

I. BACKGROUND

The grievance considered herein was filed by the Palm Beach Area Local of the American Postal Workers Union (hereinafter referred to as the "Union") on behalf of the Clerk Craft employees of the United States Postal Service (hereinafter referred to as the "Postal Service") at the Post Office in Palm Beach Gardens, Florida. About 40 other grievances are held in abeyance pending the decision in this case. The Step 2 Grievance Appeal Form, dated September 1, 2009, sets forth the "Detailed Statement of Facts/Contentions", as follows:

On the dates of 7-15-09, 7-22-09, 7-29-09, 8-5-09, 8-12-09, and 8-19-09, Management violated the collective bargaining agreement when it utilized Letter Carriers to perform Premium Forwarding Services, a Clerk Craft job function. Under Function Four Operating Codes, Clerks use Operation Number 638 when performing said work.

The Union contends it takes approximately ten (10) minutes to complete Premium Forwarding Services for each address, so ten (10) minutes times the number of Premium Forwarding addresses that the Palm Beach Gardens office has, which is eleven-hundred and thirty-three (1133) for the time period cited, equals one-hundred and eighty-eight (188) hours Letter Carriers perform Clerk work. At the appropriate overtime rate, \$37.50, time 188 hours, equals \$7,050.00 Palm Beach Gardens Clerks should be paid. Clerks to be paid are as follows:

...
Clerk Employee I.D. numbers are listed on employee listing report which is in grievance file. \$7,050.00 divided by twenty-eight (28) Clerks equals \$251.00 to each Clerk named.

The filing of the Step 1 of this grievance was mutually extended, copy of extension agreement is in file.

At Step 1, Mgmt. did not dispute the fact that Letter Carriers performed Premium Forwarding Services on said dates.

As the "Corrective Action", the Union requested that the Postal Service:

Make grievants whole, included, but not limited to: 1-Premium Forwarding Services be perform by Clerks. 2-Pay to each of the twenty-eight (28) Clerks named, the sum of \$251.00. (sic)

The parties met and discussed the grievance at Step 2 in accordance with the grievance procedure contained in their collective bargaining agreement.¹ By letter dated October 26, 2010, Ms. Jane M. DiLisio, Labor Relations Specialist, denied the grievance, by stating that:

Premium Forwarding Service has been in existence since July 2005, making this grievance and all the others untimely. To my knowledge, the

¹ Collective Bargaining Agreement Between United States Postal Service and American Postal Workers Union, AFL-CIO, effective November 21, 2006 - November 20, 2010 (hereinafter referred to as the "Agreement").

local union failed to file any grievances on this issue until July 2009. According to the local union, a grievance concerning this issue was never filed at the national level either. The APWU would have you believe the Premium Forwarding Service belongs to the clerk craft, but they have absolutely no proof to support their position.

The forwarding of customer mail has always been a carrier function (as shown in Handbook M-41, City Carrier Duties and Responsibilities, and Handbook PO-603, Rural Carrier Duties and Responsibilities). Carriers would take the mail to be forwarded and place it in a tray on a GPC. The most a clerk had to do with the forwarding mail was to close the GPC and make sure the GPC was loaded on the truck.

The program guidelines for the Premium Forwarding Service (Postal Bulletin 22160, 8-4-05), 6.2, Management Responsibilities, states that Post Office management (Postmasters, manager, and supervisors) have the overall responsibility to identify the designated control point employee and other employees to perform the responsibilities in support of the PFS program. No where in these program guidelines does it state this work belongs only to the clerk craft.

The Union has failed to submit any evidence to support that Premium Forwarding Service work belongs exclusively to the Clerk craft. The only evidence submitted by the Union is a Function 4 Operation Code sheet which shows Clerks are supposed to clock onto operation 638 when conducting Premium Forwarding Service. This document, standing on its own, is misleading because Function 4 reflects only Clerk functions. It does not carry any jurisdictional weight nor does it tell the whole story.

