C# 10826

IN THE MATTER OF ARBITRATION BETWEEN	GRIEVANT: Class Actions
	POST OFFICE: Peoria, IL, St. Paul, MN Dubuque, IA, Ft. Smith, AK
American Postal Workers Union,	POSTAL SERVICE CASE NO.: H4C-4A-C 7931, H4C-4C-4C 13068, H4C-4K-C 33596, and H4C-3B-C 4857
	APWU CASE NO.:
-and-	
U.S. Postal Service	

BEFORE: Bernard Dobranski, Arbitrator

APPEARANCES: For the U.S. Postal Service
James K. Hellquist

For the Union
Larry Gervais

PLACE OF HEARING: Washington, D.C.

DATE OF HEARING: February 6, 1990

BRIEF DATE: April 30, 1990

AWARD: For all the reasons set forth in the attached Opinion and Award, the grievances in the four cases referenced above do not present an interpretive issue of general application under the National Agreement, and therefore they are remanded to regional arbitration.

DATE OF AWARD: December 14, 1990

Bernard Dobranski
Arbitrator

IN THE MATTER OF ARBITRATION BETWEEN	)	OPINION AND AWARD
	)	
American Postal Workers Union, AFL-CIO	)	
	)	
-and-	)	Case Nos. H4C-4A-C 7931
	)	H4C-4C-C 13068
U.S. Postal Service	)	H4C-4K-C 33596
Washington, D.C.	)	H4C-3B-C 48957
	)	

The hearing in the above-matters was held on February 6, 1990 in Washington, D.C. before Bernard Dobranski, designated as arbitrator according to the procedures set forth in the collective bargaining agreement.

Appearances: Larry Gervais
For the Union

James K. Hellquist
For the Postal Service

Full opportunity to present evidence and argument was afforded the parties. Post-hearing briefs were filed by both parties by the extended April 30, 1990 deadline.

ISSUE

The issue which emerged from the discussion with the parties at the hearing is whether, in light of the fact that both parties at the hearing acknowledged that no national interpretive issue was involved, the arbitrator has the authority to remand the grievances to regional arbitration.[1]

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[1] The Postal Service contended at the hearing and again in its brief that the issue is whether the National Arbitration Award in Case No. HBC-4J-C 34063 (AB-C-2666), issued by Arbitrator Bloch on January 16, 1984, is controlling in this case

BACKGROUND FACTS

The basic facts are not in dispute. The case consists of four separate grievances consolidated for hearing because they pose similar issues, i.e., whether the Employer is required under Article 7 of the National Agreement to utilize Part-Time Flexible (PTF's) from Associate Offices before it can use casuals at the facility to which the casuals are assigned. (Employer Exhibits 1A-D; Union Exhibits 1A-D). Case No. H4C-4A-C 7931 involved the Peoria, Illinois facility (Employer Exhibit 1A; Union Exhibit 1A); Case No. H4C-4C-C 13068 involved the St. Paul, Minnesota facility (Employer Exhibit 1B; Union Exhibit 1B); Case No. H4C-4K-3 33596 involves the Dubuque, Iowa facility (Employer Exhibit 1C; Union Exhibit 1C); and Case No. H4C-3B-C 48957 involves the Fort Smith, Arkansas facility (Employer Exhibit 1D; Union Exhibit 1D).

In each of the grievances, the Union filed an appeal to Step 4. In two of these cases, the Peoria case and the Dubuque case, the Postal Service either also referred the case to Step 4 (Peoria) or indicated an interpretive issue appropriate for Step 4 was involved (Dubuque). In the Peoria case, Mr. Michael

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which contains identical issues. According to the Postal Service, it is controlling, and the arbitrator should so find, and thus no remand to Regional Arbitration is appropriate.

For reasons later discussed, I do not share this narrow view of the issue. Moreover, I believe the issue formulated above in the text accurately describes the essence of the differences between the parties.

