

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)
between) **Grievance:** Class Action
UNITED STATES POSTAL SERVICE) **Post Office:** Des Moines, IA
and) **USPS Case No.** E98M-1E-C 01219672
NATIONAL POSTAL MAIL HANDLERS) **NPMHU Case No.** 0101192333
UNION)

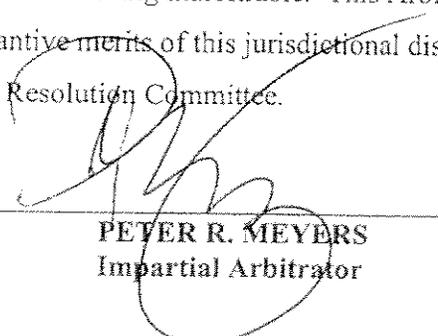
BEFORE: Peter R. Meyers, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Marcia Grant and Roger West
For the Union: Randy Krueger, Dennis Lockridge, Kevin John
Beener, and Lance Coles
Place of Hearing: 1165 Second Avenue
Des Moines, IA 50318
Postal Service Brief Received: August 19, 2002
Union Brief Received: August 28, 2002
Date of Hearing: July 8, 2002
Date of Award: September 11, 2002

AWARD SUMMARY:

The grievance is dismissed as being inarbitrable. This Arbitrator lacks the authority to consider and resolve the substantive merits of this jurisdictional dispute. This matter must be referred to the RI-399 Dispute Resolution Committee.



PETER R. MEYERS
Impartial Arbitrator

Introduction

The National Postal Mail Handlers Union, Local 333 (hereinafter "the Union"), filed this class-action grievance on behalf of the mail handlers working at the Processing and Distribution Facility in Des Moines, Iowa. The grievance alleges that the United States Postal Service (hereinafter "the Postal Service") violated the parties' National Agreement when it assigned clerks to perform containerization work associated with the AFSM 100 flat-sorting machines in July 2001.

This matter was processed, without resolution, through the contractual grievance procedure, then came to be heard before Neutral Arbitrator Peter R. Meyers on July 8, 2002, in Des Moines, Iowa. The parties subsequently filed written, post-hearing briefs.

Statement of the Issues

1. Whether the subject of the instant grievance is arbitrable and may be considered and resolved by the arbitrator?

2. If so, then whether the Postal Service violated the parties' National Agreement by assigning clerks, from July 9 to September 2001, to perform containerization work associated with the AFSM 100 flat-sorting machines at the Processing and Distribution Facility in Des Moines, Iowa? If so, what is the appropriate remedy?

Relevant Contract Provisions

ARTICLE 3 - MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- 3.1 To direct employees of the Employer in the performance of official duties;
- 3.2 To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

- 3.3 To maintain the efficiency of the operations entrusted to it;
- 3.4 To determine the methods, means, and personnel by which such operations are to be conducted; . . .

ARTICLE 5 - PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under the law.

ARTICLE 7 - EMPLOYEE CLASSIFICATIONS

Section 7.2 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 schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:
 - A1 All available work within each separate craft by tour has been combined.
 - A2 Work of different crafts in the same wage level by tour has been combined.
- B The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing combination full-time assignments within different crafts in accordance with this Article.
- C In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.
- D During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their

capabilities, to the heavy workload area for such time as management determines necessary.

ARTICLE 15 - GRIEVANCE-ARBITRATION PROCEDURE

Section 15.1 Definition

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

...

Section 15.4 Arbitration

A. General Provisions

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A6 All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. Unless otherwise provided in this Article, all costs, fees and expenses charged by an arbitrator will be shared equally by the parties.

Fact Summary

The record in this matter reveals that in September 2000, the Automated Flat Sorting Machine (AFSM 100) was installed at the Des Moines Processing and Distribution Facility. As a new machine, the AFSM 100 was not included in the current RI 399 Inventory. The AFSM 100 sorts flats by electronically "reading" the address, without the need for a clerk to input the address through a keypad. The record establishes that staffing for this piece of equipment was set as three operators for loading, two operators for sweeping, and DCOs as needed, based on image generation rate.

The record further reveals that prior to the arrival of the AFSM 100, flats at the Des Moines facility were sorted both manually and by the use of the Multi-Purpose Flat Sorting Machine (including FSM 881). The evidence demonstrates that the clerks who operated the FSM 881 removed the mail from the machine and placed the tubs on hand-trucks; mailhandlers then removed the hand-trucks and took the containers to be banded and dispatched.

