ARBITRATION DECISION
October 16, 1985
CIN-4C-C 33108 Class Action

C#05230

Between

United States Postal Service
Hopkins, Minnesota

and

National Association of Letter Carriers
Branch 2942

ARBITRATOR: Daniel G. Jacobowski, Esq.

DISPUTE: Whether temporary 204b promotion to supervision exceeded four months, or was broken by one week return as letter carrier?

JURISDICTION

APPEARANCES: The postal service was represented by its Minneapolis office labor relations representative, Thomas P. Gergen. The union was represented by its Minneapolis local business agent, Stephen Hult.

HEARING: The September 17, 1985 hearing was conducted at the Hopkins Post Office, on this contract grievance dispute, pursuant to the procedures and stipulations of the parties under their collective bargaining agreement.

ISSUE

QUESTION: Did the carrier's temporary 204b promotion to supervision exceed four months, and did the service violate the contract by not posting the carriers position for bid, or instead, was the claimed four month period broken by the carrier's one week return to her letter carrier position?

CASE SYNOPSIS: On March 12, 1984, letter carrier Murphy was assigned a temporary 204b promotion to supervision for an indefinite period. On July 18, 1984, the union initiated its grievance, claiming that her carrier position should be posted for bid, since her 204b promotion exceeded four months. The service denies the claim on the grounds that the assignment period was broken by the one week return to her carrier position from May 26 through June 1, 1984. The parties are in issue over whether the one week return constituted a break in the four month period, and whether the return assignment was solely to circumvent the bid posting provision of the contract.

CONTRACT PROVISION APPLICABLE: Article 41, Section 1A, 2 provides as follows:

"2. Letter carriers temporarily detailed to a supervisory position (204b). . .

> The duty assignment of a full-time carrier detailed to a supervisory position, **including a supervisory training program** in excess of 4 months shall be declared vacant and shall be posted for bid in accordance with this Article. Upon retrun to the craft the carrier will become an unassigned regular. A letter carrier temporarily detailed to a supervisory position will not be returned to the craft solely to circumvent the provisions of Section 1,A,2. . ."

BACKGROUND - FACTS

From March 12, 1984, through July 18, 1984 when the union first initiated this grievance, and for some unspecified time after, letter carrier Patty Murphy was given a temporary 204b promotion assignment to supervisory duties, except for the one week period when she was returned to her letter carrier position, from Saturday, May 26 through Friday, June 1, 1984. This was the week of the Memorial Day holiday, Monday, May 28. On June 2, 1984 she was returned to supervisory duties, by again being given another indefinite 204b assignment.

The service stated she was returned as a carrier for one week because of scheduling needs, and staff shortages of persons being off for such reasons as annual leave, scheduled days off, or their scheduled holiday equivalent. The testimony was that management reluctantly released her from her supervisory duties for that week, because of the pressing need request of the scheduling supervisor.

In challenge and for support, the union supplied figures to show and argue that the staff shortages for the week in question were lower than average at the time in comparison with the preceding and following accounting pay periods. The disputed week is in accounting period 9. The union figures extended from accounting period 6 to 11. Over the extended period, weekly sick leave hours averaged 68; whereas in the dispute week they numbered only 1, far below the average, and the lowest of any point in the period. Similarly, over the period the weekly hours of annual leave averaged 247; whereas for the disputed week, they were below average at 212. Over the same period, the weekly overtime hours worked averaged 567; whereas, for the week in dispute, it was only 456, far below the average and near the bottom point during the period. The service challenged that the union's overtime figures failed to take into account the hours worked by some carriers on their holiday equivalent scheduled days off.

The service in turn cited figures which it felt germane, showing the increase in volume over the comparable period in the prior year of 1983. At that time, for the year to date, 1984 was registering a 16.4 percent increase in volume over 1983. But for that disputed last week in May, the volume increase was even greater; it was 25.8 percent over the comparable week in 1983 and 15 percent over what the service had planned for the week. It was also substantially greater than the amount of volume increase of the preceding week, which had a volume increase of only 12.4 percent over the comparable week in 1983, and was only 2.8 percent over what the service planned. For the disputed week, the mail volume was 5,793 feet; for the preceding week it was 6,499. The union argued that the reference to volume was irrelevant, and failed to take into account the increase in carriers and routes that were provided in 1984 to accommodate the additional volume. The service made point that the scheduling needs of that week were affected by both the volume and the fact that it included the Memorial Day holiday. The service also recited that overtime for the city carriers that week was 19.4 percent of the hours worked, and that there was 82 percent more overtime than the prior year.

