C# 15602

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration between UNITED STATES POSTAL SERVICE and AMERICAN POSTAL WORKERS UNION with NATIONAL ASSOCIATION OF LETTER CARRIERS as Intervenor	GRIEVANCE: Class Action POST OFFICE: New Haven, CT CASE NO.: B90V-4B-C 93032199

BEFORE: Carlton J. Snow, Professor of Law

APPEARANCES: For the Postal Service: Mr. John W. Dockins

For the APWU: Mr. Lee W. Jackson

For the NALC: Mr. Keith E. Secular

PLACE OF HEARING: Washington, D.C.

DATE OF HEARING: September 22, 1995

DATE OF AWARD: July 15, 1996

RELEVANT CONTRACTUAL PROVISIONS: MOU of May 9, 1994

CONTRACT YEAR: 1991-1994

TYPE OF GRIEVANCE: Contract

AWARD SUMMARY: The grievance challenged the right of management to assign other than MVS employees to transport bulk quantities of Express Mail as a violation of a May 9, 1994 Settlement Agreement, and the grievance is denied.

Carlton J. Snow

Carlton J. Snow
Professor of Law

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the New Haven, Connecticut Post Office did not violate the May 9, 1994 settlement agreement between the Employer and the APWU in Case No. H7V-A-C 18841 and its companions when management assigned other than Motor Vehicle Service Division employes to transport bulk quantities of Express Mail. The grievance is denied. It is so ordered and awarded.

DATE: 7-24-96

Carlton J. Snow
Professor of Law

IN THE MATTER OF ARBITRATION)
)
BETWEEN)
)
UNITED STATES POSTAL SERVICE)
)
AND) ANALYSIS AND AWARD
)
AMERICAN POSTAL WORKERS UNION)
) Carlton J. Snow
WITH) Arbitrator
)
NATIONAL ASSOCIATION OF)
LETTER CARRIERS)
as Intervenor)
(Grievance: Class Action))
(Case No. B90V-4B-C 03032199))

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from June 12, 1991 through November 20, 1994. A hearing occurred on September 22, 1995 in a conference room of the United States Postal Service headquarters located at 475 L'Enfant Plaza Southwest in Washington, D.C. Mr. Lee W. Jackson of the Washington, D.C. law firm of O'Donnell, Schwartz, and Anderson represented the American Postal Workers Union. Mr. John W. Dockins, attorney, represented the United States Postal Service. Mr. Keith E. Secular with the law firm of Cohen, Weiss, and Simon in New York, N.Y. represented the National Association of Letter Carriers as Intervenor.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to

examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. Mr. Ed Greenberg with Diversified Reporting Services, Inc., reported the proceeding for the parties and submitted a transcript of 135 pages. The arbitrator also maintained extensive personal notes. The advocates fully and fairly represented their respective parties.

There were no challenges to the arbitrator's jurisdiction, and the parties stipulated that the matter properly had been submitted to arbitration. They authorized the arbitrator to state the issue. The parties elected to submit the matter on the basis of evidence presented at the hearing and post-hearing briefs, and the arbitrator officially closed the hearing on March 4, 1996 after receipt of the final brief in the matter. Out-of-state travelling due to a death in the arbitrator's family delayed preparation of the report.

II. STATEMENT OF THE ISSUE

The issue before the arbitrator is as follows:

> Did the New Haven, Connecticut General Post Office violate the May 9, 1994 Memorandum of Understanding between the Employer and the American Postal Workers Union in Case No. H7V-A-C 18841 and its companions when management assigned other than Motor Vehicle Service Division employes to transport bulk quantities of

express mail? If so, what is the appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISIONS

Memorandum of Understanding of May 9, 1994

1. It is understood that management has not designated the delivery, transportation, or collection of Express Mail to any specific craft.

2. The motor vehicle craft is the primary craft to perform the transportation of bulk quantities of mail between postal facilities. As such, if a combination of such work with other Motor Vehicle Service work would result in eight or more continuous hours of Motor Vehicle Service work, and where consistent with an efficient and effective operation, the performance of the work should be assigned to an employee of the motor vehicle craft in any facility which has Motor Vehicle Service employees.

3. These principles apply to the transportation of all classes of mail, including Express Mail, between postal facilities.

4. This settlement is not intended to prohibit management from assigning available personnel as necessary to meet its delivery commitment where Express Mail is concerned.

