

In the Matter of Arbitration Between :

UNITED STATES POSTAL SERVICE :  
"Service" :

and :

NATIONAL ASSOCIATION OF :  
LETTER CARRIERS - BRANCH 1314 :  
"Union" :

Before: James F. Searce, Arbitrator :

C#05751

SIN 3D C27186

Group Grievance

Decatur, Alabama

This case involves a dispute over the Service's use of a letter carrier to cover a vacant route on his scheduled off-days and who was not on the Overtime Desired List (ODL), in lieu of pivoting the route among carriers who were on the ODL. The Union also raises a procedural question of denial of information. The hearing was held on October 1, 1985 at the main postal facility at Decatur, Alabama. Both parties were afforded a full opportunity to present, examine and cross-examine witnesses and to submit exhibits. The proceedings were recorded by notes of the arbitrator. Both parties closed argument at the hearing. The record was held open at the request of the parties for submission of additional data, which was received in due course.

## APPEARANCES

### FOR THE UNION:

Collier James

Regional Administrative  
Assistant  
(Presenting)

K. Day

President - Branch 1314\*  
Witness

### FOR THE SERVICE:

John Hyatt

Labor Relations Executive\*\*  
South Region  
(Presenting)

L. Maples

Supervisor - Mails & Delivery  
(Witness)

## BACKGROUND

On Friday and Saturday, September 2 and 3 of 1983 City Route 7 was vacant due to non-availability of the regularly-assigned carrier. The record shows that on those dates, the Service assigned a carrier (B. Bennett) to cover the route doing so on overtime; such days were regularly scheduled off for him. The Service's actions were challenged by the Union, contending that Bennett was not on the ODL but that five other carriers were and were available to cover the route among them if the Service had "pivoted" - or split - the route. Essentially, this would have entailed dividing the responsibility for coverage of segments of the route among the five carriers so as to permit them to perform delivery of the segment of Route 7 and their regularly

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\* Position held at time of events germane to this dispute.

\*\* Also gave testimony subject to cross-examination.

assigned routes on one or the other (or both) days, some of which would have been on overtime. (It was established that none of the five carriers worked any overtime on September 2 or 3, 1983.) A letter dated September 7, 1983 from the Branch president (Day) to his supervisor (Maples) sought data under the provisions of Articles 17 and 34 of the Agreement concerning the status of the ODL, carrier scheduling records and the time card for the carrier used on those dates (Bennett). A Step 1 meeting was held on September 8, 1983 and, on the basis of denial, a formal grievance was initiated on September 12.

A second request (undated) repeated the above-cited request for information. The Step 2 grievance was denied by the Service contending that the 5 allegedly aggrieved carriers were already scheduled to work on September 2 and 3, 1983 and thus unavailable; no reference was made to the request for information. By letter dated October 1, 1983 the Union made reference to the unanswered request(s) for information. The grievance was timely appealed to Step 3; it was denied at the Regional level claiming that the record appeared to show that the route had been "divided among several carriers." (Jt. Ex. 2) Subsequently, it was sent to Step 4 by the Union contending an interpretive question existed; such contention was denied by the parties at the National level and the matter was remanded to Step 3 for re-argument.\* Inability to resolve the matter at that time resulted in this proceeding for final disposition.

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\* The record of this hearing included a copy of the remand letter to the Region which privately suggested reference to a National award; this award will be discussed in due course.

#### POSITION OF THE UNION

Article 15 of the Agreement requires that the Service provide information in its possession deemed necessary by the Union in its investigation of a grievance - real or potential. The data sought was directly related to this matter and reasonable in scope. The request was raised on three (3) separate occasions without response. This is the Service's attempt to frustrate the grievance procedure and a violation of the Agreement which, in and of itself, should prompt imposition of the Award being sought. As to the merits, the pivoting of routes under the circumstances here is proper procedure and could have been done. The Service's only defense was that the aggrieved employees were on duty and assigned. In fact, the Service's response to the original inquiry was that it would do as it pleased. The pivoting of routes is recognized as proper procedure under applicable regulations and has been past practice at this facility. The aggrieved employees are entitled to the compensation on the merits even if no procedural errors were made.

