C-26137

REGULAR ARBITRATION PANEL

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| In The Matter of the Arbitration between UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO and AMERICAN POSTAL WORKERS UNION, AFL-CIO. (INTERVENOR) | GRIEVANT: Class Action<br>POST OFFICE: Naugatuck, CT<br>USPS #B01N-4B-C05078789<br>NALC #0505<br>DRT #14-047224 |



BEFORE: HARRY R. GUDENBERG, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Anthony Salzo, Jr.
Labor Relations Specialist

For the N.A.L.C.: Chuck Carroll
Advocate

For the A.P.W.U. Robert L. Johnson
Local Administrative V.P.

Place of Hearing: Waterbury, CT.

Date of Hearing: July 29, 2005

Date of Award: August 29, 2005

Relevant Contract Provision: Articles 3, 5, 7, 19.

Contract Year: 2005

Type of Grievance: Contract

AWARD SUMMARY: The grievance is denied for the reasons discussed in the full decision.

Arbitrator: Harry R. Gudenberg

The parties in accordance with the terms of the National Agreement appointed this Arbitrator to hear the dispute in this case and issue a decision and award.

At the hearing the parties were afforded full opportunity to present oral and written evidence, examine and cross examine the witnesses who testified under oath, engage in oral argument, and otherwise support their positions.

The testimony and evidence of the parties and their positions and arguments presented at the hearing have been fully considered in the issuance of this opinion and award.

## STIPULATED ISSUE

Did management violate Articles 3, 5, 7 and 19 of the National Agreement and an established past practice by allowing a clerk to transport mail to the Union City Post Office? If so, what is the proper remedy?

## SUMMARY OF THE FACTS

A grievance was filed on March 10, 2005 by the Union in Naugatuck, Connecticut. This grievance said the Service was violating the National Agreement and past practice by having clerks transport mail to the Union City Post Office from the Naugatuck Post Office.

The grievance sought an order to have the Service seek and desist from this practice since this work was the exclusive purview

of the letter carrier craft.

The grievance was not resolved at step A or B and an impasse was declared which resulted in this appeal to arbitration.

During the processing of this dispute the Union's position was:

1. A clerk transported mail on 3/2/05 to the Union City Post Office.

2. In the past five (5) Naugatuck routes were located in the Union City Post Office.

3. As far back as anyone can remember a city carrier brought the mail to them (the carriers at the Union City Post Office) each day including box mail and accountable mail.

4. In November of 2000 a new Naugatuck Post Office was built and the five routes in Union City were relocated to the new facility.

5. Letter carriers continued to transport the box mail and accountable mail to the Union City Post Office on a daily basis after November 2000.

6. A clerk has, on occasion, taken it upon himself to bring mail to the Union City Post Office. After bringing this activity to the attention of management, management instructed the clerk to cease and desist from this practice.

7. A prior postmaster, in January 2005, sought permission from the Union to allow a clerk to perform this function (delivery of mail to the Union City Post Office) for one day due to a large number of carrier sick calls.

8. The sole responsibility to transport mail to the Union City Post Office has rested with carriers for many years and was an accepted past practice.

Management's position was:

1. It did not violate any terms or provisions of the National Agreement when it assigned available personnel to transport mail between the Union City Post Office and the Naugatuck Post Office.

2. This issue was the subject of a previous grievance and should be dismissed under the principles of "res judicata".

3. The operational circumstances that exist now, as compared to when carriers were located at the Union City Post Office bears little resemblance to the current (operational) situation.

## ANALYSIS AND FINDINGS

At the hearing the Service initially took the position this dispute should be resolved on the basis of "collateral estoppel", before reaching the merits, (rather than "res judicata" which claim was included in the moving papers), since the issue had been heard by another arbitrator who ruled in favor of the Service.

The Service specifically referenced arbitration case, #B94N-4B-C99018473 (1999) covering the South Windsor Post Office to support their position of collateral estoppel.

While this cited case from another location was closely on point, from a review of this case significant factual differences existed, especially as to the past practice claims of the Union, which requires an independent look at the claimed violation.

Differences also exist, and it is a well accepted fact, of many operational variations at different postal locations.

"Collateral estoppel" is applicable when there is a recognition that the determination has been litigated between the parties and is, accordingly, precluded from re-litigation.

Since there were enough factual differences in comparing this case with the case cited by the Service, a claim of collateral estoppel must be denied, and the issue decided based on the facts before me.

The Union asserted that mail deliveries to the Union City Post Office were within the exclusive purview of the letter carrier craft and had always been performed by them.

The Union admitted that the motor vehicle craft, in those facilities where such craft employees exist, has the responsibility for the delivery of bulk mail from one facility to another.

