C#00164 16f

REGULAR REGIONAL ARBITRATION PANEL

1981 CONTRACT

Arbitration between

UNITED STATES POSTAL SERVICE Pine Bluff, Arkansas and AMERICAN POSTAL WORKERS UNION	Opinion and Award pertaining to C SIN-3F-C-2799 (Class Action) Removal of Box Stools

Arbitrator: J. Earl Williams

The hearing of the subject matter in arbitration was held at the Pine Bluff, Arkansas Post Office on September 28, 1983. Briefs were filed by the parties in due course.

Appearances

For Management: C. B. Weiser
Labor Relations Representative
Labor Relations Division
United States Postal Service
Southern Regional Office
Memphis, Tennessee 38166-0222

For the Union: Robert D. Kessler
National Vice President, Clerk Craft
American Postal Workers Union
United Labor Building, Room 419
6301 Rockhill Road
Kansas City, Missouri 64131

Background

The parties stipulated at the hearing that there had been a past practice, whereby clerks were allowed the use of stools to box mail in the box section. On July 7, 1981, a notice was posted which revoked this practice. A grievance was filed and ultimately was resolved at Step 3. In relevant part, it read as follows:

> The grievance was settled by mutual agreement as follows:
>
> The case file indicates it has been the policy to allow stools in the box section. Since management failed to supply the union with reasonable advance notice of a policy charge, the order to remove the stools is rescinded. [JX 3]

The Step 3 decision was signed by John D. Burke, of the Labor Relations Division. However, Mr. Kessler did not sign. Although another notice, dated October 15, was posted and ultimately was removed, there was a final posting dated November 20, 1981. It read as follows:

> Due to a recent grievance appeal decision relative to the use of stools in the box section to box mail, these stools have been returned to use.
>
> In accordance with the same grievance effective thirty days from this date these stools will be removed, this letter will constitute reasonable advance notice. [JX 4]

A grievance was filed charging a violation of Article 5 and past practice. Since there was no resolution of the issue, it led to the subject arbitration.

Issue

Immediately prior to the start of the hearing, the parties agreed to the following statement of the issue:

Did Management violate the Agreement, when it removed the stools in the box section? If so, what is the appropriate remedy?

Language Referenced by the Parties

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:

* * *

C. To maintain the efficiency of the operations entrusted to it:

* * *

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 37

CLERK CRAFT

Section 5. Anti-Fatigue Measures

A. The subject of fatigue as it relates to the safety and health of an employee is a proper subject for the consideration of the Joint Labor-Management Safety Committee as provided in Article 14 of the National Agreement. The Employer will continue to furnish adjustable platform stools for periods of sustained distribution as heretofore.

Contentions of the Union

1. Past Practice

The Union points out it was stipulated at the hearing that a past practice indeed had existed in the past. It contends that Management apparently is saying that the practice was not a benefit, so that this gave it a right to eliminate the practice. However, the Union feels that the Service is equating benefit with "gain" or "profit," such as a fringe benefit that provides vacation pay, sick pay, etc. But, gain or profit has other definitions, which include "serve," "avail," "advantage," "help," etc. In fact, arbitrators universally have accepted the fact that a benefit is a benefit, if it is of peculiar personal value to the employees. The Union referenced a postal award of Arbitrator Goldstein (C8N-4H-C-3151), in which he held that smoking at the case was a benefit. Consequently, it concludes that, if smoking can be construed as being of peculiar personal value to the employees which cannot be eliminated unilaterally, when allowed to become a binding practice, then the use of rest stools obviously should be considered as such.

2. The Torrington Principle

The Union points to a decision of the U.S. Court of Appeals, 2d Cir. (New York) 62 LLRM 2495, 2499 (1966), which upheld a lower court decision, which had overturned an arbitrator's award. It contends that, as a result of this award, the only time a clearly-established past practice can be eliminated unilaterally is when the principle of that award is involved. Consequently, it states that the principle applies only when the following elements are present:

a. a long-established past practice on

b. a relatively minor employee benefit, on which

c. the contract was completely silent and where

d. the employer announced during negotiations on a contractual renewal his firm intentions of discontinuing the practice in the future.

It notes that Management did not give proper notice in the subject case.