Jordan, Labor Relations Programs Analyst, Principal for the Postal Service, indicated in an October 23, 1987 memorandum to Mr. James P. Williams, Central Regional Coordinator of the APWU, that the Peoria grievance was referred to Step 4 in accordance with Article 15, Section 4.4(5) by the Postal Service.[2] (Union Exhibit 1A). In the Dubuque case, the June 29, 1987 Postal Service Step 3 decision indicated that an interpretive issue was involved. (Employer Exhibit 1C; Union Exhibit 1C). In the St. Paul, Minnesota and Fort Smith, Arkansas cases, the Postal Service indicated in the Step 3 decisions that non-interpretive issues were involved. (Employer and Union Exhibits 1B and 1D). In the Fort Smith grievance, for example, the May 13, 1987 Step 3 denial issued by the Postal Service stated, in pertinent part:

> In our judgment, the grievance does not involve any interpretive issue(s) pertaining to the National Agreement or any supplements thereto which may be of general application. Unless the union believes otherwise, the case may be appealed directly to regional arbitration in accordance with the provisions of Article 15 of the National Agreement.

As the above makes clear, the Postal Service in at least two, and arguably three of the above cases took the position that no national interpretive issue was involved.[3] Although it is not

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[2] The grievance in the Peoria case was apparently remanded once from Step 4 to Step 3 by mutual agreement and in both Step 3 decisions, one on October 25, 1985 and the other on October 30, 1986, the Postal Service indicated that non-interpretive issues were involved. (Union Exhibit 1A).

[3] The uncertainty stems from the Peoria case where the Postal Service took the position in the two Step 3 decisions that non-interpretive issues were involved, but then indicated in Jordan's October 23, 1987 memorandum that the Peoria case had

clear when the Union first asserted its position that no interpretive issue was involved, it is clear that at some point after the cases were appealed to Step 4 the Union acknowledged that no such issue was presented by the cases in question.

At various times in September 1987 and in February 1988, the Union and the Postal Service met to discuss the instant grievances at the fourth Step of the contractual grievance procedure. Each of the grievances was denied by the Postal Service at Step 4. The February 12, 1988 Step 4 denial in the Peoria case, issued by Ms. Sheila A. Stafford of the Grievance and Arbitration decision of the Postal Service to Mr. Cliff J. Guffey, the Assistant Director, Clerk Craft Division of the APWU, is illustrative of the Step 4 denials issued in each case:

> Re: Class Action
> Peoria, IL 61601
> H4C-4A-C 7931
>
> Dear Mr. Guffey:
>
> On February 2, 1988, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.
>
> The issue in this grievance is whether management is required to utilize associate office part-time flexible clerks prior to utilizing casuals at the Peoria facility in accordance with Article 7 of the National Agreement.
>
> It is our position that no national interpretive issue involving the terms and conditions of the National Agreement is fairly presented in this case. However, inasmuch as the union did not agree, the following represents the decision of the Postal Service on the particular fact circumstances involved.

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been referred to Step 4 in accordance with the National Agreement by the Postal Service.

It is management's position that there exists no contractual requirement to assign associate office part-time flexible clerks to work at another facility, in this instance the Peoria Post Office, prior to utilizing casuals. Further, it is our position that associate office part-time flexible employees have no contractual work hour guarantee beyond the associate office in which they are employed.

The question was appropriately addressed on February 2, 1984, in an arbitration decision by Arbitrator Richard I. Bloch, in Case No. H8C-4J-C 34063. In this decision Arbitrator Bloch stated in pertinent part: "....given that the part-time flexible employees in question are assigned to the associate offices and that their first responsibility is to those offices (the availability for work at the Green Bay facility is purely voluntary), the requirement of Green Bay's first attempting to schedule from the associate offices may well be beyond what the parties had contemplated in the language of Article VII."

Based on the foregoing considerations this grievance is denied.

Time limits were extended by mutual consent.

Sincerely,

Sheila A. Stafford

Sheila A. Stafford
Grievance & Arbitration
Division

After the Step 4 denials, the Union appealed to arbitration and the case is now properly before the arbitrator for final and binding resolution. After discussion and argument at the hearing, it is clear that both parties agree no national interpretive issues were involved in any of the cases presented. In light of this, the question for resolution is whether the Union is entitled to have the cases remanded to regional arbitration of these cases on their merits, or whether they should be denied outright on the grounds asserted by the Postal Service.

POSITIONS OF THE PARTIES

Union Position

The Union argues that the cases at issue contractually belong before a regional level arbitrator for decision on the merits. The national level arbitrator is contractually barred from hearing these cases on the merits because they do not involve an interpretive issue of general application.

