

C#10514

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)
between)
UNITED STATES POSTAL SERVICE)
and)
NATIONAL ASSOCIATION OF LETTER)
CARRIERS, AFL-CIO)

GRIEVANT: CLASS ACTION

POST OFFICE: NEENAH, WI

CASE NO: (Management) C7N-4J-C 21822
(NALC Case No.) GTS1020

BEFORE: (Full Name of Arbitrator) ARBITRATOR FRED WITNEY

APPEARANCES:

For the U. S. Postal Service: (Management Advocate)
SUSAN R. BARELA, LABOR RELATIONS REPRESENTATIVE

For the Union: (Union Advocate)
JOE BEDOR, REGIONAL ADMINISTRATIVE ASSISTANT


Place of Hearing: (Location of Facility)
NEENAH, WI

Date of the Hearing: (Full Date of Hearing)
SEPTEMBER 6, 1990; DECEMBER 13, 1990

AWARD:

GRIEVANCE DENIED. EMPLOYER DID NOT VIOLATE NATIONAL AGREEMENT AND/OR
GRIEVANCE SETTLEMENTS.

Date of Award: (Full Date of Award)
JANUARY 7, 1991


(Signature of Arbitrator)
FRED WITNEY

On November 13 and 14, 1989, Letter Carriers at the Neenah, Wisconsin Post Office delivered mail after sunset. In protest, they filed class action Grievance No. 21-89, dated November 15, 1989, which stated:

On Monday 11-13-89 and Tuesday 11-14-89 there were a number of carriers that worked past sunset. We had carriers delivering mail at 6:45 P.M. Sunset on Monday was 4:28 P.M. on Tuesday 4:27 P.M.

For corrective action the Union requests:

...that any carriers that were delivering mail after dark be compensated at a rate of triple (3) their base pay for any time spent out after sunset. Also, a cease and desist order be given and enforced by Management, and whatever other damages may be deemed appropriate.

Having failed to settle the dispute in the Grievance Procedure, the Parties convened this arbitration for its determination.

NATIONAL AGREEMENT

Article 3 - Management Rights

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;

- E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and
- F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

Article 14 - Safety and Health

Section 1. Responsibilities

It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Unions will cooperate with and assist management to live up to this responsibility...

Section 2. Cooperation

The Employer and the Unions insist on the observance of safe rules and safe procedures by employees and insist on correction of unsafe conditions. Mechanization, vehicles and vehicle equipment, and the work place must be maintained in a safe and sanitary condition, including adequate occupational health and environmental conditions. The Employer shall make available at each installation forms to be used by employees in reporting unsafe and unhealthful conditions. If an employee believes he/she is being required to work under unsafe conditions, such employees may:

- (a) notify such employee's supervisor who will immediately investigate the condition and take corrective action if necessary;
- (b) notify such employee's steward, if available, who may discuss the alleged unsafe condition with such employee's supervisor;
- (c) file a grievance at Step 2 of the grievance procedure within fourteen (14) days of notifying such employee's supervisor if no corrective action is taken during the employee's tour; and/or
- (d) make a written report to the Union representative from the local Safety and Health Committee

who may discuss the report with such employee's supervisor.

POSTAL SERVICE MANUALS

To the extent necessary for purposes of this case, Postal Service Manuals will be cited later on in this decision.

ISSUE

Under the circumstances of this case, did the Employer violate the National Agreement and/or grievance settlements? If so, what should the remedy be?

BACKGROUND

Events of November 13, 1989: Heavy Mail Volume

When the circumstances of this case arose, the Neenah, Wisconsin Post Office serviced twenty-six (26) city routes. It was staffed by thirty-eight (38) carriers of which twenty-six were full-time regulars and the remainder was composed of PTF's and utility carriers. (Joint Exhibit 6) On Monday, November 13, Herb Treu was serving as Postmaster and Allen Innerbner was Superintendent of Postal Operations. Also on duty was John Lehl, "204B," who was serving as temporary delivery supervisor in place of Len Chesney, the regular supervisor, who was absent.

