26,479 (ClN-4C-C) Dobranski
Contract won 9-24-86
Art 19,41,15 USPS# 814990

C#06499

IN THE MATTER OF ARBITRATION BETWEEN) OPINION AND AWARD
)
)
National Association of Letter)
Carriers)
)
)
-and-) Case No. ClN-4C-C 26479
) (Class Action Grievance)
)
U.S. Postal Service)
Owatonna, MN)

The hearing in the above-matter was held on March 15, 1985 before Bernard Dobranski, designated as arbitrator in accordance with the procedures set forth in the collective bargaining agreement.

Appearances: Barry Weiner
For the Union

D. J. Shipman
For the Postal Service

Full opportunity to present evidence and argument was afforded the parties. The parties chose not to file post-hearing briefs.

ISSUE

The issue is whether the Postal Service violated the National Agreement, as interpreted by Arbitrator Benjamin Aaron, in the assignment of items weighing over two pounds to letter carriers in Owatonna, Minnesota.

BACKGROUND FACTS

On March 11, 1982, Arbitrator Benjamin Aaron rendered an "interpretative" award in the nature of a declaratory judgment as

to the respective rights of the parties under the National Agreement regarding the authority of the Postal Service to require foot carriers to deliver articles weighing in excess of two pounds. (Joint Exhibit 3). In pertinent part, the award stated:

> The Postal Service has the authority to require foot carriers to deliver articles weighing in excess of two pounds... provided that the authority is exercised only on an infrequent and non-routine basis, when there is no other equally prompt, reliable, and efficient way to deliver the mail.

In the instant case, the Union alleged in a grievance filed in June 1982 that on Tuesday, June 15, 1982, Supervisor Wesely ordered the foot carriers in Owatonna to carry in their satchels J.C. Penney and Montgomery Wards catalogues weighing five pounds each. According to the grievance, the foot carriers had not carried catalogues over two pounds since March when the Aaron Award was rendered. (Joint Exhibit 2). The grievance was denied at the various steps of the grievance procedure and is now properly before the arbitrator for resolution. (Joint Exhibit 2).

The Union presented its case primarily through the testimony of letter carrier Cupkie, the Union Steward at Owatonna. Cupkie, who was with the Postal Service for approximately four years at the time of the hearing, had a T-6 assignment which meant five routes on five different days, two of which were foot delivery routes. Cupkie testified that she delivered catalogues weighing in excess of two pounds on many occasions. The catalogues were those of Sears, Penneys or Wards and each weighed approximately five pounds. The catalogues come on a regular basis,

approximately two times a year each, and the Postal Service and the carriers anticipate when they will come. According to Cupkie, on the average, each foot delivery route receives approximately 80 to 120 catalogues. The three foot routes in the city are City Route 1 which has 12 relays, City Route 5 which has 15 relays and City Route 10. Cupkie did not know how many relays City Route 10 had.

When the catalogues arrive, Cupkie's (and the other carriers') instructions were to take them get them out within five days. The catalogues weighed approximately five pounds and were approximately 12 inches by 9 inches by 2-1/2 or 3 inches. Although for some relays, the carrier would carry less than thirty-five pounds there was no room for the catalogues because of their size. On a number of occasions, because the catalogues could not be accommodated, it would take up to 12 days to get the catalogues out rather than within the 5 days originally indicated. If all Cupkie had to do was to carry catalogues, she could get them out within one or two days. Of course, the regular mail had to be carried and a carrier would take whatever the satchel would hold. If the satchel could not hold the catalogues, the catalogues would be set aside until the mail load was low enough to get the catalogues in the satchel.

When the instructions to carry the catalogues were given to the foot carriers, Cupkie was the shop steward and talked with management to resolve the problem. According to Cupkie, there were other methods available to management to effect delivery of these items. One was by motorized routes which often traveled

along the same lines. Second, the Post Office had an extra jeep, a collection jeep, which went out a 4:00 P.M. for collections. Sometimes the jeep was used by PTF's to make deliveries of mail to help the regular letter carriers. The jeep could also be used for catalogues.

