

**IN THE MATTER OF REGULAR ARBITRATION**  
**BETWEEN**

**UNITED STATES POSTAL SERVICE**

**(Employer/Service)**

**-and-**

**AMERICAN POSTAL WORKERS  
UNION, AFL-CIO  
(Union)**

**Grievant: Class Action**

**Post Office: Kansas City, KS**

**USPS Case No: E00T-1E-C 06155464**

**APWU Case No: 05114**

**BEFORE: Diane Dunham Massey**

**APPEARANCES:**

**For the Service: Shirley T. Pointer**

**For the Union: Donald L. Foley**

**Place of Hearing: Kansas City, Kansas**

**Date of Hearing: May 16, 2007**

**Hearing Closed: May 16, 2007**

**Date of Award: June 22, 2007**

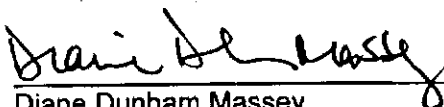
**Relevant Provisions: Article 25 and ELM 17.12**

**Contract Year: 2000-current**

**Type of Grievance: Contract Interpretation (Higher Level Pay – Painter)**

**Award Summary: The grievance is sustained. The Postal Service violated the National Agreement when it did not compensate the Level 3 Labor Custodians and Level 6 Maintenance Mechanics at the higher Level 7 Painter rate for the time spent painting aisle markings and parking lot lines at the Kansas City KS P&DC under Work Orders # 167, 105 and 104. They shall be paid at the Level 07 Painter rate for all hours worked under those work orders.**

**RECEIVED  
JUL 2007  
IND. REL  
DEPT.**



**Diane Dunham Massey  
Arbitrator**

## HEARING

A Hearing was held in the above matter on May 16, 2007, in Kansas City, Kansas. The Parties made oral arguments at the end of the Hearing. The witnesses were sworn and sequestered. The Parties were given full opportunity to present testimony and evidence at the Hearing.

## APPEARANCES

### For the Union

Donald L. Foley  
Ron Shatto  
Robert Rooney

Advocate, National Business Agent  
Technical Assistant  
MM6, witness

### For the Postal Service

Shirley T. Pointer  
Jeffrey L. Duce

Advocate, Labor Specialist  
Technical Assistant

## ISSUE

At the Arbitration Hearing, the Parties agreed to the following statement of the issue:

Whether the Postal Service violated the National Agreement when it did not compensate the Level 3 Labor Custodians and Level 6 Maintenance Mechanics at the higher Level 7 Painter rate for the time spent painting aisle markings and parking lot lines at the Kansas City KS P&DC under Work Orders # 167, 105 and 104? If so, what is the appropriate remedy?

## BACKGROUND

The Union filed this class action grievance on May 10, 2006 because Level 3 Labor Custodians and Level 6 Maintenance Mechanics at the Kansas City KS P&DC allegedly performed, but were not paid, Level 7 Painter wages for painting aisle markings and parking lot lines under Work Orders # 167, 105 and 104.

The grievance was appropriately processed and remains unresolved. The Parties stipulate the matter is properly before the Arbitrator for Opinion and Award. The Parties also agree that the Arbitrator may retain jurisdiction for the purposes of implementing a remedy, if a remedy is so ordered.

## **RELEVANT PROVISIONS**

### **Article 25**

#### **Section 1. Definitions**

Higher level work is defined as an assignment to a ranked higher level position, whether or not such position has been authorized at the installation.

#### **Section 2. Higher Level Pay**

An employee who is detailed to higher level work shall be paid at the higher level for time actually spent on such job. An employee's higher level rate shall be determined as if promoted to the position. An employee temporarily assigned or detailed to a lower level position shall be paid at the employee's own rate.

#### **Section 3. Written Orders**

Any employee detailed to higher level work shall be given a written management order, stating beginning and approximate termination, and directing the employee to perform the duties of the higher level position. Such written order shall be accepted as authorization for higher level pay. The failure of management to give a written order is not grounds for denial of higher level pay if the employee was otherwise directed to perform the duties.

