

C#10264

In the Matter of the Arbitration
between
UNITED STATES POSTAL SERVICE
and
NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO

BEFORE: Philip W. Parkinson
Arbitrator

GRIEVANT: G. Toth
Regional Case No. LC 90-32
NALC Case No. 125-90
GRIEVANT: J. Doak
Regional Case No. LC 89-84PG
NALC Case No. 159-89
GRIEVANT: D. Carse
Regional Case No. LC 89-94PG
NALC Case No. 180-89
GRIEVANT: K. Weathers
Regional Case No. LC 89-96
NALC Case No. 191-89
GRIEVANT: S. Sieminski
Regional Case No. LC 89-103PG
NALC Case No. 222-89
GRIEVANT: N. Detrick
Regional Case No. LC 89-51PG
NALC Case No. 129-89
GRIEVANT: E. Therison
Regional Case No. LC 90-52PG
NALC Case No. 130-89
GRIEVANT: L. Turcovsky
Regional Case No. LC 89-111PG
NALC Case No. 245-89

APPEARANCES:

For the U. S. Postal Service: Frank E. Poli, Labor Relations Representative

For the Union: Charles A. Hamilton, Jr., Executive Vice President, Branch 84

Place of Hearing: 1001 California Avenue, Pittsburgh, PA

Date of Hearing: July 25, 1990

AWARD:

The grievances are granted. Those grievants who have been adversely affected as a result of being reassigned while on holddown shall be made whole with respect to wages and benefits. Further, if the holddown jobs of the grievants are currently in existence, then the grievants shall be returned to said jobs. Aside from the wages and benefits, the Postal Service shall have sixty (60) days from the date of this Award to implement any personnel changes. Finally, the Postal Service is to cease and desist reassigning Part-time Flexible employees while they are on holddown status.

Date of Award: September 4, 1990


Philip W. Parkinson

IN THE MATTER OF THE ARBITRATION)
Between) Regional Case No. LC 90-32
UNITED STATES POSTAL SERVICE) NALC Case No. 125-90
and) Regional Case No. LC 89-84PG
NATIONAL ASSOCIATION OF LETTER) NALC Case No. 159-89
CARRIERS, AFL-CIO, Branch No. 84) Regional Case No. LC 89-94PG
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) NALC Case No. 245-89

BEFORE
PHILIP W. PARKINSON
Arbitrator

Representing the Postal Service - Frank E. Poli, Labor Relations Representative
Representing the Union - Charles A. Hamilton, Jr.
Executive Vice President, Branch 84

I. THE GRIEVANCES

Included herein for determination are eight grievances involving the National Association of Letter Carriers Branch No. 84 (hereafter referred to as the "Union") and the United States Postal Service and various stations within the Pittsburgh General Mail Facility (hereafter referred to as the "Postal Service"). The grievances were filed on various dates in 1989 and 1990 and joined herein for hearing because of the commonality of the issue. Illustrative of the grievances is one that is identified as LC 9032. This grievance was first presented on April 11, 1990 on behalf of Mr. Gary Toth. The grievance states, on the parties' Standard Grievance Form at Step 1A,¹ that "Grievant has been holding down Route 21 West Mifflin since January 1990. Holddown is currently vacant because regular carrier is on limited duty. On 4-11-90 grievant was pulled from his holddown and excessed to the Monroeville station." The Union contends on the grievance that Article 41 of the parties' collective bargaining agreement² "allows the selection of a holddown for the duration of holddown." They request that the "grievant be returned to the holddown on Route 21 in West Mifflin and that he be paid for any lost wages and benefits incurred as a result of this action." The grievance was discussed by the parties on April 20, 1990 and in a letter dated April 25, the Postal Service denied the grievance. In the denial, it stated, "Management is required to excess by juniority in cases of permanent reassignment." The

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1. This is a special grievance procedure between the Union and the Postal Service. It is referred to as the "Pilot Grievance Procedure."
 2. AGREEMENT between United States Postal Service and American Postal Workers Union, AFL-CIO, National Association of Letter Carriers, AFL-CIO, 1987-1990 (hereafter referred to as the "Agreement").

grievance was appealed to Step 2 and discussed by the parties on May 25, 1990 at this Step. In a letter dated June 8, 1990 the Postal Service denied the appeal pointing out that "when management is required to excess employees, the junior person is excessed in cases of permanent reassignment." They also stated that in this case, the grievant was the junior person.

