C-19547

IN THE MATTER OF ARBITRATION BETWEEN)
)
American Postal Worker Union,)
AFL-CIO)Postal Service Case
) No. G94C-4G-C 96077397
-and-)
)Edmonds Office
U.S. Postal Service)Oklahoma City, Oklahoma
Washington, D.C.)

BEFORE: Bernard Dobranski, Arbitrator

APPEARANCES: For the U.S. Postal Service
Marta E. Erceg, Esq.

For the APWU
CJ "Cliff" Guffey

For the NALC
Keith Secular, Esq. (Intervener)

PLACE OF HEARING: Washington, DC

DATE OF HEARING: April 23, 1997

BRIEFS SUBMITTED: August 8, 1997

RECORD REOPENED: December 1, 1989

ADDITIONAL AWARDS SUBMITTED: December 21, 1998

SUMMARY OF AWARD: For all the reasons set forth in the attached Opinion and Award, the grievance is denied.

Bernard Dobranski
Arbitrator

IN THE MATTER OF ARBITRATION BETWEEN	) OPINION AND AWARD
	)
American Postal Worker Union,	)
AFL-CIO	)Postal Service Case
	) No. G94C-4G-96077397
-and-	)
	)Oklahoma City, Oklahoma
	)Edmonds Office
	)
U.S. Postal Service[1]	)
Washington, D.C.	)

The hearing in the above matter was held on April 23, 1997 in Washington, D.C. before Bernard Dobranski, designated as arbitrator in accordance with the procedures set forth in the collective bargaining agreement.

Appearances: C.J. "Cliff" Guffey
For the American Postal Workers Union (APWU)

Martha Erceg, Esq.
For the Postal Service

Keith Secular, Esq.
For the Intervener, National Association of Letter Carriers (NALC)

Full opportunity to present evidence and argument was afforded the parties. Post-hearing briefs were filed by the parties by the deadline. On December 1, 1998, the APWU requested that the hearing be reopened to permit it to submit a national arbitration award by Arbitrator

[1] Without objection from the parties, the National Association of Letter Carriers was permitted to intervene in this matter.

Snow in Case No. H94N-4H-C 96090200, issued on November 4, 1998, which the APWU argued was pertinent to the issue in this case. After the Postal Service responded on December 18, 1998, that it had "no objection to admission of the Snow Award into the record.", the APWU submitted a copy of the award on December 21, 1998.

ISSUE

The issue that emerged from discussion with the parties is whether the union notification provision under Article VII, Section 2, of the National Agreement applies to permanent Rehabilitation Program full-time assignments made under Section 546 of the Employee and Labor Relations Manual (ELM).[2]

BACKGROUND FACTS

On May 4, 1995, the Postal Service offered to Deborah M. Robertson, a letter carrier

---

[2] In its appeal to arbitration, the union characterized the issue as to "whether management must notify the APWU prior to creating a mixed light or limited duty assignment." At the hearing and in its brief, the union described the issue as "whether or not Article VII, Section 2, requires notification to the affected unions whenever a Postal Service creates a full-time assignment containing duties in different crafts."

During a lengthy discussion of the issue by the arbitrator and the parties at the hearing (e.g. Tr. pp. 10, 28, 38-41, 60-71), it became clear that the real issue between the parties was the one stated above.

employed at the Edmonds office in Oklahoma City, a permanent limited duty assignment as Special Delivery Messenger. Some of the assigned duties were clerical duties assigned to the clerk craft. No advance notification was given to the APWU about the work assignment to Robertson which included some clerical duties. According to the APWU, it did not become aware of this job offer of a mixed assignment until approximately one year later.

On April 8, 1996, the APWU, after it became aware of the mixed assignment, filed the instant grievance. The grievance was denied at the various steps of the grievance procedure and is now properly before the national arbitrator.

