

United States of America
Postal Rate Commission
Washington, D.C. 20268-001

Complaint of Daniel Ray Unger

Cause Number: _____

I. Complainant Name and Address:

Name: Daniel Ray Unger
Current Mailing Address: General Delivery
Grapeland Post Office
Grapeland, Texas 75844

II. Jurisdiction:

The United States Postal Commission has jurisdiction pursuant to 39 United States Code (also "U.S.C.") Section 3662, because Complainant is not receiving postal service in accordance with 39 U.S.C. Sections 101; 401 (10); 403 (b) and (c); 3621, and 3661 (a). The United States Postal Commission's policies of denying general delivery mail to itinerant people after 30 days affects all of that class of People on a national basis. This matter is not currently before any Administrative Law Judge or judicial officer of the Postal Services.

III. Facts of the Case:

1. Daniel Ray Unger (also "Complainant") is an itinerant horse logger who normally works in the northern parts of America (Minnesota during 2003; Wyoming during 2002, Washington State during 2001; Idaho during 2000 etc.) during the mild or hot weather months; and in the south, usually in different parts of Texas and/or Kentucky, during the cold weather months. Complainant has no permanent physical address.

2. On December 19, 2003, Complainant filed a federal rights lawsuit against the City of Jacksonville, Texas, for violations of rights of his minor son by the Jacksonville police department. This case was originally filed in the United States District Court for the District of Columbia, but was subsequently ordered transferred to the United States District Court for the Eastern District of Texas located in Tyler Texas, in February of 2004¹. This case is ongoing and may or may not be shortly resolved.

3. During 1999 thru 2004, Complainant worked during cold weather months in Cherokee County, Texas and received mail by general delivery service at the Alto, Texas, Post Office. Complainant has been temporarily but indefinitely located in Texas, with no permanent address, since the winter of 2004/05 due to the filing and appearance demands of the federal lawsuit after transfer of the federal lawsuit to Texas, beginning in May 2005.

4. Complainant also currently has a son deployed in Iraq with the United States Army who also witnessed the violation of his younger brother's rights.

5. Complainant is domiciled and a Citizen of the Commonwealth of Pennsylvania and has no permanent address in either Texas or the other States he has worked in and has moved from location to location from 1996 thru the current date.

6. Prior to 2005 Complainant received mail by general delivery services without time restrictions or limitations at Post Offices in Daniel and Pinedale, Wyoming; W. Richland, Washington; Genesee, Idaho; Scottsville, Kentucky; and Alto, Texas, when working in those locations.

7. Beginning in 2005, Complainant began working tracts of timber in Anderson County, around Elkhart; and Houston County, around Grapeland, in Texas. About this

¹ Actual transfer did not occur until May of 2005, due to the appeal of the original transfer order.

time Complainant began receiving general delivery mail at the Elkhart, Texas, Post Office during the later part of 2005. During January of 2006 the Elkhart, Texas, Post Office Post Master, Norm Griffith (also "Griffith") informed Complainant that he could no longer receive general delivery mail at the Elkhart Post Office as general delivery mail service was only temporary for a period of time not to exceed 30 days as provided by Domestic Mail Manual (also "DMM") section 508.6.4. Without other written or verbal notice, Griffith returned Complainant's legal papers to the sender, including an order issued by the United States District Court for the Eastern District of Texas, and a large deposition returned on or about February 14, 2006, the same day the Post Office received the mail matter. During the latter part of January of 2006, Complainant was supposed to receive sworn affidavits from his son serving in Iraq. These affidavits were to be used in support of Complainant's motion for summary judgment in the federal lawsuit. These affidavits were also returned; and therefore Complainant was unable to support his motion for summary judgment with these sworn affidavits by the filing deadline for these motions.

8. During February of 2006, Complainant contacted Sandra Simmons (also "Simmons") with Consumer Affairs for Postal Services Dallas District by Phone at (972) 393-6755. Complainant was informed by Simmons that it was the Postal Services position that pursuant to DMM 508.6.4 general delivery mail service was temporary for a period of time not to exceed 30 days. Complainant argued with Simmons that this was the length of time that the Post Office was required to hold mail pending the customer picking up the mail as the plain language of this section states, but this argument fell on deaf ears. Complainant asked Simmons for the procedures to appeal her decision and

Complainant was informed by Simmons that there were no procedures to appeal her decision.

