

C#03003

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UNITED STATES POSTAL SERVICE : CASE NO. NB-N-3908
: (Wallingford, CT)
:
and : NB-N-5125
: (Rochester, NH)
:
NATIONAL ASSOCIATION OF : ISSUED: September 29, 1978
LETTER CARRIERS, AFL-CIO :
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.....:

BACKGROUND

This case involves two separate grievances which protest instructions given to Carriers on park and loop routes to carry pre-sequenced flat mail as a separate third bundle for certain specific dismount deliveries. 1

The parties agree that the facts in Case NB-N-3908 from Wallingford, Connecticut, suffice to illustrate the issue presented in both grievances. Accordingly, the evidence has been limited to Case NB-N-3908. The original grievance presented by Carrier John Oefinger on November 15, 1974 stated: 2

"Frank Totz ordered Carrier to take occupant mail as third bundle into Silver Pond Apts. This is violation of M-41. Carrier's route is park & loop. Carrier was instructed to deliver each occupant to its proper mailbox but not to sort it into other flats in the office."

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The grievance requested that, in the future, all such pre-sequenced flat mail should be worked in the office with other flats.

The parties agree that pre-sequenced flat mail (received from the mailer already in proper delivery sequence) is delivered as a third bundle by Carriers serving motorized curb delivery routes. They also agree that pre-sequenced flat mail carried by a Letter Carrier serving a conventional park and loop route usually should be collated into the flats that the Carrier sequences himself in the office. The present dispute thus applies only to a narrowly limited and exceptional situation involving "dismount" deliveries. These are deliveries on a park and loop route where the Carrier leaves the vehicle to deliver mail to one or more customers at a single delivery point such as a large apartment house. Since pre-sequenced flat mail generally is addressed to "Resident" or "Occupant" at each address, the Postal Service holds that such mail may be handled as a third bundle for purposes of a dismount delivery, when this appears to be more efficient in the judgment of the Carrier's supervisor.

Following a realignment of routes in Wallingford in 1974, the Silver Pond Apartments--a complex of approximately 160 apartments for the elderly--were placed at the beginning of the route carried by Grievant John Oefinger. The dismount technique is used for the deliveries at the Silver Pond Apartments. The Carrier's vehicle first is parked outside the main entrance to the apartment complex,

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and the Carrier takes the mail for approximately 80 apartments into the lobby, where he places the mail in boxes for each customer. He then returns to the vehicle, drives to each of two side entrances, and repeats the procedure, with approximately 40 deliveries in each such additional dismount stop. Except for these three dismount stops, Oefinger's route consists of traditional park and loop deliveries: the vehicle is parked and the Carrier delivers mail to one or more blocks of houses at a time, walking from door to door.

It is agreed that for the park and loop portion of his route, Grievant Oefinger collates his pre-sequenced flats with the flats that he puts in delivery sequence during casing in the office. He specifically was instructed, however, to take the pre-sequenced flats for Silver Pond Apartments deliveries as a third bundle so that, while in the office, he simply set aside the pre-sequenced flats for the Silver Pond Apartments. The result is that at the delivery point, the Carrier makes three insertions into the mail receptacle--flats, pre-sequenced flats, and letters--rather than the two insertions (flats and then letters) which he would have made had the pre-sequenced flats been collated into the other flats in the office.

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The Postal Service stresses that it has adopted this third bundle method of delivery for certain specific dismount stops solely to improve efficiency. In support of the grievance the Union relies essentially upon an interpretation of portions of the M-39 and M-41 Handbooks, against the background of the following provisions in the 1973 National Agreement:

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Article III provides in relevant part:

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"MANAGEMENT RIGHTS

"The Employer shall have the exclusive right, subject to the provisions of the Agreement and consistent with applicable laws and regulations:

• • • • •

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

Article XIX provides:

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"HANDBOOKS AND MANUALS

"Copies of all handbooks, manuals, and regulations of the Postal Service that contain sections that relate to wages, hours, and working conditions of employees covered by this Agreement shall be furnished to the Unions on or before January 20, 1974. Nothing in any such handbook, manual, or regulation shall conflict with this Agreement. Those parts of any such handbook,

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manual or regulations that directly relate to wages, hours, or working conditions, as they apply to employees covered by this Agreement, 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.

"Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least 30 days prior to issuance. The parties shall meet concerning such changes, and if the Unions believe that the proposed changes violate the National Agreement (including this Article), they may submit the issue to arbitration in accordance with the Step 4 of the grievance-arbitration procedure within 30 days after receipt of the notice of proposed change."

(Underscoring added.)

