

C-26276

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION ) GRIEVANT: George Diaz  
(  
Between ) POST OFFICE: Hialeah, Florida  
(  
UNITED STATES POSTAL SERVICE ) USPS Case No: H01N-4H-C 05053636  
(  
(  
And ) NALC Case No: HIA 04-299  
( DRT NO: 09-051156  
(  
NATIONAL ASSOCIATION OF LETTER )  
CARRIERS, AFL - CIO )

BEFORE: Ruben R. Armendariz, Arbitrator

APPEARANCES:

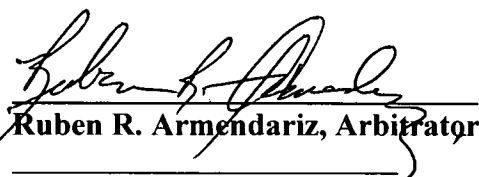
For the U. S. Postal Service: Maria A. Villar-Avery, Labor Relations Specialist

For the Union: Eugenio Perez, Assistant Secretary Treasurer

Place of Hearing: Hialeah, Florida  
Date of Hearing: November 8, 2005  
Date post-hearing briefs are due: November 18, 2005  
Date of Award: November 28, 2005  
Relevant Contract Provisions: Article 14 and 19 and handbooks  
Contract Year: 2000-2005  
Type of Grievance: Contract/Safety

AWARD SUMMARY

This grievance is **SUSTAINED**. The Local Hialeah Postal Management is, hereby, **ORDERED** to immediately correct these safety hazards; by removing the CBUs from its present location, and by changing the mode of delivery to curbside delivery<sup>1</sup> ensuring the safety concerns of the grievant, the customers and safe passage to motorists and pedestrians.

  
Ruben R. Armendariz, Arbitrator

<sup>1</sup> The President of Spanish Lakes HOA has offered to purchase and install all mail receptacles for the residents of the Spanish Lakes Community at no cost to the Postal Service.

RECEIVED

DEC 07 2005

VICE PRESIDENT'S  
OFFICE  
NALC HEADQUARTERS

Judith Willoughby, NALC  
National Business Agent

DEC 01 2005

Received

## ARBITRATOR'S OPINION AND AWARD<sup>2</sup>

### I. INTRODUCTION

This matter came on to be heard on November 8, 2005, in Hialeah, Florida. Based on the entire record in this case, my observation of the witnesses, after examination of all the exhibits, arbitral citations provided, post-hearing briefs submitted and in consideration of the arguments raised by the parties, this Arbitrator makes the following findings and renders the following Discussion, Opinion and Award.

### II. STATEMENT OF THE CASE

This is a contract grievance. George Diaz, the grievant herein is a full-time city letter carrier at the Hialeah Miami Gardens Branch and is assigned to route 15032. On November 27, 2004, grievant filed a complaint with the Office of the Inspector General **"hotline"** because he had previously raised certain safety and hazardous conditions located within his route (578 CBUs are located within a 4-way stop) that were being ignored by the local management. Grievant had previously informed his immediate Supervisors, the Station Manager, the safety office and the Postmaster of the safety and hazardous conditions that currently exist on his route (Spanish Lakes community at 79<sup>th</sup> Avenue and NW 197<sup>th</sup> Street) as follows:

1. No parking for the carrier or customers,
2. No parking for the handicapped,
3. Excessive exposure to the elements (over 500 deliveries in one stop),
4. No protection to the carrier from busy traffic and customers attempting to get their mail without anywhere to park except in front of the boxes and sidewalks, and
5. The proximity of CBU mail boxes to the roadway.

On December 27, 2004, an Informal Step A grievance was initiated with no resolve. On

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<sup>2</sup> This proceeding was tape recorded by the undersigned. Said tapes are immediately erased upon issuance of the Award for use in other arbitration proceedings.

February 11, 2005, a Formal Step A meeting was held with no resolve. On February 14<sup>3</sup>, the grievance was received at Step B and on March 1, an **IMPASSE** decision issued.

On March 22, National Business Agent Judith R. Willoughby and Labor Relations Manager Steve Murray entered into a pre-arbitration settlement and agreed to remand this grievance to the Local Union President or his designee and to the Local Postmaster or his designee to resolve this grievance.