9. Complainant afterwards contacted Ms. Marvay (also "Marvay") of Postal Service Consumer Affairs in Washington D.C. by phone at (202) 268-2000. Marvay also informed Complainant that general delivery mail service was limited to 30 days and this was the position of the Postal Service, but stated she would get back to Complainant, which she never did. Complainant later called Marvay five different times and left messages on Marvay's voice mail to return a call on my cell phone or leave a message, but Marvay never responded again, nor would she take my calls. Complainant also had asked Marvay for the rules or procedures to appeal her decision, but none were provided.

10. On or about February 23, 2006 Complainant received a letter from Griffith (See Exhibit A, pages 1 thru 4, attached) that informed Complainant that he will no longer be able to receive general delivery mail at Elkhart, Texas, Post Office; although Griffith had previously returned mail matter prior to this notice.

11. Complainant changed Post Offices in the latter part of March of 2006 and began receiving mail at the Grapeland, Texas, Post Office because of Griffith's refusal to deliver mail. However, Post Master Eddie Childress (also "Childress") informed Complainant that a person could only receive general delivery mail service for 30 days; although Childress stated he did not have a problem with Complainant receiving mail for an indefinite period, but that it was the policy of the Postal Services to allow general delivery mail service for only 30 days.

12. Complainant then contacted the Alto, Texas, Post Office, which now has a new Post Master, and was informed that it was the Postal Services policy to only allow general delivery mail service for 30 days pursuant to DMM 508.6.4.

13. Complainant is not able to receive mail from his son serving with the United States Army in Iraq, because it usually takes mail longer than 30 days to be sent from Iraq.

14. After April 30, 2006, Complainant will have no Post Office within 50 miles of his work location where he can receive legal papers by mail with regard to the federal lawsuit or to receive mail correspondence from his son serving in Iraq, although there are four separate Post Offices located in his current work area.

IV. Statement of the Grounds for Complaint:

15. 39 U.S.C. Section 101 states in pertinent part:

“(a) The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. The Postal Service shall have as its basic function **the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas** and shall render postal services to all communities. The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.” **(emphasis added)**

16. 39 U.S.C. Section 401 (10) states in pertinent parts:

“The Postal Service shall have the following general powers:

(10) to provide types of mail service to meet the needs of different categories of mail and **mail users;**”(emphasis added)

17. 39 U.S.C. Section 403 General duties states in pertinent part:

“(b) It shall be the responsibility of the Postal Service-

- (1) to maintain an efficient system of collection, sorting, and delivery of the mail nationwide;
 - (2) to provide types of mail service to meet the needs of different categories of mail and mail users;
 - (c) In providing services and in establishing classifications, rates, and fees under this title, the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user.
18. 39 U.S.C. Section 3621 states in pertinent part as follows:
- “. . . Postal rates and fees shall be reasonable and equitable and sufficient to enable the Postal Service under honest, efficient, and economical management to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States”
19. 39 U.S.C. Section 3661 Postal services states:
- “(a) The Postal Service shall develop and promote adequate and efficient postal services.
- (b) When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Rate Commission requesting an advisory opinion on the change.
- (c) The Commission shall not issue its opinion on any proposal until an opportunity for hearing on the record under sections 556 and 557 of title 5 has been accorded to the Postal Service, users of the mail, and an officer of the Commission who shall be required to represent the interests of the general public. The opinion shall be in writing and shall include a certification by each Commissioner agreeing with the opinion that in his judgment the opinion conforms to the policies established under this title.
20. 39 U.S.C. Section 3662 Rate and service complaints states:
- “Interested parties who believe the Postal Service is charging rates which do not conform to the policies set out in this title or **who believe that they are not receiving postal service in accordance with the policies of this title** may lodge a complaint with the **Postal Rate Commission** in such form and in such manner as it may prescribe. The Commission may in its discretion hold hearings on such complaint. If the Commission, in a matter covered by

subchapter II of this chapter, determines the complaint to be justified, it shall, after proceedings in conformity with section 3624 of this title, issue a recommended decision which shall be acted upon in accordance with the provisions of section 3625 of this title and subject to review in accordance with the provisions of section 3628 of this title. **If a matter not covered by subchapter II of this chapter is involved, and the Commission after hearing finds the complaint to be justified, it shall render a public report thereon to the Postal Service which shall take such action as it deems appropriate.** (emphasis added)

21. Domestic Mail Manual (also "DMM") 508.6.4 states:

"Holding Mail

General delivery mail is held for no more than 30 days, unless a shorter period is requested by the sender. Subject to 6.2, general delivery mail may be held for longer periods if requested by the sender or addressee.

