Arb 143 (E)

RI-399 AWARDS

Operation No.(s) /9/ /9/ /9/ Individual

Operation No.(s) /_/ /_/ /_/ - /_/ /_/ /_/ Spread

Key Language /N/ /AA/ /E/ /_/ See Issue Definitions

Arbitration Level National /X/ Regional /_/ Other /_/ _____

Decision Sustained /X/ Denied /_/ Modified /_/* Other /_/

Date of Award /_/ /1/ - /1/ /2/ - /2/ /3/

Case No.(s) /_/ /N/ /C/ - /E/ /N/ - /A/ - /E/ /I/ /S/ /3/ /6/

City HOLLYWOOD, State FLORIDA

Arbitrator SYLVESTER GARRETT

Advocate _____, APWU

Advocate _____, USPS

Advocate _____, LIUNA

ow the APWU views the decision.

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*--- SEARCH  RESULT  -------- CASE NO.:0000143  ----------------------------*
*                                                                           *
* USPS NO :NCNAT1576    REGION NO :          LOCAL NO :            UNION :NA *
* GRIEVANT:                                          ,INIT/F:    ,M:        *
*   OFFICE:MIAMI                STATE:FL  LOCAL NAME:                       *
* UNION ADVOCATE:  N/A                                ,INIT/F:    ,M:       *
* USPSN ADVOCATE:  N/A                                ,INIT/F:    ,M:       *
* REGION :S  CONTRACT YR :75  NAT. OF ISSUE :C   ARB LEVEL :N               *
*                                                                           *
* SUBJECT : 1: 023.001.00   2: 002.000.00   3: 000.000.00   4: 000.000.00   *
*                                                                           *
*     T O P I C   ART-SECT-SUB          T O P I C   ART-SECT-SUB            *
*     1. N        001 -001 -000          4.           000 -000 -000         *
*     2. N        007 -002 -000          5.           000 -000 -000         *
*     3.          000 -000 -000          6.           000 -000 -000         *
* ARBITRATOR:GARRETT                    ,INIT/F:S ,M:                       *
*              DECISION:D           DECISION DATE:77/01/07                  *
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END OF REPORT

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AIRS 143

UNITED STATES POSTAL SERVICE	CASE NO. NC-NAT-1576
and	Miami, Florida (Hollywood)
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	ISSUED: January 17, 1977

BACKGROUND

This case from the Hollywood, Florida Post Office presents a claim that the Postal Service improperly assigned work within the protected scope of the Letter Carrier craft to Distribution Clerks in the Clerk craft. 1

Violation of Article I, Section 1, and Article VII, Section 2, is claimed. Relevant portions of these provisions are cited by the Union as follows: 2

"Article I, Section 1. Unions

"A. The Employer recognizes each of the Unions designated below as the exclusive bargaining representative of all employees in the bargaining unit for which each has been recognized and certified at the national level:

National Association of Letter Carriers, AFL-CIO -- City Letter Carriers

* * *

"Article VII, Section 2. Employment and Work Assignments

"A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time scheduled assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.

2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article."

As initially filed in Step 1, the substance of the grievance was: 3

"CROSSING CRAFTS--NALC feels that clerks are sorting carrier mail, & System on route 2171 is not working and should not be sorted to five hold outs by clerks. Mr. Wilson can case mail faster and deliver it than by present system."

As corrective action, the grievance requested "Revert back to old system of casing mail in office sequencing to apt # and then delivering as usual."

Supervisor J. Christy wrote in reply to the grievance: 4

"This is not a valid grievance--The manual provides for hold out of concerns receiving volume of mail and under Article III we have the right to determine the most efficient means of delivering mail."

