

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration Between

UNITED STATES POSTAL SERVICE

Grievant: **Michael Grealish**

and

Case Nos.

Postal Service B10C-4B-C 14150877

Union 14-0431

Boston-Weston Branch, Massachusetts

AMERICAN POSTAL WORKERS UNION, AFL-CIO

BEFORE: Sarah Cannon Holden, Arbitrator

APPEARANCES:

For the Postal Service: Eric Koestner

For the Union: Scott Hoffman

PLACE OF HEARING: Boston, Massachusetts

TYPE OF GRIEVANCE: Contract/TACS & Lead Clerk duties

DATE OF HEARING: November 4, 2014

DATE OF AWARD: December 2, 2014

ISSUE.

The parties agreed to submit the following issue for decision:

“Did Management violate the National Agreement by performing bargaining unit work in the Weston, Massachusetts Post Office as it relates to TACS (Time Attendance Collection System) time keeping duties? If so, what shall be the remedy?”

STIPULATIONS.

The parties made the following stipulations.

1. Management denied the grievant’s request to receive TACS training.
2. The grievant is the Lead Level 7 Sales Service Associate in Weston.
3. Weston is staffed with one manager and one supervisor.
4. The Weston Post Office stands alone; it does not have satellite offices.
5. On the average day the disputed work entails fifteen (15) minutes.

PRELIMINARY STATEMENT.

The parties agreed not to call any witnesses. They made their opening statements and then, under oath, further presented their sides of the issue. Each had a chance to ask the other questions. Both asked then that I rely on their testimony, their submitted exhibits and the joint exhibit to evaluate the grievance.

BACKGROUND.

In July 2000 Management switched from another time and attendance system to TACS (Time Attendance Collection System). Management implemented the new system for efficiency and to streamline certain duties. Over time the parties have differed on what duties left over from the old system and not covered by TACS should remain as bargaining unit work. According to the Union the parties have disputed this since 2000 with the Union arguing that the lower level work, e.g., leave inputs, payroll adjustments, wrong operation numbers and other corrections, should remain with the Union. The Union filed several grievances. Management has claimed that it may assume such duties.

In July 2006 the USPS Manager of Contract Administration John W. Dockins issued a memo to “All Area Managers, Labor Relations” covering the “issue of bargaining unit timekeeping duties in a TACS environment” where there has been “increased grievance/arbitration activity.” (Jt. 2, p. 25) In his memo Manager Dockins writes that “(a)lthough TACS has changed the timekeeping landscape and automated a number of duties; TACS has not totally eliminated all bargaining unit functions previously assigned to timekeepers.” (ibid.) He goes on to enumerate some of the “examples of bargaining unit timekeeping duties remaining”.

Those specifically highlighted by the Union are the following:

1. Create temporary job assignments
2. Assist the supervisor in preparation and/or submission of a properly approved Form 2240 payroll adjustment.
3. Maintain files of forms that support time and attendance entries.
4. Assist the supervisor in timekeeping functions as the supervisor may require.
5. Answer time and attendance inquiries.

In sum, Manager Dockins wrote “management should perform non-bargaining unit work only.”

In a series of Questions and Answers in May 2012 representatives of Management and the Union responded to various questions regarding the Lead Clerk position. The parties herein focused primarily on the following questions and answers.

...

3. Will the Lead Clerk have access to TACS records (clock rings) and can they make adjustments?

Answer: Yes, with the approval of the supervisor.

...

19. What training and testing requirements will there be for the Lead Clerk positions?

Answer: Training will be provided, where necessary, to assist the Lead Clerk in providing oversight, direction and support to other employees and to perform administrative duties. It is anticipated the Lead Clerks will have, based on their experience, the ability to provide technical guidance to other employees.

Subsequently the parties agreed upon the 2010-2015 Collective Bargaining Agreement with a MOU that pertains to the issues herein. (Pages 375-380 of the CBA and Jt. Exhibit #2, p 38-43) It provides the following with respect to the Lead Clerk positions:

...

2) Mail Processing/Customer Service

The intent behind the creation of the Lead Processing Clerk and the Lead Sales and Services Associate is to provide oversight, direction and support, in the absence of Supervisory presence to bargaining unit employees in both Mail Processing and Retail operations. Lead Clerk positions will be created at one level above other employees in the group.