Since Saturday, November 11 was a holiday, Veteran's Day, the mail was extremely heavy on the following Monday. Whereas the average mail volume is about 300 feet, it was over 500 feet on November 13. (Joint Exhibit 2, p. 5)

Because of non-scheduled days, annual and sick leave, nine (9) carriers on November 13 were not available for duty. (Joint Exhibit 6) Nonetheless, said Innerbner, all routes were covered by 7:15 A.M., utilizing PTF's and utility carriers. In addition, with the exception of Ronald Christansan and Tom Radtke, the sixteen (16) other carriers on the ODL worked overtime. (Employer Exhibit 1; Joint Exhibit 5) In addition, apparently the so-called "pivot" system was used whereby uncovered routes were spread to carriers on duty.

Delivery After Dark

Normally carriers leave the office for the street between 9:30 and 10 A.M., but on November 13, because of the heavy mail volume, they left about noon. On November 13, sunset was at 4:28 P.M. (Union Exhibit 6) As a result, twenty-two (22) carriers delivered mail after dark. (Joint Exhibit 5)

Allen Cousineau, regular carrier, testified he called Lehl at 3:30 P.M. telling him he had one and one-half (1-1/2) hours of mail still to be delivered and he would not complete his route before dark. According to the carrier, Lehl (who did not testify in the arbitration) told him:

Keep going. If I have help, I will send it to you. If not, keep going in the dark to finish the route.

As it turned out, Cousineau returned to the office at about 5:38 P.M. (Joint Exhibit 5)

Jan Berg, utility carrier, said he told Innerbner he could not complete his route before dark. The Superintendent of Postal Operations replied he would try to get him help. At about 5 P.M.,

the carrier returned to the office. At that time, said Berg, Lehl gave him more mail to deliver. As a result, he returned to the office the second time at about 6:31 P.M. (Joint Exhibit 5)

Steve Schwalenberg, PTF carrier, said he returned to the office at 5 P.M. At that time, Lehl gave him one hour additional mail to deliver. According to the carrier, he told the acting supervisor it was not safe to deliver mail after dark. Lehl replied, said Schwalenberg, "the mail had to go out." As a result, the carrier returned to the office the second time at about 6:45 P.M. (Joint Exhibit 5)

Charles Damsheuser, utility carrier, returned to the office at about 5:22 P.M. (Joint Exhibit 5) When asked whether he had notified supervision he could not complete his route before dark, the carrier testified: "I believe I did, but I am not sure."

Edward Johanek, regular carrier, and branch president, testified he told Lehl that before leaving for the street he could not complete his route before dark. Lehl instructed him to leave behind about two (2) hours and forty-five (45) minutes of mail. As a result, Johanek, not on the ODL, returned to the office at about 3:45 P.M. Abba, regular carrier, not on the ODL, also did not deliver mail in the dark.

Events of November 14, 1989

According to Innerbner, the mail volume on November 14 was slightly heavier than normal. Postmaster Treu testified he became aware on November 14 of deliveries after dark during the previous day. He directed the floor supervisor to check with each carrier "to make sure they could get back to the office before dark."

Sunset on November 14 was at 4:26 P.M. (Union Exhibit 7)
On that day, nine (9) carriers delivered mail after dark. (Joint Exhibit 5)

Other matters material to this case which surfaced during the arbitration will be treated later on in this decision.

POSITIONS OF THE PARTIES

Whereas the Employer asserts the grievance should be denied, the Union requests it be granted. Both Parties offered closing arguments to support their respective positions. To the extent necessary and appropriate for purposes of this dispute, the Parties' contentions shall be referenced in the following portion of this decision.

