USPS-NALC CONTRACTUAL GRIEVANCE PROCEEDINGS
CENTRAL REGION
ARBITRATION OPINION AND AWARD

C#01664

In the Matter of Arbitration
Between:

THE UNITED STATES POSTAL SERVICE
Gurnee, Illinois Station

-and-

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO
Branch 409

Case No. C8N 4A C 22293

Class Action
Gurnee, IL

Decision Issued:
January 2, 1982

APPEARANCES

For the Postal Service:

James K. Hellquist — Manager, Arbitration Branch
Central Region

For the Union:

Rodney F. Graham — President, Branch 409
Danny Jarrell — Grievant

ISSUE:

Class Action. Article X, Section D--Claim of entitlement of Letter Carriers to preference over other crafts for allowance of annual leave applications.

Jonathan Dworkin, Arbitrator
Central Region
16828 Chagrin Boulevard
Shaker Heights, Ohio 44120

BACKGROUND OF DISPUTE

This dispute was initiated by a Letter Carrier at the Gurnee, Illinois Post Office. The Grievant challenged Supervision's denial of his annual leave application for Saturday, August 8, 1980. At the same time that Grievant's application was denied, a similar request was approved for a member of the Rural Letter Carrier craft, employed at the same post office. An employee in Grievant's craft was assigned to fill the vacancy of the absent Rural Carrier. Grievant essentially contended that if the cross-classification assignment had not been made, there would have been an employee available to replace him on his route, and there would have been no legitimate reason for Management to refuse his application for annual leave.

The relief demanded by the grievance is far more comprehensive than a request to remedy the single incident of August 8. The Union utilized Grievant's complaint as a springboard to present a policy issue to arbitration. The Arbitrator has been requested to rule that except in unusual circumstances, the Postal Service must give preference to a leave application of a Letter Carrier whenever the absence is to be filled by a member of the same craft. The grievance states:

> Gurnee Postal Management is taking members of the carrier craft and using them to supplement the Rural Carriers Craft for vacations and other short term leave purposes for the rural carrier, including Saturdays that members of the carrier craft have submitted short term leave requests for.
>
> This practice causes a shortage in the Letter Carrier Craft and works to the detriment of the

Carrier Craft when it happens.

Rural carrier is given priority on use of carrier craft employees for replacement when there are leave requests that conflict between the crafts. Rural carrier is allowed to take LWOP on Saturdays on short notice and allowed to bump carriers who made leave requests in accordance with local and National agreements.

Corrective Action Requested:

Members of the Letter Carrier craft should not be used to supplement the Rural Carrier Craft at the Gurnee Post Office except in accordance with the National Agreement or an emergency. When Leave requests are of a conflicting nature, carrier requests should be considered ahead of requests from other crafts when replacement is to come from Carrier Craft. Properly submitted requests for short term annual leave by carriers shall be considered and acted on in accordance with the local and national agreements. Approved application for leave shall not be disapproved except in accordance with Article X of the National Agreement.

The grievance is further complicated by the fact that Grievant submitted his request for annual leave nine days before the Rural Letter Carrier submitted hers. Management delayed making a decision upon the conflicting applications until August 6, 1980. The Union contends that Management's conduct was in clear violation of a Local Agreement at the Gurnee station. Section 4, Subsections B, C, and D of the Local Agreement address the Postal Service's obligation with respect to when an application for annual leave is to be acted upon:

B. Requests submitted in duplicate over three weeks before the start of requested leave, management will give the employee a two-week notice of approval or disapproval whenever possible.

C. An employee applying for short term annual leave on form 3971 will be notified by management as soon as possible on the disposition of the request. Management will consult with the employee about the request by the Wednesday prior to the requested leave whenever applicable.

