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Art. 19. P1, P11, P12B

C#09093

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS UNION

AS-W-864

Case No. HBT-5C-C-11160

APPEARANCES: David P. Cybulski, Esq., and Eric Scharf, Esq.,
for the Postal Service; James I. Adams for the Union

DECISION

This grievance arose under and is governed by the 1978-1981 National Agreement (JX-1) between the above-named parties. The undersigned having been jointly selected by the parties to serve as the sole arbitrator, a hearing was held on 12 May 1982, in Washington, D. C. Both parties appeared and presented evidence and argument on the following issues:

- (1) Is the grievance arbitrable.
- (2) If so, did management at the San Rafael, CA post office violate the 1978-1981 National Agreement by including heavy lifting and the possession of an SF-46 (government driver's license) as requirements on the Notice of Intent for the position of Maintenance Control and Stock Clerk.

It was agreed that the arbitrator should hear evidence on both issues, but should ultimately not rule upon the second unless he concluded that the grievance was arbitrable.


A verbatim transcript was made of the arbitration proceeding, and each side filed a post-hearing brief. The record

was officially closed on 30 June 1982.

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

AWARD

- (1) The grievance is arbitrable.
- (2) Management at the San Rafael, CA post office did not violate the 1978-1981 National Agreement by including heavy lifting and the possession of an SF-46 (government driver's license) as requirements on the Notice of Intent for the positions of Maintenance Control and Stock Clerk.


Benjamin Aaron
Arbitrator

Los Angeles, California
7 July 1982

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UNITED STATES POSTAL SERVICE

Case No. HBT-5C-C-11160

and

AMERICAN POSTAL WORKERS UNION

OPINION

I. Arbitrability

A.

On 16 April 1980, the San Rafael, California MSC posted a Notice of Intent (Ex-1) for a newly-authorized duty assignment, Maintenance Control & Stock Clerk. The notice read in part as follows:

MAINTENANCE CRAFT

In accordance with Article XXXVIII, Section 2, (A), (1), (2) & (C), (1) of the National Agreement this Notice of Intent is posted for the following duty assignment to be filled by using the appropriate selection registers.

Maintenance Control & Stock Clerk, schedules & controls the maintenance activities at a postal installation & performs a variety of clerical work involved in the requisitioning, receiving, storing issuing, & accounting for a wide variety of parts, tools, and supplies used in the maintenance of building and postal equipment. Heavy lifting required, must be able to lift 70 lbs. Vehicle Operator's card, SF 46 required.

Several maintenance craft employees applied for this assignment, but none was deemed to be qualified. A second Notice of Intent (EX-2), therefore, was posted on 24 April; and this

time it invited bids "from all full-time career employees in any craft within the San Rafael post office." The description of the job in the second notice was the same as in the first. A third Notice of Intent (EX-3) was posted on 30 April, because the previous two notices had inadvertently omitted the following words: "Typing required, must pass a typing test of 30 words a minute."

Meanwhile, on or about 10 May 1980, Owen Barnett, the Union's National Vice President for the Maintenance Craft in the Western Region, received a telephone call from David Swaney, an official of the San Rafael Local. Swaney said he thought that the posting of the new position violated the National Agreement, but that he needed more specific information. Barnett said that the necessary information could be found in Section 180 of the Personnel Handbook, Series P-12B (UX-2), but Swaney replied that he had no access to a copy of the handbook. Accordingly, Barnett agreed to send him a copy, and did so the next day. After receiving a copy of the handbook, Swaney telephoned Barnett on or about 17 May, and told the latter that in his (Swaney's) opinion, the posting had improperly included the requirements of a SF-46 and heavy lifting. Barnett then told Swaney to file a grievance.

On 29 May 1980, Swaney filed the instant grievance (JX-2, p.9), in which he charged in part:

Maintenance employees were denied the job because of the Vehicle Operator's Card SF 46 required. Also, on the posting Heavy Lifting was required....

Management's response at the first step was "Denied Grievance submitted untimely" (JX-2, p. 9).

The grievance was appealed to step two on 9 June 1980.

Management's answer, dated 20 June (JX-2, p. 10), read in part:

- A. This grievance was submitted untimely, as the APWU had reason to know of the contents of the posting on April 16, 1980, at 11:30 a.m., and no later than April 24, 1980, 11:00 a.m. This grievance was filed on behalf of the Maintenance Craft at Step 1 on May 29, 1980, 1:25 p.m., over thirty (30) days after the fact.
- B. The posting of the position of Maintenance Control and Stock Clerk met the requirements of Article XXXVIII, Section 2 E and was in compliance with the P-1, P-11 and P-12 B.

