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In the matter of the arbitration	)	Grievant: Class C-23057
between	)	
UNITED STATES POSTAL SERVICE	)	Post Office: New Haven, CT
And	)	
BRANCH 19 , NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	)	Case No:B98N4BC01132933 Union No. 1928701 30293

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Before Garry J. Wooters, Arbitrator

Appearances:

For US Postal Service: J. Carr
Labor Relations Specialist

For Union: C. Page
Branch President

Date of Hearing: January 14, 2002

Place of Hearing: Wollingford, CT

Date of Award: February 12, 2002

Relevant Contract Provisions: Article 5, 7, 19

Contract Year: 1999 - 2001

Type of Grievance: Contract

Award Summary: Where the practice in New Haven for more than twenty years had been to have carriers make two withdrawals of mail from the clerk cases, management violated Article 7 when it assigned this work to the clerks without notice to or bargaining with the NALC. Over the years, this work had become the exclusive work of the carrier craft and could not be unilaterally withdrawn and awarded to another craft. Management is directed to restore the prior practice.

Signature Garry J. Wooters

OPINION AND AWARD

Statement of the Case

The undersigned heard the above-captioned matter on January 14, 2002 in New Haven, Connecticut sitting as a member of the Regular Regional Arbitration Panel. The arbitration arises out of a grievance filed by Branch 19, National Association of Letter Carriers, AFL-CIO ("Union") against the United States Postal Service ("Service"). Evidence was taken under oath, in the presence of the above-named advocates. The case was orally argued at the close of the evidence.

Issue

Did management violate Articles 5, 7 and/or 19 of the National Agreement and the established past practice when they changed the policy concerning who withdraws mail for the carrier routes? (From B Team Decision). If so, what shall be the remedy?

Summary of the Evidence

The facts of this case are largely undisputed.

For at least twenty-two years prior to March of 2001 city letter carriers in the New Haven facility had "dragged" mail for their routes from the clerk cases two or more times in their morning office hours while casing their routes. "Dragging" is the term used to describe

the action of the carrier going to the working clerk cases and pulling from the case the mail for his route. These two drags would take five or more minutes a day.

On March 29, 2001 carriers at the facility were instructed that from that time forward, they would no longer be required to "drag" the mail for their route. Rather, the clerks would deliver this mail to the carrier cases.

The Union filed a grievance asserting that the actions described above violated Articles 5, 7 and 19 of the National Agreement. The grievance has remained unresolved and has resulted in the instant arbitration.

As remedy, the Union seeks an order directing management to restore the prior "practice" of having carriers "drag" the mail as well as monetary damages measured by pay for five minutes of time per carrier rote, per day since the change was made.

Positions of the Parties[1]

The Union Case. The Union argues that there is a clearly established past practice, extending over at least twenty-two years,

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[1] The arguments of the parties were extended and detailed. In this section of the Opinion I gave on the most basic overview of their positions. More detail will be provided on certain points in the Discussion section of this Opinion.

whereby carriers dragged mail for their routes at least twice per day. By ending this practice without notice to the Union or opportunity to bargain, management violated Article 5 of the National Agreement. The practice in question meets all the requirements for a binding past practice. It was well known to the parties, acted upon over an extended period of time and was mutually assented to.

The Union also asserts that in New Haven, carriers have jurisdiction over the function of dragging the mail. It is true that other crafts perform similar functions. But, for an extended period, only carriers have performed the work at issue here. Under National Level arbitration awards, work historically performed by a craft becomes the exclusive work of that craft. This work cannot be taken from the carrier craft and given to the clerks. To do so violates Article 7 of the National Agreement.

The Management Case. Management argues that there has been no violation of the contract.

There is no evidence of a binding past practice in this case. Under the manuals, management has discretion on whether or not to assign the function in question - dragging the mail - to letter carriers. Although it has continued to assign this work to carriers more than twenty-two years, management never last its discretion to make another decision if efficiency dictated or other circumstances changed. To hold otherwise would mean that even though management has

bargained for discretion, it loses that discretion at some point unless it changes the assignment periodically. The arbitrator should not undercut the meaning of the contract or manual provisions by agreeing to such a reading.