On July 6, Union Vice President Santos Luyanda informed and remanded this grievance for arbitration to NBA Willoughby, stating that Local Management is unwilling to resolve this grievance or to offer an alternative to alleviate the dispute.

Due to the inability of the parties to resolve this safety grievance, it was submitted to this Arbitrator for decision.

### **III. THE ISSUE**

The parties agreed to frame the issue as follows:

**Did Management violate Article 14 of the National Agreement when it failed to make changes to the grievant's delivery location on Route 15032 after he reported an unsafe work environment related to the delivery location? If so, what is the appropriate remedy?**

### **IV. BURDEN OF PROOF**

In contract issue cases, the burden of proof rests on the Union. This case involves the interpretation and application of Article 14 of the National Agreement. In order for the Union to demonstrate its burden of proof, the Union must establish the intent of the contract language. If the contract language is clear and unambiguous, the intent of the contract language has been established. If the contract language is not clear and unambiguous, the Union may establish its intent by relying on the parties bargaining history, its' past practices, arbitral authority, or by its' customs and practices within the industry. The Postal Service, on the other hand, in rebutting the Union's burden of proof, may rely on the same criteria.

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<sup>3</sup> All dates hereafter refer to year 2005, unless otherwise noted.

## **V. RELEVANT CONTRACT & FLORIDA STATUTE PROVISIONS**

### **ARTICLE 14 SAFETY AND HEALTH**

#### **Article 14, Section 1 Responsibilities**

**“It is the responsibility of Management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist Management to live up to this responsibility. ...”**

#### **Handbook M-41**

##### **812.2**

**Observe all traffic regulations prescribed by law. Rules applying to the public also apply to operators of postal vehicles.**

#### **POM Issue 9, July 2002**

##### **732.2 Traffic Laws**

**Employees driving any vehicle in performance of postal duties must obey all federal, state, and local traffic laws at all times. Postal-owned or leased vehicles have no special right-of-way over private vehicles.**

#### **ELM 17.3, April 2003**

##### **814 Employee Rights and Responsibilities**

##### **814.2 Responsibilities**

**It is the responsibility of all employees to:**

- c. Immediately report safety hazards and unsafe working conditions.**
- g. Drive defensively and professionally; extend courtesy in all situations; and obey all state, local, and postal regulations when driving a vehicle owned, leased, or contracted for by the Postal Service.**

## **CHAPTER 316 THE 2005 FLORIDA STATUTES**

### **316.2045 Obstruction of public streets, highways, and roads.**

- (1) It is unlawful for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering the safe movement of vehicles or pedestrians traveling thereon; and any person or**

persons who violate the provisions of this subsection, upon conviction, shall be cited for a pedestrian violation, punishable as provided in chapter 318.

**316.1945 Stopping, standing, or parking in specified places.**

**(1) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic control device, no person shall:**

**(a) Stop, stand, or park a vehicle:**

- 1. On the roadway side of any vehicle stopped or parked at the edge of a curb of a street.**
- 2. On a sidewalk.**
- 3. Within an intersection.**
- 4. On a crosswalk.**
- ...**
- 10. At any place where official traffic control devices prohibit stopping.**

**(b) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:**

- 3. Within 20 feet of a crosswalk at an intersection.**
- 4. Within 30 feet upon the approach to any flashing signal, stop sign, or traffic control signal located at the side of a roadway.**

## **VI. POSITION OF THE PARTIES**

### **THE UNION**

The Union argued in their post-hearing brief that Management violated Article 14 of the National Agreement to provide all employees a safe working environment with safe working conditions. The grievant reported an unsafe working environment in his delivery location, in which, it affects the grievant, other carriers that replace him or are assigned that portion of the route. The unsafe conditions affect customers and children in the community and in violation of postal rules and regulations as well as local and state laws.

The Union argued that Management violated:

1. ELM Sections 811.22, 811.23, 811.24, 814.1, 814.2 (JX-5) by failing to adhere to their own Safety Vision Statement, Safety Guiding Principles, Safety Philosophy. Employees

Rights and Responsibilities requiring grievant to violate traffic regulations.

