

C# 08309

*In the Matter of Arbitration Between*

**UNITED STATES POSTAL SERVICE**

*and*

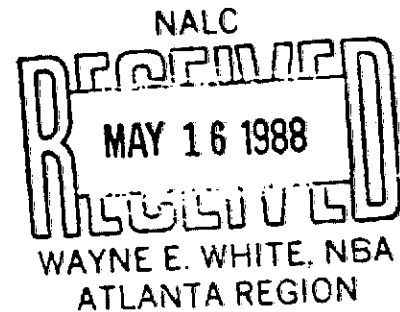
**NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO**

Arbitration File No. S4N-3W-C-23922

NALC GTS-3A-86-435

Class Action

Tampa, Florida



*Before the Arbitrator Raymond L. Britton*

#### **APPEARANCES**

Julia Michler, Supervisor, Station & Branches *for the Employer*

Judson K. Vaughn, Regional Administrative Assistant *for the Union*

#### **ISSUE**

*Whether the Employer violated the contract, specifically Article 41, Section 1.C.4, by requiring that a successful bidder on a router position deliver street duties prior to the casing of the available BBM mail on January 3, 1986?*

#### **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 January 21, 1988, and the Hearing was held on that date in Room No. 208, U.S. Post Office, 5201 W. Spruce St., Tampa Florida. 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 United States Postal Service, (hereinafter referred to as "Employer") and the National Association of Letter Carriers, AFL-CIO, (hereinafter referred to as "Union") would present oral closing arguments in lieu of the submission of Post-Hearing briefs.

## SUMMARY STATEMENT OF THE CASE

Employee R.M. Green was the successful bidder on a router position which included routes 710, 711, 713, 715, 719, 720, 723 and 724, and was regularly assigned to case all eight (8) routes. On January 3, 1986, he was directed to deliver the street duties on two routes. A class action grievance was thereafter filed and a Step 1 meeting held on January 10, 1986. Pursuant to Article XV of the National Agreement, the grievance was appealed to Step 2 of the grievance procedure on January 21, 1986, alleging a violation of, but not limited to, Articles 3, 5, 15, and 41 1c4 and stating in relevant part as follows:

*Router R. Green was used for auxiliary assistance on routes 07010 and 07018, when BBM was available for casing.*

The Union contention and the reason given for the grievance was that "Management has violated Article 41, Section 1-C-4 of the 1984 National Agreement by refusing to honor the router bid. The corrective action requested was that management "Cease violating Article 41 Section 1-C-4. That a carrier on the overtime desired list be paid 8.06 hours at the overtime rate. The Senior carrier on the overtime desired list that was off on Jan. 3, 1986.

A Step 2 meeting was held on January 21, 1986, and a decision rendered on February 7, 1986, which states in relevant part as follows:

*Mgt will make & does make every effort to use the router in his bid. However, there may be on occasion in order to keep from delaying mail due to carrier going home sick, mgt. may find it necessary to use router for auxiliary assistance. This was the case in this grievance. Regular carrier went home sick - no PTF carriers available.*

On February 27, 1986, the Step 2 decision was appealed to Step 3 of the grievance procedure. The reason for the appeal was that "Router was removed from his bid position and brought in at 7:10 A.M. There were two carriers on the O.D.L. that were available at this time to work." The corrective action requested was "That carrier on the O.D.L. with least opportunity that was off 1-3-86 be paid 8.06 hrs at the O.T. Rate.

After a Step 3 Grievance Decision on April 11, 1986, the grievance was appealed to arbitration on April 28, 1986.

Provisions of the National Agreement entered into by and between the Employer and the Union effective December 24, 1984 and to remain in full force and effect to and including 12 midnight July 20, 1987 (hereinafter referred to as "National Agreement") (Joint Exhibit No. 1) considered pertinent to this dispute 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 actions 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;*
- E. *To prescribe a uniform dress to be worn by letter carriers and other designated employees; and*
- F. *To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.*

#### ARTICLE 41

##### LETTER CARRIER CRAFT

###### Section 1.        Posting

###### C.    Successful Bidder

\* \* \*

- 4. *The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to T/6 and utility assignments, unless the local agreement provides otherwise.*

\* \* \*

#### POSITION OF THE PARTIES

##### The Position of the Union

It is the position of the Union that the Employer violated Article 41 of the National Agreement by working a router out of bid. The Union contends that Article 41, Section 1.C.4. requires that a successful bidder work on his duty assignment as posted, and that no emergency existed as claimed by the Employer to work the router out of bid.

