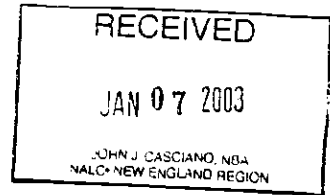


C-23936

REGULAR ARBITRATION PANEL



In the Matter of the Arbitration  
Between

UNITED STATES POSTAL SERVICE

and  
NATIONAL ASSOCIATION OF LETTER  
CARRIERS, AFL-CIO

) GRIEVANT: Class Action  
) POST OFFICE: Waterbury, CT  
)

) CASE Numbers:  
) USPS: B98N-4B-C 01025900  
) NALC: 015900  
) GTS:29790  
)

BEFORE: Sherrie Rose Talmadge, Esq., ARBITRATOR

APPEARANCES:

For the U.S. Postal Service:  
For the Union:

Charles J. Corso, Labor Relations Specialist  
Glen Aeschliman, Arbitration Advocate

Place of Hearing:

135 Grand Street, Waterbury, CT

Date of Contract:

1998 - 2001

Relevant Contract Provisions:

Article 19, M-41 Section 812

Date(s) of Hearing:

October 15, 2002

Date of Award:

January 3, 2003

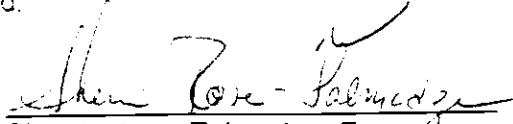
AWARD SUMMARY

Management violated Article 19 of the National Agreement, specifically Section 812 of the M-14 Handbook when they issued a letter of standard operating procedures dated September 21, 2000 stating that "All doors of vehicles will be closed when vehicle is in motion". The local procedure, although well intentioned, conflicted with the existing provision of Section 812.31 and thus was invalid and must be rescinded. Any further proposed changes to Section 812 of the M-41 must comply with the procedural requirements of Article 19 of the National Agreement. Accordingly, the grievance is sustained.

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VICE PRESIDENT'S  
OFFICE  
NALC HEADQUARTERS

  
Sherrie Rose Talmadge, Esq.  
Arbitrator

### **STIPULATED ISSUES**

1. Did Management violate Article 19 of the National Agreement, specifically Section 812 of the M-14 Handbook when they issued a letter of standard operating procedures dated September 21, 2000 stating that "All doors of vehicles will be closed when vehicle is in motion"?
2. If so, what shall the remedy be?

### **RELEVANT 1998-2001 CONTRACT ARTICLES, HANDBOOKS AND MANUALS**

#### **ARTICLE 14, SAFETY AND HEALTH**

##### **Section 1. Responsibilities**

It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility. ....

#### **ARTICLE 19, HANDBOOKS AND MANUALS**

Those parts of handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

#### **M-41 Methods Handbook (City Delivery Carriers Duties and Responsibilities)**

##### **Section 812.31**

When traveling to and from the route, when moving between park and relay points, and when entering or crossing intersecting roadways, all vehicle doors must be closed. When operating a vehicle on delivery routes and traveling in intervals of 500 feet (1/10 mile) or less at speeds not exceeding 15 MPH between delivery stops, the door on the driver's side may be left open.

### **FINDINGS OF FACT<sup>1</sup>**

At the Waterbury, Connecticut Post Office, Manager of Customer of Service, Fred Dotson, issued the Standard Operating Procedure (S.O.P.) letter dated September 21, 2000 mandating the "All doors of vehicle will be closed when vehicle is in motion". Manager Dotson testified that he issued the S.O.P. Letter as a direct result of three motor vehicle accidents that had occurred in the Connecticut District. In 1998 and 1999 carriers working for the Waterbury Post Office had fallen out of their vehicles when they

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<sup>1</sup> During the hearing the parties had an opportunity to question witnesses under direct and cross-examination, and to submit relevant documentary evidence. At the close of hearing the parties presented closing arguments.

drove with the driver's door open resulting in runaway accidents. In 1998 the carrier fell out of the vehicle while attempting to kick a dog. In 1999 the carrier fell out of the vehicle while attempting to kick a recycling bin. In each case the vehicle traveled down the road and hit an apartment house and a tree, respectively. In 2001 a carrier for the Danbury Post Office tried to get letters while restrained by a seat belt. The carrier, beginning to fall and dragged down the road, wiggled out of the belt and fell out of the vehicle. The vehicle continued unmanned until it hit a tree. District Safety Specialist Andre Breault testified that all three accidents were preventable by closing the door and in the 1999 incident the carrier should have worn a seat belt. Had the Danbury carrier put the car in park and closed the driver's door, she would not have been dragged down the road. Breault acknowledged that in each accident there were other contributing factors in addition to not having closed the driver's door.

