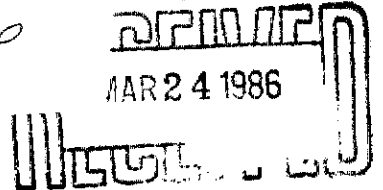


C#06096

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UNITED STATES POSTAL SERVICE

OPINION AND AWARD

And

Regular Arbitration

NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO

Issues: Lunch Locations

Case No. C4N-4K-C 8595
(Willis Lloyd)

Hearing Closed: February 26, 1986

Branch No. 343

Issued: March 14, 1986

St. Louis, Missouri

Arbitrator: Edward D. Pribble

APPEARANCES

For the NALC

John Haake, President Branch 343
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Willis, Lloyd, Grievant

For the USPS

Charles V. Stevens, Jr., Labor Relations Representative
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Al Laich, Management Associate (Trainee)
Erssie M. Lucas, Jr., Manager, Wellston Station
Morris Carson, Supervisor Delivery, Wellston Station

JURISDICTION

Pursuant to agreement of the Parties, the arbitrator serves on the Central Region's Regular Discipline and Contract Panels.

A hearing in this matter was convened on February 5, 1986, at the Main Post Office (MPO), Saint Louis, Missouri. Following the arbitrator's receipt of positions, contentions and evidence, the Parties had the opportunity to present oral or written argument at the hearing. At hearing, the Parties requested permission to file post-hearing briefs. This request was granted. Upon timely receipt of the brief(s), the hearing was closed on February 26, 1986.

ISSUES

The Parties stipulated or agreed that the issue(s) is:

Did the Employer violate the Agreement, Joint Exhibit No. 1, by its cancellation of one of the three authorized lunch breaks of the Grievant?

PRELIMINARY STATEMENT AND BACKGROUND

The Parties are signatories to the Agreement, Joint Exhibit No. 1, which was effective for the relevant time period. The exact nature of the Employer's methods of operation are not in contention and will not be stated unless relevant to the issues.

About fifty-six employees are employed at the Wellston Station (the Installation), an Associate Office of the St. Louis Post Office (St. Louis P.O.). The St. Louis P.O. is in the St. Louis MSC (the MSC). About forty-five of these employees are City letter carriers and included within the portion of the bargaining unit at the Installation. About thirty-five regular carrier routes are based at the Installation.

On September 13, 1985, the Grievant timely filed the written grievance(s) involved in this arbitration. The grievance(s) claimed that management improperly revoked a previously authorized lunch location of the Grievant.

When the Parties were unable to resolve this matter in the informal steps of the grievance procedure, the grievance was appealed to binding arbitration at the Regular Panel Regional level. The Parties stipulated that the grievance was processed and appealed timely through the appropriate steps of the grievance procedure. The Parties stipulated that there were no procedural nor substantive arbitrability claims. The Parties also stipulated that the grievance(s) is properly before the arbitrator. Joint Exhibit Nos. 2(a)-2(d).

POSITION OF THE PARTIES

The position of the Parties are summarized very briefly whenever possible without detracting from their import, but all details of their positions have been carefully considered by the arbitrator.

Union Position

The Union's position is that the USPS improperly revoked a previously authorized lunch location of the Grievant. In support of this position, the contentions of the Union are:

1. A letter carrier is permitted to select reasonable and suitable lunch locations, as authorized by USPS. M-39, TL-8 (1-30-81) Joint Exhibit No. 5 (J. 5) and the Agreement (J. 1) Articles 3, 19 and 41. Management must be evenhanded in its consideration and determination.

2. There had been no problem with the location at issue (Olive).

3. There is no extra time or expense to the USPS for any of the Grievant's lunch locations.
4. The Olive location has a variety of foods for reasonable cost. It has fast service and a buffet steam table for the food.
5. The Grievant had used the Olive location for two years as an authorized stop.
6. The real reason for removal of the Olive location were grievance handling events on September 6, 1985.
7. No other letter carriers at Wellston have been denied requested lunch locations.
8. The intent of the Agreement and manuals is to let employees eat at reasonable places, absent overwhelming contrary reason(s) that employee(s) should not be at that particular location.