\* \* \*

## **STD POSITION DESCRIPTIONS**

### **PAINTER, PS-07<sup>1</sup>**

#### **FUNCTIONAL PURPOSE**

Performs painting and finishing duties incident to the maintenance and repair of buildings, furniture and equipment.

#### **DUTIES AND RESPONSIBILITIES**

1. Paints interior parts of building and various items of equipment such as letter boxes, filing cabinets, hampers and trucks; also paints traffic lines on pavement in loading concourses and parking areas.
2. Finishes and refinishes wood and metal furniture, cabinet work, and screenline equipment; performs graining work.

---

<sup>1</sup> Upgraded from PS-06 by the Parties' Memorandum of Understanding, effective March 18, 2006. Although the STD Position Description still reads "Painter, PS-06" it will be referred to as Level 07 herein.

3. Prepares surfaces prior to painting, finishing, or refinishing; mixes paints, stains, varnish, shellac, and lacquer to match colors and attain desired consistency.
4. Uses the various tools and equipment of the trade, such as sanding machines, graining tools, paint brushes, striping tools, ladders, and scaffolds.
5. In addition, may: paint signs and do lettering either freehand or by stencil; glaze window and door glass, and make plaster patching repairs; perform spray painting work; perform work incident to other trades, as required.

## MAINTENANCE MECHANIC, PS-06<sup>2</sup>

### FUNCTIONAL PURPOSE

Independently performs semiskilled preventive, corrective and predictive maintenance tasks associated with the upkeep and operation of various types of mail processing, buildings and building equipment, customer service and delivery equipment.

### DUTIES AND RESPONSIBILITIES

1. Independently performs preventive maintenance and minor repairs on plumbing, heating, refrigeration, air-conditioning, low-voltage electrical systems, and other building systems and equipment.
2. Performs preventive maintenance and routine repairs on simple control circuitry, bearings, chains, sprockets, motors, belts and belting, and other moving parts or wearing surfaces of equipment.
3. Assembles, installs, replaces, repairs, modifies and adjusts all types of small operating equipment such as letter boxes, mechanical scales, stamp vending equipment, building service equipment, mailhandling equipment and related equipment.
4. Under the direction of skilled maintenance employees, or clearly written instructions from either hard copy or electronic format, performs specific tasks related to disassembling equipment, replacing parts, relocating and reassembling equipment; assists higher level workers in locating and repairing equipment malfunctions.
5. Maintains an awareness of equipment operation, especially excessive heat, vibrations, and noise, reporting malfunctions, hazards or wear to supervisor
6. Uses a variety of hand and power tools, gauging devices and test equipment required, or as directed, to perform the above tasks.
7. May drive a vehicle to transport tools, equipment, employees, materials or in the normal performance of assigned duties.

---

<sup>2</sup> Upgraded from PS-05 by the Parties' Memorandum of Understanding, effective March 18, 2006. Although the STD Position Description still reads "Maintenance Mechanic, PS-05" it will be referred to as Level 06 herein.

8. Completes or initiates work record sheets, as required. Takes readings from meters, gauges, counters and other monitoring and measuring devices. Maintains logs and other required records; reports on breakdowns and equipment being tested.
9. Follows established safety practices and requirements while performing all duties.
10. May serve as a working leader over a group of lower level employees assigned to a specific task
11. Performs other duties as assigned.

#### MAINTENANCE MECHANIC, PS-04

\* \* \*

#### DUTIES AND RESPONSIBILITIES

\* \* \*

2. Makes minor repairs to electrical systems, motors and case lights; assembles, disassembles, and repairs equipment or furniture; performs minor painting jobs and assists in major painting jobs. Independently performs preventive maintenance and minor repairs on plumbing, heating, refrigeration, air-conditioning, low-voltage electrical systems, and other building systems and equipment.

