C# 05186

IN THE MATTER OF ARBITRATION)
)
BETWEEN)
)
NATIONAL ASSOCIATION OF)
LETTER CARRIERS, BRANCH 79)
)
AND)
)
UNITED STATES POSTAL SERVICE)
(Case No. W1N-5D-C 4592))
(Assignment System for Reserve)
Carriers))

ANALYSIS AND AWARD

Carlton J. Snow
Arbitrator

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from July 21, 1981 through July 20, 1984. A hearing occurred on July 29, 1985 in a conference room of the Main Post Office located in Bellevue, Washington. Ms. Leigh T. Scott, Training and Development Specialist, represented the United States Postal Service. Mr. Jim Edgemon, National Business Agent, represented the National Association of Letter Carriers.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath. The arbitrator tape-recorded the proceeding as an extension of his personal notes. The advocates fully and fairly represented their respective parties. The parties stipulated that the matter properly had been submitted to arbitration and that there were no issues of

substantive or procedural arbitrability to be resolved. The parties submitted both oral and written arguments. The arbitrator officially closed the hearing at the conclusion of the arbitration proceeding.

II. STATEMENT OF THE ISSUE

The parties authorized the arbitrator to formulate the issue in this matter. The issue is as follows:

(1) Did the Employer violate Article 41 of the National Agreement, or Articles XII and XVII of the local agreement when management instituted a city-wide method of assigning reserve letter carriers without having negotiated with the Union?

(2) If so, what is an appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISIONS

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 unforseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

ARTICLE 15 - GRIEVANCE-ARBITRATION PROCEDURE

Section 4 - Arbitration

(6) All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. Unless otherwise provided in this Article, all costs, fees, and expenses charged by an arbitrator will be shared equally by the parties.

ARTICLE 41 - LETTER CARRIER CRAFT

Section 1 - Posting

B. Method of Posting

4. Information on notices shall be shown as below and shall be specifically stated:

(a) The duty assignment by position title and number (e.g., Key or Standard).
(b) PS salary level.
(c) Hours of duty (beginning and ending), including, in the case of a utility or T/6 duty assignment, the hours of duty for each of the component routes.
(d) The fixed or rotating schedule of days of work, as appropriate.
(e) The principal assignment area (e.g. section and/or location of activity).
(f) Invitation to employees to submit bids.
(g) Physical requirement unusual to the assignment.

(h) If city carrier route is involved, the carrier route number shall be designated. If a utility or T/6 duty assignment is involved, the route number of the utility or T/6 duty assignment and the route numbers of the component routes shall be designated.

(i) Date of last inspection and date of last adjustment.

Section 2 - Seniority

B. Definitions

3. Full-time reserve letter carriers, and any unassigned full-time letter carriers whose duty assignment has been eliminated in the particular delivery unit, may exercise their preference by use of their seniority for available craft duty assignments of anticipated duration of five (5) days or more in the delivery unit within their bid assignment areas, except where the local past practice provides for a shorter period.

LOCAL AGREEMENT

ARTICLE XII - PRINCIPLES OF SENIORITY, POSTING & REASSIGNMENT

Section 2 - Change of Assignment Posting

A change of starting time shall not constitute a change of assignment. No route will be posted for bid because of any change in starting time or duty assignment.

IV. STATEMENT OF FACTS

In this case, the Union has challenged the Employer's decision to change the method of assigning reserve postal carriers. Basic facts in the case have not been greatly disputed. The City of Bellevue, Washington has a Main Post Office. It also has a station in Bellevue named Crossroads approximately one and a half miles from the Main Post Office. Since the Employer opened Crossroads Station in July of 1979, management has assigned reserve carriers, that is, full-time carriers without regular routes, to work at each of the Bellevue facilities.

According to testimony from Postmaster Nesbitt, reserve carriers receive positions in the following manner. First, management posts a notice of an open position and a description of the job, including the domicile of the assignment. Reserve carriers are permitted to bid or "opt" for those positions. The recipient of the position is to be the bidder who ranks highest on the city-wide seniority list. If there are insufficient bids submitted to fill the available openings, management assigns reserve carriers to those positions.

