

**REGULAR ARBITRATION PANEL**

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In the Matter of the Arbitration

Grievant: Dickover and Class Action

Between

Post Office: Fort Myers, Florida

**UNITED STATES POSTAL SERVICE**

USPS Case No.: G10C-1G-D 14278545  
G10C-1G-C 14172648

And

**AMERICAN POSTAL WORKERS UNIONS**

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BEFORE: Linda S. Byars, Arbitrator

APPEARANCES:

For the U. S. Postal Service: Allen L. Powell, Labor Relations Specialist

For the Union: Jim Demauro, National Arbitration Advocate

Place of Hearing: Fort Myers, Florida

Date of Hearing: June 12, 2015

Date of Award: June 23, 2015

Relevant Contract Provisions: PSE Conversion to Career

Contract Year: 2010-2015

Type of Grievance: PSE Conversion

Award Summary

Although management has the right to correct an administrative or clerical error, there is no evidence to support a finding that the conversion resulted from an administrative or clerical error. Therefore the conversion of the PSEs became effective April 19, 2014. The Grievances are sustained.

## BACKGROUND

By memoranda dated April 18, 2014, Acting Manager of In Plant Support for the Fort Myers, Florida P & DC, Donna Milheim, advised 25 PSEs that they were being converted from PSE Clerk to career positions of Full Time Regular clerk and that effective April 19, 2014 they would become unassigned regulars with temporary work schedules as outlined in the memoranda. By memoranda dated April 18, 2014, Acting Manager Milheim advised the same PSEs that her previous notice was rescinded. The memoranda state as follows:

This letter is notification that we are rescinding the previous letter you received regarding your conversion to a career position as of April 19, 2014. At this time, all career conversions have been cancelled and there will not be any PSE Clerks converted to a Full Time Regular clerk status in the Fort Myers Plant.

You will remain in your current assigned work location and hours until further notice. [Joint Exhibit No. 3, pp. 31-51.]

The Union protested by filing a Class Action Grievance.

James Dickover, one of the PSEs in the Class Action Grievance, again received notification in May 2014 that he would be converted to career status and later received notification that his employment was terminated on August 6, 2014 for unsatisfactory performance during his probationary period. The Union protested the termination by filing a Grievance, contending that the Grievant had been converted to career status in April, that the cancellation of the conversion was improper, and that the Grievant was no longer a probationary employee.

The Grievances came before the Arbitrator at hearing on June 12, 2015 in Fort Myers, Florida. The parties agreed that the Grievances would be heard simultaneously. The

parties agree that the Grievances are properly before the Arbitrator and that the Arbitrator retains jurisdiction to decide a remedy if necessary. The parties further agree that the decision in the Class Action Grievance is outcome determinative for the individual Grievance. That is, the party prevailing in the Class Action Grievance also prevails in the Grievance for James Dickover.

## OPINION

The Postal Service frames the issue in the Class Action Grievance as follows: Did management violate the National Agreement when they cancelled an intended conversion of 25 PSE's at Fort Myers P & DC on April 18, 2014? The Postal Service maintains that the error was an administrative one and that nothing prohibits management from "correcting the error prior to implementation." [Joint Exhibit No. 3, p. 8.] The Postal Service further maintains in its second step denial of the Grievance that, "Due to a miscommunication between senior district Management and local Management at the Fort Myers P&DC, these notices were sent out prematurely." [Joint Exhibit No. 3, p. 8.] The Postal Service contends that, "Immediate action was taken to send follow-up notices to each of the involved employees notifying them of the mistake and that the conversions would not be taking place at that time." [Joint Exhibit No. 3, p. 8.]

The Union acknowledges that management sent follow-up notices to each of the PSEs cancelling the conversion but contends that the conversion was implemented and then cancelled. The Union contends that once a PSE is converted, there is no mechanism for "unconverting" them.

There is no dispute that, in addition to the letters of congratulations sent by Ms. Milheim to each PSE, management issued PS Form 50 to implement the conversion for each of the PSEs. There is also no dispute that such action initiated an automated process where PSEs received documents informing them of their newly attained rights as career employees and also initiated the process of converting them for pay purposes.

