

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration )  
 )  
 between )  
 )  
 UNITED STATES POSTAL SERVICE )  
 )  
 and )  
 ) CSBCS Jurisdictional Dispute  
 NATIONAL ASSOCIATION OF )  
 LETTER CARRIERS ) Case No.: Q90N-6E-C 94051017  
 )  
 and ) NALC No.: 5106  
 )  
 AMERICAN POSTAL WORKERS )  
 UNION )  
 )  
 As Intervenor )

BEFORE: Carlton J. Snow, Professor of Law

APPEARANCES: For the NALC: Mr. E. Secular  
For APWU: Mr. Darryl J. Anderson  
For the Employer: Mr. Kevin B. Rachel  
Ms. Marta Erceg  
Ms. Nora Becker  
Mr. Richard Mummer

PLACE OF HEARING: Washington, D.C.

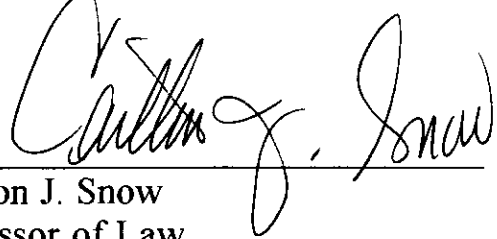
DATES OF HEARINGS: April 27, 1999  
January 11-12, 2000  
January 31, 2001

POST-HEARING BRIEFS: June 18, 2001

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer did not violate the NALC National Agreement by assigning operation of the Carrier Sequence Bar Code Sorter to the Level 4 Mail Processor position of the Clerk craft, rather than to the City Letter Carrier position. The grievance is denied. It is so ordered and awarded.

Respectfully submitted,



Carlton J. Snow  
Professor of Law

Date: September 17, 2001

NATIONAL ARBITRATION PANEL

IN THE MATTER OF ARBITRATION	)	
	)	
BETWEEN	)	
	)	
UNITED STATES POSTAL SERVICE	)	ANALYSIS AND AWARD
	)	
AND	)	Carlton J. Snow
	)	Arbitrator
NATIONAL ASSOCIATION OF	)	
LETTER CARRIERS	)	
	)	
AND	)	
	)	
AMERICAN POSTAL WORKERS	)	
UNION	)	
(As Intervenor)	)	
(CSBCS Jurisdictional Dispute)	)	
(Case No. E90N-6E-C 94051017)	)	
(NALC No. 5106)	)	

I. INTRODUCTION

This matter came for hearing pursuant to the 1990-94 agreement between the Employer and the National Association of Letter Carriers. On April 27, 1999, January 11, 2000, January 12, 2000, and January 31, 2001, the parties met for hearings in a conference room of the U.S. Postal Service Building located at L'Enfant Plaza in Washington, D.C. Mr. Keith E. Secular of Cohen, Weiss and Simon represented the National

Association of Letter Carriers. Mr. Darryl J. Anderson of O'Donnell, Schwartz, and Anderson represented the American Postal Workers Union. Mr. Kevin B. Rachel, with assistance from Ms. Marta Erceg, Ms. Nora Becker, and Mr. Richard Mumer, represented the United States Postal Service.

The hearings 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. Four volumes of transcript totaling 597 pages were prepared by various reporters for Diversified Reporting Services. The advocates fully and fairly represented their respective parties.

The parties initially stipulated that there were no issues of substantive or procedural arbitrability to be resolved, but the APWU on the second day of hearing raised an issue of collateral estoppel. The parties authorized the arbitrator to state the issues in dispute. They submitted the matter on the basis of evidence presented at the hearing as well as post-hearing briefs, and the arbitrator closed the hearing on June 18, 2001 after receipt of the final brief in the matter.

It should be noted that various documents in the case used a variety of file numbers for the case. In a letter of June 2, 1996 from Ms.

Patricia Heath to Mr. Vincent Sombrotto, the number is E90N-6E-C 94051017. In Notices of Hearing to the arbitrator on March 31, 1999, April 21, 1999, and January 4, 2000, the parties used a Case No. of Q90N-6E-C 94051017. But the Notice of Hearing to the arbitrator dated January 19, 2001 from Messrs. Edward Ward and William Young returned to the Case No. of E90N-6E-C 94051017. It is the one used by the arbitrator.

## II. STATEMENT OF THE ISSUE

The issue before the arbitrator is as follows:

Did the Employer violate the parties' National Agreement by assigning operation of the Carrier Sequence Bar Code Sorter to the Level 4 Mail Processor position of the Clerk craft rather than to City Letter Carriers? If so, what is an appropriate remedy?

### III. RELEVANT CONTRACTUAL PROVISIONS

#### ARTICLE 1 - UNION RECOGNITION

##### Section 5. New Positions

A. Each newly created position shall be assigned by the Employer to the national craft unit most appropriate for such position within thirty (30) days after its creation. Before such assignment of each new position the Employer shall consult with all of the Unions signatory to this Agreement for the purpose of assigning the new position to the national craft unit most appropriate for such position. The following criteria shall be used in making this determination:

1. existing work assignment practices;
2. manpower costs;
3. avoidance of duplication of effort and “make work” assignments;
4. effective utilization of manpower, including the Postal Service’s need to assign employees across craft lines on a temporary basis;
5. the integral nature of all duties which comprise a normal duty assignment; and
6. the contractual and legal obligations and requirements of the parties.

#### IV. STATEMENT OF FACTS

In this case, the National Association of Letter Carriers challenged the decision of the Employer to assign operation of the Carrier Sequence Bar Code Sorter to the Clerk craft. The Carrier Sequence Bar Code Sorter or CSBCS primarily sorts mail into delivery sequence and has been designed for use in post offices as contrasted with distribution centers. It is a part of the Employer's automation program, and its use continues an effort of the parties to increase the efficiency of mail processing.

In 1994, the Employer informed officials of the Letter Carrier and Clerk craft unions of its decision to assign operation of the CSBCS to the Mail Processor position, a Clerk craft position. Management supported its decision by observing that the Mail Processor Position Description "accurately describe(s) the primary tasks associated with the operation of the CSBCS equipment." (See NALC's Exhibit No. 5.) The National Association of Letter Carriers responded to management by requesting more information and also by filing a grievance. (See NALC's Exhibit No. 7.) The Employer ultimately denied the grievance, and the NALC pursued the matter to arbitration. Believing its rights were implicated in the dispute, the American Postal Workers' Union intervened in the dispute. When the

parties were unable to resolve their differences, the matter proceeded to arbitration.

