

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration (Grievant: Class Action
)
between (Post Office: Payette, Idaho
)
UNITED STATES POSTAL SERVICE (USPS Case No.: E00C-4E-C 03165881
)
and) APWU Case No.: D386611
)
AMERICAN POSTAL WORKERS ()
UNION, AFL-CIO)

BEFORE: Alan R. Krebs, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Michael A. Stanley
For the Union: Brian Dunn
Place of Hearing: Boise P&DC
Date of Hearing: May 14, 2008
Date Briefs received: June 16, 2008
Date of Award: June 30, 2008
Relevant Contract Provisions: Articles 1.6 and 3
Contract Year: 2006-2010
Type of Grievance: Contract

AWARD SUMMARY

The Postal Service violated Article 1.6.B when the Postmaster performed window lunch relief on a daily basis, which was inconsistent with the historical practice at the Payette Post Office.

/s/ Alan R. Krebs
Alan R. Krebs, Arbitrator

ISSUE

The parties, being unable to agree upon a stipulated statement of the issue to be decided, agreed to have it framed by the Arbitrator. Having considered the testimony and arguments, your Arbitrator frames the issue as follows:

Did the Postal Service violate Article 1.6 when the Postmaster at the Payette Post Office performed window transactions on a daily basis in order to provide lunch break relief for a full time regular Clerk?

If so, what is the appropriate remedy?

FACTS

Donald Chiavaras was the Postmaster of the Payette, Idaho Post Office from 1996 until 2005. In April 2003, one full time regular (FTR) Clerk and three part time flexible (PTF) Clerks were employed at the Payette Post Office. The position description for the Payette Postmaster contains the following among the listed "Duties and Responsibilities:"

* * *

8. May personally handle window transactions and perform distribution tasks as the workload requires.

* * *

Postmaster Chiavaras testified that prior to May 2003, he himself did about ten hours of Clerk work per week, nearly all of which was distribution and boxing of mail. Postmaster Chiavaras testified that he would fill in at the window only when absolutely necessary, such as when there was a long line, or when the FTR Clerk who normally worked the window called in sick or had to leave work early. He further testified that lunch relief for the FTR Clerk who worked at the retail window had been performed by a PTF Clerk.

A Function 4 review of the Payette Post Office was conducted from May 6 to May 8, 2003. The Function 4 team, consisting of three Postal Service managers, observed the operations of the Payette Post Office and then made recommendations to improve its efficiency. In their written Function 4 review, the Function 4 team made a number of written recommendations,

including staffing recommendations. They recommended that two PTF Clerks be scheduled for the staging, spreading, and distribution of mail, and that the window Clerk report “at 8:00 a.m. with 1 and ½ hour lunch”. They also recommended that the Postmaster needed to make himself available for window back up during peak times, which was something that they had not observed.

According to Postmaster Chiavaras, during his exit interview with the Function 4 team, he was instructed to provide lunch and break relief for the window Clerk. That was not included in the written recommendations. Postmaster Chiavaras followed the recommendations of the Function 4 team, including those he received in the exit interview. Thereafter, in addition to his routine distribution and boxing duties, he filled in at the window during the FTR window Clerk’s lunch break, instead of the PTF Clerks who had done this in the past. With the changes implemented, Postmaster Chiavaras was performing more than the ten hours of Clerk work per week that he had done in the past. On May 29, 2003, Postmaster Chiavaras was advised in writing by his supervisor that the budget for the Payette Post Office was reduced for window operations by 154 hours for the period May 12, 2003 through the end of the fiscal year. He was further advised that his budget for mail processing would be reduced by 52 hours for the same period as a result of automation improvements. In early May 2003, one of the part time flexible Clerks transferred to another post office. That employee was not replaced at the Payette Post Office.

On June 16, 2003, a grievance was filed, protesting that on May 12, 2003, the Payette Postmaster “started performing additional clerk duties which he has not historically performed.” The Union noted in that grievance that a vacant PTF Clerk position at the Payette Post Office was abolished. In its Step 2 Grievance Appeal, the Union protested that the Agreement was violated by removing work hours from Clerks and moving them to the Postmaster. The Union alleged that for the first time the Postmaster was providing lunch and break relief to the window Clerk and also that he was performing more sorting and boxing of mail. The Union requested as a remedy that the Postal Service pay the PTF Clerks one hour of pay for each hour of bargaining unit work that the Postmaster performed in excess of two hours per day. The Postal Service in its Step 2 Grievance Decision, settled the grievance in part and denied it in part. “The Postal Service agree[d] that the Postmaster may not increase the number of hours of non-supervisory duties he performs” above the ten hours per week of bargaining unit work that he had been