Roger West, the Postal Service's Manager Distribution Operations and a member of the Local RI 399 Committee, testified that when this new equipment arrived at the Des Moines facility, work assignments relating to it were in a state of flux. West explained that the operation of the AFSM 100 was experimental for several months, and both clerks and mailhandlers were involved. Clerks mainly were assigned to stock the machine with needed equipment, bring in mail, and take dispatches away. Moreover, there was some overlap, with certain duties being performed by both crafts.

During the hearing in this matter, the parties stipulated that:

1. The clerk craft, during the period July 10 - September 22 of 2001 for Tour 2 and July 9 for six weeks for Tour 3, was assigned 1640 hours to do the containerization work of the AFSM 100.
2. Before and after the above periods, the containerization work on the AFSM 100 was assigned to the mailhandlers.

The Union subsequently filed the instant grievance, challenging the Postal Service's assignment of containerization work on the AFSM 100 to the clerk craft. "Containerization" involves that splitting of tubs of mail into larger containers for dispatch or further processing.

The Union's Position

The Union initially addresses the Postal Service's objection to the arbitrability of this grievance. The Union emphasizes that the Postal Service's objection primarily is based on an October 1992 tripartite agreement on RI-399 dispute resolution procedures. This agreement states that grievances "must be referred to the Dispute Resolution Committee" if "one of the parties believes the issue in the grievance constitutes a jurisdictional dispute." The Union contends that the Postal Service has no basis for "believing" that a jurisdictional dispute exists.

The Union maintains that when the AFSM 100 machines were installed in September 2000, management assigned the containerization work at issue exclusively to the mailhandlers, and it continued that assignment with the exception of the few weeks that are the subject of this grievance. The Union argues that the Postal Service therefore must be considered as "believing" that the containerization work properly was assigned to mail handlers; any other conclusion is unreasonable.

The Union further points out that both of the involved unions were of the opinion that the work properly was assigned to the mail handler craft, and a written agreement to that effect was entered into evidence at the hearing. The Union asserts that the parties intended for the October 1992 RI-399 dispute resolution procedures to apply only to genuine "disputes." Moreover, the parties expressly agreed, in the August 3, 2000, tripartite agreement, that non-jurisdictional grievances shall not be referred to the RI-399 dispute resolution procedures. The Union further argues that the August 2000 agreement, in defining to what types of cases the settlement is intended to apply, includes "cases where the remedy sought by the grieving union does not include permanent reassignment of the work to a different craft." The Union emphasizes that because the subject work currently is assigned to the mail handler craft, as the parties stipulated, this grievance does not ask for "permanent reassignment of the work to a different craft." The Union also asserts that as the most recent agreement between the parties pertaining to the RI-399 committee process, the August 2000 agreement should be given significant weight.

The Union then contends that the Postal Service's Step 2 Decision does not include any objections to arbitrability. At Step 2 of the contractual grievance process, management is obligated to "make a full and detailed statement of facts and contractual provisions relied upon." The Union points out that there was no Step 3 meeting or Step 3 Decision, and management did not raise the issue of arbitrability until the hearing before this Arbitrator.

The Union goes on to cite West's accurate testimony that he could not move this grievance to the RI-399 dispute resolution process without the cooperation of one of the two unions. The Union emphasizes that the RI-399 process does not contain any provisions allowing the Postal Service to initiate a dispute. The Union therefore argues that the Postal Service now is

asking the Arbitrator to do what it admittedly could not do: divert this dispute from the arbitration procedure that has been established in accordance with Article 15 of the National Agreement. The Union contends that the instant grievance is arbitrable and properly before this Arbitrator for resolution.

As for the merits of this dispute, the Union contends that the Postal Service must assign work in accordance with Section 7.2 of the National Agreement. The Union argues that the subject containerization work properly was assigned to the mail handler craft before management "combined" it with clerk work by reassigning it to that craft. The Union maintains that management did not comply with Section 7.2 of the National Agreement when it reassigned the subject work.

The Union emphasizes that management cited three reasons for this reassignment: the local inventory had not been updated, so management could assign the work however it chose; the AFSM 100 operating manual indicated that clerks should be assigned the containerization work; and that an operational change necessitated the reassignment. The Union argues that none of these three reasons are included within Section 7.2 of the National Agreement as allowable reasons for such a reassignment.

