

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration *

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between *

* GRIEVANT: Class Action

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UNITED STATES POSTAL SERVICE *

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* POST OFFICE:

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* North Haven, CT

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and *

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* CASE NO: B06N-4B-C 12386689/

*

19-668-12

NATIONAL ASSOCIATION OF LETTER
CARRIERS *

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* *DRT # 14-260313*

BEFORE: John B. Cochran, ArbitratorAPPEARANCES:For the U.S. Postal Service: James Lloyd
Labor Relations SpecialistFor the Union: Vincent J. Mase
President, Branch 19PLACE OF HEARING: North Haven, CT**RECEIVED**DATE OF HEARING: May 10, 2013¹

OCT 23 2013

AWARD**VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS**DATE OF AWARD: September 16, 2013Management at the North Haven P.O. did not violate
Articles 3, 5, 8, 19, 32 and/or 41 of the National
Agreement and more specifically disregard resolved
grievance #19-888-08, when they unilaterally¹ The parties presented additional evidence via conference call
on May 29, 2013

conducted a minor route adjustment on carrier route 9 and privately contracted out the pickup of mails at Parcel Port at 33 Stiles Lane. Therefore, the grievance is denied.


John B. Cochran, Arbitrator

ISSUE:

The parties stipulated to the following issue:

Did management at the North Haven P.O. violate Articles 3, 5, 8, 19, 32 and/or 41 of the National Agreement and more specifically disregard resolved grievance #19-888-08, when they unilaterally conducted a minor route adjustment on carrier route 9 and privately contracted out the pickup of mails at Parcel Port at 33 Stiles Lane? If so, what is the proper remedy?

PERTINENT CONTRACT LANGUAGE:

National Agreement

**ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE**

Formal Step A

(c) The installation head or designee will meet with the steward or a Union representative as expeditiously as possible, but no later than seven (7) days following receipt of the Joint Step A grievance Form unless the parties agree on a later date. . .

(d) At the meeting . . . The Employer representative shall also make a full and detailed statement of facts and contractual

provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Articles 17 and 31 . . .

(e) Any resolution of a grievance in Formal Step A shall be in writing or shall be noted on the Joint Step A Grievance Form, but shall not be a precedent for any purpose, unless the parties specifically so agree or develop an agreement to dispose of future similar or related problems . . .

ARTICLE 31 UNION-MANAGEMENT COOPERATION

Section 3. Information

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement . . .

ARTICLE 32 SUBCONTRACTING

Section 1. General Principles

A. The Employer will give due consideration to public interest cost, efficiency, availability of equipment, and quantification of employees when evaluating the need to subcontract.

B. The Employer will give advance notification to the Union at the national level when subcontracting which will have a significant impact on bargaining unit work is being considered and will meet to consider the Union's view on minimizing such impact. No final decision on whether or not such work will be contracted out will be made until the matter is discussed with the Union.

C. The Employer and the Union agree that upon the request of the NALC National President, the Employer will furnish relevant cost information prior to the commencement or renewal of any contract delivery route which performs service formerly performed in a particular installation by a city letter carrier. The Employer's decision as to whether to commence or renew the contract delivery route will be made on a cost effective basis.

FACTS:

2008 Grievance Resolution

In 2008, the Union filed Grievance No. 19-888-08 alleging that management at the North Haven Post Office had violated Articles 3, 8, and 41 of the National Agreement by having full-time regular carrier Lou Papa do the Parcel Port run at 33 Stiles Lane on overtime while the full-time regular on that route worked eight (8) hours. The Postal Service representative at Formal Step A was Owen Davis, the Officer in Charge of the North Haven Post Office. Davis resolved the grievance as follows: "Parcel Port at 33 Stiles Lane is a "stop" on Route 9. Daily delivery and pick-up of mails for Parcel Port are the responsibilities of the FTR carrier on Route 9 that day." In August 2009, the Step B team resolved grievance 19-186-09, agreeing that management would cease from improperly altering time rings of letter carriers on Route 9.

