

USPS-NALC ARBITRATION PANEL
SOUTHERN REGION
WILLIAM J. LeWINTER, ARBITRATOR

IN THE MATTER OF ARBITRATION]	
BETWEEN]	
]	
UNITED STATES POSTAL SERVICE]	
(Pensacola, Florida)]	Case No. SIN-3W-D26096
]	Hearing: April 5, 1984
-AND-]	Pensacola, Florida
]	
NATIONAL ASSOCIATION OF]	
LETTER CARRIERS, AFL-CIO,]	

OPINION AND AWARD

Representing the Employer:
R. Wayne Ray
Labor Relations Representative

Representing the Union:
Judson K. Vaughan
Assistant to National Business Agent

Preliminary Statement

On August 26, 1983, a grievance was filed on behalf of Everett J. Mack, alleging the Employer violated the parties' collective bargaining agreement when it issued grievant a seven day suspension. The matter, not being resolved by the parties, was scheduled for arbitration under the Expedited Arbitration procedures. In view of the involvement of the Delivery Unit Volume Recording System (DUVRS), the matter was declared to be complex and re-scheduled for the regular, regional arbitration panel. Hearing was held before William J. LeWinter, Panel Arbitrator, on April 5, 1984, at Pensacola, Florida, at which time the parties were accorded full opportunity to present witnesses for direct and cross examination and such other evidence as was deemed pertinent to the proceedings. The

parties desiring to file briefs, and those briefs having been received by the arbitrator, the hearing was closed on May 9, 1984. From the evidence adduced at the hearing, the arbitrator makes the following:

Findings of Fact

The grievant, Everett J. Mack, has been employed for a period of 16 years. He has been assigned to Route 411 for a period of four years. On July 16, 1983, by the required time, 8:30 a.m., grievant submitted a Form 3996, a request for auxiliary assistance, wherein he requested one hour and forty-five minutes. Based on the DUVRS tape, his supervisor did not authorize the extra assistance. The DUVRS tape showed that grievant had six and 3/4 feet of mail. His reference figure for the route is nine feet.

The grievant left the office for street duty at 9:48 a.m., one hour and four minutes after his scheduled time. Without prior notice to grievant, the supervisor assigned street assistance. The assisting carrier met grievant on the street, and grievant handed off what he determined to be 1:45 hours workload. The assistant carrier completed the work in 1:18 hours. Grievant returned to the office checking in 6 minutes early. He finished his usual office work for the afternoon and requested Annual Leave for the balance of his shift, which was granted.

On August 4, 1983, grievant was issued a Notice of Disciplinary Action, wherein he was given a seven day suspension. The pertinent parts of the Notice are as follows:

Charge 1. You are charged with Failure to Follow Instructions - Requesting Unnecessary Route Assistance.

On Saturday, July 16, 1983, while assigned to Route 411, you requested one (1) hour and forty-five (45) minutes of route assistance. You prepared P.S. Form 3996 showing heavy mail and needed time to enter change of address cards as the reason for the route assistance. You insisted you could not maintain your schedule and needed the requested assistance. You were advised that the assistance was not necessary based on your DUVRS tape.

I then directed another carrier to assist you with a one (1) hour forty-five (45) minute leg. This employee carried the leg given to him in one (1) hour and eighteen (18) minutes, twenty-seven (27) minutes short of the requested assistance.

I then accompanied you on your route to check your efficiency on the day in question. During my street observation, I noted several time-wasting actions by you such as: you went back inside the building after loading, to go to the bathroom (2 minutes); parked the truck in the parking lot and went back inside to go back to case, reason unknown (2 minutes); went to service the truck for no apparent reason - had over 1/2 tank of gas; drove 50 mph in a 55 mph speed zone (interstate); drove 30 mph in a 45 mph speed zone (Olive Road); filled out a 3849 in the truck instead of at the door while ringing the bell or knocking; handcarried mail to a patron mowing the lawn instead of putting it in the box; drove 15 mph in a 25 mph speed zone; used five (5) minutes to hand off leg one (1) hour and forty-five (45) minutes (Whitton); met your wife at Cedarwoods - received watch and money (1 1/2 minutes); drove 43 mph in a 55 mph speed zone (I-10).