The Union further asserts that the placement of these cases before a national level arbitrator by the refusal of the Postal Service to remand these cases is contrary to national level precedents and, therefore, violates the National Agreement. As a remedy, the instant arbitrator has the authority to remand the cases to the appropriate arbitration panel the same as national level arbitrators have done in the other national level awards.

The Union points out that the parties agree that the fundamental preconditions of an interpretive issue of general application have not been met in the instant cases. The Postal Service set forth this position in its Step 4 decision in each of the pending cases. The Union agrees with that aspect of the Step 4 decision which indicates that "no interpretive issue involving the terms and conditions of the National Agreement is fairly presented in [these] cases."

In normal circumstances, such agreement would be enough routinely to cause the parties to remand these cases to the region for application of the National Agreement. While the Union is prepared to do so here, the Postal Service apparently is not. The Postal Service has decided, for its own reasons, to refuse to allow these cases to go forward to arbitration at any level. Even though the Postal Service at the hearing agreed that the instant cases cannot be decided on their merits by this national arbitrator level arbitrator, it refused to remand the cases to a lower level where there would not be a contractual prohibition preventing consideration both of any non-interpretive threshold questions raised by the Postal Service and of the merits of the cases.

The Postal Service position in this case presumes that the parties are in the proper forum to address the issues raised by the Postal Service, a presumption which is not valid by its own admission in its Step 4 decision.

The Union further asserts that the authority of the instant

arbitrator is confined to the disposal of preliminary procedural questions. The parties scheduled the hearing (Employer Exhibit 2). The scheduling letter states that it is for the purpose of bringing this case to a hearing before this arbitrator and does not constitute a waiver of arbitrability objections. This arbitrator, therefore, by agreement of the parties, is granted the authority to decide only what his jurisdiction is as a preliminary matter to hearing these cases. The fact that the arbitrator is not empowered to hear certain matters because they do not present an interpretive the issue does not bar the arbitrator from disposing of the jurisdictional question. The hearing cannot come to a successful closure without such a decision.

The Union further asserts that the arbitrator must look at the construction of the contract language and how the Postal Service has used it to force these cases before the arbitrator, even though no national interpretive issue is fairly presented by the cases, in order to understand why the Union is in the situation now presented.

In effect, what the Postal Service has done in this case is utilize the Article 15 language to force these cases to Step 4. Then, at the same time it agrees no interpretive issue is presented, it attempts to use the Article 15 language, which requires mutual agreement for the parties to remand the case from Step 4 to Step 3, to deny the Union a hearing on the merits of the case at the appropriate level - the regional level. The

Postal Service is in violation of the contract by forcing a case to national level arbitration when it admits that the case does not meet the condition precedent for this level. The mutual agreement provision of Article 15 applies to the parties themselves, not to the arbitrator, and applies at the Step 4 level, not the arbitration level.

Moreover, to the extent that Article 15 gives either party a right, the right must be exercised in a reasonable and non-arbitrary way. By forcing a case to arbitration at the highest possible level when the Postal Service admits the condition precedent does not exist, is not a contractually proper utilization of the procedure. It can hardly have been the intention of the negotiators to allow, for instance, one party to force all cases on a particular subject to Step 4 only for a ruling of arbitrability on the grounds decided by the Postal Service in this case. A regional level arbitrator is properly suited to make such rulings. If the Postal Service is permitted to clog up Step 4 with this type of issue, the purpose of reserving Step 4 at national level arbitration only for interpretation of the contract will be frustrated. Delays which occur as a consequence of such actions will poison the labor relations environment, resulting in needless expenditures by both parties.

In order for the Postal Service to exercise the right to refer a case to Step 4, it must conclude a national interpretive issue of general application is presented in the case. Any such

conclusion reached by either party at a lower level of the procedure is not a proper one since the parties at the national level now agree that this cases do not contain such an issue.

The proper way for the arbitrator to remedy the contractually improper action of the Postal Service in this case is for the arbitrator to order these cases remanded to the parties to be considered on their merits at the regional level. This action is inherently a part of the remedial authority of the arbitrator.