No violation has occurred, therefore, this grievance is denied. This grievance was extended by mutual consent.

The grievance was then appealed to step three, at which time it was discussed by Barnett and George E. Banks, Acting Regional Labor Relations Representative for the Postal Service. In a letter dated 17 July 1980, to Raydell Moore (JX-2, p. 6), the Union's Western Regional Coordinator, Banks stated in part:

Providing lifting and driving requirements on the Notice of Intent does not establish a violation of the National Agreement. In fact, Article XXXVIII, Section 2, E 7, provides for such special or unusual requirements.

In our judgment, the grievance does not involve any interpretive issue(s) pertaining to the National Agreement or any supplement thereto which may be of general application. Unless the union believes otherwise, the case may be appealed directly to regional arbitration in accordance with the provisions of Article XV of the National Agreement.

The grievance was then appealed to step four, where it was discussed by Richard I. Wevodau, the President of the Union's Maintenance Craft, and Margaret H. Oliver, Labor Relations Department. Oliver's answer (JX-2, p. 3), set forth in a letter to Wevodau dated 18 March 1981, read in part:

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

The question in this grievance is whether or not management at the San Rafael, CA post office violated the National Agreement by including heavy lifting and the possession of an SF-46 as requirements on the Notice of Intent for the position of Maintenance Control and Stock Clerk.

In our view, this grievance does not fairly present a nationally interpretive question; however, our response is required.

The position in question is assigned to the maintenance craft. Article XXXVIII, Section 2E includes physical or other special requirements unusual to the specific assignment as suitable information for inclusion on a Notice of Intent.

Accordingly, as we find no violation of the National Agreement, this grievance is denied.

B.

Article XV, section 2(a) of the National Agreement, provides that a grievance initiated at step one must be submitted "within 14 days of the date the employee or the Union first learned or may reasonably have been expected to have learned of its cause."

Article XV, section 3(b) provides in part:

The failure of the employee or the Union in Step 1, or the Union thereafter to meet the prescribed time

limits of the Steps of this procedure, including arbitration, shall be considered as a waiver of the grievance. However, if the Employer fails to raise the issue of timeliness at Step 2, or at the step at which the employee or Union failed to meet the prescribed time limits, whichever is later, such objection to the processing of the grievance is waived.

It is the position of the Postal Service that Swaney learned, or may reasonably have been expected to have learned, on or about 16 April 1980, when the Notice of Intent regarding the duty assignment of Maintenance Control & Stock Clerk was first posted, that it included the requirements of a SF-46 and the ability to lift 70 pounds. Because the grievance was not filed until 29 May, well beyond the 14-day limit, the Postal Service maintains that it was untimely. Moreover, the Postal Service argues that by specifically stating in its step-two answer that the grievance was untimely filed, it preserved its objection and could properly reassert it at the arbitration stage.

The Union's position is that it had not fully checked on all the facts associated with the notice here involved until about 17 May, and that no decision whether to file a grievance could be made until then. On this theory, of course, the filing of the grievance on 29 May would be within the 14-day period. Moreover, Barnett testified that in his discussion of the grievance with Banks at step three, Banks agreed with him that the grievance was timely. The record, however, contains no written verification of any such oral understanding.

C.

The arguments of the Postal Service, if taken at face value, suggest that Union representatives who investigate the facts of situations before filing grievances do so at their peril if such investigations take longer than 14 days, and that the language of Article XV, section 3(b) means that once an objection to the arbitrability of a grievance, on grounds of untimeliness, is raised by the Postal Service at step two or later, it retains its vitality at all subsequent stages of the grievance-arbitration procedure, regardless of the positions taken by the Postal Service in steps three and four. I have difficulty with both arguments.

On the basis of the evidence submitted, it appears that Swaney was not sure whether or not the Notice of Intent here in dispute violated the National Agreement. Accordingly, he telephoned Barnett for advice. When, three or four days later, he received the P-12B Personnel Handbook Barnett had sent him, Swaney studied it and concluded that the notice violated the National Agreement. He then telephoned Barnett to confirm that conclusion, and received Barnett's approval to file the grievance. It may be true that Swaney knew on or about 16 April 1980 that the duty assignment called for a SF-46 license and the capacity to lift 70 pounds, but I am not persuaded that he knew, or reasonably should have known, more than 14 days prior to 29 May that the notice actually gave rise to a legitimate grievance.

