C# 05114

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS UNION

Case No. AC-E-20433

APPEARANCES: Richard A. Levin, Esq., for the Postal Service;
Thomas P. Powers, Esq., for the Union

DECISION

This case arose under and is governed by the 1975-1978 National Agreement (JX-1) between the above-named parties. The undersigned having been selected to serve as sole arbitrator, a hearing was held on 17 May 1979, in Washington, D. C. Both sides appeared and presented evidence and argument on the following issue (Tr. 14):

> Did the Postal Service violate the 1975-1978 collective bargaining agreement the weekend of Fourth of July, 1977, and Labor Day, 1977, when it closed the operation of the Chester Post Office and gave the clerk craft employees scheduled to work on those given Sundays the alternatives of working in Philadelphia, taking annual leave or taking leave without pay?

The parties stipulated (Tr. 15) that the arbitrator's award could simply give an affirmative or a negative answer to the question posed, and that if the answer were affirmative, they were in agreement on what the appropriate remedy would be.

A verbatim transcript was taken of the arbitration proceedings.

Each side filed a post-hearing brief. The time for filing briefs was extended several times by agreement of counsel; the record was officially closed 24 September 1979.

On the basis of the entire record in this case, the arbitrator makes the following

AWARD

The Postal Service did not violate the 1975-78 collective bargaining agreement the weekend of Fourth of July, 1977, and Labor Day, 1977, when it closed the operation of the Chester Post Office and gave the clerk craft employees scheduled to work on those given Sundays the alternatives of working in Philadelphia, taking annual leave, or taking leave without pay.

Benjamin Aaron
Arbitrator

Los Angeles, California
16 October 1979

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OPINION

I

The basic facts are not in dispute. In 1977 both the Fourth of July and Labor Day fell on Monday. Postal Service management decided that on the Sunday preceding both days, no mail would be dispatched from Philadelphia to Chester, or collected in Chester. On both occasions Chester Postmaster John A. Caldwell, Jr., was instructed by the Director of Labor Relations in Philadelphia to offer the affected employees in the clerk craft (five on the Fourth of July, four on Labor Day) the options of working in Philadelphia on the Sunday, taking annual leave, or taking leave without pay. Caldwell orally gave this information to Justin Eskelman, the Union's chief steward, and foreman Clarence Brennan so advised each of the affected employees. Had any of the employees opted to work in Philadelphia, reimbursement would have been provided for the transportation involved and for parking expenses. None of the affected

employees elected to work in Philadelphia, however; each took either annual leave or leave without pay. A grievance was subsequently filed and eventually was appealed to arbitration.

II

As set forth in its post-hearing brief (p. 22) the Union's position is

> that the employer cannot reassign a clerk from one installation to another except in accordance with Article XII and Appendix A. The employer also cannot order an employee to take leave without pay since this would be in violation of Article VI, the no layoff provision, and the employer cannot order an employee to take annual leave since this would be in violation of Article X, Leave, wherein it is clearly stated that annual leave is taken at the discretion of the employee.

The Postal Service relies primarily on the powers reserved to it in Article III (Management Rights), which reads in part:

> The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:
>
> A. To direct employees of the Employer in the performance of their official duties;
>
> B. To . . . transfer, assign, and retain employees in positions within the Postal Service . . .;
>
> C. To maintain the efficiency of the operations entrusted to it;
>
> D. To determine the methods, means, and personnel by which such operations are to be conducted; . . . .

The Postal Service also relies on the language of Article VII (Employee Classifications), Section 2-B, which

states:

> In the event of insufficient work on any particular day or days in full-time or part-time employee's own scheduled assignment, management may assign him to any available work in the same wage level for which he is qualified, consistent with his knowledge and experience, in order to maintain the number of work hours of his basic work schedule.

In addition, the Postal Service asserts that Appendix A has nothing to do with this case, because action complained of here did not consist of any of the situations specifically referred to in Appendix A.

III

Article III of the National Agreement (supra) subjects the powers therein reserved to the Postal Service to the condition that their exercise does not contravene any other provisions of the Agreement or any applicable laws and regulations. It is necessary, therefore, to examine first the particular provisions claimed by the Union to have been violated in this case.

Article XII of the Agreement is entitled "Principles of Seniority, Posting and Reassignments." Section 4 deals with "Principles of Reassignments." Paragraph A declares:

> A primary principle in effecting reassignments will be that dislocation and inconvenience to employees in the regular work force shall be kept to a minimum, consistent with the needs of the Service. Reassignments will be made in accordance with this Article and the provisions of Appendix A.

Appendix A purports to incorporate the principles of reassignment contained in Article XII. Section II applies

to the clerk craft. Paragraph A of Section II lists eight specific situations covered by the "Basic Principles and Reassignments," as follows:

When it is proposed to:

1. Discontinue an independent installation;

2. Consolidate an independent installation (i.e., discontinue the independent identity of an installation by making it part of another and continuing independent installation);

3. Transfer a classified station or classified branch to the jurisdiction of another installation or make an independent installation;

4. Reassign within an installation employees excess to the needs of a section of that installation;

5. Reduce the number of regular work force employees of an installation other than by attrition;

6. Reduce RPO, HPO employment, including employment in mobile stations;

7. Centralized mail processing and/or delivery installation (New and Old);

8. Reassignment--Part-time flexibles in excess of quota; such actions shall be subject to the following principles and requirements.

