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In the Matter of the Arbitration between :
NATIONAL ASSOCIATION OF LETTER CARRIERS, :
AFL-CIO :

-and- :

UNITED STATES POSTAL SERVICE :
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Re: Case No. NC-W-7519
Portland, Oregon
(Use of 1033 Gurny)

OPINION AND AWARD

APPEARANCES:

For the NALC - Law Office of Mozart G. Ratner, Esq.
by: Peter J. Carre, Esq.

For the USPS - Richard A. Levin, Esq.
Charles M. Loveless, Esq.

BACKGROUND:

This proceeding was initiated by the filing of a verbal grievance by the NALC Steward with the Manager of the Lents Station in Portland, Oregon. It was appealed in writing to Step 2A, on April 6, 1977, by the President of Branch NO. 82, and converted into a group grievance filed on behalf of all the Carriers employed in the Portland, Oregon Post Office. The case was processed through the steps of the grievance procedure, as outlined in the 1975 collective bargaining agreement. On August 10, 1977, a final reply to the grievance was sent to the NALC in which the grievance was denied. On that same day, the National President of the Union requested arbitration of the issue raised. During the course of the hearing, no question regarding procedural irregularities or contesting the right of the Undersigned to issue a final and binding Award was raised by either Party.

THE ISSUE:

The Parties were unable to agree upon a definition of the issue as presented. However, the Union proposed that the issue could be defined as follows:

Whether the Postal Service's insistence on the use of the 1033 gurney by carriers violates Article XIV and XIX of the 1975 Agreement.

The Postal Service proposed that the issue could be stated:

Is the use of the 1033 gurney to transport mail from a carrier's case to his vehicle so inherently unsafe as to require its immediate removal from use?

In discussing the appropriate remedy, if a finding were made in favor of the Union's position, the Union urged that it would be appropriate to direct the suspension of the use of the 1033 gurney and direct the use of the best alternate method or methods of moving mail from the carrier's case to his vehicle. The Postal Service indicated that a study was currently underway for the purpose of designing a new container for this purpose, and that the status quo should be preserved regarding the use of the gurney until that study had been completed and the new container introduced to replace it.

STATEMENT OF THE CASE:

The 1033 gurney came into widespread use in the Portland, Oregon Post Office in the Fall of 1975. At that time, this medium sized canvas covered hamper, with either four wheels or three wheels on its bottom, was furnished to each appropriate facility for the use of the motorized carriers in getting their cased mail from the

from the case area to their vehicles. They were to take the packages and mail trays on the 1033 gurney to the parking lot and then load their vehicles from the gurney. The Postal officials had determined that the use of the 1033 gurney in lieu of nutting trucks and baskarts, or any other means employed to transport their mail to the vehicles, would save time and would also save space in the aisles of the Facility since these gurneys could be stacked when not in use. In some 410 of 513 motorized routes in the Portland area, the gurney was used to transport mail to the carrier's vehicle.

- Depending upon the configuration of the Postal Facility, the gurney was normally loaded with the packages on the bottom by a Part-Time Flexee. The carrier would then place his trays on the top of the gurney and push the gurney to the ramp leading to the parking lot. The carrier would then either push the gurney down the ramp, as if he were directing a baby carriage down the ramp, or he would, on occasion, get in front of the gurney and guide it down the ramp. At his vehicle, the carrier would load the trays and the packages aboard and then return to empty gurney to the ramp or inside the facility for reuse. Prior to employing the gurney as the prevailing means of transporting the mail, the carriers had usually used a nutting truck, mentioned above, which was a flatbed vehicle without sides, but with rails on either end for the carrier to push, to transport the mail from the casing area to the carrier's vehicle.

Shortly after these 1033 gurneys were put into general use at the various facilities in Portland, complaints about safety problems which they allegedly created were voiced by the carriers. - Carriers

claimed that in pushing the 1033 gurney down the ramp they were subject to injury since these vehicles were hard to control on the steep slope found at most locations. Carriers also charged that lifting their trays and packages out of the gurney required that they bend and stretch in such a manner that back injuries were being experienced.

