

IN THE MATTER OF THE) OPINION AND AWARD
ARBITRATION BETWEEN.)
United States Postal Service)
Metairie, Louisiana) S1N-3Q-C-18088
Employer) J.L. Royal
 C#03991
-and-)
National Association of)
Letter Carriers,)
Union)

Before:

Robert W. Foster, Arbitrator

Appearances

For the Employer:

Walter Flanagan, Regional Labor Relations Specialist

For the Union:

Ben Johnson, National Business Agent

PRELIMINARY STATEMENT

The undersigned was appointed to arbitrate a dispute between the United States Postal Service (Employer) and the National Association of Letter Carriers (Union) arising out of a grievance brought by Carrier J.L. Royal (Grievant) and pursued by the Union to this arbitration proceeding according to the National Agreement between the parties. A hearing was held on November 30, 1983 in Metairie, Louisiana attended by the above-named representatives of the parties who were accorded full and equal opportunity to present evidence and arguments.

This matter is now before the arbitrator to render a decision according to the terms of the National Agreement.

ISSUE

Whether the employer violated the National Agreement and appropriate regulations incorporated therein by denying Grievant his choice of lunch locations?

PERTINENT CONTRACT PROVISIONS

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:

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- 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 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 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.

PERTINENT PROVISIONS FROM THE M-39

126.5--REVIEW OF CARRIER CASES AND WORK AREA

The better organized a carrier unit manager is the more he or she will accomplish. One aid in keeping the carrier work area in proper order is a check-list developed to meet local conditions and situations, modified as needed, and from which a few carrier cases can be reviewed each week. (See Exhibit 1-6) The following items are representative of those that should be checked periodically:

- (2) Has the carrier entered information such as line of travel to reach the beginning of the route, line of travel to reach the lunch place, return to next delivery location, and return to office?

Note: Authorized lunch periods, travel, and locations where the carrier is authorized to leave the route are recorded on form 1564-A by the carrier when the USPS provides reimbursement or transportation to and from lunch places. In all cases travel time to and from the lunch place will be charged to the lunch period. Enter on the reverse of Form 1564-A any deviation for lunch by carrier technician, utility carrier, or other regularly scheduled replacement. The carrier has the option of selecting up to three locations for lunch. When authorizing lunch places, give consideration to reasonableness of location from the standpoint of suitable eating places, and in particular to the reasonableness of the distance from the route to the eating place and back to the route. If at all possible, the authorized lunch stops should be on the line of travel. . . .

613.2--TRAVEL AND TRANSPORTATION OF CARRIERS

- .212 When there is no suitable place to eat lunch on the route, carriers not covered by transit agreements--on Form 7365, Transit Agreement, (formerly Form 1361), in accordance with section 172 of Handbook M-39, Management of Delivery Services--or who do not have transportation (driveout) agreements, may be furnished bus fare, its equivalent, or be provided transportation in Postal Service vehicles to and from a suitable lunch place or to a comfort stop.

.213 Motorized carriers may be permitted to use Postal Service-owned or contract vehicles to travel a reasonable distance to and from lunch.

.214 In all cases, travel time will be charged to the lunch period. In granting this privilege, postmasters will consider accommodations available, distances and travel time involved in each instance before authorizing travel to lunch places off the route.

171.3--DISTANCES

171.36 The location of a suitable and reasonable lunch place and time must be a subject of discussion between the carrier and the unit manager. The authorized location(s) must be on or within a minimum reasonable distance from the route. Particular attention must be given to the reasonableness of the distance to the eating place and back to the route. If at all possible, the authorized lunch stops should be on the line of travel.

SUMMARIZED STATEMENT OF THE CASE

Grievant's route is in a residential area with no commercial eating establishments within the line of travel. Prior to the action that precipitated this grievance, grievant had three lunch locations designated in his Form 1554-A, by a pak, Schwegmann's and Burger King. Following a route inspection, grievant's supervisor denied grievant's request to continue two of these places as his lunch location since they were .6 miles further each way from other eating places deemed to be suitable by the supervisor. Grievant objected to the places suggested by the supervisor on the ground that he could not get a hot sandwich at one, and the other was too expensive. The supervisor then designated the closer places as grievant's lunch location, thereby giving rise to this grievance.

