

RI-399 ARBITRATION PANEL

In the Matter of the Arbitration between)	Grievant: APWU
UNITED STATES POSTAL SERVICE,)	Post Office: Omaha, Nebraska
AMERICA POSTAL WORKERS UNION,)	USPS Case No. E10C-1E-J 14074035
)	Union Case No. 14-0063
and)	
NATIONAL POSTAL MAIL HANDLERS)	
UNION, Local 307)	

BEFORE: James A. Lundberg, Arbitrator

APPEARANCES:

For the U.S. Postal Service:	Nels Truelson
For the American Postal Workers Union:	Martin Mater
For the National Postal Mail Handlers Union:	Don Gonzales
Place of Hearing:	Omaha, Nebraska
Date of Hearing:	December 12, 2017
Date of Award:	January 29, 2018
Relevant Contract Provision:	Arbitrator's Award Dec. 3, 2015 RDRC submission
Contract Year:	2013 and continuing
Type of Grievance:	Arbitrator's referral to RI-399 Dispute Resolution Process Article 32 remedy

Award Summary:

The above matter was referred by Arbitrator Harry N. MacLean in his award in the above case dated December 3, 2015 to the Regional Dispute Resolution Committee, which undertook to resolve the issue of craft jurisdiction at the Omaha area Mail Consolidation Center by first referring the issue to the Local Dispute Resolution Committee. The parties were unable to arrive at an agreement and the matter was brought to RI-399 dispute resolution arbitration.

The arbitrator determined that the matter is properly before him and ruled in favor of the work assignments proposed by the AWPU and the NPMHU. The Arbitrator's ruling is based upon the "New or Consolidated Facility" provision of the April 16, 1992 Regional Instruction 399 – Dispute Resolution Procedures agreement.

Dated: January 29, 2018



James A. Lundberg, Arbitrator

ISSUES:

Substantive arbitrability issue presented by the Service:

When no postal craft is or has been performing certain work in a non-postal facility, is the hypothetical determination of which craft would have or should have been assigned to perform such work had it been assigned to a postal craft properly within the domain of the RI-399 process and therefore a substantively arbitrable issue therein?

Issue statement by the Service:

If performed by bargaining unit employees, craft jurisdiction of the work at the Omaha Mail Consolidation Center (MCC).

Issue statement by APWU:

Craft jurisdiction of the work being performed at the Mail Consolidation Center (MCC).

Issue Statement by the NPMHU:

The jurisdictional assignment of the work at the Mail Consolidation Center here in Omaha NE, if and when the work is returned to Postal employees.

RELEVANT R-399 GUIDELINES:

“General Principals” of the April 16, 1992 Regional Instruction 399 – Dispute Resolution Procedures –

Effective with the signing of this Agreement, no new disputes will be initiated at the local level by either union challenging jurisdictional work assignments in any operations as they currently exist. Except as otherwise specifically provided in the New or Consolidated Facilities, New York, or Operation Change sections contained in this memorandum, all local craft jurisdictional assignments which are not already the subject of appending locally initiated grievances will be deemed as a proper assignment for that facility.

“New Or Consolidated Facilities” of the April 16, 1992 Regional Instruction 399 – Dispute Resolution Procedures –

Jurisdictional assignments shall not be changed solely on the basis of moving operation(s) into a new facility. If jurisdictional assignments existed in a

previous facility, they shall be carried forward into the new facility except where operational changes as described below result in the reassignment from one craft to another.

BACKGROUND:

In the award in Case No. **E10C-1E-C-14074035** Arbitrator Harry N. MacLean ruled that the Postal Service violated **Article 32** of the collective bargaining agreement, when it subcontracted with “New Breed” to operate a Mail Consolidation Center (MCC) in a non-postal building near Omaha, Nebraska. Arbitrator MacLean also “*referred the matter to the Regional Dispute Committee under RI-399 for a determination as to craft jurisdiction of the work.*” In making his referral Arbitrator MacLean relied upon Question and Answer #3 attached to the **RI-399** agreement and the opinion of Arbitrator Meyers in Case No. **E98M-1E-C-011219672 (2002)**. Question #3 attached to the RI-399 agreement says:

3. If a grievance exists or is filed alleging a violation of the contract other than RI-399 (e.g. Article 7.2) and one of the parties believes the grievance constitutes a jurisdictional dispute, what if anything should be done with the grievance?

