

NATIONAL ARBITRATION
BEFORE IMPARTIAL ARBITRATOR STEPHEN B. GOLDBERG

In the Matter of Arbitration)
)
 between)
)
 UNITED STATES POSTAL SERVICE) Case No. Q10T -4Q-C 15206030
) POSTPlan Custodial Staffing
)
)
 and)
)
 AMERICAN POSTAL WORKERS)
 UNION, AFL-CIO)
)

BEFORE: Stephen B. Goldberg, Arbitrator

APPEARANCES:

United States Postal Service: Lucia R. Miras, Brian M. Reimer, Labor Counsel;
Terry C. Lefevre, Labor Relations Specialist

American Postal Workers Union, AFL-CIO: Melinda K. Holmes, Attorney;
Jason R. Veny, Attorney (Murphy Anderson, PLLC)

Place of Hearing: United States Postal Service, 475 L'Enfant Plaza,
SW, Washington, D.C.

Hearing Date: February 7-8, 2017

Date of Award: June 30, 2017

Relevant Contract Provisions: Article 38.2.B; POStPlan
Memorandum of Understanding;
Subcontracting Cleaning Services
Memorandum of Understanding

Contract Year: 2010-2015

Type of Grievance: Contract Interpretation

SUMMARY OF AWARD

1. Whether an APO-RMPO cluster constitutes an installation for custodial staffing purposes is a question to be resolved under Article 38.2.B. of the National Agreement.
2. A POSTPlan cluster of an APO and associated RMPOs is an installation as that term is used in Article 38.2.B.

I. SUMMARY OF RELEVANT EVIDENCE AND CONTRACT PROVISIONS

POSTPlan was introduced by the Postal Service in May 2012. Its purpose was to realign window service hours in small Post Offices in order to better match customer use. POSTPlan was to cover approximately 13,000 Post Offices, in many of which operating hours were reduced to six, four, or two hours per day. Administratively, POSTPlan offices were to be placed in clusters of not more than ten geographically contiguous Remotely Managed Post Offices (RMPOs) that would report to a Postmaster at an Administrative Post Office (APO). Level 6 RMPOs were to be staffed by Evaluated Postmasters, who would be part-time career employees; Level 2 and 4 RMPOs were to be staffed by Postmaster Reliefs, who would be non-career employees.

In June 2012, the Union filed a Step 4 grievance, alleging that the Postal Service had violated the Agreement by assigning the work of bargaining unit clerks to employees who were not members of the bargaining unit. The Union also alleged that an APO and the RMPOs that report to it constitute an “installation” under Article 38.2.B of the National Agreement, and that the creation of such an installation constituted a consolidation of previously independent offices.

This consolidation, the Union asserted, placed an additional limitation on the number of hours a postmaster in the installation could perform bargaining unit work. Although the Union had not alleged any violation of Article 38 or claimed custodial work, the Postal Service, in its post-hearing brief, stated:

There is an MOU about Subcontracting Cleaning Services under which a consolidation of post offices could result in a requirement that cleaning services that were previously contracted out be returned to the bargaining unit. That would be a much more difficult issue to settle, and was only brought to the Postal Service’s attention after the hearing. The Postal Service submits that the arbitrator should return this issue to the parties.

The reason for the Postal Service concern about the consolidation issue was, as stated in its brief:

[I]f the parties considered POSTPlan a traditional “consolidation,” RMPOs and the APO they report to may constitute an “installation.” Whether offices comprise an “installation” is important because of the Subcontracting Cleaning Services MOU.¹ The Subcontracting Cleaning Services MOU instructs the Postal Service to follow a formula that involves measuring the square footage of the interior and exterior areas of all offices that comprise an installation. The calculation involves several more steps, and the resulting number determines if the Postal Service can outsource cleaning services. Thus, whether the Postal Service can contract for custodial services is determined, in part, by the size of an installation.²

¹ The MOU on Subcontracting Cleaning Services sets out the following formula to determine whether a contract cleaning service may be utilized:

- (1) Measure the square footage of the interior area of all facilities of an independent installation, using procedures identified in handbook MS-47, Housekeeping-Postal Facilities. Then add the results (if more than one facility) then divide that total measurement by 18,000 and round off the resulting number to four (4) decimal places;
- (2) Measure the square footage of the exterior paved and unpaved area of all facilities of an independent installation, to be serviced using the procedures identified in the MS-47 handbook. Then add the results (if more than one facility) then divide that measurement by 500,000 and round off the resulting number to four (4) decimal places.
- (3) Add the numbers obtained in steps 1 and 2 together. If the resulting number is less than ONE (1), a contract cleaning service may be used to perform the required work.

