

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration)

between)

UNITED STATES POSTAL SERVICE)

and)

AMERICAN POSTAL WORKERS UNION)

GRIEVANT: Arturo Abenis

POST OFFICE: Norfolk, VA.

CASE NO: HIT-2V-C 17607

BEFORE: DANIEL G. COLLINS

ARBITRATOR

APPEARANCES:

For the U. S. Postal Service:

R. Andrew German, Assistant
General Counsel
Yvette Chancellor, Attorney,
Office of Labor Law
Richard I. Wevodau, Director,
Maintenance Division

For the Union:

Place of Hearing:

475 L'Enfant Plaza, S.W., Washington, DC.

Date of the Hearing:

June 8, 1989

AWARD:

Applicants for the position of Area Maintenance Technician in 1984 should not have been ranked on the Promotion Eligibility Register solely in terms of the scoring of their rated applications by the Postal Service's National Test Administration.

Date of Award:

August 23, 1989

Daniel G. Collins

(Signature of Arbitrator)

The Issue

The parties stipulated the issue to be as follows:
Should applicants for the position of Area Maintenance Technician in 1984 have been ranked on the Promotion Eligibility Register solely in terms of the scoring of their rated applications by the Postal Service's National Test Administration?

The Background

Mr. Arturo Abenis, the grievant herein, was at all relevant times employed as a Maintenance Technician, Level 6, at the Norfolk, Virginia Post Office. On April 17, 1984 Local Management posted a Notice of Intent to create a Promotion Eligibility Register ("PER") for the Level 8 position of Area Maintenance Technician ("AMT"). Promotion was to be on a "best qualified" basis. Abenis applied for the position, as did two other employees, and filled out a Form 2591 application and a Questionnaire relative to the AMT position. Those documents along with similar documents filed by the other applicants, were sent to the Service's National Training Administration Center ("NTAC"), which rated the grievant's application as qualified and the highest of the three applications, and so notified Local Management at Norfolk. Local Management then convened a Local Review Board, which rated the three applicants using Postal Service Form 1796 and a Supplemental Experience Sheet. The grievant was rated

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lowest of the three applicants. Because one member of the Review Board had failed to fill in a column B on Form 1796 designed to show job elements of unusually high importance, a second Local Review Board was convened. That Board then rated the grievant and one other applicant as unqualified, in each case because they lacked ability to perform welding, metal cutting and burning with a torch. Abenis grieved his failure to be promoted to the AMT position, contending that his "highest" rating by NTAC was determinative of his position on the PER and that it was improper for the Service to have convened a Local Review Board to reevaluate the applicants. Abenis' grievance was appealed to Step 3 of the parties' grievance procedure, where Regional Arbitrator Bernard Cushman held that Abenis' claim raised an interpretive issue under the National Agreement, and referred the matter to Step 4.

The Parties' Positions

The Union argues as follows: Appendix B to the P-11 Handbook provides that the examination for the position of AMT is a Rated Application Examination. Under 525.21 of the P-11 Handbook, which deals with "Selection Procedures", when a Rated Application Examination is prescribed for a position, the rating of the application is done by NTAC. Under 331.22 of the Employee and Labor Relations Manual ("ELM"), the NTAC rating is the "final

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rating for each competitor." Thus it was improper for Local Management to have reevaluated Albenis, whom NTAC had found to be qualified and the highest rated applicant, and to have determined that he was unqualified for the AMT position. In any event, the question at issue here "was resolved at the Regional Level in Case No. E4J-2D-C7722." This conclusion "is further buttressed by the Step 4 pre-arbitration settlement of Case No. CIJ-4K-C 14359."

The Postal Service argues as follows: The Union essentially is attempting to rely on a provision of the ELM, 331.2, relating to "Forms of Examination", that it has taken entirely out of context. 331.1 of the ELM makes it clear that examination results are intended only "to assist in the identification of the best qualified eligible candidates..." The P-11 Handbook at 525.13 and .22 expressly states that "examination results" are only one among a myriad of factors that are to be taken into account in the evaluation process for promotion to best qualified positions. Furthermore, Handbook EL-303 "states explicitly that applicants for the AMT position" will be rated on the basis of the quality and extent of their total experience, education and training." With respect to the Questionnaire related to the AMT position at issue, the qualification standard of welding was not even listed. Moreover, the Form 2591 application and the related Questionnaire that are evaluated by NTAC reflect unverified information that is supplied by an applicant. It is inconceivable that the Regulations would provide for promotion based on such unverified

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self-evaluation of applicants. If there is any doubt as to this conclusion, it is dispelled by the Postal Service's practice, during the period from 1975 to 1985, of utilizing Local Review Boards to evaluate PER candidates following NTAC ranking of applications.