The answer to Question #3 is:

Answer: it must be referred to the Dispute Resolution Committee for an initial determination as to whether or not it involves a jurisdictional claim. If it is determined that it involves a jurisdictional claim, the grievance will be processed in the Dispute Resolution Procedures. If the Committee is in disagreement as to whether or not it involves a jurisdictional claim, that question is appealable through the Dispute Resolution Process up to and

including arbitration for resolution prior to the parties addressing the merits of the dispute. The three parties shall review cases at the lowest possible level, which raise the potential of containing a jurisdictional dispute so that the proper procedure is utilized to resolve dispute/grievances.

In this case the Arbitrator observed that the jurisdictional issue goes only to the remedy not the merits (the question of subcontracting) but determined that *“the provision can be relied upon to provide the authority for the Arbitrator to refer the dispute to the Dispute Resolution Committee for a determination of the jurisdictional issue.”* Arbitrator MacLean supports his argument by looking to Arbitrator Meyers['] decision in Case No. **E98M-1E-C-011219672 (2002)**, wherein he found that *“once the Arbitrator determines that the grievance involves a jurisdictional dispute, the matter must be referred to the Dispute Resolution Committee.”*

The Regional Dispute Resolution Committee (RDRC) met on February 22, 2016 to review Case No. **E10C-1E-C-14074035**. By unanimous agreement executed by the authorized representative of APWU on February 22, 2016 and the authorized representatives of the USPS and NPMHU on February 23, 2016 the case was remanded to the Local Dispute Resolution Committee (LDRC) for the following:

For a determination as to craft jurisdiction of the work at issue, pursuant to Arbitrator MacLean’s award in the above referenced case, dated December 3, 2015.

The LDRC was unable to resolve the dispute. The USPS submitted a position paper on May 6, 2016 arguing that the work at the MCC is properly work performed by the NPMHU. The NPMHU in a written position on May 13, 2016 argued that “All

work in the MCC is in fact Mail Handler work. The APWU position on May 20, 2016 disagreed with the Postal Service and the Mail Handlers and referred the issue back to the Regional Dispute Committee. On February 15, 2017 the NPMHU and the APWU arrived at a bi-lateral, non-binding agreement merging the NPMHU's position with the APWU's position on how the work at the MCC should be performed.

On February 16, 2017 the RDRC parties exchanged position papers and signed off on the case as an "unresolved dispute." The APWU appealed the issue to Jurisdictional Arbitration. The position papers by the APWU and NPMHU adopt the same position and the Service disagrees.

An arbitration hearing was conducted on December 12, 2017.

SUMMARY OF POSITION TAKEN BY APWU AND NPMHU:

The APWU and NPMHU argue that the work assignments at the MCC should be the same as the work assignments at the Omaha P&DC. Their position is derived from RI-399 instructions relating to "New or Consolidated Facilities", which says:

Jurisdictional assignments shall not be changed solely on the basis of moving operation(s) into a new facility. If jurisdictional assignments existed in a previous facility, they shall be carried forward into the new facility except where operational changes as described below result in the reassignment from one craft to another.

When the MCC was established, the most proximate existing facility was the Omaha P&DC. Surface mail, which is sorted by the first three (3) digits of the zip code at the MCC, is processed using the same procedure found at the Omaha P&DC ground floor, where Low Cost Tray Sorters (LCTS) were introduced in 2002. The MCC uses a

gravity induction system that is the functionally equivalent to the LCTS. Both systems work within the same basic format and elements of the processes in the two plants correlate directly. Hence, the RI-399 instruction should be followed and the same craft assignments should be made.

