

In the Matter of the Arbitration Between:

UNITED STATES POSTAL SERVICE

AND

NATIONAL RURAL
LETTER CARRIERS ASSOCIATION

Case D-95R-4D-C-#00104717

Hearings held Nov. 6 and Dec. 19, 2003

Before Richard I. Bloch, Esq.

Appearances:

For the NRLCA
Michael J. Gan, Esq.

For the Postal Service
Howard J. Kaufman, Esq.

OPINION

Facts

Rural Letter Carriers are compensated in accordance with a negotiated “evaluated pay system” that is as unique as it is arcane. Rural carriers are salaried employees whose pay is based on the wide range of duties performed in the Post Office and on their respective routes. Thus, each of some 32 elements of a given route¹ is measured and allocated an “allowance factor” that is ultimately translated

¹ Union Exhibit 12, a Rural Route Evaluation Worksheet, details items that include length of the route, number of boxes served, number of letters of various types delivered, number of money order applications and a wide range of other items.

into time values that, when manipulated in accordance with existing formulae, result in a Rural Route Evaluation.²

An important element in the evaluation scheme is the amount of time taken to sort mail in the process of preparing it for delivery on the route. Prior to the substantial automation that is central to the instant dispute, rural carriers received letter mail in generally random order. Carriers would then sort the mail, placing it in cases segregated by address. Following the casing process, the mail would be "strapped out" and the carrier would deliver it in the ordered sequence. Beginning in the early 1990's, the NRLCA (hereinafter "Association" or "Union") and the Postal Service (hereinafter "Agency" or "Service") began discussions aimed at accommodating the onset of automation designed to substantially expedite or virtually eliminate manual mail processing activity. Introduction of new equipment resulted in new standards that recognized and credited various types of mail (based on the extent of required sorting) and the varying times associated with sorting it. Unsorted, or "raw mail" now was supplemented by some mail that came to the carrier not in precise delivery order but in rough sections that corresponded to the geographical divisions of the carrier case.³ This was known as "sector /segment mail." And, relevant to this case, the developing technology allowed mail to be processed so as to arrive in delivery point

² Section 531.3 of PO-603 defines route evaluation as follows:

The evaluation of a rural route is determined by the mail volume handled, daily miles traveled, the number and type of boxes served, and fixed or variable time allowances, i.e., the types of data that are obtained from mail counts.

³ See Tr., pp. 68, 77-78.

order, requiring no further sorting. This so-called "Delivery Point Sequencing" ("DPS") enabled the carrier to receive mail sorted in the delivery order of his route. As such, the carrier could then proceed directly to the route without sorting the mail at the facility.

Because it took less time to deal with DPS mail, it followed the parties would ascribe different time elements. Thus, while raw mail had previously been rated at 16 letters per minute, sector/segment mail, which involved some machine processing, was rated at 22.5 letters per minute. DPS mail was rated at 30 letters per minute.⁴

A carrier's compensation depends, in part, on the composition of the deliveries. As such, the parties recognized the importance of assessing the amount of DPS mail as a percentage of the total letter volume of a given route. This figure is set once a year during an annual mail count.⁵ And, because, by design, the salary remains constant after the annual count, the parties have developed procedures designed to protect carriers in the event DPS volume drops. Together, they bargained the terms of §541.42 of the Rural Carrier Duties and Responsibilities Handbook (PO-603)⁶. Entitled "Formal Review of DPS Processing," that section states:

If a route receiving DPS mail frequently experiences significant decreases in the quality of the DPS mail or there is a disproportionate

⁴ See Agency exhibit 3.

⁵ The DPS agreement negotiated in 1994 (see Tr., p.279) established certain procedures that were required prior to implementing DPS on a route. For example, for 3 consecutive days, prior to a mail count, the Postal Service was required to "qualify" the route by providing it with 98% of the automated mail in strict delivery sequence order. During the mail count, the Service was required to supply an average of more than 2400 pieces of DPS mail per week. (See Tr., pp.282-283; See also Union Ex. 2).

⁶ Article 19 of the National Agreement specifically incorporates the Handbook language as part of the labor agreement.

reduction in DPS volume in relationship to the total letter volume of the route, the carrier may make a written request asking for a formal review of the DPS processing for the route. If the formal review indicates a zone or route is no longer being properly processed on automated equipment, quality has deteriorated significantly, or a pattern of random automated processing is revealed. Management will take corrective action to ensure that the processing is returned to levels equivalent to those experienced during the previous mail count period.