V. POSITION OF THE PARTIES

A. National Association of Letter Carriers

The National Association of Letter Carriers maintains that operation of the Carrier Sequence Bar Code Sorter is within its exclusive jurisdiction. Accordingly, the NALC asserts that the Employer violated the NALC National Agreement by assigning the work of operating CSBCS equipment to members of the Clerk craft. It is the position of the NALC that provisions of the NALC National Agreement as well as prior national arbitration decisions supported the conclusion that the disputed work belongs to Letter Carriers.

The NALC relies on Article 1, Sections 1 and 5 as well as Article 7, Section 2 of the NALC National Agreement. Additionally, the NALC relies on arbitration decisions issued by Arbitrators Garrett, Mittenthal, and Zumas over a period from 1974 to 1994.



It is the contention of the NALC that using the Principle of Function as recognized by Arbitrator Zumas in 1986 required management to assign the work to Letter Carriers. It is the view of the NALC that the function of a CSBCS operator replaces work typically performed within the NALC's jurisdiction. Accordingly, the NALC concludes that operation of the CSBCS must be assigned to members of the City Letter Carrier craft, at least where CSBCS machines perform only City Letter Carrier work.

The NALC argues that the Employer improperly assigned the disputed work to the Mail Processor position and did so wrongly on the basis of a position description. Relying on the decision of Arbitrator Zumas, the NALC argues that management's decision should have been made according to the overall function of the work. The function of the CSBCS operator, according to the NALC, is to perform work over which the NALC has exclusive jurisdiction.

The NALC rejects the argument that CSBCS operators perform more than City Letter Carrier work. The Union contends that some of the capabilities of the machinery were unknown at the time management made its determination and that non-City Letter Carrier functions performed by CSBCS equipment are either performed too infrequently to be significant or involve issues not relevant to this particular dispute. Moreover, the NALC

believes there is no reason that Letter Carriers cannot perform the disputed work as efficiently as clerks.

The NALC also argues that the “collateral estoppel” issue raised by the American Postal Workers Union is totally without merit. The prior case on which the APWU relies allegedly involved the assignment of senior Mail Processor positions. In the earlier dispute (Case No. HON-NA-C 25), the NALC withdrew its claim to the position. The NALC contends that it is in no way prejudiced in this present proceeding by its withdrawal in the earlier proceeding because no determination was made as to which craft would operate the CSBCS equipment and because the machines had not yet even been deployed.

In summary, the NALC argues that, since CSBCS equipment performs City Letter Carrier functions, City Letter Carriers should operate the machines. The NALC seeks to have the operation of the CSBCS machinery reassigned to the Letter Carrier craft, at least where the equipment clearly performs Letter Carrier work.

B. American Postal Workers Union

The American Postal Workers Union argues that the National Association of Letter Carriers failed to carry its burden of proof. The APWU maintains that NALC arguments are rooted in the status quo and fail to be in sync with the facts of the case. The APWU contends that the CSBCS changes the nature of the relevant work and that the assignment of the changed work to the clerk craft is completely appropriate. The APWU also argues that the NALC is precluded from pursuing this dispute in arbitration because of its earlier withdrawal from the Senior Mail Processor dispute, Case No. HON-NA-C 25.

It is the belief of the APWU that the NALC mistakenly relies on the “status quo” principle to suggest that letter carriers should operate the CSBCS because letter carriers traditionally cased their mail manually. The APWU believes that the “status quo” principle is inapplicable in this case because the nature of the work has changed. Moreover, the APWU interprets prior arbitration awards to stand for the proposition that the “status quo” principle is only a determinative factor in cases where craft lines between the parties are difficult to establish. In the current dispute, such lines allegedly are not difficult to draw because letter carriers do not operate the disputed machines while clerks do so.

Similarly, the APWU maintains that the “replacement” principle advanced by the NALC is not applicable in this case. It supports this conclusion by noting differences between manual casing and operation of the CSBCS. Additionally, the APWU believes the facts demonstrate that the CSBCS performs and replaces more than letter carrier work.

The APWU finds support for assigning the disputed work to the Clerk craft in the respective Position Descriptions of the crafts. The APWU maintains that the Letter Carrier craft is not recognized as having any duties which mirror the operation of the CSBCS equipment. On the other hand, the APWU believes that the Mail Processor Position Description is virtually a perfect fit with the operation of CSBCS machines. On this basis, the APWU maintains that management’s assignment of the work is appropriate. It is the position of the APWU that the NALC’s reliance on various handbooks and manuals is not a useful guide in a jurisdictional dispute of this sort.

The APWU also contends that the Senior Mail Processor case from which the NALC withdrew addressed precisely the same issues as the ones presented in this case. That earlier dispute involved the assignment of the Senior Mail Processor position, created to operate and maintain automated equipment, to the Clerk craft. The APWU argues that the

present dispute involves the work of that position and that the NALC cannot lay claim to the disputed work after it abandoned its claim to the position in an earlier case. Hence, the APWU maintains that the Employer's assignment of the work is correct.

C. The Employer

The Employer contends that its assignment of the operation of the CSBCS to the Clerk craft is proper and does not violate the National Agreement with the NALC or its jurisdictional rights. It is the contention of the Employer that management retains flexibility in making assignments of work as necessitated by efficiency and economy. Moreover, such flexibility is especially important where the nature of the work at issue has changed. In support of its position, the Employer cites arbitration decisions by Arbitrators Garrett and Gamser as well as other decisions it believes to be similar. According to the Employer, the CSBCS has changed the nature of the work from manual casing to automated delivery point sequencing. The Employer argues that, in its new form, the work is correctly assigned to the Clerk craft.

The Employer supports its decision with the contention that Clerks operate machinery while Letter Carriers do not. Additionally, the Employer argues that duties required to operate the CSBCS equipment match well with the Mail Processor Position Description, the position to which the Employer assigned the work. It is also the belief of the Employer that the challenger in a “work assignment” dispute carries a heavier than normal burden of proof to establish that management’s assignment is incorrect.

It is the belief of the Employer that criteria relevant in the analysis of a jurisdictional dispute support the conclusion reached by management in this case. The Employer draws such criteria from decisions of the National Labor Relations Board, Article 1.56 of the NALC National Agreement, and the award of Arbitrator Zumas, in particular. Finally, the Employer contends that even viewed narrowly, using the “replacement” principle, the assignment of the work to the Clerk craft should not be overturned because the CSBCS machinery replaces and performs some work which never has been performed by Letter Carriers. Hence, the Employer concludes that the grievance must be denied.

