

C# 07630

REGULAR REGIONAL ARBITRATION  
ARBITRATOR'S AWARD

In the Matter of the Arbitration	)	David A. Dilts
Between	)	Arbitrator
National Association of Letter Carriers	)	
Branch 102; Sheboygan, Wisconsin	)	
and	)	NALC's GTS No. 000506
	)	USPS No. C4N-4J-C 30920
United States Postal Service,	)	
Sheboygan, Wisconsin	)	September 1, 1987

APPEARANCES:

For the Union:

Stephen Hult, Advocate  
August Margenau  
Art Radke  
Richard Pirimc  
Norbert Whermann  
Kenneth Thuemmler  
Ralph Knuth  
Robert Derus  
Marvin Miennert  
Danny Austerling  
Wayne Anderson  
Robert Brunette  
Dennis Bastil

For the U.S. Postal Service:

Wolfgang Grunder, Advocate  
Charles Hayes  
Robert Medley

Hearings in the above cited case were conducted on Wednesday, August 5, 1987 at the U.S. Post Office, 522 North Ninth Street, Sheboygan, Wisconsin. The parties stipulated that the present matter is properly before this Arbitrator in accordance with Article 15 of the 1984 National Agreement. The record in the instant matter was closed upon receipt of the Union's case citation on Saturday, August 15, 1987.

## ISSUE

Were routes in the Sheboygan Post Office properly adjusted in accordance with Chapter 2 of the M-39 and the 1984 National Agreement? If not, what shall be the remedy?

## BACKGROUND

The routes in the Sheboygan Post Office were inspected between September 8 and September 13, 1986. Adjustments to these routes were subsequently made which resulted in the Union filing a class action grievance. This grievance was timely filed and processed through the various steps of Article 15.

Various parts of Chapter 2 of the M-41, and Chapter 9 of the M-41 are cited as the relevant authority in the instant issue. These parts of the M-39 and the M-41 are given contractual authority by virtue of Article 19 of the 1984 National Agreement. Articles 3 and 5 of the 1984 National Agreement are also cited by the parties. The pertinent parts of Article 3 are:

The Employer shall have the exclusive right, subject to provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;

.

C. To maintain the efficiency of the operations entrusted to it;

.

D. To determine the methods, means, and personnel by which such operations are to be conducted;

Article 5 of the 1984 National Agreement is also cited by the Union as being violated by Management:

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

#### UNION'S POSITION

It is the Union's position that it has proven through testimony and evidence that the Postal Service failed to properly adjust the grievants' routes to "as nearly eight hours daily work as possible", [M-39, part 242.122, Joint exhibit 3] and thereby violated the applicable terms of the collective bargaining agreement. The evidence adduced by the Union clearly shows that at least 17 letter carriers in the Sheboygan Post Office have had their routes adjusted, resulting in routes which cannot be routinely delivered in eight hours. Forms 3996 and route summaries prepared from these documents were introduced for 16 routes. These documents clearly show that the adjusted routes cannot be delivered in eight hours. Further the testimony of twelve witnesses corroborates this documentary evidence.

The Union does not contest the route inspection and procedures utilized in inspecting the routes. The Union contests the resultant adjustments. Inspection procedures outlined in the M-39 and M-41 could be followed to the letter, yet produce adjustments which are not consistent with the requirement that the routes be eight hours of work. If the routes are not adjusted so as to fall within the eight hour requirement then

this is a violation of the National Agreement, since Article 19 clothes part 242.122 of the M-39 in contractual authority.

The Union requests that the Arbitrator make the class of effected letter carriers whole for the improper adjustments herein grieved. The remedy requested by the Union contains two specific parts. First, in order to adjust the carrier routes in Sheboygan, Wisconsin to "as nearly eight hours daily work as possible," the Postal Service be ordered, within thirty days of the date of the award to create and post for bids five additional full-time letter carrier routes. Second, in order to make the grievants whole for the harm caused by the clear and continuing violation of the Agreement, the Postal Service be ordered to pay the grievants one extra hour's pay at their regular rate of pay for each and every day that the grievants worked overtime from February 10, 1987 until the necessary route adjustments are implemented. The Arbitrator has the authority to order whatever remedy will give meaning to and protection for the various provisions of the National Agreement. The Union has offered numerous precedent cases for the Arbitrator's guidance in the matter of the remedy.