You completed your route at 1317 as indicated by the 3999 and you stated "Damn, we got through early, didn't we?" After returning to the office you worked up your afternoon mail and requested fifty-three (53) minutes of annual leave which was approved. Your request for the route assistance was not justified. Your actions were contrary to Parts 131.4 and 280 of the Methods Handbook 41 and instructions of P.S. Form 3996.

...

The following element of your past record have been considered in taking this action:

1) On February 16, 1982 you were issued Notice of disciplinary Action seven (7) day suspension for the following: You are charged with unauthorized delay and curtailment of mail. This suspension was resolved at the regional level to reduce the suspension to three and a half (3 1/2) calendar days.

The Union filed a grievance alleging a violation by management of Articles 14, 15, 16 and 41 of the collective bargaining agreement. The Employer responded, the pertinent portions being as follows:

The grievance is denied for the following reasons:

1) During the Step 2 hearing, Mr. Mack Stated he received help the day before Friday, July 15, 1983 without any questions. However, on Saturday, July 16, 1983 the day in question, Mr. Messer questioned his request. I asked Mr. Mack did he have as much or more mail on Saturday, July 16, 1983 than he had on Friday, July 15, 1983. His answer was, I do not remember. After the hearing, I obtained copies of the 3921s for Friday, July 25, 1983 and Saturday July 16, 1983 (COPIES ATTACHED TO THIS DECISION).

2) On Friday, July 15, 1983 Mr. Mack had 12 (twelve) and 1/2 (one-half) feet of mail, this was 3 (three) and 1/2 (one-half) feet over reference--(reference 9 (nine) feet). Mr. Mack asked for and received 1 (one) hour assistance. On Saturday, July 16, 1983 Mr. Mack had 6 (six) and 3/4 (three-fourth) feet of mail, this was 2 (two) and 1/4 (one-fourth) feet under reference--(reference 9 (nine) feet). Mr. Mack asked for 1 (one) hour and 45 (forty-five) minutes assistance--45 (forty-five) minutes more than the day before Friday July 15, 1983. The day before Friday, July 15, 1983 he had 3 (three) and 1/2 (one-half) feet over reference. The supervisor went with Mr. Mack on the street on Saturday, July 16, 1983, and it is very evident that Mr. Mack requested excessive auxiliary assistance as compared to reference volume.

Contract Provisions

ARTICLE 16

DISCIPLINE PROCEDURE

Section 16.1 Statement of Principle

In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

ARTICLE 41

LETTER CARRIER CRAFT

...

Section 3. Miscellaneous Provisions

...

6. The Employer will advise a carrier who has properly submitted a Carrier Auxiliary Control Form 3996 of the disposition of the request promptly after review of the circumstances at the time. Upon request, a duplicate copy of the completed Form 3996 and Form 1571. Report of Undelivered Mail, etc., will be provided the carrier.

City Delivery Carriers Handbook Provisions

112.1 Efficient Service

Provide reliable and efficient service. Federal statutes provide penalties for persons who knowingly or willfully obstruct or retard the mail. The statutes do not afford employees immunity from arrest for violations of law.

112.21 Obey the instructions of your manager.

131.4 Reporting Requirements

.41 It is your responsibility to verbally inform management when you are of the opinion that you will be unable to case all mail distributed to the route, perform other required duties, and leave on schedule or when you will be unable to complete delivery of all mail.

.42 Inform management of this well in advance of the scheduled leaving time and not later than immediately following the final receipt of mail. Management will instruct you what to do.

.43 Complete applicable items on Form 3996, *Carrier Auxiliary Control*, if overtime or auxiliary assistance is authorized in the office or on the street.

...

280 CARRIER AUXILIARY CONTROL

Prepare Form 3996, *Carrier Auxiliary Control* (see exhibit 2-16 as follows:

a. ...

b. *Item F.* Place a check mark (✓) or (X) in the space below the number indicating the case shelf containing the mail for which assistance is being requested. The bottom shelf of the letter separations is designated No. 1. When assistance is required for less than a full shelf of mail, enter the portion of shelf in fractions. The portion should be identified as follows: L 1/2, R 1/4; M 1/2; (L-Left, R-Right, M-Middle of the shelf).

