

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-001

MOTION FOR RECONSIDERATION OF AMERICAN
POSTAL WORKERS UNION, AFL-CIO

Docket No. C2013-10

MOTION FOR RECONSIDERATION OF THE DISMISSAL OF APWU'S COMPLAINTS
REGARDING VIOLATIONS OF 39 C.F.R § 121.1.

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Motion for Reconsideration

Complainant American Postal Workers Union, AFL-CIO (“APWU”) respectfully moves the Commission to reconsider its February 27, 2014 Order dismissing the APWU’s Complaint and Amended Complaint alleging violations of 39 C.F.R. § 121.1 and invoking the Commission’s jurisdiction under 39 U.S.C. §§ 3691(d) and 3662. As explained below, the APWU has sufficiently alleged violations of 39 C.F.R. § 121.1. The Commission is required by 39 U.S.C. § 3662(b) to begin proceedings on APWU’s complaints.

I. Background

On September 5, 2013, the APWU filed a complaint alleging, among other things, that the Postal Service was not only regularly and consistently failing to comply with the service standards set by its own regulations, but also that the Postal Service had closed mail processing facilities in such a manner and to such an extent that it had disabled itself from being able to meet its service standards.

On September 25, 2013 the Postal Service filed a Motion to Dismiss the APWU’s Complaint, which the Commission granted in part on November 27, 2013, in Order No. 1892. Order 1892 permitted the APWU to supplement its Complaint with additional information, identifying “the specific standards it believes are being violated, the harm alleged to be caused to it by those violations, and alleg[ing] facts it intends to elicit that, if proven, would constitute violations of those regulations.” Order 1892 at 16. On December 13, 2013, the APWU filed its Amended Complaint pursuant to the Commission’s Order. The Postal Service again moved to dismiss and, on February 27, 2014, the Commission dismissed the APWU’s Complaint and Amended Complaint, finding that the APWU had not identified how the APWU or its members are harmed by

the alleged violations of service standards by the Postal Service. The Commission held (Order 2000 at 7):

For claims involving violations of section 3691(d), harm or injury is an essential element. Without harm or injury, claims of alleged service standard violations present no controversy for the Commission to hear under section 3662. In this case, the APWU merely alleges violations of service standards without identifying how it or its members are harmed or injured by the alleged service standard violations.

In 2013, the Postal Service delivered over 158 billion packages and pieces of mail to almost 153 million delivery points. In that context, reports of mail pieces arriving past the intended delivery time without allegations of the harm or injury caused by such untimely delivery do not justify commencement by the Commission of a complaint proceeding.

[Footnotes omitted.]

II. The Commission Must Begin Proceedings On APWU’S Complaint Under 39 C.F.R. § 121.1

We respectfully submit that Order 2000 does not address the gravamen of APWU’s complaints. The APWU and its locals are regular and large users of First Class mail. APWU complains that “the Postal Service is regularly failing to comply with [Section 121.1 of] its regulations” and that, “[a]s a consequence of these violations, the Postal service is depriving...the APWU and its locals of the service to which they are entitled by law under the service standard regulations in violation of Section 3691(d) of the PRA...” Complaint at ¶¶ 21, 22. But the gravamen of the Complaint is not merely that the Postal Service is regularly failing to meet its Section 121.1 service standards, it is that the Postal Service cannot meet those service standards because it has reconfigured its mail processing network in a way that makes it impossible for it to meet

its service standards. The APWU is not complaining of the sort of random and occasional service plan failures that appropriately may be made the subject of a rate or service inquiry under 39 C.F.R. part 3031. The APWU is complaining that the Postal Service is regularly violating its service standards and that those regular violations will continue unless the Commission orders the Postal Service to take corrective action.

Thus, the Complaint alleges:

In response to direct questions from the Chairman of the PRC, the Postal Service assured the Commission that care would be taken to ensure that intra-SCF First-Class Mail service would be maintained until February 1, 2014... [Complaint ¶19]

As a result of the deactivation of the East Texas P&DC, the Postal Service is consistently failing to meet the one-day service standard for First-Class Mail [Complaint ¶ 32]

Local 739 [in Waco, TX] mails newsletters and letters, which are domestic First Class mail pieces, that originate and destinate in the SCF. The newsletters and letters sent to Local 739's members are accepted before the day-zero Critical Entry Time at origin.

Local 739 Members have regularly received their First Class Mail four or five days after the delivery date, in violation of 39 C.F.R. § 121.1(a).