The joint agreement between Omaha Area Local APWU and the NPMHU Local 298 addresses the following four categories of workers at the MCC, who perform tasks identical or nearly identical to the tasks performed at the Omaha P&DC.:

- Shipping Packer;
- Forklift Operator;
- Shipping Lead and
- Quality Auditor.

The induction of mail by the “Shipping Packer” does not constitute four hours of work. However, by rule (399- Mail Processing Work Assignment Guidelines, II. C. Distribution Activities) the work cannot be efficiently separated and, therefore, must be assigned to the primary craft, which at the Omaha P&DC is the clerk craft.

The Unions propose identifying Forklift Operator as Mail Handler Work, Shipping Lead as Clerk Work, Quality Auditor as Clerk Work and Shipping Packer as Clerk Work, which is consistent with the existing RI-399 inventory agreements and existing practice in the Omaha installation.

In addition to identifying the categories of positions at the MCC and carrying forward existing jurisdictional assignments from the Omaha P&DC, the Unions propose the following:

- The Shipping Packer work involves work of induction (putting the mail into the system) and distribution (taking the mail off the lines and distributing by zip codes).
- Once the work is returned to the craft that mail handlers will perform induction work and clerks will perform distribution work, consistent with the existing RI-399 inventory, RI-399 agreements and the existing practice in the Omaha installation.
- Scan Where You Band work will be performed consistent with the existing RI-399 inventory, RI-399 agreements and the existing practice in the Omaha installation.
- Mail Handlers will transport mail and empty equipment and will shrink wrap pallets and clerks will take full containers/pallets to the designated staging area consistent with the existing RI-399 inventory, RI-399 agreements and the existing practice in the Omaha installation.
- Once the work is returned to the bargaining unit, the assignment of such work will be consistent with existing RI-399 inventory, RI-399 agreements and the existing practice in the Omaha installation. **[Joint Agreement between APWU and NPMHU, Local 298 dated 2/15/2017].**

At hearing the Service argued that the issue is not properly before the RI-399 Arbitrator. However, Management has no right based upon the tripartite agreement of 1992 to change their position at the arbitration hearing.

Management did not argue that the issue is not properly in the Jurisdictional process but says:

First and foremost the RI-399 ADR process is to resolve disputes over the jurisdiction of work being performed by Mail Handlers and Clerks. This case is in this process due to an arbitrator's ruling to determine jurisdiction of work being performed by non-postal contract employees for the purpose of remedy determination. Agreements reached in the RI-399 process or awarded by a Jurisdiction arbitrator are prospective in nature, in other words they determine the assignment of work in the future. Management's position is that they are not to be used to award remedy for violations under the Article 15 process that gave rise to the dispute or during the interim that the jurisdictional dispute exists. [Joint 2, Tab-1, page 5]

Management's position up until the December 12, 2017 hearing was that all of the work at the MCC is more closely aligned with Mail Handler work than with APWU work.

The question for the Jurisdictional Arbitrator is the assignment of work, which is exactly what the RDRC undertook, when it issued the tripartite order remanding this case to the LDRC for the following action:

For a determination as to craft jurisdiction of the work at issue, pursuant to Arbitrator MacLean's award in the above referenced case, dated December 3, 2015.

The Union's assert that the jurisdictional issue is properly before the RI-399 Arbitrator and the jurisdictional question should be resolved consistent with the position taken by the Unions.

SUMMARY OF UNITED STATES POSTAL SERVICE POSITION:

The Service attacks the credibility of the referral to RI-399 Dispute Resolution saying:

The Service questions the dubious distinction between an issue that “goes only to remedy and not the merits.” But more importantly, the Service maintains that Arbitrator MacLean’s analogy between the contemplated scenario and the current situation is too much of a stretch. First, the “existing grievance” anticipated must truly have a jurisdictional component in real terms. The example given (Article 7.2) deals with the classic cross-crafting issue. Jurisdictional issues also sometimes arise out of Article 12 excessing scenarios, where the “four or more hours of continuous work” criterion is determinative of whether a particular craft belongs in the facility at all. However, the instant case involves a subcontracting issue where the remedy issue poses a pure hypothetical: What if the Postal crafts had been doing the contracted work instead: There is no future assignment question of work to be resolved, as that situation has not existed and still does not actually exist. There is no jurisdiction of work truly at issue because there is no actual Postal craft work at issue.

