

## REGULAR ARBITRATION

IN the Matter of the Arbitration

(GRIEVANT: Class Action

)

BETWEEN

(POST OFFICE: Allington Ct.

)

UNITED STATES POSTAL SERVICE

(CASE NO.: B11N-4B-C 17579617

)

and

(DRT NO.: 14-406587

)

NATIONAL ASSOCIATION OF LETTER CARRIERS (UNION NO.: 1961217ALL

BEFORE: DONALD J. BARRETT, ARBITRATOR

## APPEARANCES:

For the U.S. Postal Service: Ms. Rebecca Peperni, Labor Relations Spec

For the Union: Mr. Vincent J. Mase, Pres. Branch 19

Place of Hearing: Wallingford Ct. Plant

Date of Hearing: December 12, 2017

AWARD: This grievance is sustained.

Date of Award: December 17, 2017

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DEC 21 2017

John J. Casciano, NBA  
NALC - New England RegionAward Summary

The Union provided sufficient evidence that demonstrates the Service has failed to wash/clean the vehicles, pursuant to their LMOU on a regular basis, or to provide the Union with information requested per Article 15.3.A and Article 17.3 of the Agreement.



Arbitrator

**STATEMENT OF PROCEEDINGS:**

This grievance was heard pursuant to the procedures outlined in the parties National Agreement, also known as the Agreement, or Contract (2011-2016), and came before me on December 12, 2017 at the Wallingford Ct. plant facility.

The National Association of Letter Carriers, also known as the Union, and the U.S. Postal Service, also known as the Service, or Management were well represented at hearing, and were afforded a full, and fair opportunity to present argument, evidence, and witnesses on behalf of their positions.

Counsel for the parties were prepared, articulate, and professional during the hearing.

At the request of the parties, each witness called was duly sworn an oath prior to offering their testimony.

The Union called the following witnesses:

Ms. Donna Rzasa, Steward, Informal A Representative

Mr. Kenneth B. Honore, Steward, Formal A Representative

The Service called the following witness:

Mr. Ernest F. Jackson, Supervisor, Allington Postal Station

**JOINT EXHIBITS:**

Joint 1 - The National Agreement, inclusive of the Joint Contract Administration Manual (J-CAM)

Joint 2 - Moving Papers, Pages 1-151

**STIPULATED FACTS NOT IN DISPUTE BY THE PARTIES:**

The parties did not agree to any.

**ISSUE AS FRAMED BY THE PARTIES AT HEARING:**

The parties agreed the Step B Team issue would suffice.

"Did management violate Articles 15, 30, and 41 of the National Agreement as well as M-1517 and PCES when they failed to comply with the LMOU as well as previous DRT decisions, when they failed to clean the LLV's in accordance with the LMOU and past DRT decisions? If so, what is the proper remedy?"

**BACKGROUND:**

The relevant provision of the parties Local Memorandum of Understanding (LMOU, or local agreement) is Article 14.C which relevantly states, "It is the Employer's intent that vehicles be maintained in an acceptable state of cleanliness, inside and outside including periodic washes at least every thirty (30) days and more frequently if necessary."<sup>1</sup>

The Union's grievance alleges that Management at the Allington Station has continually failed to have the vehicles washed within thirty days, citing the period of May-July, 2017 as the most recent example of such failures.

The Union also argues that the Service has failed to provide acceptable documentation to substantiate the Service's claim that the vehicles have, in fact been washed during this time frame.

The Service responds that they have had to change companies that provide the cleaning service to the vehicles, and this has caused a disruption with scheduling, and providing invoices associated with the work performed.

The parties have met throughout their grievance procedure but were unable to resolve this dispute, thus resulting in the Union's appeal to arbitration.

**CONTRACT PROVISIONS CITED:**

Article 15.1

"A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to ...conditions of employment. A grievance shall include, but is not limited to, the complaint... of the Union which involves the ...compliance with the provisions of this Agreement, or any local Memorandum of Understanding..."

Article 30 - LOCAL IMPLEMENTATION

21—"Those other items which are subject to local negotiations as provided in the craft provisions of this Agreement.

Article 41.3.Q

"The Employer agrees to continue efforts to improve the comfort and temperature level in postal vehicles."

New Haven LMOU - Article 14.C

"...vehicles be maintained in an acceptable state of cleanliness, inside and outside including periodic washes at least every thirty (30) days and more frequently if necessary."

