

AMERICAN POSTAL WORKERS UNION, AFL-CIO

JUNE 92

GRIEVANCE
STATUS LETTER
*(CENTRAL REGION)

GRIEVANT—PERSON OR UNION FROM LINE B (LAST NAME FIRST)		APWU-USPS NATIONAL GRIEVANCE
CLASS ACTION		#
WORK LOCATION CITY AND ZIP CODE FROM LINE 10		USPS REGIONAL GRIEVANCE
Des Moines, IA		# C7C-4K-C 30916
CONTRACT ISSUE	CRAFT	APWU REGIONAL GRIEVANCE
ART. 12 & 13	Clerk	# None
TO	DATE	APWU LOCAL GRIEVANCE
	June 25, 1992	# 77-90-6299

DIRECTOR, INDUSTRIAL RELATIONS
AMERICAN POSTAL WORKERS UNION, AFL-CIO
1300 L STREET, N.W.
WASHINGTON, D.C. 20005

D/A: 06/22/92 - Reg.
DENIED
ADVOCATE:
Carl F. Casillas

PYMT. # 502549

- WITHDRAW FROM STEP 4 OR ARBITRATION
- SETTLEMENT
- ARBITRATION AWARD
 - NATL. CERTIFICATION
 - LOCAL CERTIFICATION

Arbitrator's Statement - Linda DiLeone Klein
\$1005.91 -- D/H: June 2, 1992

ATTACHED IS DOCUMENTATION IN SUPPORT OF ACTION INDICATED.

Management did not violate the provisions of the Agreement by permitting a limited-duty employee to remain in the section while full-time regular employees, holding bid assignments, were excessed to the needs of the section.

Notwithstanding the limited-duty issue, the arbitrator stated, "However, assuming that the only issue in this case was excessing, Ms. Bentall would have been allowed to remain in the section by virtue of her seniority." Her rehab job offer was created in accordance with the law and there was no evidence to indicate that her assignment was to the detriment of any other employee. Therefore, her placement in the Incoming Section had no bearing on the excessing process, and there was no requirement to move her when others were excessed.

JAMES P. WILLIAMS, COORDINATOR
CENTRAL REGION, APWU, AFL-CIO
330 SOUTH WELLS STREET, ROOM 1402
CHICAGO, ILLINOIS 60606

NBA St. Louis Div. Office, APWU
President, Des Moines, IA A/L (0044), APWU

Regular Arbitration Panel

* * * * *
 In The Matter of Arbitration
 between
 United States Postal Service
 and
 American Postal Workers
 Union, AFL-CIO
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Class Action Grievance
 Post Office: Des Moines, Iowa
 USPS Case No: C7C-4K-C 30916
 APWU Case No: 77-90-6299

Before: Linda DiLeone Klein, Arbitrator

Appearances

For the Postal Service: Daniel Garza

For the Union: Carl Casillas

Place of Hearing: Des Moines, Iowa

Date of Hearing: June 2, 1992

Award: The grievance is denied.

Date of Award: June 22 1992


 LINDA DILEONE KLEIN

RECEIVED JUN 24 1992

I S S U E

Did the Postal Service violate the National Agreement when it allowed C. Bentall, a "rehabilitation" employee, to remain in the Incoming Section while full-time regular employees were being excessed from that section? If so, what is the appropriate remedy?

O P I N I O N

There is no serious dispute between the parties regarding the essential facts of this matter. After a survey was conducted in the Tour III Incoming Section, Management concluded that said section was overstaffed. Manpower changes were implemented in August and September 1990, and various full-time regular employees were excessed from the Tour III Incoming Section. A dispute arose over the issue of light/limited duty employees remaining in the section during excessing; grievances were initiated, and the matter was resolved in part. As a result of the filing of grievances, full-time regulars who had been excessed were returned to the section; however, the subsequent reassignment of excessed full-time regulars did not change Management's position that rehabilitated employees on job offers would remain in the section where excessing was occurring. The instant grievance was therefore processed through the grievance procedure in order to resolve the dispute over the application of contract language governing ill and injured employees and excessing; the Union is seeking to protect the rights of full-time regulars in the future.

