



C# 6395

SOUTHERN REGION REGULAR ARBITRATION

United States Postal Service * Case No. S4N-3W-C 18229
*
AND * Grievant: T. Evans
*
National Association of Letter * Location: Sarasota, FL
Carriers *

Arbitrator: Elvis C. Stephens Hearing Date: August 7, 1986

APPEARANCES

For the Union: Robert Harkinson, Regional Adm. Assistant

For the Service: Ruth Johnson, Management Advocate

ISSUE

Did management violate the National Agreement and/or the Local Memorandum of Understanding when it did not allow the Grievant to work on Route 7907 on September 16, 1985? If so, what is the proper remedy?

INTRODUCTION AND BACKGROUND

On August 6, 1986 there was an arbitration hearing on the above referenced case at the MPO, Sarasota , Florida. The arbitrator had been appointed to the case by the Southern Regional Headquarters in accordance with the procedures agreed upon by the parties. During the hearing the parties had opportunity to introduce evidence and present and cross examine

witnesses. Closing arguments were made at the end of the hearing.

On September 10, 1985 a temporary bid was posted for route number 7907 at the South Gate Station. The bid was for the dates of September 16 -- 21, 1985. On September 11 the station manager drew a line across the bid and initialed it. However, that same day PTF Carrier T. Evans signed the bid. When the schedule was posted on Wednesday, it did not show Evans on the route. The Union Steward went to a supervisor and explained that the LMOU required such bids to remain up for three days. The supervisor replied that a letter dated August 22, 1985 specified that such bids were to go up on noon Tuesday, and be closed on noon Wednesday. A grievance was filed contending that management violated the contract in its handling of this matter, and requested a day's pay for PTF Evans since he did not work on the route on September 16. The parties could not resolve the grievance, and stipulated that it was properly before the arbitrator for a decision on its merits.

POSITION OF THE UNION

The union contends that the LMOU provisions on bidding were negotiated in 1979, and have remained in effect since then, with one exception. The LMOU required that all bids for vacancies due to annual leave, etc. be posted on Monday of the week preceding the vacancy. Vacancies due to unscheduled leaves are to be posted the next week day after such vacancy becomes known. These bids are to be posted and remain up for three days. In 1985

management came to the union and suggested a modification of the bidding procedure.

Because bids for vacant routes were opened on Tuesdays, with the assignment to be started the next Saturday, there was a problem of bidding for the vacancy created by the successful bidder leaving his old route. Therefore, management and the union agreed that for this purpose only, bids would be posted on Tuesday for one day to cover the vacancy starting the following Saturday.

Testimony of the Local Union President and the Manager for Customer Services support this contention. Mr. MacNabb agreed that the August 22, 1985 letter on posting was only for the vacancies caused by the awarding of bids on Tuesdays.

The National Agreement provides that provisions in the LMOU remain in it until the parties negotiate changes, or agree to abolish such provisions. Management failed to show where the LMOU provisions on bidding were ever changed or deleted.

The employer did not keep the bid up for the correct number of days. If the LMOU had been followed, the grievant's bid would have been timely.

The temporary period was from September 16 to September 21. The grievant should have been allowed to work on the 16th.

The union introduced several Step 4 resolutions and one arbitration case to support its position.

POSITION OF THE EMPLOYER

The employer contends that the letter of August 22, 1985 controls the grievance. The union attempted to introduce an attachment to the LMOU pertaining to bidding. This was negotiated in 1979, but was not mentioned in the later LMOU's, thus it is no longer controlling. Both management and union witnesses agreed that after some discussions about problems with bidding the parties agreed to the August 22, 1985 letter.

Mr. Oliver testified that he drew a line across the bid in question around 1:30 on Wednesday, thus closing the bidding process. Since the August 22 letter provides for such bids to close at noon, and the grievant had not signed by the time the line was drawn on the bid, his bid was untimely. The fact that he did work on the route some of the days it was vacant was not the result of his signing the bid sheet, it was because he was a PTF and the station management decided that the vacant route would be covered by PTF's.

The union introduced a memorandum dated April 22, 1986 providing for a different method of handling bids for temporary vacancies, but this was not in effect in September of 1985, so it has no bearing on this grievance.

DISCUSSION AND OPINION

Article 30 allows the local parties to negotiate provisions covering 22 specific items, including the subject of posting. The union introduced a document relating to posting which was

signed by the Local President and the Manager of Customer Services. These provisions pertaining to posting had been impasse during the 1978 negotiations, and resolved in November of 1979. There is no evidence that these provisions were ever deleted by the parties. As such, Article 30, Section A of the National Agreement clearly provides that they continue in effect.

Mr. Oliver, the station manager at South Gate Station at the time in question, testified that he had never seen the agreement on posting. This statement is only one bit of evidence which tends to cause the arbitrator to believe that there has been a lack of communication within management at this installation. Mr. Oliver stated that he came to the installation in September of 1979, which was only two months prior to the impasse resolution on bid posting. He should have been given a copy of this document, although he testified that he had not seen it until just prior to the arbitration hearing. Part of the problem of communication was caused by the changing of personnel in the management ranks, and the frequent assignment to other locations on temporary duty.

