

C#10271

REGULAR ARBITRATION PANEL

* * * * * * * * * * * * * * * * *
IN THE MATTER OF THE ARBITRATION * GRIEVANT:
Between * Ronald Dauphin
* * * * * * * * * * * * * * * * *
UNITED STATES POSTAL SERVICE * POST OFFICE:
* * * * * * * * * * * * * * * * * Gretna, LA
And * * * * * * * * * * * * * * * * *
NATIONAL ASSOCIATION OF LETTER CARRIERS * CASE NUMBER:
* S7N-3N-C-27268
* * * * * * * * * * * * * * * * *

BEFORE: P. M. WILLIAMS, ARBITRATOR, SOUTHERN REGION

APPEARANCES:

FOR THE POSTAL SERVICE:
Bonnie Raby Wallace, Labor Relations Representative

FOR THE NATIONAL ASSOCIATION OF LETTER CARRIERS:
George Cooper, Local Business Agent

PLACE OF HEARING:
Main Post Office, Gretna, LA

DATE OF HEARING:
August 7, 1990

DECISION AND AWARD

BACKGROUND:

The grievant was employed as a full time regular letter carrier and assigned to the Gretna Post Office. His craft seniority date is November 27, 1971.

On February 9, 1990, a grievance was processed on his behalf to Step 2 (I have made several corrections for typographical and sentence structure errors) stating as follows:

"FACTS: What Happened. The grievant's full time duty assignment as a router-segmentation position was abolished as bid. The grievant's duty assignment consisted of a specific group of routes, and as a result of route adjustment the grievant's full time duty assignment which calls for special segmented parts was eliminated.

"UNION CONTENTIONS: Reasons for Grievance. The Union contends that the grievant's position as a router was a bid position and into which the grievant bid successfully. Management did not live up to the guideline set forth in the Memorandum of Understanding of 7/21/87 for router position. Action taken to make correction and adjustment after mail count and inspection indicated management cover-up of procedure describing detail work assignment on Form PS 1716."

"CORRECTIVE ACTION REQUESTED: That all routes junior to the grievant be posted for bid in accordance with the posting procedures. ..."

The Step 2 decision letter of the Postmaster was dated March 21, 1990. In part the letter stated as follows:

"On March 2, 1990, you met with me to discuss the subject grievance. At this Step Two Meeting, we agreed that the issue was as follows:

1. Was Carrier R. Dauphins' (sic) bid position abolished through route adjustment?
2. Is Management required to post all bid positions junior to Carrier Dauphin?

"As we discussed, Carrier Dauphins' (sic) bid position No. 2-88 included normal requirements of a KP-11 carrier position and did not include specific territory assigned to other city routes at this office. His bid position of Router/Segmentation was not abolished through route adjustment.

"In addition, our Local Memorandum of Understanding dated October, 1987 does not contain language concerning Article 41, Section 3-O of the National Agreement. Your grievance is denied. ...

"Camile C. Darenbourg

"Postmaster ...

Under date of March 15th the Union submitted additions and corrections to the Step 2 decision letter, stating in part:

"*** In your letter of decision ... you denied the grievance based upon the language of Article 30, Section B, and of the Local Memorandum of Understanding, Agenda Item 22, Section 1.

"The Union at this time would like for you to have a copy of the original transcript of Section II of the Local Memorandum of Understanding dated October, 1987 that was deleted from [the] reprint of Local Handbook.

"The Union would like for you to reconsider this decision based upon this correction. ..."

The postmaster's response was as follows:

"Because the Gretna, La. Local Memorandum of Understanding, that was provided by the NALC to Management in October, 1987, did not contain provisions for posting junior positions, my Step Two decision will not be changed.

"Route adjustments were made during January, 1990, based on language contained in the current Local Memorandum of Understanding. ..."

The parties agree that the grievance was properly processed to the level of arbitration.

All interest parties appeared at the hearing where they were given an opportunity to present such evidence and argument as was deemed appropriate. The grievant appeared and testified on his own behalf. All witnesses were placed under oath and were cross examined by the opposing party. After each party had rested its case-in-chief each made a closing argument to conclude the hearing.

