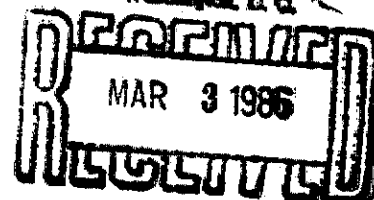


CH 05793

NALC AAA
Washington, D.C.



UNITED STATES POSTAL SERVICE

OPINION AND AWARD

And

Regular Arbitration

NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO

Issues: Article 41.1 C. Successful
Bidder; Route Assignments;
Senior Bidder

Case No. C4N-4T-C 6054
(Stanfred G. Kraft Jr.)

Hearing Closed: October 7, 1985

Branch No. 14

Issued: February 27, 1986*

Louisville, Kentucky

Arbitrator: Edward D. Pribble

APPEARANCES

For the NALC

Irv Lambert
President Branch 14
4400 Bishop Lane
Louisville, KY 40218
Richard A. Lockard, Branch Vice President
Thomas A. Webb, Branch Administrative Aide and Steward
Stanfred G. Kraft Jr., Grievant
Linda A. Cecil, Letter Carrier

For the USPS

Michael P. Jordan, SC Director Employee & Labor Relations
1420 Gardiner Lane
P.O. Box 3111
Louisville, KY 40231-9994
Julia M. Bennett, Manager Employee Relations, Louisville MSC
Clay J. Vermillion, Labor Relations Representative
Virginia W. Wolfe, Employment Officer
Martha A. Van Fleet, Personnel Assistant Manager
Danniel J. Kannapel, Personnel Assistant

JURISDICTION

Pursuant to agreement of the Parties, the arbitrator serves on the Central Region's Regular Discipline and Contract Panels.

A hearing in this matter was convened on October 7, 1985, at the Main Post Office, Louisville, Kentucky. Following the arbitrator's receipt of positions, contentions and evidence, the Parties presented oral or written

argument at the hearing. The hearing was closed on October 7, 1985. *This decision was delayed by the arbitrator's recuperation from surgery. After the issuance of this Opinion and Award, the arbitrator is current with his USPS and NALC cases.

ISSUES

The Parties stipulated or agreed that the issue(s) is:

Did the USPS violate Article 41 of the Agreement by awarding route 01007 to J. H. Potter Jr., rather than to the Grievant?

PRELIMINARY STATEMENT AND BACKGROUND

The Parties are signatories to the Agreement, Joint Exhibit No. 1, which was effective for the relevant time period. The exact nature of the Employer's methods of operation are not in contention and will not be stated unless relevant to the issues.

About fifteen hundred employees are employed at the Louisville, Kentucky, postal delivery installations (the Installation). About seven hundred and two of these employees are City letter carriers and included within the portion of the bargaining unit at the Installation or the Louisville, Kentucky MSC (the MSC). The Record is unclear which one. About six hundred carrier routes are based at the Installation.

On July 1, 1985, the Grievant timely filed the grievance(s) involved in this arbitration. The grievance(s) claimed that management improperly refused to assign a route 01007 (the Route) to the Grievant, senior bidder.

When the Parties were unable to resolve this matter in the informal steps of the grievance procedure, the grievance was appealed to binding arbitration at the Regular Panel Regional level. The Parties stipulated that the grievance was processed and appealed timely through the appropriate steps of the grievance procedure. The Parties stipulated that there were no procedural nor substantive arbitrability claims. The Parties also stipulated that the grievance(s) is properly before the arbitrator. Joint Exhibit Nos. 2(a)-2(e).

POSITION OF THE PARTIES

The position of the Parties are summarized very briefly whenever possible without detracting from their import, but all details of their positions have been carefully considered by the arbitrator.

Union Position

The Union's position is that the USPS improperly refused to assign the Route to the Grievant. In support of this position, the contentions of the Union are:

1. The Grievant was the most senior bidder meeting the qualifications standards for the position for the Route. Management knew this when it did not award the Route to the Grievant.
2. The reason(s) given by the Employer are not qualifications standards for the letter carrier position for the Route.
3. Article Thirty of the Agreement states that no local memorandum of understanding may be in conflict with or inconsistent with the Agreement.
4. Nothing in any of the manuals or Agreements states a Form 1717 must be completed in accordance with what management states is correct.
5. The same issue was grieved previously about the same time as this grievance. Higher level management sustained the grievance. Union Exhibit No. 1.
6. At no time has the Union agreed to the additional requirements, beyond the Agreement, for the bidding process which are stated in Joint Exhibit No. 8. Rather, the Union stated that Employer Exhibit No. 3 and Joint Exhibit No. 8 are in conflict with the Agreement, Article 41.
7. A broad order is needed to prevent future violations.