At the hearing, the Postal Service presented its case primarily through testimony of Richard Bauer, Injury Compensation Specialist, Office of Safety and Risk Management, U.S. Postal Service Headquarters, and Peter Sgro, the Acting Manager of Contract Administration for the Postal Service, charged with responsibility for administering the APWU and the Mail Handlers contracts, and through Postal Service Exhibits 1-14. The APWU presented its case primarily through the testimony of Cliff Guffey, the Assistant Director of the Clerk Division of the APWU, and Union Exhibits 1-20. No witnesses or exhibits were presented by the NALC.

Guffey testified, in essence, that the matters set forth in his opening statement, including the negotiation history, and the documents put forth as exhibits are an accurate reflection of what has occurred regarding the issue before the arbitrator.

Bauer testified that he has been involved with the creation, modification, and revision of ELM Section 546 since 1978. As regards reemployment of injured employees, it was contemplated from 1976 onward that duties from other crafts might be given to injured or ill employees. Moreover, the Postal Service is required to make every effort to accommodate injured or ill employees. Section 546.141 of the ELM essentially defines the Postal Service's current obligations with regard to limited duty employees. The language in the provision was developed to minimize the disruptive impact on employees by establishing a pecking order of work assignments. Over the years in each of the versions of the regulations that were promulgated, management was always permitted to assign limited duties that included work that was not in the injured employee's crafts. To Bauer's knowledge, the union never raised, in 1979 or any time thereafter, the contention that the Postal Service was required to notify the union in advance of making a limited duty assignment under Section 546. The Postal Service Injury Compensation Handbook EL-505 is the procedures document that implements Chapter 540. It gives injury compensation field personnel guidance on how to implement the policy contained in Chapter 540. Chapter 7 of the Handbook EL-505 deals with the limited duty program and Chapter 11 of the handbook deals with the rehabilitation program. In making assignments, the Postal Service attempts to minimize any disruptive impact to the employee, tries to keep the person in his or her present craft if possible, and in his or her present facility if possible. This is true whether it is a limited-duty assignment or a permanent assignment pursuant to the Rehabilitation Program. The term "other work" used in Section 546.141(a)(2) of the ELM which may be assigned within the facility means other bargaining unit work. Under 546.141(a), the first priority is to find work for an employee within his or her craft; the next priority is outside

the craft but within the facility. Nothing in Section 546 of the ELM or in the EL-505 Handbook requires management, before it places an employee in a permanent rehabilitation assignment, to give advance notification to the union if the assignment involves cross-craft duties. If the notification requirement was imposed upon management, it would slow down the process of making rehabilitation program assignments.

As regards Section 546.221 of the ELM, the language of this section was inserted to make sure that the rights of injured employees were not violated. At the time the language was inserted, the focus of the various unions was with regard to the rights of the injured employees under the collective bargaining agreement. During this time, the APWU and the other postal unions were "allied very, very closely" on the issue of protecting the injured employee's rights under the collective bargaining agreement, and no issue of cross-crafting was raised.

Sgro testified that it is his responsibility to assure that the contract is adhered to by the various management parties at headquarters and in the field, and to perform the other work related to the administration of the contract. He interacts with the union regularly regarding the contract, handbook, and manual provisions.

It is the Postal Service position that Article VII, Section 2 of the contract does not apply to Section 546 of the ELM. Under Article VII, Section 2, the Postal Service is required to notify the unions when it establishes cross-craft full-time duty assignments that fulfill the intent of Article VII. That intent is to maximize efficiency and to give maximum flexibility in the affected offices. In other words, the notification provisions under Article VII, Section II apply

only to combination assignments made under Article VII and not outside of it. To his knowledge, the APWU has not previously raised at the national level, through Article XIX or otherwise, the APWU contention that the notification provision of Article VII, Section 2 applies to Rehabilitation Program permanent cross-craft assignments.

It is upon the testimony of the witnesses indicated above and the exhibits submitted by the parties that the case now comes before the arbitrator for final and binding resolution.

POSITIONS OF THE PARTIES

APWU POSITION

The APWU contends that the instant case is a straightforward one. A letter carrier, injured on the job and unable to perform the duties of letter carrier, was offered an assignment which included duties in two crafts represented by the APWU. Under Article VII, Section 2, the APWU should have been notified of the creation of this mixed assignment.

