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PRESIDING OFFICER'S
RULING NO. C2001-3/15

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Complaint on First-Class Mail Standards

Docket No. C2001-3

PRESIDING OFFICER'S RULING ON CARLSON MOTION
REGARDING DFC/USPS-GAN-43

(Issued January 25, 2002)

An earlier ruling on discovery practices in this case held that the Service has the discretion to provide an institutional answer to interrogatories addressed to declarant Charles F. Gannon. The expectation was that this approach would elicit the most appropriate response. P.O. Ruling C2001-3/1 at 2. Numerous interrogatories have been redirected pursuant to this decision, without controversy. However, Mr. Carlson questions the Service's redirection of DFC/USPS-GAN-43, and moves for an answer from declarant Gannon. In support of his motion, Mr. Carson raises the possibility that redirection of question 43 is inconsistent with the Administrative Procedure Act (APA) because it does not allow him to directly cross-examine Mr. Gannon. He also suggests that redirection of this question is a purposeful tactic designed to insulate Mr. Gannon from cross-examination. Douglas F. Carlson Motion to Require the United States Postal Service to Provide a Response from Declarant Charles M. Gannon to Interrogatory DFC/USPS-GAN-43 (Carlson Motion), December 26, 2001 at 3-4.

Discussion. Question 43, directed to declarant Gannon, asks for a discussion of the ways in which the needs of customers for two-day First-Class Mail delivery affected any of Mr. Gannon's decisions on whether to change First-Class Mail service standards from two days to three days in 2000 and 2001. The Postal Service responded: "Please see the earlier response to DFC/USPS-GAN-3(a-c)." The referenced question, like question 43, asks for a discussion of customers' needs, but also asks for supporting documents and for an identification and description of all data and other indicators that

reflect the needs of customers or that serve as proxies for measuring the needs of customers. The Service's institutional response referred, among other things, to the pages captioned "Requirements" and "Assessment Made by Team" in the presentation included in DFC-LR-1. However, the response stated that aside from this material and the other information provided, the Service had not relied upon any other indicators of customer needs in finalizing Phase 2.

Mr. Carlson asserts that he filed question 43 as a refinement of the earlier question because he considered the response "rather general." *Id.* at 1-2. He contends that he needs to know whether Mr. Gannon, as national program manager, considered the needs of customers for two-day delivery before he changed the service standards to three days. *Id.* at 3. Moreover, he claims the ways, if any, in which Mr. Gannon considered customers' needs are highly probative on the question of adequacy of service. *Id.* at 2. He also says that since Mr. Gannon led the project to change service standards, his actions and considerations are an appropriate avenue of inquiry. *Id.* at 3.

The Service's reply. In its reply opposing Mr. Carlson's motion, the Service points out that Mr. Gannon, for the period relevant to this proceeding, has served as National Team Leader/Manager of the group responsible for implementation of the service standard changes at issue. Reply of the United States Postal Service to Motion of Douglas Carlson Regarding the Response to DFC/USPS-GAN-43 at 1. It notes, among other things, that institutional responses can be appropriate to reinforce that the decisions inquired about in an interrogatory were institutional in nature, rather than the work of any particular individual. The Service emphatically dismisses complainant's suggestion that redirection was undertaken to shield any one individual from cross-examination. *Id.* at 1. It also notes that the undertaking Mr. Carlson has inquired into was a group effort, and not solely the work of Mr. Gannon or any other individual member of the team. *Id.* at 2.

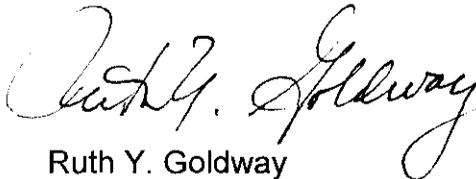
Ruling. Prior to this controversy, any complications associated with the redirection option have been confined to minor points, such as appropriate captions for

interrogatories. The two concerns Mr. Carlson raises with respect to question 43, if valid, are far more serious. The first concern is whether redirection does, in fact, interfere with his right to cross-examine a witness. On this issue, a central consideration is Mr. Gannon's status as team leader of the underlying project. As such, I agree with the Service's position that the institutional answer that was provided in response to question 3 can be presumed to cover the entire Service Standards team, including its leader. Therefore, no impairment of APA-related rights or privileges appears to have occurred as a result of the redirection of this interrogatory.

The second concern is whether the redirection option has been abused in this instance as a strategic means of disadvantaging the complainant. As both questions are so similar, I find nothing objectionable or suspicious about the redirection on its face. Moreover, nothing in the pleadings convincingly demonstrates that any subterfuge is involved. Accordingly, the motion is not granted.

RULING

The Douglas F. Carlson Motion to Require the United States Postal Service to Provide a Response from Declarant Charles M. Gannon to Interrogatory DFC/USPS-GAN-43 (December 26, 2001) is not granted.



Ruth Y. Goldway
Presiding Officer