In addition, there is no evidentiary or contractual support for the Postal Service's three stated reasons for reassigning the subject work. As for the local inventory, the Union points out that the Postal Service made no effort to update the inventory until weeks before the arbitration hearing in this matter. In addition, the Union argues that, as made clear in the April 1992 memorandum, the parties at the local level were responsible for including the containerization work in the local inventory because the September 2000 assignment of the work was "not in dispute." Because the clerks agreed with the assignment of the work and the mail handlers believed the inventory was accurate, the Union argues that the Postal Service was the only "party" that could have addressed the inventory issue in September 2000. The Union maintains that the issue of whether management did or did not add it to the inventory is inconsequential because the assignment was undisputed and therefore valid.

The Union goes on to contend that it absurd for management to claim that the inventory was not "updated" nearly two years after it was obligated to address any concerns about the inventory. The Union asserts that the parties clearly did not intend that any failure to include undisputed assignments in the local inventory should grant management the authority to alter craft assignments. By arguing that the substance of the assignment be overlooked in favor of the formality of recording an undisputed assignment in the local inventory, the Union asserts that the Postal Service is asking that the parties' intent be ignored.

As for the AFSM 100 manual, the Union asserts that a reading of the entire staffing section reveals that the Postal Service is attempting to misuse it. The Union points out that this section refers to the assignment of additional personnel, and it does so without designating from which craft those "additional personnel" should come. The Union contends that management at the Des Moines facility determined it was appropriate to assign mail handlers to perform the containerization work. The Union argues that it was unreasonable for management to reassign some of the work to the clerks ten months later, and then claim that the manual justified this reassignment. Moreover, because management reassigned the work to clerks on only two of the three tours, its claim about attempting to adhere to the manual is hollow.

In connection with the Postal Service's argument about operational change, the Union maintains that under the "Operational Change" section of the April 1992 memo on RI-399 dispute resolution procedures, when any operational change may result in the reassignment of functions from one craft to another, management must present and discuss any such change with the Local Dispute Resolution Committee thirty days prior to the effective date of the operational change. The Union asserts that it is undisputed that management did not propose any operational change to the committee that justified a change in the craft assignment. The Union further points out that the Postal Service first raised its "operational change" argument during the hearing before this Arbitrator. Moreover, management not only failed to make the reassignment comply with the April 1992 memo, but it also reversed the reassignment a few weeks later and left intact the original assignment to the mail handlers on the first shift for virtually the entire time.

The Union then argues that after it proved its jurisdiction over the subject work and that the clerks were assigned to the work, the burden of proof shifted, making the Postal Service

responsible for presenting evidence that one of the situations described in Section 7.2 of the National Agreement was present and allowed for combining work from different crafts. The Union emphasizes, however, that the Postal Service never even has asserted that the necessary circumstances, as described in Section 7.2, existed.

The Union additionally contends that arbitrators previously have rejected Postal Service claims that grievances should be moved to the RI-399 committee procedure, particularly where, as here, the Postal Service raised such claims for the first time at the arbitration hearing. The Union also argues that arbitrators frequently have corrected Section 7.2 violations by awarding payment to the harmed craft employees and ordering the Postal Service to "cease and desist." The Union asserts that in the instant case, mail handlers would have performed the subject 1640 hours of work had management not improperly assigned the work to the clerks. The Union therefore argues that there is no question as to whether mail handler craft employees were harmed.

The Union argues that the Postal Service violated the National Agreement by assigning clerks to perform work that mail handlers should have been allowed to perform. Mail handlers were available at all times to perform the work, so the mail handlers were harmed and should be compensated. The Postal Service completely disregarded its obligations under Article 7 of the National Agreement, and its defensive arguments are rendered ludicrous by the evidence. The Union ultimately contends that the instant grievance should be sustained, that the work performed on the AFSM 100 properly be assigned to the mailhandler craft, and the mailhandler craft be paid at the overtime rate for work improperly performed by clerks.

The Postal Service's Position

The Postal Service contends that this dispute involves a jurisdictional issue, and it therefore is not properly before this Arbitrator. The Postal Service maintains that a dispute over work jurisdiction matters concerning a primary craft issue represents a subject for resolution by the Local Dispute Resolution Committee under the RI-399 Dispute Resolution Procedures. The Postal Service emphasizes that under RI-399 procedures, if one of the parties believes a grievance issue constitutes a jurisdictional dispute, then the grievance must be referred to the

Dispute Resolution Committee. The Postal Service argues that because it so believes, the instant grievance must be referred to the Committee; any other path violates the agreement.

