

C# 09187

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration
between
UNITED STATES POSTAL SERVICE
and
**NATIONAL ASSOCIATION OF LETTER
 CARRIERS, AFL-CIO**

GRIEVANT: Class Action
POST OFFICE: Glen Falls NY
USPS CASE NO: H4N-1W-C 34928
NALC CASE NO: 1526

BEFORE: Raymond L. Britton, *Arbitrator*

APPEARANCES:

For the U.S. Postal Service:

L.G. Handy

For the Union:

Keith Secular

Place of Hearing:

U.S. Postal Headquarters

Date of Hearing:

February 24, 1989

AWARD:

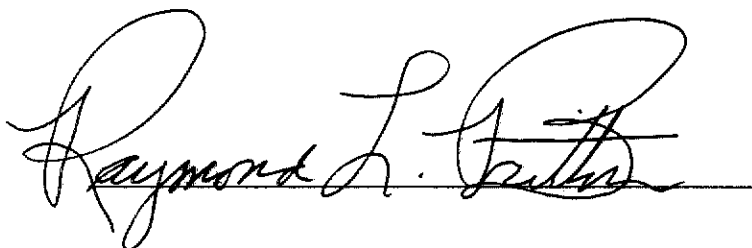
For the reasons given, the grievance is sustained and the Employer is directed to adhere to the findings made herein, namely, that a part-time flexible city letter carrier on a hold-down who accepts a 204b detail retains the contractual right to the hold-down until the hold-down is awarded to another carrier pursuant to the provisions of Article 41, Section 2B4 of the National Agreement; and under the language of Article 41, Section 1A1, within five (5) working days of the day that the hold-down becomes vacant as a result of a carrier accepting a 204b detail, the hold-down must be reposted for the duration of the remainder of the original vacancy.

Date of Award: July 21, 1989

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CONTRACT ADMINISTRATION UNIT
 U.S.P.C. WASHINGTON, D.C.



ISSUES

1. Does a part-time flexible city letter carrier on a "hold-down" who accepts a 204b detail lose the contractual right to the "hold-down"?
2. Must said "hold-down" be reposted for the duration of the remainder of the original vacancy?
3. Is the PTF prohibited from returning to the "hold-down" (which they were awarded under Article 41.2.B.4) upon completion or termination of the 204b assignment?

HISTORY OF THE PROCEEDINGS

The parties failed to reach agreement on this matter, and it was submitted to arbitration for resolution. Pursuant to the contractual procedures of the parties, the undersigned was appointed as Arbitrator to hear and decide the matter in dispute.

At the commencement of the Hearing, it was stipulated by the parties that this matter was properly before the Arbitrator for decision and that all steps of the arbitration procedure had been followed and that the Arbitrator had the authority to render the decision in this matter. After the Hearing, it was agreed that the parties would submit Post-Hearing Cross-Briefs to the Arbitrator by placing such Briefs in the mails not later than April 14, 1989. A Transcript of the Hearing prepared by Diversified Reporting Services, Inc., Washington, D.C. was received by the Arbitrator on March 15, 1989. The Post-Hearing Cross-Brief filed by the United States Postal Service (hereinafter referred to as "Employer") was received by the Arbitrator on April 17, 1989. The Post-Hearing Cross-Brief filed by the National Association of Letter Carriers, AFL-CIO (hereinafter referred to as "Union") was received by the Arbitrator on April 18, 1989.

SUMMARY STATEMENT OF THE CASE

On or about February 24, 1987, Branch No. 81 of the Union at Glen Falls, New York, filed a Class Action grievance concerning the manner in which hold-down assignments were being handled, and the grievance was denied by Carrier Foreman Steve Philo. Pursuant to Article 15 of the National Agreement, the grievance was appealed on March 4, 1987 to Step 2 of the grievance procedure alleging a violation of, but not limited to, Article 41, Section B, Paragraphs 4 and 5 of the National Agreement, and stating in relevant part as follows (Joint Exhibit No. 2):

Facts: Carrier Desguin had a hold down on Route 20. She was temporarily assigned as 204B for a period of 2 weeks. Carrier Schmitt was then awarded the route on a "two week" hold down.

