

C#
05335

ARBITRATION DECISION
October 9, 1985
#CIN-4C-C 8352 Class Action

Between

United States Postal Service
Mitchell, South Dakota

and National Association of Letter Carriers
Branch #498

ARBITRATOR: Daniel G. Jacobowski, Esq.

DISPUTE: Delivery of seasonal catalogs over 2 pounds by foot carriers.

JURISDICTION

APPEARANCES: The postal service was represented by Gregory J. Selle the employee and labor relations director at the Sioux Falls office. The union was represented by Stephen Hult, a local business agent from the Minneapolis office.

HEARING: The September 9, 1985 hearing was conducted at the Mitchell Post Office, on this contract grievance dispute, pursuant to the procedures and stipulations of the parties under their National Collective Bargaining Agreement, and their October 5, 1983 Remand Agreement for processing disputes of this nature.

ISSUE

QUESTION: Is the requirement that foot carriers deliver seasonal catalogs in excess of 2 pounds, in violation of the conditions set forth in the March 11, 1982 Arbitrator Aaron Award?

CASE SYNOPSIS: City foot carriers in Mitchell, have been required to deliver seasonal catalogs, such as Sear's, Ward's, and Penney's, with a latitude allowance of a few at a time, added to their various trip loads, spread over the course of several days. In March, 1982 the arbitrator Aaron award was rendered, in an interpretive decision under the National Agreement, setting forth the conditions and restrictions applicable when the postal service required foot carriers to deliver articles in excess of 2 pounds. Thereafter, in June, 1982, this grievance arose among others elsewhere, claiming that the local requirement violated the restrictive conditions applicable under the award. In disagreement, the postal service maintains that the requirement and latitude allowed the carriers, is consistent with the Aaron Award.

PROVISION APPLICABLE: The Arbitrator Aaron Award, of March 11, 1982, in grievance #H8N-4E-C-19254 and #H8N-4E-C-21358, is worded as follows:

"The Postal Service has the authority to require foot carriers to deliver articles weighing in excess of 2 pounds, subject to the requirement of Postal Standard for Carriers (Description of Work, Carriers), and provided that the authority is exercised only on an infrequent and nonroutine basis, when there is no other equally prompt, reliable, and efficient way to deliver the mail."

BACKGROUND - FACTS

Procedurally, the grievance here in dispute arose in June, 1982, and has been processed under the procedures of the National Agreement between the parties, and in accord with the further directions of the October 5, 1983 Remand Agreement executed by the national parties, providing guidelines for local grievances arising over questions of compliance and application under the Aaron Award. The Aaron Award itself resulted from the question raised in 2 earlier Ohio grievances, on the similar question of letter carriers who were required to carry catalogs over 2 pounds.

Mail delivery in the small city of Mitchell, is organized into 9 city routes, 3 foot carrier, and the others motorized. It is the 3 foot carrier routes located in the central part of the city, which are involved in this dispute. Also, the motorized routes provide 2 main types of supplementary or auxillary service along the 3 foot carrier routes; one, the delivery of parcel post for customers; and the other, delivering and depositing the additional trip bag loads for the foot carrier at the several relay box stations located along the routes.

The specific incident referred to in the original grievance was a June, 1982 local directive to foot carriers, that they carry and deliver from their satchels, JC Penney catalogs between June 10 and June 14, 1982, by carrying 1 or 2 in each of their trip loops. This one incident is representative of the general practice that exists in Mitchell.

Under the general practice, when the seasonal catalogs are deposited by such customers as Sear's or Penney's, they are scheduled for delivery along all of the routes, both foot and motorized. Under the system, foot carriers are expected to deliver the catalogs gradually over the course of several days, by adding 1 or 2 catalogs at a time to each of their trip loads. They are given individual discretion and latitude as to how best to distribute and accommodate the catalogs with their days and load sizes. If at the end of the period of days, such as 5, the foot carrier hasn't been able to conveniently deliver all of the catalogs, he may then deposit the remainder for delivery by a motorized parcel post carrier. When the foot carrier has a catalog which is undeliverable, he or she must retain it in the satchel during the balance of the trip until return to the next relay box or station.

The union stressed those facts or aspects of the systems which it felt most supportive of its case. It noted the types of catalog or items that can exceed 2 pounds, that are given foot carriers for delivery. Among them, heavier seasonal catalogs come twice a year from Sear's, Penney's and Ward's. Other items periodically come from LaBelle's, and a few blue books. Other items which periodically are delivered include records, Readers Digest books, and phone books. Most of the Sear and Penney catalog type items are delivered by the foot carrier, along the foot routes, though some are otherwise. The carriers noted some instances when the foot deliveries took some days longer than the 4 or 5 days prescribed. The catalogs can be, and in some instances are, delivered by the motorized carriers along with parcel post.