² Prior to 2010, square footage for purposes of the Cleaning Services Memo was measured on a facility basis. In the 2010 negotiations, the Cleaning Services MOU was changed to measure square footage on an installation basis. According to APWU Maintenance Craft Director Steve Raymer, this change would lead to less contracting out and more work for bargaining unit employees.

The effect of the Cleaning Services MOU is that the smaller the installation, the greater is the Postal Service freedom to contract out cleaning work, rather than to use bargaining unit employees to perform that work. In order to maximize its freedom to contract out, the Postal Service would prefer that the “installation” for Cleaning Services MOU purposes would remain the individual office, and that POSTPlan, which placed small and medium-sized offices into a grouping composed of an APO and several RMPOs, not be viewed as the consolidation of those several offices into a single installation.

The Arbitrator, in a September 5, 2014 Decision and Award, sustained that portion of the grievance which complained of the improper assignment of clerk work, but granted the Postal Service request that he remand to the parties the issue of whether the Postal Service creation of APO-RMPO clusters constituted the consolidation of separate offices into a single installation.

On September 22, 2014, subsequent to the POSTPlan decision, the parties entered into a Memorandum of Understanding entitled, “POSTPlan Staffing of Offices, Filling of Assignments, PSE Usage and Conversion” (POSTPlan MOU). The POSTPlan MOU is silent on the question of whether a POSTPlan grouping of previously independent offices into an APO and several RMPOs results in that grouping constituting an installation under Article 38.2.B. However, Paragraph XIV of the POSTPlan MOU provides:

Limited solely to seniority, bidding, Article 6, Article 12
excessing, PTF conversion to full-time, and PSE
conversion to career, the installation (or ‘bid cluster’) is
defined as the Administrative Post Office (APO) and the
RMPOs reporting to that APO.

The POSTPlan MOU was negotiated directly between Postal Service Vice President of Labor Relations Doug Tulino and APWU President Mark Dimondstein, both of whom testified about the negotiations leading to that MOU. According to Mr. Dimondstein:

At the end of the day, we could not reach agreement,
and we mutually agreed that we would defer to the
provisions of the existing collective bargaining agreement
as to how maintenance will be applied to POSTPlan
offices . . .

According to Mr. Tulino:

We had discussions with regard to maintenance during the course of our conversations, and we concluded that we were not going to address staffing, maintenance staffing, in the context of the POSTPlan. It was not impacted, and therefore we didn't . . . address it.

Mr. Tulino was asked if he anticipated any increases in career custodial positions as a result of the POSTPlan MOU. He responded:

Absolutely not. . . nothing changed. You know, the status quo wasn't altered by the MOU with regard to staffing and maintaining custodial cleaning in those offices. Nothing changed; therefore fall back to the National Agreement. We do what we always did and move forward.

Shortly after the parties agreed to the POSTPlan MOU, they also agreed to "APWU and USPS POSTPlan Questions and Answers" ("Q &As"). Q&A 27 provides:

27. How will maintenance work be addressed in 'POSTPlan' offices?

Answer: Per the provisions of the Collective Bargaining Agreement.

Although neither Mr. Dimondstein nor Mr. Tulino had been directly involved in negotiating the Q&As, both testified about them. According to Mr. Dimondstein, Q&A 27 was "absolutely consistent with what we had settled on" in negotiating the POSTPlan MOU. According to Mr. Tulino, Q&A 27:

. . . basically codified what our understanding was. It was that custodial staffing, the way we're going to go ahead and clean these buildings weren't affected by the MOU, and therefore it was going to fall back to the provisions of the National Agreement, codified with the understanding of POSTPlan MOU doesn't impact.

The provisions of the National Agreement that deal with custodial staffing are Article 38 and the MOU on Subcontracting Cleaning Services. Article 38 applies solely to the Maintenance Craft, and in Article 38.2.B defines an installation as:

A main post office, airport mail center or facility, terminal, bulk mail center, processing and distribution center or facility, Maintenance Support and Repair Facility or any similar organizational unit under the direction of one postal official, together with all stations, branches and other subordinate units.

