

C# 03902

In the Matter of
UNITED STATES POSTAL SERVICE
AND
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

SIN-3D-C-1697
C. TALLEY
ATTALLA, ALABAMA

APPEARANCES

For the Employer: - Roland McPhail, Labor Relations Executive
For the Union: - Ben Johnson, National Business Agent

ISSUE

Did the Postal Service violate either Article 5 of the National Agreement or the provisions of the M-39 Handbook in refusing to allow the Grievant, Cecil Talley, to eat his lunch at 104 Lester Street, as he has done in the past?

HISTORY OF THE PROCEEDINGS

The parties failed to reach agreement on this matter, and it was submitted to arbitration for resolution.

Pursuant to the contractual procedures of the parties, the undersigned was appointed as Arbitrator to hear and decide the matter in dispute.

The date for the Hearing of this matter was set for Friday, April 1, 1983, and the Hearing was held on that date at the Main Post Office, 401 North 4th Street, Attalla, Alabama, commencing at 9:00 o'clock a.m.

At the commencement of the Hearing, it was stipulated by the parties that this matter was properly before the Arbitrator for decision and that all

steps of the arbitration procedure had been followed and that the Arbitrator had the authority to render the decision in this matter.

After the Hearing, it was agreed that the parties would present oral closing arguments in lieu of the submission of Post-Hearing Briefs.

SUMMARY STATEMENT OF THE CASE

On October 6, 1981, Postmaster Jim Johnson approached the case of Regular Letter Carrier, Cecil Talley, (hereinafter sometimes referred to as "Grievant"), removed the route book of the latter and deleted 104 Lester Street as an authorized lunch stop for the Grievant.

Cecil Talley subsequently filed a grievance and a Step 1 meeting was held on October 20, 1981. Pursuant to Article XV of the National Agreement, the grievance was appealed on October 29, 1981, to Step 2 of the grievance procedure alleging a violation of, but not limited to, Article V of the National Agreement and Part 126.5 of the M-39 Handbook. By way of corrective action, it was requested that the lunch stop at 104 Lester Street be restored and in addition that harassment of Union Steward Cecil Talley be stopped (Joint Exhibit No. 2).

On November 19, 1981, James L. Helton, Jr., Acting SCD/E&LR in a Memorandum to N. A. Russell, President, NALC, Branch 1047, Subject: Step 2 Grievance Decision stated in relevant part as follows (Joint Exhibit No. 2):

This refers to your meeting of November 13, 1981, with my designee, Mr. L. R. Johns, concerning the above-captioned Step 2 grievance.

Based upon information contained in your appeal, as well as for reasons and discussion presented in the above-mentioned meeting, management takes the following position:

Management understands that one of the designated lunch stops for the grievant was at a location off the grievant's route. The Postmaster recently learned of this and advised

the grievant to select another stop located on his route. When the grievant did not do so, the Postmaster deleted the off route stop.

Handbook M-41 requires the Postmaster to assign lunch stops on the carrier's route if at all possible. Management has determined that there are between three and six suitable stops the grievant can select, eliminating the need to deviate. Three of those locations are the school, Key Corner, and Jiffy Mart.

For the above-stated reasons this grievance is denied.

* * *

On December 2, 1981, the decision rendered at Step 2 was appealed to Step 3 of the grievance procedure pursuant to Article XV, Section 2 of the National Agreement. On January 26, 1982, James Greason, Jr., Labor Relations Division, in a letter to Mr. Ben Johnson, National Business Agent, Subject: Step 3 Grievance Decision stated in relevant part as follows (Joint Exhibit No. 2):

This is to confirm the disposition of the subject Step 3 grievance appeal which was recently discussed.

Based on information presented and contained in the grievance file, the grievance is denied. No violation of the Agreement has been shown, although the location that the carrier desires may be closer, the Postmaster's decision in this case to not allow 'deviation' off the route is proper.

* * *

On February 2, 1982, the Union appealed the Step 3 decision and requested arbitration.

Provisions of the National Agreement entered into as of the 21st day of July 1981, by and between the United States Postal Service, (hereinafter referred to as "Employer") and the National Association of Letter Carriers, AFL-CIO (hereinafter referred to as "Union"), effective July 21, 1981 through July 20, 1984 (hereinafter referred to as "Agreement") (Joint Exhibit No. 1)

considered pertinent to this dispute by the parties are as follows:

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.

