

C#10614

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION)

between)

UNITED STATES POSTAL SERVICE)

and)

AMERICAN POSTAL WORKERS UNION)

R. GRAY

KANSAS CITY BMC

C7T-4H-C 16152

BEFORE:

James P. Martin

APPEARANCES:

For the U.S. POSTAL SERVICE:

Patrick C. Deming

For the UNION:

James W. Wheeler

Place of Hearing:

Kansas City BMC

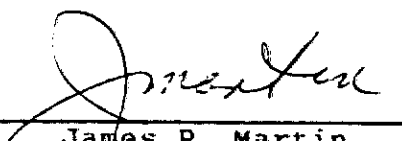
Date of Hearing:

February 28, 1990

AWARD:

That the grievance shall be and hereby is allowed; that Management was in violation of the Agreement when it failed to consider the grievant for transfer; that the grievant is to be transferred to St. Thomas within three months of the date of this Award, in the status of a part-time flexible Clerk, with a seniority date of July 31, 1987; that the grievant's moving expenses to St. Thomas are to be paid as if he were transferred at Postal Service direction.

June 28, 1990


James P. Martin
Impartial Arbitrator

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ISSUE

Did Management violate the National Agreement when the grievant was not considered for transfer to St. Thomas? If so, what is the remedy?

APPLICABLE CONTRACT PROVISIONS

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO, and
National Association of Letter Carriers, AFL-CIO)

Re: Transfers

The parties agree that the following procedures will be followed when career Postal Employees request reassignment from Postal installations in one geographical area of the country to Postal installations in another geographical area. Local reassignments (reassignments within the same MSC, Division, or to adjacent MSCs or Divisions) are covered by the provisions of Section 2 of this memorandum.

Section 1. Reassignments (Transfers) to other geographical areas.

A. Installation heads may continue to fill authorized vacancies first through promotion, internal reassignment and change to lower level, transfer from other agencies, reinstatements, etc., consistent with existing regulations and applicable provisions of the National Agreement.

B. Installation heads will afford full consideration to all reassignment requests from employees in other geographical areas within the Postal Service. The requests will be considered in the order received consistent with the vacancies being filled and type of positions requested. Such requests from qualified employees, consistent with the provisions of this memorandum, will not be unreasonably denied. Local economic and unemployment conditions, as well as EEO factors, are valid concerns. When hiring from entrance registers is justified

based on these local conditions, an attempt should be made to fill vacancies from both sources. Except in the most unusual of circumstances, if there are sufficient qualified applicants for reassignment at least one out of every four vacancies will be filled by granting requests for reassignment in all offices of 100 or more man-years if sufficient requests from qualified applicants have been received. In offices of less than 100 man-years a cumulative ratio of 1 out of 6 for the duration of the National Agreement will apply.

C. MSC's will maintain a record of the requests for reassignment received in the offices within their area of responsibility. This record may be reviewed by the Union on an annual basis upon request. Additionally, on a semiannual basis local Unions may request information necessary to determine if a 1 out of 4 ratio is being met between reassignments and hires from the entrance registers in all offices of 100 or more man-years.

D. Managers will give full consideration to the work, attendance, and safety records of all employees who are considered for reassignment. An employee must have an acceptable work, attendance, and safety record and meet the minimum qualifications for all positions to which they request reassignment. Both the gaining and losing installation head must be fair in their evaluations. Evaluations must be valid and to the point, with unsatisfactory work records accurately documented. An employee must have at least one-year of service in their present installation prior to requesting reassignment to another installation. Employees reassigned to installations under the provisions of this memorandum must remain in the new installation for a period of one year, unless released by the installation head earlier, before being eligible to be considered for reassignment again, except in the case of an employee who requests to return to the installation where he/she previously worked. Employees serving under craft lock-in periods per the provisions of the National Agreement must satisfy those lock-ins prior to being reassigned to other installations.

E. Installation heads considering employees for reassignment will contact the installation head of the losing installation and arrange for mutually agreeable reassignment and reporting dates. A minimum of thirty days' notice to the losing office will be afforded. Except in the event of unusual circumstances at the losing installations, reasonable time will be provided to allow the installation time to fill vacancies, however, this time should not exceed ninety days.

FACTS AND COMMENTS THEREON

This is a most unusual case, because the grievant filed his complaint with the Kansas City BMC, while his real complaint was with the Postmaster of Charlotte Amalie. To avoid going through the chronology twice, the facts, and comments thereon, will be set out together.

