
Article 19 & 25 – Upgrades (Mail Processing Clerk to Special Postal Clerk – working alone)

G06C-4G-C 08269418 – Rogers, AR

Summary: This case involves a Mail Processing Clerk reporting alone, opening the building, meeting and unloading and counting arriving mail from the truck, with the assistance of a casual before other clerks report. In addition to reporting alone and working without supervision for approximately three (3) hours, she also performed most of the duties in the Special Postal Clerk job description including moving other clerks around to match workload.

Management's position in this case was that she was not "in charge" - even though she basically acted in the shoes of a supervisor - because she didn't perform all of the duties of the SPC position every day. She only performed those duties on occasion for which they paid her higher level.

The arbitrator found that working without supervision in addition to performing the duties of an SPC required the job to be re-posted as a Special Postal Clerk.

REGULAR ARBITRATION PANEL

In the Matter of Arbitration)		
)		
Between)	GRIEVANT:	Class Action
)		
UNITED STATES POSTAL SERVICE)	POST OFFICE:	Rogers, AR Main Post Office
)		
and)	CASE NO.:	G06C-4G-C 08269418
)		
AMERICAN POSTAL WORKERS UNION)	APWU NO.:	062320081

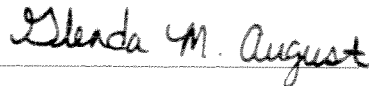
BEFORE: **Glenda M. August, Arbitrator**

APPEARANCES:

For the USPS:	Steve Neal
For the APWU:	Robert D. Kessler
Place of Hearing:	401 N. 8th Street Rogers, AR 72756
Date of Hearing:	July 22, 2009
Date Briefs Received:	August 27, 2009
Date of Award:	October 15, 2009
Relevant Contract Provision:	Article 37.3A11, Article 19, and ELM Sec. 233.3
Contract Year:	2006-2011
Type of Grievance:	Contract

AWARD Lack of supervision along with a performance of level 7 Special Postal Clerk duties supports a finding of reposting to the Special Postal Clerk position. The grievance is sustained.

Management shall pay the grievant at the level 7 pay rate for the hours worked beginning fourteen days prior to the filing of the grievance and repost the position as a Special Postal Clerk.



GLENDA M. AUGUST
Arbitrator

I. ISSUE

Did Management violate Article 37.3A11 and ELM 233.3 when clerks performed special Postal clerk duties without higher level pay at the Rogers, AR. Post Office? If so, what is the appropriate remedy?

II. RELEVANT CONTRACT PROVISIONS

**ARTICLE 37
CLERK CRAFT**

Section 3. Posting, Bidding, and Application

A. Newly established and vacant Clerk Craft duty assignments shall be posted as follows:

11. The following PS-6 and PS-7 positions are filled on the basis of senior qualified:

Position Number	Title
SP 2-157	Special Postal Clerk

**ARTICLE 19
HANDBOOKS AND MANUALS**

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

**EMPLOYEE AND LABOR RELATIONS MANUAL
230 BARGAINING UNIT POSITIONS COVERED BY A
NATIONAL AGREEMENT**

233 Evaluation of Bargaining Unit Positions

233.3 Criteria for Evaluating Mixed Assignments

Criteria for evaluating mixed assignments are as follows:

- a. *Regularly Scheduled to Two Positions on a Daily Basis.* When a fulltime employee is scheduled every workday to perform the work of two separately defined positions in two different grades, the employee is placed in the position of the higher grade. The duties of the lower grade position, while included in the work assignment, represent extra duties in relation to the official position and do not affect the pay grade of the employee.

III. FACTS

The mail processing clerk was assigned to open the office at 3:45 A.M. in Rogers, Arkansas, without supervision. This practice continued until she was awarded a new assignment. Another clerk was given the assignment wherein she opened the post office, assigned clerks according to the workload, took call-ins for sick leave, performed mail count and supervised the workroom floor until the supervisor reported at approximately 5:30 A.M.

The Postmaster brought the first clerk back to open the facility and began paying her for two hours of level 7 work while working the rest of the day as a level 6 employee. Two months before the hearing, the Postmaster stopped paying the clerk for two hours of level 7 work.