However, if the corrective action has not resolved the problem within 30 calendar days of the carrier's written request, Management will prepare a form 4003, Official Rural Route Description, discontinuing the application of DPS standards. The DPS volume will be reclassified as sector/segment mail (if processing standards are achievable) or raw mail, as appropriate, and a base hour change made to adjust the route evaluation. The form 4003 will be processed with an effective date beginning with the first day of the pay period in which the carrier provided written notification requesting a review of DPS processing.

The terms of this document, to be discussed in substantially greater detail below, are central to the current case. As drafted, the process contemplates a series of mandatory events. First, there must be a "disproportionate reduction in DPS volume in relationship to the total letter volume of the route." The meaning of "disproportionate" is what divides the parties in this case. Assuming such reduction, the carrier may request a formal review. Management is then obliged to take corrective action so as to return the processing to levels equivalent to those existing during the mail count. If, however, the problem is not resolved within 30 calendar days, DPS standards are to be discontinued and

the DPS mail is to be reclassified as either sector/segment or raw mail. Without question, the financial impact of such reclassification can be substantial.⁷

The current dispute has arisen over a 2000 claim originating from Louisville, Kentucky's Fern Creek station that the DPS quantity had fallen below the previously-established level (this is undisputed), that Management failed to take corrective action (also undisputed – Management says the problem was *de minimus*) and that as a result, the DPS volume must be reclassified in accordance with §541.42.⁸

Union Position

The Union says the requirements of §541.42 are clear: If the proportion of DPS mail to the total volume of letters decreases by any amount after a mail count, the Postal Service is obligated to return the percentages to the level equal to that established during the count.⁹ Failing to do that, the reclassification referred to in §541.42 is mandatory.

Management Position

The Postal Service claims the reclassification process inherent in §541.42 is not invoked unless the reduction at issue is a "significant" amount¹⁰, perhaps 10% or more.¹¹ The

⁷ Because calculations are rounded to the nearest hour, an evaluated route schedule with 30, rather than 29, minutes beyond the hour can result in a one-hour additional credit. In 1999, a one-hour differential amounted to some \$1300 in salary. (See Union brief, p.10; see also Jt. Ex. 1, p.22)

⁸ Routes 5, 19, 40, 51 and 77 suffered decreases of 3.04%, 5.57%, 4.73%, 2.92% and .33%, respectively. (See Union Ex. 10).

⁹ At one point in the lower steps of the grievance proceedings, the Union appears to have endorsed a 2% threshold. Its position at the arbitration stage, however, is "zero variance."

¹⁰ Citing Webster's Dictionary, management at Fern Creek claimed "significant" means "momentous". (Agency Ex. 1, p.11).

¹¹ In denying the grievance, the Agency stated:

Union's interpretation, says Management, overlooks the intention of the parties to avoid bright-line thresholds. Rather, a variety of "local factors" such as the quantity of mail, the type of mail or the volume of mail at a given facility must be considered. The percentage reduction at one facility might warrant reversion to segment/sector or raw mail rate while the same level at another facility would not, it is claimed. At Fern Creek, under these circumstances, the shortfall should be considered insignificant. The Postal Service requests that the grievance be denied.

Analysis

The critical language in this case is troublesome, primarily because it purports to establish numerical thresholds (strict or loose, depending on which sides' characterization is accepted) in the context of measurements that are often imprecise and boundaries that are, at least to some extent, the product of negotiation as much as experimentation. The Union claims the parties intended a rigid "zero-change" approach. On the one hand, if the parties intended to plainly establish a zero tolerance for change, it would have been easy to say so.¹² At the same time, Management's claim that these parties, in response to political pressures and negotiating realities,¹³ intended to utilize purposely vague wording, or that the

The Postal Service believes a reasonable application of the language in the DPS Implementation Procedures would require correction or discontinuation of DPS standards when the ratio of DPS mail volume to total letters for a route is reduced by more than 10 percent compared to volumes during the latest mail count. (Agency Ex. 1, p.2)

¹² Testifying for the Agency, Robert West observed: [If] we would have wanted to say "equal", we could have wrote "equal", and "disproportionate" didn't need to be there." (Tr., p. 324).

¹³ Agency brief, pp. 8-9.

appropriate numerical standards were intended to be left for local application requires some substantial leaps of faith that are clearly reflected neither in the language itself nor in the parties' negotiating history. In the final analysis, the finding is that the intended purpose of the contested language--to accommodate and respond to the challenges of automation and its impact on the bargaining unit--is more closely reflected in the Union's proposed interpretation of §541.42 and that, for the reasons that follow, the grievance should be found to have merit.

