

REGULAR ARBITRATION PANEL

In the Matter of Arbitration)
)
 between:)
)
 UNITED STATES POSTAL SERVICE)
)
 and)
)
 AMERICAN POSTAL WORKERS UNION)

GRIEVANT: Class Action
POST OFFICE: Des Moines, Iowa
CASE NO. I90C-1I-C96018566

BEFORE: Lamont E. Stallworth ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Janet S. Ades
Labor Relations Specialist

Marcia Grant
Labor Relations Specialist
Hawkeye District

For the Union: Kevin John Beener
Local Union President
APWU - Local 7027

Place of Hearing: Des Moines, Iowa

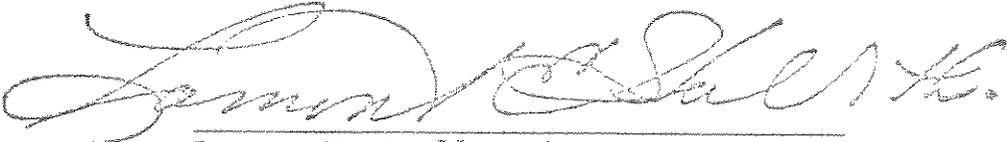
Date of Hearing: December 9, 1998

AWARD:

The Postal Service is ordered to cease and desist its current practice and to reinstate the practice of allowing employee to trade daily work assignments on Tour III until such time the Parties bargain or mutually agree to a change in the trade assignment practice.

The instant grievance is sustained.

Date of Award: February 27, 1999


Lamont E. Stallworth
Arbitrator

THE ISSUE(S):

The Parties submitted the following issue(s) to the Arbitrator:

1. Did the Postal Service violate the contract, handbook and manuals when they stopped the practice of allowing employees to trade daily work assignments?
2. If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS:

ARTICLE 3
MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;
- E. To prescribe a uniform dress to be worn by designated employees; and
- F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

(The preceding Article, Article 3, shall apply to Transitional Employees)

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ARTICLE 5
PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

(The preceding Article, Article 5, shall apply to Transitional Employees)

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE

15.5.A.6

6. All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. Unless otherwise provided in this Article, all costs, fees, and expenses charged by an arbitrator will be shared equally by the parties.

ARTICLE 19
HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. At the request of the Union, the parties shall meet concerning such changes. If the Union, after the meeting, believe the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Union upon issuance.

Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to transitional employees only to the extent consistent with other rights and characteristics of transitional employees negotiated in this Agreement and otherwise as they apply to the supplemental work force. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to transitional employees pursuant to the same standards and procedures found in Article 19 of this Agreement.

BACKGROUND:

The instant dispute involves the practice of trading job assignments on a daily basis at the Des Moines, Iowa, Post Office. According to the Service, the instant dispute primarily involves the operation of the Optical Character Readers (OCR) and the Bar Code Sorters (BCS) in the automation section of the Postal Service. The Postal Service states that the Des Moines facility has twenty (20) machines in automation which require two (2) operators for each machine and a daily schedule is posted that lists job assignments on the machines.

From 1990 to 1995, the Postal Service allowed employees who worked in the automated section to trade work assignments on a daily basis on all three tours. It is undisputed that to effectuate a trade, two employees involved in the trade must agree and a supervisor must approve the trade. Trading daily work assignments proved to be a popular practice and employees would often arrive early to work and wait in line to change their assignments.

At one point, the Union filed a grievance about employees coming in early to make a trade in assignment. The Union does not dispute that such a grievance was filed. According to the Postal

Service, as the automation section grew, it became a "problem" to allow employees to trade daily work assignments. The Postal Service therefore ceased the practice of allowing employees to trade places on the machines on a regular basis on Tour III.