For the City Letter Carriers, these duties come under operation 722 which are included as part of the Letter Carrier office functions per the M-41. The Rural Carriers are compensated for their role in performing the functions of this program per the PO-603. Nothing in the way this work is done has changed so if the Union felt this work was assigned incorrectly, they sat on their rights and laches applies as the work has been assigned this way, in plain sight of the Clerk craft for years.

Since the record does not demonstrate any violation of the National Agreement, the grievance is denied.

The Union filed Corrections and Additions to the Step 2 Decision and appealed the grievance to Step 3. The Postal Service denied the grievance at Step 3, claiming that the Union "sat on its rights for four years before filing a grievance, constituting a waiver of their position". Thereafter, the Union appealed the case to arbitration and the undersigned was appointed to hear and decide the issue. A hearing was conducted in West Palm Beach, Florida, on December 16, 2015, at which time the parties were afforded full opportunity to present testimony and evidence, to cross-examine the witnesses, all of whom were sworn, and to make arguments in support of their respective positions. Upon receipt of the parties' post-hearing briefs on March 2, 2016, the record in this case was closed.

II. SUMMARY OF TESTIMONY

Mr. Kevin Young testified that he has been employed by the Postal Service for 37 years and he is a Distribution and Window Clerk at the Riviera Beach Post Office. Mr. Young has been a Step 2 Designee for the Union since 1997 and he met at Step 2 in this case. He also prepared the additions and corrections and appealed the grievance to Step 3. He made reference to the Function 4 Operation codes and maintained that the Operation Code 638 was for the Clerk craft job of "Premium Forwarding Service/Express or Priority Reshipment: Processing Prem Forward. Service or Reship - collect mail to be forwarded, packaging shipments, weighing, rating, tracking, scanning, dispatch." Mr. Young asserted that this is an ongoing grievance. He made reference to a Step 1 Grievance Resolution dated July 10, 2015 which stated that "beginning Wednesday, July 15th, all aspects of Premium Forwarding Services will be performed by Clerk craft employees."

On cross-examination, Mr. Young stated that the Carriers perform the Premium Forwarding Services at the Riviera Beach Post Office. He stated that there has not been a grievance filed on this issue at the Riviera Beach Post Office while he has been there since 2009. He explained that there are seven offices in the Area and the Carriers perform the Premium Forwarding Services in three of the seven offices.

Ms. Anne Mack testified that she has been employed by the Postal Service since 1988 and has worked at Palm Beach Gardens since 2006 as a Window and Distribution Clerk. Ms. Mack identified her written statement claiming that Carriers were performing Clerk craft work and she filed the grievance on this issue. According to Ms. Mack, she had read something about the Premium Forwarding Service being Clerk work and when she came to Palm Beach Gardens she asked the other Clerks about it and they told her they used to do the work but it was taken away. She said she dropped the issue at that point but later started filing grievances.

Ms. Mack explained the process for Premium Forwarding Services and the duties of the Clerks; i.e., they take the application, take the money from customer and they turn it in to the Close-out Clerk at the end of their shift. She indicated that the Clerks prepare the mailing labels and attach them to the yellow copy of the application that goes to the Carrier. According to the Clerk, the mail should be collected every Wednesday and sent to the customer. The date shipped and the tracking number are recorded on the back of the application. She said customers started complaining that they were not getting their forwarded mail and if the mail is not properly logged the Postal Service has to refund the fee to the customer. She emphasized that the customers pay an extra fee to have all of their mail forwarded and if there is postage due, the Clerks, not the Carriers, have to weigh it and keep track of the postage due. Ms. Mack

stated that the settlement agreement was complied with for about one week and then the work on the Premium Forwarding Services was returned to the Carriers.