As a result of the work performed by the clerk for two hours, the Union filed this grievant to allege that Management violated the National Agreement when it failed to pay the clerk as a Special Postal Clerk (level 7).

IV. UNION'S CONTENTIONS

In this grievance, the Union argued that Management violated the National Agreement when it utilized the level 6 clerk as a level 7 Special Postal Clerk. According to the Union, the clerk reports to the post office at 3:45 A.M. to perform the early morning duties without supervision.

Union witnesses testified that the clerk opened the post office, assigned clerks based on workload, performed the mail count and received sick leave calls. Additionally, the Union noted the postmaster changed one clerk's reporting time and began paying her higher level pay for the duties she was performing. It was also noted by the Union that the clerk received higher level pay until two months prior to the hearing.

It was the Union's position the Employee and Labor Relations Manual; Section 233.3 required that the job be qualified at the higher level. Thus, the Union requested as a remedy that the clerk be paid at the higher for hours worked and that the position be reposted in compliance with Article 37.3A.11.

V. MANAGEMENT'S CONTENTIONS

Management has argued that ELM 233.3 and Article 37.3.A.11 were not violated at the Rogers, Arkansas Post Office. It was Management's position that the mail processing clerk did not perform the duties of a Special Postal Clerk on a daily basis.

In review of the level 7 Special Postal Clerk's job description, Management cited several basis for denying the Union's grievance. Firstly, Management stated that item number 1, although similar in job descriptions for a mail processing clerk and a special postal clerk, is not justification to repost the job under ELM 233.3. Item number two was not applicable to this grievance according to Management and the Union. Item number three involved dealing with routine problems that required contacting a supervisor away from the post office. Management stated that there were only two occasions when it was necessary to contact a supervisor thereby failing to meet the requirement of "problems of a routine nature".

In regards to item number four, Management stated that the clerk counted the mail when the 4:20 A.M. truck arrived however; she did not do verification and reporting mail volumes. Management argued that the actual record keeping was performed by the supervisor.

Item number five of the Special Postal Clerk's job description states "May provide leadership to one or more clerks when assigned to the tour or a portion of the tour". According to

Management, the employees may have recognized the opening clerk as the person in charge prior to the arrival of the supervisor however; she was not given such authority by Management.

In closing, Management stated that there was no basis to repost the position as a level 7 Special Postal Clerk. Management further stated that the position didn't exist at the Rogers, Arkansas Post office and it didn't exist in the State of Arkansas.

VII. DISCUSSION AND OPINION

The parties in this grievance identified the interpretation of Article 37.3.A.11 and ELM 233.3 as the basis of their dispute. Whether or not the utilization of a mail processing clerk to perform some duties of the Special Postal Clerk violated Article 37.3.A.11 and ELM 233.3 was argued during the hearing.

Article 37.3.A.11 provides the following language:

ARTICLE 37 CLERK CRAFT

Section 3. Posting, Bidding, and Application

A. Newly established and vacant Clerk Craft duty assignments shall be posted as follows:

11. The following PS-6 and PS-7 positions are filled on the basis of senior qualified:

Position Number	Title
SP 2-157	Special Postal Clerk

Employee and Labor Relations Manual, Section 233.3 states:

EMPLOYEE AND LABOR RELATIONS MANUAL 230 BARGAINING UNIT POSITIONS COVERED BY A NATIONAL AGREEMENT

233 Evaluation of Bargaining Unit Positions

233.3 Criteria for Evaluating Mixed Assignments

Criteria for evaluating mixed assignments are as follows:

- a. *Regularly Scheduled to Two Positions on a Daily Basis.* When a fulltime employee is scheduled every workday to perform the work of two separately defined positions in two different grades, the employee is placed in the position of the higher grade. The duties of the lower grade position, while included in the work assignment, represent extra duties in relation to the official position and do not affect the pay grade of the employee.

The Union argued that the application of Article 37 and ELM 233.3 mandated the reposting of the mail processing clerk's position to the Special Postal Clerk position. In contrast, Management contended that the mail processing clerk's job description and duties overlapped the description and duties of the Special Postal Clerk however; there was no basis to repost the position. Both parties examined duties one thru five of the Special Postal Clerk and applied them to the case at bar. The Union cited the opening of the post office, counting the mail, adjusting employee assignments according to mail load and answering the telephone for sick leave as duties of the Special Postal Clerk being performed by the Mail Processing Clerk. The Union further stated that these duties were being performed by the clerk from 3:45 A.M. until the supervisor arrived around 6:00A.M.

