
In The Matter of the Arbitration

Between

United States Postal Service

and

American Postal Workers Union

Grievant: Class Action

Case No.: H06C-4H-C 08240043

Location: Centre, Alabama

Hearing Date: January 5, 2010

POST-HEARING BRIEF

ON BEHALF OF

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Billy Woods, NBA
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PRELIMINARY STATEMENT

Arbitration proceedings were held on January 5, 2010, before Arbitrator James Odom, in the United States Post Office, Gadsden, Alabama. This brief is submitted in support of the presentation made by the APWU at the hearing.

The APWU does not waive any inferences or conclusions favorable to its position which can be drawn from the record of the hearing solely by its failure to mention them herein.

JOINT EXHIBITS

- J-1 Collective Bargaining Agreement
- J-2 Moving papers (140 pages)
- J-3 USPS/APWU Joint Contract Interpretation Manual
- J-4 Postmaster EAS-20 Job Description
- J-5 National Award by Arbitrator Benjamin Aaron (NC-E-11359)
- J-6 National Award by Carlton Snow (A-C-N-6922)
- J-7 National Award by Arbitrator Sylvester Garrett (AC-NAT-5221)
- J-8 National Award by Arbitrator Shyam Das (Q98C-4Q-C 01238942)

UNION EXHIBITS

U-1 Chapter 14 of the Postal Operations Manual (3 pages)

U-2 Chapter 3 of the Administrative Support Manual (5 pages)

MANAGEMENT EXHIBITS

M-1 Sales, Service, and Distribution Associate qualification standard (2 pages)

STIPULATIONS

- 1) The disputed duties have been done by the Postmaster(s) for years.
- 2) The work other than boxing mail is that is being disputed is di minimus.
- 3) There was no shift or increase of bargaining unit duties by the Postmaster.

ISSUE

The Union submitted the issue as: “Did the Postal Service violate the Collective Bargaining Agreement when the Postmaster in Centre, Alabama scheduled herself to do specific duties not outlined within her job description? If so, what shall be the remedy?”

Management raised the following threshold issue: “Is the instant grievance arbitrable? Does the APWU craft have jurisdiction for delivery of the mail?”

They agreed the issue on the merits of the case was the same as the Unions.

THRESHOLD ISSUE

The Union will first address the “threshold issue” put forth by Management even though we feel this was technically not a threshold issue of arbitrability, rather it was a feeble attempt to confuse the issue. As I am sure you noticed, there was not a shred of evidence to support their threshold argument submitted at the hearing. That is because all possible evidence would contradict their argument.

Management stated in their opening “If delivery of Box mail is a delivery function then this issue would be better addressed via a grievance filed by the NALC or NRLCA alleging a cross craft violation or a 1.6 violation, not by the APWU.” They go on to state “The actual delivery of mail belongs in the jurisdiction of the city carrier and rural craft, the APWU has no claim to work which involves “delivery of the mail.”

The Union would contend this argument is flawed in many ways and is contradictory to their several USPS handbooks and manuals along with what the Service has argued in National Level Arbitration. The Union would first point out that if Management really meant what they stated in their opening then they should have, at the very least, invited either the NALC or the NRLCA or both to intervene in the case before you. The fact that that did

not occur is telling. The Union's next point is that Management at Step 2 of the grievance procedure realized this is not a valid argument when they admitted in the Step 2 decision (J-2, page 54) **"Granted Post Office Boxes are a type of delivery service."** He then tries to qualify his remark by stating "However the work does not fall under delivery. Otherwise a delivery employee would box mail." The Step 2 designee apparently has not read his own Post Office Manual (U-1) which states from the beginning **"This section concerns mail delivered by clerks at postal facilities."** He also probably never read the Domestic Mail Manual (J-2, page 37) which states **"Post office box service is a premium service offered for a fee to any customer requiring more than free carrier delivery or general delivery and for no fee to customers who are not eligible for carrier delivery."** He also must have missed Publication 32 (J-2, page 38) which is a glossary of Post Office definitions. In that publication it states **"post office box – A locked box, located in the post office lobby or other authorized place, that customers rent for delivery of their mail."** It also states **"post office box service – A premium service (or alternate delivery) that consists of delivery to post office boxes rented to customers for a fee."** Management would have you to believe that what the person does when he or she boxes mail is not

delivery but distribution. This again is completely contradictory to the USPS own handbooks and manuals. As pointed out in the moving papers, the PO-401 (J-2, page 69) clearly states the definition of distribution is “Mail sorted by address into machine bins, pigeonhole cases, trays, sacks, or pouches to group pieces with a common destination for transportation to the post office of address.” The Postal Service, as argued by the Union in this grievance, has also agreed with our position at the National level. In Arbitrator Snow’s award (J-6, page 45) he states the Postal Services’ position which is:

