

C#05669

N.A.L.C. A.R.B.  
Washington, D. C.

ARBITRATION AWARD

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FEB 3 1986

In the Matter of the Arbitration	)
	)
Between	)
	)
UNITED STATES POSTAL SERVICE	)
Grand Rapids, Michigan	)
	)
And	)
	)
NATIONAL ASSOCIATION OF LETTER CARRIERS,	)
Branch 56	)

Case No.: C1N-4B-C 27877

ALBERT A. EPSTEIN  
ARBITRATOR

CLASS ACTION GRIEVANCE RE:  
DELIVERY OF STORE CATALOGS IN EXCESS OF TWO POUNDS  
BY DEMOTORIZED PAIRED FOOT CARRIERS

THE PROCEEDINGS

The above parties, unable to resolve a grievance filed by the Union in January of 1984, relating to the assignment of demotorized foot carriers for delivery of department-store catalogs, weighing in excess of two pounds, submitted the matter to the undersigned for arbitration under the terms of their Labor Agreement.

A hearing on the matter was held at the Grand Rapids Post Office on July 25, 1985.

Both parties were represented and fully heard, testimony and evidence were received and the parties subsequently filed post-hearing briefs.

RECEIVED

JAN 30 1986

Jack R. Sebolt

APPEARANCES

For the Union:

Mr. Fred W. Herman	Regional Administrative Assistant
Mr. Wes Van Rhee	President

For the Postal Service:

Mr. Scott T. Rennie	Labor Relations Representative
Mr. Robert E. Lancaster	Manager, Postal Employees Development Center

THE ISSUE

Was the United States Postal Service in violation of the Labor Agreement between the parties and in violation of the Remand Agreement, under the terms of the Aaron Award, when it ordered demotorized foot carriers, on paired routes, to carry department-store catalogs weighing in excess of two pounds, in January of 1984.

PERTINENT LABOR AGREEMENT PROVISIONS

ARTICLE 3

MANAGEMENT RIGHTS

- 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.

## ARTICLE 19

### 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.

#### PERTINENT MANAGEMENT OF DELIVERY SERVICES MANUAL

- 125 CARRIER WORK METHODS - STREET
- 125.1 Loading Carrier Vehicles
- The carrier should take all mail for delivery to the vehicle at the same time using a hamper or other assigned conveyance. Avoid extra trips to the vehicle unless they are absolutely necessary due to the quantity of mail.
- 125.4 Carrier Satchel
- .42 Carriers must load their satchel with all the letter, flat, and SPR mail for a loop or relay to minimize the trips to the replenishment point, except when this would require them to carry more than 35 pounds of mail.
- 125.5 Park in Designated Location
- On a park and loop route, the carrier must park the vehicle in the locations the unit manager has designated. After parking, the carrier must perform delivery as on a foot route, except for delivery of parcels.
- 125.7 Parcel Delivery
- b. Delivery of Parcel After Completing Loop. The carrier may park in the usual location and deliver the letter and flat mail first. However, when delivering the letters determine if the parcel is deliverable. If it is not, the carrier should leave a notice at this time and return the parcel to the delivery unit. If the parcel is deliverable, the carrier can deliver the parcel as he/she drives past the delivery point, enroute to the next park and loop location.

125 PROVIDING RELAY SERVICE

125.1 General

- .11 When mail for a delivery trip weighs more than 35 pounds, make relays to one or more suitable collection or relay boxes appropriately located on the route. When a carrier uses a cart, the 35-pound limitation does not apply for the carry-out and/or any relays. Relays may also be made to safe points within office buildings or stores when agreeable to the owners or their representatives. Mail not deposited inside of relay or collection boxes must be placed in sacks locked with padlocks.
- .12 Determine service needs on a day-to-day basis at each unit and take the following actions:
  - f. Use existing service as far as possible in making relays, including interstation service, Motor Vehicle Service (MVS), motorized and parcel post carriers, collectors, and rural carriers if the mileage of the rural carrier is not increased. Make relays by part-time flexibles when other services are inadequate.

