C# 16923

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration between NATIONAL ASSOCIATION OF LETTER CARRIERS and UNITED STATES POSTAL SERVICE with AMERICAN POSTAL WORKERS UNION as Intervenor	CASE NO.: I90N-4I-C 92057810

BEFORE: Carlton J. Snow
Professor of Law

APPEARANCES: National Association of Letter Carriers:
Mr. Keith E. Secular

United States Postal Service:
Mr. John W. Dockins

American Postal Workers Union:
Mr. Arthur Luby

PLACE OF HEARING: Washington, D.C.

DATES OF HEARINGS: June 4, 1996
July 17, 1996

AWARD: Having carefully considered the record submitted to the arbitrator in this case, the arbitrator concludes that the grievance is denied.

AWARD

Having carefully considered the record submitted to the arbitrator in this case, the arbitrator concludes that the grievance is denied.

Date: June 20, 1997

Carlton J. Snow
Professor of Law

NATIONAL ARBITRATION PANEL

IN THE MATTER OF ARBITRATION	)	
	)	
BETWEEN	)	
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS	)	
	)	
AND	)	ANALYSIS AND AWARD
	)	
UNITED STATES POSTAL SERVICE	)	
	)	Carlton J. Snow
WITH	)	Arbitrator
	)	
AMERICAN POSTAL WORKERS UNION as Intervenor	)	
Case No.: I90N-4I-C 92057810)	)	

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from June 12, 1991 through November 20, 1994. Hearings were held on June 4, 1996 and July 17, 1996 in a conference room of Postal Headquarters located in Washington, D.C. Mr. Keith E. Secular, with the law firm of Cohen, Weiss, and Simon in New York City, represented the National Association of Letter Carriers. Mr. John W. Dockins, Labor Relations Specialist, represented the United States Postal Service. Mr. Arthur Luby, with O'Donnell, Schwartz, and Anderson in Washington, D.C., represented the American Postal Workers Union.

The hearings proceeded in an orderly manner. The parties had a full opportunity to submit evidence, to examine and

cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. A court reporter for Diversified Reporting Services, Inc. reported the proceedings for the parties and submitted a transcript of 179 pages. The advocates fully and fairly represented their respective parties.

The parties stipulated that the matter properly had been submitted to arbitration and that there were no issues of substantive or procedural arbitrability to be resolved. They elected to submit the matter on the basis of evidence presented at the hearing and simultaneous post-hearing briefs. The arbitrator officially closed the hearing on March 19, 1997 after receipt of a letter from Mr. Secular dated March 14, 1997.

II. STATEMENT OF THE ISSUE

The issue before the arbitrator is as follows:

Whether management violated the National Agreement by excessing a full-time clerk into the Letter Carrier craft in accordance with Article Article 12.5.C.5.a.

III. STATEMENT OF FACTS

In this case, the National Association of Letter Carriers asserted that the Employer violated Article 12 of the parties' agreement. In 1991, the Employer centralized and automated mail processing functions into the facility at Cape Girardeau, Missouri. The managerial decision resulted in a loss of five full-time Clerk positions in the Sikeston, Missouri installation. The parties disagreed regarding whether management properly reassigned one of the excessed clerks across craft lines into a vacant, full-time Letter Carrier position within the Sikeston, Missouri installation. The National Association of Letter Carriers challenged the action of the Employer on behalf of a part-time flexible carrier who was not promoted to a full-time position as a result of the reassignment.

The Employer denied the grievance at each step of the process. On January 22, 1992, the National Association of Letter Carriers appealed the dispute to Step 4. The Union claimed a violation of Article 12 and requested the following resolution:

> That those senior PTFs who are eligible to promotions of full-time positions or who become eligible shall be promoted. That management shall comply with Article 12 of the contract, and that the PTF Carriers who should have been promoted will be compensated for lost Holiday Pay and compensated for all work outside of the denied full-time position without any reduction in the hourly salary received as a PTF.

