

C#10454

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration) GRIEVANT: Class Action
(
)
(
between) POST OFFICE: Bogalusa, LA
(
UNITED STATES POSTAL SERVICE) CASE NO: S7N-3N-C 28399
(GTS NO: 003948
and)
(
NATIONAL ASSOCIATION OF LETTER)
CARRIERS)
)

BEFORE: Linda S. Byars, Arbitrator

APPEARANCES:

For the Employer: Mack Boyd
Employee and Labor Relations Assistant

For the Union: George Cooper
Local Business Agent

Place of Hearing: Bogalusa, Louisiana (Region 08)

Date of Hearing: October 24, 1990

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BACKGROUND

E. G. Benard, a FTR Letter Carrier, was detailed on August 21, 1989 as acting Supervisor of Mails and Delivery pursuant to Assignment Order dated August 18, 1989 (Management Exhibit #1, p. 2). On November 21, 1989 Mr. Benard was returned to the letter carrier craft and worked his regular assignment. Mr. Benard was non-scheduled on November 23, 1989, took the Thanksgiving holiday on November 22, 1989, and was returned to the higher level detail on November 24, 1989 pursuant to Assignment Order dated November 21, 1989 (Management Exhibit #1, p. 3).

On January 18, 1990 a written Grievance was filed challenging the Postal Service's failure to post for bid Mr. Benard's assigned route (CR 02) and citing a violation of Article 41 of the National Agreement. The Grievance was denied at Step 2 on February 7, 1990 and at Step 3 on June 15, 1990. The Grievance was appealed to Arbitration and was heard before the undersigned Arbitrator on October 24, 1990. The parties stipulated the following issue as properly before the Arbitrator for decision and award.

"Did Management violate Article 41 of the National Agreement by bringing Mr. Benard back to craft for one day, November 21, 1989?"

PERTINENT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

Article 41 - Letter Carrier Craft

Section 1. Posting

A. In the Letter Carrier Craft, vacant craft duty assignments shall be posted as follows:

* * *

2. Letter carriers temporarily detailed to a supervisory position (204b) may not bid on vacant Letter Carrier Craft duty assignments while so detailed. However, nothing contained herein shall be construed to preclude such temporarily detailed employees from voluntarily terminating a 204b detail and returning to their craft position. Upon return to the craft position, such employees may exercise their right to bid on vacant Letter Carrier Craft duty assignments.

The duty assignment of a full-time carrier detailed to a supervisory position, including a supervisory training program in excess of four months shall be declared vacant and shall be posted for bid in accordance with this Article. Upon return to the craft the carrier will become an unassigned regular. A letter carrier temporarily detailed to a supervisory position will not be returned to the craft solely to circumvent the provisions of Section 1.A.2.

POSITIONS OF THE PARTIES

Union's Position

It is the Union's position that Mr. Benard was brought back to craft for the one day, November 21, 1989, in order to avoid posting his carrier position for bid as required by Article 41, Section 1.A.2. The Union argues that returning Mr. Benard to craft for one day was for the sole purpose of circumventing Article 41, Section 1.A.2, which is expressly prohibited by that provision.

The Union contends that Management's motivation for returning Mr. Benard to craft was not for the purpose of avoiding overtime as claimed by the Postmaster. The evidence is undisputed that on many occasions during the months that Mr.

Benard was on higher level letter carriers worked overtime. The evidence also indicates that on November 21, 1989 there were three PTF's who worked less than eight hours. By fulling using the PTF's and pivoting, overtime could have been avoided on November 21, 1989 without returning Mr. Benard to craft. Also indicative of Management's motivation is the fact that management knew on November 21, 1989, as indicated by the Assignment Order, that Mr. Benard would be returned to craft for only the one day, November 21, 1989.

Postal Service's Position

The Postal Service contends that Mr. Benard's detail was broken on November 21, 1989 in order to avoid overtime, not to circumvent Article 41 of the Agreement. The testimony of the Postmaster, as well as PS Form 3997 for November 21, 1989 (Union Exhibit #9), shows that there were three carriers non-scheduled and two carriers on annual leave on November 21, 1989, which would have necessitated the assignment of overtime. By returning Mr. Benard to craft that day, Management avoided a significant number of overtime hours and promoted the efficiency of its operation.

The Postal Service contends that Mr. Benard's detail was for approximately 90 days, rather than the 120 days required by Article 41, Section 1.A.2. Therefore, Management's failure to post for bid CR 02 is not a violation of the Agreement.

OPINION

As the Union argues returning a 204b to the craft for the sole purpose of circumventing Article 41, Section 1.A.2 is expressly prohibited by the that provision. However, as the Postal Service argues it is the Union who must bear the burden in proving such a contractual violation, and in this case the weight of the evidence does not compel such a finding.

Clearly there have been incidents of overtime during Mr. Benard's detail which could have been prevented by returning him to craft. However, the Union failed to show that circumstances similar to those existing on November 21, 1989 existed at other times during the detail and Mr. Benard was not returned to craft. According to the Postmaster's undisputed testimony, November 21, 1989 was unusual in that two carriers had been granted annual leave at the same time that there were three carriers non-scheduled. The possibility that by using the three PTF's another few hours and pivoting on some of the other routes the work could have been completed without returning Mr. Benard to craft does not persuade the Arbitrator that the decision to return Mr. Benard to craft for that day was done for the sole purpose of circumventing the Agreement. Neither, does the fact that management was aware on November 21, 1989 that Mr. Benard's return to craft would be necessary for only one day persuade the Arbitrator that the assignment was made solely to circumvent Article 41, Section 1.A.2 of the Agreement. The evidence shows that at least since July Mr. Benard has periodically been temporarily detailed as a 204b and also periodically been returned to craft. The fact that the

November return to craft was for only one day is not in itself proof that management's motivation was to circumvent the contract.

AWARD

Management did not violate Article 41 of the National Agreement by bringing Mr. Benard back to craft for one day, November 21, 1989. Therefore, the Grievance is denied.



Arbitrator



Date