

National Arbitration Panel

In the Matter of Arbitration)
)
)
 between)
)
) Case No.
 UNITED STATES POSTAL SERVICE) Q01N-4Q-C 05023350
)
)
 and)
)
)
 NATIONAL ASSOCIATION OF LETTER)
 CARRIERS, AFL-CIO)

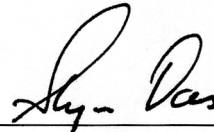
Before: Shyam Das

Appearances:

For the Postal Service: Larissa O. Taran, Esquire
For the NALC: Keith E. Secular, Esquire
Place of Hearing: Washington, D.C.
Date of Hearing: March 22, 2005
Date of Award: September 28, 2005
Relevant Contract Provision: Articles 30.B.2 and 41.1.A.3
Contract Year: 2001-2006
Type of Grievance: Contract Interpretation

Award Summary

The Postal Service did not violate Article 41.1.A.3 when it unilaterally changed route assignments at the Fort Point Station from fixed to rotating days off in conformance with Article 8 of the Boston LMOU.



Shyam Das, Arbitrator

In June 2004, local management at the Fort Point Station in Boston changed the non-scheduled day for 19 letter carrier routes from fixed to rotating. This was done for operational efficiency and cost reasons. The fixed schedules had been in effect for a good many years. The Union filed grievances protesting these changed schedules. One of the issues raised in those grievances is an interpretive issue which the Union appealed to national arbitration.

The Union contends that management's unilateral action violated Article 41, Section 1.A.3 of the National Agreement, which provides:

Section 1. Posting

A. In the Letter Carrier Craft, vacant craft duty assignments shall be posted as follows:

* * *

3. The existing local procedures for scheduling fixed or rotating non-work days and the existing local method of posting and of installation-wide or sectional bidding shall remain in effect unless changes are negotiated locally.

The Postal Service maintains that the change did not violate Article 41.1.A.3 and was appropriate in that it is consistent with Article 8 of the Boston Local Memorandum of Understanding (LMOU), which states that, with certain exceptions not relevant in this case: "Letter Carriers in the Boston Post

Office will be granted a non-scheduled work day on a rotating basis...." Article 8 of the LMOU was negotiated pursuant to Article 30, Section B.2 of the National Agreement, which permits the local parties to negotiate about: "The establishment of a regular work week of five days with either fixed or rotating days off."

Both Article 41.1.A.3 and Article 30.B.2 were first negotiated into the National Agreement in 1973. The Boston LMOU in effect when the protested changes were made in 2004 was negotiated during the October 2002 local implementation period. The Union points out, however, that there is no evidence that the provisions of Article 8 of the LMOU, which were carried over from the prior LMOU, were discussed during the 2002 local implementation negotiations.

UNION POSITION

The Union contends that management's unilateral action at Fort Point violated Article 41.1.A.3, and that the LMOU is no defense. The fixed days off schedules at Fort Point were an "existing local procedure for scheduling fixed or rotating non-work days". As such, they "shall remain in effect unless changes are negotiated locally". In this case, the changes were not "negotiated locally". To the contrary, management has refused to negotiate with the local Union throughout the course of the dispute.

The Union insists that even assuming, *arguendo*, that the scheduling of fixed non-work days at Fort Point was not in

compliance with the applicable LMOU, any change in that existing procedure still would have to be "negotiated locally", as provided in Article 41.1.A.3. The choice of the phrase "existing local procedures", as opposed to "existing local agreements", reflects an intent to prohibit unilateral change in the procedures actually used at the local level. Moreover, there is no language in Article 41.1.A.3 suggesting that its application is limited to offices without LMOUs. Similarly, Article 30.B.2 simply authorizes the local parties to negotiate fixed or rotating days off during the 30-day local implementation period. Unlike Article 41.1.A.3, Article 30.B.2 does not address the present situation where, after completion of the local implementation process, management claims that a long-standing procedure must be changed to conform to the LMOU.