The instant grievance and seven others were then placed into arbitration and the undersigned arbitrator was appointed to hear the cases on July 25, 1990. Accordingly, a hearing was held in Pittsburgh, Pennsylvania at which time the parties were afforded full opportunity to present evidence, both oral and written, to cross-examine the witnesses and to argue their respective positions. The Union submitted arbitrators' decisions, as well as a number of Step 4 dispositions in support of its position. At the conclusion of the hearing the record was closed.

II. STIPULATIONS

The parties stipulated to the following:

1. The holddowns were properly selected.
2. The grievants were working the holddowns at the time of reassignment.

III. BACKGROUND

The Postal Service presented Mr. William Greb, who is the Area Manager and has administrative control over a section of the various stations and branches in the City of Pittsburgh. He pointed out that the grievants, all of whom are Part-Time Flexible employees (PTF), were reassigned in these eight cases because of a need in another facility or office in the City. Such a need can arise because of bidding, extended illness, prime time vacations, or any of a number of reasons which may cause vacancies. He stated that the reassignments are made on a permanent basis because there is often no time frame in which to judge the length of vacancies. He alluded to the complement size of various facilities which may range from two (2) Letter Carriers, for example, at Neville Island, to an excess of 100 at the East Liberty station. He pointed out that if, for example, there are two Letter Carriers at a station and they are both off at the same time, then there is a need to fill these vacancies. They attempt to initially fill them with Part-Time Flexibles on the basis of those who are interested in relocating. The Postal Service attempts to honor those requests. He indicated that he would move an individual from a station that is overstaffed regardless of seniority if the person has a request to so move. Mr. Greb testified that he tries to accommodate persons geographically, i.e., to excess them close to the facility to where they

may be currently located. However, there is no guarantee that they will be in any specific office in the City. He alluded to Items 21 and 22 of the Local Agreement³ and Article 3, Section (c) and (d) from the Agreement and pointed out that the Postal Service reassigns the PTFs in accordance with these provisions. Administratively, Mr. Greb said that they do a weekly staffing sheet based on projection for the following week and that the Postal Service attempts to equalize the personnel for each office in order to get coverage for the routes. If they are not able to excess at a small facility, he must then move people, otherwise routes would not operate. He feels that because he uses juniority that he is upholding the Agreement, inasmuch as it states that he must reassign by juniority.

On cross-examination, when asked to reconcile Article 41, Section 2(b)(5) of the Agreement, he stated that it is in conflict with Articles 12 and 3 of the National Agreement and that he could not reconcile them. When he excesses employees, Mr. Greb said that he first of all picks a unit and then excesses from that unit. He first selects someone not on holddown. If everyone is on holddown he goes to a facility in which coverage of the PTF removed would be more viable, i.e., somewhere close. Finally, he would then take the junior PTFs from anywhere.

IV. POSITION OF THE PARTIES

A. UNION

The Union believes the issue to be the interpretation of Article 41, Section 2 (b)(4) and (5) of the Agreement as it relates to the

3. LOCAL AGREEMENT Between the United States Postal Service, Pittsburgh, Pennsylvania and National Association of Letter Carriers (hereafter referred to as the "Local Agreement").

excessing of PTFs from a delivery unit while they are on a hold down. The Part-Time Flexible Carriers in the Pittsburgh Seniority Unit are, the Union contends, being denied the opportunity to work a craft duty assignment for its duration. The Union alleges that Article 41, Section 2 (b)(5) is clear and unambiguous and provides that a Letter Carrier who has selected a craft duty assignment by virtue of his seniority shall work that duty assignment for its duration. The Union further points out that Article 41, Section 2 (b)(4) provides that PTFs may exercise their preference by use of their seniority for vacation scheduling and for available full-time craft duty assignments of an anticipated duration of five days or more in the delivery unit to which they are assigned. The Union alludes to a number of Step 4 decisions at various other locations in which the rulings provide the value placed upon working a hold down assignment for its duration. They also refer to a decision by Arbitrator Mittenthal⁴ in which they point out that the arbitrator ruled that the Postal Service should honor an unassigned regular's right to remain on a hold down assignment pursuant to Article 41, Section 2 (b)(5) even in the face of management's right to move an unassigned regular to a vacant full-time duty assignment pursuant to Article 41, Section (1)(a)(7).