Charlene Bentall was injured on the job and she began working a limited duty assignment in February 1987. Ms. Bentall was diagnosed with carpal tunnel syndrome and her physician later determined that her impairment was "permanent". Pursuant to the Federal Employees' Compensation Act and Chapter 540 of the Employee and Labor Relations Manual, Ms. Bentall received a permanent limited duty job offer in May 1989. She was assigned to perform duties within her restrictions on Tour III in the Incoming City Section. Her permanent limited duty hours were charged to the Rehabilitation Labor Distribution Code rather than the Labor Distribution Code assigned to employees of the Incoming Section. Her "operation number" was 958, the Rehabilitation Operation Number. She was limited to lifting no more than ten pounds; she could not work the LSM and she could not perform duties involving the repetitive use of her arms. She performed various dispatch and verification functions in the Incoming Section.

When full-time regular employees were excessed from the Incoming Section, Ms. Bentall remained there on the basis of her "rehabilitation job offer". The Union contends that Management violated the National Agreement when it failed to reassign Ms. Bentall from the Incoming Section to another area where the performance of her particular duties would not be to the detriment to any full-time regular on a scheduled assignment.

The Union contends further that the Postal Service should transfer unassigned limited duty rehab employees from the section before excessing full-time regulars who occupy bid positions in that section. Allowing an unassigned rehab employee to remain in the section gives

him/her an unfair advantage, over those in the section who occupy bid positions. What has happened here, says the Union, is that Management has attempted to isolate the rehab employee and create a "section within a section", thereby making the rehab employee "untouchable".

Article 12.5 provides for seniority to govern the excessing of employees occupying bid positions, however, the Union submits that Ms. Bentall's circumstances do not entitle her to a position in the Incoming Section during excessing despite her seniority. Excessing employees with bid assignments while at the same time allowing limited duty rehab employees to remain in the section is a form of "bumping", adds the Union. This is contrary to the provisions of Article 13.4.C.; this section of the contract states the following:

"The reassignment of a full-time regular or part-time flexible employee to a temporary or permanent light duty or other assignment shall not be made to the detriment of any full-time regular on a scheduled assignment or give a reassigned part-time flexible preference over other part-time flexible employees."

The Union acknowledges that Management is obligated to accommodate employees who are injured on duty, but any such accommodation cannot be to the detriment of full-time regulars. Ms. Bentall was an unassigned regular who was given a set of duties which could have been performed in another section, claims the Union. Furthermore, no attempt was made to place her in a residual vacancy in the Incoming Section; had this been done, then seniority could have been applied to the excessing regardless of whether or not she was recovering from an on the job injury. Management never claimed that there was no work for Ms. Bentall in other sections and Management never claimed that she

could not have been reassigned within her limitations, adds the Union; there is no regulation prohibiting a change in a rehab job offer.

The Union submits that residual vacancies can be modified to fit the restrictions of rehab employees, and then the excessing can be properly accomplished.

Under the facts of this case, Ms. Bentall's assignment was made to the detriment of full-time regulars in the section; the Union is seeking to preserve the bid assignments of employees in the section. As a remedy, the Union asks that Management be directed to reassign light duty, limited duty and rehabilitation employees out of the section prior to excessing full-time regulars.

The evidence establishes that Ms. Bentall's rehabilitation job offer was created pursuant to the Federal Employees' Compensation Act, the Rehabilitation Program Guidelines and Part 546 of the ELM. In accordance with Article 21.4 of the National Agreement, the Postal Service is required to comply with OWCP regulations for those employees who are entitled to compensation for their work related injuries.