The Union filed the instant grievance on July 17, 1995, claiming that management unilaterally stopped the past practice of allowing employees to trade daily work assignments on Tour III. (Joint Exhibit No. 2). Specifically, the Union charged that the Service instituted a blanket policy of no more trading of daily job assignments unilaterally despite the fact that trading had been allowed for years in the LSM and FSM areas, and on a limited basis in the OCR/BCS areas. Id. The Union noted in its grievance that it appears that the practice was stopped in the automation area due to a union grievance filed on employees coming to work early to pick up their assignments.

In the instant grievance, the Union also noted that management failed to prove that the trading of daily assignments has had any adverse effect on the operation of the Postal Service. To the contrary, the Union asserted in its grievance that employees are more productive when they work where and with whom they would prefer to work. (Joint Exhibit No. 2). The Union requested that the blanket policy of no trading be rescinded and that employees be allowed to trade if they so choose provided they are qualified to work in the selected position.

The Service denied the instant grievance at Step 2 on November 7, 1995. The Service stated that it was management's position that the Postal Service is under no contractual obligation to allow employees the choice of picking and choosing their work location.

The Service also stated in its Step 2 denial that the complexity of automated mail processing now necessitates the obliteration of the past practice of allowing employees to trade daily work assignments and that a rotation system will be utilized to insure that all employees are capable of processing on all machines and operations. (Joint Exhibit No. 2).

The instant grievance proceeded through the contractual grievance procedure; however, the Parties were unable to resolve the instant dispute. Accordingly, the Parties submitted the instant grievance to arbitration. It is within this factual context that the instant dispute arises.

THE UNION'S POSITION

It is position of the Union that the Postal Service violated a long standing past practice when it unilaterally abolished the practice of allowing employees to trade daily work assignments on Tour III.

The Union asserts that Union Exhibit Nos. 1 and 2 clearly provide evidence of a past practice which started in 1990 and continued until the Postal Service disallowed the practice in June of 1995. The Union submits that it has met its burden of proof that a past practice existed. The Union notes that the Service even referred to the practice of trading job assignments as "a past practice" during the grievance procedure. (See, Joint Exhibit No. 2). The Union asserts that there was no proper elimination of this past practice by the Parties through negotiation or bargaining.

The Union contends that the past practice of trading daily work assignments was agreed to by local Postal Service management

as provided in Union Exhibit Nos. 1 and 2. In addition, the Union states that the practice of allowing employees to trade daily work assignments was a benefit to both the employees and the Postal Service. The Union argues that employees benefitted from the practice because it allowed them to work assignments that they preferred or to work with employees they liked. The Union further contends that this arrangement benefitted the Service because it was good for employee productivity and employee morale which, according to the Union, is no small thing given the often tense climate of the Postal Service environment.

The Union submits that the past practice of allowing employees to trade daily work assignments is still allowed on Tours I and II. The Union argues that those tours are also automated and do not have problems as a result of the trading practice as the Service asserts is the case on Tour III. The Union maintains that the position of the Postal Service on this point should be discounted as the past practice still continues on other tours.

With regard to the efficient operation of Postal Service, the Union points out that the past practice of trading daily job assignments always required the agreement of the employees involved and the approval of their supervisor. The Union argues that the Service is not giving up their ability to manage by allowing employees to trade daily work assignments. The Union states that it does not seek a change in the way the trading of daily job assignments is accomplished and that the supervisor still has the authority to approve or disapprove a trade. The Union merely seeks a restoration of the trading practice on Tour III.

With regard to remedy, the Union requests that the Service be required to reinstate the trading practice on Tour III. No monetary remedy is sought by the Union in this case.

Based on the foregoing, the Union requests that the instant grievance be sustained and that the Undersigned Arbitrator order that the practice of allowing employees to trade daily work assignments be restored. (Joint Exhibit No. 2).

THE SERVICE'S POSITION

It is the position of the Postal Service that Management did not violate the Collective Bargaining Agreement when it ceased the practice of allowing employees to trade their daily work assignments. The Postal Service asserts under Article 3 that the Postal Service has the right to make work assignments, which includes disallowing the trading the daily job assignments.