The parties also supplied the work schedule for the week, starting Saturday, May 26th, through Friday, June 1. The schedule lists the regular routes and carriers, as well as the T6 and PTF carriers and the routes on which they filled in or were assigned. Also listed are the days off, either scheduled or taken by the carriers, including scheduled days off which were actually worked by some carriers. The union also supplied additional schedules of surrounding weeks.

The union supplied the original work schedule posted in advance for the week on the preceding Wednesday. The service supplied the schedule that was actually worked, and which incorporated some of the changes and adjustments that were made. In the first posted schedule the grievant was scheduled for only 2 days work as a carrier, Thursday, May 31, and Friday, June 1, and 2 days on detail as a supervisor, Saturday, May 26 and Tuesday, May 29. Three days were scheduled off for her, Sunday, Wednesday, and the Monday holiday. It was on this schedule that the union originally initiated its grievance. However there was a change, and in actuality, and the grievant worked the entire week as a carrier, except for an additional 3/4 of an hour worked as a supervisor on Tuesday, May 29. She also worked as a carrier on her scheduled day off of Wednesday, on a voluntary overtime basis. However, on the first scheduled day of Saturday, May 26th, she only worked 1/2 of a day, taking the balance of the day off as leave, since her route was finished. She explained that most of the deliveries on her route are businesses, with the majority of them closed on Saturdays. Accordingly, on her Saturday rotations, about 1/2 of the time she leaves early after the completion of her route, and works the other half, if she is asked to pivot elsewhere, which was not the case on this Saturday.

From the work schedule, the service cited the number of staff shortage needs it had to fill by reason of days off taken, from the available T6 and PTF replacements, in support of its position that carrier Murphy's return was needed. In counter, the union solicited supervisor admission that staff absences or replacement needs are a common daily and weekly occurrance, and that most of the PTF's were fully available that particular holiday week. The union also argued that replacement needs for employees leave days off were even greater in the weeks preceding and following, when Murphy was not returned as a carrier and instead was retained in her temporary supervisor reassignment.

ARGUMENTS

UNION: In general, the union argues the following main points. First, the one week return was minimal and did not constitute a break in the 4 month period of assignment as a supervisor. This is buttressed by the actual additional time she worked as a supervisor that week, as well as the days originally planned. Several arbitration decisions argued as supportive were cited. Second, the service did not have an actual need for return as a carrier, but returned her for the week only as a subterfuge to circumvent the posting bid provision of the contract. Management's claim of need is refuted by several considerations; the low amount of leave absences that week as compared with the far greater number of such absences in other weeks; there was an adequate number of replacements available; the volume increase over the prior year is irrelevant; and supervision did indicate an awareness and an intent to avoid a span in excess of 4 months, contrary to the contract.

POSTAL SERVICE: The following are the main points argued by the postal service. First, is the concept that the one week return did actually constitute a break in the supervisory assignment, separating it into 2 assignments, neither of which had exceeded 4 months at the time of the grievance. Second, the one week return was for valid scheduling needs, and not solely to circumvent the contract as claimed by the union. The particular week had a holiday with actual needed replacements for the many shortages of staff due to days off. The union's claim of low below average leave absences and overtime for the week are misleading, and fail to take into account the days off for the holiday, and substitute holiday days actually worked by some employees. More supportive and relevant are the volume figures showing the substantial increase

in volume over 1983, and for this week in particular. The union's attempt to show a management intent to break and avoid 4 month span assignments, by one supposed conversation with a supervisor, is too weak, inapplicable, and denied. The union has failed to bear its required burden of proving its case, particularly on its claim that the sole reason for the week return of carrier Murphy was to circumvent the contract.

DISCUSSION

In general, as I have reviewed and analyzed the evidence and factors in this case I have consistently found myself deciding in favor of the union on the general question, and concluding that in reality, carrier Murphy had one continuous assignment as a temporary supervisor, in excess of 4 months, and that the one week return to her carrier position did not constitute an actual break in the continuity of that assignment as claimed by the service. My reasons for this conclusion are next further discussed below. I recognize the additional distinctive aspect of the issue over the union's additional claim that the one week return was only for the purpose of defeating the contract provision; that will be discussed later.