The affair started in July of 1986, when the grievant wrote a letter to the Postmaster of Charlotte Amalie, Virgin Islands, requesting a transfer somewhere within the United States Virgin Islands. The letter was sent on lined paper without a letterhead, and set out the grievant's address as the Kansas City Bulk Mail Center. He enclosed some personal and professional data, requesting consideration. On ^uJuly 23, 1986, he received a reply from the Postmaster telling him there were no vacancies, no proposals to increase the complement, and informing the grievant that his request would be held in his active files for a period of one year. On July 4, 1988, the grievant again wrote the Postmaster, reiterating his request for a transfer,† was told by the Postmaster by letter of July 12th that there were no current openings. An investigation conducted by the EEOC as a result of a later-filed complaint revealed

that there had been 32 employees hired by the Postmaster between July 1986 and October, 1988. On July 18, 1988, the grievant again repeated his request for a transfer, indicating the desire to transfer in any capacity from Labor Custodian up. By letter of July 26, 1988, the Postmaster requested the grievant's OPF from "Postmaster, Kansas City BMC, MO 64128". Interestingly, a letter dated the same date from the grievant to the Postmaster stated that, contrary to the Postmaster's claim, the grievant had discovered that there were jobs available. He repeated his request for transfer. The grievant, upon discovering the inaccuracy of the Postmaster's responses to him, contacted his Congressman, which got the Government Relations Department of the Postal Service into the act. That Department informed the Congressman that the Postmaster had received the grievant's OPF, and had two Clerk vacancies at that time. This was false, because the record does not reflect that the Postmaster ever received the grievant's OPF, up to and including the date of the Hearing. The Postmaster's letter requesting the OPF of the grievant was somehow sent to the Kansas City, Missouri Post Office, where a letter was sent to the Postmaster stating that the grievant did not work there and had not worked there for at least two

years. This letter was dated August 15, 1988. On August 24th, the Postmaster wrote to the Government Relations Department, (herein after "Department"), that he had not received the grievant's OPF because the Postmaster at Kansas City, MO Bulk Mail Center was unable to locate it. In the next few months, the grievant attempted to get a copy of his OPF to the Postmaster, but was unable to do so due to procedural and technical roadblocks. Letters dated November 23, 1988, and February 24, 1989, from the Department clarify or further confuse the issue. In the first one, the grievant was informed that the Postmaster claimed the grievant did not specifically indicate his offers of employment, but did use the Kansas City Main Post Office stationery, so that the Postmaster assumed his employment at that office. On February 24th, the Department informed the grievant that the Postmaster had reported to them that the grievant's letter had been written on Kansas City Post Office stationery, but that he had sent them a copy and this was false. That letter also noted that the grievant's letter clearly indicated that he was employed at the Kansas City Bulk Mail Center. Finally, it informed the grievant that six vacancies had opened in the Virgin Islands, but the grievant was not considered because the Postmaster received a letter

saying that you are not employed in Kansas City. While this was going on, the grievant finally decided to file a grievance, and did so on September 28, 1988. He also filed an EEO complaint, at some later date, reported by the Postmaster on November 29, 1988. A Step Three Settlement to the grievance filed in September of 1988 was arrived at on January 6, 1989, with the following resolution: "The grievant shall be given every consideration for reassignment to the V.I. Office in accordance with Article 12 and Article 38 and applicable provisions of the National Agreement." Copy of this settlement was sent to the Postmaster on January 18, 1989. By letter of April 26, 1989, Kansas City MSC wrote to the Postmaster stating that actions were still being initiated by the grievant concerning his request for transfer and asked four questions: Have employees been hired since Mr. Gray's request? Do you anticipate filling vacancies in the near future? Is the grievant being considered for those vacancies? and do you require any evaluation of the grievant from his supervisor or this office?

The Postmaster's reply to the questions were, as to the first, one Mail Handler and one Distribution Clerk have been hired since the grievant's request. This answer is false, because the EEO Investigator discovered that 32

employees had been hired during the pendency of the grievant's request for transfer.

The Postmaster replied that they anticipated filling vacancies in the future; he further replied that the grievant would certainly be considered when one of the vacancies is to be filled by a transfer. *Next,* the Postmaster stated that when the decision to fill a vacancy by a transfer is made, he would request the grievant's OPF and other information. Finally, the Postmaster stated that requests for transfer, because of their number, are maintained in a pending file and that when they are filling a vacancy from the list, consideration and evaluation takes place at that time. The EEO investigation disclosed the following: "Investigative inquiry and data research failed to produce a list and/or register of transfer requests being maintained at the Charlotte Amalie Post Office." By letter dated May 18, 1989, following the EEO investigation, the Department reported to the Congressman that the Postmaster informed them that he does not maintain a transfer list per se. "Names of individuals requesting transfers are kept in separate files and retrieved only when vacancies occur." The Postmaster's statements are inconsistent, and one is probably false.

Evidence was not submitted at the Arbitration Hearing as to the status of Charlotte Amalie under the Memorandum regarding transfers, as to whether it is covered by the one to four or one to six ratio. In the absence of proof that it belonged to the one to four category, the assumption will be made here that it is in the one to six category.

The Arbitration record did not contain the results of the EEO Investigation, but did contain numberless letters and memoranda, and requests by the grievant attempting to overcome the numberless errors and falsifications which blocked any consideration of his request for a transfer to Charlotte Amalie. A number of registered letters to the Postmaster went unanswered, requests for data were unavailing, and even the responses to Congressional inquiries were inaccurate, which the Department blamed upon information given it by the Postmaster.

As of the date of the Hearing, there was no evidence that the grievant's OPF had ever been requested successfully by the Postmaster, and no action was shown to have occurred in his request for transfer.