IV. STATEMENT OF FACTS

In this case, the American Postal Workers Union challenged management's interpretation of a settlement agreement; and the National Association of Letter Carriers agreed with the Employer's interpretation. On May 9, 1994, the Employer and the American Postal Workers Union entered into a Memorandum of Understanding which was intended to resolve a number of grievances. The grievances generally asserted that using other personnel than Motor Vehicle Craft employes to transport Express Mail in bulk quantities violated the collective bargaining agreement between the Employer and the American Postal Workers Union. The thrust of the Union's argument was that, in some circumstances, transporting Express Mail was actually transporting "bulk quantities" of mail that fell within the position descriptions of workers represented by the American Postal Workers Union. From this premise the Union concluded that transporting bulk quantities of Express Mail was within the exclusive jurisdiction of the American Postal Workers Union. Such jurisdictional matters are not at issue in this particular dispute, no conclusion has been reached by the arbitrator with respect to such jurisdictional issues. The Employer maintained that movement or delivery of Express Mail, in whatever quantity, was not within the exclusive jurisdiction of any craft and that, therefore, the manner and methods of moving Express Mail constituted a matter controlled by managerial discretion.

The original grievances became the subject of

discussion between Mr. Donald Ross, APWU Motor Vehicle Division Director, and Mr. Daniel Magazu, Labor Relations Representative. After approximately half a dozen meetings, the parties reached the following agreement:

1. It is understood that management has not designated the delivery, transportation, or collection of Express Mail to any specific craft.

2. The motor vehicle craft is the primary craft to perform the transportation of bulk quantities of mail between postal facilities. As such, if a combination of such work with other Motor Vehicle Service work would result in eight or more continuous hours of Motor Vehicle Service work, and where consistent with an efficient and effective operation, the performance of the work should be assigned to an employee of the motor vehicle craft in any facility which has Motor Vehicle Service employees.

3. These principles apply to the transportation of all classes of mail, including Express Mail, between postal facilities.

4. This settlement is not intended to prohibit management from assigning available personnel as necessary to meet its delivery commitment where Express Mail is concerned. (See, Union's Exhibit No. 4, pp. 2-3).

Following the Memorandum of Understanding, the parties remanded a number of pending national level Motor Vehicle Craft grievances to the regional level for resolution in accordance with the settlement agreement. One such grievance was Case No. B90V-4B-C 93032199. (See, Joint Exhibit No. 2).

Case No. B90V-4B-C 93032199 arose in New Haven, Connecticut. The American Postal Workers Union asserted that the Employer was violating the parties' National Agreement by using letter carriers to transport bulk quantities

of Express Mail between terminal points and stations or branches. The Employer denied the grievance at all steps with the general explanation that "any qualified postal employee can deliver Express Mail." (See, Joint Exhibit No. 2). After the Memorandum of Understanding on May 9, 1994 in Case No. H7V-A-C 18841, the American Postal Workers Union renewed its claim to the transportation work and cited Section 2 of the Memorandum of Understanding of May 9, 1994. On August 4, 1994, Mr. Edward Pierce, Labor Relations Specialist, told Mr. Anthony Salzo, APWU Director of Industrial Relations, he interpreted the Memorandum of Understanding of May 9, 1994 to mean that "the transportation of Express Mail between facilities has not been given to MVS." (See, Joint Exhibit No. 2).

On May 17, 1995, Messrs. Ross and Magazu met to review the nature of their dispute. Subsequently, Mr. Magazu wrote Mr. Ross on July 24, 1995 that:

> The issue in this grievance is whether the prearbitration settlement of Case H7V-3A-C 18841 requires Management to assign the transportation of bulk quantities of mail to employees in the Motor Vehicle Craft if a combination of such work with other Motor Vehicle Service work would not result in eight or more continuous hours of Motor Vehicle Service work.
>
> The Union contends that, since the settlement states that the Motor Vehicle Craft is the primary craft to perform the transportation of bulk quantities of mail between postal facilities, all such work must be assigned to Motor Vehicle Craft employees, even if the combination of such work with other Motor Vehicle Service work results in less than eight continuous hours of Motor Vehicle Service work.
>
> It is the position of the Postal Service that

no national interpretive issue involving the terms and conditions of the National Agreement is presented in this case. However, inasmuch as the Union did not agree, the following represents the decision of the Postal Service.

The terms of the settlement are clear and unambiguous. Part 2 of the settlement states:

> The motor vehicle craft is the primary craft to perform the transportation of bulk quantities of mail between postal facilities. As such, if a combination of such work with other Motor Vehicle Service work would result in eight or more continuous hours of Motor Vehicle Service work, and where consistent with an efficient and effective operation, the performance of the work should be assigned to an employee of the motor vehicle craft in any facility which has Motor Vehicle Service employees.

The designation of the motor vehicle craft as the primary craft does not mean that other crafts cannot perform the work in question. It means that the work should be assigned to the motor vehicle craft in the circumstances described in the settlement: "eight or more continuous hours"; "consistent with an efficient and effective operation"; "in any facility which has Motor Vehicle Service employees"; and without inhibiting the Postal Service's ability "to meet its delivery commitment where Express Mail is concerned." (See, Joint Exhibit No. 3).