Cupkie also showed on a large map that alternatives were available to the Post Office in delivering the catalogues which she believed were just as prompt, reliable and efficient. Route C-5 had 622 deliveries, approximately 350 of which were residential and the rest, business. Most of the 15 relays were delivered by C-14. C-14 also delivered downtown parcels, so the carrier was downtown and traveled through parts of C-5. His line of travel for lunch was also through the residential area of C-5. Route C-4 also goes through the area although no relays are dropped for C-5. C-13 also drops off relays at two points.

Route C-1 has relays handled by C-7. C-7 also travels in a line through the area which would permit the C-7 carrier to drop off the catalogues and could accommodate such streets as Mill Street, or Rice Street, or even School Street.

Route C-2 has no relays but could take any number of routes through C-1 to get to C-2. C-15 delivers parcels for C-1 and has easy access to C-1.

Route C-10 has two relays handled by C-11. In going out, part of C-11 goes through part of C-10 and on returning, the carrier of C-11 has the option to go back through any number of streets through C-10. C-9 also delivers C-10 relays. Moreover, C-9 travels through C-10 back and forth to lunch. After the route

is completed, C-9 must return to the Post Office through C-10. The carrier for C-3 delivers one relay to C-10 and goes through C-10 territory for his lunch which he takes at home.

In short, according to Cupkie, the large map of the area demonstrate that there is plenty of travel in the area of the foot routes and it would be no burden to the Postal Service to have the catalogues delivered by the motorized routes.

On cross-examination, Cupkie described the major streets through C-1 and said that the easiest way to get to one end of C-1 to the other was on Cedar Street, although it depended on where the carrier was going to start. Cupkie also described the first relay delivery in the morning and the last delivery of the day made by C-7 for C-1. How the carrier would return to the Post Office would depend on the time of day and traffic. Cupkie took the safest route. Besides C-1 and C-5, Cupkie also delivered C-4, C-12 anc C-13, which were motorized routes. Cupkie delivered parcels for these motorized routes. For example, on C-4, she would load the parcels before starting out in the morning. The vehicle used was a quarter ton jeep with right hand drive and the parcels would be loaded into this jeep in the morning before starting out. An attempt was made to line parcels up in the order in which they coincided with the relays so that they would be in delivery sequence. The parcels would be spread out in the jeep and she could not reach them all from the driver's seat.

In response to a series of questions as to how a carrier would deliver catalogues for C-5, Cupkie stated that catalogues would be put in sequence of the line of travel. Cupkie indicated

that realistically a carrier would take one or two trays (18 catalogues per tray) rather than all 120 catalogues. In deciding how many catalogues to take, the carrier would have to consider the mail volume on the route.

In response to the question as to how long it would take to arrange 120 catalogues in a jeep, Cupkie could not give an answer. She also pointed out that some catalogues came with labels and others did not. It was during the fall of 1984 when she had C-1 that Cupkie sat down and counted the number of catalogues on the route. Cupkie also made a count of catalogues in the spring of 1984 when she was on either C-1 or C-12. In response to the question as to whether all the catalogues were from one mailer, Cupkie responded that there might be a count several different times because you may get catalogues from more than one mailer over a short period.

During fall 1984 there was more than one count. To illustrate the point, Cupkie testified that Penneys might send a couple of thousand of catalogue and then send a stack of cards for each route. A carrier would not know how many cards there were for the particular route. It would be necessary to take the cards and case them according to address and take the cards out of the case in delivery order and then count them so the carrier would know the total number of catalogues to deliver. Each day the carrier would take them out and count out actually how many were delivered that day and make an entry on a clipboard so that management would know the volume of catalogues moving out each day. Cupkie identified Postal Service Exhibit 1 as a copy of what

is posted on the clipboard and the count that is made. Letter carriers make entries each day, although occasionally a carrier might forget. Cupkie repeated that there were about 12 splits on C-1 but never weighed the split on C-1.

