C-35023

Regular Arbitration

In the Matter of the Arbitration	)	
	)	
between	)	Grievant: Class Action
	)	
United States Postal Service	)	Post Office: Warner Robins, GA
	)	
and	)	USPS Case No: G16N-4G-C 19379996
	)	
National Association of Letter Carriers, AFL-CIO	)	DRT No: 09-478765
	)	
	)	NALC Case No: 25-2019

Before: Roberta J. Bahakel, J.D., Arbitrator

Appearances:

For the U.S. Postal Service:	Mr. Greg Holland
For the Union:	Mr. Greg Dixon
Place of Hearing:	Warner Robins, GA
Date of Hearing:	December 15, 2020

Award:

Date of Award:	February 12, 2021

Panel: Region 9/Southern

Award Summary:

The grievance is sustained. Management will cease and desist including "residual mail" in with the carriers DPS mail at the Warner Robins, Georgia installation.

Roberta J. Bahakel

BACKGROUND

The Union filed a class action contract grievance in Warner Robins, Georgia alleging that Management is in violation of Article 19, M-01306 (Building Our Future by Working Together, 1992), M-01153 (Questions and Answers Concerning the September 1992 Memorandums), M-01246 (Step 4 settlement that DPS cannot be characterized as "enhanced two pass" to avoid established DPS implementation procedures) and the M-41 Handbook, Section 121.1 in that there is mail contained in the carriers DPS mail that is not in delivery point sequence. Specifically, the Union argues that there is "residual" mail in the DPS and that this mail should be removed from the DPS and cased by the carriers prior to leaving the office.

The evidence presented at the hearing showed that the issue the carriers have is that when mail is being delivered to one street address which has multiple buildings and Neighborhood Delivery & Collection Box Units (NCBDU), the carriers are receiving some mail in their DPS tray in front of the street address that is not in delivery sequence order. For example, when delivering to a large office complex that has one main street address with multiple delivery points at that address, there is mail, sometimes a great deal of mail, in front of the DPS for the main address. While the majority of the subsequent secondary addresses are in delivery order, the mail in question is out of delivery order and the carriers must manually sort this mail while on the street and then deliver that mail along with the correctly addresses and sequenced DPS mail in their tray. The Union argues that this out of sequence mail is in fact residual mail, as defined by M-01153 and therefore should be cased by the carriers before they leave for the street.

Management argues that this mail has been sorted by the automation equipment to the main street address, therefore it is DPS mail and not residual mail. Management contends that it is due to sorting errors that this mail is not ultimately placed in delivery sequence order like the other mail for that address. Management also contends that because this is a sorting error that the mail is not residual mail as contended by the Union.

The parties were unable to resolve this issue in the grievance process and it was appealed to arbitration.

ISSUES

Is the grievance arbitrable?

Did Management violate the M-01306, M-01153, and M-01246 via Article 15 of the National Agreement and Section 121.1 of the M-41 Handbook via Article 19 by having residual mail in the DPS? If so, what is the proper remedy?

CONTRACT PROVISIONS

M-41 HANDBOOK

CITY DELIVERY CARRIERS DUTIES AND RESPONSIBILITIES

12 BASIC CARRIER DUTIES

121 Office Duties

121.1 Time Allowances

121.11 Route or case all classes of mail (exception, DPS mail will be cased only when management requires) in sequence of delivery along one or more established routes (see Exhibit 121.11 for maximum time allowances). The accurate and speedy routing of mail is one of the most important duties of a carrier; you must be proficient at this task.

DISCUSSION

I have reviewed the testimony and evidence presented at the hearing and considered the excellent briefs submitted by the parties, the last of which was received on January 13, 2021. Management has raised issues of arbitrability, therefore those issues will be addressed before the merits of this matter are considered.

Management contends that this case is not substantively arbitrable for several reasons: 1) a 1998 Step 4 agreement is dispositive of the issues presented, 2) the provisions of M–01306 (Building our Future by Working Together) provide for DPS issues tto be addressed by

a joint task force, and 3) the Union contentions at the 2011 National Interest Arbitration and the resulting Das award on the 2011 National Contract, as well as the Snow award in regard to the Third Bundle case establish that this case is not proper for hearing.