ARTICLE 19

HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the National level at least sixty (60) days prior to issuance. At the request of the Unions, the parties shall meet concerning

such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Unions upon issuance.

Provisions of the M-39, TL-8, 1-30-81 considered pertinent hereto are as follows (Management Exhibit No. 1):

126.5 REVIEW OF CARRIER CASES AND WORK AREA

The better organized a carrier unit manager is the more he or she will accomplish. One aid in keeping the carrier work area in proper order is a checklist developed to meet local conditions and situations, modified as needed, and from which a few carrier cases can be reviewed each week. (See Exhibit 1-6) The following items are representative of those that should be checked periodically:

* * *

(2) Has the carrier entered information such as line of travel to reach the beginning of the route, line of travel to reach the lunch place, return to next delivery location, and return to office? Note: Authorized lunch periods, travel, and locations where the carrier is authorized to leave the route are recorded on form 1564-A by the carrier when the USPS provides reimbursement or transportation to and from lunch places. In all cases travel time to and from the lunch place will be charged to the lunch period. Enter on the reverse of Form 1564-A any deviation for lunch by carrier technician, utility carrier, or other regularly scheduled replacement. The carrier has the option of selecting up to three locations for lunch. When authorizing lunch places, give consideration to reasonableness of location from the standpoint of suitable eating places, and in particular to the reasonableness of the distance from the route to the eating place and back to the route. If at all possible, the authorized lunch stops should be on the line of travel. . . .

POSITIONS OF THE PARTIES

The Position of the Union:

The Union takes the position that in deleting 104 Lester Street as an

authorized place for the Grievant to eat lunch, management violated the provisions of the National Agreement, specifically Article 5 thereof.

The Position of the Employer:

It is the position of the Employer that no violation of the National Agreement has occurred by its deletion of 104 Lester Street as a lunch stop for the Grievant as management is given the authority under Article 3 of the National Agreement to approve or disapprove the location of lunch breaks.

OPINION

Central to the resolution of this matter, in the considered judgment of the Arbitrator, is the language found in Part 126.5 (2) of the M-39 Manual (Union Exhibit No. 4) which states in relevant part as follows:

. . . . The carrier has the option of selecting up to three locations for lunch. When authorizing lunch places, give consideration to reasonableness of location from the standpoint of suitable eating places, and in particular to the reasonableness of the distance from the route to the eating place and back to the route. If at all possible, the authorized lunch stops should be on the line of travel. . . .

As part of the M-39 Handbook, this provision is incorporated into and therefore becomes a part of the National Agreement under the terms of Article 19. Such provision requires notice to the Unions at the national level of proposed changes that directly relate to wages, hours, or working conditions. In the matter at hand, the Union urges that the Employer has violated Article 5 of the National Agreement in unilaterally changing the terms of the M-39 Handbook without proper notification to the National Union.

In support of its position that its action herein was proper, reference is made by the Employer to Article 3 of the National Agreement which states, in substance, that management has retained the right to direct employees in the performance of their official duties and to determine the methods, means

and personnel necessary to the conduct of its business including the use and non-use of vehicles by employees. As applied to the instant case, the Employer maintains that it has the authority to determine and to change lines of travel in the best interests of the Postal Service and that it has the sole discretion to determine where the lunch break is to begin, where each delivery point will be and where the carrier will travel to lunch.

It is urged by the Employer that authorized lunch breaks, if possible, should be on the line of travel and if suitable places to eat lunch exist on the line of travel, management may authorize one or more of such places as the location for lunch. While under Part 126.5 (2) of the M-39 Manual (Union Exhibit No. 4), the carrier is given the right to list three locations for lunch, this, according to the Employer, does not mean that it is required to approve such locations. Rather, the Employer claims that the carrier only has an option that must be approved by management and that management may approve all three or none of the carrier's selections depending on whether such are reasonable to the Postal Service.

The reasonableness of its decision to delete 104 Lester Street as an authorized place for the Grievant to eat lunch is demonstrated, according to the Employer, by the testimony of Post Master James Johnson. In this regard, reference is made by the Employer to the totality of factors considered by the Post Master in deciding where the Grievant was to take his lunch break. Specifically enumerated were distance, costs, deviation from line of travel, and public image.