The Postal Service argues that because the AFSM 100 is a new machine, all of the work associated with it must be considered new work. Accordingly, the parties' dispute over the subject duties must be classified as jurisdictional, and the only proper forum for the resolution of the assignment dispute is the RI-399 Dispute Resolution Process and, if necessary, jurisdictional arbitration. The Postal Service emphasizes that an arbitrator hearing a non-jurisdictional case under Article 15 of the National Agreement is not empowered to decide jurisdiction. The Postal Service argues that the Union, however, is attempting to accomplish just that in the instant case by asking this Arbitrator to assign the subject work to the mailhandler craft. The Postal Service asserts that only a jurisdictional arbitrator may make that assignment, and only after the issue has been processed through the RI-399 Dispute Resolution Process.

The Postal Service goes on to cite the testimony of both West and APWU representative Lance Coles, indicating that the Local Dispute Resolution Committee had discussed the duties, but had not resolved the AFSM 100 work assignments. The Postal Service asserts that the issue cannot be pursued outside of the Committee until it is referred to the next step of the RI-399 Dispute Resolution Process. The Postal Service therefore argues that this instant matter is not properly before this Arbitrator. The Postal Service additionally contends that because all three parties must reach an agreement under the Dispute Resolution Process, the agreement between the two Unions regarding the containerization work is virtually meaningless. The Postal Service argues that the written stipulation on the subject work that the two Unions drew up on the day of the arbitration hearing should not be admitted into the record or given any consideration.

The Postal Service additionally maintains that the Union failed to submit any evidence to substantiate its allegation that the Postal Service violated Article 7 of the National Agreement. The Postal Service emphasizes that there is no evidence that the containerization work was within the sole jurisdiction of the mailhandler craft, and there was no current RI-399 Inventory assigning these duties to the mailhandlers. The Postal Service asserts that no such assignment yet has been made. None of the Union's witnesses offered testimony that can be considered persuasive regarding which craft has jurisdiction over the subject duties on the AFSM 100.

The Postal Service then emphasizes that the AFSM 100 Standard Operating Procedures spell out the staffing criteria for this piece of equipment, and this staffing does not include any mailhandlers. Instead, the manual specifically states that sweeper operators, who are clerks, are responsible for moving the flat trays conveyed to the extendable buffer/conveyor at the end of the machine. The Postal Service further asserts that containerizing is an integral part of sweeping and operating the AFSM 100. Although the Postal Service argues that this work cannot be efficiently separated, and that it should be performed by the clerks who are operating and sweeping the machine, the Postal Service emphasizes that the RI-399 Dispute Resolution Committee is responsible for designating the proper craft assignment. The Postal Service cites several prior arbitration decisions in which arbitrators found that jurisdictional disputes must be referred to the Committee for resolution.

The Postal Service ultimately contends that the grievance at issue should be denied in its entirety.

Decision

This Arbitrator has carefully reviewed all of the evidence and testimony in the record, as well as the written, post-hearing briefs that the parties submitted. In this dispute over the proper interpretation and application of the parties' National Agreement, the Union bears the burden of proving that the Postal Service committed a contract violation in connection with the Postal Service's decision to assign, during the period from July 9 to September 2001, certain containerization work associated with the AFSM 100 flat-sorting machines to employees of the clerk craft.

Before the substantive merits of the parties' dispute may be considered, however, the Postal Service's objection to the arbitrability of this grievance must be analyzed. Of course, if the Postal Service is correct in its contention, then the grievance must be dismissed as inarbitrable, without any consideration of its merits.

The Postal Service's objection to the arbitrability of this grievance is based upon its contention that this matter involves a jurisdictional dispute. If the grievance does, in fact, present a jurisdictional dispute, then this Arbitrator does not have jurisdiction to hear and resolve it.

Jurisdictional disputes must be referred to the parties' Dispute Resolution Committee for resolution, in accordance with the express provisions of the RI-399 Dispute Resolution Procedures. To assist with such questions as the proper identification of matters that must be referred to the Dispute Resolution Committee, the parties jointly produced a Q&A document that addresses a number of issues relating to the proper application of the RI-399 Dispute Resolution Procedures. The Q&A document specifically states that if a grievance alleges a contract violation other than RI-399, such as an alleged violation of Section 7.2, and even one party involved in the grievance believes that the grievance constitutes a jurisdictional dispute, then the matter must be referred to the Dispute Resolution Committee for an initial determination as to whether or not it does involve a jurisdictional claim.

