

AIRS 4656

C# 00154

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration between the
UNITED STATES POSTAL SERVICE
and
American Postal Workers Union, AFL-CIO

Grievant: P. Lockwood
(Union Grievance)
Post Office: E. Northport, NY.
Case No: NIC-IM-C-30525

Before Rodney E. Dennis, Arbitrator

Appearances:

For US Postal Service:

Rosemarie Dowling

- MSC Director, Employee and
Labor Relations, Hicksville, N.Y.

For the Union:

John Bernovich

- Executive Vice President,
Long Island Area Local APWU

Date of Hearing: February 11, 1985

Place of Hearing: Carle Place, Long Island

Award: The grievance is denied.

Date of Award: March 4, 1985

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BACKGROUND OF THE CASE

In the Spring of 1984, the Postmaster at the East Northport, Long Island, Post Office informed the employees that they could not be guaranteed more than three weeks of vacation during prime time, even though they could request more than three weeks during that period. A grievance was filed by the Local Union Officials alleging that the Postal Service had violated past practices, as well as the National Agreement. The grievance was denied at each step and has been processed to arbitration.

THE ISSUE

Did the Postmaster violate the National Agreement, specifically Article 10, Section 3(d), when he failed to guarantee employees more than three weeks' vacation during prime time when the vacation list was circulated and employees picked vacations for the year 1984? If so, what shall the remedy be?

CONTRACT LANGUAGE INVOLVED IN THIS ARBITRATION

ARTICLE 10 LEAVE

Section 3. Choice of Vacation Period

D. Annual leave shall be granted as follows:

1. Employees who earn 13 days annual leave per year shall be granted up to ten (10) days of continuous annual leave during the choice period. The number of days of annual leave, not to exceed ten (10), shall be at the option of the employee.

2. Employees who earn 20 or 26 days annual leave per year shall be granted up to fifteen (15) days of continuous annual leave during the choice period. The number of days of annual leave, not to exceed fifteen (15), shall be at the option of the employee.
3. The subject of whether an employee may at the employee's option request two (2) selections during the choice period(s), in units of either 5 or 10 working days, the total not to exceed the ten (10) or fifteen (15) days above, may be determined pursuant to local implementation procedures.
4. The remainder of the employee's annual leave may be granted at other times during the year, as requested by the employee.

LOCAL MEMORANDUM OF UNDERSTANDING

October 6, 1981 - July 20, 1984

4-12. FORMULATION OF LOCAL LEAVE PROGRAM.

- A. The choice vacation period will be the months of June, July, August and September.
- B. The number of employees scheduled for choice vacation period will be (20%) of the clerk force. A maximum of (3) employees will be granted annual leave during the choice vacation period.
- C. The number of employees scheduled for vacation during non choice vacation period will be (13.3%). A maximum of (2) employees scheduled granted leave in non choice vacation period. December will be excluded for vacation selections.
- D. All employees shall be allowed up to (3) weeks vacation during choice period.

POSITIONS OF THE PARTIES

The Union

The Union contends that the Postmaster at East Northport (the present one, as well as the former Postmaster) always allowed three employees at the same time to be off on vacation during prime

time. This occurred even though some of the employees on vacation had previously had three weeks of prime time vacation. It argues that the vacation list is passed around and that each employee (based on seniority) makes his or her selection of vacation time. If there are any prime time slots not selected after every one has had a chance to indicate his or her first choice for the vacation period, the most senior employee has a second chance to pick vacation during prime time beyond the initial three weeks selected. This process continues until all prime time slots are spoken for or until all employees have used up their available vacation.

The Union emphatically states that, in the past, no employee was ever told that he or she could not have the prime time vacation selected if the slot was available. It argues that the Local Agreement states that three employees will be granted vacation during the prime time period and in the instant case, the Postmaster would allow only two employees at a time to be on vacation, not the three authorized by Agreement. The Union submitted a recent arbitration award by

Arbitrator Walter M. Colleran, Case No. NIC-IM-C-6141, in support of its position in this case.

Given all the facts presented, the Union requests that the grievance be upheld and that Management at East Northport be required to approve more than three weeks of prime time vacation for any employee who selects it, as long as the slots are available.

The Postal Service

The Postal Service argues that it can not be required to grant more than three weeks prime time vacation to any one employee, even though each employee has a right to select whatever time is available after the vacation selection process has been completed for the first time.

The Postal Service does not dispute any testimony offered by the Union in this case, nor does it take exception to the Colleran arbitration award. The Postal Service simply argues that it is not required by National Agreement or by Local Agreement to grant more than three weeks of prime time vacation to any one employee. Additional prime time vacation can be requested by the employee, but it is granted at the discretion of the Postmaster, not as a matter of right, whether all prime time slots are spoken for or not. The grievance should be denied.

FINDINGS

The differences in this case are subtle ones but ones that are of major importance to both parties to this dispute. The Union is saying that the Local Agreement requires that three employees will be granted vacation during prime time, that it has always been that way at East Northport, and that when the Postmaster questioned a number of employees who had indicated that they wanted more than three weeks off during this period of the year, he violated a long-standing past practice and the Arbitrator should not allow him to do so. The practice, it argues, has the same standing as a contract clause and can not be unilaterally changed.

The fine distinction comes into play when Management's position on this point is considered. Management agrees that the employee can request more than three weeks vacation during prime time and that as long as three or less employees are to be off during this prime time, the employee's request can not be unreasonably denied. It does not agree, however, that more than three weeks of prime time vacation is an automatic right of an employee.

Management's position in this instance is the correct one and all the acceptable arbitrable principles and the arbitration award submitted by the Union support its position.

Both the National Agreement and the Local Agreement clearly

state that all employees will be allowed up to three weeks' vacation during prime time. Neither of these Agreements can be read to require that under any conditions, an employee must be granted more than three weeks' vacation during prime time.

The Union's argument that a past practice existed at East Northport that allows each employee to take as much prime time vacation as he or she chooses as long as not more than three employees were off at the same time may very well be true. That practice, however, can not be raised to change the clear language of the Agreement. The pertinent Agreement language here clearly states that the Postal Service shall grant up to three weeks of prime time vacation to each employee who has available leave on the books. That is all that is required. What has taken place in the past on this point at East Northport has not changed the Agreement. The Employer, as well as the Union, has a right to enforce the contract as written and that is what is being done here.

Finally, the arbitration award relied on so heavily by the Union is clearly supportive of Management's position. Management in this case has stated that it has no problem with an employee requesting more than three weeks of prime time vacation. Its problem arises (and rightfully so) with the Union's insistence that if a spot is available and a request is made, it must be granted by Management.


That is not required by Agreement, arbitrable principle, or Arbitrator Colleran's award. What Arbitrator Colleran stated is the following:

Employees should have the right, under past practice, to request additional annual leave in the choice period where there is an open spot and the limit of the number of employees off is maintained. Such a request should not be unreasonably denied.

That does not state that the employee has a right to have his or her request granted. It states that an employee has the right to request the additional time off and the Postal Service shall not unreasonably deny the request. That is the position taken by the Postal Service in this case and I can find no reason to disagree with it.

AWARD

The grievance is denied.


Rodney E. Dennis
Arbitrator

New York, New York
March 4, 1985