Article XLI provides, in relevant part:

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"LETTER CARRIER CRAFT

"[Section 3] I. Carriers shall not finger mail when driving, or when walking up or down steps or curbs, when crossing streets, or at any time it would create a safety hazard to the carriers or the public. Consistent with the efficiency of the operation, mail shall be placed in delivery sequence in a bundle(s) during strapping out. The Employer shall not be required to conduct a special count or route inspection as a result of this Agreement."

(Underscoring added.)

The Union urges that the third bundle delivery method on a dismount stop increases the physical and mental effort required of the Carrier. In some circumstances, indeed, it suggests that the Carrier actually may carry the third bundle in the crook of his arm, with letter mail in the left hand, and other flats in the satchel. Under adverse weather conditions, delivery of the third bundle thus is said to be particularly difficult. The Union also suggests that limited space in a Carrier's vehicle leaves virtually no room to carry the extra trays necessary to utilize the third bundle system. Finally, it stresses that pre-sequenced mail in the third bundle at times actually is not in proper delivery sequence when it reaches the Carrier.

The heart of the Union's interpretive argument appears in its brief as follows:

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"The M-39 and M-41 Manuals, binding on the Postal Service under Article XIX, clearly prescribe the third bundle delivery method for presequenced flats only with reference to motorized routes. Specifically, the M-41 Manual in Chapter 3, Section 322, 'Motorized Routes', provides for the handling of flat mail in paragraph 322.23 as follows: 'Any sequenced mailing received by a motorized curb delivery route shall be delivered as a third bundle. All additional sequenced mailings available must be collated.'^{1/} Additionally, Section 920 of the M-41, in detailing procedures for recording count data for letter routes, provides in paragraph 922.423 that, 'Bundled mailings of other than letter size, made up in sequence of delivery, are handled for second or third bundle delivery. Make count the same as explained in [paragraph] 922.41 and record count in column 2.' The antecedent

^{1/} The glossary of the M-41 defines sequenced mail as, 'Mail made up by mailers in sequence of delivery.'

reference to paragraph 922.41 clearly prescribes at subparagraph .413 (in conformity with the above-mentioned paragraph 322.23) that carriers on motorized curb-delivery routes do not case sequenced flats (or letters) or record them with other cased mail, but are to deliver them as a third bundle. Thus, the only two references in the M-41 Manual to the practice of delivering sequenced flats as a third bundle limit such direction only to motorized routes.

"By way of contrast, Section 323, 'Park and Loop Routes', does not prescribe the third bundle delivery method for sequenced flats. Indeed, the Postal Service does not dispute that the third bundle method is not required for sequenced flats on park and loop or foot routes (Tr. 14, 31-32). Paragraph 323.1 of the M-41 in fact states that, 'Delivery of mail on park and loop routes is basically the same as for foot routes with relays. The vehicle is used as a movable relay box from which the carrier withdraws a substantial amount of mail, placing his mail into his satchel before beginning the route.' Furthermore, as the Union's uncontroverted evidence shows, the dismount delivery portion of a park and loop route is just like a traditional park and loop route and unlike a motorized curbline route (Tr. 47).

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Therefore, since the Postal Service alone was responsible for drafting the M-41 Manual and had every opportunity to specify other exceptions where the third bundle delivery method was to be used, it is a fair implication to suggest that any doubt as to the application of the M-41 should be resolved against the drafter."

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On the basis of this analysis, the Union holds that the case is controlled by the rule of construction known as "expressio unius est exclusio alterius." It is axiomatic in cases of contract construction, says the Union, that where the parties expressly state certain exceptions to a general rule, this indicates that there are to be no other exceptions. Here it cites generalizations found in Elkouri & Elkouri, How Arbitration Works (BNA, Inc., 3rd Ed. 1973), p. 310, and Fairweather, Practice and Procedure in Labor Arbitration, (BNA, Inc., 1st Ed. 1973), p. 170.

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Approximately the same time credit is allowed the Carrier for delivering a third bundle on dismount as would be allowed for casing the same pre-sequenced flats in the office: both are included in the route evaluation on the basis of time actually required. Since the Union feels, however, that the third bundle method involves greater physical and mental effort, it believes the grievance should be sustained because nothing in the M-41 or M-39 Handbooks authorizes use of this delivery method.

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The Postal Service, in reply, stresses its exclusive right under Article III, Section D, to determine methods by which operations are to be conducted. Absent a contractually binding restraint upon the exercise of this authority, the Postal Service clearly may direct a Carrier to utilize the third bundle method on appropriate dismount deliveries. None of the cited provisions in the M-39 or M-41 Handbooks, says the Service, reasonably could be read to restrict its exercise of authority under Article III. It sees no appropriate basis for adopting the expressio unius est exclusio alterius maxim in applying the Handbooks.