performing. The Postal Service agreed “to compensate the appropriate craft employees at the appropriate rate of pay for [the Postmaster’s] performance of bargaining unit work in excess of 2 hours/day or 10 hours/wk.” The Postal Service disagreed with the Union’s contention that based on the historical practice the Postmaster could not perform window work on a daily basis. The Postal Service decided “that the historical restriction is solely on the number of hours worked, not the duties performed.” In its “additions and corrections” document, the Union recorded its position that “the Postmaster can **not** move from the distribution work that he has performed and now perform window work.”

Chris Santos, the Union’s Idaho State President, testified that about four to five weeks prior to the arbitration hearing in this matter, the Payette Postmaster stopped performing lunch relief for the window Clerk.

POSITION OF THE UNION

The Union contends that the Postal Service violated Article 1.6 of the National Agreement when in May 2003 it transferred approximately two hours of relief window work at the Payette Post Office from the bargaining unit to the Postmaster as a result of a Function 4 review. The Union describes Article 1.6 as a work preservation clause intended to protect the duties of the bargaining unit. The Union maintains that the factors discussed by National Arbitrators Garrett, Snow, and Das must be applied in order to determine whether Postmasters in a small post office may properly perform bargaining unit work. The Union argues that applying those factors requires consideration of the historical practice at the particular post office of not only the amount of time that a Postmaster performs bargaining unit work, but also the particular bargaining unit work performed. The Union asserts that in order to transfer work from the bargaining unit to the Postmaster, it is required by the principles established in National Awards that the transfer of work be based on good faith reasoning and operational necessity. The Union maintains that the transfer of window relief work to the Postmaster at the Payette Post Office was based on arbitrary and capricious reasoning, and not upon the historical practice, the considerations established in National Awards, nor any discernible operational reason or necessity. As a remedy, the Union requests “the immediate return of the relief window duties to

the clerk craft, and compensation, at the appropriate rate, for all time the Postmaster has . . . performed the relief window duties.”

POSITION OF THE EMPLOYER

The Postal Service contends that inasmuch as the Payette Postmaster has historically performed bargaining unit work, including window work when he felt it was necessary, the Union cannot establish a prima facie violation of Article 1.6.B since there is not a significant increase in the amount of bargaining unit work performed and a corresponding decrease in clerk hours. The Postal Service reasons that the Garrett award established that Postmasters are entitled to perform the amount of bargaining unit work they have historically performed, and may even increase the amount of such work performed provided that there is an underlying change in the office or such increase is consistent with Management’s discretion under Article 3 of the National Agreement. The Postal Service recognizes that Article 1.6.B necessarily implies an obligation to act in good faith, but asserts that having the Payette Postmaster work the window to cover Clerks who are at lunch is certainly a good faith response to customers having to wait in line for excessive lengths of time. The Postal Service maintains that since the Postmaster’s position description permits the performance of bargaining unit work, and this Postmaster has historically performed such work on a daily basis, the ongoing performance of the work cannot be a violation of Article 1.6.B. The Postal Service claims that the Union has not demonstrated that any employee’s hours have, in fact, been reduced. According to the Postal Service, the Union’s aim is to create work for the craft and to prevent Management from exercising its rights under Article 3 to operate efficiently. The Postal Service argues that no monetary remedy is appropriate here because the Union has not demonstrated that any employees lost work hours as a result of the Postmaster working at the window. Rather, the Postal Service maintains that the only possible award in favor of the Union would be one that limited the performance of bargaining unit work by the Postmaster in this office.

DISCUSSION

Article 1.6.B provides:

Section 6. Performance of Bargaining Unit Work

A. Supervisors are prohibited from performing bargaining unit work at post offices with 100 or more bargaining unit employees, except:

1. in an emergency;
2. for the purpose of training or instruction of Employees;
3. to assure the proper operation of equipment;
4. to protect the safety of employees; or
5. to protect the property of the USPS.

B. In offices with less than 100 bargaining unit employees, supervisors are prohibited from performing bargaining unit work except as enumerated in Section 6.A. 1 through 5 above or when the duties are included in the supervisor's position description.