Union Contentions: It is the Union's contention that if a PTF is working on a hold down assignment, and is then detailed to a 204B position, that a new hold down period starts, and as such, should be awarded as an "Indefinite" period or for the duration of the original hold down period, not until the 204B returns for detail.

Corrective Action Requested: That in the future, if a PTF having a hold down position, is detailed as a 204B that the assignment be reposted as "Duration" and the 204B not be allowed to return to that hold down after completing a 204B detail.

On March 16, 1987, in a letter to Union President Mike Hoag, Superintendent of Delivery & Collection R. Greg French denied the grievance, stating in relevant part as follows (Joint Exhibit No. 2):

* * *

Upon full discussion of the matter, it is determined that this grievance is denied.

The reason for this decision is that management feels that a PTF should not be punished for their efforts to attain upward mobility. Post practice has never seen a PTF pulled off a Hold Down Assignment for taking AL/SL and management feels that should include 204-B assignments.

On March 23, 1987, the Union appealed the grievance to Step 3 of the grievance procedure for the following reasons (Joint Exhibit No. 2):

Art 41 states that a hold down is for the duration of the vacancy. If a person accepts another position, such as 204B, OIC, becomes eligible and is a successful bidder on a fulltime position, etc. Then the hold down should be vacated and reposted for other eligible employee consideration. If a person is on a hold down and is on Annual or Sick Leave, they have not vacated the position, but rather are just in another pay status.

Corrective Action Requested: In the future, if a PTF having a "hold down" position, is detailed as a 204B that the assignment be reposted as "duration" and the 204B not be allowed to return to that hold down after completing a 204B detail.

On May 7, 1987, in a letter to National Business Agent Robert Massaroni, the grievance was denied by Labor Relations Program Analyst C.G. Carlson, who stated in relevant part as follows (Joint Exhibit No. 2):

* * *

Upon full discussion and consideration of this matter, it is determined that this grievance is denied.

The reason for this decision is investigation indicates no violation as alleged. Employees assigned as "hold down" are retained when absent for annual leave, sick leave, etc. This instant case presents no different conditions or circumstances.

On May 28, 1987, the grievance was appealed to Step 4 of the grievance procedure, and on September 11, 1987, in a letter to Director of City Delivery Brian Farris, the grievance was denied by Margaret H. Oliver, Grievance & Arbitration Division, who stated in relevant part as follows (Joint Exhibit No. 2):

* * *

The issue in this grievance is whether a hold-down assignment should have been reposted when the incumbent went on a 204b assignment.

It is our position that no national interpretive issue involving the terms and conditions of the National Agreement is fairly presented in this case. However, inasmuch as the union did not agree, the following represents the decision of the Postal Service on the particular fact circumstances involved.

A review of the grievance file disclosed no contractual violation. In this case, an employee who returned from a 204b assignment was allowed to go back into the hold-down assignment. According to management, this action was in accord with the practice of retaining employees in hold-down assignments when they are on leave. There is no contractual prohibition against the action taken by management. Accordingly, the grievance is denied.

On September 16, 1987, the Union appealed the grievance to arbitration.

Provisions of the National Agreement effective July 21, 1984, to remain in full force and effect to and including 12 midnight July 20, 1987, (hereinafter referred to as "National Agreement") (Joint Exhibit No. 1) considered pertinent to this dispute by the parties are as follows:

ARTICLE 3

MANAGEMENT RIGHTS

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 official duties;*

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary actions against such employees;

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;

* * *

ARTICLE 15

GRIEVANCE-ARBITRATION PROCEDURE

* * *

Section 2. Grievance Procedure--Steps

* * *

Step 2:

* * *

(d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the exchange of copies of all relevant papers or documents in accordance with Article 31. The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. In addition, in cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above.

* * *

Section 4. Arbitration

A. General Provisions

* * *

(6) All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. . . .

** * **

ARTICLE 41

LETTER CARRIER CRAFT

Section 1. Posting

A. In the letter carrier craft, vacant craft duty assignments shall be posted as follows:

** * **

- 2. Letter carriers temporarily detailed to a supervisory position (204b) may not bid on vacant letter carrier craft duty assignments while so detailed. However, nothing herein shall be construed to preclude such temporarily detailed employees from voluntarily terminating a 204b detail and returning to their craft position. Upon return to their craft position, such employees may exercise their right to bid on vacant letter carrier craft duty assignments.*

The duty assignment of a full-time carrier detailed to a supervisory position, including a supervisory training program in excess of four months shall be declared vacant and shall be posted for bid in accordance with this Article. Upon return 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.

