

C # 10138

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION

Between

UNITED STATES POSTAL SERVICE

And

NATIONAL ASSOCIATION OF LETTER CARRIERS

GRIEVANT:

EDITH CHEADLE

POST OFFICE:

Carrollton, TX

CASE NUMBER:

S7N-3A-C-14503

BEFORE: P. M. WILLIAMS, ARBITRATOR, SOUTHERN REGION

APPEARANCES:

FOR THE POSTAL SERVICE:

John Vallie, Labor Relations Representative

FOR THE NATIONAL ASSOCIATION OF LETTER CARRIERS:

George White, Local Business Agent

PLACE OF HEARING:

Post Office, Carrollton, Texas

DATE OF HEARING:

July 11, 1990

DECISION AND AWARD

BACKGROUND:

The essential facts surrounding the grievance are not in dispute. Prior to the grievant being employed as a letter carrier at the Carrollton post office she had worked for the Postal Service as a letter carrier in the California city where her husband was employed. His employer closed its plant. He therefore was obliged to seek employment elsewhere. His new job was in the Dallas-Fort Worth Metro-Plex. She asked to be transferred to post offices in either Denton or Fort Worth. Neither city however had openings for letter carrier employees and her request was not granted. She remained in California for approximately three months after he began work on his new job. She then decided to resign her position in California and move to the DFW Metro-Plex to join him.

She had worked as a letter carrier for the Employer for 17 years before leaving California. Her pay there was at Level 5, Step 0. When she applied for employment in Carrollton she was interviewed by the superintendent of postal operations (SPO). The subject of her wages was not discussed. For the first few months of her employment in Carrollton her wages were set at Level 5, Step B. Shortly after receiving her first paycheck she contacted her immediate supervisor and asked that her wages be set at the level she had been paid in California. After a few days and not getting an affirmative response she then

contacted the SPO. He initiated a request that she be paid at the level and step she was receiving in California. Dallas Division officials denied the request however stating that current policy was to the effect that she could not be restored to her former level of pay. A Personnel Services official of the Division stated that the best that could be done for her under the local policy was to place her at Step 5, Level D. The SPO said that while this was a compromise it nonetheless was better by \$2.00 per hour than what she had been receiving. He also said that Step D was where other former postal service employees were placed when they were re-hired to work at Carrollton.

All interested parties appeared at the hearing, including the grievant who testified on her own behalf. The parties were given an opportunity to present such evidence, through exhibits and the testimony of witnesses, as was deemed appropriate under the circumstances. All witnesses were placed under oath and were cross-examined by the opposing party. At the conclusion of the evidentiary portion of their presentations each party made a closing argument to end the hearing.

POSITION OF THE PARTIES:

National Association of Letter Carriers (Union):

The first phase of the Union's contention that the grievance should be sustained related to the fact that the "grievant was forced to resign her position in California", and that her "resignation" should have a direct relationship on the rate of pay she should receive when she became employee at Carrollton. The second phase of its contention related to the fact that as a black female employee she was being discriminated against by the Employer because of her race and sex. Its third phase was to the effect that the Employee and Labor Relations Manual (ELM) §412.1(c) gave discretion to the appointing officer in reinstatement situations, thus the recommendation of the SPO should have been followed rather than the policy of the Dallas Division being implemented. It asked that the grievance be sustained with her being raised to the Level 5, Step 0 rate of pay, and that she be paid the difference between that rate and the rate which she has been paid since her re-employment at the Carrollton Post Office.

United States Postal Service (Employer):

The Employer denied that she had been "forced to resign" her position. Rather, it said, by choice she decided to follow her husband to his new job site instead of continuing to be an employee in California, which remained available to her. It vigorously denied that she was discriminated against because of her race and sex, citing as proof of that fact a decision of the Equal Employment Opportunity Commission which had recently denied her complaint on that issue and which also involved the factual situation here. It further contended that neither the National Agreement (NA), nor the ELM's provisions authorized or required that she be paid at her former level of pay. It said her grievance should be denied, and it asked that I so decide.

ISSUE: Did the Employer violate the terms of the NA when it did not reinstate the grievant to the pay rate of Level 5, Step 0 when it reinstated her to the Carrollton Post Office, and if so, what is the proper remedy?

OPINION:

Part 412 of the ELM is captioned "New Appointment". §412.1(c) provides as follows:

"c. Reinstatement or Transfer. The appointing officer may, when more favorable to the employee, set the salary of a former or current federal civilian or former Postal Service employee who is being given a Postal Service career appointment, at a point between the minimum and the highest basic compensation (augmented by any general increase since the date of separation) the employee previously received, raised to the next higher step. However, the salary may not be in excess of the maximum rate of the grade for the assigned position."

Other than the overall thrust of Article 19's terms as it relates to the inclusion of handbooks, manuals and published regulations the Union did not cite another portion of the NA as being particularly helpful to the position it has taken in this case.

Moreover, at the hearing it offered no probative proof that the Employer had declined to restore her pay to Level 5, Step 0 because of either her race or her sex. Rather its proof on that aspect of the discrimination issue was nothing more than a self-serving allegation by the grievant that discrimination for those reasons had occurred.

The SPO is a white male employee. It was his recommendation that she be restored to her former salary rate. Dallas Division personnel stated they were unable to accede to his request because of Division policy. Under the circumstances, and with the posture of the record being as it is, I am persuaded, and so find, that race and sex discrimination was not a factor in the Employer's decision making process in this case. I therefore will decline to sustain the grievance on the basis of that allegation.

The Union contended that in several situations in the past the reinstated employees in Carrollton had been restored to their former level of salary. The Employer conclusively proved however that in no situation was an employee restored to a level higher than that which was awarded to the grievant, i.e., Level 5, Step D, albeit possible that Step D was the step the reinstatee's were receiving when they left Postal Service employment. It may not be said therefore that she was the victim of discrimination in actual pay as compared with others who were re-instated at the local installation. Her claim that this was true therefore should be, and the same hereby is, dismissed.

In matters such as this where the employee seeks a pay increase the burden is on the Union to show that from a contractual standpoint the relief it seeks is appropriate and authorized. In this case the Union's bases its claim for relief on the language of §412.1(c) of the ELM, and the fact that having given discretion to the "appointing officer" to restore the former salary level the Employer necessarily must accept his recommendation, which here was that she be awarded a Level 5, Step 0 salary.

The implication of the Union's argument is to the effect that the

"appointing officer's" decision must be followed despite the fact that Dallas Division policy is to the contrary. The argument has a degree of plausibility. However, it seems to me it fails to recognize the reality of life in the business world of the boss having the final say in money matters where discretion is clearly authorized, and contractual commitment is not stated or implied in the NA, the latter being the situation in this case. Simply stated, I find no contractual basis upon which this grievance may be sustained, therefore it must be denied.


I am of the opinion, and so find, the Union has failed to properly prove that the Employer violated the terms of the NA or applicable rules and regulations when it did not restate the grievant to Level 5, Step 0 when it reinstated her to the Carrollton Post Office. Her grievance therefore should be, and the same hereby is, denied.

On the basis of the entire record in this case the undersigned makes the following

AWARD

The grievance is denied in accordance with the opinion expressed above.

IT IS SO ORDERED.



P. M. Williams
Arbitrator

Dated at Oklahoma City, OK
this 18th day of July, 1990.