

C# 12634

In the Matter of the Arbitration)	GRIEVANT: T. Melvin
between)	POST OFFICE: Birmingham, AL
UNITED STATES POSTAL SERVICE)	CASE NO: SON-3D-C 12026
and)	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO, BRANCH 530)	

BEFORE: Hutton S. Brandon, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Roy Shirkey
Labor Relations Program Analyst

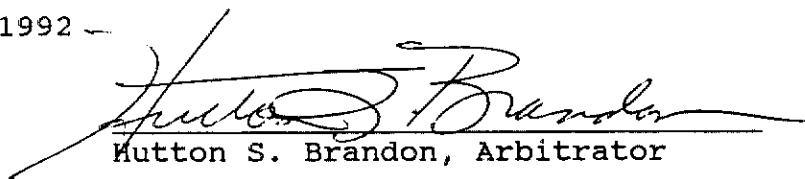
For the Union: James Mayfield
President, Branch 530

Place of Hearing: Birmingham, Alabama

Date of Hearing: November 19, 1992

AWARD: The grievance is sustained. A breach of the bargaining agreement is found in the general refusal by the St. Petersburg postmaster to consider the grievant's mutual exchange request. The exchange-approval decision involved in this case is remanded to the Birmingham and St. Petersburg Post Offices with the direction that they make their determination on the exchange after considering all relevant factors.

Date of Award: December 8, 1992 ~



Hutton S. Brandon

Hutton S. Brandon, Arbitrator

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I. The Issue

The parties stipulated the issue in this case to be whether the national agreement (the Memorandum of Understanding [MOU]) was violated when the grievant's request for a mutual exchange with a city letter carrier from St. Petersburg, Florida was not granted.

A second issue of whether the denial of the requested exchange was based upon discriminatory considerations was withdrawn by the Union at the hearing.

II. Pertinent Provisions of the Bargaining Agreement

Article 2 of the national bargaining agreement, Section 1, which was alluded to in the grievance bars discrimination by the parties against employees because of "race, color, creed, religion, national origin, sex, age, or marital status."

At the hearing and in their respective arguments the parties also alluded to Article 19, Employee and Labor Handbook (EL-311) Section 512.4, and Article 41 Sections 2.G.3 and 2.E. Article 19 captioned "Handbooks and Manuals" incorporates into the bargaining agreement all outstanding postal "handbooks, manuals, and published regulations" that "directly relate" to wages, hours and working conditions of the employees covered by the agreement. By virtue of Article 19 ELM Section 512.4 is deemed to be incorporated in the agreement. That section captioned "Mutual Exchanges" provides in pertinent part, "Career employees may exchange positions (subject, when necessary, to provisions of the appropriate collective bargaining agreement) if the exchange of positions is approved by the officials in charge of the

installations involved."

Article 41, Section 2, of the agreement relates to seniority within the letter carrier craft. More specifically, at Section 2.E captioned "Changes in Which Seniority Is Modified" the agreement provides: "When mutual exchanges are made between letter carriers from one installation to another, the carriers will retain their seniority or shall take the seniority of the other exchangee, whichever is the lesser." Section 2.G captioned "Changes in Which a New Period of Seniority is Begun" provides at subsection 3 for loss of seniority when a letter carrier transfers from one postal installation to another at the carrier's own request except in mutual exchange cases.

The MOU referred to is a supplement to the bargaining agreement. It is sufficient to note that it provides procedures to be followed when career employees request reassignment between geographical areas. In particular it requires that installation heads afford "full consideration to all reassignment requests from employees in other geographical areas within the Postal Service." Section 1.G states, however, that employees reassigned under the MOU provisions will be reassigned consistent with the provisions of the appropriate craft article in the National Agreement and "Employees will not be reassigned to full-time regular positions to the detriment of career part-time flexible employees who are available for conversion at the gaining installation."

III. Material Facts

Thomas Melvin, herein called the grievant, is a city letter carrier in the Homewood station, Birmingham, Alabama. Desirous of

relocating to St. Petersburg, Florida, the grievant located a letter carrier, Walter Lee Copus, in the St. Petersburg post office who sought relocation to Birmingham due to hardship considerations. The two agreed to exchange positions each realizing that the seniority resulting from the exchange would be the seniority of the junior of the two under Article 41.2.E.

On March 15, 1992, the grievant wrote the postmaster of St. Petersburg, Colleen K. Goodwin, requesting the exchange. Goodwin responded by letter dated April 7 stating:

Please be advised that we are not approving reassignments into St. Petersburg, including mutual swaps, at the present time. The St. Petersburg Post Office is a designated automated site, which means there will be excessing of employees in both clerk and carrier crafts, because of the OCR, BCVS, RBC's; therefore, it is necessary for this office to preserve any vacancies for these employees and to help in the placement of employees within the Tampa Division who are being excessed.