These charges by the carriers, about injuries that were allegedly sustained when the carriers attempted to guide the gurneys down the steep and slick ramps and the back injuries which allegedly were caused by lifting heavy trays and packages while in an awkward position required to reach such items in the gurney, were brought to the attention of the Joint Management-Labor Safety Committee. It appears that this item was first listed on the agenda of the Committee meeting in the Fall of 1975. After the matter was discussed at several meetings, a jointly signed letter was sent to the Postmaster on June 30, 1976, which stated:

In the May 26, 1976 meeting of the Joint Labor-Management Safety and Health Committee it was unanimously decided to advise you that the loading and unloading of hampers may be in violation of the P-13, Supervisor's Safety Handbook, 232.7.

The Postmaster eventually replied to the Joint Committee on October 22, 1976. In his reply, the Postmaster apologized for the delay in responding to the jointly signed letter. He then went on to state, in essence, that his review and inquiry indicated that the use of the gurney for loading and unloading mail, "...does not stand in conflict with our safety policies." He went on to also state that the equipment involved was part of a national methods policy and procedure system that had been adopted and was not con-

sidered, at that level, to constituted a safety hazard. He concluded his letter by stating that, "I find no cause to unilaterally discontinue the use of the equipment."

After receipt of that letter, the Union filed a form 1767, Safety Hazard Report, on the 1033 gurney, and thereafter filed the grievance which is the subject matter of this proceeding.

CONTENTIONS OF THE PARTIES:

The Union argued that its evidence of the number of injuries and back problems which could be traced to the introduction of the 1033 gurney to transport cased mail to the carriers' vehicles plainly indicated that the continuation of the use of this equipment and this procedure was in violation of Article XIV of the collective bargainin agreement, which required management to provide safe working conditions in all installations, and also Article XIX of the Agreement, which authorized the continued applicability of handbooks and manuals which contained provisions not inconsistent with the terms of the Agreement. More specifically, the Union made reference to Section 230, dealing with lifting, in the Supervisor's Safety Handbook, Personnel Series P-13, which was issued by the Postal Service.

The Union claimed that not only was taking the loaded gurney down the steep ramp unsafe but also lifting heavy packages and trays of mail out of the gurney also constituted a hazard by placing a strain on the lower back. The Union argued that carriers had previously been able to move packages and trays laterally from the nutting truck on the loading dock directly into their vehicles.

They could also bend from the knees in the prescribed manner if they were required to lift trays and packages from the floor of the nutting truck since the sides of that truck were open and the trays and packages accessible without tilting the truck or dumping its contents. The Union conceded that loading packages and trays from the dock directly into their vehicles took a longer time before all carriers could clear out of the installation and make their rounds, because of the waiting time to pull up to the dock, but the Union insisted that the time saving could not be justified when the new equipment and procedure created such a serious safety problem.

To establish that there was no question that a serious safety problem existed, in addition to it having been acknowledged by the Joint Committee at the situs as well as by other officials, who were asked to make a preliminary assessment of that claim, the Union introduced the testimony of two experts in the field of Biomechanics, who had been hired to observe the use of the gurney for the purpose and in the manner discussed above. These experts, as part of their study, took moving pictures and photographs of carriers using the 1033 gurney, under what they alleged to be normal operating conditions. In addition, they took measurements of the dimensions of the gurney, ramps, jeeps, letter trays, and parcels. They also verified the representativeness of their measurements by reference to postal manuals and catalogues. They also weighed what they regarded to be representative trays, parcels and gurney loads which they had observed at Rose City and at the East Lansing, Michigan, postal installations.

Based upon their calculations and study of the use of the gurney, these experts came to the conclusion that lifting from the 1033 gurney and moving it down ramps did create safety problems. These experts also reached the conclusion that a better designed vehicle could minimize the problems and such a vehicle should be employed for these operations.