2. EL-801 Handbook (JX-6) by requiring grievant to violate traffic regulations.
3. PO-701 Handbook (JX-7) by requiring grievant to violate traffic regulations.
4. EL-814 Handbook (JX-8) by requiring grievant to violate traffic regulations
5. POM (JX-9) by the unsafe location of the cluster boxes, in which, it required postal customers to violate Florida's State Statutes on a daily basis, thereby exposing the community to vehicle/pedestrian accidents. The location requires postal customers to walk or drive more than one block in violation of the above-cited provision.
6. Florida State Motor Vehicle Statutes (JX-10) 316.1945 Section 1, (a) numbers 1, 3 and Section 12 number 3 and 4, in which, it prohibits stopping, standing or parking at the edge or curb of the street, or within 20 feet of a crosswalk at an intersection, or within 30 feet upon the approach of a stop sign. The grievant and the community are required to violate the cited statutes on a daily basis.
7. Breached the agreement with the Spanish Lakes Community and the developer to have three locations for the cluster boxes within an appropriate distance per Postal Handbooks. The developer left the site without finalizing the locations for the cluster boxes and left all the parties empty handed. As a result, the Local Management placed all deliveries (578) in one unsafe location.

The Union argued that the grievant, the community and the school have repeatedly complained about the unsafe conditions they are subjected to deliver, pick up their mail, release and transport children via school buses. The most obvious hazard is the close proximity of the CBUs to the intersecting roads. State law prohibits parking within 20 feet of an intersection. The photos provided in the file clearly show the carrier's vehicle partially parked onto the parkway. The original locations for the CBUs are no longer available and there is no location to park a letter carriers vehicle. The current location of the CBUs is not safe. When a carrier's truck is parked onto the curb where the CBUs are located, it only adds to the existing problem i.e., the view of all vehicles (cars and school buses) trying to cross a 4-way stop intersection is blocked. The placement of over 500 deliveries in one location by management requires customers to travel up to six blocks is not reasonable, nor is it reasonable to require a letter carrier to deliver mail in such close

proximity to traffic. The grievant has attempted to remedy this situation by completing PS Form 1767, Report of Hazard, Unsafe condition or practice report, contacted safety and finally the Office of the Inspector General. The grievant also raised issues of excessive exposure to the elements, no parking for the Postal vehicle and no parking for the customers. This lack of safe parking creates an additional hazard for drivers using these streets.

The Union argued that in August 2003, Ms. Nancy Salazar, a resident of the Spanish Lakes community complained to the Miami-Dade County, Florida. On August 14, 2003, Muhammed M. Hasan, P.E., Chief of Traffic Engineering Division responded and wrote the following letter, "Pursuant to your request for the installation of a raised curbside to protect mailboxes at the referenced subject location, please be advised that staff conducted a field investigation of the area which revealed that the existing mail boxes were installed on the northeast corner at the referenced location, and are creating a visual obstruction and a hazardous condition for motorists driving westbound and southbound. Therefore, by copy of this letter, we are requesting Mr. John J. Ritsema, P.E. Chief, Construction Division, and Mr. Raul Pino., Chief, Land Development Division, to take the appropriate action to require the developer to relocate the mailboxes to a new location adjacent to a local roadway within the new development which will not create a traffic hazard. Upon relocation of these mailboxes, the installation of raised curbside at the subject location is no longer necessary."

In or around September 2004, Postmaster Victor Estalella met with the Continental Group, Inc., that represents the Spanish Lakes Homeowners Association to hear their concerns over the CBUs present location. On September 20, 2004, Sylvia Glist, Property Manager for the Continental Group wrote a letter to Postmaster Estalella and thanked him for hearing their concerns. In this letter, Ms. Glist stated the following, "As we all have determined the area where the cluster mail boxes are located is an accident waiting to happen. There is no guest parking there and they are situated on a main road. The Association would like to have curbside delivery and will incur the expense of the receptacles." Ms. Glist further stated, "We appreciate your consideration of this request, as Spanish Lakes has been dealing with the homeowners' complaints regarding their safe being in relation to where these mail boxes have been situated."

The Union argued that the Local Management has created an unsafe working environment and continues to refuse to properly address and remedy this unsafe situation.

The Union requests this grievance be sustained. Local Management should immediately be ordered to correct these safety concerns; by removing the CBUs from their present location, by changing the mode of delivery to curbside delivery ensuring the safety concerns for the grievant, the customers and safe passage to motorists and pedestrians.