The Union further points out that this is not the first time that national level arbitrators have been faced with a claim of arbitrability as of first impression based on the absence of a national interpretive issue. It is not the first time a national level arbitrator has been asked to remand cases to the regional level for that reason. The only difference in the instant cases is the party asking for the remand is the Union instead of the Postal Service. In at least two national level arbitration cases,[4] national level arbitrators have ruled that the cases did not contain national interpretive issues and then remanded the cases to regional arbitration.

The Union further asserts that the various "arbitrability" issues presented at the hearing by the Postal Service - if they are truly arbitrability issues - are raised in the wrong forum.

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[4] USPS v APWU, Case Nos. H8T-4K-C 35699 and H8T-4F-C 24940, (June 7, 1983: Aaron). USPS v APWU, Case No. H4C-5A-C 13378 (April 7, 1988: Mittenthal).

If these issues are to be raised at all, this must be done at regional level arbitration. While the Postal Service raises them as arbitrability issues, the issues, according to the Union, go, in fact, to the merits of the instant cases or at least are so intertwined with the merits as to be almost indistinguishable from them. The merits of these cases, however, are not before the arbitrator and therefore he cannot resolve these issues. The proper place to raise these issues is as an affirmative defense when these cases are placed before a regional level arbitrator for hearing on the merits. In short, the Postal Service's arbitrability issues are being presented in the wrong forum.

In conclusion, the Union argues that it is undisputed that the parties agree that this national level arbitrator cannot hear or decide these cases on the merits. Any ruling that would deny the Union a hearing on the merits is beyond the authority for this arbitrator to decide. In keeping with the national precedents cited in the Union brief, these cases must be remanded to the regional level to be decided on the merits. This procedure does not deprive the Postal Service of the opportunity to raise as a defense any or all of its arguments and to try and carry the burden of proof at the hearing on the merits.

For all these reasons, the Union requests the arbitrator to find these cases outside his jurisdiction on the merits and to issue an order remanding them back to the regional level.

Postal Service Position

The Postal Service argues that the issue presented in these cases is whether the national arbitration award in Case No. H8C-4J-C 34063 (AB-C-2666), issued on January 26, 1984 by Arbitrator Bloch, is controlling in these subsequent grievances which contain the identical issue.

In support of its argument that this issue must be decided in favor of the Postal Service, the Postal Service first argues that the Bloch decision, a national award, is controlling in the instant cases and therefore the grievances must be denied. There is no doubt that Arbitrator Bloch's award in that case was, in fact, a national award involving interpretive issues of general application.

The negotiated system of arbitration as set forth in the National Agreement calls for three different types of arbitrations - Expedited, Regular, and National Level. Each level of arbitration has a separate panel of arbitrators selected by the parties to hear the cases at that level. Article 15.4(A)(6) provides that all decisions of arbitrators will be final and binding. This entire negotiated system of all arbitration was designed to create stability in the work place. Both parties need such stability to administer efficiently the National Agreement. Stability is critical in Postal Service operations. Given the large number of employees nationwide, if arbitration decisions were not final and binding and if national level awards could not be looked to for controlling guidance,

chaos would reign in the work place. Every single installation would simply provide its own interpretation of whatever contract language tickled its fancy and the end result would be a fractured, fragmented Postal Service. This is exactly why the parties negotiated the current system of arbitration. National level arbitrations are the linchpin of stability in the Postal Service. Each and every national level award must have controlling precedential value; otherwise it simply becomes another regional arbitration case. This is clearly not what the parties bargained for. The parties bargained for precedent setting, national level arbitration and not to be able to avoid the consequences of such a precedential award when it suits their purposes. Accordingly, the current grievances must be denied because the Bloch award is controlling.

The Postal Service further asserts that the Union is attempting to obtain in this case unachieved contract demands through arbitral fiat. Employer Exhibit 6 is the 1984 APWU and the NALC Joint Bargaining Committee's proposal regarding the same issue as raised in the instant cases. This proposal is dated April 24, 1984 or three months after the Bloch National Award was issued. In this proposal, the Union acknowledges that the Agreement does not "contain a mechanism for 'loaning' underused PTF employees to nearby installations where their services are needed." This proposal did not result in a negotiated change in the National Agreement.

