

C#03222

A.B

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE

Grievance Nos.
H8N-4E-C-19254
H8N-4E-C-21358

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

APPEARANCES: David Fishman, Esq., for the Postal Service;
Cohen, Weiss and Simon, by Keith E. Secular,
Esq., for the Union

DECISION

These grievances arose under and are governed by the 1978-1981 National Agreement between the above parties (JX-1). The undersigned having been jointly selected by the parties to serve as sole arbitrator, a hearing was held on 18 August 1981, in Washington, D. C. Both parties appeared and presented evidence and argument on the following agreed-upon issue (Tr. 4):

Does the Postal Service have the authority to require foot carriers to deliver articles weighing in excess of 2 pounds.

A preliminary discussion between opposing counsel and the arbitrator (Tr. 4-5) brought forth the information that one of the two grievants had retired, and that the parties were seeking an "interpretive" award in the nature of a declaratory judgment as to the respective rights of the parties under the National Agreement.

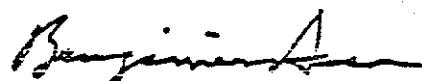
A verbatim transcript was made of the arbitration proceeding, and each side filed a post-hearing brief.

Upon receipt of both briefs on 9 February 1982, the arbitrator closed the record.

On the basis of the entire record, the arbitrator makes the following

AWARD

The Postal Service has the authority to require foot carriers to deliver articles weighing in excess of 2 pounds, subject to the requirement of Postal Standard for Carriers (Description of Work, Carriers), and provided that the authority is exercised only on an infrequent and nonroutine basis, when there is no other equally prompt, reliable, and efficient way to deliver the mail.



Benjamin Aaron
Arbitrator

Los Angeles, California
11 March 1982

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OPINION

I

The facts giving rise to the two grievances can be easily and briefly stated. The grievants, F. Morley (who has since retired) and R. Zingery, were letter carriers employed in Youngstown and New Philadelphia, Ohio, respectively. Morley was required to carry catalogues weighing as much as 5 to 8 pounds, apparently on a recurring basis. Zingery was required to carry Sears, Roebuck catalogues, each of which weighed slightly over 2 pounds. Postal management's fourth-step answer to both grievances read as follows (JX-2, JX-3):

It is our determination that management may rightfully and reasonably assign parcels weighing more than 2 pounds to foot delivery carriers whenever the overall weight is within the 35 pound limitations established in the qualification standards for carriers (also noted in Sections 122 and 180 of the M-39 Methods Handbook) and provided such a parcel can be reasonably and securely placed in the carrier's satchel. The references cited by the Union does not limit management's rights to make such determination to maintain the efficiency of delivery operations.

According to the Union (Br., p. 6), "It is this assertion of unlimited discretion to assign parcels to foot carriers which forms the crux of the issue before the arbitrator."

The following provisions of the 1978-1981 National Agreement have a bearing on this case:

Article XIX (Handbooks and Manuals) of the National Agreement provides in part:

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.

Article XLI (Letter Carrier Craft), Section 4.3(e), provides in part:

Section 4. City Carrier Transportation
(Driveout) Agreements

* * * *

3. All carriers furnishing a vehicle for transporting themselves, passengers and mail to and from the assigned routes shall be reimbursed on a mileage-zone basis as follows:

* * * *

e. Twenty-five cents for each article transported larger than the size required to be delivered by foot letter carrier (2 lbs.).

Article III (Management Rights) provides in part:

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

* * *

- 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.

Each of the parties also relies upon various current and previous provisions of the M-39 Handbook and the Postal Operations Manual.

II

According to the Union's only witness, Joe Johnson, Director of City Delivery, NALC, during the "premotorization" era (prior to the mid-1960's), "generally those parcels in excess of 2 pounds and the catalogues were culled out. . . for parcel post trucks to deliver" (Tr. 17). He testified that occasionally a carrier would get a piece of mail weighing more than 2 pounds, in which case he would advise his supervisor; the parcel would then be put aside for a carrier with a vehicle, and the "foot carrier would not have to deliver it" (Tr. 18).

Sub-Chapter 352.54 of the Post Office Department Manual dated December 8 1966 stated the rule as follows:

.55 DELIVERY BY OTHER THAN PARCEL POST CARRIERS.

