

C# 10022

REGULAR ARBITRATION PANEL

In the Matter of Arbitration)
Between)
UNITED STATES POSTAL SERVICE)
d)
NATIONAL ASSOCIATION OF LETTER)
CARRIERS, AFL-CIO)

OPINION AND AWARD

Nicholas H. Zumas, Arbitrator
Grievant: Class Action
Case No.: N7N-1E-C 24324

Appearances:

For U.S. Postal Service: Carolyn Rizzo

For Union: Carl Soderstrom

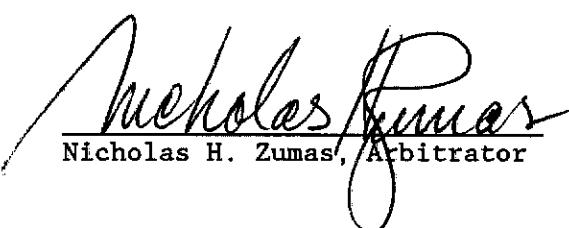
Place of Hearing: Boston, Massachusetts

Date of Hearing: February 23, 1990

Post-Hearing Briefs Filed: March 23, 1990

Award: Grievance denied.

Date of Award: May 16, 1990


Nicholas H. Zumas, Arbitrator

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STATEMENT OF THE CASE

This is an arbitration proceeding pursuant to the provisions of Article 15 of the National Agreement between the United States Postal Service (hereinafter "Service") and the National Association of Letter Carriers, AFL-CIO (hereinafter "Union"). At the hearing, sworn testimony was taken, exhibits were offered and made part of the record and oral argument was heard. The parties filed post-hearing briefs on March 23, 1990.

This is a class action grievance protesting the adjustment of parcel post and combination routes in Medford, Massachusetts.

The Union contends that the Service violated Article VIII of the Local Memorandum of Understanding ("LMOU") and the National Agreement when the Service (through local Management) changed the non-scheduled days of five parcel post combination routes from Saturday/Sunday non-scheduled days to Sunday and rotating non-scheduled days. The Service contends that its actions were not in violation of either the National Agreement or the LMOU; and that the adjustments were consistent with managerial efficiency.

The parties, having failed to resolve the matter during the grievance procedure, referred the dispute to this Arbitrator for resolution.

ISSUE

The parties stipulated that the issue to be decided in this dispute is whether the Service violated the National Agreement and/or the LMOU when it assigned Sunday and rotating days off to certain routes; and if so, what should the remedy be.

STATEMENT OF FACTS

The LMOU provides:

ARTICLE VIII

WORK SCHEDULES

A. BASIC WORK WEEK

1. Rotation of Non-Scheduled Work Day

Letter Carriers in the Boston Post Office will be granted a non-scheduled work day on a rotating basis, except as provided below:

- a. Multiple trip routes shall have a Monday through Friday work week with Saturday as their non-scheduled day.
- b. Parcel Post Carriers and Carriers on combination Parcel Post, relay and collection routes, will be granted a non-scheduled work day on a rotating basis, except that those engage in business of partial business areas that do not have a full Saturday delivery scheule shall have a Monday through Friday work week with Saturday as their non-scheduled day.

The National Agreement provides:

ARTICLE 3

MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;
- E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and
- F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

The M-39 Handbook provides:

MANAGEMENT OF DELIVERY SERVICES

SECTION 112 TYPES OF ROUTES

112.1 Delivery

.11 Business Route. A foot or motorized route on which 70 percent or more of the possible deliveries are business establishments.

.12 Residential Route. A foot or motorized route on which 70 percent or more of the possible deliveries are residential.

.13 Mixed Business and Residential Route. A foot or motorized route on which 30 to 69 percent of possible deliveries are business establishments.

The M-41 Handbook provides:

CITY DELIVERY CARRIERS - GLOSSARY

BUSINESS ROUTE - A letter carrier route on which 70 percent or more of the possible deliveries are business places.

COMBINATION SERVICES ROUTE - A route on which, in addition to the delivery of parcel post, other delivery duties are performed.

MIXED ROUTE - A letter route or trip where 30 to 69 percent of possible deliveries are business places. May include a route where business and residential deliveries are made on the first trip and only business area is served on the second trip.

