C#03329

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

Case No. H1N-3Q-C 1288

APPEARANCES: C. B. Weiser for the Postal Service;
Richard N. Gilberg, Esq., for the NALC

DECISION

This grievance arose under and is governed by the 1981-1984 National Agreement (JX-1) between the above-named parties. The undersigned having been jointly selected by the parties to serve as sole arbitrator, a hearing was held on 18 November 1982, in Washington, D. C. Both sides appeared and presented evidence and argument on the following issues (Tr. 8-9):

1. Is grievance H1N-3Q-C 1288 arbitrable?

2. If so, did the Postal Service violate Articles 1 and 19 of the 1981-1984 National Agreement by permitting supervisors to perform work associated with the relabeling of carrier cases, including the completion of Forms 313, at the post office in Laurel, Mississippi?

If so, what is the appropriate remedy?

The parties agreed to address both the arbitrability and the merits of the grievance, with the understanding that the arbitrator would reserve his decision on both issues until after the case had been fully submitted.

A verbatim transcript was made of the arbitration proceedings, and each side submitted a post-hearing brief. Upon receipt of both briefs, the arbitrator closed the record on 28 February 1983.

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

AWARD

1. Grievance H1N-3Q-C 1288 is arbitrable.

2. The Postal Service violated Articles 1 and 19 of the 1981-1984 National Agreement by permitting supervisors to perform work associated with the relabeling of carrier cases, including the completion of Forms 313, at the post office in Laurel, Mississippi.

3. Each regular letter carrier at the Laurel, Mississippi, post office whose case was rearranged and relabeled by supervisors shall be paid one hour's pay at time and one-half for time they would have spent if such work had been assigned to them.

Benjamin Aaron
Arbitrator

Los Angeles, California
16 March 1983

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Case No. H1N-3Q-C 1288

OPINION

I

Article 1 (Union Recognition), Section 6 of the 1981-1984 National Agreement (JX-1) provides in relevant part:

> A. Supervisors are prohibited from performing bargaining unit work at post offices with 100 or more bargaining unit employees, except:
>
> 1. in an emergency;
>
> * * * *
>
> B. In offices with less than 100 bargaining unit employees, supervisors are prohibited from performing bargaining unit work except as enumerated in Section 6A1 through 5 above or when the duties are included in the supervisor's position description.

Article 3 (Management Rights) provides in relevant 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 conducted.

The M-39 Handbook (Management of Delivery Services) (JX-5) provides in relevant part:

117.4 Carrier Case Labeling

.41 Carrier case labels must be applied in accordance with the following:

a. Label Uniformly and for Efficiency. Delivery unit managers are responsible for the efficient and uniform labeling of all carrier cases. They must schedule frequent reviews of carrier-case layout to assure maximum efficient use of available equipment, route layout, and housekeeping.

* * * *

k. Use Machine-Printed Carrier Case Labels. Machine-printed carrier case labels should be used ordinarily when routes are newly established and when extensive route changes necessitate complete replacement of case labels. Submit Form 313, Requisition for Printed Carrier Case Labels, for machine printed labels to the designated label printing unit. An employee skilled in lettering, if approved by the management sectional center (MSC), may be used to prepare case labels if the time required is not excessive.

The M-41 Handbook (City Delivery Carriers Duties and Responsibilities) (JX-3) provides in pertinent part:

120 BASIC CARRIER DUTIES

121 OFFICE DUTIES

* * * *

121.2 Case Duties

.21 Relabel cases if local management so desires, as required by route adjustments and changes in delivery.

Both Handbooks are incorporated into the National Agreement by Article 19.

On 26 October 1981, carriers at the Laurel, Mississippi, post office learned that their immediate supervisor. C. R. Carlisle,

and a Postal Service Route Examiner, Mr. Miller, were performing work relating to the rearrangement and relabeling of all 19 letter carrier cases in the post office. This work included filling out Forms 313 (Requisition for Printed Carrier Case Labels) (JX-6), as well as physically relabeling some of the cases. This work was done over a period of several weeks. In the past, according to the testimony of G. E. Cruise, President of Laurel Branch 1437, letter carriers had always performed such work at Laurel, at the direction of management. He testified, further, that carriers performed this work either during their regular shift or on overtime; in the former case the carrier's route was taken over by a part-time flexible carrier.