Between 1979 and April of 1982, there were fourteen postings for open reserve carrier positions. (See, Union Exhibit Nos. 9-12). With the exception of one posting, which did not specify an assignment area, all positions included a domicile at either Crossroads or the Main Post Office. (See, Union's Exhibit No. 9). On April 2, 1982, however, the Employer stated that six reserve carrier positions were open with a domicide listed as "city-wide." The Employer never informed the Union

of any change in policy concerning the domicile of reserve carrier positions prior to the postings of April 2.

The Union protested the Employer's action on two grounds. First, the Union contended that the Employer had no authority to post for nonvacant positions because of a change in duty assignment. Second, the Union contended that the Employer violated the national and local agreements between the parties as well as the past practice in Bellevue by changing the reserve carriers' domicile to "city-wide." (See, Joint Exhibit No. 2(J)). In his Step 2 decision letter, Postmaster Nesbitt agreed that the positions should not have been posted but maintained that management enjoyed a right to change the assignment area for open positions to "city-wide." (See, Joint Exhibit No. 2(H)). When the parties were unable to resolve their differences, the matter proceeded to arbitration.

V. POSITION OF THE PARTIES

A. The Union:

It is the belief of the Union that the Employer violated the national and local agreements when it instituted a new policy of assigning reserve carriers on a "city-wide" basis. According to the Union, support for its position is to be found in Article 41, Section 2(B)(3) which requires that reserve carriers be permitted to exercise their seniority for job and vacation preference in the "delivery unit within their bid

assignment area." The Union also has contended that the Local Agreement between the parties recognizes Crossroads and the Main Post Office as two separate assignment areas. Nor, in the opinion of the Union, may the Employer change the assignment area of a bid position without posting the position. It is the belief of the Union that Article 41(1) of the National Agreement only allows a posting of positions if there is a vacancy or the position is newly established.

It is also the position of the Union that the Employer itself has recognized that assignments of reserve carriers may not be made on a city-wide basis. Mr. Costello, Western Regional Director, allegedly instructed postmasters in the region not to use city-wide locations if two or more carrier stations existed in the area. The Employer allegedly has misapplied its own policy. Finally, it is the belief of the Union that the Employer has violated the binding past practice by changing the domicile of the disputed positions to "city-wide."

B. The Employer:

It is the belief of the Employer that assigning carrier positions on a city-wide basis has not violated the parties' collective bargaining agreement. According to the Employer, Article 41 of the National Agreement is concerned essentially with posting positions, an issue that is separate from that of bid assignment areas. In other words, the Employer contends that Article 41 is not relevant in this dispute.

The Employer also contends that the Union has misinterpreted the policy attributed to Mr. Costello. The Employer contends that even Mr. Costello recognized his position as a suggested philosophy and not a contractual obligation. Additionally, Mr. Costello allegedly focused on areas where there were two or more "stations," but management contends that Bellevue has only one station, namely, Crossroads.

Finally, the Employer contends that changing the assignment areas constituted an effort to improve efficiency in Bellevue. It is the belief of Postmaster Nesbitt that assigning reserve carriers on a city-wide basis provides a greater pool of employes to work at vacant positions and results in budgetary savings. Accordingly, it is the contention of the Employer that management's action in this case constituted a legitimate use of management rights and is not a violation of the parties' agreement.

VI. ANALYSIS

A. Was there a violation of express terms in the national or local agreements?

A threshold question to be resolved is whether or not the national or local agreement between the parties expressly prevents the Employer from assigning reserve carriers on a "city-wide" basis, as contrasted with a station basis. Both parties agree that Article 41 of the National Agreement is crucial to resolving the dispute, although they have sharply divergent interpretations of the contractual provisions. Accordingly, it is necessary to scrutinize Article 41.

1. An assignment area is not necessarily limited to a single delivery unit

No specific provision is to be found in Article 41 dealing with the maximum or minimum size of an assignment area. Certain sections of the article, however, give some indication of the scope an assignment may have. One such provision is Article 41(2)(B)(3) which states that reserve carriers may use their seniority for craft duty assignments "in the delivery unit within their assignment area." (emphasis added). It is reasonable to infer from this language that an assignment area can encompass more than one delivery unit.