The record establishes that Jack's Place was approved by management as an authorized lunch place. Form 1564-A, the Carrier's Route Book-Route Instructions (Union Exhibit No. 1) reflects that 511 8th Avenue is the

Grievant's authorized break point. It is indicated by the testimony that the distance from 511 8th Avenue to Jack's Place is 2.2 miles (round trip) while the distance from 511 8th Avenue to 104 Lester Street is 1.3 or 1.4 miles (round trip) or almost a mile further on a round trip basis. The record further indicates that the Post Master testified that 104 Lester Street was changed because of the costs involved in the Grievant taking a lunch break at that location. However, it is shown that no more gasoline is required for the Grievant to travel to 104 Lester Street as is required to travel to Jack's Place, an authorized lunch stop. That 104 Lester Street, as an eating place, may not be on the Grievant's route and may, therefore, constitute a deviation of 1.3 or 1.4 miles cannot, under the circumstances here presented, be properly considered as controlling in this matter. For 104 Lester Street was previously recognized by management as an authorized lunch location for the Grievant. Absent any persuasive evidence to show that the authorized line of travel on Grievant's route had materially changed from the time 104 Lester Street was approved as an authorized lunch place, the Arbitrator can accord no controlling force to the Employer's present argument that 104 Lester Street constitutes a route deviation of 1.3 or 1.4 miles and an eating place not on the Grievant's route. Similarly, the Arbitrator can give no significant weight to the argument of the Employer that its public image is adversely affected by having other persons observe the Grievant's mail vehicle while he is taking a lunch break at 104 Lester Street, the home of his mother-in-law, and the mail not being delivered. While any appearance of impropriety of a carrier in the uniform and vehicle of the Postal Service is considered to be of the utmost importance by management, especially in a small town such as that here involved, this cannot reasonably be viewed as a persuasive factor in

the matter at hand inasmuch as management, as found herein, had authorized 104 Lester Street as an approved lunch stop for the Grievant. Moreover, there is no indication from the record submitted that any supervisors or employees relayed any complaints from neighbors or fellow employees to the Post Master relative to the Grievant having parked his Postal Service vehicle in the driveway at 104 Lester Street.

CONCLUSION

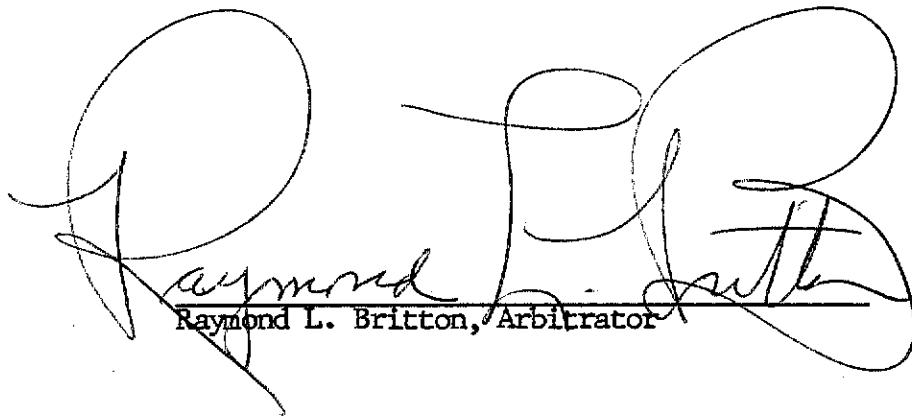
Based upon the above findings, it is the conclusion of the Arbitrator that while the Employer pursuant to the provisions of Part 126.5 (2) of the M-39 Handbook may have the authority to disapprove a lunch place that it had formerly approved of in conjunction with a carrier having exercised his or her option with respect to the selection of such lunch place, it may not do so arbitrarily or capriciously, but such change must be shown to have been for reasonable and sufficient cause.

AWARD

For the reasons given, the grievance is sustained and the Employer directed to allow the Grievant, C. H. Talley to use 104 Lester Street as a lunch location.

DATE:

November 10, 1983



A handwritten signature in black ink, appearing to read "Raymond L. Britton, Arbitrator". The signature is somewhat stylized and cursive. Below the signature, the name "Raymond L. Britton, Arbitrator" is printed in a smaller, more formal font.