USPS Position

The USPS position is that it acted in accordance with the Agreement, Joint Exhibit No. 1 and that the grievance(s) should be denied. In support of the position, the USPS contentions are:

1. It has been the past practice for twenty to twenty-five years in the MSC to use a Form 1717, Joint Exhibit No. 6.
2. From 1979 to January 1985 the PEDC handled the posting and bidding process. In January 1985 this function was returned to the MSC, E & LR section. E & LR found that there were basic problems in the process being utilized at that time.

Another inordinate amount of time was spent in correcting and completing the bid cards that had been submitted. It was determined by management that this was not the responsibility of the E & LR staff and that the situation had to be corrected.

3. The process of collecting, separating, collating and checking bid cards is cumbersome and time consuming. There may be numerous bids for one popular position. An employee may bid on several vacant positions at one time, depending on the postings and status of an employee. Sight checking, verifying and correcting each bid card requires much time. This time could be saved if the cards were required to be complete and correct upon submission.

It is the employee's responsibility to be certain the bid card information is correct and complete when responding to a job bid posting.

4. In January 1985 it was agreed between the MSC E & LR Director and the major local Union Presidents in the MSC that each Union would inform its memberships that bid cards must be completed accurately and completely. See Employer Exhibit No. 1. As a result of these discussions, a deadline of March 1985 was set.

It was agreed that if bid cards were incomplete or had an obvious error, it would be returned to the bidder for completion and resubmission, time permitting. Also if incorrect information was on the bid card, it would be declared invalid.

On January 23, 1985, an Order Book notice went to all employees telling them that it was their responsibility to complete the bid cards accurately and properly.

5. In March 1985 a bid card was disqualified by MSC management when the card said twenty years, rather than an actual seniority date. The Union accepted the grievance and withdrew from its prior agreement, see item 4 above.

After the MSC management denied the grievance, the grievance was sustained at Step 3 by the Region.

6. As a result, the MSC management appointed a study committee which included the Local Union Presidents. The results of this committee were published in an Order Book notice, Employer Exhibit No. 4 and Joint Exhibit No. 8.

These were reasonable rules reached after consultation with the Local Unions.

7. In accordance with the January 23, 1985, Employer Exhibit No. 3 and Joint Exhibit No. 8, the Grievant's bid was disqualified. There was no provision in these documents for human error or to accept the bid of the bidder who was the senior bidder if a mistake was made on a bid card. The Grievant's bid was declared invalid. The bid was awarded to the senior bidder with the correct PS Form 1717.

8. If the Employer cannot require that the accurate seniority date be placed on PS Form 1717, then the Employer cannot require accurate completion of other information on the bid cards.

9. In order to be the "senior bidder meeting the qualification standards" at the MSC, the employee must provide the correct seniority date on his or her bid cards.

DISCUSSION

On the basis of the foregoing and all the evidence, it is concluded that the grievance is sustained.

This Opinion and Award should not be interpreted as reflecting adversely on the integrity of the principals. At the hearing in this proceeding, each of them behaved in a manner that indicated sincere attempts to provide open and convincing argumentation in support of their respective positions. Nevertheless, this Opinion and Award is based upon standards of contract and grievance

application and interpretation, which are accepted by representatives of management, labor, and neutrals.

In his evaluation of all the evidence, the totality of the circumstances, and the testimony of all witnesses, the following was determined by the arbitrator to be most credible. Evidence which is inconsistent with these findings has not been credited. The basic reasons for the Award are the following:

1. In all contract application determinations in this Opinion and Award, this arbitrator has utilized the primary rule in construing a labor agreement and related documents, which is to determine from the instrument as a whole the true intent of the Parties and to interpret the meaning of a questioned word or part with regard to the connection in which it is used, the subject matter and its relation to all other parts or provisions, and to apply it accordingly.

Moreover, as Arbitrator Updegraff stated in John Deere Tractor Company, 5 LA 631, 631 (1946):

It is axiomatic in contract construction that an interpretation which tends to nullify or render meaningless any part of the contract should be avoided because of the general presumption that the Parties do not carefully write into a solemnly negotiated agreement words intended to have no effect. (Elkouri and Elkouri, How Arbitration Works, Fourth Edition, p. 353.)