The Union also asserted that the Postal Service Supervisor's Handbook and the Pocket Safety Handbook, distributed by Portland postal officials to the carriers, both clearly indicated that lifting heavy objects from the bottom of hampers, such as the 1033 gurney, would be unsafe since these objects could not be lifted out properly without tilting the hamper over on its side and getting the tray or package close to the carrier for lifting, or in the alternative, building up the bed on which these packages and trays rested in the hamper so the carrier would not have to bend over into the hamper in order to lift the article out.

The Union argued that no evidence presented by Management refuted the showing that the use of the gurney at Rose City, in the manner described during this proceeding, constituted a safety hazard in violation of Management's obligations under Article XIV and the requirements incorporated by reference into the Agreement under the provisions of Article XIX. Since, according to the Union, its evidence established that injuries as well as low back pains and low back problems would continue to result from the use of the gurney, the Union urged that the appropriate remedy would have to require that the use of the gurney be discontinued and an alternate means of conveyance, the nutting truck, be substituted.

Management argued that, in late 1975, as part of the MIP/SOP program, the 1033 gurney was employed at the Portland Post Office and its facilities, where appropriate, in lieu of the use of the nutting truck for conveying cased mail and packages from the casing area onto the carriers vehicles in the parking lot. USPS contended that the procedure formerly used was more cumbersome and time consuming. The nutting trucks would be wheeled to the loading dock, if one were available, and then the carrier would wait his turn to bring his vehicle to the dock and load it from the nutting truck there. Where there was no loading dock, the carrier would wheel the nutting truck to his vehicle on the parking lot and then transfer his mail at that time. USPS inferred that the grievance that resulted from the introduction of the use of the 1033 gurney may have been inspired more by the time saving procedure that was instituted rather than by the alleged safety considerations.

Management posed the question, is the gurney inherently unsafe, warranting its immediate abandonment, or is it subject to misuse or use without observing appropriate safeguards with the resulting appearance of a possible direct causal connection between its use and complaints of injuries sustained on the job? Management conceded that the gurney could not be regarded as a perfect piece of equipment. Like every other piece of equipment employed in industry generally, it must be used properly and in a safe manner if injury occasioned by its use is going to be avoided. The spokesman for the USPS alleged that the Union was charged, in this proceeding, with showing more than the possibility that the gurney could be used

in an unsafe manner if it were to prevail in this proceeding.

Management pointed out that the major complaint about the gurney was that its construction caused carriers to lift objects from its interior without observing proper lifting procedures to avoid stress and strain on the lower back.. Management alleged that, in the pocket guide issued to all carriers at Rose City, and in the safety instructions that Management promulgated, carriers were directed to get help if any object was too heavy to lift alone and, at all times, not to lift objects without bending the knees so the arms of the person doing the lifting were parallel with the object being lifted. Management also directed that carriers make more than one trip from the casing area to their vehicles with cased mail and packages, if to do otherwise would mean moving an overloaded gurney to the parking lot.

The USPS claimed that the testimony offered by the experts produced by the NALC constituted a theoretical analysis of a problem that could more accurately be analyzed based upon the practical experience which the Postal Service has had with the use of the gurneys on a national basis and upon a consideration of the makeup of the workforce that was to use this equipment. For example, the Postal Service pointed to the fact that the Union's experts did not take into consideration that the carriers hired by the Service had to demonstrate a physical capacity for lifting greater than that possessed by the general population. The USPS also claimed that the NALC experts did not take into account the fact that carriers would avoid certain lifting problems by positioning the gurney or themselves in such a manner so that reaching into the far side of the upright

gurney could be avoided. Carriers knew they should and could squat as close as possible to the load. In addition, the USPS questioned the accuracy of the representative weights of packages and trays which the NALC experts used in their testimony and calculations of hazards. On the job experience would indicate, asserted the Postal Service, that it would be a rare occasion on which a carrier would have to lift packages of any considerable weight such as those discussed in the experts' testimony.

