

SOUTHWEST REGULAR ARBITRATION PANEL
HOUSTON ACCELERATED PROCESS
IN THE MATTER OF ARBITRATION

Between)
United States Postal Service)
-and-)
American Postal Workers Union)

Grievant: Class Action
Post Office: Houston, TX
Case No.: G98T-1G-C01202094
GO1845

Before Maretta C. Toedt, Arbitrator

Appearances:

For the Postal Service

Clyde Phillip Advocate

For the Union

Michael Williams Advocate

Place of Hearing: Houston, TX

Date of Hearing: May 29, 2002

Date of Award: June 6, 2002

Relevant Contract Provisions: Articles 2, 5, 7, 19, 25 and 38

Contract Year: 1998- 2000

Type of Grievance: Contract Interpretation

Award Summary

The grievance is sustained. The Postal Service did violate the National Agreement, specifically Articles 7, 25 and 38, when it assigned level 2 custodians to do lawn mowing work involving operating motorized lawn mowing equipment which is paid at a level 4 rate.

M. C. Toedt

Maretta C. Toedt, Arbitrator

Hearing

A Hearing was held in the above matter on May 29, 2002 in Houston, Texas. Both parties were given full opportunity to make opening and closing statements, to examine and cross examine witnesses under oath, to offer exhibits, to raise objections on procedural rulings and to otherwise make known their respective positions and arguments on the issues involved in the grievance. The grievance was properly processed and remains unresolved. There was no issue of arbitrability. The parties agreed that the matter was properly before this Arbitrator for final and binding Opinion and Award.

Issue

The parties jointly stipulated to the issue as follows:

Did the Postal Service violate the National Agreement, specifically Articles 2, 5, 7, 19, 25 and 38, when it assigned level 2 custodians to do lawn mowing work involving operating motorized lawn mowing equipment which is paid at a level 4 rate? If so, what is the appropriate remedy?

Position of the Union

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

This grievance involves level 2 custodians at the North Houston Processing & Distribution Center (P&DC) performing work that is considered to be level 4 work that should have first been available to level 3 laborer custodians. In March 2001, the Postal Service asked for volunteers from the level 2 and 3 custodians on Tour II to do lawn mowing work. Lawn mowing work that involves the operation of a commercial lawn mower or driving lawn mower is level 4 work. Management assigned this work to level 2 custodians and paid them at the level 4 rate. The level 3 laborer custodians, however, were wrongfully bypassed.

Article 38 specifies that level 2 custodians and level 3 laborer custodians are different occupational groups and levels. Article 7.2, spells out the circumstances under which crafts or occupational groups can be crossed or combined. Those circumstances were not present here. There were level 3 custodians available to do the work and they should have been utilized before the level 2 custodians to do this lawn work.

The Union requests that the grievance be sustained. The Union asks that the level 3 custodians on Tour II who volunteered and were unable to work be paid and or made whole at the overtime rate for the hours worked by the level 2 custodians until such time as this grievance is adjudicated.

The Union submitted one case in support of its position.

Position of the Employer

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

This is a contract case and the Union bears the burden of proof. The Union has not established by a preponderance of the evidence that the Postal Service violated the National Agreement.

Union Steward Harrell approached Maintenance Manager Guillory and asked him to rotate all custodial routes among custodial personnel. To accommodate this request, Manager Guillory posted a list asking for volunteers on Tour II from custodian levels 2 and 3 to mow grass. Mowing grass with a commercial lawn mower is considered to be level 4 work however there is no level 4 position at the Houston PD&C. There is also no Promotional Eligibility List (PER) for level 4 custodians.

Based on the list of individuals who volunteered, the work was assigned and paid at the level 4 rate. The level 2 custodians that performed this work were given training in the operation of the mower. Level 2 custodians were available and qualified to perform this work. As arbitrator King noted in his 12/26/00 award at page 3, G98T-1G-C 00109790, "Essentially, it is the Union's position that every Custodial Laborer PS-2 is capable of performing the job of a Custodial Laborer PS-3."

Management responded to a request from the Union to rotate custodial duties. Management accommodated that request and obtained a list of volunteers. Any custodian that was assigned lawn mowing work with a motorized lawn mower did so on a purely voluntary basis and was paid the appropriate rate. There was no violation of the National Agreement.

The Postal Service requests that the grievance be denied.

Discussion and Opinion

The weight of the evidence indicates:

Although there is no level 4 position at the Houston P&DC and no PER list for level 4 custodians, the task of operating a motorized lawn motor has been considered to be a task meriting level 4 pay. Prior to this grievance being filed, lawn mowing work with a commercial mower had normally been performed by level 3 laborer custodians. The evidence showed that the duration of the lawn mowing detail was thirty (30) days. (For purposes of this Opinion & Award, level 3 custodians are referred to as laborer custodians or by their position description title of Custodial Laborers.)

Triggered by a request from Union Steward Harrell to rotate custodial routes, Manager Guillroy posted a list on March 27, 2001 and asked for volunteers on Tour II from level 2 custodians and level 3 laborer custodians to perform lawn mowing work. Of the 17 custodians who volunteered for this work, 6 were level 3 laborer custodians. The un rebutted evidence was that normally when rotating a schedule, level 3s rotate in a group and level 2s rotate in a group.