Although this portion of the Q&A document suggests that only the Committee may initially determine whether a particular grievance involves a jurisdictional claim, in fact such a determination must be made by an arbitrator under the set of circumstances presented here. To determine whether the Postal Service's objection to the arbitrability of the instant grievance is valid, it is necessary for this Arbitrator to consider whether the grievance does present a jurisdictional dispute.

The evidence leaves no doubt that the instant grievance does, in fact, present a dispute over work jurisdiction. There are three parties to a typical jurisdictional dispute, the employer and two unions, and the dispute develops when all three parties fail to agree on the proper assignment of certain work to a particular classification of employees. It is not enough if only two of the three parties agree to the work assignment; to avoid a jurisdictional dispute, all three parties must be in agreement. This means that there is no relevance here to the Union's argument that the union representing the clerks agreed with it that the work at issue should be assigned to the mail handlers. The Postal Service's assignment of the work at issue to the clerk craft for the period from July 9 to September 2001 demonstrates that it does not agree with the two Unions that the work properly belongs to the mail handlers. The evidentiary record therefore conclusively demonstrates that a jurisdictional dispute does exist, completely undercutting the Union's contention that the Postal Service has "no basis for believing" that such a dispute exists.

The Union's assertion regarding the Postal Service's failure to raise its arbitrability objection until the arbitration hearing also has no bearing on whether the instant grievance is inarbitrable here. Although it is true that some arbitrability objections based upon procedural errors might be waived if not raised at an earlier point in the process, that is not true of an objection of the nature that the Postal Service has raised. Instead of making a purely procedure objection, however, the Postal Service contends that this Arbitrator has no authority to consider the subject matter of the instant dispute, and this type of objection may be raised at an any time during the grievance and arbitration process.

Section 3 of the August 2000 Settlement Agreement is instructive on the question of whether the instant matter is a jurisdictional dispute. Section 3 provides that "non-jurisdictional cases are those cases in which the underlying craft jurisdiction is not under challenge." In this case, such a challenge does exist; the parties do not agree on the underlying craft jurisdiction. The Union's assertion that it is not seeking "permanent reassignment of the work to a different craft," which Section 3 indicates is an example of a non-jurisdictional case, is not factually accurate. Because no permanent assignment of the work yet has been made, and the work has been assigned to two different crafts at different times, the Union is seeking to have the work permanently reassigned to the mail handlers craft.

I find that because the instant grievance does constitute a jurisdictional dispute, a dispute over which craft has jurisdiction over particular work, the parties' RI-399 Dispute Resolution Procedures govern the proper handling of this matter. I also find that according to the express terms of those Procedures, this matter must be referred to the Dispute Resolution Committee. It must be noted that this finding of inarbitrability does not, under these particular circumstances, preclude either side from pursuing and obtaining complete relief and a full resolution of this dispute on the merits. The fact that the instant grievance must be referred to the Committee, and is not arbitrable at present, means only that the parties must seek that resolution and relief in a different forum.

The Union also has suggested that this matter should not be referred to the Committee because the RI-399 Dispute Resolution Procedures do not contain any provisions allowing for

the Postal Service to initiate a dispute. Although it is true that the Postal Service cannot initiate a jurisdictional dispute before the Committee, that does not mean that the instant matter cannot be referred to the Committee. The RI-399 Dispute Resolution Procedures contemplate that a jurisdictional dispute will be initiated by a Union that disagrees with the Postal Service's assignment of work. Applying this to the instant matter, the Union disagreed with the Postal Service's assignment of containerization work to the clerk craft during the period from July 9 to September 2000, and I find that the Union should have pursued that jurisdictional dispute before the Committee, rather than through the contractual grievance and this arbitration procedure.

In light of all of these considerations, this Arbitrator finds that the instant grievance represents a jurisdictional dispute between the parties that must be referred to the Dispute Resolution Committee in accordance with the RI-399 Dispute Resolution Procedures. This matter is not properly before this Arbitrator, and this Arbitrator is without authority to consider and resolve the substantive merits of this matter.

Award

The grievance is dismissed as being inarbitrable. This Arbitrator lacks the authority to consider and resolve the substantive merits of this jurisdictional dispute. This matter must be referred to the RI-399 Dispute Resolution Committee.



PETER R. MEYERS
Impartial Arbitrator

Dated this 11th day of September 2002
at Chicago, Illinois.