The Union respectfully submits that the instant grievance should be sustained and the requested remedies awarded.

#### EMPLOYER'S POSITION

The Employer denies that any violation of the National Agreement has occurred as a result of the route adjustments of September through November of 1986 in the Sheboygan Post Office.

The Union bears the burden of proof to demonstrate that the routes were not properly adjusted. This the Union has failed to do.

The Postal Service has shown that the proper inspection procedures were followed and the routes were adjusted according to the proper procedures. The Union had contended that proper procedures were not followed, but then dropped that contention during the hearing. The Union's case is founded on the premise that because overtime is sometimes required on various routes in Sheboygan that this is proof that the routes were not properly adjusted. This is patently in error. The various routes are frequently cased, pulled down, and delivered within the eight hour time frame. What may be even more telling, is the fact that when part-time flexibles and subs are used on the routes cited by the Union as being more than eight hours, these part-time and substitute carriers generally deliver the route well within the eight hours.

The testimony of the twelve letter carriers called by the Union is unconvincing. Each of the letter carriers admitted that it was not only possible, but they had actually delivered their routes within the eight hours allowed. The Union's parading of witnesses cannot serve to impress the Arbitrator. It is the quality and not the quantity of evidence which must be considered in the Arbitrator's deliberations.

The Union has offered voluminous documentary evidence. The reams of 3996s offered by the Union should not be considered by the Arbitrator. Most of the 3996s proffered by the Union are for periods of time well after the filing of this grievance. The

Union must be limited to what it knew at the time the grievance was filed for the Postal Service to be given not only a fair hearing, but also a reasonable opportunity to resolve the grievance at the earliest possible step in the grievance procedure. The Postal Service therefore asks the Arbitrator not to consider these untimely 3996s.

The Union and each of the members of the class of grievants had the right to request a special route inspection. Once the proper documents are received by Postal Management a special route inspection would have been conducted. To date, the Union has not availed itself of the proper forum for the resolution of any disputed route adjustments. The Arbitrator ought not permit the Union to circumvent the requirements of the M-39 by resorting to the grievance procedure.

The Postal Service notes the Union's requested remedies. Even should the Arbitrator find a contractual violation, a presumption the Postal Service makes only for argument's sake, the requested remedies are not authorized by the 1984 National Agreement.

The Postal Service respectfully requests the Arbitrator to deny the instant grievance as being without merit.

#### ARBITRATOR'S OPINION

The instant case involves several contentions by the Union and the Postal Service. There is a dispute over what the M-39 actually requires. The Union's case focused on the language of the M-39, Part 242.122, while the Postal Service contends that

its adjustments were the result of a proper inspection and everything concerning adjustments should be remedied under the procedures contained the M-39. There are also factual disputes. In addition to the respective contentions concerning what actually happened, the Postal Service contends that certain of the Union's documents should be excluded from the record. There is also a dispute over what the remedies should be, if the Arbitrator finds a contractual violation. The first two issues must be resolved before a need to examine the final issue can be determined. Each of these issues will be examined in turn in the following sections of this opinion.

#### M-39 Requirements

The M-39 Handbook, *Management of Delivery Services* is noticed by Article 19 of the 1984 National Agreement. This provision of the National Agreement grants contractual authority to the M-39 in as much as it directly effects the employees' "wages, hours or working conditions." Part 242.122 of the M-39 states:

The proper adjustment of carrier routes means an equitable and feasible division of the work among all of the carrier routes assigned to the office. All regular routes should consist of nearly 8 hours daily work as possible.

This Part of the M-39 forms the contractual basis for the Union's grievance. The requirement embodied in this language is that routes shall be as close to eight hours per day as possible.

The parties stipulated that no letter carrier in the Sheboygan Post Office requested a special inspection, except for

Guy Karo. The Postal Service contends that the M-39 provides for a method of adjustment of routes when and if the work required is not as close to eight hours as possible. The Postal Service's witness Mr. Charles Hayes testified that the M-39 allows for special route inspections when certain criteria are met. These requirements, according to Mr. Hayes are; "when a route shows the need for 30 minutes or more of overtime or auxiliary assistance 3 or more times per week for 4 consecutive weeks, excluding December." Mr. Hayes stated this requirement is to found in the M-39 and/or the M-41 Handbook, but he could not cite chapter and verse.