## VI. ANALYSIS

### A. Contextualizing the Dispute

The parties disagree about the appropriate assignment of employees to operate the Carrier Sequence Bar Code Sorter. The CSBCS is a part of the Employer's ongoing automation program. Mr. Walter O'Tormey, a manager of processing operations, played a significant role in developing the automation program, particularly as it relates to delivery point sequencing. His testimony about the history and purposes of the automation program was unrebutted.

According to Mr. O'Tormey, the automation program became feasible in 1979. In 1982, equipment such as the Single Line Optical Character Reader became available to allow automated sorting by bar code reading machines. At the time, automated equipment was able to sort only to the carrier route level and often not even that far. With development of the multiple line character reader, mail could be sorted automatically to a sector segment level. This meant mail could be grouped in segments of a carrier's route. The automated equipment, including bar code sorters, was operated by Mail Processors of the Clerk craft and was intended, in part, to reduce carrier casing time.

In 1986, Mr. O'Tormey and six others conceived of delivery point sequencing as a way to increase efficiency and as a method of driving "automation into delivery operations." (See Tr., vol. 1, 176.) "Delivery point sequencing" means that mail is sorted into the order that it will be delivered along a carrier's route. It requires no primary or secondary distribution. Previously, Letter Carriers performed the final level of sortation, and this was a process referred to as "letter casing" or "flats casing." A "case" is:

a piece of equipment containing separations [pigeonholes] into which letters, flats, or irregular parcels are sorted. [Also called flat or letter case.] [Verb] to sort pieces of mail into a case. (See *Glossary of Postal Terms*, 10 (1988).)

If mail is sorted to the "delivery point sequence" level by machine, all necessary sortation has been mechanically performed. The Employer implemented delivery point sequencing because of the greater efficiency management believes it provides. Mr. O'Tormey testified that the Delivery Bar Code Sorter (DBCS) was designed for delivery point sequencing, although it was used for sector segmenting in the late 1980s before delivery point sequencing was feasible. (See Tr., vol. 1, 184-187.) In March of 1993, the Employer began implementing delivery point sequencing using DBCS machines operated by Mail Processors of the Clerk craft. (See Tr., vol. 1, 194; and NALC's Exhibit No. 4, p. 5.) After March



of 1993, DBCS equipment often was combined with other technology, such as optical character readers, to increase efficiency and to permit its use in smaller facilities. (*See Tr.*, vol. 1, 187-189.)

Around 1991, the Employer recognized that it had insufficient space available to process all mail to a delivery point sequence level on DBCS equipment. (*See Tr.*, vol. 1, 191.) According to Mr. O'Tormey, the Employer sought "a small delivery blocker sorter the size of a Xerox machine." (*See Tr.*, vol. 1, 191.) The Engineering Department responded to the request by designing the Carrier Sequence Bar Code Sorter.

In 1994, the Employer issued a Decision Analysis Report which recommended investing in 3,144 Carrier Sequence Bar Code Sorters. The report concluded that "DBCSs and CSBCSs are the two equipment types that can allow us to fulfill our future delivery point sequencing requirements." (*See NALC's Exhibit No. 4, p. 5.*) The report listed several advantages of the CSBCS, such as "the ability to utilize the untapped space that exists in many delivery units." (*See NALC's Exhibit No. 4, p. 7.*) The report also observed that "CSBCS benefits are derived by eliminating the manual casing of mail by carriers" and compared manual casing at a rate of 859 pieces an hour to CSBCS delivery sequencing at a rate of 19,038 pieces an hour. (*See NALC's Exhibit No. 4, p. 11.*) The report also cited a

reduction in the number of carrier routes as an economic benefit. It, however, appears from the report that DBCS equipment had a greater impact on the reduction of Letter Carrier work. This seems to be a reasonable conclusion based on comments in the report to the effect that DBCS equipment provides approximately 40% of capacity required for delivery point sequencing, while the addition of the CSBCS equipment would raise the capacity to 60%. (See NALC's Exhibit No. 4, p. 1.)

The Employer decided to deploy the CSBCS machinery not only because the DBCS machines were large but also because of the fact that the Employer would have had to produce additional space to implement delivery point sequencing if management relied exclusively on DBCS technology. (See Tr., vol. 2, pp. 63-64.) The most significant difference between DBCS and CSBCS equipment is size. (See Tr., vol. 1, p. 160.) CSBCS equipment was designed to perform at least the delivery point sequencing function of DBCS machines, but CSBCS equipment fits in most post offices rather than in distribution centers.

Currently, the CSBCS is capable of other functions, such as sorting mail to the route level, although those functions were not the reason for the design of the machine. Given that the automation program seeks to increase efficiency through technology, it is reasonable to conclude that the

potential for enhancing capabilities of the CSBCS equipment was considered by management at the time of its initial deployment. During the 1994 arbitration proceeding concerning the assignment of the Senior Mail Processor position, for example, Mr. John Potter was called as a witness by the Employer and stated:

We can use [the carrier sequence bar code sorter] to sort mail to route level. We can sort--use that machine to sort mail to five-digits level. We're finding that there are a lot of creative people out there, and they're going to use it for practically everything we do. (See NALC's Exhibit No. 9, pp. 111-112.)

In the current arbitration proceeding, Mr. O'Tormey testified that the CSBCS could not sort to the route level until approximately 1997. (See Tr., vol. 1, pp. 197-198.) Regardless of when other capabilities might have been added, the Employer authorized creation of the CSBCS and deployed it primarily to perform delivery point sequencing. (See NALC's Exhibit No. 9, p. 112.)

Prior to deploying the CSBCS equipment, the Employer made its determination that the machines would be operated by employees holding the Mail Processor position. (See NALC's Exhibit No. 5.) In announcing the Employer's decision on May 26, 1994, Mr. Mahon stated:

It has been determined that the duties outlined in the Mail Processor, PS-4, position description accurately described the primary task associated with the operation of CSBCS equipment. (See NALC's Exhibit No. 5.)

After receipt of this letter, the National Association of Letter Carriers requested further information and, then, initiated the present grievance.

