

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

COMPLAINT OF STEPHAN STAHLMAN

C2023-1

UNITED STATES POSTAL SERVICE'S MOTION TO DISMISS
(November 25, 2022)

The United States Postal Service (Postal Service) respectfully moves to dismiss the Complaint for lack of subject matter jurisdiction, failing to satisfy procedural prerequisites, and, alternatively, to the extent that it demands unauthorized relief. Alternatively, the Postal Service proposes that the Complaint be referred to the rate and service inquiry process. In support of this motion, the Postal Service relies on the arguments and authorities set forth below.

INTRODUCTION AND BACKGROUND

On November 4, 2022, Complainant Stephan Stahlman filed his Complaint against the Postal Service pursuant to 39 U.S.C. § 3662(a).¹ Complainant claims to be a United States citizen with his principal residence at 1127 Frontier Street, Estcourt Station, Maine.²

¹ Complaint, ¶ 10. For purposes of this Motion only, the Postal Service accepts the truth of the allegations of the Complaint. Such acceptance is not intended as an admission of any allegation and the Postal Service reserves the right to challenge any allegations in its Answer should the Complaint survive this Motion to Dismiss.

² *Id.*, ¶ 1.

As alleged in the Complaint, on September 4, 2020, the contract for mail carrier delivery to Complainant's Estcourt Station residence was not renewed, the Postal Service having determined renewal was not cost effective.³ Complainant avers that he was unaware of the posted non-renewal notice because he was in Kentucky during the 30-day posting period.⁴

Complainant contends that, upon learning that the carrier delivery contract had not been renewed, he contacted the local Postmaster and was offered two alternatives for receiving his mail: delivery to a checkpoint in Fort Kent, Maine, or delivery to a Post Office Box in St. Francis, Maine, the nearest Post Office to Complainant's residence in Estcourt Station.⁵ Complainant contends that both alternatives would require that he travel between 90 and 120 minutes each way.⁶ Complainant charges that the failure to provide mail delivery service to his residence violates the requirement in 39 U.S.C. § 101(b) that: "[t]he Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining."⁷

Complainant seeks an evidentiary hearing pursuant to 39 U.S.C. § 3662(a) to adjudicate the propriety of the Postal Service's determination to not renew the mail carrier delivery contract⁸ and demands that the Postal Regulatory Commission

³ *Id.*, ¶ 3.

⁴ *Id.*, ¶ 4-5.

⁵ *Id.*, ¶ 7.

⁶ *Id.*

⁷ *Id.*, ¶¶ 7-9.

⁸ *Id.*, ¶¶ 10-11.

(Commission) declare that the non-renewal violates 39 U.S.C. 101(b),⁹ order mail delivery to his residence,¹⁰ and award his attorneys' fees and costs.¹¹

ARGUMENT

As demonstrated below, the Complaint should be dismissed because the Commission lacks jurisdiction over the alleged violation of 39 U.S.C. § 101(b) and because the Complainant failed to satisfy the procedural prerequisites set forth in Rules 3022.10(a)(9) (meet and confer) and 3022.11(service). Alternatively, the demand for an award of attorneys' fees and costs should be dismissed because such an award is not within the scope of the remedies authorized in 39 U.S.C. § 3662. Alternatively, the Complaint could be referred to the rate and service inquiry process in accordance with Rule 3022.13(b).

A. The Commission Does Not Have Jurisdiction to Hear Complaints Alleging a Violation of 39 U.S.C. § 101(b)

The Commission has consistently held that its complaint jurisdiction under 39 U.S.C. § 3662 is limited to alleged violations of the five specific sections of title 39 of the United States Code—§§ 101(d), 401(2), 403(c), 404a, and 601—or the sections contained in chapter 36.¹² The Complaint here, however, alleges only a violation of 39

⁹ *Id.*, ¶¶ 7-9, 12.

¹⁰ *Id.*, ¶ 12.

¹¹ *Id.*, ¶ 13.