...

e. *Item K.* Under *Estimated Work*, the Carrier must enter the estimated hours and hundredths of hours work required.

f. Present form to manager.

g. *Item L--Auxiliary Assistance.* If assistance is approved the manager shall initial Form 3996 and return it to the carrier for completion of route information.

h. *Overtime.* If overtime is approved, the manager shall initial the form and enter near his initials the amount of overtime in minutes. After advising the carrier, the form is then deposited in a designated place for use later when the timecard or printout is verified.

...

Discussion

This matter was originally removed from the Expedited

Arbitration Panel and scheduled for the Regular Regional Arbitration Panel because of the Union's claim that the Employer utilized the DUVRS tape to generate a disciplinary proceeding. It is necessary to discuss the DUVRS system and its relationship to the parties' collective bargaining in this regard.

DUVRS is a computer operated system for measuring mail load. It registers the load of mail for the carrier in feet. It does not make a specific count of the number of pieces. It is a management tool to determine the logistics of the mail flow.

DUVRS has been a consistent irritation in the parties' labor relations and has resulted in a number of communications on the national level from the Postal Service to the Union and to local managers.

The Employer made strenuous objection to the admission of the correspondence and letter of agreement submitted by the Union. That objection was overruled by the arbitrator. The basis of the objection was that the letters were not in the prior steps of the grievance proceeding; however, the Union raised the question of invalid use of the DUVRS tape and the forms derived from it. The case was removed from the Expedited Panel because of the involvement of DUVRS. The Employer was not in any way prejudiced by the presentation of Employer generated documents relating to the purpose and use of DUVRS. It was reasonably to be expected. The fact that the particular Employer representative was not

familiar with the correspondence is not material. A study of the collective bargaining relationship concerning DUVRS, the basis of the arbitration appeal of the Union, would reasonably have uncovered the correspondence. This evidence was known to the Employer. The Employer's representative must be bound by the Employer's knowledge in this situation.

On August 22, 1979, the Employer wrote the Union:

Your concern that this system would be used by managers to replace the provisions of the M-39 Handbook is addressed in Section I, Paragraph D, of Management Instruction, PO-610-79-24.

"Daily volume estimations recorded for individual routes in accordance with these procedures will not constitute the basis for disciplinary action for failure to meet minimum casing standards."

On April 24, 1980 the Employer sent the following throughout the system:

The following quotation is from a handout we disseminated during the series of delivery seminars in which the Delivery Volume Recording System was initially presented:

"2. Volume recording information will not be used in lieu of a count of mail on a carrier's route for the purpose of determining the carrier's office time or if the carrier is meeting minimum casing standards, and will not be used as the basis for a corrective disciplinary action for the above-mentioned infraction." ...

This office is in receipt of complaints and grievances indicating that some managers are converting the daily linear measurements to pieces, and converting the resulting piece estimate to minutes. They are then using these time calculations to advise the carriers as to the quality of their performance, and to deny auxiliary assistance. ...

These practices violate the original intent of this program. Please note from the above quotation that linear data is not to be used in any way

to determine a carrier's office time, since a linear measurement is but an estimate. Any computation of office time pertaining to a carrier's performance must be based on an actual count of the mail.

On July 6, 1982, the parties on a national level settled a grievance No. H8N-3W-C 35318 and agreed there was no national interpretation required, stating:

...The Original Headquarters Instructions states that the use of reference volume is not intended to serve as a precise measure of workload nor the employees' performance.

That Employer's position has not changed is quite evident by a Memorandum sent to Regional Directors of Customer Services on September 7, 1983:

...

DUVRS volumes and reference volumes are not precise. They are considered to be a linear estimation. Comparison of the reference volume to the daily available volume requiring casing is intended to assist delivery supervisors in the evaluation of the daily workload in order to determine workhours needed and to make better informed decisions regarding the management of the daily available mail volume.

There are various methods in use to determine the appropriate reference volume. ... No methodology or methodologies have been prescribed as being universally applicable in this area.

...

- o Due to its imprecise nature, reference volume is not to be used to set office time schedules. ...