POSITION OF THE PARTIES:

National Association of Letter Carriers (Union):

The Union contended that after the negotiations for the Local Memorandum of Understanding (LMU) were concluded in October, 1987 one of its negotiators undertook to have the new LMU typed and printed by a commercial company. In the process of the LMU being printed however a portion of it was inadvertently deleted. The missing portion had been a part of the three prior LMUs. It had not been the subject of negotiations in the current one. When the deletion was discovered a correction was made, and, to the best of its peoples' knowledge a corrected copy was provided to the postmaster. It claimed that based upon the proper language of the LMU and the fact that the grievant had held a full-time bid position which was abolished, the grievance should be sustained, and it asked that I so order.

United States Postal Service (Employer):

The Employer claimed that the provisions of the current LMU did not support the Union's position. It also said that Article 37, Section 1(F) applied. And it further said that having no specific duties listed in his bid the grievant's router position was not a full-time bid position. It asked that the grievance be denied.

ISSUE: Did the Employer violate the terms of the National Agreement and/or the LMU and applicable rules and regulations when it abolished the router position held by the grievant and thereafter failed to allow him to bid for positions held by junior employees, and if so, what is the proper remedy?

OPINION:

A Union witness who acted as one of its negotiating team members for the LMU negotiations in October, 1987 testified, and credibly so, that in the course of the negotiations the subject of the content of AGENDA ITEM #22 was not raised by either party, and the discussions did not make mention of the fact that any change in the language should be made by way of addition, deletion or alteration.

The Postmaster testified at the hearing. He did not challenge the testimony of the witness. Rather he agreed that what she said was true.

I am of the opinion, and so find, that not having been made the subject of the negotiations for the current LMU, the prior language of AGENDA ITEM # 22 is to be deemed as remaining unchanged and in full force and effect because of Article 30, ¶A of the National Agreement, which will be discussed in a moment.

The prior LMU language in part was as follows:

"**** Seniority determines relative standing among employees in the full-time work force. It is computed from the date of employment in the letter carrier craft and continues to accrue so long as service is uninterrupted in the letter carrier craft in the same installation.

"1. Senior bidder meeting qualification standards established for that position shall be designated the successful bidder and seniority will prevail. The employer shall be responsible for the day to day administration of the seniority rules. Every installation, section, delivery unit shall have a roster posted in an appropriate place listing all carriers in order of seniority date. Said roster shall be updated during the months of January and July of each calendar year. The union will be given a copy of the updated roster.

"2. When a letter carrier's route or full-time duty assignment, other than the letter carrier route(s) or full-time duty assignment(s) of the junior employee(s), is abolished at a delivery unit as a result of, but not limited to, route adjustments, highway, housing projects, all routes and full-time duty assignments at that unit held by letter carriers who are junior to the carrier(s) whose (route(s) or full-time duty assignment(s) was abolished shall be posted for bid in accordance with the posting procedures in this Article.

The Form 1627 for January, 1990 shows the grievant as occupying "Seg 1", which is included among the full-time positions at the station. It was said that he regularly worked a 40 hour week, and that he regularly had Sunday and Friday as non-scheduled days. The Employer does not dispute what is last said.

I am of the opinion, and so find, that for purposes of ¶2, which is quoted above, the grievant's position as a "router", to which he used his seniority to bid for, meets the test contemplated. Thus, only if ¶2 is deemed inapplicable to these parties LMU is it to be said that his grievance is without merit and is to be denied.

I am of the further opinion that Article 30, ¶A of the NA tends to dispose of this case because in stating thusly,

"A. Presently effective local memoranda of understanding not inconsistent or in conflict with the 1987 National Agreement shall remain in effect during the term of this Agreement unless changed by mutual agreement pursuant to the local implementation procedure set forth below.

the clear effect of ¶A is to vitalize the language of ¶2 which I have quoted above. Moreover, doing that has the effect of providing the

grievant, because of his full-time duty assignment, with a right to bid for one of the full-time duty assignments being held by carriers who were junior to him.

I therefore am constrained to find that the Employer violated the terms of the NA and the LMU when it failed to allow the grievant to bid for positions held by junior carriers. The grievance therefore should be and the same hereby is, sustained.

On the basis of the entire record in this case the undersigned makes the following

AWARD

The grievance is sustained in accordance with the opinion expressed above. The grievant shall be allowed to bid for a full-time duty assignment that currently is an assignment of a junior carrier employee. His bid right shall be extended to him not later than 7 days after this award is received by either party.

IT IS SO ORDERED.



P. M. Williams
Arbitrator

Dated at Oklahoma City, Oklahoma
this 11th day of September, 1990.

-5-

RECEIVED
MEMPHIS REGION

SEP 17 1990

N. A. L. C.