The Union adduced evidence to reflect that exchanges had been allowed at other locations in the Tampa Division of the Postal Service within which St. Petersburg lies. Thus, a carrier in the Orlando post office had been allowed to exchange with a carrier in Tallahassee, Florida in March, 1992. Similarly, a carrier in the grievant's city had been allowed to exchange with a carrier in Rockville, Maryland effective September 19, 1992.

Ruth Johnson, manager of support services for the St. Petersburg post office testified that she had prepared the April 7 letter to the grievant for Postmaster Goodwin and was familiar with the situation. She stated that upon Goodwin's assuming office in March or April, 1991 Goodwin concluded that because of the anticipated automation to take place in the St. Petersburg

office with resulting excessing of employees no employees, of whatever craft, would be brought into the St. Petersburg office from outside.

IV. The Arguments of the Parties

The Union argues that mutual swaps have been allowed for years, and had been allowed recently not only in the Birmingham office but also in the Tampa area. Transfers have long been recognized and allowed for reasons of compassion and that is why the parties agreed to the MOU on reassignments. The mutual exchange sought in this case would not act to detriment of any employee in danger of being accessed in either Birmingham or St. Petersburg because a new position is not created or filled in either location. Even assuming some discretion on the part of the installation head in approving mutual exchanges, the arbitrary denial of the exchange here sought by the grievant reflects callousness, because it ignores the compassionate reasons advanced by the one of those involved in the exchange. Moreover, the refusal to approve the exchange demonstrates disparate treatment since other mutual exchanges within the division have been granted even where the employees involved had work records inferior to those in this case. Accordingly, the Union seeks an award finding a contract violation and directing that the exchange be approved.

The Postal Service on the other hand contends that the MOU is inapplicable to this case because it involves reassignments or transfers rather than mutual exchanges. The only applicable provision is EL-311, Section 512.4. In this regard, the Postal

Service points out that transferees under Article 41, Section 2.G.3 to which the MOU applies lose all seniority while mutual exchangees under Article 41.2.E retain the seniority of the junior employee involved in the exchange. Thus, a transfer is not adverse to local career carriers because no seniority is carried by a transferee. But a mutual exchange would contravene the provisions of the MOU, Section 1.G which states that "Employees will not be reassigned to full-time positions to the detriment of part-time flexible employees who are available for conversion at the gaining installation." A mutual exchange would always violate this provision of the MOU where there is a part-time flexible carrier who is available for conversion at the gaining installation. Since the MOU clearly cannot apply under these circumstances, it cannot be viewed as applying generally to mutual exchanges.

In addition, the Service relies upon an award of Arbitrator Mark I. Lurie in Case SON-3W-C 2201 (July 11, 1992) as establishing the inapplicability of the MOU to mutual exchanges, and holding an arbitrator does not have authority to force a postmaster to hire or transfer any city carrier. The Service notes disagreement with that portion of Arbitrator Lurie's award which would nevertheless require installation heads apply MOU transfer standards in considering mutual exchanges and urges that portion of the award not be followed in this case. Accordingly, the Service contends the grievance must be denied.

V. Discussion and Conclusion

In agreement with the Service, and without regard to the award of Arbitrator Lurie, it appears to the undersigned that the

MOU has no application to mutual exchanges except to the extent it reflects a general policy or understanding between the parties favorable to the transfer and reassignment of employees. However, while mutual exchanges in effect are transfers, different seniority treatment is allowed mutual exchangees which would contravene the provisions of the MOU. Accordingly, the MOU can not apply and no breach of the MOU, and consequently the bargaining agreement, may be found in this respect. As a result, the issue as narrowly framed on this point would warrant denial of the grievance particularly where the evidence fails to establish disparate treatment of the grievant.

More specifically with respect to the Union's disparate treatment argument, the Union has shown that mutual exchanges have been allowed between other installations within the Tampa Division. But these exchanges are subject under Section 512.4 to the approval of the individual installation heads. The fact that one installation head has approved a mutual exchange does not reflect disparate treatment of one whose exchange in a different installation has been disapproved by an entirely different installation head.

The parties in their presentation of evidence and arguments have gone beyond the narrow issue of whether the MOU was breached. Indeed, the Service has specifically relied upon EL-311, Section 512.4, and Arbitrator Lurie's award relative to that provision as establishing the discretion of Postmaster Goodwin in refusing the mutual exchange sought in this case. In view of this the undersigned deems the issue regarding

application of Section 512.4 sufficiently raised and argued by the parties to warrant its resolution in this case.