In response to a question asking for a description of what Cupkie would do in delivering catalogues on a motorized route, Cupkie responded that a carrier would look at the flats and letters in the relay; if the satchel can accommodate catalogues, she would put them in. If it would not go in the satchel, then it would be done with the jeep. This would be done by pulling a jeep up to the house, shutting off the jeep, taking the key out of the ignition, setting the braking, taking off the seatbelt, and then taking the catalogue to the house. The carrier would then return to the jeep, unlock the door, put on the seatbelt, put the key in the ignition, start up the jeep and go to the next point. This would take a minute or two at the most. In this regard, Cupkie pointed out that supervisors go out to time carriers and there should be records to reflect how much time it took.

On redirect-examination, Cupkie stated that if the vehicle was in view it normally would not be locked when the carrier delivered the catalogues. On a motorized route, the carrier might not be able to carry the catalogue in the satchel in a particular relay, but the carrier in the motorized group would have the option of storing it in the jeep. On a foot route, if the carrier cannot leave the catalogue with the owner because the mailbox will not accommodate the catalogue, the carrier leaves a notice with customer to pick up the catalogue after 4:00 p.m. That catalogue

then must remain with the carrier or in a relay box until the carrier stops for the last time at the relay box when the carrier then must take it. According to Cupkie, when delivering the foot route it has been necessary to delay the deliveries of catalogues for up to two weeks.

The Postal Service presented its case primarily through the testimony of Doyle, the Postmaster at Owatonna, and Wesely, the Supervisor of Postal Operations.

Doyle, who became Postmaster in November 1966, testified that at the time the instance grievance was filed in June 1982 he made a count of all the catalogues delivered on the three foot routes from Tuesday, June 15, 1982 through Thursday, June 24, 1982. (Postal Service Exhibit 2). Where a 0 is indicated, it means that the letter carrier delivered no catalogues that day. Although Doyle was not certain what catalogue was delivered at this time, it was a mailing from one of the three major companies and it was one of the six mailings that occurred during the year. For example, in the fall, the Wards catalogues, weighing 4.1 to 4.3 pounds arrived; in the spring, the same catalogue would weigh 3-1/2 to 4-1/4 pounds. There were two mailings per year for each of the three major mailers which was equal to six mailings a year.

Doyle also testified that a supervisor would accompany a carrier on two occasions each year. A PS Form 3999, a two page document, was filed out whenever a supervisor accompanied a carrier. (Postal Service Exhibits 3A and 3B). This form shows the time the carrier began to tie out; loading time, coffee break, the time the carrier leaves the Post Office, and the time on each

block. According to Doyle, the form provides a complete street analysis. Postal Service Exhibit 3A, a form for one of the motorized carriers, shows the actual time used to deliver two parcels on June 4, 1984 was 3 minutes and 12 minutes respectively. Postal Service Exhibit 3B shows parcel delivery times on November 5, 1984 of 5 minutes and 6 minutes.

On cross-examination, Doyle indicated that Postal Service Exhibit 3A was for route C-15. In response to a question as to whether there was any way of knowing if a signature was requested on the parcels indicated or what kind of parcels they were, Doyle replied that if a signature was needed, the carrier would have marked it "insured parcel". If the parcel was registered or certified, that too would be indicated on the form. Thus, the parcels indicated on the Postal Service Exhibit 3A show the amount of time it took to deliver the parcels where no signature was needed. Postal Service Exhibit 3B was for motorized route C-13. These forms were pulled out for sampling purposes. Since both forms were for 1984, they obviously were not available at the time the grievance was discussed in 1982.

As regards Postal Service Exhibit 2, the bottom numbers of 57, 28, and 63 were the total number of deliveries for foot routes C-1, C-5, and C-10 respectively. According to Doyle, these numbers also reflected the total number of catalogues received at the time.