After Step 2-A consideration of the grievance failed to produce agreement, NALC President Rademacher wrote Senior Assistant Postmaster General Conway under date of April 6, 1976, as follows: 5

"A dispute exists in the Hollywood Hills Station of the Hollywood, Florida Post Office where letter carriers are represented by our Miami Branch 1071. Because of the urgency in resolving the dispute, I am herewith requesting and certifying for arbitration this grievance in accordance with Article XV, Section 3, last paragraph.

"We deem it necessary to bypass intermediate steps for the reason that irreparable harm is being done the letter carrier craft by management instructions for clerical personnel to 'case' mail for condominiums. This is distinctly a letter carrier job function and the NALC anticipates immediate arbitration so that the suffering can be minimized. Your prompt attention to this urgent request will be appreciated.

(Underscoring added.)

After a Step 4 Meeting was unsuccessful the case was certified for arbitration by President Rademacher under date of May 14, 1976 in a letter including the following significant paragraph: 6

"Because the Union cannot agree that employees of another Craft may now perform the work that has been the function of letter carriers in the past, you may consider this letter as an official certification for arbitration purposes with the additional request that the matter be handled in an expeditious manner because additional grievances are now being generated by a continuation of management's action in removing casing assignments from letter carrier functions which involved delivery to condominiums in Hollywood and Hallandale, Florida areas."

(Underscoring added.)

A hearing was held by the Impartial Chairman in Hollywood, Florida on October 5, 1976, and each party later filed a brief as of November 24, 1976. 7

At the outset of the hearing, Counsel for the Union stated the issue in the case to be as follows: 8

"Does the establishment of directs at the Hollywood, Florida, Post Office for mail delivery service to condominium residences constitute the assignment of letter carrier craft work to the clerk craft in violation of Article One, Section One, and Article Seven, Section Two of the 1975 National Agreement?"

Salient facts were stipulated by parties at the hearing as follows: 9

"STIPULATION NO. 1

"On or about March, 1976, a direct or a direct hold-out was instituted for five condominium buildings on Route 2171 at Hollywood. That is, the distribution clerk separates the mail going to those buildings and places it in a separation. The letter carrier now sequences the mail for the rest of the route in the office, but for these four--one of the buildings is now on another route--buildings, the carrier sequences the mail in the mail room at the building and places it in the boxes provided at the building.

"Prior to the above date, the mail for these five buildings was included and mixed in with the rest of the mail for the route. The carrier cased or sequenced the mail in the office either to apartment numbers or floors within the building. He then went to the building and placed the mail in the individualized boxes located in a centralized mail room."

(Underscoring added.)

"STIPULATION NO. 2

"In Hollywood, since on or about March, 1976, there are approximately eleven buildings which similarly have been converted to direct hold-outs and where the carrier does not case or sequence the mail for those buildings in the office, but at the mail rooms at the buildings.

"At three of those eleven buildings, the direct hold-out by the distribution clerk is to a group of floors, such as 1-4, 5-8, 9-16 within the condominium building address."

(Underscoring added.)

The parties also developed a third Stipulation at the hearing including the following:

"In general, prior to March, 1976, the mail was separated by the distribution clerk to the routes. But where the mail was sufficiently heavy, a direct hold-out was made by the distribution clerk. In most cases these hold-outs were to businesses, schools, hospitals, et cetera, where the mail is delivered as a single bundle to one central location.

"There have been, however, instances where mail has been held out for delivery to a group of customers receiving individual delivery. Examples of this found in the files of the Hollywood Post Office or based on the memory of personnel at that facility are:"

(Underscoring added.)

During ensuing discussion, the following instances were noted in completion of the third Stipulation: 11

1. The Home Tower Highrise Building, including business offices, since 1964 or earlier.

2. Escom Trailer Park, prior to August of 1974.

3. A shopping mall with an assortment of businesses identified as Fashion Square, with the carrier sequencing in the office, since about November of 1971.

4. Gallahad Hall, a condominium, since 1969.

5. Gallahad Court, a condominium, since 1969.

6. The Florida Unemployment Commission, including a number of separate offices receiving individual delivery and sequenced at the carrier case.

