

C-21799

REGULAR ARBITRATION

In the Matter of Arbitration Under
the Labor Agreement Between

UNITED STATES POSTAL SERVICE
The Employer or Service
-and-

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO
The Union or NALC

) GRIEVANT: Nardy, David
)
) POST OFFICE: Wynnewood, PA
)
) MANAGEMENT CASE NO: C90~~8~~4C-C-95021213
)
) UNION CASE NO: 0024 / GTS 13530
)
) ND NO: 2457
)
)
)

BEFORE: NICHOLAS DUDA JR., ARBITRATOR

APPEARANCES:

For the U.S. Postal Service:

Kenneth Giles
Labor Relations Specialist

For the NALC:

William McKinney
Arbitration Advocate

Contractual Violation Alleged:
Place of Hearing:
Date of Hearing:

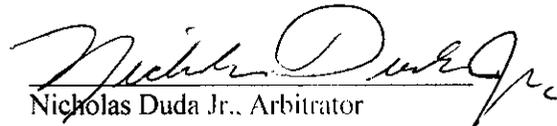
National Article 8 & 29
Wynnewood, PA
1/17/01

AWARD

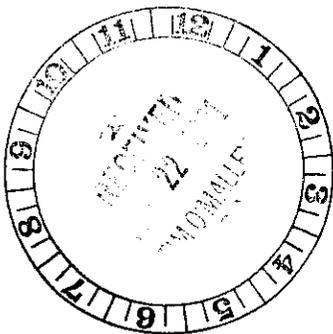
The Postmaster's order, effective October 21, 1994, to assign Grievant to ease his assigned route and no other duties on each of his scheduled days violated Grievant's rights and the Employer's duty under Article 29 of the Labor Agreement. As a direct result, for the next 14 months Grievant worked less than the eight hours on each of his scheduled workdays.

Therefore for each day after October 21, 1994 until restoration of Grievant's driving privileges and resumption (in January 1996) of his assignment to work eight hours on his scheduled days, the Service is ordered to pay Grievant at his regular wage rate for the number of hours less than eight which Grievant actually worked.

The Arbitrator retains jurisdiction for 90 days to resolve any disputes concerning meaning or compliance with the terms of this Award.


Nicholas Duda Jr., Arbitrator

March 16, 2001



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VICE PRESIDENT'S OFFICE
N.A.L.C. HDQRTS., WASHINGTON, D.C.

NATURE OF THE CASE

Beginning in February 1991 Grievant was not assigned to driving duties because his state drivers license was suspended. However, for the next three and a half years he worked full time on non-driving duties. On October 21, 1994 the Postmaster ordered that on each of Grievant's scheduled work days Supervision was to assign him to case the route for which he was scheduled, pull it down, and then clock off. The Union filed the subject grievance claiming failure to work him full time on and after October 21, 1994 was a violation of Articles 8 and 29 of the National Agreement.

This Opinion and Award decides the issues in the subject case.

GRIEVANCE CASE FILE

11/25/94 Appeal to Step 2 by NALC

Violation: National Article 8 & 29

Other Grounds: Harassment

Facts: [On October 21, 1994] Carrier David M. Nardy [was] told that he is only to case the route he is scheduled on each day. He is then to pull down that route and clock off and go home. ...

DM has been working at the Wynnewood Post Office without a driver's license February 28, 1991 to the present. [He] has cased, pulled down and delivered routes without a license for nearly 4 years. He has double cased routes and performed all duties requested of him during this period. He has delivered mail out of the office, from collection boxes, and relay boxes.

...

On October 21st DM was told by Supervisors...Casey and ...Smith that when he was finished pulling his route he was to clock off and go home using annual leave to make 8 hours.

On October 24th DM and myself went into Miss Johns' office to discuss the situation. She reiterated the statements of case, pull down clock off, and use leave also stating "I will not make work for DM." I stated that there was committed and delayed mail in the office every day which could be cased, also mail may be carried from the office to be delivered, and

existing relay and collection boxes may be utilized for relays of mail delivery. Miss Johns' response to these statements was "I will not make work for DM. If he can't park and loop, he can't deliver mail." I produced a list of deliveries on his string of routes which could be made either from the office or from existing relay or collection boxes. Miss Johns responded "If he can't park and loop, he can't deliver mail." ...The attitude and demeanor displayed in this meeting reinforced her earlier statement of doing anything she could to get DM out of the office.

...

Union Contention: Management has harassed Mr. Nardy to a point where the situation is becoming increasingly menacing, stressful and unbearable. ...

