

In the Matter of the Arbitration Between:

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UNITED STATES POSTAL SERVICE

A8-C-598

Case No. ~~AS-NR-1864~~

AND

AMERICAN POSTAL WORKERS UNION, AFL-CIO

RECEIVED BY

Hearing Held May 26, 1981

SEP 16 1981

Before Richard I. Bloch, Esq.

INDUSTRIAL
RELATIONS

APPEARANCES:

For the Company

James Shipman, Esq.
Labor Relations Executive

For the Union

Kenneth D. Wilson
Administrative Aide

FROM THE OFFICE OF
JOHN P. RICHARDS
DIRECTOR
INDUSTRIAL RELATIONS
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OPINION

Facts

During the fall of 1979, the Employer at the Wichita, Kansas Post Office issued an "Employee Checklist-Proper Distribution Technique". This Checklist accompanied a short training program for all Distribution Clerks concerning techniques for mail distribution. The Checklist stated, among other things:

Right-hand (no left-handed distribution) moves to bin destination with a short glance at position placement.

The Union maintains that issuance of this directive constituted a change in Methods Handbook M-75 -- "Manual Letter Mail Distribution". This, it says, was a violation of the National Agreement.

Issue

Was it a violation of the 1978 National Agreement for Management to have issued the contested Checklist?

Union Position

The Union says that Article XIX of the National Agreement requires certain procedures for changes in, among other things, working conditions. This was such a change, it says, and it was improper for Management to have implemented it under these circumstances.

Management Position

The Employer denies this was a violation of Article XIX. The "recommendation", it argues, is directed to Management, which may implement the procedures at its discretion. It should not be construed as an employee option.

Additionally, it says there was no change; the procedure was standard and in existence prior to 1979.

Finally, even assuming a change, says the Employer, this did not constitute a change in "working conditions" and thus was not violative of the Labor Agreement.

Relevant Contract Provisions

ARTICLE III

Management Rights

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;
- 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 of a recurring nature.

ARTICLE XIX

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 Unions at the national level at least thirty (30) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within thirty (30) 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 Unions upon issuance.

Analysis

The specific claim in this case is that Management at Wichita modified -- by making mandatory -- what had been merely a "recommended" right-handed distribution procedure. And, Management acknowledges (1) that the Checklist procedures were, indeed, mandatory and (2) that in the appropriate circumstances, disciplinary action might follow for refusal to comply with the directive. Resolution of the matter centers on interpretation and application of the Handbook itself as well as the Agreement.

Article III of the National Agreement provides for Employer retention of various management rights. However, these are "subject to the provisions of [the 1978 National] Agreement..." Accordingly, the question is whether Management's prerogatives have been limited with respect to issuing the contested directives.

Article XIX is at the heart of the dispute. Dealing with "Handbooks and Manuals", the provision states, in relevant part:

Those parts of all handbooks....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.

By this language, the parties have agreed that, as a basic matter, handbook procedures, among other things, are to remain unchanged. There are avenues by which Management

may institute certain modifications, assuming they are generally fair and not inconsistent with the Agreement. Significantly, however, notice of proposed changes must be furnished to the Unions at the national level at least thirty days prior to issuance.¹ Thereafter, the parties meet concerning such changes. The Union may grieve if it believes the proposed changes violate the National Agreement.²

Section 190 of the Methods Handbook describes the "Distributor's Position at Letter Case":

The recommended position for a distributor sorting mail at a letter case, '79 or '80 is illustrated in appendix C. The dimensions shown will vary, depending upon the size of a distributor. An adjustable platform stool, item 53 (rest bar), is used to reduce fatigue by permitting leaning instead of standing. Use of the stool should be according to section 333.212b, Postal Service Manual. By leaning, the trunk of the body can be maintained in an erect posture, close in to the case, facilitating access to all of the case holes without requiring a dismount from the stool. In order to reach all case holes, the body is centered with the case. The stack of letters is held in the left hand with the addresses also centered with the case. This arrangement also affords access to the wing case holes, if a wing case is used. The stack is held at a readable distance from the eyes, with the addresses positioned approximately 12 inches from the front surface of the case. Most case holes

¹ See Article XIX, supra at page 3.

² As drafted, it is reasonably apparent that the language referred to the issuance of new manuals. In this case, the alleged change occurred as a result of an implementing directive related to Section 190 of the Manual. Nevertheless, the ultimate impact would be the same; the absence of an actual manual revision in this case is not controlling; nor does the Employer so contend.

can be reached by employing only wrist and arm motions. Holes on the left edge of the main case, and those on the right side of the wing case, require body assists (shoulder turns) in conjunction with the arm and wrist motions, while holes in the uppermost rows require slight forward leans by the trunk of the body. (Emphasis added.)

The Union interprets the Section's reference to "recommended" as directed to Clerks. It contends:

The language of Section 190 of the Handbook...and the illustrations to which reference is made in that Section, recommend that clerks use their left hand to hold letters and their right hand to place the letters into the appropriate holes in a case.³

One must conclude, however, that the Union's emphasis on the term in this particular context has been given undue weight. In their exceptional briefs, both parties direct the arbitrator's attention to the transmittal letter of January 14, 1975 which states, in relevant part:

Material Transmitted

1) This Methods Handbook provides detailed descriptions of the recommended methods for activities within the area of Manual Letter Mail Distribution and is to serve as a guide to managers of these activities. Implementation of these methods where applicable will aid in reducing costs and in improving the reliability and consistency of service.