7. Hollywood Towers, a condominium, since 1974, and apparently a "carrier holdout" with sequencing at the condominium.

12 While Counsel for the Postal Service agreed with the facts cited in Stipulation No. 2, he urged that they were irrelevant to decision here. Thus, the Postal Service deems the issue here to be limited to the specific grievance filed--namely, whether a violation of the Agreement occurred when holdouts were established early in March of 1976 for five condominiums then included in Route No. 2171. The Service also presented evidence seeking to show that the new method of effecting deliveries to the five condominiums produced a substantial saving in total time required for processing and delivering such mail. The Service also emphasized that, under the new method, Carriers are able to leave the office to begin deliveries much earlier than previously--perhaps 3 to 3½ hours daily. No Clerks were added to handle any additional work entailed in the holdouts nor has any overtime been paid to Clerks as a result.

13 Postal Service testimony also showed that the practice of using holdouts for apartment buildings or condominiums pre-dated introduction of the Methods Improvement Plan--Standard Operating Procedure, which went to the field in March of 1976. Indeed, this technique had been applied to a total of 287 buildings in the New York Metropolitan Area as well as in Alexandria and Arlington, Virginia; Wilmington, Delaware; Houston, Fort Worth and Austin, Texas; Denver, Colorado; Portland, Oregon; San Diego, San Francisco

and Los Angeles, California. Other testimony indicated that the practice of holding out directs for trailer parks and apartments had been followed generally for some years. Reference also was made to the M-39 Manual indicating that the practice of holding out directs was long established and treated in several Sections of the Manual, as well as on Form 1838-B set forth therein. Reference also was made to the April 30, 1971 M-5 Manual, in which Section 122.6 indicates that holdouts may be utilized for buildings and firms receiving large mail volumes, and stating:

> "Special Listings: Firms, buildings, hotels, and hospitals may be listed as special listings in the scheme, preceding street listings."

The Service also stressed the earlier Postal Manual, dated February 16, 1970, indicating that the use of directs should be maximized, consistent with efficiency.

The Union presented evidence, particularly in the form of testimony by a Carrier Techniciam familiar with a number of routes (including 2171), that more time is required to handle the mail for the condominiums than formerly was the case. In addition, the Chairman had opportunity to inspect the Distribution Clerk's case, and the mail rooms at several condominiums. 14

ARGUMENTS CONCERNING APPLICATION OF ARTICLE I, SECTION 1

The Union relies upon Article I, Section 1 (and Article VII, Section 2) as interpreted in the Mail Handler-APWU Jurisdictional Dispute, decided April 2, 1975 (Grievances AW-NAT-5753, A-NAT-2964, and A-NAT-5750). In that case the Impartial Chairman's Opinion analyzed the contractual language appearing particularly in Article I, Section 1 and in Article VII, Section 2, and then stated: 15

> "Since these detailed provisions reflect a clear intent by all parties to protect the basic integrity of the existing separate craft units as of the time the 1971 National Agreement was negotiated, the Impartial Chairman must find that Article I, Section 1 bars the transfer of existing regular work assignments from one national craft bargaining unit to another (absent any change in conditions affecting the nature of such regular work assignments), except in conformity with Article VII."
>
> (Underscoring added.)

Citing this language, the NALC urges that the establishment of the directs, as outlined in both Stipulations No. 1 and No. 2 constituted improper transfers of existing Letter Carrier work to the Clerk craft without any change in conditions affecting the nature of such regular work assignments. Indeed, the NALC asserts that the "transfer" of casing from Letter Carriers to Clerks was "simply the product of a changed, erroneous, Management efficiency perception; in no way was it predicated upon a 'change in basic conditions affecting the scope of duties required.'" Thus, it feels that the Impartial Chairman cannot, in light of his above quoted interpretation of Article I, Section 1, now permit the protested transfer of Letter Carrier work to the Clerk craft to stand. 16

A change in basic conditions (for purposes of applying the quoted language of the Chairman), in the judgment of the NALC, must affect the nature and scope of duties required in the given work assignment: it is not enough for Management simply to make a non-arbitrary judgment that the work can be done at less cost than previously. If a test of non-arbitrary economic considerations were to be applied for such purpose, says the NALC, this would eviscerate the precedent set in the Mail Handler-APWU Jurisdictional Dispute and permit reassignment of a large portion of Letter Carrier work to the Clerk craft.