As is apparent from the discussion above, at the time of bargaining, both parties recognized the potentially substantial impact of automation on bargaining unit work and compensation. Because DPS mail could be handled more quickly and expeditiously, it followed it would be rated lower, in terms of its time value, than raw mail (30 pieces per minute for DPS mail as contrasted with 16 pieces per minute for raw mail). From the outset, while the Union recognized the necessary reevaluation, it also foresaw the need to ensure that the assumptions underlying the evaluation at the time of the mail count would remain valid, as indicated earlier. Thus, if, at the time of the count, it was concluded that 70% of a rural carrier's total letter volume was composed of DPS mail, and the carrier's compensation was premised on that mix, a drop in the DPS-to-total mail volume ratio would mean the carrier was processing the more time consuming raw mail while being paid at the lower rate based on the earlier assumptions.¹⁴

¹⁴ The Union's concern was verbalized by Union negotiator Scottie Hicks who stated:

The Handbook Language

According to the evidence, an initial draft of PO-603 contained language acknowledging the problems associated with "significant decreases in the *quality*" of the DPS mail, but the provisions said nothing with respect to quantity.¹⁵ As a result, the Union responded with its proposed language, which incorporated the quantity requirement -- the DPS quantity must remain in the same proportion to the total letter volume. Management accepted that amendment and it was codified in the final language of §541.42.¹⁶

Management's willingness to accede to the Union's proposed protective language is a reflection of the Postal Service's optimism that DPS would soon constitute the bulk of any carrier's load.¹⁷ Thus it was that the parties agreed on the mechanism that would engage at the point of a "disproportionate reduction in DPS volume in relationship to the total letter volume of the route". As noted above, corrective action was obligatory. Significantly, however, in the event Management was unable or unwilling to make the corrections, a

The issue is that he was promised and evaluated on a percentage of his total volume at a much lower rate so its essential to the carrier that he receive, continue to receive at least that minimum amount that he qualified under during the mail count. If not, he has to... perform other functions and do other work that he's not properly compensated for. (Tr.,p.113.)

¹⁵ See Union exhibit 17, p.5.

¹⁶ The language was formally issued on March 31, 1994. See Association exhibit 5.

¹⁷ Indeed, Management initially forecast "95% in 1995" but subsequently revised its expectations downward.

substantial and potentially expensive remedy was agreed upon: The DPS volume would be reclassified and considered to be sector/segment or raw mail. Without doubt, this can be a stern penalty; its inclusion, one must conclude, reflects both the importance of the issue to the Union and the confidence on the part of Management in its ability to avoid that outcome.

There is no dispute in this case as to the several steps that necessarily follow in the event of decreasing DPS volume. The question here is: What triggers those steps?

Specifically, what is meant by a “disproportionate drop?”

The mischief in this case is caused by the parties’ decision to employ the adjective “disproportionate”. It is a troublesome word, and, from the evidence, it is a term that was never fully discussed between the parties during bargaining¹⁸. Strictly interpreted, it means “out of proportion”.¹⁹ As is apparent from the dictionary definition, at least, the term can represent a proportionate disparity that is either greater or less than the benchmark (“inadequately or excessively proportioned” says the OED).²⁰ The Postal Service reads the word as synonymous with “significant”,²¹ and in this context, that reading, while not fully consistent with the dictionary definition, is by no means unreasonable. It is true, after all, that if the contracting parties had meant simply to refer to a change of *any* magnitude, they could have deleted the adjective entirely, simply linking the review process to a “reduction in

¹⁸ See, for example, testimony set forth in Tr., p.294 *et seq.*

¹⁹ The Oxford English Dictionary says it means “out of proportion; failing observe or constitute due proportion; inadequately or excessively proportioned.”

²⁰ *Id.*

²¹ “Disproportionate”, says the Agency, means something “so out of proportion that no credible comparison is possible.” (Agency brief, p. 22.)

the DPS-to-total letter volume ratio". It is also conceivable, however, that the intention was to signal the very test here suggested by the Union, which requires a review to see if the original proportion established at the time of the count is somehow now out of line -- "disproportionate". In the overall, there are strong reasons to conclude that the latter approach is correct. First, there is no question this comparison process -- viewing the current ratio against that established at the time of the count -- is precisely what both parties intended. The only issue in this case is the extent of the imbalance required to trigger the remedial processes. While the parties might have chosen to drop the adjective entirely, there is no necessary reason to conclude, as the Postal Service here urges, that they intended it to be synonymous with "significant". *That* adjective is utilized, in the same paragraph, to describe the test for "quality", not "quantity". Thus while, the Agency repeatedly urges that the terms "significant" and "disproportionate" are, and were intended to be, synonymous,²²