\* \* \*

#### LABORER, CUSTODIAL, PS-03

#### FUNCTIONAL PURPOSE

Performs manual labor in connection with maintenance and cleaning of the buildings and grounds of a postal facility; assists in firing low pressure boiler and in making minor repairs to the building and equipment.

#### DUTIES AND RESPONSIBILITIES

1. Independently inspects conveyors; cleans, lubricates, adjusts and makes minor repairs of a routine nature to mechanized mail processing, mail handling, delivery and/or building equipment; performs mail searches and clears jams and blockages.
2. Makes minor repairs to electrical systems, motors and case lights; assembles, disassembles, and repairs equipment or furniture; performs minor painting jobs and assists in major painting jobs.
3. Under the direction of skilled maintenance employees, locates and corrects sources of trouble and performs repair, relocation or modification of equipment or systems, disassembles equipment, and replaces parts or components.

4. Maintains an awareness of equipment operation, especially excessive heat, vibration, and noise; reports obvious equipment malfunctions, hazards or wear to supervisor.
5. May drive a vehicle to transport tools, equipment, employees, materials or in the normal performance of assigned duties.
6. Completes or initiates work record sheets, as required. Maintains required records and takes readings from meters, gauges, counters and other monitoring and measuring devices.
7. Follows established safety practices and requirements while performing all duties.
8. Uses necessary hand and power tools, gauging devices, and test equipment as required in the course of assigned duties.
9. Performs other duties as assigned.

### POSITION OF THE UNION

The Union makes the following arguments and contentions in support of its position:

Management has regularly and routinely used Maintenance Craft employees (Maintenance Mechanics, PS-06 [MM6] and Custodial Laborer, PS-03 [CL3]) to repaint aisle markings in the Plant and parking lot stripes. There are two (2) MM6 employees at the facility and they, together with at least three (3) of the eight (8) CL3 employees, have been used to perform the painting work at issue. However, these employees have not been properly compensated for performing this higher level work.

Prior to this grievance being filed, the CL3 employees were given Assignment Orders (PS Forms 1723) to perform these tasks for about a month, and they were paid a the higher level PS-06 rate. After the grievance was filed, the CL3 employees were not paid at the higher rate, although they continued to be assigned to perform these duties. The Union advised Management that the painting work fell within the Painter job description, which had been elevated by Agreement at the National level from PS-06 to PS-07 as of March 18, 2006. At the same time, the Maintenance Mechanic position also was elevated from PS-05 to PS-06. The Union estimated the painting work, which was generally performed by pairs of employees who recorded their working time on Work Orders # 167, 105 and 104, at over 100 hours and sought compensation at the PS-07 level. However, Management has refused to pay for this work at the Level 07 rate. Management contends that it does not have to pay at the PS-07 level because there is no Painter, PS-07 at the facility and because painting falls within the Maintenance Mechanic, PS-04 position, which position is not filled at the facility. The lack of a Painter at the facility is irrelevant under Article 25. Furthermore, Article 25 requires that the employees involved herein be paid at the higher level for the higher level work they were directed to perform.

The Parties disagree about whether the work performed per Work Orders # 167, 105 and 104 was something other than "minor painting jobs." Management contends, as it has in past cases of this nature, that the work performed was only "minor painting." However, this was not spot painting or touch-up painting work. Furthermore, minor painting does not fall within the Standard Position Descriptions of either the MM6 or CL3 positions. The employees at issue clearly were directed to work outside of their own occupational group limits, repainting all aisles inside of the P&DC per OSHA's citation. Painting obviously is a core duty of the Painter, PS-06 (now PS-07) position. Minor painting is merely peripheral to the MM4 occupational group; no MM4 employees are involved in this grievance. Additionally, the Standard Position Description for Painter includes, "... paints traffic lines on pavement in loading concourses and parking areas ... ."

Subsequent analysis of Work Orders # 167, 105 and 104 reveals that more than 300 hours of work were performed by the affected employees. The Union requests that the Arbitrator rule in the Union's favor, finding that Management violated the National Agreement, and direct Management to remedy its violation.

