

C# 03232

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UNITED STATES POSTAL SERVICE : OPINION AND AWARD
:
: In the Matter of
:
: DEAN A. NIEDERT
and :
: N-C-4120 (124Vs)/SXF-36
: RA-73-1587
:
: Issued:
NATIONAL ASSOCIATION OF :
LETTER CARRIERS, AFL-CIO : August 30, 1974
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BACKGROUND.

This grievance is before the Impartial Chairman for decision pursuant to Article XV of the July 21, 1973 Agreement between the United States Postal Service and American Postal Workers Union; National Association of Letter Carriers; National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of Laborers' International Union of North America; and National Rural Letter Carriers Association. The issues arose under the July 20, 1971 National Agreement between the U. S. Postal Service and the respective Unions.

A hearing was held in Washington, D.C. on June 12, 1974. Both parties thereafter filed briefs as of July 25, 1974. The Postal Service later filed a reply brief on August 9, 1974. The Union elected not to file a reply brief.

The grievance originated in Sioux Falls, South Dakota, early in 1973 and protests the transfer of about 800 deliveries from the jurisdiction of the National Association of Letter Carriers (NALC) to the jurisdiction of the National Rural Letter Carriers Association (NRLCA). The NRLCA was notified of the hearing herein and advised of its right to intervene in the proceedings under Article XV, Section 3, of the National Agreement, but it elected not to participate.

The case began to take shape late in 1972, when a survey of the existing five rural routes then operated by the Sioux Falls Post Office revealed that all five entailed more than 40 hours of work per week. Three of the 5 were found to be "heavy duty" and 2 others were characterized as "overburdened." One of these was rated at 76 hours of work per week. In view of these findings it was apparent that a redistribution of work was essential to achieve more reasonable workloads for the rural routes. About this same time Branch 491, NALC, representing the Sioux Falls City Carriers, urged that at least one existing auxiliary city route be converted to a regular route and posted for bid because the workload approximated or exceeded 40 hours per week. After a grievance embodying this request was filed, Postal Service Officer in Charge Martinez replied on February 9, 1973 as follows:

"This office has requested authorization to fill regular city carrier vacancies within our authorized complement. Our District Office has advised that such existing vacancies can only be filled by reassignment of excess rural carriers within our area. We are presently proceeding with rural route consolidations in the area to provide for our staffing needs locally."

(Underscoring added.)

The need to place excess Rural Carriers was expected to arise because six Rural Carriers were to be displaced by route consolidations in other Post Offices near Sioux Falls. Under the 1971 National Agreement such displaced Rural Carriers were entitled, in certain circumstances, to claim jobs in other crafts within a radius of up to 100 miles.

About this same time another official of the Sioux Falls Post Office advised NALC Branch 491 President Niedert that the Sioux Falls Post Office planned soon to increase the number of Sioux Falls rural routes from 5 to 11 by (1) re-assigning work among the existing rural routes and (2) transferring to rural routes deliveries then being made by City Carriers on Routes 13, 24, 50, and 72 (the latter being an auxiliary route as to which the earlier Union grievance had requested posting for bid as a regular route). This official further told Niedert that the proposed action was intended to create positions for six Rural Carriers being surplus from their own offices.

Following this advice, Branch President Niedert wrote Officer in Charge Martinez on April 1, 1973 grieving as follows:

"I wish to appeal a violation of the National Working Agreement including but not limited to Article VII, Section 4. This is in regard to the cannibalizing of city delivery routes in Sioux Falls and converting all or part of some of the city delivery routes to rural routes.

"Article VII does give the right for work in different crafts to be shifted back and forth, however section 4 specifically excludes rural letter carriers from this shifting of work.

"My representative on this grievance will be Mr. Duane McKee, and we will be available to meet with you on this matter at your convenience."

On April 6, 1973 Officer in Charge Martinez replied:

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"This letter is written in response to your alleged violation of the National Agreement, Article VII, Section 4.

"I have considered the facts bearing on this case.

"Article VII, Section 4, of the National Agreement has not been violated since this deals with employee classifications.

"Methods of delivery, etc., are considered a management right and obligation under Article III of the Agreement, and we shall continue to carry out our responsibilities in this area as in the past. I might add that there is nothing on record to indicate you have discussed this matter at Step 1 of grievance procedure."