22. DMM 507.1.8.6 b. states:

"Mail without a specific address or instruction from the sender is held:

- b. For 10 days if for general delivery at an office with city carrier service. If the addressee notifies the postmaster of a delay in claiming the mail, the postmaster may hold such mail up to 30 days."

23. Postal Bulletin 22060 (10-04-01) page 89 states in pertinent part:

"DMM D930.1.4 'Holding Mail,' cites a 30-day limit for general delivery mail. Employees are reminded that this time limit specifies how long individual mailpieces are held and does not refer to how long an individual person may receive general delivery service."

24. United States Postal Service decision for P.S. Docket Nos. POB 00-209, POB 00-271, POB 00-272 which states in pertinent part as follows:

a. "FINDINGS OF FACT" section item #2:

" . . . One or more may have been given incorrect information, i.e., that there was a 30-day limit on that service, but this matter is now moot. All Petitioners were informed early on in this litigation that general delivery service was available to them indefinitely. (Petitions; answers; Zinser Declaration; Green Declaration)."

b. "DECISION" fourth paragraph which states in pertinent part as follows:

“ . . . As noted earlier (see Finding of Fact #2), part of the first issue is now moot because the Postal Service acknowledges that there is no time limit on Petitioners’ entitlement to general delivery service.”(**emphasis added**)

25. The United States Postal Services (also “U.S.P.S.”) has arbitrarily and capriciously denied mail delivery to Complainant by denying Complainant general delivery mail service after 30 day period. This has denied Complainant with a manner of being served and receiving important pleadings in his federal lawsuit and has denied Complainant the ability to receive mail correspondence from his son who is serving in a war zone with the United States Army in Iraq. The U.S.P.S. misinterprets DMM 508.6.4., contrary to the edict of Postal Bulletin 22060 (10-04-01) page 89 (as shown in item#23 above), and contrary to the rulings by Postal Service Administrative Judge for P.S. Docket Nos. POB 00-209, 00-271, 00-272 also shown in item #24 above; and/or have changed their policies without proper notice or hearings contrary to 39 U.S.C. Section 3661 (b) and (c) (See item #19 above).

26. The United States Postal Services are not providing prompt, reliable and efficient postal services contrary to the requisites of 39 U.S.C. 3661 (a) (See item #19 above), and have not been adopted to fulfill the needs of all the People as itinerants are denied general delivery mail service after 30 days, contrary to 39 U.S.C. 3621 (See Item #18 above). See also 39 U.S.C. 403 (b) and (c) (item #17 above), 39 U.S.C. 101 (item #15 above), 39 U.S.C. 401(10) (item #16 above).

27. The United States Postal Services is hindering and restricting mail delivery to itinerant People who have no permanent mail location by arbitrarily and capriciously limiting general delivery mail service to 30 days.

28. The United State Postal Services' policy of restricting general delivery mail service for itinerant People with no permanent physical address violates Complainant's First Amendment Right to have access to the United States mail system.

Description of all Persons or Classes of Persons Similarly Affected:

All itinerant People, who have no permanent physical mail location, throughout the United States of America, are affected by the United States Postal Services' policy to only allow general delivery mail service for a period of 30 days.

Statement of Specific Relief or Redress:

Complainant requests that the United States Postal Commission hold a hearing on this complaint and render a public report to the Postal Services and have said Postal Services allow nationwide general delivery mail services for all itinerant People who have no permanent physical location for receiving mail and to take such other actions as deemed appropriate and necessary to allow all said class of People to indefinitely receive general delivery mail service.

Respectfully Submitted,
Daniel Ray Unger

Certificate of Service

I, Daniel Ray Unger, do hereby certify that a true and correct copy of the above and foregoing complaint has been served by placing the same in the United States Mail with adequate first class postage attached, addressed as shown below on this the 20th day of April, 2006.

Daniel Ray Unger

Norm Griffith
Post Master
United States Postal Service
Elkhart Post Office
Elkhart, Texas 75839

Eddie Childress
Post Master
United States Postal Service
Grapeland Post Office
Grapeland, Texas 75844