The Postal Service argues that adjustments were necessary after the practice of allowing trading assignments became a problem. The Service contends that as the automated section of the Des Moines facility grew, trading assignments grew unwieldy due to the size of the work force, sick calls and other operational needs. The Service states that a rotating system was introduced to replace the previous trading practice.

It is the Postal Service's position that it has the exclusive right to direct employees under Article 3 of the Contract. The Service asserts that it is the right of management to direct employees in the performance of official duties and to maintain an efficient operation. The Postal Service argues that the right to direct employees is not a shared right but is reserved solely to

the Postal Service, and may be exercised, well or poorly, only by the Postal Service as long as it exercised in a manner that is not inconsistent with the Agreement.

The Postal Service also argues that proof of a violation of Article 5, which prohibits unilateral action, is conditional upon proof that some other section of the Contract has been violated. In the instant grievance, the Postal Service argues that no provision of the Contract was violated by any unilateral action on the part of the Postal Service.

The Postal Service argues that the Union has failed to establish that a past practice existed with respect to the trading of daily job assignments. The Service asserts that the Union did not establish by clear and convincing evidence that there was a negotiated past practice in effect. The Service submits that it has not accepted the terms of the past practice. The Service contends that there was no binding, clearly enunciated, and acted upon past practice in the instant grievance. Rather, the Postal Service maintains that this practice just developed over time, something that the employees "got by with", and cannot be construed as a binding past practice. When the practice became a problem for the Postal Service, the Service states that it exercised its managerial rights and discontinued the trading of job assignments on Tour III. The Postal Service argues that such action did not violate the National Agreement.

In support of the position of the Postal Service that the instant grievance should be denied, the Service relies upon numerous arbitral awards. See, e.g., United States Postal Service and Laborer's International Union, (Houston, TX) (Arb. Michael J.

Jedel, November 9, 1988) Case No. S4M-3V-C 34300; United States Postal Service and National Association of Letter Carriers, (Laurel, MS) (Arb. Robert G. Williams, March 10, 1989) Case No. S7N-3N-C 16871; United States Postal Service and American Postal Workers Union, (Fort Worth, TX) (Arb. Robert W. Foster, May 17, 1984) Case No. S1T-3A-C 29153; United States Postal Service and Local 301 of the Mailhandlers Union, (Springfield, MS) (Arb. Garry J. Wooters, January 19, 1991) Case No. N7M-1G-C 28869; and United States Postal Service and National Post Office Mailhandlers, (Ann Arbor, MI) (Arb. William Haber, June 14, 1981) Case No. C1M-4A-C 19642.

In light of the foregoing, the Service requests that the Arbitrator conclude that the Service did not violate the Agreement and that the instant grievance be denied in its entirety as being without merit.

OPINION

This is a contract interpretation dispute involving the abolition of the past practice of allowing Postal Service employees to trade their daily work assignments on Tour III at the Des Moines, Iowa MSC facility.

The Parties submitted the following issue(s) to the Arbitrator:

1. Did the Postal Service violate the contract, handbook and manuals when they stopped the practice of allowing employees to trade daily work assignments?
2. If so, what is the appropriate remedy?

The Undersigned Arbitrator has considered the testimony, other evidence and arguments put forth by the Parties and concludes that based on the facts and circumstances of the instant grievance that the Postal Service violated the Contract when it unilaterally ceased the past practice of allowing employees to trade daily work assignments. Accordingly, the instant grievance is sustained. The Arbitrator's findings, conclusions and reasoning are set forth below.

The Collective Bargaining Agreement in Article 15, Section 5.6 specifically limits an arbitrator's authority as follows:

All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement and, in no event may the terms and provisions be altered, amended, or modified by an arbitrator

The Agreement clearly provides that the arbitrator's limited authority lies in the express language of Article 15.