160 PARCEL POST

161 PARCEL POST DELIVERY REQUIREMENTS

The day-to-day supervisory requirements for parcel post routes are basically the same as for city letter carrier routes. The office work routine, both before leaving for the route and after returning from the route, is somewhat different, as follows:

- b. 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.

PERTINENT GLOSSARY (FINAL CASE)

Foot Route - A city delivery route served by a carrier on foot. A bicycle or automotive vehicle used solely as transportation to and from the route does not affect its status as a foot route.

Parcel - A first or fourth-class package over 2 pounds in weight and/or larger than a shoe box.

Park and Loop Route - A route which utilizes a motor vehicle for transporting all classes of mail to the route, using the vehicle as a moveable relay container as the carrier loops segments of the route on foot.

PERTINENT POSTAL OPERATIONS MANUAL PROVISIONS

- 614 PARCEL POST
- 614.2 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.
- 613 Letter Delivery Routes
- 613.1 Load Limits for Foot Carriers. Carriers are not required to carry more than 35 pounds of mail in a satchel at one time. This applies to both carry-out mail and to pickup of mail at any relay point.
- 613.2 Travel and Transportation of Carriers
- .21 When to Provide
- .211 Provide transportation for foot carriers only when the distance from the delivery unit to the beginning or end of the route is one-half mile or more.

DISCUSSION AND OPINION

This grievance arises from a complaint by the Union that the Postal Service in Grand Rapids, Michigan violated the Remand Agreement entered into between the Post Office and Union representatives in 1983, which Agreement provides as follows:

REMAND AGREEMENT

1. The parties recognize that under the award of Arbitrator Aaron in case numbers H8N-4E-C 19254 and H8N-4E-C 21358, the Postal Service does have the authority to require foot carriers to deliver articles weighing in excess of two pounds, provided that the carrier's total load to be carried does not exceed 35 pounds.
2. The award sets forth additional conditions which must be satisfied before the Postal Service can exercise its authority to assign articles weighing in excess of two pounds to foot carriers. The authority can be exercised "only on an infrequent and non-routine basis, when there is no other equally prompt, reliable, and efficient way to deliver the mail."
3. The NALC may grieve the assignment of an article weighing in excess of two pounds to a foot carrier on the ground that such assignment violates the conditions of the Aaron award. Pursuant to

Article 15 of the National Agreement, when such a grievance is filed, at the request of the NALC, management will make a full and detailed statement of the facts which management believes show that the conditions of the award have been satisfied.

4. If the Union challenges management's factual explanation, such dispute should be resolved through arbitration at the regional level.

The Union maintains that the action of the Postal Service in this matter is covered by the National Award entered by Arbitrator Aaron, who it contends made a ruling and set forth conditions when the Postal Service can exercise its authority to assign articles weighing in excess of two pounds to foot carriers (in this case, catalogs which meet that criteria). It points out that the parties have agreed that the conditions must be met by entering into the Remand Agreement and that the Postal Service's authority, under the terms of Article 3, can be exercised only "on an infrequent and non-routine basis, when there is no other equally prompt, reliable, and efficient way to deliver the mail". It is the position of the Union that the Postal Service has violated the conditions set forth above, by issuing a blanket instruction that all catalogs must be delivered by the foot carriers, which according to the Union, is a routine process of delivering catalogs, no matter what the frequency of the distribution is.

In response to the emphasis of the Postal Service that the burden of proof is on the Union in a contractual agreement, it even points out that paragraph 3 of the Remand Agreement requires that management must make a full and detailed statement of the facts which management believes show that the conditions of the award have been satisfied. Thus, the burden shifts, according to the Union.

