

IN THE MATTER OF ARBITRATION BETWEEN

United States Postal Service,
Trenton, Michigan,

@ 6155

Employer

Case No. C4N-4B-C5659

and

National Association of Letter
Carriers, AFL-CIO,
Trenton, Michigan Branch 2184

Union

RICHARD TAURENCE

APPEARANCES:

For the Employer:

Bennie J. Powell
Labor Relations Representative
U.S. Postal Service
General Mail Facility
Detroit, Michigan 48233

For the Union:

Ronald Brown
Regional Administrative
Assistant
2722 East Michigan
Suite 102
Lansing, Michigan 48912

DECISION AND AWARD

Preliminary Statement

MAX ROTENBERG, Arbitrator: The Issues before me for resolution stem from the Employer's action on or about May 13, 1985¹ taking away from grievant the satchel cart which he had used on his mail delivery route for several years. The Union claiming the Employer's action is violative of the 1984-87

¹All dates are in 1985 unless otherwise indicated.

National Agreement (Agreement) between the parties and the Employer's Handbook M-39, invoked the contract grievance procedure on or about June 13 which culminated in this arbitration. The Employer justifies its action as being in full conformity with the Agreement and Handbook M-39. At the hearing of the dispute in Dearborn, Michigan on November 12 and 13, the parties were afforded full opportunity to present evidence, examine and cross examine witnesses, and present argument in support of their respective positions. Post-hearing briefs received December 15-16 were duly considered. The parties agreed that the issues may be stated as follows:

THE ISSUES

1. Whether the withdrawal of the satchel cart violates the 1984-87 Agreement?
2. If so, what is an appropriate remedy?

SUMMARY OF EVIDENCE

Grievant, a full-time letter carrier at the Trenton, Michigan installation, has been in the Employer's Postal Service for approximately 25 years. Sometime in 1970 grievant was assigned a satchel cart for medical reasons due to a non-job related injury, to be used on his mail delivery route #8312. The satchel cart (here also called cart) is a device used by some letter carriers on their mail delivery routes; when in use these carts resemble the carts widely used in supermarkets. They are designed to carry two satchels and the purpose of their use in the Postal Service described in Handbook M-39 part 118.1 is to, "Relieve carriers primarily from physical burden of carrying

heavy loads of mail." Grievant utilized the cart in mail delivery on his route #3812 during the entire time from 1970 until it was taken away on or about May 13, when as a result of a special route inspection conducted for May 6 through May 11, grievant received written notice from the Trenton Postmaster, Ronald W. Thomas "Based on the results of the Special Route Inspection conducted May 6th thru May 11, 1985, your street time has increased due to the assignment of a cart. Therefore, your cart will be immediately taken away". In the several years that grievant had used a cart he had several special route inspections, all of which including the one in May were at the grievant's request because he claimed, the route was exceeding the criteria of Handbook M-39 part 270. At the hearing the Union stated that it was not contending that grievant is "handicapped" within Article 7 of the Civil Rights Act. By a memorandum of July 26, 1983 from Gene Cole, MSC Manager/Postmaster, Detroit, Michigan addressed to several postmasters under Cole's management including the postmaster at Trenton, Michigan were informed of the Detroit MSC position regarding the use of carts:

"In recent weeks, there has been a rise in city carrier grievances concerning the use of carrier carts. It is the position of the Detroit MSC that all carriers, presently using carts, be allowed to continue the use of these carts until such time as it has been determined by local management that a cart is no longer required. The discussion to remove a cart from a carrier route is a local management decision which must be made based upon mail volume, weight, and authorized relays on a given route. Until such time as this has been done and a discussion held with local N.A.L.C. Stewards, no carts should be arbitrarily removed from a carrier route.

In the future, all requests for the use of a carrier cart must be accomplished by a letter from an attending physician, describing medical reason, to document such request."

