

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 OF THE UNITED STATES POSTAL SERVICE FOR
RECONSIDERATION OF PRESIDING OFFICER'S RULING N2010-1/21
(July 23, 2010)

On July 19, 2010, the Presiding Officer issued Ruling N2010-1/21,¹ effectively reversing P.O. Ruling N2010-1/4² by granting, in part, Douglas Carlson's Motion for Reconsideration of Presiding Officer's Ruling N2010-1/4.³ The United States Postal Service hereby moves for reconsideration of P.O. Ruling N2010-1/21. As discussed below, there are two bases for reconsideration: (1) P.O. Ruling N2010-1/21 misconstrues, and therefore fails to consider, the arguments made by the Postal Service in its July 8th Motion;⁴ and (2) P.O. Ruling N2010-1/21 reverses P.O. Ruling N2010-1/4 without articulating any new factual or legal basis for making the reversal.⁵

¹ Presiding Officer's Ruling Granting, In Part, Douglas F. Carlson's Motion for Reconsideration (July 19, 2010) (hereinafter "P.O. Ruling N2010-1/21").

² Presiding Officer's Ruling Denying Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to DFC/USPS-T4-14 (May 19, 2010) (hereinafter "P.O. Ruling N2010-1/4").

³ Douglas F. Carlson Motion for Reconsideration of Presiding Officer's Ruling N2010-1/4 (July 7, 2010) (hereinafter "Motion for Reconsideration").

⁴ To avoid confusion, the motion filed by the Postal Service on July 8, 2010 to oppose Mr. Carlson's Motion for Reconsideration, namely the Opposition of the United States Postal Service to Carlson Motion for Reconsideration of Presiding Officer's Ruling N2010-1/4, is referred herein as the "July 8th Motion;" while the motion filed by the Postal Service on May 17, 2010, namely the Opposition of the United States Postal Service to Carlson Motion to Compel Response to DFC/USPS-T4-14, is referred to herein as the "May 17th Motion."

⁵ See *generally*, *Motor Vehicles Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29 (1983) (finding that an agency's decision to reverse a prior regulation did not pass muster under the applicable standard of review because the agency had not provided the level of analysis requisite for making the reversal).

The background to the discovery dispute underlying P.O. Ruling N2010-1/21 is summarized in P.O. Ruling N2010-1/4.⁶ P.O. Ruling N2010-1/4 denied Mr. Carlson's motion to compel a response to interrogatory DFC/USPS-T4-14.⁷ P.O. Ruling N2010-1/21 accurately summarizes the arguments underpinning Mr. Carlson's Motion for Reconsideration:

In his Motion, Carlson asks the Presiding Officer to reconsider P.O. Ruling N2010-1/4 based on Carlson's discovery of Saturday mail processing consolidation cost savings estimates that he obtained through a Freedom of Information Act (FOIA) request. The cost savings estimates Carlson obtained are for a consolidation of San Jose and Oakland, California mail processing. This demonstrates that the information exists, and that the Postal Service should be required to provide it.⁸

However, P.O. Ruling N2010-1/21 misconstrues the arguments made in response by the Postal Service in its July 8th Motion. The Postal Service argued that, because its May 17th Motion acknowledged that records such as those produced in response to the FOIA request exist, and because P.O. Ruling N2010-1/4 itself acknowledged that such records exist, Mr. Carlson's Motion for Reconsideration merely rehashed arguments that were already considered and dispensed with in P.O. Ruling N2010-1/4.

Unfortunately, P.O. Ruling N2010-1/21 summarizes the Postal Service's arguments quite differently:

The Postal Service opposes Carlson's motion, stating that the anecdotal evidence Carlson garnered from his FOIA request is informal, local data

⁶ See P.O. Ruling N2010-1/4, at pages 1-2.

⁷ Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-T4-14 (May 10, 2010).

⁸ P.O. Ruling N2010-1/21, at pages 2-3 (internal citations omitted). For clarity, it should be noted that the final sentence in the excerpt indicates Mr. Carlson's views, not the views of the Presiding Officer.

that is not responsive to DFC/USPS-T4-14. The Postal Service also states that other data that may exist would be informal and not comparable across districts. For many consolidations, the Postal Service notes, any cost savings estimates would have to be recreated (*i.e.*, they do not currently exist).⁹

It is unclear what precipitated this mistaken summary, though it appears possible that the summary was based wholly on one sentence of the July 8th Motion, reproduced below:

The point of the Opposition Motion was that no standardized cost savings records exist, that any records that do exist were created locally and would not be comparable across districts, and that for a great many of the consolidations records would have to be recreated out of whole cloth years after the fact.¹⁰

As is clear from the context, the Postal Service included this sentence not to offer up again arguments already made in the May 17th Motion, but rather to refute Mr. Carlson's assertion in his Motion for Reconsideration that the Postal Service's May 17th Motion had claimed that Saturday consolidation cost savings records absolutely do not exist. By misreading the July 8th Motion, P.O. Ruling N2010-1/21 fails to consider the Postal Service's arguments in opposition to Mr. Carlson's Motion for Reconsideration.

Apart from failing to consider the Postal Service's arguments, P.O. Ruling N2010-1/21 also fails to articulate any new factual or legal basis for reversing P.O. Ruling N2010-1/4. The only sentence that alludes to a new basis is the following:

⁹ *Id.* at page 3 (internal citations omitted).

¹⁰ July 8th Motion, at page 2. The summary appears to be based on this sentence because it is the only sentence in the entire July 8th Motion that mentions the arguments restated in the summary, and because the summary borrows language directly from the sentence (*e.g.*, "comparable across districts," "recreated").

It appears that during the pleading process there has been clarification of some misunderstanding of the underlying interrogatory.¹¹

The ruling does not articulate what the misunderstanding was; it does not articulate what the clarification is; the use of “it appears” makes it impossible to know even whose misunderstanding it was.¹² Apart from the sentence above, the ruling’s discussion section simply reiterates arguments that, after P.O. Ruling N2010-1/4, are no longer at issue.¹³ In so doing – in other words, by considering the same arguments that were dispensed with in P.O. Ruling N2010-1/4 but coming to an opposite conclusion – P.O. Ruling N2010-1/21 has the appearance of failing to meet the standard generally required where agencies reverse their decisions.¹⁴

The Postal Service has previously noted the heightened need for transparency when a ruling is reversed.¹⁵ For the two reasons discussed above, the Postal Service believes that P.O. Ruling N2010-1/21 merits reconsideration.

¹¹ P.O. Ruling N2010-1/21, at page 3.

¹² The use of “it appears” would only make sense if the misunderstanding were on the part of a party other than the Presiding Officer, but misunderstandings on the part of other parties do not precipitate reversals of Presiding Officer rulings.

¹³ See, e.g., the following excerpt from page 3 of P.O. Ruling N2010-1/21: “The Postal Service focuses on the fact that neither a national plan for Saturday mail processing consolidations nor a system for calculating consolidation savings exist. Further, the Postal Service notes that past estimates may no longer exist because they were not required to be created or maintained in the first place. Even if they did exist, the Postal Service asserts that they would not be comparable or credible.” Curiously, the next sentence after this excerpt states: “Carlson’s response indicates local estimates suit his needs.” Neither Mr. Carlson’s Motion to Compel nor his Motion for Reconsideration was a response; each was a new motion to which the Postal Service responded on May 17th and July 8th, respectively.

¹⁴ See generally, *Motor Vehicles Mfrs. Assn. of United States, Inc.*, *supra* note 5.

¹⁵ See 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).

Respectfully submitted,

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