Meanwhile, NALC President Rademacher had written to the Senior Assistant Postmaster General on March 30, 1973 protesting the contemplated action at Sioux Falls, as well as similar proposed actions in other locations. President Rademacher asserted that all such moves were in violation of Articles I, III, V, VII, and XII of the 1971 National Agreement. On May 11, 1973 the grievance filed by Branch President Niedert on April 1 was appealed to Step 4 and ultimately it became the basis for the present arbitration. Other grievances involving similar problems were held in abeyance pending decision here.

The protested realignment of routes in Sioux Falls did not actually take place until nearly two months after the grievance was filed. During early 1973 it had become necessary to review all city and rural routes, at Sioux Falls as well as at other Post Offices, to determine the impact of a new centralized mark-up system for forwarding mail. Much of the work of Carriers (both City and Rural) in forwarding mail was to be transferred to Clerks under the new procedure. While this new forwarding method was not expected to affect the total workload of the various routes substantially, its potential impact nonetheless was significant enough to warrant a general study of all routes as a basis for realignment to achieve more efficient use of the entire delivery force. This review of all Sioux Falls routes was completed before the action now under review ultimately became effective on May 26, 1973.

As had been indicated earlier to Branch President Niedert, one principal effect of the realignment of routes was to establish 11 rural routes in contrast to the previous 5. This result was achieved in substantial part by removing

deliveries from four City Routes as follows: (a) 270 deliveries, of 670, were removed from City Route 13; (b) 75 deliveries, of 494, were removed from City Route 24; (c) 104 deliveries, of 512, were removed from City Route 50; and (d) all, or substantially all, of the 398 deliveries on City Route 72 were reassigned. Thus a total of 800 or more deliveries were reassigned from City Carriers to Rural Carriers. At the same time about 50 rural deliveries were reassigned to City Carriers.

These reassessments were approved by District Customer Service Representative Seger, who earlier had discussed possible realignment of rural and city routes with the Sioux Falls Postal Service officials. Seger testified that there were at least three reasons to remove deliveries from City Carriers and assign them to Rural Carriers in Sioux Falls: (1) the Postal Service could "draw a type of boundary where we would have an area where we could really say that we knew where there was a difference between our city and rural delivery," (2) the Postal Service could strive "to provide the best service we could to the customer ... because they are so far from a postal unit ...," and (3) the transfer of deliveries to rural routes would enable the Postal Service thereafter to provide delivery to people on new streets without having to meet the 50 per cent improved requirement for new city deliveries. The Union presented a good deal of testimony calculated to establish that each of these claimed improvements in service was more fictional than real and that there had been no change in any relevant characteristics of the areas involved to warrant changing them from city to rural service.

Prior to May 26, 1973 there were 66 regular and 4 auxiliary city routes in Sioux Falls. After that date there

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were 64 regular and 3 auxiliary city routes. Thus, while the rural routes were increased from 5 to 11, the city routes were reduced from 70 to 67 in number. One of the new rural routes, however, apparently resulted in large part from the transfer of territory from a nearby Post Office to Sioux Falls.

After May 26, 1973 only one of the 6 new rural routes actually was filled by a Rural Carrier who had been displaced by route consolidation in another Post Office. The other 5 new rural routes were posted for bid and awarded to members of the Clerks craft on the basis of seniority.

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CONTRACTUAL PROVISIONS

The principal arguments of the parties involve interpretation of Articles I, III, and VII of the July 20, 1971 National Agreement.

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In Article I, Section 1, the Employer recognizes each of the designated Unions therein "as the exclusive bargaining representative of all employees in the bargaining unit for which each has been certified and recognized at the National level."

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Article III states:

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"ARTICLE III. MANAGEMENT RIGHTS

"SECTION 1. 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;

"E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and

"F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be a recurring nature."

Article VII provides, in relevant part:

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"SECTION 2. Employment and Work Assignments

"A. Normally work in different crafts, occupational groups or levels will not be combined into one job. However, in order to maximize full-time employment opportunities and provide necessary flexibility, management may after studied effort to meet its requirements by combining within craft or occupational groups, establish full-time or part-time scheduled assignments by including work within different crafts or occupational groups.

"B. In the event of insufficient work on any particular day or days in full-time or part-time employee's own scheduled assignment, management may assign him to any available work in the same wage level for which he is qualified, consistent with his knowledge and experience, in order to maintain the number of work hours of his basic work schedule.