[USPS brief page 8]

The RI-399 guidelines (Tab 4) in the Introduction state that *“These assignment guidelines are to be implemented at all postal installations.”* The Implementation Criteria also refers to *“postal installations”*. In this case the contractor’s employees are working in a non-postal facility. Hence, the issue is not

properly part of the RI-399 dispute resolution process. RI-399 is to resolve real-life disputes and discourages Arbitrators from making declaratory judgment like decisions over hypothetical situations. *"The Service contends that the Regional Arbitrator does not have the authority to "remand" the case to the dispute resolution process under RI-399."* [USPS brief at page 7]

The position of the Service on the merits is that all of the work at MCC is work that properly should be performed by Mail Handlers. In support of the argument they contend that there are no continuous four-hour periods of exclusively clerk work available in the facility. The MCC is essentially a dock operation where everyone is involved with moving of mail. All personnel are cross trained and assist in loading/unloading trucks and transporting mail. A Forklift Operator will step down from the machine and separate mail, which keeps personnel working on tasks through their shifts. The operation simply can not move the mail effectively or efficiently by separating the work force into distinct groups of employees.

Finally, the APWU did not establish that the craft can meet the four continuous hour criterion. It is the Union's burden to show that their craft would actually meet the criteria and it did not provide sufficient evidence in support of its' position.

The Service asks that the arbitrator find the matter substantively non-arbitrable in the RI-399 process or alternatively find that the APWU has failed to demonstrate that clerks would have hypothetically been used to staff the

MCC, and that all such positions would instead have been filled by Mail Handlers. [USPS brief page 10].

OPINION:

In compliance with the award of Arbitrator Harry N. MacLean dated December 3, 2015, which found that the Service violated **Article 32**, the subcontracting provision of the collective bargaining agreement, the Regional Dispute Resolution Committee met on February 22, 2016.

In the “Remand to LDRC”, the authorized representatives from all parties agreed that the RDRC meeting was conducted “Pursuant to the terms and conditions of the trilaterally negotiated RI-399 National Dispute Resolution Memorandum of Understandings (MOUs), dated April 16, 1992.

The remand made to the Local Dispute Resolution Committee was made for the following specific action:

For a determination as to craft jurisdiction of the work at issue, pursuant to Arbitrator MacLean’s award in the above referenced case, dated December 3, 2015.

The remand to LDRC further directed that:

This case will be fully examined by the local parties in an attempt to resolve this dispute. Should the parties be unable to resolve the dispute, it may be appealed to the RDRC in accordance with the April 16, 1992 RI-399 Dispute Resolution MOUs.

On 2/22/16 the APWS Representative signed the “Remand to LDRC” and on 2/23/16 the USPS Representative and the NPMHU Representative signed the

“Remand to LDRC.” The RDRC by unanimous agreement accepted the craft jurisdiction issue identified in Arbitrator MacLean’s award as appropriate for resolution under the April 16, 1992 RI-399 Dispute Resolution MOUs, without qualification. The clear intent of the RDRC was to resolve the work jurisdiction issue identified by Arbitrator MacLean, as the issue needs to be resolved to fully fashion a remedy in the **Article 32** subcontracting case.

The authority of this Arbitrator to make a “determination as to craft jurisdiction of the work at issue, pursuant to Arbitrator MacLean’s award in the above referenced case, dated December 3, 2015” is derived directly from the Remand to LDRC. The “Remand to LDRC” was executed by all three parties. The April 16, 1992 Dispute Resolution MOUs provide for RI-399 arbitration of jurisdictional disputes. Based upon the above, the Arbitrator rejects the argument that the issue before him is not arbitrable and asserts jurisdiction over the dispute.