3. Article 5, Prohibition of Unilateral Action

This language clearly prohibits any actions affecting "conditions of employment." Unilateral actions by Postal Management, in light of Article 5, have been addressed many times by many arbitrators. The Union references, for example, a case by Arbitrator Collins (N8C-1Q-676). This award declares rest breaks to be a term and condition of employment and that the elimination of same was a violation of Article 5. The arbitrator cited Management's failure to seek to bargain the change in the established practice. The Union notes that the only exceptions to this unilateral action is where change in operation makes it impossible, unsafe or inefficent. Thus, it points to language in a postal award of Arbitrator Larson (S8C-3F-C-2752), in which stools were eliminated in some box sections partly because of a physical change, which resulted in a constriction of space, so that the use of the stools would be awkward and a positive hindrance to an efficient operation. However, he rescinded the elimination of stools where such was not the case. He stated that the practice is a part of the whole contract and the employees in the

Union can insist on its continuance during the life of the contract and that Article 5 is consistent with this understanding.

4. There was no operational change.

The Union contends that there was no operational change, which resulted in the practice's becoming inefficient, inoperable or unsafe. Thus, it claims that Article 3, which gives the Service the right to make changes in regard an "efficient" operation, is subject to the terms and conditions of other provisions of the National Agreement, specifically Article 5. Thus, it concludes there can be only a unilateral change of a practice if it is because of an operational change. However, it contends that, in the subject case, the change, based upon a survey team recommendation, came considerably after the elimination of the stools. The change did not precipitate the elimination of the stools. Also, it contends that the elimination of the stools did not increase efficiency or productivity. The Arbitrator went with representatives of the parties to a demonstration, and it was clear that, by standing, the clerk could reach the top row more easily and the two outside or end holes, but that gain was far offset by corresponding inability to reach the bottom row of boxes without bending down or squatting. Further, even the recommended change of reaching two sections of boxes instead of one was put into effect for a short while but later abondoned as Management went back to the old method of one section. Finally, the Union points to Management testimony that it saved a number of hours of box time as a result of the elimination of the stools. However, the testimony was that the improvement in productivity was due to better supervision and the removal of the stools. As a consequence, the Union concludes

that it was easier for Management to remove something that makes an employee's job easier than it was to supervise the employee's use of the stool.

5. Bad Faith and Misguided Assumptions

The Union contends that Management is attempting to read into the final settlement the wording of earlier language, which the Union representative refused to sign. Thus, it feels that there is a misguided assumption that the Postmaster could remove the stools at his discretion with reasonable notice. Yet, it concludes that arbitral case law firmly establishes a reasonable notice is that which takes place during negotiations, and only in this manner.

Contentions of Management

1. The Union proffered no probative evidence that the practice of using stools to box mail was a result of a mutual agreement or understanding between the parties.

Management relies upon a Ford Motor Co. case (19 LA 241), in which the late arbitrator, Harry Shulman, discussed two ways in which a practice may be established. One is by mutual agreement. In those cases, it may be subject to change only by mutual agreement. However, it is due not to the fact that it is a practice, but rather to the agreement on which it is based. The reference also suggests that practices may be the result of happenstance, convenient methods, present way of doing things, etc. In those cases, it suggests that change may be made at the discretion of Management. It concludes that, during the hearing, no Union witnesses testified as to any agreement or understanding between the parties.

2. The practice was due to happenstance, present ways and managerial discretion.

Management contends that the Step 3 resolution, dated October 20, 1981, was one in which the Union representative agreed with the Employer that it had been a policy to allow stools in the box section. It makes no mention of a mutual understanding regarding the stools. Also, the resolution infers admission by the Union that Management may effect the change and practice by providing reasonable advance notice. In short, Management concludes that, since the use of stools was a product of Management's determination, the practice is subject to change by the same Management discretion. The only requirements are that the discretion be reasonable, as opposed to arbitrary or capricious.

3. The Union proffered no probative evidence that the use of stools in the box section was a benefit.

Management referenced Black's Law Dictionary, in which it states that a benefit means that the promisor has, in return for his promise, "acquired some legal right to which he would not otherwise have been entitled." Yet, it stated that the only suggestion by Union witnesses that the stools were a benefit is that they allowed the clerks to rest and provided relief from standing. Management immediately refers to Article 37.5 (a), which indicates that the only stools, which may be used as anti-fatigue measures, are adjustable platform stools. Thus, Management concludes that, since a benefit is not involved, there is no necessity to have mutual agreement to eliminate the practice.