As all of the applicable factors are weighed together, they support the general conclusion and collective result that in the main, on the substance and merit, and in actual reality, she was given an assignment and performing duties as a temporary supervisor over this general period, and that her one week return as a carrier was not an actual break, but more in the nature itself of only being a temporary interruption or release for a few days, after which she was expected to return and continue as a supervisor. The various facts applicable lean in this direction and support this conclusion, among them, the following. The wording inserted on Form 1723, the assignment or transfer form, indicates its more long term indefinite nature, rather than a more limited fill-in for a specific single person or purpose. The term is recited as indefinite. On the first March 12, 1984 assignment form the reasons identified are for annual leave, detail, and etc. The same type of broadness and indefinite period is similarly listed on the second assignment form returning her as a supervisor on June 2, 1984.

Similarly, as the circumstances are examined surrounding her return to the carrier duties in that last week of May, the overall impression and effect is not that a break in her assignment as a supervisor was being effected, but merely that she was only being temporarily released for a few days work as a carrier, and then expected to return or continue as a supervisor. Several pertinent factors are so supportive. One is the manager's initial reluctance, and finally agreeing to release her only upon the pressing scheduling need request of the assignment supervisor. Consistent with this, on the original schedule she was only scheduled to work 2 days as a carrier and the other 2 days in the same week as a supervisor. Even after her schedule was shortly changed to work the full week as a carrier, she still was called back to work a short amount as a supervisor within the week.

In essence and substance then this indicates that management was generally regarding her as a supervisor over this entire period, and that in only being temporarily released for a few days as a carrier, it did not breach that continuity. In my opinion, this conclusion is fully and comfortably consistent with the contract language in Article 41, Section 1,A,2, in particular, the first sentence of the second paragraph which contains the 4 months reference. In interpreting provisions, it is fundamental that one affords to words and language their normal meaning and general substantive intent

and purpose. Normally clauses are afforded their general broad intent and purpose, rather than applied with a narrow restrictive manner, unless so expressly recited or so understood from the general context. Here, the pertinent language simply contains a general broad reference to the period of 4 months. There is no narrowness or restrictiveness implied or suggested, that would preclude or exclude from the 4 month span, the brief period of the several days here at issue under our circumstances described. In point is the fact that on its face, the purpose of the clause is positive in nature, to provide a specific benefit or posting bid opportunity, rather than a setting forth of negative restrictions as to when or when not such a clause shall be applied. It is a fundamental of interpretation to give a clause and benefit its normal intended meaning and scope.

For these reasons then, I find and conclude that Murphy's assignment as a supervisor did exceed 4 months, and its continuity was not broken by the one week carrier assignment.

In reaching this conclusion, the arbitrator is well aware that a different conclusion might be reached on a different set of circumstances. The arbitrator has reviewed the cases cited by both parties, and does feel they are distinguishable by their specific circumstances. The brevity of the several days or week alone is not the key determinative, although it is a consideration factor. More determinative is the substance of the supervisory assignment itself, its continuity and expected continuation nature.

Next discussed is the second related question of whether the union has proven its related claim that the only reason for the week return as a carrier was to circumvent the contract 4 month provision. Admittedly, that consideration can be regarded as relatively moot, in view of my above conclusion that the one week did not constitute a break. Nevertheless, it is also within the submission of the parties for decision. In general I feel the union has presented the better case on this point with greater persuasiveness in its direction. Among the reasons are the following.

Management stated that it returned Murphy as a carrier based upon its scheduling needs that week. Yet in the evidence, the union presented a substantial challenge by its showing of figures that the annual and sick leave absences that week were way below average and at their lower points over the several periods compared. I don't feel that the service effectively met this particular challenge. There are additional supportive factors for the union. Murphy was allowed to leave early after only one half day, on the very first Saturday. Practically all of the PTF's were available, and for the full week since they are not given holidays as such. Coupled with this is the retained continuity of her supervisory assignment already discussed above, and as reflected by the supervisory duties assigned and performed by her that week. Also, the arbitrator here notes that the service never really explained why they assigned her the first 2 days as a carrier originally, and why they later changed the assignment shortly after into the fuller week.