D. Requests shall be acted on in order of submission with seniority prevailing in case of duplicate requests.

According to the evidence, on July 15, 1980 Grievant applied for eight hours short term annual leave. The request was submitted on form 3971 more than three weeks prior to the proposed date of absence. According to the Union, Management of the Gurnee station was contractually obligated to respond to Grievant's request by no later than July 25. Such response would have conformed to the Union's interpretation of Section 4B of the Local Agreement. The Union maintains that at the very least, Grievant should have received Management's answer "as soon as possible" pursuant to Section 4C. In either event, the Union contends that by delaying its response until August 6, Supervision violated both the meaning and the intent of the negotiated Local Agreement.

The Employer denied the grievance at each preliminary level, stating that the facts did not confirm that there had been a violation of any provisions of the National Agreement between the Postal Service and the National Association of Letter Carriers. The matter was appealed to arbitration and was heard in Waukegan, Illinois on May 8, 1981. At the outset of the hearing, the Representative of the Postal Service asserted some additional defenses that were not specifically stated in any of Management's

second and third step answers. The primary affirmative claim raised by the Postal Service is that this dispute is not arbitrable. The Postal Service also maintains that the relevant portions of the Gurnee station Local Agreement are invalid because they conflict with provisions of the National Agreement. The Arbitrator's attention was directed to Article XXX, Section A of the National Agreement which states that memoranda of understanding and local agreements shall not be given effect if they are inconsistent with specific terms of the National Agreement.

The Representative of the Postal Service conceded his willingness for this controversy to be heard on its merits, but that concession was made only upon the Arbitrator's assurance that he would address arbitrability first. In the event that the Postal Service's challenge to arbitrability were sustained, such finding would require that the grievance be summarily denied without regard to the factual content of the dispute.

ARBITRABILITY

August 8, 1980, the day for which both the Letter Carrier and the Rural Letter Carrier requested leave, was a Saturday. The Collective Bargaining Agreement between the United States Postal Service and the National Rural Letter Carriers' Association contains a provision that specifically refers to Saturday leave. Article 30.2L of that Agreement states:

L. Saturday Leave

The approved absence on a Saturday of a rural carrier or a substitute rural carrier in a leave earning capacity, which occurs within or at the beginning or end of a period of annual or sick leave shall be without charge to such leave or loss of compensation provided:

a. There are 5 or more days of annual or sick leave within the period; or

b. There are 4 or more days of annual or sick leave plus a holiday (see Article 11) within the period. If a holiday falls on Saturday, which is a scheduled work day, absence on the preceding Friday shall be without charge to leave. If the leave period is for less than 4 days, absence on Friday shall be charged to leave.

c. Interruption during the approved period of annual or sick leave by one day of court leave due to circumstances beyond the employee's control shall not disqualify the carrier for coverage as provided in "a" or "b" above.

d. Upon request a rural carrier shall be granted annual leave or leave without pay on Saturday, at the carrier's option, provided a substitute rural carrier is available for replacement.

During the processing of the instant grievance, one of the Postal Service's answers suggested that Management of the Gurnee Post Office was of the opinion that Article 30.2L of the Rural Carriers' Agreement required that members of that craft be given preference when they apply for Saturday leave. In the arbitration hearing, the Postal Service contended that in order to fully resolve this controversy, the Arbitrator would have to determine the propriety of Management's interpretation of the Rural Letter Carriers' Agreement. It was argued that the Arbitrator has been invested with the authority to resolve

disputes arising out of the contractual relationship between the Employer and the National Association of Letter Carriers. He has not been empowered in this controversy to interpret, apply, or interfere with the contractual relationship between the United States Postal Service and the National Rural Letter Carriers' Association. The Postal Service reasoned that a fully comprehensive resolution of this grievance would require the Arbitrator to make a comparative assessment of the negotiated benefits of the two crafts. Since to do so would be in excess of legitimate arbitral authority, the Postal Service concluded that the issues in dispute cannot be reviewed or ruled upon by this Arbitrator, and therefore, that the matter is not arbitrable.