¹² See 39 U.S.C. § 3662(a); 39 C.F.R. 3022.2(a); Docket No. C2019-1, Order Granting Motion to Dismiss, Dec. 12, 2018, at 11 (Order No. 4924); Docket No. C2015-3, Order Dismissing Complaint, Aug. 26, 2015, at 15-16 (Order No. 2687); Docket No. C2015-2, Order Granting Motion to Dismiss, Jul. 15, 2015, at 15 (Order No. 2585); Docket No. C2015-1, Order Granting Motion to Dismiss, Mar. 4, 2015, at 5-7 (Order No. 2377); Docket No. 2010-2, Order Granting Motion to Dismiss, Jun. 11, 2010, at 2 (Order No. 471).

U.S.C. § 101(b).¹³ Because section 101(b) does not lie within the Commission’s jurisdiction under 39 U.S.C. § 3662(a), the Complaint fails to state a claim within the Commission’s complaint jurisdiction and is therefore properly dismissed.

B. Complainant Has Not Satisfied Procedural Prerequisites

1. Complainant did not Attempt to Meet or Confer with the Postal Service’s General Counsel Prior to Filing his Complaint

Rule 3022.10(a)(9) requires that a Complaint “include a certification that prior to filing, the complainant attempted to meet or confer with the Postal Service’s general counsel to resolve or settle the complaint, why the complainant believes such additional steps would be inadequate, and the reasons for that belief.”¹⁴ This requirement serves two purposes: it enables the parties to explore the possibility of alternative dispute resolution procedures to resolve the issues raised by the complaint, and it compels a good faith attempt to resolve the complaint before involving the Commission.¹⁵

To achieve these purposes the complainant must involve “the appropriate individuals at the Postal Service—those with authority to resolve the issues raised by the complainant.”¹⁶ As specified in the Rule and endorsed by the Commission, the appropriate person for the Postal Service is its General Counsel:

In an effort to identify a designated appropriate individual within the Postal Service who has the authority to settle issues raised by a complaint, commenters suggest, and the Postal Service agrees, that the Postal Service’s General Counsel be designated as the appropriate official

¹³ See Complaint, ¶¶ 7-9.

¹⁴ 39 C.F.R. § 3022.10(a)(9); see also Docket No. C2015-2, Order Granting Motion to Dismiss, Jul. 15, 2015, at 15-16 (Order No. 2585) (“The Complaint must also be rejected for failure to comply with Commission rules about the content of complaints. A complaint is required to include a certification that Complainant has attempted to meet or confer with the Postal Service’s general counsel.”).

¹⁵ See Docket No. RM2008-3, Order Establishing Rules for Complaints and Rate or Service Inquires, Mar. 24, 2009, at 38 (Order No. 195).

¹⁶ *Id.* at 16.

to whom complainants should direct their meet or confer communications. The Commission finds this reasonable and therefore changes its final rule from the proposed rule in order to state that the complainant's meet or confer attempts be directed to the Postal Service's General Counsel.¹⁷

The Complaint, however, does not contain the required certification that prior to filing the Complaint the Complainant attempted to meet or confer with the Postal Services general counsel to resolve or settle the complaint. Nor does the Complainant contend that attempting to meet or confer with the Postal Service's General Counsel would have been inadequate.¹⁸

The meet or confer requirement ensures that those Postal Service attorneys most knowledgeable about Commission practice and best positioned to promote an amicable resolution are engaged before involving the Commission. Allowing Complainant to proceed with his Complaint without first attempting to meet or confer with the appropriate Postal Service attorneys would reward him with pursuit of his litigation at the expense of other objectives reflected in the Commission's complaint rules, including economy of Postal Service and Commission resources.

Because Complainant made no attempt to meet or confer with the Postal Service's General Counsel prior to filing his Complaint, nor explained the reasons why such an attempt would have been inadequate, the Complaint fails to comply with the Commission's mandatory content requirement and should, therefore, be dismissed.¹⁹

¹⁷ *Id.*; see also 39 C.F.R. § 3022.10(a)(9).

¹⁸ See 39 C.F.R. § 3022.10(a)(9) ("A complaint must . . . [certify] why the complainant believes additional steps [to meet or confer with the Postal Service's General Counsel] would be inadequate, and the reasons for that belief.").

¹⁹ See *id.*; see also Docket No. C2015-2, Order Granting Motion to Dismiss, Jul. 15, 2015, at 15-16 (Order No. 2585) (dismissing complaint for failing to satisfy the meet or confer prerequisite); Docket No. C2010-1, Order Granting Motion to Dismiss Without Prejudice, Jan. 12, 2010, at 1 (Order No. 390).

