

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Nanci E. Langley; and
Robert G. Taub

Complaint of the National
Association of Postmasters of
the United States, et al.

Docket No. C2011-3

ORDER DENYING MOTION FOR RENEWAL AND STAY

(Issued November 30, 2011)

Background and Procedural History. A complaint of the National Association of Postmasters of the United States, the League of Postmasters, Mark Strong, Robert Rapoza, Marilyn Shaw, and Marilyn Hill (Complainants) came before the Commission in Docket No. C2011-3.¹ The Commission dismissed the Complaint on August 11, 2011.² One claim concerning the Postal Service's failure to submit a request for an advisory opinion, in violation of 39 U.S.C. 3661, was dismissed with prejudice as moot because the Postal Service later filed a request for an advisory opinion. *Id.* at 7; see *also* Docket

¹ Complaint Regarding Postal Service Proposed Rule "Post Office Organization and Administration: Establishment, Classification and Discontinuance," 39 CFR Part 241, May 23, 2011 (Complaint).

² Order Dismissing Complaint, August 11, 2011 (Order No. 797).

No. N2011-1, Request for the United States Postal Service for an Advisory Opinion on Changes in the Nature of Postal Services, filed July 27, 2011. The other two claims were dismissed without prejudice because they were based on a Postal Service rule that had been proposed, but not implemented. Order No. 797 at 7. The Commission states that if “the Postal Service implements a final rule that implicates Complainants’ interests, they may renew their Complaint.” *Id.* at 8.

The Commission is required to determine, within 90 days of filing, whether a complaint raises material issues of fact or law, and either begin proceedings on the complaint or dismiss it. See 39 U.S.C. 3662(a)(1). Order No. 797 dismissed the Complaint within 90 days of filing, consistent with section 3662(a)(1).

Motion to renew and opposition. On November 7, 2011, Complainants filed a motion to renew the dismissed claims of the Complaint.³ The Postal Service filed in opposition to the motion on November 14, 2011.⁴ Complainants filed comments, simultaneously with a motion to accept those comments, on November 22, 2011.⁵ The American Postal Workers Union (APWU) filed comments in response to Complainants’ comments on November 29, 2011.⁶

Complainants contend that the Postal Service adopted and implemented its final rules on October 26, 2011, which makes the underlying Complaint ripe for adjudication. Motion to Renew at 2. Complainants also contend that the issues are fully briefed and

³ Motion to Renew Complaint, and Request to Submit for Decision on an Expedited Basis, Before December 1, 2011, or in the Alternative to Stay the Postal Service’s Final Rule from Going into Effect on December 1, 2011, filed November 7, 2011 (Motion to Renew).

⁴ Opposition of the United States Postal Service to Complainants’ Motion to Renew Complaint, November 14, 2011 (Postal Service Opposition).

⁵ Motion to Accept Comments Re: Opposition of the United States Postal Service to Complainants’ Motion to Renew Complaint (Complainants’ Comments); Motion to Accept Comments Re: Opposition of the United States Postal Service to Complainants’ Motion to Renew Complaint, both filed November 22, 2011.

⁶ Comments of the American Postal Workers’ Union, AFL-CIO in Response to Complainants’ Comments Re: Opposition of the United States Postal Service to Complainants’ Motion to Renew Complaint, November 29, 2011 (APWU Comments).

the matter may be submitted to the Commission for an expedited decision on the filings. *Id.* at 3.

The Postal Service contends that the Motion to Renew “suffers from numerous procedural flaws, jeopardizes the Postal Service’s procedural rights, and is based on unsubstantiated...premises that are not supported....” Postal Service Opposition at 2. Specifically, the Postal Service states that there is no way to “renew” a complaint via motion as Complainants attempt in this case, and to do so would neglect the intervening circumstance, *i.e.*, changes to the proposed rule. *Id.* at 9-12. The Postal Service notes that the only filings in the docket are the Complaint itself and the Postal Service’s motion to dismiss. *Id.* at 9. The Postal Service states that its motion to dismiss is not a rebuttal brief, and the Postal Service should be afforded the opportunity to answer the merits of the Complaint. *Id.* at 12. Finally, the Postal Service states that the potential injury alleged in the Motion to Renew is pure hyperbole because alternate means of redress exist for the speculative types of harm mentioned by Complainants. *Id.* at 15.

Complainants comment that they are not opposed to further briefing, but that the disagreement with the Postal Service is a legal issue and does not require further briefing. Complainants’ Comments at 1-2. Complainants contend that the Postal Service’s final rule does not materially differ from its proposed rule, making a new complaint unnecessary. *Id.* at 2-3. Finally, Complainants contend that the Postal Service’s current intentions notwithstanding, the Postal Service’s ability to misinterpret the law using the rule is the subject of the Complaint. *Id.* at 3.

APWU responds to Complainants stating that the Complaint is not yet ripe for review. APWU Comments at 1. APWU states that the hypothetical harm alleged by Complainants is too remote to justify utilization of the Commission’s limited resources. *Id.* at 2. APWU states that nothing prevents Complainants from bringing a ripe, well-grounded complaint in the future if the Postal Service attempts to abuse the rules at issue. *Id.* at 3.

Commission analysis. Complainants appear to have literally interpreted the Commission’s language in Order No. 797 at 8 that “they may renew their Complaint”

and acted to renew the dismissed Complaint by motion. In Order No. 797, the Commission found, *inter alia*, that claims 1 and 2 of their Complaint were not ripe for adjudication. Therefore, pursuant to 39 U.S.C. 3662(b)(1), the Commission dismissed those claims without prejudice, and closed Docket No. C2011-3. *Id.*

There is no ready procedural mechanism to revive a dismissed complaint by motion. To renew the dismissed Complaint, Complainants are required to proceed under the Commission's rules governing complaints. See 39 CFR part 3030. This will allow the Commission to evaluate a complaint that includes accurate factual statements and arguments that are premised on the situation as of the date of filing. Therefore, Complainants' Motion to Renew is denied.

In the alternative to an expedited review of matters raised in the Motion to Review and issuance of a decision by December 1, 2011, Complainants also request a stay of the effective date for the Postal Service's final rule. Motion to Renew at 4. Complainants refer to potential harm premised on implausible and aggressive action by the Postal Service. *Id.* at 3. Complainants, however, recognize that any actions taken by the Postal Service could "be undone afterwards..." Complainants' Comments at 4. Complainants have failed to justify the Commission granting a stay. Therefore, Complainants' alternative request for a stay in the effective date of the Postal Service's final rule is denied.

It is ordered:

1. The Motion to Renew Complaint, and Request to Submit for Decision on an Expedited Basis, Before December 1, 2011, or in the Alternative to Stay the Postal Service's Final Rule from Going into Effect on December 1, 2011, filed November 7, 2011, is denied.

2. The Motion to Accept Comments Re: Opposition of the United States Postal Service to Complainants' Motion to Renew Complaint, filed November 22, 2011, is granted.

By the Commission.

Shoshana M. Grove
Secretary