The position of the APWU in this case concurs with the Postal Service's explanation of the changes when they occurred in the 1973 contract. As the Postal Service explained in its 1973 contract training manual:

Whenever a combination assignment between different crafts

is to be made, the Unions involved must be notified in advance at the local levels as to the reasons for the combination assignment.

The Postal Service offers no authority for its position that because the assignment was established pursuant Part 546 of the ELM that Article VII notification is not necessary. In fact, the handbook provisions governing assignments for on-the-job injuries are all quite plain in that they require compliance with the collective bargaining agreements when reemployment or reassignments are made. See e.g., Section 546.21 of the ELM. In addition, the October 14, 1983 letter from McDougald to Burrus, Vice President of the APWU, which references both Postal Handbook and ELM provisions, makes it clear that reemployment or offering of an assignment to an employee of one craft to work in another craft is covered by 546.141 of the ELM and this reemployment or reassignment, in turn, is governed by 546.2 of the ELM which makes it clear that such reassignments must be in compliance with the National Agreement.

The APWU further asserts that throughout the grievance chain, the Postal Service referred to the permanent assignment in this case as "limited duty". At the hearing, the Postal Service for the first time made a distinction between limited duty as a temporary assignment and rehabilitation as a permanent assignment. The APWU position is that it seeks notification during the creation of the assignment, temporary or permanent, before it is offered and before the employee is assigned. While an employee's disability may be permanent, the assignment that the employee will be given to work is not permanent. The assigned work may be changed. Even bid duty assignments are not really permanent. Various individuals can bid or hold these assignments, and in some cases are involuntarily assigned (verb) to the assignment (noun). Duty

assignments can be abolished, reverted or reposted.

A mixed duty assignment can be created to maximize full-time employment. A duty assignment is created from existing work which is posted for bid. The proper bidder is established and then the proper bidder is assigned to the assignment. The APWU expects to be notified at the earliest stage — when the assignment is created — not at the final stage — when the employee is being assigned. Once, however, the mixed assignment is properly created, the APWU does not have to be notified every time it is filled by bid or assignment.

As far as the APWU is concerned, temporary assignments are those daily assignments covered by Article VII, Sections 2 (B) and (C). When the Postal Service creates an assignment, it provides that assignment to an individual for an indefinite period. The APWU does not consider such an assignment to be temporary. It wants notification before the creation of the assignment, and not before the assignment action of the employee. In 1971, after the postal strike of the previous year, the APWU achieved a major victory in the contract regarding duty assignments. Before that, duty assignments were a reserved management right and the then applicable handbooks and manuals reflected this. The post strike negotiations produced the original language in Article VII, Section 2.A. The language which was developed in 1971 is not before the arbitrator in the instant case. (Union Exhibit 10). The language which was added in 1973, however, is now before the arbitrator. (Union Exhibit 11).

The APWU points out that one exception to the requirement to post regular scheduled

work to the appropriate craft are assignments negotiated for light or limited duty per Article XXX, Items 15, 16, and 17. As the McDonald to Burrus letter makes clear, these items are applicable to employees injured on-the-job.

The review of the national cases and the agreement compels the conclusion that Section 546 of the ELM grants additional rights to an employee and creates additional obligations for management, but does not relieve management of any contractual obligations. Article VII, Section 2.A. is one such contract obligation which is not relieved. In this regard, the APWU notes that the final paragraph is a stand alone paragraph equal to the first paragraph, which would make the final paragraph applicable to abnormal situations where work is combined, as well as where work is combined to create maximum full-time employment. Arbitrator Mittenthal has made it clear that ELM 546 assignments are not outside contract limitations. Support for this interpretation is found in the Postal Service training guide for the 1973 contract.