Based upon the evidence presented Postmaster Goodwin refused to consider the exchange sought by the grievant because she did not want to bring outside employees into the St. Petersburg installation. Rather, she wanted to preserve positions for local people who might be excessed. That position appears logical when applied to transferees who might be brought in to fill new or vacant positions. But it appears illogical and irrelevant when applied to mutual exchanges which do not add new positions or fill vacant ones. The only vacancies which might grow out of a mutual exchange situation are those which might result from the resignation of an individual whose mutual exchange request has been arbitrarily rejected. If this foreseeable consequence is the basis for a rejection it is a callous one as the Union claims. It is not only detrimental to employee morale but probably wasteful of employee training and experience.

Postmaster Goodwin in this case established a blanket rejection of consideration of mutual exchanges. This blanket rejection on its face, and in the absence of some understandable and reasonable explanation, appears contrary to the implicit right of career employees under Section 512.4 to be considered for mutual exchanges.

The Service's reliance upon the Lurie award cited above to support its contention that Postmaster Goodwin had an exclusive management right to reject the mutual exchange requires close examination of the award. That case involved a mutual exchange sought in April 1991 between a carrier in St. Petersburg and one

in Marianna, Florida. The Marianna postmaster following an interview with the St. Petersburg employee (the grievant in that case) rejected the exchange on the basis of the interview and without considering the employee's overall record. The provisions of the bargaining agreement in issue were Article 12 (Principles of Seniority, Posting and Reassignments), Section 6.A of the bargaining agreement which provides that "Installation heads will consider requests for transfers submitted by employees from other installations," and the MOU on reassignments which requires "full consideration" of transfer requests.

Arbitrator Lurie read Section 512.4 as meaning "that a mutual exchange between installations which has no net effect on the staffing of either installation can take place outside of the context of, and as an exception to the vacancy-filling requirements of the MOU." Accordingly, the "vacancy-filling provisions of the MOU" did not apply. Nevertheless, Arbitrator Lurie went on to find that in the past mutual exchanges had "been viewed and treated by the parties as transfers." In this historical perspective he saw no reason to "superimpose a narrow and legalistic interpretation of Section 512.4," and therefore concluded that the standards of consideration imposed by Article 12 and the MOU applied to mutual exchanges. Those review standards had not been accorded the grievant by the Marianna postmaster, Lurie decided, because the full record of the grievant had not been considered by the postmaster. However, he further concluded that he was powerless to make the exchange-approval decision for management and in his award remanded the

exchange-approval to the Marianna and St. Petersburg Post Offices for their "fully-informed" consideration and determination.

I concur with the Service's argument voiced in this case that I am not bound by the award of fellow regional Arbitrator Lurie regarding the standard of review to be utilized by postmasters in approving exchanges. Nevertheless, Lurie's reasoning is both logical and, I believe, sound. His application of MOU consideration standards to mutual exchanges is based not only upon the practice of the parties viewing and treating mutual exchanges as transfers, but also upon arbitral precedent not cited by the parties in this case. Nothing appears in the record of this case which would reflect a different practice or understanding among the parties. Accordingly, I adopt the conclusion of Arbitrator Lurie that the consideration standards set out in Article 12 and the MOU relative to transfers are applicable to mutual exchanges.

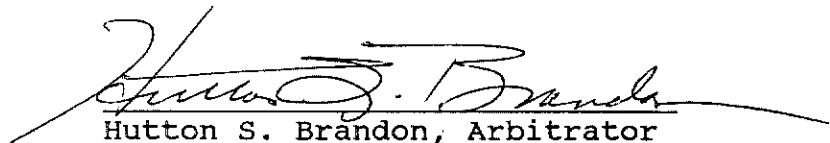
It is clear that the St. Petersburg postmaster's general determination not to allow any mutual exchanges in that post office precluded "consideration" of an exchange on its own merits. It follows that the grievant's exchange request was given no consideration at all. The standard for review of exchange requests found applicable above as the same for Article 12 transfers and the MOU have clearly not been met here. The denial of any consideration of the exchange is therefore found to be in breach of EL-311, Section 512.4, and consequently, by virtue of Article 19, a breach of the bargaining agreement.

Notwithstanding the foregoing, the discretion of an installation head to approve an individual mutual exchange is.

clearly retained by management as set out in Section 512.4. Absent actual discrimination or disparate treatment it is not within the purview or authority of the arbitrator to dictate the exchange-approval decision in this case. As in the award of Arbitrator Lurie, that decision must be left to the Service utilizing the review standards determined in that award and adopted here as fair and reasonable.

VI. The Award

The grievance is sustained. A breach of the bargaining agreement is found in the general refusal by the St. Petersburg postmaster to consider the grievant's mutual exchange request. The exchange-approval decision involved in this case is remanded to the Birmingham and St. Petersburg Post Offices with the direction that they make their determination on the exchange after considering all relevant factors.



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Dated: December 8, 1992