

ARBITRATION AWARD

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A.B

March 8, 1982

UNITED STATES POSTAL SERVICE
Saginaw & Livonia, Michigan

-and-

Case Nos. H8N-4B-C-16721
H8N-4B-C-25427

NATIONAL ASSOCIATION OF LETTER
CARRIERS

Subject: Seniority - Filling Day-to-Day Assignments

Statement of the Issue: Whether the Postal Service's refusal to allow letter carriers to use their seniority to choose from among available assignments on a given day was a violation of Article XLI, Section 2-A-1?

Contract Provisions Involved: Article XLI, Section 2 of the July 21, 1978 Agreement.

<u>Grievance Data:</u>	<u>Date</u>	
	<u>Saginaw</u>	<u>Livonia</u>
Grievance Filed:	4-30-80	1-6-81
Step 2 Answer:	5-9-80	1-20-81
Step 3 Answer:	7-15-80	2-17-81
Step 4 Answer:	11-7-80	5-14-81
Appeal to Arbitration:	12-1-80	5-19-81
Case Heard:	11-24-81	11-24-81
Briefs Submitted:	12-30-81	12-30-81

Statement of the Award: Article XLI, Section 2-A-1 does not require the Postal Service to honor seniority in filling a day-to-day assignment. The grievances are denied.

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BACKGROUND

These grievances raise a question of interpretation with respect to Article XLI, Section 2-A-1 of the 1978 National Agreement. NALC insists that letter carriers who report to work without assignments on a given day have a right to use their seniority to choose among the available assignments. It states that this right can be overridden only for "reasons pertaining directly to management's efficient use of the work force." The Postal Service disagrees. It believes letter carriers have no right to choose a daily work assignment on the basis of seniority under the above provision.

Some brief description of the grievances will help to place the dispute in sharper focus.

The first case arose in the Saginaw, Michigan post office. There were a large number of sick leaves the week of April 6, 1980. Management had to find replacements. It exhausted the overtime desired list. It then ordered certain employees to report for work on Friday, April 11. One of these employees was C. Moody, a full-time regular carrier.

Supervision placed Moody on a vacant "park and loop" assignment with a starting time of 7:00 a.m. Its decision was influenced by the fact that he ordinarily was scheduled on a "park and loop" route with the same starting time. Moody realized there were other assignments available that day. He requested route #308, a high volume, fully motorized curb line route with a starting time of 6:30 a.m. Supervision denied his request. It had placed a part-time flexible carrier on route #308. It believed this carrier was "more qualified" than Moody for this assignment. It emphasized that he, unlike Moody, had a good deal of experience on high volume, motorized routes.

Moody had more seniority than this part-time flexible carrier. He claimed his seniority rights under Article XLI, Section 2-A-1 had been violated and he filed a grievance.

The second case arose in the Livonia, Michigan post office. P. Fox was an unassigned full-time carrier. He approached supervision the week of December 14, 1980, and asked "if he could float through the next week." He explained that he did not wish to bid for any of the posted

five-day (or longer) assignments and that he would simply fill vacant assignments on a daily basis the following week. Supervision agreed to this arrangement.

Fox reported on Monday, December 22. He was told by supervision that there were three assignments available. Fox chose one of them. But he realized moments later that there had been a fourth route available as well. He requested that assignment. Supervision denied his request. It had already placed a part-time flexible carrier on that route. It refused to change the assignment because it considered her to be "more experienced" than Fox on this route and because it felt a need for route "efficiency and familiarity" given the heavy Christmas mail volume.

Fox had more seniority than this part-time flexible carrier. He claimed his seniority rights under Article XLI, Section 2-A-1 had been violated and he filed a grievance.

The relevant provisions of Article XLI (Letter Carrier Craft), Section 2 (Seniority) read as follows:

"A. Coverage

1. This seniority section applies to all regular work force letter carrier craft employees when a guide is necessary for filling assignments and for other purposes and will be so used to the maximum extent possible.

* * * *

"B. Definitions

1. Seniority for bidding on preferred letter carrier craft duty assignments and for other purposes for application of the terms of the National Agreement shall be restricted to all full-time regular city letter carriers.

2. Part-time regular letter carriers are considered to be a separate category and seniority for assignment and other purposes shall be restricted to this category.

3. Full-time reserve letter carriers, and any unassigned full-time letter carriers whose duty assignment has been eliminated in the particular delivery unit, may exercise their preference by use of their seniority for available craft duty assignments of anticipated duration of five (5) days or more in the delivery unit within their bid assignment areas, except where the local past practice provides for a shorter period.

4. Part-time flexible letter carriers may exercise their preference by use of their seniority for vacation scheduling and for available full-time craft duty assignments of anticipated duration of five (5) days or more in the delivery unit to which they are assigned.

* * * * * (Emphasis added)

NALC conceded that the Postal Service had "valid reasons" for making the assignments in question and that the Postal Service committed no contract violation in either grievance. Its concern, however, goes beyond the facts of these cases. It seeks an interpretation of Article XLI, Section 2-A-1. Its position is that this provision should be read to "requir[e]...the Postal Service to consider seniority as the prime determining factor in handling preferences for assignments of less than five days duration, except when there are overriding reasons pertaining directly to management's efficient use of the work force."

