

REGULAR ARBITRATION PANEL

C# 10898

In the Matter of the Arbitration) GRIEVANT: CLASS ACTION
between) POST OFFICE: LIVERPOOL, N.Y.
UNITED STATES POSTAL SERVICE) MANAGEMENT CASE NO. N7N-IW-C-34921
and) UNION CASE NO. GTS #5000
NATIONAL ASSOCIATION OF LETTER)
CARRIERS (NALC)

BEFORE: ROBERT L. MITRANI, ARBITRATOR:

APPEARANCES:

FOR THE U.S. POSTAL SERVICE: MARK WICKES,
GENERAL FOREMAN, MAILS

FOR THE UNION: SPENCER BAKER, 2ND V.P.

PLACE OF HEARING: SYRACUSE, N.Y.

DATE OF HEARING: MAY 30, 1991

AWARD:

THE POSTAL SERVICE DID NOT VIOLATE THE NATIONAL AGREEMENT WHEN SUPERVISOR FRANK KLOCEK DELIVERED EXPRESS MAIL AT THE BAYBERRY POST OFFICE. PLEASE SEE LAST PARAGRAPH OF AWARD.

DATE OF AWARD:

JUNE 7, 1991


ROBERT L. MITRANI, Arbitrator

IN THE MATTER OF THE ARBITRATION)	
BETWEEN)	
UNITED STATES POSTAL SERVICE)	
AND)	OPINION AND AWARD
NATIONAL ASSOCIATION OF LETTER CARRIERS (AFL-CIO))	ROBERT L. MITRANI
REGIONAL CASE NO. N7N-IW-C-34921)	
LOCAL GRIEVANCE: GTS-#5000)	
GRIEVANT: CLASS ACTION)	

This case was heard on Thursday, May 30, 1991 in Syracuse, New York before Arbitrator, Robert L. Mitrani, pursuant to the National Agreement between the parties. The Arbitrator is on the regular regional arbitration panel and this was a regular arbitration assignment.

APPEARANCES

U.S.P.S.	MARK WICKES GENERAL FOREMAN, MAILS
N.A.L.C.	SPENCER BAKER 2ND V.P.

(A) ISSUE

"Did the Postal Service violate the National Agreement when Supervisor Frank Klocek delivered Express Mail at the Bayberry Post Office, and if so, what shall the remedy be?"

(B) BACKGROUND AND DISCUSSION

In its opening statement the Union stated the following:

"It is the job of Letter Carriers to deliver the mail, It is the job of a supervisor to make sure that Letter Carriers do so. In the case before you, the supervisor in the Bayberry office made it a habit of disregarding this simple fact. Management will no doubt argue that the delivery of Express Mail is different. Because of the guaranty of delivery by a certain time, management claims the right to deliver Express pieces. The Union is not ques-

tioning that right, if there is no other method of effecting timely delivery.

Both exhibit and testimony today will demonstrate that the supervisor in Bayberry delivered at least 24 pieces of Express mail over a six month period not because they would be late if he didn't, but rather that finding a Letter Carrier to deliver the pieces would, in his opinion, be 'a waste of time'.

The limitations placed on management in Art. 1.6 of the National Agreement are very specific. The restrictions contain no exception that management is prohibited from performing craft duties unless it is inconvenient or is a waste of time to find a craft employee.

The disregard for the National Agreement demonstrated by the management of the Liverpool offices was blatant. Because of this, the Union asks that you send a clear and strong message by sustaining this grievance."

The following is a pre-arbitration settlement made in Washington, D.C. on 11/1/88 between the parties (first three paragraphs).

On October 14, 1988, you and Charles Dudek met in prearbitration discussion of the above-captioned grievances.

During this discussion, we mutually agreed the general delivery and pickup of Express Mail is bargaining-unit work. It is also understood that management has not designated this work to any specific craft. In accordance with the above understanding, management is prohibited from performing bargaining-unit work except as enumerated in Article 1, Section 6.

This settlement is not intended to prohibit management from assigning available personnel as necessary, including nonbargaining-unit persons, to meet its commitment where Express Mail is concerned in connection with noon and 3 p.m. deliveries and office closings.

In its grievance the Union stated the following:

"The attempt to make the timely delivery of express mail a factor in this grievance is without merit. Express mail is brought to the Liverpool office at 12:30 p.m. daily. It is immediately sorted and the pieces for Bayberry are

taken by the VMF driver arriving before 1:00 p.m. The pieces in question were not required to be delivered until 3:00 p.m. The farthest delivery from the Bayberry office is less than 4 miles. The Union finds it impossible to believe that management would have difficulty finding a carrier to effect delivery. Rather, the Union contends that management feels it's a waste of time and so stated at the Step 1 meeting. The exceptions to the prohibition of management doing craft work are very clearly listed in Article 1, Section 6. It being possibly inconvenient to find a carrier is not one of them."

In its Step 2 response to the grievance, management stated the following:

Although Article 1.6 prohibits management from performing bargaining unit work, delivering of Express Mail in a timely manner is permitted. It is permitted when it is necessary to meet the time commitment of its delivery.

Clearly, the Express Mail that was delivered by the supervisor, arrived at the Bayberry Branch of the Liverpool NY office after the carriers had left the office for their routes. The need to deliver before the deadline allows management to take whatever means it can. It would be illogical, as the union requested, for the supervisor to locate each carrier on his own route and give him the Express Mail piece to deliver. This would entail a loss of time on the part of the supervisor while looking for the carrier. It would also be a waste of time if the carrier had already delivered that portion of the route for which the Express mail piece is addressed.