EVALUATION OF THE EVIDENCE

Employer Contentions

Certain contentions advanced by the Parties do not provide a valid basis for decision-making purposes. On its part, the Employer stresses that Lehl was a temporary delivery supervisor filling in for Chesney, the absent regular supervisor. It contends that decisions made by him on November 13 should not count against the Postal Service. Should his actions be held to be a violation of the National Agreement and/or grievance settlements,^{*} it still would not be proper to grant the grievance.

Without contradiction, Cousineau, Berg, and Schwalenberg

^{*}Union Exhibits 2, 4, 5. See *infra* for discussion of these grievance settlements regarding mail delivery after sunset.

testified that Lehl ordered them to deliver mail after dark.

Nonetheless, the Employer asserts:

There was an inexperienced 204B delivery supervisor on duty. Postmaster Treu testified Lehl supervised carriers only four times before November 13, 1989.

Lehl's inexperience would not mitigate any employer violation. It is up to Management to provide sufficient training to its supervisors be they regular or temporary. Management has the responsibility to assure that its supervision perform their duties in a proper manner just as the Union has the responsibility to train its representatives to carry out their duties in a proper manner. In short, if it is held the Employer violated the National Agreement and/or grievance settlements made pursuant to the National Agreement, it may not be heard to say the inexperience of the temporary supervisor exculpates its conduct.

Nor would the Employer be excused from a violation just because sixteen (16) carriers on the ODL delivered mail in the dark on November 13. On this matter, the Postal Service asserted:

Employees who delivered mail in the dark on November 13 and 14 were on the ODL. Those not on the ODL [Johanek and Abba] did not do so. Section 5 of Article 8 says carriers not on the ODL may be forced to work overtime only if all available employees on the ODL have worked up to 12 hours per day and 60 hours in a week.

In other words, by listing their names on the ODL, employees in effect volunteer to deliver mail after sunset. The fallacy of the Employer's position is that Management is not required to schedule overtime for any employees, including those on the ODL. If carriers are strictly forbidden to deliver after dark, the ODL system of overtime assignment would not authorize Management to

undermine such a policy.

To support its position for the denial of the grievance, the Employer asserts that no carrier was injured on November 13 and 14 because they delivered mail in the dark. Its assertion was documented by the Accident Log of the period October 9, 1989 to August 27, 1990. (Employer Exhibit 3) It reveals that no carrier suffered an injury on November 13 or 14 when mail was delivered in the dark.

If it is true that mail is not to be delivered in the dark, the fact of injury-free conditions on November 13 and 14 did not serve to authorize Management's action. Regardless of what may be the ultimate outcome of this case, the record is clear that the Postal Service discourages, if not forbids, mail delivery after sunset. On November 6, 1989, the Central Region Joint Labor-Management Safety and Health Committee dealt with mail delivery after dark. (Union Exhibit 1) At that time, Union members of the Committee raised the question:

What is the Central Region's policy in regard to letter carriers delivering after dark?

In its response, the Postal Service replied:

As we have indicated in the past, the Region no longer sets policy; however, it is well known that management does not advocate delivery after dark due to a number of business and safety related reasons. (Emphasis supplied)

Indeed, even at Neenah, Management discourages delivery of mail after sunset. When Postmaster Treu learned on November 14 of mail delivery after sunset on the preceding day, he took action to remedy the situation for November 14. Superintendent of

Postal Operations Innerbner testified:

We make every effort to get the carriers back by dark. We don't want our people delivering in the dark. If carriers returned at 5 P.M. [after dark] I would not send them out again if unsafe but this was done on the two days.
(Emphasis supplied)

Obviously the Postal Service recognizes carriers are at risk by delivering after dark. Its policy of at least discouragement is rooted to carrier safety and customer convenience. Thus, just because injuries did not occur on November 13 and 14 would not justify the denial of the grievance.

Union Contentions

Just as the Employer raised invalid arguments for the denial of the grievance, the Union raised invalid contentions for the granting of the grievance. Gene McMnulty, National Business Agent, testified:

There are 409 offices and over 10,000 carriers in the Central Region. Neenah is the only office out of all of them where we have a problem with delivery of mail after dark. Milwaukee does not let its carriers on the street after 5 P.M. Other offices do the same thing.