On cross-examination, Ms. Mack recalled the names of some of the Clerks that she talked to about the Premium Forwarding Services. She explained that the Carriers pull the mail that is being held from the delivery mail each day and put it in a tray, and each Wednesday, the Carriers put the mail in an envelope or box and apply the mailing label and tracking number. She stated that the examples included in the grievance file are for residential deliveries by the Carriers. She asserted that the mail held for Premium Forwarding Services from the PO boxes is processed by the Clerks.

III. RELEVANT PROVISIONS OF THE AGREEMENT

ARTICLE 7 EMPLOYEE CLASSIFICATION

Section 2. Employment and Work Assignments

IV. CONTENTIONS OF THE PARTIES

A. Union

The Union contends that the Postal Service violated the provisions of Article 7, Section 2 of the Agreement when it assigned the packaging and processing of Premium Forward Mail to the Carrier craft instead of the Clerk craft. According to the Union, the work in question was designated as Clerk work at the Palm Beach Gardens Post Office since its inception. It calls attention to the PFS Program Guidelines and the Palm Beach Gardens LDC/MODS Codes which show that the description of the Premium Forwarding Services described on the Clerk operation of 638 and identifies the tasks of packaging, forwarding and weighing the mail as a Clerk function.

The Union asserts that this issue was already decided by Arbitrator Armendariz in 2011 when he decided a case in Stuart, Florida with identical fact circumstances. In the earlier case, the parties stipulated that the Carriers had performed PFS since 2005 but the grievance was not filed until August 28, 2009. In this regard, the Union argues that this is a continuing violation.

In addition, the Postal Service argued in the Stuart case that the Operational Codes do not equate to jurisdiction; however, Arbitrator Armendariz did not agree. He ruled that the Program Guidelines assigned the work in dispute to the Clerk craft employees and directed the Postal Service to assign to the Clerk craft the PFS hold out mail for packaging and mailing and to cease assigning this work to the Letter Carriers.

The Union requests that the grievance be sustained and the Postal Service be directed to assign the Premium Forwarding Services to the Clerks and to pay the sum of \$251.00 to each of the named 28 Clerks.

B. Postal Service

The Postal Service contends that the grievance was untimely filed and is therefore not arbitrable. It submits that the Union had knowledge of the Carriers performing the work in question since 2005 and yet it waited until July 15, 2009 to file the grievance. The Union points to the provisions of Article 15, Section 2.a. which requires an aggrieved employee, or the Union, to file a grievance within 14 days of when the employee or the Union first learned or may reasonably have been expected to have learned of its cause. In support of its timeliness argument, the Postal Service calls attention to several prior arbitration decisions which emphasize that the cutoff date for filing any grievance is 14 days of the employee's awareness or the Union's awareness of the claimed violation.

The Postal Service maintains that the Union raised a new argument for the first time at the arbitration hearing. Specifically, it points out that throughout the grievance procedure it was contended by Management that since July 2005, the work in question related to the Premium Forwarding mail has been done by the Letter Carrier craft. However, at the hearing, Clerk Mack indicated that the Clerk craft originally performed this work and then it was taken away. In this regard, the Postal Service asserts that the parties are required to disclose all facts relied upon before the case is submitted to arbitration and the Union cannot now expand the nature of the dispute.

According to the Postal Service, no specific craft has been assigned the duties of the work in question. It is performed by the Carrier craft in some facilities and the Clerk craft in other facilities of the West Palm Beach installation. The Postal Service notes that the Carriers have been performing the work in question since 2005 in the Palm Beach Gardens office and the only aspect of the process that is specifically a Clerk craft duty is accepting payment for and processing the Premium Forwarding applications. The Carriers have been performing the work since 2005 and for four years the Union acknowledged these duties as Carrier craft duties. The Postal Service submits that the Union cannot establish a crossing craft grievance because it is an undisputed fact that from the onset of the Premium Forwarding Service program, the Carriers have prepared and mailed the Premium Forwarding mail at the Palm Beach Gardens Post Office. The Postal Service rejects the Union reliance on the Function 4 Operation Codes by stating that the fact that there is a Clerk operation code for Premium Forwarding does not in any

way indicate that the duties in question are Clerk craft duties. It emphasizes that even though some stations use the Carriers to perform the work while other stations use the Clerks, the Palm Beach Gardens Post Office is the only office in the West Palm Beach installation that has filed a grievance on Premium Forwarding.