The Union points out that the statement set forth by management in March of 1984, in reply to the grievance, suggests that management met the conditions of the Aaron Award, setting forth that the catalogs were not mailed frequently, that the delivery of the catalogs by the foot carriers was not a routine or frequent part of the foot carriers' duty assignment and claims that the most efficient method of delivery for these catalogs is delivery as the carrier travels his normal delivery pattern. In that reply, the Postal Service also indicated that assigning these deliveries to adjacent motorized carriers would mean almost 100% duplicate travel on the foot route, at the additional expense of fuel and time for the motorized carrier and would delay the delivery of preferential mail on the motorized route. The Union claims that management itself, did not meet the conditions which it indicates as governing the situation. The Union points out that there was no evidence presented that there would be any additional expense to the Postal Service if catalogs were delivered by the motorized carrier, or that there would be any substantial delay of delivery of mail. It notes that the supervisor at the hearing admitted that a study has not been made regarding the efficiency of catalog delivery and that at times, the foot carrier is being required to deliver catalogs to patrons where there is no mail for the address, which creates unnecessary additional time for him. The Union also notes that the issue is further complicated by the fact that the duplication of delivery could be created by the motorized carrier delivering articles in excess of 35 pounds to addresses where the foot carrier makes delivery. Management's logic in this respect is not based upon documented fact according to the Union.

The Union also notes that it was recognized at the hearing that the

most knowledgeable people to make determinations of mail volume, daily conditions of delivery and actual points of delivery, would be the paired carriers. It submits that essentially, the paired route is a city delivery procedure in which two or more carriers utilize one vehicle for transportation to and from their routes, spotting relays, delivering parcel post, making collections and other delivery functions in the most efficient manner facing the varying degrees of local conditions. The Union points out that management recognizes that solicitation of carrier input is a must to make the procedure work.

The Union notes that management is provided with instructions and other alternatives to establish efficient delivery of relays and parcel post without requiring foot carriers to perform the function and that all of these alternatives come under the "equally prompt, reliable and efficient way to deliver the mail". The Union submits that its witnesses testified without rebuttal, that while working as motorized carriers and foot carriers, it was their experience that a given number of parcels could be delivered in a lesser amount of time by the motorized carrier, even though daily conditions vary. It indicates that testimony set forth that under normal conditions, the motorized carrier could deliver the given number of catalogs in 15 minutes, while the foot carrier took 30 minutes and there was further testimony that the foot carrier was faced with problems when unable to deliver the catalog and had to carry the catalog with him to the relay point to secure it. This caused unnecessary retrieval and dead-heading at the end of the route to return undeliverable catalogs to the post office.



The Union refers to Section 614.2 of the Postal Operations Manual, which provides that supervisors may require foot carriers or parcel-post carriers to deliver articles weighing more or less than two pounds, based upon available work, but it notes that this Section must also meet the conditions of the Aaron Award.

The Union also maintains that the route maps of the paired routes establish that the motorized carrier travels through the demotorized route and spots five relays and delivers parcel post that the foot carrier is unable to carry. It also points out that the motorized carrier travels through the demotorized route, spots four relays and delivers parcel post that the foot carrier was unable to carry and that the motorized carrier travels through the demotorized route, spotting at least six relays and delivers parcel post that the foot carrier is unable to carry. In regard to these examples, it was testified to, according to the Union, that the motorized carrier, on occasion, based on the available work load, travels through all of the streets of the demotorized route.

The Union claims that although the Postal Service instruction violates the Remand Agreement, the Arbitrator cannot deny or sustain the grievance and on that basis, resolve the dispute. Therefore, the Union offers a common-sense approach as a resolution, taking into consideration carrier input as suggested by the parties at the hearing and this resolution is proposed as the following: "Concerning the paired routes at the Grand Rapids, Michigan Post Office, the motorizes carrier, while providing transportation for the foot carrier and while delivering relays and parcel post, the driver will deliver articles in excess of two (2) pounds where there is no substantial increase in travel during the course of his duties."

The Union closes with a request that the Arbitrator adopt the above proposal.