"C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

"D. The number of casual employees who may be employed in any period, other than December, shall not exceed 8% of the total number of employees as covered by this Agreement, except as to employees employed pursuant to Public Policy Employment Type Programs.

"SECTION 3. Employee Complements. The Employer shall man all post offices and facilities with 200 or more man years of employment with 90% full-time employees within six (6) months from July 1, 1971, with the exception of the seventy-eight (78) largest post offices that include all post offices larger than Grand Rapids, Michigan as to which such manning shall be completed by June 30, 1972. The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all Post Offices.

"SECTION 4. Exclusions. This Article does not apply to rural letter carriers or replacements, as to whom current practices and policies shall apply."

THE CONTENTIONS

1. NALC

The Union essentially advances three major arguments. Initially it urges that the reassignment of City Carrier deliveries to rural routes violated an implied obligation arising from recognition of the NALC as exclusive representative of all employees in this craft. It stresses the long established distinction between City Carriers and Rural Carriers: they have been treated as separate and distinct crafts for years in applicable Federal statutes, in Postal Service Regulations, and in the parties' collective bargaining agreements. In a recent NLRB decision involving the Postal Service (208 NLRB No. 144) the following relevant paragraph appears:

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"Sometime in 1962, in accordance with Executive Order 10988 which issued January 7, 1962, the Post Office Department determined that appropriate bargaining units should be national in scope and coincide with seven traditional so-called 'craft' lines. At that time, the seven such groups were (1) letter carriers, (2) mail-handlers, (3) clerks, (4) special delivery messengers, (5) rural letter carriers, (6) motor vehicle employees, and (7) maintenance employees. On July 1, 1971, after passage of the PRA but prior to execution of the interim collective-bargaining agreement, the clerks,

special delivery messengers, motor vehicle employees, maintenance employees, and the National Postal Union merged to form the APWU, but each union except NPU signed the Agreement as a separate entity. Rural letter carriers remain as a separate craft, but have not intervened herein. Thus there are four unions presently representing employees in the seven 'craft' groups."

Although the 1971 National Agreement does not spell out the respective jurisdictions of all of the seven national crafts in so many words, the Union has no doubt that exclusive recognition of the NALC necessarily implies agreement that employees represented by NALC will be protected in the exclusive right to perform work traditionally performed by NALC members. On this score the Union cites general language from various opinions of other arbitrators in other collective bargaining relationships. All NALC witnesses testified that never before to their knowledge--extending back more than 30 years--had there been a transfer of deliveries from City Carriers to Rural Carriers.

Another principal NALC argument involves Article VII, Section 2-A. Under this language, it says, the Employer may establish full-time or part-time scheduled assignments by combining work from two or more crafts into a single job, only "in order to maximize full-time employment opportunities and provide necessary flexibility." The Union notes that Article VII, Section 2-A cannot apply to the Rural Carrier craft because of the specific exclusion set forth in Section 4.

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This exclusion, it says, necessarily requires that no work be assigned from any of the other six crafts to the Rural Carrier craft.

Finally, the Union reasons that the disputed re-assignment of work violated Article VII, Section 3, on the ground that City Auxiliary Route 72 properly should have been posted as a full-time regular route as the Union had requested specifically, prior to May 26, 1973. In addition, it stresses that the total number of deliveries removed from city routes entailed enough work to constitute at least two full-time regular routes. It thus suggests that the assignment of the disputed work to Rural Carriers constituted an evasion of the Postal Service obligation to the NALC under Article VII, Section 3.

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2. POSTAL SERVICE

The Postal Service urges that there is no significant distinction between the work performed by Rural Carriers and City Carriers, although the former serve as "traveling post offices." (On an average basis this type of work may involve about 10 minutes per day for a Rural Carrier.) Moreover, it urges that the determination of the type of delivery service to be provided in a given area is a Management decision under Article III. Such a determination, it urges, is a basic decision as to how the Postal Service will meet its responsibilities under law to maintain an efficient system of mail collection, sorting, and delivery, and provide types of mail service which will meet the needs of different categories of mail users.

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The Postal Service deems its decision to change certain stops from city to rural service as an exercise of an inherent Management function, with nothing in the National Agreement to impose any limitation upon the exercise of such function. It characterizes the Union claim of work jurisdiction as essentially a claim of right to service particular geographical areas. Since the Postal Service has established criteria to determine the type of service to be provided in any given area, it may exercise full discretion when the criteria do not clearly require one type of service or prohibit another.