The Service made reference to the testimony of its own expert witnesses, officials of the Postal Service with long experience on the job as carriers and as safety officers, regarding the lack of complaints from users of gurney in other parts of the Country, or the rare reports of accidents or injuries attributed to the use of the 1033 gurney over many years. The four cases of injuries which occurred in Rose City, and which were presented through testimony of the victims in this proceeding, were analyzed by the Postal Service. Based upon that testimony, the analysis by the Service indicated that, if the carriers had followed appropriate safeguards and approved procedures in loading their vehicles, the accidents about which they complained would not have occurred, if indeed they did occur as claimed.

The Postal Service also addressed the testimony offered by the Union's experts regarding the hazards involved in moving the gurneys down a steep ramp based upon slip analysis. Here it was claimed that certain critical variables in such analysis were not fully evaluated and explained so the results of the study should be regarded as based upon an unproven and questionable hypothesis.

Finally, Management stated that, even if for the sake of argument it were found that the use of the 1033 gurney did create certain safety problems, those problems could be resolved without adopting the Union's proposal that the use of the gurney be prohibited. The USPS suggested that the carrier in packing the gurney and in unloading it could take steps to avoid carrying too heavy a load or unloading from the far side or in an unsafe fashion. The carrier could also, as the Service proposed, ask for assistance if individual parcels are too heavy to be lifted without possibly putting a strain on one man. In addition, rather than overload a gurney, under appropriate circumstances, a carrier could make more than one trip from the casing area to his vehicle with the day's mail. Management also suggested that if placing trays of mail in the bottom of the gurney, because there is little parcel post to fill up the lower portion of the gurney, created a lifting problem, the carrier could utilize empty trays placed upside down in the bottom of the gurney to raise the level of the trays to be lifted out of the gurney. Additionally, the USPS pointed out that Section 232.7 of the Supervisor's Safety Handbook contemplates that heavy packages are to be removed from hampers by tipping the hamper over so these packages can be withdrawn without bending over the side of the hamper. All these procedures and safeguards, if conscientiously employed by the carriers, would eliminate any real possibility of injury resulting from the use of the 1033 gurney.

OPINION OF THE ARBITRATOR:

In concluding its argument the Service stated, "This case requires a balancing of two important considerations--the need to

miantain a safe working environment and the Postal Service's right and obligation to operate in whatever manner it deems to be most reasonable and practical." The Service went on to state that any such balancing, in its opinion, is necessarily difficult. In the opinion of the Undersigned, the record made in this proceeding does not present a situation in which such balancing is particularly difficult.

Article XIV of the Agreement, as well as applicable statutory proscriptions, impose an unequivocal obligation upon management to provide safe working conditions. That is a primary obligation to which need to operate with optimum efficiency and economy must give way.

In examining the evidence provided through the testimony and documentation supplied by the Parties, the undersigned must reach the conclusion that the Union has succeeded in establishing the fact that the use of the 1033 gurney, as it is handled in the Portland Post Office facilities described with some particularity by the Union's witnesses from the ranks of postal employees as well as by its expert witnesses, does create working conditions which are hazardous and which require a disregard of the dictates of Section 230 of the Supervisor's Safety Handbook.

The testimony of the obviously well qualified expert witnesses offered by the NALC was given signifigant evidentiary weight in arriving at this conclusion. This was, of course, necessary under the accepted rules of evidence in the light of the absence of countervailing testimony from equally qualified expert witnesses offered by the Postal Service.

In addition, this conclusion is further supported by the statements submitted in this record, without rebuttal, made by the management representatives on the local Joint Labor-Management Safety and Health Committee as well as by the District Safety Officer in his later assessment. These management representatives also reached the conclusion, based on their on the spot investigation of this safety issue raised by the NALC, that the use of the 1033 gurney at the Portland Post Office facilities presented a safety problem.

Both requirements in using the 1033 gurney, guiding it down the steeply sloped ramp and loading the carrier's vehicle from the upright gurney placed alongside created safety hazards which must be eliminated if the further possibility of injury and the incidence of low back problems is to be minimized.