In September, 2015, the Union filed a Step 4 grievance asserting that the manner in which the Postal Service was contracting out cleaning services in POSTPlan offices violated Article 38 and the MOU on Subcontracting Cleaning Services.

II. DISCUSSION

There are two issues that must here be determined: (1) What agreement controls the question of whether an APO-RMPO cluster is an “installation” under the Agreement - the POSTPlan MOU or Article 38.2.B? (2) Is an APO-RMPO cluster an “installation” under the controlling agreement?

A. What agreement determines whether an APO-RMPO cluster is an installation under the National Agreement?

From the Postal Service perspective, the answer to this question is clear. The question of custodial staffing in POSTPlan offices was extensively discussed by Mr. Tulino and Mr. Dimondstein in the negotiations for the POSTPlan MOU. At the conclusion of those negotiations, Mr. Tulino and Mr. Dimondstein agreed to six situations in which an APO and its associated RMPOs would form a single installation. Custodial staffing was not on that list. The Postal Service asserts that the omission of custodial staffing from this list makes it plain that the negotiators agreed that the POSTPlan MOU would not treat an APO-RMPO cluster as a single installation for purposes of custodial staffing. Rather, each POSTPlan office would continue to be a separate installation, as it had been prior to POSTPlan. The Postal Service concludes that “If the parties had intended for a group of POSTPlan offices to form a single installation for custodial staffing purposes, they would have included custodial staffing in the list. A plain reading of Paragraph XIV thus supports the Postal Service’s position.”

In many circumstances, the exclusion of custodial staffing from a list of situations in which an APO-RMPO grouping constituted an “installation” would, as the Postal Service contends, warrant the conclusion that the parties intended that an APO-RMPO grouping would not constitute an installation for custodial staffing purposes. In this case, however, a careful reading of the Tulino-Dimondstein testimony leads to a contrary conclusion. Both Mr. Tulino and Mr. Dimondstein are experienced and sophisticated negotiators, as well as responsible representatives of their respective constituencies. As the Postal Service points out, the Union was aware from the beginning of the negotiations for the POSTPlan MOU that the Postal Service was unlikely to concede to a Union demand that an APO-RMPO grouping be treated as an installation for custodial staffing purposes, since to do so would, pursuant to the Cleaning MOU, reduce Postal Service freedom to contract out cleaning work and require it to employ additional bargaining unit personnel.

On the other hand, the Union was equally unwilling to budge from its position that an APO-RMPO grouping must constitute an installation for custodial staffing purposes. The Union had been successful in the 2010 contract negotiations in achieving an alteration to the Cleaning Services MOU pursuant to which the amount of square footage that would trigger a ban on the contracting out of cleaning work was to be measured by the installation involved, rather than the office involved. A definition of installation for custodial purposes that would exclude the APO-RMPO grouping would, from the Union’s perspective, represent a surrender of what it had gained in negotiating the 2010 Agreement – a surrender it was unwilling to make.

Whether or not Mr. Tulino was aware at the beginning of the negotiations of the Union’s determination to maintain its position on the custodial staffing issue, he certainly became aware of it as the negotiations progressed. Similarly, Mr. Dimondstein became aware that the Postal Service was unwilling to budge from its position. Indeed, the testimony of both negotiators makes it clear that each accepted the reality that the other would not surrender on this issue.

Accordingly, in order to extricate themselves from an impasse that might have threatened the entire POSTPlan MOU, Mr. Tulino and Mr. Dimondstein did what experienced union-management negotiators have done since time immemorial. They agreed to disagree – to accept an overall MOU which would not address the custodial staffing issue. Instead, they would simply assert that this issue would be resolved pursuant to the Agreement, and would let an arbitrator decide whether or not that meant that an APO-RMPO grouping constituted an installation

for custodial staffing purposes. The testimony of both Mr. Dimondstein and Mr. Tulino makes this clear:

Mr. Dimondstein:

At the end of the day, we could not reach agreement, and we mutually agreed that we would defer to the provisions of the existing collective bargaining agreement as to how maintenance will be applied to POSTPlan offices . . .

