

CH103219

In the Matter of Arbitration

between

Case No. N8-NA-0219

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

APPEARANCES: Barbara S. Fredericks and Nancy Forden, Attys.,
for the Postal Service; Cohen, Weiss & Simon,
by Bruce H. Simon, Esq., for NALC

DECISION

This grievance arose under and is governed by the 1978-1981 National Agreement (JX-1) between the above-named parties. The undersigned having been jointly appointed to serve as sole arbitrator, a hearing was held on 31 July 1980, in Washington, D. C. Both parties appeared and presented evidence and argument on the following agreed-upon issue (Tr. 10-11):

May the Postal Service deny requests for investigation pursuant to Article XVII(3) of the 1978-1981 National Agreement by Shop Stewards requesting to leave the work area to investigate grievances or to investigate specific problems to determine whether to file a grievance and for access to documents, files, and other records necessary for processing the grievance or determining if a grievance exists; and for the right to interview grievants, supervisors and postal patron witnesses during working hours in connection with situations in which a letter carrier has made an initial determination in his judgment and in the exercise of his discretion that a particular customer would object

to his lawn being crossed and where a supervisor has over-ridden that determination and issued an order that such lawn be crossed? If not, what shall be the remedy?

A verbatim transcript was made of the arbitration proceeding. Each side filed a post-hearing brief. Upon receipt of both briefs on 19 September 1980, the arbitrator officially closed the record.

On the basis of the entire record in this case, the arbitrator makes the following

AWARD

The Postal Service may not deny requests for investigation pursuant to Article XVII(3) of the 1978-1981 National Agreement by Shop Stewards requesting to leave the work area to investigate grievances or to investigate specific problems to determine whether to file a grievance and for access to documents, files, and other records necessary for processing the grievance or determining if a grievance exists; and for the right to interview grievants, supervisors and postal patron witnesses during working hours in connection with situations in which a letter carrier has made an initial determination in his judgment and in the exercise of his discretion that a particular customer would object to his lawn being crossed and where a supervisor has over-ridden that determination and issued an order that such lawn be crossed.

Such future requests in the precise circumstances set forth in the preceding paragraph must be honored by the Postal Service, as provided in Article XVII.



Benjamin Aaron
Arbitrator

Los Angeles, California
10 November 1980

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

Case No. N8-NA-0219

OPINION

I

This "lawn-crossing" dispute has a long history with which both parties are now so familiar, if not weary, that no useful purpose would be served by detailing the background facts at length. Suffice it to say that it has figured in at least five previous arbitrations, extending back as far as 1976: NC-C-178, 23 Dec. 1976; NC-E-6501-D, 8 December 1978; NC-C-7851, 3 May 1978; and NC-C-15708-D and NC-NAT-13212, 20 August 1979. The decisions in all of these cases were either written or approved by Arbitrator Sylvester Garrett; none disposes of the problem raised in the instant case.

The present grievance, filed by Vincent R. Sombrotto, President of NALC, charges that the Postal Service has violated Article XVII (Representation), Section 3 (Rights of Stewards) of the National Agreement (JX-1). That section reads in pertinent part;

When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and such request shall not be unreasonably denied. In the event that the duties require the steward to leave the work area and enter another area within the installation or post office, the steward must receive permission from the supervisor from the other area he/she wishes to enter and such request shall not be unreasonably denied.

The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review documents, files, and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied. . . .

The Postal Service insists, however, that the real issue involved in the grievance is lawn-crossing, specifically addressed in Article XLI (Letter Carrier Craft), Section 3 (Miscellaneous Provisions), Paragraph N, which states in its entirety: "Letter carriers may cross lawns while making deliveries if customers do not object and there are no particular hazards to the carrier." (Underscoring added) As will appear shortly, there is truth to both contentions.

The Postal Service bases its present policy in respect of lawn-crossing by carriers on Article III (Management Rights) of the National Agreement, which, among other things, grants the "Employer. . .the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:"

A. To direct employees. . .in the performance

of official duties; . . .

C. To. . . maintain the efficiency of the operations entrusted to it; [and]

D. To determine the methods, means, and personnel by which such operations are to be conducted. . . .

The Postal Service also cites its obligation under the Postal Reorganization Act (39 U.S.C. §101(e)) to "give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of. . . mail." Furthermore, it accuses NALC of opposing and thwarting "the mandate" in Section 661.3 of Employee and Labor Relations Manual (PS Ex. 1) that "Employees must avoid any action, whether or not specifically prohibited by the Code [of Ethical Conduct], which might result in or create the appearance of. . . c. Impeding Postal Service efficiency or economy."

Finally, the Postal Service charges that NALC is trying to gain in arbitration what it failed to win in the 1978 negotiations, when, according to John S. Humphrey, Jr., General Manager, City Delivery Division of the Postal Service, NALC unsuccessfully sought to incorporate language in the National Agreement permitting letter carriers to make the initial determination whether or not to cross lawns, depending on "safety hazards or customer preference or whatever" (Tr. 70). No changes were made in Article XLI-3-N; instead, as Humphrey testified (Tr. 71):

Well, there was no language specifically addressed to that part of the article. In a Memorandum

of Understanding. . . [it was agreed] that during the inspection process, if there was some problem as to what constituted a safety hazard between the examiner and the Carrier or whether there were [other relevant] factors [in dispute]. . . a process [would be] set up to handle that particular case. And that was that the route inspection process would be discontinued or deferred or cancelled and that the Carrier would be instructed in the proper method of shortcircuiting and following the line of travel and then the route would be reinspected. And that's all the language that was involved in the negotiation.