RESIDENTIAL ROUTE - A foot or motorized route on which 70 percent or more of the possible deliveries are residential. It may serve scattered businesses or stores comprising a small minority of total possible deliveries.

In early 1989, the parcel post and combination routes in Medford were inspected and adjusted. The adjustments led to changes in the parcel post and combination routes. The five routes that were adjusted were to have Sunday and a rotating day as non-scheduled days.

The five routes that were adjusted consisted of between 93%-99% residential deliveries.

At the hearing, Michael J. O'Connor, President of Branch 34 and former Shop Steward and Treasurer, testified that the Service had not attempted to change Article VIII by negotiation. He testified further that in Medford, six routes are relay/collection and one route is combination. On cross examination, O'Connor testified that the routes in Medford are either partial business, residential or parcel post, but admitted that he did not know which parcel post routes fell in residential or business. O'Connor also testified that he at one time delivered parcel post with Saturdays and Sundays off.

Kevin Ford, a Shop Steward, testified that he did not know the actual definition of "multiple trip route." He further testified that parcel post was not delivered to certain businesses on Saturday because the business was closed. Ford also pointed out that a parcel post route covers relays/collections, express and late collections.

Charles F. O'Connor, the Service's Manager at Medford, testified that a "multiple trip route" was a "route that makes more than one trip out of the office to make more than one delivery to the same location." These trips, he testified, were abandoned in 1982-83. In the past, O'Connor testified, parcel post was not delivered on Saturdays. Parcel post was not a priority; it was neglected. If there was a delivery on Saturday, however, it would be residue from during the week. As a result, the Service lost business to competitor United Parcel Service.

C. F. O'Connor testified further, however, that recently, there was a change of procedure. Parcel post deliveries on Saturday became part of the service standard and they were delivered on a consistent basis. Furthermore, five routes were established to deliver parcel post mail on Saturday as well as one auxiliary route for delivery to residential patrons (with Sunday and a rotating day off.) Monday to Friday, however, there were seven parcel post routes. Now, there are two partial business routes that have Saturday and Sunday off.

C. F. O'Connor also testified that the inspection in 1989 was conducted in his office and his office made the decision to change the schedule in order to handle parcel post deliveries on Saturdays to primarily residential addresses. He testified that in lieu of the collections, carriers had a full schedule on Saturday, and confirmed that there was no dispute from the carriers as to this arrangement. Finally, O'Connor testified that no grievance was filed, the carriers bid the positions and service has improved since the implementation of the plan. On cross examination, O'Connor conceded that the Saturday delivery schedule is not the same as the Monday to Friday schedule.

POSITION OF THE UNION

The Union maintains that Article VIII of the LMOU provides that Letter Carriers will have rotation of non-scheduled work days except as described in VIII.A.1.a. (multiple trip routes) and VIII.A.1.b. (parcel post carrier and carriers on combination parcel post routes who will be granted a non-

scheduled work day on a rotating basis, except for those engaged in the business of partial business areas who do not have a full Saturday delivery schedule, and who have a Monday through Friday work week with Saturday and Sunday as the non-scheduled days.) The Union contends that this concept has remained unchanged since the advent of locally negotiated contracts.

The five routes in this case are, the Union maintains, routes such as are described in Article VIII.A.1.a. and b. and, therefore, must have non-scheduled work days as described in the Article, not the non-scheduled days to which the Service has adjusted. While noting that "multiple trip routes" is not defined in the LMOU, the Union examines the separate meaning of each of the three words and concludes that "Route 64" (55064) is a multiple trip route. The other four routes, it maintains, are the type described in Article VIII.A.1.b.

The Union asserts that the Service has tried to change the non-scheduled days of parcel post carriers without negotiating that change to the LMOU. The Union maintains that any change to the LMOU must be negotiated and agreed to and cannot be accomplished by the dictate of the Service.

POSITION OF THE SERVICE

The Service contends that it did not violate the National Agreement or the LMOU. The Service maintains that it had the right to make the adjustments in the routes and assign to those routes Sunday and rotating non-scheduled days.