Consistent with its interpretation of the Memorandum of Understanding of May 9, 1994, the Employer denied the grievance. When the parties were unable to resolve their differences, the matter proceeded to arbitration at the national level.

V. POSITION OF THE PARTIES

A. The American Postal Workers Union

The American Postal Workers Union contends that applicable rules of contract interpretation support its understanding of the Memorandum of Understanding of May 9, 1994. According to the APWU, it would be inappropriate for the arbitrator to rely on the "plain meaning" rule of contract interpretation in concluding that the Settlement agreement does not oblige the Employer to assign Express Mail bulk transportation to the Motor Vehicle Craft unless a combination of such work with other craft duties would result in eight or more continuous hours of work. The Union maintains that the correct interpretation of the document is found in the intent of the parties at the time they reached their agreement, and that intent allegedly was for management to assign bulk transportation of Express Mail to Motor Vehicle Service employes.

According to the American Postal Workers Union, the "principal purpose" rule of contract interpretation should provide the primary guide in resolving the dispute between the parties. It is the position of the APWU that the principal purpose of the parties in reaching an agreement on May 9, 1994 was to secure for the Motor Vehicle Craft the work of transporting Express Mail in bulk. At the time of the negotiation, the work was being assigned to other crafts, and the Union maintains that its principal purpose in reaching the settlement agreement was to lay claim to such work. Moreover, the Union allegedly made clear at the

bargaining table that the APWU had no intention of relinquishing the transportation of Express Mail in bulk that already was being performed by craft members assigned on an "auxiliary" or an "available time" schedule that required less than eight hours of work.

The American Postal Workers Union contends that bargaining history supports its understanding of the Memorandum of Understanding and justifies its contention that the impact of the settlement agreement was not intended to focus the Employer's obligation to assign Motor Vehicle Craft employes the work of transporting Express Mail in bulk on "auxiliary" or "available time" schedules of less than eight hours. According to the APWU, the settlement agreement must be interpreted only within the context of the Union's attempt to claim the work of transporting Express Mail in bulk between postal facilities. It is the position of the APWU that this clear-cut goal caused the Union to object to the Employer's initial language regarding eight or more continuous hours of transportation work before "Express Mail" work would be assigned to a Motor Vehicle Craft employe. According to the Union, the Employer agreed to change language in the Memorandum of Understanding of May 9, 1994 to include the phrase "a combination of such work with other Motor Vehicle Service work would result in. . . ." The change allegedly came because of Mr. Ross's explanation of the existing use of "auxiliary" and "available time" schedules. In such circumstances, it allegedly was understandable and

logical for the APWU to assume that the final language of agreement would not oust the Motor Vehicle Craft from the Express Mail transportation work it already performed on "auxiliary" and "available time" schedules.

The APWU maintains it informed the Employer that, by entering into the settlement agreement, the Union did not intend to give up work and that it considered management to be obligated to assign Express Mail in bulk to the Motor Vehicle Craft on "auxiliary" and "available time" schedules, as had been the practice in the past. The Union contends that the decision of Arbitrator Mittenthal in Case No. H7S-A-C 24946 supports its understanding of the settlement agreement and justifies its conclusion that the agreement should not be interpreted to oust the APWU of its jurisdiction over "auxiliary" and "available time" scheduling of the disputed work. It is the position of the Union that "the customary way of doing things becomes the contractually correct way of doing things" and means that the work the Union always performed was presumptively within its jurisdiction. Such work allegedly may not be lost through the settlement agreement.

It is the belief of the Union that other principles of contract interpretation support its understanding of the agreement and justify its belief that the parties never intended to deprive the Union of the Express Mail transportation it already was performing simply because that transportation work might occur on less than a full eight hour schedule.

The APWU maintains that its understanding of the agreement should prevail because it made its meaning clear to the Employer and had no reason to know that management attached a different meaning to the language. Moreover, the Union argues that there is a strong presumption against a waiver of existing rights. The agreement, according to the Union's theory of the case,needs to be construed in view of what a reasonable person would have concluded under similar circumstances. The Union concludes that the Employer must be required not only to assign the transfer of Express Mail in bulk to the Motor Vehicle Craft when the combination of such work with other Motor Vehicle duties results in eight or more hours of continuous work but also in all circumstances where, prior to the settlement agreement, such work was performed on "auxiliary" or "available time" schedules.