The Employer has conceded that Article 1.6 prohibits supervisors from performing basic mail processing functions. In the Employer's opening statement for the second phase of this arbitration proceeding, the Employer presented the following statement:

We have conceded with the Union that there are certain kinds of work which is bargaining unit work for Article 1.6.A purposes. We have told them in this arbitration that we agree that the traditional duties of moving the mail, that is, hauling sacks, casing mail, selling stamps, delivering mail, those we freely concede are bargaining unit work because they are what makes the craft the craft. (See, Tr. 303, March 20, 1989).

In other words, the Employer has conceded that "traditional duties" provide the appropriate boundaries for understanding Article 1.6 in the parties' agreement.

In Regional Arbitration, the Postal Service has consistently taken the Union’s position (that boxing mail is clerk craft work) before you in this

case. Arbitrator Carl Bosland in case #EEOC-4E-C 06040396 stated on page 5:

Management conceded that it violated Article 7.2 of the National Agreement when it used city carriers to work 4.97 hours to perform clerk craft work sorting box mail.

Further on page 5 of his findings he stated:

“Here, Management conceded that the events of December 12, 2005, did not justify the assignment of clerk work to the city carriers as permitted under the National Agreement. As such, the work should have been performed by members of the Clerk Craft.”

Arbitrator Jacquelin F. Drucker also stated in award #K98C-1K-C 00193121 on page 3:

“...and the Postal Service "conceded that there was a violation of Article 7 of the Collective Bargaining Agreement when injured limited duty letter carriers were given job assignments in the Customer Service Division 'Box Section' at the Baltimore General Mail Facility.”

The Union has also supplied an award by James Scearce on this subject with this brief.

Finally, the Union has supplied edit sheets (J-2, pages 9-36) which demonstrate the box section as a “Route” the same as a letter carrier. The edit sheets annotates each post office box section as a **“delivery route type.”**

Just as you told the parties at the end of the hearing to send our briefs to your street address in lieu of your post office box, **you, not the Postal Service,** made the determination of how you wanted your mail delivered and

also by making that determination the Postal Service can only make the determination of which craft performs the function.

The Union realizes we have mixed a lot of our arguments on the merits of this case in arguing against Management's "threshold issue", but that is the reason we still contend there really is no threshold issue. We respectfully request that you rule this grievance arbitratable and make a decision on the merits of the case.

MERITS

To not be redundant, the Union would respectfully request that you consider the above remarks concerning box mail to not only be for the "threshold issue" but also for the merits of this case. The Union supplied no witnesses at the hearing because basically there were no facts in dispute. The handbooks and manuals speak for themselves. They may not say what Management would like for them to say but the clear language contained in them is far better than any testimony either party could have produced. The J-2 packet agreed to at the hearing is 140 pages and the Union would request that you read it throughout as both parties were clear through the grievance procedure as to their positions and the Union will stand by our position today.

National Arbitrators have ruled no less than twice on the subject of Postmasters performing bargaining unit work in smaller offices which fall under Article 1.6b. Arbitrator Garrett stated in his well versed opinion of Article 1.6b (J-7) on page 34:

Under the USPS literal reading of 1-6-B, however, it would be free to rewrite or replace all supervisory position descriptions so as to take full advantage of the exception referring to the inclusion of bargaining unit work "in the supervisor's position description." Under this interpretation, in effect, it could substitute supervisors for bargaining unit personnel freely, even on a full-time basis. To embrace such an interpretation would be to read 1-6-B as if written in a vacuum rather than in the context of an on-going collective bargaining relationship. Proper interpretation of such a key provision in a collective agreement surely involves more than an exercise in semantics.