On April 22, 1994, management denied the grievance at Step 4 and stated that:

> The Union, in management's opinion, misreads Article 12.5.C.6. Subsections 5 and 6 of Article 12.5.C are not mutually exclusive, rendering different results, as the Union contends. Rather, the provisions of Article 12.5.C.6 do not come into play until after there are excess clerks in the losing installation. A clerk who is placed in the Carrier Craft in his home installation has a job, and is not an "excess clerk." The net effect of Article 12.5.C.6 is to specify certain special provisions among clerks in certain situations. It in no way establishes a different order for excessing ["outside the installation" before "outside the craft within the installation"] as alleged by the Union. To do so would in itself be a violation of Article 12.4.A ("A primary principle in effecting reassignment will be that the dislocation and inconvenience to employees in the regular work force shall be kept to a minimum. . . .").

On May 12, 1994, the National Association of Letter Carriers appealed the Step 4 denial to arbitration. Subsequently, the American Postal Workers Union intervened in the case. When the parties were unable to resolve the matter, it came to arbitration for resolution.

IV. POSITION OF THE PARTIES

A. National Association of Letter Carriers

The National Association of Letter Carriers asserts Article 12 of the agreement specifies that, in cases of automation and centralization of mail processing, excess clerks must be reassigned, first, to open clerk positions within a one hundred mile radius of their location. Only if such positions are unavailable within this area may excess clerks be placed across craft lines inside their own facility,

according to the National Association of Letter Carriers.

Subsection 6 of Article 12.5.C states that, "When operations at a centralized installation . . . results in an excess of full-time clerks at another installation(s), full-time clerks who are excess in a losing installation(s) by reason of the change shall be reassigned as provided in Section C.5.b." The National Association of Letter Carriers contends that using Article 12.5.C.6 is a departure from the usual method of reassigning excess employees as set forth in Sub-section 5. According to the National Association of Letter Carriers, Subsection 5 applies in cases where employees become excess for "typical" reasons, such as reduction in mail volume or installation of automated equipment. As the National Association of Letter Carriers sees it, the provision causes excess clerks to be reassigned within the installation first and, if no positions are available within the installation, to other installations within a one hundred mile radius. Because the language of Subsection 6 applies specifically to situations where mail processing is being centralized and direct reassignment of excess clerks, the National Association of Letter Carriers contends that the Employer may not reassign clerks to cross craft lines within an installation but, rather, must cause the clerk "to follow the work."

The National Association of Letter Carriers maintains that the plain meaning of the language as well as the historical development of Article 12 are in agreement with the Union's interpretation. The 1964 agreement between the parties

includes language equivalent to Article 12.5.C.5 but has no provision specific to centralization. The Union stresses the fact that the language of the current Article 12.5.C.5 predates the verbiage in Article 12.5.C.6. The language of Article 12.5.C.6 first appeared in the 1966 agreement as Article 12.5.C.7 and directed reassignment under Subsection 5(d). It is the conclusion of the National Association of Letter Carriers that the contractual reference to Section 5(d) shows the clear intent of the parties to bypass Subsection 5(a) where clerks are excessed due to centralization of mail processing. The National Association of Letter Carriers maintains that the only possible purpose of Subsection 6 is to change reassignment priorities in cases of centralization, according to which the clerks would follow the work. Otherwise, it allegedly would be a superfluous clause. The National Association of Letter Carriers concludes that the language is not ambiguous and, therefore, must be interpreted in accordance with its plain meaning.

B. The Employer

The Employer argues for an interpretation of the agreement based on an underlying commitment to keep employee dislocation to a minimum. According to the Employer, Article 12.5.C.5 calls for reassigning employes first within an installation, and only afterwards does the Employer look outside to other installations. The Employer suggests that the language of Subsection 6 ("full-time clerks who are excessed") is not activated until an employee becomes "excessed," that is, after an application of Subsection 5(a) and when no vacancies are available within the installation.