Article 3 reserves to Management the right “[t]o maintain the efficiency of the operations” and “[t]o determine the methods, means, and personnel by which such operations are conducted,” “subject to the provisions of [the] Agreement.” The right, inherent in Article 3, of Management to assign work is limited by Article 1.6. Article 1.6 is a work preservation clause. It prohibits supervisors in small post offices, such as Payette Post Office, from performing bargaining unit work except in certain specified circumstances “or when the duties are included in the supervisor's position description.” The position description for the Payette Postmaster includes the duty: “May personally handle window transactions and perform distribution tasks as the workload requires.” This listed duty is standard language in the position descriptions for many Postmasters in small post offices. Indeed, National Arbitrator Shyam Das observed that this language has remained unchanged in Postmaster position descriptions “since before the parties entered into their first CBA in 1971.” Case No. Q98C-4Q-C 01238942 (2005).

When a Postmaster position description contains language authorizing their handling of Clerk duties such as window transactions and distribution tasks, National Arbitrators Garrett and Das have provided guidance as to the extent and limits of the right of Postmasters to perform

such work. Arbitrator Garrett, in his binding National Award, Case No. AC-NAT-5221 (1978), stated that even where an applicable Postmaster position description includes duties which are normally Clerk bargaining unit duties, such as handling the window or distribution of mail, that does not provide management with a free hand to assign any such work to the Postmaster. In such circumstances, the baseline for the allowable performance of Clerk work by a Postmaster at a particular office is the work which Postmasters have historically performed there. Beyond this, Arbitrator Garrett found that there were limits to a Postmaster's right to perform Clerk duties even where efficiencies are achieved, particularly when a transfer of such work to the Postmaster results in a reduction in Clerk hours. Arbitrator Garrett stated at pages 40-41 of his Opinion:

. . . There is no way, therefore, that I-6-B reasonably could be read to grant an unlimited license to eliminate Clerk hours by transferring Clerk work to supervisors without also giving consideration to other possible means of reducing total work hours.

In light of this analysis, it is clear that the USPS errs in claiming an unfettered license under I-6-B to assign Clerk duties to supervisors. Proper observance of the policy enunciated in Article 1, Section 6 would require as a minimum that--before such action is taken in any given office--the USPS should also give full consideration to other reasonably available means of eliminating excess manpower. If, after such a good faith review has been conducted, it nonetheless reasonably appears that Clerk hours must be reassigned to supervisors in any given small office, appropriate action then might be taken in the exercise of Management authority under Article III.

The present interpretation obviously cannot be applied in any given small office except in light of all relevant facts applicable to that particular installation. . . .

National Arbitrator Das provided further clarification of the application of Arbitrator Garrett's preconditions for the transfer of Clerk work to Postmasters in his Opinion, Case No. Q98C-4Q-C 01238942 (2005). Arbitrator Das held that Postmasters in small post offices where the Postmaster position description includes the performance of Clerk duties, "may continue to perform those duties historically performed by a supervisor at that office on a daily regular or routine basis, where there has been no shift or transfer of work or change in the amount of such duties performed by the supervisor." Arbitrator Das explained at page 23 of his Award that he viewed Arbitrator Garrett's Award as intended to preserve the "long established policy to avoid having supervisors perform lower level work. . ." He observed that there was an

exception to this policy in small post offices where “it may be ‘necessary’ to require supervisors to perform lower level work, as reflected in supervisory position descriptions. . .” Arbitrator Das stated that “[a]ny substantial change [in the historical practice] has to meet the requirements Arbitrator Garrett spelled out.” *Id.*, p. 25. Arbitrator Das recognized that the narrow issue before him involved situations “where there has been no shift or transfer of work or change in the amount of such duties performed by the supervisor.” Nevertheless, he provided some guidance in his Award Summary as to the application of Article 1.6.B where bargaining unit hours are reduced without a change in the amount of bargaining unit work performed by supervisors. Arbitrator Das stated the following:

. . . a blanket answer cannot be provided for a situation where bargaining unit hours are reduced without a change in the amount of bargaining unit work done by a supervisor. Moreover, such determinations as whether specific duties ‘historically’ have been performed by a supervisor are to be made, to quote the Garrett Award ‘light of all relevant facts applicable to that particular installation’.