DISCUSSION

The grievant was in the peculiar position of having to file his grievance against the Kansas City BMC, which had essentially nothing to do with the complaint. The object of the grievant's complaint, of course, was the Postmaster, to whose involvement in this case the Post Office can certainly not point with pride. He was, however, joined by a host of others, whose intentions may have been splendid, but whose actions constantly thwarted the grievant's attempts to obtain his contractual rights.

For an example, the Postmaster first wrote to "Kansas City BMC, Missouri," stating that an employee had requested a transfer. Response was received from Manager, Personnel Services, Kansas City, Missouri. The reply simply said that the grievant was not employed at the Kansas City, Missouri Post Office. Surely, Postal employees in the Kansas City area are aware that there are two Kansas City's, and the address from the Postmaster was clearly Kansas City BMC, MO. Did the Personnel Department think that this was a gag, or some type of fraud? When they found no employee by the grievant's name in the Kansas City, Missouri Post Office, had they looked at the address,

Kansas City BMC, surely they were aware that there was another facility in the next state, and it seems minimally reasonable that the request could have been sent to the only BMC in town to check its records, when they found no employee of that name in the Kansas City, Missouri Post Office. The evidence clearly states that the grievant lost an opportunity to be considered for one of six vacancies as a result of this error. The Postmaster can not be charged with this error, but the grievant has a single Employer, the United States Postal Service, and that single entity certainly is responsible for the denial of the grievant's opportunity to obtain one of six vacancies through transfer. The grievant's attempt to utilize Congressional assistance was thwarted by inaccuracies and proved to be of no help whatsoever.

The essence of the grievant's problems, however, was the Postmaster. Consider the record as it relates to communications to and from him. His original letter stated that he maintained accurate files on requests for transfer; by letter dated December 8, 1988, he stated that all eligible applicants are considered when a decision is made to fill a vacancy; on May 9, 1989, he stated that requests for transfer are held in a pending file and when one is to be

filled from the list, evaluation takes place at that time. The EEO Investigation reported that inquiry and data research failed to produce a list and a Register of Transfer Requests being maintained at the Charlotte Amalie Post Office. Now the story changes. By letter of May 18, 1989, the Department reported that the Postmaster told them that he does not maintain a Transfer List per se. Names of individuals are kept in separate files. The question must be asked, how do all these separate files get pulled up when a decision is being made to fill a vacancy. The Postmaster's statements regarding the maintenance of a Request for Transfer file and/or list do not inspire confidence in their accuracy. That is a gentle conclusion.

As to the Postmaster's other involvement with the grievant, he stated several times, and to several people, that vacancies were non-existent, or, in one case two positions had opened. The investigation conducted by the EEO revealed that 32 positions had been filled during the same period when the Postmaster claimed only two had been filled. Even that is inconsistent with his statement that six openings were being considered for filling when the grievant was not considered because of failure of the Kansas City facilities to respond to his request for the grievant's OPF.

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The Grievance Settlement in January, 1989 required the grievant to receive consideration; as of the date of the Hearing, February 28, 1990, no action of any kind had been reported concerning the grievant's request for transfer, or the settlement under the grievance. No proof was offered that no vacancies had existed during those 14 months, and considering the state of the Postmaster's prior commitments, proof would have to be clearly made that the Postmaster had no vacancies for which to consider the grievant. Based upon the state of the record, I make the finding that the Grievance Settlement of January 1989 was not complied with in good faith. Throughout this entire sordid mess, the grievant has done everything within his power, and ^{was} singularly unsuccessful in attempting to transfer to the Virgin Islands. Based upon the record before me, I make the following findings: The grievant was denied his right to be considered for transfer under the Memorandum of Understanding. The Postmaster sent a request for the grievant's OPF to an address which should have caused him to receive it, but through administrative confusion in the Kansas City area, the grievant was denied consideration. Vacancies were open. The Postmaster's statements as to the number of vacancies available out of Charlotte Amalie inaccurately reflected the true facts.

The grievant has spent almost four years in Kansas City, Missouri rather than in the area where he wished to work, the Virgin Islands. He was never considered for a vacancy, despite a personnel record which, the Arbitration Record reflects, would support a transfer. The grievant was denied his contractual rights through mistakes and/or misrepresentations by Postal Service Management.

The grievance is allowed. The grievant's original request for transfer was dated in July of 1986, and within the year, five vacancies were filled at Charlotte Amalie. Since the grievant should have been considered, and was not, and was thereafter for three years denied the right to transfer, by one agency of the Postal Service or another, the appropriate remedy is to award him a vacancy, and make that vacancy effective following the first five employees accepted into Charlotte Amalie. Since the sixth vacancy was filled by an employee with a seniority date of August 1, 1987, the grievant should be given a seniority date one day prior to that, July 31, 1987. Since the principal number of positions filled were Flexible Clerks, and the grievant has successfully passed the Clerk Carrier combination, the grievant should be transferred, as soon as possible and in no case later than 90 days, to Charlotte

Amalie, in the classification of Flexible Clerk. Further, since the grievant was denied the location of his choice for a four year period, his relocation expense to St. Thomas should be at the cost of the Postal Service, as if he had been transferred there at Postal Service request.