Management deployed the CSBCS for test purposes in 1994. During this test phase, employee volunteers from various crafts operated the machines, including Letter Carriers. Use of volunteers from across craft lines is common when equipment is being tested and may not necessarily be relevant to the present dispute, other than to illustrate that Letter Carriers clearly are capable of operating CSBCS equipment. (*See Tr.*, vol. 2, pp. 159-161.) A major development of CSBCS machines began in 1995. Beginning at that time, the Employer deployed 3,144 CSBCSs at a rate of 16 a week. The deployment followed a plan which required at least two CSBCS machines in every place they were deployed so that if one machine malfunctioned, the other acted as a backup.

Although the CSBCS primarily performs delivery point sequencing, it does not necessarily follow that the machine only performs work previously done by City Letter Carriers, work known as "casing." It is undisputed that the CSBCS is able to sort multiple routes at a time. Undisputed testimony established that CSBCS machinery can be used to delivery point sequence approximately 15 routes overall. (*See Tr.*, vol. 2, p. 100.) This function may be similar to the "Router" position within the

Letter Carrier craft. Other testimony suggested that a CSBCS machine can do five to six routes at a time. (*See Tr.*, vol. 2, p. 44.)

The CSBCS does not sort only mail which otherwise would be handled by City Letter Carriers. It also sorts mail destined for rural routes, post office boxes, and highway contracts. The CSBCS is also often used in delivery distribution units which sort mail for multiple zones. In some cases, the CSBCS equipment at a delivery distribution unit will sort for multiple satellite offices so that the mail is sorted in one facility and delivered by carriers from another facility. In some instances, mail which now arrives sorted to the routes level on a CSBCS previously required manual sortation to the route level by Clerks and into delivery sequence by Carriers. (*See Tr.*, vol. 2, pp. 196-197; 207; and 217-221.) It is useful for processing “reject” and “residual” mail to the route level, and as an emergency backup in case of a failure at a processing plant. In some areas, this capability is used on a daily basis. In others, the capability is seldom used.

The CSBCS requires daily maintenance. The machine is operated by either Mail Processors (Level 4 employees) or by Senior Mail Processors (Level 5 employees). The difference between these positions is

that Senior Mail Processors perform virtually all maintenance on the machines.

The CSBCS sorts mail by reading a bar code which has been “sprayed” on other material by other automated equipment. It is located in delivery units and performs work which, otherwise, would be performed either manually or on a DBCS at the mail processing facility. Operation of a CSBCS machine is similar to the work of operating a DBCS. (*See Tr.*, vol. 2, p. 69.) It involves different procedures and skills from those required manually to case mail. While the function of the CSBCS certainly encompasses the function of manual casing of mail, the performance of the function (sorting mail to the order of delivery) entails work of a different nature depending on whether it is done manually or on automated equipment.

It is undisputed that the CSBCS reduces the amount of work and, hence, the number of work hours of City Letter Carriers. There was also evidence that the CSBCS reduces the amount of Clerk craft work. For both crafts, however, evidence submitted to the arbitrator suggested that the DBCS equipment causes greater work reduction than does the CSBCS machinery.

The NALC used testimony from several Letter Carriers to demonstrate that the CSBCS has reduced their time spent casing mail. It was the impression of the Letter Carriers who testified that the amount of work for Clerks in delivery units had been increased by use of CSBCS equipment. One witness suggested that the CSBCS did not replace manual Clerk distribution but only manual casing by Letter Carriers. (*See Tr.*, vol. 1, p. 144.)

On the other hand, the arbitrator received un rebutted evidence that the Clerk craft lost work due to deployment of CSBCS equipment. The apparent gain observed by some Letter Carriers may be explained by a shift of work from DBCS machines located in processing plants to CSBCS equipment located in delivery units. The transfer of work from processing facilities to delivery units was the subject of open discussion and a slide presentation. (*See*, Employer's Exhibit No. 2, p. 17, Slide 33.) Mr. James Shield, who made the slide presentation, explained the work transfer further. He contended that use of the CSBCS reduces both Clerk and Carrier work. (*See Tr.*, vol. 2, pp. 62-63.) Witnesses called by the APWU contended that the CSBCS significantly had reduced the amount of work performed by Clerks, although some loss may be attributable to other aspects of the automation program.

It is reasonable to conclude that not all work lost by Letter Carriers or Clerks is attributable to the CSBCS. The DBCS was described as the “work horse” of delivery point sequencing, while the CSBCS merely supplements the process. The machines operate at similar productivity levels. Accordingly, it is reasonable to conclude that the DBCS plays at least as significant a role as the CSBCS in reducing Letter Carrier work. The new equipment also transforms manual Clerk work into the operation of mechanical equipment, and that fact reduces Clerk work hours.

B. The Issue of Collateral Estoppel

The American Postal Workers Union raised an issue of collateral estoppel on the second day of hearing in this matter. Insight can be found in Section 68(1) of the *Restatement of Judgments* which teaches, “Where a question of fact essential to the judgment is actually litigated and determined by a valid and final judgment, the determination is conclusive between the parties in a subsequent action on a different cause of action.” While such legal doctrine has not firmly taken root in arbitration, numerous awards have given consideration to such procedural challenges. (*See, e.g.,*



*Aristocrat Travel Products, Inc.*, 52 LA 314 (1968); *Board of Education*, 77-1 ALD 8236 (1977); and *New Orleans S.S. Association v. Longshore Workers Local 1418*, 626 F.2d 455 (5<sup>th</sup> Cir. 1980).) Since the issue was raised, it has been addressed without intending to prejudge the applicability of such legal doctrine in a less formal evidentiary proceeding, such as a postal service arbitration hearing.

In effect, the American Postal Workers Union maintained that the National Association of Letter Carriers is precluded from challenging the operation of the Carrier Sequence Bar Code Sorter by Senior Mail Processors (who operate many CSBCSs) because the NALC withdrew from a case which addressed the assignment of the Senior Mail Processor position to the Clerk craft. The APWU asserted that the NALC may challenge the assignment of CSBCS work to Mail Processors, but there may be no location where CSBCS equipment is operated exclusively by Mail Processors. The APWU pointed to “moving papers” for this aspect of the dispute to demonstrate that the narrower issue, in fact, is the only issue presented, despite the broader statement of issue set forth by the NALC. (See Tr., vol. 2, pp. 9-13; and NALC’s Exhibit No. 1.)