Cruise filed a grievance on 26 October 1981 (JX-2); it read in part as follows:

> On Monday 10/26/81 Supr. Carlisle violated Art. 1 Section 6 of the National Agreement by performing bargaining unit work. . .by rearranging and relabeling carrier cases. . . .This is continuing on a daily basis and Supv. Carlisle stated that he was going to do all routes.

The relief requested by Cruise was "That each regular letter carrier whose case was rearranged and relabeled by Supervisors be paid a minimum of one hours pay at the rate of time and [one] half for time they would have spent rearranging and relabeling their cases."

Management's response, dated 16 November 1981, at step 2 of the grievance procedure, was

> that all routes were being restructured as a result of Model Delivery Audit. Supv. Carlisle and

> Mr. Miller of MSC staff, worked in the office and on the street many hours in realigning routes and designating park points so that routes will comply with Model Delivery program. Form 313's were completed in the process as they worked on each route. Realigning and restructureing routes is a function of Management. For the reasons listed above management position is that we have not violated ART I, Sec. 6 of National Agreement.

At step 3, management's response, dated 11 January 1982, was as follows:

> Based on information presented and contained in the grievance file, the grievance is denied. No violation of the Agreement has been shown, since the work may be performed by supervisors. . . .
>
> In our judgement, the grievance involves an interpretive issue(s) pertaining to the National Agreement or a supplement thereto which may be of general application, and thus may only be appealed to Step 4 in accordance with the provisions of Article XV of the National Agreement. [Underscoring added]

At step 4, however, management's position, as stated in a letter dated 2 June 1982, changed, as is indicated in the following excerpt:

> In our opinion this issue does not fairly present an interpretive question. . . .
>
> In our opinion there is no contractual prohibition for the supervisor to complete PS Form 313. The supervisor completed the forms to establish new lines of travel in order to comply with Model Unit Program guidelines. When the printed case labels were returned to the installation, they were placed in the cases by letter carriers. Hence, any rearranging and/or relabeling of carrier cases was accomplished by letter carriers. [Underscoring added]

On 7 June, the Union requested arbitration.

At the arbitration hearing the Postal Service, for the first time, challenged the arbitrability of the instant

grievance. It claims that essentially the same issue was raised in Grievance No. H8N-5D-C 16010, in Tacoma, Washington, and was settled in a prearbitration meeting on 24 February 1982 (JX-7). That case, like the present one, involved the question whether the completion of Forms 313 is exclusively bargaining-unit work, as the Union contends, or whether the work may be performed, at management's discretion, by any employee in or out of the bargaining unit, including supervisors. It appears that in the discussion on 24 February, Haline Overby, Assistant Secretary Treasurer of the NALC, proposed the following language (CX-1) as an appropriate settlement of the Tacoma grievance:

> Non-bargaining unit employees shall not be used to the detriment of bargaining unit employees in the execution of Form 313. To the maximum extent possible, bargaining unit employeeswill complete this Form.

The Postal Service rejected the proposed first sentence, however, and the language eventually accepted by both sides stated: "To the maximum extent possible, the carrier regularly assigned to the route will complete PS Form 313." It is the position of the Postal Service that this prearbitration settlement amounts to a special agreement governing the future rights of the parties in similar cases and should govern the present grievance, and that, therefore, there is nothing to arbitrate.

The Union's position is that under the terms of Article 15 (Grievance-Arbitration Procedure) of the National Agreement, the instant grievance is clearly arbitrable. Article 15 reads in pertinent part:

Step 3: . . . .

* * * *

(e) If either party's representative maintains that the grievance involves an interpretive issue under the National Agreement, or some supplement thereto which may be of general application, the Union representative shall be entitled to appeal an adverse decision to Step 4 (National level) of the grievance procedure. . . .