As stated by Elkouri, supra, p. 354, "When one interpretation of an ambiguous contract would lead to harsh, absurd or nonsensical results, while an alternative interpretation, equally consistent, would lead to just and reasonable results, the latter interpretation will be used."

2. In response to a Route for Bid Notice dated June 3, 1985, on June 6, 1985, the Grievant presented his bid for carrier route 01007 (the Route) on the proper Form 1717 to his supervisor. Joint Exhibit Nos. 4 and 7.

On June 13 the bidding process for this route was closed. On June 24, the Employer posted a Notice of Reassignments (the Reassignment Notice) for these routes, including the Route. According to the Reassignment Notice, J. H. Potter Jr. (Potter) was assigned the Route.

3. Potter's craft seniority date is November 23, 1968. He correctly stated his seniority date on his bid for the Route. Joint Exhibit No. 3.

The Grievant's craft seniority date is January 28, 1967. On his bid for the Route, the Grievant incorrectly stated his seniority date as January 8, 1967. Joint Exhibit Nos. 3 and 4.

5. Before the MSC management determined who would be awarded the Route, the MSC management knew that the Grievant had incorrectly listed his seniority date and what his correct date was. The then current seniority list for letter carriers, Joint Exhibit No. 3, listed the Grievant's correct seniority date. They also knew that the Grievant was more senior than Potter by more than twenty-two months. The MSC management knew the Grievant's seniority date, inter alia, from another bid the Grievant submitted on May 6, 1985, Joint Exhibit No. 5, and the seniority list, Joint Exhibit No. 3.

6. An Order Book memorandum to all employees dated April 12, 1985, "Subject Guidelines for Submission and Acceptance of Forms 1717 - 'Bid Cards'", Joint Exhibit No. 8, states:

The following guidelines, based on practicality and fairness to all employees, will be followed for all bid positions (those vacancies for which a Form 1717, "bid card" must be submitted):

2. The Form 1717, or bid card, must be completely filled out with the information necessary to determine senior bidders. This includes the employee's name, social security number, correct seniority date (month/day/year), posting number, if any (e.g., PE-85-06), the position number, the employee's choice in order of preference, the employee's current pay location, signature, and date of submission.
4. Information necessary to determine senior bidders which is not furnished, or is incorrect or incomplete, will disqualify the employee from consideration for the desired position. Seniority dates such as "1978", "5/80" or "20 years" will be considered incorrect, and will be returned.
5. Employees at the Main Office may submit bid cards directly to the Employee Relations Office one of two (2) ways: they may hand-carry them in during office hours; or they may drop them in the E & LR drop box next to PEDC, which is expressly for employee correspondence such as bid cards.
6. The Employee Relations Office will return bid cards to employees who have submitted incomplete forms.

PROPER PROCEDURE FOR COMPLETING PS FORM 1717

1. Name must be printed, last name first.
2. Social Security number must be entered.
3. Exact craft seniority date must be entered (if you do not know your craft seniority date, or are unsure of it, a seniority list should be posted in your work unit. If it isn't, ask your supervisor).
4. Posting number, if any - for example, PE-85-07.
5. The position number must be entered accurately. The position number consists of: the pay location number, the initials of the job title and the job number in that group. For example, 202-DC-99 means the position is in Pay Location 202, the position is a Distribution Clerk, and the individual number is 99. For carrier routes, the route number consists of the zone and route number, separated by a zero. For example, 18099 is in zone 18, Buechel, and the route number is 99.
6. Location of the position - if not known, leave blank.

7. Choice number must be entered even if you are only bidding on one position.
8. Craft, title, level and pay location are entered at the bottom of the card, above your signature and date the card is completed/-submitted.

As noted these were "guidelines" only.

7. From 1979 to January 1985 the posting and bidding process was handled by the MSC's Postal Employees Developmental Center (PEDC). In January 1985 this function was returned to the MSC's E & LR section.

8. Article 41.1 B. Method of Posting, Joint Exhibit No. 1, provides in much detail the specific information to be stated on the job bid notices, and the places and manner of posting.

There are no similar provisions for the job bids themselves.

9. Article 41.1 C. Successful Bidder, Joint Exhibit No. 1, states:

1. The senior bidder meeting the qualification standards established for that position shall be designated the "successful bidder."
2. Within ten (10) days after the closing date of the posting, the Employer shall post a notice indicating the successful bidder, seniority date and number.
3. That successful bidder must be placed in the new assignment within 15 days except in the month of December.
4. The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to T/6 and utility assignments, unless the local agreement provides otherwise. (emphasis added).

