#89

ARBITRATION AWARD

August 23, 1982

UNITED STATES POSTAL SERVICE

-and-

Case No. H8C-2F-C-7406

AMERICAN POSTAL WORKERS UNION

Subject: Propriety of Cross-Craft Assignment

Statement of the Issue: "Did Management have the right to make such a [cross-craft, Mail Handler to Clerk,] assignment under Article III of the National Agreement? Did Management violate Article VII, Section 2-B and/or C, Article VIII, Section 5 or Article XXV in making such assignment?"

Contract Provisions Involved: Articles III, VII, VIII and XXV of the July 21, 1978 National Agreement.

Grievance Data:	Date
Grievance Filed:	August 18, 1980
Step 2 Answer:	October 6, 1980
Step 3 Answer:	November 18, 1980
Step 4 Answer:	February 25, 1981
Appeal to Arbitration:	March 3, 1981
Case Heard:	March 23, 1982
Transcript Received:	April 2, 1982
Briefs Submitted:	May 14, 1982

Statement of the Award: The grievance is granted. The Postal Service should pay a total of five hours at straight time rate to the Distribution Clerk (or Clerks) to be designated by the parties.

BACKGROUND

This grievance protests Management's action in assigning a Mail Handler to Distribution Clerk work, part of the Clerk craft, at the Pittsburgh Bulk Mail Center (BMC) on July 27, 1980. The Union insists this cross-craft assignment was a violation of Article VII, Section 2-B of the 1978 National Agreement. The Postal Service disagrees.

The essential facts are not in dispute. The Pittsburgh BMC handles non-preferential mail, i.e., second, third and fourth class mail. It has two basic tours, Tour 2 which operates seven days a week, 7:00 a.m. to 3:30 p.m., and Tour 3 which operates Monday through Friday, 6:30 p.m. to 3:00 a.m. Because non-preferential mail was backing up on weekends with a large backlog each Monday morning, Management decided in late 1979 to establish a mini-tour on Saturday and Sunday. It placed this mini-tour on Tour 3 hours, 6:30 p.m. to 3:00 a.m.

On Sunday, July 27, 1980, there were nineteen Distribution Clerks (Level 5) and one Mail Handler (Level 4) on this mini-tour. The Distribution Clerks were distributing mail (casing letters and flats, etc.) in the "paper room." The Mail Handler was dumping sacks of mail onto a belt outside the "paper room." There were no other mail processing employees on duty in the BMC at that time. Mail Handlers are represented by the Laborers International Union of North America; Distribution Clerks are represented by the American Postal Workers Union. They are different crafts.

The Mail Handler dumped sacks for the first three hours of this Sunday tour. He then ran out of work. Management reassigned him to work as a Distribution Clerk in the "paper room." He spent five hours on the latter job and he was paid the Distribution Clerk rate (Level 5) for those hours. His reassignment prompted the instant grievance.

Management anticipated this problem before it occurred. It advised the Union in mid-July 1980 that the Mail Handler on the mini-tour might not have sufficient work on Saturday or Sunday and that he would, in such circumstances, be reassigned to Distribution Clerk work. The Union voiced its objection. It suggested various ways in which the Mail Handler could be employed within his own craft for the full eight-hour tour. Its suggestions were not acceptable to Management. Hence, each time a Mail Handler was placed on Distribution Clerk work, a grievance was filed. There were several such grievances, only one of which is before the arbitrator in this case.

The parties agree that the movement of the Mail Handler to the Distribution Clerk job was a cross-craft assignment. The issue is whether this cross-craft assignment was a violation of Article VII, Section 2-B. This provision, along with Article VII, Section 2-A and -C, and Article XXV, read in part:

Article VII - Employee Classifications

"Section 2 - Employment & Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken...

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employees' knowledge and experience, in order to maintain the number of work hours of the employees' basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary." (Emphasis added)

Article XXV - Higher Level Assignments

"1. Higher level work is defined as an assignment to a ranked higher level position, whether or not such position has been authorized at the installation.

"2. An employee who is detailed to higher level work shall be paid at the higher level for time actually spent on such job...