The Postal Service also challenges the Award by Arbitrator Armendariz and maintains that the Premium Forwarding Guidelines do not assign the work at issue to the Clerk craft. Section 6.4 of the Guidelines discusses the responsibilities of Designated Control Point Employee (DCPE) and nowhere in this section does it indicate that this is a Clerk function. The Postal Service asserts that each Letter Carrier is the DCPE for the mail being forwarded from their individual route.

The Postal Service contends that this case should not go beyond the initial argument of timeliness. However, the Union has failed to prove a violation in this case because it has failed to establish that the work in question is Clerk craft work. Therefore, the Postal Service requests that the grievance be denied in its entirety.

V. DISCUSSION AND FINDINGS

The grievance considered herein concerns the Premium Mail Forwarding Services which began on a trial basis in 2005 and was made a permanent service in 2008. At the outset of the arbitration hearing, the Postal Service pointed out that its argument concerning the untimeliness of the grievance has been carried through the grievance process. It emphasizes that Article 15, Section 2.(a), requires a grievance to be filed within 14 days of when the employee or the Union first learned, or should reasonably be expected to have learned, of its cause. In this regard, the Postal Service maintains that the Carriers have been performing this work at the Palm Beach Gardens Post Office since its inception in 2005. It therefore submits that the grievance is untimely and not arbitrable. In response to the Postal Service's claim of arbitrability, the Union argues that this is a continuing violation and each day that the Postal Service assigns the work the Carriers constitutes a new cause of action. A continuing violation is viewed as one that is repeated from day to day, with each day treated as a new "occurrence" and in such instances, arbitrators will permit the filing of such grievances at any time, recognizing that any remedy would accrue only from the date of filing.² Moreover, the parties' Joint Contract Interpretation Manual (JCIM) 2012 states that "a continuing contract violation is an exception to the general rule for grievance time limits. Where the Union asserts that the alleged contractual violation has

² See Elkouri & Elkouri "How Arbitration Works" Sixth Edition, 2003, p. 218-19.

been on a continuing basis, a grievance filed within 14 days of an event would be considered timely." Consequently, this grievance is found to be arbitrable as a continuing violation.

With regard to the merits of this case, the customer utilizing the Premium Forwarding Service is required to pay a fee for the Postal Service to hold their mail and to ship their mail to a pre-determined address on a weekly basis. The customer fills out an application and pays the fee to the Clerk who processes the application and issues a notice to the appropriate Carrier. The Carrier is to put the mail in a special hold out and it is sent to the customer every Wednesday. The Carriers at the Palm Beach Gardens Post Office have been packaging the mail and applying the required label with a tracking number each week. However, by this grievance the Union argues that it is the Clerks' duty to collect the mail, package it, put the appropriate label on the package, and record the tracking number before sending it to the customer. The Union claims that the work that the Carriers are doing is Clerk work. It relies upon the list of Function 4 Operation Codes which specify LDC 48 Operation 638 as "Premium Forwarding Service/Express or Priority Reshipment" and includes processing PFS or reshipment, collecting the mail to be forwarded, packaging shipments, weighing, rating, tracking, scanning and dispatch.