CONTENTIONS OF PARTIES

The Union in substance contends: (1) The several special inspections of grievant's route over the past years including the one in May were at grievant's request "because the route exceeded the criteria of Handbook M-39 part 270" and required adjustment. (2) Grievant utilized a satchel cart the entire period of years since his assignment of Route #8312 and conducted himself in the same manner during the inspection in May as he had done in the past. "The only changes that have been made over the past several years, other than an increase in mail volume, has been a change in management and there lies the problem". (3) Inasmuch as the Employer's written notice of May 13 to grievant states that the reason for withdrawing the court was that grievant's "street time has increased due to the assignment of a cart", the Employer has the burden of proving this claim. In order to establish this, "management would have to compare the carrier (grievant's) street time without a satchel cart with street time when a cart was used. This is impossible to do since the parties have stipulated that the carrier (grievant) has used a cart during the entire period he has been assigned this route". (4) MSC Manager, Gene Cole, "has directed postmasters under him which

includes the Trenton Post Office, to discuss with the Union before (utilization) any cart is discontinued. This requirement was not met."

The Employer in substance contends: (1) Article 3 of the Agreement grants the Employer "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; D. To determine the methods, means and personnel by which such operations are to be conducted. (2) Grievant's route was not established to include a cart. He was given the cart because of a non-job related injury and out of consideration given him by local management. Grievant "has a contractual obligation to present administratively acceptable evidence that his physical condition requires the requested accommodation No such documentation was presented at the several steps of the grievance and none was submitted into evidence at the hearing." (3) "Perhaps the most important factor the Arbitrator should consider is the grievant's admission that during the Winter months the cart is a safety hazard and he therefore delivers mail with a satchel." (4) "The Inspection Summary and the remarks of the route inspector indicate the grievant failed to perform efficiently and the removal of the cart is justified on this basis".

ANALYSIS AND CONCLUSIONS

The relevant parts of the Agreement provide:

"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;

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

ARTICLE 13

ASSIGNMENT OF ILL OR INJURED REGULAR WORK FORCE EMPLOYEES

Section 1. Introduction

B. The U.S. Postal Service and the Unions recognizing their responsibility to aid and assist deserving full-time regular or part-time flexible employees who through illness or injury are unable to perform their regularly assigned duties, agree to the following provisions and conditions for reassignment to temporary or permanent light duty or other assignments.

Section 2. Employee's Request for Reassignment

A. Temporary Reassignment

Any full-time regular or part-time flexible employee recuperating from a serious illness or injury and temporarily unable to perform the assigned duties may voluntarily submit a written request to the installation head for temporary assignment to a light duty or other assignment.

B. Permanent Reassignment

1. Any ill or injured full-time regular or part-time flexible employee having a minimum of five years of postal service, or any full-time regular or part-time flexible employee who sustained injury on duty, regardless of years of service, while performing the assigned duties can submit a voluntary request for permanent reassignment to light duty or other assignment to the installation head if the employee is permanently unable to perform all or part of the assigned duties.

ARTICLE 19
HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions."

The relevant parts of Handbook M-39 Part 118 provide:

"SACHEL CARTS

118.1 Assignment

Postmasters and unit managers are responsible for authorizing use of satchel carts on the routes. These carts are normally designed to carry two satchels. In reviewing requests for assignment of satchel carts, they are to consider the following factors:

a. Relieve carriers primarily from physical burden of carrying heavy loads of mail.

b. Give priority in assignment to carriers with physical impairments.

c. Assign to carriers not having physical impairments only with the express understanding that street time will not increase as a direct result. When a carrier uses a cart, the 35-pound mail load limitation does not apply. The satchels on the cart are to be filled to capacity, both on the carry-out portion and at each relay point. When first assigning a cart to a route, also consider adjusting the number of relay points due to the greater carrying capacity of the cart.

118.2 Follow-up

After assignments of satchel carts on city delivery routes, local management shall:

a. Require carrier to use carts regularly, including day of inspection. Irregular use at the option of carrier is not permitted.

b. Decide if cart will remain on route when a change in carrier assignment occurs. If a carrier with a physical impairment is reassigned to another route, continued need for the use of a cart must be evaluated.

c. When street time has increased as a direct result of assignment of a cart, withdraw the cart immediately and reassign it to another carrier or report it as surplus."

There is no significant dispute between the parties as to the operative facts, the applicable provisions of the Agreement or of the Handbook M-39. Their differences lie in the interpretation of those facts, the provisions of the Agreement and the Handbook and the conclusions to be drawn.

