

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

SIX-DAY TO FIVE DAY STREET DELIVERY
AND RELATED SERVICE CHANGES, 2010

Docket No. N2010-1

MOTION FOR RECONSIDERATION AND CLARIFICATION OF
PRESIDING OFFICER'S RULING REVERSING PREVIOUS RULING
AND COMPELLING THE UNITED STATES POSTAL SERVICE
TO RESPOND TO INTERROGATORIES DFC/USPS-T4-22-24
(July 6, 2010)

On June 11, 2010, the Presiding Officer issued Ruling N2010-1/6,¹ which denied Douglas Carlson's Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-T4-22-24.² On June 16, 2010, Mr. Carlson filed a motion to certify an appeal of Ruling N2010-1/6.³ On June 29, 2010, apparently in response to Mr. Carlson's motion, the Presiding Officer issued Ruling N2010-1/9, which (1) vacated Ruling N2010-1/6, (2) granted Mr. Carlson's original Motion to Compel, and (3) declared Mr. Carlson's Motion for Certification of an Appeal moot.⁴ The Postal Service is filing this motion to request reconsideration and clarification of the Presiding Officer's ruling.

¹ Presiding Officer's Ruling Denying Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to DFC/USPS-T4-22-24 (June 11, 2010) (hereinafter "Ruling N2010-1/6").

² Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-T4-22-24 (May 19, 2010) (hereinafter "Motion to Compel").

³ Douglas F. Carlson Motion for Certification of an Appeal of Presiding Officer's Ruling N2010-1/6 (hereinafter "Motion for Certification of an Appeal").

⁴ Presiding Officer's Ruling Reversing Previous Ruling and Compelling the United States Postal Service to Respond to Interrogatories DFC/USPS-T4-22-24 (June 29, 2010) (hereinafter "Ruling N2010-1/9").

Background

On May 4, 2010, Mr. Carlson submitted Interrogatories DFC/USPS-T4-22–24, which seek data regarding the Advanced Facer Cancellor System (AFCS).⁵ In particular, DFC/USPS-T4-22 requests the number of AFCS machines in use at each Postal Service facility that cancels and processes outgoing mail. DFC/USPS-T4-23 requests a comparison of AFCS cancellation volume on Saturday to AFCS cancellation volume on an average weekday for each facility that cancels and processes outgoing mail on Saturday. DFC/USPS-T4-24 requests a comparison of AFCS cancellation volume on Saturday to AFCS cancellation capacity at each facility that cancels and processes outgoing mail on Saturday.

The Postal Service filed an objection to the interrogatories on May 14, 2010.⁶ On May 19, 2010, Mr. Carlson filed a motion to compel the Postal Service to respond to the interrogatories.⁷ The Postal Service filed an opposition to Mr. Carlson's motion on May 26, 2010.⁸ The bases for Mr. Carlson's and the Postal Service's positions are contained in the above filings and need not be repeated here.

⁵ Douglas F. Carlson Interrogatories and Requests for Production of Documents to United States Postal Service Witness Frank Neri (DFC/USPS-T4-22–24) (May 4, 2010).

⁶ Objection of the United States Postal Service to Interrogatories DFC/USPS-T4-22 to 24 (May 14, 2010). In its objection, the Postal Service offered to provide in aggregate form the information requested by DFC/USPS-T4-22; the Postal Service provided this information on May 18, 2010.

⁷ Motion to Compel, *supra* note 2.

⁸ Opposition of the United States Postal Service to Carlson Motion to Compel Response to DFC/USPS-T4-22 to 24 (May 26, 2010).

Discussion

Ruling N2010-1/6, which denied Mr. Carlson's Motion to Compel, appears to rest on two bases: (1) relevance; and (2) undue burden. After laying out some background and discussing the parties' arguments, Ruling N2010-1/6 states that the "Presiding Officer does not find it appropriate to compel the Postal Service to respond."⁹ The ruling immediately then sets forth the standard upon which the Presiding Officer's finding is based, namely, whether the interrogatory appears reasonably calculated to lead to the discovery of admissible evidence.¹⁰ This is, basically, a relevance standard. Presumably, then, the Presiding Officer found that DFC/USPS-T4-22-24 did not meet the relevance standard. The Presiding Officer indicates as much by noting in the ruling that the information requested by the interrogatories "is at best marginally relevant to this docket."¹¹ Ruling N2010-1/6 then provides a second basis for denying the motion to compel, namely, that "the limited probative value of the site-specific capacity information sought by Carlson does not justify the burden of the nationwide data collection efforts required" – in other words, undue burden.¹²