NALC's response to this last contention of the Postal Service, in the words of its counsel at the arbitration hearing, is that "[t]his is not a case that deals with Management ordering all lawns to be crossed. . . . This is not an Article XLI case. It's an Article XVII case" (Tr. 59).

Technically, NALC is correct. The specific situation to which the instant grievance relates is one in which a carrier has determined that a particular patron objects to having his lawn crossed; the carrier's supervisor has overruled the carrier's determination and has ordered the lawn to be crossed; the carrier's steward has filed a grievance; and the supervisor has denied the steward's request to "investigate" the grievance "on the clock," which investigation involves leaving the work area and interviewing the patron at the latter's residence. In the broader sense, however, the grievance implicates the entire lawn-crossing policy of the Postal Service, and thus Article XLI-3-N.

Unfortunately, a reading of Articles XLI-3-N and III does not automatically dispose of the issue raised by NALC.

As counsel for NALC stated in his opening remarks at the arbitration hearing, "Article XLI-3-N. . .is magnificent in its ambiguity" (Tr. 12); a statement that carriers "may" cross lawns "if" customers do not object and there are no particular hazards is hardly a definitive declaration of policy. Similarly, the management rights of the Postal Service set forth in Article III are subject in part to "the provisions of this Agreement," including, of course, Article XVII.

A colloquy between the arbitrator and the Postal Service's only witness, Humphrey, is instructive. The latter agreed that in case of a dispute between a carrier and a supervisor over a patron's wishes in respect of lawn-crossing, the final decision would have to be made by the patron. The colloquy continued (Tr. 80):

MR. AARON: Inasmuch as it is the customer who makes the final decision in these matters, how would the customers intent be ascertained?

THE WITNESS: I think in that case it would have to be ascertained by contact with the customer.

MR. AARON: And who would make the contact?

THE WITNESS: From Management's standpoint, I think the manager would or the supervisor.

MR. AARON: And would the Union have the right to make the contact?

THE WITNESS: I don't know. . . .How would Article XVII apply in that case? That's what I would answer.

The Postal Service takes the position that if it has no "hard data" -- e.g., a communication by a patron objecting

to having his lawn crossed, or a report by a carrier of some obvious physical barrier or hazardous condition that makes lawn-crossing infeasible--and is presented instead with a carrier's subjective conclusion that a lawn should not be crossed, the supervisor may properly order the carrier to cross the lawn. In that event, as Humphrey put it, "there is nothing to grieve about" (Tr. 79). That conclusion, however, seems to be contradicted by the following statement by Arbitrator Garrett in his most recent decision on the subject (NC-C-15708-D and NC-NAT-13212, p. 34):

Where a Carrier does not use a shortcut which appears to be safe to the supervisor, and the supervisor concludes that there is no reason to believe that the customer might object, then the supervisor properly may order the Carrier to use that specific shortcut. The Carrier is obliged to comply with such a direct order, but may file a grievance protesting any apparent unreasonable supervisory action. . . .

It is true that the quoted statement referred specifically to procedures to be followed during a route check, but it seems equally applicable to the present case; and if the carrier may file a grievance against the supervisor's order, then it follows that Article XVII applies to the processing of that grievance. Accordingly, the specific issue presented in this case must be resolved in favor of the grievant.

It is at once apparent, however, that this decision could, and probably would, lead to increased expense for the Postal Service, impairment of its efficiency, and some exacerbation

of its relations with its patrons, who, regardless of how they feel about having their lawns crossed, are very likely to resent the necessity of explaining their feelings to Postal Service personnel. I have decided, therefore, to make a rare exception to my practice of never giving unsolicited advice to the arbitrating parties, and to submit for their consideration a modest proposal which, if adopted, would make it unnecessary to implement the decision in this case.

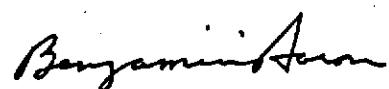
II

Obviously, the subject of lawn-crossing is one of intense concern to the Postal Service and the NALC; but I can find nothing in the voluminous record in this case to suggest that it is of an intricacy commensurate with its interest. Both sides agree that lawns need not be crossed if (1) the patron objects, for any reason or no reason; (2) if there are barriers that render such crossing infeasible; or (3) if lawn-crossing is otherwise rendered hazardous for some reason. The existence of conditions (2) and (3) may be objectively verified without bothering the patron; ascertaining whether or not the patron objects to having his lawn crossed presents the only real problem. Both parties quite sensibly dislike involving the patron unnecessarily in their disputes; but, both agree that if there is disagreement over the patron's desires, the issue can ultimately be resolved only by the patron. The Postal Service insists, however, that carriers have no right to raise that issue unless

the patron has first made known his objection to lawn-crossing.

My proposal is designed to remove any doubts about the patron's preference, without significantly increasing costs to the Postal Service, adversely affecting its efficiency, or involving the patron in disputes between the Postal Service and NALC. I propose that each patron be sent a simple form (return postage prepaid) in which he is asked to indicate if he objects to carriers crossing his lawn when they make mail deliveries. The patron should also be advised that if he does not so indicate his disapproval on the form, or if he fails to return the form, it will automatically be presumed that he has no objection to his lawn being crossed. I further propose an agreement between the parties that NALC will not communicate in any way with patrons about this matter, and that individual carriers will volunteer no statements or opinions about it to patrons.

Adoption of the foregoing proposals would, in my judgment, eliminate grievances arising from disagreements over a patron's preferences in respect of lawn-crossing. If, however, the proposals, or some variation thereof satisfactory to both sides, are not adopted, then the Postal Service must allow NALC stewards to investigate such grievances in the manner permitted by Article XVII.



Benjamin Aaron
Arbitrator