

VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

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APR 7 2008
WILLIAM J. COOKE

BACKGROUND

The undersigned Arbitrator, Timothy B. Tobin, was chosen by mutual agreement of the parties, The United States Postal Service (hereinafter referred to as the Employer) and the National Association of Letter Carriers, (hereinafter referred to as the Union) to resolve a labor dispute with reference to the above captioned matter.

The case arises pursuant to a grievance filed by Letter Carrier, Richard Keeler, from the Columbus, Ohio Area (Herein referred to as Grievant) The grievance challenges the propriety of the Employer's decision to deny Mr. Keeler's request for an "E-transfer" and a request for a "hardship transfer" to the Northern Ohio District.

An evidentiary hearing was held on April 1, 2008. Mr. Rocco Evangelista represented the Union. Mr. Donald L. Cox represented the Postal Service. Both parties were afforded a full and complete opportunity to be heard, present relevant evidence, cross-examine witnesses and develop arguments. The Grievant attended the arbitration hearing and testified as a witness on his own behalf. At the conclusion of the oral presentations by the parties, on April 1, 2008, the matter stood fully submitted to the Arbitrator. The record was declared closed on that date. This decision is based on the record compiled during the arbitration hearing.

ISSUE

The parties agreed to the following issue submission at the hearing on April 1, 2008:

Is management in violation of the National Agreement by denying the Grievant a transfer to the Northern Ohio District? (as required by Article 12.6) If so, what shall the remedy be?

RELEVANT CONTRACT PROVISIONS AND SUBMISSIONS

ARTICLE 3

MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of the Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties; ..
- C. To maintain the efficiency of operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;
- E. To take whatever actions may be necessary to carry out its mission in emergency situations, i. e. an unforeseen circumstance or a

combination of circumstances which call for immediate action in a situation which is not expected to be of a recurring nature.

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
UNITED STATES POSTAL SERVICE AND THE JOINT
BARGAINING COMMITTEE/JCAM**

Section 1 Reassignment (Transfer to other geographical areas

Transfer Memo 1 B.

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.

BACKGROUND AND UNDISPUTED FACTS

The Grievant, Mr. Keeler, has been a Letter Carrier with some 18 years of service with the Postal Service. In 2006 and 2007 he requested a transfer to the Northern District of Ohio. The reason for the transfer was to care for his wife's aging parents. In August and September of 2007 his multiple requests for a transfer from Columbus were denied. (Jt. Exh. 1) One denial was based on a poor attendance record (particularly from the year 2005) and the other denial was based on a "poor safety record".

On August 7, 2007 the grievant was sent a letter from the Postal Service which read in part as follows: "Please provide documentation and or an explanation of the sick leave

that has been used. Medical, FMLA or dependent care information is required to verify sick leave usage.

A response within 10 calendar days is required for consideration of this position.” (U. Ehx. 1)

The Grievant testified that he never received this letter, and therefore never fully responded. He did however send two E-mails explaining his prior record through the local Union President.

POSITION OF THE UNION

The Union argued that Management was in violation of the collective bargaining agreement because they did not comply with the terms of Article 12.6 when they denied the Grievant's request for a transfer in August and September 2007. The Union said that the denial of transfer was arbitrary and capricious because the Service relied on inaccurate records and did not consider mitigating circumstances, surrounding Grievant's attendance and safety problems when it evaluated his transfer request.

The Union pointed out that the Grievant's usage of family medical leave and sick leave were due to legitimate illness. The Union also claimed that two of the injuries (i.e. a dog bite and repetitive motion syndrome should never have been considered as accidents and held against the Grievant. The Union said that the Service incorrectly documented the usage of approved FMLA. The Union also argued that since the management official who reviewed the safety record took

into account "accidents" that were not preventable and therefore, the transfer must be granted. (Jt. Ex. 1)

The Union maintained that since the Grievant has never been disciplined for either poor attendance or on the job injuries that his record on those two issues must have been acceptable to the employer. They also pointed to the fact that the Grievant's immediate supervisor said that his work record was acceptable.

The Union pointed out that the Family Medical Leave Act (herein FMLA) prohibits any adverse actions by an employer due to the usage of family medical leave and they feel that that is exactly what happened in this case.