The effect of these factors when weighed together, is that the union did raise a substantive challenge to the scheduling needs claimed; the challenge was not satisfactorily fullly refuted by the service. Its reference to vo'ume is not persuasive as compared with the union's response of irrelevancy and in recognition that the volume of the week was registered only after the experience of the week without proof that it affected the scheduling specifically at issue. On the face of these factors, there is support for the conclusion that the service has not effectively proven its case and claim that there was a valid scheduling need for which reason Murphy was returned as a carrier. In the face of the total context and circumstances, one can then understand whey the union rationalized in its conclusive judgment then that the only or primary reason for the transfer back was to defeat the contract clause.

Yet, there is arguability that this amount of persuasiveness in the union's direction, falls short of the union proving its position. The burden of proof is on the union, not on the service. This arbitrator has studied the various scheduling sheets and data supplied by the parties. While acknowledging the union's challenge and the lack of the managements convincing proof, I am not satisfied that the evidence shows that management did not have any scheduling need problems as claimed in that week. To the contrary, there still remains some evidence that management might have had legitimate scheduling needs and problems of some of the nature it claimed, even if not adequately articulated or as extensive as the service claims. For example, the week was unusual in that it had the holiday; a number of the TD-6's were unavailable both that week and in the preceding week; a number of persons had their holidays scheduled on the preceding Saturday because the actual holiday fell on their rotating scheduled days off, some employees actually worked on their scheduled days off; and there were a few changes of leaves which arose for several individuals, both sick and annual. Recognition of these factors does lend some support for the claim of the service that it had valid scheduling needs, even if not better proven or articulated. Again, the burden of proof is on the union.

Further, the union was not fully accurate or unchallenged on several of its contentions. The union's July 18th grievance was based upon Murphy's original schedule of 2 days as a carrier, whereas in actuality, it had been changed to the full week. Also the original union contention was that Murphy was assigned to replace a certain manager who had been temporarily transferred to another office for a long period. Management corrected this by noting that his transfer had actually taken place earlier in October of 1983, and that he was replaced by another individual transferred in from elsewhere, and that accordingly, Murphy's assignments were for different persons or purposes, though they were not specified. The union testimony was that Murphy had earlier said she didn't care if she lost her basic carrier assignment rights, but this she vigorously denied at the hearing saying she liked the assignment duty of her position. The only specific direct evidence of the union that a supervisor expressed the concept of keeping temporary supervisory assignments within or less than 4 months, was both weak, denied, not particularly timely, with a supervisor who had no scheduling duties, and without further hard evidence to subscribe a general management intent or a specific application to the Murphy case. In general then, as provocative and as persuasive as the union's contention may be, that the intent of the service was to circumvent the contract, there is arguability that it does not go so far as to sustain the burden of proving that such was actually the case.

However, the arbitrator does return to his original earlier finding and conclusion recited above, and in general on the broad question, does repeat the general conclusion, in favor of the union, that the one week return of Murphy as a carrier did not constitute a break in the continuity of her service as a temporary supervisory, which in turn exceeded 4 months and which further then required the service to post for bid her basic carrier position. By not so posting it, the service violated the Article 41, Section 1,A,2 provision of the contract.

Next, as to the specific posting relief requested. In presenting the case, the parties primarily dealt with the presentation of the question at issue, and did not address themselves in detail to the matter of implementation in the event the arbitrator decided in the union's favor. The parties notably did not elaborate on what happened after the grievance or as to the current status of Murphy or her carrier position. Accordingly, if there is any further issue over the implementation or posting under this decision or related need for clarification, the arbitrator is willing to retain jurisdication, in the event, the parties so further submit or request.

DECISION

Based upon the record, evidence and submissions, and in accord with the above discussion and analysis, it is here decided and determined in favor of the union, that carrier Murphy's temporary 204b promotion to supervisory duties was in excess of 4 months and that the brief week during which she temporarily returned to her carrier position duties did not constitute a break in the continuity of that supervisory assignment period under the circumstances outlined in this case. Accordingly, the postal service did violate Article 41, Section 1,A,2 of the contract by not posting her letter carrier position for bid. The union grievance is sustained.

AWARD: An award is here rendered in favor of the union, directing the Postal Service to post the carrier position for bid, to the extent appropriate under current circumstances consistent with this decision.

Dated: October 16, 1985

Submitted by:

David G. Jacobowski

Daniel G. Jacobowski, Esq.
Arbitrator