In its opening statement and throughout the hearing, the Union suggested that the concept of "unit" and "assignment area" are essentially the same. The Union submitted extensive evidence, based especially on the Local Agreement, indicating that Crossroads and the Main Post Office had been considered separate units in terms of annual leave and overtime. As Article

41(2)(B)(3) indicates, however, a "unit" and "assignment area" are not necessarily identical. In other words, although the evidence may be persuasive to show that Crossroads is a distinct unit from the Main Post Office in Bellevue, it is not dispositive of the question regarding whether an assignment area can be city-wide.

2. Inability to post assignments does not necessarily prevent management from changing assignment areas:

A second argument put forth by the Union is that, because the Local Agreement prevented the Employer from posting positions for bid on April 2, 1982, the agreement also prevented the Employer from changing the assignment areas of those positions. This assertion has been based on an assumption. The Union's claim has been based on the assumption that, in order to change the bid assignment area of any position, the Employer must have the ability to post the change.

Language in the National and Local Agreements, however, fail to support the Union's interpretation. The agreements do not state that all assignment area "changes" must be posted. Instead, Article 41 of the National Agreement merely requires that the assignment area be included in the information listed in a posting for a vacant or newly established duty assignment. (See, Joint Exhibit No. 1, Article 41, §§ 1(A)(1) and 1(B)(4)(e). The agreement between the parties contains no provision making management's right to change a duty assignment dependent on its ability to post the position.

Some of the confusion surrounding this particular point found its roots in Article XII(2) of the Local Agreement. This provision states that a position may not be posted because of any change in starting time or duty assignment. Like Article 41 of the National Agreement, however, this provision does not deal with management's right to change duty assignments. Article XII(2) only prohibits the Employer from "posting" positions because the duty assignment has been changed. As a result, the Employer clearly violated the Local Agreement on April 2, 1982 when it posted positions which were not new or vacant. This conclusion, however, does not mean that the Employer had no right under the Local Agreement to change a duty assignment area of a nonvacant position.

3. The Costello policy:

A major area of contention in this case has focused on policy letters which Western Regional Director Costello wrote in 1979. His policy did not constitute a contractual prohibition against changing the assignment areas. A significant question in regard to those letters is whether Item 6, dealing with the assignment area for reserve carriers, constituted a binding contractual obligation on the Employer. It did not.

In the past, arbitrators have held that the Costello letters have considerable weight in showing management's understanding of its contractual obligations. (See, for example, USPS and MALC, Case No. W1N-5D-C 2510, 2527, 2810, 3544, and 3545.

(1985)). Mr. Costello, however, stated in his letter that Item 6 consisted of "suggestions or express philosophy and . . . not contractual obligations." (See, Joint Exhibit No. 5). Clear language in the Costello letter indicated that management at the western regional level did not consider itself contractually bound to a "station-based assignment system," although it clearly believed this method to be wiser. As a consequence, Item 6 of the letter should not be viewed as a statement of the Employer's belief that it lost its right under the National Agreement to assign reserve carriers on a city-wide basis.

B. The Matter of Past Practice:

Did the Employer violate a past practice by changing the assignment area for reserve carriers? As previously indicated, written provisions of the National or Local Agreements did not prevent the Employer from changing the method of assigning reserve carriers to a city-wide system. That conclusion does not resolve the dispute because of the possibility that management's posting reserve carrier positions on a city-wide basis violated a past practice which the Employer ought to have honored. It is necessary to evaluate the elements of past practice in relationship to this particular case.

1. Did a past practice exist?

Arbitrators long have recognized past practice as a source of contractual obligations in instances where a written agreement is silent or ambiguous concerning an issue. As the parties are aware, arbitrators customarily have found a past practice to exist when a policy (1) has been clearly enunciated and acted on; (2) has been unequivocal; and (3) has been readily ascertainable and accepted by the parties over a reasonable period of time. (See, for example, Celanese Corp. of America, 24 LA 168, 172 (1974)).