The Postal Service contends that the acts complained of in this case do not fall within any of the eight situations set forth in Paragraph A. The Union argues, to the contrary, that the situation was covered by Paragraph A-5: reduction of the number of regular work force employees of an installation other than by attrition. The question, of

course, is what is meant by the word "reduction," which is nowhere specifically defined in the Agreement. I conclude, however, that within the context of Article XII and Appendix A "reduction" means a "permanent" reduction, or at least what management believes and intends in good faith at the time to be permanent.

This conclusion is supported by the language of Article XII. Thus, Paragraph B of Section 4 speaks of "a major relocation of employees . . . in major metropolitan areas or due to the implementation of national postal networks." Paragraph C is concerned with "employees . . . excessed out of their installation." Both situations suggest a permanent rather than a temporary change. Employees "relocated" or "excessed" are, presumably, "reassigned." John T. Quinn, a Union witness at the arbitration hearing was asked, "What does a reassignment mean, is that a permanent thing, a temporary thing?" He replied, "It's a permanent thing." (Tr. 37).

As previously indicated, the Company relies in part on Section 2-B of Article VII (supra) as providing affirmative support for its challenged actions on the two holidays. The Union has attacked that contention very strongly, asserting that reassignments covered by Section 2-B may be made only within a given installation, and not from one installation to another; indeed, the Union declares that "choice of jobs, bidding of jobs, preferred assignments,

overtime, light duty work, scheduling, etc., are all within the context of an installation" (Un. Br., p. 26). To illustrate, the Union points to Article XXXVII (Clerk Craft). Paragraph C (Responsibility) of Section 1 (Seniority) states in part: "The installation head is responsible for day-to-day administration of seniority." Paragraph D (Definitions) provides in part:

> 2. Seniority for full-time regular employees for preferred assignments and for other purposes of application of the terms of the National Agreement:
>
> a. This seniority determines the relative standing among full-time regular employees. It is computed from the date of career appointment in the clerk craft and level and continues to accrue so long as service is uninterrupted in the same craft and level in the same installation, except as otherwise specifically provided.

The Union asserts, therefore, that in accordance with the literal language of that provision, the grievants "may well have lost their seniority if they had accepted the assignment" (Un. Br., p. 27). Finally, Paragraph D-2-4 (Duty Assignment) defines a duty assignment as "a set of duties and responsibilities within recognized positions regularly scheduled during specific hours of duty." Paragraph D-2-6 (Bid) requires that bids must be submitted in writing to"the installation head."

In addition, the Union maintains that the parties clearly understood at the time that they agreed upon the

language of Section 2-B of Article VII, that assignments referred to therein were to be within the installation only. That was the testimony of two Union witnesses, Arthur J. Wolff and Don E. Dunn, both of whom also related that Section 2-B was a concession made by the Union in return for Article VII, Section 3, relating to the manning of individual postal installations. My evaluation of that testimony convinces me, however, that the "understanding" was all on the Union's side, and that the question whether an employee could be temporarily assigned to another installation under Section 2-B was never discussed by the parties.

The Union's argument on the proper meaning of Section 2-B is also based on an analysis of Article VII as a whole. Thus, in its brief (p. 30) the Union asserts:

> Beginning with Paragraph A, Section 2, Article VII, it is clear that the parties had agreed to maximize full-time employment. Under that paragraph they had agreed that in order to do so, certain work could be combined. It is instructive to note that the work was to be combined by tour; and tour can only mean within an installation. Therefore, Paragraph B, the language the Postal Service mistakenly relies upon, must be read in the light of Paragraph A as meaning that individual employees may be assigned to any available work within the installation. This becomes even clearer when one accepts the meaning of the words in B "...in full-time or part-time employee's own scheduled assignment..." A scheduled assignment is only meaningful in relation to an installation. See Article XXXVII D, 4 and 6.

The Union's arguments are ingenious but not persuasive. Had the parties intended that temporary assignments of the kind here involved were to be restricted to a single

installation, they could have made that intention clear by adding the words "in the same installation." Whether those words were omitted through oversight, or by design, with full knowledge that their omission created an ambiguity to be resolved, if necessary, in a future arbitration, is not disclosed by the record. The absence of those words, however, taken in conjunction with the lack of any specific reference in the Agreement to temporary assignments to a different installation, means that the Postal Service's decision was justified under Article III.

The Union claims that the Postal Service violated Article VI (No Layoffs or Reductions in Force) and Article X (Leave), which states that annual leave may be taken at the discretion of the employee. Quite apart from the fact that the Postal Service did not order the grievants to take annual leave or leave without pay, the Union's argument assumes the critical point at issue, namely, invalidity of the temporary assignment. In view of my determination that the temporary assignment was valid, there was nothing improper in offering grievants the options of going on annual leave or leave without pay instead of working the day in Philadelphia.

The Union also insists that to sustain the position of the Postal Service in this case is to "make a mockery out of the contract since it would allow employer to do indirectly

what it is prohibited from doing directly" (Un. Br., pp. 27-28). The Union's argument, however, again assumes the point at issue; there is nothing in the Agreement directly prohibiting management from making the challenged temporary assignments.

The grievants could have worked "in the same wage level, commensurate with their capabilities," in Philadelphia on the days in question. Management need not have offered them the other two options, and certainly did not order anyone to go on annual leave or leave without pay. There was no violation of the Agreement.

Benjamin Aaron
Arbitrator