Mr. Tulino:

We had discussions with regard to maintenance during the course of our conversations, and we concluded that we were not going to address staffing, maintenance staffing, in the context of the POSTPlan. It was not impacted, and therefore we didn't . . . address it.

Under these circumstances, application of the normal rule of contract interpretation relied upon by the Postal Service – that the express inclusion of some items in an agreement warrants the conclusion that those items not so included were intentionally excluded – is not warranted. In this case, the exclusion of custodial staffing from the POSTPlan MOU list of situations in which an APO-RMPO grouping would constitute an installation does not mean that an APO-RMPO grouping would not constitute an installation for custodial staffing purposes. Rather, the evidence shows, it means that the negotiators intentionally chose not to address that issue, instead leaving an arbitrator to decide the issue under the terms of the National Agreement.

The Postal Service, in arguing to the contrary, relies on a portion of the testimony in which the following exchange took place:

Q. (by Postal Service counsel): Did you anticipate any increase in career custodial positions as a result of the POSTPlan MOU?

A. (Mr. Tulino): Absolutely not. . . nothing changed. You know, the status quo wasn't altered by the MOU with regard to staffing and maintaining custodial cleaning in those offices. Nothing changed; therefore fall back to

the National Agreement. We do what we always did and move forward.

The Postal Service asserts that since interpreting the POSTPlan MOU to define an APO-RMPO grouping as an installation would have led to an increase in career custodial staffing, this interchange demonstrates that Mr. Tulino did not interpret the POSTPlan MOU as providing for such a definition. A careful reading of the question and answer, however, shows that Mr. Tulino was asked if he anticipated any increase in career custodial positions “as a result of the POSTPlan MOU”. In answering that he did not, Mr. Tulino was interpreting the POSTPlan MOU as does the Union – it did not, of itself, have any effect on custodial staffing in the APO-RMPO grouping. Whether or not there would be such an effect would depend upon the interpretation of the relevant provisions of the National Agreement.

Neither the text of Q&A 27, nor the testimony relating to that Q&A lead to a contrary conclusion. The text states that maintenance staffing under the POSTPlan MOU would be “per the provisions of the Collective Bargaining Agreement”, the same conclusion reached above. Similarly, Mr. Tulino testified that Q&A 27:

. . . basically codified what our understanding was. It was that custodial staffing, the way we’re going to go ahead and clean these buildings weren’t affected by the MOU, and therefore it was going to fall back to the provisions of the National Agreement, codified with the understanding of POSTPlan MOU doesn’t impact.

This testimony, too, is entirely consistent with the conclusion here reached - the POSTPlan MOU did not affect custodial staffing in POSTPlan clusters. Whether an APO-RMPO cluster constitutes an installation for custodial staffing purposes is a question is to be resolved according to Article 38.2.B of the National Agreement.³

³ The Postal Service asserts that this interpretation of the POSTPlan MOU is inconsistent with the Two Hour Memo in the 2006 Agreement. Whatever inconsistency there may be – and I see none – does not persuade me that the instant interpretation of the POSTPlan MOU is inaccurate.

B. Is an APO-RMPO cluster an “installation” under Article 38.2.B?

The Union asserts that an APO-RMPO cluster is an installation as that term is defined in Article 38.2.B. The Postal Service does not challenge the Union’s assertion. Nor could it successfully do so.

Article 38.2.B defines an installation as consisting of:

A main post office, airport mail center or facility, terminal, bulk mail center, processing and distribution center or facility, Maintenance Support and Repair Facility or any similar organizational unit under the direction of one postal official, together with all stations, branches and other subordinate units.

As the Union points out, the POSTPlan office structure is almost identical to the main post office- station/branch structure described in Article 38.2.B. Simply switch the names from APO to main post office and from RMPO to station or branch, and the management and operational structure of the POSTPlan and non-POSTPlan offices are exactly the same. The POSTPlan office structure is, in the language of Article 38.2.B, “a similar organizational unit under the direction of one postal official, together with . . . other subordinate units”. It is thus an installation as that term is used in Article 38.2.B.

III. AWARD

1. Whether an APO-RMPO cluster constitutes an installation for custodial staffing purposes is a question is to be resolved under Article 38.2.B of the National Agreement.
2. A POSTPlan cluster of an APO and associated RMPOs is an installation as that term is used in Article 38.2.B.

June 30, 2017



Arbitrator