These three tests of past practice have been met in this particular case. The Employer first enunciated the policy of assigning reserve carriers on a station-wide basis in 1979 in Mr. Costello's letter. (See, Joint Exhibit No. 5). He stated:

> All full-time carriers must have regular hours of work and days off. Much of the believed loss of flexibility can be overcome by administering as follows:
>
> > Post by facility, not by supervisor or zip code. Do not designate city-wide work location if you have two or more carrier stations. Designate the work location as a specific station. (See, Joint Exhibit No. 5).

The parties were in dispute regarding whether Mr. Costello's letter applied to circumstances existing in Bellevue following establishment of Crossroad Station in July of 1979. According to the Employer, Bellevue has only one "station," while Mr. Costello's letter concerned itself with cases in which there were two or more "stations." According to the Union, the Main Post Office should be treated as though it were a "station" for the purpose of Mr. Costello's letter.

There is technical accuracy in the Employer's position when it contends that a "main post office" is not the same as a "station," according to the Domestic Mail Manual. (See, Employer's Exhibit No. 3, §§ 113.121 and .122). Such an interpretation of Mr. Costello's letter, however, is overly wooden. His letter focused on circumstances in which there were two or more delivery units, not necessarily two stations as such. The terms "station" and "unit" are intermixed in some cases. For example, Article VIII(1) of the Local Agreement refers to "each station or delivery unit." The provision includes the Main Post Office within the definition of "station or delivery unit." The point is that, although Mr. Costello used the term "stations" in his letter, it is reasonable to conclude that he referred to all delivery units, including main post offices.

The Employer clearly acted in accordance with the policy of assigning carriers on a station-wide basis, beginning with its posting on July 12, 1980 of a reserve carrier position. This policy continued unabated through March 12, 1982. (See, Union's Exhibit No. 12). The policy was clearly acted on. It was unequivocal. It existed for a substantial period of time.

That the policy was unequivocal found support in Postmaster Nesbitt's testimony. He testified that the postings of April 2 represented, to his knowledge, the first time carrier assignments had been made on anything but a station-wide basis. Furthermore, the Employer conceded that the postings of April 2, 1982 constituted a change in previous policy concerning the assignment area of reserve carriers. (See, Employer's Exhibit

No. 2).

The policy of assigning carriers on a station-wide basis had enjoyed the mutual acceptability of the parties over a reasonable period of time. The Union clearly believed that the reserve carrier assignment system set forth in Mr. Costello's letter had become the policy of the Employer at all locations in the western region, including Bellevue. (See, Union's Exhibits Nos. 4 and 5). Likewise, the Employer closely adhered to this policy for several years. Between July 12, 1980 and March 12, 1982, the Employer posted twelve positions for reserve carriers. In none of those postings was the domicile made anything other than a station-wide basis. Clearly, a past practice had been established.

2. The Employer's obligation in light of the past practice:

Management has retained the right under Article 3(c) of the National Agreement to implement changes in operational methods, subject to terms of the national or local agreements. Absent contractual restrictions to the contrary, arbitrators customarily have concluded that changes in work assignments constitute a subject of managerial discretion. (See, Central Soya Company, 68 LA 864 (1977); and Ceco Corp., 49 LA 234 (1967). In cases involving no contractual impediments, there have been instances where management made changes that caused employes to lose benefits as a result, and arbitrators have upheld the

changes. See, for example, Hilliard Corp., 75 LA 548 (1980); Brown Ferris Industries of Ohio, 68 LA 1347 (1977); and Hopwood Foods, 73 LA 418 (1979).

Under this particular agreement, managerial authority in such circumstances is not unlimited. Article 3 of the National Agreement suggests that a change in operational methods must be implemented in an effort to maintain or improve efficiency. This contractual provision is consistent with most arbitral guidelines which state an Employer may not exercise its discretion in an arbitrary or capricious fashion. (See, for example, Yale University, 53 LA 482 (1969); and Federal Paperboard Company, 51 LA 49 (1968). The Employer's justification for changing an assignment area in this case has been that the city-wide system would be more efficient. Although Postmaster Nesbitt asserted that a larger work pool and budgetary savings would result from changing the assignment area, the arbitrator received no empirical evidence at the arbitration hearing to show that any such improvements in operational efficiency had occurred.