The APWU failed to be persuasive in its contention that the NALC is precluded from challenging the assignment of the disputed work to

the Clerk craft. It is the position of the NALC that the Letter Carrier craft is entitled as a matter of jurisdictional right to operate Carrier Sequence Bar Code Sorters. The NALC is not rechallenging the assignment of the Senior Mail Processor position to a particular craft. Rather, the NALC is challenging the assignment of the CSBCS operation to the Senior Mail Processor position as well as to the Mail Processor position.

In order for an issue to be precluded by the doctrine of collateral estoppel, it actually must have been litigated in proceedings involving the party against whom the doctrine is asserted; and it must have been essential to the prior decision. While it is clear that the National Association of Letter Carriers was involved in the prior proceeding, insufficient evidence was presented to establish the other two factors. In the earlier proceeding, the parties did not join issue with regard to who would operate the CSBCS equipment. Nor did this arbitrator receive evidence in this proceeding that the issue of which craft would operate the CSBCS was a necessary determination for the decision in the "Senior Mail Processor" case. CSBCS machinery had not even been deployed at that time, and no determination had been made with regard to which craft would operate the machines.

Evidence submitted to the arbitrator failed to establish that the issue in this proceeding has already been arbitrated in a prior proceeding. The parties have designed their dispute resolution system so that prior national awards are binding on everyone in the grievance arbitration process, even future national arbitrators. The parties, of course, remain free mutually to modify prior national awards, but prior awards are binding on all parties to the national agreement, absent some defense. In this case, however, the issue before this arbitrator is not the same as the one addressed in the prior proceeding; the contractual language is not the same; and arguments made by the parties are not the same. While adherence to prior awards is important in the relationship between the parties, this is not a case where the doctrine of collateral estoppel precludes rendering a decision on the merits of the case. The parties have not previously arbitrated whether Letter Carriers have a jurisdictional claim to the operation of CSBCS equipment.

C. Appropriate Criteria for Resolving Jurisdictional Disputes

Appropriate criteria used to evaluate a jurisdictional dispute between the parties are derived from several sources. A major source is the parties' collective bargaining agreement. Article 1, Section 5 of the National Agreement sets forth negotiated criteria to be used by management in assigning new positions. This contractual provision emerged from a Memorandum of Understanding on jurisdictional disputes. (See NALC's Exhibit No. 27.) The famous Regional Instruction 399 (binding only in jurisdictional disputes between the APWU and the Mail Handlers) also lists criteria to be used in determining the propriety of a craft assignment. It may provide an analogic source of guidance in this dispute. Likewise, analogic prior regional or national arbitration decisions between the parties also provide a plethora of criteria. Finally, criteria used by the National Labor Relations Board, the body most experienced in jurisdictional disputes, may also provide a useful source of guidance.

The National Agreement between the parties does not specifically list criteria to be used in resolving a jurisdictional dispute such as the one before the arbitrator. Article 1, Section 5 of the NALC National Agreement, however, sets forth criteria which the Employer promised to use in assigning new positions to a craft. It is reasonable to rely heavily on

those criteria in examining the present jurisdictional dispute concerning the assignment of new work. The NALC National Agreement sets forth the following criteria:

1. existing work assignment practices;
2. manpower costs;
3. avoidance of duplication of effort and “make work” assignments;
4. effective utilization of manpower, including the Postal Service’s need to assign employees across craft lines on a temporary basis;
5. the integral nature of all duties which comprise a normal duty assignment; and
6. the contractual and legal obligations and requirements of the parties. (*See Joint Exhibit No. 1, pp. 2-3.*)

The contractual criteria are an important source of instruction with regard to whether the Employer erred in awarding operation of the CSBCS equipment to the Clerk craft.

Regional Instruction 399 is a regulation which details jurisdictional lines between the American Postal Workers Union and the Mail Handlers Union. In no way is it controlling in this dispute. It, however, sheds light on the appropriate criteria for resolving jurisdictional disputes within the Postal Service. While not all criteria are relevant in this dispute, Regional Instruction 399 sets forth five criteria. (*See Employer’s Exhibit*

No. 12.) The first, “Efficient and Effective Operation,” is relevant in this dispute and is implied by Article 1, Section 5 of the NALC National Agreement. This criterion teaches that actions taken in jurisdictional issues must be consistent with efficient and effective operation of the Postal Service. The second criterion in Regional Instruction 399, “Four Hours Criteria,” provides that, if four or more hours of continuous work involving functions of one craft are required for a position, the position should be assigned to that craft. While this may appear to be relevant to the dispute before the arbitrator, it is not a useful guideline because the parties in this matter disagree with regard to which craft’s job duties are performed by the CSBCS equipment. The other three criteria, “Distribution Activities,” “Changes in Duty Assignments,” and “Assignment of New and/or Additional Work,” do not advance the resolution of this dispute because these factors are too complex to apply outside the context of a dispute between the APWU and the Mail Handlers.

This is not the parties’ first jurisdictional dispute. Prior arbitration decisions have dealt extensively with the topic. Such prior arbitration decisions aid in interpreting the parties’ agreement and, more often than not, elaborate on factors to be considered in conjunction with Article 1, Section 5 of the NALC National Agreement. In the Zumas

decision (Case No. HIM-NA-C 14), the arbitrator listed past practice, previous arbitration decisions, and “efficiency” concerns of the Employer as additional factors to be considered in conjunction with Article 1, Section 5 of the National Agreement. (See NALC’s Exhibit No. 33, pp. 13-14.) In another jurisdictional dispute between the parties, Arbitrator Gamser examined criteria used by the National Labor Relations Board (Case No. NAP-3061); and he included criteria such as the skills and work involved, the assignment made by the Employer, efficiency, and related job titles. (See NALC’s Exhibit No. 7, p. 19.)

While not dispositive, the method of analysis used by the National Labor Relations Board in jurisdictional disputes provides a helpful source of insight. In 1962, the NLRB began resolving jurisdictional disputes on their merits. In that year, the Board announced a case-by-case approach and listed several factors to be considered in jurisdictional disputes. The NLRB stated:

The Board will consider all relevant factors in determining who is entitled to the work in dispute, that is, the skills and work involved, certifications by the Board, company and industry practice, agreements between union and boards, and the AFL-CIO in the same or related cases, the assignment made by the employer, and the efficient operation of the employer’s business. This list of factors is not meant to be exclusive, but is by way of illustration. (See 135 N.L.R.B. 1402, 1410-11 (1962).)

Criteria have been gathered from these various sources to test them for their utility in this proceeding.