Employer Exhibit 7 demonstrates that an identical proposal was submitted in the 1987 national negotiations and again, the Union failed to achieve its demands. Now, six years after the controlling Bloch National Award and after two unsuccessful attempts to negotiate a change in the National Agreement, the Union attempts to circumvent the collective negotiating process through arbitrable fiat. To allow this would do violence to the collective bargaining process.

The Postal Service further contends that the instant forum, which is a rights arbitration, is an improper forum for the resolution of these matters. The Union appears to be confusing interest arbitration with rights arbitration. When the Union demands in Employer Exhibits 6 and 7 were not met, the Union could have elected under the Postal Reorganization Act of 1970, which allows for interest arbitration if the parties arrive at an impasse, to go to interest arbitration if it so desired. It chose not to do so. Now the APWU seeks to change the National Agreement and its interpretation by the Bloch award through rights arbitration. All arbitrators, at every level, are creatures of the contract. Article 15.4(A)(6) indicates that all decisions of arbitrators shall be limited to the terms and provisions of this Agreement and that the arbitrators may not modify, amend or alter the terms and provisions of the Agreement.

To grant the Union's requested remedy would be to impose unilaterally its unachieved contract demands upon the Postal Service. Any such remedy is impossible to achieve through

regular arbitration and would be a clear cut violation of Article 15.4(a)(6). The Union's proper course of action should have been through interest arbitration pursuant to the Postal Reorganization Act after its contract demands were unachieved. The instant proceeding is an improper forum in which to achieve these unsuccessful demands.

The Postal Service further contends that regional arbitration on this issue would only serve to erode the Bloch award. In this regard, no legitimate material factual issues exist which would warrant the hearing of these cases at regional arbitration. The grievance chain of each grievance establishes that each case was set up by the Union to challenge the national interpretive issue decided in the Bloch award. Case No. H4C-4A 7931 does cite Article 2, Non-Discrimination and Civil Rights, as having been violated, but the Union's proffered purview (filing sick leave grievances) is not covered by Article 2 and the case filed lacks any development whatsoever of such an issue. It is significant to note that in each of the four instant cases, the Union decided to appeal the case to national arbitration even after management indicated at Step 4 that no national interpretive issue was presented in the cases. In fact, in every case except H4C-4K 33596, management indicated at Step 3 that the issue was non-interpretive. Clearly, the Union's intent all along was to challenge the interpretative issues as decided in the Bloch award.

By requesting that these cases now be heard at Regional Arbitration, the Union is attempting to back door the Bloch award and carve out several exceptions to it under the guise of factual interpretation. Its only purpose is to erode the precedential stature of the Bloch National Award. As discussed earlier, to allow this chicanery would do violence to the collective bargaining procedure and would destabilize industrial relations in the Postal Service.

The Postal Service further contends that the Union's arguments are inconsistent and without merit. The Union argued at the hearing that each case is a pure factual determination without an interpretive issue presented. This is inconsistent with the Union's claim in each case is evidenced by Employer Exhibits 1A-D. As previously noted, the Union has insisted all along that each grievance presented an interpretative issue of general application, i.e., the same Article 7 issue decided by the Bloch award. Suddenly at national arbitration, when faced with the prospect of attempting to overturn the Bloch award, the Union conveniently changes directly 180 degrees and declares that each case is a mere factual determination ripe for Regional Arbitration. If this were so, why did the Union insist on pursuing each case to National Arbitration? Obviously, the positions it has taken are in conflict with each other and this provides great insight into the weakness of its arguments.

Furthermore, the Union argued that management boxed them in with no place to go with its grievances in that management can

send the grievances up to National Arbitration to avoid Regional Arbitration. It was the Union, however, that sent each case to the national level, not management.

Management clearly stated in its Step 4 responses in each case that the Bloch award appropriately addressed the issues presented in the instant cases and therefore no national interpretive issue involving the terms and conditions of the National Agreement was fairly presented.

In conclusion, the Bloch award is controlling over the instant grievances and therefore each grievance must be denied in its entirety.