Finally, the APWU asserts that the only reason to have language such as is contained in the last paragraph of Article VII, Section 2, is to allow the affected Union the opportunity to protect its jurisdiction and to assure a proper cross-craft assignment within the context of the entire National Agreement. In the case of an assignment being created to be offered to an injured employee of another craft, the affected Union wants the opportunity to verify that all work available within the employee's own craft was combined first, and that the work was appropriate pursuant to Article XXX, Items 15, 16, and 17. In addition, the APWU would want to protect the seniority rights of employees in the affected crafts.

The APWU further points out that Arbitrator Snow in Case No. H0C-3N-C-418 (Union Exhibit 16) addressed and rejected all the arguments raised by management in this case. The APWU does not challenge the OWCP law or the language in section 546 of the ELM. Rather, the APWU position is that there is nothing in the OWCP law or in the ELM that allows disregard of the notification requirement of Article VII, Section 2. The APWU believes that its position is supported by the national award made by Arbitrator Ganser in Case No. N8-NA-0003, decided on March 21, 1980, and submitted by the Postal Service Exhibit No. 14. Arbitrator Ganser, in that case and in an earlier case referenced in that award, applied the applicable contract language to the limited duty assignments. This is exactly what the APWU seeks in the instant case. There is no specific language in Section 546 of the ELM which disavows the Article VII, Section 2 notification procedure.

The Union further argues that the Postal Service failed to prove the existence of a past practice in this case

Finally, the Union submitted five regional arbitration awards which it argues support its position in this case. In addition, after the hearing was held, the Union submitted an arbitration award rendered by Arbitrator Snow in Case No. H94N-4H-C 96090200, issued on November, 4, 1998, which it asserts supports its position in the instant case.

For all these reasons, the grievance should be sustained.

Postal Service Position

The Postal Service points out that since the mid-1970's, it has been subject to the requirements of the Federal Employee Compensation Act (FECA), which provides compensation for employees who are disabled as a result of on-the-job injuries or employment-related illnesses. The Office of Personnel Management is empowered by FECA to issue regulations governing the administration of the statute. One such regulation directs the agency involved to make "every effort" to restore such an employee to some form of "limited duty."

Since 1976, the Postal Service has had handbook provisions in place to comply with OPM's directive. These provisions are found in section 546 of the ELM. Under these provisions, the Postal Service has legal responsibilities to employees with job-related disabilities. In 1979, after a challenge by the NALC, the Postal Service, with the concurrence of the NALC and the other affected unions, including the APWU, promulgated a resolution which was incorporated into the ELM as Section 546.141. This section sets forth a procedure for the Postal Service to follow when placing in limited duty assignments employees who partially have overcome the compensable disability. That procedure is designed to minimize any adverse or disruptive impact on the employee. The procedure followed today is essentially the same procedure that was drafted in 1979, and includes the requirement that when adequate duties are not available within the employee's work limitations tolerance in the craft and work facility to which the employee is regularly assigned, other work may be assigned within that facility. It is not disputed that the reference to "other work" within the employee's facility means work outside

the employee's craft. Thus, before an employee's assigned work outside his or her regular hours of duty or outside of the work facility to which the employee is normally assigned, the employee should be given work outside of his or her craft.

Although Section 546.141 applies to the placement of employees and limited duty assignments, which are temporary assignments, the order that it establishes applies equally to injured employees who have reached maximum medical improvement and need to be reassigned permanently to another job pursuant to the Rehabilitation Program, which is the factual situation which underlies the present grievance.

Accordingly, Chapter 11 of the Postal Service Handbook EL-505, which contains guidelines for implementing ELM Section 546's policies regarding the Rehabilitation Program, reflects the same order for placement of employees under the Rehabilitation Program as for employees working temporary limited duty assignments under ELM Section 546.141. Moreover, the Postal Service gave notice that the Rehabilitation Program and the EL-505 to the APWU pursuant to the requirements of Article XIX of the National Agreement.