## **THE POSTAL SERVICE**

The Postal Service argued in the Step B decision the following, "there is no violation of safety rules and regulations and therefore no hazardous conditions are created by the placement of the CBUs at its present location.

While the grievant maintains there is no parking available for his postal vehicle, the copies of pictures provided in this grievance show there is ample area for the grievant to park his vehicle. In addition to the area in front of the delivery point, there is nothing to preclude the grievant from parking on the street, which is in close proximity to the delivery points. That may not be the optimal location in the grievant's opinion, but nevertheless, it is a viable option that provides for the grievant's safety.

The grievant's claim that no parking for the handicap exists must be dismissed as without merit. The photos clearly show no impediment to a handicapped individual being able to access their delivery box. The site was not constructed by the Postal Service and therefore this issue should be addressed to local government if in fact there is a violation of any local ordinance relative to handicapped person access. The grievant's claim of excessive exposure to the elements fails to consider that his position as a letter carrier requires him to perform his duties on a daily basis outside. This fact was true when the grievant sought and accepted postal employment as a letter carrier and remains true at this time. In addition, the grievant's claim fails to take into consideration that letter carriers who make deliveries on park and loop routes have no protection from the elements while they are making their walking deliveries, often times with as many deliveries as the grievant. While the grievant makes deliveries at one location, other carriers are walking miles to complete deliveries on their assignments on a daily basis. If the grievant believes that such an assignment is not to his liking, he has the contractual right to make a bid for another assignment that is within his personal parameters for exposure to the elements.

The photocopies disclose that there are other options for parking other than the grievant's



preferred parking place. There is nothing to preclude the grievant or other carriers from legally parking on the street to the left of the delivery location. Likewise, there is nothing to preclude the grievant or other carrier from orienting his vehicle in a different manner on the pad other than that shown in the photos. Absent in this grievance are any measurements to support grievant's and the Union's contention concerning space on the pad. There is no mention in this grievance that a stop sign is located on the right side of the delivery location and at this intersection that requires motorists to stop. Although there may be periods of "busy traffic" during the course of the day, there was no evidence provided to indicate that this intersection is overly busy at the time the grievant or other carrier is effectuating delivery at this locale. While it is not known how long this delivery point has been in existence there is no evidence in the case file to indicate there have been accidents involving any letter carrier or postal customer by which the location of this delivery point was a factor.

While it appears the location of the boxes is in proximity of the roadway, a stop sign is located at the point closest to the roadway. Again, there are no measurements provided that demonstrates the location violates any safety rule or local ordinance. What is apparent is that motorists are required to stop at the location closest in proximity to the delivery location. Therefore, ample consideration has been given to the safety of the grievant and customers to access this area.

Further review of the file indicates that Management was responsive to the grievant's complaint. A number of officials have visited the site, including a safety specialist and the consensus has been that no safety hazards exist at this location."

The Postal Service argued that there is no documentation in the file to establish that curbside delivery is a more efficient manner to make delivery or adds to the safety of the grievant.

The Postal Service requests this grievance be denied in its entirety.

## **VII. DISCUSSION AND OPINION**

The Union, in support of its position, provided for testimony Continental Group Property Manager Sylvia Glist, the current Homeowners Association (HOA) President Mary Almanza, EX-VP HOA Tom Lopez, Homeowner School Security Spanish Lake's Security Raul Vasquez, Steward Eloy Gonzalez, NALC Formal A remand discussions representative Santos Luyanda, Director of Board Members-Spanish Lakes HOA Luis E. Leon and the grievant.

Leon testified that the intersection is unsafe, dangerous and there are several children in the area. He had to pick up his mail on foot as there is no available parking near the cluster boxes. Glitz testified that the area where the cluster boxes are located is an accident waiting to happen. Steward Gonzalez testified that the area is unsafe by the number of cars parked on the street and people going home. Grievant testified that he reported his work area as a safety hazard and feared for his safety because of the traffic and obstructions. He stated that he was offered the option to park his vehicle in front of the cities pumping station gates but this was blocking their access to and from the area.