4. The stools in the box section were eliminated in order to improve efficiency and productivity.

Management points to Article 3(c), which gives the Employer the exclusive right "to maintain the efficiency of the operations entrusted to it." Then, it contends that the stools were eliminated in the box section to improve the productivity and efficiency of that section. It references a company audit team report of June 1981. The report indicated that sitting on stools while boxing mail seriously restricted the reach of each employee. Consequently, it recommended that the employees stand to box mail, and this would allow them to reach two sections of boxes instead of one and increase productivity by 25 per cent. [CX 2] Employer Representative Hicks testified that he conducted a survey of the box section prior to the elimination of the stools. Nineteen hours were being utilized daily. He conducted a comparable survey after the elimination of the stools, and, with a greater mail volume, there were only ten hours being utilized. He attributed this nine hour increase in producitivity to (a) elimination of the stools and (be) better supervision of the box section. He also indicated that the use of the stools had caused inefficiency in three ways: (a) sitting on the stool seriously restricted the reach of the employee, (b) sitting on the stool caused the second handling of mail and (c) the use of stools resulted in a slower work pace caused by talking and visiting among the employees.

5. Past practice cannot exist where it conflicts with a clear and unambiguous contract provision.

Management states that, in the subject case, Article 3 C is clear and unambiguous language, which gives the Employer the exclusive right to maintain the efficiency of its operations. Management references the Elkouris to suggest that past practice is used primarily to establish the intent of ambiguous language. It also references several postal arbitrations, particularly three by Arbitrator J. Fred Holly. Quotes from those cases suggest that past practice is utilized when language is vague or indefinite, but it is irrelevant where the parties have agreed to language to the contrary, etc.

Discussion

Counsels for the parties did an outstanding job in marshalling arguments to support their respective positions. They referenced case after case in order to prove the kind of practice, which existed, as well as the extent to which it was binding. It seems appropriate to lump their contentions under a number of common headings.

A. The Development of the Practice

About the only thing, upon which there is agreement, is that, for a long number of years, there has been a practice, whereby clerks in the box section, for the most part, have used stools while performing their work. These are low stools as opposed to high ones. No one knows how the practice

was initiated, and there was no testimony suggesting how it might have developed. However, Management's first basic contention contained a surmise as to how it had developed. It was a very apt and astute argument built around an often-referenced arbitration award of the late Harry Shulman. As noted in the contention above, Shulman suggested that there was a difference, at least in terms of the discretion of Management to discontinue a practice, between practices established by mutual agreement and those by happenstance, management discretion, etc. Arbitrator Shulman was one of the great pioneers in arbitration. The Ford case was thirty-three years ago, and he spent a substantial amount of time in the case raising questions, which have been answered to a large extent through the ensuing thirty-three years of case law. Thus, today, Shulman's opposing conditions are utilized primarily as determinants of whether or not there is, indeed, a practice when the same is claimed. Thus, mutuality has become the key determinant to a practice, particularly if it is to be binding. Generally speaking, a happenstance would not contain the key ingredients to qualify as a past practice. Thus, what the Management advocate really is describing is a practice vs. a non-practice. Given that, he really would be saying that all practices must contain the necessary factor of mutuality and, by definition, can be changed only by mutual agreement. Of course, this was not his intent, and arbitral case law in the past thirty-three years has developed some ways in which some bona fide past practice can be terminated by Management.

The Arbitrator should point out that the Management advocate

appeared to be saying that mutual agreement meant an agreement in writing or, at least, that the parties had sat down and reached an oral agreement. This is certainly not what the Arbitrator means by mutuality, and this kind of agreement is not required to meet the test of mutuality and become a bona fide past practice. There are three situations, which can exist, when past practice occurs. They are (a) where there is ambiguous language, (b) where the contract is silent, and (c) where there is clear language. In the subject case, the contract is silent in regard to language related to the use of stools in the box section, and there is none re stools at all except for utilization as an anti-fatigue measure. Given this absence of specific language, it is clear that the parties did not write up supplemental language. If so, it would be a part of the agreement and not a practice. Further, there is no evidence of an oral agreement as such. What probably happened is that one or more clerks in the box section approached a supervisor with the suggestion and/or request that stools be used. Obviously, there was agreement with the request or suggestion. It is probable that this discussion, which may have been extended, led to a quick and rather complete practice for clerks in the box section. There is no doubt that it has become the accepted way of doing things and that the clerks in the box section rely upon it. These are two factors, which are significant in determining the existence of a bona fide practice. It has been long-standing, and it is repeated daily. There is no doubt that Management, at a minimum, assented to the practice. Under the circumstances, arbitrators generally hold that there is a tacit or implied