The union also contends that management should schedule a carrier from the Overtime Desired List. This again is inconceivable. Any regular employee who is called in on his non-scheduled day is guaranteed eight (8) hours of work or pay. Most of the 24 instances that the union cited deal with one or two Express mail pieces. Handling the pieces until an Overtime Desired carrier returns from his route might result in missing the delivery deadline.

Based on the reasons cited above, the grievance is denied.

James Coleman of the USPS gave management's Step 3 answer to the grievance on 2/8/91. That answer is attached to this award as an exhibit.

The parties are aware of the extensive discussion that took place at the hearing on 5/30/91. In its opening statement, the Service stated the following:

"The union has made a claim that Supervisor Klocek delivered 24 pieces of Express Mail over a period of six months during 1990. The period cited is from March 2nd through October 5th. During this time, the union was very much aware of the supposed deliveries by Klocek, yet a grievance was not filed until October 23, 1990."

The Arbitrator indicated that based on the clear contract language, as well as the history of this case, the grievance could not have any retroactive effect beyond the limits of the contract.

As to the merits of the case, the goals of supervisor Frank Klocek and the Union are the same. It does not look good when someone in civilian clothes delivers express mail. It should be delivered by someone in uniform.

Klocek said that the express mail that causes some difficulty arrives at Bayberry at about 1:00 p.m. The office does schedule for a letter carrier to be coming back from a route at this time. This person can then handle the express mail. But there are bad days from time to time and schedules are thrown off. By the same token a 3:00 p.m. deadline must be met for delivery. Klocek said that his practice is to always attempt to have a letter carrier take out the express mail. Klocek also said that of the 24 pieces mentioned by the union in the grievance, he only delivered 6 to 8 pieces. The fact that a report may indicate that he signed for a piece of express mail does not mean it was delivered by Klocek. There were many cases where Klocek gave the piece to a letter carrier to deliver.

The 11/1/88 pre-arbitration agreement gives management the right to use non-bargaining unit personnel "... to meet its commitment where Express Mail is concerned in connection with noon and 3:00 p.m. deliveries and office closings."

Frank Klocek's testimony was not contradicted by either testimony or evidence. He only made deliveries of Express Mail in order to meet the delivery deadline. As he stated, he prefers for the letter carriers to make these deliveries. However, there are times when his options are so restricted for one reason or another because of time constraints that he finds that it is necessary to make a delivery. If there is a

fault it is the one or two deliveries Klocek made to the store in the same mall as the post office.

The Union made what the Arbitrator thought was a very good point. At the Liverpool post office, management has scheduled a carrier in such a manner so that this carrier can take care of express mail and make the 3:00 p.m. deadline without problems. There is a tendency for issues such as the one involved in this case to cause morale problems. Although the Arbitrator finds no violation of the National Agreement, it might behoove the Service to have a similar system in Bayberry that exists in Liverpool. This certainly will meet the needs of management and the union.

AWARD

The Postal Service did not violate the National Agreement when Supervisor Frank Klocek delivered Express Mail at the Bayberry Post Office. Please see last paragraph of award.

Robert L. Mitrani

ROBERT L. MITRANI, Arbitrator
June 7, 1991

February 8, 1991

Mr. Robert J. Massaroni, NBA
National Assoc. Letter Carriers
PO Box 775
Schenectady, NY 12301-0775

M7N-1W-C 34921
Class Action
Liverpool, NY 13090
BAY0790

Dear Mr. Massaroni:

On January 25, 1991, we met with your designee, B. Cook, to discuss the above captioned grievance at Step 3 of our contractual grievance procedure.

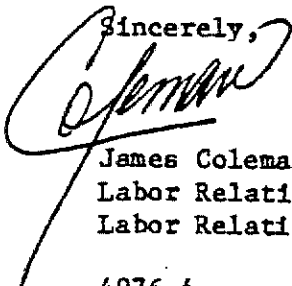
This grievance pertains to union's alleged violation of provisions under Articles 3, 10 and 15 of National Agreement. Specifically, union contends that Bayberry supervisor delivered twenty-four (24) pieces of Express Mail during the period beginning March 2 through October 13, 1990, including thirty-eight (38) pieces delivered with no signature by delivering employee. Additional union's contentions are indicated on Standard Step 1-2 Grievance Appeal Form, requesting management ensure all Express Mail is signed in by clerk and out by delivering employee. Also, payment of twenty-four (24) hours at the O/T rate to be divided equally among Bayberry carriers on OTDL.

Upon full discussion and consideration of this matter, it is determined that this grievance is denied.

The reason for this decision is investigation and review of case file, including information submitted by union to support contention that management violated provisions under above cited articles is not valid. In this instant grievance, evidence indicates that this issue was known to union personnel in March 1990, yet union elected not to file a grievance until October 1990 (i.e., Article 15) and requesting payment for entire period is unreasonable. Most importantly, general delivery and picking up of Express Mail is bargaining unit work, however, management has yet to designate this work to a particular craft, but management is prohibited from performing bargaining unit work except as enumerated in Article 1.6. Management may assign available personnel as necessary, including non-bargaining personnel to meet commitment where Express Mail is concerned. Therefore, failure of union to submit specific evidence to support granting remedy requested, I find no violations, alleged by union.

In our judgement, the grievance does not involve any interpretive issue(s) pertaining to the National Agreement or any supplement 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.

Sincerely,



James Coleman, Jr.
Labor Relations Executive
Labor Relations Division

4076-4