The Employer will fill duty assignments of a Lead Clerk in any facilities where clerks work without direct supervision and in facilities that have a minimum complement of five (5) clerks. Lead Clerk assignments shall include duties in both the Retail and Mail Processing operations in Post Offices. Lead Clerk assignments will also be filled in facilities with only a Retail operation.

....

B) Lead Clerk-Customer Service – Responsibilities include, but are not limited to, maintaining a working knowledge of regulations....

Performing administrative duties in both retail and mail processing operations; and ensuring that all work is performed efficiently.

....

D) In order to ensure the orderly establishment of the new Lead Clerk position, the Employer will have 1 year from the signing of this memorandum to develop the Lead Clerk senior qualified job descriptions and any training program that may be necessary, post and fill the positions and complete any other relevant activities. During year 2 of this agreement the parties will jointly agree upon a procedure to be used to review the effectiveness of the newly established position. At the end of year 2 the parties will meet to apply the review procedure with the expectation that the number of work hours utilized for 204-B activities will be reduced or eliminated in those work units with a Lead Clerk position. Additional review will be conducted by the parties at the end of years 3 and 4 of this agreement....

3) Audit of EAS Jobs

The Employer shall return duties and responsibilities from Executive and Administrative Schedule (EAS) positions with the Mail Processing and Customer Service to the APWU bargaining unit based upon an audit conducted by the employer ... provided, however, that if particular duties and responsibilities may have evolved from either an APWU craft position or an EAS position, the Employer will apply a presumption that the duties will be returned to the APW craft.

....

In January 2013 the Manager of Organizational Effectiveness sent out a memo to modify the Lead Clerk Positions. (Jt. Exh. 2, p. 18) At that time the following words were added to the job descriptions:

“Makes Supervisor approved entries to correct time and attendance records and retains required supporting documents.”

In February 2013 the Manager of Contract Administration sent a memo to the APWU President explaining the “purpose of these modifications.” The purpose, he wrote, “is to incorporate language to allow Lead Clerks to make supervisor-approved entries to correct time and attendance records in the TACS and retain supporting documents.” (Jt. Exh. 2, p. 19)

On March 3, 2014 and in response to a letter from the Union, Postmaster James Holland of the Greater Boston District, USPS, wrote the following with regard to the

types of entries made for TACS/timekeeping: “Entries are made relative to leave requests, time clock error correction, higher level inputs, pay adjustments, and operation number adjustments. The average amount of time spend on such entries would be approximately one hour per day, per facility.” (Un. Exh. #2)

In a lead up to this grievance the grievant who is also the Union Steward wrote a statement outlining the events leading to his filing of the grievance on April 9, 2014. He alleges that Management denied him his request for TACS training in February 2014. When he submitted the duties of a Lead Clerk as described above in Item 9, the grievant alleges that his manager responded that the grievant has not completed the TACS course. The grievant responded that the course is mandatory but alleges that the manager disagrees. The grievant alleges that Article 1 “clearly states that supervisors are prohibited from performing bargaining unit work with the exception of 5 instances, none of which are germane to this situation.” He further refers to other documents that he alleges support his position.

In April 2014 the Union filed this grievance arguing that management was performing bargaining unit work to the detriment of craft employees and in violation of the National Agreement. It is the Union’s position the it is Management’s role to approve the work done by the Lead Clerk not grant permission for the work to be done in the first place. It is Union work.

On May 14, 2013 Management sent a memo to Area Human Resources Managers regarding “Time and Attendance Collection System Training.” (Jt. Exh. 2, p. 20) The memo’s primary focus is on the modified training for “newly promoted supervisors” some of which is optional and some of which is mandatory. It also refers to the modification of the Lead Clerk job. “This modification will enable the Lead Clerks access to TACS through a newly created Lead Clerk Clock Office role. Similar to the training requirement above for newly promoted supervisors, the only *mandatory* training for the Lead Clerk position is the TACS Supervisory Course....”