Ms. Bentall did not submit a voluntary request for her assignment per Article 13; her position evolved through Management's obligations under Part 546 of the ELM. The job was created for her alone consistent with her medical restrictions and physical limitations. The assignment as defined in the job offer did not exist before and it will cease to exist when she retires. When she is absent, she is not replaced. Clearly, her job offer was not a newly created duty assignment per Article 37. There was no evidence to suggest that her assignment was made to the detriment of any full-time regular employee, and the Union did not initiate a grievance in May 1989 when she began working the rehab job offer.

The Arbitrator concludes from the evidence that she was not in a "bid assignment" and she was not part of the section for excessing purposes; there was no intent or obligation to move her during excessing. Her duties were not those of an "able-bodied person", and she performed in accordance with her customized job offer; she did not perform the duties of employees who were excessed. If the Union's position were sustained here, Management would be restricted in the placement of rehab employees. Management might ultimately be required to excess all rehab employees out of the facility prior to excessing full-time regulars. This would be contrary to regulations which augment the contract and require Management to create assignments for employees who have been injured on duty, even if the work is minimal.

The Union presented a letter dated June 11, 1990 from an Assistant Postmaster General which set forth Management's interpretation of the contract as it applies to the assignment of ill or injured employees during excessing. In part, the letter states:

"Management's interpretation of Article 12 of the contract is that, when excessing occurs in a craft, either within the installation or to another installation, the sole criteria for selecting the employees to be excessed is craft seniority. Whether or not a member of the affected craft is recovering from either an on- or off-the-job injury would have no bearing on his/her being excessed."

This document cannot be relied upon to support the Union's position. It refers to employees who are "recovering"; Ms. Bentall's condition is permanent. However, assuming that the only issue in this case was excessing, Ms. Bentall would have been allowed to remain in the section by virtue of her seniority.

Ms. Bentall's rehab job offer was created in accordance with the law and there was no evidence to indicate that her assignment was to the detriment of any other employee. Her placement in the Incoming Section had no bearing on the excessing process, and there was no requirement to move her when others were excessed; had she been moved out of the section, it would not have affected the number of full-time regulars who were excessed.

Absent a violation of the National Agreement, the position of the Union cannot be sustained.

A W A R D

The grievance is denied.


LINDA DILEONE KLEIN

Dated this 22nd day of June 1992
Cleveland, Ohio

American Postal Workers Union, AFL-CIO

Telephone
(202) 842-4246

Memorandum

1300 L Street, NW
Washington, DC 20004

From the Office of WILLIAM BURRUS
Executive Vice President

March 16, 2001

TO:

SUBJECT: **Excessing**

Having failed to achieve an agreement at the national level, postal management will initiate discussions at the local level on procedures to reassign higher level employees from assignments that are scheduled for abolishment. Following are the legal and contractual rules governing such reassignments:

* Article 6, Sections (1) and C.1. and the 1998 Memo limiting lay-off prohibits the **reduction in grade** of any preference eligible employee with one year of continuous service. Such protected employees may not be removed from their assignment unless placed (excessed) to a vacant assignment of same or higher grade.

*If a preference eligible employee voluntarily bids to a lower level, he/she loses the protections of Article 6 and the Veterans Preference Act. Management will attempt to convince you and the preference eligibles to voluntarily bid.

*Article 12.C.4 governs the reassignment of non preference eligibles excess to the needs of a Section. You have determined in local negotiations the specific Sections. All reassignments from a Section must be by juniority and if a non preference eligible is senior to a protected preference eligible, the protected preference eligible may not be bypassed to excess a more senior non preference eligible.

*Management may abolish specific job assignments but Article 12.5.A.4. requires that When it is proposed to reassign within an installation employees excessed to the needs of a section, such reassignment must be done by juniority. The abolishment of assignments does not reduce the number of employees within a Section. The national parties have agreed that full time flexibles and light and limited duty employees are a part of identified sections and they must be removed first.

*Preference eligibles may not be provided saved grade as a means of avoiding the MSPB requirements to continue an employee within their grade (MSPB Case *White vs USPS*).

