C#07606

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration between UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	Grievant: Class Action Post Office: Foxboro, MA 02035 Case No: N4N-1E-C 33973 (NALC # 2234)

Before Harry Grossman, Esquire , Arbitrator

Appearances:

For US Postal Service: Louis M. Pento, Labor Relations Specialist, USPS, Woburn, MA 01889-9405

For Union: John J. Pimentel, Jr., Regional Admin. Ass't., NALC, Portsmouth, RI 02871

Date of Hearing: November 12, 1987

Place of Hearing: Middlesex-Essex MSC, Woburn, MA

Award: 1. For the violations of Handbook M-39, §§ 271g and 242.122, acknowledged by the Employer, each of the eight (8) grievants shall be compensated by a cash payment of one thousand ($1,000) dollars.

2. The Employer is ordered to make necessary adjustments to the grievants' routes with all due deliberate speed to bring them in conformance with Handbook M-39, Section 242.122.

3. The Employer is ordered to cease and desist from continuing or future violations of Handbook M-39, §§ 271g and 242.122.

Date of Award: NOV 27 1987

USPS and NALC
Case No. N4N-1E-C 33973
Grievant: Class Action,
Foxboro, MA

OPINION AND AWARD

Introduction

This is the fourth dispute of its kind between the parties that has come before the undersigned arbitrator. All involved the same essential facts, namely, overburdened carrier routes, meaning routes that consistently required more than eight and one half hours of work to complete, both in the office and on the street. All three prior disputes resulted in awards in favor of the Union. Two of these awards followed evidentiary hearings, analyses and findings of fact (Case Nos. N4N-1E-C 22422, Cambridge, MA; N4N-1F-C 30826 et als., Franklin, MA). The third award was by consent of the parties (Case No. N4N-1K-C 32218, 34724, Sanford, ME).

Similar disputes have been before other Regular Regional Panel Arbitrators, both in the Northeast Region and in other Postal Service Regions. They, too, resulted in awards in favor of the Union.

In the instant dispute, as in the previous case heard by this Arbitrator, No. N4N-1E-C 30826 et als., it was stipulated that the Employer did violate pertinent provisions of the National Agreement and Postal Service Handbooks and Manuals incorporated into that Agreement by Article 19 thereof in the matter of timely honoring of

carriers' requests for special mail counts and route inspections under Handbook M-39, Section 271g, where routes are shown to be overburdened, and adjusting them to comply with M-39, §§ 211.3 and 242.11, 242.122.

The Issue(s)

The Union submitted its proposed issue to be addressed by the Arbitrator in the following terms:

> Since Postal Service violated the National Agreement by refusing to conduct and implement timely Special Route Inspections and adjustments on the routes of the grievants, what is the appropriate corrective action, including a financial remedy?

The Employer had no objection to this statement except that it did not concede that any financial remedy, i.e., payment to the grievants because of the violations was a priori called for.

Thus, the appropriate statement of the issue to be addressed should read:

What is the appropriate remedy(ies) for the Employer's violations of the National Agreement in the matters of requested special mail counts and route inspections and making route adjustments to comply with the contractual eight (8) hour work day?

Position of the Union

The Union's position on the remedies sought was put

forth in its opening statement at the arbitration hearing as follows:

1. Inspect the grievants' routes immediately and adjust them to eight hours.

2. Pay each grievant one extra hour's pay for each day since the original grievance was filed (4/1/86) until the date the routes are inspected and adjusted.

3. Award the grievants twice their normal rate for all overtime hours worked on their routes from the date the Special Inspections were requested (2/28/86) until the date the adjustments are implemented.

4. Management be instructed to abide by the mandates of the National Agreement.

5. A strong reprimand to Management advising them that continued violation of Section 271g of the M-39 will subject them to more severe financial penalties and/or to sanctions under Article 5 of the National Agreement which incorporates the National Labor Relations Act.

6. Adjust the routes to eight (8) hours by the creation of the maximum number of full-time letter carrier positions.

7. Immediately create four (4) new full-time routes at the Foxboro Post Office.

The Union argued at the arbitration hearing that progressive financial penalty awards were needed to bring about Employer compliance with the pertinent contractual requirements; that monetary sums of $500.00 or $750.00 to each grievant, awarded in similar previous cases, were ineffective as the Employer was simply content to pay them and just continue to wilfully disregard its obligations in

the matter of overburdened routes.

It submitted that even in this situation after the grievants requested special mail counts and inspections, the only result was Management's making temporary, minor route adjustments which in a very short time became outdated and were inconsequential steps to reduce the time required to complete the routes within the normal work days. It argued that the grievants' routes have been overburdened for two years or more despite Management's futile efforts made in response to the grievants' requests and in disregard of its own responsibilities under M-39, Chapter 2 to establish and maintain eight hour routes.