Management's first arbitrability argument contends that the mail described by the Union in this case, i.e., mail that has been processed by the DPS sort program to the delivery point on the route and presented to the carrier in their DPS mail, but which is without a secondary sequence, is actually the result of DPS sort errors and that the following Step 4 decision, M-01356, which the parties agreed to in 1998, is dispositive of this issue. That Step 4 decision states as follows:

> … "During our discussions, we mutually agreed that, as facilitated to city carriers through the USPS-NALC Joint Training, Delivery Point Sequencing for City Carriers, and DPS Implementation: A Training Guide for Delivery Management Street Impact:
> Local managers are responsible for establishing and advising carriers of local policy for handling, identifying and reporting of DPS sort errors found by city carriers during street delivery. Local quality guidelines for error identification and resolution procedures should cover all anticipated circumstances and contain clear instructions for carriers to follow regarding both the delivery and disposition of mail returned to the office."

Based on this Step 4 language, Management argues that the parties have agreed that Management at the local level has the responsibility to address and resolve these sort errors, therefore this matter is not arbitrable.

Secondly, Management contends that M-01306, Building Our Future by Working Together, which the Union relies on to support their position in this case, sets out that any disputes concerning DPS mail will be resolved through a joint body at the National level. Management relies on the language found on page 42 of the M-01306, which states:

> "Joint administration of Memorandums. The parties will resolve disputes concerning the memorandums through a joint process at the national level. a joint body is being created which will have continuing responsibility for seeing that the Memorandums are interpreted and enforced correctly and fairly. Questions regarding proper interpretations will be forwarded to this joint body for resolution."

Management contends that this National MOU clearly sets out the parties agreement that any disputes concerning the DPS MOU 01306 will be resolved through a joint body at the National level, therefore the grievance presented here is not properly before me for decision.

Thirdly, Management argues that Arbitrator Snow, in his 1996 National decision regarding an impasse over a third bundle and marriage mail issue, addressed the intent of contractual agreements and specifically M-01306, stating that parties cannot forsee all contingencies that might arrive, therefore in recognition of this reality have produced the gap-filling principles of contract law whereby the language and concepts in a collective bargaining agreement are given meaning. Arbitrator Snow further stated that such gap filling provisions will be used unless the parties agree otherwise. Management contends that by setting up the joint review process at the National level, the parties have agreed that DPS questions will not be ruled on by regional arbitrators. Management contends that this position is further supported by the Union's position letter for the 2011 Interest Arbitration and the resulting Das Award where the Union failed to set out that this same type of mail was a violation of the contract, but instead asked for additional pay to compensate the carriers for the additional work of delivering this type of mail. Based on these decisions and the Union's position at the Interest Arbitration Management argues that the grievance is not arbitrable.

In response to these arbitrability arguments , the Union contends that this dispute is arbitrable, and that Management's arguments regarding the M-01356 are improper in that this argument was never raised during the grievance process and is now presented as an arbitrability argument. Additionally, that Step 4 decision dealt with sorting errors and not with residual mail, which is the issue in this case, therefore it has no applicability to the issues here.

In regard to Management's argument about the M-01306 requiring that any disputes regarding the M-01306 be referred to a national task force for interpretation, the Union contends that Management appealed this grievance to Step 4 and the parties at the national level determined that there was no interpretive issue to be determined, therefore Management's contentions in that regard should fall. Additionally, the Union contends that M-01153, which jointly defines residual mail, was a direct result of the National level task force resolving disputes

in accordance with the M-01306. The Union contends that the M-01153 is enforceable through the grievance process.

In regard to Management's contentions regarding the Snow award and "gap filling principles" the Union contends that the gaps in M-01306 have been filled by the National Task Force in M-01153 and those provisions are binding and enforceable through arbitration.

In regard to Management's arguments regarding the 2011 Das award and the positions taken by the Union in that interest arbitration, the Union contends that in interest arbitration many requests are made by each side and ultimately many requests go unanswered, therefore no change is ultimately made to the existing provisions and agreements. The fact that something is raised in an interest arbitration and not addressed in the final award does not nullify the existing agreements.

The Union contends that if there was an unresolved DPS dispute that it would be ripe to be addressed at the national level, but this case represents a violation of an issue that has already been resolved by the national parties in M-01153. Therefore, the Union argues, the grievance should be found to be arbitrable.

I have considered each of the arbitrability arguments presented by Management and have made the following determinations:

In regard to Management's contentions that the 1998 Step 4 decision, M-01356, is dispositive of this issue, a reading of that Step 4 decision shows that it deals only with sort errors. While Management contends that the mail in question is a result of sort errors, the Union contends that such mail is residual mail, as defined by the parties in M-01153. This step 4 decision cannot be considered to be dispositive of the issues raised in this grievance until a finding of fact is made as to whether the mail in question is a sort error or is residual mail. After considering the arguments presented, it is my determination that without proof that the mail in question is a result of sort errors, this Step 4 decision cannot be found to bar the hearing of this matter at arbitration.