*Junior non preference eligibles are not protected against reassignments and may be provided saved grade requiring that they bid.

*If reassignment is outside the craft or installation, employees indicate at the time of reassignment whether they wish to bid to all vacancies within their former craft and level. Completion of the form serves as a bid to all vacancies required by Article 4. No further bids are required (Art 12.C.5b.(6)).

*Article 4 requires that employees bid but does not require that they qualify .

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Retreat Rights - Article 12.5.C.4

The parties mutually agree that the following bidding procedures will apply when clerk craft employees of different levels comprise a section and excessed employee have expressed a desire to retreat back to their former section.

1. The initial vacancies occurring within a Section in the same salary level from which excessed employees have active retreat rights, when posted are limited to employees within the section of the same salary level as the excessed employees.
2. The residual vacancy that occurs from one above is then offered to employees who have retreat rights to the section and who, at the time of excessing, were in the same salary level as the residual vacancy when excessed.
3. If vacancies remain after the offering of retreat rights to eligible employees, these vacancies are posted for bid.
4. Vacancies that occur within the section that are not of the same salary level of the excessed employee with retreat rights are posted for bid.



Mr. Anthony J. Vegliante
Manager, Grievance and Arbitration
Labor Relations



Mr. William Burrus
Executive Vice President
American Postal Workers Union

FAQ'S ON ABOLISHMENT/EXCESSING/UNENCUMBERED

1. **What is abolishment?** Abolishment is when a management decision to reduce the number of occupied duty assignment (s) in an established section and/or installation
2. **What is excessing?** Excessing are those employees who had their duty assignments abolished and are not senior enough to stay within the section.
3. **What is an unencumbered employee?** The term unencumbered includes both unassigned regular employees and full time flexible employees.
4. **What is a reposted duty assignment?** Reposting can occur when there has been a change in day's off/ hours/duties. A change has occurred, the duty assignment is taken away from the affected employee and reposted with the desired changes of management's decision to those in the same or higher level.
5. **What is a retreat right?** Retreat rights are to those employees who had their duty assignment abolished and have been excessed out of their section. These employees have first option to bid back within their former section by seniority seclusive to other employees in other sections.
6. **How will I know if I am subject to abolishment/excessing?** Management will notify you by mail that it has been determined your duty assignment is abolished. This letter should inform you when you will become unencumbered and what your contractual rights are. Always read this letter carefully and we suggest you keep it for your files.
7. **When do you lose your retreat rights?** You will be sent a letter notifying you of a vacant duty assignment within your former section with instructions as to whether you wish to retreat back or decline. Once you decline and your seniority would have received that vacant duty assignment then your retreat rights are now done. Retreat rights do not come back once you declined.
8. **Can the schedule of an unencumbered full time regular employee be changed from the schedule the employee worked immediately prior to becoming unassigned?** Yes, as long as the employee is notified within the first 28 days of becoming unassigned. Thereafter, the employee's schedule cannot be changed again until 180 days after the date the employees schedule was last changed.
9. **If an unencumbered employee's schedule is to be changed within the first 28 days, must the actual change take place within 28 days?** No. The employee must be notified of the schedule change within 28 days. After such notification, the actual schedule change will begin the following workweek. No out of schedule premium will be paid.
10. **If an unnumbered employee is not notified of a schedule change during the first 28 days, can the employee's schedule still be changed after 180 days?** Yes. The 180 day period begins on the date the employee became unencumbered.
11. **In what order must unencumbered employees be assigned?**
 - a) *currently qualified: offer by seniority, assign by juniority*
 - b) *partially qualified: offer by seniority, assign by juniority*
 - c) *not currently or partially qualified: assign by seniority, assign by juniority*
12. **When assigning unencumbered employees to residual vacancies for which they are currently Qualified, is it necessary for them to be unencumbered for 90 days?** No. The 90 day rule only applies to partially qualified or not currently qualified.