Position of the Employer

The Employer's Advocate argued only in opposition to any financial penalty payments. He submitted that the grievants received overtime pay for all time worked in excess of their normal hours; that they were all on the "overtime desired" list at the Foxboro, MA Post Office, meaning that they wanted to work extra hours, so they, in fact, sustained no losses. He expressed his familiarity with previous arbitration awards of this and other arbitrators in these kinds of cases but had no specific comments thereon.

Discussion

The parties agreed to the following statement of stipulations put forth by the Union:

1. The grievants requested Special Inspections in February 1986.

2. The grievants at that time (and to this date) had met the criteria for a Special Inspection under Section 271 g of the M-39 Handbook.

3. The contract was violated when the inspections were not completed within thirty (30) days of the request s.

4. The decision in this case will apply to all of the eight (8) grievants.

5. The eight grievants would testify to the following:

   (a) Special Inspections have not, to this date, been conducted.
   (b) (See below)
   (c) Carriers are, to this date, working approximately sixty (60) hours a week.

The Employer's Advocate was not willing to agree to the statement set forth by the Union in Stipulation 5(b) which read: "Carrier routes have never been adjusted to eight hours since February of 1986." He was, however, willing to concede that the local Management's effort to bring about satisfactory adjustments to comply with the eight hour routes requirement of M-39, Chapter 2,did not succeed and the routes remained by and large overburdened.

In view of the foregoing, the task that remains for this Arbitrator is to fashion a remedy or remedies that not

only serves justice for the Employer's past contract violations grieved, but will also serve to meet the future needs and interests of the Union and its constituencies in the matter of overburdened routes.

Analysis and Conclusions

As stated above under Position of the Union, the Union's request numbered 1 was that the grievants' routes be inspected immediately and adjusted to eight hours. The Employer's decision at Step 3 of the grievance procedure is contained in a letter of Barbara E. Winsloe, Labor Relations Specialist, Northeast Region dated May 19, 1987. It reads in pertinent part:

> If the carriers on Routes 1, 2, 3, 4, 7, 8, 9, and 11 met the criteria in the six week period prior to their request for Route Inspections, they will be granted during September, 1987, as by the time of receipt of this decision insufficient time will be available to complete the inspections during May.

September has of course come and gone. The criteria was acknowledged by the Postmaster to have been met in his letter of March 29, 1987 to the Union's local branch President, William H. Strong. The Union represented to this Arbitrator that as of the date of the Arbitration hearing, November 12, 1987, the routes had not been inspected and were still overburdened. On these facts, this Arbitrator concludes that the routes in question must be inspected and

adjusted with all due deliberate speed consistent with the governing provisions of the M-39 Handbook, a part of the National Agreement by virtue of Article 19 thereof.

The Union's second and third requests stated above were for awards of premium pay penalties to the eight grievants in the way of punitive or exemplary damages. The Employer's Step 3 grievance decision denied this request "as there is no regulation which requires this penalty payment." (B.E. Winsloe's letter of May 19, 1987). This Arbitrator's view is that absent a prohibition imposed by external law or the collective bargaining agreement, an arbitrator has authority to award punitive or exemplary damages where, in his judgment, such an award is appropriate to reach a just result in the resolution of the grievances. This Arbitrator as well as other arbitrators who have processed cases of this kind have done so. (See, for example, Cases W4N-5G-C 3589, December 15, 1986, Arbitrator H. Letter; C4N-4J-C 6365, 4720, 6273, January 24, 1986, Arbitrator E.D. Pribble; N4N-1E-C 22422, December 16, 1986; N4N-1K-C 32218, 34724, August 6, 1987; N4N-1F-C 30826 et als, October 27, 1987, Arbitrator H. Grossman.)

In the instant case, however, the Union argued in opposition to the relatively modest penalty payments of five hundred ($500.00) or seven hundred and fifty ($750.00) dollars to each grievant as was awarded either by consent or

by the arbitrators' decisions in prior cases similar to this. Its reason was that the Employer would simply pay such sums and continue to ignore its contractual obligations to conduct requested special route inspections and make satisfactory adjustments. It therefore pleaded for strong, progressive monetary penalties sufficient in amount to serve as deterrents from such future contract violations by the Employer.

On the other hand, the Employer argued that all of the grievants were on the "overtime desired" list at the Foxboro, MA, Post Office and opposed any penalty payments.

In addition to that argument, this Arbitrator has every reason to assume that the grievants were paid for all hours that they worked, at whatever rate of pay applied for such hours under the National Agreement. I also assume that if and when any of them worked excess overtime in contravention of Article 8, Section 5F, he/she received penalty pay for such overtime as provided by Article 8, Section F.C and D of the National Agreement. If any of them did not receive such penalty overtime pay for excess overtime, then of course, such failure or omission was correctable or grievable under the collective bargaining agreement. Lastly, I am of the opinion that the prior awards should be recognized as having some precedential impact.