The Union further alludes to the Local Agreement at Items 21 and 22 which states that "The assignment of hold downs will be consistent with

4. USPS and NALC, Case No. H1N-3U-C-13930, Richard Mittenthal, 11-2-84.

Article 41, Section 2 of the 1978 Agreement." The eight cases presented at this hearing, the Union points out, are composed of holddowns selected by PTFs who exercised their preference for this assignment. They were working their hold down assignments prior to reassignment and the holddown assignment continued beyond the reassignment. As to management's reliance on Items 21 and 22 of the Local Agreement at 1-A-3, it states "When it is necessary to reduce the complement of Part-time Flexibles at a delivery unit the junior Part-Time Flexible shall be excessed, except as noted in paragraph 1(A)(1)." According to the Union, this paragraph is intended to provide an orderly method to reduce the number of PTFs at a particular delivery unit. However, its use as a method to provide employees at a delivery unit, which is in need of an influx of new people because of vacations, sick leave, heavy workload, etc., does not supercede the provisions of Article 41, Section (2)(b)(4) and (5). The Union notes that management may choose from 44 delivery units to transfer PTFs in order to accommodate their need for additional people and a specific delivery unit.

The Union also noted that they are aware of the Postal Service's staffing problems but that the Postal Service cannot use the Agreement provisions that fall within the guidelines to resolve staffing problems. Supervision at Pittsburgh is ignoring what the parties agreed to at the National level. Although the Pittsburgh facility may have unique staffing problems, the Union stated that other facilities also have staffing

problems. Finally, the Union argues that the intent of the parties is clear and has been clarified by a number of Step 4 decisions. They ask that the grievances be granted and the payment of any lost wages and benefits be awarded.

B. POSTAL SERVICE

The Postal Service points out that Article 3 of the Agreement provides that management has the right to maintain the efficiency of the operation, among other things. The Postal Service also alludes to Article 12 of the Agreement as well as the Local Agreement which they contend provides for involuntary reassessments by juniority. They also point out that Article 41 of the Agreement, Section (1) deals with senior employees having preference to bid assignments. It does not address the issue as how to reassign junior employees. However, this is spelled out in Article 12, and that is by juniority. One must take one article in concert with another article in the National Agreement. The Postal Service argues that the Step 4 decisions submitted by the Union pertain to particular cases at other facilities and that the Step 3 designee does not have to abide by the Step 4 designee. They contend that the Mittenthal case cited by the Union deals with unassigned regulars, and in this situation we are not dealing with unassigned regulars but with PTFs. As to another arbitration decision

entered by the Union, the Postal Service notes that the decision is by a regional arbitrator and it deals with that particular region; therefore, it has no precedential value. The Postal Service concludes that it has not violated the National Agreement, but rather has abided by Article 12 of the Agreement, as well as Articles 21 and 22 of the Local Agreement. They ask that the grievances be denied.

V. PERTINENT PROVISIONS OF THE AGREEMENT

ARTICLE 41

LETTER CARRIER CRAFT

Section 2. Seniority

B. Definitions

3. Full-time reserve letter carriers, and any unassigned full-time letter carriers whose duty assignment has been eliminated in the particular delivery unit, may exercise their preference by use of their seniority for available craft duty assignments of anticipated duration of five (5) days or more in the delivery unit within their bid assignment areas, except where the local past practice provides for a shorter period.

4. Part-time flexible letter carriers may exercise their preference by use of their seniority for vacation scheduling and for available full-time craft duty assignments of anticipated duration of five (5) days or more in the delivery unit to which they are assigned.