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While the Union claims that the third bundle increases the difficulty of the Carrier's work, the Service notes that actually there is no fingering of mail required. Carriers generally do not finger their mail while walking to apartment buildings. Once inside, the Carrier opens the door to the mail receptacles and then delivers the mail into the receptacles. There is ample room for the third bundle in his satchel up to this point. None of the various provisions cited by the Union from the M-41 nor the M-39 actually prohibits the Postal Service from determining that Carriers should use a third bundle for certain dismount deliveries where deemed more efficient.

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The Service, finally, challenges the Union's reliance on Article XLI, Section 3(I), which states that "Consistent with the efficiency of the operation, mail shall be placed in delivery sequence in a bundle(s) during strapping out." This Section, it says, in no way prohibits use of a third bundle--it simply provides that mail should be placed

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in delivery sequence in one or more bundles during strapping out. Moreover, this specific sentence starts with the phrase "Consistent with the efficiency of the operation..." Here the Service has determined that it is more efficient to utilize the third bundle system for these dismount deliveries. In no way does the delivery method alter the total amount of mail and the same amount of room in the Carrier's satchel is required under both the two-bundle and three-bundle techniques.

FINDINGS

Nothing in Article XLI, Section 3(I) reasonably may be construed to limit the authority of Management to make limited use of the third bundle delivery method under the specific circumstances developed in this record. The sentence therein which is cited by the Union specifically is qualified by the phrase "Consistent with the efficiency of the operation ..." It is a normal Management function under Article III to determine, on the basis of its evaluation of facts available, the most efficient method of effecting deliveries, except where its discretion is limited under some relevant contractual provision or other provision protected under Section XIX.

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Thus, the only significant issue here arises under Article XIX as quoted earlier in this Opinion. Here the Union cites provisions in the M-41 and M-39 Handbooks which do not specifically apply and relies on the expressio unius

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theory of contract interpretation to support its view that the Handbooks preclude use of the third bundle delivery method in the present situation. This kind of argument appears to equate the USPS Handbooks with carefully drawn, highly technical legal documents, such as a trust indenture. It would seem, however, that this kind of an interpretive theory at best could have only limited value as an aid to sound interpretation of typical collective bargaining agreements. Moreover, its application here would overlook the fact that the Handbook provisions were not drafted to represent the results of collective bargaining, but rather essentially to set forth policies and procedures to guide USPS employees in the performance of their numerous and varied duties. While it is entirely clear that such policies and procedures may embody provisions which on their face (or by reasonable implication) constitute conditions of employment, it must be recognized that some operating conditions or problems are not of sufficiently great importance to warrant specific treatment in a Manual, Handbook, or Regulation. Thus it seems unsound at best to attempt to read such a document as if it were designed to cover expressly every possible situation which might arise in the course of operations.

There is nothing in either the M-39 or M-41 Handbooks which specifically treats the kind of situation here involved. The M-41 language in Chapter 3, Section 322.23 applies only to motorized routes and requires use of the third bundle delivery method for the first pre-sequenced mailing to be delivered on any given day. The next sentence ("All additional sequenced mailings available must be collated") obviously refers to additional such mailings to be

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delivered that same day on the specific motorized route. No useful inference, for present purposes, can be drawn from this provision. Other M-41 provisions cited for letter routes (Section 920, Paragraphs 922.423, 922.41, 922.413, etc.) deal with the recording of count data for the various types of routes, treating the typical situations which may arise on each.

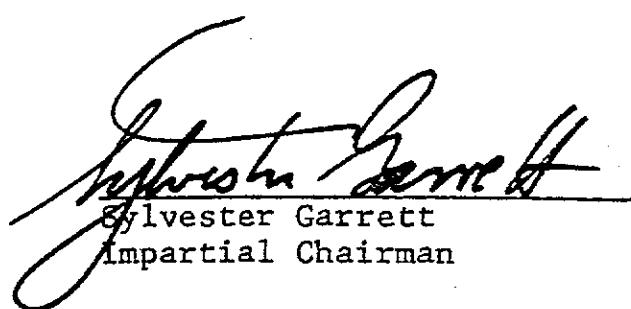
Thus the critical fact here is that the Union does not point to any specific Handbook provision which clearly (or by reasonable implication) could have been violated by the instruction given to Grievant Oefinger in the present case. The required conclusion, under the present evidence, is that the Handbooks simply were not intended to cover this narrowly limited type of situation at all. The challenged action in the present case thus constituted a reasonable exercise of Management authority under Article III.

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AWARD

The grievance is denied.

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Sylvester Garrett
Impartial Chairman