The Postal Service relies upon its reserved authority under Article III of the National Agreement to direct its employees in the performance of their work, so as to maintain efficiency of operations, including its 18

right to determine the methods, means and personnel by which operations are to be conducted (as long as its action does not conflict with any provision of the Agreement, or applicable laws and regulations). It stresses that no additional Clerks were hired, nor was any additional overtime paid to Clerks.

The Postal Service holds firmly, moreover, that this case involves only the factual situation covered by Stipulation No. 1 as presented at the hearing. It was not prepared to deal with the facts covered by Stipulation No. 2, which were not involved in the present grievance as it was appealed to arbitration. 19

The Postal Service notes that use of Clerks to make directs, or holdouts, long has been normal. The purpose of a direct now is, and always has been, to minimize piece handling to as great an extent as practicable. Here the Service cites Sections 411 and 510 of the M-75 (Manual Mail Distribution and Section 333.33 of the 1970 Postal Manual. While directs generally have been used in the past when a single delivery point has a high volume of mail, the evidence also shows significant use of directs in instances where a number of customers are located at a single building or address, such as apartments, condominiums, and trailer parks. 20

ARGUMENTS AS TO ARBITRABILITY

The Postal Service brief for the first time raised a question as to whether the present grievance properly could be decided by the Impartial Chairman at this time. Its brief notes that under the NALC arguments the grievance would appear to involve a jurisdictional dispute. The Postal Service denies that its action here actually affected "the nature of the work performed by either the Carriers or the Clerks" and thus it believes no jurisdictional issue really is involved. But if its position on this point is not sustained, then it says the Impartial Chairman has no authority now to decide which craft properly should perform the disputed work. Here it cites the September 4, 1975 Memorandum of Understanding, among the parties to the National Agreement, establishing a Committee on Jurisdiction. The function of this Committee is defined in the September 4, 1975 Memorandum as "to identify and resolve such current and any future jurisdictional disputes" which may exist during the life of the National Agreement. The September 4, 1975 Memorandum authorizes any member of the Committee (all four Unions are represented) to identify a disputed assignment and to request that it be considered by the Committee. Further, the Memorandum states that if a dispute is not resolved by the Committee within 180 days after it is first considered, then any of the Unions claiming jurisdiction over the duties, within 15 days may request that the dispute be arbitrated under Article XV of the National Agreement. The Memorandum specifically states, "Failure to make such a timely request shall constitute a waiver of the claim." 21

The Service stresses that in any jurisdictional dispute any Union which has an interest is entitled to participate. In the present case, the APWU represents the Clerks but did not participate. Thus, the Service concludes that if the Impartial Chairman might find the present case to involve a jurisdictional dispute, it then should be referred to the Committee on Jurisdiction. 22

The NALC apparently was advised informally prior to filing of the Postal Service brief that this argument would be raised. It now flatly states that the Service was fully aware of the nature of the claim here from the beginning and never raised any argument about arbitrability prior to filing its brief. Thus the NALC holds that the Service has waived any right which it otherwise might have had to advance such an argument. It also urges that referring this grievance to the Committee on Jurisdiction would serve no useful purpose since the Postal Service position obviously would remain unchanged. Finally, NALC Counsel asserts that, prior to the hearing, the APWU was advised of the pendency and nature of the case and expressed no interest in intervening. 23

