

C#10616
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CENTRAL REGION
REGULAR ARBITRATION PANEL

In the Matter of the Arbitration) GRIEVANT: Class Actions
Between) POST OFFICE: Des Moines, Iowa
UNITED STATES POSTAL SERVICE) CASE NO. C7V-4K-C23462
And) C7V-4K-C23463
AMERICAN POSTAL WORKERS UNION)
)

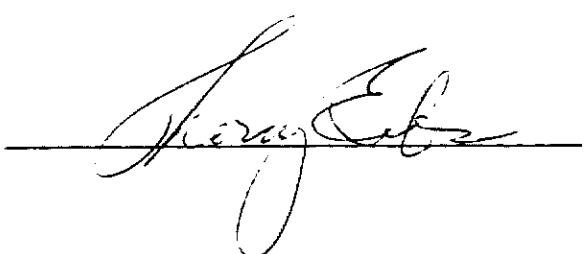
BEFORE: Thomas J. Erbs, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Daniel Garza, Manager, Labor Relations
For the APWU: John F. Hermann, National Bus. Agent
For The NALC: Art Buck, Local Bus. Agent
Place of Hearing: Des Moines, Iowa
Date of Hearing: December 14, 1990
All briefs Filed as of: January 28, 1991

AWARD: The grievances are denied.

Date of Award: February 20, 1991.



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CHARLES J. COYLE
N.B.A. - N.A.L.C.

OUTLINE OF CASE

The instant case involves two (2) separate grievances. C23462 is a challenge over the assignment by the Postal Service of carriers to do the pickup of mail from contract stations and transport it to the GMF. The second case, C23463, involves a challenge to the Postal Service's assignment of carriers to "close out" Des Moines area stations and branches on Saturdays since the Motor Vehicle Section does this work during the week.

The NALC, the APWU and the Postal Service requested permission to allow the NALC to intervene in the case. The APWU consented to such intervention and the parties agreed at the hearing that evidence on both cases would be presented at the same time and that one opinion should be rendered. It should also be noted that both grievances originally were processed through the LAMPS procedure but the parties ultimately agreed that jurisdictional disputes do not apply to the LAMPS process and the cases were removed to the regular arbitration panel. There is no issue of timeliness and the parties agreed that the matter is properly before this regional Arbitrator. Grievance C23462 is as follows:

"While reviewing Carrier route schedules the Union has been made aware that Carriers are picking-up First Class, Priority, Parcels, and Registers branch stations (contract stations).

The Union contends that this action constitutes crossing crafts and is infringing upon Motor Vehicle Craft work, as defined in Key Position Descriptions, key position 10, Motor Vehicle Operator-level 5 and this work be returned to the Motor Vehicle Craft.

The corrective action requested is as follows:

"That this action cease. That the Motor Vehicle Craft, Motor Vehicle Operator be assigned these duties as per but not excluding the duties outlined in the P.O. 701, and Motor Vehicle Operators job description."

The Step 3 Amended Decision of the Postal Service is as follows:

"The issue is whether management violated the National Agreement when it assigned collection duties at contract stations to the City Carrier Craft. MVS responsibilities include the pickup and delivery of bulk quantities of mail at stations, branches and terminal points. Mail collected at contract stations is not in bulk quantities and is within the duties as outlined in a carrier's position description. The Union has not demonstrated that the collection of mail at contract station is

exclusive to the MVS craft. Absent a contract violation the grievance is denied."

The grievance in C23463 is as follows:

"While reviewing the Carrier Sat. route schedules the Union has become aware that Carriers are doing Motor Vehicle Craft work. By the pick-up of bulk quantities of First Class, Priority, Parcels, and Registers and closing out Carrier and Finance stations.

"The Union contends that this action constitutes crossing crafts and is infringing upon Motor Vehicle work as defined in Key Position Descriptions, key position 10, Motor Vehicle Operator-level 5 and that this work be returned to the Motor Vehicle Craft.

The remedy requested is as follows:

"That this action cease. That the Motor Vehicle Craft, Motor Vehicle Operators be assigned these duties. As per but not including the duties outlined in the P.O. 701, and Motor Vehicle Operators job description."