²² The Agency contends, for example²² that the NJSC "Questions on Delivery Point Sequencing (DPS) Procedures for Rural Routes" somehow applies "Significant" to both Quality and Quantity concepts. It does not. The process -- unresolved quality or quantity problems leading to discontinuance of DPS standards -- is, indeed, applicable to both quality and quantity issues, as the Agency notes. However, the benchmarks for assessing the deficiencies are different and are described differently in the questions themselves. In answer to "What Is A Significant Decrease in the Quality of DPS Mail?" the text notes that:

Initially, no number or percent was set for what would be considered a frequent, significant quality decrease. It was anticipated that the local DJSCs would examine the capabilities of their local mail processing operations, and other related conditions, and determine what was a frequent, significant variance based on their knowledge of local conditions.²²

This language incorporates, unequivocally, the adjective "significant". And, it just as clearly refers to decisions being made on a local basis. But, with reference to DPS volume, neither the question nor the answer refers to a "significant" drop or to any standard involving local conditions. The sole overlap is with respect to the remedial process, as noted above: Reclassification follows in the case of uncorrected quality or quantity problems. But as to decreases in volume, the triggering language stems directly from §541.42 of PO-603:

its proposed test of whether the volume change is both "significant" and "disproportionate" merges adjectives that were separated by the parties in their drafting of the language. Absent evidence to the contrary, one must at least begin with the assumption that these choices of words and construction were intentional.

The Agency says the evidence makes it clear that the NRLCA and the Postal Service agreed to language in §541.42 that intentionally left open the question of what precise percentage reduction in DPS mail was "disproportionate".²³ The bargainers, says Management, chose to finesse the issue "as to whether the slight reductions present in Fern Creek represent a significant/disproportionate reduction in DPS volume. If the arbitrator finds the DPS percentage decreases to be neither significant nor disproportionate," says Management, "there is no need for him to impose on the parties' terms that were purposely left vague."²⁴

[O]ne can conclude that the parties chose to continue the 'specifically non-specific' and provided latitude to the local committees and managers to determine a significant/disproportionate reduction in DPS percentages."²⁵

It urges the arbitrator to avoid making a decision on what is a "significant percentage" or what is a "disproportionate reduction" in DPS percentages²⁶ inasmuch as several other

"This same [remedial] process is applicable where there is a *disproportionate reduction* in DPS volume in relationship to the total letter volume for the route...."

²³ Agency brief, p. 15.

²⁴ Agency brief, p. 15-16.

²⁵ *Id.*, p. 20.

²⁶ *Id.*, p. 22.

“local factors” such as mail quantity, the nature of the mail or its volume will impact what is significant or disproportionate:

Rather, the arbitrator’s sole concern should be whether Management exercised proper discretion by finding the DPS percentage decreases at Fern Creek were not “disproportionate reduction”, where the decreases were between .33 and 5.57%. Indeed, as West testified, the percentage in Fern Creek did not warrant reversion. He would have applied a 10% DPS percentage reduction based on Fern Creek volume, although the same 10% in another locality might not warrant reversion.²⁷

But there is no support whatsoever in the operative language of the rule that would somehow direct the parties to local understandings on thresholds. It is true, as Management notes, that the parties intentionally avoided a set threshold. But that does not mean they failed to establish a mechanism that could operate with some precision. This one does so by using comparisons of ratios.

The Postal Service notes that review of DPS percentages will not be identical to the earlier percentages determined during the mail count time period due to seasonal fluctuations. It strains credulity, says the Agency, to believe that at any given point in time a rural carrier route would show exactly the same DPS percentage as the mail count. Rather, there will always be slight variations, as in this case.²⁸ That is true, but it ignores the fact that this was a system designed with a firm expectation of continued expansion of DPS mail. Moreover, it was one clearly designed to work by comparing snapshots. If it is less than

²⁷ *Id.*, p. 22., citing Tr., pp.300-302, 330.

²⁸ *Id.*, p. 22.

scientific, (and it manifestly is less than scientific) in that respect, it is nevertheless a system to which the parties themselves committed. Similarly, if uncorrected, albeit minor, variations, will result in meaningful wage adjustments, this, too, is the system that was bargained.

Bargaining History

The bargaining history leads to no contrary conclusion. Perhaps predictably, the parties differ in their views of their history on this point. Testifying for the Postal Service, program manager Robert West says that, in discussions during monthly National Joint Steering Committee (NJSC) meetings, both parties intended to avoid "absolutes" in the application of the language.²⁹ According to West, the amount of mail volume is only one of several critical factors to consider; type and volume of mail and other operational concerns would also have to be factored into the equation.³⁰ But Scottie Hicks, former NRLCA Vice President, who, unlike West, participated in negotiating the language, differed substantially as to the intentions. As indicated earlier, the Union was concerned over the failure of the proposed rules to properly account for quantity variations. With recognition of the substantial impact in a drop in the ratio, the Union proposed, and Management accepted, the procedure that is at issue. And, he noted that, at the time of bargaining, the Postal Service was steadfast in its belief not only that the relative percentage of DPS mail would increase

²⁹ Tr., p. 284.

