

ORDER NO. 4924

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

Before Commissioners:

Robert G. Taub, Chairman;  
Tony Hammond, Vice Chairman;  
Mark Acton; and  
Nanci E. Langley

Complaint of Randall Ehrlich

Docket No. C2019-1

ORDER GRANTING MOTION TO DISMISS

(Issued December 12, 2018)

I. INTRODUCTION

On November 2, 2018, Randall Ehrlich (Complainant) filed a complaint pursuant to 39 U.S.C. §§ 3662(a) and 403(c) concerning an ongoing suspension of mail service to Complainant's home.<sup>1</sup> On November 23, 2018, the Postal Service filed a motion to dismiss the Complaint.<sup>2</sup> Complainant responded to the Motion on December 7, 2018.<sup>3</sup>

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<sup>1</sup> Complaint of Randall Ehrlich, November 2, 2018 (Complaint).

<sup>2</sup> United States Postal Service Motion to Dismiss with Prejudice the Complaint of Randall Ehrlich, November 23, 2018 (Motion).

<sup>3</sup> Complainant's Response to USPS's Motion to Dismiss, December 7, 2018 (Response). The Response includes the declarations of Randall Ehrlich (Ehrlich Declaration), Scott Lucas (Lucas Declaration), and Adam P. Karp, the Complainant's attorney (Karp Declaration). The Commission granted a seven day extension of time to file the Response, pursuant to a motion for extension. See Motion for Extension of Time, November 30, 2018 (Motion for Extension of Time); Order Granting, in Part, Motion for Extension of Time, November 30, 2018 (Order No. 4910).

For the reasons explained below, the Commission concludes that the Complaint should be dismissed for lack of jurisdiction and failure to state a claim. The Commission grants the Motion in part and dismisses the Complaint without prejudice. The Commission concludes that a reasonable likelihood exists that rate or service inquiry procedures may result in a resolution of the Complaint. Accordingly, the Commission will refer the matter to the Postal Service as a rate or service inquiry pursuant to 39 C.F.R. § 3030.13(b). Because this Order dismisses the Complaint, the Postal Service is relieved from filing an answer under 39 C.F.R. § 3030.12. The rate or service inquiry procedures detailed in 39 C.F.R. § 3031.11 shall apply.

## II. BACKGROUND

### A. Complaint

The Complainant is an individual resident of Seattle Washington. His assigned mail carrier is a postal employee named Sonja Voisine (Voisine). He states that sometime “[b]efore 2015, Voisine complained that [Complainant’s] shrubs impeded her access to his mailbox,” located on his porch near his front door. Complaint at 4. The Complainant alleges that after trimming the vegetation, Voisine ignored him and was rude, prompting him to complain to the Postal Service. *Id.* The Complainant lists several other incidents since that day.<sup>4</sup>

The day after Voisine allegedly acted rudely, Complainant discovered a damaged DVD in his mailbox, which he reported to the Ballard Carrier Annex (BCA).<sup>5</sup> In July 2015, Voisine refused to deliver mail when Complainant’s dog barked while behind a metal gate and screen door. Complaint at 4-5.

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<sup>4</sup> The allegation that occurred “before 2015” is the earliest allegation against the Postal Service or any Postal Service employees directly involving the Complainant. He notes a third party at a different address, Peggy Hougardy, whom the Complainant alleges had trouble with a mail carrier, Sonja Voisine, in late 2005 resulting in a suspension and ultimate resumption of mail delivery to Hougardy’s home. *Id.* at 2-3.

<sup>5</sup> *Id.* at 4. The Complaint refers to the facility as “Ballard Postal Annex.” The proper name for the facility appears to be “Ballard Carrier Annex.” See Motion, Exhibit A at 1.

On or about July 20, 2015, Complainant signed a Memorandum of Understanding regarding the presence of his dog(s) and the possibility that he may be required to move his mailbox. *Id.* at 5.<sup>6</sup> He states that one week after his mail delivery resumed, it was subsequently discontinued without notice. Complaint at 5.