If an employee is reassigned or re-employed under the Rehabilitation Program to a different craft, ELM Section 546.222 provides that "such assignment must be to a residual vacancy or to a position uniquely created to fit [the employee's job-related medical] restrictions; however, such assignment may not impair seniority rights of PTF employees." In addition, ELM Section 546.21 provides reemployment or reassignment under this section must be in compliance

with applicable collective bargaining agreements. Postal Service further points out that its actions in this case complies with those requirements. Moreover, the APWU argument that article VII, Section 2's union notification provision does not apply in the instant case. This union notification provision rights by the very terms of Article VII, Section 2 applies only to combination assignments made under Article VII, Section 2.

In its argument in this case, the APWU attempts to divorce the notification provision in that article from the rest of Article VII and to mischaracterize Postal Service and APWU written guidance regarding the contract language by taking it out of the context of Article VII, Section 2. Under accepted principles of contract interpretation, this argument must be rejected.

Further, despite the APWU claim to the contrary, the bargaining history surrounding Articles VII, Section 2 provides "absolutely no support for its contention in this arbitration."

The interpretation of Article VII, Section 2 advanced by the Postal Service in this case draws supported by the testimony of Peter Sgro, Acting Manager of Contract Administration for the APWU and Mail Handlers contracts. According to Mr. Sgro, neither the Postal Service nor the APWU has viewed the notification provision of Article VII, Section 2 as applying beyond combination assignments described in Article VII, Section 2.

In addition, neither the APWU or any other union raised question as to whether the Rehabilitation Program assignments were subject to an advanced union notification requirement

under Article VII, Section 2 when Section 546 was implemented. In fact, Article VII, Section 2, was in the contract years before the implementation of ELM 546. Indeed, it is with the filing of the present grievance that the APWU raises for the first time its contention that Article VII, Section 2 notification applies to ELM 546 Rehabilitation Program assignments. The union failure to not raise this contention until almost 20 years after the Postal Service began reassigning employees outside their craft pursuant to the Rehabilitation Program substantially weakens any argument that the notification provision applies beyond Article VII, Section 2.

Furthermore, the persuasiveness of this newly found interpretation of Article VII, Section 2 by the APWU is undercut by the fact that it has never alleged that union notification is required when the Postal Service makes cross craft assignments under Article XII or XIII of the National Agreement and by the fact that the union advocate in this proceeding stated that there are local agreements between APWU branches and local management officials requiring notification to the branch of combination assignments made under the Rehabilitation Program. If the Postal Service was required to provide Article VII, Section 2 notification for Rehabilitation Program assignments, APWU local branches would not have entered into the local agreements.

The Postal Service further argues that because the notification required by Article VII, Section 2 applies only to combination assignments under that article, the Postal Service has not violated ELM Section 546.2. The focus of Section 546.2 reflects the focus of the union's concern expressed in 1978 which was a focus on the rights of injured employees. None of the unions raised in discussions with the Postal Service any issue regarding union notification of

Rehabilitation Program assignments or any other claimed union rights.

Contrary to the APWU claim, Arbitrator Snow's Award in Case No. HOC-3N-C 418, issued on February 7, 1994, does not compel a different result. Nor does Arbitrator Snow's award in case number H94N-4H-C 96090200, issued on November 4, 1998, require a different conclusion. In fact, the Postal Service has complied fully with ELM Section 546.21's directive and Arbitrator Snow's interpretation of that directive.

For all these reasons, the grievance should be denied.

NALC POSITION

The NALC did not submit a brief in support of its position. At the hearing, however, it argued that although it agreed with the Postal Service that Article VII is inapplicable to typical Section 546 limited duty assignments, it disagreed with the Postal Service and agreed with the APWU when the issue involves the creation of the permanent assignment which crosses craft lines. Assignments created under chapter 546 of the ELM are outside the scope of Article VII and normally notice would not be required. Notification, however, is required when a permanent duty assignment is created which crosses craft lines. Such a situation is outside the scope of chapter 546 and squarely within Article VII, Section 2.

For these reasons, the grievance should be sustained.

