

C#09463

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration
between
UNITED STATES POSTAL SERVICE
and
NATIONAL ASSOCIATION OF LETTER
CARRIERS

GRIEVANT: WAY, ROBERT
POST OFFICE: GREENSBORO, N.C.
CASE NO: E7N-2G-C 18082
NALC GTS 011393

BEFORE: WALTER H. POWELL

ARBITRATOR

APPEARANCES:

For the U. S. Postal Service: DENNIS MCPETERS, Labor Rel. Ass't

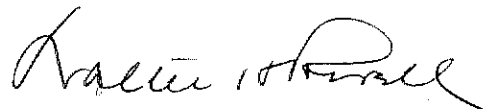
For the Union: JUDSON K. VAUGHN, Regional Adm. Ass't

Place of Hearing: GREENSBORO, N.C.

Date of Hearing: October 5, 1989

AWARD: GRIEVANCE IS DENIED. The proper casing standard for this particular circular called the 'Express Magazine' was properly set at 18 per minute.

Date of Award: OCTOBER 19, 1989



Arbitrator

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION,
between

NATIONAL ASSOCIATION OF LETTER CARRIERS

-AND-

UNITED STATES POSTAL SERVICE

Case No. E7N-2G-C 18082/Way
GTS - 011393

DECISION AND OPINION

Hearing held at Greensboro, N.C. - October 5, 1989

ARBITRATOR: WALTER H. POWELL, ESQ.

APPEARANCES

FOR THE UNION

Judson K. Vaughn,
Regional Adm. Assistant

Robert Way, Grievant

Paul Amos, Local
President

FOR THE POSTAL SERVICE

Dennis McPeters,
Labor Relations Assistant

ISSUE

DID THE EMPLOYER VIOLATE THE
COLLECTIVE BARGAINING AGREE-
MENT WHEN THEY GAVE MR. WAY
LETTER SIZE CREDIT FOR 404 PIE-
CES OF 'EXPRESS MAGAZINE'? IF
SO, WHAT SHALL THE REMEDY BE?

FACTS AND BACKGROUNDS

Grievant, Robert Way was given a count and inspection on November 18, 1988 at the Spring Valley Post Office, Greensboro, N.C. During that inspection the grievant was given 404 pieces of mail; this was a pamphlet entitled "Express Magazine". It had a bulk mail rate and the examiner gave it the letter rate of 18 pieces per minute as the formula for determining the standard. At the end of the test, Mr. Way found that he did not meet the standard by 17 minutes. If the allowance for the 404 pieces had been at the magazine rate of 8 pieces per minutes, the inspection would have shown that he beat the standard by some 21 minutes. As a result of the discrepancy in not meeting standard, a grievance was filed. No discipline was given to the grievant.

The piece in question is 5 and 3/8ths inches wide by

8 and 3/8ths inches long, its thickness is more than a 32nd of an inch. Including the covers there are 8 pages of advertising, coupons, etc. The pieces could be inserted without bending if inserted vertically. The case of Mr. Way was defective, because the placement of a light on the top middle of the case caused some sagging on the top row of the case. Some six to eight of the 240 separations were probably smaller in total height because of the structural defect.

POSITION OF THE UNION:(NALC) The matter in question is covered by specific directives and regulations embodied in Postal Service Manuals issued to carriers and other personnel. The test in determining whether a piece is a letter or other mail, is predicated on the fact it can be inserted into the separations of the case without bending or folding. Postal regulations specifically define types of mail. The piece in question is called a magazine and is paid for at a Bulk Rate. Magazines are normally classified as other mail and given a rate of 8 per minute for insertion, incorrectly labeling the piece in question; letter size prevented the grievant from meeting the standards set.

POSITION OF THE POSTAL SERVICE:

The circular fits the dimensions established by the Postal Service for letters. It fits into the separation of the

case without the necessity of bending or folding. Observation of the case of the grievant suggests that there are some physical limitations in some 6 or 8 separations on top of the case due to a faulty installation of a light; however, those few separations out of a total of 240 separations in the total case could have little adverse effect on the carrier's ability to meet the standard of 18 per minute, the amount allowed for letters. Actual demonstration of the piece in question showed that there was at least a half (1/2) inch clearance over the piece in the insertion of the pieces into the separations.

Circulars are always counted as letters if they are not too thick. Merely calling a piece a magazine is a self-serving statement by the publisher of this advertising circular and it is not in the normal sense a magazine.

DISCUSSION AND OPINION

Pertinent and relative sections of the Postal Service Manuals which are applicable to the facts at hand herein are as follows:

M-39- 121.12 Letter Mail defined:
"Letter mail is defined as mail which can be routed into the carrier letter case between separations, vertically without bending or folding. The size of the mail is determined by the

smallest vertical space between any two shelves on a particular case."

