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REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	Grievant: Class Action
between	)	Post Office: Boise, ID
UNITED STATES POSTAL SERVICE	)	USPS Case No: E06N-4E-C 09328061
And	)	DRT No. 02-143-923
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	)	NALC Case No: M06C2009R1

BEFORE:	Joseph W. Duffy, Arbitrator
APPEARANCES:	
For the U.S. Postal Service:	Shirley T. Pointer
For the Union:	Mary Martinez
Place of Hearing:	Boise, ID
Date of Hearing:	December 10, 2009
Briefs Filed:	January 4, 2010
Date of Award:	February 1, 2010
Relevant Contract Provisions:	Articles 3, 7, 41
Contract Year:	2006-2011
Type of Grievance:	Reversion of Reserve Letter Carrier Position

Award Summary

The arbitrator found that the employer had reasonable business justification for reverting Reserve Letter Carrier (RLC) position #95797406, but management violated the National Agreement and prior Step B decisions when management reverted the position while a Full-Time Flexible (FTF) remained employed. Therefore, the employer must post the RLC position in the next bidding cycle and must cease and desist from reverting full-time positions while FTFs remain employed.

Joseph W. Duffy, Arbitrator

Introduction

This arbitration took place at the Postal facility located at 770 S. 13th St., Boise, ID. At the start of the hearing, the parties agreed that the grievance is properly before me for a final and binding decision on the merits.

The hearing proceeded in an orderly manner. The advocates did an excellent job of presenting the respective cases. Both parties had a full opportunity to call witnesses, to make arguments and to introduce documents into the record. Witnesses were sworn under oath and subject to cross-examination by the opposing party.

The parties introduced two joint exhibits (J1-J2) and one union exhibit (U1) into the record. The record contains over seven hundred pages of material. Two witnesses testified at the hearing (Branch President Walter Ross and Manager of Customer Service Cindy Sommer). At the close of the testimony, the parties elected to submit post-hearing briefs by simultaneous mailing to me and to each other, postmarked by December 31, 2009. With the closing briefs, the parties also submitted a total of approximately thirty-five arbitration decisions in support of their arguments. I received the briefs on January 4, 2010 and then closed the record.

Issue for Decision

The parties agreed that the issue for decision, as framed by the Step B team, is as follows: "Did management violate the National Agreement and/or prior Step B decisions when they reverted Reserve Letter Carrier (RLC) position #95797406? If so, what is the appropriate remedy?" (J2, p. 1)

Stipulation

At the hearing the parties stipulated that a Full-time Flexible ("FTF") was employed when this grievance arose and is still employed.

Background

On May 15, 2009, the employer notified the union that management planned to revert Reserve Letter Carrier ("RLC") position #95797406. (J2, p. 30) The notice letter stated that the position "no longer constitutes an (8) hour a day position." Letter Carrier Vazquez vacated the position by bidding out on or about May 23, 2009. The employer then notified the union on June 9, 2009 that position #95797406 would be reverted. The notice states:

> You were sent a letter dated May 15, 2009, advising you that position #95797406 was being considered for reversion. This position number refers to RLC position

located in the 83706 section of the Boise Main Office. After consideration of all relevant information it is my decision to revert this position due to the following:

- Declining mail volumes
- Staffing analysis, fewer routes to cover on vacations (J2, p. 31

Another notice, written the same day, also referred to "upcoming MIARAP adjustments"[1] as a reason for the reversion. (J2, p. 33)

The union filed a grievance over the reversion on July 3, 2009 (The parties agreed to an extension of time for filing the grievance. (J2, p. 12-14)). The Dispute Resolution Team ("DRT") reached an impasse on October 2, 2009 and this arbitration followed. (J2, p. 1)

Discussion

The Standards Applied by Arbitrators When Reviewing Reversion Decisions

Reversion cases involve significant interests for both the employer and the union. The union's desire to preserve regularly scheduled full-time employment clashes with the employer's desire for efficiency and flexibility in scheduling the workforce.