Based upon the testimony supplied by the National Business Agent, the Union argued:

Through grievance settlements, Memorandums of Understanding, Labor-Management meetings, delivery after dark is not a problem except here at Neenah. Management here at Neenah feels it can operate independently from the whole United States Postal Service. It disregards the principles of safety contained in the National Agreement. Management does not honor its own words contained in the grievance settlements. The purpose of this case is to make Management accountable. They say they will stop deliveries in the dark. They say "stop" until the next time. That is why we are requesting triple pay for the carriers who delivered

after dark. To deny that remedy would make a mockery of the National Agreement.

Given McNulty's testimony, Neenah apparently "sticks out like a sore thumb." Of the 409 offices in the Central Region, Neenah is the only office which requires carriers to deliver after dark. This is indeed an astounding record.

Nonetheless, the problem with the Union's contention is lack of evidence showing why the other offices of the Central Region do not require carriers to deliver after dark. In Milwaukee, said McNulty, both Management and the Union executed a Local Memorandum of Understanding forbidding carriers on the street after 5 P.M.* pursuant to Article 30 of the National Agreement.** At Neenah, the local Management and Union have not negotiated such a restriction on carrier duties. Have other offices settled grievances which flatly forbid deliveries after dark? True, at Neenah, the Parties have settled grievances which deal with the issue, but as will be demonstrated, these grievance settlements do not flatly forbid deliveries after the sun sets.

In other words, given the state of the record, unlike Neenah, the other offices might have negotiated agreements which flatly forbid deliveries after dark. For this reason, the comparison between Neenah and the other Central Region offices relating to the

*The restriction would apply to Central Standard Time. During Daylight Saving Time, the sun sets much later than 5 P.M.

**Apparently the Milwaukee Local Memorandum of Understanding was based on Item 3 of Article 30 calling for "Guidelines for the Curtailment or Termination of Postal Operations to Conform to Orders of Local Authorities or as Local Conditions Warrant Because of Emergency Conditions."

issue involved in this dispute does not necessarily provide a legitimate basis for the granting of the grievance.

As noted earlier, Christansan and Radtke, though on the ODL, were not used by Management to work overtime on the days in question. Since they were not used, the Union charges that Management did not do all that it could to avoid deliveries in the dark.

This contention, however, in effect conflicts with the Union's basic position: all carriers, including those on ODL, are forbidden by the National Agreement and/or grievance settlements to deliver in the dark. If the Union's position has merit, the assignment of the two employees in question would have compounded the Employer's violation. Just like the other ODL employees, Christansan and Radtke would have also delivered in the dark. So, why should Management be forced to compound its violation?

In addition, the Union has not demonstrated the extent to which Christansan's and Radtke's services would have alleviated deliveries after sunset. Given the large number of carriers who worked in the dark on November 13, it is possible their use would have been minimal, and be covered by the de minimis rule.

In short, the Employer's failure to use the two employees in question does not provide a valid basis to grant the grievance.

With these Employer and Union contentions out of the way, the inquiry turns to other substantive matters involved in the dispute.

Management Rights and Grievance Settlements

A major Employer position is that the National Agreement does not expressly forbid mail delivery after sunset. Nor does any

Postal Service Bulletin, Handbook, Manual, including Chapter 8, Safety and Health of the Employees, Labor Relations Manual (Joint Exhibit 7), establish such a restriction on carrier duties. In addition, as noted earlier, the Central Region does not have a policy regarding after dark deliveries. In its argument, the Employer stresses that McNulty, National Business Agent, testified:

There is no provision in the National Agreement or in any Postal Service Handbook or Manual Forbidding delivery after dark.