No motor vehicle craft employees exist in either the Naugatuck or Union City Offices. The transportation of bulk mail between these facilities has been performed by letter carriers and such practice must be considered a binding past practice on both the Union and the Service.

The Union explained that this delivery was usually performed by a letter carrier on light duty, or a part-time flexible employee, or by a carrier on the overtime desired list, or a carrier who is on a pivot route assignment.

The Service disagreed. They contended that the delivery of bulk mail between facilities could be performed by any craft.

The Service maintained employees other than letter carriers had transported mail in the past and the Service was not precluded from using any employee for this purpose where it was operationally feasible and necessary.

The Service admitted letter carriers had performed this work in the past, but said they did not do so on an exclusive basis.

In addition, the Service said this specific duty was not within the job bid or description of any bid assignment or letter carrier.

During the hearing, testimony from several employees, supported the Service's position that employees, other than letter carriers, had transported bulk mail to the Union City Post Office on occasion in the past.

There was also testimony from the clerk who transported the mail on March 2, 2005, which event gave rise to this grievance. His testimony lacked credibility. He said he took the mail in his own car when his work assignment moved from the Naugatuck Office to the Union City Office (as it did as a part of his schedule on occasion) and that he was unaware of any complaints about his doing so, and had never been spoken to by anyone that this practice had led to a grievance or a disagreement between the clerks and the carriers.

The annals of arbitration cases between the parties are filled with differing decisions on many same or similar issues. One issue that has, in this arbitrator's opinion, been (or should have been) put to rest is who owns the right to deliver bulk mail

between postal facilities.

In those postal facilities where motor vehicle craft employees are assigned, the transportation of bulk mail between postal facilities generally belongs to the motor vehicle craft.

Where motor vehicle craft employees do not exist, the transportation of bulk mail between facilities may be performed by other crafts. It is not within the exclusive purview of any one craft.

In the instant dispute, it is factually accepted that carriers moved bulk mail to the Union City Post Office from the Naugatuck Post Office prior to 2000 (when there were a number of carriers assigned delivery routes out of the Union City Post Office).

From the evidence and testimony it cannot be found that no other employees ever handled such deliveries during this time period.

In 2000 a new Naugatuck Post Office was opened and the routes housed in the Union City Post Office were moved to Naugatuck. This changed the delivery requirements although box and accountable mail deliveries continued to be made to the Union City Post Office primarily, but not exclusively, by carriers.

The issue in dispute is the question of exclusivity. The Union contends that a binding past practice exists and that no other craft employees can perform an occasional delivery of box and accountable mail.

The Union referenced the Joint Contract Administration Manual (JCAM) and the discussion of past practice contained therein as

support for their contention. Since all parties have copies of this material it is not repeated, in it's entirety, in this discussion.

This material contains, among others, the following comments:

"First, there should be clarity and consistency..."

In this dispute it is accepted that the bulk mail was generally delivered to the Union City Post Office before 2000 by carriers and box and accountable mail was moved to this facility after 2000 by carriers, although, on occasion, this delivery was performed by other craft employees.

Another included comment states:

> "One must consider, too, the underlying circumstance which give a practice its true dimensions. A practice is no broader than the circumstances out of which it has arisen... The point is that every practice must be carefully related to its origin and purpose."

Carriers have performed the practice of the movement of mail from these facilities as a delivery function. So, too, on occasion, have others. Both have occurred and have been an accepted practice.

It is, as previously stated, the exclusivity issue that is at the heart of this dispute. Exclusivity has not been proven or supported. While carriers have performed this delivery work, an occasional delivery was also made by others, and such occasional activity cannot be held to be a contractual violation where exclusivity does not exist.

The parties submitted a National arbitration decision issued

in 2003, Case #E90N-4E-C 95001512 (Arbitrator Briggs) as a joint exhibit during the hearing.

This case involved a unilateral reassignment of a letter carrier run included in a carrier bid (emphasis supplied) to the clerk craft. This reassignment was held to be in violation of the National Agreement.

Several differences must be ascribed to this case and the facts before me. The National case involved a bid assignment; the reassignment of duties constituted a permanent change; the permanent change constituted a violation of the provisions of Article 7.2.A.

Arbitrator Briggs reviewed, in detail, many other National arbitration decisions that were relied on by both parties to support their position which involved an analysis and interpretation of management's rights under Article 3 and employee classifications under Article 7. These cases and review presents an interesting historical background and has applicability to the instant dispute.

The language of several of these National cases considered management flexibility. The reasoning contained therein cannot be found to hold that an occasional delivery of mail to postal facilities by another craft employee, which practice had existed based on the testimony for many years, especially where there would be no detrimental effect on other employees, be construed to be a contractual violation.

Therefore, based on the facts presented, the grievance must be

denied.

August 2005

Harry R. Gudenberg
Arbitrator