Letter carriers drive with the driver's side door open to help control the interior heat within Postal vehicles during the summer months or in warm climates because they are only equipped with small fans, and no air conditioning.

Manager Dotson noted that since the issuance of the S.O.P. letter in September 2000 there have not been any accident involving carriers following out of their vehicle or being bitten by dogs. He testified that took the oath to protect the letter carriers in a dangerous job.

Assistant Postmaster General James C. Gildea sent a letter dated November 21, 1984 to NALC President Sombrotto and APWU President Moe Biller enclosing a draft Postal Bulletin article concerning the policy on seatbelt use, closed vehicle doors, and authorized passengers. The article states, in pertinent part:

....The following is the present policy on seatbelt use, closed vehicle doors and authorized passengers:

Seatbelts must be worn at all times the vehicle is in motion. When traveling to and from the route, when moving between park and relay points, and when entering or crossing intersecting roadways, all vehicle doors must be closed. When operating a vehicle on delivery routes and traveling in intervals of 500 feet (1/10 MILE) or less at speeds not exceeding 15 MPH between delivery stops, the door on the driver's side may be left open. Rural carriers will follow the policy outlined in Handbook M-37, Rural Delivery Carriers Duties and Responsibilities, Section 161.

## **POSITIONS OF THE PARTIES**

### **UNION'S POSITION**

The Union argued that the Service violated Section 812.31 of the M-41, incorporate by reference into the National Agreement by the terms of Article 19, by requiring that carriers drive with the driver's side door closed. The policy of giving the carrier the option of driving with the driver's side door open is a national policy, which was instituted in 1984 by an Assistant Postmaster General, and agreed to by both parties at the National level. The party's failure to address this policy on the National level since that time reflects the fact that it has not been as unsafe as argued by the Service. Carriers drive with their side door open for safety, to wit: to regulate the heat during summer or in warm climates inside a Postal vehicle that is equipped only with a fan.

Section 812, of the M-41 Methods Handbook states that a letter carrier has the option of driving with the driver's side door open as long as certain conditions are met. The policy of giving the carriers the option of driving with the driver's side door open, when the listed conditions are met, is restated and validated in the Postal Bulletin. In a letter dated November 21, 1984 from the Assistant Postmaster General James C. Gildea to NALC President Sombrotto, the Postmaster General enclosed a draft of an article that stated: "When operating a vehicle on delivery routes and traveling in intervals of 500 feet (1/10 MILE) or less at speeds not exceeding 15 MPH between delivery stops, the door on the driver's side may be left open". The Joint Contract Administration Manual (JCAM) states that locally developed policies may not vary from nationally established Handbook and Manual provisions (National Arbitrator, Aaron, N1N-NAC-C-3 (1984)). Manager Dotson's driving policy conflicts with Section 812.31 of the M-41 Methods Handbook. This local policy removes the option of driving with the driver's side door open when operating a vehicle on delivery routes. The Union notes that had the letter carriers had their seat belts on and properly in use no one would have fallen out. Nonetheless, the Service went after the open door option.

The Union maintained that had the parties at the National level intended to allow local policies to be in conflict or inconsistent with nationally recognized manuals and handbooks for "safety reasons" it would have stated in Article 19. However, Article 19 has no exceptions. Management's policy violates Article 19 of the National Agreement. Therefore, the Union requested that the grievance be sustained, and order Management

Arbitration decision continued.

to rescind this policy and to follow the driving policy as stated in Section 812 of the M-41 Handbook.

### **POSTAL SERVICE POSITION**

The Service maintained that the Union did not meet its burden of proving a contractual violation. Management identified a serious safety hazard, one that could result in serious injury or even death, and was obligated under Article 14 of the National Agreement to correct it. The Service asserted that in M-41, Section 812.31 Management has made driving with the door open under certain specified conditions. Management made driving with the door open condition because of safety concerns. Moreover, the operative work is "may", and if you may, you also may not.

The M-41 Handbook is an instructional manual, written unilaterally by Management, who through Articles 3 and 14 has the responsibility to determine the safest way to run its operation. In this case Management has met its responsibility to provide safe working conditions, but the Union has not met their responsibility under Article 14 to cooperate and assist.