Wesely, who has been Supervisor of Postal Operations for approximately 17 years and before that a city carrier for 13 years, testified that as a result of the instant grievance he

weighed the relays on route C-1. He chose that route because that was the route where the confrontation occurred. He made notations of weights at the C-1 relays. (Postal Service Exhibit 4). These notations were made between June 9 and 15, 1982, a day or two after the confrontation with carrier Randall over the catalogues and shortly before the grievance was filed. The entries to the right side of Postal Exhibit 4 were the total weight of flat mail on Route C-1 per relay. Although Wesely did not weigh the letters, the day he weighed the relays was an average day for letters and the estimated weight of the letters is approximately one half pound per relay. Each separate line on the exhibit is a notation for a different relay. Wesely stated that the day he weighed the relays was a light day. On a normal or slightly heavier day the weight would be seven to ten pounds for letters and flats per relay. He defined a relay as a point where the carrier begins and ends. For a foot route, the carrier prepares the mail in the morning and it is dropped off for him. Another route going through that area is designated to drop off the relay for the foot route.

Wesely also recalled a discussion with Randall in reference to Arbitrator Aaron's arbitration award. Wesely asked him if he had a copy of if and Randall provided him with a copy from the Union newspaper. (Postal Service Exhibit 5.) According to Wedely, this misunderstanding of the Aaron Award precipitated the grievance.

On cross-examination, Wesely acknowledged that Postal Exhibit 4 was the weight of flats in the relay on one day in June 1984.

He did not weigh relays on any other dates or on any other routes on the June date. He repeated that the weights given were probably light. The average weight of a relay on an average day in the course of the year would be somewhat higher.

It is upon this evidence that the case now comes before the arbitrator for resolution.

POSITIONS OF THE PARTIES

Union Position

The Union argues that the resolution of the issue in this case requires a close scrutiny of the previous resolution of this issue by Arbitrator Aaron. Moreover, the Union directs the arbitrator's attention to Joint Exhibit 4, the remand agreement between the Union and Postal management. The first paragraph or stipulation interprets the decision and recognizes that the Postal Service does have the authority to require foot carriers to deliver articles weighing in excess of 2 pounds provided that the carrier's total load does not exceed 35 pounds. The second stipulation imposes a burden on the Postal Service to satisfy the conditions set forth in Arbitrator Aaron's award. The authority can be exercised "only on an infrequent and nonroutine basis, when there is no other equally prompt, reliable, and efficient way to deliver the mail.

A review of management's position clearly indicates that it is willfully ignorant and forgetful of the limited conditions imposed by the Aaron award under which it can require foot carriers to deliver articles weighing in excess of 2 pounds. An

example of this is management's Step 3 decision where management indicates that "the Postal Service does have the authority to require foot carriers" without any recognition of the limitations imposed on it by Aaron.

In the case before Arbitrator Aaron, he was faced with two conflicting positions, the Union position was that the M-39 handbook established binding rules for the division of parcels for delivery between foot carriers and motorized carriers and contemplated only narrow exceptions in compeling circumstances. Management's position, illustrated by the Step 4 answer described on page 1 of the Aaron Opinion, was in essence that the assignment of parcels weighing more than two pounds to foot delivery carriers was its determination.

In resolving this dispute, the Union argues that Arbitrator Aaron essentially adopted its position as indicated on page 9 of the Opinion which, in pertinent part, states:

> Apart from the 35-pound limitation, moreover, it is obvious that the exceptions to a rule that is "normally" or "usually" to be applied cannot become the norm. A routine and frequent assignment of parcels weighing over two pounds to foot carriers would thus be inappropriate.

Arbitrator Aaron did not set forth or describe specific circumstances when it would or would not be appropriate for the Postal Service to make such assignments.

A careful examination of the conditions imposed by Arbitrator Aaron and the application of those conditions to the facts in the instant case clearly demonstrates why the Union position in this case should prevail. Arbitrator Aaron indicated that the Postal Service authority to require foot carriers to deliver articles

weighing in excess of 2 pounds could only be exercised on an infrequent and nonroutine basis, when there is no other equally prompt, reliable, and efficient way to deliver the mail.