As to Employer's contention (1) Management Rights - The Employer is mistaken in this contention. It is true that Article 3 of the Agreement provides significant and broad rights for the Employer. However, these rights are not absolute; by the very language of Article 3 these rights are made "subject to the provisions of this Agreement" i.e. they are available to the Employer so long as the Employer's action in issue is not violative of any provision of the Agreement. Here the Employer's position seeks to apply Article 3 rights to action that is challenged as contrary to the Agreement.

As to Employer's contention (2) Grievant's physical condition justifies withdrawing the cart - The Employer is also mistaken in its second contention. It is relevant to note the elaborate and detailed provisions in Article 13 of the Agreement devoted to the contracting parties commitment to accommodate "employees, who through illness or injury are unable to perform

their regular assigned duties . . ." Illustrative of these provisions are, Section 1.B; Section 2.A.B. 1.C and Section 4 A. quoted above. Management's assignment of the cart to grievant for medical reasons to use on his mail delivery route was in the nature of a "light duty or other assignments" within Article 13, Sections 1 through 4 and was implemented pursuant to the Employer's Handbook M-39 Part 118.1. By the language of Agreement Article 19 the provisions of Handbook M-39 part 118 have the force and effect of provisions of the Agreement. In the written notice given to grievant of taking away the cart the reason is stated "your street time has increased due to the assignment of a cart". There was no mention of grievant's physical condition or of any other reason for taking away his cart. The increase of street time as the reason for taking away the cart was reiterated in the decisions of Steps 2 and 3 of the grievance procedure and also during the hearing. The "increased street time as a direct result of assignment of a cart" is the only theory on which this case was litigated. In order to establish this as a defense in this case requires a showing of a comparison between the grievant's street time before the assignment and his street time after the assignment and the use of the cart. Each of the several Summaries of Counts and Inspections (Form 1840s) introduced in evidence at the hearing involves grievant's route #8312 and covers periods after grievant had been assigned and used the cart. There is no evidence whatever what grievant's street time was before he was assigned

the cart in 1970. In these circumstances I conclude the withdrawing of the cart is inconsistent with and therefore violative of Handbook M-39 Part 118.2 c. and the Agreement.

As to Employer's contention (3) Cart use is winter hazard -
This contention is irrelevant. As it is stated in greater detail in the discussion of Employer's contention (2) the Employer's assigned reason for withdrawing the cart is that grievant's May, 1985 route inspection showed his "street time has increased due to the assignment of a cart" and that under Handbook M-39 part 118.2 c. this is a ground for withdrawing a cart. Neither the Employer's written assigned reason, nor the cited Handbook contains any mention about a winter hazard.

As to Employers contention (4) Grievant's inefficient performance justified withdrawing the cart - If the "inefficient performance" here alleged refers to the Employer's contention that grievant's "street time has increased", the discussion and conclusion under contention (2) equally apply to contention (4). If the claim of "inefficient performance" refers to some conduct independent of the increase in street time, contention (4) is nonetheless irrelevant for the reasons stated in the discussion of Employer's contention (3).

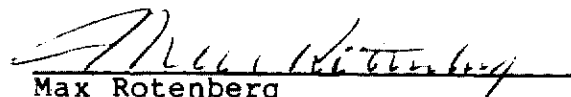
I have read and duly considered two arbitration cases submitted by the Employer, Case No. C8N-4G-D32306 Tipton, Indiana and Case No. C8N-4G-C34744 Anderson, Indiana and find them distinguishable from the case before me. In the Tipton case the issue was whether the carrier's disability was a valid ground for discharge. Arbitrator Dworkin at page 6 of the decision

expressly declined to rule on the question whether the taking away of the cart was proper. In the Anderson case the issue was whether a discontinuance of the use of a cart, after the carrier had a change of his route. Arbitrator Goldstein concluded on the facts there present, the discontinuance was justified. On the basis of the entire record before me, I conclude that the withdrawal of the cart is inconsistent with and violative of Handbook M-39 part 118.2 c. and the Agreement.

THE AWARD

- (1) The grievance is sustained.
- (2) The Employer shall reinstate the use of a satchel cart by grievant on his mail delivery route.

Dated at Minneapolis, Minnesota
May 12, 1986.


Max Rotenberg
Central Region Arbitrator