"4. Detailing of employees to higher level bargaining unit work in each craft shall be from those eligible, qualified and available employees in each craft in the immediate work area in which the temporarily vacant higher level position exists...". (Emphasis added)

DISCUSSION AND FINDINGS

This is not the first time Article VII, Section 2-B and -C have been construed by an arbitrator from the national panel. Arbitrator Bloch considered these provisions in Case No. H8S-5F-C-8027. His ruling included the following observations:

"...[Article VII,] Section 2 deals with, among other things, limited circumstances wherein the inherent proscription against crossing craft lines is inapplicable. Paragraph B...specifies that the eventuality of 'insufficient work' on a given occasion will justify the crossing of craft lines for the purpose of providing an employee an eight-hour day. [Paragraph] C...refers primarily to a situation where 'exceptionally heavy work' occurs in another occupational work group...[Paragraph] C... provides that, when such heavy workload occurs, and when there is at the same time a light load in another group, craft lines may be crossed.

"Taken together, these provisions support the inference that Management's right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforeseeable. There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel usage; this is not what the parties have bargained. That an assignment across craft lines might enable Management to avoid overtime in another group for example, is not, by itself, a contractually sound reason. It must be shown either that there was 'insufficient work' for the classification or, alternatively, that work was 'exceptionally heavy' in one occupational group and light, as well, in another.

"...the reasonable intent of this language [Paragraphs B and C is] ...not to provide means by which the separation of crafts may be routinely ignored but rather to provide the employer with certain limited flexibility in the face of pressing circumstances..." (Emphasis added)

The principle seems clear. Where Management makes a cross-craft assignment, it must justify that assignment under the terms of VII-2-B or VII-2-C. If no such justification is provided, the cross-craft assignment is improper under the "inherent proscription..." in VII-2. The Postal Service does not claim Arbitrator Bloch's interpretation is incorrect. It has not asked me to modify or overrule his award.

However, the statement of this principle does not resolve the present dispute. The Mail Handler who was dumping sacks on the evening mini-tour on July 27, 1980, ran out of work after three hours. There was "insufficient" work for him that day. That fact gave Management the right, under VII-2-B, to "assign the employee [here, the Mail Handler] to any available work in the same wage level for which the employee is qualified..." Plainly, more than one condition must be satisfied before a cross-craft assignment can be validated by VII-2-B. There must be not only (1) "insufficient work" for the employee but also (2) other "available work" (3) which he is "qualified to perform" and (4) which is "in the same wage level."

The first three conditions were met in this case. The fourth is the crux of the problem. The Union stresses that a Mail Handler, a Level 4 position,, was made a Distribution Clerk, a Level 5 position. It believes that this was not an assignment "in the same wage level", that VII-2-B is inapplicable in this situation, and that Management has hence failed to provide justification for this cross-craft assignment. The Postal Service has a quite different view of the evidence. It alleges that the Mail Handler's assignment to Distribution Clerk was "in the same wage level."

This disagreement suggests that the parties have conflicting ideas as to the meaning of the term, "in the same wage level." A careful review of the post-hearing briefs, however, shows no such conflict. The Postal Service's brief (page 7) states that "Article VII, Section 2B... is concerned with lateral, day to day work assignments..." Its brief recognizes that a "lateral" move involves going from one job to another "in the same wage level." That is the Union's reading of VII-2-B as well.

It seems the real disagreement is one of fact. The Postal Service's brief (page 8) states that the Mail Handler in question "was upgraded to Level 5 and was then assigned laterally to work with the [Distribution] Clerks." It maintains, in other words, that the movement here was Level 5 Mail Handler to Level 5 Distribution Clerk. This argument is not at all persuasive. The Mail Handler was in Level 4 before being made a Clerk for the remainder of his July 27, 1980 tour. He was performing what is regarded as Level 4 work, i.e., dumping sacks of mail on the "paper belt." He was not assigned to any Level 5 Mail Handler work. Nor does he appear to have been processed through any kind of procedure which would have made him a Level 5 Mail Handler. Hence, the Postal Service allegation that he was "upgraded to Level 5..." before being assigned to a Clerk job is not borne out by the evidence. This was a bare claim, nothing more. If the Postal Service could "upgrade" an employee within his craft in the manner it says it did in the present case, then the VII-2-B requirement that a cross-craft assignment be "in the same wage level" would be meaningless.