The Postal Service submits that the burden of proof in grievance cases lies squarely upon the shoulders of the Union and it maintains that in this case, the Union has not carried this burden of proof which would sustain its position that foot carriers should not carry catalogs in excess of two pounds in weight. It notes that documentation has been presented by management in this case, which shows that foot carriers are, in fact, required at times to carry catalogs in excess of two pounds in weight. It submits that this was presented in the form of documentation in the M-39 Handbook, Management and Delivery Services, wherein it states in pertinent part "when mail for delivery trip weighs more than 35 pounds, make relays to one or more suitable collection or relay boxes appropriately located around the route." It also refers to another of the M-39 handbook, which provides "withhold, generally, all small parcels (not exceeding two pounds) to be delivered by foot carriers. Don't delay getting these parcels to the foot carriers." It also points out that the Postal Operations Manual provides in another chapter "Normally, require foot carriers to deliver articles including catalogs not exceeding two pounds in weight. Based on available workloads, supervisors may require foot or parcel carriers to deliver articles weighing more or less than two pounds". And, what management considers as the final and absolute line as far as weight limitations are concerned, is set forth in another chapter of the Postal Operations Manual, which provides that "Carriers are not required to carry more than 35 pounds of mail in a satchel at one time."

In response to the Union's argument that the delivery of catalogs is, in fact, frequent and routine, management claims that testimony from its witnesses confirms that city letter carriers deliver approximately 1500 pieces of mail per day and that there are approximately 302 delivery dates within the delivery year. By its computation, it points out that the average letter carrier carries approximately 453,000 pieces of mail per year and that the average city route gets approximately 300 catalogs per year. Thus, the average foot carrier's percentage of catalogs carried per year, is less than .001%. Therefore, this could hardly be construed to be routine of frequent delivery as is defined in Arbitrator Aarons Award.

Management witnesses also stated that it is significantly more efficient and less costly to the Postal Service when it has the foot carrier deliver these catalogs, one or two per relay, than it is to have a motorized carrier duplicate the foot carrier's entire line of travel to a specific delivery point. Management claims that if the Union were to have this grievance sustained, it would mean that carriers would be duplicating a line of delivery to a specific delivery point, 100% of the time that it takes to deliver that customer's mail and that it also means that if the motorized carrier were spending 5 to 10 minutes per day delivering these catalogs to various points on the foot carrier's route, it would delay first class mail to the motorized carrier's customers.

In response to the Union's argument that if the catalogs on the foot carrier's route are nondeliverable, the foot carrier would, in fact, have to carry these catalogs with him throughout the whole route, the Postal Service notes that it has been established through testimony that if the catalogs are nondeliverable to a specific address, the foot carrier may put the catalog into the next relay box along his route and that at the

end of the day, when empty equipment is picked up from the relay boxes, the catalog would also be picked up at that time, brought back to the post office and posted for notice.

The Postal Service submits that it has never been alleged by the Union, either in this arbitration case or through documentation presented throughout the grievance procedure, that the absolute rule of the 35-pound weight limit has ever been breached by management and the Postal Service notes that the weights of actual relays leaving the Grand Rapids Post Office for delivery, even with one or two catalogs added, would be within the 35-pound weight limit.

The Postal Service comments that in order for the Arbitrator to sustain this grievance, by finding that foot carriers not be required under any circumstances, to carry parcels or catalogs in excess of two pounds, he would have to rewrite the Postal Operations Manual and the M-39 Methods Handbook. Postal Service refers to Arbitrator Aaron's Award where it states "Historically, the two pound limit for foot carrier 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. Arbitrator Aaron is also quoted as saying "Apart from the 35-pound limitation, moreover, it is obvious that the exception to a rule that is normally or usually to be applied, cannot be the norm. A routine and frequent assignment of parcels weighing over two pounds to foot carriers would be inappropriate. Arbitrator Aaron also is quoted as saying "If a more specific gloss on the present language of Section 161B 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 and by an Arbitrator." It notes that Arbitrator Aaron, in response to the question placed before him about the limitations, stated that the Postal Service has the authority to exceed the two-pound limit, provided that it is only on an infrequent and nonroutine basis, where there is no equally or prompt, reliable and efficient way to accomplish the delivery of mail."