The Complainant states that as of July 30, 2015, he no longer owned the dog that prompted the July 20, 2015, Memorandum of Understanding. *Id.* He thereafter acquired another dog, and a Postal Service employee came to the residence to observe the dog. *Id.*

He goes on to assert that on or about August 12, 2015, he contacted management at the BCA, resulting in the BCA holding (rather than delivering) Complainant's mail for the next two years. *Id.* Complainant maintains that he attempted to contact the Postal Service from August 12, 2015, through September 14, 2018, in an effort to have his mail delivery resumed.<sup>7</sup>

On September 22, 2015, he states that he received an anonymous, green note in his mail, "depicting a diagram stating where his mailbox should be placed, and allowing for no exceptions."<sup>8</sup> Complainant states that BCA Manager Mike Fletcher "promised to come to [Complainant's] home and discuss the matter with him," but never did, and kept Complainant's mail on hold. Complaint at 7. Further, on September 30, 2015, he allegedly received a second, anonymous, yellow note, informing him that if he did not provide a mailbox, his mail would be returned to sender beginning October 7, 2015.<sup>9</sup> Complainant believes Voisine authored both notes. Complaint at 7-8.

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<sup>6</sup> The Postal Service filed the Memorandum of Understanding with its Motion as Attachment 2 to Exhibit A – Declaration of John Bell.

<sup>7</sup> *Id.* at 5-7. One of these attempts, made September 10, 2015, was to the Commission, who directed Complainant to the Postal Service's Seattle District Manager of Consumer & Industry Contact. *Id.* at 6-7.

<sup>8</sup> *Id.* at 7, Exhibit A.

<sup>9</sup> *Id.* Exhibit B.

Complainant realized that his mail was being returned to sender as of October 9, 2015. *Id.* at 8. Over the next several weeks, Complainant made contact with Postal Service employees regarding his mail delivery. *Id.* Employees told Complainant to move his mailbox to the sidewalk. *Id.* On October 16, 2015, Complainant acquired a post office box, but he believes that he still may not have received some mail. *Id.* at 8-9.

In the Spring of 2016, BCA Manager Mike Fletcher left the facility, and Complainant's mail began being returned to sender. *Id.* at 9. In the Spring or Summer of 2016, Seattle Postmaster Trent McNeal informed Complainant and a neighbor that he would conduct an investigation into Voisine and report the results back to them. *Id.* Complainant alleges that in September 2016, Voisine gestured at Ehrlich while walking, "pointing one of her hands directly toward him as if it were a gun." *Id.*

Complainant states that as of February 6, 2017, his mail "was stopped again" and Complainant sent his first of three complaint letters to the Postmaster General. *Id.*<sup>10</sup> The Complainant states that on or about February 14, 2017, Seattle Postmaster Trent McNeal contacted him and other customers "to discuss Voisine." *Id.* at 9. He states that on March 29, 2017, as a compromise, he mounted a second mailbox on his side fence, approximately 10 feet 6 inches from the sidewalk. *Id.* at 10.

Complainant states that on April 3, 2017, he and a neighbor contacted BCA Manager John Bell and a Union representative named Tyson Burchak (Burchak).<sup>11</sup> Complainant alleges that neither BCA Manager John Bell nor Burchak would address Voisine's behavior, ensure she would not be a threat to Complainant or his pets, or acknowledge that there was an investigation of Voisine. *Id.* On the same day, Complainant found a bagel in his backyard. *Id.* He reported the Voisine's finger point and the bagel to the Seattle Police Department in April 2017. *Id.* He sent a second

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<sup>10</sup> It is unclear when or if, between Spring 2016 when BCA Manager Mike Fletcher left the BCA, and February 6, 2017, Complainant's service was resumed.