In the instant grievance, it is undisputed that a practice of trading daily job assignments existed for several years prior to the filing of the instant grievance in 1995. The trading practice allowed Postal employees to trade daily work assignments on the machines located in the automated section of the Des Moines, Iowa Post Office. (See, e.g. Union Exhibit Nos. 1 and 2). The instant grievance filed by the Union involves the Postal Service's alleged unilateral change of that practice on Tour III in 1995.

The Postal Service asserts that it has the right under Article 3 to manage and direct its employees in order to maintain an efficient operation. The Service argues that such a right is exclusive to the Service and that no past practice existed to

modify the right to direct employees by unilaterally prohibiting the trading of job assignments. The Postal Service denounces the position of the Union that a past practice existed with regard to trading job assignments. To the contrary, the Service asserts that no binding, clearly enunciated, and acted upon past practice existed in the instant grievance.

It is well-accepted that management rights may be tempered or modified by the mutual acceptance of an established past practice. See, Elkouri and Elkouri, How Arbitration Works, (BNA, 4th Edition, 1985) Chapter 12, "Custom and Past Practice," at 437.

In the instant grievance, based on the record evidence, it is the Arbitrator's opinion that Union Exhibit Nos. 1 and 2 support a finding that a past practice existed with regard to the trading of job assignments at the Des Moines facility. These exhibits are written memos issued by local Postal Service management. The memos are dated July 11, 1990 and August 10, 1990. Both written memos clearly state that the trading of job assignments is permitted. It is the Arbitrator's opinion that these written memos provide strong evidence of the existence of a mutually accepted past practice. See also, Elkouri and Elkouri, How Arbitration Works, (BNA, 4th Edition, 1985) at page 439.

The Undersigned Arbitrator notes that the Service stated in its Step 2 denial and during the arbitration hearing that the Postal Service is under no contractual obligation to allow employees the choice of picking and choosing their work location, and that the complexity of automated mail processing now necessitates the obliteration of the past practice of allowing employees to trade daily work assignments. Accordingly, the

Service has implemented a rotation system to insure that all employees are capable of processing on all machines and operations. (Joint Exhibit No. 2).

The Arbitrator is in agreement with the Postal Service that the Contract does not specifically state that employees have the right to pick and choose, or trade, daily work assignments. Absent a past practice, the Service would arguably prevail on this point. However, it is clear from Union Exhibits Nos. 1 and 2 that a mutually accepted past practice did exist. Accordingly, the Postal Service became obligated to adhere to that practice as it was agreed to by the Parties through practice over time and was clearly a benefit to the employees.

With regard to the position of the Service that automated mail processing now necessitates the obliteration of the past practice of allowing employees to trade daily work assignments, the Undersigned Arbitrator notes that the Service only abolished the practice on Tour III. The Undersigned Arbitrator further notes that it is undisputed that the practice of trading continues to exist on Tours I and II. The Undersigned Arbitrator is therefore hard pressed to accept the position of the Service that trading imposes an undue burden on Postal Service operations when two out of the three tours still allow for the trading of daily work assignments.

During the course of the arbitration hearing, it was suggested through witness testimony that the Union sought through the grievance procedure to end the practice of trading assignments. This perception on the part of the Service, however, appeared to stem from a communication problem that arose during the course of

It is also the Undersigned Arbitrator's opinion that the Postal Service did not take the appropriate steps to change the established past practice, nor did the Union request that the practice cease as noted above. See also, Elkouri and Elkouri, How Arbitration Works, (BNA, 4th Edition, 1985) at pages 442-447. Accordingly, the instant grievance must be sustained.

AWARD

The Postal Service is ordered to cease and desist its current practice and to reinstate the practice of allowing employee to trade daily work assignments on Tour III until such time the Parties bargain or mutually agree to a change in the trade assignment practice.

The instant grievance is sustained.



Lamont E. Stallworth
Arbitrator

Signed this 27th day of February, 1999

City of Chicago
County of Cook
State of Illinois