

REGULAR REGIONAL ARBITRATION PANEL

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

Grievant: Class Action  
Post Office: Des Moines, Iowa  
Case No: 190C-4I-C 95-066373  
Loc # 77-95-10533

Before: John C. FLETCHER, Arbitrator

Appearances:

For the Postal Service: Mr. Stephen J. Thalkin  
Labor Relations Specialist  
Hawkeye District - USPS  
Post Office Box 18994  
Des Moines, Iowa 50318-9994

For the Union: Mr. Carl Casillas  
National Business Agent  
St. Louis Region - Clerk Division - APWU  
1001 East 101st. Terrace, Suite 390  
Kansas City, Missouri 64131

Place of Hearing:  
Date of Hearing: June 4, 1997  
Date of Award: July 7, 1997  
Relevant Contract Provisions: Article 13 and Article 37 of the National Agreement  
Contract Year: 1990 - 1994  
Type of Grievance: Contract

Award Summary

The grievance is sustained. Management's bases for switching Job I.D. 7653499 - Postage Due Clerk, from Tour 2 to Tour 1, 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.

  
John C. FLETCHER, Arbitrator

OPINION AND AWARD

I90C-4I-C 95-066373 - Class Action  
Des Moines, Iowa

Background:

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.

In appeal to Step 3, APWU repeated and enlarged upon the contentions stated at Step 2. The Step 3 denial noted that:

The issue in this case is whether Mgmt. violated Article 37 in posting job #7655499 (sic) for bid as 0200-1030 S. M. off. The Union has not presented any documentation or evidence to show the posting was improper.

Timely appeal as made to this arbitration where APWU asked that the issue be framed as:

Whether Management violated the National Agreement when preferred duty assignment No. 7653499 was changed from Tour 2 to Tour 1 with different non-scheduled days?

If so what shall the appropriate remedy be?

Management would ask that the issue before the Arbitrator be framed as:

When the Tour 2 Postage Due Clerk job became vacant was it a violation of the Agreement when Management changed the hours and non-scheduled days of the position?

### DISCUSSION

The record in this case is sparse, partly because at the outset of the hearing the Advocate for APWU insisted that the Arbitrator strictly confine the Postal Service to a presentation of only those matters that were discussed at Steps 2 and 3 of the grievance procedure. APWU's Advocate indicated that its arguments that Position No. 7653499 was changed from Tour 2 to Tour 1 as "retaliation," simply because a Manager perceived that the Postage Due Section was abusing overtime, and that its arguments that the "pecking order" was not being followed in the matter of a reassignment of a limited duty employee, were merely answered with the statement that Management was exercising its rights under Articles 3 and 13, and nothing more. APWU indicated that it would object to any and all testimony and evidence presented beyond that developed at Steps 2 and 3, as being outside the preview of Article 15. It also indicated that the Postal Service was not now privileged to expound new theories, as these should have been developed at the steps of the procedure preceding arbitration.

With this, APWU presented testimony, mostly unrefuted, that its Steward and Local President were told that if Management kept getting complaints about the Postage Due Section they would all be put on nights. Also, that the "gentlemen's club" in Postage Due was going to be broken up. APWU's witnesses also indicated that it explored the availability of limited duty work in the Air Mail facility, the location of the injured employee, and was told that such work was available in that facility. Nonetheless, no attempt was made to accommodate the employee there, instead, Management seized upon the injury as an opportunity to retaliate in the Postage Due Section.

Management's case merely stated that it possessed certain rights under Article 3 and that it had an obligation under Article 13 to find work for employees injured on-duty. In response to APWU's contentions that Management was breaking up the gentlemen's club in Postage Due, the Service's witness did not deny the existence of a vendetta, as alleged by the Union, only that he was not aware of one. On the issue of providing work for limited duty employees, the Service's response was an explanation of the requirements and obligations of the ELM and OWCP, but no denial was forthcoming that suitable work was available in the employee's own facility.

Management possesses certain rights to direct employees and make assignments under Article 3. In the exercise of these rights it must act in accordance with other provisions of the Agreement. Further, it may not exercise these rights in an arbitrary or capricious manner. It may not use the power it retained in Article 3 in a retaliatory manner to redress perceived problems developing elsewhere. As in this case, when it elects to move a preferred duty assignment from Tour 2 to Tour 1, it must have a sound business basis for doing so. In this matter no sound business basis has ever been stated as the reason for the switch. If there was one, i.e., the efficiency of the Section was improved, the work was now available on Tour 1 and was no longer available on Tour 2, around-the-clock service was required, overtime would be eliminated by the switch, etc., then it should have been stated at either Step 2 or Step 3. That it was not supports the position of the Union and conclusively suggests that no business needs were present requiring that the job be moved from Tour 2 to Tour 1.

On the matter of the limited duty assignment, APWU has indicated that when this facet of the grievance was initially under discussion, it contacted the Air Mail facility and was told that sufficient limited duty work, within the employee's limitations was available at that location. This point has never been refuted by the Service. Part

546.14(a) of the ELM is clear that the first step of the pecking order is the injured employee's regular facility. That section reads in part:

[I]n assigning such limited duty, the USPS should minimize any adverse or disruptive impact on the employee. The following considerations must be made in effecting such limited duty assignments:

(1) To the extent that there is adequate work available within the employee's work limitation tolerances; within the employee's craft; in the work facility to which the employee is regularly assigned; and during the hours when the employee regularly works; at work constitutes the limited duty to which the employee is assigned. (*Emphasis added.*)

Accordingly it must be concluded that the switch of Position No. 7653499 from Tour 2 to Tour 1 was pretextual, and that the pecking order for the assignment of limited duty work to the injured employee was not followed. We will order that the job be returned to Tour 2 and promptly bulletined, as requested in the original grievance.

#### AWARD

The grievance is sustained. Management's bases for switching Job I.D. 7653499 - Postage Due Clerk, from Tour 2 to Tour 1, 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.

  
John C. FLETCHER, Arbitrator

Mount Prospect, Illinois - July 7, 1997