It follows that the protested Mail Handler did not make a "lateral" move on July 27, 1980, that he hence was not assigned to a job "in the same wage level", and that Management has not been able to justify its cross-craft assignment under VII-2-B.[1] That cross-craft assignment, Mail Handler to Distribution Clerk, was improper under the principle stated in Arbitrator Bloch's award.

The Postal Service resists this conclusion on several grounds. It urges that no VII-2-B violation can be found (1) because of the negotiating history behind this provision, (2) because of past practice with respect to cross-craft assignments in the Pittsburgh BMC, (3) because of alleged inconsistencies in the Union's position, and (4) because of the settlement terms of a Jacksonville, Florida grievance involving a similar issue. Each of these contentions is discussed below.

1 Management's rights under Article III are obviously limited by the restrictions imposed by VII-2-B. Management made no attempt to justify its cross-craft assignment under VII-2-C.

Negotiating History

The Postal Service contends the words "in the same wage level" were written into VII-2-B of the 1971 National Agreement because of the Union's concern that employees could otherwise be given a cross-craft assignment to a lower wage level job with a consequent loss of earnings. It notes these words were added before the wage protection provisions of Article XXV were agreed upon. Its argument appears to be that VII-2-B, read in light of this bargaining history, should not be interpreted to prohibit a cross-craft assignment to a higher wage level job, i.e., from Level 4 Mail Handler to Level 5 Distribution Clerk.

The difficulty with this argument is that the parties did not limit the application of VII-2-B to assignments to a lower wage level job. They adopted contract language which permitted only those cross-craft assignments which were "in the same wage level." That formula would, on its face, preclude assignments to lower or higher wage level jobs. The Postal Service acknowledged this reality in its post-hearing brief by describing VII-2-B as being "...concerned with lateral, day to day work assignments..." Given this concession, the Postal Service cannot be allowed to use the 1971 negotiations as a basis for further limitations on the applicability of VII-2-B.[2]

Past Practice

The Postal Service asserts that a practice of cross-craft assignments to higher and lower wage level jobs exists at the Pittsburgh BMC and elsewhere. It believes that VII-2-B, when construed in light of this practice, cannot prohibit the cross-craft assignment made in this case, Mail Handler to Distribution Clerk.

---

2 In subsequent negotiations, both sides proposed changes in the language of VII-2-B. The Postal Service sought in 1973 and again in 1978 to delete the words in question, "in the same wage level", from VII-2-B and -C. It did not prevail. The Union sought in 1975 to remove all of VII-2-B and -C from the National Agreement. It did not prevail. None of this history warrants any change in the interpretation I have already given VII-2-B.

This argument improperly lumps together a variety of different assignments. It is true that Management at the Pittsburgh BMC has assigned Clerks to Mail Handler jobs on numerous occasions over the years. Such cross-craft assignments may well have become a practice in this facility. Indeed, the 1978 Local Memorandum of Understanding stated that "all part-time flexible schedule clerks on duty will be reassigned to mailhandler assignments before regular clerks are reassigned to mailhandler duties."[3]

But the dispute here involves a move in the opposite direction, Mail Handler to Clerk. The evidence reveals that Mail Handlers have been assigned to Clerk jobs on only one occasion. That was in 1976 during a United Parcel Service (UPS) strike. A large increase in the Postal Service's business resulted in Clerks working a great deal of overtime and in a need for more Clerk manhours than were available. Management's response was to upgrade some Mail Handlers to Clerk. This single move, even though it concerned several Mail Handlers, can hardly constitute a practice. That is especially true given the fact that this cross-craft assignment was prompted by a truly unique situation.

I find that any cross-craft assignment practice involving Clerks moving to Mail Handler does not control Mail Handlers moving to Clerk. These are separate and distinct matters. Because there is no proven practice for Mail Handlers moving to Clerk, the Postal Service's practice argument must be rejected.