The Union concedes that the Postal Service has not exercised the authority on a frequent basis. The Union contends, however, that the Postal Service's actions in this case amount to a "regular course of procedure" which is the dictionary definition of the word "routine." The evidence before the arbitrator, including the evidence from the Postal Service, clearly shows that the foot carriers are required to carry the catalogues on a recurrent basis. It is a routine, expected and recurrent function of the foot carriers established by Postal Management. It is not affected by any consideration of the individual circumstances of letter carriers or the routes carried.

As regards the use of the word "prompt" by Arbitrator Aaron, the Union presented unrefuted testimony that delays in catalogue deliveries of up to two weeks occurred under the system used by the Postal Service. This is not as prompt as if done by motorized carriers.

As regards the word "efficient" used by Arbitrator Aaron, the entire thrust of the Postal Service case is that cost effective and efficient are synonymous. The Postal Service evidence failed to establish, however, that the Union alternatives are not equally cost effective or efficient. The Postal Service Exhibits 3A and 3B (the Form 3999's) tell the arbitrator very little. They merely show how long it took one carrier on one day to deliver certain parcels. If it takes a motorized carrier three or four minutes to

deliver a parcel on a given day, that is what it took; but the Postal Service did not show that it took the motorized carrier longer than it would have taken a foot carrier to deliver that parcel.

Moreover, Postal Service Exhibit 4 has no probative value. It merely represents a count of the weight of flats on one route on one day, a day which the Postal Service witness conceded was a light day. Further, Postal Service Exhibit 1 has little probative value. The form is not even dated with the year and is not signed.

The Union further argues that it is incorrect to equate efficiency with cost effectiveness. During the Aaron arbitration, the Postal Service presented only one witness, Anthony F. Colatrella, the Senior Operations Specialist in the Delivery Services Department. During his testimony, Colatrella was asked what would happen to a carrier who erroneously concluded that his bag weighed more than 35 pounds and accordingly split his relay, thereby using more street time than might be objectively justifiable. He replied that there was no realistic way management could make that determination and thus no way it could penalize the carrier or determine that he was right or wrong. The point for the arbitrator to keep in mind in this proceeding is that there could be use of additional time by the foot carrier. For this reason, the position advocated by the Union is the more cost effective one or efficient one. More importantly, the Union's point is that the Postal Service uses the term efficient to equal cost effective. Even if you assume that the terms are

synonymous, the arbitrator has to understand Aaron's use of the term which is in the context of prompt and reliable. The Postal Service in this case indicates that prompt and reliable delivery of catalogues is its goal. It is more cost effective to delay delivery up to two weeks (which is what the Union's unrebuted testimony shows does occur) but that is not efficient in terms of the Postal Service mission and stated goal which is prompt and reliable service. Further, on the question of the meaning of the word "efficient", the Union directs the aribtrator's attention to the definition of the word in Websters Dictionary and Black's Law Dictionary. Webster defines the word as "immediately effecting and productive of desired effect; especially productive without waste" and Black's defines it as "causing an effect; particularly the result or results contemplated. Adequate in performance or producing properly a desired effect."

The Union also states that it does not pursue this grievance for frivolous reason nor is it seeking to limit management's discretion for no good reason. In the Aaron arbitration, the Union pointed out that the delivery of items weighing over two pounds creates a problem for the foot letter carriers, and the Aaron award recognized this by putting specific limitations on management's right to require this. The Postal Service argument in essence is that the Aaron Award means that the Postal Service can require such delivery but should not abuse its discretion. This is not a correct interpretation of the Award. . Arbitrator Aaron puts specific limitations on management's authority to require foot carriers to deliver articles weighing in excess of

two pounds. Joint Exhibit 4, for example, makes it clear that the Postal Service is incorrect. The remand agreement that forms the basis of that exhibit recognize that the Aaron award sets forth additional conditions which must be satisfied before the Postal Service can exercise its authority. In the instant case, the Postal Service has failed to show that those conditions were satisfied. In the instant case, the Postal Service has adopted a standard method of delivering catalogues through foot carriers and this ignores the specific conditions set forth in the Aaron award and the remand agreement and thus is in violation of the terms of the Aaron award.