Management also contends that this case is not arbitrable because it should be referred to the joint task force set up in the M-01306. The M-01306 addresses 6 specific joint Memorandums in regard to DPS mail. Of the six, the only memorandum which would apply to this grievance is number 5, which deals with the two agreed upon work methods for incorporating DPS mail. The memorandum states that if the parties are unable to agree on which method to use, then the decision of which method will be implemented will be forwarded to the joint parties at the national level for resolution. There is no issue in this case as to the work method selected and implemented in Warner Robins. The M-01306 also sets forth the parties agreement that a joint body will be created which will have continuing responsibility for seeing that the six Memorandums are interpreted and enforced correctly and fairly. The M-01153 was issued by the parties as a supplement to the M-01306 for the purpose of jointly addressing the numerous issues that arose with the implementation of DPS. In that document the parties jointly defined DPS mail and residual mail. The issue in this case arises from those two definitions. Management appealed this case to Step 4 based on its belief that there were interpretive issues involved that should be resolved at the National level. This case was returned to the local parties with the joint determination from the National level parties that there were no interpretive issues to be decided. As the task force was created to deal with interpretation and enforcement issues, the fact that the National parties jointly determined that there were no interpretive issues to be decided in this case indicates that there is no need for the Task Force to consider this matter. Based on this, I do not find that Management's arbitrability contentions regarding failure to utilize the joint task force can be upheld.

In regard to Management's remaining arbitrability arguments, I do not find that the decision of Arbitrator Snow or the position letter of the Union in the 2011 Interest Arbitration and the resulting Das award have any bearing on the arbitrability of this matter. After considering all of Management's arbitrability arguments, it is my determination that this grievance is arbitrable and is properly before me for decision.

Merits

Having determined that this matter is arbitrable, I will now address the merits of the case. The Union contends that Management has violated several National Level Settlement Agreements, M-01306 (Building our Future by Working Together), M-01153 (Questions and Answers Concerning the September 1992 Memorandums), and M-01246 (Step 4 Settlement that DPS mail cannot be characterized as "enhanced two pass" to avoid established DPS implementation procedures), as well as Section 121.1 of the M-41 Handbook by having residual mail in the DPS. The Union argues that there are three simple facts that are the basis of this case:

1. Delivery Point Sequence (DPS) is one bundle of mail in delivery point sequence
2. Residual mail is any mail that is not in DPS order
3. Residual mail is not DPS mail and must be cased

The Union argues that the parties have jointly established definitions for DPS mail and for residual mail and that these definitions are set out in M-01153. Based on these definitions the Union contends that the mail that is sorted to the main street address, but not to a secondary address, i.e., building number, apartment number, suite number, etc, is residual mail and should therefore be cased by the carrier prior to leaving for the street.

The Union also contends that DPS mail is mail that is in delivery sequence, which means that it is ready to be delivered as it comes in the tray and that no further sorting of the mail is required. The mail in question may be in delivery sequence to the main address, but it has defaulted to the front of the main street address because it is not in delivery sequence to the secondary address like the other mail included in the DPS. Therefore, the carrier must sort this mail while delivering on the street. The Union acknowledges that it is not the small Neighborhood Delivery & Collection Box Units (NDCBU) that are the problem, but is the large complexes with numerous buildings, each with their own NDCBU that cause the problem. In those cases a carrier must either sort the mail in the back of their vehicle or on the NDCBU so that they are not moving from one NDCBU to another trying to deliver these mail pieces that are not in delivery order.

Management contends that the Union has not been able to establish a contractual violation, therefore the grievance must be denied. Management contends that it is impossible for residual mail to be in DPS mail in that the eleven digit barcode assures that mail in DPS is in delivery point sequence. Management argues that residual mail is mail that cannot be sorted by automated equipment into Delivery Point Sequence. The mail being contested by the Union is mail that has been processed and sorted by the DPS equipment and presented to the carrier in their DPS processed mail at the proper delivery address. However, this mail does not always have the secondary address, such as a building number, apartment number, or suite number. Management contends that even if this mail was cased by the carriers that it would still not be in exact delivery sequence, but would only be narrowed down to a range as the carrier's cases are set up by sections, i.e., apartment 1-20, 20-40, etc. When a carrier delivers to a NDCBU they would still have to sort the sectioned mail while delivering to the NDCBU.