2. The Complaint Was Not Properly Served

The Commission's Rules require that "[a]ny person filing a complaint must simultaneously serve a copy of the complaint at this address:

PRCCOMPLAINTS@usps.gov."²⁰ Emails to that address automatically forward to responsible attorneys engaged in Commission practice in the Postal Service Law Department at Headquarters who can promptly act to assure the Postal Service can meet the 20-day deadline to respond to the Complaint.²¹

A review of the Postal Service's email account affiliated with the *PRCCOMPLAINTS@usps.gov* address revealed no communications at all from the Complainant or his attorney. Having failed to comply with Rule 3022.11's service requirement, the Complaint should be dismissed.

C. **Alternatively, the Commission Does Not Have Authority to Award Complainant Attorneys' Fees and Costs**²²

Section 3662 specifies the type of relief that the Commission may grant for violations within its complaint jurisdiction.²³ The statute, however, does not provide for an award of attorneys' fees and costs to the Complainant.²⁴ Because the Commission

²⁰ See 39 C.F.R. § 3022.11.

²¹ See 39 C.F.R. § 3022.12(a).

²² The Commission need only reach this issue should it find jurisdiction over the substantive claim. See Docket No. C2015-2, Order Granting Motion to Dismiss, Jul. 15, 2015, at 15, note 22 (Order No. 2585) ("Because the Complaint is dismissed for lack of jurisdiction, the Commission need not reach the validity of the Complainants' request for relief through Commission sanction upon each of the respondents.")

²³ See 39 U.S.C. § 3662(c) (authorizing the Commission to order such action as it deems necessary to achieve compliance and remedy noncompliance of violations within its jurisdiction), (d) (authorizing fines payable to the Treasury of the United States for cases of deliberate noncompliance).

²⁴ See Docket No. C2019-1, Order Granting Motion to Dismiss, Dec. 12, 2018, at 11 (Order No. 4924) ("Similarly, the Commission lacks the authority to issue fees and damages as a remedy. While the Commission has the authority to issue fines where it finds deliberate noncompliance, such fines are not payable to the Complainant.")

does not have authority to award attorneys' fees and costs to Complainant, the demand for an award of such fees should be dismissed.

D. Alternatively, the Complaint Could be Resolved Through the Rate or Service Inquiry Process

If the Commission finds there is a reasonable likelihood that a complaint might be resolved through the rate or service inquiry procedures, it may, in its discretion, invoke those procedures.²⁵ As provided in Rule 3022.13(a), the rate or service procedures apply “to complaints that concern rate or service matters that are isolated incidents affecting few mail users,” provided that the complaint does not:

- (1) Raise unfair competition issues;
- (2) Raise issues affecting a significant number of mail users;
- (3) Represent a pattern, practice, or systemic issue that affects a significant number of mail users (or is reasonably likely to be evidence that such a pattern has begun); or
- (4) Impact a substantial region of the nation.²⁶

Here, the Complaint concerns an individual's dispute about mail delivery service to his residence. It presents no claims of unfair competition and does not affect a significant number of mail users, a substantial region of the nation, nor suggest a pattern, practice or systemic issue that may impact a significant number of mailers. Accordingly, should the Complaint survive dismissal—which the Postal Service respectfully argues it should not—the Commission may properly apply the rate and service procedures to attempt its resolution.

²⁵ See 39 C.F.R. § 3022.13(b); *see also* Docket No. C2019-1, Order Granting Motion to Dismiss, Dec. 12, 2018, at 11-12 (Order No. 4924); Docket No. C2015-2, Order Granting Motion to Dismiss, Jul. 15, 2015, at 16-17 (Order No. 2585).

²⁶ See 39 C.F.R. § 3022.13(a).

CONCLUSION

As demonstrated above, the Complaint should be dismissed because the Commission lacks jurisdiction over the alleged violation of 39 U.S.C. § 101(b) and because the Complainant failed to satisfy the procedural prerequisites set forth in Rules 3022.10(a)(9) (meet and confer) and 3022.11 (service). Alternatively, the demand for an award of attorneys' fees and costs should be dismissed because such an award is not within the scope of the remedies authorized in 39 U.S.C. § 3662. Alternatively, the Complaint could be referred to the rate and service inquiry process in accordance with Rule 3022.13(b).

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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