As I previously discussed in another reversion case, the issue of the proper standards for evaluating a reversion under the National Agreement has been the subject of numerous arbitrations. (USPS Case No: E01N-4E-C 07307901) Reversion cases almost always involve reconciling Articles 3, 7 and 41 of the National Agreement.

Article 3 recognizes management's exclusive right to manage the business and to maintain the efficiency of the operations, subject to the provisions of the Agreement and consistent with applicable laws and regulations. Section 7.3B of the National Agreement provides that the employer shall: "maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules...." Section 41.1.A.1 provides that when a position is under consideration for reversion, the decision to revert or not to revert shall be made within thirty days of the time the position becomes vacant. The union, at the local level, is to receive notice of the assignments that are being considered for reversion and of the results of such consideration.

Standards of contract interpretation commonly applied in labor arbitration include the following principles: 1.) The meaning of a contract cannot be derived from a single word or phrase. The labor agreement must be interpreted as a whole and words or phrases must be

[1] MIARAP means Modified Interim Alternate Route Adjustment Process (J2, p. 614)

interpreted in context. 2.) When alternative interpretations of a contract provision are possible, the arbitrator should select the interpretation that gives meaning and effect to all provisions of the labor agreement. (Elkouri & Elkouri, *How Arbitration Works, 6th Ed.*, Chapter 9 (BNA Books; 2003) p. 427)

In reversion cases, the employer often argues that Articles 3 and 41 give the employer an absolute right to revert positions, subject only to certain procedural notice requirements. The union often argues that the maximization language of Section 7.3B should be the dominant consideration.

The Postal arbitration cases cited by the parties show a division among arbitrators in the way in which they have reconciled Articles 3, 7, and 41 in reversion cases. Some arbitrators do not consider Article 7 to have any bearing on reversion disputes, yet those arbitrators also accept that the employer has an obligation not to act in an arbitrary and capricious manner when exercising management discretion. Other arbitrators have taken the view that Article 7 places limits on management's discretion to revert positions and those arbitrators believe that a balance must be struck between "maximization" principles found in Article 7 and "management efficiency" principles found in Article 3. The most persuasive view of how to handle these cases among the many arbitration decisions on this subject is found in a decision by Arbitrator Eaton.[2]

Arbitrator Eaton applied a shifting burden of proof approach in a reversion case and many other arbitrators have adopted that approach. Under this analysis, if the employer reverts a position and the union disagrees with the decision, then the union must establish a prima facie case that full-time work is available. The burden then shifts to the employer to "show inefficiency or some other reason why the Union's conclusion is incorrect or unsupportable." As Arbitrator Eaton wrote:

> In numerous cases Postal Service arbitrators have reestablished reverted positions where the Union has shown ample work available and the Postal Service has been unable to show that re-establishing the reverted position would result in inefficiency of operations. For the Postal Service to make this showing requires concrete documentation, and not merely an assertion that re-establishment would be inefficient. (F94N-4F-C 97120050 (May 29, 2001) p. 10-11)

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[2] The Postal Service cited a Step 4 from 2006 (E98N-4E C 00155340) for the proposition that Section 7.3B "includes no provisions for reversion of full-time carrier duty assignments. Rather, consideration of reversion of reserve letter carrier assignments is initiated pursuant to...Section 41.1.A.1...." The issue submitted to Step 4, however, stated: "Management takes the position that Article 7.3B gives them authority to revert positions whenever the full-time/part-time ratio exceeds 88/12." That issue differs from the issue in the present case in that the question here is whether the Postal Service acted arbitrarily or capriciously when it reverted position #95797406.

Arbitrator Eaton's shifting burden of proof approach provides a guide or method for analyzing whether the employer made either an arbitrary and capricious decision without regard to the facts or a reasonable decision based on facts.

As arbitrator Gentile wrote:

> The [arbitrary and capricious] "test" reasonably requires there be a factual foundation for the decision to revert and that the decision be thoughtful and linked to all of the attendant circumstances then existing. (F94N-4F-C 99014025 (1/25/05))

The Facts of this Case

In this case, no dispute exists over the following facts: 1.) the employer met the notice requirements and time limits of Section 41.1.A.1 of the National Agreement, and; 2.) the Boise installation exceeds the 88/12 ratio of full-time to part-time, and; 3.) the Boise installation meets and exceeds the 200 workyear requirement contained in Article 7.3.A of the National Agreement.