Management has denied DM the opportunity to perform his carrier duties as he has since February 1991 to October 1994. No reasonable efforts are being made to allow this carrier to work his assignment. Specifically, double casing when carriers are shorthanded, casing curtailed and delayed mail, carrying mail from the station to deliver, utilizing relay and collection boxes to deliver mail, and working in the clerk craft.

...

Corrective Action Requested: Carried paid 8 hours penalty time each day worked from Oct 21 to settlement grievance; all annual leave from Oct 21 to settlement reinstated; additional 40 hours of pay granted; immediately cease and desist of harassment; immediately cease and desist forcing Grievant to use leave when work is available; grievant made complete and whole.

12/10/94 Step 2 Decision by Postmaster Mae Johns

...

...Mr. Nardy has been afforded every opportunity to comply with the requirements of his position as a letter carrier at this office. Relay boxes have been used and extra time expended to accommodate Mr. Nardy's limitations; Management made Mr. Nardy an offer to transfer to the clerk craft; Verbally requested some form of documentation as to when his PA license will be restored. When it became mandatory to remove all relay boxes from the street, it was no longer possible to continue making allowances for Mr. Nardy's deficiencies. We have no FOOT routes. ALL of our routes are PARK & LOOP or MOUNTED. We are not authorized relay time. We are not authorized parcel post delivery route. We are not authorized a Router position. Mr. Nardy's casing skills will not allow him to case and pull down more than one route. I have never used the Grievant nor other letter carriers to distribute mail in function four. I can find no record showing Mr. Nardy has scheme knowledge.

Management has in no way harassed the Grievant. Under Article 3 of the National Agreement, Management has the right "To direct employees of the employer in the

performance of official duties." Additionally, "To maintain the efficiency of the operations entrusted to it." Management has made every effort to assist Mr. Nardy with suitable work, within his limitations.

Based on the above I do not believe the Postal Service has breached the National Agreement; therefore, the grievance is denied.

Arbitrator's Note: The Union appealed to Step 3.

2/13/95 Step 3 Decision by Labor Relations

...

The union representative's oral argument and submitted documentation...were not sufficiently persuasive to alter local management's position. Therefore, the corrective action requested by the union is not granted.

Arbitrator's Note: Unsatisfied with that answer the Union appealed to arbitration.

POSITIONS OF THE PARTIES

NALC POSITION

...

[Grievant] is a Full Time Regular Carrier. He was assigned to a Utility Position.

Prior to October 1994 he was working 8 hours a day and 40 hours a week. He performed duties such as double casing, casing committed and delayed mail, delivering mail from relay boxes and collection boxes (LCB) and delivering routes immediately surrounding the station. Mr. Nardy completed these duties without incident until October 1994. At that time, the Carrier was told by Supervisor Tom Casey and J. Smith that he would no longer be allowed to perform those duties. Starting on October 21, 1994 he would only be allowed to case his route and get it ready for delivery. He would then have to clock out....

From October 1994 to January 1996 the Carrier was forced to use 199.3 hours of annual leave, 75.56 hours of sick leave and 472.76 hours of leave without pay.

...

...Article 29 of the National Agreement addresses situations resembling this and states that; *“Every reasonable effort will be made to reassign such employee to non-driving duties in the employees craft or in other crafts.”* The Joint Contract Administrative Manual (JCAM)...on pages 29-4 thru 29-5 ...states that the every reasonable effort clause is not contingent upon a Letter Carrier making a request for non-driving duties, rather it is management’s responsibility to seek and find suitable work.

Article 8 Section 1 and 2 of the National Agreement guarantees Full Time Regulars 40 hours per week, 8 hours per day.

Finally, Mr. Arbitrator, management’s action violates the Snow Award dated April 8, 1998. That award obligates management to provide work for the Carrier in any craft. It states that if management can not do that without violating the other craft’s bargaining agreement, it must place the Carrier on leave with pay until work becomes available.

The Grievant did decline an offer for permanent reassignment as a PTF. He didn’t decline those duties he denied a permanent change of craft he would have performed those duties if assigned.

...

The Postal Service had the authority to temporarily reassign the grievant, irrespective of his lack of consent. Not only did Man. have that right but pursuant to Art 29, it had that obligation.

...

From Feb 1991 until Oct 1994 there was work available for the grievant to work 8 hrs a day 40 hours a week.

Management was not making work it was available on his own craft.

...even in the absence of the relay boxes the grievant could have delivered four of the five routes from the existing LCB boxes and the station. There was testimony that the grievant was proficient at casing double triple on routes other than his assignment.

