

C# 10006

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

GRIEVANT: J. Mitchell

between

CASE NO: S7N-3W-C 88041

UNITED STATES POSTAL SERVICE

GTS NO: 011896

and

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO

B. R. SKELTON, ARBITRATOR

APPEARANCES:

For the U. S. Postal Service:

Gerald E. Keegan

For the Union:

Robert L. York

Place of the Hearing:

Tampa, FL

Date of the Hearing:

March 30, 1990

AWARD:

The Postal Service did not violate the Agreement when it did not award Route 19082 to the Grievant in October 1989. The grievance is denied.

Date of the Award: May 2, 1990



B. R. Skelton, Arbitrator

STATEMENT OF THE CASE

The Grievant, J. Mitchell, had an on the job injury on January 11, 1982. On December 10, 1983 a modified job was created for him consisting of a limited duty assignment on Route 5013. The medical restrictions imposed at that time were considered to be permanent and consisted of a weight restriction of twenty-five (25) pounds and sitting no more than two hours per day. In the letter to him creating the modified limited duty assignment, he was informed that his physical limitations would have to be considered when and if he bid on another position. He accepted the modified work assignment and has been on Route 5013 since.

In February, 1987, the two hour sitting restriction was removed and he subsequently, on occasion, carried mounted routes. The twenty-five (25) pound weight restriction remained as a part of his limited duty job.

On September, 1989, Route 19082 was posted for bids. The Grievant bid on this work assignment and was initially awarded the route, effective October 7, 1989. Subsequent to the award notice but prior to the effective date of the assignment, the award was rescinded and awarded to another carrier. This occurred after it was made known to the station manager that the Grievant did not meet the qualifications of the job because of his weight restrictions.

A grievance was filed on his behalf challenging the failure of the Postal Service to award him the bid on Route 19082. This grievance was processed through the UMPS procedure, remained unresolved, and is not the subject of this arbitration.

ISSUE

The parties stipulated that the issue to be resolved in this matter is as follows:

Did the Postal Service violate the National Agreement by not awarding the Grievant the bid assignment on Route 19082 because of medical restrictions? If so, what shall the remedy be?

POSITION OF THE UNION

The Union makes the following contentions and allegations in support of its position that the grievance should be sustained:

1. Route 19082 was a mounted curb delivery route and would eliminate walking involved in the Grievant's current limited duty Route 5013.
2. The bid was initially awarded to the Grievant but subsequently rescinded because the Postal Service stated he did not meet physical requirements of the job.

3. There is no evidence in the National Agreement and relevant handbooks nor in the testimony of witnesses that an employee is disallowed from bidding on a job while on limited duty.

4. The motorized curb delivery route could be modified to accommodate the Grievant's restrictions just as Route 5013 was modified in 1983. Management made no effort to modify the route and did not even consider modification as an alternative when the Grievant bid on the job.

5. The Grievant could perform the full range of duties associated with Route 19082. He had a fifty pound weight limitation and this weight limitation could have been accommodated on a day to day basis as needed.

6. The Grievant has carried motorized curb delivery on other routes without any complications.

7. Management is required to make every effort to accommodate employees with on the job injuries. Management did not do so when the Grievant bid on Route 19082.

Because the Postal Service violated the Agreement when it did not award Route 19082 to the Grievant, the grievance should be sustained and he should be awarded that route.

POSITION OF THE POSTAL SERVICE

The Postal Service makes the following contentions and allegations in support of its position that the grievance should be denied:

1. Management made every effort to accommodate the Grievant because of his on the job injury. It created a limited duty route assignment for him, established additional selection points for him, and accommodated his twenty-five (25) pound weight restriction so that he could continue to work.

2. The Grievant's restrictions were permanent. The Postal Service had no additional information since February 1987 when medical documentation was provided which removed the two hour sitting restriction so the Grievant could on occasion carry mounted routes. The twenty-five (25) pound weight restriction remained as a restriction up to and including the time on which he bid on Route 19082.

3. The Postal Service qualifications for a carrier include weights of thirty-five (35) pounds for the satchel and seventy (70) pounds overall. The Grievant could not meet either of these weight restrictions at the time the bid was made. Therefore, he did not meet the qualifications for the job.

4. The Grievant may have carried mounted routes on occasions since 1987, but on these occasions his twenty-five (25) pound weight restriction was accommodated. Management is obligated to base its decision on medical restrictions on record not on what a carrier believes he can or cannot do.

5. Article 13.2 requires the Postal Service to give the greatest consideration to an employee's medical restrictions. Management did so when it created a permanent limited duty job assignment for him on Route 5013.

6. Article 41.1.C.1 states that the successful bidder meeting the qualification standards will be awarded the job. The Grievant was permitted to bid and he was the senior bidder. However, he did not meet the qualification standards for the job and for this reason the award could not be granted to him.

7. The Postal Service is not obligated by contractual provisions, OWCP rules and regulations, or precedent to continuously modify different jobs to accommodate limited duty employment.

Because the Grievant did not meet the qualifications for the job at the time he bid on the job, the grievance should be denied and dismissed in its entirety.

