

C#248

USPS - APWU CONTRACTUAL GRIEVANCE PROCEEDINGS
CENTRAL REGION
ARBITRATION OPINION AND AWARD

In The Matter of Arbitration
Between:

THE UNITED STATES POSTAL SERVICE
Kansas City, Missouri

-and-

THE AMERICAN POSTAL WORKERS UNION
AFL-CIO
Greater Kansas City Area Local

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Case No. C1S-4H-C 27303

Decision Issued
September 23, 1984

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APPEARANCES

FOR THE EMPLOYER

John L. Richardson
Lilbon Clark
L.R. Henderson
Janet L. Earl

Labor Relations Specialist
Manager of Delivery & Collection
Labor Relations Assistant
Labor Relations Assistant

FOR THE UNION

Richard Butler
Timothy Crawford
Archie Lisco
Robert Bradley

National Business Agent
Local President
Local Executive Vice President
Steward

ISSUE: Article 7, Section 2 and Memorandum of Understanding -- Claim
of contractually-prohibited cross-craft assignment.

Jonathan Dworkin, Regional Arbitrator
16828 Chagrin Boulevard
Shaker Heights, Ohio 44120

BACKGROUND OF DISPUTE

This is a policy grievance on behalf of the Special Delivery Messenger Craft in the Kansas City, Missouri Post Office. It pertains to work jurisdiction. The Union claims that, since 1979, Management has followed a policy of intentionally permitting the complement of craft employees to diminish through attrition and has increasingly assigned work belonging to these employees to part-time flexible letter carriers. The protest centers upon Express Mail delivery.

In 1979, the Special Delivery Messenger Craft consisted of twenty-three employees. Fourteen of them were assigned to Tour 2 and delivered all of the Express Mail. By 1984, the number of craft employees on Tour 2 decreased to eight. Each time one retired or left the unit, the Kansas City Postmaster determined that the vacated position was unnecessary and he declined to post it for bid. Typically, he informed the Union of his decision by letter stating:

A review of the Special Delivery Messenger position vacated . . . indicates this position is excess to the needs of the service. Therefore, this position will be reverted and not posted for bid.

One would imagine that, if the Postmaster's decisions were justified, the Special Delivery Messenger unit was overstaffed and

fewer employees were needed to perform the available work. According to the Union, however, this conclusion is inaccurate. The Union maintains that the volume of work customarily performed exclusively by the messengers is the same as or greater than before, only some of it is now assigned to letter carriers. The Union points out that Express Mail is still delivered by fourteen Tour 2 employees -- the eight remaining messengers and six part-time flexible letter carriers who were brought in to supplement the unit. The Union argues that these facts reveal that Management has systematically used letter carriers to cross craft lines in violation of Article 7, Section 2 of the Agreement. This provision defines and limits the Postal Service's authority to make cross-craft assignments. It states:

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 of full-time assignments within different crafts in accordance with this Article.

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

The grievance, which was initiated on November 18, 1983, demands that the Kansas City Post Office staff the Special Delivery Messenger Craft with a sufficient number employees to fulfill the Express Mail needs and that the current members of the classification be paid compensation for work they lost because of the Postal Service's cross-craft work distribution.

The Postal Service concedes most of the facts relied upon by the Union. It contends, however that the Union's conclusions are incorrect, and that no contractually prohibited cross-craft assignments have been made. The Postal Service's case rests upon the argument that delivery of Express Mail does not belong exclusively to the Special Delivery Messenger Craft. To the contrary, the Express Mail Service Handbook (M-68) specifically provides that letter carriers can and should perform this function. Therefore, the Postal Service concludes that Management has the prerogative to

distribute Express Mail delivery as it sees fit, and the fact that letter carriers are used at some times, and special delivery messengers at others does not give rise to a legitimate grievance over cross-craft work assignments. For that reason, the Employer denied the Union's claim at each preliminary level of the grievance procedure. The Union appealed the dispute to arbitration and hearings were convened in Kansas City, Missouri on June 25 and July 26, 1984. At the outset of the hearings, the Representatives of the parties agreed that the appeal to arbitration was procedurally correct and that the Arbitrator was authorized to issue a conclusive award on the merits.

