arbitrator concludes that the Grievant was deprived of higher level pay at an average of 8 hours a month from May 15, 1985 to May 15, 1986. She will be paid the difference between her regular pay and the higher level of an acting Supervisor for those 96 hours. The Postal Service is instructed to never again discriminate against the Grievant for her valid activities.

October 29, 1987


Robert F. Grabb

Impartial Arbitrator