DISCUSSION AND OPINION

Most of the factual information pertaining to this matter is not in dispute. The Grievant had an on the job injury, was out of work for a period of time, and returned to duty on a limited duty assignment specifically created for him to accommodate his permanent medical restrictions. When he was not permitted to carry mounted routes to relieve other carriers he went to his doctor and successfully removed the two hour sitting requirement from his medical restrictions. Subsequent to this he was permitted on occasion to carry mounted routes. However, the twenty five (25) pound weight restriction remained as a permanent restriction on his record.

Based on this information the Postal Service gave the greatest consideration to the Grievant's physical limitations and accommodated him when it created the permanent job for him. Neither the Grievant nor the Union disagree that the Postal Service did accommodate his permanent medical restrictions by modifying Route 5013 to accommodate him. The Union and the Grievant believe, however, that the Postal Service did not give the greatest consideration to the Grievant when it did not award him Route 19082.

A review of the facts surrounding the bid on Route 19082 is in order. On September 14, 1989 Route 19082 was posted for bids. Article 41.1.C.1 states that the successful bidder meeting the qualifications standards will be awarded the bid. It is not in dispute that the Grievant was the senior bidder and was initially awarded the bid. This bid was rescinded when the station manager learned that the Grievant did not meet the physical requirements of the job. The station manager was unaware at that time that he had a twenty five (25) pound weight restriction.

Article 41.1.C.1 is clear and unambiguous when it states that the bidder must meet the qualification standards for the job. It is not in dispute that the Grievant was not permitted by his medical restrictions to lift thirty five (35) pounds in his satchel or seventy (70) pounds in trays. In other words, based on the Grievant's medical restrictions at the time the bid was awarded the Grievant did not meet the qualification standards for the job. Subsequent to the bid the Grievant did go to his physician and have the weight restriction raised to fifty (50) pounds. This would accommodate the satchel restriction but would not accommodate the seventy (70) pound restriction which both the Union and the Postal Service agree has to be met on occasion by carriers.

It is clear then that the Grievant did not meet the physical requirements of Route 19082 and the Postal Service was within its right to deny the bid on this route to him. Unsettled is the question of whether the Postal Service, once it modifies a route and creates a permanent limited duty assignment for an employee, is obligated to permanently modify other routes on which the Grievant wishes to bid. The Postal Service pointed out that there was nothing in the National Agreement or relevant handbooks that required the Postal Service to modify additional routes whenever a carrier wished to bid on additional routes. The Union pointed out that there was nothing in the National Agreement or relevant handbooks that prohibited the Postal Service from modifying another route if a carrier wished to bid on it and was the successful bidder.

It is logical to conclude that activities that are not prohibited by contract and relevant handbook languages are permitted at the discretion of the Postal Service. It cannot be concluded from this, however, that because an action is permitted that the Postal Service is required to engage in that action. In other words, even though the Postal Service could modify another route for an employee who is on a permanent limited duty assignment, the Postal Service is not obligated by contract to do so. It is at the discretion of the Postal Service whether to modify another route to accommodate changing permanent medical restrictions. The record clearly establishes that the Grievant went back to his medical doctor and was successful in changing the two hour sitting restriction initially imposed in 1983. This occurred in 1987. It is also clear from the record evidence, although not probative for the matter before this Arbitrator, that subsequent to the denial to the bid in October, 1989 the Grievant went to his doctor and successfully raised the weight restriction from twenty five (25) to fifty (50) pounds.

The changing circumstances of the physical restrictions on limited duty assignments may make it possible for an employee to bid on and have more desirable jobs. It is apparent because the Grievant bid on the job that he felt the mounted route would be a more desirable job for him than a walking route. It also appears that the initial restrictions imposed on him in 1983 are no longer as strict as they were.

The Postal Service did not violate the Agreement when it did not award Route 19082 to Mr. Mitchell. Because the Postal Service did not violate the Agreement when it did award job 19082 to him does not mean that the Postal Service cannot permit him to bid on other routes and have those other routes modified to accommodate his restrictions if it is in the best interest of both the employee and the Postal Service. There is no evidence in the

record that it is in the best interest of the Postal Service to change the permanent limited duty assignment of Mr. Mitchell unless and until an opening occurs for which he can qualify. There is evidence it is his best interest to be off a walking route and on a mounted route.

Because the Postal Service did not violate the Agreement and relevant handbooks when it did not award Route 19082 to the Grievant, the grievance is denied. Neither party wishes gratuitous dicta incorporated in awards. But it is apparent that the Postal Service should make the greatest effort to accommodate employees on limited duty assignments to their changing work circumstances, to their changing age and physical capabilities, and should make efforts to accommodate employees moving into more desirable work assignments when possible, even if it means changing a permanent limited duty assignment from one route that has been modified specifically to accommodate an employee to another route that can be modified with minimal effort to accommodate the changing circumstances of that employee. The Postal Service is not ordered, however, to award the Grievant Route 19082 and modify it to accommodate his current weight restrictions, but in the event the Grievant is the senior bidder on other routes open for bid, the Postal Service should give the greatest consideration to what would be necessary to accommodate the Grievant on any subsequent route on which he bids, even if it does create paperwork.