The Postal Service acknowledges that the Clerks at four of the seven offices in the West Palm Beach installation process the weekly Premium Forwarding Service mail; however, it submits that the work is done by the Carriers at the remaining three offices, which includes the Palm Beach Gardens Post Office. The Postal Service argues that the program guidelines for the Premium Forwarding Service do not designate the reshipping of the customer's mail to the Clerk craft. In addition, the Postal Service maintains that the fact the work in question has been done by the Letter Carriers since the beginning, establishes that it is Letter Carrier work in the Palm Beach Gardens office. The arbitration decisions cited by the Postal Service are distinguishable based upon the facts. The Union relies upon the only decision which addresses the same issue as presented in this case. In the decision by Arbitrator Ruben R. Armendariz,³ he found that the Postal Management "crossed crafts when they assigned carriers to perform clerk work" and he directed the Postal Service "to assign to the Clerk Craft, the PFS hold out mail for packaging and mailing and to cease assigning this work to the Letter Carrier Craft". Moreover, the Union produced a Step 1 settlement dated July 10, 2015, by which Supervisor Mary Burnett from the Palm Beach Gardens office and Union Steward Gary Hansman agreed that "beginning Wednesday, July 15th, all aspects of Premium Forwarding Services will be performed by Clerk craft employees." However, it was conceded that the settlement was not

³ USPS and APWU, Case No. H06C-4H-C 09446599, December 1, 2011.

honored and the practice of allowing the Carriers to package and ship the Premium Forwarding Service mail to the customers has continued.

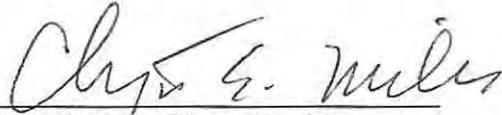
According to Section 6.2 Management Responsibilities, found in Postal Bulletin 22160 (8-4-05), the Postmasters, Managers and Supervisors have the overall responsibility to identify the designated control point employee (DCPE) and other employees to perform the responsibilities in support of the PFS program. The responsibilities of the DCPE are listed in Section 6.4 and include handling and separating the mail for PFS customers, preparing the PFS mail for reshipment, rerouting the PFS packages. Thereafter, Section 6.5 identifies the responsibilities of "Delivery" and "P.O. Box" employees. There is nothing, however, specifying or identifying who is to complete the packaging and shipment of the PFS mail.

Arbitrator Armendariz, in the Stuart, Florida case, stated on page 5 of his decision that: "the Premium Forwarding Service Program guidelines put out by the USPS in July 2005 assigns the acceptance and packaging and forwarding of the mail to the Clerk Craft." My review of the PFS guidelines does not yield the same conclusion. I do not believe the program guidelines identify one way or the other which craft employees are to perform the forwarding service. Nevertheless, it is clear that PFS is different than the traditional forwarding of mail with an address change referenced by the Postal Service. In my view, the actual tasks involved to complete the PFS must be considered and those tasks are identified in operation code 638 of the Function Four Operation Codes as "collect mail to be forwarded, packaging shipments, weighing, rating, tracking, scanning, dispatch". These are generally considered as Clerk Craft duties.

In view of the foregoing, it is my opinion that the Carrier is to hold out the mail to be forwarded in a designated slot in accordance with the notice provided to the Carrier by the Clerk and thereafter the remainder of the Premium Forwarding Service should be completed by Clerk craft employees. Consequently, based upon the record presented, it is found that the Postal Service violated Article 7, Section 2 of the Agreement, when it assigned the Letter Carriers to perform the PFS work. Therefore, the grievance is sustained and the Postal Service is directed to assign the PFS work to the Clerk Craft employees and immediately cease and desist from assigning the work in question to the Letter Carriers at the Palm Beach Gardens Post Office. No other remedy is awarded.

AWARD

The class action grievance considered herein is sustained. Based upon the particular circumstances surrounding this case, it is found that the Postal Service violated the provisions of Article 7, Section 2 of the Agreement, when it assigned the Letter Carriers at the Palm Beach Gardens Post Office to perform the PFS work. The Postal Service is directed to assign the Premium Forwarding Service (PFS) work to the Clerk Craft employees and immediately cease and desist from assigning the work in question to the Letter Carriers. No other remedy is awarded.



Christopher E. Miles, Esquire
Labor Arbitrator

April 6, 2016