It is quite clear that the parties' dealings show an intent that DUVRS is to be eliminated as a consideration in the determination of discipline. The reasoning behind this is demonstrated by the fact situation presented by this case. Grievant was disciplined for presenting an invalid

request for assistance. The request was not approved, in the first instance, because of the DUVRS information. This study showed that grievant's load was below the reference level.

Not only is the linear method of measurement of mail load imprecise, in and of itself, but the DUVRS tape does not take into consideration the mail in grievant's case from the prior day casing, nor does it show the type or quality of mail as to that which may require more handling than others.

It was noted that grievant left the office one hour and four minutes "late", according to his ordinary schedule. His supervisor was asked if he was not checking him closely, because he had, at 8:30 a.m., presented the request for assistance which had not been approved. The supervisor testified that he had watched him during the morning office work and had decided to perform a street supervision. He further testified he had no explanation for the cause of the one hour four minute late start to the street. He gave no testimony which would permit an inference that grievant was extending office time unduly, or that grievant had performed in any improper manner while working in the office. I must therefore make the inference that grievant was diligently applying himself to his duties during morning office hours.

If grievant was then so occupied, the DUVRS tape, which showed a volume below reference for the day, cannot be trusted as a guide to scheduling in this case, because the

actual work took grievant, acting in a proper manner, one hour four minutes longer than normal.

This, then, takes us to the street supervision for further analysis of the case. It is unclear whether management contends the activities occurring during the street supervision, themselves, constitute grounds for the suspension imposed; or whether those activities are used as evidence to demonstrate that grievant gave an unreasonable request for assistance, and they are thus evidential of discipline for rendering the request.

The Notice is rendered as a single charge and that charge is headed:

Charge 1. You are charged with Failure to Follow Instructions - Requesting Unnecessary Route Assistance.

There then follows a listing of various performance infractions. At the outset, grievant used 4 minutes to return to his case and to use the Men's Room. Thereafter, he purchased gas when his tank was over 1/2 full. Grievant was also charged with filling out a Form 3849 while sitting in the truck instead of performing the act while ringing the bell or or knocking at the door. These charges will be discussed later.

Grievant was charged with driving below the legal speed limit ranging from 5 mph to 15 mph. In and of itself, this cannot constitute a violation without evidence to the effect that grievant had no cause to do so. Further, I question the issuance of discipline based solely on the allowable speed limit. Discipline is subject to proof of reasonable

cause. The burden falls upon the employer. There was no evidence demonstrated that grievant was merely wasting time.

Grievant was charged with taking 5 minutes to hand off the portion of his route to the assisting carrier. It must be remembered that grievant was given no answer to his request for assistance. It was certainly reasonable that some time would be taken when the assistance is granted while grievant is on the street. Even grievant's supervisor testified that, under the conditions, five minutes was not abusive.

Grievant was charged with taking 1 1/2 minutes to receive his watch and some money from his wife who met him on the route. The evidence showed that grievant took 10 minutes less than the time allotted on his lunch break and took less than his allotted 10 minute brake. Adding up all the break time taken, including the meeting with his wife, the evidence shows approximately 1/2 minute less than the allotted lunch time. Under these circumstances, it is inconceivable the grievant would be punished for this.

Grievant obliged a patron by handing his mail to him while the patron was mowing the lawn. If this were demonstrated as a common occurrence with grievant, there may be some reason to clarify the need for speed, but a single instance on one day of delivery hardly constitutes a disciplinable offense.

At most, the Employer demonstrated that grievant engaged in some time wasting by returning to the building,

buying gas when unnecessary and filling out the form in the truck. At most, the offenses mentioned would warrant a general discussion. There was no indication this was habitual. As far as visiting the Men's Room is concerned, unless the carrier is demonstrated to habitually waste time, it must be considered a normal activity which will occur from time to time.