...(3) Implementation

Immediately upon receipt, the methods presented in this Manual should be considered for implementation by local management where applicable.

3 Union's Brief, Page 6.

Preface

Manual Letter Mail Distribution is by far the largest single area of mail processing endeavor, and as such, warrants continuous management attention with regard to the methods employed and the results obtained. This Handbook has been prepared for the purpose of providing field management with detailed descriptions of recommended methods for this mode of processing. While serving as a guide to good methods practice, this information will also aid in improving the reliability and consistency of service. Proper application of the material presented will yield benefits through standardization and optimization of postal operations.

While by no means controlling, these statements are helpful, in this particular case, in interpreting the Handbook provision at issue. Read alone, Section 190's reference to a "recommended" position might arguably be construed as reflecting Management's intention to allow right- or left-handed distribution at the employee's option. But, in the context of the overall document, it is more reasonable to find that the "recommended" reference is to Management's options for implementation, with no intent that employees be granted discretion with respect to adhering to the procedure. The terms of the Transmittal Letter support this latter approach.

Additionally, while the Union concentrates on recommendations as to the use of the hands, the Section speaks to "the recommended position" in its entirety. Accepting the Union's interpretation would, of necessity, require the finding that all aspects of positioning at the letter case are optional. There is no basis in the record

for concluding this was either the intended impact of Section 190 or the reasonable inference to be drawn therefrom.

Nor does the evidence of past implementation support the Union's proposition. At most, the history concerning the Wichita Post Office is sparse. A witness for the Employer testifies that right-handed distribution had been in effect prior to 1978. One may accept this contention, although it is not dispositive of the ultimate question of whether such procedure was mandatory. Beyond that, the Union suggests that employees in other areas of the country have been disciplined for performing the job in a left-handed fashion. If anything, however, this supports the suggestion that the right-handed procedure has been mandatory (at least in other regions).

The Union directs the arbitrator's attention to the case of United States Postal Service and National Association of Letter Carriers, Case No. NC-C-7851.⁴ There, the arbitrator concluded the Employer had violated the National Agreement by modifying a provision of the M-39 Handbook permitting carriers to cross customers' lawns or, alternatively to use sidewalks while making deliveries, at the carrier's option. In 1977, Management required carriers to

⁴ 71 LA 1188, 1978.

cross lawns despite a Municipal ordinance to the contrary. The arbitrator held these actions constituted a violation of Article XIX inasmuch as the new lawn crossing policy conflicted with controlling provisions of the M-39 Handbook.

That case, however, differs in significant respects from the one here at issue. First, there was no question in that case as to the original existence of the carrier's option. A portion of regional instructions stated:

Carrier may cross lawns while making deliveries if patrons do not object and there are no particular hazards to the carrier.

In a letter to the Union of January 9, 1969, the director of the Employer's Labor Relation Division had stated to the Union:

This policy does not provide for a mandatory requirement that carriers cross patrons' lawns nor does the Department approve the issuance of individual office or blanket instructions to cross lawns. The Department does, however, encourage this practice where (1) the patron does not object; (2) it is not hazardous for the carrier to do so, and (3) it is advantageous to the Department.

Article XLI of the 1975 National Agreement provided, in Section III-N:

Letter carriers may cross lawns while making deliveries if customers do not object and there are no particular hazards to the carrier.

Adjustments to routes were to be accomplished by means of an extensive series of "adjustment procedures" outlined in the M-39 Handbook. Said the arbitrator:

There is no suggestion here that the Service has undertaken since 1975 to change any of the basic policies and procedures in the M-39 Handbook insofar as the crossing of customers' lawns is concerned. If any such change were to be made, it could only be accomplished in accordance with the requirements of Article XIX. Clearly, then the St. Louis Post Office unilaterally adopted policies in early 1977 which conflict with official USPS policies embodied in the M-39 Handbook. This local action was not authorized under Article III, since it violated Article XIX of the National Agreement.

As such, Arbitrator Garrett found a violation of the National Agreement. There, the existence of a clear option, described in precise terms, was unquestioned. There was no doubt that the Postal Service had instituted a change. In that case, the Service sought to justify the change on the basis of, among other things, a joint agreement with the Union. Arbitrator Garrett found no such agreement; nor did the labor contract justify the actions.

But in this case, as observed above, the conclusion must be that the Union's reading of the term "recommended" in Section 190 is strained. On balance, the reasonable conclusion is that such terminology does not grant an employee an option as to whether to follow the highlighted procedures therein, including (but not limited to) the right-handed distribution method. Rather, the "recommendation" was directed to management as a distribution method available for implementation.

Caution should be exercised in reading this Opinion. The finding here is that Section 190 did not provide the option here suggested by the Union and that, therefore, the

mandatory nature of the 1979 directive did not constitute a change under Article XIX. However, this Opinion should in no sense be read as necessarily endorsing discipline which may have been, or may yet be, imposed as a result of the directive. Questions as to the just cause for such discipline must be resolved on a case-by-case basis. The sole finding here is that there was no violation of Article XIX resulting from the 1979 directive. For these reasons, the Grievance will be denied.

AWARD

The grievance is denied.


RICHARD I. BLOCH, ESQ.

September 14, 1981

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