DISCUSSION AND OPINION

The key to the resolution of the instant grievance is the interpretation of Article VII, Section 2. If the APWU interpretation is correct, notification of the mixed assignment should have been given and therefore the grievance should be sustained. If the Postal Service interpretation is the correct one, however, then Article VII, Section 2 does not apply to the facts in this case and therefore no union notification was required.

After careful examination and evaluation of the evidence, it is my conclusion that the correct interpretation of Article VII, Section 2 is the one advanced by the Postal Service, and therefore no union notification of the mixed-craft assignment was required.

Article VII, Section 2.A, entitled Employment and Work Assignments, states:

> Normally, work in different crafts, occupational group or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts of occupational groups after the following sequential actions have been taken:
>
> 1. All available work within each separate craft by tour has been combined.
>
> 2. Work of different crafts in the same wage level by tour has been combined.
>
> The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article. (Emphasis supplied.}

Contrary to the APWU argument, this article does not require advanced union notification of mixed-craft assignments in circumstances like those involved in the instant case where the mixed-craft assignment is made pursuant to Chapter 546 ELM. By its very terms, Article VII, Section 2.A limits the mandatory advanced union notification to those situations where the mixed-craft assignments, i.e., "full-time combination assignments within different crafts", are made in accordance with that same article. What kind of mixed-crafts assignments are made in accordance with Article VII, Section 2.A? The second sentence of Article VII provides the answer: Mixed-craft assignments which are made "to provide maximum full-time employment and provide necessary flexibility." When management makes mixed-craft assignments for this reason, then it must notify the affected unions in advance of the reasons for establishing these combination full-time assignments within different crafts. This is what is meant by the phrase "accordance with this article." In the instant case, of course, the mixed-craft assignments was not made to provide maximum full-time employment and provide necessary flexibility. Rather, it was made for the purpose of complying with Section 546 of the ELM which relates to management's responsibilities to reassign or re-employee employees because of on-the-job injuries.

To state it again, the mandatory advance union notification provisions set forth in Article VII, Section 2.A apply only to combination assignments made under that article and not to those made outside the article. This is the meaning and import of the "in accordance with this article." language in article VII, Section 2.A.

Moreover, it does not matter whether the assignment to the employee injured on the job was made under the Rehabilitation Provisions, as it was in this case, or under more temporary limited duty basis. In either case, the assignment is made pursuant to the requirements of Section 546 of the ELM and it is not a combined assignment within the meaning of Article VII, Section 2.A.

Further support for the Postal Service position in this case is derived from an examination of the relevant sections of Section 546. Section 546.141 of the ELM mandates the procedure to be followed when the Postal Service places in limited duty assignments employees who partially have overcome a compensable disability. These procedures, designed to minimize any adverse or disruptive impact on the employee, are essentially the same today as when they were first drafted approximately twenty years ago. Section 546.141(a) states in relevant part:

> 1) To the extent that there is adequate work available within the employee's work available within the employee's work limitation tolerances, within the employee's craft, in the work facility to which the employee is regularly assigned, and during the hours when the employee is regularly works, that work constitutes the limited duty to which the employee is assigned.
>
> 2) If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned within the employee's regular hours of duty, other work may be assigned within that facility.

There is no question that the phrase "other work" in section 546.141(a)(2) refers to work outside of the employee's "craft". What this means is that if there is not adequate work available within the employee's craft and within the work facility to which the employee is regularly assigned, and before the employee should be assigned to work outside his or her work facility, the

employee should be given work outside his or her craft but within the work facility. Although Section 546.141 applies to the placement of employees and limited duty assignments, which, according to the Postal Service, are temporary assignments, the order that it establishes for such placement applies as well to injured employees who have reached maximum medical improvement and need to be reassigned permanently to another job pursuant to the Postal Service's Rehabilitation Program, which is the actual circumstance which gave rise to the instant grievance. Thus, Chapter 11 of the Postal Service Handbook EL-505, which includes the guidelines for implementing Chapter 546's policies regarding the Rehabilitation Program, reflects the same order for placement employees under the Rehabilitation Program, i.e. an employee is placed outside of his or her craft within his or her work facility before being placed outside of his or her work facility or work schedule.

