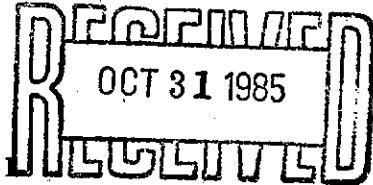


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N.A.L.C. A.R.B.
Washington, D.C.



REGULAR REGIONAL ARBITRATION PANEL

Arbitration between

UNITED STATES POSTAL SERVICE)
Williamston, North Carolina) Opinion and Award
and) pertaining to
NATIONAL ASSOCIATION OF) S1N-3P-C-17466 *W. Hopkins*
LETTER CARRIERS) Parcels Over 2 Pounds
-----)

Arbitrator: J. Earl Williams

Hearing

The hearing of the subject matter in arbitration was held at the Post Office in Williamston, North Carolina, on February 4, 1985. Briefs were filed by the parties in due course.

Appearances

For Management: Jim L. Carter
Labor Relations Representative
United States Postal Service
Raleigh, North Carolina 27611-9994

For the Union: Q. L. Pittman
Senior Regional Administrative
Assistant
National Association of
Letter Carriers
Post Office Drawer 450709
Atlanta, Georgia 30345

Background

On 12-10-82, Letter Carrier Hopkins was required to include fourteen parcels weighing over two pounds in relays on City Route #3. On 12-21-82, he was required to carry sixteen parcels weighing two pounds, six ounces in relays on the same route. Also, on 12-21-82, Carrier Gardner was required to include eleven parcels weighing over two pounds in relays on City Route #2. City Routes #2 and #3 are de-motorized city routes. The Union filed a grievance on the standard grievance form, dated January 20, 1983, which contended that it was a violation of the National Agreement, a local agreement reached on December 15, 1982, between the Postmaster and the NBA Representative, as well as a national postal arbitration award for foot carriers to be forced to carry parcels weighing over two pounds. Management replied that it did not violate any of these sources suggested by the Union, and, there being no settlement of the issue during the grievance procedure, it led to the subject arbitration.

Issue

Immediately prior to the start of the hearing, the parties agreed to the following statement of the issue:

Did Management violate the National Agreement and/or a national arbitrator's award, when it made assignments to the grievant, Hopkins, during December 1982? If so, what is the appropriate remedy?

Language Referenced by the Parties

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:

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;

ARTICLE 41

LETTER CARRIER CRAFT

Section 4. City Carrier Transportation (Driveout) Agreements

3. All carriers furnishing a vehicle for transporting themselves, passengers and mail to and from the assigned routes shall be reimbursed on a mileage-zone basis as follows:

e. Thirty cents for each article transported larger than the size required to be delivered by foot letter carriers (2 lbs). (JX 1)

POSTAL OPERATIONS MANUAL (JX 3)

614 PARCEL POST

614.2 Delivery Employees. Normally, require foot carriers to deliver articles including catalogs, not exceeding 2 pounds in weight. Based on available work-loads, supervisors may require foot or parcel post carriers to deliver articles weighing more or less than 2 pounds. Require motorized carriers to deliver all parcels received for their routes.

M-39 (JX 4)

160 PARCEL POST

161 Parcel Post Delivery Requirements

The day-to-day supervisory requirements for parcel post routes are basically the same as for city letter carrier routes. The office work routine, both before leaving for the route and after returning from the route, is somewhat different, as follows:

b. Withhold, generally, all small parcels (not exceeding 2 pounds) to be delivered by foot carriers. Don't delay getting these parcels to the foot carriers.

JOB DESCRIPTION (JX 5)

CITY OR SPECIAL CARRIER -- LEVEL 5

DESCRIPTION OF WORK

2. Carriers and Special Delivery Messengers

Carriers and Special Delivery Messengers are responsible for the prompt and efficient delivery and collection of mail on foot or by vehicle under varying conditions in a prescribed area or on various routes. They must serve in all kinds of weather

and may be required to drive motor vehicles in all kinds of traffic and road conditions and to deliver parcel post from trucks and make collections of mail from various boxes in the city. They may be required to carry on their shoulders loads weighing as much as 35 pounds and to load and unload full sacks of mail weighing up to 70 pounds from trucks.