FINDINGS

1. Arbitrability

The September 4, 1975 Memorandum of Understanding concerning jurisdictional disputes was negotiated in light of all parties' recognition that as of that date disputes existed among the parties "relating to the crafts to which various duties performed by employees represented by the Unions have been assigned." All such existing disputes plus any "future jurisdictional disputes" were said to fall within the scope of the Committee on Jurisdiction established in the Memorandum. 24

The Memorandum includes no precise definition of the term "jurisdictional dispute." Whether the present grievance might represent such a "jurisdictional dispute," as that term reasonably should be interpreted under the Memorandum, is by no means free from doubt. The issue in the present case, specifically, does not arise from a claim by one Union to work previously assigned to employees in another craft, as much as it represents a protest against Management action which is said to violate a prohibition arising from the National Agreement. Such an issue on its face would seem considerably narrower in scope than the types of problems which were before the parties when they adopted the September 4, 1975 Memorandum. 25

The distinction is of potentially great significance. Under the terms of the Memorandum the Committee on Jurisdiction is directed to consider "among other relevant factors," the following items in resolving "disputed assignments": 26

"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;

6. the contractual and legal obligations and requirements of the parties."

The Memorandum also provides for arbitration, at the request of any interested Union, when a particular dispute has not been resolved by the Committee. Presumably--or at least arguably--the Arbitrator in any such case then would be obliged to consider the same factors which the Memorandum delineates to guide the Committee on Jurisdiction. Thus the criteria for decision by the Arbitrator in such a case might be considerably different from the criteria which normally would control in a case, such as the present, which essentially involves only a claimed violation of the National Agreement. 27

While the Postal Service on the one hand argues that the present grievance embodies a "jurisdictional dispute," under the NALC arguments, it also urges that the issue involves only "procedural changes which have not changed the nature of the work performed by either the Carriers or the Clerks." The obvious fact is, of course, that neither party in the present case has had an adequate opportunity to consider all of the ramifications of this major interpretive issue as to the scope of the September 4, 1975 Memorandum. Moreover, other interested parties covered by the Memorandum are not involved in this proceeding and have had no opportunity to consider the problem. Given these circumstances, the Impartial Chairman in no way could express any definitive view on such an issue. It will be time enough to do so in a proper case after the matter has been considered fully by all interested parties and adequately presented in arbitration. 28

Finally, there are dominant practical considerations in this specific case which permit ruling on the precise issue raised. First, the Postal Service is in no position to raise its procedural argument so belatedly. Second, the Service itself urges that the issue here does not involve a "jurisdictional dispute." Third, the APWU has expressed no interest in intervening here. Fourth, as will be seen below, the case may be determined strictly under the National Agreement. On this record, therefore, it is proper to rule on the merits of the case, without expressing any opinion in response to the alternate jurisdictional argument of the Service. 29

2. The Scope of the Case

The NALC now seeks a ruling on an issue outside the scope of the present grievance, both as filed and as appealed to arbitration. This is the practical effect of its effort to deal with the fact situations covered in Stipulation No. 2, to the extent that such facts go beyond those in Stipulation No. 1. 30

Under Stipulation No. 2 some of the "directs" therein involve Clerks who not only hold out for single addresses, but who also are performing a distribution of mail as among various floors of given apartments or condominiums. This differs significantly from the situation covered by Stipulation No. 1 and apparently reflects developments after the present grievance was processed. Since the parties at no time have considered this particular issue in the grievance procedure, and the Postal Service was not prepared to meet such additional issue at the hearing, there is no proper occasion now to rule on any issue which might arise from the facts included in Stipulation No. 2. 31

3. The Merits

The April 2, 1975 Opinion in the Mail Handler-APWU Jurisdictional Dispute flatly stated that Article I, Section 1, of the National Agreement "bars the transfer of existing regular work assignments from one national craft bargaining unit to another (absent any change in conditions affecting the nature of such regular work assignments), except in conformity with Article VII." 32

