

In the Matter of the Arbitration Between:

C383

UNITED STATES POSTAL SERVICE

AND

Case No. H1C-4B-C-7361

AMERICAN POSTAL WORKER UNION,
AFL-CIO

Hearing held February 22, 1983

Before Richard I. Bloch, Esq.

APPEARANCES:

For the Union

Gerald "Andy" Anderson
Assistant Director, Clerk Division

For the Postal Service

D. James Shipman
Manager, Arbitration Branch

Frank M. Dyer
Labor Relations Specialist

C. Earl Melvin
Manager, Customer Services

OPINION

Facts

On January 28, 1982, Susan Zacharias, a full-time regular city letter carrier in the Dearborn, Michigan Post Office, received a letter advising her she was being reassigned to the Clerk Craft due to an apparent physical inability to perform assigned letter carrier functions. On February 20, 1982, she was so reassigned.

On February 25, Management posted a notice to all Distribution Clerks indicating that Ms. Zacharias had been re-assigned to the position of full-time Distribution Clerk and stating further that the vacancy created by the assignment would be filled in accordance with the National Agreement, Article XIII, Section E. It stated:

The resulting Full Time Vacancy in the Carrier Complement, not necessarily in the particular duty assignment, is being posted to give employees in the gaining craft the opportunity to be reassigned to the vacancy if they so desire.

Thereafter, on March 7, 1982, Grievant Beverly Foley, then employed as a full-time regular distribution clerk at the Dearborn Post Office, applied for the carrier job. Her application was successful and, on April 3, 1982, she was reassigned to the letter carrier craft. In accordance with the National Agreement, upon the change, Grievant's seniority as a letter carrier was modified to the extent that she would become one day junior to the then-junior full-time regular in the letter carrier craft.

The matter would have rested peacefully but for the fact that, in the meantime, Ms. Zacharias had grieved her reassignment from letter carrier to clerk. And, on April 15, 1982, her grievance was settled on a non-precedent basis by an agreement whereby Zacharias would return to the letter carrier craft and, indeed, to the same bid position she had assumed before her involuntary reassignment. As a result of Zacharias'

return, Grievant Foley was returned to the clerk craft. Then, she grieved.

Issue

Was it a violation of the labor agreement for Management to have displaced Grievant Foley by returning her, involuntarily, to the clerk craft?

Union Position

The Union says Foley had properly requested, and had been awarded, the carrier craft position. This was a cross-craft assignment, it says, that could not be revoked at the whim of Management. Accordingly, it says that Foley should have remained in that position. In the alternative, it requests that Foley be awarded "out-of-schedule" pay for the time spent in the classification.

Management Position

Management says the Zacharias settlement nullified the transfer; therefore, it was appropriate to reinstate the status quo by returning each of the two employees to her prior position. It denies any contract violation.

Relevant Contract Provisions

ARTICLE 13
ASSIGNMENT OF ILL OR INJURED REGULAR WORK
FORCE EMPLOYEES

Section 4. General Policy Procedures

. . . I. If a full-time regular employee is re-assigned in another craft for permanent light duty and later is declared recovered, on medical review, the

employee shall be returned to the first available full-time regular vacancy in complement in the employee's former craft. Pending return to such former craft, the employee shall be an unassigned full-time regular employee. The employee's seniority shall be restored to include service in the light duty assignment.

Section 5. Filling Vacancies Due to Reassignment of an Employee to Another Craft

When it is necessary to permanently reassign an ill or injured full-time regular or part-time flexible employee who is unable to perform the regularly assigned duties, from one craft to another craft within the office, the following procedures will be followed:

A. When the reassigned employee is a full-time regular employee, the resulting full-time regular vacancy in the complement, not necessarily in the particular duty assignment of the losing craft from which the employee is being reassigned, shall be posted to give the senior of the full-time regular employees in the gaining craft the opportunity to be reassigned to the vacancy, if desired.

Analysis

Article 13, Section 5 specifies procedures for filling vacancies in situations such as this. In specific terms, it refers to the fact that a "resulting full-time regular vacancy" such as that arising when Zacharias was transferred is to be "posted to give the senior of the full-time regular employees in the gaining craft the opportunity to be reassigned to the vacancy, if desired." Thus it was that the light duty reassignment of Zacharias to the clerk craft gave rise to Foley, a clerk, responding to the posting and securing the transfer to the letter carrier craft. All this was fully in accordance with the contract. At that point, Foley had properly secured the position.

The Service suggests there is no general contract provision permitting movement on a permanent basis between crafts. But Article 13, Section 5 allows an individual, subject to certain seniority adjustments (see Section 6) to assume just such a vacancy on a permanent basis.¹ Thus, Foley had attained her job fair and square. The question is whether the subsequent grievance settlement relevant to Zacharias should have served to displace her. For the reasons that follow, the finding is that it should not and that the grievance, therefore, has merit.

The Service says the April settlement "effectively nullified the transfer of Zacharias pursuant to Article 13. As such," says the Employer, "it nullified the exchange which had taken place pursuant to the terms of Article 13."² There is no contractual foundation for this assertion, however. It was fully within the parties' prerogatives to settle the Zacharias problem. But even assuming, without deciding, that the parties could somehow modify the terms of the existing labor agreement at that point, they did not do so. The sole

¹One notes that the parties provided for the contingency of the reassigned ill or injured employee later being declared recovered. In that case, according to Section 4(I), "The employee shall be returned to the first available full-time vacancy in complement in the employee's former craft." Until then, the employee remains an unassigned full-time regular in their reassigned status. Thus, the recovery of such employee does not, per se, dictate the "bumping" of the successor.

²Management brief, p. 7.

result of the non-precedential Zacharias settlement was to return her to her bid assignment in the city carrier craft. But that assignment had already been populated. Clearly, there was a contractual problem. Foley had properly attained the job to which Management had just agreed to return another employee. Predictably, another grievance would, and did, follow.

Management argues that the light duty reassignment of Zacharias to the clerk craft was the "condition precedent" to a transfer of Foley. When that condition precedent ceased to exist, it contends, so did the right of any clerk to transfer to the letter carrier craft. This position, however, overlooks the fact that the Zacharias transfer had already been made, and so had Foley's. There simply was no contractual justification foundation for removing Foley.

The parties differ as to what would have followed had Foley been retained in the position instead of displaced. The Union suggests that, in accordance with Section 4(I), cited earlier, Zacharias should have been retained in her then-current clerk craft position pending a vacancy in the letter carrier craft. Management, for its part, suggests that Zacharias could have been returned to the letter carrier craft, in which case it could have declared an excess of full-time letter carriers, requiring the involuntary re-assignment of a full-time letter carrier to the clerk craft;

this, it notes, would have been Foley since she occupied the position of junior full-time regular letter carrier at the time. These are potentially significant questions in terms of the ultimate disposition of this matter, but they have not been fully explored in argument, either at the hearing or in the briefs and may well be moot, given the passage of time following institution of this grievance and the potential staffing configurations that may presently exist.

For purposes of this case, the finding is that Management erred in displacing Grievant Foley, who had properly applied for and been awarded the job. The Arbitrator declines to speculate on subsequent potential staffing changes. It suffices here to note that it was not within Management's prerogatives to displace Foley pursuant to the Zacharias settlement.

AWARD

The grievance is granted in accordance with the above Opinion. The Zacharias settlement did not provide grounds for displacing Foley.



Richard I. Bloch

October 5, 1983