The First Class Mail that originates from Waco, Texas is transported to Coppell, TX or to Austin, TX for processing. After processing, the First Class Mail must be transported to a destinating facility, which is in Waco, TX. Because of the transportation of the First Class Mail to Coppell or Austin, the First Class Mail does not arrive in Waco in time to permit overnight delivery, as required by 39 C.F.R § 121.1(a). [Amended Complaint ¶¶ 28, 29, 30]

American Postal Workers Union Local 776 ("Local 776") in Altoona, PA, ...sends newsletters, letters, and election ballots by First Class Mail. The newsletters, letters, and election ballots are properly accepted before the day-zero Critical Entry Time for a given day. The newsletters and letters are domestic First Class Mail pieces that originate and destinate within the SCF.

Since the consolidation of the Post Service's facility, the Postal Service has failed to meet and continues to fail to meet the one day service standard for some of its First Class Mail, required by 39 C.F.R. § 121.1(a), for mail sent by Local 776.) [Amended Complaint ¶¶ 32-34]

As a result of recent network consolidations, both originating and destinating mail processing has been moved from Brooklyn to the Morgan P&DC in Manhattan, New York.

As a result of the change described in the paragraph above, a substantial percentage of First-Class Mail is not receiving one-day delivery service within the SCF where it both originates and destinate (intra-SCF mail). This is in violation of service standards. [Complaint ¶¶ 34, 35]

The outgoing mail processing operation was moved from Colorado Springs to Denver, Colorado on June 1, 2013. As a result, cut-off times at stations and collection boxes were changed to one hour earlier. All mail dropped in those boxes after the new earlier cutoff time is delayed by one day. A substantial percentage of the mail is failing to meet delivery standards.

Mail that used to be processed and delivered overnight in Colorado Springs now takes two to three days for delivery. [Complaint ¶¶ 37, 38]

Since the consolidation of outgoing mail in the Colorado Springs facility, the Postal Service has consistently failed to meet the one day service standard for its First Class Mail Services, pursuant to 39 C.F.R. § 121.1(a), in violation of the rights of the Colorado Springs Area Local 247 ("Local 247").

Local 247 communicates with its members and with the National Union through First Class Mail.

Once a month, Local 247 sends materials to its members and to the National Union through First Class Mail. For the materials sent to the Local 247's members, the materials, which are accepted before the day-zero Critical Entry Time, are Domestic First Class Mail pieces that originate and destinate in the SCF.

Local 247's members have informed the President of Local 247, acting in his official capacity, that they have been receiving several of Local 247's communications days after the service standard of one day pursuant to 39 C.F.R §121.1(a) and in violation of Local 247's rights under that standard. [Amended Complaint 57-59, 64]

As a result of Network Consolidation affecting Kilmer [NJ], its residents receive mail that does not comply with service standards.

Processed mail routinely arrives at the Kilmer P&DC at 10 a.m. instead of 7 a.m. as it did before consolidation. This significantly delays letter carriers' departure to make deliveries. As a result, postal patrons receive their mail hours later than they did before the consolidation. In the case of small businesses, mail that should have been received during the business day is not received until the next business day. [Complaint ¶¶ 40, 41]

Since the consolidation of the Postal Service's facilities, the Postal Service has consistently failed to meet the one day service standard for its First Class Mail, pursuant to 39 C.F.R. § 121.1(a), for mail sent by American Postal Workers Union Local 149 ("Local 149").

Local 149 uses First Class Mail to send materials to its members, and to the National Union.

Once a month, Local 149 mails newsletters and letters to its members. The newsletters, and letters, which are accepted before the Critical Entry Time, are First Class Mail that originate and destinate within the SCF. As a result, Local 149 expects that its newsletters and letters would be delivered to its members within the service standard period of one day, as required by 39 C.F.R §121.1(a)....

The President of Local 149 in his official capacity as Local President has learned that some of Local 149's members have not been receiving their mail from the Local in accordance with 39 C.F.R §121.1(a). The Postal Service is violating 39 C.F.R. § 121.1(a) on a consistent basis in violation of Local 149's rights under that regulation. [Amended Complaint ¶¶ 47-50, 56]

As a result of the elimination of mail processing operations in Saginaw [MI], mail destinating in Saginaw is regularly being delayed, and service standards are being violated. [Complaint ¶ 43]

As a result of the closure of the Williamsport, Pennsylvania, destinating mail processing operation in 2013, a change which was not scheduled to occur until 2014 under the Network Consolidation Plan, mail is being delayed and is being delivered in violation of service standards in the Williamsport area...