CHAPTER B (JX 6)
KEY POSITION 11

CITY OR SPECIAL CARRIER*OR SPECIAL
DELIVERY MESSENGER**LEVEL 5

Duties and Responsibilities

(B) . . . Prepares and separates all classes of mail to be carried by truck to relay boxes along route for subsequent delivery.

(D) Delivers mail along a prescribed route, on a regular schedule, picking up additional mail from relay boxes. . . .

Contentions of the Union

The Union contends that the language referenced shows that, as a general rule, the assignment to carriers, in terms of parcels, is to be restricted to two pounds or less. Then, it devotes most of its attention to Arbitrator Aaron's national award. It indicates that the award disputes the Postal Service's contention that it has unlimited discretion to assign more than two pounds. It indicates that there must be sound business reasons for assigning more than two pounds, and it must not be done on a routine basis. While it is true

that the Postal Service must be free to determine exceptions to the normal, these exceptions cannot become the norm. Thus, the qualified conditions, under which Postal Management can assign more than two pounds, would be only on an infrequent and non-routine basis when there is no other official way to deliver the mail. However, in the subject case, the exception had become the norm, and parcels exceeding two pounds routinely were being assigned to carriers. There was an equal and reliable alternative to this approach. Management has been aware of the national award; the Union discussed it with them, but, to date, they have not responded to it.

Contentions of Management

Management contends that, under Article 3, Sections C and D, it has the exclusive right to maintain the efficiency of the operation and to determine the methods, means, and personnel by which such operations are to be conducted. In terms of the handbooks and manuals, the use of the terms "normally" and "generally" indicate that the 2-pound limit is a reasonable guideline, not an absolute. Further, Management witnesses testified that, on a regular basis, they have not, and will not, require carriers of foot routes to deliver parcels weighing in excess of two pounds. It will be only on occasional basis that will depend upon overall conditions on a particular day in the office. The Postmaster testified that, in regard to the days in question, it was necessary to deliver the catalogs due to conditions of delivery, shortage of help, and volume

of mail. Further, the supervisor testified that he does not require carriers to carry parcels just to add weight to the relay. Also, even Union witnesses agreed that they normally are relieved of articles of over two pounds and never required to carry more than thirty-five pounds per relay. In short, all the direct testimony indicated that the carriers had not been required to carry articles over two pounds on a continuous basis. Finally, the alternative approach suggested by the Union would be costly over a period of time and is not an equally justifiable alternative.

Discussion

The parties are well-aware of Management Rights, under Article 3, to maintain efficiency of the operation and to determine the methods, means and personnel by which the operations are to be conducted. However, the additional language referenced, including handbooks, qualify this to the extent that a general intent is expressed to restrict the weight of parcels assigned to carriers to a maximum of two(2) pounds. However, as Management pointed out, this is qualified to some extent by the use of the adverbs "normally" and "generally." In fact, POM 614.2 makes clear that there may be occasions when the carrier will be required to carry more than two pounds. The standards for interpreting this language, in terms of when and under what conditions more than two pounds can be assigned, have been developed by Arbitrator Aaron in a national interpretative award of March 11, 1982. (H8N-4E-C-19254 and 21358) The parties to

the National Agreement have determined that the national interpretative awards constitute the final interpretative authority. The question of whether or not a regional arbitrator agrees with a particular award is moot. He is bound by that award. Thus, it is not surprising that the local agreement referred to by the Union was primarily one in which Management agreed that it would abide by Arbitrator Aaron's award. Therefore, it is important to specify the standards, which the subject Arbitrator believes were developed by the Aaron award. The parties are bound by, and Management has agreed to abide by, same. They are:

1. The Postal Service has the authority to require foot carriers to deliver articles weighing in excess of two pounds, subject to the requirement of Postal Standard for Carriers (Description of Work, Carriers).