#### **POSITION OF THE POSTAL SERVICE**

The Postal Service makes the following arguments and contentions in support of its position:

The Standard Job Description for Maintenance Mechanic, PS-04, shows that such employees are to perform minor painting jobs and assist in major painting jobs. There is no Painter, PS 07, assigned to the Kansas City P&DC. However, the STD Job Description for Painter, Level 07 includes many tasks that can be performed by less skilled, lower level employees. That painting traffic lines in parking appears as a duty of a Level 07 Painter does not exclude this kind of minor painting from other job descriptions. The painting tasks performed by the employees involved in this grievance were of the type that can be performed by unskilled laborers and which do not constitute higher level work.

The painting of aisles and parking lot is not complex, and the skills required for the work at issue are those of an unskilled laborer. The fact that an employee might perform one task mentioned in a job description does not automatically mean that the employee is performing higher level work; rather, the actual task and required skill level must be considered. The employees involved in this grievance were generously paid for their painting work. The Union bears the burden of proving that Management violated the National Agreement. The Union has not met its burden, and this grievance should be denied in its

entirety. However, should the Arbitrator sustain the grievance, Management points out that this grievance was filed on May 10, 2006 and that any remedy would be limited to fourteen (14) days prior to that date.

## OPINION

### THE FACTS

The evidence shows the following:

The Kansas City P&DC does not have any Painter, Level 07 or Maintenance Mechanic, Level 04 assigned to it. By Work Orders Nos. 167, 107 and 105, Management directed several of the facility's Maintenance Mechanics, Level 06 ("MM6") and Custodial Laborers, Level 03 ("CL3") to paint the P&DC's tarmac and inside aisles, as well as to paint stripes on the parking lots of the P&DC and local Post Offices.

MM-06 Robert Rooney<sup>3</sup> testified that, in order to paint the parking lot stripes, he and the other workers did the following:

- Made sure nothing was parked on the lot
- Roped off the lot and placed orange cones to keep vehicles out
- Went to Maintenance Department to prepare paint
- Mixed the paint with a mixer and cut the roller to the appropriate width
- Painted the stripes by hand, then stencil-painted handicap and other signs
- Cleaned up

MM-06 Rooney stated that he worked by himself or with another employee, essentially with no supervision. According to MM-06 Rooney, they painted over some existing stripes, but sometimes had to measure to apply stripes that either had not been previously painted or did not previously exist. There were also situations wherein the previous demarcations were moved to change the arrangement of parking spaces.

The inside work of painting the P&DC's aisles involved the following, according to MM-06 Rooney:

- *Prepare the area by scraping off existing lines*
- Place cones to keep foot traffic out of the painting area
- Mix the paint and prepare brushes and rollers
- Draw non-existent lines with chalk

---

<sup>3</sup> MM-06 Rooney was the only witness who testified for either Party. The Parties stipulated that the Union's other witnesses, had they testified, would have given testimony similar to MM-06 Rooney's.



Therefore, this Arbitrator turns to a consideration of the tasks performed by the MM6s and CL3s under Work Orders # 167, 105 and 104 to assess whether such work involved minor painting, as Management contends, or whether it amounted to the higher level performance of Painter, 07.

#### Nature of Painting Tasks

The evidence demonstrated that the MM6s and CL3s performed painting tasks that are identified within the Functional Purpose of the Painter, Level 07 position, specifically painting to maintain and repair the Kansas City P&DC, as well as its parking lot and that of local branch Post Offices. The evidence also showed that the painting at issue in this matter, as explained by sole witness MM6 Rooney, included the following tasks that are specified on the applicable STD Position Description as being Duties and Responsibilities of Painter, Level 07:

Paints interior parts of building \* \* \* also paints traffic lines on pavement in loading concourses and parking areas.