Upon full consideration, I conclude that while monetary

penalty payments to these grievants are appropriate for the deprivation of time which would have been theirs to use as they saw fit, substantially greater payments, designed to reach into the Employer's "deep pockets" to serve as a deterrent for the future are not in the best interests of all concerned.

In Case No. N4N-1F-C 30826 (NALC No. GTS 1933), et al., October 27, 1987, this Arbitrator awarded the grievants cash payments of five hundred dollars each in a somewhat similar situation. In that case, however, the route inspections were requested in September 1986, no inspections were conducted, but the evidence was that Management, in consultation with the aggrieved carriers, adjusted the routes in the following February, according to the Step 3 grievance decisions rendered in April 1987. I concluded there that the contract violations continued from October 28, 1986 until the grievants' routes were reportedly adjusted about four months later in February of 1987, not to exceed eight hours per day. I held that if those adjustments were in fact put in place, ". . . and the results were to effectively reduce the grievants' regularly assigned routes to 'as nearly 8 hours daily work as possible' the purpose of the grievants' requests for special inspections will have been met, and the effect of the violations of M-39 will then have come to an end . . ."

In the instant case the requests were made in February 1986, no special inspections were conducted and no satisfactory route adjustments were made before the Step 3 grievance decision was issued on May 1987, nor for that matter, to the date of this arbitration hearing. Under these circumstances I conclude that a higher cash penalty payment to each of the grievants here is called for to compensate them for the Employer's violation of the National Agreement. My principal reason for doing so is not so much for deterrence from future violations as it is to compensate the grievants for the length of time that their routes continued to be overburdened. As for the aspect of deterrence, this will be treated in greater detail below in connection with the Union's remaining requested remedies.

The Union's requested award numbered 4 is to instruct the Employer to abide by the mandates of the National Agreement. Insofar as this request may apply to carriers' requests for special mail counts and route inspections where carriers' time records meet the criteria in M-39, Section 271g, such a request is within the scope of this grievance, and is an appropriate remedy designed to provide deterrence from future violations of the collective bargaining agreement in the matter at hand.

The Union's requested award numbered 5 asking for a strong reprimand of Management and advice or warning that

continued violations of the requirements of Section 271g of M-39 will bring more severe financial sanctions was also submitted to this Arbitrator in Case No. N4N-1F-C 30826 (NALC No. GTS 1933) et als., decided October 27, 1987. There, the request was denied as I did not deem it in the best interest of sound management-labor relations to issue a "strong reprimand," but instead I believed that an appropriate instruction in the nature of a cease and desist order would suffice, which I proceeded to issue. It was my view that if necessary, the Union could seek appropriate relief from the courts by an action to confirm the Arbitrator's award under the Labor-Management Relations Act of 1947, 29 U.S.C. 185. It is generally recognized that once an Arbitrator has issued a final and binding award, the prevailing party must look to the court for enforcement of the award where necessary, rather than to the Arbitrator.

Finally, the Union's requested remedies numbered 6 and 7 call for the creation of additional carrier positions at the Foxboro, Massachusetts Post Office in order to bring about adjustment of the grievants' routes. In my view any order of mine to bring that about is beyond the scope of my authority and would violate Article 3 of the National Agreement, MANAGEMENT RIGHTS, wherein the Employer has retained "exclusive right subject to the provisions of this Agreement and consistent with applicable laws and

regulations" to determine the methods, means, and personnel by which its operations are to be conducted. Nothing has been presented to me in the agreement or elsewhere that prescribes the number of carriers to be employed in any post office which in any way limits the Employer's "exclusive right" under Article 3 other than that "(a)ll regular routes should consist of as nearly 8 hours daily work as possible." (M-39, § 242.122). How that is done falls within Management's exclusive right under Article 3,D and the guidelines of M-39 Handbook. For these reasons, I conclude that the last two of the Union's requested remedies must be denied.

AWARD

1. For the violation of M-39, § 271g and § 242.122, acknowledged by the Employer, each of the eight (8) grievants shall be compensated by a cash payment of one thousand ($1,000.00) dollars.

2. The Employer is ordered to make necessary adjustments of the grievants' routes with all due deliberate speed to bring them into conformance with Handbook M-39, Section 242.122.

3. The Employer is ordered to cease and desist from

continuing or future violations of Handbook M-39,

Sections 271g and 242.122.

Dated: NOV 27 1987

Harry Grossman
Arbitrator

Class Action:

Carriers, Foxboro, MA
Routes 1, 2, 3, 4, 7, 8, 9, 11