The subcontracting of the Omaha area Mail Consolidation Center was found by Arbitrator MacLean to have violated **Article 32** of the collective bargaining agreement. The Omaha area MCC pursuant to Arbitrator MacLean’s decision became a “New or Consolidated Facility” in the Omaha area, after the parties entered into the April 16, 1992 Regional Instruction 399 – Dispute Resolution Procedures were agreed upon.

Under “General Principals” of the April 16, 1992 Regional Instruction 399 – Dispute Resolution Procedures the parties agreed:

Effective with the signing of this Agreement, no new disputes will be initiated at the local level by either union challenging jurisdictional work assignments in

any operations as they currently exist. Except as otherwise specifically provided in the New or Consolidated Facilities, New York, or Operation Change sections contained in this memorandum, all local craft jurisdictional assignments which are not already the subject of appending locally initiated grievances will be deemed as a proper assignment for that facility.

Under the New Or Consolidated Facilities of the April 16, 1992 Regional Instruction 399 – Dispute Resolution Procedures the parties agreed:

Jurisdictional assignments shall not be changed solely on the basis of moving operation (s) into a new facility. If jurisdictional assignments existed in a previous facility, they shall be carried forward into the new facility except where operational changes as described below result in the reassignment from one craft to another.

The APWU and NPMHU described how mail is processed in the Omaha P&DC and demonstrated that the process at the Omaha area Mail Consolidation Center is nearly identical to the pre-existing facility. The only difference between the surface mail processes at the two facilities is in the induction process where that the Omaha P&DC has an automated tray system and the MCC has a gravity system. The two systems accomplish the same function. Consequently, there appears to be a direct correspondence between the process in the pre-existing Omaha P&DC and the new Omaha area MCC. The jurisdictional assignments existing in the Omaha P&DC shall, according to the April 16, 1992 Regional Instruction 399 – Dispute Resolution Procedures agreement, be the assignments proposed by the AWPU and the NPMHU.

AWARD:

- 1. The grievance appeal by the APWU is hereby sustained and the position of the APWU and NPMHU is adopted.***
- 2. The work assignments at the Omaha area Mail Consolidation Center shall be made in accordance with the positions taken by the APWU and NPMHU.***
- 3. A copy of the Joint Agreement describing the joint position of the APWU and the NPMHU is attached hereto as Exhibit #1 to assist Arbitrator MacLean in fashioning an award in this matter.***

Dated: January 29, 2018


James A. Lundberg Arbitrator

Joint Agreement

**Omaha Area Local #11, American Postal Workers Union
and Local 298 of the National Postal Mail Handlers Union**

Omaha installation: Regional #E10C-1E-C 14074035

**Issue in Dispute: Jurisdiction of work performed at the Mail Consolidation
Center (MCC)**

The parties agree to the following jurisdiction of work performed by the categories of positions listed by the New Breed Contract, as performed at the MCC:

Forklift operator - mail handler work
Shipping Lead - clerk work
Quality Auditor - clerk work
Shipping Packer - clerk work


The Shipping Packer work involves work of induction (putting the mail into the system) and distribution (taking the mail off the lines and distributing by zip codes).

The parties agree that once the work is returned to the craft that mail handlers will perform induction work and clerks will perform distribution work, consistent with the existing RI-399 inventory, RI-399 agreements and the existing practice in the Omaha installation.

The parties agree that Scan Where You Band work will be performed consistent with the existing RI-399 inventory, RI-399 agreements and the existing practice in the Omaha installation.

The parties agree that mail handlers will transport mail and empty equipment and will shrink wrap pallets and clerk will take full containers/pallets to the designated staging area consistent with the existing RI-399 inventory, RI-399 agreements and the existing practice in the Omaha installation.

The parties agree that once the work is returned to the bargaining unit, the assignment of such work will be consistent existing RI-399 inventory, RI-399 agreements and the existing practice in the Omaha installation.


Philip D. Thomas, President
Omaha Area Local, APWU

2/15/17

Justin Kreikemeier, Vice President
NPMHU Local 298

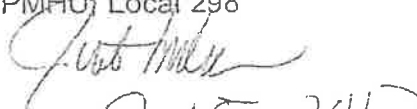

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Exhibit #1