

C# 07098

ARBITRATION DECISION - AWARD

IN RE

U.S. Postal Service
Champaign, Illinois

C4N-4A-I-99229
Local Impasse

and

National Association of Letter Carriers,
AFL-CIO, Branch 671

DISPUTE:

Article 30.B.1, wash-up periods.

Arbitrator:
Daniel G. Jacobowski, Esq.
April 20, 1987

ARBITRATION DECISION - AWARD

April 20, 1987

C4N-4A-I-99229

United States Postal Service
Champaign, Illinois

and

National Association of Letter Carriers,
AFL-CIO, Branch 671

ARBITRATOR: Daniel G. Jacobowski, Esq.

DISPUTE: Local impasse. Article 30.B.1, wash-up periods.

JURISDICTION

APPEARANCES: USPS: Josephine McClellan, Mgr., Labor Relations, South Suburban.
NALC: Warren E. Fredrich, Regional Admin. Asst., Chicago.

HEARING: Conducted on March 20, 1987, at Champaign, on this local negotiation impasse, pursuant to the procedures and stipulations of the parties under the national agreement.

ISSUE

IMPASSE ITEM: Does the local provision on wash-up period conflict with Article 8.9, and should it be re-worded?

CASE SYNOPSIS: Since April, 1985 the parties have been at impasse in their local negotiation over the wash-up period provision which has been effect since the 70's. Management contends it does not conform to Article 8.9 and should be changed. The union position is that the clause has been satisfactory and should remain as is. The dispute is over the clause's reference to every carrier, and management's claim that it should be limited only to occasional work that is excessively dirty beyond the normal routine.

CONTRACT PROVISIONS APPLICABLE:

ARTICLE 8 - HOURS OF WORK

"Section 9. Wash-up Time

Installation heads shall grant reasonable wash-up time to those employees who perform dirty work or work with toxic materials. The amount of wash-up time granted each employee shall be subject to the grievance procedure."

ARTICLE 30 - LOCAL IMPLEMENTATION

"A. Presently effective local memoranda of understanding not inconsistent or in conflict with the 1984 National Agreement shall remain in effect during the term of this Agreement unless changed by mutual agreement pursuant to the local implementation procedure set forth below.

B. There shall be a 30-day period of local implementation to commence on April 1, 1985 on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the 1984 National Agreement:

1. Additional or longer wash-up periods."

CHAMPAIGN LMU PROVISION

"B.1 Additional or longer wash-up periods—Every carrier shall be allowed actual wash-up time on-the-clock on a daily basis:

- A. After loading and before leaving for route.
- B. Immediately prior to the end of the carrier's tour of duty.

Wash-up time must be reasonable."

BACKGROUND - FACTS

Under Article 30.C and its referenced attached Memo, the parties can submit to arbitration, a local negotiation dispute on which they are at impasse, and a dispute as to whether a prior or existing local provision is in conflict with the national agreement. The employer position and proposal in this dispute embraces the duality of both types of related questions.

Since 1973, the parties have had the substance of the above provision in their local agreement, providing reasonable wash-up time to every carrier before leaving the office or station. In 1978 there was a slight change, to the above exact wording, which has remained in the local agreement since. According to the testimony, under this clause and language, there have been no problems in its administration and no grievances have arisen.

However, midway during the last April, 1985 local negotiations, management suddenly proposed a change in the wash-up clause, on the grounds that its application to every carrier, conflicted with Article 8.9 of the national agreement, which instead only provided wash-up time for employees on dirty work or with toxic materials. Management contended that all work of the carriers is not normally dirty, but only occasionally so, and that it was not the intent of 8.9 to provide wash-up time to every carrier.

The clause was not raised nor in issue during the first negotiation sessions, handled by the employer's more direct supervisors. It was injected midway in the negotiations, by an upper management person, then temporarily and newly arrived on the scene, who since has left. In the negotiations, management's first proposed language change read as follows:

"Those carriers performing dirty work or work with toxic materials shall be granted reasonable wash-up time."

At the point of impasse, management's final proposed language change read as follows:

"Carriers performing dirty work will be allowed reasonable wash-up time on-the-clock on a daily basis:

- A. After loading and before leaving for route.
- B. Immediately prior to the end of the carrier's tour of duty."