The Step 2 Answer of the Postal Service to the grievance was issued on January 25, 1990 and it is as follows:

"The subject Step 2 grievance was discussed with you on January 6, 1990, in accordance with Article 15, Section 2 of the National Agreement.

"The facts, as management understands them, are as follows. Carriers are performing collection duties (First Class, parcels and registers inside on Auxiliary Route Collection #1472, 1454, 1434, 1414, and 1403), and closing out carrier and finance stations, which the union alleges should be assigned to the MVS craft. Carriers in this office have been performing these duties for several years.

"The union's position at Step 2 is that picking up this mail is the exclusive right of the Motor Vehicle Craft and should be assigned accordingly. The union contends that they only recently became aware of this while reviewing carrier route schedules, and subsequently filed the subject grievance(s).

"The union bases their argument on the position descriptions. The position description for Motor Vehicle Operator states in (A), "Pick up and delivers bulk quantities of mail at stations, branch offices, and terminal points." The position description for carrier states, "Basic Function--Is responsible for the prompt and efficient delivery and collection of mail." It also

includes "deposits mail collected in the post office upon return from route." The Step 2 union designee emphasized the wording "bulk quantities of mail" and contends that the duties in question are in fact the collection of bulk quantities of mail and should, therefore, be assigned to MVS.

"Based on the facts and arguments presented by the Union, I find that Management has not, as alleged in its grievance, breached the terms and conditions of the National Agreement. Management's position is that this grievance is procedurally defective due to the timeliness of filing at Step 1. It is reasonable to expect that the union was aware of this issue long before filing a grievance and accepted the assignment of collections to the carrier craft until recently. Based on the position descriptions, it would appear that both crafts can be assigned collection duties. This work has been assigned to the carrier craft for several years and MVS has not questioned this prior to the excessing of three Motor Vehicle Operators.

"The union's argument that the mail is "bulk" quantities and, therefore, belongs to MVS is without merit and unsubstantiated by documentation. The type of mail being collected at the contract stations and branches includes First Class, parcels, and registers, and is generally collected in sacks, pouches, and trays. The MVS craft generally transports containerized mail (Bulk) in APC's, OTR's or racks.

"There is no evidence that carriers are crossing crafts by collecting this mail, and the union has failed to establish a contractual violation. Absent a contractual violation of Article 7 of the 1987 National Agreement, this grievance is denied. Further, the parties have determined that this represents an interpretive issue."

The rather lengthy hearing included the introduction of numerous exhibits including the position descriptions of the Motor Vehicle Operator-Level 5 and the City Carrier Level 5. In addition citations from the M39; the M41; Postal Operations Manual; P.O. 701-Fleet Management; various maps and the list of auxiliary collection routes were all introduced.

For the purposes of this opinion when the APWU is referenced it shall be called the "Union" and when the National Association of Letter Carriers is referenced it shall be referred to as the "NALC". The Motor Vehicle craft will be called "MVS".

The Union case was presented through the Craft Director who, at present, is a Tractor Trailer Operator although he formerly was a Motor Vehicle Operator. He is also the Steward of Record. He indicated that when an MVS schedule was abolished he discovered what he felt were contract violations by the Postal

Service in the assignment of certain work to the Carriers. He defined a contract station as a mail facility that is not owned by the Postal Service but instead is contracted out. He acknowledged that the volume at these contract stations varies considerably depending on the location but he claimed that the mail at all of them was in "bulk" quantities. He stated that the Carriers are now performing this work using a two ton truck. He acknowledges that the two ton truck is never more than 3/4 full when this collection is accomplished. He stated that the MVS personnel are trained in the use of various trucks and he personally drives a two ton truck every Monday. However, he acknowledged that MVS personnel usually drive vehicles of 5 tons or more.