Barnett's account of the alleged understanding he had with Banks at the step-three meeting was too sketchy to be accorded any weight. On the other hand, the Postal Service's third-step and fourth-step answers previously quoted indicated its willingness to consider the grievance on its merits. Rejection of the grievance on the ground that it was not timely filed was not mentioned, and the grievance was denied on the merits. Contrary to the Postal Service, I interpret Article XV, section 3(b), as applied to the facts of this case, to mean simply that if the Postal Service failed to raise the issue of timeliness at step 2, it could not raise it at any subsequent stage of the grievance-arbitration procedure. That is substantially different from the Postal Service's interpretation that, once raised at step two, the objection of untimeliness could be reasserted at any subsequent stage, regardless of inconsistent positions taken by the Postal Service in the interim. I am satisfied from my reading of the Postal Service's third-step and fourth-step answers that it did, in effect, waive its objection to alleged untimeliness asserted at the second step. Accordingly, I find that the grievance is arbitrable.

II. The Merits

A

Section 180 of Qualification Standards, Bargaining Unit Positions (Personnel Handbook, Series P-12B) (UX-1, p. 4) reads in its entirety:

180 USE OF QUALIFICATION STANDARDS IN POSTING VACANCIES

Position vacancies to be filled by bid, promotion, transfer, or assignment are posted in accordance with the applicable collective bargaining agreement and Handbook P-11. The qualification standard appropriate for the particular position is included in the announcement. This handbook shall be the source of such qualification standards. No additions, deletions, or alterations will be allowed by any local, district, or regional office.

Article XIX (Handbooks and Manuals) of the National Agreement provides in part:

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable.

Both the Postal Service Qualification Standard for Maintenance Control & Stock Clerk (UX-3, p. 1) and the Standard Position Description (UX-3, p. 2) set forth the basic function of that job as follows:

Schedules and controls the maintenance activities at a postal installation and performs a variety of clerical work involved in the requisitioning, receiving, storing, issuing, and accounting for a wide variety of parts, tools, and supplies used in the maintenance of buildings and postal equipment.

The position description makes no reference to driving a motor vehicle, possessing a SF-46 license, heavy lifting, or typing; but paragraph N provides: "Occasionally performs other job related tasks in support of primary duties." The qualification standard also makes no reference to driving.

holding a SF-46 license, or heavy lifting; it does, however, require the demonstrated ability to type 30 words per minute for five minutes with no more than two errors.

Section 524.4 (Best Qualified PS Positions) of Handbook P-11 (UX-6) states in part: "If a qualification standard is published in Handbook P-12B, it must be used" [in the posting of such positions]]. Maintenance Control & Stock Clerk is a "Best Qualified" position (Fr. 80-81).

Section 525.221 of the P-11 Handbook deals with evaluating the qualifications of job applicants. It states in part: "The qualifications consist of the qualification standard and any relevant selective factors that have been included in the posting."

Article XXXVIII of the National Agreement deals exclusively with the Maintenance Craft. Section 2 concerns posting of vacant duty assignments. Section 2-E (Information on Notice of Intent) includes the following item 7: "Physical or other special requirements unusual to the specific assignments."

Donald R. Noble, the maintenance superintendent at the San Rafael MSC, testified that the storeroom for that facility is located at Mission Rafael, about three miles away; most custodial supplies are stored there. He stated that the maintenance control and stock clerk must drive a half-ton pickup truck from the San Rafael MSC to the Mission Rafael storage facility about once a week to pick up supplies. The round trip takes about an hour. The supplies consist of toilet paper,

towels, cleaning bleaches, and other custodial supplies. A box of toilet paper weighs approximately 64 pounds.

B.

The Union's basic position on the merits is that because neither the qualification standard nor the standard position description for Maintenance Control & Stock Clerk includes any reference to a SF-46 or a heavy lifting requirement, and because the language of Section 180 of Personnel Handbook P-12B states that no additions, deletions, or alterations of qualification standards will be allowed by any local, district, or regional office, the disputed Notice of Intent in this case violated the National Agreement. The Union points out that Article XIX of the National Agreement sets forth a procedure that must be followed when the Postal Service wishes to make changes in handbooks, manuals, or published regulations. It also notes that Personnel Handbook P-12B sets forth in Part 4 (UX-2, p. 25) the procedures that must be followed when management requests a waiver of qualification standards.

The basic position of the Postal Service on the merits is that it has the right to establish "selective standards" bearing a reasonable relation to the published requirements of a particular position. It argues that the parties never intended that each postal facility in the country would operate in an identical manner, or that the National Agreement would deal with the minute details of every job. In the case of the job in dispute, the Postal Service contends that the tasks of

driving and heavy lifting are "incidental" to the primary function of the position and are "reasonably related" to it. It asserts that these tasks are covered by paragraph N of the job description, previously quoted, and that there has been no additions, deletions, or alterations of the "core elements" set forth in the qualification standard. In addition, the Postal Service claims that its Notice of Intent was covered by Article XXXVIII, section 2-E-7 of the National Agreement, previously quoted. Finally, the Postal Service relies upon the bargaining history of the 1978 National Agreement to support its contention that the Union previously attempted, unsuccessfully, to secure a provision that no maintenance employee would be required to possess an SF-46 license unless that requirement was embodied in Handbook P-12B as a condition of employment (EX-6). I do not find it necessary to consider that particular argument.

