

C# 15946

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

"Service"

-and-

NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

"Union"

Grievant:

M. Fletcher

Post Office:

Jamesburg, NJ

Case No.:

A87N-4A-C 90030105

NALC GTS No.:

310189

BEFORE: Kathleen M. Devine, Arbitrator

APPEARANCES:

For the U.S. Postal Service:

John F. Holly, Advocate & Postmaster, Atlantic
Highlands, NJ

Robert W. Reese, Postmaster, Jamesburg, NJ

Joanne Zaffarese, Human Resources Specialist

For the Union:

Charlie Heluk, President, NALC Branch 444

Owen Seidenberg, Vice President, NALC Branch 444

C. Darryle Whitaker, Steward, Kendall Park

Thomas Baist, Shop Steward

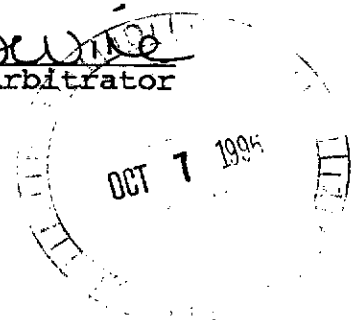
Place of Hearing: 21 Kilmer Road, Edison, New Jersey

Date of Hearing: September 11, 1996

AWARD: The Service violated Article 7, Section 2 of the National Agreement when it assigned a Part Time Flexible Carrier to deliver rural routes. The grievance is sustained to the extent indicated in this Opinion.

Date of Award: October 3, 1996

Kathleen M. Devine
Kathleen M. Devine, Arbitrator



BACKGROUND

The dispute in this case involves the assignment of a Part Time Flexible City Carrier to a rural route. The Union filed a grievance on November 1, 1989 when Part Time Flexible City Carrier Meredith Fletcher worked three and one half (3 - 1/2) hours on a rural route. The Union alleged a violation of Article 7, Section 2 of the National Agreement.

On November 8, 1989, the grievance was denied at Step 2 of the grievance procedure. On November 16, 1989, the Union appealed the grievance to Step 3. On December 8, 1989, the parties met at Step 3 and the grievance was denied by the Service. On December 7, 1993, Charlie E. Baker of the Service's Grievance and Arbitration, Labor Relations division wrote Vincent R. Sombrotto of the NALC indicating that the grievance was denied at Step 4 of the grievance procedure.

On January 31, 1995, Anthony Vegliante, of the Service, and William Young, of the Union, wrote in response to a pre-arbitration discussion of the dispute pending national level arbitration. They mutually agreed that "city letter carriers may be assigned to perform duties in the rural carrier craft in emergency situations, as specified in Article 3.F of the National Agreement." In addition, they agreed to "remand

this case to the parties at Step 3 for further processing, or to be scheduled for arbitration, as appropriate, consistent with the above understanding".

On March 13, 1996, John Cavallo, Labor Relations Specialist of the New York Metro Area, wrote Alan Ferranto, National Business Agent of the NALC indicating that, after a Step 3 meeting, the grievance was denied. The dispute was then appealed directly to regional arbitration pursuant to the provisions of Article 15 of the National Agreement. In addition, this case has been designated as a representative case for additional grievances that have been held pursuant to Article 15.

The undersigned was duly designated as arbitrator of the dispute. A hearing was held at the postal facility located at 21 Kilmer Road, Edison, New Jersey on September 11, 1996.

The Service was represented by John F. Holly, Postmaster, Atlantic Highlands. The Union was represented by Charlie Heluk, President, NALC Branch 44. At the hearing, the parties were provided the opportunity to present evidence and testimony in support of their positions. They did so. At the conclusion of the hearing on September 11, 1996, the record was declared closed.

DISCUSSION AND FINDINGS

The Issue

At the hearing of September 11, 1996, the parties stipulated to the following issue:

1. Did the Service violate Article 7, Section 2 of the National Agreement when it assigned a Part Time Flexible Letter Carrier to deliver rural routes?
2. If so, what shall be the remedy?

Relevant Contract Language

ARTICLE 3 MANAGEMENT RIGHTS

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

* * *

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

ARTICLE 7 EMPLOYEE CLASSIFICATIONS

* * *

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

Positions of the Parties

The Union maintains that the Service violated Article 7, Section 2 of the National Agreement when it assigned Part Time Flexible Carriers to deliver rural routes. It argues that the cross craft assignment provisions of Article 7, Section 2 are limited to assignments between the Carrier Craft and the Clerk Craft and do not extend to the Rural Carrier Craft. As such, the Union maintains that the Service is prohibited from crossing crafts as occurred under the facts of this dispute.