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<sup>1</sup> See J-2, Page 21

POSITION OF THE PARTIES IN THE MATTER BEFORE ME:UNION

The Union argues that Management at the Allington Station continually fails to meet their obligations to wash the carrier vehicles at least every 30 days pursuant to their Local Agreement. That the Union has had to file grievances over the last three years, which are sustained by the parties Step B team, in order to get the Service to comply.

The Union argues further that the last work order provided to the Union in response to their Request for Information (RFI) documenting that the vehicles have been washed was dated April 27, 2017, and that since that time there is no documentary proof that the vehicles have been cleaned.

That as of May 27<sup>th</sup>, there was no evidence that the Service was in compliance with this LMOU article, despite numerous Step B decisions compelling Management to comply with these exact failures in the past years, many of which resulted in monetary payments to letter carriers because of Management's repeated failures.

The Union requests this grievance be sustained in their favor, that Management abide by Article 14.C of the LMOU, and the other contractual obligations, that each letter carrier assigned to the Allington Station be paid forty dollars (40), and that Management will supply a date stamped receipt for each time the vehicles are cleaned.

SERVICE

The Service argues that the Union is well aware of the business reasons why the invoices demonstrating that the vehicles have been cleaned as prescribed have not been forthcoming with regularity - that even with this knowledge the Union is simply being unreasonable in their attempt to gain an unjust enrichment for the letter carriers, when in fact no harm has been caused the employees.

That the Service has put forth much effort to find, and retain a reputable company that will come to the site to wash the vehicles during a limited window of opportunity. That one company was double billing the postal service, and after much effort another, much smaller company was hired but they do not provide an invoice immediately after washing the vehicles.

That the Service has provided the Union, per their request with a list of those vehicles that have been cleaned from May through June.

The Service maintains that the vehicles have been washed during May-June, and the absence of an official invoice from the company does not change that fact. The Service requests that this grievance be denied in its entirety.

**FINDINGS & OPINION OF THE ARBITRATOR:**

One need not look far to discover that the issue before me is most familiar to the parties. The moving papers contain evidence of similar grievances going back years, with many of them resolved by the parties Step B representatives inclusive of "cease and desist" proclamations, and financial payouts of ever increasing numbers to letter carriers, or the Union itself.<sup>2</sup>

While the issue of washing/cleaning the vehicles at the Allington Station has been ongoing for many years, with many resolutions, it is abundantly clear that previous resolutions have not truly resolved this issue, as far as the Union is concerned.

In the instant matter before me, the Union bears the burden to prove, with a preponderance of evidence that a violation, or as they exclaim a continuing violation of the parties agreement(s) has taken place.

The first matter for review is if there is, in fact an agreement between the parties regarding the washing/cleaning of the vehicles.

The Local Memorandum of Understanding (LMOU) for New Haven Ct., of which Allington falls under contains the following language,

"Article 14 - Safety & Health,

C. "...It is the Employer's intent that vehicles be maintained in an acceptable state of cleanliness, inside and outside including periodic washes at least every thirty (30) days and more frequently if necessary. Employees are responsible for policing interior of vehicle."

Such language, obviously a part of the LMOU for many years is clear evidence that such an agreement exists.

Further, the abundance of previously filed grievances, and the precedent setting resolutions issued by the Step B Team on behalf of the parties establishes a clearly recognized agreement to clean the vehicles.<sup>3</sup>

The second, and most important matter for review in determining if the Union has met their burden is to determine if the Service has, in fact violated this LMOU, as stated by the Union.

The Union argues that the vehicles were not washed in May and June, 2017, as mandated by the LMOU. They provide in support of this argument forty seven (47) employee statements, all of which essentially, or emphatically claim that their vehicles have not been washed in "over a month", "a few months ago", "2 months", "end of April, early May."<sup>4</sup>

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<sup>2</sup> See J-2, Pages 81-136

<sup>3</sup> See J-CAM, Page 15-8, Step B Decision

<sup>4</sup> See J-2, Pages 25-71

The Service responds that the vehicles have been washed in May and June, and submit an "LLV Listing" that shows check marks indicating the vehicles that were washed that month.<sup>5</sup>

The Union argues that this check list is not evidence of compliance with washing the vehicles, and absent an invoice from the company performing the service, Management has failed to prove they washed the vehicles, and failed to abide by previously issued Step B decisions mandating that Management "will keep the union informed in detail of their plans to ensure that the vehicles are washed at least every 30 days..."<sup>6</sup>

While testimony was offered at hearing that the checklist was completed by the employees washing the vehicles on the day of the wash, this could not be convincingly established. Testimony was inconclusive regarding those vehicles listed on the sheets that did not have check marks, what that meant, and what the meaning of other marks on the sheets were.