DISCUSSION AND OPINION

After a careful examination and evaluation of the evidence and argument, it is my conclusion that no interpretive issue of general application is involved in these cases, the arbitrator thus is without jurisdiction to hear them on the merits, and the appropriate response is to remand them to the regional level for regional arbitration. My reasons for this conclusion are as follows:

First, it is clear that the merits of the instant grievances may not be arbitrated or disposed of by this national arbitrator at the national level. As Section 15.4.D(1) states:

> Only cases involving interpretive issues under this Agreement or supplement thereto of general application will be arbitrated at the National level. (Emphasis supplied).

At the hearing, both the Union and the Postal Service made it clear that neither believes that a interpretive issue of general application is presented in any of the four cases scheduled for hearing. Although it is not entirely clear from the record whether the Postal Service consistently asserted this position throughout the grievance procedure of each of the four cases[5], it is clear that this is the position that the Postal Service took in the Step 4 written decisions in each case. Each Step 4 decision, in pertinent part, stated:

> It is our position that no interpretive issue involving the terms and conditions of the National Agreement is fairly presented in this case.

When the Union first asserted its position that no interpretive issue is uncertain; it is clear, however, that at the arbitration hearing the Union acknowledged that no such issue was present.

In light of the acknowledgement now by both parties that no interpretive issue of general application is involved, the arbitrator, under the explicit terms of the Agreement, is without authority to hear and resolve these cases on their merits. To resolve these grievances on the merits would be to amend, modify, or alter the terms and provisions of the Agreement in violation

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[5] In the Dubuque case, the June 29, 1987 Postal Service Step 3 decision indicated that an interpretive issue was involved. (Employer Exhibit 1C; Union Exhibit 1C). In the Peoria case, the Postal Service indicated in an October 23, 1987 memorandum to the Union that the Peoria grievance was referred to Step 4 in accordance with Article 15, Section 4.4(5) by the Postal Service. In the Peoria case, the Postal Service also took the position in the two Step 3 decisions issued before the October 23, 1987 memorandum that non-interpretive issues were involved.

of Article 15.4(A)(6) of the Agreement.

Because no interpretive issue of general application is involved and thus the arbitrator has no authority to resolve the instant grievances on their merits, the issue becomes one of what happens to these cases. Should they be remanded, as urged by the Union, to the regional level to be decided on the merits by regional level arbitrator, if necessary, or should they be dismissed in their entirety, as the Postal Service contends?

As indicated above, my conclusion is that these cases should be remanded through the regional level as urged by the Union.

First, there is nothing in the National Agreement which prohibits remand of non-interpretive issues by the national level arbitrator to regional arbitrators.[6]

Second, the parties, through negotiations, have created in the National Agreement a sophisticated mechanism for the resolution of their grievances or disputes. It is clear that in these cases there remains an ongoing, live dispute between the parties. Both parties agree, however, that the instant arbitrator, a national level arbitrator, does not have the authority to resolve the merits of this dispute because no

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[6] Although Article 15.2, Step 4 of the Agreement indicates that mutual agreement of the parties is required to remand cases from Step 4 to Step 3, this applies only to the parties themselves and does not prevent the national arbitrator from remanding cases to the regional level after the case has been presented to the arbitrator. In the absence of a specific contractual prohibition, the arbitrator has the inherent power to remand the case back to its proper place in the grievance procedure.

interpretive issue of general application is involved. Since no interpretive issue is involved, the appropriate level for the resolution of the merits of the ongoing dispute is the regional level, the level where non-interpretive issues are resolved under the Agreement.

This result is the only one that makes sense. To rule otherwise, would have the effect of creating a gap in the system the parties negotiated for the resolution of their disputes and would prevent the issues in this case from being resolved through the arbitration process.

Third, further support for the result reached here is derived from Arbitrator Mittenthal's decision in Case No. H4C-5A-C 13278, rendered on April 7, 1988 in a dispute between the Postal Service and the American Postal Workers' Union. In that case, arising out of grievance filed in Barrows, Alaska, Arbitrator Mittenthal, finding that the case did not present an interpretive issue, stated:

> That being so, there was no longer an interpretive issue under the National Agreement before this national arbitrator. Article 15, Section 4(D)(1) clearly provides that "only cases involving interpretive issues under this Agreement or supplements thereto of general application will be arbitrated at the National level." It follows that this grievance should be remanded to regional arbitration.[1]

The footnote referenced by Arbitrator Mittenthal stated:

> The Postal Service had argued throughout the grievance procedure that this grievance did not involve national issues and hence belonged in regional arbitration.