The Arbitrator is in agreement with the Postal Service's premise, but he is in disagreement with its conclusion. The Collective Bargaining Agreement of the Rural Letter Carriers was received into evidence. Its purpose was to allow the Union the opportunity to present the background of its grievance and its contentions. But beyond that, the document could have no impact whatsoever upon the determinative issues of this matter. Article XV, Section 4A(6) of the Letter Carriers' Collective Bargaining Agreement declares that, "All decisions of arbitrators shall be limited to the terms and provisions of this Agreement" (emphasis added). The language could not be clearer or more decisive. It unambiguously restricts the Arbitrator's scope. No arbitrator may rightfully go beyond limitations that the parties, through mutual agreement, have imposed upon him.

The foregoing reasoning applies to this case. It requires that a finding be made to the effect that irrespective of its provisions, the Agreement between the Postal Service and the National Rural Letter Carriers' Association is immaterial to the grievance. The Arbitrator must confine his investigation of the merits of this case to relevant aspects of the Letter Carriers' Agreement, alone.

In the Arbitrator's opinion, the constraint does not warrant the conclusion that the grievance is not arbitrable. The written grievance defines the issue as, whether Management of the Gurnee, Illinois station is contractually authorized to grant a leave request to an employee in another craft if: (1) the concomitant to allowing that leave application is the denial of a conflicting leave application submitted by a Letter Carrier, and (2) on the day of the leave, a Letter Carrier is temporarily cross-classified to fill the vacancy created by the leave. Stated another way, the issue is whether members of the Letter Carrier craft are contractually entitled to preference for annual leave when another member of the same craft will be assigned to fill the resulting vacancy.

It may be, as the Postal Service suggests, that the grievance lacks a relevant contractual premise. That fact alone does not render a grievance non-arbitrable. The question of whether provisions of the Collective Bargaining Agreement are applicable to a complaint, and whether they have been properly applied or interpreted by one party or another, is precisely the

issue at the core of every arbitration. It is that issue that arbitrators are charged with resolving. In plain language, the fact that a party may be wrong does not deprive him of the right to an arbitral award stating that he is wrong.

Article XV, Section 1 of the Collective Bargaining Agreement that governs this controversy defines a grievance as follows:

> A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Unions which involves the interpretations, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

The succeeding sections of Article XV set forth a number of steps that are part of what is recognized as the Grievance-Arbitration Procedure. Arbitration is the final step of that contractual dispute resolution process. It is important to note that arbitration is not different or apart from the grievance process. It is simply the last of the progressive levels within that procedure.

In sum, the Arbitrator finds that the complaint set forth in this case falls within the definition of a "grievance." Because it is a claim that the Postal Service has violated rights and privileges of employment that the Union claims are derived from the collective bargaining relationship, it is substantively an arbitral grievance. The parties must recognize, however, that

whether the grievance will be sustained or denied depends entirely upon the Arbitrator's application and interpretation of the Letter Carriers' bargaining relationship with the Postal Service. The fact that another craft may have negotiated a more favorable agreement is immaterial. The fact that the Postal Service may have misinterpreted and misapplied a provision of a separate agreement with another craft is also immaterial. By the same token, the fact that the Postal Service may have made a bargain with another craft that erodes the contractual rights of Letter Carriers cannot be held to excuse Management from a violation of its contract with the Letter Carriers.

THE LOCAL AGREEMENT

The Postal Service contends that the Gurnee station Local Agreement is ineffective with respect to granting or denying applications for annual leave, because it conflicts with the National Agreement. The relevant provisions of the Local Agreement were recited in an earlier portion of this decision. It will be recalled that the focus of those provisions was the requirement that Supervision respond to annual leave requests within a defined period of time. Although the evidence that was submitted in the arbitration is not altogether clear, it seems probable that adherence to the Local Agreement would have required Supervision of the Gurnee station to reply substantially sooner to Grievant's leave application than it did. It is arguable that