Given the absence of any such restriction, the Employer position is that under Article 3, Management Rights, Management has the right to compel deliveries after dark since the provision states the Employer has the exclusive right "to direct employees of the Employer in the performance of official duties." Any such action is "subject to the provisions" of the National Agreement. Since the provisions of the National Agreement do not forbid deliveries after sunset, the Employer says it has the unilateral right to direct carriers to deliver mail in the dark.

The record demonstrates, however, that prior to the circumstances of this case, the Parties settled three grievances dealing with the problem involved in this proceeding. On January 4, 1984, Postmaster Treu and Union President Johanek agreed to the following:

Subject: Grievance Settlement Regarding Carriers Delivering Mail After Dark. #11-83

As a final and complete settlement of the subject case and without prejudice to the position of the U.S. Postal Service in this or any other case, and with the understanding that this settlement shall not be cited by either party, the following resolution has been entered into by the parties: Supervisor will instruct carriers as to proper leaving time and completion of Forms 1571 and 3996. Carriers will notify supervisor if they are not

able to complete route before dark, and supervisor will provide carriers with either additional help or instructions. (Union Exhibit 4)

On November 16, 1987, Treu wrote the following to Johanek:

Subject: Grievance at Step 2

On Tuesday, 11-10-87, we met to discuss grievance # 23 - 87, at step 2.

I agree, except for the daily collection run between 5:00 pm and 6:00 pm, all carriers delivering mail should be back in the office prior to darkness setting in.

I have instructed all supervisors that every effort will be made, on management's part, to keep carriers from delivering mail in the dark. (Union Exhibit 5)

On March 30, 1988, a Step 3 decision was agreed to by authorized designees of the Parties dealing with the issue in question.

(Union Exhibit 2) It stated:

Pursuant to the terms and obligations as set forth in Article 15 of the 1987 National Agreement, management and union designees met at Step 3 of the grievance procedure. The results of that meeting on the above-referenced case are as follows:

As a final and complete settlement of the subject grievance and without prejudice to the position of either party in this or any other case, and with the understanding that this settlement shall not be cited by either party in any other grievance proceedings or in any other forum, the following resolution has been arrived at between the parties:

It is the responsibility of management to provide safe working conditions and to develop a safe working force. Carriers will notify their supervisor if they are not able to complete their route before dark, and the supervisor will provide the carriers with either additional help or instructions.

At the arbitration, the Employer objected to Union Exhibits

2 and 4 on the grounds that each stated the settlements "shall not be cited by either party in any other grievance proceedings or in any other forum."

The Employer's objection does not have merit because Post-Master Treu cited the Step 3 decision when he denied the instant grievance. (Joint Exhibit 2, p. 5) He said:

We had a step 3 decision settled on 3-30-88, regarding this matter. It was stated as follows:

It is the responsibility of management to provide safe working conditions and to develop a safe working force. Carriers will notify their supervisor if they are not able to complete their route before dark, and supervisor will provide the carrier with either additional help or instructions. (Emphasis in original)

Since the Employer cited the settlement of March 30, 1988 when it denied the instant grievance, the settlements of the two grievances in question have full standing in this proceeding. How can the Employer validly object to those settlements when the Employer itself cited the Step 3 decision when it denied the instant grievance? In this light, to sustain the Employer's objection would be a masterpiece of error and inequity.

Although the National Agreement and Postal Service Handbooks, Bulletins, and Manuals do not forbid mail delivery after dark, the grievance settlements, made pursuant to the National Agreement, constitute a restriction on the Employer's right to make such assignments. Any other finding would undermine the integrity and purpose of the Grievance Procedure established in the National Agreement, and would undermine the stability of labor relations within the Postal Service.

Johanek-Chesney Meeting

On November 6, 1989, the Union President met with Supervisor Chesney. Johanek related the substance of that session. Chesney did not testify in the arbitration. At that time, Chesney was new to the Neenah office. Because of the time change back to Central Standard Time, and the impending Veteran's Day holiday, the Union President informed the new supervisor of the problem of mail delivery after dark and the grievance settlements. Chesney informed him that carriers would not work in the dark.