For all these reasons, the grievance should be sustained. As a remedy, it is appropriate for the arbitrator to issue a make whole remedy, particularly in light of the fact that the Union has already been through this issue once at the National level and is dealing with it again in the instant case because of management intransigence. Specifically, the Union apparently asks as a remedy that the foot carriers be paid for carrying the catalogues at the same rate as contract carrier gets which is 30 cents per parcel.

Postal Service Position

As regards the remedy requested by the Union, the Postal Service contends that Arbitrator Aaron settled the issue. There is nothing in his award that indicates that the 30 cents per package remedy requested by the Union would be appropriate.

On the merits, the Postal Service directs the arbitrator's attention to page 9 of Arbitrator Aaron's award which clearly

indicates that on the issue presented to Arbitrator Aaron the Postal Service had "the more persuasive argument." Arbitrator Aaron further stated on that page that

> In the absence of a specific agreement between the parties on how this [2-pound] 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 concedes is binding upon it.
>
> Apart from the 35-pound limitation, moreover, it is obvious that the exception to the rule that is "normally" or "usually" to be applied cannot become the norm. A routine and frequent assignment of parcels weighing over 2 pounds to foot carriers would thus be inappropriate.

In sum, the Aaron award said that the Postal Service has the authority to require foot carriers to deliver articles weighing in excess of 2 pounds. There are two limitations or exceptions to the use of this authority; the first is the 35 pound weight limit and the second is that the Postal Service, though it has the authority to require the delivery of such articles, may not abuse this authority. Moreover, Arbitrator Aaron specifically refused to establish any additional limitations.

In the instant case, the Union concedes that the Postal Service has not exercised its authority in a frequent basis, but contends that it is exercised on a routine basis because it recurs. The ice age may recur but that does not make it routine.

An examination of the evidence in this case clearly and convincingly establishes that the Postal Service applied the terms of the Aaron award. In the January 20, 1984 Step 2 decision, the Postal Service made it very clear that it was not asking the delivery to be done as a frequent or routine function. The Step 2

denial also made it clear that it was not efficient to use another carrier to deliver catalogues to the same residence being delivered by the foot carrier. Moreover, Postal Service Exhibits 1 and 2 demonstrate through an actual count of the catalogues received and delivered, that the number involved is not extensive. For example, Postal Service Exhibit 2, the June 1982 count of the catalogues on the 3 routes, indicates that the catalogues are carried approximately five days. If there are approximately 6 times a year when catalogues need to be delivered, that means that approximately thirty days a year catalogues would be delivered by the foot carriers on the three routes. The Postal Service delivers 303 days per year so if it delivers catalogues on only 30 of them, that is approximately one out of every ten days. As regards Postal Exhibit 1, which involves the January 1984 count of J.C. Penney catalogues, catalogues were delivered on Route C-5 for three of the days, on C-1 for five days and on C-10 for four days. This is even less than that established by Postal Service Exhibit 2. Further, Postal Service Exhibit 1 shows that 95 catalogues were delivered on the three routes and Postal Service Exhibit 2 shows that 148 catalogues were delivered on the three routes. By no reasonable definition, can this be termed frequent or routine.

Furthermore, the Union advances a novel theme of efficiency. It asserts that the catalogues can be delivered faster with jeeps but has provided no evidence to support this. In fact, the Postal Service Exhibit 1 refutes the suggestion of the Union. Moreover, Cupkie, during her testimony, admitted worrying about the mail volume even on the motorized routes. In addition, if you look at

Postal Service Exhibits 3A and 3B, which were the times it took motorized carriers to deliver parcels, you see a range of 3 minutes, 5 minutes and 6 minutes. If it even takes 3 minutes to deliver each of 148 catalogues, that would result in almost 8 hours extra time needed to deliver the catalogues.