The alleged practice does not deal with an employee working condition or benefit, but with the means and methods of doing the work. This is an area where Article 3 gives management the exclusive right to act.

There has been no violation of Article 5 as the Union has not established a mutually agreed to practice. Management always believed that it had the right to act at its discretion. It never expressly or by implication gave up this right. There is no mutually agreed to practice that binds management.

The NALC does not exclusively own the work in question. In New Haven, all three of the major crafts do the same kind of work. Nothing in Article 7 grants this work exclusively to the carriers. Management does not violate Article 7 when it exercises its discretion to have clerks do this work as it is work appropriately assigned to that craft.

The arbitrator should find that there has been no violation of the contract.

Relevant Contract Provisions

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 7

. . .

Section 2. Employment and Work Assignments
A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:
1. All available work within each separate craft by tour has been combined.
2. Work of different crafts in the same wage level by tour has been combined.
The appropriate representatives of the affected Unions will be informed in
advance of the reasons for establishing the combination full-time assignments
within different crafts in accordance with this Article.

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.
Notice of such proposed changes that directly relate

> to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. At the request of the Union, the parties shall meet concerning such changes. If the Union, after the meeting, believes the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Union upon issuance.
> Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to transitional employees only to the extent consistent with other rights and characteristics of transitional employees negotiated in this Agreement and otherwise as they apply to the supplemental work force. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to transitional employees pursuant to the same standards and procedures found in Article 19 of this Agreement.

Discussion

I believe that this case turns on the language of Article 7 and the cases developed thereunder. I will first discuss the claims arising under Article 5 and Article 19.

I. Article 19. Under Article 19, those parts of various handbooks and manuals which deal directly with wages, hours or working conditions are incorporated into the contract. Thus, certain actions in conflict with those provisions may also violate the contract.

In this case, I find no violation of Article 19 as the actions

in question are not in conflict with the manuals.

Under the M-39[2] and M-41 manuals which govern city carrier operations, carriers may or may not be required to withdraw mail from the cases where the clerks are working up to twice during the morning office hours.[3] The language of the provisions cited neither requires such withdrawals, nor prohibits requiring carriers to make them.

I do not read the provisions of the M-39 and M-41 as expressing a negotiated agreement between the parties that management was to have discretion in the assignment of dragging to carrier craft employees. Rather, these provisions only indicate that, in appropriate circumstances, these are appropriate duties for the craft. Whether these duties belong to the carriers in any location or to some other group of employees will depend on the circumstances and history in the work location. See Mittenthal Zumas Award. If the work can or must be assigned to carriers, the M-39 confirms that this may be done.[4]

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[2] M-39 sec. 116.6.

[3] While there is some suggestion in the stipulation that this prior to March of 2000, carriers at New Haven might make more than two "drags" on some mornings. This was not an independent claim of a contract violation, however, and I make no findings in this regard.

[4] In this regard, the cited provisions of the M-39, § 116.6 differs from the POM regulations discussed in the Mittenthal Zumas Award. The POM clearly deals with when management may decide to convert carrier routes from rural to city delivery. M-39 sec. 116.6 merely confirms that withdrawal of mail is not an inappropriate duty for carriers. It does not speak to when carriers should do that work as compared to other craft employees.

Thus, in my view, the cited provisions of the manuals do not provide management with an affirmative, negotiated right to assign work involving the withdrawal of mail from clerk cases to carriers or to some other craft. Whether management has such a right depends in my view on other factors such as whether in a particular case the change involves a condition of employment within the meaning of the National Labor Relations Act, or whether some other provision of the contract privileges management to change the craft which performs such tasks.

I find no violation of Article 19.