Moreover, if an employee is reassigned or reemployeed under the Rehabilitation Program to a different craft, Section 546.222 of the ELM requires that "such assignment must be to a residual vacancy or to a position uniquely created to fit [the employee's job height and related medical] restrictions; however such assignment may not impair seniority rights of PTF employees."

In addition, Section 546.21 of the ELM provides:

> Reemployment or reassignment under this section must be in compliance with applicable collective bargaining agreements. Individuals so reemployeed or reassigned must receive all appropriate rights and protection under the newly applicable collective bargaining agreement.

Nowhere in any of Section 546 provisions is a reference made to advance notification of the union. The failure to include such a reference further weakens the union argument that the union

notification provision of Article VII, Section 2.A. applies beyond the items referenced in that article.

Moreover, when Section 546 of the ELM was implemented neither the APWU nor any of the other unions raised the issue on a national level that Rehabilitation Program assignments or other assignments under Section 546 were subject to an advanced union notification requirement under Article VII, Section 2.A. of the National Agreement, a contract provision that was in the National Agreement for a number of years before Section 546 of the ELM was drafted and included in the ELM. In late 1979, as a result of a challenge by the NALC, the Postal Service, with the concurrence of the NALC and all other affected unions, including the APWU, resolved the NALC grievance with a regulation that subsequently became Section 546.141 of the ELM. The resolution of that grievance, however, did not include language which required mandatory advanced union notification when an employee was being assigned "other work" such as cross-craft work.

Nor was any challenge on this basis made by the unions under Article XIX, as it could have been if such union notification was required in these circumstances.

In reaching this conclusion, I reject the APWU argument that the Postal Service actions in this case are not in compliance with the National Agreement as required by Section 546.2 of the ELM. As indicated above, the failure to notify the union in advance when a cross-craft assignment is done pursuant to Section 546 does not violate Article VII, which under its own terms only requires notification in the circumstances specified in that article.

I agree with the Postal Service that Arbitrator Snow's arbitration Case No. HOC-3N-C 418, issued on February 7, 1994, does not compel a different result. In that award, Arbitrator

Snow found that the Postal Service has impaired the seniority rights of PTF employees. In rendering the Award, Arbitrator Snow indicated that under Section 546.21 of the ELM, the Postal Service, in order to ignore a particular provision of the agreement, would have to point to a particular legal or contractual provision which permitted it to do so, and Arbitrator Snow found that no such provision existed. In the instant grievance, because Article VII, Section 2.A. applies by its specific terms only to combination assignments specified in that article, the Postal Service actions are not inconsistent with, in conflict with, or otherwise ignoring of other parts of the National Agreement. For similar reasons, the Award of Arbitrator Snow in Case No. H94N-4H-C 96090200, issued on November 4, 1998, does not compel a different result. Again, because Article VII, Section 2.A.'s notification provision applies by its terms only to those assignments specified in Article VII, Section 2.A., management did not violate any provision of the National Agreement.

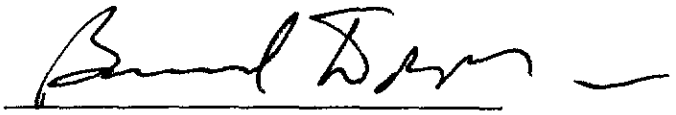
In reaching my conclusion in this case, I have also read carefully the regional arbitration awards submitted by the APWU in support of its position, and do not find them persuasive in their interpretation of the Article VII, Section 2.A. requirement.

Finally, in reaching my conclusion in this case, I have carefully considered all the arguments raised by both unions at the hearing and in the APWU brief, whether specifically referenced above or not, and do not find them persuasive.

For all of the reasons set forth above, it is my conclusion that the grievance should be denied.

AWARD

For all the reasons set forth above, the grievance is denied.



Bernard Dobranski
Arbitrator
June 1, 1999
Alexandria, Virginia