mutuality. [See Larson, S8C-3P-C-2752.] It is inferred under the circumstances. Even the suggestion that the practice has been referred to as a policy does not obviate the fact that the crucial tests of practice have been met or turn the practice into a unilaterial determination of Management per se. Thus, the mutuality, of which the Arbitrator is convinced, becomes the mutual agreement suggested by the Management advocate. However, the Management advocate will be happy to note that, despite the conclusion that there is a bona fide past practice containing the elements of mutuality, it does not follow that Management is prevented from changing and/or discontinuing the practice under any and all circumstances.

B. Does the practice conflict with clear and unambiguous language?

While continuing to be impressed with the Management advocate's array of arguments, the Arbitrator must note that the emphasis utilized in this contention is misplaced. A number of the cases referenced by Management, in addition to the Elkouris, indicated that practice will not be used to give meaning to a provision, which is clear and unambiguous. Then, the contention continues by noting that Article 3C of the National Agreement is clear and unambiguous, in that it gives the employer the exclusive right "To maintain the efficiency of the operations entrusted to it." However, there has been no suggestion by the Union that it is contending that the practice gives meaning to Article 3C. An example of where a practice might be used to give meaning would be if contract language stated that "The Company will furnish protective

clothing to all employees." If questions arise as to whether or not this means that the Company will pay for same or what is included as protective clothing, than a strong past practice can give meaning to the language. However, this is not what is being contended by the Union at all. It is merely stating that it is a practice, which cannot be eliminated except under certain specific conditions. In fact, if the Union were contending that the practice gave meaning to Article 3C, it probably would argue that 3C included the understanding that stools in the box section were efficient. Of course, it is making no such argument.

Thus, the heading developed by the Arbitrator as Management's fifth contention is more relevant in terms of a contention of Management. It appears to be contending that the practice is in conflict with Article 3C, which it considers to be clear and unambiguous. However, this also appears to mean that, because of the language, it is clear that Management may make any change it pleases in the name of efficiency. This is not at all clear from the language. In fact, the language, itself, in terms of the exclusive right to maintain efficiency of operations, is qualified by its being "subject to the provisions of this Agreement and consistent with applicable laws and regulations." Thus, there are at least two ways in which Article 3C may be subject to the Agreement. In the first place, a bona fide past practice of the nature of the one in the subject case has become endowed, in effect, with the meaning and authority of a written clause in the contract. Thus, while a question can be raised, in the name of efficiency, regarding the use of

stools in the box section, a determination must be made. The existence of the language in 3C does not automatically prohibit the practice. Second, the Union put a great deal of emphasis upon Article 5. The language does make clear that, if the use of stools in the box section is termed a condition of employment, there could not be unilateral action on the part of Management in terms of discontinuing their use. While this determination will be made later, there may be another conflict between the language of 3C and Article 5. Thus, it is abundantly clear that the language of 3C does not automatically prohibit the use of stools in the box section.

C. Under what, if any, conditions can Management eliminate a practice?

While there is not complete unanimity among arbitrators in terms of when and under what conditions a practice can be discontinued, it is clear that the subject matter of the practice is more critical than whether it was established by unilateral or bilateral action. For example, the Elkouris indicate that ". . . the fact of unilateral establishment should not necessarily be given controlling weight." [p. 392] However, there appear to be a number of kinds of practice and/or circumstances, in which a substantial number of arbitrators will consider a practice binding and other kinds and circumstances which, in one way or another, may allow for termination of the practice. Some of those generally considered binding are:

1. Sometimes what might be called a major vs. a minor condition of employment test is applied. The Elkouris described "major," which would be binding, as follows:

> It may reasonably be assumed that the parties in shaping bargaining demands as to wages and other employee benefits do so with silent recognition of existing unwritten benefits and favorable working conditions. This accepted, such matters may well be called "major" (for those who would apply a "major-minor" test). [399]

2. Benefits, which are of peculiar personal value and are, at most, indirectly involved with methods of operating the work force, are considered binding.

3. Other benefits, which fall into the category, are things such as a Christmas turkey, meal allowances, wash-up time, breaks, free coffee, etc.