##### The Position of the Employer

The Employer takes the position that under the circumstances and the situation presented there was no violation of Article 41 by working a router out of bid. The

Employer contends that its action was correct and in accordance with Article 3 of the National Agreement and that it was done to avoid the delay of the mails and to aid in its movement.

## OPINION

Determinative of this matter, in the considered judgment of the Arbitrator, is the language of the National Agreement, specifically Article 41, Section 1.C.4. and that found in the Implementation Guidelines - Router Program (Union Exhibit No. 5).

While acknowledging that Article 41, Section 1.C.4. of the National Agreement states that "The successful bidder shall work the duty assignment as posted," the Employer urges that the following sentence, i.e., "Unanticipated circumstances may require a temporary change in assignment" must also be considered. When so viewed, the Employer urges that its action was proper as the situation here was unanticipated and an emergency and that it therefore had to act immediately. Under such circumstances, the Employer maintains the National Agreement gives it the right to work a router out of bid. The Employer further argues that its action was taken to avoid inconvenience to its customers and to fulfill its primary mission, i.e., timely mail service to the public and therefore was correct as being within its management rights under Article 3 of the National Agreement.

The difficulty with accepting the foregoing contentions of the Employer as persuasive, however, is that such arguments are found to be based primarily on the premise that "unanticipated circumstances," as required by Article 41, Section 1.C.4 of the National Agreement, exist in the case at hand. It does not seem to the Arbitrator that in adopting such language it was the intent of the parties that a carrier going home sick or taking sick leave would constitute "unanticipated circumstances" within the meaning of such provision and thereby allow management to require a temporary change in assignment. The possibility that sickness will occur is an anticipatory event, and therefore one which supervision should be able to plan around.

While under Article 3.F. of the National Agreement, management, in "emergency situations," has the right to do whatever is necessary to carry out its mission, it is noted by the Arbitrator that "emergency situations" are defined, "... as an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature." Sickness, as hereinabove found by the Arbitrator, is not deemed to possess the characteristics described, and therefore, in his judgment, does not fall within the definition of "emergency situations" found in Article 3.F. to allow management to take the action here in question. Further supportive of this finding, is the language of Part V.E of the Implementation Guidelines - Router Program (Union Exhibit No. 5) which states in relevant part that "The router should remain at his assignment when work is available; only in extreme emergencies should he be taken off his bid assignment."

It is urged by the Employer that management had to act immediately and that as a result of its action, the public received its mail as soon as possible. Had the router not gone on the route when the sick carrier came in, the Employer maintains that the mail would have been delayed two to three hours. The Employer further points out that customers have the right to expect their mail, and contends that if management waited for

the PTF's, another situation might have developed that would have further compounded an already existing problem. In short, the Employer urges the action taken was for the purpose of furthering its mission, and that under the circumstances here described, the router was the only individual available at the time. With this, the Arbitrator cannot agree.

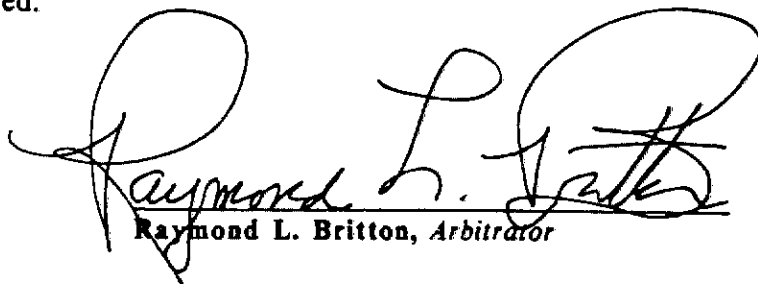
In addition to the option of working PTF's, two other options are shown to have been available to management. It could have pivoted street time with carriers in the station or it could have obtained someone from the overtime desired list. Instead, it chose, in effect, to use the router as if he were a PTF, and to assign him the duties it wished. This, it cannot properly do under the circumstances here described. There is no indication from the record submitted that any PTF worked twelve (12) hours or that anyone on the ODT list worked up to twelve (12) hours.

Based on the above findings, it is the conclusion of the Arbitrator that the action taken by the Employer was in violation of Article 41, Section I.C.4. of the National Agreement (Joint Exhibit No. 1) and Part V.E of the Implementation Guidelines - Router Program (Union Exhibit No. 5).

#### AWARD

For the reasons given, the grievance is sustained and the Employer directed to implement the action requested.

April 25, 1988



Raymond L. Britton, Arbitrator