Discussion

The cited Regulations are not entirely "free from ambiguity" but under well established canons of interpretation, they strongly support the Postal Service's position that NTAC's evaluation of applications is only one factor to be considered in the Service's ultimate ranking of PER candidates. It is an established principle of interpretation that words must be read in the context of the totality of the instruments in which they are expressed, and in the context of the purposes for which they are uttered. Here, 331.22 of the ELM provides that:

competitors submit completed applications or other required documents, providing information for evaluation against an established rating standard. Based upon the information, a final rating is established for each competitor.

331.2 of the ELM is entitled "Forms of Examination", and 331.22 is entitled "Rated Application". Form 2591 is entitled "Application for Employment." It seems clear that what NTAC evaluates and rates is the completed "application" and Questionnaire

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of a candidate. However, 525.2 of the P-11 Handbook, dealing expressly with "Selection Procedures" for best qualified positions, speaks fo "examination results" as being only one among a host of selection criteris, the others being "interviews, supervisory appraisals, certificates of course completion,... personnel records, and any other evidence tending to show that the employee does or does not possess the required qualifications." Significantly, in the Arbitrator's opinion, 525.22 also includes as an evaluation criterion "the written application specifying experience and training (after checking for accuracy)". The testimonial and documentary evidence establishes that NTAC neither did nor was equiped to check the "accuracy" of applications; that was only done at the local level.

The P-11 Handbook, at 525.231, requires for rating purposes use of Form 1796, which lists "all the relevant qualifications in column A" and "any qualifications of unusually high importance.. in column B." The central role of Form 1796 for rating purposes is noted in Appendix I to the EL-303 Handbook and in the October 28, 1977 Maintenance Bulletin dealing with the then newly negotiated procedures for establishing PERs. Yet Form 1796 appears both from the Regulations and practice to be a locally utilized form that has no role in the NTAC process. There is, in the Arbitrator's opinion, a strong suggestion in the Regulations that Form 1796 was designed to play an important part in the ranking process for jobs like that of AMT, where particular job require-

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ments at the local level mandate specific qualifications that may or may not be referred to, no less dealt with, in Form 2591, the general application, or on the related Questionnaire. This was, for example, the case with the AMT position at Norfolk, where welding was designated on the Form 1796 as being a qualification of unusual importance, though it was not referred to in the application or Questionnaire.

The Union argues that the language of the Maintenance Bulletin relied on by the Service has no bearing on rated applications. The Arbitrator does not agree. The Maintenance Bulletin, which was issued following ground breaking collective bargaining negotiations, was concerned with the general process of developing rating procedures, rather than with carefully describing any such procedures. For that description one must look to the P-11 Handbook, which in 525.22 describes a broad ranging evaluation procedure focussing on the use of Form 1796. In fact 525.31 mandates use of Form 1796 with respect to positions to be filled on a best qualified basis. Since the AMT position at issue was to be filled on a best qualified basis, it is simply impossible to reconcile the Union's position here with the provisions of 525.31 of the P-11 Handbook.

The Union has cited a Step 3 settlement and the terms of a Union letter withdrawing a grievance at Step 4, in support of its position that the NTAC evaluation of a candidate's application was determinative of the candidates position on a PER. Whatever

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weight should be accorded to a Step 3 settlement seems to this Arbitrator to be very problematical, but surely such a settlement can have no more weight than a regional arbitration decision, which by the terms of the National Agreement cannot resolve national interpretive issues. As to the Step 4 grievance withdrawal letter cited by the Union, the Arbitrator does not view it as having the stature of a clearly and mutually stated settlement agreement. Furthermore, there is evidence that local review panels were typically convened to establish PERs. However, the Arbitrator will not base his decision on any evidence of practice; he believes that the language of the Regulations, and a commonsenseical reading of them, clearly supports the Postal Service's position that while the NTAC evaluation of an application is final and binding, that evaluation is only one factor among a variety of factors that Local Management msut consider in determining the ranking of applicants on a PER.

Dated: August , 1989

DANIEL G. COLLINS, Arbitrator

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named Parties, and having been duly sworn and having duly heard the proofs and allegations of the Parties, AWARDS as follows:

Applicants for the position of Area Maintenance Technician in 1984 should not have been ranked on the Promotion Eligibility Register solely in terms of the scoring of their rated applications by the Postal Service's National Test Administration.

Daniel G. Collins
DANIEL G. COLLINS, Arbitrator

State of New York)
)ss.:
County of New York)

On this 23rd day of August, 1989, before me personally came and appeared DANIEL G. COLLINS to me known and known to me to be the individual described in and hwo executed the foregoing instrument and he acknowledged to me that he executed the same.

Jeanetta McLeod Ross
JEANETTA McLEOD ROSS
Notary Public, State of New York
No. 31-4673915
Qualified In New York County
Commission Expires March 30, 1991
Jan 31, 1991