* * * *

Step 4: (a) In any case properly appealed to this Step the parties shall meet at the National level promptly, but in no event later than thirty (30) days after filing such appeal in an attempt to resolve the grievance. The Union representative shall have authority to settle or withdraw the grievance in whole or in part. The Employer's representative shall have authority to grant or settle the grievance in whole or in part. The parties' Step 4 representatives may, by mutual agreement, return any grievance to Step 3 where (a) the parties agree that no national interpretive issue is fairly presented or (b) it appears that all relevant facts have not been developed adequately. In such event, the parties shall meet at Step 3 within fifteen (15) days after the grievance is returned to Step 3. Thereafter the procedures and time limits applicable to Step 3 grievances shall apply. Following their meeting in any case not returned to Step 3, a written decision by the Employer will be rendered within fifteen (15) days after the Step 4 meeting unless the parties agree to extend the fifteen (15) day period. The decision shall include an adequate explanation of the reasons therefor. In any instance where the parties have been unable to dispose of a grievance by settlement or withdrawal, the National President of the Union involved shall be entitled to appeal it to arbitration at the National level within thirty (30) days after receipt of the Employer's Step 4 decision.

As previously noted, the Postal Service declared at the step 3 level that "the grievance involves an interpretive issue(s) pertaining to the National Agreement. . . which may

be of general application. . . ." At step 4 the Postal Service reversed its position, stating: "In our opinion, this issue does not fairly present an interpretive question." Because no settlement of the grievance was reached at step 4, the Union contends that it had the right, pursuant to the last sentence of the step 4 procedure quoted above, to appeal the grievance to arbitration.

The National Agreement contains no language declaring when the voluntary disposition of a local grievance such as H8N-5D-C 16010 becomes binding in all similar future grievances. The Postal Service insists, however, that this was the clear understanding between Howard R. Carter, a Postal Service Labor Relations Specialist, and Overby, who negotiated the prearbitration settlement. (Overby also signed the settlement agreement for the Union; William E. Henry, Jr., Director of the Office of Grievance and Arbitration, signed for the Postal Service.)

Both Carter and Overby testified at some length about the discussions immediately preceding the prearbitration settlement of the Tacoma grievance on 24 February 1982. Carter testified in part (Tr. 26):

> My intent and my understanding with Mr. . . . [Overby] at the time was that this would put to bed. . . this dispute and any subsequent disputes. . .relative to the completion of the 313. It's more or less an accepted practice, at least in my experience, that for the most part the carriers do complete the 313. However, had we intended for this pre-arb settlement to be non-citable and non-precedential, we would have put that in the language, which we frequently do, and my intent was to put this to bed once and for all.

In a colloquy with the arbitrator, Carter testified further, as follows (Tr. 40-41):

> . . .[I]f I understand what you understood from this agreement, this pre-arbitration settlement, it was that you started from a position that this is not limited to bargaining unit employees that the work is not assigned solely to bargaining unit employees.
>
> THE WITNESS: Yes, sir.
>
> MR. AARON: In your experience, however, carriers do perform this work in the overwhelming percentage of the cases.
>
> THE WITNESS: Yes, sir.
>
> MR. AARON: What you entered into was, in effect, a compromise. You gave up the position of saying, in the settlement, "This work is not restricted to bargaining unit employees," but you. . .intended to add the assurance that, as in the past, in the great majority of the cases, the work would be assigned to the carriers.
>
> THE WITNESS: That was my intent, yes, sir.
>
> MR. AARON: And it was also your intent that the decision whether or not to, in any given case, assign to the carriers was solely within the discretion of Management.
>
> THE WITNESS: Exactly.
>
> MR. AARON: And you couldn't get agreement by putting it that baldly, "This is not limited to bargaining unit employees; Management has the sole discretion when to assign the work," so you entered into an agreement which, in effect, assured the Union that in most cases, as in the past, the work would be assigned to carriers, but you added a precautionary phrase, "to the greatest extent possible," or whatever that was.
>
> THE WITNESS: Yes, sir, "to the maximum extent possible." You're entirely right, sir, and the Union acceded. We both got off of our polarized positions in a meeting of the minds to come to this language.

Overby, however, did not so understand the settlement language that was adopted. He testified in part (Tr. 66-67):

> Then we went through the litany [with management] of what would happen with this language [proposed by management] and that would be, the first thing it would do is to the maximum extent possible it would take the regular carrier. . . .
>
> Once that was done, then we'd go into the craft and try to find somebody to do it, and barring everybody busy, if they had to bring a clerk over from the clerk side to do it, that was a possibility and that would have to stand the test of whether he had light duty, light time, in his craft as to no one to work over on our side. And then after that, if no one else could do it, Management proposed that maybe a supervisor could do it, and then we got into Article 1, Section 6, and this was what they were hanging on, that in the contract we can't negate that, and I agreed that we cannot negate Article 1, Section 6.