In writing this language the Impartial Chairman was dealing with three cases in which entire bid assignments had been transferred as entities from one craft to another. The controlling obligation in that case was found to be implied in Article I, Section 1 of the National Agreement, when read in light of Article I, Section 5, and the detailed provisions of Article VII, Section 2. This is illustrated in the following sentence from the Opinion, which precedes the sentence now stressed by the NALC: 33

> "It is a plain implication from this carefully drawn provision that all parties to the National Agreement contemplated that existing positions, then included in existing national craft units, should remain in those units."

In short, the decision in the Mail Handler-APWU Jurisdictional Dispute dealt only with regular bid assignments which the Postal Service had transferred unilaterally from one craft to the other in response to a jurisdictional claim. 34

The present case essentially involves only a minor reassignment of work. Nonetheless it is useful here to note that the Opinion in the Mail Handler-APWU Jurisdictional Dispute spelled out the following basic approach to the interpretation of Article I, Section 1: 35

"The meaning of Article I, Section 1 must be ascertained from an objective reading of its language, in the context in which it was negotiated, and not by application of dicta extracted from judicial and arbitral opinions dealing with other contracts and other parties. The bargaining context in which Article I, Section 1 was negotiated includes two particularly significant elements: (1) the history of collective bargaining on a craft basis in the Post Office Department and (2) the inclusion in the National Agreement of other provisions illuminating the obligations arising under Article I, Section 1."

(Underscoring added.)

36

Applying this interpretive approach in the present case, it seems most significant that the bargaining context in the 1971 negotiations not only included the history of collective bargaining on a craft basis, but also a long history of day-to-day administration of the Postal Service, as embodied in various Manuals. For present purposes, therefore, it is significant that the Postal Manual, long in existence as of 1971, reflected an established policy to use "all warranted directs." Similarly, the M-5 Manual, dated April 30, 1971, in part included the following as to Special Listings:

"Principal firms, apartments, buildings, hotels, and hospitals may be listed as special listings in the scheme, preceding street listings."

There is no basis, against this background, to find an implied obligation under Article I, Section 1 which would preclude the Postal Service from continuing to apply such a long established technique for improving the efficiency of its operations, even if a realignment of duties among various crafts may result. Any doubt that the ruling in the Mail Handler-APWU Jurisdictional Dispute did not extend to such an extreme is dispelled when it is noted that the Findings in that Opinion expressly state: 37

"It should be understood, however, that the present rulings in no sense restrict Postal Service discretion to realign job duties, to make temporary assignments, to create new positions, or to establish additional full-time scheduled assignments which include work within different crafts, as long as such actions are in conformity with all relevant provisions of the National Agreement, including Article I, Section 5; Article III; and Article VII."

In conclusion, it perhaps should be observed that even if there is no specific definition of "direct" in various Manuals that would embrace apartments, condominiums, or trailer parks as such, there nonetheless is adequate evidence here that the term "direct" has been applied over the years to apartment buildings, condominiums, and trailer parks. In the present case, therefore, there is no sound basis for sustaining the grievance. 38

It should be noted, however, that the record contains no indication that a portion of a building (such as one or two floors in an apartment house or condominium) ever has been treated as a "direct" within the meaning of any Manual language, or that any clear practice has developed implementing the definition of "direct" for purposes of applying any Manual in such manner. Thus it should be clear that no opinion is here expressed or implied concerning any issue under the facts involved in Stipulation No. 2, to the extent that they differ from those in the present grievance. 39

AWARD

1. This grievance may be determined on its merits and need not be referred to the Committee on Jurisdiction. 40

2. The specific grievance in this case is denied. 41

42

3. No opinion is expressed concerning the propriety of establishing directs (holdouts by Clerks) for separate floors or groups of floors of apartments or condominiums.

Sylvester Garrett
Impartial Chairman