This Arbitrator finds the requirements discussed by Mr. Hayes in his direct examination at Part 271 of the M-39. This section states:

#### **270 SPECIAL ROUTE INSPECTIONS**

##### **271 WHEN REQUIRED**

Special route inspections may be required when one or more of the following conditions or circumstances is present:

- a. Consistent use of overtime or auxiliary assistance.
- b. Excessive undertime.
- c. New construction or demolition which has resulted in an appreciable change in the route.
- d. A simple adjustment to a route cannot be made.
- e. A carrier requests a special inspection and it is warranted.
- f. Carrier consistently leaves and/or returns late.
- g. If over any 6 consecutive week period (where work performance is otherwise satisfactory) a route shows over 30 minutes of overtime or auxiliary assistance on



each of 3 days or more in each week during this period, the regular carrier assigned to such route shall, upon request, receive a special mail count and inspection to be completed within 4 weeks of the request. The month of December must be excluded from consideration when determining a 6 consecutive week period. However, if a period of overtime and/or auxiliary assistance begins in November and continues into January, then January is considered as a consecutive period even though December is omitted. A new 6 consecutive week period is not begun.

h. Mail shall not be curtailed for the sole purpose of avoiding the need for special mail counts and inspections.

This Arbitrator notes a substantial variance in the requirements of Part 271 of the M-39 and the testimony offered by Mr. Hayes. Mr. Hayes impressed the Arbitrator as honest and forthright man, but the fact remains there are eight sets of circumstances which may result in a special route inspection. It is important to note the word, *may*, in the first paragraph of Part 271. While the M-39 states that a special route inspection may be had if one or more of the listed situations are observed. Further, there is no requirement that such an inspection occur. This Arbitrator, after careful examination of Chapter 2 of the M-39 finds nothing which requires that letter carriers request a special route inspection if they believe the adjustments to routes fall outside of contractual limitations. The first paragraph of Part 271 uses the word *may*, referring to the conduct of special route inspections.

Article 15 of the 1984 National Agreement defines grievances. In pertinent part Article 15, Section 1 states:

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A

grievance shall include, . . . , the complaint of an employee or of the Unions which involves the interpretation, application of, or compliance with the provisions of this Agreement . . .

It is this Arbitrator's opinion that the Union may process a complaint concerning route adjustments as a grievance, without requesting a special route inspection.

The M-39 also contains language which addresses routes of eight or more hours. This language is at Part 243.21 and states:

**.21 Routes of More than 8 Hours.** If, after correcting improper practices, a route still shows a total daily time in excess of 8 hours on most days of the week, plan to provide permanent relief by transferring the workload or providing temporary relief on heavy days, as follows:

a. Temporary relief must be provided in the most efficient and economical manner, either by using auxiliary assistance in the office or by authorizing necessary overtime.

b. Permanent relief may sometimes be provided by reducing carrier office time. Consider items such as additional firm holdouts, relocating of vehicle parking, withdrawal of mail by clerks or mailhandlers, providing a cart system for accountable items, etc. Where actual transfer of territory is necessary, see 243.23

This Arbitrator notes the language of Part 243.68 of the M-39, which states:

.681 If the route is found to be adjusted properly, this must be brought to the carrier's attention and the carrier given an opportunity to improve his or her performance.

.682 If the route is found to be too heavy, relief should be granted, and conversely if found to be light, work should be added. If the carrier frequently uses overtime or receives auxiliary assistance, determine if the route is in adjustment or if the carrier is not serving it efficiently, a special inspection may be order.

This language clearly establishes the fact that Management may conduct a special route inspection if there is a frequent use of auxiliary assistance or overtime, without the Union or letter carrier requesting it. If the route is found to be too heavy then relief is to be granted, otherwise if frequent use of auxiliary assistance or overtime is in evidence then the letter carriers are to be instructed and given an opportunity to improve their performance.