THE ISSUE

The Union's contention that Article 7, Section 2 prohibits at-will cross-craft assignments has been well established. On April 7, 1982, National Panel Arbitrator Richard I. Bloch issued a decision interpreting this contractual provision [Case No. H8S-5F-C 8027]. That case arose when the Postal Service assigned what was admittedly messenger work to a letter carrier. Arbitrator Bloch ruled that Article 7, Section 2, Subsections B and C set forth the only circumstances in which Management can legitimately distribute work across craft lines and that by stating when such assignments can be made, the negotiators implicitly created an "inherent prescription against crossing craft lines" in other circumstances. He

called attention to the fact that Subsection B permits cross-craft assignments when there is insufficient work in an occupational group; and Subsection C permits the Postal Service to equalize work when one group is overburdened and the workload of another is relatively light. He held that these were the only exceptions to the general prohibition against cross-craft assignments and he concluded:

Taken together, these provisions support the inference that Management's right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforeseeable. There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel usage; this is not what the parties have bargained.

. . .

It must be shown either that there was "insufficient work for the classification or, alternatively, that work was "exceptionally heavy" in one occupational group and light, as well, in another.

Arbitrator Bloch also indicated that whenever crossing craft lines is challenged by a grievance, the burden is upon Management to justify its action.

If this dispute amounted to a rehashing of the case decided by Arbitrator Bloch, the result would be a foregone conclusion. The National Decision is a binding interpretative resolution of any am-

biguity or misunderstanding regarding the Employer's authority to assign work across craft boundaries. But this case is not the same. The dispute before Arbitrator Bloch contained a pivotal stipulation; that the work in question did in fact belong to the aggrieved classification. What was stipulated in that case is the issue in this one. The Postal Service does not disagree with the proposition that its authority to distribute one craft's work to another is contractually limited. It correctly maintains, however, that this issue is immaterial unless and until it is established that the work in question belongs to a particular craft. In the Employer's judgment, Express Mail delivery is not within the exclusive jurisdiction of special delivery messengers and unless the Union can prove otherwise, the grievance should be denied.

The Arbitrator agrees with the Employer's assessment of what is pertinent to this case. If the National Decision has any relevance at all, it is marginal. Before the principles stated by Arbitrator Bloch can be applied, it must first be established that the protested work belonged to the Special Delivery Messenger Craft. Unless the Union's evidence proves this to be a fact, the grievance will be denied. On the other hand, the Postal Service did not even argue that the protested assignments were made in accordance with Article 7, Sections 2 B or C. Therefore, if the Union's evidence confirms that Express Mail delivery was within the jurisdiction of this craft, the grievance will be sustained.

ANALYSIS

It is to be noted that the Union does not contend that the letter carriers routinely deliver Special Delivery Mail. The dispute focuses entirely upon Express Mail which is claimed to belong to the aggrieved craft. The Express Mail Service Handbook poses a particularly impressive barrier to the Union's assertion. It clearly provides that, except in one instance, delivery of Express Mail is a shared responsibility that may be assigned across craft boundaries. The only exception pertains to mail addressed to rural locations which, according to Section 522.2 of the Handbook, "will be delivered by rural carriers." With respect to all other Express Mail, the Postal Service has specifically reserved the authority to use any delivery method it deems appropriate. Section 535.1 of the Handbook states:

Each office will develop an operations plan for Next Day Express Mail deliveries that will provide for delivery no later than 3:00 p.m. The plan should encompass adjacent offices where where desirable or necessary to meet service standards or maximize efficiency. Provision will be made for deliveries on weekends and holidays as well as normal delivery days. Delivery should be effected in the normal course of delivering other mail on all delivery routes (foot, motorized, delivery and collection, special delivery, and parcel post routes) when delivery can be accomplished by 3:00 p.m., and without incurring additional costs. Within this context, letter carriers should be used to the extent possible so that delivery can be accomplished in the most cost effective manner possible. If special delivery messengers are used, Next Day Express Mail should be delivered in the course of delivering special delivery mail. Specific ZIP areas or delivery routes, should be identified, particularly

in high volume business and commercial districts, and all Next Day Express Mail arriving on normal delivery days in time to connect with these designated delivery trips should be so delivered [Emphasis in text].