Johanek also suggested to Chesney ways to handle the problem, including curtailment of mail.

Thus, prior to November 13, the aforesaid grievance settlements were in place, and the Union alerted the new supervisor of the problem of deliveries after dark.

Character of Grievance Settlements

Vital to the proper outcome of this dispute is the character of the aforesaid grievance settlements. None flatly forbids deliveries after dark. They do not contain language such as the following: "Effective immediately, no carrier shall be forced to deliver mail after sunset regardless of circumstances."

Instead, the grievance settlements establish a procedure dealing with the issue involved in this dispute. They say that when a carrier believes he/she will not be able to complete the route before dark, the carrier will notify the supervisor. After such notification, the supervisor will provide the carrier with help or instructions. Thus, the carrier bears the burden to implement the procedure by notifying the supervisor. In the absence of

such notification, the Employer does not bear responsibility should the carrier deliver mail after dark. When the carrier does not implement the notification requirement, the carrier in effect volunteers to work after sunset.

True, at Neenah, the practice has been for supervisors to check with carriers to determine whether they could finish the route before dark. As Postmaster Treu testified:

The practice here is that the supervisor would ask the carrier "can you finish before dark?" If the carrier says "cannot," the supervisor would take part of the route away, and give it to a PTF or go to the ODL.

It is also true that Management at Neenah should have recognized that the mail would be very heavy on the Monday following the Saturday holiday. If temporary supervisor Lehl did not know, the Postmaster and the Superintendent of Postal Operations surely were fully aware of the condition.

Nonetheless, the Arbitrator may not ignore the clear and unambiguous language contained in the grievance settlements. He may not ignore that the carriers have the responsibility to notify the supervisor that they would not be able to complete the route before dark. Indeed, the grievance settlements in effect amount to contractual language negotiated by the Parties. Such language is clear, unambiguous, and unequivocal. Thus: "The carriers will notify the supervisors...(Emphasis supplied) It is well settled that when that kind of contractual language conflicts with an inconsistent practice, the language prevails over the practice. Although the practice at Neenah involved the supervisor making inquiries of the carrier, the crystal-clear language of the grievance

settlements places the notification burden on the carrier.

Indeed, if the grievance settlements are equated to contractual language, the Arbitrator would violate the parameters of his legitimate authority if he ignored the language. Section 15.4 forbids arbitrators to alter, amend, or modify the terms and provisions of the National Agreement, or, as here, modify the terms of grievance settlements reached pursuant to the Grievance Procedure of the National Agreement.

Consider also the terms of the City Delivery Carriers Manual, M-41. (Joint Exhibit 8) Section 131.42 states:

It is your responsibility to verbally inform management when you are of the opinion that you will be unable to case all mail distributed to the route, perform other required duties, and leave on schedule or when you will be unable to complete delivery of all mail.

.42 Inform management of this well in advance of the scheduled leaving time and not later than immediately following the final receipt of mail. Management will instruct you what to do.

Clearly, the sense of the grievance settlements was based on the language contained in this document. Once again, under M-41, the carrier bears the responsibility to notify supervision, and not the other way around.

Notification to Supervision

Carriers Cousineau, Berg, and Schwalenberg notified Lehl that they could not complete their routes before dark.* Damsheuser was not sure he advised supervision that he could not finish before

*Cousineau called Lehl at 3:30 P.M. and Lehl and Schwalenberg were sent out by Lehl to deliver mail at 5 P.M. when it was already dark.

sunset. But what about the other carriers who worked after dark? As said, twenty-two (22) carriers on November 13 delivered after dark and nine (9) on November 14. Other than the three (3) carriers and possibly four (4), there is no showing in the record that any of the other carriers notified any supervisor that they could not complete their routes before sunset. Unlike the three or four carriers, they did not comply with their responsibilities established by the grievance settlements and the City Carriers Manual.

