

REGULAR REGIONAL ARBITRATION PANEL

In the Matter of the Arbitration)
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 between)
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 United States Postal Service)
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 and)
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 American Postal Workers Union)

Grievant: Class Action
Post Office: Des Moines, Iowa
Case No: I90C-II-C 96016570
77-95-10749

Before: John C. FLETCHER, Arbitrator

Appearances:

For the Postal Service: Ms. Marcia G. Grant, Labor Relations Specialist
USPS Hawkeye District
Des Moines, Iowa 50318-9401

For the Union: Mr. Kevin John Beener, President
APWU Bulk Mail Center Local
Des Moines, Iowa 50322

Place of Hearing: Des Moines, Iowa

Date of Hearing: May 12, 1999

Date of Award: June 15, 1999

Relevant Contract Provisions: Article 13, National Agreement

Contract Year: 1990 - 1994

Type of Grievance: Contract

Award Summary

The grievance is sustained. The Postal Service violated the National Agreement when it reverted a Tour 2 bid position of Postage Due Clerk and assigned the same work schedule and duties of the reverted position of a Limited Duty employee.


John C. FLETCHER, Arbitrator

OPINION AND AWARD

**190C-II-C 96016570 - Class Action
Des Moines, Iowa**

Background:

This is the second case presented this Arbitrator in the Des Moines Main Post Office, involving a switch of Postage Due Clerk Positions from Tour 2 to Tour 1, and thereafter assigning the work of the switched positions to a Limited Duty employee. In the earlier case, *190C-4I-C 95066373*, decided on July 7, 1997, this Arbitrator noted:

On April 20, 1995, at Step 2, APWU filed the instant grievance, protesting the switch of a Postage Due Clerk position from Tour 2 to Tour 1. In that grievance it was alleged that the Clerk Craft Director was told that the reason behind the change was that Management was not going to let Postage Due Clerks run the operation, and if need be, all Postage Due Clerks would be moved to Tour 1. Further, the grievance noted that Management was in the process of making a job offer of this position to a limited duty employee rather than follow procedures and offer a modified position in the employee's own facility. In denying the grievance at Step 2, Management merely said that it was exercising its rights under Articles 3 and 13.

(Award at p. 2.)

In sustaining the grievance in *190C-4I-C 95066373* the Arbitrator found that:

Management's basis for switching Job ID 7653499 - Postage Due Clerk, from Tour 2 to Tour 1, [is] found to be pretextual. Allegation that change was an Article 13 - OWCP limited duty accommodation, cannot be considered, as it was not raised at Steps 2 and 3. In providing accommodation to an on-the-job injured employee Management failed to first attempt to provide available suitable work in the employee's regular facility, before making a job

offer in a different facility. Management is directed to rebulletin Postage Due Clerk with previous Tour 2 schedule. (Award at p. 5.)

The instant grievance (77-95-10749) arose three months after the above grievance in *I90C-4I-C 95066373* was initiated, however, the switches from Tour 2 to Tour 1 and the two offers of permanent Limited Duty jobs were occurring within the same time frame. On August 10, 1995, APWU filed the instant grievance contending that:

On 7/26/95 Clerk Sally Leonard was presented with a job offer as a modified Clerk position, scheduled days off Thurs./Fri., Hours 0450-1300, Pay Location 214. It is the Union's position that this offer is being made to the detriment of the Full-time Regulars. Over the past few months Management has moved the Tour II Postage Due Bids to Tour I, as they became vacant, thus precluding regular employees from bidding into this area. They now are affording these same hours and days off (preferred) to Limited Duty employees. In addition, on 5/16/95 Management reverted Job ID 7843544 (214143) which is the same job as now being offered to Ms. Leonard.

As a remedy the corrective action requested was that all Postage Due Bids that were changed to Tour I be moved back to Tour II and posted immediately.

The grievance was denied at Step 2 on the basis that Management had followed the procedures of Article 13 when Ms. Leonard was given the job offer. Comment was also made that the Postage Due bid jobs were moved to Tour 1 to meet clearance times, but Ms. Leonard's duties involved getting account information for customers, and this freed up other Clerks to get the mail out.

In its appeal to Step 3 the Union noted that while Management had taken the position that Postage Due positions were no longer necessary on Tour 2, it was offering the exact job, 7843544 (214143), that had earlier been reverted to Ms.

Leonard. The Step 3 denial was on the general basis that the job offer was in complete accord with Article 13 and it was within the injured employee's medical limitations.

THE ISSUE

The Union asks that the issue in this matter be stated as:

Did the Postal Service violate the National Agreement when it reverted a Tour 2 bid position of Postage Due Clerk and assigned the same hours and duties of the reverted position of a Limited Duty Clerk?

If so, what shall the appropriate remedy be?

The Postal Service would have the issue stated as:

Whether or not the limited duty job offer made to Ms. Sally Leonard was in accordance with the requirements of the National Agreement?

The Union's statement of the issue more accurately reflects the grievance that was handled at the Steps below. It did not argue whether the offer was made in accordance with the requirements of the National Agreement or that Ms. Leonard was not able to work the job because of her medical restrictions. Management's statement of the issue would re-direct the grievance to areas that the Union is not disputing. Accordingly, the Union's statement of the issue is the one that will be considered in this arbitration.