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The Postal Service denies that Article VII, Section 2-A, has any application, saying:

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"The Union's assertion that this case in some way involves a combination of rural carrier craft work with the work of another craft fails to recognize the basic scope of rural carrier work - to deliver mail in a rural delivery service area. This work is not the work of any craft other than the rural carriers, although the individual duties of a rural carrier are virtually identical to those of a city carrier. As the duties involved in this case are duties of the rural carrier craft, no claim that there has been a combination of work of several crafts can legitimately be made."

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The Service urges that the maximization requirement in Article VII, Section 3, applies to all bargaining unit employees in each Post Office as a composite group (except for Rural Carriers), and not on individual craft basis.

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In its reply brief the Service contends that a managerial decision concerning boundaries of the various delivery service areas, and type of service to be provided, is not subject to challenge under the grievance procedure of the National Agreement. Thus the ultimate and basic position of the Service is that Article III recognizes its unfettered discretion to make decisions of the sort now challenged by the Union.

FINDINGS

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Proper analysis of this case must start with Article III--Management Rights. This Article makes clear that the Employer has the exclusive right, among other things, (1) to direct the employees in the performance of their official duties and (2) to determine the methods, means, and personnel by which its operations are to be conducted. The various Management rights described in Article III, however, are expressly limited in that they must be exercised "subject to the provisions of this Agreement and consistent with applicable laws and regulations."

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The Union in effect seeks to bring the present case within this critically important proviso, by its arguments under Article I--Recognition (buttressed by reference to Article XII--Seniority) and under Article VII.

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The Impartial Chairman sees no useful purpose in considering the elaborate argument as to implied obligations said to arise from the Recognition Clause in Article I. The fact is that a reasonable reading of Article VII should leave little doubt that it applies to the kind of problem which has arisen in this case. Thus there is no need to speculate about implied obligations which otherwise arguably might stem from Article I and the seniority provisions in Article XII. The agreed obligations and restraints which limit Management's exercise of discretion concerning the matters dealt with in Article VII properly are found in the language of that Article and the reasonable inferences and implications which arise therefrom.

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Nor does the Impartial Chairman believe that the Union arguments and assumptions concerning the possible application of Article VII, Section 3, require discussion here. If the Union is correct in holding that Article VII, Section 2-A, barred the action now under review, of course, Section 3 possibly could become pertinent in considering remedial action.

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Article VII, Section 2-A itself must be read in the context of the entire National Agreement, and of the collective bargaining relationships which have existed in the Postal Service since the early 1960's. At first blush, two basic propositions emerge from this provision:

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(1) Normally work in different crafts will not be combined into one job, and

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(2) full-time or part-time scheduled assignments may be established to include work within different crafts

"in order to maximize full-time employment opportunities and provide necessary flexibility," but only after "studied effort" by Management to meet its requirements "by combining within craft or occupational groups."

The Postal Service brief apparently seeks to avoid application of Article VII, Section 2-A, in the present case by suggesting, in effect, that the employees represented by the NALC and the NRLCA may be treated as though in the same "craft." The brief urges (1) that no "distinction" between the Rural and City Carriers may be found "in the work they perform," and (2) that the craft of employees making deliveries is "determined solely by the type of delivery service established by the Postal Service." Indeed, it is further asserted that the disputed deliveries are "not the work of any craft other than the rural carriers," because the Postal Service has elected now to establish the routes as "rural," rather than "city."

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These arguments, however skillful an exercise in semantics, overlook the consistent treatment of the City and Rural Carriers as separate "crafts" for purposes of collective bargaining. While their work in many instances may be virtually identical, this in no way can detract from the dominant fact that these two groups have been deemed to be separate "crafts" for many years, both in law and in practice. Article VII, Section 2-A, cannot be interpreted properly except in light of this firmly established meaning of the words "craft" and "crafts" as used therein. This meaning thus does not lie in any abstract definition of either "craft." It can only be found in established practice in each given Post Office in assigning work to one or the other of the craft bargaining units. If this interpretation somewhat limits the flexibility

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of Management to transfer work from City to Rural Carriers (and thus to change the type of service provided in given areas) it nonetheless is inescapable when Article VII, Section 2-A is read in the context in which it was written. Moreover, the basic policy thus reflected in this provision may well be essential to the maintenance of sound relationships between the Postal Service and the various Unions involved, as well as among the Unions themselves.