#### POSITION OF THE SERVICE

The procedural claims by the Union at the hearing were not raised at Step 3 of the grievance procedure. Since this case went to Step 4 and was remanded for further consideration, nothing precluded it from seeking data again at that point in the procedure. The data requested by the Union was prepared by the grievant's supervisor and passed on to

his supervisor for disposition. Additionally, the Union never asked for the work schedules for those days. On the merits, the Service called in carrier Bennett for good and sufficient cause: all other carriers were either non-available or already assigned; this involved a holiday weekend; there was a need to clean-up a backlog of mail which included time-sensitive Social Security checks; and, it was not feasible to split the route at that time. There is no merit to this claim.

CITED/RELEVANT PROVISIONS  
OF THE AGREEMENT AND RELATED  
DOCUMENTS

AGREEMENT

Article 3 - Management Rights\*

Article 8 - Hours of Work\*

Article 15 - Grievance-Arbitration Procedure\*

Article 17 - Representation\*

Article 31 - Union-Management Cooperation\*  
(Jt. Ex. 1)

THE ISSUES

1. Does the Union prevail on its claim of procedural error by the Service; if so, does this preclude consideration of the merits arguments?
2. If the answer to Issue 1 is in the negative, did the Service violate the Agreement and Related Regulations in the manner in which it assigned coverage of City Route 7 on September 2 and 3, 1983; if so, what is the appropriate remedy?

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\* Not reproduced here for sake of brevity.

## DISCUSSION AND FINDINGS


Disposition of this matter need not go beyond review of the procedural question raised by the Union. The requests for information initiated by the Union were neither a "fishing" expedition nor could it be construed as excessive. The documents would have been precisely on point with the incident in dispute. Whether the Union could have concluded that it had proper cause for disputing the Service's actions or not is speculative at this point, but at least it would have had a fair opportunity to look at the matter from both vantage points - its and the Service's. What it is forced to do is initiate a grievance anyway and potentially bear a cost it otherwise might have avoided. Article 15, particularly at Section 2, Step 2 (d) and (f) contemplates full disclosure of the underlying fact and condition. The Union buttressed its demand for compliance with the data disclosure aspects of the matter in dispute not once but three times officially. I am unpersuaded that it needed to continuously reiterate such demand in the travels of this dispute up and down the grievance steps. If the Agreement had expected such requirement, I would assume its drafters would have stated as much. If the Service is permitted to ignore its own commitment to disclosure of information, then that part of the Agreement is meaningless. Where, as here, the local management chooses to ignore the contractual obligation to make such data available in the face of repeated valid requests, a conclusion must be derived that the complained-of activity was in error

on its face and the Service chose to avoid addressing the matter by not making official records available. It is interesting to note that the Service official who handled this dispute at the original Step 3 hearing dismissed the demanded resolution because he was under the impression that the "route in question was divided among several carriers," (Jt. Ex. 2). This, of course, could have involved pivoting the route as sought by the Union and was not what occurred. Let there be no mistake about it, this is a punitive award which the arbitrator orders reluctantly and exceptionally - but with good cause. At the hearing, the Service also presented testimony of a supervisor which might have represented arguably cogent reasons for the use of the non-ODL carrier. No such bases are to be found in the Service's responses in the grievance procedure; per the Union, they are raised for the first time at this arbitration proceeding. As heretofore cited, a substantially similar situation was addressed in a national arbitration case (H8N-5B-C 17682) and the conclusions reached there were the same, i.e. arguments raised at arbitration for the first time are not given weight.

This arbitrator is loath to dispose of a dispute without fully addressing all aspects. In the instant case, however, I am satisfied that the specific circumstances compel a disposition of the grievance as sought by the Union on procedure without consideration of the merits. The procedure of pivoting to cover a temporarily vacant route is institutionalized in the Postal Operations Manual and the potential for its use here was not perceived as beyond practicability.

AWARD

Issue 1 is answered in the affirmative.  
The aggrieved employees shall be afforded compensation equal to the total received by carrier Bennett for work he performed on September 2 and 3, 1983; distribution shall be at the overtime rate and proportioned among them, but not for any who otherwise would not have been available to perform such work for reasons such as sick leave, having departed work early at his/her own request, etc.  
The arbitrator anticipates prompt execution of this Award.

  
James F. Scearce - Arbitrator

Atlanta, Georgia  
February 12, 1986