In his Motion for Certification of an Appeal, Mr. Carlson distinguishes the portion of Ruling N2010-1/6 based on relevance from the portion based on undue burden. He states that undue burden is applicable only to DFC/USPS-T4-24. Undue burden should

⁹ Ruling N2010-1/6 at page 3.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at page 4.

not be taken into account regarding DFC/USPS-T4-22 and 23, he argues; rather, these two interrogatories should be evaluated based only on relevance. The Postal Service does not disagree with Mr. Carlson's burden/relevance distinction. Based on this distinction, Mr. Carlson states that his Motion for Certification of an Appeal does not apply to DFC/USPS-T4-24; it applies only to DFC/USPS-T4-22 and 23.¹³ The bulk of Mr. Carlson's motion restates and expounds on his relevance arguments regarding DFC/USPS-T4-22 and 23.

Ruling N2010-1/9 briefly recounts the background to the disputed interrogatories and then sets forth the Presiding Officer's "finding that the information sought by Carlson is reasonably calculated to lead to the discovery of admissible evidence."¹⁴ It further states that "[t]he Postal Service's relevance arguments are not persuasive" and that the information sought by Carlson "appears relevant."¹⁵ As noted above, the ruling vacates Ruling N2010-1/6, compels the Postal Service to respond to all three interrogatories, and declares Mr. Carlson's Motion for Certification of an Appeal moot.

¹³ In the background section of his motion, Mr. Carlson states: "DFC/USPS-T4-24 requested information designed to determine Saturday cancellation volume as a percentage of capacity at each facility. The Postal Service explained in its objection to my three interrogatories that the capacity information does not exist. For this reason, this motion does not request certification of an appeal of POR N2010-1/6 as it pertains to DFC/USPS-T4-24." Motion for Certification of an Appeal, at pages 2-3. In his discussion section, Mr. Carlson states: "The Postal Service's only objection concerning burden involved DFC/USPS-T4-24, which is no longer at issue." *Id.* at page 5. In his final request for relief, he leaves out DFC/USPS-T4-24: "For the reasons explained herein, I move for certification of an appeal of POR N2010-1/6 and a ruling requiring the Postal Service to respond to DFC/USPS-T4-22 and 23." *Id.* at page 7.

¹⁴ Ruling N2010-1/9 at page 2.

¹⁵ *Id.* at page 3.

The text of Ruling N2010-1/9 is relatively succinct. The ruling does not explain the reasoning that led to the Presiding Officer's decision to reverse the initial finding of a lack of relevance. It also does not explain why the Presiding Officer has taken the unusual step of vacating the prior ruling, rather than simply certifying Mr. Carlson's request for an appeal. Further, the ruling ignores Mr. Carlson's concession that DFC/USPS-T4-24 is not at issue.

Request

The Postal Service respectfully requests that the Presiding Officer review two aspects of Ruling N2010-1/9. First, the Postal Service requests that the Presiding Officer reconsider or clarify the applicability of the ruling to DFC/USPS-T4-24. Given that Mr. Carlson has stated that DFC/USPS-T4-24 is no longer at issue and that he does not seek reconsideration either by the Commission or by the Presiding Officer of his Motion to Compel as it relates DFC/USPS-T4-24, it is unclear why the Presiding Officer has, *sua sponte*, compelled the Postal Service to respond to the interrogatory.

Second, the Postal Service requests further explanation of the bases and reasoning underpinning the reversal of the Presiding Officer's original finding that DFC/USPS-T4-22 and 23 do not meet the relevance standard. Mr. Carlson moved that his request for an appeal be certified so that the full Commission could review whether DFC/USPS-T4-22 and 23 meet the relevance standard. If the facts and circumstances, or legal principles, underlying the interrogatories' relevance have led to two opposite rulings, it would seem that review by the full Commission could indeed be beneficial. At the least, without an understanding of the reasoning and analysis that may have led the

Presiding Officer to reverse the original ruling, the parties are left without guidance on how best to approach, evaluate, and argue future relevance disputes before the Commission. Such clarification might help the parties minimize similar future disagreements regarding discovery.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with Section 12 of the Rules of Practice and Procedure.

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