As a result of route adjustments that occurred around the time of this reversion, Boise reduced the number of delivery routes by six and also reduced one T6 position.[3] (MIARAP subsequently resulted in some further reductions.) In addition, mail volume declined in Boise, as it has in most other areas.

When management reverted position #95797406, Boise had 186 career Carriers and seven TEs. Of the 186 career Carriers, only one was a PTF. The remaining Carriers were: 185 FT, 8 RLCs, 2 FTFs. Currently, Boise has 187 career Carriers of whom seven are PTFs, 180 are FT, 5 are RLCs and one is a FTF.

This case presents two major questions. The first is the usual question in any reversion case, which is: What business justification did the employer rely on in making the reversion decision? If the union makes the prima facia case that work is available, then the employer must show that business justification existed and the employer did not act arbitrarily or capriciously in deciding to revert the position.

[3] The union argued in the closing brief that reverting the RLC position after these other routes had been eliminated constituted a form of "double jeopardy" for the workforce. As Mr. Ross testified, however, the route adjustment process does not evaluate RLC positions. Therefore, the reversion of RLCs is a separate consideration.

The second question in this case is whether an RLC position can be reverted while a FTF remains employed.

This case also raises a question about the precedent value of prior Step B decisions within the same installation.

The union provided evidence to show that work was available in zone 83706 where the RLC worked. The union provided testimony to show: 1.) The RLC had always worked at least forty hours; 2.) Boise has twenty-seven annual leave slots; 3.) PTFs and TEs worked over forty hours per week; 4.) PTFs were not bumped from opts to give the RLC work; 5.) Many Article 8 grievances have arisen and Boise has a great deal of overtime. (see J2, p. 47-73)

The employer responded that one of the central problems with this RLC position comes about because as long as a vacant route existed at Boise Main, the RLC had to be assigned to that route. Ms. Sommer testified that another limitation on the use of the RLCs is that they are zone specific and they therefore cannot be used outside their zone if a vacant route is available in the zone. Ms. Sommer testified that although the RLC could opt onto a route at one of the five other delivery stations, nothing requires the RLC to do so. Therefore, if routes are vacant at other stations the RLC assigned to zip code 83706 at Boise main cannot be sent to cover any of those other routes so long as a route is vacant in 83706 or at Boise main. Ms. Sommer testified that this practice has been in existence for a long time.

Ms. Sommer testified that the twenty-seven annual leave slots are scheduled city-wide in Boise. Therefore, at times, all the Letter Carriers at a particular station may be on annual leave.

Ms. Sommer gave an example of a situation in which all the routes at Cole Village Station were covered and so the RLC from Cole Village was sent to another station that was significantly understaffed. She testified the union filed a grievance because the Letter Carriers at Cole Village worked more than eight hours of overtime that day and the union contended the RLC should not have been moved because of the overtime hours. Ms. Sommer testified that the problem is that the availability of an RLC often does not reduce overtime because the RLC has a regular schedule and a set start time. Therefore, the likelihood that post-tour overtime will be reduced is low. She also testified that most of the overtime occurs simultaneously, therefore the RLC would have a limited or no effect on reducing that overtime.

Ms. Sommer testified that even though work may be available, often the RLC cannot be used to do the work because of the fixed schedule. She testified that as a consequence, sufficient

coverage is often not available. Ms. Sommer testified that more flexibility is needed to get the job done and the limited flexibility for this RLC position was not working.

In my judgment, the employer has presented persuasive evidence concerning the inefficiency of RLC position #95797406. The fact that RLCs are considered zone-specific and station-specific greatly reduces the employer's ability to make use of the RLCs when the need arises at other stations. The union pointed to the fact that the previous incumbent in position #95797406 always worked forty hours. That argument, however, does not take into account that the RLC is guaranteed an eight-hour day and a regular schedule. The fact that the RLCs work a regular schedule with a set start time also limits the ability to use the RLCs to reduce overtime that arises later in the workday. In my judgment, the employer made a reasonable decision based on facts and did not act arbitrarily or capriciously when it reverted position #95797406.

