National Arbitrator Rules that the National Agreement Does Not Require the Postal Service to Provide Additional Compensation to Rural Letter Carriers for Increase in Parcels During COVID-19 Pandemic

On June 27, 2023, the parties' National Arbitrator issued a decision in the "COVID-19 Parcels" case. While the Arbitrator appeared to agree with the Union on the merits of the case, she denied the grievance, holding that the National Agreement did not mandate the remedies that the NRLCA was seeking.

The arbitration addressed the Union's June 18, 2020 Step 4 grievance, which alleged that the Postal Service violated Articles 9.2.A.1.t and 9.2.C.3.b of the National Agreement by failing to provide "suitable relief" to rural carriers who were affected by the increase,e in parcels resulting from the COVID-19 pandemic. At arbitration, the Union argued that the pandemic-related parcel increase constituted "longstanding route conditions, beyond the control of the rural carrier" that caused the carrier to exceed the evaluated hours of the route and "unusual conditions" that required the Postal Service to provide suitable relief or additional compensation. As a remedy, the Union asked for affected carriers to be compensated at the overtime rate for any hours worked over the evaluation, but under the annual guarantee.

The National Arbitrator agreed with the underlying premise of the Union's argument, that the "perfect storm" of a pandemic and related significant parcel increase, along with no recent mail count, constituted "longstanding route conditions" and "unusual conditions". She stated:

> There is no question that the COVID-19 pandemic was an unusual condition, which was not reflected in the latest evaluation, nor short of duration. A three year period of a substantial increase in the number of parcels caused by the pandemic, when coupled with the absence of a NMC reflecting the increase, can certainly be considered a "longstanding route condition beyond the control of the rural carrier" which is expected to cause the rural carrier to exceed the evaluated hours of the route.

However, she concluded that the plain language of the contract did not allow her to mandate a remedy. Article 9.2.a.1.t, dealing with "longstanding route conditions", only requires suitable relief or "appropriate compensation for the actual hours worked in excess of the annual guarantee." Here, those carriers were already compensated properly. Those carriers who exceeded their evaluations, but not the 2080 guarantee, did not have the right to additional compensation under the National Agreement. Notably, the Arbitrator *did* reject the Postal Service's argument that 9.2.A.1.t only applies to "physical" route conditions as opposed to situations such as an unexpected increase in volume.

With respect to Article 9.2.C.3.b, dealing with "unusual conditions," the Arbitrator found that the National Agreement gives the Postal Service complete discretion as to whether to provide an "additional allowance". The Arbitrator stated:

> I also conclude that the situation presented in this case constitutes an "unusual condition … not reflected in the latest evaluation," and thus falls within the language of Article 9.2.C.3.b. … However, while the Postal Service could have adjusted evaluated time by determining an appropriate allowance for a particular route, it was within its rights not to do so… Unlike the language of Article 9.2.A.1.t, the Employer's obligation under Article 9.2.C.3.b is not mandatory, and is solely at the discretion of the Postal Service.

The Arbitrator also addressed a procedural issue involving the Postal Service's failure to timely provide a written position statement in response to the Step 4 grievance. Because the Union made multiple requests for a written statement of the Postal Service's position and the Postal Service refused to do so until right before the arbitration, in violation of Article 15, the Union argued that the Postal Service waived its right to make arguments during the hearing. Again, the Arbitrator agreed that the Postal Service violated the National Agreement, but disagreed with the Union's requested remedy. She held that, despite the violation, the Postal Service did raise arguments at grievance meetings. Thus, it still had the ability to make arguments in support of its defense, just not *new* arguments that it failed to raise during those meetings.

This case was the first to substantively address the meaning and application of Articles 9.2.A.1.t and 9.2.C.3.b. Certainly, this was not the outcome that the Union hoped for, and the Union continues to believe that if these contractual provisions do not apply and afford a meaningful remedy under these circumstances, it is difficult to imagine a situation in which they do. However, it cannot be denied that the Arbitrator's decision is consistent with the language of the contractual provisions involved and with the principles underlying the evaluated system in general, at least before RRECS. Moreover, the dynamic nature of RRECS, which captures changes to the route, including spikes in mail volume, on an ongoing basis, truly limits the impact of the decision into the future.