C-20449

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	GRIEVANT: Class
Between	POST OFFICE: Chico, CA
UNITED STATES POSTAL SERVICE	CASE NO: F94N-4F-C 97028701
And	NALC: C56396C
NATIONAL ASSOCIATION OF LETTER CARRIERS	

BEFORE: Nancy Hutt, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Stephen Bushelman, Pacific Area Labor Relations

For the Union: Al Apfelbaum, NALC

PLACE OF HEARING: Chico, CA

DATE OF HEARING: November 15, 1999

AWARD: The grievance is sustained. The Postal Service violated Article 41 Section 3 A when Grievant was denied the use of a stool. Management is directed to permit Grievant the use of a stool so long as he is in compliance with Article 41 Section 3 A.

DATE OF AWARD: February 15, 2000

Nancy Hutt

Nancy Hutt, Arbitrator

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties. The parties agreed the matter is properly before the arbitrator for resolution. The parties had a full opportunity to present evidence and argument, including the examination and cross-examination of witnesses. The arbitrator swore all witnesses under oath. Following the presentation of evidence, the parties chose to present oral closing arguments. Upon the receipt of arbitration awards, the record was closed.

II. STIPULATED ISSUES

Whether management violated Article 41 Section 3 A when Grievant was denied the use of a stool? If so, what is the appropriate remedy?

III. RELEVANT CONTRACT PROVISION

ARTICLE 41 LETTER CARRIER CRAFT

Section 3. Miscellaneous Provisions

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

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IV. STATEMENT OF THE CASE

The Grievant has 31 years Service with the Postal Service as a letter carrier. He walked 75% of his route for approximately four to five miles daily. On October 16, 1996, Grievant was informed he could no longer use the stool while casing mail. At the time of the instruction, Grievant had utilized the stool while casing letters and stood while casing flats. The Union filed a grievance alleging the instruction to stand was a violation of Article 41 Section 3 A of the National Agreement in that management failed to show that his efficiency or standard job performance was affected by using the stool.

The Postal Service took the position that the use of a stool should not interfere with or affect the carrier's efficiency and job performance. Management maintains that Grievant was double handling the mail, as he could not reach the top shelf of the case while sitting on the stool. According to the Service, the facts are identical to a Step-4 decision which supports the instruction to stand was proper.

The Supervisor, Customer Service testified while he observed Grievant for fifteen minutes he noticed Grievant double handle the mail at the case. The Supervisor stated that Grievant appeared unable to reach the left and right-hand corners of the case. On cross-examination the Supervisor admitted he had never asked Grievant if he could reach those areas. On one other occasion, the Supervisor approached Grievant and questioned him about mail on the ledge. Grievant told him the mail was set aside for CFS. The Supervisor took Grievant's word for the explanation and asked no further questions.

Additionally, the Supervisor testified he had a safety concern about the manner in which Grievant was turning to reach various areas of the case while using the stool.

Grievant informed Steward Brousseau of the instruction to stand. The Steward testified he observed Grievant at his case and that Grievant demonstrated he was able to reach the top shelf. The carrier whose case was back-to-back with Grievant also testified he observed Grievant reach the top shelf from the stool. Brousseau stated no mail count was performed to determine the efficiency of Grievant's handling of the mail. According to Brousseau, the Supervisor used volume figures to determine the minute per foot ratio was better while Grievant was standing rather than utilizing the stool. Brousseau advised the Supervisor that linear measurement was invalid to evaluate performance.

Grievant testified he did not double handle the mail. Prior to the instruction from his Supervisor, he never had a reason to know the use of the stool was not acceptable. Grievant stated he walked 75% of his route and his legs got sore. He found the use of the stool for the prior year or so helped. Grievant testified his stool was taller than usual and enabled him to reach the top shelf.

V. DISCUSSION

It is acknowledged that the use of a stool in the Chico Post Office was an unusual circumstance. However, Article 41 Section 3 A provides a carrier may use a stool if that use does not affect efficiency and standard job performance. The Service urges the arbitrator to find a one-time observation of Grievant as an acceptable standard to deny the

use of the stool to the carrier. However, there was no showing by management that the use of the stool interfered with or affected the efficiency and job performance of Grievant.

The evidence presented indicated on one occasion the Supervisor observed Grievant for a fifteen minute span and saw him double handle the mail. Although Grievant denied the accusation, there was no evidence the double-handling occurred more than once or was a result of the use of the stool. Management assumed that the one time observation was the normal manner in which Grievant cased the mail. The Supervisor admitted he never asked Grievant if he could reach the top shelf, including the corners, and on this record failed to observe the Grievant a second time. Management's explanation as to the issuance of the instruction for Grievant to stand while he cased was not persuasive evidence that Grievant worked in an inefficient manner or his job performance was affected due to his use of the stool.

The Parties presented three Step-4 decisions for guidance and review. Joint 3 states in relevant part:

> "It is acknowledged that the proper stipulated manner for determining the efficiency of an employee and whether or not the employee is, in fact, meeting standards, is to conduct a one-day count as provided ..." (NC-C-2322/NC-71/5-CLE-347)

Joint 4 states in relevant part:

> "...A carrier may use stools while casing mail and performing other office duties provided the use of such stools does not interfere with or affect efficiency and standard job performance. Information in the file does not substantiate that the Grievant's use of a stool interferes with or affects efficiency and standard job performance." (NC-S-5139/N5-FL-8946)

Joint 5 states in relevant part:

> "The evidence clearly shows that the employee could not reach the top shelf of the case while sitting on a stool. As a result, he would place mail for the top shelf aside and later stand up and case this mail. Since this second handling of the mail is an inefficient practice, management properly instructed the employee not to use the stool." (NC-S-6146/N5-SW-11386)

There is no convincing evidence that Grievant clearly could not reach the top shelf and corners of the case. Moreover, the Postal Service failed to substantiate, on this record, that Grievant's use of the stool interfered with or affected his efficiency and job performance.

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V. AWARD

For the reasons set forth above, the grievance is sustained. The Postal Service violated Article 41 Section 3 A when Grievant was denied the use of a stool. Management is directed to permit Grievant the use of a stool as long as he is in compliance with Article 41 Section 3 A.

Nancy Hutt, Arbitrator

DATED: February 15, 2000
San Francisco, CA