10. There is no definition in the Agreement or manuals (Article 19), of "qualification standards".

Roberts' Dictionary of Industrial Relations, BNA Incorporated (1966) (Roberts) defines qualifications: "The natural fitness, ability, or endowments a person has, or demonstrates, for a particular office or job." (p. 348)

Roberts defines "ability (in layoff and promotion): Training, skill, aptitude and other factors essential in the performance of a job.... Ability has been measured by performance on the job, by work records, and other ratings designed to measure an employee's day to day handling of his job."

11. The Grievant met all the qualification standards established for the route. No evidence was presented that was inconsistent with or contrary to the Roberts' above definitions.

12. The Grievant was the "senior bidder" within the meaning of the Agreement.

13. The Agreement in Article 41, Section 2 defines seniority. In 41, Section 2, Seniority, B. Definitions 6. Relative Seniority Standing (a) states: "In cases of appointment on the same day, where there is a tie in seniority, the relative standing on the appointment register will determine the more senior carrier."

14. The Agreement in Article 41, Section 2 Seniority, C. Responsibility for Administration states: "The Employer shall be responsible for the day-to-day administration of seniority rules. Every installation, station, branch, and/or delivery unit shall have a roster posted in an appropriate place listing all carriers in order of seniority number. Said roster shall be updated during the months of July and January of every calendar year." (emphasis added).

There is no evidence that any seniority rosters, which were generally available to employees, specified seniority dates of letter carriers.

15. In the current case the MSC management seeks to pass the responsibility for determining the correct seniority date to the employee. This is contrary to the Article 41 of the Agreement.

There was no agreement by the Union to accept the MSC management proposals for submission and acceptance of PS Form 1717 bid cards.

16. The MSC argues that considerable time is wasted by the E & LR staff by the process of collecting, separating, collating and checking bid cards.

This arbitrator agrees. However, the evidence in this record is that most of the waste of time is caused by the system selected by MSC management. The MSC uses a manual bid card separating, collating and checking system. It is full of opportunities for errors. This system was antiquated for large groups of employees when this arbitrator finished graduate school more than sixteen years ago. This system is nearly nonexistent in private employment and most public employment.

This arbitrator suggests that administration of the bidding system is an area where properly placed computers would reduce very substantially the time, monies, effort, and number of personnel needed to accurately perform this function.

While the Union wants this arbitrator to issue a broader order, this arbitrator feels constrained by Article 3 of the Agreement. For a further discussion of an arbitrator's remedial authority under the Agreement, see USPS and NALC, (Kenosha, Wisconsin) Regular Case Nos. C4N-4J-C 6365, etc. (January 24, 1986) pp. 10-12, (Arbitrator Edward Pribble).

17. There is no evidence which relates the errors in the bidding process to the problems, time and otherwise, caused by the particular errors.

However, the Employer witness, who currently administers most of the bidder selections, stated that mistaken seniority dates on the bid cards occurs very seldom.

18. In March 1985 in a generally similar case, Union Exhibit No. 1, the Employer, Region level, awarded the Grievant the route with a seniority entry of "twenty years" on the bid card.

19. Correct seniority, dates is information which the Employer is required to maintain and update in accordance with the Agreement. The MSC management had this information readily available to it.

Some information (for example, signature, job route or position sought) on the bid cards is available only from the employee. In order to submit an operative bid, this information must be included on the bid card.

20. This Opinion and Award should not be construed to eliminate the Parties mutual efforts to have accurate and complete bid cards submitted. With changes and provisions added in the some areas (for example, one - mistaken entries and two omitted nonessential entries) consistent with this Opinion to the MSC management's proposal (Joint Exhibit No. 8), and improvements in the administration of the bidding system (such as those suggested above) a workable binding system under the Agreement might be achieved.

This arbitrator expresses no personal preference for one bidding system versus another. He only suggests here some areas of mutual discussion within the Agreement that might solve some remaining problems with the bidding system.

21. The Grievant is awarded the Route 01007, effective June 29, 1985. He shall be paid full backpay, if any, regular or overtime, in accordance with the Agreement from June 29, 1985, until his actual assignment to the Route.

The Grievant shall be assigned to the Route by March 10, 1986, with the assignment date of June 29, 1985, with all rights and benefits.

AWARD

The grievance is sustained.

The Employer shall pay the monies, award the Route, and make reassignment as stated above.

Dated: February 27, 1986
at St. Cloud, Minnesota


Edward D. Pribble, Arbitrator