The Postal Service contends that the processing of the Form 50s for the PSEs does not change the fact that management had the right to cancel the conversion and did so. In its second step decision, the Postal Service submits that the decision to cancel the conversions occurred later the same day, April 18, but not in time to reverse the automated process. At Step 2, the Postal Service asserted, “In any event, local Management insured that each employee was informed that the conversions were cancelled.” [Joint Exhibit No. 3, p. 9.] The Postal Service further asserted at Step 2 that, “[The PSEs] were clearly notified that the conversions would not be taking place and this notification was given prior to the originally intended implementation date of April 19, 2011.” The Postal Service contends that the Union did not refute management’s assertion that PSEs received such notification and therefore it stands as fact.

The Union produced evidence demonstrating that implementation of the conversion occurred before the cancellation of the conversion. The fact that the cancellation memoranda are dated the same day as the conversion memoranda is insufficient to demonstrate the Postal Service claim that, “[The PSEs] were clearly notified that the conversions would not be taking place and this notification was given prior to the originally intended implementation date of April 19, 2011.” [Joint Exhibit no. 3, p. 9.]

The record also fails to demonstrate that employees were advised of the cancellation by means other than the cancellation notice. Contrary to the argument by the Postal Service, its claim, unsupported by evidence, does not stand as fact. Moreover, the record contains no evidence to support the claim at Step 2 of the grievance procedure that the conversion was the result of administrative error caused by miscommunication between local and district management.

The memorandum sent to each PSE offers no explanation for the cancellation of the conversion. Rather, the notices state that, “At this time, all career conversions have been cancelled and there will not be any PSE Clerks converted to a Full Time Regular clerk status in the Fort Myers Plant.” Postal Service witness, Davina Best, explained the general process of a personnel action. However, Ms. Best was not involved in the personnel action at issue, and her testimony was insufficient to explain the cancellation of the PSE conversions at issue in this case.

The cases cited by the Postal Service involve facts similar to those in the instant case and management’s right to correct a clerical error. For example, Arbitrator Tobie Braverman decided a case involving a Transitional Employee, who received contradicting Form 50 notices. [Case No. C06N-4C-C 12101212.] However, unlike the instant case, the parties **were in agreement** that the employee was aware of his termination and that the second Form 50 Notice was the result of clerical error. [Case No. C06N-4C-C 12101212, p. 6.]

In a subsequent case decided by Arbitrator Braverman, she sustained the grievance where she found the evidence did not support a cancellation of conversion due to clerical

error. [C11N-4C-D 13208211.] In the instant case, there is no evidence to support the Postal Service claim of administrative or clerical error.

For similar reasons, the case cited by the Postal Service and heard by Arbitrator Frank Giordano is not on-point. In the case before Arbitrator Giordano, management explained the reason for the rescission of the promotion and provided evidence to support its explanation. [ K06T-1K-C 11300754, p. 8.]

The 1988 decision of Arbitrator Arnold Ordman turned on whether or not the conversion of seven PTF employees had become effective when it was cancelled. Similar to the instant case, management explained that papers documenting the conversion had already been prepared, that time had to be allowed for the preparation of papers correcting the action, and that the action never actually took place. [E4V-2N-C 45338, pp. 11-12.] As the Postal Service contends, the facts in the Ordman case are distinguishable from those in the instant case, including the fact that the PTFs were paid for several weeks as regular employees. However, in both cases, the records demonstrated that action was implemented and then cancelled.

The Postal Service contends that management does not have to explain its action and that the Union has the burden of proof. However, as the Union contends, the record demonstrates that management implemented and then cancelled the conversion. The Postal Service then had the obligation to demonstrate, with evidence, its assertion of the administrative or clerical error.

In its opening argument, the Postal Service states that, "It is the intention of the US Postal Service today to show that this action was proper, correct, not conceived in malice of forethought and was within our exclusive rights." However, the Postal Service did not

produce evidence to support such assertion. Although management is within its rights to correct an administrative or clerical error, there is no evidence to support a finding that the conversion resulted from an administrative or clerical error. Accordingly, the Arbitrator finds for the Union and makes the following Award.

AWARD

The Grievances are sustained. The 25 members of the Class Action Grievance shall be retroactively converted to career full-time employees effective April 19, 2014 and shall be paid the difference in wages and benefits retroactive to April 19, 2014. Grievant James Dickover shall be returned to work as a career FTR employee retroactive to April 19, 2014 and made whole for all lost wages and benefits. The Arbitrator retains jurisdiction to decide any dispute arising over the interpretation and/or implementation of the remedy.



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Arbitrator

DATE: June 23, 2015