As a result of the late arrival of trucks carrying processed mail, letter carriers are delayed and regularly must deliver mail until after 8 p.m. ...In the case of small businesses, mail that should have been received during the business day is not received until the next business day. [Complaint ¶¶ 44, 48]

As a result of a consolidation that was scheduled for 2014 being carried out in 2013, mail is being delayed in the Salem, Oregon, area, and service standards are not being met. For example, a test mailing of a First Class Mail parcel sent certified mail was due to be delivered on June 22, 2013, under applicable service standards. It was not received until June 24, 2013...

... Because of the consolidation, collection times from postal mail boxes have been moved to earlier times throughout the area, and dispatch times from coastal Oregon are as early as 1:30 p.m. Mail deposited after earlier collection times or arriving at a facility after an earlier dispatch time is delayed by one full day in addition to mail processing delays caused by the consolidation. [Complaint ¶¶ 49, 51]

The Carbondale, Illinois, mail processing center recently shut down and now its mail is sent to St. Louis, Missouri, for processing.

An official Postal Service announcement about this change stated that the fact that the mail is now being processed in St. Louis “may add a day or two to the normal delivery timeframe.”

If the postal spokesperson quoted in the paragraph above is correct, the Postal Service is violating delivery standards in the Carbondale area due to the elimination of mail processing in Carbondale. [Complaint ¶¶53-55]

Mail delivered to Cape Girardeau, Missouri and the surrounding area is first processed in St. Louis... The St. Louis processing center is overwhelmed by the volume of mail, resulting in large delays and service standards not being met. Complaint [¶ 58]

Since the closure of the Post Service’s facilities in Gainesville, FL, and Waycross, GA, Savannah, GA, and Macon, GA, the Postal Service has consistently failed to meet the one day service standard for its First Class Mail Services, in violation of the rights of the Northeast Florida Area Local 138 (“Local 138”) under 39 C.F.R. § 121.1(a).

Once a month, Local 138 mails materials to its members by First Class Mail.

The materials, which are accepted before the Critical Entry Time, are Domestic First Class Mail that originate and destinate within the SCF. As a result, Local 138 is entitled to have its materials delivered to its members within the service standard period of one day, as required by 39 C.F.R §121.1(a)

The President of Local 138 stated Local 138’s members have not been receiving their mail in accordance with 39 C.F.R. §121.(a) and their rights under that regulation have been and are being violated. [Amended Complaint ¶¶ 70-73, 77]

The decision to close 53 or 55 of the mail processing operations in 2013, that were originally scheduled for closure in 2014, was made by the Board of Governors or by postal management despite the likelihood that mail would be delayed in violation of applicable service standards.

[I]t has been impossible and will remain impossible for the Postal Service to meet its delivery standards in areas where 2014 closures have been carried out in 2013. [Complaint ¶¶ 60, 61]

We respectfully submit that these alleged violations cannot be dismissed at the sort of rate or service complaints that must be made the subject of a rate or service inquiry under 39 C.F.R. part 3031. These are specific allegations of substantial,

consistent, ongoing service standard violations of the sort the Commission has the authority and responsibility to remedy under Section 3662(c) of the Act. To hold otherwise would require a conclusion that a systemic failure to deliver First-Class mail pursuant to the required service standards caused by the inability of the Postal Service to do so (due to the closures of numerous Processing and Distribution Centers) does not constitute sufficient harm to warrant proceedings on APWU's Complaints.

The APWU's Complaints make clear that this is not a matter of isolated or intermittent failures by the Postal Service to deliver mail in accordance with the required service standards. Indeed, the APWU is not alleging that due to plan failure, where, for unpreventable reasons (bad weather, traffic problems, etc.), the Postal Service is occasionally delivering mail beyond the time frame provided for in the service standards. To the contrary, the APWU's Complaints allege that the Postal Service is consistently unable to meet the required service standards because of the consolidation of its processing operations. The APWU's allegations, if proven, would show that the Postal Service is unable to meet its service standards for the APWU's First-Class mail entered at specified locations around the country. The APWU believes that the inability of the Postal Service to deliver its mail in a timely manner is a harm in and of itself. First-Class mail must be delivered in accordance with service standards. Users of the mail, including the APWU, are entitled to have their mail delivered in a timely manner. The APWU and other users of the mail are mailing time sensitive documents in reliance on the Postal Service's service standards and, because of the nationwide failures by the Postal Service to deliver its mail in a timely manner, those documents are not being delivered in the time period prescribed in the service standards. The APWU therefore

respectfully requests that the Commission reconsider its February 27, 2014, Order dismissing the APWU's Complaints and begin proceedings under Section 3662 of the Act. 39 C.F.R. § 3662.

Respectfully Submitted

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