B. The Employer

The Employer argues that the Memorandum of Understanding of May 9, 1994 is clear and unambiguous and, accordingly, should be given its plain meaning. It is the position of the Employer that the plain language of the parties' agreement establishes five criteria to be met in order for work to be assigned to the Motor Vehicle Craft. According to the Employer, work should be assigned to the Motor Vehicle Craft pursuant to the parties' settlement agreement only if (1) it

results in eight hours of continuous work; (2) the assignment is consistent with an efficient and effective operation; (3) the facility has Motor Vehicle Craft employes assigned to it; (4) the mail is in bulk quantities; and (5) the transportation is between postal facilities. The Employer believes that only if all criteria are met is there an obligation to assign work to the Motor Vehicle Craft pursuant to the Memorandum of Understanding. If the criteria are not met, it is the belief of the Employer that management may assign the work to either a Motor Vehicle Craft employe or any other craft employe, at its discretion.

The Employer argues that the disputed settlement agreement already has been the subject of a regional arbitration decision and was found to be clear and unambiguous. Moreover, the Employer also maintains that weight should be given to the fact that the agreement was negotiated by two experienced negotiators dealing in good faith at arm's length. The Employer believes that the precise language of the agreement combined with the experience of the negotiators makes clear the fact that there was no ambiguity about the meaning of the settlement agreement.

It is the belief of the Employer that the only "real" dispute between the parties is the meaning of the "eight hour" provision set forth in the second paragraph of the settlement agreement. According to the Employer, the "eight hour" issue arose only after the grievance had been remanded to the parties following resolution of the Memorandum of

Understanding of May 9, 1994. Local representatives allegedly failed to agree on the correct application of the settlement agreement because they selectively depended on paragraphs 1 and 4 of the document and failed to adhere to the agreement as a whole. It is the contention of the Employer that the parties resolved their differences with respect to interpreting the agreement as a whole document but that exactly what is required under the "eight hours of continuous work" requirement remains unresolved and, hence, came to arbitration.

The Employer argues that the bargain of the parties as set forth in their settlement agreement now must be protected. The Employer asserts that the parties' agreement makes clear the absence of any obligation to grant any work involving the transportation of Express Mail to Motor Vehicle Craft employes, unless that work, in combination with other Motor Vehicle Service work, would result in at least eight hours of continuous work. The Employer argues that the provision cannot simply be ignored. It is the understanding of the Employer that the APWU cannot be compelled to give up anything under the settlement agreement because the agreement makes no mention and has no effect on the existing work of the Motor Vehicle Craft. In such circumstances, the Employer believes that the Memorandum of Understanding of May 9, 1994 must be given its plain meaning.

C. National Association of Letter Carriers

The National Association of Letter Carriers believes that the Employer correctly interprets the settlement agreement between the parties. As the NALC sees it, the issue in the case is whether management violated the settlement agreement by failing to assign Express Mail transportation work to Motor Vehicle Craft employes, even though there is insufficient other MVS work to create eight or more hours of continuous work. It is the belief of the National Association of Letter Carriers that the interpretation of the American Postal Workers Union should be selected only if the settlement agreement is interpreted to require that the disputed "Express Mail" work be assigned to the APWU irrespective of the hours of work created or the efficiency and effectiveness of the assignment. The NALC contends that such a result would be contrary to the clear language of the settlement agreement as well as its bargaining history.

It is the belief of the National Association of Letter Carriers that Section 2 of the agreement expressly conditioned the obligation to assign work to the MVS on whether such an assignment would result in at least eight hours of work and would be consistent with an efficient and effective operation. It is the view of the NALC that Section 2 of the settlement agreement contains the only language in the document providing for an assignment of work to MVS employes. Accordingly, the NALC concludes that requirements of the agreement simply cannot be ignored on the theory that MVS employes have an

a priori right to such work. The NALC argues that designating the MVS as the "primary craft" for transportation does not create any right to particular work apart from provisions of the settlement agreement itself. It is the position of the NALC that the APWU is attempting to establish an all encompassing obligation for management to assign all transportation work to MVS employes, an obligation that allegedly is inconsistent with the settlement agreement and contrary to rights of NALC bargaining unit members.

The NALC urges that care be taken in resolving the dispute between the APWU and the Employer in a way that does not prejudice the rights of the parties to assert jurisdiction over disputed work in the future. The NALC maintains that the settlement agreement simply cannot be interpreted to require the transfer of work to another bargaining unit that members of the NALC bargaining unit historically had performed. Such a result would violate arbitral precedents holding that craft jurisdictional issues are to be settled by past practice and not by abstract definitions of "craft work." It is the position of the NALC that relevant documents are silent regarding how the disputed work presently is assigned or for how long it might have been so assigned. According to the NALC, there is no reason for the arbitrator to rule on potential jurisdictional disputes in the guise of interpreting a settlement agreement that is clear and unambiguous and does not even address existing jurisdictional boundaries.