³⁰ Tr., p. 294.

but that, to the extent problems were encountered, they could be remedied within the 30 day grace period.³¹

Application of these concepts has generated disparate views among the parties along the way. As Management notes, discussion surrounding the overall problem of dealing with DPS mail tended, at times, to speak, simply, of “significant” problems.³² Terms such as “significant” and “disproportionate reduction” were used loosely and, at times, interchangeably, during such discussions.³³ On the other hand, the local District Joint Steering Committee, (DJSC), in accordance with standard procedure, considered the rural carrier’s allegations in this specific case and concluded that, because DPS percentage decreased in five routes, ranging from .33 to 5.575%, in November of 1999, the five routes in Fern Creek should be reclassified.³⁴ That recommendation from the DJSC was passed on to the Kentuckiana District Operations manager, who rejected it, concluding “there was not a

³¹ See Tr., pp. 90 *et. seq.*

³² The 1996 NJSC minutes of July 11 state:

... we will also look at the possibility of putting together a small work team to look at the issue and develop a formula which could help us identify what is or isn't a significant problem. All parties agree that we support automated processing of mail and understand the need for such processing. Further, we agree that even in the best operations there are occasional glitches which can cause a dramatic volume shift from DPS to random... Volume we have determined is somewhat uneven and, while the linear measurement may go up, this does not always translate into increases in DPS. (Agency Ex. 9, p.4.)

³³ Agency brief, p. 9.

³⁴ According to the National Guidelines of the USPS-NRLCA Quality of Work Life/Employee Involvement Process, the DJSC is charged with certain functions relevant to Automation Implementation:

DJSCs must ensure that carriers receive any required training in the proper implementation of automated processing and that, once counted and evaluated under automated mail standards, routes continue to receive automated mail in the same manner as during the count... (At p. 14.)
DJSCs are responsible for monitoring and assisting in the implementation of automated mail processing, both sector/segment and delivery point sequencing (DPS), throughout the district.

'disproportionate reduction' in DPS volume percentage."³⁵ Management claims the DJSC's decision was erroneous, stemming from the failure of its members to have understood the intention of the language. According to the Postal Service, the members of the committee had no training on the issue, failed to consult with Postal Service headquarters prior to its recommendations and based their decision solely on reading the language.³⁶ It is, of course, possible that the DJSC members misunderstood the language. It is also possible, however, that the language was, in their judgment, clear and compelling. There is, as indicated herein, ample room for such a finding. The conclusion of that committee is in no way binding in a subsequent arbitration. The decision in this case is rendered solely on the evidence and arguments presented at arbitration. Having carefully reviewed the terms of the bargained language, the conclusion is that the Union has sustained its burden of proving the violation.

In summary, neither of the positions advanced in this case is unreasonable. It is at least possible the parties would have constructed a system that relied on benchmarks intended to be developed locally, with reference to the particular facts of a given case. Yet, given the substantial stakes riding on the question of whether there has been any "disproportionate" change, it would make sense, instead, for the parties to have established a definable

³⁵ Union Ex., 10. Contrary to management's contention, (Agency brief, p. 14) Gregory did not base his written conclusions on the lack of a "significant" decrease in DPS volume percentage.

³⁶ See Agency brief, pp. 13 *et. seq.*

threshold, in the interest of avoiding recurrent disputes. In this case, with due regard for the ambiguity in the word "disproportionate", the language of §541.42, when read in its entirety, strongly supports the conclusion that the parties did, in fact, establish such a threshold.

It is true, as the Agency observes, that the parties steered clear of a precise percentage change, in terms of DPS volume drop. Instead, the bargained language reflects agreement on a process that focused not on a numerical benchmark, but rather on the requirement of equality: §541.42 requires that the relative mix of DPS mail to total volume, established at the annual mail count, is to be maintained. To the extent the mix deteriorates, it is to be restored to "equivalent" levels. A contrary approach, one that would involve limitless trigger points, all depending on local circumstances, is nowhere suggested in either the structure or content of §541.42. In the final analysis, interpretation and application of the contested language requires the conclusion that management erred in failing to reclassify the DPS volume, in the circumstances here at issue. For these reasons, the grievance will be granted.

AWARD

The grievance is granted.


RICHARD I. BLOCH, ESQ.

June 17, 2004