

C# 05070

ARBITRATION AWARD

July 8, 1985

UNITED STATES POSTAL SERVICE

-and-

Case No. H1N-2B-C-4314

NATIONAL ASSOCIATION OF LETTER
CARRIERS

Subject: Employee Complements - Conversion of Part-Time
Flexible Assignment to Full-Time Position

Statement of the Issue: Whether time worked by
a part-time flexible Letter Carrier pursuant to
Article 41, Section 2B4 can be credited toward the
time requirement for converting a part-time flexible
assignment to a full-time position under Article 7,
Section 3C?

Contract Provisions Involved: Article 3; Article 7,
Section 3B and C; and Article 41, Section 2B4 and
5 of the July 21, 1981 National Agreement.

Appearances: For the Postal Service,
John S. Ingram, Manager, Arbitration Branch,
Southern Region; for NALC, Richard N. Gilberg,
Attorney (Cohen Weiss & Simon).

Statement of the Award: The grievance is granted
to the extent set forth in the foregoing opinion.

BACKGROUND

This grievance involves the question of whether time worked by a part-time flexible Letter Carrier pursuant to Article 41, Section 2B4 can be credited toward the time requirement for converting a part-time flexible assignment to a full-time position under Article 7, Section 3C. NALC says such a credit is appropriate under the plain and unambiguous language of Article 7, Section 3C. The Postal Service disagrees.

A. J. Iacuzzi was a part-time flexible (PTF) carrier in the Toms River, New Jersey post office. His rights under Article 41.2.B.4 and 5 were as follows:

"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.

"5. A letter carrier who, pursuant to subsection...4 above, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration." (Emphasis added)

A temporary vacancy on a full-time route assignment developed in early 1982. Iacuzzi used his seniority to "opt" for this full-time assignment which thereafter was referred to as his "hold-down" assignment. The parties have assumed, for purposes of this case, that he remained on this "hold-down" assignment for eight hours within ten on the same five days each week for at least a six-month period. NALC insists Management was obliged to convert Iacuzzi's "hold-down" assignment to a full-time position after these six months. It relies on Article 7.3.B and C:

"B. 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.

"C. 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."
(Emphasis added)

The Postal Service urges it had no obligation to convert Iacuzzi's "hold-down" assignment to a full-time position. It maintains that time spent on a "hold-down" assignment under Article 41.2.B.4 cannot be credited toward the time requirement for converting a PTF assignment to a full-time position under Article 7.3.C. It believes its view is supported by the language of these provisions as well as considerations of practicality.

NALC, on the other hand, stresses that no limitation or exception was placed in Article 7.3.C. It contends that this provision broadly covers any PTF assignment which fits the conversion formula, namely, "eight...hours within ten...on the same five...days each week...over a six month period..." It sees no reason why a "hold-down" assignment under Article 41.2.B.4 should be treated differently from any other PTF assignment. It alleges that Iacuzzi's situation is governed by Article 7.3.C.

DISCUSSION AND FINDINGS

Article 7.3 deals with "employee complements." Paragraph B calls upon Management to "maximize the number of full-time employees..." Paragraph C expresses this obligation in concrete terms. It states a formula which, when met, requires the conversion of a PTF assignment to a "full-time position." Whenever such a conversion occurs, there will be an additional "full-time position" and presumably an additional full-time employee. None of these matters appear to be in dispute.

The question here concerns the scope of this Article 7.3.C conversion formula. NALC claims it applies to any PTF assignments including "hold-down" assignments under Article 41.2.B.4. The Postal Service claims it does not apply to such "hold-down" assignments. The problem is what relationship, if any, exists between these two provisions, between Article 7.3.C and Article 41.2.B.4.

To begin with, the language of Article 7.3.C seems broad enough on its face to encompass any PTF assignment. The Postal Service attempts to limit the reach of this provision to a so-called "fixed assignment." It states that because Article 41.2.B.4 relates to a PTF filling a "temporary vacancy", that is, a temporary assignment, this situation is not covered by Article 7.3.C. The difficulty with this argument is that nothing in Article 7.3.C suggests that the parties had only a "fixed assignment" in mind. This provision

speaks of a PTF working "the same assignment" in a certain manner for a certain period at which point "the assignment" is to be converted to a "full-time position." Nowhere do these words indicate, expressly or by implication, that only a "fixed assignment" was contemplated. Indeed, considering the purpose of this contract clause, there is no sound basis why a temporary assignment cannot in appropriate circumstances result in conversion to a "full-time position."

What the parties were attempting to do was to limit the amount of time a PTF's assignment could remain a part-time position under the conditions set forth in Article 7.3.C. They established a six-month limitation. For they must have believed that any assignment held by a PTF, repeated each day five days a week for six months, could no longer be considered a part-time position. It had to be converted to a "full-time position." How the PTF happened to have been placed on that assignment was not a factor. Whether he "opted" for it under Article 41.2.B.4 or whether he was given it as a matter of Management convenience, the result should be the same. I am not prepared, under the guise of interpretation, to write a "practicality" exception into the language of Article 7.3.C.* Nor am I convinced, on the present state of the record in this case, that "practicality" demands that Article 7.3.C exclude any PTF assignment stemming from Article 41.2.B.4.

Furthermore, it should be noted that the Article 7.3.C conversion formula was written into the National Agreement in 1973. There is no evidence as to what the practice was in the next several years. But, absent any other contract provision with respect to a PTF working a temporary assignment, it seems reasonable to presume that any such assignment which continued in the requisite manner for the requisite period would have had to be converted to a "full-time position." The Article 41.2.B.4 right of a PTF to use his seniority to "opt" for a temporary full-time assignment was written into the National Agreement in 1978. Had the parties intended this new provision to modify the application of the conversion formula, they presumably would have said so. Their silence

* Arbitrator Garrett's ruling in Case No. AB-N-3744 with respect to practicability does not demand a different conclusion here. Garrett was addressing the general obligations stated in Article 7.3.A and B, not the very specific obligation found in Article 7.3.C.

on this matter suggests that they meant Article 7.3.C to have the same application it had before 1978. In other words, Article 41.2.B.4 does not appear to have limited the broad reach of Article 7.3.C.

AWARD

The grievance is granted to the extent set forth in the foregoing opinion.


Richard Mittenthal, Arbitrator