...

...there is a carrier here who lost his license in 1997 and has been accommodated 8 hrs 40 wk.

This carrier was being accommodated since 1997 when Mrs. Johns was the Postmaster up until this very day. #5 route in which the carrier is being accommodated on was on David Nardy’s Utility; that is disparate treatment.

...the arguments we just stated plus the evidence and testimony proffered at the hearing prove management violated the contract. Therefore, ...we ask that you sustain this grievance in its entirety. As a remedy, we will request that the Carrier be reimbursed for all sick leave and annual leave used as well as all leave without pay hours.

POSTAL SERVICE POSITION

Because his driver's license was revoked, Grievant could not do his full job.

Every reasonable effort was made to reassign him to non-driving duties. For a time he could deliver on foot from relay boxes, but that had to be discontinued when the relay boxes were mandated for removal. To continue to drive Grievant to his routes and deliver his mail after the relay boxes were removed would have been an unreasonable, inefficient effort, beyond what is required in Article 29.

Grievant denied an offer to be transferred to Clerk.

Work was being "made" for Grievant but there is no requirement to do so ,and Management stopped it.

The Postmaster had two alternatives:

1. Accommodate to Grievant's inability to drive, as was done for several years until it became too inefficient; or

2. Remove Grievant, as was ultimately done after the action protested in this case.

There was no violation of the Agreement.

ISSUES

Did the Service violate Grievant's rights and its duties under Articles 8 and 29 of the Labor Agreement? If so, what remedy is appropriate?

RELEVANT PROVISIONS FROM THE SUBMISSIONS

FROM THE LABOR AGREEMENT

Article 8: Hours of Work

Section 1. Work Week

The work week for full-time regulars shall be forty (40) hours per week, eight (8) hours per day within ten (10) consecutive hours....

Section 2. Work Schedules

...

C. The employee's normal work week is five (5) service days, each consisting of eight (8) hours....

Article 29: Limitation on Revocation of Driving Privileges

...

...An employee's driving privileges will be automatically revoked or suspended concurrently with any revocation or suspension of State driver's license and restored upon reinstatement. Every reasonable effort will be made to reassign such employee to non-driving duties in the employee's craft or in other crafts. ...

FROM THE J-CAM

pp 29-4 and 5

Every Reasonable Effort to Reassign: Even if a revocation or suspension of a letter carriers driving privileges is proper, Article 29 provides that, "every reasonable effort will be made to reassign the employee in non-driving duties in the employee's craft or other crafts." This requirement is not contingent upon a letter carrier making a request for non-driving duties. Rather, it is management's responsibility to seek to find suitable work.

...

If there is such available work in another craft, but the carrier may not perform that work in light of the Snow award, the carrier must be paid for the time that the carrier otherwise would have performed that work.

4/8/98 Award by National Arbitrator Snow for 194N-4I-D 96027608

...Article 29 of the Agreement...requires the Employer to make temporary cross-craft assignments in order to provide work for carriers whose occupational driver's license has been suspended or revoked.

9/25/98 Letter to Area Human Resource Manager from National Manager Grievant and Arbitration Pete Bazylewicz

SUBJECT: Implementation of Arbitrator Snow's Award
Case Number 194N-4I-D 96027608

...

...In cases where letter carriers temporarily lost driving privileges, the following applies:

- Management should first attempt to provide non-driving letter carrier craft duties within the installation on the carrier's regularly scheduled days and hours of work. If sufficient carrier craft work is unavailable on those days and hours, an attempt should be made to place the employee in carrier craft duties on other hours and days, anywhere within the installation.
- If sufficient work is still unavailable, a further attempt should be made to identify work assignments in other crafts, as long as placement of carriers in that work would not be to the detriment of those other craft employees.
- If there is such available work in another craft, but the carrier may not perform that work in light of the Snow award, the carrier must be paid for the time that the carrier otherwise would have performed that work.

ANALYSIS**FINDINGS OF FACT**

The site of this case is the Wynnewood, PA Post Office. In 1991 Wynnewood Post Office had about 20 letter carrier routes; most were walking, but a few involved driving. There was a Letter Carrier force of about 25 Letter Carriers, including several who were in the category of "utility" (now called T-6). A utility worked on five routes, one on each day that the assigned Carrier was non-scheduled.

The Carrier holding a walking route cased his route and then walked or was driven to the beginning of the route. Mail for the route was driven by someone else to three or four relay boxes located on each route. From each relay box the Carrier took the mail and then delivered it on foot. At the end of the route the Carrier walked or was transported back to the Post Office.