Form 1723, Notice of Assignment, shall be used in detailing letter carriers to temporary supervisor positions (204b). The Employer will provide the Union at the local level with a copy of Form(s) 1723 showing the beginning and ending of all such details.

** * **

- 5. Whether or not a letter carrier route will be posted when there is a change of more than one (1) hour in starting time shall be negotiated locally.*

** * **

B. Method of Posting

* * *

2. *Posting and bidding for duty assignments and/or permanent changes in fixed non-work days shall be installation-wide, unless local agreements or established past practice provide for sectional bidding or other local method currently in use.*

* * *

C. Successful Bidder

1. *The senior bidder meeting the qualification standards established for that position shall be designated the "successful bidder."*

* * *

4. *The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to T/6 and utility assignments, unless the local agreement provides otherwise.*

* * *

Section 2. Seniority

A. Coverage

1. *This seniority section applies to all regular work force letter carrier craft employees when a guide is necessary for filling assignments and for other purposes and will be so used to the maximum extent possible.*

* * *

B. Definitions

1. *Seniority for bidding on preferred letter carrier craft duty assignments and for other purposes for application of the terms of the National Agreement shall be restricted to all full-time regular city letter carriers.*
2. *Part-time regular letter carriers are considered to be a separate category and seniority for assignment and other purposes shall be restricted to this category.*

3. *Full-time reserve letter carriers, and any unassigned full-time letter carriers whose duty assignment has been eliminated in the particular delivery unit, may exercise their preference by use of their seniority for available craft duty assignments of anticipated duration of five (5) days or more in the delivery unit within their bid assignments areas, except where the local past practice provides for a shorter period.*
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 subsections 3 and 4 above, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration.*

* * *

POSITION OF THE PARTIES

The Position of the Union

It is the position of the Union that the Employer violated the National Agreement by allowing a parttime flexible to return to a hold-down assignment, thereby bumping another parttime flexible. The Union contends that an award should be issued affirming that management may not allow a letter carrier to leave an opted-for hold-down assignment to work as a 204b supervisor, and then return to the same hold-down assignment after completing the 204b assignment, so as to bump a second carrier who had used his seniority to opt for the hold-down assignment.

The Position of the Employer

The Employer takes the position that the Union has failed to meet its required burden of proof in support of its case. The Employer contends that there is no evidence that a parttime flexible on a hold-down forfeits that position by accepting a 204b supervisory assignment. The Employer maintains that, to the contrary, it is the long established practice of the parties that such a hold-down assignment is not forfeited.

OPINION

Basically, in this matter, the Arbitrator is required to determine whether a parttime flexible on a hold-down assignment loses the right to complete that assignment by accepting a 204b supervisory position.

In support of its position herein, the Union argues that this case involves the straightforward application of unambiguous contract language. According to the Union, Article 41, Section 2B5 of the National Agreement provides that when a parttime flexible carrier (hereinafter sometimes referred to as "PTF") successfully opts for a hold-down assignment, the carrier ". . . shall work that duty assignment for its duration." The Union maintains that Section 2B does not contain any exceptions to this explicit, mandatory language. Citing the award in Case No. H1N-4G-C-10621, the Union notes that the arbitrator therein concluded that "Section 41.2.B.5 bars the Service from taking [a carrier] off a temporary [hold-down] assignment for any reason." It is further urged by the Union that management's actions in this matter were inconsistent with Section 2B5 in two distinct respects. Specifically, the Union contends that when PTF Desguin exercised her seniority to select Carrier Freightenberg's route, she had the right and obligation to work that assignment for the duration of the vacancy, that is, until Freightenberg returned or the route was posted for permanent bid. Management's action in allowing Desguin to leave the assignment prematurely to work as a 204b supervisor were inconsistent with this requirement. The Union further contends that when PTF Schmitt won the hold-down on January 17, 1987, he assumed his own right under Section 2B5 to work the assignment for its duration, and management clearly violated this right by bumping Schmitt off the hold-down to permit Desguin to return to it after her stint as a 204b.

