

C#03277

An Arbitration in the Matter of:
THE UNITED STATES POSTAL SERVICE
and
THE NATIONAL ASSOCIATION OF LETTER
CARRIERS

GRIEVANCE NO. NC-E-11,737
SCRANTON, PENNSYLVANIA

ISSUED: November 21, 1978

THE GRIEVANCE

In this case the Union protests the assignment of ten excessed Clerks to City Letter Carrier positions in the Scranton, Pennsylvania Post Office.

The grievance reads:

"Nature of Grievance: The assigning of excess clerks in the Scranton Post Office into the Letter Carrier Craft of the Scranton Post Office. Not promoting Part-Time Flexible Letter Carriers on the rolls at the Scranton Post Office to Full-Time Positions.

Corrective Action Requested: That the promotion of Part-Time Flexible Carriers already on the rolls of the Scranton Post Office take place before any persons from any other crafts are put on the carrier rolls."

BACKGROUND

On September 27, 1977, the Scranton Post Office advised the Union that it intended to assign ten Manual Distribution Clerks to the position of City Letter Carrier - Unassigned Regular in the Letter Carrier Craft. The ten Manual Distribution Clerks were among forty-one Clerks who had been declared excess to the Scranton Post Office^{1/}. It is this action that gives rise to the grievance under consideration in this Arbitration.

For background purposes, it is useful to review the City Letter Carrier situation prevailing at the Scranton Post Office for a number of years preceding the date of this grievance.

In addition to the Regular City Carrier complement at Scranton in 1974, there were twenty-seven Unassigned Regular Carriers or "Floaters" and approximately seventeen Part-Time Flexible Carriers ("Flexies"). There is nothing to show how the twenty-seven "Floaters" came on the rolls but it is clear that they were not hired as such and that, after July, 1974, the Post Office was filling permanent City Carrier vacancies from the contingent of "Floaters." The number of "Floaters" steadily decreased until only one such employee was on the rolls in early 1978.

During this period, both "Floaters" and "Flexies" were working forty-hour weeks. Over the years there was considerable discussion

^{1/} See Associate Impartial Chairman's Case No. AC-E-22,783 which dealt with the validity of the excessing.

between the Union and Management concerning the conversion of "Flexies" to Full-Time Regular Carrier positions. In January, 1973, the Union requested Management to fill three vacancies in the Regular Carrier force. The Postmaster responded by stating that the vacant positions would be filled from among the Unassigned Regular Carriers. There is no record that the Union protested this action through the Grievance Procedure. On other occasions the Union reported that Management held to this same position. The issue arose again in September, 1974, and the Union filed several grievances. The Branch President reported that these grievances were denied and were not processed beyond Step 3 of the Grievance Procedure.

The matter seemed not to be at issue again until May, 1977, when the National Association of Letter Carriers' National Business Agent discussed the Clerks' situation with Scranton Post Office Management. It appears that, at that time, the decision was made not to file a grievance until excessed Clerks were assigned to the Carrier Craft.

CONTENTIONS

The Union makes several arguments here. It says, in the first instance, that Management did not comply with Article VII, Section 3 when it failed to convert Part-Time Flexible Carriers who were

working forty hours each week to Full-Time Regular Carriers.

Article VII, Section 3 reads:

"Section 3. Employee Complements. The Employer shall man all postal installations which have 200 or more man years of employment in the regular work force as of the date of this Agreement with 90% full-time employees. The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations. A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six-month period will demonstrate the need for converting the assignment to a full-time position. Where a count and inspection of an auxiliary city delivery assignment indicates that conversion to a full-time position is in order, conversion will be made."

The Union produced three surveys made from Scranton Post Office time cards. The periods were 6/21/75 through 9/12/75, 1/1/77 through 3/25/77 and 12/31/77 through 3/24/78^{2/}. Each of these surveys, says the Union, demonstrates that a Part-Time Flexible employee worked, (a) 8 hours within 10, (b) on the same five days each week and, (c) [on] the same assignment over a period of six months. Therefore, it argues, the need was demonstrated for converting the assignment to a Full-Time position. In this regard, the Union claims a continuing violation in that the Postal Service, over a four-year period, reduced the number of "Floaters" by not replacing them when they were assigned Regular Full-Time Carrier positions. Therefore, says the Union, such a grievance is

^{2/}The surveys were made in the Spring of 1978.

always timely. Finally, on this point the Union argues that, if Management had proceeded to maximize the Full-Time Regular Carrier workforce properly, three-fourths of the "Flexies" would have been assigned as Full-Time Regulars prior to the excessing.