A careful review of the testimony and other evidence presented indicates that elimination of this safety hazard can only be accomplished in two ways. The first way is being urged by the Union. That is, eliminate the use of the 1033 gurney in moving the cased mail and parcel post from the casing area to the carrier's vehicle. The other, which commends itself, for a number of reasons to be set forth below, to the undersigned is to give the Postal Service the opportunity to provide a safe workplace, in compliance with Article XIV, and adherence to the safety practices set out in the Supervisor's Handbook, while retaining the right to still employ the 1033 gurney because of the space saving efficiencies and flexibility which it provides. These steps which the Postal Service must undertake and the safeguards which it must provide are based upon an evaluation of all the evidence presented with regard to how the gurney is

being employed at the installations covered by this grievance.

They will be detailed in the Award below.

The reason why the undersigned is of the opinion that this latter course of action must be offered to the Postal Service is that this grievance cannot be regarded as being initiated and prosecuted by the Local at Rose City for the purpose of inhibiting , restricting or challenging in such a manner, or by such means, the MIP/SOP or LCRES programs. Resistance to the Postal Service's right to initiate new and innovative ways of delivering the mail or arguments over the sufficiency of street time allowance cannot be permitted under the guise of a safety grievance.

Additionally, this record discloses that some 400 motorized routes of the Portland Post Office use 1033 gurneys while nationwide some 80% of the 101,000 motorized routes are employing this piece of equipment in getting the mail from the casing area to the carrier's vehicle. The evidence of the incidence of accidents or injuries attributed to the use of the gurney in Portland as against the un-rebutted testimony offered by the Postal Service with regard to the lack of a serious problem of the same nature elsewhere in the Country, leads to the conclusion that there is a danger of throwing out the baby along with the bath water if an absolute prohibition on the use of this equipment is imposed on this installation.

Finally, the Union's expert witnesses testified that their studies of Biomechanics are advanced for the purpose of designing the work place to limit the stresses to limits that the workers can handle. The preventive measures which the Service will be required to undertake at Rose City , under the terms of the Award below, will insure

that the hazards as well as the potential stresses which may be imposed by the use of the 1033 gurney will be limited in the most prudent fashion. These measures will suffice until the study of a new conveyancing container, which one of the Postal Service witnesses testified was underway, brings about the adoption of such a new container by the Postal Service which will eliminate the hazards in the present equipment.

Therefore, after due consideration of the testimony, other evidence and argument presented in this proceeding, the undersigned makes the following

A W A R D

1. As the use of the 1033 gurney is presently carried out at the Portland, Oregon Post Office, for the purpose of moving cased mail and parcel post from the casing area to the parking lot to be loaded on the carrier's vehicle constitutes a violation of Article XIV as well as Article XIX of the 1975 Agreement as that latter Article references Section 230 of the Supervisor's Safety Handbook.
2. For the purpose of remedying such violations, the Employer may choose one of two course of action: The Employer may discontinue the use of the 1033 gurney for this purpose and revert to the use of the nutting truck and/or baskart as they were employed prior to the Fall of 1975. In the alternative, the Employer may take the following preventative and corrective measures and continue employing the 1033 gurney.
 - A. Recoat all ramps employed to bring gurneys to the parking lot with safety coating or safety strips.
 - B. Undertake a training program to provide in person safety instruction for the carriers involved covering the material specifically discussed under the subject heading of Lifting in Section 230 of the Supervisor's Safety Handbook and in the pertinent sections of the Pocket Safety Guide.

- C. This training program shall also provide specifically for instructions in the following: 1. How the gurney may be positioned or tipped so that heavy objects may be removed by having them accessible to the carrier without his having to reach over into the hamper to remove such heavy objects. 2. Circumstances under which two trips or the assistance of a fellow employee are to be used to avoid individual handling of an overloaded gurney or an especially heavy package.
- D. Finally, if necessary, street time will be adjusted, during the next count and inspection period, to make an appropriate allowance for the additional time required to properly implement the preventative measures required.
3. The steps set forth above will be implemented by the Postal Service, except where otherwise noted under D, as soon as possible but in no event more than 30 days after receipt of this Award.


HOWARD G. GAMSER, DESIGNATED ARBITRATOR

Washington, DC
July 6, 1978