In other words, the Employer argues that clerks are not excess to an installation until reassignment within the unit has taken place and no further vacancies exist. Thus, according to the Employer, Subsection 6 does not bypass Subsection 5(a) but, rather, is carried out only after Subsection 5(a) is applied. The Employer further maintains that the presence of the words, "after making reassignment within the installation," in the title of Subsection 5(b) suggests that Subsection 5(a) must already have been applied.

It is the position of the Employer that the dispute before the arbitrator is not one of first impression. The Employer maintains that an established and unchallenged practice of management in cases of centralization of mail processing has been to assign excessed clerks across craft lines within an installation prior to looking outside the facility. The Employer provided evidence of such a

long-standing practice, first, by offering an internal management training manual from 1966. The manual states that management is to use the "same principles of reassignment as provided by reduction of employees in an installation other than by arbitration" in implementing the new Section 7 of Article 12.C, an earlier equivalent to the current Subsection 6. In addition, the Employer relies on six prior arbitration awards and testimony from five witnesses to support its contention that such a practice is well-established. Furthermore, management contends that the National Association of Letter Carriers had notice of the practice and that the Union never before challenged the practice. Accordingly, the Employer concludes that there has been no contractual violation.

C. The American Postal Workers Union

The American Postal Workers Union intervened in the case and agrees with the Employer's interpretation of Subsections 5 and 6 of Article 12.5.C of the agreement. The American Postal Workers Union maintains that the referral in Subsection 6 to Subsection 5(b) is controlled by the words, "after making reassignment within the installation," in Subsection 5(b)'s title and, therefore, presumed the prior application of Subsection 5(a). An employee, thus, is not excessed unless no full-time vacancy exists in the installation, regardless of craft, according to the American Postal Workers Union.

The Union contends that the National Association of Letter Carriers' interpretation would give Letter Carriers an unfair advantage in the reassignment process and that such a result was never intended by the parties to the agreement. According to the American Postal Workers Union, the underlying aim of the reassignment provision is to avoid and reduce dislocation of employees. Additionally, the American Postal Workers Union argues that the purpose of Section 6 is to provide the 180 day "detail" provision and minimize disruption to gaining installations.

V. ANALYSIS

Based on correspondence from the National Association of Letter Carriers to which the American Postal Workers Union did not object, the grievance is denied. A letter dated March 14, 1997 from the National Association of Letter Carriers' representative to the arbitrator stated:

> As you know, the issue in this case is whether management properly reassigned a clerk craft employee to the letter carrier craft within the Sikeston, Missouri installation, where the clerk became excess to the needs of the installation due to a centralization of mail processing. NALC initially took the position that management was obliged to reassign the excess employee to an available clerk craft vacancy in a different installation under the provisions of Article 12.5.C.6. Management argued that this provision did not alter the reassignment rules specified by Article 12.5.C.5, pursuant to which excess employees are reassigned across craft lines within the installation before being assigned to a different installation.
>
> The record shows that the provisions at issue were negotiated in the 1960's, so that none of the preset parties have direct, first-hand knowledge of the original intent of the draftsmen. However, NALC has reconsidered its position in light of the testimony and documentary evidence submitted at the hearing, including, in particular, the 1966 training manual submitted by the Postal Service (Postal Service Exhibit 8) which apparently had not been discovered when the parties discussed this case at Step 4. We have concluded, based on the evidence, that management's interpretation of Article 12.5.C. subsections 5 and 6 is correct.
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> In light of the foregoing, NALC does not oppose the entry of an award denying the grievance herein.

In view of the letter from Mr. Secular, no further comment is necessary from the arbitrator; and the grievance is denied.

AWARD

Having carefully considered the record submitted to the arbitrator in this case, the arbitrator concludes that the grievance is denied.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: June 20, 1997