Each of the few driving routes was assigned a Postal vehicle. The Carrier assigned to the route drove the vehicle containing the cased mail for the route and then delivered the mail, usually using the park and loop system. On completion of delivery, the Carrier drove the vehicle back to the Post Office.

Grievant was hired as a Letter Carrier in January 1986. After five years as a part-time flexible he became a full-time regular. Later he was assigned to utility and performed that assignment for several years prior to 1991. The routes on his "string" of five were Route numbers 1, 5, 7, 8 and 12, four of which were walking routes. When assigned to the riding route, Grievant drove the assigned vehicle.

For the walking routes, Grievant was transported to each route by someone to the route after Grievant cased and made appropriate bundles to be dropped off at relay boxes. The bundles were left for Grievant at the relay boxes on the route.

Grievant's driver's license issued by the State of Pennsylvania was suspended in February 1991. That prevented him from delivering one of his five routes in the normal fashion, since he could no longer himself drive the vehicle, but it did not impact initially on how he cased and delivered his four walking routes.

For the driving route Grievant adopted the same system as on his driving routes. That is, he cased his mail in the Post Office and made it into appropriate bundles, then he was driven to the beginning of the driving route with some of the mail. The rest of it was transported for him to three to five relay boxes along each route from where Grievant delivered. His parcels were handled by someone else unless they were small enough to be left in a relay box. At the end of his route Grievant was picked up by a driver assigned to transport him back to the Post Office

During the next three years four more of the routes on Grievant's string were assigned vehicles and became driving routes. As each of these routes became "driving" routes Grievant continued to "deliver" them by "walking." He was transported to the beginning of the route and picked up at the end after delivering mail bundles and small parcels left for him in relay boxes. In other words, the system Grievant had used in the beginning of 1991 to deliver his walking route was extended to his four driving routes.

In early 1994 Wynnewood Postmaster Mae Johns received instructions to remove the relay boxes from routes which changed to driving status. By the end of 1994 Wynnewood had removed most of the relay boxes, because all its routes had become "driving." Postmaster Johns told Grievant and the Union about removal of the relay boxes and complained that she had to send someone out to each route where Grievant was delivering to leave mail for him in addition to taking him to the route and returning him to the Post Office, all extra worktime she considered unreasonable and inefficient, costing at least an extra hour per day to have his routes delivered.

Grievant was asked how much longer until he received his license back, but he would not say, nor would he tell what steps, if any, he was taking to have his license restored. Postmaster Johns told Grievant he should seek a walking route at some other post office, because there were no walking routes to be left at Wynnewood. According to Grievant, he tried to get a walking route at another office, but the other post offices were also converting to all driving and no walking routes were available.

From time to time during 1994 Postmaster Johns confronted Grievant about the extra cost caused by

transporting him and his mail, because he could not drive. Postmaster Johns said she was not willing to continue transporting Grievant and his mail to the route and then carrying him back to the Post Office. In September or early October 1994 the Postmaster told Grievant she had part-time flexible clerk vacancy to which he could transfer if he wanted. Grievant said that he did not want to transfer to part-time flexible clerk. Grievant said some letter collection boxes were still on four of his routes, so the Postmaster could assign someone to take his mail to those letter collection boxes for later pick-up by Grievant.

Postmaster Johns said that she was not going to make work just so Grievant could deliver the routes by having others drive him and his mail around the route; he could either transfer or only case one route each day. When Grievant would not accept a permanent transfer to part-time flexible clerk, the Postmaster ordered that on each day Grievant could only case his assigned route, put it up and then punch out; the route would be delivered by someone else, and Grievant could make up the eight hours by using annual leave, sick leave or L.W.O.P.. The subject grievance was filed in protest. Thereafter Grievant continued to case only one route and then punch out; his time up to eight hours was accounted for by using annual leave and sick leave until they "ran out," and then he used leave without pay.

In 1995 Postmaster Johns issued Grievant a Notice of Removal. Although the papers for that case were not submitted in arbitration, the Parties acknowledged the removal was based on the Service claim that he could no longer do his job, because he could not drive. While the removal grievance was being processed in 1995, Grievant hired a lawyer to help get his license restored. It was restored in January 1996, at which time the removal was rescinded, and Grievant resumed delivering as well as casing his mail for all his assigned routes using the Postal vehicle as necessary.