Grievant returned to the station about six minutes early. The supervisor testified that he returned 11 minutes early, the difference being the time taken to clock in. There was no evidence concerning at what point in grievant's activity "return" was considered to take place. The supervisor did not indicate that there was any untoward time involved between his noting the return and the time grievant clocked in. Accordingly the grievant will be considered to have returned six minutes early. Added to that should be the time wasting activities. The actual time was not proven, but from the evidence about 10 minutes should be considered a reasonable amount. The assisting carrier delivered the amount of hand-off in one hour 18 minutes, 27 minutes earlier than the anticipated one hour forty-five minutes. As of the time grievant was back at the station, he should be considered 43 minutes off the mark as to his request for assistance. The fact that grievant finished his usual afternoon office work and requested Annual Leave for the balance of the shift is immaterial. This is a discipline case wherein grievant is charged with improper request for assistance. To discipline him for this, it is manage-

ment's obligation to show that grievant did not need the assistance up to his scheduled afternoon reporting time. Grievant would have no way of knowing what would be coming in while he was on the street. In making his estimate he should anticipate that the scheduled afternoon office time would be needed for the purpose scheduled.

Grievant's request for Annual Leave is immaterial to this case. The supervisor granted the request. Had there been important work to be performed, he had the right to deny it as grievant merely wanted to get home early. Since he did authorize the leave, the fact that there was some work he "probably could have found for him to do" does not render the request for assistance a disciplinable act.

There was no demonstration that the Annual Leave granted involved any delay in the mails or even administrative inconvenience.

The filing of a form for assistance is a requirement of management. The form must be filed by 8:30 a.m. Grievant had not yet finished his office work by this time. The request is based on an estimate. The grievant cannot be held accountable for the exact number of minutes required as shown by hindsight. There is no question that a carrier of grievant's experience should be fairly accurate in his estimate. 43 minutes is close to a 30% error. This is a wide differential in this case. There is no explanation why the relief carrier finished 27 minutes before the allotted hand-off. Management is entitled to a better estimate than

was given.

There were, however, other defects in management's position. Not the least of which was the failure of the supervisor to respond to the request form. The handbook, establishes the methodology to be used. The form provides for the response. The supervisor testified that if he gives no response, the carrier is to assume that it is either not permitted, or that he will work the overtime. This is not in accord with the established procedures. The carrier should have been informed of the status of his request.

After examining all the facets of this case, it becomes apparent that the supervisor based his actions primarily on the DUVRS tape. The initial decision to withhold the request for assistance was based on the DUVRS, the decision to run a street supervision followed in due course. The decision to issue discipline was, as indicated by the Employer's Step 2 decision, based upon the reference volume of mail figures on a linear basis. This is in direct contravention to the Employer's stated purpose of DUVRS.

DUVRS is a proper management tool. If used for matters for which it is applicable, there is nothing wrong with it. Even if DUVRS points out a questionable area of carrier activity, management has the right to then follow through to determine if there is a disciplinable act being committed. In this case, management utilized the DUVRS with an impact on the act of disciplining grievant. As indicated, the street supervision did not prove any acts which would warrant more than a minor discussion.

While management was improper in using DUVRS for discipline purposes, the facts do show that grievant was further off the mark in his estimate than management has a right to expect from this employee. To be fair to both parties, I cannot totally eliminate discipline; however, I can not find any act which was proven which would warrant more than a Letter of Warning.

Assuming grievant performed an act which could give rise to discipline, his record shows that he has only one prior offense, a three and a half day suspension for unauthorized delay of the mail on February 16, 1982. Management indicates this to be a seven day suspension which was reduced to three and a half days. This is incorrect. The fact that the matter was settled in the grievance procedure renders the suspension a three and a half day suspension, not a seven day suspension. If it is not treated as a three and a half day suspension, the grievance settlement becomes meaningless.

The facts demonstrate that grievant had good cause to request assistance. Though the request is an estimate, the time requested was greater than grievant should reasonably requested. Since nothing was shown which shows that the current failure at estimation related to the prior act, and since grievant has a good, basic work record, there being no evidence that such behavior is usual with grievant, there is no reason to initiate discipline for this matter at more than a Letter of Warning.

AWARD

The grievance is sustained in part. The discipline shall be reduced to a Letter of Warning for extensive error in estimation on Form 3996. Grievant shall be paid for the period of suspension served.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "William J. Lewinter", is written over a horizontal line.

William J. Lewinter, Arbitrator

Dated: November 28, 1984