.551 FOOT CARRIERS. Ordinarily require foot carriers to deliver all parcels including

mail order catalogs, not exceeding 2 pounds in weight. Use common sense in applying this rule. When a foot carrier has a large quantity of other mail and the carrying of heavy or bulky parcels under the rule would overburden him or delay the delivery of more important mail, turn the larger parcels over to the parcel post carrier. If a foot carrier has less than 25 pounds of mail for the carry-out and/or any relay and there are one or two parcels slightly in excess of two pounds in weight for the carry-out and/or any relays on his route, he should deliver them. In disputed cases, decisions of supervisors will govern.

Johnson testified, further, that the "motorization" period began in about 1967, when the Postal Service purchased small vehicles and assigned them to almost all of the foot carriers in residential areas, who were then given parcels weighing over 2 pounds to deliver. As a consequence, the number of parcel post routes was sharply reduced. Section 352.42 of the Postal Service Manual dated November, 1974, read as follows:

.42 DELIVERY EMPLOYEES

Ordinarily require foot carriers to deliver parcels, including catalogs, not exceeding 2 pounds in weight. Based on available workloads, supervisors may require foot or parcel post carriers to deliver articles weighing more or less than 2 pounds. Require motorized carriers to deliver all parcels received for their routes.

In addition, the M-39 Handbook, edition of June, 1976, established a 35-pound limit for foot carriers who did not have satchel carts and for the establishment of relays. The Postal Service Qualification Standard for Carriers also stated, at B-2 (Description of Work, Carriers):

They may be required to carry on their shoulders loads weighing as much as 35 pounds and to load and unload full sacks of mail weighing up to 70 pounds from trucks.

In 1979, Johnson testified, the Postal Service inaugurated a "demotorization" program in order to conserve energy and fuel. As a result, he stated, "the [Postal] Service in many instances like these grievances [is] still passing on to those carriers who no longer have a vehicle catalogues and parcels in excess of 2 pounds," and this "has caused problems" (Tr. 25). Johnson added that "a substantial number" of grievances have been filed and are being held in abeyance, pending the outcome of this case (Tr. 25).

Section 161.b (Parcel Post Delivery Requirements) of the current M-39 Handbook provides:

Withhold, generally, all small parcels (not exceeding 2 pounds) to be delivered by foot carriers. Don't delay getting these parcels to the foot carriers.

Section 614 .2 (Parcel Post) of the current Postal Operations manual provides:

Delivery Employees. Normally, require foot carriers to deliver articles including catalogs, not exceeding 2 pounds in weight. Based on available workloads, supervisors may require foot or parcel post carriers to deliver articles weighing more or less than 2 pounds. Require motorized carriers to deliver all parcels received for their routes

III

According to the Union, the requirement that foot carriers deliver parcels that weigh over 2 pounds has two major practical

consequences adversely affecting foot carriers (Br., pp. 6-7):

First, because of their size, parcels, unlike regular mail, present the problem of deliverability. Regular sized mail will almost always fit in the mail slot or receptacle designed for that purpose. Parcels, on the other hand, are often too large to fit into the receptacles. If this is the case with a particular parcel, and if no one is at home to accept it, the foot carrier must return the parcel to his satchel and carry it throughout the rest of his route. . . . Therefore, although Postal Service regulations require the total load of mail carried at any given point to be under 35 pounds, the practical effect of an undeliverable package is to increase the average weight the carrier must bear during the course of the day. The carrier will carry a greater weight for a longer period of time. . . . The carrier is burdened by the inconvenience of undeliverable material cluttering the satchel and getting in the way of deliverable mail. These problems are accentuated on days in which there is a mass mailing of catalogues and a carrier may have to handle many catalogues over two pounds on each relay. . . .

Second, when a carrier with undeliverable parcels picks up a second relay to deliver before returning to the installation, the additional weight of the undeliverable parcels may bring the total mail weight to over 35 pounds. Because no scale is available at the relay point, the exact weight of the relay with the additional parcels cannot be confirmed. . . . If the carrier is not confident that the weight exceeds 35 pounds, he or she may feel compelled to carry it. On the other hand, if the carrier believes the weight exceeds 35 pounds, the carrier may choose to divide the relay into two relays, thereby unnecessarily increasing street time should the carrier have been wrong. . . .