I am not unmindful of the July 1982 National Memorandum of Understanding on this subject. It provides that "in applying...Article...VII..., cross craft assignments of employees ...shall continue as they were made among the six crafts under the 1978 National Agreement." This understanding was executed roughly two years after the instant grievance was filed. It therefore is not relevant to this dispute. Its emphasis on past practice, however, does suggest that practice must always have been a consideration in the application of

3 This Memorandum of Understanding, involving as it does the Clerks' bargaining representative, cannot be binding on the Mail Handlers.

the cross-craft assignment principles in VII-2-B. And the practice should, in my opinion, deal with specific "employees", i.e., the specific craft and specific facility involved in the assignment. That is exactly what I have done in analyzing this dispute.

Union Inconsistency

The Postal Service stresses that the Union has no objection to Clerks moving to Mail Handler under VII-2-B even though that is not a cross-craft assignment "in the same wage level." It says that if the Union has no quarrel with movement to a lower wage level job, there should be no quarrel with movement to a higher wage level job (i.e., Mail Handler to Clerk).

This argument ignores the plain meaning of VII-2-B. As explained earlier, the only permissible assignments under this contract clause are those "in the same wage level." It is hardly surprising that the Union has no quarrel with Clerks moving to Mail Handler. For such an assignment enlarges the Clerks' work opportunity. It is the Mail Handlers who would have reason to protest such a move. Therefore, the Union's apparent inconsistency is nothing more than an expression of self-interest. Its failure to object to Clerks moving to Mail Handler cannot, under these circumstances, become the kind of precedent which would be binding with respect to Mail Handlers moving to Clerk.

Jacksonville Settlement

The Postal Service relies also on the parties' settlement of a Jacksonville, Florida grievance which was pending in national arbitration. It notes that the settlement provided that the movement of Mail Handlers to Clerk in Jacksonville on account of "unscheduled absences, ...unavailability of replacements and heavy parcel post volume...[was] not inconsistent with the National Agreement" requirements on cross-craft assignments. It urges that the Union thereby "accepted as contractually correct the practice of upgrading Mail Handlers to perform Clerk work..."

This argument is not convincing. To begin with, the parties' settlement is dated November 9, 1981. That is more than one year after the instant grievance was filed. There is no indication in the settlement that the parties meant to

apply its terms retroactively to other grievances then pending arbitration.[4] More important, the settlement was expressly "based on the fact circumstances of this particular [Jacksonville] case..." And Management agreed that it "will only utilize this procedure in an emergency situation in order to maintain the efficiency of operations..." There was certainly no "emergency situation" in the Pittsburgh BMC on July 27, 1980, when the Mail Handler was moved to Distribution Clerk for five hours. Thus, the Jacksonville settlement is clearly distinguishable from the facts of the present case.

* * * *

For these reasons, my ruling is that Management's action in assigning a Mail Handler to Distribution Clerk on July 27, 1980, in the Pittsburgh BMC was a violation of Article VII, Section 2. In view of this ruling, the parties' arguments regarding Article XXV need not be answered. The Postal Service, in any event, has not invoked XXV here to justify the Mail Handler's cross-craft assignment to Clerk.

As for the remedy, Management did not work any of the Distribution Clerks overtime on July 27, 1980. Even had the Mail Handler remained on his regular job for the full tour, Management would not have called in any Clerk for overtime in the "paper room." Overtime was simply not needed. Overtime pay would not be a proper remedy. However, the cross-craft assignment of this Mail Handler was a violation of the National Agreement and he did perform work which should have been performed by Distribution Clerks. The latter were injured by the violation and there is no way for them to get that work back. Accordingly, the appropriate remedy is to pay five hours at straight time rate to one or more Clerks to be designated by the parties.

AWARD

The grievance is granted. The Postal Service should pay a total of five hours at straight time rate to the Distribution Clerk (or Clerks) to be designated by the parties.

Richard Mittenthal

Richard Mittenthal, Arbitrator

4 The instant grievance was appealed to arbitration on March 3, 1981.