The postal service in turn stressed those facts and aspects of the system which it felt were supportive of its case, and which challenged the claim of the union. It noted that in the case of Ward's, Ward's has allowed the delivery of its catalogs spread over several weeks, such as in January. Also, Ward's had fewer catalogs for mail, and scheduled most of them for pick up by its customers at the store. Of further note is the recent announcement by Ward's of the scheduled plan closings of its catalog sections. A number of catalogs and similar items come in that are less than 2 pounds, and they are not involved in this dispute. In general, other than the seasonal Sear's and Penney type catalogs, other occasional items which exceed 2 pounds are encountered by a foot carrier on only an average of about once a week.

Continuing, the postal service noted that for the most part, it is the delivery of the heavier Sear's and Penney type catalog that are primarily at issue in this dispute. Generally the catalogs currently weigh about 4 1/2 pounds each. Sear's post an average order of 780 catalogs for its deliveries; a recent typical Penney posting was 757 catalogs. These in turn are scheduled for delivery over all of the carrier routes and post office boxes. An average foot carrier will end up with an average of about 50 catalogs for delivery along his route over about 5 days. These are then further divided into the various trip loads deposited into the various relay boxes, over the course of the days, with the expectation that the carrier may have 1 or 2 catalogs each trip. A number of the carriers' trips loop back to the same relay box, which can thus minimize the amount of carrying of nondeliverable catalogs.

The service explained that the average foot carrier has about 10 loop trips from the relay boxes along the route, plus the 2 ways to and from the post office. The weight of an average trip load is about 12 1/2 pounds. Under regulations, 35 pounds is the maximum allowed on an individual load carry. The addition of some catalogs to the average trip load remains well under the 35 pound limit. Carriers are allowed individual latitude and discretion as to how to best fit the catalog delivery into their trips. If they can't be handled, then he can submit the remainder for delivery to the auxiliary motorized carrier. There have been few if any criticisms of individual foot carriers in the exercise of this latitude. A foot carrier traverses the same route daily, past the same houses and businesses. Supplemental service along the foot routes of the motorized carriers, only involve stops when there is a parcel post item for delivery. Having all of the catalogs delivered by motor instead of the foot carrier, would involve both more labor time and vehicle expense.

The service also noted that its right to schedule occasional deliveries of catalogs and items over 2 pounds, within the exercise of judgment and workload accommodation, is consistent with a number of provisions, specifically the following. In the National Agreement, Article 3 on Management Rights, and in Article 34A, the principle of a fair day's work for a fair day's pay. Also, Section 614.2 of the Postal Operations Manual, and the Aaron Arbitration Award.

ARGUMENT

UNION: In general, the union argues that if the Aaron Award is to have application and meaning, then the Mitchell practice should be precluded by its conditions, where the delivery of catalogs over 2 pounds is required of foot carriers. The regularity of these catalogs throughout and over the years, and the several days required for each set of deliveries, renders them frequent and routine. It would be more efficient and faster to have the catalogs delivered by the auxiliary motor carriers who provide supplemental parallel service along the routes. The argument of the postal service that delivery by the motorized carrier would involve additional time and expense, does not directly apply to the specific concept of efficiency. The union submits that this required delivery of catalogs by the foot carriers violates the conditions set forth in the Arbitrator Aaron Award, and should therefore be precluded by a remedial award.

POSTAL SERVICE: The service argues to the contrary, that the occasional delivery of the catalogs required of foot carriers, is well within the conditions of the Aaron Award and the reasonable load limits and workload accommodations of the foot carriers. The occasions when foot carriers deliver catalogs or items over 2 pounds is only occasionally and irregularly, not frequent and not routine. The Sear's and Penney seasonal catalogs over 2 pounds, come only twice a year, in summer and winter, and are conveniently accommodated with the flexibility of the carrier's loads and trips, on a minimal basis. It is more efficient and reliable to have the catalogs delivered by

the foot carriers, who are more familiar with and daily traverse the route. The use of the motor carriers would have the additional inefficiency of the greater time and expense involved for the separate trips. The service submits that the practice in Mitchell is consistent with the conditions set forth in the Aaron Award, does not violate its restrictions.

DISCUSSION

Upon review of the submitted facts and arguments, analyzing the factors and weighing the comparative merit on both sides, this arbitrator has come to the conclusion that the facts and merits are better proven for the postal service and are more favorable to it, as next discussed.