It is also significant in the Barrows case, just as in the instant case, that the lack of an interpretive issue under the National Agreement did not develop until the arbitration hearing itself.

Although Arbitrator Mittenthal in his award also indicated that the remand to regional arbitration was agreed to by both parties at the arbitration hearing, it is clear from a reading of the award that such agreement was not essential to his decision to remand the case.

The Postal Service arguments that the grievances should be dismissed in their entirety appear, upon close examination, to go to the merits of the instant grievances or, as suggested by the Union in its brief (p. 19), they are so intertwined with them as to be almost indistinguishable from them. For this reason, they must be rejected. To the extent that they go to the merits, this arbitrator, of course, cannot resolve the grievances based on them because both parties acknowledged that the cases do not present interpretive issues. Thus, the appropriate place to present these arguments is before a regional level arbitrator.

A few additional comments regarding the Postal Service arguments: The Union concedes that the Bloch Award is a national level award and as such is final and binding on the parties. The application of that award to the non-interpretive issues in the instant cases, however, is for the regional level arbitrator and not for the national level arbitrator. It is for the regional

level arbitrator to determine whether any or all of the issues in the instant cases are resolved or disposed of by the Bloch Award. The Union also acknowledges that a regional level arbitrator cannot overrule a national level arbitrator. It thus concedes that if the issues presented in the instant cases are identical to the ones presented to and resolved by Arbitrator Bloch, the regional arbitrator is bound by the Bloch Award. The fact that the Union's grievances ultimately may be found by the regional level arbitrator to lack merit under the Bloch Award, however, does not mean that they should be dismissed now by the national level arbitrator.

Moreover, the Union may be able to show a factual basis for distinguishing the instant grievances from the Bloch Award. The Postal Service here contends that the Union cannot make such a showing. That argument, however, is for the regional level arbitrator to consider and resolve, not the national level arbitrator.

The Postal Service further argues that the Union is attempting here to obtain through arbitration what it could not obtain at the bargaining table. In addition, a "rights" arbitration forum is an improper forum in which to do this. Obviously, neither the national level arbitrator nor the regional level arbitrator is an "interest" arbitrator, and neither level of arbitration is an appropriate forum for "interest" arbitration. As the Union points out in its brief (p. 26), however, these Postal Service arguments are in the nature of

affirmative defenses, and as such should be presented to the regional level arbitrator. It may be that the Postal Service will prevail with these arguments. This, however, is a decision for the regional level arbitrator, and not this arbitrator.

The Postal Service further contends that regional arbitration on the issue presented in these cases would only serve to erode the Bloch Award. According to the Postal Service, no legitimate material factual issues exist which warrant the hearing of these cases at the regional arbitration level. The Union is attempting to back door the Bloch Award and carve out several exceptions to it under the guise of factual interpretation for the purpose of eroding the precedential stature of the Bloch Award. I cannot agree. As indicated above, to the extent that the issue presented by the instant cases is identical to the one resolved by Arbitrator Bloch, the regional arbitrator can be expected to rule for the Postal Service on the merits. The regional arbitrator will also be in a position to determine whether legitimate material factual differences exist or not.

Finally, the Postal Service argues that the Union position taken at the arbitration hearing is inconsistent with its claim earlier in the grievance procedure. It is true that the Union in each of the grievances did assert earlier a belief that interpretive issues of general application were involved. So did the Postal Service in at least one of these cases, and arguably in two of them. Irrespective of who asserted what position and

when, the assertion of one position earlier does not bar either party from changing its position at the arbitration hearing and asserting that it no longer believed an interpretive issue of general application was involved. In the Mittenthal Award discussed above, this same situation developed, i.e., the change to the position that no interpretive issue of general application was involved occurred at the arbitration hearing. Despite this, Arbitrator Mittenthal ruled that the grievance should be remanded to regional arbitration, which is the same conclusion I reach in the instant matter.

AWARD

For all the reasons set forth above, the grievances do not present an interpretive issue of general application under the National Agreement and therefore they are remanded to regional arbitration.

Bernard Dobranski
Arbitrator

December 14, 1990
Grosse Pointe Park, Michigan