The Service contends that the Union has not satisfied its burden of proof. The Service admits that it assigned Sunday/Rotating non-scheduled days for parcel post, combination, relay and/or collection routes at Medford. Citing the Management's Rights Article of the National Agreement, the Service contends that the National Agreement gives it the prerogative to determine how or what service will be provided and that the LMOU does not supersede that right in the National Agreement. The Service maintains that its adjustment of schedules for the routes in question is simply an effort to operate at "optimum efficiency."

The Service contends that the routes in question are residential routes and that the Union has failed to contest that point. The Service also provides statistical evidence to demonstrate that the five routes in question are, in fact, residential routes in keeping with the definition in the M-39 and M-41 Handbooks. The Service contends that the definition of a "multiple trip route" presented by Charles F. O'Connor, Medford Manager, went undisputed by the Union; and the Service argues, by implication, that none of the routes in question falls within that definition.

The Service rejects the Union's contention that past practice has established non-scheduled days on the parcel post routes. The Service asserts that the delivery standard for parcel post (six day delivery was not implemented due to lax enforcement of the standard) did not constitute a past practice. The Service further asserts that it retains the right to schedule work. The Service notes also that no employee benefit was elimin-

ated by the non-scheduled day changes; that all the employees in the Sunday/rotating non-scheduled day schedule had bid into that schedule; and that no employee had chosen to bid out of it.

In sum, the Service contends that it has established the Sunday/rotating non-scheduled days schedule within the guidelines of Article VIII and has simply exercised its right to meet service standards.

FINDINGS AND CONCLUSIONS

After review of the record, including witness testimony, it is this Arbitrator's finding that the grievance is without merit and must be denied. The Service did not violate the National Agreement or the LMOU as charged.

This is, at bottom, a dispute regarding non-scheduled days. In order to find that the Service has violated the LMOU, the Union must show that the Service assigned non-scheduled work days in some manner not in accordance with Article VIII.A.1. That section of the LMOU grants non-scheduled work days to Letter Carriers on a rotating basis except in certain listed conditions. Put another way, unless the Letter Carrier falls within the exception, his non-scheduled work days will be Sunday and one other day which rotates through the week on successive weeks. For obvious reasons, many letter carriers would prefer to have Saturday and Sunday as their non-scheduled work days.

The first exception to the rotating non-scheduled work day plan is that "multiple trip routes will have a Monday through Friday work week with Saturday as their non-scheduled day." In the course of this proceeding, the question emerged as to what in fact was a "multiple trip route." According to the Union witnesses, it was not defined in either the LMOU or the National Agreement. The Union simply attributed to the term a definition based on the literal meaning of each of the three words. C. F. O'Connor testified that "multiple trip route" was indeed a term of art which meant a route that makes more than one trip out of the office to make more than one delivery to the same location.

The definition by the Service is more likely the accurate definition of the term because otherwise every route would likely become a "multiple trip route" and the meaning of Subsection A.1.a. would be lost. Moreover, the testimony of C. F. O'Connor was more credible as to the existence and subsequent abandonment of this type of route. Since his definition is the one this Arbitrator will apply because the credible evidence is that no such routes have existed since 1983, and the only conclusion is that none of the adjusted routes falls within this category.

To fall into the second category of exception to the rotating non-scheduled work day plan a Letter Carrier must meet a combined set of criteria. A Letter Carrier must work certain types of routes or mail (i.e. parcel post or a combination parcel post, relay and collection routes) but the Letter Carrier must also "engage in business of partial business areas that do not have a full Saturday delivery schedule." If a Letter Carrier

met all three of these criteria, he or she would not have a rotating non-scheduled work day. The Union did not show that these were the facts in this matter and, indeed, they were not. The persuasive, credible evidence is that the routes in question were residential, not business routes and that the Letter Carriers had full Saturday delivery schedules. Therefore, they properly fell with the ambit of the general rule set forth at the beginning of Article VIII.A.1, and repeated in subsection A.1.b., that Letter Carriers are assigned a rotating non-scheduled work day.

Since the Union did not prove that the Letter Carriers or routes fell within Article VIII, as described above, then the Service cannot be found to have violated the Agreement by assigning non-scheduled work days on a rotating basis. That assignment is precisely what the LMOU requires. It should also be borne in mind that the Service possesses a managerial prerogative to operate within the Agreements in a manner it deems efficient. The record suggests that the Service possessed a reasonable basis for the reassessments in question based on service standards, its investigation and its interest in efficiency.