

DECISION OF THE ARBITRATOR

Background

This is a class action grievance on whether the Postal Service has a contractual obligation to pay a work clothes allowance to General Expeditors at the DesMoines, Iowa installation.

The General Expeditors in DesMoines had been receiving a work clothes allowance since at least 1988. In 1991 local Management made an enquiry of Nora I. Becker, Labor Relations Program Coordinator at headquarters, on whether such an allowance was appropriate for General Expeditors and Vending Machine Mechanics. Her response, dated April 4, 1991, was:

"Under the current program, neither position is authorized an allowance, and exceptions to the program will not be made at this time. The program administrators will be conducting a multi-year study of the uniform program and intend to address individual uniform and work clothes allowance at that time."

As a result of this advise the work clothes allowance was ended during 1991 for new General Expeditors. There was to be no mention of the allowance in the vacancy notices posted to fill General Expeditor positions. The intent of Management was to end the allowance for General Expeditors who entered their position after the change in policy.

The work clothes allowance, however, was continued for General Expeditors who were then receiving the allowance. For many years (at least since 1988) General Expeditors have received the work clothes allowance and this allowance was included in vacancy notices that they bid on. Consequently, it was decided that all General Expeditors would continue to receive the allowance for as long as they held their bid position. They would loose the allowance if they changed positions.

On October 29, 1991 the Union filed a step 2 grievance which claimed that "To deny General Expeditors a work clothes allowance

is in flagrant violation of the ELM and the National Agreement." This grievance has not been settled. A hearing was held on the grievance in Des Moines on March 25, 1994; but after the hearing it was withdrawn and sent to Step 4. The case has subsequently been remanded back to the Regional level and, in a note dated May 15, 1995, the parties asked this arbitrator to issue an opinion and award.

The parties stipulate that some General Expeditors at the Des Moines installation have received a clothing allowance.

Issue

The parties have stipulated that the issue to be decided by the arbitrator is:

"Has the Postal Service violated Article 26.5 of the National Agreement by not considering certain General Expeditors eligible for the clothing allowance. If so, what is the remedy."

Contract Provisions

ARTICLE 26 Uniforms and Work Clothes

Section 5. Program Continuation

The current Work Clothes Program will be continued for those full-time maintenance, motor vehicle and clerical employees who have been determined to be eligible for such clothing based on the nature of work performed on a full-time basis in pouching and dispatching units, parcel post sorting units, bulk mail sacking operations, and ordinary paper sacking units. The Employer will alter the method of currently furnishing work clothes under this program to provide eligible employees with an allowance of \$49.00 per annum to obtain authorized work clothes on a reimbursable basis from licensed vendors.

EMPLOYEE & LABOR RELATIONS MANUAL

923.13 Work Clothes. This program is separate from the contract uniform program. It is for employees who are not presently eligible for uniforms or contract uniforms. Affected are certain mail handlers, maintenance employees, motor vehicle employees, and clerical employees involved full time in pouching and dispatching units, parcel post sorting units, bulk mail sacking operations, and ordinary paper sacking units:

b. Clerk Craft Employees assigned to:
Ordinary Paper Sacking Units
Parcel Postal Distribution Units (Manual)
Pouching and Dispatching Units

Position of the Union

The Union's Position is that all General Expeditors at the Des Moines installation are entitled to the work clothes allowance. This is based on two considerations. First, Section 923.13 of the ELM states that clerk craft employees assigned to Pouching and Dispatching units are entitled to the allowance. The General Expeditors in Des Moines are assigned to such a unit - they do pouching and dispatching work. This is dirty work and an allowance is appropriate.

Second, there is a long standing practice of paying a work clothes allowance to the General Expeditors in Des Moines. Such an allowance has become a past practice that is now binding on Management. Indeed, the Des Moines management in the past has determined that these employees are entitled to the allowance and nothing has changed in the nature of the work that would justify the elimination of the allowance. This position is supported by the inclusion of the allowance in the vacancy notices that employees relied on in bidding the General Expeditor position. The Postal Service's contention that the allowance was given in error is not believable.

Finally, the Union argues that the April 4, 1991 memo from headquarters not only ignores the past practice in this installation but also was made with no consideration of specific factor in the DesMoines installation. Moreover, the local staff that is responsible for administering the allowance program also has no knowledge of the General Expeditors job and, therefore, had no basis for ending the past practice.

Position of the Postal Service

The Postal Service's position is that the General Expeditors

are not entitled to a clothing allowance. Under Article 26.5 certain full-time clerical employees are eligible for a clothing allowance but only if they are working full-time in pouching and dispatching units. Under this standard the General Expeditors have historically been exempt from the clothing allowance. This is because the General Expeditor is a floating position. They may occasionally be assigned to pouching and dispatching but not on a full-time basis. To be eligible for the clothing allowance they would have to work 100 percent in pouching and dispatching and they do not. This is a National program and National policy must be followed.

Further, the Postal Service contends that to be eligible for the clothing allowance a General Expeditor would have to perform pouching and dispatching work 100 per cent of the time. It is not sufficient to be assigned to a pouching and dispatching unit. While a General Expeditor will sometime load mail they do not do so 100 percent of the time.