D. An Application of the Criteria

1. “Article 1, Section 5” Factors

Factors listed in Article 1, Section 5 of the NALC National Agreement require careful attention because, although they are not necessarily dispositive in this dispute, they result from national bargaining on jurisdictional issues. The Employer and the NALC agreed that management would use the following factors in assigning a new position to the most appropriate craft unit. The “Article 1, Section 5” factors are as follows:

1. existing work assignment practices;
2. manpower costs;
3. avoidance of duplication of effort and “make work” assignments;
4. effective utilization of manpower, including the Postal Service’s need to assign employees across craft lines on a temporary basis.



5. the integral nature of all duties which comprise a normal duty assignment; and
6. the contractual and legal obligation and requirements of the parties. (*See* NALC 1990-94 Agreement, pp. 2-3.)

The first criterion, “existing work assignment practices,” requires an examination of current work performed by each craft. Letter Carriers still manually case mail in many places. (*See* Tr., vol. 1, p. 220.) On the other hand, a large quantity of mail is delivery point sequenced by Clerks operating Delivery Bar Code Sorters. Mail sorted by CSBCSs is not exclusively mail which City Letter Carriers would otherwise case. It includes rural, box, and highway contract mail. (*See* Tr., vol. 2, .45.) All of these types of mail are also currently sorted by Clerks on DBCSs. (*See* Tr., vol. 1, pp. 195-196; vol. 4, p. 25.)

The CSBCS equipment may also perform sortation to the carrier route level, and this is a task Letter Carriers previously have not performed. Another relevant existing practice is the fact that Clerks operate virtually all automated equipment within the Postal Service and perform maintenance regularly, while Letter Carriers generally do not operate automated equipment. (*See* Tr., vol. 2, pp. 140-145.) CSBCS equipment is generally located in delivery units where both Clerks and Letter Carriers work. Considering the totality of these work practices, it seems more

appropriate for Clerks, who currently sort a variety of mail to all levels on machines, to operate the CSBCS equipment, rather than Letter Carriers who traditionally case mail but do not sort mail on machines.

The second criteria, “manpower costs,” supports a similar conclusion. While the NALC was persuasive in showing that Letter Carriers can operate CSBCS equipment (and there is no evidence to suggest that they would be less efficient than Clerks), it, nevertheless, is clear that Letter Carriers would be paid more to perform the same work. Letter Carriers are now paid at Level 6, while Mail Processors are Level 4; and Senior Mail Processors are Level 5. The pay differential between levels is approximately \$500 to \$1,000 a year. (See Tr., vol. 2, p. 131.) In view of the fact that over 3000 CSBCSs are operating several hours a day, the pay difference is significant. While this particular factor favors the Employer’s decision in the case, its impact is mitigated by the fact that, at the time the Employer assigned the work, Letter Carriers were being paid at a “Level 5” rate.

The third factor, “avoidance of duplication of effort and ‘make work’ assignments,” favors neither union. Both the NALC and the APWU demonstrated that each craft could operate the CSBCS machines and, then, perform other duties to constitute a full-time position. It is also clear that

part-time employees would be capable of operating the CSBCS equipment and, then, could leave work.

The fourth factor, “effective utilization of manpower . . . ,” also favors neither party. There might be some justification for the Employer’s assignment based on this factor, considering the performance of maintenance and sortation to the route level on the CSBCS, but certainly Letter Carriers could learn those tasks. This factor, however, does caution against any arrangement which requires both crafts to operate the CSBCS equipment for different functions. Arguably, it might lead to an ineffective use of personnel if the crafts were supposed to alternate on the machines. (See Tr., vol. 2, pp. 148-149.) Use by one craft might cause delay to the other, or there might be an increased need to segregate the different types of mail prior to delivery point sequencing if each craft used the machine for different purposes.

The fifth factor, “the integral nature of all duties which comprise a normal duty assignment,” supports the Employer’s analysis. Duties required of a CSBCS operator are similar to duties performed in many other Clerk positions. They are dissimilar to the main duties of a Letter Carrier, other than manual casing. If this criterion is evaluated according to function, rather than a mere comparison of duties, it continues

to support a denial of the grievance. The function performed by CSBCS equipment, if it is limited to delivery point sequencing, is also the function of manual casing and delivery point sequencing on a DBCS. If all operations which CSBCS equipment may perform are considered, a CSBCS operator performs more functions of a Clerk than of a Letter Carrier. Moreover, the position descriptions of Senior Mail Processor and Mail Processor list “operation of a variety of automated mail processing equipment” as part of the “functional purpose” of these positions. (See APWU Exhibit Nos. 6 and 10.) The Position Description of a Letter Carrier contains no such statement, and it discusses the “functional purpose” of a Letter Carrier as the delivery of mail. (See APWU’s Exhibit No. 11.) While such descriptions certainly are not dispositive, they are suggestive of the work performed by each type of employee and give some insight into which craft normally performs work similar to the operation of CSBCS equipment.

The sixth and final factor in Article 1, Section 5 of the NALC agreement is “the contractual and legal obligations and requirements of the parties.” It lends support to the decision made by the Employer. The totality of the record established that the Employer did not violate the spirit of jurisdictional principles set forth in Article 1, Section 5 of the NALC’s

agreement. Nor does arbitral precedent, which will be examined shortly, undermine the decision of the Employer.

## 2. The Role of Efficiency and Managerial Discretion

Prior arbitration decisions between the parties, decisions by the National Labor Relations Board, and the Employer's Regional Instruction 399 all suggest that management's enormous concern with efficiency deserves careful attention in resolving a jurisdictional dispute. Such an analysis is implicit in Article 1, Section 5 of the NALC agreement, which lists "manpower costs" and "effective utilization of manpower" as relevant criteria to be considered in making an assignment of the sort at issue in this dispute. The parties agreed by contract that management is to be allowed to exercise a reasonable degree of discretion when making assignments of the kind challenged in this case in an effort to encourage efficient and effective operations. This consideration is reflected in numerous decisions by the National Labor Relations Board over the last 40 years. (*See, e.g., Johns Construction*, 135 N.L.R.B. 1402 (1962); *Valley Plate Glass Company*, 106 N.L.R.B. 1140 (1972); *Golden W. Broadcasters*, 210 N.L.R.B. 46 (1974); and *Knowlton Construction Co.*, 207 N.L.R.B. 46 (1973).)