The Union interprets the present provisions of the M-39 Handbook and the Postal Operations Manual, quoted above, as clearly imposing a 2-pound limit on individual pieces of mail

given to foot carriers to deliver, except in "abnormal" circumstances.

The Postal Service, on the other hand, interprets the 2-pound limit as a "reasonable guide line," not as "an absolute." At the same time, it regards the overall 35-pound weight limit as an absolute requirement. It points out that, historically, the 2-pound limit has always been qualified by the words "generally" or "usually," and that even Johnson, when describing how the rule was applied in the "premotorization" period, used the word "generally."

The Postal Service also relies on the testimony of its only witness, Anthony F. Colatrella, Senior Operations Specialist in the Delivery Services Department, who stated that the Service does not want regularly to assign packages weighing more than 2 pounds to foot carriers for delivery, because doing so cuts down on the amount of ordinary mail they can handle.

Colatrella testified, further, that there may be circumstances in which it would be more efficient for a supervisor to direct a foot carrier to deliver an item weighing in excess of 2 pounds--for example, when doing so might result in the early delivery to a business firm at the beginning of the carrier's route.

Addressing the second alleged practical adverse effect on foot carriers stressed in the Union's brief, as quoted

above, Colatrella pointed out that the carrier prepares the relay and is responsible for the amount of weight he carries; if one or more parcels weighing over 2 pounds are added to his load, he may have either to split the relay into two segments or follow some other course approved by his supervisor. Colatrella stated that in his experience "many relays are not so close to 35 pounds that a normal additional increase [of 2½ pounds] would put them over 35 [pounds]" (Tr. 52).

Asked what would happen to a carrier who erroneously concluded that his bag weighed more than 35 pounds and accordingly split his relay, thereby using more street time than might be objectively justifiable, Colatrella replied (Tr. 61-62):

There is realistically no way management could have weighed it and determined it was 32 and not 38. So we couldn't penalize him, because we couldn't say he was right or wrong.

Finally, the Postal Service relies on the Management Rights provision in the National Agreement, as well as on its obligation under the Postal Reorganization Act of 1970 to insure the prompt, reliable, and efficient services to patrons in all areas. It points out that, according to the testimony of the witnesses for both sides, there were about 10,000 foot carrier routes at the height of the "motorization" period and about 10,000 previously motorized routes were subsequently de-motorized. It concludes (Br., p. 10):

To open 20,000 foot routes to the requirement that postal management must justify why a particular item assign-

ment was made on a particular day. . . is nowhere called for in the contract between the parties and would be an unreasonable, expensive imposition on postal management and the American public.

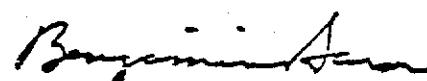
IV

As previously noted, the Union has stated that the instant grievances and others like them have been filed because it disputes what it regards as the Postal Services "assertion of unlimited discretion" to assign parcels weighing more than 2 pounds to foot carriers. Responding to the Union's challenge, the Postal Service does claim to have such unlimited discretion; but it also asserts that there are perfectly sound business reasons why it will not routinely require foot carriers to deliver parcels weighing over 2 pounds.

On the issue of the meaning of the cited provisions of the National Agreement and of M-39 Handbook and the Postal Operations Manual, I think the Postal Service has the more persuasive argument. Historically, the 2-pound limit for foot carriers has been qualified by the words "normally" or "usually." In the absence of a specific agreement between the parties on how this limit is to be applied, the Postal Service must be free to determine when exceptions to the normal or usual practice are justified. Its discretion is fettered, however, by the 35-pound weight limit, which it concedes is binding upon it.

Apart from the 35-pound limitation, moreover, it is obvious that the exceptions to a rule that is "normally" or "usually" to be applied cannot become the norm. A routine and frequent assignment of parcels weighing over 2 pounds to foot carriers would thus be inappropriate. If a more

specific gloss on the present language of 161.b of the M-39 Handbook and 614.2 of the Postal Operations Manual is desired, however, it will have to be devised by the parties, not by an arbitrator. Unless and until that is done, the answer to the question submitted for decision is a qualified "Yes," provided that the authority is exercised only on an infrequent and nonroutine basis, when there is no other equally prompt, reliable, and efficient way to accomplish the delivery of mail.



Benjamin Aaron
Arbitrator