VI. ANALYSIS

A. No Intent to Fix Jurisdictional Boundaries

The issue in the case can be understood only in reference to "moving papers" of the grievance. In its original form, the grievance set forth a claim that the Employer in New Haven, Connecticut violated the National Agreement by using letter carriers to transport bulk quantities of Express Mail between stations and branches. According to the American Postal Workers Union, such work belongs to members of its bargaining unit alone because the work falls within the jurisdiction of the Motor Vehicle Craft. The Employer rejected the contention on its merits and argued that "any qualified postal employee" may be assigned to deliver Express Mail.

The "jurisdictional" dispute in New Haven, Connecticut was never settled. Instead, the parties thought the grievance to be capable of resolution under terms of a settlement agreement reached in Case No. H7V-3A-C 18841 and its companions. In those cases, the American Postal Workers Union asserted a jurisdictional right to transport bulk mail, without regard to whether it was "express" mail. The settlement produced the following agreement:

1. It is understood that management has not designated the delivery, transportation, or collection of Express Mail to any specific craft.

2. The motor vehicle craft is the primary craft to perform the transportation of bulk quantities of mail between postal facilities. As such, if a combination of such work with other Motor Vehicle Service work would result in eight or more continuous hours of Motor Vehicle Service work, and where consistent

with an efficient and effective operation, the performance of the work should be assigned to an employee of the motor vehicle craft in any facility which has Motor Vehicle Service employees.

3. These principles apply to the transportation of all classes of mail, including Express Mail, between postal facilities.

4. This settlement is not intended to prohibit management from assigning available personnel as necessary to meet its delivery commitment where Express Mail is concerned. (See, Union's Exhibit No. 4, pp. 1-2).

The hope of the parties that the New Haven grievance could be settled by reference to the settlement agreement proved to be mistaken. Instead, the interpretation of the settlement agreement is now in dispute.

The Employer and the American Postal Workers Union disagreed regarding the meaning of the second paragraph of their settlement agreement. In the second sentence of the second paragraph, there is a reference to "eight or more continuous hours" of work; and the meaning of the "eight hour" language is believed by the American Postal Workers Union to be crucial to a resolution of the New Haven agreement. The Employer argued the language clearly and unambiguously requires that eight or more hours of continuous work must be available from a combination of "Express Mail" work with existing duties before any obligation to MVS employes arises. The National Association of Letter Carriers argued that the settlement agreement of May 9, 1994 may not be used to divest its bargaining unit of work over which its members previously acquired jurisdiction by past practice. The

American Postal Workers Union presented a similar "jurisdictional" argument, although basing it on a more abstract notion of "craft jurisdiction" than on past practice. The American Postal Workers Union contended that the settlement agreement may not be used to divest its membership of "Express Mail transportation" work previously performed on less than eight hour schedules.

There has been considerable misunderstanding regarding the operation of the settlement agreement. It did not resolve jurisdictional issues on either "past practice" or "craft jurisdictional" grounds. Indeed, the first paragraph of the settlement agreement stated with clarity "It is understood that management has not designated the delivery, transportation, or collection of Express Mail to any specific craft." (See, Union's Exhibit No. 4). Although signing the settlement agreement, the American Postal Workers Union does not now agree with the quoted statement because it believes that there are circumstances where "craft jurisdiction" will have the effect of designating the transportation of Express Mail to its members. Similarly, the National Association of Letter Carriers does not agree that management has not designated the delivery, transportation, or collection of Express Mail to its members in some cases and, accordingly, maintains that its membership cannot be divested of "Express Mail" work which its bargaining unit historically has performed.

The two unions see the assignment of work in terms of jurisdiction. The Employer sees the assignment of work in terms of delivery commitments when it comes to transporting

Express Mail. The Employer, therefore, took the position that it has a right to use employes to meet its "Express Mail" commitment without regard to jurisdictional issues. Although interesting and highly important, none of those jurisdictional issues is directly before the arbitrator in this particular case. Instead, the issue in this dispute is:

> Under what conditions can a failure to assign particular work to an MVS employe violate terms of the May 9, 1994 Memorandum of Understanding?

The fact that the American Postal Workers Union or the the National Association of Letter Carriers each may believe it has jurisdictional claims to particular work does not alter the application of the settlement agreement of May 9. To understand the meaning of a contract "the primary search is for a common meaning of the parties, not a meaning imposed on them by (an arbitrator.)" (See, Restatement (Second) of Contracts, § 201, comment c, p. 81). The objective of an arbitrator is to carry out the intent of the parties and not to impose interpretations on them contrary to their understanding. A "rights" arbitrator is a contract reader and not a contract maker. To give effect to the parties' intent, the bargain they struck must be understood. That understanding must flow from the words and circumstances in which they bargain.