Both of the parties have stressed the importance of each significant word and phrase in the Aaron Award. In general though, it recites 2 broad restrictions on the authority to require the delivery of items over 2 pounds by foot carriers. The 2 restrictions are one, that the authority is exercised only on an infrequent and nonroutine basis; and two, when there is no other equally prompt reliable and efficient way to deliver the mail. The issue then is over the existence or applicability of these two conditions in the Mitchell system and practice.

The arbitrator does recognize that the union has made considerable showing and merit that elements of the Mitchell situation do pertain to the restriction concepts recited in Aaron. The union case is by no means frivolous and does pose a question where an honest dispute can arise. In other words, if we think in terms of the Sears and Penney's catalogs primarily involved, their twice a year regularity requiring delivery spread over various trips and several days, does involve a certain degree or amount of frequency and routineness in the repetitive regularity. Likewise, relative to the second condition, there are elements of persuasiveness in the union claim that having the catalogs delivered by motorcarrier could be faster and therefore more efficient, and just as reliable.

However, as those elements favorable in the union's claim are weighed against the opposite position and factors stressed by the postal service, the factors of the postal service constitute greater weight and favor. For example, on the elements of frequency and routineness recited in the restriction, in terms of a daily, weekly or monthly normal and common work load, there is greater persuasiveness in the submission of the postal service, that on balance, delivery of the catalogs required by the foot carriers is not frequent and is not routine over the course of time and the typical standard workloads of the carriers. Thus, I find that the postal service has the better argument and greater showing that the assignments are more correctly described as infrequent and nonroutine.

As we look at the second broad condition, certainly the union has made some showing that the delivery of catalogs by motorcarrier could be effective, and even faster if the speed were so scheduled and accommodated. Yet, even on this consideration, the union's claim is quite effectively challenged by the considerations of the postal service. On the concept of promptness, speed alone is not the only determinate. The promptness must be considered consistent with the time or speed required or appropriate. The delivery of catalogs is a lower priority than the speed of delivering first class mail. The store customers themselves contemplate delivery spread over the course of several days. The foot carrier is more familiar with the route and the individual delivery points, and traverses the route daily anyway. These 2 concepts add to the greater weight of reliability and efficiency claimed by the postal service in having the deliveries by foot. Similarly, the element of additional cost and time for the separate trips that

would be required if delivered by motorcarrier, are also an additional valid dimension in the concept of efficiency as argued by the postal service. An additional element of efficiency accrues in the latitude and flexibility allowed the foot carrier to fit and accommodate the catalog deliveries into his trips and workloads. On balance then, there is greater showing and favor to the postal service claim that there is greater advantage and efficiency in having catalogs delivered by the foot carriers within the reasonable accommodation allowed their trips and workloads.

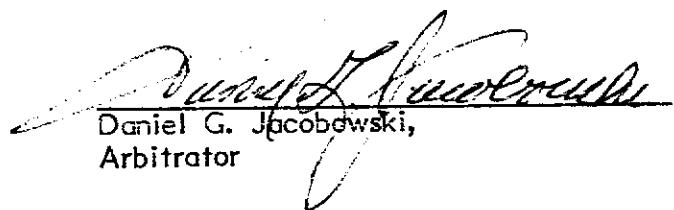
There is an additional aspect, which the arbitrator has noted and finds in favor of the postal service on this question. As this arbitrator has read the Aaron award, in context with the full companion decision, the starting point fundamental premise of Aaron in the first instance, is to stress the fundamental right of the service to require the delivery of items in excess of 2 pounds by footcarriers save and except for the restrictions he recites in the decision. Although this arbitrator is not persuaded that the concept of being frequent and routine extends so far as to require being daily and constant as expressed by the opinion of the Mitchell Postmaster, nevertheless, as this arbitrator reads the Aaron Award, it is his opinion and judgment that the intent of the Aaron Award is not meant to preclude and restrict the Mitchell situation here at issue, as shown by the evidence.

DECISION

Based upon the evidence and submissions, and in accord with the above analysis and discussion, it is here determined and decided that the union has failed to prove its claim that the catalog type deliveries required of the footcarriers violates the restrictive conditions set forth in the Arbitrator Aaron Award. To the contrary, the position of the postal service is sustained, that the practice of deliveries as shown, is consistent with and in satisfaction of its rights as expressed in the Aaron Award. Accordingly, the union grievance is denied.

Dated: October 9, 1985.

Submitted by:



Daniel G. Jacobowski,
Arbitrator