Management noted the same duties which were performed by the clerk however; Management stated that some of the duties were not performed in a routine basis. It was also contented by Management that some of the duties of the mail processing clerk and the special postal clerk were overlapping thereby not supporting the requirement to repost to the higher level position.

Numerous Arbitrators have analyzed the issue at bar with varying decisions. One such decision which was submitted by Management was most enlightening in reference to the case at bar. Arbitrator Martin A. Soll, in case number G00C-4G-C 06037742/ CA2118 stated that a Level 6 Special Postal Clerk Position applied in two situations:

... , it applies when a Level 5 clerk is working in the Postal facility on a tour on which no supervisor is present. But here, the facts and circumstance are that the Registry Clerk's workstation in Rogers is

not away from the Postal installation. And while arguably working alone for many hours with little or no help, the aggrieved clerks in this matter, the record also shows, have only been assigned to a tour or working hours when a supervisor is present. And being the case, and based the record in this matter, the undersigned is compelled to deny the instant grievance.

In denying the grievance, Arbitrator Soll noted that the level 5 clerk worked while a supervisor was present. In contrast, the mail processing clerk in the case at bar worked without the presence of a supervisor during the hours of 3:45 to 5:30 A.M.

The parties in the present case also discussed the Special Postal Clerk's duties listed below:

DUTIES AND RESPONSIBILITIES

1. Makes primary and one or more secondary distributions of incoming or outgoing mails, or both, based on a knowledge of the applicable distribution scheme or schemes.
2. Maintains direct contacts with persons picking up mails in bulk from or delivering it to the Postal facility during the tour.
3. Personally resolves problems of a routine nature arising during the tour and decides when problems warrant contacting a supervisor at his home or other location away from the facility.
4. Keeps required records for such matters as mail on hand and processed.
5. May provide leadership to one or more clerks when assigned to the tour or a portion of the tour.

Testimony at the hearing provided that the duties in item number one were overlapping with a distribution clerk while item number two did not apply. The parties disputed the significance of item numbers three thru five. According to the Union, item number three applied in the present case on two occasions while Management argued that there were no problems resolved of a "routine nature".

The focus of additional consideration had to be placed on items four and five regarding record keeping and leadership. The clerk testified that she counted the mail each morning before distribution and provided the information to the supervisor when she arrived between 5:30 A.M. and 6:00 A.M.

On the other hand, Management testified that the mail count was not considered to be the record keeping required under item four and only the supervisor handled those records.

On the issue of item number five, the clerk testified that the other employees came to her with their problems and sick calls were also given to her so that replacement employees could be called in to work. Management argued that the clerk was never assigned to handle the employees' problems and stated that the supervisor took the majority of the sick calls. In support of its position, Management submitted the sick call log wherein the supervisor was listed as taking the majority of the calls. Management also testified that the employees were instructed to call in after 5:30 A.M.

Although this Arbitrator is aware that the clerk handles some of the level 7 Special Postal Clerk duties without supervision from 3:45 A.M. thru approximately 5:30 A.M., the most crucial evidence was the fact that Management paid the clerk at the level 7 pay rate up until two months prior to the hearing. If there was a change in circumstances to negate such payment, Management did not offer any discussion on this matter.

Where the Union makes a case of level 7 reposting and Management has paid the level 7 rate without distinguishing a basis for discontinuance, the grievance must be sustained. Lack of supervision along with evidence of level 7 duties performed by the level 6 employee supports a reposting under Article 37 and ELM 233.3.

Award

Lack of supervision along with a performance of level 7 Special Postal Clerk duties supports a finding of reposting to the Special Postal Clerk position. The grievance is sustained.

Management shall pay the grievant at the level 7 pay rate for the hours worked beginning fourteen days prior to the filing of the grievance and repost the position as a Special Postal Clerk.

Glenda M. August

GLENDAM. AUGUST
Arbitrator

October 15, 2009
New Iberia, LA