The union testimony described the dirt and toxic material that carriers customarily encounter in their normal handling of the mail and equipment prior to deliveries, from

casing, cardboard trays, canvas carts, and particularly the ink from flats and printed material, and ink pads or indelible markings. Also, the normal dirt encountered during the course of handling the mail on route deliveries, along with dirt from customer conditions and the vehicles. Among such union testimony was that of its chief local negotiator since the 70's, and with 25 years of service.

While management in response acknowledged the types of dirt and ink stains that can arise from these duties, it maintained its position that the purpose of the Article 8.9 wash time, was not to cover normal routine dirt, but only that which is occasionally excessive beyond normal.

ARGUMENT

UNION: Basically the union position is that the existing clause should remain since it is satisfactory, has caused no problems, and has been administered reasonably for the normal dirt and toxics which the carriers customarily experienced in their daily duties. Supportive cases were cited. In the alternative, if the arbitrator finds some conflict with Article 8.9, the union requests the arbitrator's award of language in the best equity between the contract and its position.

EMPLOYER: Basically the position of the employer is that the current clause applicability to every carrier conflicts with Article 8.9, which instead is limited to only those occasional instances of dirty work and toxic material above and beyond the normal daily routine. Supportive cases were cited.

DISCUSSION - OPINION

The heart of this dispute is whether Article 8.9 is to be given the employer's narrow construction of application to only occasional instances of dirty work beyond normal, or whether it with 30.B.1 allows a broader more liberal construction of application to all carriers engaged in normal carrier duties as claimed by the union. Upon review and analysis, I have decided that on the substance of the question the union position is essentially correct, based on and within the context of the following analysis and reasons.

1. Article 8.9. The tenor and thrust of the language is positive and direct, in the mandate of the benefit. Its tone is not negative, and does not indicate a limited application of availability to only exceptional circumstances. True, the wash-up period benefit is provided for those employees engaged in dirty or toxic work, but that is not a conclusive assumption of applicability to only some occasional instances as the employer argues. The language does allow that there are or may be some employees or assignments not involved in dirty work, but is otherwise unspecific. It is recognized that the contract covers two unions, the APWU and the NALC, over thousands of locations and employees. The language can be understood within the context that over this broad scope, there may be some instances of uniqueness or exception, where carriers are not engaged in dirty work. Article 8.9 is not alone, but in companion with the local implementation allowed under Article 30. I do not read Article 8.9 as precluding applicability to most or all carriers engaged in normal carrier duties nor as having a limited application to only occasional instances of carriers doing exceptionally dirty work beyond the normal routine.

2. Article 30.B.1. Under local implementation, item 1 is likewise positive, without any negative nor limitation emphasis. Its tone is even more expansive and all inclusive, with the word "additional", keeping in mind that 8.9 already established the mandate for reasonable wash-up time. Granted that introductory paragraphs A and B preclude a local provision from being inconsistent or in conflict with the national agreement, I do not see that as applicable to nor supportive of the employer's claim in this case. Of the 22 items recited in Article 30 for local implementation, item 1 is

distinctly unique in its thrust of greater expansiveness and more inclusiveness; whereas the other 21 items are more directly implementation matters. The employer position fails to take into account the expansive thrust of item 1. Nor do I feel the existing local provision constitutes an inconsistency or conflict under 30.B.1 with 8.9.

3. The nature of carrier work. There is a commonality among carrier work and duties in the many locations across the country. There is an essential sameness and identity in the work. This is inherent in the policies and regulations outlining carrier duties and self-evident as this organization and these duties are exercised in the many installations. As a general rule, the two main portions of a carrier's duties are the mail processing and preparation in the station for a delivery, and the actual delivery itself on route. A third lesser portion is related office work on such items as processing certified, address changes, and the like. In the process of performing these duties and handling the mail, it is elementary and acknowledged that a carrier's hands will acquire dirt from the mail, the printed matter ink, and the equipment. Since these are the duties of carriers generally, it is fully reasonable to regard the wash-up period as applicable to carriers generally. Employer policy requires carriers to be neat and clean.

4. The evidence in Champaign. The union presented its case from the actual evidence of the common carrier work of this nature as it has commonly existed in Champaign over the years, describing the normal dirtiness encountered in the daily normal work, from handling the mail, the printed material, the equipment, and the office ink pads and indelible markings. The employer's position was not a denial of this. Rather, the employer position was one of a subjective or philosophical concept that the normal routine daily dirt was exempted from 8.9, and that it applied only to exceptionally dirty work. The employer gave no evidence of any instances nor job assignments that fell within such claimed distinction.