C.

On the basis of the evidence and arguments submitted, I conclude that the Postal Service had the right in this case to include the SF-46 and heavy-lifting requirements in the Notice of Intent for the duty assignment of Maintenance Control & Stock Clerk. The special circumstance involved--the physical separation of the San Rafael MSC and the storage facility at Mission Rafael--fully justified the requirement of the SF-46. Likewise, the heavy-lifting requirement was made necessary by the nature of the materials handled. Neither requirement

affected the "core elements" of the qualification standard and the job description. Both were covered by Article XXXVIII, section 2-E-7 of the National Agreement, Section 525.221 of the P-11 Handbook, and paragraph N of the job description.

The Union contends, however, that regardless of any other considerations, the grievance in this case should be granted because of an oral understanding between Wevodau and Frank Dyer, a Postal Service representative, in connection with a pre-arbitration settlement of Case No. HBT-3D-C-11020 on 23 September 1981 (UX-7, p. 1), to the effect that the pre-arbitration settlement applied to every case involving the "same issue."

The pre-arbitration settlement, which involved a typing requirement for a Tool and Parts Clerk, was as follows:

1. A typing requirement is not presently a part of the qualification standard for the position of a tool and parts clerk, SP1-31. Until such time as a change is initiated the typing requirement will be deleted from the posting.
2. On the basis of the particulars surrounding this case, the two jobs in question in this grievance will be reposted without the typing requirement.
3. This decision is not intended to preclude management from requiring an employee to type.

The pre-arbitration settlement agreement was signed by William E. Henry, Jr., Director, Office of Grievance and Arbitration, Labor Relations Department, on behalf of the Postal Service. Henry signed the document after discussing it with

Dyer. He testified that Dyer did not mention any oral understanding with Wevodau as to the future application of the settlement, and that Dyer had no authority to enter into any such understanding on behalf of the Postal Service.

Wevodau's version of his discussion with Dyer was as follows (Tr. 85):

. . . Mr. Dyer brought this settlement directly to my office, and I questioned Mr. Dyer about it, and my questioning went along the line that, "Okay, this is a pre-arbitration settlement. Are you saying that this applies only to the instant grievance?", and the response was, "No, this was a grievance that was certified as an interpretive grievance, and this pre-arbitration settlement is an interpretive pre-arbitration settlement on that grievance and therefore applies to every case." and I said, "Well, do you mean that if I get other cases up here dealing with this same issue, that I'd have to certify each one of those for arbitration?", and he said, "No, this settlement will be applied to those."

Wevodau's account was generally corroborated by Thomas Freeman, Jr., Executive Vice President of the Maintenance Craft. On cross-examination, Freeman testified in part as follows (Tr. 128-29):

Q. Did you state or did Mr. Wevodau state or any of the four individuals in the room state to Mr. Dyer or converse with Mr. Dyer to the effect that this settlement would hereafter preclude the Postal Service from including in a notice of vacancy, in a job posting, any duties not specifically contained in the position description or qualification standard?

A. I don't think such a statement was made literally, a literal statement, no.

Q. Was that in fact your understanding?

A. No. My understanding, when this question was

raised, was that requirements such as typing that dealt with this issue of placing a requirement on a posting or on a position that was not in the P-12 Handbook would not be done, and that was my understanding when I left the office.

Dyer was not called as a witness.

I do not doubt the Union witnesses' good faith in offering their version of the alleged oral understanding between Wevodau and Dyer. In my judgment, however, whatever that understanding may have been, it cannot be allowed to have the effect claimed for it by the Union in this case. The subject of the alleged understanding was a typing requirement in an unrelated job. It was, at best, ambiguous. The written settlement agreement was signed on behalf of the Postal Service by an authorized representative who was wholly unaware of any oral discussion concerning its possible future application in other circumstances. The alleged oral understanding would have substantially extended the scope of the written settlement agreement. Given these facts, I cannot allow the testimony of the Union witnesses to alter the plain meaning of the written settlement agreement by extending it to future cases involving "the same issue." In the event that understandings as to the subsequent application of pre-arbitration settlement agreements are reached in the future, the parties are advised to reduce them to writing.

For all the foregoing reasons, the grievance is denied.



Benjamin Aaron
Arbitrator