USPS Position

The USPS position is that it acted in accordance with the Agreement, Joint Exhibit No. 1 and that the grievance(s) should be denied. In support of the position, the USPS contentions are:

1. The burden of proof is on the Union to prove that the Agreement, including manuals have been violated.
2. The reasons for no longer authorizing the Olive location are that
a) Lucas, the Station Manager, while on regular street observation, first observed the Grievant at this off route lunch location on September 6, 1985.
b) Lucas did not want letter carriers outside of delivery boundaries (District) because of accidents and no one knows who they are or what is happening. USPS needs to know where people are. c) There are available other lunch locations on Grievant's route.
3. There was no different treatment of other letter carriers. Only one other letter carrier goes outside District for lunch and that is one tenth of a mile.
4. Grievant has filed numerous grievances over the years. There are better ways to nail him if management wishes. The Grievant had been an active steward for many years. Management could have used discipline if it wanted to get the Grievant or put him in his place.
5. Management considered in changing the Olive location that the Grievant was not finishing his route within eight hours.
6. The M-39 (J. 5) requires that if at all possible the lunch locations be on the line of travel.
7. This case has unique facts and there are no comparable arbitration cases.

DISCUSSION

On the basis of the foregoing and all the evidence, it is concluded that the grievance sustained.

This Opinion and Award should not be interpreted as reflecting adversely on the integrity of the principals. At the hearing in this proceeding, each of them behaved in a manner that indicated sincere attempts to provide open and convincing argumentation in support of their respective positions. Nevertheless, this Opinion and Award is based upon standards of contract and grievance application and interpretation, which are accepted by representatives of management, labor, and neutrals.

In his evaluation of all the evidence, the totality of the circumstances, and the testimony of all witnesses, the following was determined by the arbitrator to be most credible. Evidence which is inconsistent with these findings has not been credited. The basic reasons for the Award are the following:

1. In all contract application determinations in this Opinion and Award, this arbitrator has utilized the primary rule in construing a labor agreement and related documents, which is to determine from the instrument as a whole the true intent of the Parties and to interpret the meaning of a questioned word or part with regard to the connection in which it is used, the subject matter and its relation to all other parts or provisions, and to apply it accordingly.

Moreover, as Arbitrator Updegraff stated in John Deere Tractor Company, 5 LA 631, 631 (1946):

It is axiomatic in contract construction that an interpretation which tends to nullify or render meaningless any part of the contract should be avoided because of the general presumption that the Parties do not carefully write into a solemnly negotiated agreement words intended to have no effect. (Elkouri and Elkouri, How Arbitration Works, Fourth Edition, p. 353.)

As stated by Elkouri, supra, p. 354, "When one interpretation of an ambiguous contract would lead to harsh, absurd or nonsensical results, while an alternative interpretation, equally consistent, would lead to just and reasonable results, the latter interpretation will be used."

2. The Grievant has been a letter carrier for more than twenty-one years. Since June 17, 1967, he has worked the same residential only route, currently a park and loop route. This route is based at the Installation.

3. For more than two years before September 6, 1985, the Grievant had three authorized lunch locations (lunch location(s)). One was his home, which is located about one and one-half blocks from his route and his lunch breakpoint.

The second lunch location is a McDonalds. It is located about 1.4 miles from the Grievant's lunch breakpoint. The Grievant gave very detailed testimony about the available routes of travel between these two points. There are several obstructions, railroad tracks, cul-du-sacs, closed and permanently blocked streets, and one way street(s) which limit the available routes of travel. Management witnesses confirmed nearly all of these available routes

and obstructions. In the only exceptions, management witnesses stated that they were less familiar than the Grievant with the area.