The importance of management's concern with encouraging efficiency was also recognized by Arbitrator Zumas in Case No. HIM-NA-C 14. Arbitrator Zumas stated that "the desire by the Service to achieve greater efficiency and economy of operations" is a factor that deserves attention in jurisdictional disputes. (*See* NALC's Exhibit No. 33, p. 14.) This concern, along with other considerations examined in his report, explained Arbitrator Zumas's characterization of the burden of proof on a party challenging a jurisdictional assignment as "a heavy burden." (*See* NALC's Exhibit No. 33, p. 34.)

The Employer concluded that Clerk operation of CSBCS equipment is most efficient for overall productivity, and management suggested that granting jurisdiction to Clerks over such distribution equipment will encourage more efficiency than granting multiple jurisdictions or assigning such work to Letter Carriers. As Mr. O'Tormey stated for the Employer, "We view . . . the Clerk craft as the one to use the mail processing equipment or automated technology at various functions." (*See* Tr., vol. 1, 201.) At the same time, the parties did not explore this aspect of the dispute with depth, and the arbitrator received no conclusive demonstration that Clerks are able to operate the equipment more efficiently

than Letter Carriers. Consequently, the factor of efficiency has been noted but not given great weight in this particular dispute.

On the other hand, the factor of a pay differential received slightly more consideration. The difference in pay currently received by Letter Carriers at Level 6 contrasted with Clerks who operate CSBCS equipment at Levels 4 or 5 suggests that Clerks will be able to operate the machines more economically. At the same time, when management made the disputed assignment, Letter Carriers were paid at the Level 5 rate. Of course, the original assignment was to Mail Processors at Level 4. Evidence submitted to the arbitrator demonstrated that it is more economical for the Clerks to operate the machines, but the record is undeveloped with regard to the degree to which this factor influenced the Employer's assignment.

Although it has not been proven that Clerks will operate CSBCS equipment more efficiently than Letter Carriers, the Employer's discretionary judgment in this regard deserves some consideration, unless the NALC had proven that operation by Letter Carriers would be more efficient or that there was some impropriety in the decision to assign the work to Clerks. Such evidence was not submitted to the arbitrator. What the NALC demonstrated is that Letter Carriers are capable of operating the

machines and that there is no reason to conclude their operation would be inefficient. If it appears, however, that efficiency is advanced either way, this factor favors upholding the original assignment because it is the Employer's right and responsibility to make decisions about what assignments will most promote efficient and effective operation of the Postal Service. At the same time, it is important to emphasize that "an employer's assignment of disputed work cannot be made the touchstone in determining a jurisdictional dispute," and management's initial decision in this case has not been dispositive in the arbitrator's analysis. (*See Don Cartage Co.*, 160 N.L.R.B. 1061 (1966).)

### 3. Past Practice and the Work Involved

It is clear from decisions by the National Labor Relations Board as well as from arbitration awards of postal arbitrators that past practice and the work involved are important elements of consideration in a jurisdictional dispute. (*See* NALC's Exhibit No. 33; *Jones Construction*, 135 N.L.R.B. 1402 (1962); *Zia Company*, 168 N.L.R.B. 494 (1967); and *Walter Corporation*, 151 N.L.R.B. 741 (1965).)

As the NALC viewed the case, "what precedent teaches is that past practice is key." (*See* Tr., vol. 1, p. 15.) The NALC astutely summarized the dispute with regard to past practice in this case as follows:



Past practice here, I suppose, is a bit problematic. APWU will say, 'Wait a minute, the Clerks have always fed and swept bar code sorters. The CSBCS is a bar code sorter. Then the Clerks should sweep and feed it.'

NALC says in response, 'But we have always been the ones who have routed mail into delivery sequence. That's our job, that's our work.' (See Tr., vol. 1, p. 15.)

The dispute between the parties with regard to past practice was not resolved by the evidentiary record submitted to the arbitrator. Each craft was able to cite past practice in support of its position. The NALC submitted evidence of its view of past practice and built an argument based on the "Replacement Principle" derived from past cases, an argument to be addressed shortly. On the other hand, the APWU argued that past practice demonstrates the fact that Clerks operate machinery and Letter Carriers generally do not. The issue is further complicated by the fact that CSBCS equipment performs the same function as manual casing but requires a vastly different type of work. This change in the nature of the work is essential to an understanding of the entire case, and it blurs the lines of past practice to the point where this criterion does not favor either party, except to the degree that the NALC's application of the "Replacement Principle" to the present case is accepted or rejected.

The disputed work in this case is, on the one hand, the operation of a Bar Code Sorter and, on the other hand, primarily the

sequencing of mail into delivery order. A view of the work as operation of a Bar Code Sorter (which favors the Employer's assignment of the work) was not discredited. The CSBCS is a bar code sorter and requires work similar to the operation of other bar code sorters. (*See Tr.*, vol. 2, p. 69.) A view of the work as sorting mail into delivery order is also an accurate description, but an incomplete one. This incomplete description is important in resolving the dispute between the parties.

The CSBCS primarily sorts mail into delivery order, but the equipment may also perform other types of sortation. The machinery also requires maintenance and sorts mail which is not carried by City Letter Carriers. None of these other functions was previously performed by City Letter Carriers. More importantly, sorting mail is the function of the CSBCS and the end result of an operator's work, but the operator does not sort mail. He or she operates a machine which sorts mail, regardless of how that mail was previously sorted. A consideration of the evidence demonstrated that the work involved is the operation of a bar code reading machine, and such work is similar to other work performed by Clerks while dissimilar to other work currently or previously performed by Letter Carriers.

E. The “Replacement Principle,” Function, and the Nature of the Work

The NALC’s theory of the case focused on the “Replacement Principle” which it drew from an award by Arbitrator Zumas decided some 15 years ago. (See Case No. HIM-NA-C 14 (1986); and NALC’s Post-hearing Brief, 8.) The NALC argued:

The Zumas Award establishes that jurisdictional disputes over the operation of new equipment turn on the function of the new equipment. Where the equipment performs a single function historically assigned to a single craft, that craft presumptively is entitled to operate the new equipment. (See NALC’s Post-hearing Brief, 13, emphasis added.)