DISCUSSION

Article 13, Section 4, Paragraph C, of the National Agreement provides:

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 has argued that the assignment of Ms. Leonard to a Modified Job Offer doing Postage Due Clerk work was made to the detriment of full-time regular employees that were reassigned from Tour 2 to Tour 1 in what it perceived to be retaliation of the Plant Manager because he believed that Clerks in the Unit were abusing overtime. Management has argued that the assignment of Ms. Leonard was in complete accord with the procedures provided in the Agreement and followed the pecking order of Part 546.14 of the ELM. The evidence tilts in favor of the Union.

First is should be noted that Ms. Leonard had been on limited duty for some time. She was not working in the Plant at the time that the modified job offer was made in Postage Due. She was working elsewhere, according to her testimony, and was perplexed as to why she was now being offered a job in the Plant. On her acceptance of the job offer, Ms. Leonard noted that if someone with less seniority was awarded a Tour 2 Friday-Saturday, Saturday-Sunday, or Sunday-Monday non-scheduled days she wanted her non-scheduled days changed to reflect the same days off. Also, Ms. Leonard stated that if the Postage Due Section was switched to Tour 1, that she be allowed to Stay on Tour 2, as that was they Tour

she was working when injured. These comments, considered with her testimony, suggest that Ms. Leonard viewed her job offer as that of a regular Postage Due Clerk

And, while the procedures for creating jobs for permanent Limited Duty employees have been explained in detail, the reasons, if any, for now needing to reassign Ms. Leonard back into the Plant, to do Postage Due Clerk work have never been shared with the Arbitrator. Of interest is the fact that all of these events were starting at the same time, April - May 1995. Job 7843544 (21413) was being switched to Tour 2 at that time, but the Union was being asked to review a Limited Duty job offer for Ms. Leonard for the duties and schedule of that job.

When Ms. Leonard came into the Postage Due Unit she was trained in all of the duties expected of a Full-time Postage Due Clerk by Mr. Steve Wilson, an employee that was opting to get out of the Unit because of the change in hours from Tour 2 to Tour 1. Thereafter, according to Wilson and Leonard, she performed these duties in the same manner as regular Postage Due Clerks had done in the past. The testimony of Mr. Wilson, which was not challenged in cross-examination, is persuasive, and conclusive – Ms. Leonard took over the full scope of duties of a Postage Due Clerk, and worked the same days and hours of job 7843544 (21413), which a short time earlier had been reverted and placed on Tour 1. Mr. Wilson was eleven numbers senior to Ms. Leonard, but the job was no longer available to him on Tour 2. Therefore he was opting out of the Unit to

stay on Tour 2. However, he was training a junior Limited Duty employee to do the work of a job that the Union had been told was now needed on Tour 1. This is mystifying, to say the least.

When Mr. Wilson's testimony is considered with the cross-examination testimony of Management's witness, that Ms. Leonard was offered a job on Tour 2 because additional help was needed in Postage Due on that Tour, it is obvious that a Job 7843544 (21413) had been moved from Tour 2 to Tour 1, while practically all existing elements of work remained on Tour 2, and this work was given to a Limited Duty employee. By any reasonable standard, the assignment of a Limited Duty employee to do the work of a reverted position on Tour 2 is detrimental to other Full-time regular employees that opted out of Postage Due jobs when schedules were changed, on the pretext that the jobs were now needed on Tour 1.

Management offered a considerable amount of testimony concerning the procedures required to be followed in developing Limited Duty job offers, and the process followed in making the job offer to Ms. Leonard. Presenting testimony on this point misses the thrust of the Union's complaint. The Union is not now contending, and never did contend, that the ministerial functions utilized in placing Ms. Leonard in the Postage Due Section were flawed. APWU's complaint was that any work in that Section that was available to be included in a Limited Duty job offer was work of jobs that had been improperly reverted on Tour 2, because Management was moving preferred duty assignments from Tour 2 to

- my closing!

Tour 1 on a pretextual basis, and there existed no sound business reasons for doing so.

Management was notified early on precisely what the Union's complaint on the Leonard job offer concerned. In an electronic message concerning Ms. Leonard's proposed job offer, the Local APWU President advised the Service's Injury Compensation Specialist that the Plant Manager had told the Union that he intended to post all Postage Due bids on Tour 1, therefore APWU was opposed to any Limited Duty job offers being made in that Section while bid positions were being eliminated. The Union's complaints are not addressed through testimony on how job offers are developed and implemented, and that it is good management policy to have permanent Limited Duty employees do meaningful work. The Union's complaint is that Management reverted a job on Tour 2, and shortly thereafter offered the same job to a Limited Duty employee. That complaint is well founded, because actually what occurred here was that a Postage Due Tour 2 job was moved to Tour 1, and the work previously performed on Tour 2 was given to a junior employee through a Limited Duty job offer. Article 13 cannot be fairly read to support this result.

The grievance has merit. It will be sustained. The corrective action requested in the Step 2 appeal will be ordered. Management shall, within thirty days of the date of this decision repost all Postage Due jobs that were moved from Tour 2 to Tour 1 as Tour 2 jobs.

A W A R D

The grievance is sustained. The Postal Service violated the National Agreement when it reverted a Tour 2 bid position of Postage Due Clerk and assigned the same hours and duties of the reverted position of a Limited Duty employee. The remedy requested in the Step 2 appeal is granted.



John C. FLETCHER, Arbitrator

Mount Prospect, Illinois June 15, 1999