The Union maintains that the Service has referred to an emergency situation as justification for its actions. However, it points out that the issue of an emergency has never been addressed by the Service during any step of the grievance procedure or subsequent discussions.

However, the Union submits that Anthony Vegliante and William Young agreed, on January 31, 1995, that "city letter carriers may be assigned to perform duties in the rural carrier craft in emergency situations, as specified in Article 3.F of the National Agreement." It points out that this agreement was reached in response to a pre-arbitration discussion of this instant dispute. In response, the Union refers to the definition of emergency as stated in Article

3.F as "an unforeseen circumstance or combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature."

The Union submits that the assignment of Part Time Flexible Carriers to rural routes can not be deemed an emergency since the assignments were made in response to an ongoing manpower shortage in the rural craft. This shortage, the Union submits was not unforeseen and continued for an extended period of time at numerous facilities. These assignments, at times, were scheduled in advance and were recurring. Thus, in the Union's view, the assignment(s) does not meet the criteria contractually required of an emergency.

The Union argues that although management stated that all possible solutions were explored, rural carriers could have been assigned on their non-scheduled work days to these routes. It points out that Postmaster Reese testified that he did not attempt this alternative.

The Union also argued that Article 7, Section 2 does not apply to this dispute since that language permits the crossing of crafts, under certain conditions, between the NALC and APWU. It points out that the rural letter carriers have a separate collective bargaining agreement and are not covered by this language.

In all, the Union concludes that the Service violated Article 7, Section 2 of the National Agreement when it assigned a Part Time Flexible Carrier to deliver rural routes. It asks that the grievance be sustained in its request for three and one half (3-1/2) hours of pay at the appropriate rate.¹

The Service, on the other hand, denies that it violated the National Agreement. It argues that the assignment of Part Time Flexible Carriers to deliver rural routes was in response to an emergency situation which occurred at the facility, due to the lack of available rural carriers to perform this function.

On this point, the Service refers to the testimony of Postmaster Reese. Reese testified that he has had difficulty in hiring rural carriers due to the lack of benefits, the need to drive a personal vehicle, the requirement to be "on call" and the promise of working only one (1) day per week. Reese pointed out that even if he was able to hire a rural carrier, that individual rarely remained employed by the Service for any significant period of time due to the working conditions. Reese stated that he did everything that was

¹ The requested remedy contained within other grievances covered by this representative grievance seek an additional remedy of the conversion of rural routes to city routes. The Union stated that its request for that remedy has been withdrawn. The only requested remedy that remains is for additional compensation.

possible in order to hire rural carriers, but was unsuccessful in his attempts. Thus, Reese stated that he had no alternative but to assign Part Time Flexible Carriers to deliver the mail. The Service also submitted various arbitration awards in support of its position.

The Service submits that if the Part Time Flexible Carriers had not been assigned to these routes, mail would have been delayed. In Reese's view, any time that first class mail has to be delayed constitutes an emergency. As such, the Service argues that it meets the conditions required under an emergency.

The Service also points out that none of the individuals assigned to deliver rural mail objected to the assignment. It also maintains that these individuals benefited financially from these assignments.

In all, the Service denies that it violated the National Agreement, here. It asks that the grievance be denied in its entirety.

Opinion

This grievance involves the assignment of Part Time Flexible Carriers to deliver rural routes. After a review of the evidence presented at the hearing, I convinced that the

grievance must be sustained, in part. This is so for several reasons.

First, there is the language of Article 7, Section 2 to consider. Although this provision permits the crossing of crafts, under certain conditions, the unions referred to are the NALC and the APWU and does not pertain to the rural carriers, who have a separate collective bargaining agreement. Therefore, the provisions of Article 7, Section 2 do not apply here. This is further pointed out by the parties in the January 31, 1995 agreement at the national level, where they agreed that the only time in which this action can be permitted is in the case of an emergency.

Next, then, there is the issue of the term "emergency". On January 31, 1995, the parties, at the national level, entered into an agreement subsequent to a pre-arbitration discussion of this dispute. The parties agreed in part, that "city letter carriers may be assigned to perform duties in the rural carrier craft in emergency situations, as specified in Article 3.F of the National Agreement". Thus, we must turn to Article 3.F in order to determine the definition of the term "emergency". Under Article 3.F, an emergency is defined as "an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature".