While there was no evidence of increased efficiency, there was considerable evidence showing that a shift to the city-wide assignment system had resulted in problems for the Employer as well as for members of the bargaining unit. A disadvantage of the city-wide system was that reserve carriers had to learn more routes, opening the possibility that more reserve carriers would work on routes with which they were unfamiliar. The Eugene postal facility, at which Postmaster Nesbitt had worked

and also which was the only other multi-station installation about which the parties knew that followed a city-wide system, had returned to a system of assigning reserve carriers on a station-wide basis precisely because of the kind of problems encountered in Bellevue. (See, Union's Exhibit No. 6).

Shifting to the city-wide assignment system on April 2, 1982 undermined the efficiency of operations by changing the schedule of days off for reserve carriers. There was unrebutted testimony from Mr. Andersen, a shop steward at Crossroads, that the change to a city-wide assignment system compelled the employer to pay reserve carriers additional out of schedule pay.

It was asserted that reserve carriers suffered considerable losses as a result of being assigned on a city-wide basis. For example, reserve carriers originally competed against other reserve and regular carriers at the station where they had been domiciled for vacation and overtime preferences. Following their assignment on a city-wide basis, reserve carriers could be placed on a different vacation and overtime list. There was the potential for this change to have an impact on preferences for reserve carriers, in that they would be competing against different employes for annual leave and overtime. The Employer also could have confronted the additional difficulty of reserve carriers being required to drive extra distances to work after being assigned to a different delivery unit.

Finally, it is worthy of note that management felt there really was little need to change from the former station-wide assignment system. According to Postmaster Nesbitt's testimony,

Bellevue managers rarely assign reserve carriers to open positions. The usual method of filling positions is through permitting carriers to "opt" or bid for available routes. In view of the fact that the city-wide assignment system had certain obvious flaws and that the effects of the change on employes' rights could be substantial, a lack of real need to implement changes in the assignment area policy made the Employer's action more suspect.

The point is that the Employer failed to justify changing the practice of assigning carriers on a station basis. There was no persuasive evidence that efficiency did or would result. Evidence submitted by the parties supported a reasonable inference that efficiency, in fact, would be reduced as a result of the city-wide system. Finally, the potential for harm to employes demonstrated that the decision to change to the city-wide system was inappropriate.

C. Future Use of the City-wide System:

Evidence submitted by the parties supports a conclusion that the Employer's action in changing the assignment area of reserve carriers was inappropriate in this particular case. This conclusion, however, does not necessarily suggest that management is foreclosed forever from reinstituting a city-wide assignment system, should circumstances change and a legitimate need arise. The Union failed to be persuasive in its contention that written terms of the National and Local

Agreements prohibit the Employer from assigning reserve carriers on a city-wide basis. Yet, even though the National and Local Agreements do not prohibit the Employer's use of a city-wide assignment system, the Employer's action violated a past practice. This particular past practice, however, focused on management's control over operations, and management customarily has more flexibility in changing past practices that enhance the efficiency of the operation, absent an abuse of discretion in instituting such changes.

The point is that the Employer is not permanently prohibited from reinstituting a city-wide assignment system for reserve carriers without consent of the Union. Should management decide to do so, however, it will be necessary to demonstrate (1) a need for such a change; and (2) how the efficiency of the operation will be maintained or improved as a result of the change. It is insufficient simply to assert a more efficient operation without evidence that efficiency is likely to be improved.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer violated a binding past practice of the parties when it changed from a unit by unit to a city-wide assignment system for reserve carriers and did so without consent of the Union. All reserve carriers harmed as a result of changing the assignment area from station to city-wide shall be compensated for any loss that they have sustained.

The Employer shall investigate its records to discover which employes have been harmed by the improper change and to what extent. As soon as the loss has been ascertained, all reserve carriers who have suffered an identifiable loss shall be made whole.

The parties shall consult with each other in an effort to determine the appropriate level of compensation for each reserve carrier who allegedly has suffered a loss as a consequence of the inappropriate change. Should the parties be unable to resolve any dispute regarding the appropriate compensation within ninety days from the commencing of negotiations, the matter shall be returned to the arbitrator for final resolution. As stipulated by the parties, the arbitrator shall retain jurisdiction over this matter until all questions related to this particular grievance have been resolved. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: 9-30-85