Management also contends that the Warner Robins Post Office has a DPS 3M process where carriers are to return all Mis-sent, Mis-sorted, and Mis-sequenced mail to the office where it is reworked and delivered the following day. Management argues that it has the right under Article 3 to manage the operations and that the Union has not been able to establish any contract language which would prohibit Management from using the 3M process to resolve any DPS issues that might arise.

The evidence presented at the hearing showed that the mail in question shows up in a bundle at the front of a street address in the carrier's DPS mail. Some of the mail pieces are there because the sender did not include a building, suite or apartment number, but some are correctly addressed, but for some reason are not in DPS delivery order. The dispute between the parties here is based on their disagreement as to whether this mail constitutes "residual" mail that should be cased by the carriers. The Union has asserted that any mail not in DPS order is residual mail that should be cased, while Management asserts that the mail in question is in DPS order and therefore it cannot be residual mail.

A review of the M-01153, the joint supplement to the original agreement regarding DPS mail set forth in M-01306 (Building our Future by Working Together) sets out in question and answer format the following:

Q-64 At what point does DPS mail trigger "residual mail"?

A Residual mail is any mail that is not in DPS order once a delivery unit starts receiving DPS mail.

Q-69 If DPS mail is received in a delivery unit on more than one dispatch, does that meet the requirement of putting mail in DPS order for two or more consecutive weeks considering the need to collate the bundles?

A DPS mail is one bundle of mail in delivery point sequence. Mail that must be collated before delivery is not considered DPS mail. The number of dispatches is irrelevant.

The problem that arises in this case is that the mail in question has gone through the DPS machines and has been sorted to the main delivery address, yet it has not been sorted enough to put it in delivery order for the secondary address. The evidence presented showed that the majority of the mail is properly sorted to the secondary address in the carrier's DPS. The Union argues that because the mail is not in delivery order that it becomes residual mail and should be cased in the office before delivery. Management contends that because the mail has been sorted to the main address that it is therefore DPS mail and cannot become residual mail.

The language in the M-01153 gives a basic definition of DPS and residual mail but does not specifically define the mail in question here, which has been partially sorted through DPS. Therefore, to assist in determining the intent of the parties, we can look to see how the parties have defined and applied these terms outside of the situation presented here. The Postal Service publishes its Glossary of Postal Terms, Publication 32, which, while not presented at this hearing, was given to arbitrators by the parties as a general reference guide. The Glossary gives its Purpose as follows:

> Purpose. This glossary defines the most widely used words and phrases unique to, or with special meaning within, the United States Postal Service. It includes terms related to products and services, delivery and mail processing operations, automation technology, and strategic programs that boost productivity and improve the customer experience. This glossary does not, however, present comprehensive descriptions or furnish precise legal definitions such as those in 39 U.S.C and 39 C.F.R. If the glossary definition of a term contradicts the definition of the same term in another official and current Postal Service TM directive, the directive definition supersedes the glossary definition.

As the question raised in this case is what mail is defined as residual mail and the definitions set out in the M-01306 do not specifically define DPS and residual mail in relation to the specific mail in question here, it is helpful to see how Management has defined the terms "Delivery Point Sequence", "Delivery sequenced mail" and "Residual Mail". Those definitions are set out in the Glossary as follows:

> Delivery point sequence — (1) The arrangement of mail into delivery order by using the delivery point code and other data elements. (2) An automated process of sorting mail by carrier routes into delivery order, eliminating the need for carriers to sort the mail manually in the delivery unit prior to their departure to the routes. (3) The sort plan or scheme in which letter mail is sorted to walk sequence for carrier routes using barcode sorting equipment such as the delivery bar code sorter. Depending on the barcode sorting equipment, DPS typically entails two or three passes to reach walk sequence order. (4) To sort mail into delivery order using this automated process.
>
> Delivery sequenced mail — Mail that is arranged in delivery order for a particular carrier route. This mail requires no primary or secondary distribution.
>
> Residual mail — Mail pieces remaining after completion of a presort sequence. Residual mail lacks the volume set by standard to require or permit preparation to a particular

destination. Residual mail usually qualifies for the highest presort price or a single-piece price. Also called non-qualifying mail and working mail.