The Union rejects the notion that management's unilateral change was some sort of remedy for Fort Point's noncompliance with the LMOU. First, management acknowledged it changed the assignments purely out of self-interest. Second, and more significantly, Article 30 contemplates that the local parties will enter into LMOUs that control how management administers the work place. If management violates the LMOU, the Union may enforce the LMOU through the grievance procedure. When the Union acquiesced in the fixed days off, or declined to file a grievance to enforce the LMOU, fixed days off became the "existing local procedure" for purposes of Article 41.1.A.3.

The Union further argues that the bargaining history of Article 41.1.A.3 supports its position. The basic concept in that provision was introduced by the Union in the 1973

negotiations, which shows that the underlying purpose of the new language was to protect bargaining unit employees from unilateral management action. Moreover, the Postal Service insisted on and obtained a *quid pro quo*. The Union secured protection against unilateral changes in fixed or rotating days off, and management obtained an assurance that a permanent change in the starting time of an assignment would not result in an obligation to pay overtime.

The Union also cites two regional arbitration awards which hold that Article 41.1.A.3 protects procedures for scheduling fixed or rotating days off which have been established at the individual station level, even if they are not reflected in an otherwise applicable LMOU.

The Union contends that other arguments raised by the Postal Service at the hearing must be rejected. The Union insists that the issue presented for decision here is indeed an interpretive one. It stresses that the USPS-NALC Joint Contract Administration Manual (JCAM) is silent on the critical issue in this case, which is whether, and if so how, established procedures may be changed between local implementation periods. The Union insists that the Postal Service's argument that Article 41.1.A.3's reference to "local procedures for scheduling fixed or rotating non-work days" does not include the substantive decision as to whether an office will have fixed or rotating days must be rejected for two reasons. First, it was not presented prior to the arbitration hearing. Second, such an interpretation is not supported by the language of that

provision or its bargaining history, and would rob that provision of virtually any practical meaning.

EMPLOYER POSITION

The Postal Service contends that Article 8 of the Boston LMOU, which was negotiated pursuant to Article 30 of the National Agreement, is controlling with respect to whether an office will have fixed or rotating days off. The Postal Service maintains that Article 41.1.A.3, which was first negotiated at the same time as Article 30, would only apply to the issue of fixed or rotating days off if the local parties had not negotiated an agreement covering that issue.

The Postal Service argues that its position, unlike the Union's, gives meaning to and reconciles Article 30 and Article 41.1.A.3. It also asserts that its position recognizes that Article 41.1.A.3 addresses "procedures" for scheduling fixed or rotating non-scheduled days -- it deals with the way scheduling is done, and not the substantive decision.

The Postal Service cites provisions in the JCAM in support of its position. The joint narrative explanation for Article 41.1.A.3 states:

Local implementation NALC branches may establish local rules regarding fixed or rotating days off and the scope of posting and bidding -- by section or installation-wide -- through local implementation procedures under Article 30 of the National Agreement. Such rules are then contained in

a Local Memorandum of Understanding, which must be read in conjunction with Article 41. Fixed or rotating days off are negotiated pursuant to Article 30, Section B.2, and the scope and method of posting are negotiated pursuant to Article 30, Sections B.21 and B.22.

The JCAM also states with respect to Article 8.2 (Days Off) that the schedule of a full-time regular employee "must include fixed or rotating days off on a permanent basis (See Article 30, Section B.2)". These provisions make clear that local rules regarding fixed or rotating days off are established pursuant to Article 30 and are contained in the LMOU.

The Postal Service stresses that the LMOU is a bilateral agreement which may be enforced by either party, not just the Union.

The Postal Service further argues that the bargaining history supports its position with respect to the relationship between Article 30 and Article 41.1.A.3. The terms of the 1972 Settlement Agreement which expired concurrently with the 1971 National Agreement included the following provision:

Article VIII

The determination of fixed or rotating work schedules for full-time letter carriers assigned to routes will be made on the basis of past local practice unless otherwise agreed between the local parties....