This Arbitrator finds that the Union has met their burden of proof through the testimony of the above individuals, the documentation provided in JX-2 through 10 and the field trip to the site.<sup>4</sup>

This Arbitrator finds that the record evidence disclosed at the intersection of 79<sup>th</sup> Avenue and 197<sup>th</sup> Street is a 4-way stop. Each street is a two-way narrow residential road containing a double yellow line approximately fifty feet in length to preclude motorists from passing each other. A pedestrian crosswalk is located at the northeast corner. The existing cluster mailboxes (CBUs) were installed on the northeast corner. According to the Miami-Dade County Traffic Engineering Division, they inspected this area and responded by letter that this location is creating a visual obstruction and a hazardous condition for motorists driving westbound and southbound (JX-2 at page 21). They also requested the Miami-Dade County construction division to get with the developer and move the mailboxes to another location. At this intersection where a crosswalk is located, the stop sign is adjacent to the crosswalk and the cluster mailboxes. The stop sign is located behind bushes that are at least 10 feet high.

This Arbitrator finds that the 2005 Florida State Motor Vehicle Statutes (JX-10) are being violated by Management in requiring the grievant to violate these statutes. In turn, customers are also violating these statutes due to the location of these cluster boxes. Section 316.945 Section 1, (a) numbers 1, 3, and Section 12, number 3 and 4, of the Florida Statutes prohibit stopping, standing or parking at the edge or curb of the street, or within 20 feet of a crosswalk at an intersection, or within 30 feet upon the approach of a stop sign. This Arbitrator observed that the grievant is parking his LTV or postal vehicle on the curb and is within 20 feet of a crosswalk and within 30 feet

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<sup>4</sup> This Arbitrator does not agree with the Union that the grievant is exposed to the elements for a lengthy period of time is a safety hazard. Grievant's job description calls for him to be outside in the elements.

upon the approach of a stop sign. As a result, Management is violating postal rules and regulations by requiring grievant to violate ELM Sections 811.22, 23, 24, 814.1, 2., EL-801 Handbook, PO-701 Handbook and the EL-814 Handbook. The Postal Service argued that the grievant could park his vehicle one block away, off to the side or in front of the gates of the cities pumping station. For the grievant to park his vehicle off to the side or one block away exposes him to other safety concerns. For the grievant to park his vehicle at the gates of the cities pumping station blocks access to and from the cities pumping station and is still within 20 and 30 feet of the stop sign and crosswalk. None of these alternatives are reasonable or satisfactory to resolve this matter.

It is clear to this Arbitrator that what happened at the Spanish Lakes community is that the developer went bankrupt and did not complete what he had initially agreed to do in regards to the placement of the cluster mailboxes. The Hialeah Postal Management is aware of this situation and was under the assumption that the three agreed upon locations would be available to relocate the existing cluster boxes from the 4-way stop intersection. Unfortunately, these locations were developed for a tiny tot play area and a recreation area. According to Postmaster Estalella, he stated that there are no safety or hazard conditions at the 4-way stop. He stated that the safety office of the Postal Service had inspected this site and had concluded no safety hazards existed. He also stated that there are no other locations to place these cluster mailboxes and curbside delivery would not be cost effective.

It is this Arbitrator's Opinion that grievant's work location within the 4-way stop intersection is a safety hazard. This is supported by the testimony of the Union's witnesses, the customer complaints filed and the letter received from the Miami-Dade County Traffic Engineering Department, in which, they found these cluster boxes to be a safety hazard, as it is causing a visual obstruction and a hazardous condition for motorists driving westbound and southbound.

Under these given circumstances, it is this Arbitrator's Opinion that the Postal Service has violated Article 14 and 19 and its Handbooks.

Accordingly, the following Award is **ORDERED**.

### **VIII. THE AWARD**

This grievance is **SUSTAINED**. The Local Hialeah Postal Management is, hereby, **ORDERED** to immediately correct these safety hazards; by removing the CBUs from their present

location, and by changing the mode of delivery to curbside delivery<sup>5</sup> ensuring the safety concerns of the grievant, the customers and safe passage to motorists and pedestrians.

**Issued at San Antonio, Texas, the 28<sup>th</sup> day of November 2005.**

**Ruben R. Armendariz  
Arbitrator**

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<sup>5</sup> It should be noted that the President of Spanish Lakes HOA has offered to purchase and install all mail receptacles for the residents of the Spanish Lakes Community at no cost to the Postal Service.