\* \* \*

Prepares surfaces prior to painting, \* \* \* mixes paints, stains, varnish, shellac, and lacquer \* \* \*

Uses the various tools and equipment of the trade, such as \* \* \* paint brushes \* \* \*

In addition, may: paint signs and do lettering either freehand or by stencil; \* \* \*

Management disputes that these painting jobs were sufficiently complicated or time-consuming to constitute higher level work and that, at most, can be performed by MM4s. The arbitral authorities provided by the Parties shed light on these matters

#### Arbitral Standards

The Parties have submitted multiple arbitration awards in support of their arguments, many of which focus on painting jobs, and all of which this Arbitrator has considered. The submitted awards for the most part indicate that the various tasks designated in the STD Position Descriptions should be considered to determine whether an employee is performing merely "minor painting", such as touch-up jobs, in which case (s)he will be deemed not to be performing higher level work. In the instant grievance, the evidence demonstrated that the work performed under Work Orders # 167, 105 and 104

included four (4) of the five (5) Duties and Responsibilities of a Painter, Level 07. Additionally, painting interior parts of buildings and traffic lines on pavement are specifically designated as higher level Painter work. Moreover, the evidence showed that the level of complexity of the painting tasks performed and the time spent completing Work Orders # 167, 105 and 104 was significantly higher than those described in authorities submitted by Management. The MM6s and CL3s did not engage in "minor painting" or merely assist<sup>4</sup> in major painting jobs. This Arbitrator concludes that the painting work at issue in this grievance in fact constituted higher level work of Painter, Level 07.

Management is correct in asserting that not all functions contained in the Painter's STD Position Description require a Level 07 skill level. Yet, generally speaking, it is reasonable to assume that when a Position Description is for a skilled position, such as a painter or electrician, any other employee performing work that is unique to that position is performing higher level work as part of the craft position. Occasionally, of course, there are exceptions, such as helper or assistant functions or other minor aspects of a skilled job expressly enumerated in a lower level job description, but that is not the case here<sup>5</sup>. The presumption that work performed which is unique to a skilled position is work of the higher skilled position is a practical necessity. It would be effectively impossible to dissect a Painter's job description whenever a lower graded employee was assigned the work to determine the appropriate level of that specific work. Thus, particularly in the absence of a Painter, as was the situation at the Kansas City P&DC, if a lower graded employee is performing work expressly designated in the STD Position Description for the Level 07 Painter, then that employee is entitled the higher grade of the Painter for the work performed.

#### REMEDY

Article 25 states, in pertinent part, that

"higher level work **shall be paid** at the higher level for time actually spent on such job"

(Emphasis added).

Thus, the MM6s and CL3s who performed the painting tasks at issue herein are contractually entitled to be paid at the higher level rate of Level 07 Painter for the time they

<sup>4</sup> The STD Position Description for MM4 suggests that the employee would be assisting a Level 07 Painter, which did not occur herein.

<sup>5</sup> The Arbitrator has found that the work in question is not "minor painting" as contemplated in the MM4 STD Position Description.

spent performing such tasks. Backpay, consisting of the difference between what the MM6s and CL3s were paid and what they should have been paid at the Level 07 rate for time spent working under Work Orders # 167, 105 and 104, shall be calculated from April 26, 2006, which is fourteen (14) days prior to the filing of the grievance.

#### CONCLUSION

Many Postal Service job descriptions overlap, and it is not always apparent when an employee should be elevated to a higher pay level. In this case, however, the weight of the evidence demonstrated that the painting tasks at issue called for enhanced pay for the MM6s and CL3s who performed the work. The Union has sustained its burden of proving that the Postal Service violated the National Agreement.

For the reasons hereinabove set forth:

#### AWARD

The grievance is sustained. The Postal Service violated the National Agreement when it did not compensate the Level 03 Labor Custodians and Level 06 Maintenance Mechanics at the higher Level 07 Painter rate for the time spent painting aisle markings and parking lot lines at the Kansas City KS P&DC under Work Orders # 167, 105 and 104. They shall be paid at the Level 07 Painter rate for all hours worked under those work orders pursuant to guidelines in stated in REMEDY above. The Arbitrator will retain jurisdiction to interpret the remedy, if necessary.