He also stated that the MVS closes out all but one station in Des Moines but that the close outs on Saturday are by the Carriers. He acknowledged that Carriers do some mail collection but states that this contested collection is in bulk. He stated that the Carrier collection out of a street letter box is not a bulk collection. He acknowledges that if a Carrier is delivering mail he can automatically pick up mail. On cross examination he admitted that he did not know who previously had been doing this work. He then acknowledged that he knew that Carriers were picking up some mail but did not know the volume. He claims that anything over 2 bags of mail is a bulk quantity. He also acknowledged that under the regulations Carriers are to pick up registers at contract stations and branches and that it would be more efficient for the Carriers to pick up the other mail that was there when they picked up registers. He further acknowledged that he knew the Carriers had closed out zone 17 and have done that for many years. He acknowledged that no separate grievance over that zone 17 close out was ever filed. The Craft Director stated if a Carrier goes to a contract station they are only allowed to pick up the mail in the mail boxes outside the station. They are not allowed to pick up the mail on the inside of the station. He acknowledged that it would be more efficient to do that but states it is prohibited.

The Postal Service presented the Superintendent of Stations who testified that this contested work has been performed almost exactly the same way for many, many years. He stated that Carriers regularly have closed out contract stations bringing registers back to the GMF. MVS do not pick up registers even when they are assigned that work although he then acknowledged that MVS does close out one contract station and secures the registers at that one station if there are any. He defined a bulk quantity of mail as being 15 to 20 bags or any mail that is in an APC. For years Carriers have been collecting on Saturday at the stations that the MVS collects during the week.

Various Carriers testified to performing this contested work for many years. In performing this work as far back as 1961 the Carriers used half ton and one ton vehicles to close out the stations. The Carriers testified that when they closed out a station they might pick up 2 or at the most 3 sacks of mail with possibly 1 sack with Registers. A two ton step van is now used. Many times that vehicle is entirely too big for the amount of mail. Any bigger vehicle would not be able to be used especially for those contracts stations which are located in malls. When the Carriers close out a station all mail is picked up and this usually must be accomplished by 6:00 p.m. Carriers never pick up mail in an APC. At least one classified station is closed out daily by the Carriers. A classified station is manned by Postal Service Employees. He acknowledged that normally MVS would close out a classified station. The mail at the classified station is in a hamper and not in an APC.

CITATIONS

The parties have cited to the Arbitrator the provisions of the National Agreement including the following:

Article 3-Management Rights; Article 7-Employee Classifications; Article 19 Handbooks and Manuals. In addition the parties have cited numerous provisions of various Handbooks and Manuals including Sections of the M39; the M41; Postal Operations Manuals; P0701 Fleet Management; Publication 32-Glossary of Postal terms.

APWU CONTENTIONS

The instant dispute centers around the definitions contained in the position descriptions pertaining to the Carriers and the Motor Vehicle Operator (MVO). The Carriers are only allowed some collection duties per the Handbooks. The MVO has a responsibility for collection of bulk quantities of mail to and from stations, branches and terminal points. The Carriers' only responsibility is for delivering mail and collecting it from street letter boxes and patrons. The MVO, however, is also allowed to pick up mail from collection boxes and stations and transport that mail. The Carrier "may only deposit mail collected in his Post Office upon his return from route". Since the Carrier can only collect from letter boxes the action of the Postal Service in this case is not supported by the contract. The M39, Section 133 states that the MVS is to be used "to the extent possible to bring in collection mail." The references for Carriers are to collection boxes and not contract stations or branches. There is a clear distinction between MVS collection and letter carrier collection. It is also noted that the MVO drive all postal vehicles not just the larger vehicles as claimed by management. In addition there is an MVO who testified that he

drives a smaller vehicle on Mondays. There is even a mandate on the Postal Service (Section 232.323 of P.O. 701) "to determine if arterial collections can be carried by existing MVS, thereby releasing carrier and vehicle for more productive work."