On May 18, 2013 Management distributed a job description for the Lead Sales & Services Associate (P7-07) (Jt. Exhibit #2, p 15) which lists the duties and responsibilities of the job. The Union interpreted the job description to provide that some

of the duties “may” occur while others definitely belong to the clerk craft. Specifically the Union noted item 9 from the job description outline. (ibid)

Item 9. In accordance with the directives of the supervisory presence, plans, directs, organizes and monitors retail related programs/projects and the work of people to meet unit goals, including coordinating and scheduling work hours.... Makes Supervisor approved entries to correct time and attendance records and retains required supporting documents.”

Both parties submitted arbitration awards at the hearing held on November 4, 2014 in Boston, Massachusetts.

POSITIONS OF THE PARTIES.

The Union.

The Union took the position that “the theme in the 2010-2015 Contract was to return work to the bargaining unit which had been siphoned from the craft or were non-sensitive administrative type duties.” To accomplish this a “Lead Level 7” position was created to assume such duties in retail outlets where there was no direct supervisory presence or in locations where there were at least five (5) clerks.” According to the Union the parties took some time to establish the final job description along with duties and the requisite training. It argued that the provisions of the MOU anticipate future actions to clarify the duties and job description of the Lead Clerk.

The Union argued that the MOU between the parties (Jt. Exh. #2, pps 38-43) is a “conceptual memo” indicating the intents of the parties to take certain actions and create certain positions. Among the contemplated positions is that of Lead Clerk. It was not until May 2013 that the details of such position were agreed to at the national level. “Locally they didn’t get the memo. Locally lead level 7 was not allowed to do anything with regard to time keeping and TACS work. Not even those duties defined in the Dowkins memo.” It was then that the local unions started to push the issue to have the time keeping TACS work returned to the craft. The Union filed the instant grievance after the Lead Level 7 Clerk in Weston was not allowed to do anything with regard to timekeeping and TACS. He was not allowed to do the work since he did not have the

training but, as stipulated by the parties, management denied him the training. “Training was used as a barrier to doing this work.”

The Union suggests that the question comes down to this: Is it the supervisor’s job to give approval for work to be done or approve the work that has been done? The Union argued that it is the supervisor’s job to approve the work that has been done by craft employees. Such a set up provides the important checks and balances for the office. Management perverts the May 12, 2013 Q&A (Jt. Exh. #2, pps. 21-23) when it argues that a supervisor has the discretion to permit or not the Lead Clerk access to TACS records (clock rings). The Union argues that the phrase “with the approval of the supervisor” refers to approval of the work done by the Lead Clerk not whether or not he may do the work.

It is the Union’s position is that there are certain clerk craft jobs that belong outright to the Lead Level 7 Clerk; they are not discretionary on the part of Management. This is low-level work and does not constitute a grab at re-establishing the timekeeper position. According to the Union the jobs include leave inputs, payroll adjustments, corrections to wrong operations numbers and other residual work left over from the prior system. In support of its position the Union referred to Union Exhibit #2, among other documents, in which the work belonging to craft employees is listed.

The Lead Level 7 Clerk is in Weston because there are at least five (5) clerks. The Union stated that there are at least twenty-five (25) clerks in Weston. The concept is that the Lead Level 7 Clerk does certain time keeping duties all of which have to be approved by the supervisor before recording them just as the supervisor approves orders for office supplies. This, the Union argued, is the checks and balances in the system.

In addition the Union argued that Management’s argument that it is more efficient for it to do the work is new argument and has never been raised as reason for doing the work.

The Union asks that the grievance be sustained. For remedy the Union asks that Management stop performing Level 7 duties, that the grievant receive mandatory TACS training and assume the duties of his job description, and that the grievant be paid time and a half for all time the manager and supervisor did (TACS) bargaining unit work.

The Postal Service.

In their opening statement, Management referred to the MOU and specifically item #2 that it quoted as follows:

“The intent behind the creation of the Lead Processing Clerk and Lead Sales and Services Associate is to provide oversight, direction and support, in the absence of Supervisory presence to bargaining unit employees in both Mail Processing and Retail operations.” Management argued that the Lead Clerk position comes into play only “in the absence of Supervisory presence.” In Weston there is a manager and a supervisor. In the Step 3 answer Labor Relations Specialist James X. Lloyd noted “there are supervisors responsible for Time and Attendance of all employees. The decision has been made not to assign this work to the lead clerk. The supervisor is responsible” for the various tasks claimed by the Union. Management argued further that it would be wasteful for the “supervisor to hold back entries for the lead clerk to make later.”