4. Practices, which represent working conditions.

In many ways, the two categories can be defined as benefits, which largely are covered above, and basic management functions. At least, there are a number of practices and/or circumstances, under which Management, immediately or over time, may eliminate the practice. Some of them are:

1. The happenstance kind of situation described by Shulman which this Arbitrator really does not consider to be a practice.

2. If it is clear that it is a legitimate Management function, the fact that it has been in disuse for a period of time will not preclude its use.

3. If operation and direction of the work force is basically involved, and the discontinuance of the practice is not in violation of some contractual right of the employees involved with the practice, it may be discontinued.

4. If a benefit is purely a gratuity, and especially if the employees were informed of same at the time the practice began, it may be discontinued.

5. If the underlying basis for the practice changed,

such as a technological change or a physical change in layout, the practice no longer may be feasible or justified.

6. A substantial number of arbitrators hold that a practice can be terminated at the end of a contractual period by giving due notice of intent not to carry the practice over into the next agreement. However, it may be anticipated that the parties will attempt to discuss and/or negotiate the matter before it officialy is terminated by Management.

While the Torrington Principle, referenced by the Union, has not achieved arbitral consensus as the only way in which a practice can be terminated, it is a standard, which fits under the "due notice of intent" approach.

D. Application of Arbitral Case Law Standards to the Subject Case

It is clear that most of the practices referenced by the parties were considered by the arbitrators to be benefits. They included breaks, wash-up time, stools, smoking, and even work assignments. There is no doubt that the use of stools in the subject case would be classified as a benefit. Arbitrator Larson, in the case cited, considered the use of stools to be a benefit. [p. 7] In fact, the Arbitrator must agree with the Union, in that the use of stools also would be considered to be of "peculiar personal value" to the clerks. In addition, it would appear that the years of practice, in effect, have established the use of stools as a condition of employment. If it is assumed to be a condition of employment, Article 5, standing alone, would prohibit a unilateral elimination of the practice. For example, Postal Arbitrator Collins, in N8C-1Q-676, stated that breaks, which had developed over the years, and the contract was silent on the matter, are ". . . certainly

a term and condition of employment." [p. 5] Thus, he concluded that Article 5 prevented unilateral termination of the breaks. Even more to the point was the award of Postal Arbitrator Larson which related to the practice of the use of stools by clerks. He stated:

> It is generally understood that while a collective bargaining contract is in effect, the employer may not, for no reason or for economy reasons only, withdraw or terminate an unwritten practice which has existed for a substantial period and which is a benefit to the employees. The practice must be consistent and of such duration that the inference is that the parties have tacitly agreed to it, if indeed they have not orally agreed to it. The practice then is a part of the whole contract, and the employees and union can insist on its continuance during the life of the contract. Article V of the National Agreement ("Prohibition of Unilaterial Action") is consistent with this understanding.

There is no doubt that the conditions cited by Arbitrator Larson are a carbon copy of the subject case. Thus, Article 5 is equally applicable.

Management cited a Coca-Cola case (64 LA 707), in which the use of phones for personal business had grown as a practice. The arbitrator upheld the unilateral termination of the practice. However, there was stronger language supporting management's action, there was no comparable Article 5, and the use of the phone would be deemed a gratuity. In such cases, most arbitrators agree that management has the right to terminate the practice. However, the use of stools in the subject case cannot be considered a gratuity.

When the underlying basis for the practice has changed, it generally is held that a practice can be terminated. In relating specifically to stools, the Larson award is a perfect example. As the arbitrator stated:

> . . . Certainly it is within the Postal Service's managerial rights to make such physical changes. If the changes have resulted in constriction of space so that the use of stools is awkward and a positive hindrance to efficient operations in the area immediately behind the window clerks, then the Postal Service has a managerial right to eliminate their use.

There was no physical change, or other underlying change of conditions, in the subject case. Thus, Management cannot justify its action in this manner. However, it is important to note that Arbitrator Larson was referring to Management's right to make changes based upon efficiency. This brings the discussion back to Article 3C.