II. Article 5

In order to constitute a violation of Article 5, the evidence must show that management unilaterally altered some mandatory subject of bargaining (wages, hours, terms and conditions of employment) in violation of either its obligations under the Labor Management Relations Act or the National Agreement.

In this case, the Union has shown that management at New Haven changed the way it performed a particular task: moving mail sorted by the clerks after the arrival of the carriers to the carrier cases. The Union asserts that this constituted a change in working conditions. Management counters that there was no change to any

working condition but only a change in the means and methods of doing certain work - a matter reserved to management by Article 3.[5]

Normally, claims of past practice deal with some employee benefit as distinct from a particular job duty or method of operations. This is true for a number of reasons. Operational methods are often intimately related to such factors as technology, equipment or physical plant features normally within the control of management.

An unwritten past practice may not control in the face of an affirmative grant of authority or discretion under the collective bargaining agreement. If the obligation to bargain over a particular subject matter has been satisfied and the matter is covered by the collective bargaining agreement, there is no unlawful unilateral change when that authority or discretion is exercised. If there is no remaining obligation to bargain, there is no violation of Article 5.

In this case, management has reserved the right to direct employees in the performance of their official duties and to determine the "methods, means and personnel by which such operations will be performed." These express grants of authority would control unless the action violates some other provision of the contract.

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[5] There was a contention at the arbitration hearing that management has not raised a defense under Article 3 during the grievance procedure. I find that this issue was raised by the management representative at the Step B stage. See JX-2 at 5.

Certainly not every change in a production method or technique requires prior notice to the Union and opportunity to bargain.[6] In this case, the change did not affect the wages of the employees or their hours. Their working conditions have not been made more arduous. No new skill or training was required. The extent of the change was that for up to five minutes a day, carriers perform carrier duties other than "dragging." There is no evidence that the work done during the five minutes when otherwise these employees would be "dragging" is not appropriate carrier craft work.

If such minor changes in production technique are treated as working conditions within the meaning of Article 5, then no changes may be made to any method of operation, no matter how minor. I do not think this is a fair reading of Article 5. Indeed, Article 3 seems to clearly undercut this interpretation. Where no specific provision of the contract requires that this operational method be maintained, Article 5 permits such changes which have minimal impact on employees.

I find no violation of Article 5.

Article 7. Notwithstanding the forgoing, if the work in question

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[6] "Arbitrators frequently (but not always) have recognized wide authority in management t control methods of operation and to direct the working forces, which authority includes the right without penalty to make changes if these do not violate some right f the employees unde the written agreemnet." Elkouri % Elkouri, How Arbitration works at 442, introduced at the arbitration hearing. (Emphasis ni original).

belongs to the carrier craft, giving it to employees of another craft would violate Article 7, section 2.

It is clear that the carriers do not exclusively own the right to perform work of this general type. As noted above, the manuals do not make such a clear assignment to either craft. As the cited cases make clear, it is often necessary to refer to the local history and practice to make craft determinations. What appears to be identical work may be done by employees of different crafts depending on local circumstances. Indeed, in New Haven, all three crafts have done seemingly similar work: the mail handlers "spread" the mail prior to the arrival of the carriers; the carriers for many years "dragged" the mail during morning office hours, and the clerks took mail to the carrier stations after the carriers left for the street.

The sole basis for the Union's jurisdictional claim is that for more than twenty years, carriers did a particular part of this work and that they own this piece, not all work of this type. In this claim they rely, in large part, on the Mittenthal-Zumas Award[7] which indicates that the past practice in the locality may indeed control some aspects of craft assignments under Article 7. I believe, however, that the Union's reading of Mittenthal-Zumas is too broad and its application to this case is limited.

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[7] USPS and NALC and NRLCA, H7N-NA-C 42 (Mittenthal and Zumas 1994) (hereinafter "Mittenthal-Zumas Award").