The document states in part:

All full time vacant duty assignments, or all full time duty assignments that will be vacant for five or more days duration will be posted in accordance with the following: Vacancies due to scheduled annual leave will be posted on Monday of the week, preceding the start of the leave. Vacancies due to unscheduled annual leave and for other reasons will be posted the first week day (Monday through Friday) that it becomes known such vacancy will exist.

* * * * *

The posting inviting bids will be posted at noon and remain posted for three days

* * * * *

The successful bidder shall be placed in this temporary assignment the day following the close of bids if vacant, or on the first day the assignment becomes vacant. The successful bidder will remain in the assignment for the duration of the vacancy.

The language of the document supports the union's position in this case. The parties had agreed that hold-downs such as in this case were to be posted for bid on Monday noon and remain posted for three days. This was not done in this instant situation. The parties also agreed that the successful bidder "shall" be placed in the temporary assignment the first day of the assignment. This was not done in this situation, assuming that Evans was the successful bidder.

The employer contends that the document dated August 22, 1985 controls the bidding in the situation in this grievance. This agreement between the union and management states in part: ". . . the following procedure for handling Temporary Carrier Bids will be implemented at the Sarasota Post Office. 1. Vacant Carrier Jobs, and those anticipated to be vacant by the following Saturday, will be posted by Tuesday Noon. 2. The posting will be taken down on the following Wednesday Noon."

The employer's position would prevail if this agreement covered the situation in question. However, the arbitrator is convinced that this agreement was made for a particular type of bid. In order to clarify the meaning of this agreement, the arbitrator requested the parties to allow Mr. MacNabb (Manager,

Customer Services) and Mr. Levins (the Local President) to be brought in the hearing room together. The arbitrator questioned the two, who had made the agreement, as to its intent. Mr. MacNabb agreed with Mr. Levins that the agreement came about because the employer was having problems complying with the LMOU on bidding in those instances where a carrier bid for a vacant route (on a permanent basis). These bids were posted on the first day of the pay period, remained up for ten days, then were awarded to be effective on the first day of the next pay period. This meant that the bids were awarded on Tuesday morning, to be effective the following Saturday.

If the LMOU then had to be followed, the resulting vacancy would have to be posted for three days and the successful bidder would not be known in time to be placed on the schedule for the following week. When MacNabb explained this to Levins, the parties agreed to modify the bidding procedure to eliminate this problem. Although Levins' recall of this situation was more precise than that of MacNabb, MacNabb stated that he had confidence in Levins, and had no reason to doubt Levins' testimony.

Mr. Fred Rolando, the chief steward who filed the grievance, testified that the Evans situation was the only one which was handled in violation of the LMOU. As a result of this misunderstanding of the August 22 document, it was agreed in a labor-management meeting that Rolando would draft a letter setting forth the procedures for bidding in temporary vacancies. This letter was drafted by Rolando on April 22, 1986, but due to

the fact that MacNabb was away on temporary duty, it was not signed by any manager until the day before the arbitration hearing.

This letter sets forth the procedure described in the 1979 LMOU amendment, then includes the following: "The only exception will be as in reference to the intent of the original letter written last year. As long as permanent bids continue to be opened on Tuesday Mornings, and subsequent awards are effective the following Saturday, then any resultant temporary vacancies from these permanent bids will be posted that Tuesday noon, and taken down the next day, Wednesday noon." The arbitrator asked Mr. MacNabb if that provision reflected his understanding of the situation and he replied that it did.

Therefore, based on all of the documents and testimony at the hearing, the arbitrator concludes that the August 22, 1985 document was not the controlling procedure at the time of the bid in question. The next question to answer is whether or not management's contention that the grievant was not a successful bidder is correct. The parties had agreed that such bids would be handled by posting on Monday noon, and remain up three days, which would be until Thursday noon. Thus, the employer posted the bid later than the procedure provides, and closed the bid earlier. If the correct procedure had been followed, the grievant's bid would have been timely. Since he was the senior PTF, he would have been the successful bidder.

The question of remedy must be answered. Actually the grievant worked more than 40 hours that week, so he may not have been injured in a financial sense. However, it is possible that had he been scheduled to work that Monday (September 16) he would have worked even more hours. This arbitrator believes that the remedy requested is appropriate since this matter was brought to management's attention in time to be corrected. The steward informed management of the contract violation, but was told to wait until the following Monday to take it up with a supervisor. Since the matter was brought to management's attention in time to correct the violation, and management simply delayed doing anything until after it could have corrected the matter, the requested remedy shall be granted.

AWARD

The employer violated the LMOU by not working the grievant on September 16, 1985. He shall be paid for eight (8) hours at the appropriate rate of pay.

Date: August 8, 1986

Denton, Texas

Elvis C. Stephens

Elvis C. Stephens, Arbitrator