Management relies almost entirely upon its argument that the stools were eliminated to improve efficiency and productivity. It claims that Article 3C gives it that authority. Even the Union is in agreement with the right of Management to make such changes, when there have been physical or operational changes. It claims that neither has taken place. It is true that there was a postal audit team report of 1981. It suggested that, by standing, the clerks could reach two sections of boxes instead of one and increase productivity by 25 per cent. However, the Union is correct, in that the elimination of the stools was not precipitated by an operational change. If the attempt to reach two sections of boxes instead of one is considered operational, it came after the elimination of the stools. However, Management has the right to raise the question of efficiency, for Article 3 gives it the status of a legitimate Management function. But, there must be proof of its contention. For example, in the postal award of Arbitrator Cohen, C8C-4J-C-5052, referenced by Management,

specific contractual language was involved which gave the Postmaster the discretion of granting reasonable wash-up time for those who worked with toxic materials or performed dirty work. A determination was made by the arbitrator that such work no longer existed, so the practice could be terminated. Of course, this also represented a change in underlying conditions.

More on target, however, is the award of Arbitrator Larson. Physical changes had not been made at all of the windows. Thus, at those windows, the only question was the one of efficiency which had been raised by Management. The arbitrator concluded:

> To the extent that the clerks have to get on and off the stools in order to reach lower drawers or to walk to nearby areas (tables, mail receptacles), there is lost motion. But if this is all that is involved in the Greenville stations and branches, I think that the Postal Service is bound to allow the former practice to continue. There has been mutual acceptance of it despite its (relative small) impact on efficiency.

In the subject case, the recommended change of attempting to reach two sections of boxes was put into effect for three to four months, but then there was a return to the old system. Management insisted that some of the problems were that, with the use of the stools, some mail was shuffled, some handled twice, and some boxes on the top row could not be reached. However, based upon Union testimony and the Arbitrator's observation, it would have to be concluded that mail is still handled twice and shuffled, but in relation to the bottom rows rather than the top. Also, it is clear that some bottom boxes cannot be reached while standing upright. In short, it would appear that wasted motion and the inability to reach the top is offset by wasted

motion and inability to reach the bottom. Thus, the only evidence Management has left to prove greater efficiency is a before-and-after survey, which was purported to show that nineteen hours' time was used before compared to ten hours' box time after. However, this is highly unscientific and unconvincing. It appears that perhaps a couple of days were compared, or a few at most. There must be longer periods of study. Also, this must be related to the volume of mail so that productivity per piece can be calculated. Other variables, which might affect the averages, also must be taken into consideration. For example, the supervisor, who made the survey, indicated that the lower hours were the result of removal of the stools and better supervision. He had noted that there was too much talking before when the clerks could sit on their stools. Thus, the Union has a point. Given the paucity of specific evidence in terms of productivity, it is possible that any gain is the result of better supervision. In short, the Arbitrator cannot agree with the efficiency contention of Management, given the present state of the evidence.

However, Management is still left with the option, which some arbitrators held to be bona fide. That is to give due notice of intent to eliminate the practice. The Torrington Principle was referenced by the Union, and it is one form of this option. Three of the standards exist in the subject case. Thus, all that would be left for Management to do would be to announce during negotiations on a contractual renewal the firm intention to discontinue the practice in the future. Since the practice has assumed the mantle of contract language, it would be assumed to be a part of the local memorandum of

understanding. Thus, this would be the appropriate time to give due notice of intent. While there was a contention by Management that the third step settlement of the original grievance should be interpreted as giving the Postmaster the right to terminate the practice with reasonable notice, the settlement was not signed by the Union. However, even the Union agrees that the Torrington Principle would be consistent with the "reasonable notice" contained in that settlement.

Summary

It is clear from the discussion above that Management cannot unilaterally change the practice of the use of stools by clerks in the box section. While under a number of conditions the practice could be stopped for efficiency reasons, there was no change in the subject case other than the elimination of the stools. Evidence was insufficient to prove that the removal was justified in the name of efficiency. However, Management is left with the option of giving due notice of intent to discontinue the practice during the next local negotiation session. This option is consistent with the holding of numerous arbitrators, including several postal cases referenced by the parties, the Torrington Principle, and at least the Union's understanding of the alleged Step 3 settlement of the original grievance.

Award

For the reasons noted above, Management was in violation of the Agreement when it removed the stools from the box section. The right to use the stools should be reinstated immediately upon receipt of this award by Management. However, it also is noted that Management may be able to eliminate the stools in the future with better evidence in regard to efficiency and/or the exercise of the option of due notice of intent as discussed above.

J. Earl Williams

J. Earl Williams, Arbitrator

Houston, Texas

May 31, 1984