the affected Employee might have initiated a justiciable grievance claiming entitlement to some remedy growing out of that delay. However, the grievance that was presented to this Arbitrator protested the denial of the leave, not the delay. The question of whether or not the Local Agreement was breached appears to be irrelevant to the question of whether the leave should have been granted. It is also immaterial to whether Supervision was entitled to grant leave to the Rural Letter Carrier, and it has no bearing upon the issue of the cross-craft assignment. It seems clear that whether or not Gurnee Supervision complied with the Local Agreement, the question raised in this controversy would have remained the same. The Arbitrator concludes, therefore, that to decide whether the Local Agreement conflicts with or conforms to the National Agreement would be equivalent to expanding the grievance, and ruling upon issues that are not part of the controversy. The Arbitrator declines to make that kind of a detour, and finds that his jurisdiction is circumscribed by the statements contained in the written grievance itself.

OPINION

The Arbitrator has most carefully searched the National Agreement to discover what, if any, negotiated provisions can form a basis for the Union's contentions. He has also reviewed the documentary evidence that was submitted, including provisions of manuals that have been incorporated into the Agreement pursuant to Article XIX.

The contractual language with respect to the Postal Service's authority and obligation to grant or to deny annual leave applications is contained in Articles III and X. Article III is a broad statement of the vested prerogatives of Management. It includes the right to maintain efficiency, and "to determine the methods, means, and personnel by which such operations are to be conducted." Of course, the generalized rights of Management must be held to be limited by any specifically negotiated privileges of employment. In this respect, Article X, Section 3 of the Agreement has some bearing. That Section provides in part:

> B. Care shall be exercised to assure that no employee is required to forfeit any part of such employee's annual leave.
>
> . . .
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> D. Annual leave shall be granted as follows:
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> . . .
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> 4. The remainder of the employee's annual leave may be granted at other times during the year, as requested by the employee.

Article X, Section 3 is designed to preserve each employee's annual leave entitlement. Subsection B articulates that goal. It requires Supervision to exercise care to assure that the benefit will not be lost. But, Article X, Section 3 falls markedly short of a mandate that every short-term annual leave application must be approved. To the contrary, Article X, Section 3D 4 states that such leave applications "<u>may</u>" be granted at the employee's request. The contractual language contains a clear inference that approval or denial of an individual annual leave application is a matter within supervisory discretion.

The Union argues that when Letter Carriers are to be used to fill in for an employee on leave, applications for such leave from Letter Carriers should receive priority over competing applications from all other crafts. That position finds no support whatsoever in the Agreement. In fact, the right of Management to make cross-craft assignments where necessary to maintain efficiency, is referenced in several contractual provisions. See, e.g., Article I, Section 5 A 4; Article VII, Section 2.

The exclusive craft benefit claimed by the Union is very substantial. It is one that could only come about through collective bargaining. Because the existing Agreement contains no definitive language establishing the benefit, the Arbitrator is without power to create it. It is a subject for negotiations, not for arbitration.

One additional matter should be addressed. It is apparent from the foregoing analysis that this grievance must be denied. A significant part of the reason for the decision is that in turning down Grievant's annual leave application, the Postal Service acted within the scope of its vested contractual authority. The Arbitrator recognizes that Management's right to exercise its prerogatives is not wholly unbridled. Such power cannot stand undisturbed if it is used in bad faith to undermine the negotiated privileges and benefits of employment; or if it is applied unreasonably, arbitrarily, or so as to create illegitimate discrimination.

In the arbitration hearing on this controversy, the Union suggested that Supervision of the Gurnee, Illinois station was arbitrary in its selection of the employee to receive Saturday leave. It was also implicitly contended that the decision to grant the application of the Rural Letter Carrier and to deny the application of the Letter Carrier was consistent with a program of discrimination against the Letter Carrier craft. However, those contentions were not substantiated by the evidence. The single incident of August 8 was all that was presented by the Union. That occurrence standing alone, is insufficient as the basis for a finding of arbitrariness or patterned discrimination. Certainly it is not enough to justify so extensive a remedy as the Union demands.

AWARD

The grievance is denied.

Decision Issued:
January 2, 1982

Jonathan Dworkin
Central Region Arbitrator