~~The definition of bulk quantity of mail is not set forth, however, the APWU witness defined it as one "NO.1" bag which contains priority, first class and third class mail. The Postal Service definition that bulk quantity would be 25 trays of mail or 15-20 bags was not supported by the evidence. A previous arbitration made reference to bulk quantity of mail as "five or more hampers of mail" that is given to Motor Vehicles employees to pick up and/or deliver. Where bulk quantities of mail are involved Arbitrators have upheld the MVS right to that work and have awarded monetary damages as well.~~

~~* Cross Craft assignments are restricted by Article 7 of the National Agreement as interpreted by National Arbitrators. In this case Management is not able to demonstrate that there was insufficient work for the Carriers or that there was exceptionally heavy work in the other craft. Once the Union has proven that a cross craft assignment has taken place, which it has in this case, the burden is then upon Management to prove that this cross craft assignment was justified. Management has failed in that attempt.~~

The past practice argument is not valid. Where the language is clear past practice can not override the clear provisions of the contract. Past practice cannot be used to give meaning to a provision which is clear and unambiguous. Nor can the Postal Service argue efficiency. Efficiency is not a reason to cross crafts. Nor is the past practice argument valid since the extent of the work came to light only recently.

Since the disputed work in Case C23463 is performed Monday through Friday by MVS and only on Saturdays by the Carriers there is conclusive proof that the disputed work belongs in the Motor Vehicle Craft. Economics cannot allow Management to perform this work as they have. In Case C23462 "this work falls under the jurisdiction of MVS in that it is more than the collecting of boxes or registers which is all that is allowed according to regulating handbooks." Allowing this type of transport of mail would "serve to destroy the jurisdictional and craft delineation contained in clear, unambiguous language contained in the National Agreement." The grievances should be sustained and the subject work should be immediately awarded to the Motor Vehicle Craft.

POSTAL SERVICE CONTENTIONS

The Union's claim that it had no knowledge of the existence of this long standing past practice is "absolutely ludicrous". This work has been performed in this exact same manner since at least 1958. The MVS has acquiesced in this ongoing situation for years thereby establishing a clear past practice. There is no doubt that these collection duties overlap between both the Carrier and the MVS. Both collect some mail. The bulk quantities of mail, however, are collected by MVS drivers. There is no evidence that bulk quantities of mail are involved in this case. The Union argument that the Carrier should collect the mail from boxes outside of contract stations but not inside of a contract station, is ludicrous. Having the Carriers collect the mail outside the station and then sending an MVO with a large vehicle to the station to collect the inside mail would be less than efficient. Even the MVS witness agreed that mail to be collected from contract stations includes registered mail and he acknowledged that according to the job description only Carriers may collect registered mail. Evidence indicated that the large 5 ton vehicles driven by the MVS personnel would not be able to make collections at certain contract stations because of their size. The evidence indicates that a bulk quantity of mail was the equivalent of at least 25 trays of mail. There was no evidence that this is the quantity of mail involved in this case. The Union has not met its burden of proof. The job descriptions are not necessarily all inclusive. If that were the case some of the collection performed by the MVS would have to be given to the Carriers because registered mail is picked up by Carriers. Even the Union witness acknowledge that only Carriers are to pick up registered mail. The MVS has been doing this for some time and "the NALC has, in effect, acquiesced to this for a period of time, which has resulted in a past practice."

The duties of collecting mail overlap between the two crafts. These same duties have been performed in the same manner for many, many years. It is only when three (3) MVS employees were excessed that the Union is now attempting to get more work for the MVS. The Union, however, has not proven its case. This exact same type of work has been performed in other areas of the country and has been upheld by other arbitrators. For all of these reasons the grievance should be denied.

NALC CONTENTIONS

X The MVS is attempting to secure the exclusive right to collection of mail from contract stations. It is clear that this is not the exclusive job of the MVS. The APWU's attempt to build their case around the interpretation of the word "bulk" is not persuasive. An ambiguity in the definition of bulk mail could not give "the exclusive right to collect mail from contract

stations" to the MVS. The APWU's action is "nothing more than a retaliatory attempt to recapture something." The NALC has the right to collect mail, pick up parcels, sign for registered mail, etc. from contract stations. This is set forth in all of the applicable manuals. In addition this past practice has been going on for years. For all of these reasons the grievances must be denied.