<sup>11</sup> *Id.* at 10. Complainant does not identify Tyson Burchak's employer, or which Union he allegedly represented.

letter to the Postmaster General regarding Voisine on April 13, 2017. *Id.* The Complainant alleges that a neighbor antagonized him on or about April 15, 2017, mentioning specific details about Complainant's problems with Voisine. *Id.* at 10-11. On May 8, 2017, Complainant sent a third letter to the Postmaster General. *Id.* at 11. Complainant alleges that on May 18, 2017, BCA Manager John Bell informed Complainant that if he did not move his mailbox to the sidewalk or establish another delivery address, his mail would be returned to sender as of May 28, 2017.<sup>12</sup> Complainant did not move his mailbox, and his mail is still subject to return. *Id.*

On August 16, 2017, Complainant filed a lawsuit in the United States District Court for the Western District of Washington, seeking injunctive and declaratory relief, among other remedies.<sup>13</sup> The court dismissed his action on July 26, 2018, for lack of subject matter jurisdiction. Complaint at 11. After filing the lawsuit, Complainant found cans of cat food on his property, and feared they were poisoned. *Id.* at 12. Complainant found cans of cat food on his property in February 2018, on March 11, 2018, and as recently as October 2018. *Id.* at 12-13. Complainant alleges that Voisine parks her vehicle across from Complainant's driveway, in his view. *Id.* at 13.

Complainant also raises several allegations of Voisine's misconduct directed at third parties since late 2005.<sup>14</sup>

Complainant states that since approximately October 16, 2015, he has incurred costs including post office box rent and mileage. Complaint at 14.

Complainant suggests that BCA Manager Mike Fletcher and BCA Manager John Bell knew or should have known of Voisine's "unlawful, unreasonable, and unconstitutional behavior," yet failed to take disciplinary action against her, furthering the harms inflicted upon Complainant. *Id.*

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<sup>12</sup> *Id.* The Postal Service filed this correspondence with its Motion as Attachment 3 to Exhibit A.

<sup>13</sup> *Id.*; *Ehrlich v. United States*, No. 2:2017-cv-01245-RAJ (W.D. Wash. July 26, 2018).

<sup>14</sup> *Id.* at 2-3, 12-14, Exhibit C.

## B. Relief Requested and Procedural Requirements

Complainant requests that the Commission order: (1) that the Postal Service restore mail service to Complainant's mailbox at the front door; (2) that the Postal Service permanently remove Voisine from Complainant's route; (3) that the Postal Service discipline Voisine, BCA Manager John Bell, and BCA Manager Mike Fletcher, and subject them to suspension or termination; (4) an award of damages, fees, and costs, as allowed; and (5) other and further relief as the Commission deems appropriate. *Id.* at 15.

The Complaint includes a certification pursuant to 39 C.F.R. § 3030.10(a)(10) that the Complainant made reasonable attempts to contact the Postal Service's general counsel to resolve the complaint.<sup>15</sup> The Complaint also includes a certificate of service upon the Postal Service, in accordance with 39 C.F.R. § 3030.10(a)(11). Complaint at 16.

## III. MOTION TO DISMISS

### A. Motion

In its Motion, the Postal Service asserts several grounds for dismissal, including: (1) a failure to state a claim upon which the Commission can grant the requested relief; (2) that the Postal Service has already offered the available relief; and (3) that the Complaint is appropriate for referral to the Postal Service for resolution through the rate or service inquiry process.

The Postal Service states that the Complainant identifies 39 U.S.C. §§ 403(c) and 3662(a) as the jurisdictional bases for the Complaint. Motion at 7. The Postal Service states that while the Complaint alleges a violation of § 403(c), the Complainant has failed to establish the claim. *Id.* at 8. The Postal Service's argument relies on the

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<sup>15</sup> *Id.* at 16, Exhibit D.