Further testimony offered that this was the only reference used as evidence that the vehicles were washed until an invoice was received at a later time for payment. And that the supervisor personally went to the parking lot to view those vehicles washed, and placed a copy of the LLV Listing check list on the Union steward's letter case.

However, the Union steward disputes receiving this check list at her case, and to further complicate the Service's assertion there is a check list date stamped June 19<sup>th</sup>, and another with a handwritten date of June 30<sup>th</sup>.<sup>7</sup>

Further, there is another checklist that contains no date whatsoever.<sup>8</sup>

While the supervisor, who appears very sincere maintains that he views the vehicles after they have been washed, and while it is a safe assumption that when the letter carrier walks to his/her vehicle in the morning, and the vehicle is wet, with standing water all around it (and it's a clear, dry day) then the vehicle has been washed.

However, while those assumptions may be reasonable, it cannot deny the Union their contractual right to receive the proof that the vehicles are being washed timely that the LMOU, and previously issued DRT decisions entitle them to receive.

There is no doubt that the Service has faced obstacles in their attempts to have the vehicles washed regularly. They have switched companies, only after being doubled billed by the first, and turned down by others not interested in performing these duties. That attempts have been made by the Service to obtain invoices is documented in the file.<sup>9</sup>

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<sup>5</sup> See J-2, Pages 14, 15 & 79. Note: Page 16 is dated July, which is not properly before me.

<sup>6</sup> See J-2, Pages 81, 96, 101, 107, 117,& 121

<sup>7</sup> See J-2, Pages 79 & 15 respectively.

<sup>8</sup> See J-2, Page14

<sup>9</sup> See J-2, Pages 13, 72 & 75

However, the record contains only one invoice, dated April 27, 2017, and one dated May 24, 2017 that is date stamped June 29<sup>th</sup>.<sup>10</sup>

While the April invoice is clear as to the vehicles washed, and the date, the one that may be related to May is lacking any itemization, as evidenced by the statement of Ms. Loyd.<sup>11</sup>

While the arbitrator recognizes the efforts made by the Service, and the ongoing difficulties faced by the Service to comply with the LMOU, the simple fact is that the LMOU is specific as to its meaning.

The LMOU, by its very language places the responsibility upon the Service with the words, "The Employer's intent..." Intent, and intend are interchangeable in its meaning. Intend is to, "plan for and expect a certain result." Intent is a, "Design, resolve, or determination with which a person acts. A state of mind in which a person seeks to accomplish a given result through a course of action."<sup>12</sup>

There can be no dispute that the Union has come to rely upon the language in the LMOU to have the letter carriers vehicles washed/cleaned "*at least every thirty (30) days and more frequently if necessary.*"<sup>13</sup>

The overwhelming amount of grievances filed, and resolved in their favor support that conclusion.

That they have not been washed with the regularity the LMOU calls for is evidenced by the employee statements, and the lack of clear evidence submitted by the Service that they have.

The record is replete with the Union's requests for documentation supporting the Service's contentions that they have complied with the LMOU, yet the record is absent any clear evidence of providing the Union with this information, and therefore such absence can only be viewed as evidence of non-compliance.

There remains overwhelming precedent for the Union's right to obtain information, inclusive of the parties National Agreement, which states in relevant part, "...Union representative..may request and shall obtain access through the appropriate supervisor to review the documents, files, and other records necessary for processing a grievance, or determining if (one) exists."<sup>14</sup>

Further, "The Company...was held to have an obligation to furnish information to the union, on request..."<sup>15</sup>

<sup>10</sup> See J-2, Pages 73 & 75

<sup>11</sup> See J-2, Page 75

<sup>12</sup> See Witter's v. United States, 70 U.S. App. D.C. 316, 106 F.2d 837, 840

<sup>13</sup> Italics added

<sup>14</sup> See Article 17.3 of the Agreement

<sup>15</sup> See Central Franklin Process Co. 17 LA 142, 145 (1951)

To not furnish information requested timely by the Union, without good cause shown, is to violate the Union's right to obtain such information, and duly hampers the ability of the parties to resolve any potential dispute.