Arbitrator Das echoed Garrett's words in his recent award (J-8) on page 23 which states:

Arbitrator Garrett concluded that Article 1.6.B essentially was intended to restate and embody in the National Agreement a long established policy to avoid having supervisors perform lower level work, subject to specified exceptions. One such exception was that in small and medium size offices it may be "necessary" to require supervisors to perform lower level work, as reflected in supervisory position descriptions in effect when the parties negotiated their first collective bargaining agreement in 1971.

He further stated on page 24:

Arbitrator Garrett stated: "it seems reasonable to infer that the position description exception initially was spelled out in 1971 because the parties recognized that existing

supervisory position descriptions contemplated the performance of bargaining unit duties.”

Arbitrator Das was very clear in his award where he stated postmasters may only perform bargaining unit work if it “falls within the scope of ‘window transactions’ and ‘distribution tasks’.”

Both Garrett and Das made it crystal clear that Article 1.6.B is a work preservation clause. They also made it clear the language that allows supervisors to perform bargaining unit work is limited not only by the history of the office, which they both state is relevant as to how much bargaining unit work may be performed, it is also limited to the duties enumerated in their position description.

The “supervisor’s position description” (J-4) is what is at issue in this case. There are only two bargaining unit duties they may perform. The job description states they **“May personally handle window transactions and perform distribution tasks as the workload requires.”** is very specific and grants authority to do specific tasks within a small office. Nothing else. It is very clear and specific language and it grants authority only to do specific tasks within a small office. **Nowhere in this language does it give the Postmaster the authority to deliver mail, whether it be on a street route carried by a letter carrier or whether it be in a box section route**

delivered by a clerk within the office. Now the Union has stipulated that the Postmaster has performed this work for several within this office, but again as we stated in our written opening the National Award by Arbitrator Aaron (J-5) along with the agreed to language in the JCIM (J-3) allows the Union to grieve this issue with the only caveat being we are limited to remedy of 14 days prior to the grievance being filed. The practice and acceptance of the continuing or ongoing violation rule has been in place for years and has been honored by National and Regional Arbitrators as well. This had to be the ultimate reason the parties had the forethought to include it into the JCIM.

The Postal Service may try to argue a “past practice” has taken place because of the longevity of the Postmaster performing these duties, but the JCIM under Article 5 is clear when it states:

...a past practice that is inconsistent or in conflict with the National Agreement is not binding...

Arbitrator Lawrence Roberts echoed this language in his award in case #D94T-4D-C 99076430 in which he stated on page 8:

Any past practice, regardless of character or clarity, cannot override the precedence of clear contractual language.

Past practice as a rule of contract construction is only appropriately applied where the contract is either silent or ambiguous. It is difficult to

imagine how the language at issue in this case “window transactions” and “distribution tasks” could be more clear. That is especially true in the Postal Service where “distribution” is a term of art, with a very clear and distinct meaning of which the drafters of the language in question were certainly aware.

There are many examples of bargaining unit work that supervisors or postmasters with position descriptions such as the one at issue in this case would be prohibited from performing. A few examples follow:

- Servicing vending machines
- Clearing and assigning accountable mail
- Second notice filing, hold mail duties and related tasks
- Disposing of UBBM mail
- Custodial work, if there are no custodians in the office, clerks should perform it before supervisors’
- Loading and unloading trucks
- Collections
- Bulk mail acceptance
- Dispatch duties
- Spreading mail to carriers

And yes, DELIVERING mail to box holders

SUMMARY

Mr. Arbitrator, the Union feels without a doubt that we have proven:

- 1) Boxing of mail is a delivery function, not distribution,
- 2) This does not fall under the Postmaster's position description,
- 3) This constitutes an ongoing or continuing violation, and
- 4) The other disputed duties while they may be de minimis, are not included in the Postmaster's position description.

We feel we have proven these issues through National Arbitrations, which you know you are bound by, the Postal Service Handbooks and Manuals, which have already been agreed to by the parties, and finally, Regional awards which have been submitted for persuasive value. If you disagree, the Union would respectfully request that you give us a legitimate and logical reason why, because as many arbitrators have ruled, where there is a right, there has to be a remedy.

Thank you,

Billy Woods
National Business Agent
American Postal Workers Union

ATTACHMENTS

EOOC-4E-C 06040396 – Bosland

K98C-1K-C 00193121 – Drucker

S1C-3Q-C 5451 – Scearce

D94T-4D-C 99076430 – Roberts