Management did not act arbitrarily or capriciously in issuing this S.O.P. letter, the Service did this with the best interest of the carriers in mind. Through accidents that have occurred with regard to opened vehicle doors Management has identified a serious safety problem and corrected it. Since the issuance of the S.O.P. letter no Waterbury carriers have fallen out of their vehicles. Management's actions were proper, and therefore the grievance should be denied.

### **DISCUSSION**

At issue is whether Management violated Article 19 of the National Agreement, specifically Section 812 of the M-41 Handbook when they issued the September 21, 2000 letter of standard operating procedures stating that "All doors of vehicles will be closed when vehicle is in motion". I find that, although well intentioned, Manager Dotson violated the National Agreement when he issued the directive removing an option to keep the vehicle door open, under certain conditions, available to the carriers pursuant to Section 812 of the M-41 Handbook.

Safety procedures for driving postal vehicles, which are discussed in Section 812.13 of the M-41 and, in accordance with Article 19, are incorporated by reference into the National Agreement, are considered terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act, as referenced in Article 5.

Section 812.31 of the M-41 Methods Handbook (City Delivery Carriers Duties and Responsibilities) provides, in part:

When operating a vehicle on delivery routes and traveling in intervals of 500 feet (1/10 mile) or less at speeds not exceeding 15 MPH between delivery stops, the door on the driver's side may be left open.

The plain and unambiguous language of Section 812.31 permits the carrier to operate the postal vehicle on delivery routes with the door on the driver's side open as long as certain specified conditions are met. The use of the permissive language "the door on the driver's side **may** be left open" appears to leave the option with the driver whether to leave the door open, as long as the specified conditions are complied with.

There is no dispute that Manager Dotson's directive mandating that "All doors of vehicle will be closed when vehicle is in motion" limited the terms of Section 812.31 by removing the carrier's option to drive with the door open on the driver's side. Notwithstanding the fact that Manager Dotson issued the directive as a result of safety concerns arising out of three accidents involving carriers who fell out of the open door of their vehicles while delivering mail; I find that he did not have the authority to unilaterally change Section 812.31 of the M-41.

Locally developed policies may not vary from nationally established handbooks and manuals. (JCAM 2000, Article 19; See also National Arbitrator Aaron, [USPS and NALC and APWU, Case No. H1N-NAC-C 3 (1984)]. Aaron concluded that local and regional procedures that conflict with the ELM also conflict with the National Agreement. Aaron held that because Article 19 does not distinguish between national, local and regional levels of management; any changes in handbooks and manuals must comply with the procedural requirements of Article 19. Furthermore, he noted that because the challenged local and regional procedures are inconsistent with the National Agreement, it is irrelevant either that they may be "fair, reasonable, and equitable" or that they do not violate external law.

In the present case, I find that the September 21, 2000 directive requiring that "all doors of vehicle will be closed when vehicle is in motion" conflicted with Section 812.31 of the M-41 Handbook, and thus, also conflicted with the National Agreement. There was no evidence that the change in the handbook complied with the procedural requirements of Article 19. Moreover, because the challenged local procedure is inconsistent with the National Agreement, it is irrelevant that this procedure may be a

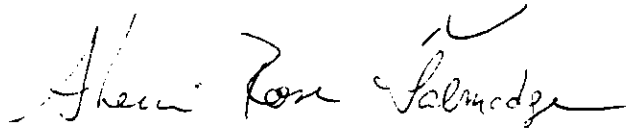
Arbitration decision continued.

reasonable safety measure. Consequently, I conclude that the standard operating procedure violated the National Agreement and is to be rescinded.

#### **AWARD**

Management violated Article 19 of the National Agreement, specifically Section 812 of the M-14 Handbook when they issued a letter of standard operating procedures dated September 21, 2000 stating that "All doors of vehicles will be closed when vehicle is in motion". The local procedure, although well intentioned, conflicted with the existing provision of Section 812.31 and thus was invalid and must be rescinded. Any further proposed changes to Section 812 of the M-41 must comply with the procedural requirements of Article 19 of the National Agreement. Accordingly, the grievance is sustained.

Respectfully submitted by:

A handwritten signature in cursive script, reading "Sherrie Rose Talmadge". The signature is written in dark ink and is positioned above the printed name of the arbitrator.

Sherrie Rose Talmadge, Arbitrator