M-39- 121.13 - General. "Letter mail is normally cased vertically; flat mail is cased horizontally."

M-41 City Carrier Handbook, Section 922.41 states:

.411 Letter size (Ordinary letters, cards and circulars) includes all mail that can be cased into the letter separations without bending or folding, as well as misthrows of all classes and types of mail. It does not include newspapers, flats, small parcels, magazines, or catalogs, even though they are intended for casing with letter mail."

Under paragraphs of the Domestic Mail Service pages and Sections 128 Processing Categories and 128.1 General there are five (5) categories of mail set forth. The criteria for each category are based solely on the physical dimensions of a mailpiece, regardless of the placement (orientation) of the address on the piece. Then Section 128.2 sets forth the minimum and maximum dimensions for letter size. The minimum in length is 5 inches, the heights 3 1/2 inches with a thickness of .007 inches. The maximum dimensions are length 11 1/2 inches and the height, 6 1/8 inches with an allowable thickness of 1/4 of an inch. The dilemma in the instant case is determining what is a letter? Rules and regulations are set forth in detail to allow for fair measurements and determination through a fair count of what is a reasonable standard,

A standard is simply a measurement based on carefully thought-out methods of doing a function or job. Setting a standard is predicated on careful investigation and observation of people who do similar work over a reasonable period of time, working at a reasonable pace under reasonable conditions. The method prescribed for the inspection and count of the work by a carrier is set forth in explicit detail. The problem in the instant case is a judgement call by the inspector describing the item in question multiplied by some 404 pieces as letter size while the carrier in good faith believes that they should have been counted as a magazine or other mail.

In an exhibit furnished by the grievant's advocate a 'magazine' according to the American Heritage Dictionary is a periodical containing a collection of articles, stories, pictures or other features. One could argue that the piece presented here contains no articles, stories, or features, but is simply a presentation of advertisements found in normal circulars distributed for advertising purposes.

Under somewhat similar circumstances, Arbitrator Mittenthal in Case No. NC-W-8752 examined Applicable Time Standards. In his opinion, the arbitrator described the working conditions which are similar to the one presented to this arbitrator. He confined himself in that opinion to a Montgomery

Ward catalogue of some 56 pages of coupons which was a 1/4 inch thick. There is no general disagreement between the Association and the Postal Service about the correctness of the present standards of 18 per minutes for letters and 8 per minute for all other types of mail. Those work measurements or standards are fair, reasonable and equitable.

The question at hand and in the Mittenthal case, is the particular piece of mail able to be placed in the separations or slots without bending or folding. The sections cited above are not sufficiently explicit to cover all situations, and every single item that may be placed in the mails by a customer. The Association in the present case insists that the 404 pieces in question are magazines. The Postal Service contends that they are a circular and that the name "Express Magazine" is not dispositive of the issue. The language set forth in the regulations doesn't answer the question. Mittenthal states that the Montgomery Ward catalogues were not letters, that inserting a booklet that thick required the carrier to move aside any other mail already placed within the one inch slot. While it was not bent or folded, it had to be placed in such a way to provide and make allowance for the abnormal dimensions of that piece. Thickness alone borders on the maximum allowed for a letter. Undoubtedly, some letters may be a 1/4 inches thick, but that would be a

rareity and not the normal. In summing up, Arbitrator Mittenthal stated that the Montgomery Ward booklet could not be cased as easily as a letter. Therefore it was unfair and unreasonable to set the standard the same as for letters.

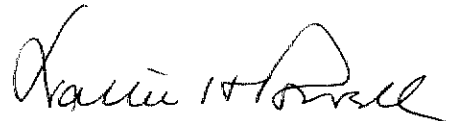
A comparative analysis of the piece presented in the case before me did not have the dimensions of the Montgomery Ward booklet. This was a circular, it does not fit the definition of a magazine; there are no articles, features, etc. which are common to almost all magazines. The thickness is minimal and is almost like the average letter. The ease in which it can and could be inserted was equivalent to that of a letter, and the decision to set the letter rate of 18 per minute was fair and reasonable. The peculiarities of this particular circular was de minimus and casing it would not cause the discrepancy of seventeen minutes.

Consideration has been given to the evidence presented both orally and in writing, plus the appropriate regulations and manuals. Both the Association and the Postal Service presented strong arguments in support of their respective positions.

After reviewing the testimony, exhibits and the arguments, I make the following AWARD:

A W A R D

Grievance is Denied. The proper casing standard for this particular circular called the "Express Magazine" was properly set at 18 per minute.

A handwritten signature in cursive script, appearing to read "Walter H. Powell", is written over a horizontal line.

WALTER H. POWELL,
ARBITRATOR

October 19, 1989