

ORDER NO. 57

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

Before Commissioners: Dan G. Blair, Chairman;
Mark Acton, Vice Chairman;
Ruth Y. Goldway; and
Tony L. Hammond

Complaint of Michael Hammond

Docket No. C2008-1

ORDER DISMISSING COMPLAINT
WITHOUT PREJUDICE

(Issued February 1, 2008)

I. BACKGROUND

Michael Hammond (Hammond) filed a complaint under 39 U.S.C. § 3662¹ concerning a dispute with the Goffstown, New Hampshire postmaster over the location of his mail receptacle, alleging that the postmaster is arbitrarily and capriciously denying him carrier delivery service and is deliberately destroying his mail.² He claims the Goffstown post office halted carrier delivery service on or about December 18, 2006, because he did not relocate his mail receptacle to a specific site on his property, which

¹ The Complaint references both the Postal Reorganization Act (PRA) and the Postal Accountability and Enhancement Act (PAEA), which amended the PRA.

² Complaint of Michael Hammond, November 2, 2007 (Complaint).

would have been inconvenient due to local snow removal procedures.³ Hammond asserts that suspending carrier delivery service was arbitrary because his mail receptacle complies with applicable physical requirements, and he emphasizes that the receptacle has been in the same location for 100 years and has not previously been cited as nonconforming. *Id.* at 3, 7-8. He also argues that the Postal Service did not follow proper procedures when it suspended carrier delivery service to his property because it did not send him form 4506 “Your Mailbox Needs Attention” as required by Postal Operations Manual § 632.53 or offer him an opportunity for a hearing. *Id.* at 3, 5. He further avers that the postmaster failed to hold his mail at the post office as promised after the discontinuance of the carrier delivery service, instead destroying or returning the mail to sender. *Id.* at 4. Hammond claims that the failure to deliver or hold his mail amounts to an act of noncompliance under title 39⁴ and constitutes obstruction of the mail under 18 U.S.C. § 1701. *Id.* at 5-6, 8-12. He requests that the Commission hold a hearing, render a public report, and require the Postal Service to deliver mail to his receptacle as currently located and to reimburse him for lost fees, subscriptions, checks, and other costs, such as attorney’s fees. *Id.* at 14.

In Order No. 47, the Commission invoked rule 85 (39 C.F.R. § 3001.85) with respect to informal methods of resolution, suspended the date for submission of a formal answer by the Postal Service, appointed Kenneth Richardson as settlement coordinator, and ordered that Mr. Richardson report on the status of settlement by December 21, 2007. In his December 21, 2007 report, Mr. Richardson informed the Commission that Hammond filed a similar complaint as part of a Freedom of Information Act request in the U.S. District Court for New Hampshire.⁵ Mr. Richardson also indicated that the Postal Service requested more time to review the matter and

³ He alleges that the town deposits the snow from the road at the appointed location and, thus, the receptacle would be buried under 20 feet of snow, making it inaccessible during the winter. *Id.* at 3.

⁴ In particular, Hammond cites to requirements in 39 U.S.C. §§ 101(a), 401(10), 403(b) and (c), 3621, and 3661. *Id.* at 8-12. He also cites 39 C.F.R. § 447.25.

⁵ Status Report of Settlement Coordinator, December 21, 2007, at 2.

consider the possibility of an accommodation to resolve the case. *Id.* at 3.

Mr. Richardson conveyed that the Postal Service offered to file a progress report regarding settlement activity at the local level with the Commission on January 18, 2008. *Id.* In Order No. 52, issued January 3, 2008, the Commission ordered the Postal Service to file its progress report by January 18, 2008, and, if that report indicated that settlement was unlikely, to file its answer to the Complaint by January 25, 2008.

In its settlement progress report, filed January 18, 2008, the Postal Service stated that settlement was unlikely and informed the Commission that carrier delivery service to Hammond's residence had resumed, thus mooted the Complaint.⁶ Additionally, any settlement offer needed to be coordinated with the Assistant United States Attorney and the field counsel for the Postal Service handling the federal court litigation. *Id.* It also suggested that, as Hammond's problems with delivery were limited to one mail receptacle, the Complaint failed to fulfill the "substantially nationwide basis" requirement of rule 82 (39 C.F.R. § 3001.82). *Id.* at 2-3.

The Postal Service indicates in its answer,⁷ dated January 25, 2008, that the possibility of settlement has changed in the week since it filed the Settlement Report, notifying the Commission that the parties were communicating with progress being made. Answer at 1. In addition to addressing each specific paragraph of the Complaint, the Postal Service claims that the postmaster's decision to halt carrier delivery service to Hammond's mail receptacle was proper and consistent with postal regulations and indicates that procedures allow such decisions to be appealed to senior officials. *Id.* at 2-9. After more senior officials reviewed the decision, the Postal Service resumed carrier delivery service as sought by Hammond on January 4, 2008. *Id.* at 9-10. The Postal Service reiterates its view that disputes involving a single customer should not require examination by the Commission or postal Headquarters. *Id.*

⁶ Settlement Report of the United States Postal Service, January 18, 2008, at 2 (Settlement Report).

⁷ Answer of the United States Postal Service, January 25, 2008 (Answer).

II. COMMISSION ANALYSIS

Hammond brings the Complaint pursuant to 39 U.S.C. § 3662. Section 3662(a) of the PAEA permits interested persons to file complaints regarding the Postal Service's failure to ". . . operat[e] in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter (or regulations promulgated under any of these provisions)"

In the Complaint, Hammond asserts that the Postal Service's failure to deliver or hold his mail constitutes nonconformance with 39 U.S.C. §§ 101(a), 401(10), and 403(b). Complaint at 11. Section 3662 does not extend a cause of action for noncompliance with cited portions of these sections. The plain language of section 3662 limits complaints to nonconformance with paragraph (d) of section 101, paragraph (2) of section 401, and paragraph (c) of section 403, which differ from those cited by Hammond. The counts of the Complaint based on noncompliance with sections 101(a), 401(10), and 403(b), therefore, do not meet the requirements of section 3662.

The Complaint also alleges nonconformance with sections 403(c), 3621 and 3661, which are within the scope of section 3662. Section 3621 governs the establishment and maintenance of a modern ratemaking system. The facts in this case do not involve ratemaking principles.

Section 3661(a) and (b) require the Postal Service to ". . . develop and promote adequate and efficient postal services" and to submit a proposal to the Commission when it ". . . 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" Section 3661, read in its entirety, applies to establishing or modifying substantially nationwide postal services and not

individual service.⁸ Section 3661, therefore, does not apply to the halting of carrier delivery service to Hammond's mail receptacle.

Section 403(c) prohibits the Postal Service from ". . . mak[ing] any undue or unreasonable discrimination among users of the mails" The Postal Service's halting of carrier delivery service to Hammond might raise a question of discrimination; however, the Postal Service indicates that service has been restored. Because Hammond is now receiving carrier delivery service, the basis for this claim is moot, and the Commission dismisses the Complaint without prejudice.

It is ordered:

1. The Complaint filed by Michael Hammond on November 2, 2007 is dismissed without prejudice.

By the Commission.

Garry J. Sikora
Acting Secretary

⁸ Section 3661 of the PAEA remains unchanged from the PRA.