The above definitions help establish the meaning that the Postal Service generally gives to the terms in question and helps to further determine the intent of the parties when using the terms set out in the M-01306 and the M-01153. These definitions are also helpful due to the fact that in some of the arbitration cites submitted by the Union in support of its position, the Management officials involved acknowledged that the mail in question was residual mail and was not properly in the carrier's DPS mail.

Question 64 in the M-01153 addresses when DPS mail triggers residual mail. The answer to that question is that residual mail is any mail that is not in DPS order. When this response is considered along with the definitions set out in the Glossary of Postal Terms, it reveals that DPS order means the arrangement of mail into delivery order, and that "delivery sequenced mail" is mail that is arranged in delivery order for a particular carrier route and requires no primary or secondary distribution.

The definition of "residual mail" states that it is the mail remaining after completion of a presort sequence. While a presort sequence is generally something that mailers do to get a better price for their bulk mail, it can also refer to what is done by the DPS machines as it sorts mail into delivery order. This indicates that in fact residual mail can be found in mail that has been sorted through DPS.

The testimony presented at the hearing established that carriers are being required to sort the mail in question while on the street so that it can be properly delivered. The intent of the DPS process is to sort mail for the carriers and have it in delivery order for the street without any further processing. The mail in question here is not in complete delivery order. It has been presorted to the main address, but for various reasons not sorted any further. After considering all of the above, it is my determination that the mail in question here is residual mail as defined by the parties in the M-01153 and should be cased by the carriers in the office and not sorted on the street.

Management contends that even if the mail in question is found to be residual mail that there is no violation of the National Agreement or any of the National Settlement Agreements because Management has established a local method for processing this mail, the 3M case. The evidence showed that this case is for Mis-sent, Mis-sequenced, and Mis-sorted mail. Management contends that the carriers can bring back mail that is improperly addressed and place that mail in the 3M case where it will be reworked and sent out for delivery the next day. The Union argues that the 3M case is not for this type of residual mail in that Mis-sent mail is mail sent to the incorrect Post Office, Mis-sequenced mail is mail that is not at the right address, and Mis-sorted mail is mail that is sorted to the wrong route. None of these situations would apply to the mail in question here, which has been sorted to the correct post office, route and address. The testimony from the Union's witness showed that she is familiar with the 3M case, but that the instructions from Management in the Warner Robins office are for the carriers to deliver all of their mail each day. Due to this instruction and the fact that the mail has been sorted to the correct main address, she sorts the mail in question on the street and delivers it each day. Based on the foregoing, it is my determination that the 3M case was not intended to deal with the mail in question here. Management's arguments in this regard are not supported by the evidence.

Management also argued at the hearing that the mail in question was not residual mail but was mail that was a result of sorting errors on the DPS machines. The Union objected to this as new evidence in that Management had not raised an issue that the mail in question was a result of sorting errors in the lower levels of the grievance procedure. Based on the contentions raised at the Informal and Formal A steps, I find that Management never raised any argument that the mail in question was the result of a sorting error. Therefore that argument was a new argument at arbitration and will not be considered.

After considering the provisions of the M-01306, M-01153 and the provisions of the M-41, it is my determination that the parties in those National Settlements generally defined DPS mail as mail in delivery point sequence and residual mail as any mail not in DPS order. The intent of DPS is to sort mail by carrier routes into delivery order, thereby eliminating the need for carriers to sort the mail manually prior to their departure to their routes. That infers that

the mail is ready for delivery and will not require additional sortation on the street. The parties, in M-01153, have agreed that any mail that is not sorted into delivery order is residual mail. After considering the evidence presented, I find that the mail that is in question here is residual mail if it meets each of the following parameters:

1) Is in DPS order only to the main address
2) Is not properly sorted to the secondary address
3) Has been included in the carrier's DPS mail, but kicked to the front of the main address because it is out of delivery order for the secondary address.

Based on all of the foregoing, it is my determination that the grievance is due to be sustained.

DECISION

The grievance is sustained. Management is found to have violated the National Level settlements M-01306 and M-01153 and Section 121.1 of the M-41 handbook when it included secondary address mail that was not in delivery sequence order in carriers DPS mail.

The Postal Service shall cease and desist from including secondary address mail not in delivery sequence order in the DPS trays at the Warner Robins installation. Management will work with In plant support and/or any other appropriate department to remove this “residual” mail from the DPS mail for the routes in Warner Robins.

This award is final, however I will retain jurisdiction over this matter for compliance with the above directives.

Done this 12th day of February, 2021.

Respectfully submitted,

Roberta J. Bahakel, J.D.
Arbitrator