The NALC sought to apply the emphasis of Arbitrator Zumas on jurisdictional function to the present dispute in such a way that the “Zumas” analysis required assignment of delivery point sequencing on CSBCS equipment to the Letter Carrier craft. According to the NALC’s theory of the case, the appropriate focus in the assignment of new work is on “function,” rather than on “duties.” The 1994 letter from management assigning CSBCS work to the Clerk craft focused on duties. (See NALC’s Post-hearing Brief, 10-11; and NALC’s Exhibit No. 5.) The response to such an argument is that the most important issue is the nature of the work involved, especially where the work of crafts is fairly easy to distinguish and the nature of the work which achieves the particular function has changed due to technological advances.

The "Replacement Principle" advanced by the NALC does find support in the award by Arbitrator Zumas. He stated that Article 4 (Technological and Mechanization Changes) "is predicated on the principle that new jobs created by technological changes should be performed by the craft previously performing similar work prior to the introduction of the new technology." (See NALC's Exhibit No. 33, p. 40.) Unless a national award is altered by contract, a succeeding national arbitrator is bound by a prior national award. The Zumas Award, however, does not state that the "Replacement Principle" should receive any more weight than other criteria relevant in jurisdictional disputes.

Even if other criteria which support the Employer's assignment of the work were ignored, the "Replacement Principle" would not necessarily be dispositive in this case. There are three fundamental reasons why this dispute cannot be resolved according to the simple justice of giving Letter Carriers the work of operating the machine which replaced or is replacing their manual casing function. First, Clerks perform on DBCS equipment all functions which a CSBCS machine can perform, and the CSBCS equipment replaces some of this Clerk work. Second, CSBCS equipment replaces more than City Letter Carrier work. The CSBCS (1) sorts some mail which City Letter Carriers would not case in a manual

environment; (2) is capable of performing tasks other than delivery point sequencing; and (3) advances efficiency goals crucial to the survival of the entire organization.

The dispute before the arbitrator is similar to the situation presented to Arbitrator Gamser in the Centralized Mark-up Case. (*See* Case No. N-NAT-3061.) In that case, Arbitrator Gamser concluded that new equipment should be operated by Clerks because the work it replaced was not exclusively City Letter Carrier work. (*See* Employer's Exhibit No. 7, p. 19.) Where it is difficult to discern with absolute clarity which craft is most appropriate to perform disputed work, it is reasonable for an arbitrator to be notably influenced by managerial discretion. While employer preference is not dispositive, managerial discretion deserves more weight if its preference is clearly supported by proof of a positive impact on organizational economy and productivity. (*See, e.g., New York Telephone Company*, 396 F.2d 591 (CA 2, 1968).)

The NALC's argument based on the function performed by CSBCS equipment leads to a similar conclusion. Even if it were accepted that "function" is infinitely more important than "duties," the NALC would not necessarily prevail in this case. This is because Clerks performed the same functions on DBCS machines without challenge, and functions outside

of the casing function are performed by a CSBCS operator. Moreover, the “functional purpose” set forth in the Position Description of each of the relevant positions suggests that Mail Processors and Senior Mail Processors operate automative equipment and that Letter Carriers generally do not. (See APWU’s Exhibit Nos. 6, 10 and 11.)

Nor do prior arbitration awards or the parties’ collective bargaining agreement direct an arbitrator to ignore the duties which make up disputed work. Crafts within the Postal Service are divided primarily according to the work performed. The work of each craft is discoverable by an examination of the function this work achieves within the organization and by the duties which are performed to fulfill the function.

In the present dispute, it is undeniable that a CSBCS operator performs the work of operating an automated machine. It is true that the function of this work, at least in part, is to sort mail into delivery sequence, work which Letter Carriers used to perform manually with regard to their own routes. The automation program, however, fundamentally altered the nature of the work required to perform a variety of functions within the Postal Service. An example of this circumstance is found in the Centralized Mark-up equipment which is operated by the Clerk craft, despite

a NALC challenge that the work replaced the manual forwarding of mail by Carriers. (See Employer's Exhibit No. 7.)

The present dispute between the parties provides a graphic illustration of the effect of automation. The automation program achieves its economic benefits by eliminating manual work and replacing it with automated equipment. The work of operating a CSBCS machine is too different from the manual casing of letters for it to provide a basis for altering management's judgment regarding the appropriate assignment of the work. The automation program reduces Carrier work, but it also reduces Clerk work. By contrast, it is management's initial responsibility to determine which craft should operate the new equipment.

An underlying problem in the case is that automation is radically altering the way mail is sorted. This is not a case in which management assigned manual casings to Clerks. That would have been a clear-cut contractual violation. Rather, a new piece of equipment came into existence which was designed to advance goals of the automation program, and management assigned the work of operating it to the craft which traditionally has operated automated equipment and which performed the same function on a different machine. Lines of craft jurisdiction blur in the face of such technological changes. This fact will continue to have an

impact on the organization of work within the Postal Service. This case is but a single chapter in the transition.

F. Conclusion

Management's decision to assign operation of CSBCS equipment to the Clerk craft did not violate the NALC agreement between the parties. The NALC challenged the Employer's assignment by drawing a strict, unchanging line of jurisdiction. While its argument was predicated on sound jurisdictional rights, it failed to take into account the reorganizing impact of an automation program. Work performed by CSBCS machines includes not only City Letter Carrier casing but also sorting of other routes and to other levels. It is likely that the CSBCS equipment will be enhanced as the automation program progresses.

The parties have agreed by contract that management must retain flexibility in pursuing an efficient operation and, therefore, must be able to reorganize in accordance with established criteria when efficient, new technology becomes available. Although a plausible argument could be made for assigning the work to another craft, assignment to the Clerk craft

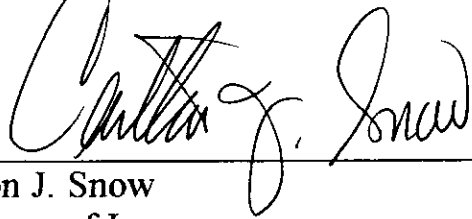


is more appropriate because Clerks commonly operate similar machinery and use the CSBCS equipment for more functions than City Letter Carrier delivery point sequencing. Evidence submitted to the arbitrator failed to justify overturning a managerial decision premised in good faith on promoting the efficient and effective operation of the Postal Service.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer did not violate the NALC National Agreement by assigning operation of the Carrier Sequence Bar Code Sorter to the Level 4 Mail Processor position of the Clerk craft, rather than to the City Letter Carrier position. The grievance is denied. It is so ordered and awarded.

Respectfully submitted,



Carlton J. Snow  
Professor of Law

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