In its second contention, the Union claims that the excessing was, in the first instance, improper and that had the Service complied with the National Agreement, no Clerks would be available to fill the open Carrier positions.

Thirdly, the Union claims that, even if the excessing were proper, the Service was in error when it reassigned the Clerks since Management did not require Clerks to qualify as Operators on the Letter Sorting Machine that was purported to replace them.

Finally, the Union argues that the positions to which the Clerks were assigned were available for at least six months prior to the excessing announcement and should have been filled by the conversion of Part-Time Flexibles to Full-Time Regular assignments.

Management says that the Union has had ample opportunity to advance its "Maximization" argument. It produced considerable evidence to show that the parties discussed the matter a number of times and could come to no conclusion that satisfied the Union. However, the Service asserts that the Union either accepted the Postmaster's decision and failed to file a grievance or filed a grievance and failed to pursue it. It is too late, says Management, for the Union to come forth with its maximization argument now and couple that argument with the excessing of Clerks.

The Service says that the excessing was proper and that the assignment of Clerks to the Carrier Craft fulfilled Management's obligation to keep dislocation and inconvenience to Full-Time employees to the minimum.

In regard to the available positions, Management says that Appendix A, Section I, A, 2 permits the Regional Postmaster General to accumulate sufficient Full-Time positions within the area for Full-Time employees who may be involuntarily assigned.

The Service contends that the Union's surveys suffer from a number of serious deficiencies. Chief among them, it says, is the fact that the surveys were made for the periods 6/21/75 through 9/12/75 and 1/1/77 through 3/25/77. It says that these periods are not immediately preceding the date of the grievance (11/7/77) and cover periods that are considerably less than six months. There is nothing in the surveys, says the Service, that proves a violation of Article VII, Section 3.

The American Postal Workers Union supports the position of the Postal Service in the assignment of the ten Clerks to the Carrier Craft. It states that the National Association of Letter Carriers "slept on its rights" by failing to file a grievance in a timely fashion.

FINDINGS

The Postal Service and the American Postal Workers Union are correct in their contention that this grievance was filed in an untimely manner.

The National Association of Letter Carriers failed to demonstrate why conditions within the Scranton Post Office, as related to Part-Time Flexible Carriers, were any different at the point of the assignment of Clerks to the Carrier Craft than those that existed in the preceding four years. Indeed, the NALC offered into evidence data from the year 1975 in order to support its contention that the Service violated Article VII, Section 3 and failed to maximize Full-Time Regular positions.

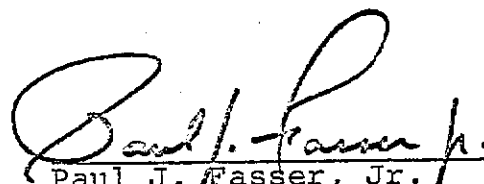
There is evidence that grievances were filed on this issue in 1974. The Union's contention here is that a violation continued over the four-year period preceding the grievance, yet there is nothing to show why the grievances were not pursued in 1974.

The alleged violation of Article VII, Section 3 and the assignment of Clerks to the Carrier Craft are separable. The Union has chosen here to combine the issues and claim a violation of Article VII, Section 3 at the point of the reassignments.

Since the grievance was not filed in a timely fashion, it must be denied.

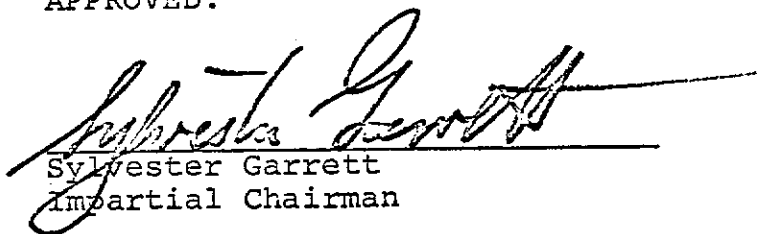
AWARD

The grievance is denied.



Paul J. Fasser, Jr.
Associate Impartial Chairman

APPROVED:



Sylvester Garrett
Impartial Chairman