There is a presumption deeply embedded in the rules of contract interpretation which teaches that external modifications of contracts must be minimized. Arbitral modification

of contracts between parties who bargained agreements into existence with equal power and information are subject to strong criticism. The presumption is that knowledgeable parties, such as these, do a better job than a "rights" arbitrator of crafting an agreement specifically designed to serve their interests. One school of thought holds that asymmetrically informed parties at the time of bargaining might provide a basis for construct modification by an arbitrator, but no evidence in this case supported such a basis for relief.

Some interpretive cases that might be candidates for external modification fall into a twilight zone of arbitral jurisprudence. These cases often involve commercial impracticability or mistake and include some event causing a negotiated bargain to misfire because of unexpected circumstances. In such cases the parties' contractual intent fails as an unerring source of guidance because their expectations did not cover the unexpected circumstances. Arbitrators and courts in such cases search for what is fair and efficient and interpret an agreement within the context of such norms. There was no evidence of unexpectedness in this case which suggested that the parties' bargain was not functioning as expected to the extent that it implicated the doctrine of impracticability.

The American Postal Workers Union argued that the "plain meaning" rule of contract interpretation should not be applied in this case because words used in the settlement

agreement failed to reflect the entirety of the bargain struck by the parties. It is important to understand that there is no formalistic rule in contract interpretation according to which the "plain meaning" of language may be used to subvert the intent of the parties or to deprive one or the other of their bargain. The "plain meaning" rule is nothing more than a recognition that people use words with the objective of expressing their agreement. Where the words used are consistent with the bargain, they will be given great weight as an expression of the parties' intent. The "plain meaning" rule is a simple tool of interpretation used to find and give effect to contractual intent. It is not a means by which the parties' intent may be ignored.

As part of their bargain, the parties stated that no craft specifically has been assigned "Express Mail" duties; and the settlement agreement did not prohibit assigning employes as necessary to meet daily commitments. The agreement stated as its first principle that:

> It is understood that management has not designated the delivery, transportation, or collection of Express Mail to any specific craft. (See, Union's Exhibit No. 4, p. 2).

It is not reasonable to believe that a person signing an agreement with such a "first principle" would believe that the agreement created jurisdictional rights to specific "Express Mail" work.

So clear is the meaning of the first and fourth paragraph of the settlement agreement in this regard that Mr. Ross of the APWU had a concern that management would take the position

no one had jurisdiction of "Express Mail" duties and that they could be assigned at will, thus defeating the operation of Paragraph 2 of the agreement. (See, Tr. 54). This interpretation flowed directly from words used by the parties in Paragraphs 1 and 4 of the agreement. The fact that the words in those paragraphs and the meaning they conveyed created interpretive tension with respect to Paragraphs 2 and 3 of the agreement did not mean that Paragraphs 1 and 4 could be ignored.

Instead, the parties must be presumed to have intended that all four of the paragraphs work in harmony. This is a bedrock rule of contract interpretation. As Restatement (Second) of Contracts makes clear,

> An interpretation which gives a reasonable, lawful and effective meaning to all of the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect. (See, § 203(a), p. 93 (1981)).

There is a presumption in contract interpretation that an agreement must be interpreted as a whole document. It is assumed by contract readers that an expertly drafted agreement contains no part which is superfluous. "An interpretation is very strongly negated if it would render some provisions superfluous." (See, Restatement (Second). § 203, comment b, p. 93 (1981)). It is reasonable to presume that the parties intended an interpretation of their agreement which harmonized the four parts of it.

B. Understanding the Agreement

It is not difficult to harmonize the four paragraphs that make up the Memorandum of Understanding of May 9, 1994. One needs only to read the provisions with an understanding that the jurisdictional issue raised by the underlying grievances was not resolved by the settlement agreement of May 9, 1994. Indeed, the settlement agreement of May 9, 1994 makes no sense unless understood as a compromise intended to avoid jurisdictional questions in favor of an agreement that limited the unfettered discretion of the Employer expressed in Paragraphs 1 and 4 of the agreement. On its face, the settlement agreement expressed a reservation of managerial discretion in the delivery, transportation, and collection of Express Mail and, then, set forth a limitation on that discretion in particular circumstances. In other words, the parties made no effort to resolve the jurisdictional dispute and, instead, chose to place limitations on management's exercise of discretion in view of the unresolved jurisdictional dispute.