As part of its decision, the B team in that case referenced Grievance No. 190888-08

Subcontracting Parcel Pick Ups at Parcel Port, 33 Stiles Lane

Prior to April 23, 2012, letter carriers represented by the Union picked up all parcels from Parcel Port², which is located at 33 Stiles Lane on delivery Route 9 in North Haven, CT. At that time, the Postal Service began contracting with HCR's to make daily pick-ups from Parcel Post. According to Anthony Maiorino

(Maiorino), the Supervisor Customer Service at the North Haven Post Office, the Service made the change because the carrier assigned to Route 9 was making multiple stops to pick up parcels at Parcel Post during the day and it was inefficient for her to make so many stops at that location. Further, the Service determined the carrier could not properly handle the volume of mail being generated by Parcel Post in her small delivery truck and often had to leave packages behind to be picked up the next day or assign another carrier to assist with a final pick up at Parcel Post. In addition, the Service projected the additional revenue it would receive from Parcel Post as a result of making that change. Accordingly, the Service decided to have the transportation contractor (HCR)³ that services the North Haven facility stop directly at Parcel Post, pick up all of the packages at that location at the end of the day, stop to pick up mail at the North Haven facility, and take all of the mail to the Southern CT P&DC in Wallingford, CT. Maiorino also represented that the change to how mail was picked up from Parcel Post did not constitute a formal route adjustment because Parcel Post continued to be a delivery point on Route 9, and the carrier assigned to that route still stops at Parcel Post twice a day. As a result of the change in how packages are picked up from Parcel Post, the

² Parcel Post is a packaging business.

³ Highway Contract Routes (HCR) are transportation routes serviced by independent contractors pursuant to the collective bargaining agreement between the Postal Service and the American Postal Workers Union, which represents postal employees in the motor vehicle craft.

time carriers spend picking up and delivering mail to that location has decreased from approximately two to two and a quarter hours each day to thirty minutes each day.

Prior to making the change on April 23, no representatives of management at the North Haven Post office notified the Union about the change or met with the Union to discuss it. However, the Service did notify Union representatives Andre James and Steve Rollier on May 11, 2012 that a truck was making daily parcel pickups from Parcel Port.

The Union grieved the Service's decision to have an HCR pick up parcels each day from Parcel Port, and Union representative Stephen Rollier (Rollier) met with Owen Davis (Davis), who was the OIC at the New Haven facility. According to Rollier, he requested information from Davis about any cost analysis the Service did prior to the change, but never received any cost analysis or other information that would enable him to determine whether the Service was saving money by having an HRC do the parcel pick up from Parcel Port. Union representative Michael Oros met initially with Maiorino at Formal Step A. At that time, Maiorino took the position that the cost of having a letter carrier pick up mail at Parcel Port several times a day was more than what the Service was paying a contractor to pick up that mail. Further, he claimed the additional trips the carrier was making presented a safety risk and resulted in additional wear and tear on the carriers LLV. The grievance proceeded to Step B, and the Step B team remanded it back to Formal Step A to further consider the matter and

instructed the parties to further develop the following issues: cost benefit, safety issues, and any and all other evidence the parties thought was relevant.

After the remand, Oros met at Formal Step A with Leslie Quental (Quental), who had become the Postmaster at the New Haven facility in November 2012. According to Quental, the two discussed the cost benefit and efficiency of having an HCR truck pick up the packages at Parcel Port, and she provided Oros with copies of e-mails she had received showing the cost of adding Parcel Port on the existing HCR contract and provided him with comparisons about what it would cost the Service to have carriers doing additional pick-ups on overtime. She acknowledges she never provided the Union with a copy of the Service's contract with the HCR, but claims Oros never asked for it. Oros and Quental also discussed whether it was most efficient to use a big truck to pick up packages from Parcel Port and then proceed to the plant because of the impact on the outgoing mail run from the plant to Wallingford.