Another employee, Matthew Witalec, had his license suspended for an offense on July 28, 1997. Mr. Witalec held Route 5, which was on Grievant's string of five routes. From August 1997 until January 17, 2001, the date of the hearing for the subject case, Witalec continued to case and deliver Route 5 using the same method as had been used so Grievant could deliver the route from 1991 to October 1994; that is,

Witalec cased Route five, was driven by someone to the beginning of his route, picked up mail left for him in letter collection boxes along Route 5, and then was returned by another driver to the Post Office.

From October 1994 until Grievant resumed driving and performed his full duties in the beginning of 1996, he used 199.3 annual leave hours, 75.56 sick leave hours and 472.76 leave without pay hours to account for the difference between the hours he worked and eight hours on every work day in that period.

Postmaster John P. Maginly, who had been appointed Postmaster at Wynnewood in June 2000, said he had become aware of the transportation cost involved in driving Witalec and his mail each day and estimated that there was an extra labor cost of at least eight hours per week to accommodate Mr. Witalec. The Postmaster testified at arbitration that he had done so because he had understood Witalec was in the process of trying to get his license back, but the Postmaster felt that Witalec had been indulged for over three years, and the Postmaster was planning to send Witalec elsewhere for a walking route or to a clerk job.

EVALUATION

Two basic, but not the only, duties of a Letter Carrier, are to case and to deliver routes on foot and/or by vehicle. In 1991, Grievant's group of five routes required him to case and then deliver by foot and by vehicle. Losing his driver's license made it impossible for him to perform the driving required on his routes.

Article 29 of the Labor Agreement imposed a duty on the Postal Service to make "every reasonable effort...to reassign [Grievant] in non-driving duties in [his] craft or other crafts."

After he cased his routes subsequent to February 1991, Grievant was assigned to accompany another driver who chauffeured him between the Post Office and his routes. A driver was also assigned to transport Grievant's mail to relay boxes from which Grievant would retrieve and deliver mail, including small parcels, before being transported back to the Post Office by a driver. (Larger parcels on the route were delivered by someone else.)

In October 1994, Postmaster Johns concluded that providing such "chauffeur service" to Grievant so increased delivery cost that it went beyond the "reasonable effort" standard in Article 28, so the Postmaster stopped assigning Grievant to do any duties after casing a route on any work day. **Result:** Grievant did not work a full eight-hour day.

The Union charges the Postmaster's failure to assign non-driving duties beyond casing one route violated Grievant's right under Article 29. Initially the Union argued that the effort involved in this chauffeur procedure was "reasonable" as evidenced by use of the method with Grievant for three and a half years until October 1994 and then with another Carrier for a similar period beginning in August 1997. Obviously long continuance of a system does not guarantee that it was, is, or continues to be "reasonable."

The current Postmaster testified that transporting Carrier Witalec and his mail five days per week on Route number 5 increased the labor cost for delivery by eight carrier hours per week. Inasmuch as the delivery time for each day is targeted at about five to six hours per day for 25 to 30 hours for five days, the delivery cost is increased about 27% (8 hours divided by 30 hours) to 32% (8 hours divided by 25 hours). If these calculations had been verified by evidence we would be persuaded that transport of Grievant and his mail was beyond "reasonable effort" and therefore not required by Article 29 to enable Grievant to make his eight hours per day. However, we will not base our decision on whether the "chauffeur" system was reasonable effort.

The Union claim went beyond failure to have someone drive Grievant with his letters and small parcels. The Union specifically cites various duties in the letter Carrier and clerk crafts, which were available and could have been assigned to Grievant to enable him to work eight hours per day. The Service made no attempt to dispute the availability of such work claimed by the Union. The fact is, Postmaster Johns flatly refused after October 21, 1994, to make any effort to assign Grievant non-driving duties except to case one route per day. The evidence is clear that there were other non-driving duties available. Furthermore, even the Service recognizes that the Postmaster offered to transfer Grievant to a clerk vacancy

that existed. Grievant had the right to refuse the transfer, but the Service was not thereby freed from its responsibility "to seek suitable work for grievant." In fulfilling that responsibility the Service could have temporarily assigned Grievant to work the clerk duties.

In his 1998 Award cited above, National Arbitrator Snow repeated the position maintained for years previously by regional arbitrators that "...Article 29 of the Agreement...requires the employer to make temporary cross craft assignments in order to provide work for carriers whose occupational driver's license has been suspended or revoked." We have also quoted a letter of instruction and interpretation by the National Manager for Grievance and Arbitration, which letter was addressed to all areas Human Resources, which specifically covered the same responsibility.