2. However, that authority may be exercised only on an infrequent and non-routine basis.

3. Also, the authority may not be exercised, if there are other equally prompt, reliable and efficient ways to deliver the mail.

4. Yet, Management must be free to determine when exceptions to the normal or usual practice are justified. However, this discretion is qualified by the 35-pound weight limit, which is binding.

5. Further, exceptions to the normal or usual practice cannot become the norm.

6. Thus, a routine and frequent assignment of parcels weighing over two pounds to foot carriers would be inappropriate.

In applying the facts of the subject issue to the standards spelled out above, several conclusions are evident. Management never has required the carriers to carry over thirty-five pounds. Further, even the Union witnesses agree that, when they have parcels over two pounds, normally, they are told to give them to the auxiliary route or deliver them the next day. In fact, it is normal to assign all such parcels to the auxiliary route. In exceptional cases, like Sears' catalogs, generally, there are not more than three assigned per relay, and they are all out in two days. Finally, the Postmaster testified that the practice, in regard to assigning parcels of more than two pounds, is to consider the volume of mail, shortages of help due to sickness, vacations, etc., seasons of the year, and the Aaron award. Thus, in terms of the days in question, Management's testimony was that it was the Christmas season, and there were some Christmas catalogs and parcels. Too, there is an extremely small carrier force, and one of them was partially disabled, and another was a new carrier. Finally, the auxiliary route already was running 20 to 30 per cent over its allotted hours each day. This was not refuted.

On the other hand, the supervisor did state that he would require carriers to take at least two parcels a day which weighed over two pounds, as long as the total weight did not exceed thirty-five pounds and it was the first stop or a relay. Also, the

Postmaster appeared to be saying that, as long as the weight did not exceed thirty-five pounds, Management would be abiding by the Aaron award. However, he did say that Management would listen to the carrier, weigh parcels, and not make a decision to assign more than 2-pound parcels just to fill up to the 35-pound limit. In this regard, the grievant indicated that, most days, there were some parcels over two pounds.

Summary

It appears clear that Management's policy, normally, is not to assign parcels over two pounds. In fact, the standard utilized by the Postmaster normally should assure that Management was abiding by the Aaron award. Thus, in terms of the three days in question, they appeared to be exceptions to the normal practice. The two days in question for Carrier Hopkins were eleven days apart. The reason for the assignments to the two carriers on the twenty-first doubtless were due to the factors spelled out by Management. An alternative approach on those days probably would have been costly and inefficient. Thus, it must be concluded that Management was exercising discretion within the guidelines of the Aaron award on the two days in question.

There was no specific evidence given in regard to a practice of assigning one or two parcels over two pounds on most days. It does appear that Management is of the opinion that this is appropriate, so long as the total weight is not over thirty-five

pounds. The supervisor did qualify this by indicating that it must be a relay or the first stop. However, to the extent that Management assigns one or two parcels weighing over two pounds on a daily, or almost daily, basis, it has become routine and frequent. Thus, the exception to the norm will have become the norm. As a consequence, such assignments would be in violation of the Aaron award, as well as the intent of language in the National Agreement and related handbooks.

Award

The grievance is upheld in part and denied in part.

1. To the extent that Management utilizes a policy, which concludes that it may assign one or two parcels on a frequent or routine basis (daily or almost daily), so long as the total weight does not exceed thirty-five pounds, it is a violation of the Agreement and the Aaron award. Thus, to the extent the policy has become practice, it must cease.
2. However, in terms of the assignments on the days in question, they did not violate the agreement or the Aaron award. Thus, that portion of the grievance is denied.



J. Earl Williams, Arbitrator

Houston, Texas

October 25, 1985