It is the position of management that less than .001% of the mail delivered by a city letter carrier, are catalogs and this verifies the fact that this is indeed infrequent and nonroutine and management feels that it is proven through documentation and testimony that it is more prompt, reliable and efficient for the foot carrier to deliver these catalogs in his regular line of travel in the delivery function, than it is for a motorized carrier to duplicate that line of travel to perform the same delivery function.

Based upon the above contentions, the Union requests that the Grievance be denied.

A review of the testimony, evidence and arguments of the parties leads to the conclusion as indicated above, that the gist of the issue between the parties, is whether or not the conditions set forth in the Aaron Award and in the Remand Agreement, under which the Postal Service can exercise its authority to assign articles weighing in excess of two pounds to foot carriers, have been satisfied. The parties presented data and testimony relating to the frequency of delivery of the particular types of catalogs involved in this proceeding, the facts relating to whether or not this delivery was on a nonroutine basis and considerable input concerning the availability of other equally prompt, reliable

and efficient ways to deliver the mail.

I find that the burden is not entirely upon the Postal Service, as the Union contends, to establish that these conditions exist because the Union also has the burden of proving its case. However, I have considered the particular conditions involved from the standpoint of placing a portion of the burden upon the Postal Service to establish the necessary conditions which the Postal Service contends exist and which the Union, of course, denies.

The statistics based upon the number of deliveries made by a foot carrier throughout the year and the number of the particular type of catalog involved herein, delivered throughout the year, lead to the conclusion that the percentage of the total delivery which is evidenced in the number of catalogs, is so minute that it cannot be held that the delivery of these items are a routine and frequent occurrence. I find that they are, in fact, delivered on an infrequent and nonroutine basis. The next question at issue between the parties is whether there is any other equally prompt and efficient way to deliver the mail. In this regard, I find that there is no real problem of delivery if the particular catalogs were carried by the foot carrier. There is no particularly important duplication of travel and there is no inordinately considerable use of the carrier's time which would have any noticeable effect on the delivery of first-class mail by the foot carrier. I find that the Union has not sustained its contention that there is such duplication of travel between the motorized and the foot carrier, that the efficiency of the service is affected.

The Union raised a point that nondeliverable catalogs would have to be carried throughout the route by the foot carrier and then returned to the Postal Service, but it appears that nondeliverable catalogs may handily

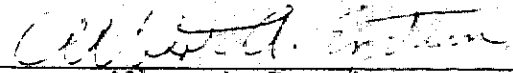
be placed in frequently spaced relay boxes on the routes so that there would be no real burden in such a situation. With reference to the Union's claim that there is a further complication because the duplication of delivery might result in the motorized carrier delivering articles in excess of 35 pounds to addresses where the foot carrier makes delivery, the 35-pound limit which is standard practice, is not involved in this case and would prevail in the case of any carrier delivery. The Union also stressed the fact that its witnesses found in their experience, that a given number of parcels could be delivered in a lesser amount of time by the motorized carrier, rather than the foot carrier, even though daily conditions vary and its witnesses claim that a motorized carrier could deliver a given number of catalogs in fifteen minutes, which would require the foot carrier thirty minutes to carry.

I find no substantiation of such a variance in the time for delivery and, in any event, considering the total of the conditions, this element would have no great effect upon the determination in this case.

It is my finding that the parties entered into a Remand Agreement based upon the Aaron Award and that the conditions set forth in the Aaron Award that I have described above, have been met in the instant case, in-so-far as the delivery of the particular catalogs complained about, is concerned. I am therefore compelled to deny the grievance and an award will issue accordingly.

A W A R D

The United States Postal Service was not in violation of the Labor Agreement between the parties or in violation of the Remand Agreement entered into between them, under the terms of the Aaron Award, when it ordered demotorized foot carriers on paired routes to carry department store catalogs, weighing in excess of two pounds, in January of 1984.



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Albert A. Epstein  
Arbitrator

NORTHBROOK, ILLINOIS  
January 24, 1986