At the expiration of the 1971 National Agreement, the parties negotiated Article 30 and Article 41.1.A.3 into the 1973 National Agreement. Article 30 allowed the parties to negotiate local procedures for the scheduling of fixed or rotating non-work days, and Article 41.1.A.3 established the office's past practice as the local "procedure" only if the parties did not establish such procedures through local implementation pursuant to Article 30.

Finally, the Postal Service contends that because the Arbitrator is being asked, in essence, to decide whether a local practice trumps an LMOU, this is a past practice case and does not involve an interpretive issue.

FINDINGS

For present purposes, I will assume that in the absence of an applicable LMOU provision, Article 41.1.A.3 would apply to preclude the Postal Service from unilaterally changing the existing fixed non-work day assignments at the Fort Point Station.

Here, however, we do have an LMOU at the Boston Office, which includes the Fort Point Station, and it provides, with exceptions not relevant to this case, that letter carriers in the Boston Office will have rotating non-work days. This provision in Article 8 of the LMOU was negotiated pursuant to Article 30.B.2 of the National Agreement.

When Article 8 of the LMOU was first negotiated, there can be no question that it permitted and, indeed, required the Postal Service to change those schedules in the Boston Office that did conform to that rule. Not only is that a necessary consequence of Article 30.B.2, but the reference in Article 41.1.A.3 to locally negotiated changes surely includes rules locally negotiated pursuant to Article 30.B.2. This seems clearly recognized in the JCAM's explanatory text regarding Article 41.1.A.3.

This conclusion also is supported by the bargaining history. The 1972 Settlement Agreement provided that: "The determination of fixed or rotating work schedules for full-time letter carriers assigned to routes will be made on the basis of past local practice unless otherwise agreed between the local parties...." Article 41.1.A.3 is broader than the 1972 Settlement Agreement in that it is not limited to determination of fixed or rotating work schedules, but it similarly allows for past practice to be changed by local negotiation.

Moreover, Article 8 of the LMOU specifically addresses the issue of fixed or rotating non-work days, which distinguishes this case from the two regional arbitration awards cited by the Union, which applied Article 41.1.A.3 to protect practices that dealt with matters not addressed in the applicable LMOU.

The wrinkle in this case is that although the locally negotiated LMOU calls for rotating non-work days, it is not self-enforcing, and management did not previously change or

conform these particular work schedules to the LMOU. The Union, of course, could have grieved management's failure to do so, but, for whatever reason, that did not occur. Management, on its part, did not apply the rule agreed to in the LMOU, but retained the right to do so unless Article 41.1.A.3 bars it from doing so.

The issue in this case is somewhat analogous to the situation where a union relies on past practice in a case where the terms of the contract specifically provide for the contrary. In that situation, unless it can be concluded that the parties modified the terms of their written agreement through the practice -- which is not the case here -- the written agreement must prevail.

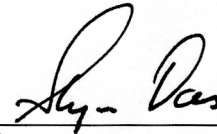
The Union's argument boils down to a claim that Article 41.1.A.3 protects a local practice that is contrary to a locally negotiated rule -- and requires the Postal Service to negotiate and get the local Union to agree that it can enforce the locally negotiated rule -- because management had not previously implemented that rule with respect to the routes in issue. I do not read Article 41.1.A.3 as supporting that argument. It protects a local practice, unless changes are negotiated. Once negotiated, however, a rule contained in an LMOU, negotiated pursuant to Article 30.B.2, that contradicts that practice is controlling.

Accordingly, I cannot find that the Postal Service violated Article 41.1.A.3 when it unilaterally changed route

assignments at the Fort Point Station from fixed to rotating days off in conformance with Article 8 of the Boston LMOU.

AWARD

The Postal Service did not violate Article 41.1.A.3 when it unilaterally changed route assignments at the Fort Point Station from fixed to rotating days off in conformance with Article 8 of the Boston LMOU.



Shyam Das, Arbitrator