Commission's decision in Order No. 2585,<sup>16</sup> where the Commission held that to establish a claim under § 403(c), the Complainant must establish three elements: (a) that he received less favorable rates or terms and conditions than others, (b) that he was similarly situated to those receiving more favorable rates or terms and conditions, and (c) that there was no rational or legitimate basis for the Postal Service to deny him those same rates or terms and conditions. Motion at 8.

The Postal Service states that the Complaint does not demonstrate that other customers with aggressive dogs are receiving more favorable terms or conditions than the Complainant does. *Id.* at 9. The Postal Service asserts that its suspension of service as a response to the Complainant's dog was reasonable and consistent with Order No. 2585, which stated that "restricted delivery . . . is reasonable and rationally related to the achievement of economical and efficient mail delivery and the preservation of mail carrier safety."<sup>17</sup>

The Postal Service also points to Section 623.1 of the Postal Operations Manual for another rationale for withdrawing delivery service. Motion at 10. This section states that the Postal Service "may withdraw service to a delivery point if a customer does not provide a suitable mail receptacle in the postal-approved location..." after being notified by local officials or by written communication. *Id.* at 10-11.

The Postal Service states that the Complainant failed to allege any of the other enumerated provisions in 39 U.S.C. § 3662(a), but that the alleged facts are not relevant to any of those provisions. *Id.* at 9.

It further asserts that the Commission lacks the statutory authority to grant the relief requested, as the Commission lacks the authority to grant relief in the form of the Postal Service's employment and labor practices, such as removing an employee from

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<sup>16</sup> See Docket No. C2015-2, Complaint of James D. Goodman and Rosalyn Goodman, April 23, 2015 (*Goodman*); Docket No. C2015-2, Order Granting Motion to Dismiss, July 15, 2015 (Order No. 2585).

<sup>17</sup> *Id.* (footnote omitted); Order No. 2585 at 13.

a delivery route or ordering disciplinary action. *Id.* at 11-12. The Postal Service states that the Commission also lacks the authority to award “damages, fees, and costs.” *Id.*

The Postal Service goes on to allege that its actions, in evaluating the Complainant’s circumstances and requesting a curbside mailbox, then reconsidering and requesting placement of the mailbox on the fence 6 feet from its location, already constitute the extent of the relief available to Complainant. *Id.* at 14. The Postal Service suggests that but for the Complainant’s refusal to comply with the Postal Service’s legitimate guidance and regulations, “residential delivery to [Complainant’s] mailbox would resume.” *Id.* Therefore, the Postal Service argues that the Commission should dismiss the case for mootness. *Id.* at 14-15.

In the alternative, the Postal Service requests that if the Commission does not dismiss the Complaint with prejudice, it should refer the Complaint to the Postal Service for resolution through the rate or service inquire process. *Id.* at 15. It suggests that, in accordance with 39 C.F.R. § 3010.13(a), this case is appropriate for the rate or service inquiry process because it concerns a single delivery point, makes no claims of unfair competition, and does not impact a substantial region of the country. *Id.* at 15-16. The Postal Service states that the Complaint raises no allegations that the Postal Service’s actions suggest a pattern, practice or systemic issue impacting a significant number of mailers. *Id.* at 16.

## B. Response

On November 30, 2018, the Complainant filed a motion to extend the time for filing a response to the Motion to Dismiss. See Motion for Extension of Time. The Commission granted an extension. See Order No. 4910. On December 7, 2018, the Complainant filed a response to the Motion. See Response.

The Response reiterates many of the allegations contained in the Complaint, and adds supplemental allegations throughout. See Response at 2-8. The new allegations do depict similar incidents of misconduct by the letter carrier involving Complainant’s neighbors. The Response contains allegations that the letter carrier, Voisine, had

similar encounters with a number of individuals, both named and anonymous. Response at 6-7; Karp Declaration at 1-34. The Response also states that news coverage has documented issues with the letter carrier. Response at 7; Karp Declaration at 37-41. The Complainant alleges that one neighbor, Lisa Sorensen, continues to receive her mail despite owning a dog. Response at 10. Complainant states that these allegations corroborate Voisine's adverse impact to the neighborhood. *Id.* at 8.