5. A letter carrier who, pursuant to subsections 3 and 4 above, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration.

LOCAL AGREEMENT

ITEM 21 and 22

SENIORITY, REASSIGNMENT AND POSTING

1. SENIORITY AND REASSIGNMENT

A. PART-TIME FLEXIBLE SCHEDULED CARRIERS

C. HOLDDOWNS

The assignment of holddowns will be consistent with Article 41, Section 2, 1987 National Agreement.

VI. OPINION

The parties have provided in their Local Agreement a separate section which indicates their intended procedure for seniority and the reassignment of "part-time flexible scheduled carriers." For example, at Items 21 and 22, Section 1-A-3 says that when it is necessary to reduce the complement of PTFs at a delivery unit, the junior PTF will be excessed, except those transferred for training or as a result of a deficiency. Consequently, it is generally acceptable that the principle of "juniority" as espoused and practiced by the Postal Service for excessing PTFs is proper. However, the parties in their Local Agreement have chosen in Items 21 and 22 to treat the category of "HOLDDOWNS" as a separate section. This is sub-section "C" and it states that "The assignment of holddowns will be consistent with Article 41, Section 2, 1987 National Agreement." Hence,

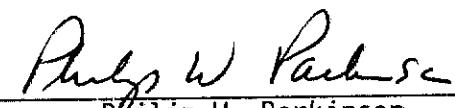
the parties' intent is specific and unambiguous in regard to the controlling contractual requirements for holdowns. In reviewing Article 41 at Section 2, sub-section B4 it provides for PTF letter carriers to use their seniority for available full-time craft duty assignments of five (5) days or more in the delivery unit to which they are assigned. Consequently, once a PTF has exercised his(her) seniority and has selected a craft duty assignment by exercising his(her) seniority, sub-section 5 of Article 41-2-B states that the letter carrier shall work that duty assignment for its duration. The Postal Service argues that Article 12 of the Agreement addresses the issue of involuntary reassessments and such reassessments are to be by juniority. They also allude to Items 21 and 22 of the Local Agreement at Section 1-A-3. However, these contractual clauses do not appear to be the controlling provisions for holdowns since sub-section 1-C specifically states that the assignment of holdowns will be consistent with Article 41, Section 2 of the National Agreement. It is recognized that the Postal Service has a genuine concern for staffing its stations and branches in order to run an efficient and effective operation. However, such planning and the resultant implementation must be within the purview of the parties' collective bargaining agreements. From the testimony offered at the hearing the Postal Service appears to be excessing employees by juniority and also attempting to be as fair as possible as to the location of the movement of its personnel. The record further indicates that the Postal Service does indeed have some problems in staffing its facilities, particularly those with a limited number of employees. On the

other hand, the reality of the parties' intent, as evidenced by the Local and National Agreements, is for a holddown to work an assignment for the duration of such assignment. It would appear therefore that a PTF exercises his(her) seniority to obtain a work assignment with the intent of completing such work assignment, i.e., working for the duration. To involuntarily reassign an employee while on holddown would, in effect, nullify the intent of Article 41, Section 2.B-5 of the Agreement as well as sub-section 1C of Items 21 and 22 of the Local Agreement. Involuntary assignments of PTFs obviously can be made by the Postal Service, but such assignments must be made by using PTFs who are not on holddown assignments. Therefore, the grievances are granted. Any grievant who has been adversely affected as a result of the reassignment while on holddown shall be made whole.

AWARD

The grievances are granted. Those grievants who have been adversely affected as a result of being reassigned while on holddown shall be made whole with respect to wages and benefits. Further, if the holddown jobs of the grievants are currently in existence, then the grievants shall be returned to said jobs. Aside from the wages and benefits, the Postal Service shall have sixty (60) days from the date of this Award to implement

any personnel changes. Finally, the Postal Service is to cease and desist reassigning Part-time Flexible employees while they are on hold down status.



Philip W. Parkinson

Washington, Pennsylvania

September 4, 1990