Although Article VII, Section 2-A, therefore must control here, the manner of its application is not free from difficulty. The Union appears to suggest that no work, under any circumstances, may be reassigned from City Carriers to Rural Carriers. It emphasizes that Article VII, Section 4, makes clear that none of Article VII applies to Rural Carriers, and seemingly would imply from this that no work may be assigned to Rural Carriers under Article VII, Section 2-A. This argument possibly may rest on an erroneous belief that Article VII, Section 2-A, constitutes a grant of authority to Management. It does not. Instead, it places a limitation upon the exercise of Management authority defined under Article III. Thus Management retains full discretion to deal with matters covered by Article VII, Section 2-A, except to the extent limited by the reasonable meaning of that provision.

In addition, Article VII, Section 4, contemplates as to the Rural Carriers that "current practices and policies" shall continue to apply as to the subjects treated in Article VII. Absent any clear knowledge of relevant practices and policies for purposes of Article VII, Section 4, the Impartial Chairman must refrain expressly from embracing the view that no City Carrier work ever may be assigned to Rural Carriers in light of Article VII, read as a whole. The present record includes evidence, albeit vague and hearsay, indicating that limited assignments of this sort actually may have been made in two earlier instances.

Disposition of the present case fortunately does not require expressing any final view on this matter. Section 2-A of Article VII permits the type of reassignment of work here in issue only "to maximize full-time employment opportunities and provide necessary flexibility." Moreover, studied effort by Management to obtain these goals by "combining within craft or occupational groups" is a condition precedent to combining work of two or more crafts into a single scheduled assignment. The present record reveals failure by Management to meet these requirements. The clear weight of the evidence compels a finding that the principal purpose in reassigning City Carrier work to Rural Carriers at Sioux Falls was to create rural route openings for six Rural Carriers who were to be displaced by route consolidations in other Post Offices. The improvements in efficiency subsequently claimed by Management are without detailed documentation, and appear essentially as rationalizations after the event.

The Impartial Chairman therefore finds that the reassignments of deliveries from City Carriers to Rural Carriers in Sioux Falls, effective May 26, 1973, were in violation of Article VII, Section 2-A of the 1971 National Agreement.

There remains the problem of appropriate remedial action. The Union requests an Award requiring (a) that the deliveries in question be returned to the NALC craft jurisdiction, and (b) that those part-time flexible employees who would have been promoted to full-time positions, had the deliveries not been reassigned improperly, should be made whole for earnings lost since May 26, 1973 in any week in which they did not work 40 hours.

The objectives sought in these proposed remedies are subject to practical limitations which should be noted here. In returning the disputed city deliveries to the NALC craft, local Management should have a reasonable period of time within which to develop new city routes, and to realign existing city routes to the extent necessary to achieve efficient deliveries. It also should be free to return to the NRLCA craft those deliveries which were reassigned to city routes as of May 26, 1973.

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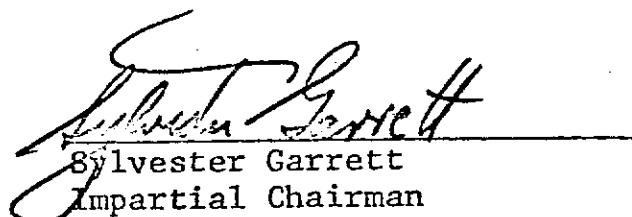
Thus the present Award will specify a 90-day period in which the Postal Service may develop an appropriate program to comply therewith. Once all city deliveries are returned to the NALC craft, implementation of the Award must include an ultimate determination of whether any member of the NALC craft suffered any loss of earnings or seniority rights by the improper reassignment of work on May 26, 1973, after full consultation with appropriate representatives of Branch 491, so that any such individual may be made whole. Any unsettled issues as to adequate compliance with this Award, after the 90-day period for implementation, may be returned to the Impartial Chairman for final determination, but only after full consideration by the parties' representatives at all levels of the grievance procedure.

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AWARD

The grievance is sustained to the extent indicated in the Opinion. Appropriate remedial steps shall be developed and effectuated no later than 90 days from the date of this Award, in the manner outlined in the Opinion. The parties are free to agree to extend this 90-day period.

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Sylvester Garrett
Impartial Chairman