The Union cited the following memorandum between the parties dated August 27, 1993 to support their position; that document reads in part:

When an employee requests a transfer, the responsible official at the gaining installation has to look at the qualifications of the "whole individual". By this we need to determine whether the individual possesses the necessary job experiences and other qualifications to fill the needs of the vacancy. We would also strongly suggest that when there are one or two questions with regard to the viability of the employee for the position, i.e., such as low sick leave balance, that it is incumbent on reasonable management to obtain additional information into that situation. (U. Exh. 2)

The Union asked that the Arbitrator grant the grievance and order the Postal Service to transfer the Grievant to the Northern Ohio District immediately.

POSITION OF THE EMPLOYER

The Postal Service argued that the Union failed to meet their burden of proof and show that the Service violated Article 12.6 of the National Agreement and therefore the grievance must be denied.

The Service said that the requirements to transfer to the Northern District of Ohio are strict because of poor performance by the District due to accidents and poor attendance. The Employer stated that it takes into account an employee's work record, safety record and the past three years of attendance. They argued that the employees they chose to fill the vacancies in question had far better records than the Grievant. The Employer also admitted that there are still over twenty-five vacancies for letter carriers in the Cleveland area.

The Service argued that Article 3 of the National Agreement supports their right to deny a transfer for good cause, as they did in this case. The Postal Service said that they gave the Grievant's transfer request full and fair consideration and therefore his grievance should be denied.

DISCUSSION AND FINDINGS OF FACT

I have examined the evidence and testimony offered at the hearing and come to the following conclusions:

It must be noted that the Grievant in this case is a good employee, who does not want to "make waves".

The Union correctly points out that the FMLA prohibits any adverse action due to approved usage of family medical leave. However, company officials testified that their examination of the Grievant's attendance records revealed a pattern of poor attendance. I agree. The 2005 attendance record, which was considered by management, was very poor. However, if the Grievant reapplied today the 2005 attendance record would not be a factor. I find that the Service did not violate Article 12 of the National Agreement when they denied one of the Grievant's transfer requests based on poor attendance.

However, the other transfer denial, based on work related accidents, does not pass the test of reasonableness. I respect the fact that the Employer considers that "an accident is an accident" no matter what the cause; but to deny a transfer because a carrier was bitten by a dog or has repetitive motion syndrome is far from fair or reasonable and cannot be allowed to stand.

I heard a lot of testimony about the health condition of the Grievant's wife's parents, and I believe this is truly a "hardship case". This transfer request should have been granted. The Grievant is a long term employee with a spotless discipline record; that has to count toward mitigation of his other employment related problems.

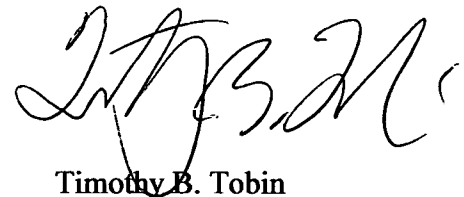
Article 12 of the National Agreement is controlling in this case. It is clear that Article 12 requires that "evaluations must be valid and to the point with unsatisfactory work records accurately documented"; that was not done in this case. The Postal Service failed to meet the requirement to fully consider the facts and circumstances surrounding the Grievant's accident record and considered "accidents" that were not accidents at all, when they denied the Grievant's transfer request. This was in no way a fair evaluation of the Grievant's safety record.

AWARD

For the reasons stated herein, the Grievance is granted. The Postal Service is ordered to reexamine the Grievant's safety records based on the comments above. The Service is to reconsider the Grievant's request for transfer based on this decision and to transfer the Grievant to the Northern Ohio District as soon as possible; after all there are 26 vacancies in the Cleveland area, according to management. In order to comply with the requirements of Article 12 the Service must consider any mitigating circumstances surrounding any employee's safety and attendance records when acting on a requested transfer. Approved FMLA usage must not be considered.

This Arbitrator will retain jurisdiction should any further dispute arise regarding this matter.

April 3, 2008
Columbia, Maryland

A handwritten signature in black ink, appearing to read 'Timothy B. Tobin', is written over the printed name.

Timothy B. Tobin
Arbitrator