DISCUSSION

The Motor Vehicle Operator - Level 5 position description references the basic function as the operation of a mail truck for the purpose of pick up and transport of mail in bulk. The Carrier's position description primarily focuses upon the "prompt and efficient delivery and collection of mail on foot or by vehicle..." There is also a specific reference to Carriers collecting mail from street letter boxes and accepting mail from patrons. There is even a statement that the job may consist exclusively of only "collection of mail". Despite those statements in the Carrier's position description, and based upon statements in the M-41 referring to letter boxes and the M39 to boxes, the Union has concluded that the picking up of mail from the contract stations or branches is exclusively the job of the MVS employees. Despite the well reasoned brief, the citations, and the excellent argument to that effect the Arbitrator does not agree.

A review of the position descriptions of the Carriers and the MVO demonstrates clearly to the Arbitrator that there is some overlap between these positions as it relates to the collection of mail. The Arbitrator is also of the opinion, based on these fact circumstances, that there has not been an improper cross craft assignment.

The Union has cited several cases to support its position. In particular it cites the 1988 case decided by Arbitrator Powell in E4V-2B-C9847 where a grievance was sustained and the Postal Service was ordered to cease and desist from using Carriers in lieu of Motor Vehicle Operators for transportation of mail. However, in that case the mail was being transported by the Carriers on a regular basis in a 7 ton truck from the Media Post Office to the Philadelphia General Post Office. Arbitrator Powell stated that the "picking up and transporting mail in bulk falls within the Key Position Description of a Motor Vehicle Operator." He therefore determined that there was an improper cross craft assignment. He concluded, apparently, that a bulk quantity of mail was involved. That is not proven in this case.

The Arbitrator has reviewed the various citations concerning cross craft assignments but has concluded that those citations do not apply if there is a job which is not exclusively within the jurisdiction of one craft or the other. From a reading of the

Handbooks, and a review of the practice of the parties that has developed over the years, it is clear to the Arbitrator that these functions in question were not an exclusive job of the MVS.

All parties to this arbitration have taken the position that the central issue is whether a bulk quantity of mail is involved. The Arbitrator agrees that this is a central part of the issue. Unfortunately there is no clear cut definition of mail in bulk contained in the Handbooks. The Union witness stated that one NO.1 bag would be bulk mail. In a citation provided by the Union, from the opinion of Arbitrator Germano in NSV-1M-C13426, a reference is made to an acting Superintendent stating that in his opinion "five or more hampers of mail" would apparently be bulk quantity. Certainly an opinion given by an acting Superintendent of Motor Vehicles in another Post Office does not necessarily control this case but even so there is no evidence that the mail in this case exceeded "five or more hampers of mail" from any station. The evidence has not convinced the Arbitrator that the picking up of 2 or 3 partially filled bags of mail from a station is the collection of mail in bulk as that term appears to be used in the various Handbooks and Manuals. Postal Service witnesses in this case indicated that the collection of bulk mail would normally involve transportation of mail by way of some type of hamper and/or APC. That is apparently, although it is not entirely clear, the same thing that the witness was stating in the case before Arbitrator Germano. That, however, is not the volume of mail that has been presented to the Arbitrator in this case.

If there were, in fact, a bulk quantity of mail as now alleged it is difficult for the Arbitrator to believe that the Union could be so totally ignorant of this practice for over 30 years as the witness now claims. This practice has continued unabated for that entire time with absolutely no prior claim of impropriety. There is no evidence that the volume has increased or that the method of transportation is significantly different than it was before.

Certainly this conduct raises an issue as to whether a past practice has developed, and if so, how it effects the outcome of this case. One of the major areas where past practice is used is to interpret contract language which is ambiguous. Past practice will not be used to change, negate or alter contract language which is clear and unambiguous. Arbitrators are bound to enforce clear contract language but can use past practice to interpret or give meaning to language which is subject to different interpretations.

Although past practice may be used to clarify ambiguous contract language, the party proposing the use of such past practice still bears the burden of proving such past practice

does exist in the context of that particular bargaining relationship. In order for a past practice to be binding it must be clear in all respects; it must have been acted upon; it must be ascertainable over a period of time; it must consist of more than an isolated instance; and it must be accepted by the parties. The acceptance need not be in writing but instead may be a tacit acceptance arising from the conduct of the parties.