No useful purpose will be served by quoting more from the testimony of the two men. I am satisfied that there was no firm mutual understanding between the parties as to the meaning of the settlement; that fact, in itself, negates the argument that the settlement should be binding on all future similar grievances. I conclude, therefore, that pursuant to the previously-quoted provisions of Article 15, the present grievance is arbitrable.

One more comment needs to be made. It seems certain that the question whether a prearbitration settlement is to cover similar cases arising in the future will be a recurring one. The problem will be further complicated when, as in the Tacoma case, it turns out that the parties are not even in agreement as to the meaning of the settlement itself. Thus, if the parties mutually agree that a prearbitration settlement is to have the

effect of a binding precedent, prudence requires that they say so in plain and unmistakeable language.

II

The Union argues that the plain meaning of the excerpts from the M-39 and M-41 Handbooks previously quoted is that relabeling work, including completion of Forms 313, is exclusively bargaining-unit work. The Union also cites the language on the Form 313 itself, which includes 12 "Requisitioning Instructions," states that the "Requisition must bear supervisory approval," contains a space for signature under the heading, "Authorized By (Supervisor)," and contains a space under which the supervisor is to note the "Date Approved." According to the Union, the role of supervisors is to authorize and to approve the completion of Forms 313, but the actual work is to be performed by bargaining-unit personnel.

This interpretation, the Union maintains, is fully borne out by the actual past practice of the parties, which it claims is uniform throughout the country. It cites, for example, Carter's testimony (Tr. 29-30) that "after some 22 years in the Postal Service, some 15 of which was [as] a city carrier,. . .in the overwhelming majority of the cases the regular carrier on the route does complete the form and it's approved by the supervisor . . . ." He later explained (Tr. 35) that "the overwhelming majority of the time the regular carrier. . .[fills out the Form 313] because he's familiar with the route and the layout of the route. The supervisor gets with him and approves."

Nevertheless, Carter insisted that management always retains sole discretion to determine whether or not bargaining-unit employees will physically perform such tasks: ". . .who fills out the 313 is at the discretion of the local manager" (Tr. 44).

Darvin D. Schlepitz, operations officer in the Headquarters Office of Delivery and Collection, testified (Tr. 122-23) that the M-39 or M-41 specific statements about labeling were not included on Form 313.

> Because it was intentionally left open to Management's discretion as to who would complete the Form 313, be it a supervisor, clerk, carrier, someone on light duty. There are so many variables in the field and different conditions and circumstances, that to specify one craft or one individual to complete something like this would limit the ability to manage.

He conceded that this reason had not been explicitly stated to the Union when the relevant sections of the manuals had been submitted to it for review.

Cruise, it will be recalled, said that supervisors had never filled out Forms 313 at the Laurel post office until the occasion that prompted the instant grievance. In cross-examining Cruise, counsel for the Postal Service inquired (Tr. 109): "Is it possible that supervisors have filled out the Form 313 without your knowledge?" Cruise replied: "If he [sic] had, we would have filed a grievance. Somebody would have told us." Subsequently, the following colloquy took place between the arbitrator and counsel for the Postal Service (Tr. 113-14):

> In your cross-examination of Mr. Cruise, you asked a question that led me to infer that you might be prepared to offer some testimony as to past practice, namely, that supervisors had in the past filled out Forms 313. Are you prepared to do that, or are you arguing that that isn't necessary for you to deal with?
>
> MR. WEISER: I would argue that that's not necessary.
>
> MR. AARON: Okay. So. . .you'll understand, in the absence of any rebuttal testimony on that, I would accept the Union's testimony that in the past this hasn't been done before.

No such testimony was offered by the Postal Service.

The Union concedes that supervisors can perform bargaining-unit work when permitted to do so under the conditions set forth in Article 1, Section 6, only one of which--"in an emergency"--is relevant in this case. Although no reference to an emergency was made in any steps of the grievance procedure in this case, counsel for the Postal Service asserted at the arbitration hearing that the occasion giving rise to the grievance at the Laurel post office was "an abnormal situation" (Tr. 112), and the same argument is made in the Postal Service's post-hearing brief.