The Union contends that, notwithstanding the rights of Management set forth in Section 535.1 of the Handbook, the function of delivering Express Mail in the Kansas City Post Office has always been recognized as belonging to special delivery messengers. In 1979, all Express Mail was delivered by this classification, which was the only one that met the criteria to perform the work. While the Handbook may have permitted the Employer to distribute the mail to other crafts, Supervision of this installation did not act on that authority. According to the Union, the work was ceded to the Special Delivery Messenger Craft through custom and practice. Moreover, the Union argues that a National Memorandum of Understanding prevented the Employer from removing this function from the craft regardless of the language of the Handbook. The Memorandum, according to the Union, crystallizes the workload of the classification by requiring Management to include all of it in analyses leading to staffing and scheduling decisions. It provides:

The total workload assigned to special delivery messengers will be used in data analysis which is utilized for staffing and scheduling. This procedure will remain in effect during the term of the 1981 National Agreement.

The Union charges that Management did two things which violated the Memorandum of Understanding and invaded the established work jurisdiction of the Special Delivery Messenger Craft. First, it is contended, the Postmaster obviously ignored the Memorandum when he refused to post vacancies and allowed the classification to become understaffed even though the reduced craft was insufficient to continue to deliver all the Express Mail. Second, when the amount of Express Mail to be delivered exceeded the capacity of the diminished classification, Management assigned a significant portion of it to another craft. According to the Union, the evidence confirms that Supervision itself is cognizant of the fact that it is creating cross-craft assignments. Postal Service records indicate that whenever part-time flexible letter carriers deliver Express Mail, their time is charged to code #744. Code #744 designates special delivery craft functions.

One fact should be clarified at this point in the discussion. The letter carriers do not deliver Express Mail on the same trips as the special delivery messengers. The messengers are scheduled to leave the post office at 7:50 a.m. and 1:00 p.m. According to the Manager of Delivery and Collection, this scheduling proved to be inadequate to meet Express Mail requirements and there were a number of failures of timely delivery. To resolve this problem, Management sometimes dispatches a third Express Mail trip which leaves the office at 12:15 p.m. The 12:15 p.m. delivery is performed by letter carriers, but the Postal Service Service denies

that it is a permanent or regular route. It is assigned only when required by the volume of Express Mail. The Manager of Delivery and Collection testified that the letter carriers perform many other primary jobs. They only occasionally deliver Express Mail, and when they do, the assignment usually encompasses no more than two hours.

The issue of whether the 12:15 p.m. trip is permanent or occasional is a point of disagreement between the parties. The Union contends that letter carriers make these deliveries daily and routinely. It is argued that Management has instituted an overlapping Express Mail delivery scheme in violation of specific mandates in the Express Mail Service Handbook. The provisions referred to by the Union state:

Delivery of Next Day Express Mail should be effected in the normal course of delivering other mail . . . and without incurring additional costs.

. . .

Additional Cost Is Never To Be Incurred Solely To Advance Time Of Delivery Unless, In The Absence Of Such Action, Delivery Would Not Be Made Before 3:00 p.m. Trips Solely To Deliver Next Day Express Mail Should Be Avoided Unless Necessary To Make The Delivery Standard.

Note: Creation of another overlay of delivery service must be avoided. Do not create specialized routes for the delivery of Next Day Express Mail or designate specific employees to deliver Next Day Express Mail exclusively.

The Union supported its position with clear and compelling evidence. The Arbitrator is convinced that Management has set up a permanent overlay Express Mail route which violates the delivery rules in the Handbook. What is not apparent is how this detracts from rights of employees. The provisions relied upon by the Union prescribe regulations to be followed by Supervision, but nothing in any of the language even suggests that they are intended to establish reliable working conditions or benefits of employment. To the contrary, the Handbook repeatedly states that Management is obligated to distribute Express Mail across craft lines in order to assure timely and cost-efficient delivery. The issue in this case is whether the Special Delivery Messenger Craft in this installation has captured Express Mail delivery as part of its exclusive jurisdiction. The proven fact that Management has established an overlay route contrary to Handbook regulations is substantively irrelevant to this issue. If the grievance were to be sustained, the overlay route could still exist. The only difference would be that it would be carried by special delivery messengers rather than part-time flexible letter carriers.