The question then is whether the set of facts present in this instant dispute constitute an emergency. I do not believe that the criteria required of an emergency have been met by the Service. The reasons set forth by the Service for the assignment here are mainly due to a lack of rural carriers to deliver rural routes. As testified to by Postmaster Reese, this has been an ongoing problem. In fact, Joanne Zaffarese, of the Human Resources Department, testified that the condition exists at the present time in numerous facilities in the area. Therefore, there is no evidence to support the condition of an "unforeseen" circumstance. This is a situation that the Service is very clearly aware. In fact, the Service acknowledged that Part Time Flexibles have been scheduled, in advance, to deliver rural routes. Therefore, this situation can not be described as "unforeseen".

In addition, the definition of emergency calls for the situation to be that "which is not expected to be of a recurring nature". Again, the circumstances as testified to by the Service do not meet this criterion. The lack of available rural carriers was of a continuing nature. Although the parties could not agree as to the number of times that this occurred, it was substantial enough to be deemed as recurring.

Therefore, since the parties mutually agreed, at the national level, that the only circumstance in which a city letter carrier may be assigned to perform duties in the rural carrier craft is in emergency situation, I am convinced that based on the evidence presented, the requirements of an emergency have not been met by the Service.

The Service presented numerous arbitration awards in support of its position. However, after a review of these awards, I am persuaded that the facts substantially differed from that which occurred under the facts of this dispute. Specifically, Arbitrator Searce, in Case No. S4N-3D-C 29350 dealt with the establishment of new boundaries and not particular assignments.

The Award of Arbitrator Williams (Case No. S7N-3R-C-11689) dealt with a settlement agreement between the parties as to how they would address a shortage in the rural letter carrier craft. Subsequently, the Award of Arbitrator Baldovin (Case No. S0N-3R-C 11432) dealt with an issue that arose between the same parties as the aforementioned Williams Award.

As to Case No. S1N-3D-C 11655, Arbitrator Britton ruled on a class action matter in which fifteen (15) city carriers protested the conversion of a particular territory to rural, and did not address individual assignments.

Arbitrator Robins in Case No. N7N-1W-C 3789 ruled on a matter in which a supervisor delivered a rural carrier auxiliary route on Saturdays which had been assigned regularly to an NALC Carrier. The Union, in the case before me, acknowledged that they would not have grieved this matter if a supervisor delivered the rural route.

In Case No. SlN-3U-C 28446, Arbitrator Caraway ruled on an issue regarding the transfer of deliveries from auxiliary city delivery to rural delivery, which is not the issue at point here.

Finally, the National Arbitration Panel Award of Arbitrators Mittenthal and Zumas does not apply here since the Union has withdrawn the requested remedy concerning the conversion of routes.

Therefore, on the basis of the evidence before, I am persuaded that the Service violated the National Agreement when it assigned Part Time Flexible Carrier to perform duties in the rural carrier craft. The Service is directed to cease and desist. What is the appropriate remedy, if any, for this violation?

Although the Union has requested, in this instant dispute, three and one half (3-1/2) hours of pay for the Grievant, I am convinced that this remedy cannot be allowed.

As arbitrator, my role is a limited one. It is to interpret the Agreement, as written and agreed to by the parties. I am not empowered to alter, add to, delete or change any of the conditions agreed to by the parties.

Therefore, although I am convinced that the Service has violated the National Agreement here, there is no recourse to the remedy requested. The Grievant received pay for work performed in the rural carrier craft. She suffered no financial loss as the result of her assignment. Therefore, the requested remedy is denied.

Accordingly, and for the foregoing reasons, the grievance is sustained to the extent indicated in this Opinion.

AWARD

1. The Service violated Article 7, Section 2 of the National Agreement when it assigned a Part Time Flexible Carrier to deliver rural. The Service is directed to cease and desist.

2. The requested remedy is denied.

October 3 , 1996.

Kathleen M. Devine
Kathleen M. Devine, Arbitrator

STATE OF NEW YORK)
)
COUNTY OF SUFFOLK)

ss.:

I, KATHLEEN M. DEVINE, do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this instrument, which is my Award.

October 3 , 1996.

Kathleen M. Devine
Kathleen M. Devine, Arbitrator