The third location is the Olive location. It is located about 1.4 miles from the Grievant's lunch breakpoint. It requires about five minutes to travel this distance. It is located about one to three blocks (the Record is unclear about the exact distance) outside the District.

4. The Grievant has been Union Steward for many years. He has filed and investigated many grievances for the letter carriers at the Installation. He represents the Union in Steps 1 and 2.

5. On September 6, 1985, the Grievant represented Grievant Robert Lloyd (no relation) in a grievance concerning a Letter of Warning alleging failure to complete his route within eight hours (Lloyd grievance). The meeting on this matter was protracted. This caused the Grievant to be about one hour and thirty-five minutes late starting his route. This grievance meeting was with Morris Carson, and possibly also with Mr. Lucas. At the end of this meeting the Grievant asked Messrs. Carson, Acting Superintendent at the Installation, Mr. Lucas, then Acting Station Manager at the Installation, and Mr. Ben Isen (Sp. ?), another manager at the Installation, for auxiliary help so that he could finish his route within eight hours. The Grievant was given auxiliary help for one hour or less.

At the Grievant's lunch break he went to the Olive location. he was observed there by Messrs. Lucas and Isen. The Grievant left his lunch breakpoint for lunch and returned to the delivery of his route within the allowed thirty minutes.

After lunch in the early afternoon, Messrs. Lucas and Isen, then the two top ranking managers at the Installation, talked to the Grievant on his route. Lucas asked the Grievant if he would be able to finish his route within eight hours. The Grievant said that he would try, but he had been given only about an hour of auxiliary help. There was no talk about the Grievant's lunch locations.

The Grievant completed his route in more than eight hours. He saved about one-half the time, which was not covered by auxiliary help.

6. When the Grievant arrived at the Installation after completion of his route on September 6, Carson told the Grievant that his Olive lunch location was no longer authorized. No reason(s) were given to the Grievant until he filed the grievance.

7. Letter carriers have a right to select lunch locations based on personal considerations, eg. cost of food, choice of menu, etc. USPS has the right to authorize or not authorize the locations selected by the individual letter carriers. These rights are not disputed in this case (J. 1, 4 and 5; E. 1).

8. The essential test for reviewing management's actions is whether or not management's actions were unreasonable, arbitrary, capricious, or improperly discriminatory. Management has broad discretion in this regard. The burden of proof is borne by the Union in this type of contract case. For example, see USPS and NALC, Branch No. 56, Grand Rapids, Michigan, Regional Case No. C1N-4B-C 34052 (November 22, 1985). In that case this arbitrator denied the

grievance concerning the removal of break locations for alcohol related problems of that letter carrier, rather than use of the discipline procedure.

9. USPS had no reasonable cause to believe that the Grievant's use of the Olive location was causing any problems with the Grievant's work and it failed to make an adequate investigation.

10. There is no evidence that the use of the Olive location had ever caused or contributed to the Grievant's not finishing his route in eight hours. On many occasions, not finishing within eight hours was caused by the Grievant's duties as Union Steward. However, the Grievant's not finishing his route in eight hours was one of the two reasons given by Mr. Lucas for cancelling the Olive lunch location. Mr. Carson, the Grievant's immediate supervisor, stated that Mr. Carson had resolved any problem of this nature by a discussion with the Grievant.

This reason apparently was not asserted during the grievance procedure (J. 2(a)-(d)). However, the Union did not claim that assertion of this reason was prohibited by the specific provisions of Article 15, Grievance-Arbitration Procedure of the Agreement (J. 1). Therefore, I have considered this reason which is given now by management for its actions.

Mr. Lucas, after consultation with Mr. Carson, made the decision to rescind the authorization for the Olive location. No effort was made to discuss with the Grievant the reason(s) for this particular lunch stop. Mr. Lucas had been a manager at the Installation for more than a year.

