

REGULAR ARBITRATION PANEL

C#12691

In the Matter of the Arbitration)
Between) GRIEVANT: Class Action
UNITED STATES POSTAL SERVICE) POST OFFICE: Grand Junction,
And) Colorado
NATIONAL ASSOCIATION OF LETTER) CASE NO. CON-4U-C 4150
CARRIERS) GTS. NO. 005479

BEFORE: Albert A. Epstein, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Ms. Paulette A. Otto
Manager of Labor Relations

For the Union: Mr. Andrew T. Petersen
Local Business Agent

Place of Hearing: Post Office
Grand Junction, Colorado

Date of Hearing: Tuesday, Octoger 27, 1992

AWARD: 1. The United States Postal Service at Grand Junction, Colorado, violated the Labor Agreement between the parties and the established past practice when it unilaterally reduced the morning break from 15 minutes to 10 minutes as of October 2, 1991.
2. Because the Postal Service acted in good faith and relied upon its understanding of the terms of the National Agreement relating to the 10-minute break periods, there shall be no back pay compensation awarded to any of the class of grievants whose 15-minute morning break period was reduced to 10 minutes as of October 2, 1991, but the Grand Junction Post Office is directed to forthwith reinstate the morning 15-minute break period to all employees within the classification previously entitled to it.

DATE OF AWARD: Saturday, December 26, 1992


Albert A. Epstein, Arbitrator

UNITED STATES POSTAL SERVICE

ARBITRATION AWARD

In the Matter of the Arbitration))
Between) CASE NO. CON-4U-C 4150
UNITED STATES POSTAL SERVICE)
Grand Junction, Colorado) GTS. NO. 005479
And)
NATIONAL ASSOCIATION OF LETTER) ALBERT A. EPSTEIN
CARRIERS, BRANCH #319) Arbitrator

CLASS ACTION GRIEVANCE RE BREAK TIME

THE PROCEEDINGS

The above parties, unable to resolve a grievance relative to the length of the morning breaks since October 2, 1991, submitted the matter to the undersigned for arbitration under the terms of their Labor Agreement.

A hearing on the matter was held at the Grand Junction, Colorado, Post Office on October 27, 1992. Both parties were represented and fully heard, testimony and evidence were received and both parties made oral closing arguments.

APPEARANCES

For the Postal Service:

Ms. Paulette Otto

Manager of Labor Relations

Mr. Rob Whitman

Manager, Station Branch Operations

For the Union:

Mr. Andrew T. Petersen	Local Business Agent
Ms. Judy Rankin	Technical Assistant
Mr. Raymond Kuhn	Steward
Mr. George Sant	Area Maintenance Specialist

THE ISSUE

Did the Postal Service violate the Labor Agreement between the parties and/or an established past practice when it unilaterally reduced the morning break from fifteen (15) minures to ten (10) minutes?

If so, what is the appropriate remedy?

PERTINENT LABOR AGREEMENT PROVISIONS

ARTICLE 3
MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;

ARTICLE 5

PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

PERTINENT MANAGEMENT OF DELIVERY SERVICES BULLETINS

242.34

.34 Street Time Allied Work Rules

.341 The carriers at the delivery unit will receive two 10 minute break periods (unless the local union opts to have the carriers in the delivery unit take one of the 10 minute break periods during office time). If two 10 minute breaks are taken on the street, they will be separate from each other. Breaks must be separate from the lunch period. The carrier shall record on Form 1564-A, *Carriers Route Book—Route Instructions*, the approximate location of the break(s). Reasonable comfort stops will not be deducted from the carrier's actual time.

PERTINENT M-39 HANDBOOK, MANAGEMENT OF DELIVERY SERVICES PROVISIONS

Section 222.214 -b, 3, e...at the option of the local Union, the Carriers of Delivery Unit will receive one 10-minute break period in the office (rather than two such 10-minute breaks on the street).

Section 222.341 - The Carriers at the delivery unit will receive two 10-minute break periods. The Local Union may annually opt to have either (a) both breaks on the street or (b) one of the 10-minute breaks in the office and one on the street, they will be separate from each other.

DISCUSSION AND OPINION

The issue in the instant case arises because carriers at the facility have had one 15-minute break in the morning and one 10-minute break in the afternoon until October 2, 1991, when the Management directed City Letter Carriers to take two 10-minute breaks - one in the morning and one in the afternoon. This change resulted in the instant grievance.

It is the position of the Union that past practice at the Grand Junction Post Office has always involved a 15-minute break in the morning and a 10-minute break in the afternoon, and that this practice has been in existence for nearly 20 years. In support of this position, the Union provided statements of witnesses who were City Letter Carriers substantiating this past practice, and the Union claims that the 15-minute morning break practice existed even though the Postal Service officials urged the Carriers to record only an official 10-minute break, even when this break time was permitted up to 15 minutes, as a matter of practice.

The Postal Service acknowledges that a 15-minute morning break had been in practice for several years but was unable to research the basis of how this 15-minute break came into being. It suggests that there were limited people who were involved or remembered how the 10-minute break was expanded to 15 minutes, but it is thought that the extra 5 minutes was to allow Carriers to read the Bulletin Board. The Postal Service admits that somehow over the years the extra 5 minutes became a part of the 10-minute

morning break.

Postal Service Management met with the Union during September of 1991, advising the Union that the breaks, both morning and afternoon, would be 10 minutes, effective October 2, 1991, and that it expected all Letter Carriers to be adhering to this directive.

Management takes the position that even though the morning breaks have been allowed to expand to 15 minutes, the Union has been advised of the change and expected Carriers to adhere to the Management's directive and the provisions which were outlined in the M-39 Handbook, as set forth above.