Under the present Postal Service practice, foot carriers already deliver mail to the doors on these routes. What the Union wants is for the motorized carriers to come up right behind the foot carriers and drop off the catalogues. What this means is that there would be two sets of carrier footprints up to the residence or business and two sets back and the second set would cost approximately 3 minutes of time each time it was used. There is no reasonable way for the arbitrator to conclude that this is efficient or cost effective. Even under the Union's theory, no evidence was provided to show that it was be more efficient to deliver the catalogues in fashion suggested by the Union.

In addition, Postal Service Exhibit 4 demonstrates that there is no reason for concern on the basis of weight. It shows that Randall, the steward who filed the grievance, did not have 35 pounds at any time on his route. Surely, he had room for a few catalogues.

What the Union is seeking in this arbitration is to relitigate the Aaron decision at the regional level. It wants to get specific guidelines established, even though Arbitrator Aaron refused to establish such guidelines and found such guidelines should not be established by an arbitrator. The essence of his decision was the Postal Service has the authority to require the

delivery of the articles but that it should not abuse that authority. The parcels in question here are well within the range of the Arbitrator Aaron's decision and therefore the grievance should be denied.

DISCUSSION AND OPINION

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DISCUSSION AND OPINION

Critical to the resolution of the instant grievance is the interpretation and application of the Opinion and the Award of Arbitrator Benjamin Aaron in Grievance Nos. H8N-4E-C 19254 and H8N-4E-C 21358, rendered on March 11, 1982.

In his Opinion, Arbitrator Aaron - after commenting that the Postal Service had the more persuasive argument on the issue of the meaning of the applicable provisions of the National Agreement, the M-39 Handbook and the Postal Operations Manual - recognized that the Postal Service has the authority to require foot carriers to deliver articles weighing in excess of 2 pounds subject to the 35-pound weight limit established by the M-39 Handbook. In addition, Arbitrator Aaron stated "that the exceptions to a rule that is 'normally' or 'usually' to be applied cannot become the norm" and that "a routine and frequent assignment of parcels weighing over 2 pounds to foot carriers would thus be inappropriate." Finally, he observed that "if a more specific gloss on the present language [of the pertinent sections of the Handbook and Manual] is desired, however, it will have to be devised by the parties, not by an arbitrator." In the absence of that specific gloss

> the answer to the question submitted for decision was therefore a qualified "Yes", provided that the authority is exercised only on an infrequent and nonroutine basis, when

there is no other equally prompt, reliable, and efficient way to accomplish the delivery of mail.

On October 5, 1983, the parties entered into the remand agreement which recognized essentially that Arbitrator Aaron found that the Postal Service does have the authority to require foot carriers to deliver articles weighing in excess of 2 pounds, provided that the carriers total load does not exceed 35 pounds and that Aaron Award set forth additional conditions which must be satisfied before the Postal Service can exercise this authority, specifically that "the authority can be exercised only on an infrequent and nonroutine basis, when there is no other equally prompt, reliable, and efficient way to deliver the mail." (Joint Exhibit 4).

After a careful examination and evaluation of the evidence in light of the Aaron Opinion and Award and the remand agreement of the parties, it is my conclusion that the instant grievance should be denied. My reasons for this conclusion are as follows:

First, one of the conditions of the Aaron Opinion and Award is a prohibition against the frequent exercise of authority to assign parcels weighing over 2 pounds to foot carriers. In the instant case, there is no doubt - in fact, the Union concedes - that the Postal Service at the Owatonna, Minnesota Post Office did not exercise its authority on a frequent basis.