In this case although there certainly is no formal acceptance, which there hardly ever is in a past practice case, there is evidence that this practice has continued for years with no objection from the Union. The Arbitrator believes the union was aware of the practices. It certainly knew it was not closing out stations on Saturday.

While the Arbitrator agrees with the citations provided by the Union as to past practice and its effect upon the contract, and its applicability or nonapplicability in the event of clear and unambiguous contract language, there is no clear definition of mail in bulk quantity. Hence, there is room to interpret that language. In this case there is language in the Handbooks and Manuals, as previously indicated, which makes it clear that collection of all mail is not necessarily the sole and exclusive job of the MVS employees. If the collection of all mail is not the sole and exclusive province of the MVS then some interpretation is appropriate. In such cases the past practice of the parties becomes very relevant in the interpretation that is to be placed upon the applicable Handbooks and Manuals as applied to the particular Post Office. In this case the clear and uninterrupted past practice is that this type of collection is not within the exclusive jurisdiction of the MVS because it is not in bulk. The MVS employees have clearly acquiesced in the Carriers doing that collection on Saturdays and from contract stations. In fact the Union acknowledged that one station is even closed during the week by the Carriers and that Carriers have always closed Zone 17. In a similar vein the Carriers have apparently acquiesced in the MVS employees occasionally collecting registers from these same stations.

The Union has argued that in Case C23463 since the work was performed by MVS during the week but on Saturdays by the Carrier that is conclusive proof that the disputed work belongs solely to the Motor Vehicle Craft. The Arbitrator does not agree. As previously indicated at least one station is closed out during the week by the Carriers. It does not prove that it is the exclusive work of MVS but instead it proves that for 30 years the parties have developed a practice, based upon the applicable Handbooks and Manuals, that this work can be performed by either craft and the MVS employees have acquiesced in that practice. Even the Union claim that PO701-232-323 supports that position is discounted. That section mandates that the Postal Service review

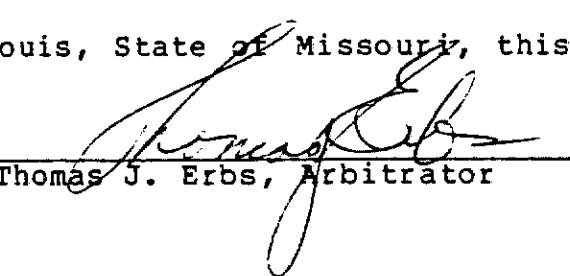
arterial collections to determine if it could be covered by "existing MVS..." However, that grants to Management the right to determine if a Carrier should be released from that function to do "more productive work". That implies to the Arbitrator that it is up to Management to make that determination but that Management is not required to assign those collection duties to the MVS. If it is not required to do so then the Union argument that this is exclusively an MVS function is not applicable without a showing of arbitrary or capricious action. There was no such showing.

In regard to C23462 the Union argues that the picking up of mail from the contract stations is also the exclusive work of the MVS because it is something other than collecting from a box or picking up a register from the contract station. The MVS argues that the Carrier can come into that station to pick up a register but that it then must leave the station and an MVS employee must be sent out to pick up that mail. The Arbitrator does not interpret such a result from the Handbook and Manuals. The practices of the parties, including the long acquiescence in that practice by the Union, does not support such an interpretation.

The Arbitrator agrees that the transportation of a bulk quantity of mail is within the jurisdiction of the MVS. The evidence established in this case, however, did not lead the Arbitrator to conclude that bulk quantities of mail were, in fact, being collected or transported by the Carriers.

It is therefore the opinion of the Arbitrator that both grievances C23462 and C23463 shall be denied.

Signed in the County of St. Louis, State of Missouri, this 20th of February, 1991.


Thomas J. Erbs, Arbitrator

March 12, 1991

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NATIONAL BUSINESS AGENTS

Please find attached a copy of regional arbitration award C-10616. It will be cited in my article in next month's POSTAL RECORD. Since it is not yet available on microfiche, I am providing a copy in advance so that you can respond to any inquiries.

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