The Union filed a grievance alleging that on June 20, 2001 level 3 laborer custodians were bypassed when management assigned two level 2 custodians to operate gasoline powered equipment. The Union argued that these duties should be assigned to level 3 laborer custodians who are qualified to operate powered equipment.

It appears that the biggest difference between a level 2 custodian and a level 3 laborer custodian as noted in their respective position descriptions is that a level 3 laborer custodian can operate power driven equipment whereas a level 2 custodian cannot. For reasons lost to history, the operation of the motorized lawn mowing equipment had been paid at the level 4 rate of pay even though there were no level 4 custodian position at the facility and no level 4 PERs.

While there is no issue that the level 2 custodians who performed the work were paid at the appropriate level 4 rate and that they were given training to operate the equipment, there is an issue regarding whether it was proper under the National Agreement to bypass the level 3 laborer custodians. Although the Union conceded that Management could solicit volunteers and create lists to perform any task it chooses, the terms of the National Agreement must still be followed.

The National Agreement has several Articles that are relevant to this dispute. As arbitrator Sherman notes in his 1/29/89 award G98T-1G-C 01202094, the application of

Articles 3, 7, 25 and 38 are far from clear. Article 3, Management Rights, gives management the exclusive right, subject to the provisions of the National Agreement, to direct employees, to maintain efficient operations and to determine the method, means and personnel by which such operations are conducted. Article 7, Employee Classifications, contains criteria that the Postal Service must use when it wishes to combine jobs within different crafts or occupational groups. For example, Section 7.2.A 1 and 2 contain sequential actions that must be taken before work can be combined from different crafts, occupational groups or levels.

Article 25, Higher Level Assignment, Section 4, Higher Level Details, contains language regarding the detailing of employees to higher level bargaining unit work in each craft. When details (longer than five days out of seven calendar days, as this detail was), are made to higher level craft positions enumerated in the craft Articles of the Agreement, the senior, qualified, eligible, available employee in the immediate work area in which the temporarily vacant higher level position exists shall be selected.

Finally, Article 38, Maintenance Craft, Section 5.B.1 deals with promotions and 5.B.2 deals with positions within the Maintenance Craft that will be filled on the basis of seniority (senior qualified **within occupational group and level**). Section 5.B.2 lists Custodian PS-2 and Custodial Laborer PS-3 as separate positions. Although it is obvious levels 2 and 3 are different levels, it is not so obvious that these are also different occupational groups. The Union says that they are, and Management says that they are not. The definition of an "occupational group" in Article 38, Section 2.H simply says that "[I]n the Maintenance Craft, occupational group shall be determined by position designation and level." This Arbitrator does not find the definition to be very helpful.

In support of its position that level 2 and 3 custodians are different occupational groups, the Union has noted that custodians at level 2 and 3 are listed in Article 38.5.B.2 as two separate entries, that they have never been grouped together for rotations and that Management at this facility has always used level 3s to perform level 4 lawn mowing work. The Postal Service has argued that both levels are on the same OTDL. The Arbitrator also notes that the 9/13/95 Step 4 decision, 190T-II-C 950/6544, tends to show that it is the level 3 laborer custodian position that gets paid the higher rate for doing this work.

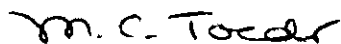
The Maintenance Craft is a seniority driven craft. Normally, promotions and job assignments to higher level craft positions as enumerated in Article 38 in excess of five working days within seven calendar days under Article 25.4 are based on criteria involving the most senior, qualified, eligible and available employee in the immediate work area in which the temporarily vacant higher level positions exists. The employees who fit this description were the level 3 laborer custodians, not level 2 custodians. Postal Service management should not have bypassed the senior, qualified and eligible level 3 laborer custodians in favor of the level 2 custodians.

Award

The grievance is sustained. The Postal Service did violate the National Agreement, specifically Articles 7, 25 and 38, when it assigned level 2 custodians to do lawn mowing work involving operating motorized lawn mowing equipment which is paid at a level 4 rate.

The level 3 laborer custodians from Tour II who volunteered and were available to work the motorized lawn mowing equipment from June 20, 2001 to the date of this Award shall be made whole at the overtime rate for the hours worked by the level 2 custodians who performed this work.

Signed this 6th day of June 2002 in
Houston, Texas



Maretta C. Toedt, Arbitrator

CUSTODIAN, PS-02

FUNCTIONAL PURPOSE

Performs manual laboring duties in connection with custody of an office or building.

DUTIES AND RESPONSIBILITIES

1. Performs any one or a combination of the duties listed below.
2. Moves furniture and equipment.
3. Uncrates and assembles furniture and fixtures, using bolts and screws for assembly.
4. Loads and unloads supplies and equipment.
5. Removes trash from work areas, lobbies, and washrooms.
6. Tends to lawns, shrubbery, and premises of the post office and cleans ice and snow from the sidewalks and driveways.
7. Stacks supplies in storage rooms and on shelves, and completes forms or records as required.
8. May perform cleaning duties as assigned.

SUPERVISION

Supervisor, Maintenance Operations, or other designated supervisor.

SELECTION METHOD

Senior Qualified

BARGAINING UNIT

BLDG/EQUIP MAINT

KEY POSITION REFERENCE

KP-0001

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