5. The existing local provision. I feel that the existing local provision which provides a wash-up period for "every" carrier on a "daily" basis is consistent within the concepts above, and in compliance and accord with the context of 8.9 and 30.B.1. It is addressed to normal carrier duties in customary normal work. That is apparent from the A and B references in the local provision, relating wash-up to the two main duties of preparation for a route, and the actual delivery on a route. The fact that the parties locally in Champaign have established this general local provision and standard which in general acknowledges that all normal carrier work does involve elements of dirt, which merit regular wash-up time, does not in any sense violate nor contradict the allowances of the national agreement. Rather, it is consistent with its terms. Presumably, the parties locally have found it to their advantage to acknowledge the reality of local conditions and work, and to establish common wash-up times for the best administration and policy. The amount is still left reasonable to the circumstances. There was no evidence of problems or grievances with this provision over the years. It thus would appear eminently satisfactory to the parties and conditions, and consistent with the national terms.

6. Exceptions. It may be that exceptions may occur where there will be some instances of an individual employee or assignment with substantially less dirtiness than that normally encountered in normal carrier duties. I have reference to such types of exceptions as the following - carriers on light or limited duty with other than normal carrier work such as answering the telephone or typing, medical attention on a job injury, classroom training, unusual fill-in or make available work, some other type of unique assignment or circumstance. The parties did not mention nor dwell on such types of unique conditions as exceptions from the concept of "every" carrier under the clause. Rather they addressed themselves to the normal customary type of carrier work encountered. By here recognizing or conceptualizing that there may be exceptions, I do not feel this in any way minimizes nor detracts from the applicability

of the general rule or standard otherwise or normally applied. With the understanding that the existing local provision already applies to the normal circumstances of normal carrier duties, it could be interpreted to already allow for the types of exceptions here described and allowed for.

7. The employer proposal conflict. As the context of this matter and these concepts become understood, it becomes apparent that the very proposal of the employer to change the existing provision would represent a conflict with Article 8.9 and an inconsistency with it and 30.B.1. This is so because it would propose a limitation and reduction in wash-up time, inconsistent with the national terms, and would more expressly conflict with 8.9 by withdrawing or failing to provide wash-up periods for employees engaged in dirty or toxic work. Under the guise of abstractly reasonable language, the employer's proposal contains the underlying premise of only an occasional applicability not proven nor supported.

8. FINDING-CONCLUSION: Accordingly, on the basis of the above, I find and conclude that the union has amply supported and proven that its position is correct, that the existing local provision is consistent and in compliance with Article 8.9, and is a fully satisfactory local implementation maintained by the parties for many years under Article 30.B.1. The employer's claim of a conflict, and proposal for a more limited applicability and revision of the provision, is therefore rejected. The union is entitled to an award in its favor.

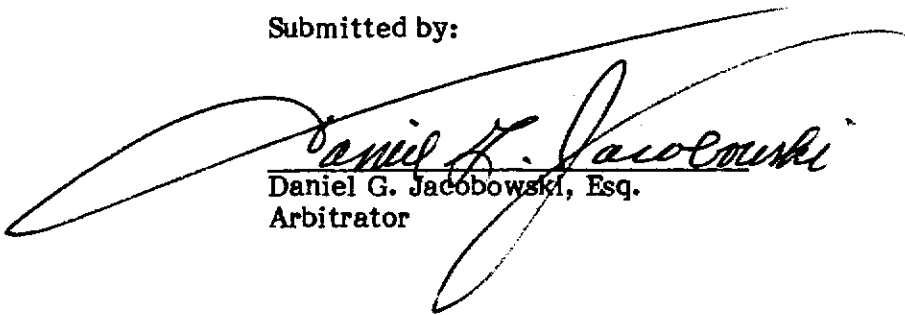
DECISION - AWARD

DECISION: The union position is correct, that the existing local provision on wash-up periods does not conflict with the national agreement, and is fully satisfactory as is. The employer's claim of a conflict and proposal for revision is rejected.

AWARD: The existing local provision continues to remain as is without any revision.

Dated: April 20, 1987

Submitted by:



Daniel G. Jacobowski, Esq.
Arbitrator