It is the position of the Postal Service that a past practice cannot override the specific terms of the Labor Agreement between the parties. Postal Service Management maintain that street Carrier investigations and general practice in the Postal Service indicated that the 15-minute break which the Carriers at Grand Junction were permitted during the period prior to October 2 were most unusual, so Management decided to strictly enforce the 10-minute break, both morning and afternoon, as per the general practice and the Labor Agreement. In support of its position, the Postal Service presented a cost analysis which indicated that on an annual basis the additional 5-minutes added to the morning break would cost approximately \$17,600.00 per year.

The Union argues that prior to 1978, the Postal Service had no standard break policy and although there was a good deal of variance amongst other post offices, Grand Junction had the

morning 15-minute break. It maintains that although the parties reached an agreement on the 10-minute break periods, it was agreed at the National level that longer break periods might continue in certain areas, depending on local negotiations.

The Union argues that in fact local longer breaks were permitted at the National level and that 15-minute breaks still exist at Grand Junction. It reiterates that supervisors sat in on discussions relating to 15-minute breaks and directed employees to record 10 minutes as the actual official breaks for inspection purposes, despite the fact that employees took 15 minute breaks. The Union notes that the M-39 Handbook does not limit breaks to 10 minutes but guarantees at least 10 minute breaks.

The Union also contends that there is no specific evidence supporting the position of the Postal Service relating to the projected savings if the 15-minute breaks were reduced to 10 minutes. It also notes that Management was aware that employees were taking 15 minute breaks, according to the timecards, and, furthermore, that there is no evidence to refute the fact that the 15-minute past break period was ever specifically barred.

The Union requests that its grievance be granted and that a remedy, depending on the number of people involved, be determined as compensation to the individuals adversely affected.

In rebuttal, the Postal Service points out that prior to the reorganization there was in effect no past practice and that there was no testimony as to who negotiated the original 15 minutes, although both parties had discussions on the point.

It is the contention of the Postal Service that in order to be an overriding factor there must be specific supporting evidence of the past practice to a degree which has not been presented in the instant case.

The Union in its rebuttal contends that the reduction in the break time was in violation of the National Agreement because the 15 minute break time was negotiated by the local parties and was intended to allow Letter Carriers extra time to sit and rest and, furthermore, the 15-minute break period has been in effect for over the past 20 years and that parties at the National level entered into an agreement allowing breaks of longer than 10 minutes to remain in effect. The Union charges that the reduction of break time is a unilateral action prohibited under the terms of Article 5 of the Labor Agreement.

I have examined the testimony, evidence and arguments of the parties and I find that the core of the issue before me is whether the past practice at the Grand Junction Post Office, prior to October 2, 1991, where 15-minute morning breaks were permitted, is strong enough to amend and overcome the National Agreements where by negotiation the parties agreed upon two 10-minute daily break periods, but allowed the possibility of longer than 10-minute breaks to remain in effect under specific local arrangements.

I agree with the Union's position that the long standing past practice at Grand Junction assumed the proposition that the parties would permit a 15-minute morning break period. Testimony in the record indicates that this 15-minute practice was

carried out at Grand Junction for a period of up to 20 years prior to the October 2, 1991, directives. It also appears that the Postal Service Management was aware of this practice because employee time records indicated 15 minute breaks and, furthermore, there was also evidence that local management, insofar as official reporting was concerned, directed employees to list their morning breaks as a 10-minute period, even though 15 minutes was allowed with the full knowledge of the local Post Office. Although there was some contrary testimony by Postal Service witnesses, the overwhelming evidence is that the 15-minute long standing break practice was in effect at Grand Junction with the full knowledge of Management which, therefore, condoned the practice.

The circumstances surrounding the alleged 10-minute break period agreement are such that it appears that such an agreement was intended to set forth a 10-minute guaranteed break, but was subject to other local arrangements and circumstances such as a long standing accepted past practice which would permit longer periods of break time.

I find further support for the Union's position in the fact that supervisors at the station were permitted to take 15-minute break periods.

The long term 15-minute break period practice meets the terms usually required as a basis for accepting a binding past practice because the past practice was exercised with the full knowledge of Management which appears to have condoned this practice even to the extent of requiring employees who received

the 15-minute break to officially record those breaks as 10-minute periods.

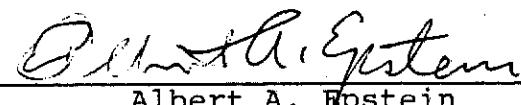
Because of the circumstances set forth above and based upon the most credible testimony in the record, I find that there was in fact a long term binding past practice which permitted employees at Grand Junction to take 15-minute morning break periods and that this practice overcomes and amends any 10-minute break period agreements entered into between the parties. In addition to the evident past practice, I find that the arrangements made at the National Level contemplated and permitted extention of the 10-minute periods in the case of contrary local agreements and situations where existing long term practices to the contrary were involved.

An award will issue accordingly.

A W A R D

1. The United States Postal Service at Grand Junction, Colorado, violated the Labor Agreement between the parties and the established past practice when it unilaterally reduced the morning break from 15 minutes to 10 minutes as of October 2, 1991.
2. Because the Postal Service acted in good faith and relied upon its understanding of the terms of the National Agreement relating to the 10-minute break periods, there shall be no back pay compensation awarded to any of the

class of grievants whose 15-minute morning break period was reduced to 10 minutes as of October 2, 1991, but the Grand Junction Post Office is directed to forthwith reinstate the morning 15-minute break period to all employees within the classification previously entitled to it.



Albert A. Epstein
Albert A. Epstein
Arbitrator

Northbrook, Illinois
December 26, 1992

AAE:lm