Second, the other major condition of the Aaron Opinion and Award which must be satisfied is that the Postal Service not exercise its authority on a routine basis. The Union, in asserting that the Postal Service is exercising its authority in a

routine basis, defines "routine" as "a regular course of procedure." Whether one relies upon that definition or one emphasizes the customary or habitual nature of a course of action in defining the term, I do not believe that the Postal Service actions in this case may properly be termed "routine" as that term was used by Arbitrator Aaron. The Postal Service does not as a regular course of procedure or habitually or customarily require foot carriers to deliver articles which weigh more than 2 pounds. Rather, these assignments are limited to catalogues and do not include other articles or parcels which weigh in excess of 2 pounds, and these assignments occur no more than six times a year. Certainly, these catalogue delivery assignments recur but that does not make them routine. The word "recur" is not synonymous with the word "routine." Merely because situations are recurrent does not make them routine. Moreover, this distinction and conclusion is well within the spirit of the Aaron Opinion and Award. The facts which give rise to the two grievances involved in that case included the delivery of catalogues by two separate carriers, at least one of whom - Morley - was required to carry catalogues on a recurring basis. Despite the recurrent function of the delivery of catalogues, Arbitrator Aaron, in his declaratory judgment, in essence upheld the Postal Service position that the recurrent assignment of these catalogues to Morley was not a violation of the Agreement. If, in fact, he intended recurrent to mean routine he would have ruled otherwise and would have phrased the limitations on the Postal Authority in a very different manner.

Third, even assuming for the sake of discussion that the word "routine" as used by Arbitrator Aaron accurately describes the Owatonna Post Office practice assignments, the Postal Service exercise of authority still does not violate the terms and conditions of the Aaron Opinion and Award. The essence of Arbitrator Aaron's concern is best discerned from an examination of the language he used in his Opinion. In this regard, he states (on page 9) that "A routine and frequent assignment of parcels weighing over 2 pounds to foot carriers would thus be inappropriate." It is clear to this arbitrator that Arbitrator Aaron used the phrase "routine and frequent" (and intended for it to be interpreted) in the conjunctive, and not disjunctive, sense. In other words, both elements must be present for the Postal Service exercise of authority to be inappropriate. In this case, because the assignment was concededly not frequent, there was no violation of the conditions of the Aaron Opinion and Award, and consequently no violation of the National Agreement, even if one assumes that the assignment was routine. For the assignment to violate the conditions of the Aaron Award it must be both frequent and routine, Establishing that one but not the other condition was met does not demonstrate a violation.

Fourth, Arbitrator Aaron also indicates that the authority shoule be exercised only "when there is no other equally prompt, reliable and efficient way to accomplish delivery of the mail." Neither side presented very helpful evidence on this point. I found the Postal Service evidence and argument slightly more

persuasive. In any case, I believe the Union, which has the ultimate burden of establishing a violation of the Agreement, has the burden of demonstrating that this condition was not met, and I find that it has not met this burden.

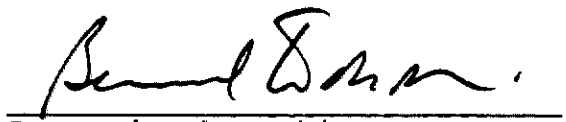
A fifth or additional reason for denying the grievance is derived from the comment of Arbitrator Aaron that "If a more specific gloss on the present language of the M-39 Handbook and the Postal Operations Manual is desired, however, it will have to be devised by the parties, not by an arbitrator."

Although the parties have entered into a remand agreement regarding the Aaron decision, that agreement does not give a specific gloss in the sense of providing guidance that would resolve or clarify situations like the instant one. The absence of such a gloss is an additional reason for providing a negative answer to the grievance in this case and an affirmative answer to the exercise of the Postal Service authority.

Finally, the arbitrator wishes to note that he found the instant case an extremely close and difficult one. Ultimately, the decision to deny the grievance is based on the fact that the burden of proof of establishing the violation of the Agreement in this case rests upon the Union and, for the five reasons stated above, the arbitrator concludes that the burden was not met and consequently the grievance should be denied.

AWARD

For all the reasons set forth above, the grievance is denied.



September 24, 1986
Grosse Pointe Park, MI

Bernard Dobranski
Arbitrator