11. Mr. Lucas' other principal reason for his rescinding the authorization was that the Olive location was located out of the District. However, after learning this Mr. Lucas made no effort to learn if other authorized lunch locations were located outside the District, until this case was in arbitration. At least two other authorized lunch locations of other carriers at the Installation were located outside the District. However, it is not necessarily unreasonable standing alone, for USPS to reduce or eliminate out of District lunch locations, whenever possible.

12. Mr. Carson had authorized the Olive location about two years before September 1985. The Grievant then and at the arbitration hearing gave his several reasons for the Olive location, as: moderate cost; variety of food; steamed food rather than fried; quick service (buffet); and blue collar customers at the restaurant. This was his favorite lunch location. Other restaurants offered by management at the arbitration hearing had very limited menus, fried foods and more expensive food. Some were also listed for other letter carriers (U. 2-8). The M-39 specifically states "When practical, avoid having groups of carriers congregate at one location" (J. 5).

There was no discussion with the Grievant before the Olive location authorization was rescinded about the reasons he wanted the location. Management admitted the reasons given throughout by the Grievant for his Olive location were proper reasons for an authorized lunch location.

13. No other letter carrier at the Installation has had a lunch location authorization removed.

14. The Installation has no policy that forbids authorized lunch locations outside the District or beyond any certain distance or time from the letter carrier's lunch breakpoint.

15. The Grievant received a flat sum for the use of his personal vehicle on the route. Therefore, there was no additional cost in money to USPS for the Olive location.

16. There was no additional cost in time to the USPS for the Grievant's use of the Olive location. All travel time was within the Grievant's unpaid lunch period.

There was no benefit or gain to USPS from rescinding the prior authorization for the Olive location, under all the circumstances here, unless hassling the Union Steward could be considered a benefit.

17. During the grievance procedure the only noted written reason for rescinding the authorization for the Olive location was that it was "too far" from the Grievant's route. This assertion appears to refer to distance, not time. All of management's testimony at the arbitration hearing on direct examination referred to distance. As noted above in Discussion, Section 3, the available route(s) of motor vehicle travel are applicable here, not routes as the crow flies.

The Grievant's McDonald's lunch location was about the same distance from his lunch breakpoint as the Olive location. The Olive location was requested more than two years ago by the Grievant for the reasons stated in Discussion, Section 12, above.

Additionally, other letter carriers at the Installation have authorized lunch locations which are about the same or greater distances from their lunch breakpoints (U. 2-8).

18. The Employer's line of travel argument from the M-39 (J. 5) is inapplicable here. The Grievant's route is residential only and there are no restaurants on any possible line(s) of travel between his lunch breakpoint and return to his route. All of the Grievant's authorized lunch locations are outside his route.

19. The past practice is clear. At this Installation the letter carriers find two or three lunch locations with food they like. They request these locations from management. In nearly all instances, these locations have been authorized. There previously has been no recession of an authorized lunch location.

20. Management's argument that if management wished to nail the Grievant, there were better ways than removing a lunch location. This arbitrator agrees. However, it also presents a low profile opportunity to test how strongly the Union would support its Steward(s).

Management's argument at hearing that there was no reason for this matter to be arbitrated seems misplaced. This case belongs to a category, that this arbitrator refers to as political. These cases nearly always go to arbitration unless the action complained about is reversed, regardless of the

merits or correctness of the action taken. Here management acted against a steward with at least the possibility or appearance that it was for his union office or activities. This arbitrator considers the arbitration process a very positive method for resolving these disputes, whether the grievance is denied or sustained.

21. The actions of local management as detailed above are unreasonable, arbitrary and capricious.

AWARD

The grievance is sustained.

The Employer is directed to immediately reauthorize the Olive lunch location for the Grievant. No other remedy has been requested.

Dated: March 14, 1986
at St. Cloud, Minnesota


Edward D. Pribble, Arbitrator