Grievant's supervisor testified that the principal consideration for denying grievant his choice of the farther location was the added fuel consumption involved. While this witness conceded that travel time to the lunch location came out of grievant's 30 minute lunch period, he stated that the additional time of several minutes each way was also a factor in his decision. The witness sponsored into evidence the copy of a menu from the place that had been designated as one of grievant's lunch location over his objection, which the supervisor felt represented average prices.

SUMMARIZED POSITION OF THE PARTIES

The Union

The Union contends that the employer improperly denied the grievant his option to select three locations, as required by appropriate provisions of the Postal Service Handbook and Manuals. In response to the supervisor's stated reason for denying grievant's choice based on the extra time involved, the Union says that this should be of no concern to the Postal Service since that time is charged to the carrier's lunch period. The Union discounts the other reason based on expense of the extra travel since the amount is no more than a few cents a day.

The Employer

The employer contends that the supervisor's designation of grievant's lunch location was reasonable because it was adequate, and points to the evidence of average prices charged at that eating place. The employer further contends that the

supervisor properly considered the appropriate factors of time involved as stated in Manual ¶ 613.214, and the distance as stated in ¶ 126.5. The employer also cites the requirement of ¶ 171.36 that the authorized location be within a minimum reasonable distance from the route.

DISCUSSION AND OPINION

A careful and complete reading of the pertinent provisions of the Handbook and Manual to which the parties are bound by virtue of Article 19 of the National Agreement, reflects a purpose to reach a balance between the personal desires of employees and the interests of the Postal Service in conserving time and cost in arriving at an accommodation in the selection of suitable locations for carriers to take their lunch breaks. While Part 126.5(2) of the M-39 Manual grants to the carrier "the option of selecting up to three locations for lunch," M-39, ¶ 171.36 provision that this matter "must be a subject of discussion between the carrier and the unit manager" suggests that neither has the unfettered right of selection. Both of these provisions recognize distance from the route as a factor. Although travel time is charged to the carrier's lunch period, ¶ 613.214 recognizes that management is concerned with the travel time involved in authorizing lunch places off the route. To be added to these express considerations, there is implicit in the phrase "suitable place to eat" a subjective factor of preference by individual carriers that may not necessarily coincide with the opinion of management. When the totality of these factors are considered, it is expected that a compromise will be reached leading to the

authorized lunch location. Since that did not occur in this instance, the parties have employed the grievance and arbitration procedure in asking the arbitrator to review the reasonableness of management's denial to grievant of his preferred lunch location.

Changed circumstances relating to cost and time may compel change in a carrier's previously approved lunch location. Moreover, designated lunch locations are not so firmly fixed that they are immune from change when management discovers that it was initially unreasonable. But here management has not suggested any change of circumstances beyond a felt need to place greater emphasis on fuel conservation. Nor has it been demonstrated that the previously authorized location was manifestly unreasonable in terms of time and costs, or based on an oversight or newly discovered evidence. And given the balance of interest that must be taken into consideration in reviewing grievant's selection of his lunch location, the saving of slightly more than one mile of travel cost, and a few minutes of travel time, is not of sufficient magnitude to justify management's denial of grievant's personal desire to continue to take his lunch breaks at the previously authorized locations.

In sum, when all of these factors are placed in proper balance, management's contrary view of what is an adequate lunch location is not sufficient to overrule the grievant's personal selection as to where he desires to take his lunch. Accordingly, the change forced upon the grievant was not shown to have been for reasonable and sufficient cause.

AWARD

After careful consideration of the evidence and arguments of the parties, and based on the reasons set out above, the award is that the employer violated the National Agreement, and the pertinent provisions from the Handbook and Manual incorporated therein, when it denied grievant his choice of lunch location.

Accordingly, the grievance is sustained and the employer is directed to authorize grievant's lunch locations at the places designated prior to the change.

Robert W. Foster

Robert W. Foster
Arbitrator

January 3, 1984

Columbia, South Carolina