POSITIONS OF THE PARTIES:

Union

The Union's position is that the Service violated Articles 3, 5, 8, 19, 32 and 41 of the parties' National Agreement by using private contractors to pick up parcels previously picked up by letter carriers at Parcel Port. As a remedy, the Union asks that

the work be returned to the letter carrier assigned to Route 9 and that affected letter carriers be made whole for 7.5 to 8.75 hours of work a week that they lost because of the change. The Union advances several arguments in support of its position.

First, the Union contends that the Service violated the Union's due process rights by failing to provide the documentation the Union requested in violation of Articles 15.2(d), 31, and 32. In the Union's view, because the Service failed to provide that information as requested at the earlier steps of the grievance procedure, it should be precluded from relying on it now as a basis for claiming that it properly subcontracted the daily package pick-up at Parcel Port.

Next, the Union argues that I should apply the reasoning of Arbitrator Simmilkjaer in *United States Postal Service and National Association of Letter Carriers, AFL-CIO*, Case No. B01N-4B-C 06094135 (2007) to the facts here. According to the Union, Arbitrator Simmilkjear determined that a decision by the Postal Service to use a private contractor was a violation of Article 5 because the Service did not give the Service notice or an opportunity to bargain before making a unilateral change in a past practice. In reaching that conclusion, the arbitrator concluded that the Service's reliance on the subcontracting language of Article 32 was an afterthought because it had never introduced any of the data it relied on for its decision. Similarly, the Union argues, management at the North Haven Post Office did not provide any information about the data it relied on at the time it decided

to use an HCR to pick up packages at Parcel Port in April 2012. Rather, it is just using that claim now as an afterthought to escape what was a blatant change in past practice.

Finally, the Union asserts that the Service has completely ignored the grievance settlement in Grievance 19-888-08. Regardless of whether that grievance settlement is precedent setting, the Union argues that the Service was bound to comply with it and continue to use carriers to perform all pick ups and deliveries on Route 9.

Postal Service

The position of the Postal Service is that it did not violate either Article 32 or a prior grievance settlement when it began using an HRC to do a daily pick up of outgoing packages at Parcel Port. Therefore, the grievance should be denied.

The Service contends the settlement agreement relied upon by the Union did not provide that the FTR on Route 9 would do all delivery and pick-up of mail at Parcel Port. To the contrary, PTF's and carriers on the overtime desired list have routinely assisted with pick ups at Parcel Port since the parties entered into that settlement.

According to the Postal Service there is also no merit to the Union's argument there was an improper route adjustment to Route 9. It claims that, although there was a change in the number of times the carrier on Route 9 stopped at Parcel Port each day,

there was no formal route adjustment because no delivery points were added to or removed from the route. Rather, Parcel Port continued to be a delivery point and continued to be serviced by the carrier on the route twice a day.

Next, the Service contends that it considered cost, efficiency, and availability of equipment when it decided to have an HRC do a daily pickup at Parcel Port. In support of its argument on this point, the Service points to Maiorino's testimony that it was not efficient to have the carrier on Route 9 make multiple stops at Parcel Port and there were complaints from the customer that parcels were left at the end of the day because the carriers LLV could not carry them all. Further, it was more cost efficient to pay the additional cost of \$23 a trip for the HCR to stop at Parcel Port than to pay multiple carriers on overtime to do all of the pickups at that location.

Finally, the Postal Service asserts there was no obligation to notify the Union in advance of the change pursuant to Article 32 because there was no significant impact on the work being done by unit members. The HRC contract was governed by the collective bargaining agreement between the Postal Service and the APWU. Further, only one individual letter carrier was impacted, and that impact was minimal.