Management took the position that the Lead Clerk is, thus, permitted to have access to TACS records and make adjustments to them only with the prior approval of the supervisor as described in the JCIM agreed to by the parties. Management’s interpretation of this provision is that the Lead Clerk is an “additional resource which management *can* utilize” if “conditions at the local level warrant.” (Opening Statement) Management argued “the Weston Post Office does not warrant utilization of this resource as to do so would negatively impact the efficiency of the operation.” (ibid) Management further argued “there is nothing presented that says that Lead Clerk will perform any of the functions; it is only that the Lead Clerk should have the ability to do the work” if called upon to do it at the discretion of Management.

Further, Management argued with respect to the Dockins memo that the tasks listed therein are not performed at the Weston station. The Union, it argued, is merely trying to bring back the timekeeper position that was eliminated. Any residual duties were left to Management and many of those were assigned to the District TACS Office and subsequently moved to Eagan, MN.

The Postal Service asks that the grievance be denied.

DISCUSSION AND AWARD.

When the Collective Bargaining Agreement, the MOU and various other documents that were submitted during the course of the instant grievance must be read in sequence and considered as a whole. After Management converted to the Time Attendance Collection System (TACS) in July 2000 the evidence indicates that the parties differed on what tasks of the old system would be absorbed by TACS, what tasks would move forward with craft employees and what tasks would be absorbed by Management. The Union filed several grievances¹ in which it alleged that Management was performing timekeeping duties in violation of the National Agreement.

In an effort to clarify the responsibilities, USPS Manger of Contract Administration John W. Dockins issued a memo to area managers in July 2006. His purpose in writing the memo was specifically to clarify responsibilities under TACS and resolve the lingering disputes between the parties. As a general matter he wrote that “(a)lthough TACS has changed the timekeeping landscape and automated a number of duties; TACS has not totally eliminated all bargaining unit functions previously assigned to timekeepers.” After listing several of those functions, which are listed below, Mr. Dockins makes it clear that “management should perform non-bargaining unit work only.”

1. Create temporary job assignments
2. Assist the supervisor in preparation and/or submission of a properly approved Form 2240 payroll adjustment.
3. Maintain files of forms that support time and attendance entries.
4. Assist the supervisor in timekeeping functions as the supervisor may require.
5. Answer time and attendance inquiries.

Despite the memo disputes persisted as the parties disagreed upon the meaning of the language in various documents. The parties disagree on 2012 language found in a

¹ Two of the awards submitted by the Union were filed after the Dockins’ Memo was issued; one was filed before. The awards submitted by Management were filed in 2001 and 2002 before the Dockins’ Memo was issued.

series of clarifying Questions & Answers. Of particular interest to the parties is the following:

Question: Will the Lead Clerk have access to TACS records (clock rings) and can they make adjustments?

Answer: Yes, with the approval of the supervisor.

Management says that this language gives it discretion with respect to permitting the Lead Clerk to have access to TACS records. Such work may be done only with the approval of the supervisor. The Union, on the other hand, argued that the supervisor's approval is required after the work has been done for the work that has been done by the Lead Clerk.

The various memos that Management distributed in 2013 suggest that the Union's reading of the above Q&A is correct.

In January 2013 Management added the following words to the Lead Clerk job description:

“Makes Supervisor approved entries to correct time and attendance records and retains required supporting documents.”

In February 2013 Management sent a memo to the Union to explain the “purpose of these modification.” The purpose, he wrote, “is to incorporate language to allow Lead Clerks to make supervisor-approved entries to correct time and attendance records in the TACS and retain supporting documents.”

With each memo Management appears to be reiterating an interpretation of the Q&As that is in line with the Union's.

I find that the two-part question above has a two-part answer. Yes, the Lead Clerk will have access to TACS records (clock rings). The apparent reason to have such access would be to examine those records in some way. Once examined, the Lead Clerk makes any necessary adjustments in the system “with the approval of the supervisor.” In other words, the supervisor must approve the recommended adjustments that the Lead Clerk proposes before those adjustments may be made.

