

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Complaint on First-Class Mail
Service Standards

Docket No. C2001-3

REPLY OF THE UNITED STATES POSTAL SERVICE
TO MOTION OF DOUGLAS CARLSON FOR RECONSIDERATION
OR PRESIDING OFFICER'S RULING NO. C2001-3/4
AND OTHER RELIEF
(November 27, 2001)

The United States Postal Service hereby files this reply to the November 20, 2001, motion of Complainant for reconsideration of Presiding Officer's Ruling No. C2001-3/4.

In that Ruling, the Presiding Officer correctly concluded that Mr. Carlson's inquiry¹ about restrictions on the shape and weight of mail matter carried by commercial passenger airlines sought information not relevant to the issues raised by the complaint he brought in this proceeding. Any such restrictions would have been implemented in response to the events of September 11, 2001, would be expected to be in effect for as long as deemed necessary for purposes of national security, and have nothing to do with his complaint about service standard changes implemented earlier this year and in 2000.

Given their genesis, the Postal Service regards any recently imposed restrictions as emergency in nature. It is not known how long any restrictions imposed since September 11th would need to be in effect. At times when heightened attention is paid to national security, such restrictions have been

¹ In the form of interrogatory DFC/USPS-31.

imposed and lifted in the past. And since no policy determination has been made by the Postal Service to assume that it can never return to air transportation arrangements that existed before September 11, 2001, the Postal Service does not know what is gained by debating now whether any current emergency restrictions in effect will evolve from temporary to permanent status.²

On November 13, 2001, in Docket No. R2001-1, the Postal Service filed an interrogatory response in which it characterized as “temporary” any current limitations on air transportation of pieces by weight or shape. Complainant now argues that his Docket No. C2001-3 interrogatory DFC/USPS-GAN-31 asked about “permanent” changes. However, no such interpretation is apparent from the face of the question. One can argue that the emphasis in the interrogatory on what is “currently” happening in response to the events of September 11th suggests quite to the contrary.

In any event, if and when the Postal Service is persuaded that it should no longer regard any current restrictions as “temporary,” it will abide by its Rule 26(f) obligation in Docket No. R2001-1 to amend its response to DFC/USPS-18 to indicate that the suspensions are either “lifted” or “permanent.”

Complainant argues that:

[his] concern appears to be limited to documenting that no permanent changes in fact exist. In Docket No. R2001-1, the Postal Service responded to DFC/USPS-18 by providing exactly the information that I need to establish: no permanent changes exist. [footnote omitted].

Motion at 5. He goes on to argue that:

² Complainant goes on and on about how any current restrictions should be regarded as permanent, as opposed to temporary. Apparently, he knows more than the Postal Inspection Service and the Federal Aviation Administration.

[his] concern is far from moot, however, as [he needs] . . . to place . . . [the Docket No. R2001-1 response to DFC/USPS-18] on the record in Docket No. C2001-3 as well, where the risk of surprise exists.

Id. Alternatively, he requests leave to file a new Docket No. C2001-3 interrogatory seeking to confirm the substance of the Docket No. R2001-1 response to DFC/USPS-18.

At some appropriate point, a motion to designate the response to DFC/USPS-18 into the Docket No. R2001-1 evidentiary record will probably be made. Rule 31(e) governs the designation of evidence from other Commission dockets. At some similarly appropriate point, a motion to designate the response to that interrogatory could be made in Docket No C2001-3. It is not apparent to the Postal Service why it is so urgent that Complainant immediately be given permission to move this one, single Docket No. R2001-1 response into the Docket No. C2001-3 record in advance of the ever-growing number of Docket No. C2001-3 interrogatory responses.

As far as the issue of “surprise” is concerned, the Postal Service, as indicated above, is aware of its Rule 26(f) obligation. The Postal Service plans to continue its long-standing policy of making operational changes in response to national security concerns without considering whether Complainant would regard any such changes as a surprise. The Postal Service will enact whatever measures it considers to be consistent with national security whenever it is appropriate to do so.³ Those decisions will be driven by considerations that are much more important than Complainant’s litigation strategy in Docket No. C2001-3, hard as it may be for him to believe.

³ Accordingly, contrary to the arguments at page 4 of his motion, Complainant has no insurance against the “real danger” of surprise by an “opponent” with an obligation to abide by Rule 26(f).

At page 3, Complainant argues that:

a permanent change in the availability of commercial passenger airlines to transport some or all sizes or shapes of First-Class Mail would be relevant to determining whether the surface transportation currently in use is the most expeditious method for transporting First-Class Mail.

He may be correct, but no one can predict the future. What is now temporary could be canceled. It could become permanent. For purposes of Docket Nos. C2001-3 and R2001-1 we simply have to proceed based on what we know now, subject to Rule 26(f).

At the top of page 3 of his motion, Complainant seeks to expand the scope of his complaint in this proceeding. He argues that:

Nowhere have I suggested that my complaint is restricted to violations of . . . [the policies of the Postal Reorganization Act] that existed on the date on which I filed my complaint . . . and that my complaint is not concerned with ongoing violations of the Act.

He apparently is now operating under the impression that, having filed his June 19, 2001, complaint about the service standard changes implemented by the Postal Service in 2000 and 2001, he is now free to unilaterally expand the scope of this proceeding to search for violations of the Postal Reorganization Act. The Postal Service does not share this view of the scope of Docket No. C2001-3 and is interested in knowing whether the Commission does.

For the reasons stated above, Ruling No. C2001-3/4 should be affirmed.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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CERTIFICATE OF SERVICE

I hereby certify that, in accordance with section 12 of the Rules of Practice, I have this day served the foregoing document upon all parties of record in this proceeding.

Michael T. Tidwell

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