C# 06914

IN THE MATTER OF THE ARBITRATION	)	Before Thomas J. Erbs, Arbitrator
	)	
Between	)	Central Region Panel Member
	)	
UNITED STATES POSTAL SERVICE	)	C4N-4Q-C 23255 V. Davis
	)	
And	)	
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS Branch No. 343	)	

Date of Hearing - February 5, 1987
Hearing Site - St. Louis, Missouri

Management Appearances:

Donald Baker - Labor Rel. Rep.
Morris Carson - Former Supt. of Delivery (Wellston)

Union Appearances:

John Haake - President Branch 343
Vernon Davis - Grievant
Willis Lloyd - Sec./Treas.

The Issue as framed by the Arbitrator:

Was the Postal Service in error in refusing to allow the Grievant to use a stool to case mail? And if so, what is the appropriate remedy?

AWARD:

Under the fact situation presented the Postal Service was in error in issuing a blanket refusal to allow the Grievant to use a stool at times while casing mail without checking his efficiency.

OUTLINE OF CASE

Vernon Davis, hereinafter called the Grievant, has been employed by the Postal Service for in excess of 26 years. The Grievant has used a stool at times to case portions of the mail. This has gone on for years. He statd that he stands when he cases flats. He further stated that there is no letter size mail which goes into the wings of his case. He stated that there is "not much difference" in his efficiency whether he sits while casing other than flats. The Grievant is approximately 5' 8". He acknowledged that there is some slight additional movement to reach the high part of the case but stated it is not that much to affect his efficiency.

The Shop Steward stated that he and the Grievant had approached the Superintendent of Delivery at the Wellston Station (Carson) because the Grievant felt he was being singled out on his route. At the end of that discussion the Grievant was told by Superintendent Carson that he could no longer use a stool. Carson acknowledge that he did not run any tests nor did he run any count as provided in M-39 Section 141.2. He stated that in his opinion the Grievant was having to raise up and this was inefficient. He stated that if the Grievant were taller he could use a stool. The Superintendent further stated that the Grievant should be far in excess of the minimum standards of the station because of his experience and that he was not considering the

18/8 standard when he felt that the Grievant's use of the stool was inefficient. Carson denied that any harassment was intended. He stated that the Grievant's route was overburdened and the Postal Service was looking for ways to improve that route. He stated that the Grievant was leaving mail that could have been delivered if the Grievant was efficiently using his casing time.

The parties have cited to the Arbitrator the following portion of the National Agreement in addition to Article 3, Management Rights:

"41.3.A. The carrier may use stools while casing mail and performing other office duties, provided the use of such stool does not interfere with or affect efficiency and standard job performance."

and the following from the M-39 Manual:

"141.2 Special Office Mail Counts

When management desires to determine the efficiency of a carrier in the office, a count of mail may be made. The carrier must be given one day's advance notification of this special count. Use Form 1838-C to record count and time items concerned. The carrier must be adivsed of the result of the office mail count".

UNION CONTENTIONS

The Postal Service was in error in denying the Grievant the use of a stool. There were no comparisons or tests to determine whether the Grievant was being inefficient. There are specific criteria for doing that. The decision was purely subjective and not based on any documented evidence. The Union cites the decision of the Postal Service from September 14, 1976 which held

that the proper manner for determining the efficiency of the employees is to conduct a count. Until the Postal Service has some comparisons it can not say that the use of the stool was inefficient. The Postal Service can not take this subjective approach. The Postal Service should be ordered to allow the Grievant to use a stool while casing mail and to abide by Article 41 of the National Agreement.

POSTAL SERVICE CONTENTIONS

The Postal Service states that under the provisions of Article 3, Management Rights the Service must "maintain the efficiency of the operations entrusted to it", and "to direct employees of the Employer in the performance of official duties;" The Superintendent did not have to run a count to determine that the technique was improper. If the Grievant used a proper technique there would not have been a problem on the route. The Grievant does not have the height to reach the top area of the case. The Grievant is not being disciplined but just being made to be more efficient. The Postal Service has a right to make a prudent judgment which it did. The grievance should be denied.

DISCUSSION

The negotiators of the National Agreement determined that Carriers could use stools while casing. This authorization, however, was limited to those cases where the use of such a stool by the Carrier would not interfere with or effect efficiency and

standard job performance. In such connection the Postal Service is under a mandate, in accordance with Article 3 of that same National Agreement, to maintain efficiency.

Both parties agree on those general statements, however, in this case there is a big disagreement as to whether the Grievant was inefficient in this instance. It is true that the Postal Service is charged with the duty and the right to maintain efficiency but that right must be exercised in accordance with the National Agreement. The Grievant and the Union have stated that the Grievant's occasional use of the stool does not decrease his efficiency and the Postal Service is being arbitrary in its prohibition of the use of the stool in this case.

There was no formal evidence of the efficiency of the Grievant nor how, if at all, it is affected by his use of the stool. The Postal Service's sole witness felt "that the Grievant could have been more efficient" and it was his "opinion" that the Grievant was not using the right technique. He testified that he saw this efficiency on one day and it just happened to be the same day that the Grievant and the Steward approached him about possible harassment. It is unfortunate that the Superintendent took this day to deny the Grievant the use of the stool. It certainly seems, in the Arbitrator's opinion, that if this was a real and ongoing problem the Superintendent would have brought this up much sooner rather than as a response to the charge of

harassment discussion. The Superintendent, under this set of facts, has left himself open to a charge that the decision as to efficiency was not really a reasonable, subjective decision but rather was tainted because it was a response to a criticism of him. On the face of the matter these decisions should be made objectively.

The Postal Service has provided in the M-39 a method to determine the efficiency. This method was apparently adopted to insure that there is a purely subjective and reasonable decision. That was not done in this case. The Arbitrator notes that the Article 41 criteria to be examined when issuing a prohibition against the use of a stool is whether or not a stool will "interfere with or affect efficiency..." This does not mean that so long as the Grievant is above the minimum standard he can use the stool but only that his efficiency, with or without the use of the stool, must be relatively equal.

The Arbitrator has not been convinced that the use of the stool interferes with the Grievant's efficiency. There certainly was no objective evidence of that presented. The Superintendent said that a 6 foot Carrier could sit on the stool but that this 5' 8" Grievant could not. Without some objective evidence the Arbitrator is hard pressed to deny the Grievant, because of this 4 inch difference, the occasional use of the stool in accordance with Article 41.3.A. It may very well be

that the Grievant is less efficient with the stool. If that is the case, in accordance with Article 41, the Grievant would not be able to use the stool but at this point that has not been shown. The Arbitrator can well understand that if the Grievant uses the stool all of the time his efficiency may well be affected and he may want to limit his use thereof to maintain efficiency but that is not the issue.

It is the decision of the Arbitrator that the Postal Service was in error when it issued an order denying the Grievant the right to use the stool at all times without running some objective check on his relative efficiency. If upon such a test it is shown that his efficiency decreases in any substantial manner from that without the use of the stool than the Postal Service shall be justified, at that time, in refusing to allow the Grievant the use of a stool.

The Grievance is therefore sustained in accordance herewith.

Signed in the County of St. Louis, this 25th day of February, 1987.

Thomas J. Erbs, Arbitrator