The Union denies that any emergency existed. Cruise testified that about one week before the fact, he was told by Carlisle that the routes were going to be changed. Apparently, nothing was said about an emergency. Carlisle described the assignment he and Miller carried out as follows (Tr. 132):

> Me and him went out on each route individually and laid out a completely different delivery pattern to it. What we'd have to do, we'd go out on the street and consider which would be

> the best way. We'd actually get out and walk loops, as we figured that would be the best. We might walk it three or four different ways in order to determine which would be the most efficient route, and we would record this on the 313. After we made our final decision, we recorded it on the 313, house by house, according to whether we set up a zig-zag pattern, loop pattern, double loop or whatever.
>
> Q. Where did you utilize the 313?
>
> A. On the route, so that we could establish a line pattern or a pattern of delivery.
>
> Q. Did you fill out the 313 while you were on the route?
>
> A. Yes.

Asked whether this work could have been done by carriers, Carlisle replied in the negative, explaining (Tr. 133): "They would have had to be trained and then sent out on a route to do it, but there was no way they could have efficiently set it up." Carlisle was also asked why the work of physically completing the Forms 313 could not have been assigned to the carriers. He replied that "we didn't have the time" (Tr. 137), that "[w]e had to get them [Forms 313] in as quickly as possible, because we were going to be reaudited to see we were in compliance with model delivery" (Tr. 138), and that he and Miller wanted "to avoid duplication of effort" (Tr. 151).

The Postal Service argues that labeling or relabeling does not mean filling out Forms 313, and points out that the only reference to that form in the M-39 or M-41 Handbooks is in M-39, 117.41 k, which says nothing about the completion of the form belonging exclusively to bargaining-unit employees. It

follows that the work may be assigned as management directs, as provided in Article 3.

The Postal Service also asserts, for the reasons given by Carlisle, that supervisors completed the Forms 313 at the Laurel post office to avoid duplication of effort and because the situation was abnormal. It cites the testimony of Cruise, that the Union knew the situation was abnormal: ". . .the whole office-wide was changed" (Tr. 110). It also purports to see a local Union admission of abnormality at Laurel in a letter dated 19 November 1981, from Laurel shop steward L. G. Holifield, Jr., to Laurel postmaster J. A. Graham (JX-2), which reads in relevant part: "Although I agreed the ordering of these lables [sic] were not normal due to the changing of all park points, I did in no way agree management had the right to violate the National Agreement."

The Union has submitted two arbitration decisions (UX-1, UX-2), involving relabeling by supervisors at Groves, Texas, and Cleveland, Ohio, respectively. Both were decided in the Union's favor. The Postal Service responds that the settlement agreement in the Tacoma case was reached after both of those decisions had been rendered.

III

Although it is true that neither the M-39 or M-41 Handbook states in so many words that the completion of Forms 313 is work belonging exclusively to bargaining-unit employees, I think that is the clear and reasonable meaning to be drawn from the pro-

visions previously quoted. Moreover, the past practice between the parties is in accord with that interpretation. Although invited by the arbitrator to do so, and warned by him that its failure to produce evidence that supervisors had done such work in nonemergency cases would lead him to accept as true the Union's assertion that they had not, the Postal Service stood on its position that such evidence was unnecessary.

I also conclude that the situation at Laurel was not an "emergency" within the meaning of Article 1, Section 6. I am satisfied that even though the supervisors felt it necessary to map the new routes, the carriers could have rearranged and relabeled their cases and filled out the Forms 313 without undue loss of time or efficiency. The situation may have been "abnormal," but an abnormality is not necessarily an emergency, and it was not in this case.

In any case, the Postal Service's claim that this was an emergency situation seems to have been something of an afterthought; the claim was not advanced during the prearbitration steps of the grievance procedure. The basic positions of the Postal Service were, first, that the grievance is not arbitrable and, second, that the completion of Forms 313 is not the exclusive property of bargaining-unit employees. For the reasons previously stated, I do not believe that the Postal Service has sustained either position. The grievance is granted. Each

regular letter carrier at the Laurel, Mississippi, post office whose case was rearranged and relabeled by supervisors is entitled to one hour's pay at time and one-half for time he would have spent if such work had been assigned to him.

Benjamin Aaron
Arbitrator