Application of Article 14

Before reaching the final outcome of this dispute, consideration was given to the provisions contained in Article 14, Safety and Health. As a matter of fact, at the outset of the arbitration the Union framed the issue to be determined as: Did Management violate Article 14 by requiring carriers to deliver mail after dark on November 13 and 14, 1989? If so, what is the proper remedy?

Article 14 says that Management has the responsibility to provide safe working conditions and to develop a safe working force. It also says that the unions should cooperate and assist Management to live up to this responsibility.

Section 2 of the article establishes a procedure where an employee believes he/she is required to work under unsafe conditions. Under these circumstances, the employee may notify the supervisor who will immediately investigate the condition and take corrective action if necessary. Such employee may also notify his/her steward who may discuss the alleged unsafe condition with the employee's supervisor. In addition, the employee may file a grievance at Step

2 of the Grievance Procedure within fourteen (14) days of notifying such employee's supervisor if no corrective action is taken during the employee's tour, or make a written report to the Union representative of the Local Safety and Health Committee who may discuss the report with the employee's supervisor.

Other than Schwalenberg, no other carrier advised any supervisor it was not safe to deliver mail in the dark. Johanek testified no carrier who delivered mail in the dark on either day notified him that it was an unsafe condition. No carrier or Johanek filed a Step 2 grievance saying delivering after dark constituted an unsafe condition. The Union President testified he filed a Step 1 grievance. Nothing in the record demonstrates any carrier submitted a written report to the Union representative of the Local Safety and Health Committee about the alleged unsafe condition.

It is also material that the Union President did not notify Management on November 13 that deliveries in the dark constituted an unsafe condition. When asked, he replied:

I was aware of the situation by 10:30 A.M. on November 13. I did not bring it up to Management that it [delivery of mail in the dark] would be a problem for everyone. I did not know it would be a grievance until it happened.

In the light of the circumstances detailed above, it would be absolutely improper to find the Employer violated Article 14. Not when the carriers, save Schwalenberg, did not follow the procedure established in Article 14 to protest against alleged unsafe conditions. Not when the Union did not take prompt action to report the unsafe condition before the carriers delivered the mail in the dark.

Conclusion and Award

Based upon the entire record, and the articulated reasoning of the Arbitrator, the grievance does not have merit and must be denied. Given this decision, the Arbitrator need not deal with whether or not he has the authority to award a triple pay remedy for the carriers who delivered mail after sunset on November 13 and 14.* That would be an issue only if the grievance was granted on its merits. Nothing in this decision relates or is intended to relate to the remedy requested by the Union. Either side may raise that issue without prejudice in another proceeding.**

True, Cousineau, Berg, Schwalenberg, and possibly Damsheuser complied with their responsibilities established by the grievance settlements and the City Delivery Carriers Manual. These carriers notified supervision that they could not operate their routes after dark. Schwalenberg also notified Management it is not safe to deliver after dark.

However, they are not entitled to a remedy because this is a

*The Union filed Postal Service arbitration decisions rendered by Arbitrators Gamser, Bowles, Goldstein, Eaton, Levak and by Arbitrator Mittenthal. (National Award) According to the Union, these decisions demonstrate the Arbitrator has the authority to fashion the remedy requested by the Union in this grievance. On its part, the Employer submitted decisions by Arbitrators Mikrut, Foster, Schedler, Bowles, and Rimmel. According to the Employer, these decisions demonstrate the Arbitrator does not have the authority to grant the remedy requested by the Union. As this Arbitrator commented at the instant arbitration, it is strange that neither side presented an award dealing directly with the issue presented in this dispute.

**In addition, in the light of this decision, the Arbitrator does not find it necessary to deal with the materiality of the agreement reached by the Parties contained in their agreement of December 1, 1989 and as it pertains to mail deliveries after dark. (Employer Exhibit 4)

class action where all of the class covered by the action stands or falls as a group. At no time did the Union contend that certain carriers covered by the class action grievance should be treated separately for the matter of remedy.