In the matter at hand, Clerk hours were reduced at the Payette Post Office, as evidenced by the reduction in budgeted Clerk hours effective May 12, 2003 and the reduction, the same month, in the number of PTF Clerks employed from three to two. At the same time, window lunch relief, which involved at least 1.5 hours of work on a daily basis, was shifted from the PTF Clerks, who had historically performed this work, to the Postmaster. This daily window lunch relief work is of a quite different nature than the occasional and sporadic window work that the Payette Postmaster had done in the past when circumstances made it necessary, such as when he opened a second window to relieve a long line. Window lunch relief was a substantial daily assignment for PTF Clerks at the Payette Post Office. As I interpret Article 1.6.B as explained in the Garrett and Das Awards, before Clerk work may be shifted to Postmasters in a small office, with the effect that Clerk hours are reduced, Management must conduct “a good faith review,” giving “full consideration to other reasonably available means of eliminating excess manpower.” There is no evidence that Management conducted such a review of alternatives here. Rather, it appears that the window lunch relief work was shifted from PTF Clerks to the Postmaster based on a spoken Function 4 Team recommendation, a recommendation which was not explained, nor even mentioned in their Function 4 Review. Absent evidence of a good faith review of alternatives pursuant to the Garrett Award, the shifting of regular Clerk duties to the Payette

Postmaster at the same time that Clerk hours were reduced was a violation of the work preservation requirements inherent in Article 1.6. See Case Nos. B00C-4B-C 04110807 (Kelly, 2005); G98C-4G-C 99250233 (Finston, 2005); E00C-4E-C 06012005 (Klein, 2006); B98C-4B-C 01273208 (Miller, 2007); E00C-4E-C 02072307 (Escamilla, 2007).

I am not persuaded by the argument of the Postal Service that there can be no violation of Article 1.6.B where the applicable Postmaster position description includes Clerk duties and the number of hours of Clerk duties performed by Postmasters has not changed. Rather, as I view the Garrett and Das Awards, the “historical practice” which is relevant to the application of Article 1.6.B includes both the number of hours of Clerk work performed by the Postmaster and the duties performed, particularly where there has been a reduction in hours for the Clerk craft. Shifting of regularly assigned Clerk work from the bargaining unit to the Postmaster resulting in a reduction of Clerk hours should occur only after a good faith review of alternatives which is required by the Garrett Award. This is consistent with a 1995 agreement by the parties which settled a pending national arbitration, Case No. Q90C-4Q-C 94011535, wherein they agreed:

. . .the considerations established in Arbitrator Garrett’s decision will be reviewed and applied before any shift of Bargaining unit work from craft employees to postmasters is effectuated. In particular, the conditions in the office must be in concert with the conditions specified in Arbitrator Garrett’s decision in order for any such shift of work to be justified.

Most of the Awards relied upon by the Postal Service are distinguishable from the situation at hand because they do not involve situations where it was proven that the Clerk craft lost work hours because of the Postmaster performing Clerk duties.

Case Nos. J98C-4J-C 99191669 (McAllister, 2006); E00C-4E-C 05055780 (Bosland, 2007); J94C-4J-C 98109969, et. al. (Simon, 2007); E00C-4E-C 05124118 (Allen, 2007); J94C-4J-C 96086176, et. al. (Simon, 2007).

In sum, I conclude that the Postal Service did violate Article 1.6.B, as interpreted by Arbitrators Garrett and Das, when it shifted the daily window lunch relief work from Clerk craft employees to the Postmaster at Payette Post Office. As a remedy, the Postal Service shall be ordered to assign such work to Clerk craft employees until it meets the Garrett Award requirements for shifting such work to the Postmaster. No monetary award shall be ordered. In the grievance documents, the Union requested as a monetary remedy that the Postal Service pay the PTF Clerks one hour of pay for each hour of bargaining unit work that the Postmaster

performed in excess of two hours per day. In a partial settlement of the grievance, the Postal Service granted this requested monetary remedy, and the Union did not request any additional monetary remedy in the corrections and additions document which it submitted subsequent to this partial grievance resolution, but rather requested only that the Postmaster not change from the distribution work that he had been performing to window work.

AWARD OF THE ARBITRATOR

It is the Award of your Arbitrator, for the reasons set forth in the attached Opinion, that:

- I. The Postal Service did violate Article 1.6 when the Postmaster at the Payette Post Office performed window transactions on a daily basis in order to provide lunch break relief for a full time regular Clerk.
- II. It is therefore ordered that the Postal Service utilize Clerk craft employees to provide the daily lunch break relief for the Clerk who regularly worked the window.

Dated: June 30, 2008
Sammamish, Washington

/s/ Alan R. Krebs
Alan R. Krebs, Arbitrator