Mittenthal-Zumas dealt with a claim by the NALC that as the duties of a group of rural carriers had evolved over the years, they had come to closely resemble city carriers and should in fact be designated as city carriers. The arbitrators held that in order to determine the proper craft of a group of employees, it was necessary to examine the history, not merely the duties being performed. Mittenthal and Zumas did not say that a craft acquires an exclusive right to a particular function and could prevent that function from being assigned to any other craft. Indeed, it was clear in the award that it was proper for both rural and city carriers to be performing some common functions. Neither craft owned that function exclusively.

This case would be similar to Mittenthal-Zumas if the carriers were claiming that, by virtue of performing the dragging work, the clerks had become carriers. That is not the claim here.

Mittenthal and Zumas did not speak to the critical issue in this case: whether by operating in a particular way for a number of years, management had awarded particular work to a particular craft and could not now change that method of operation. The question is particularly difficult because of how narrowly the Union would have me define the work in question - not just work of a particular type, but work of a particular type being done at a particular time of the day, not the basic duties of the carrier craft, but an incidental task consuming four to six minutes a day. While Mittenthal and Zumas made it clear that the same type of work may be done by more than one craft, the

cited awards do not stand for the proposition that all tasks, no matter how minor, become the exclusive work of one craft by virtue of having been done that way for an extended period.

Arbitrators in regional cases have expanded on the Mittenthal-Zumas principle that craft jurisdiction may be determined, in part, by past practice. In particular, I note the Eaton[8] and McCaffrea[9] awards offered by the Union. I am not bound by these awards, and, as argued by management, each can be distinguished to a greater or lesser degree from the instant case. Nonetheless, it is difficult to escape the conclusion that the Union's argument in this case is supported by the weight of arbitral authority. Both awards deal with the issue of whether management violated the National Agreement by changing a long-standing practice of having carriers withdraw mail from the clerk cases. In the McCaffree Award, the change was more significant that in this case as it altered the hours of the carriers, who had been reporting early to do this work, as well as their pay. In the Eaton Award, for twenty years the carriers had withdrawn all of their flat sized and letter mail before being told by management to only withdraw preferential mail. That differs from the instant case. Nevertheless, both awards are clear that even though this type of work does not belong exclusively to the carrier craft, it had become the exclusive

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[8] USPS and NALC, P94N4FC 96047380 (Eaton 2000)("hereinafter "Eaton Award").

[9] USPS and NALC, E90N1EC 94042790 (McCaffree 1995)("hereinafter "McCaffree Award").

work of that craft by virtue of the past practice.

I am concerned that there should be some limit to jurisdictional claims to extremely minor, non-core duties. In this case, however, the evidence[10] and exhibits convince me that withdrawal of mail does not fall into that category - even the small piece of that work involved in this case. The significance of the change can be addressed in the discussion of remedy.

I conclude that management violated Article 7 when without bargaining with the Union, it removed work belonging to the carrier craft and assigned it to the clerk craft.

The Remedy. Remedies in arbitration awards should be compensatory, designed to restore the parties to the positions they would have enjoyed had the violation not taken place.

I do not believe that the Union has established a right to relief other than an order restoring the status quo ante. As noted above, there is no evidence that any employee has suffered any economic loss as a result of this change. Nor is there evidence that the working conditions are more onerous for any unit employee. There is no basis on this record for any punitive relief or remedy designed as a

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[10] I note n particular that management does not cite or rely on any operational reason to justify the change. The contention is merely that management changed its mind about how to do this work.

deterrent. All that has occurred is that during the four to six minutes per day when carriers might have been dragging the mail, they continued to case mail or perform other traditional carrier duties. In such a case, no monetary relief is required.

Award

Management violated Article 7 of the National Agreement when, without notice to or bargaining with the Union, management changed the practice concerning who withdraws mail for the carrier routes. Management is directed to promptly restore the practice of having carriers make these withdrawals as they had done prior to March 29, 2001.

2-12-02
February 12, 2002

Garry J. Wooters, Arbitrator