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C# 3227

ARBITRATION AWARD

April 23, 1981

UNITED STATES POSTAL SERVICE

-and-

Case No. N8-NA-0383

NATIONAL ASSOCIATION OF LETTER
CARRIERS

Subject: Temporary Supervisors - Accumulation of Seniority
within the Letter Carrier Craft

Statement of the Issue: Whether the Postal Service's practice of permitting employees to accumulate seniority within the letter carrier craft during such time as they serve as temporary supervisors is a violation of the National Agreement?

Contract Provisions Involved: Article XII, Section 2A
and Article XLI, Sections 2A and 2F of the July 21,
1978 National Agreement.

<u>Grievance Data:</u>	<u>Date</u>
Grievance Filed:	July 1, 1980
Step 4 Answer:	September 26, 1980
Appeal to Arbitration:	October 8, 1980
Case Heard:	February 26, 1981
Transcript Received:	March 13, 1981
Briefs Submitted:	April 10 & 13, 1981

Statement of the Award: The grievance is denied.

BACKGROUND

This dispute raises the question of whether an employee accumulates seniority within the letter carrier craft during such time as he serves as a temporary supervisor. The Postal Service says he does; NALC says he does not.

Supervisors are absent for a variety of reasons. They may miss a day or two because of illness; they may be gone a week or more because of vacation; they may be away even longer because of a special detail. Management ordinarily replaces them with craft employees. The latter become temporary supervisors.* While working in that capacity, they have the authority to adjust grievances on behalf of Management and to discipline employees. Appointment to such a temporary supervisor's position is strictly voluntary on the part of the employee.

Employees have always accumulated seniority within the letter carrier craft for time spent as temporary supervisors. Their original dates of hire were unaffected by such a supervisory stint.

However, this subject has been a source of conflict between the parties in recent years. NALC amended the membership eligibility provisions of its constitution at an August 1976 convention. Its constitution thereafter provided that "...any regular member of the NALC who is temporarily... promoted to a supervisory position... will not be eligible to continue their membership in the NALC." NALC subsequently interpreted this provision to mean that anyone accepting a temporary supervisor's position would not be eligible to participate in the NALC health benefits plan. These actions prompted a Postal Service charge that NALC was engaging in "unfair labor practices." The charge led to extensive NLRB litigation.

Also, during the negotiation of the 1978 National Agreement, NALC proposed the following clause: "Seniority does

* They are also known as 204(b) supervisors, a reference to Section 204(b) of the Postal Field Service Compensation Act of 1955.

not continue to accrue during service in temporary (204b)... supervisory positions." The Postal Service rejected this proposal on two grounds. First, it believed adoption of such a clause would pose severe administrative problems in maintaining seniority rosters. Second, it believed adoption of such a clause would significantly reduce the pool of craft employees willing to accept temporary supervisory positions. Bargaining on this issue led NALC to drop its proposal in return for a Postal Service concession on a related seniority matter.*

The instant grievance was filed in July 1980, two years after the execution of the 1978 National Agreement. It protests Management's action in continuing to permit employees to accrue seniority in the letter carrier craft during the period they are working as temporary supervisors. It was prompted by a November 8, 1979 Postal Service memorandum signed by Senior Assistant Postmaster General Ulsaker which stated in part:

"Recent arbitration and NLRB decisions hold that bargaining unit employees while temporarily assigned...to supervisory...positions are not employees under the collective bargaining agreements; and therefore not governed by the provisions of, nor entitled to the benefits provided by, such agreements.

"Our policy with respect to such assignments outside of the bargaining units will be to treat them as non-bargaining unit employees and to grant benefits consistent with those provided for other employees in the non-bargaining unit salary schedules to which assigned. Thus such employees will not be entitled to Out of Schedule Overtime, Guaranteed Time, PDC On-Call Time and Holiday Scheduling Premium.

* The concession involved employees who moved into permanent supervisor positions and were later involuntarily returned to the letter carrier craft. They received seniority credit within the craft for their supervisory time pursuant to Article XLI, Section 2G2 of the 1975 National Agreement. The parties eliminated that seniority credit in Article XLI, Section 2F of the 1978 National Agreement.

"Such employees will assume the schedule for the non-bargaining unit position to which assigned but will not be eligible for Out of Schedule Overtime or Non-Bargaining Rescheduling Premium due to a schedule change upon accepting the temporary assignment. They will, of course, be eligible for overtime and other special pay provisions applicable to their assigned non-bargaining position..." (Emphasis added)

DISCUSSION AND FINDINGS

NALC relies on Article XLI, Section 2A2 of the 1978 National Agreement:

"Seniority is computed from date of appointment in the letter carrier craft and continues to accrue so long as service is uninterrupted in the letter carrier craft in the same installation, except as otherwise specifically provided."

