

C# 10309

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In the Matter of the Arbitration

between

The United States Postal Service

and

National Association of Letter
Carriers, AFL-CIO

Grievant: E. Rachinger

P. O.: Buffalo

Case No. 24.90-RB-C
63.90

GTS No. 4648

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Before: Edward Levin, Arbitrator

Appearances:

For United States Postal Service: Francis McNamara,
Advocate; Leonard Molik, witness.

For National Association of Letter Carriers, AFL-
CIO: Patrick F. Gorman, Assistant Secretary-
Treasurer, Branch 3; Joseph Carmack, PTR Steward;
Eva M. Rachinger, grievant.

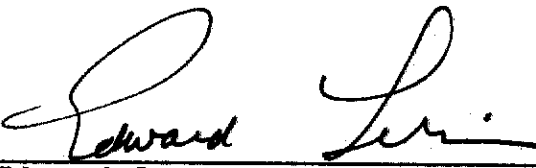
Date of Hearing: September 17, 1990

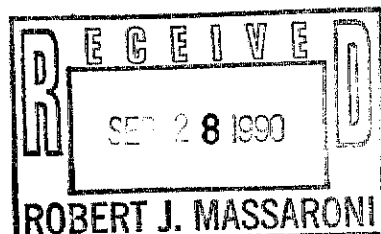
Place of Hearing: Buffalo, New York

Award:

1. The Postal Service did not violate the Collective Bargaining Agreement when it failed to allow the grievant to remain in the Clerk Craft following her improper placement.
2. The grievance is therefore denied.

Date of Award: August 20, 1990


Edward Levin, Arbitrator



In accordance with the provisions of the collective bargaining agreement between the United States Postal Service (Postal Service) and the National Association of Letter Carriers, AFL-CIO (Union), the undersigned was designated Arbitrator to hear and determine the following issue:

1. Did the Postal Service violate the Collective Bargaining Agreement when it failed to allow the grievant to remain in the Clerk Craft following her improper placement?
2. If so, what shall be the remedy?

A hearing was held on September 17, 1990 at the facilities of the United States Postal Service located in Buffalo, New York at which time the parties were afforded opportunity to present testimony, documentary evidence and oral argument in support of their respective positions.

CONTRACT LANGUAGE

ARTICLE 37.2.E

....

2. Vacant part-time regular assignments shall be posted for bid to part-time regular employees in the same salary level who are currently qualified.

....

7. Full-time and part-time flexible clerks may request reassignment to a residual part-time regular vacancy and such request shall be considered. If granted, the reassigned employee will begin a new period of seniority.

BACKGROUND

On September 22, 1989, Eva M. Rachinger, a Part-Time Regular(PTR) Carrier, requested reassignment to a PTR Clerk position at the earliest possible opportunity.

On the same date, the Postal Service acknowledged Ms. Rachinger's request and informed her it would be given consideration at the time these positions would be next filled.

On April 18, 1989, Ms. Rachinger was reassigned from her PTR Carrier position to that of a PTR Distribution Clerk, effective April 21, 1990.

Upon learning from the APWU that the assignment violated the bidding procedure of Article 37 of the National Agreement, the Postal Service, on April 20, 1990, issued a bid announcement for the position and returned Ms. Rachinger to her previous position of PTR City Carrier effective May 5, 1990, and a PTR Regular Clerk was assigned to that position.

The Union filed a grievance which is properly before the Arbitrator.

UNION POSITION

The Union believes that the actions of the Postal Service in this instance are unjust since Ms. Rachinger was awarded a vacant assignment and not a bid. When the Postal Service rescinded the award and placed a PTR Clerk in the

position, this left another vacancy for a PTR Clerk to which vacancy Ms. Rachinger should have been assigned. In the event all the vacancies created by the chain reaction of appointments to PTR Clerk position settled down there should have been a PTR Clerk position to which Ms. Rachinger should have been eventually assigned. This would have been a legitimate job for her to fill.

The Union contends that if the Postal Service followed the procedures it has outlined there would be no cost to the Postal Service and no possibility of a grievance arising from the APWU under the contract.

The Union therefore asks that the grievance be granted, and Ms. Rachinger be awarded a job as a PTR Clerk.

POSTAL SERVICE POSITION

The Postal Service acknowledges making a mistake in assigning Ms. Rachinger to the PTR Clerk position. According to its understanding of Article 37, the order in which bids for PTR Clerk position are to be awarded is:

1. PTR Clerks
2. FTR Clerks
3. FTF Clerks
4. Anyone else from any craft.

In assigning Ms. Rachinger to the PTR Clerk position it inadvertently failed to allow PTRs, FTRs, and FTFs to bid for the vacant position. When it was informed of this error by the APWU it moved to correct the mistake by properly

advertising the job and returning Ms. Rachinger to her previous position as PTR Carrier.

The Postal Service argues that it would have been improper to assign Ms. Rachinger to residual vacancies since she would have improperly accrued seniority as a PTR Clerk, and that all those residual vacancies had to be filled in accordance with the requirements of Article 37 of the National Agreement.

The Postal Service claims it did the only thing possible without incurring grievances from the APWU. That is, putting Ms. Rachinger back on her original job without loss of pay.

The Postal Service therefore asks that the grievance be denied in its entirety.

ARBITRATOR'S OPINION

The Parties do not disagree that the assignment of Ms. Rachinger to the PTR Clerk position was in error. The Postal Service did what it could to remedy this error by posting the position for bid from PTR Clerks.

The Union failed to show any contractual right of Ms. Rachinger to be given residual vacancies while the chain reaction of reassignments ran its course. If the Postal Service followed the Union's suggested course of action Ms. Rachinger would have accrued seniority for which she had no contractual rights. Indeed, such action would have held the

Postal Service open to grievances for which it would have no contractual defense.

The Arbitrator finds that Ms. Rachinger suffered no monetary losses as a result of the Postal Service's error in assigning her to the PTR Clerk position and then reverting her back to the PTR Carrier position.

Accordingly, the Arbitrator concludes that the Postal Service did not violate the Collective Bargaining Agreement when it failed to allow Ms. Rachinger to remain in the Clerk Craft following her improper placement. The grievance is therefore denied.

File # 1048