The Employer argues, to the contrary, and urges that the Union is attempting to take away the right of a PTF to a hold-down position that is clearly contained in the provisions of Article 41 of the National Agreement. According to the Employer, the only purpose for taking away this contractual right is the Union's dislike for employees who accept a temporary assignment as a 204b. The Employer maintains that the language of the National Agreement as well as the documents presented at the Hearing reveal that the Union has only been successful in negotiating one very limited and specific area pertaining to curtailing the rights of letter carriers who accept 204b assignments. That single curtailment deals with full-time regular employees who are on a 204b assignment for a period in excess of four months. Subsequent to the contractual language, the parties have only agreed in a Step 4 settlement to a limited obligation on the part of management. The Employer maintains that the limited obligation occurs when a hold-down position becomes vacant for one week or more after having been awarded as a hold-down, and under those circumstances, the hold-down will be reposted for that specific period of time, and the carrier who originally opted will be allowed to return and finish the original hold-down. What the Union seeks to do through arbitration, the Employer argues, is to achieve what it could not obtain during negotiations. According to the Employer, the Union has repeatedly attempted to gain restrictions and assess penalties against carriers who express an active interest in a 204b assignment or regular supervisory position. Citing the position taken by the Union during contract negotiations in 1975, 1978, and 1981, the Employer argues that the instant grievance is but another attempt to achieve that end result. Were the Union to be successful in this attempt, it would, according to management, be a further restriction on the Employer's ability to encourage craft employees to seek upward mobility and it would act as a deterrent to the craft employee.

The Employer additionally argues that the language of Article 41, Section 2B4 of the National Agreement clearly states that the hold-down is awarded on the basis of seniority, and the person on the hold-down is entitled to work the hold-down for its duration. According to the Employer, there is no contractual penalty specified that requires a carrier to lose what the carrier obtained by contract language if the carrier accepts a 204b assignment. The only penalty specified in the contract is that a carrier who functions continuously for more than four months as a 204b loses his bid route. However, it is the position of the Employer that the language of the National Agreement and subsequent Step 4 agreements do not cause the PTF to permanently or completely lose that hold-down by accepting a 204b assignment.

Supportive of this position, the Employer maintains, is the history of the development of Article 41, Sections 2B4 and 2B5 of the National Agreement. In this regard, the Employer cites the testimony of William Henry of the Labor Relations Department that the language was a last-minute Union proposal, which neither side attempted to clarify prior to agreement. According to the Employer, the meaning of Article 41, Sections 2B4 and 2B5 has evolved by mutual agreement in a series of Step 4 settlements at the national level. Referencing eleven such agreements, the Employer contends that such settlements contain the mutual agreement of the parties on the meaning of the language in Article 41.

It is further noted by the Employer that, prior to the filing of this grievance in 1987, the Union in 1984 challenged management's longstanding practice of not penalizing a carrier, by removing a PTF from a hold-down, when that PTF was used as a 204b for two days or more while on the hold-down. That grievance was subsequently appealed to arbitration after a Step 4 decision was issued on May 17, 1985. In relevant part, the Step 4 decision stated as follows (Management Exhibit No. 12):

Management may assign the employee during the period of the "hold-down" to higher level assignments 204(b). During the period the employee is assigned as a 204(b), management may assign any available carrier to the "hold-down."

The grievance in the referenced matter challenged a longstanding practice of the Employer that is again being challenged in the matter at hand. According to the Employer, this challenge by the Union establishes that approximately seven years after the language of Article 41 here in question came into existence, the Employer firmly believed that the long-term practice of detailing a carrier on hold-down to a 204b assignment was not contractually prohibited by Article 41, Sections 2B3, 2B4, and 2B5.

In the considered judgment of the Arbitrator, the factor that distinguishes the situation now before him from the one that led to the above-referenced Step 4 decision is the amount of time involved. Under the facts of the grievance that led to the Step 4 decision (Management Exhibit No. 12), the carrier on a hold-down worked as a 204b for two days and then returned to the hold-down. There is no indication from the record of that incident that the hold-down assignment was posted for bid; to the contrary, it appears that management decided to assign another available carrier to work the hold-down while the first carrier served as a 204b.

