

CH04484

ARBITRATION AWARD

November 2, 1984

UNITED STATES POSTAL SERVICE

-and-

Case No. H1N-3U-C-13930

NATIONAL ASSOCIATION OF LETTER
CARRIERS

Subject: Seniority - Duration of Hold-Down Assignment

Statement of the Issue: "Whether Management may remove an unassigned regular carrier from a 'hold-down' assignment awarded pursuant to Article 41, Section 2B, prior to the termination of the 'hold-down' assignment, in order to fill a full-time vacant duty assignment pursuant to Article 41, Section 1A7?"

Contract Provisions Involved: Article 3 and Article 41, Sections 1A and 2B of the July 21, 1981 National Agreement.

Appearances: For the Postal Service, John S. Ingram, Manager, Arbitration Branch, Southern Region; for NALC, Keith E. Secular, Attorney (Cohen, Weiss & Simon).

Statement of the Award: The grievance is granted. The Postal Service should hereafter honor an unassigned regular's right to remain on a "hold-down" assignment under Article 41, Section 2B5 even in face of Management's right to move an unassigned regular to a vacant full-time duty assignment pursuant to Article 41, Section 1A7.

BACKGROUND

This grievance protests the movement of an unassigned regular from his "hold-down" assignment to a vacant full-time duty assignment. NALC contends this move was a violation of Article 41, Section 2B5. The Postal Service disagrees.

J. A. Canales was an unassigned regular in the Houston, Texas Post Office when this dispute arose. Unassigned regulars have no permanent route assignment. They work a variety of temporary assignments. They serve primarily as fill-ins for absent employees.

Route 7711 at the Baneway Annex station was vacant in August 1982 because its regular carrier was working temporarily as a 204B supervisor. Canales opted to use his seniority, pursuant to Article 41, Section 2B3, to fill this temporary vacancy. He began work on Route 7711 on August 7 and apparently expected to remain on this route until its regular carrier returned. This is known, in postal service parlance, as a "hold-down" assignment.

A short time later, a full-time duty assignment became vacant at the Westheimer station. This vacancy was posted for bids but neither Canales nor any other letter carrier submitted a bid. Management then decided, pursuant to Article 41, Section 1A7, to place Canales on this Westheimer vacancy. It removed him from the Baneway Annex on September 4, 1982. He thereafter worked this full-time duty assignment at Westheimer. Had he remained at Baneway Annex, he would not have been removed until October 2, 1982, when the regular carrier returned. He suffered no loss of earnings because of this move.

NALC claims that Canales had a right under Article 41, Section 2B5, to continue on his "hold-down" assignment at Baneway Annex until October 2, 1982. The Postal Service claims that Management had a right under Article 41, Section 1A7, to place Canales, or any other unassigned regular, in the Westheimer vacancy. Each side insists its contract right is superior to the other's.

The relevant portions of Article 41, Sections 1 and 2, read:

Section 1 - Posting

"A. In the letter carrier craft, vacant craft duty assignments shall be posted as follows:

7. An unassigned full-time carrier may bid on duty assignments posted for bids by employees in the craft. If the employee does not bid, assignment of the employee may be made to any vacant duty assignment for which there was no senior bidder in the same craft and installation..."

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...

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

DISCUSSION AND FINDINGS

Article 41, Section 2B5 is clear and unambiguous. It provides that an unassigned regular who has used his seniority to opt for a "hold-down" assignment "shall work that duty assignment for its duration." These underscored words establish the carrier's right to remain on his "hold-down" assignment "for its duration." That right is unconditional. Nowhere did the parties state that a "hold-down" assignment could be cut short by Management exercising its right under Article 41, Section 1A7 to place an unassigned regular on a vacant full-time duty assignment for which there was no bidder.

The parties wrote Section 2B5 into the National Agreement in 1978, thus giving an unassigned regular the right to remain on a "hold-down" assignment "for its duration." They must have been fully aware of Management's right under Section 1A7 to fill certain vacancies with unassigned regulars. For this latter right appeared in the National Agreement in 1973, five years earlier. The parties nevertheless made no attempt in 1978 (or in 1981) to subordinate Section 2B5 to Section 1A7. Had they meant to limit the carrier's Section 2B5 right, they presumably would have said that the carrier "shall work that duty assignment for its duration except where Management moves him to a different assignment pursuant to Section 1A7." No such exception was written into Sections 1A or 2B or any other part of the National Agreement. Nor is there any evidence that such an exception has been recognized through past practice.

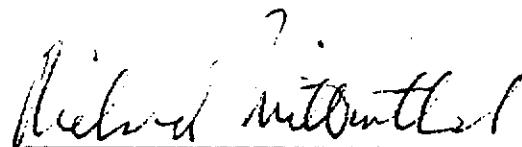
Furthermore, the Postal Service's position is based on a belief that Section 1A7 must prevail over Section 2B5 where a conflict exists. But these provisions can be read in such a way as to avoid conflict. Section 1A7 grants Management a right to put an unassigned regular in a vacant full-time duty assignment for which there have been no bidders. Hence, Management was entitled to place Canales on the Westheimer vacancy. Section 2B5 granted Canales a right to remain on his Baneway Annex "hold-down" assignment until the regular carrier returned from a stint as temporary supervisor. To allow Canales to remain on this "hold-down" assignment "for its duration" does not deny Management its Section 1A7 right. It simply places a time restriction on the exercise of that right. Instead of Management moving Canales to the Westheimer vacancy on September 4, 1982, it was required to postpone the intended move to October 2, 1982, because of Canales' Section 2B5 right. Such a reading serves to harmonize these competing provisions. It is certainly a fair presumption that the parties wished all provisions of their National Agreement to be given full meaning to the extent possible.

The Postal Service alleges that this interpretation would "reduce the efficiency..." of mail delivery. It notes that some other unassigned regular would have had to fill the Westheimer vacancy for one month before Canales was available and that this would have meant having to familiarize an additional person with the Westheimer route in question. There are two difficulties with this argument. First, the Postal Service has ignored the possibility that some other unassigned regular could have filled the Westheimer vacancy

just as well as Canales. And it is fair to assume that someone filled Canales' Baneway Annex route for one month. That carrier in all probability also had to undergo a period of familiarization. In short, some inefficiency seems to have been inevitable whatever action Management took. Second, even if the Postal Service were correct in pointing to some loss of efficiency, that problem is a product of the parties' own National Agreement. I cannot ignore the plain meaning of Section 2B5 in order to prevent some small inefficiency.

AWARD

The grievance is granted. The Postal Service should hereafter honor an unassigned regular's right to remain on a "hold-down" assignment under Article 41, Section 2B5 even in face of Management's right to move an unassigned regular to a vacant full-time duty assignment pursuant to Article 41, Section 1A7.


Richard Mittenthal
Richard Mittenthal, Arbitrator