DISCUSSION:

First, I must address the Union's argument that having an HCR make a daily stop at Parcel Port to pick up packages violated

a 2009 settlement agreement between the parties. The Union's claim in that grievance was that the Service was assigning a carrier, other than the full-time, regular carrier on Route 9 to pick up parcels at Parcel Port on overtime. Davis resolved that grievance by recognizing that "Daily delivery and pick-up of mails at Parcel Port are the responsibility of the FTR carrier on Route 9 that day." Significantly, Davis's decision did not say that only the full-time regular mail handler on the route could ever pick up packages at Parcel Post. Rather, his decision, when read in the context of the grievance, can only be fairly read to conclude that, if picking up packages at Parcel Port involves overtime, the overtime work would belong to the regular, full-time carrier.

Even if Davis's decision can be read to award all deliveries and pick-ups at Parcel Port to the regular carrier on the route, the language of Article 15, Section 2, Formal Step A states in clear, unambiguous terms that any resolution of a grievance at that step "shall not be a precedent for any purpose, unless the parties specifically so agree or develop an agreement to dispose of future similar or related problems. Therefore, because there is no evidence of an agreement concerning the effect of Davis's resolution before me, it is not binding in this proceeding, and I must proceed to decide whether the disputed change in picking up packages at Parcel Post violated the parties agreement, not whether it violated the 2009 grievance settlement.

Relying on a 2007 award by Arbitrator Simmelkjer, the Union

argues that management in North Haven violated Article 5 by altering the past practice of having the carrier on Route 9 pick up all packages at Parcel Post. In his award, Arbitrator Simmelkjaer considered the relationship between Article 5. He concluded that, although Article 32.1 might have been an appropriate process for having an HCR perform an Express Mail run previously done by letter carriers, it was not in that case because the supervisor testified he did not consider or treat it as a subcontracting issue. Therefore, the language in Article 5 prohibiting unilateral changes governed.

Here, in contrast, I am satisfied that management at North Haven did treat the decision to have an HCR pick up packages at Parcel Port to be a subcontracting. Therefore, I must determine whether it properly considered the criteria in Article 32.1(A) before implementing that decision. Maiorino testified that management at North Haven had received complaints from Parcel Port about packages being left at the end of the day. According to Maiorino, the Service decided to use the daily HCR run at Parcel Port because it was inefficient to have the regular carrier make multiple stops at Parcel Port in a small LLV each day. Further, it was not possible for her to complete her route, including the multiple stops at Parcel Port within her scheduled tour, resulting in overtime. Further, a March 6, 2012 e-mail from Ana Cokkinias to Davis reflects projected revenue the Service would receive from Parcel Port because of the change. Similarly, a series of additional e-mails between Cokkinias and Davis shows the Service

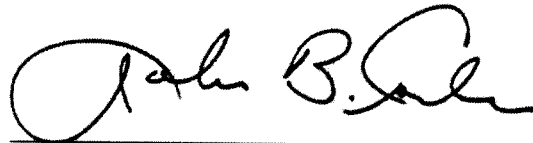
evaluated the benefits of the change and continued to monitor the positive effects after the change was made.

It is disturbing to me that the Service did not share more of the information it relied on before deciding to have an HCR do a daily pickup at Parcel Port. Perhaps if the Service had been more forthcoming, this matter could have been resolved at an earlier step of the grievance process, without the need for arbitration. Rather, the matter had to be remanded back to the local parties by the Step B team, and it was not until then that the Service shared much of the information it was relying on for the change. The issue before me is not whether the Postal service participated in good faith in the grievance arbitration procedure, but whether it violated the National Agreement or the prior grievance settlement by contracting out a daily parcel pickup at Parcel Port. For the reasons above, I find that it did not, and the grievance must be denied.

AWARD:

Management at the North Haven P.O. did not violate Articles 3, 5, 8, 19, 32 and/or 41 of the National

Agreement and more specifically disregard resolved grievance #19-888-08, when they unilaterally conducted a minor route adjustment on carrier route 9 and privately contracted out the pickup of mails at Parcel Port at 33 Stiles Lane. Therefore, the grievance is denied.

A handwritten signature in black ink, appearing to read "John B. Cochran". The signature is fluid and cursive, with a large initial "J" and "C".

John B. Cochran, Arbitrator

Vinalhaven, ME
September 16, 2013