In the instant matter, the record presented reveals that Carrier Desguin was offered a two-week assignment as a 204b while she was on a hold-down assignment. Thus, it was clear from the outset that if Carrier Desguin accepted the 204b position, the hold-down assignment would be vacant for two weeks. As read by the Arbitrator, Article 41, Section 1A1 requires that a vacant craft duty assignment ". . . shall be posted within five working days of the day it becomes vacant . . ." Seemingly, therefore, management was obligated to post the hold-down occupied by Carrier Desguin within five working days after she vacated the assignment in favor of the 204b position. If Carrier Desguin had elected to terminate the 204b assignment before it was awarded to another carrier, she would have had the right to return to the hold-down. However, once the position was awarded to another carrier, in this case Carrier Schmitt, the right of Carrier Desguin to that hold-down was extinguished.

The Employer has attempted to liken the situation presented herein to that of a carrier on leave for vacation or illness. However, in the view of the Arbitrator, the analogy is not appropriate, for a carrier taking leave is absent from work while utilizing a benefit of employment. In contrast therewith, a carrier accepting a 204b position is present and at work but is in an alternative duty assignment. Thus, it is the conclusion of the Arbitrator that the settlement (Management Exhibit Nos. 22 and 33) reached between the parties as to the handling of the situation that arises when a carrier on a hold-down takes leave is not controlling herein. Similarly, the additional settlements referenced by management (Management Exhibit Nos. 16, 18, 20, 24, 25, 27, 28, 32 and Union Exhibit Nos. 5 and 7) do not appear to the Arbitrator to address the situation of filling the vacancy created when an employee accepts a 204b assignment from a hold-down position.

The Employer has also cited a number of previous arbitration awards as supportive of its position herein. Several of these awards (Case Nos. NB-5-6859, N8-NA-0383, A8W-939 and H1N-4J-C-8187) are primarily concerned with the rights of an employee while serving in a 204b assignment and shed little light on the resolution of the instant grievance. The remainder of the awards cited by management (Case Nos. H1N-5D-C-2120, H1N-3U-C-13930, H1N-3U-C-10621, S1N-3U-C-15330, and S1N-3U-C-27089) address various concerns of the parties that have arisen as a result of the somewhat conflicting provisions of Article 41 of the National Agreement, but none of these awards are found by the Arbitrator to be fully supportive of its position in this matter. Indeed, it is observed by the Arbitrator that in several of the cited awards, arbitrators have underscored the mandate of Article 41, Section 2 requiring a letter carrier to work a temporary duty assignment for the duration, and in the considered judgment of the Arbitrator, management cannot properly cling to its view that a carrier on a hold-down who accepts and is working on a 204b assignment is at the same time working the hold-down for its duration, for the two situations are clearly inconsistent and incompatible.

Finally, the Arbitrator does not find the position of the Employer to be advanced by its endeavor to assign to the term "duration" the time period in which Carrier Desguin served as a 204b. That the time period of Carrier Freightenberg's detail to a

supervisory position is the more appropriate yardstick to be used in the measurement of "duration", as that term is used in the National Agreement, is demonstrated by the language of Article 41, Section 2B4 which states, in relevant part, that a PTF may exercise his preference ". . . for available full-time craft duty assignments of anticipated duration of five (5) days or more . . ." Thus, the position on which Carrier Schmitt bid was the full-time craft duty assignment of Carrier Freightenberg and not the hold-down assignment of Carrier Desguin.

In view of the findings made with respect to the issues presented, the Arbitrator concludes as follows:

1. A part-time flexible city letter carrier on a hold-down who accepts a 204b detail retains the contractual right to the hold-down until the hold-down is awarded to another carrier pursuant to the provisions of Article 41, Section 2B4 of the National Agreement.
2. Under the language of Article 41, Section 1A1, within five (5) working days of the day that the hold-down becomes vacant as a result of a carrier accepting a 204b detail, the hold-down must be reposted for the duration of the remainder of the original vacancy.
3. Upon completion or termination of the 204b assignment, the PTF is prohibited from returning to the hold-down if another PTF has exercised his preference for the full-time duty assignment in accordance with Article 41, Sections 2B4 and 2B5 of the National Agreement.