The General Expeditors in Des Moines who have received a clothing allowance have done so erroneously. They have never been entitled to such an allowance. Management's decision to bring the uniform program in Des Moines into conformity with the National Program was not arbitrary or capricious.

Further, the Postal Service has acted in a reasonable manner by allowing General Expeditors who have received the clothing allowance to continue to do so. Only employees who bid for this position after the change in 1991 will be denied the allowance. This insures that no employee has been harmed by having a benefit removed.

Discussion and Analysis

It is agreed that the General Expeditors in Des Moines had received a work clothes allowance until 1991 when Management determined that such payments had been made in error. The General

Expeditors who had received the work clothes allowance continued to receive the allowance but employees who bid into the position after the change did not. The question to be answered is whether the Postal Service violated Article 26.5 of the National Agreement when Management decided in 1991 that General Expeditors were no longer eligible for the work clothes allowance.

The starting point, as always, must be the Agreement. Article 26, Section 5 states in part:

"The current Work Clothes Program will be continued for those full-time maintenance, motor vehicle and clerical employees who have been determined to be eligible for such clothing based on the nature of work performed on a full-time basis in pouching and dispatching units, parcel post sorting units, bulk mail sacking operations, and ordinary paper sacking units."

In order to qualify for the uniform allowance under this provision the General Expeditors would need to be full-time employees who work "on a full-time basis in pouching and dispatching units...." While they are clearly full-time employees it is not clear if they are considered to work on a full-time basis in pouching and dispatch units.

The General Expeditors are not always assigned to pouching and dispatching; this is a floater position. This would seem to exclude the General Expeditors from coverage since, as the Postal Service argues, they do not work 100 percent in one of the designated areas. However, what the parties meant by a full-time basis in pouching and dispatch is not entirely clear. There is sufficient ambiguity in this term for the parties to decide that employees who do not always work 100% in pouching and dispatch should receive a uniform allowance. Thus, if the parties agreed in practice that employees who worked 90 percent in the appropriate area were in fact "full time" that would not be inconsistent with the Agreement. Such a past practice would need to be considered incorporated into the parties' agreement.

I agree with the Union that there was a past practice to apply the Work Clothes Program to General Expeditors in Des Moines in

1991. The practice was long standing having existed since at least 1988 and it was consistently applied. Of most importance is that there was mutual acceptance of the allowance. Both parties obviously knew of the practice and accepted it; Management even put the allowance in bid notices when vacancies were filled. There can be no doubt that Management in Des Moines agreed to a practice of paying a uniform allowance to General Expeditors under the work clothes program.

It must follow that Management improperly ended the past practice when it unilaterally decided to end the practice in April, 1991. The April 4, 1991 memo from headquarters could not be the basis for ending a local past practice at that time. If Management could unilaterally end a past practice at any time then the practice would have no meaning. At the time the grievance was filed on October, 29, 1991 the past practice was still in effect and, therefore, the grievance must be sustained.

However, I also find that this past practice did not continue into the 1991-1994 National Agreement. Once established a past practice need not continue for ever. It is generally agreed that a past practice can be ended by Management when the underlying conditions that gave rise to the practice change. In addition, a past practice can be ended by Management at the time a new agreement is negotiated. If notice is given prior to a new agreement that a practice will not be continued then there is obviously an end to a mutual agreement; mutuality no longer exists. It then becomes incumbent on the Union to negotiate the desired practice into the agreement.

In this grievance management in Des Moines gave notification to the Union after April, 1991 that it would not continue the practice of providing a uniform allowance to General Expeditors. Notification to the Union was certainly made prior to October 29, 1991 when the grievance was filed. Thus, when the 1991-1994 National Agreement was signed in December, 1991 both parties were aware that Management did not consider General Expeditors to be covered by the work clothes program. This must imply that there

was no longer a mutual agreement on providing a uniform allowance to General Expeditors in Des Moines. The past practice had effectively been ended.

This arbitrator agrees with the Union that Management may not unilaterally end a past practice but surely this principle only applies for the duration of a written contract. Further, if Management does not give notice that is ending the practice prior to the signing of new contract then that practice must be presumed to continue for the duration of the new contract. But in this grievance Management did give notice and the past practice at issue did not continue into the 1990-1994 Agreement.

The remaining issue is the remedy. Employees who bid into a General Expeditors position in Des Moines prior to the effective date of the 1991-1994 National Agreement are entitled to the work clothes allowance; employees who bid into the position after the effective date are not entitled to the work clothes allowance. General Expeditors who receive the work clothes allowance under this award are to be treated the same as employees who received the allowance prior to April, 1991.

Award

The grievance is sustained in part. The past practice to pay a work clothes allowance to General Expeditors in Des Moines was in effect prior to the effective date of the 1991-1994 National Agreement. Management is to pay the work clothes allowance to employees who bid into the position prior to this date. The arbitrator retains jurisdiction for 90 days to resolve any disputes that may occur over the implementation of this award.



Charles E. Krider
Arbitrator
June 15, 1995