It claims the Postal Service had for years considered temporary supervisors to be bargaining unit employees. It believes it necessarily followed that their "service" in the letter carrier craft was "uninterrupted" and that they hence were entitled to accrue craft seniority while filling a supervisory assignment. It believes all of this was changed by the November 1979 memorandum, by the Postal Service statement that temporary supervisors would thereafter be treated as non-unit employees. It argues that such non-unit status means their "service" in the letter carrier craft has been "...interrupted" and that they hence cannot accrue seniority while working as a supervisor. Its position, in short, is that the proper application of Article XLI, Section 2A2 has been substantially altered by the Postal Service memorandum.

Any analysis of this argument must begin with the terms of the National Agreement itself. Article XLI, Section 2A2 addresses the issue in dispute. It says an employee's seniority accrues only "so long as service is uninterrupted in the letter carrier craft..." Nowhere in the National Agreement did the parties explain how this clause was to be applied. They did not describe situations in which "service" would be considered to have been "...interrupted" or "uninterrupted." These words were simply left undefined.

There are, notwithstanding this silence, several ways of determining what the parties intended. The Postal Service has, from the inception of this collective bargaining relationship, given employees seniority credit within the letter carrier craft for time spent working as a temporary supervisor. This seniority accrual has occurred routinely in most, if not all, postal installations. NALC accepted these arrangements for years. It did not challenge this seniority accrual through the grievance procedure until July 1980. This long-standing practice indicates the parties fully understood that employees accumulate craft seniority during those periods in which they serve as temporary supervisors. The parties never deemed an employee's "service" to have been "...interrupted" by reason of such supervisory status.

The language of Article XLI, Section 2A2 has remained the same for years.* The practice of employees accruing seniority within the letter carrier craft while working as temporary supervisors has been in effect for years. Hence, the general contract language with respect to "service" being "...interrupted" or "uninterrupted" should be construed in light of this practice. The established way of doing things is usually the contractually correct way of doing things.

These views are reinforced by the parties' bargaining history. NALC proposed the following clause in the 1978 negotiations: "Seniority does not continue to accrue during service in temporary (204b)...supervisory positions." It thus sought to eliminate the practice described in the previous paragraphs. But its proposal was unacceptable to the Postal Service. After further discussion, NALC dropped this proposal in return for some other seniority concession. Under these circumstances, it seems obvious that NALC knew at the time the 1978 National Agreement was executed that Article XLI, Section 2A2 did not contemplate an employee's "service" being "...interrupted" by his working as a temporary supervisor.

* Only the article and section numbers may have changed.

In reaching these conclusions, I have considered the memorandum issued by the Postal Service in November 1979. That memorandum, to repeat, says employees will not be regarded as part of the bargaining unit while functioning as temporary supervisors. It says too that these temporary supervisors will no longer be entitled to certain benefits under the National Agreement. None of this alters my interpretation of Article XLI, Section 2A2. That contract clause has been given its own special meaning through long-standing practice. The memorandum, a unilateral statement by the Postal Service, cannot change the meaning of this clause. Only a revision of the contract language itself or a mutual understanding to modify (or nullify) the practice could effect such a change.

It is commonplace in American industry to make some provision in collective bargaining contracts for seniority accrual for employees promoted to supervision. That accrual takes place even though the employee, during his supervisory stint, is not covered by the collective bargaining contract. This is essentially what the parties did in Article XLI, Section 2A2. That provision was designed to deal with the seniority accrual issue. The only difference is that it does not expressly mention employee assignments to temporary supervisor. Instead, it relates seniority accrual to "service" in the letter carrier craft being "uninterrupted." These words cannot be read in a vacuum. They have been construed for many years to provide for seniority accrual during the time employees are working as temporary supervisors. The employees' non-unit status, during this period, in no way detracts from this seniority accrual.*

Accordingly, the Postal Service memorandum offers no sound basis for upsetting a well-established interpretation of Article XLI, Section 2A2. Past practice must prevail in this case. It follows that employees are properly permitted to accrue seniority during the time they serve as temporary supervisors. There has been no violation of the National Agreement.

* This entire discussion assumes that the Postal Service is correct in declaring temporary supervisors to be outside the bargaining unit. Perhaps that assumption is supported by a NLRB decision but there is no arbitration award which holds that temporary supervisors are outside the unit for purposes of seniority accrual under Article XLI, Section 2A2.

AWARD

The grievance is denied.


Richard Mittenenthal, Arbitrator