The second major question raised by this case is whether the employer could revert a RLC position while a FTF continued to work. This question presents a difficult problem of interpretation. A 1980 Mittenthal arbitration decision required the parties to return to the bargaining table to develop maximization criteria concerning the conversion of PTFs to full-time status. (N8-NA-0141) The parties at the National Level subsequently negotiated the 1981 Letter of Intent ("LOI"). That LOI states the following in paragraph 6:

> 6. In those installations where conversions have been made under this Memorandum of Understanding, and there are subsequent reversions or excessing, any reduction in full-time letter carrier positions shall be from among those position(s) converted pursuant to this Memorandum of Understanding until they are exhausted.

Looking only at the LOI, one could argue that it deals only with the conversions made in 1981 as part of the settlement of that particular grievance. The JCAM, however, discusses the 1981 LOI and provides some guidance on the current applicability of the LOI. The Postal Service argues in this case that paragraph 6 of the 1981 LOI was not included in the 1987 Memorandum of Understanding ("MOU") on "Maximization/Full-time Flexible." The Postal Service argues, therefore, that paragraph 6 of the 1981 LOI is no longer in effect. The JCAM, however, states the following:

> A 1978 memorandum of understanding, similar to the 1987 memorandum above first established a type of letter carrier status—"full-time flexible"—not mentioned in Article 7. The 1981 letter of intent reprinted above was created in

> settlement of a grievance brought under the 1978 memorandum, and remains in effect under the 1987 memorandum....(JCAM 7-23)

Accordingly, the JCAM makes clear that the 1981 LOI remains in effect.

In addition, the JCAM discusses the nature of FTF positions, and includes the following:

> Full-time flexible employees are subject to reductions in full-time positions when reversions (see Article 41.1) or excessing (see Article 12.5) takes place. Nothing in paragraph 6 of the Letter of Intent changes the parties' understanding that any excessing still must be from the junior full-time carrier by level, regardless of his/her status as full-time regular or full-time flexible. (JCAM 7-25)

This provision from the JCAM makes clear that paragraph 6 of the 1981 LOI remains viable.

At Step B, the employer argued that paragraph 6 of the LOI deals only with excessing under Article 12. That contention is not persuasive, however. The first sentence of the above-quoted provision from JCAM 7-25 states that FTFs are subject to reductions when reversions or excessing takes place. The second sentence makes clear that seniority applies when excessing occurs, but that does not modify the reference in the first sentence to reversions. Each sentence deals with a separate issue.

The employer argued at Step B as follows:

> It is nonsensical that management would not be able to revert positions that are no longer needed. Case in point, all over the country routes are being reverted and abolished as a result of MIARAP. (J2, p. 6)

In this case, however, the union does not contend that the Postal Service is prohibited from reverting positions that are no longer needed. The union argues instead that the LOI that remains part of the parties National Agreement requires that FTFs be reduced first before other full-time positions are reverted or excessed.[4]

Award

The employer made a convincing case concerning the inefficiency of the reverted RLC position and the business justification for the reversion. Nevertheless, the JCAM makes clear that paragraph 6 of the 1981 LOI remains in effect. Accordingly, the Postal Service must comply with this contractual obligation.

[4] At Step B, the Postal Service argued that no FTFs were employed when this reversion took place. The parties' stipulation at the hearing contradicts that assertion.

Based on my analysis, I find that the three prior Step B decisions on this subject applied the National Agreement correctly and correctly found that reversions of full-time positions while FTFs remained employed violated the National Agreement.

Accordingly, the record establishes, and I must therefore find, that management violated the National Agreement and prior Step B decisions when management reverted Reserve Letter Carrier position #95797406 while an FTF remained employed.

The appropriate remedy is as follows. The employer shall: 1.) post Reserve Letter Carrier position #95797406 in the next regular bid posting following the receipt of this award, and; 2.) cease and desist from refusing to comply with the provisions of the National Agreement (including LOIs, MOUs, the JCAM and prior Step B decisions) related to the reversion of full-time positions while FTF(s) remain employed.

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