I find the Union's argument persuasive that at the time of the signing of the MOU there were provisions that were a work in progress and as such the precise nature of the

Lead Clerk position took time to evolve. The following language of the MOU appears to support the Union's position:

D) In order to ensure the orderly establishment of the new Lead Clerk position, the Employer will have 1 year from the signing of this memorandum to develop the Lead Clerk senior qualified job descriptions and any training program that may be necessary, post and fill the positions and complete any other relevant activities. During year 2 of this agreement the parties will jointly agree upon a procedure to be used to review the effectiveness of the newly established position. At the end of year 2 the parties will meet to apply the review procedure with the expectation that the number of work hours utilized for 204-B activities will be reduced or eliminated in those work units with a Lead Clerk position. Additional review will be conducted by the parties at the end of years 3 and 4 of this agreement....

Management addressed a secondary matter, however, when it sent out a memo on May 14, 2013 to area managers regarding training for TACS. It speaks both to a modification of the Lead Clerk job and to mandatory training.

“This modification will enable the Lead Clerks access to TACS through a newly created Lead Clerk Clock Office role. Similar to the training requirement above for newly promoted supervisors, the only *mandatory* training for the Lead Clerk position is the TACS Supervisory Course....”

Shortly thereafter on May 18, 2013 Management issued an updated job description with a list of the duties and responsibilities of the job.

Item 9. In accordance with the directives of the supervisory presence, plans, directs, organizes and monitors retail related programs/projects and the work of people to meet unit goals, including coordinating and scheduling work hours.... Makes Supervisor approved entries to correct time and attendance records and retains required supporting documents.”

Once again the Lead Clerk is explicitly expected to make “Supervisor approved entries to correct time and attendance records and retains required supporting documents.” It does not say that the a supervisor will first decide if the Lead Clerk will be permitted to review documents to determine if there are corrections to be made. However, the May 14th

memo makes it **mandatory** for the Lead Clerk to be trained in TACS before undertaking any such review. It is here that an additional dispute arises between the parties.

The grievant is the Lead Clerk in Weston, Massachusetts. The parties stipulated at the start of the hearing that “Management denied the grievant’s request to receive TACS training.” Subsequently, Management denied the grievant access to TACS or the responsibility for any of the tasks outlined in the various memos cited above because he did not have the training. Management itself stated at the hearing that “it is only that the Lead Clerk should have the ability to do the work” if called upon to do it at the discretion of Management. If he is denied training he would not be eligible to do the work if called upon even if Management’s understanding of the MOU were accepted.

In the grievant’s statement (Jt 2, p. 13) the grievant alleged that Manager White stated that “mandatory means something different to him and denied my training.” I understand mandatory to mean obligatory not discretionary. There was no explanation for another meaning to the word.

This situation becomes circular and flies in the face of Management’s directives and specific language. The grievant is the Lead Clerk and it is mandatory that he be trained in TACS. Once he is trained his job description includes a number of clerk craft duties related to timekeeping for which he should be responsible. I do not find that the assignment of TACS duties as outlined in the Lead Clerk job description is discretionary.

Management raised another argument. It made the argument that it is more efficient for a supervisor to do the work claimed by the Union. While it is clear that Management introduced TACS to increase efficiency, there is nothing in any of the Management documents that speaks to a conditional assignment of the clerk craft duties only if it can be shown to be more efficient. If the kind of work that is part of the Lead Clerk’s job assignment is to be done, it is low-level work as described by the Union and is clerk craft work not supervisory work.

THEREFORE, I award as follows:

Management violated the National Agreement by performing bargaining unit work in the Weston, Massachusetts Post Office as it

relates to TACS (Time Attendance Collection System) time keeping duties.

For remedy Management shall stop performing Level 7 duties; the grievant shall receive the mandatory TACS training; and the grievant shall assume the duties of his job description.

The grievant shall receive straight time back pay from the date he was denied taking the TACS training to the date of this award for time the Weston Branch manager and supervisor did (TACS) bargaining unit work.

I shall retain jurisdiction for sixty (60) days if the parties are unable to resolve the remedy.

A handwritten signature in black ink, appearing to read "Sarah Cannon Holden". The signature is written in a cursive style with a horizontal line underneath it.

Sarah Cannon Holden