Complainant asserts that his Complaint differs substantially from that of *Goodman* because the alleged facts demonstrate no dog interference, and that Complainant has provided a suitable mail receptacle. *Id.* at 10. He argues that the Commission has plenary authority to award the relief requested and disputes the Postal Service's contention that the allegations are moot, stating that only a restoration of front-door delivery and the removal of Voisine as the letter carrier can remedy the matter. *Id.*

Complainant asserts that given the similar complaints by a significant number of neighbors, the allegations affect a significant number of mailers and represent a pattern, practice, and systemic issue. *Id.* at 11. Complainant states that rate or service inquiry procedures therefore should not apply, but that if the Commission disagrees, it "can and should *sua sponte* try to resolve this issue" via an order pursuant to 39 C.F.R. § 3030.13(b). *Id.* at 11-12.

#### IV. COMMISSION ANALYSIS

*Undue discrimination claims.* The Commission has jurisdiction over complaints that meet the statutory requirements of 39 U.S.C. § 3662(a). Section 3662(a) permits any person to file a complaint with the Commission if they believe the Postal Service is not operating in conformance with the provisions of sections 101(d), 401(2), 403(c), 404a, 601, or chapter 39, or any regulations thereunder.<sup>18</sup>

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<sup>18</sup> 39 U.S.C. § 3662(a); *see also* 39 C.F.R. § 3030.2.

Section 403(c) of title 39 prohibits the Postal Service from making any undue or unreasonable discrimination among mail users. 39 U.S.C. § 403(c). In evaluating claims of discrimination among mail users, the Commission follows the guidance set forth in *Egger v. USPS*, 436 F. Supp. 138 (W.D. Va. 1977).<sup>19</sup> In *Egger*, the Court held that it is “obvious that the Postal Service may provide different levels of delivery service to different groups of mail users so long as the distinctions are reasonable.” *Egger*, 436 F. Supp. at 142. As stated in Order No. 2585, the Postal Service may differentiate among customers where the differences have a rational basis. Order No. 2585 at 12.

The Complainant in the instant case does not specifically state the basis upon which he believes the Postal Service is offering him less favorable treatment than similarly situated individuals. The Complainant considers himself to be similarly situated to “a class of dog owners” and individuals who live next to dog owners who have “offended” Voisine, the letter carrier (collectively, “dog owners”). Complaint at 12. He recounts a number of Postal Service actions directed at him, including the suspension of mail delivery related to a “dog hold,” and several perceived intimidating or aggressive actions from the carrier. *Id.* at 4-11.

Even so, the Complainant has failed to show that the Postal Service has offered more favorable rates or terms and conditions to similarly situated individuals. Indeed, the Complainant acknowledges that others similarly situated have also experienced the discontinuation of mail delivery.<sup>20</sup> Complainant also alleges that other dog owners have experienced intimidating or aggressive gestures or actions from the letter carrier. *Id.* at 12-14. While these allegations, if true, demonstrate unacceptable conduct by a Postal Service employee, they fail to support a claim of discrimination among mail users pursuant to § 403(c).

Complainant also suggests that the entire class of dog owners and neighbors received less favorable rates or terms and conditions than non-dog owner customers.

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<sup>19</sup> See Order No. 2585 at 12.

<sup>20</sup> *Id.* at 12; see also Karp Declaration at 1-36.

Response at 1. Assuming that dog ownership is the distinction that the Complainant alleges, the Commission notes that it has previously recognized a legitimate interest in ensuring letter carrier safety. Order No. 2585 at 12. The Commission has also recognized that the suspension of delivery service to addresses of known dog concerns reasonably relates to achieving that interest. *Id.* Therefore, the Complainants' allegations do not meet the criteria for a successful claim of unwarranted discrimination among mail users.