Nothing in the testimony of either negotiator of the agreement cast any doubt on this meaning of the Memorandum of Understanding of May 9, 1994. There was no testimony suggesting that the American Postal Workers Union believed the agreement gave it jurisdiction over Express Mail in bulk or otherwise. What the APWU argued was that it did not intend to give up "Express Mail" work its membership already was performing on less than eight hour schedules. That

issue will be reviewed shortly, but the point here is that there was no claim of general jurisdiction in this grievance; and nothing in the settlement agreement itself supported such a claim. The dispute is not about jurisdictional boundaries. It is about a bargained-for limitation on management's exercising its discretion in assigning work not yet determined to be within the jurisdiction of a particular union.

The bargained-for limitation on management's discretion to assign "Express Mail" functions as it wished is found in Paragraph 2 of the settlement agreement. The provision states:

> The motor vehicle craft is the primary craft to perform the transportation of bulk quantities of mail between postal facilities. As such, if a combination of such work with other Motor Vehicle Service work would result in eight or more continuous hours of Motor Vehicle Service work, and where consistent with an efficient and effective operation, the performance of the work should be assigned to an employee of the motor vehicle craft in any facility which has Motor Vehicle Service employees.

Paragraph 3 of the agreement, then, clarified the principle set forth in Paragraph 2 and made clear that it applied to transporting all classes of mail, including Express Mail, between postal facilities.

The first sentence of Paragraph 2 in the settlement agreement is a "recognition" sentence in which the Motor Vehicle Craft is recognized as the primary craft involved in transporting bulk mail between postal facilities. As such, it was a simple statement of historical fact. The craft primarily involved in transporting bulk mail has been the Motor Vehicle Craft. Following that historical statement, there was an "as such" statement. As such (that is, as the craft

primarily transporting bulk mail), the parties agreed that, if transporting bulk mail could be combined with "other Motor Vehicle Service work" and if doing so was efficient and effective, the work should be performed by the MVS, assuming the facility involved employed such workers. Paragraph 3, then, made clear that Paragraph 2 applied to transporting all types of mail between postal facilities, expressly including Express Mail Thus, the Employer promised that, in facilities with MVS employes, such individuals would transport bulk quantities of Express Mail between facilities, if that work could be combined with other MVS work to produce eight or more hours of continuous work and if it was otherwise efficient and effective to assign the work.

Interpreted as a bargained-for limitation on managerial discretion, Paragraph 2 of the settlement agreement of May 9, 1994 is not difficult to understand. Nor in that context is there any real disagreement among the parties as to its meaning. For example, Mr. Magazu, Labor Relations Representative for the Employer, was asked whether management was obligated to give work involving the bulk transport of Express Mail to MVS employes if that work, combined with other MVS work, resulted in eight or more continuous hours of work. He responded in the affirmative. (See, Tr. 117). When asked, however, whether the Employer was obligated to make the same decision if the combination of work resulted in less than eight hours of activity, he replied in the negative. Such testimony is completely consistent with express terms of Paragraph 2 in the agreement concerning the "eight hour" condition.

C. A Contrary Interpretation

It was the theory of the American Postal Workers Union that, because it did not intend to give up Express Mail transportation work its membership already was performing on less than eight hour schedules, Paragraph 2 in the agreement could not be given its plain meaning. What that theory failed to incorporate was the fact that the settlement agreement did not even address such a situation. A jurisdictional claim to "Express Mail" work does not implicate the settlement agreement of May 9, 1994. Whether the American Postal Workers Union or, for that matter, the National Association of Letter Carriers, is entitled to particular work is a matter of its appropriate jurisdiction. It is a completely separate issue that is not a part of this case. The settlement agreement of May 9, 1994 involved only an assignment of the bulk transport of Express Mail to MVS employes in particular circumstances. By its own terms, the agreement reasserted the historic position of the Employer that no craft is entitled to "Express Mail" work as a matter of jurisdictional boundaries.

Because the settlement agreement of May 9, 1994 did not reach jurisdictional issues, resolution of the present dispute before the arbitrator is clear-cut. The Employer agreed, notwithstanding its assertion that no craft is entitled to the work pursuant to jurisdictional right, to assign the transportation of bulk quantities of Express Mail between postal facilities to MVS employes when (1) such "Express Mail"

transport can be combined with other MVS work to result in eight or more continuous hours of MVS work; (2) such an assignment is otherwise efficient and effective; and (3) the facility involved has MVS employes assigned to it. When the conditions are met, the settlement agreement required that the relevant "Express Mail" transport be assigned to a MVS employe. Equally, when the conditions are not met, the settlement agreement has no direct bearing on the assignment of such work.