In the Arbitrator's opinion, an award confirming the Union's position that all of the Express Mail delivery belongs to this craft would not necessarily be contrary to the Agreement. In marginal areas, it is conceivable that a classification can capture exclusive jurisdiction of work that ordinarily might be shared by several crafts. The Memorandum of Understanding cited by the Union

can be interpreted as stating that Management cannot reduce the Special Delivery Messenger Craft by removing work that is customarily performed by its members. The Union contends that Management did precisely what the Memorandum of Understanding and Article 7 of the Agreement prohibit -- it effectively reduced the classification by refusing to fill vacancies and it transferred work of the special delivery messengers to letter carriers. The relevant evidence supporting the Union's charge consists of three factors:

1. In 1979, the Special Delivery Messenger Craft delivered all Express mail;
2. Between 1979 and 1984, the craft was permitted by Management to diminish through attrition. In all, nine members were lost.
3. At the same time that the classification was reduced, Management created a new overlay Express Mail route which was assigned to another craft.

Standing alone, the Union's evidence justified an inference that Management did make cross-craft assignments that were contrary to Article 7, Section 2 of the Agreement. However, the Postal Service's affirmative case included testimony that overcame the inference. One question that needed to be answered was why vacated craft positions were not filled. The Manager of Delivery and Collection stated that each time a special delivery messenger left the unit, a study was made and it was determined that the vacancy was

excess to the needs of the Service. The reason for this was that the customary work of the classification was decreasing. In the five years covered by this grievance, special delivery mail diminished sixty percent. In the same time period, the volume of Next Day Express Mail increased one hundred thirty percent. The witness testified that special delivery messengers are actually delivering more Express Mail than they did in the past, and none of the customary volume has been removed from the classification. With the continuing increase in the amount of Express Mail, Management found it necessary to add another trip in order to assure that the delivery deadline would be met. When it did this, it assigned part-time flexible letter carriers to the trip because, in its view, the Handbook permitted it.

The Postal Service's testimony stood unrefuted. This meant that, in order to sustain the grievance, the Arbitrator would have to rule that all Express Mail, no matter what volume, belonged to the special delivery messengers; and even if the volume doubled, tripled, or quadrupled, it would still have to be delivered exclusively by this classification. Such a ruling would fly in the face of the language of the Handbook which grants Management the authority and responsibility to distribute Express Mail across craft lines. The Special Delivery Craft may have jurisdiction of a customary, recognized amount of Express Mail, but it clearly does not own all of it. The evidence in this case requires that the grievance be denied.

The Union regards this grievance as a springboard for the Arbitrator to fashion guidelines for the future. In addition to the central issue -- whether cross-craft assignments were made -- the Union requested that the following questions be answered: (1) Does the Memorandum of Understanding include Express Mail assigned to the craft? (2) When does the Postal Service have the right to assign Express Mail across craft lines?

These questions have been partially addressed in the previous discussion. The Arbitrator declines to make a more specific statement because he believes that to do so would constitute an abuse of his authority. The collateral issues raised by the Union disclose unresolved matters that are more appropriate for collective bargaining than for arbitral fiat. This Arbitrator's jurisdiction is restricted by Article 15, Section 4 A(6) of the Agreement which provides:

All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator.

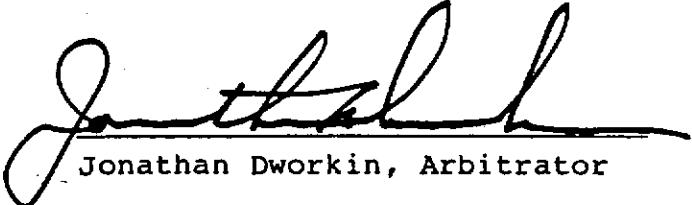
Additionally, Article 15, Section 2, Step 3, Subsections (d) and (e), and Section 4 B(5) implicitly deny Regional Panel arbitrators any authority to make interpretative awards of general application. In view of these contractual statements, it is concluded that this

case presented a single reviewable issue -- whether the Postal Service violated the restrictions on cross-craft work distribution set forth in Article 7, Section 2 of the Agreement. The decision that the alleged violation did not occur terminates the Arbitrator's authority.

AWARD

The grievance is denied.

Decision Issued:
September 23, 1984



Jonathan Dworkin, Arbitrator