The only reason evidenced at hearing for the Service's failure to provide the Union with the information requested, i.e. invoices proving the vehicles had been washed/cleaned, and when that is the Service did not have them in their possession. That fact only lends itself to the Union's claim that the vehicles were not washed timely, per the LMOU.

The burden of proof that resides with the Union is met when one objectively reviews all the argument, and evidence provided to the arbitrator.

The plain and simple fact is that the abiding language of the LMOU requires the vehicles be washed/cleaned, "at least every thirty (30) days and more frequently if necessary."

The evidence before me fails to establish that this intended obligation by Management has been observed with any regularity. And lacking any proof, such as a valid, and timely issued invoice by the company providing the service during the cited months, the arbitrator is left with the more preponderant evidence supplied by the Union, including, but not limited to, the forty seven (47) employee statements offering that their vehicles were not washed in compliance with the LMOU.

I do find that the Service has made an ongoing effort to meet their obligations. It is not as if Management completely ignored their contractual obligation, but it is obvious that they have not made the effort consummate with the known issue.

Surely an increase, and ongoing level of communication between the local parties could only serve to demonstrate Management's efforts. Involving the Union (Steward) on those days the washing company is on site could only serve to demonstrate that the vehicles are actually being washed, because it is obvious the individual letter carrier may be unaware of the standing water around their vehicle.

Setting up, or insisting on a regularly scheduled same date each month to wash the vehicles could also serve to maintain the "at least" every thirty day mandate.

Clearly, the seriousness of this ongoing issue is lacking the like attention by Management to easily resolve this issue. The two parties MUST be of like mind on this simple issue. The LMOU insists upon it, the DRT insists upon it, and now an arbitrator insists on it.

The LMOU, and the Agreement are clear. The vehicles must be maintained, and the Union is entitled to the information they seek in determining if a grievance is needed. Seeking information is the Union's right. Providing it is the Service's obligation. Maintaining the vehicles as prescribed is the intent agreed to by the Service in their LMOU.

While there may be limited occasions when maintaining the vehicles in this way may be impractical, i.e. inclement, and/or freezing weather, the intent is "at least every thirty (30) days and more frequently if necessary."

In the final analysis, pertaining to the grievance before me, I find that the Union has, by a preponderance of the evidence demonstrated that the Service has violated the subject LMOU, and Article 15 of the Agreement.

I strongly encourage the parties to work together to resolve this issue, to give it the attention, and importance that numerous grievances, monetary settlements, and now arbitration lend to it.

**AWARD:**

This grievance is sustained.

Management will have the Allington vehicles washed in full compliance with the subject LMOU. (Recognizing that there may be exceptions due to inclement weather/freezing temperatures - in which case Management will timely inform the Union of the delay, and when the cleaning will be safely scheduled.)

Management will set up a regular scheduled day each month for the subject cleaning, and inform the Union in advance of the date. Management will provide the Union with a date stamped statement detailing the vehicles that have been cleaned within twenty four hours of the cleaning. Management will also provide the Union timely with a copy of the monthly invoices as received by the Service. (Recognizing that companies may not send out invoices until the end of each month.)

While I find no evidence of direct harm to the letter carriers, previous resolutions of this issue resulting in monetary compensation have failed to resolve the issue, thus the lump sum payment of forty (40) dollars for each letter carrier requested by the Union in the matter before me cannot be considered unreasonable, and is so ordered. The parties shall meet within thirty (30) days to determine who will be paid.

The Service will comply with the LMOU, and the National Agreement as prescribed, related to this issue. Failure to do so will likely result in an ever increasing penalty.

The arbitrator shall retain jurisdiction for ninety (90) days for the purpose of its implementation, and/or clarification.

Note:

To the parties: At risk of being preachy, this does not have to be a continuing issue. There can be simple answers to this problem, not the least of which is an increasing, and more direct manner of communication, and sharing of information.

The parties entered into this LMOU voluntarily I presume, and both are obligated to enforcing it. There is simply no way around it as it currently stands. This issue, continuing over the years is not insurmountable to resolve. There can be simple ways to do it, together. I encourage you both toward that goal.