It is the "no direct bearing on the assignment of such work" aspect of the settlement agreement that caused the present dispute between the Employer and the American Postal Workers Union, and the dispute triggered the intervention of the National Association of Letter Carriers. Each union wished to protect whatever "Express Mail" transportation work it presently performed. Hence, the American Postal Workers Union focused on transporting such mail assigned by "auxiliary" and "TA" schedules of less than eight hours, and the National Association of Letter Carriers insisted that the settlement agreement not be interpreted to take away work from its members. It is important to recognize that the jurisdictional right to the work each union seeks to protect has not been defined in this decision. The Employer continues to assert its managerial right to assign "Express Mail" functions as it deems appropriate. As made clear in Paragraph 1 of the settlement agreement, whether either Union is entitled to the "Express Mail" delivery, transportation, or collection

continues to be unresolved. Nothing in the settlement agreement of May 9, 1994 changed that state of affairs.

A direct answer to the assertion of the APWU that the settlement agreement was not intended to oust MVS employes from work they presently perform is that, while the claim is true, it is wide of the mark. Any claim to such work would have to proceed under some theory other than an assertion that it is granted or protected by the settlement agreement of May 9, 1994. The claim of the APWU to such work is completely unaffected by the settlement agreement. For that reason, the work, assuming conditions previously set forth with respect to requirements of the agreement are not met, is no more or less secure than it was before the parties reached their agreement. The same is true of the NALC's claim to particular "Express Mail" work. Nor did the agreement give the Employer additional power to assign or reassign "Express Mail" work because management maintained the same right to assign or reassign "available personnel as necessary to meet its delivery commitment where Express Mail is concerned" with the same authority it had before the settlement.

Fears expressed by the Unions in this dispute are real. As long as the jurisdictional issue remains unresolved, they cannot be certain how the work will be assigned. The settlement agreement of May 9, 1994 did nothing to change this ambiguity unless conditions expressed in the settlement agreement are met. When the conditions are not met, the

Employer believes it has authority to assign "Express Mail" work, including bulk transport between facilities, as it sees fit. Since MVS schedules that cannot be combined with "Express Mail" work to create at least eight hours of work are outside the coverage of the settlement agreement, the right to such work remains, as it always has, a matter of contention. Since the National Association of Letter Carriers was not a party to the settlement agreement of May 9, 1994, its claim to "Express Mail" work it is now performing is completely unaffected and subject to whatever managerial discretion and limitation the Employer faced before it entered into the settlement agreement with the APWU.

In this case, the parties sought only an interpretation of the Memorandum of Understanding of May 9, 1994. Accordingly, the arbitrator did not receive the kind of evidence that would be necessary in order to determine whether the facility at New Haven, Connecticut should assign any "Express Mail" transport work to MVS employes. Whether existing work of MVS employes can be combined with transporting bulk quantities of Express Mail between postal facilities in order to result in eight or more hours of continuous work is unknown by the arbitrator. Even if such combinations are possible, there is nothing in the evidence submitted to the arbitrator regarding the efficiency or effectiveness of making such an assignment. Indeed, it is not even known by the arbitrator whether the facility in question presently has MVS employes assigned to it.

At the same time, if the relevant conditions are met in New Haven, the obligation undertaken by the Employer in Paragraphs 2 and 3 of the May 9, 1994 settlement agreement requires that the work be assigned to MVS employes. The work, therefore, would be performed by MVS employes as a matter of a separate agreement and not by jurisdictional right. If the conditions of the settlement agreement are met and the work performed previously had been assigned to the NALC, the right of NALC bargaining unit members to that work would have to be resolved based on a claim of jurisdictional right. The arbitrator expresses no opinion regarding the validity of such a jurisdictional claim.

Similarly, if the Employer were to assign to NALC bargaining unit members "Express Mail" work now performed by MVS employes that does not fall within the conditions of the settlement agreement, the recourse of the APWU would be to assert a jurisdictional claim to the work. The arbitrator again expresses no opinion regarding the validity of such a jurisdictional claim. The point here is that the May 9, 1994 settlement agreement is ineffective to block the assignment or reassignment of "Express Mail" functions when the conditions of the agreement are not met. Clearly, the APWU believes that the settlement agreement should not require its members to "give up work the Motor Vehicle Craft presently performs." In fact, the agreement has no such impact. It is completely silent with regard to assignments that do not fall within its condition. In that respect, the claim

of the American Postal Workers Union regarding the work its membership presently is performing is completely unaffected by the settlement agreement of May 9, 1994. The APWU has gained a right to specific work under specific circumstances by a negotiated settlement agreement. Work not covered by that agreement is no more and no less within the jurisdiction of the APWU than it was prior to the settlement agreement.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the New Haven, Connecticut Post Office did not violate the May 9, 1994 settlement agreement between the Employer and the APWU in Case No. H7V-A-C 18841 and its companions when management assigned other than Motor Vehicle Service Division employes to transport bulk quantities of Express Mail. The grievance is denied. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: 7-24-96