Notwithstanding the resolution of these two grievances, the Postal Service agreed with NALC that the interpretive issue was before the arbitrator and should be decided. Its view is that Article XLI, Section 2-A-1 does not require supervision to consider seniority in making assignments on a day-to-day basis. It believes this provision merely describes the "coverage" of Section 2, nothing more.

DISCUSSION AND FINDINGS

The critical contract language, Article XLI, Section 2-A-1, bears repeating. It states: "This seniority section

applies to all regular work force letter carrier craft employees when a guide is necessary for filling assignments and for other purposes and will be so used to the maximum extent possible."

Some elaboration on NALC's argument would be helpful. Take the Moody case as an example. The Saginaw, Michigan post office had several different assignments available on April 11, 1980. Moody preferred one of these assignments and sought to use his greater seniority to claim it. The Postal Service had "valid reasons" for giving this assignment to someone with less seniority. But NALC seeks a ruling here that, absent such "valid reasons", the Postal Service is contractually required by 2-A-1 to treat seniority as the "prime determining factor" in making this kind of assignment. The Postal Service disagrees.

There are several difficulties with NALC's position. Section 2-A-1 has a very limited purpose. It is a "coverage" clause. It describes the class of employees, namely, "regular work force letter carrier[s]...", who are entitled to rights set forth elsewhere in Section 2. It does not establish any independent substantive rights. One must look to other provisions of Section 2 (or perhaps other portions of the National or Local Agreement) to determine precisely what seniority rights a letter carrier may exercise.

All of this should be clear from a study of the relevant contract language. However, NALC fails to consider all the terms of Section 2-A-1. It reads this provision as if it said, "...seniority...applies to all regular work force letter carrier[s]...when a guide is necessary for filling assignments..." It thus ignores the two key words which surround "seniority". Section 2-A-1 does not state that "...seniority...applies..." Rather, it says "this seniority section applies..." The difference in meaning is great. The parties did no more than assert that "this [Section 2] applies to all regular work force letter carrier[s]..." They did not create a particular seniority application; they did not create a specific seniority right. They simply explained what class of employees were entitled to the seniority benefits expressed elsewhere in Section 2. To read something more into 2-A-1 is to distort the plain meaning of the language used.

The same result is suggested by other considerations. Section 2-B-3, for instance, deals with full-time reserve carriers or unassigned full-time carriers "whose duty assignments have been eliminated in the particular delivery unit..." They have a right to "exercise their preference by use of their seniority for available craft duty assignments of anticipated duration of five (5) days or more..." And, indeed, they can exercise this seniority preference for assignments of less than five days where there is a "local past practice" to that effect.

If, as NALC alleges, 2-A-1 allows carriers to choose from available day-to-day assignments on the basis of their seniority, there would be little need for 2-B-3.* The full-time reserve carrier (or unassigned full-time carrier) would simply invoke 2-A-1 when his duty assignment was eliminated. His greater seniority could then be employed to select from among the available assignments regardless of their duration. He could opt, for instance, for an available one-day assignment. Thus, NALC gives 2-A-1 a construction so broad that it would extract much of the meaning from 2-B-3.** That could hardly have been what the parties contemplated.

NALC stresses the history of Section 2-A-1, particularly the changes made in this provision in the 1978 negotiations. It notes that before 1978, 2-A-1 stated that "these rules apply to full and part-time employees...when a guide is necessary in filling vacant assignments..." It concedes that, "under this formula, the only guide to the filling of assignments was indeed the specific 'rules'...i.e. those set forth in sub-section B." This 2-A-1 language thus was not a guide for filling assignments. In 1978, the provision was amended to read that "this seniority section applies to all regular work force...carrier[s]...when a guide is necessary for filling assignments...and will be so used to the maximum extent possible." I cannot find the dramatic change in meaning which NALC attributes to this change in

* NALC's position would allow some distinction to be drawn between its claimed 2-A-1 and 2-B-3 rights. It would no doubt urge that a 2-A-1 right could be overridden by Management's need for efficiency while a 2-B-3 right could not be so overridden.

** This same analysis could be made of 2-A-1 and 2-B-4.

language. "These rules" became "this seniority section." But both terms are part of a "coverage" clause and both terms suggest one must look elsewhere for the relevant seniority application. Nor can NALC's interpretation be embraced because of the phrase, "...to the maximum extent possible." These words pose their own special interpretive problem but they certainly do not form a basis for ruling that 2-A-1 grants employees seniority rights in filling day-to-day assignments.

For these reasons, my conclusion is that 2-A-1 does not require Management to apply seniority in filling day-to-day assignments. The uses to which seniority can be put by a letter carrier are found in other provisions of Section 2.* Nothing in the bargaining history demands a different result.

AWARD

Article XLI, Section 2-A-1 does not require the Postal Service to honor seniority in filling day-to-day assignments. The grievances are denied.


Richard Mittenthal, Arbitrator

* There may be post offices, as NALC alleges, where carriers have been permitted for years to exercise seniority in filling day-to-day assignments. Whether such practices are binding on the Postal Service is not an issue before me and I make no judgment on this matter.

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