*Commission's authority to grant the requested relief.* Section 3662(a) sets forth the Commission's authority to hear rate and service complaints. 39 U.S.C. § 3662(a). The scope of this authority is limited to the enumerated title 39 provisions and regulations promulgated thereunder. *Id.* An additional limitation on the Commission's authority is the type of relief that the Commission is able to grant. *Id.* § 3662(c).

Complainant requests several remedies related to Postal Service personnel — including the removal of a letter carrier from her route as well as initiation of disciplinary actions, including the termination of several employees. Complaint at 15. These actions are outside the Commission's authority to grant relief. Labor and personnel decisions are the purview of the Postal Service as the postal operator. Granting the requested relief would not “achieve compliance” in this case, because even if the requested personnel actions occurred, they would not affect the Postal Service's policy on suspension of delivery service due to an aggressive dog at the address. In other words, those actions would not result in the Postal Service restoring service commensurate with other similarly situated mailers.

Similarly, the Commission lacks the authority to issue fees and damages as a remedy. While the Commission has the authority to issue fines where it finds deliberate noncompliance, such fines are not payable to the Complainant.<sup>21</sup>

*Rate or Service Inquiry Process.* The Commission may refer a complaint to the Postal Service for resolution through rate or service inquiry procedures where the

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<sup>21</sup> 39 U.S.C. § 3662(d).

Commission finds “a reasonable likelihood that such procedures may result in resolution of the complaint.” 39 C.F.R. § 3030.13(b). Rate or service inquiry procedures are appropriate where the complaint does not: (1) raise unfair competition issues; (2) raise issues affecting a significant number of mail users; (3) represent a pattern, practice, or systemic issue that affects a significant number of mail users; or (4) impact a substantial region of the nation. *Id.* § 3030.13(a).

The Complaint raises no unfair competition issues, and there is no allegation that the allegations in the complaint impact a substantial region of the United States. The Complainant does indicate that other neighbors who share his carrier’s route have made formal or informal complaints about the carrier. Karp Declaration at 1-36. The Commission, however, finds that the instant Complaint does not raise significant issues or represent a pattern, practice, or systemic issue that effects a significant number of mail users. Given that the allegations in the Complaint arise from a single delivery route and single letter carrier, the Commission finds that it is reasonably likely that rate or service inquiry procedures may result in resolution. Accordingly, the Commission refers the Complaint to the Postal Service for treatment as a rate or service inquiry. The procedures set forth in 39 C.F.R. § 3031.11 will apply. The Postal Service shall advise the Commission of its resolution of the inquiry, or its inability or refusal to reach resolution, within 45 days of this Order. 39 C.F.R. § 3031.11(a).

The Postal Service requests that the Commission dismiss the Complaint with prejudice. Motion at 6, 10-11, 13, 15-16. The Commission finds that the Complaint fails to successfully plea an action under 39 U.S.C. § 403(c). The Commission makes no finding on the merits or veracity of the allegations set forth in the Complaint. A dismissal with prejudice is warranted where the “allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency.” *See Firestone v. Firestone*, 76 F.3d 1205, 1209 (D.C. Cir. 1996).<sup>22</sup> As the Commission does not

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<sup>22</sup> *See also Belizan v. Hershon*, 434 F.3d 579, 583 (D.C. Cir. 2006).

foreclose the possibility of other facts coming to light that may constitute a legitimate claim, the Commission dismisses the Complaint without prejudice.

V. ORDERING PARAGRAPHS

*It is ordered:*

1. The United States Postal Service Motion to Dismiss with Prejudice the Complaint of Randall Ehrlich, filed November 23, 2018, is granted in part.
2. The Complaint of Randall Ehrlich is dismissed without prejudice.
3. The Postal Service shall advise the Commission of its resolution of the inquiry, or its inability or refusal to reach resolution, within 45 days of this Order.

By the Commission.

Stacy L. Ruble  
Secretary