This Arbitrator notes that the M-39 places requirements on the route adjustments to be as nearly eight hours as possible and that the routes which are over eight hours must be either permanently adjusted to make them eight hours or temporarily given auxiliary assistance or assigned overtime to make them as nearly eight hours as possible.

#### Facts in the Case

A substantial record was made before this Arbitrator. The record contains substantial documentary evidence to which the Postal Service objected. The nature of the Postal Service's objection to the Union's proffering of the forms 3996 for sixteen routes (and their attendant summaries) is that the period of time covered by these documents is after the fact of the filing of the instant grievance.

The 3996s proffered by the Union, contained data for the hours worked by letters on the effected routes from January 1987 through July 1987. The original grievance was filed on February 10, 1987. The Step 2 decision was rendered on March 18, 1987. It

is this Arbitrator's considered opinion that data covering the period until February, 10 1987 is certainly admissible. The question then becomes whether the data since February 10 is admissible.

The nature of the present grievance, in part, dictates to this Arbitrator the ruling on the admissibility of the 3996s. This grievance focuses on adjustments of routes which are in force to the current writing. This grievance is over an issue which continues past the protest lodged by the Union. From this view the evidence ought not be excluded. Maybe of greater importance to the Postal Service is the fact that the subject documents are Postal Service records, provided to the Union by Management. It must be presumed that the Postal Service is aware of the data contained in these documents. A presumption supported by the capable cross-examination of the Union witnesses by the Postal Advocate. It is clear to this Arbitrator that there exists no inherent unfairness in admitting these documents and that they are germane to the instant grievance. It is therefore this Arbitrator's considered opinion that the forms 3996 proffered by the Union are admissible. The summaries prepared by the Union have been closely compared with the original 3996s and the Union summaries have been found to be reasonably accurate transcriptions of the original 3996s [the Arbitrator having found only six errors]. The Postal Service's objections to these documents is therefore overruled.

The Union's case is founded on the contention that the route adjustments of September through November 1986 resulted in routes which are not eight hour routes, but rather routes which are

greatly in excess of the time contemplated by Part 242.122 of the M-39. The testimony of twelve letter carriers was adduced in support of this claim as well as the 3996s for the calendar year 1987.

On the face of this evidence the Arbitrator finds merit to the Union's claim. Union exhibit 6 shows the hours required to deliver mail in Sheboygan, Wisconsin is consistent with 48.1 routes, for the first ten pay periods. The Union claims there are only 40 routes presently assigned to the Sheboygan Post Office. This information was gleaned from Postal forms 3997 and 3923 for applicable pay periods and no adjustments for curtailments have been made in the data.

This evidence serves to corroborate the testimony of the twelve letter carriers called to testify. The testimony of these letter carriers portray route adjustments which, in many cases, took what were characterized as more than could be normally delivered in eight hours and added to them additional deliveries and, in some cases additional collections.

The testimony of Art Radke, a letter carrier of 40 years service, was that prior to the route inspection in September of 1986 his route was about 30 minutes too long. Mr. Radke testified that after the adjustment his route was assigned another 10 to 15 minutes of work. Further, Mr. Radke testified that in his 40 years of service he had never received a job discussion or been disciplined.

Mr. Radke also testified that he, for several months, was routinely furnished with 3996s and auxiliary assistance without

requesting the form from his supervisor. He attributed this to the fact that his route was too heavy to be completed in 8 hours and Management's knowledge of that fact.

With minor variations, eleven other letter carriers testified that their routes were too long to be delivered in 8 hours. The testimony of Mr. Thuemmler, a letter carrier of 14 years experience, was his route, since the adjustment, is approximately 9 hours of work. Mr. Thuemmler did testify that 10 to 12 minutes of his pre-September route had been removed as a result of the inspection.

Mr. Miennert, a letter carrier for 18 years, testified that his post-adjustment route was between 8 and 8.5 hours of work, with mail being curtailed every day of the week and assistance or over time generally on 4 days per week. On cross examination the Postal Service examined this letter carrier's 3996 and noticed that on several occasions the substitute carrier and the T-6 had completed delivery within 8 hours. The Postal Advocate asked this witness why these other carriers could deliver the route in 8 hours. The witness stated that variations in the volume of mail could explain some of the days referred to by Management, but the witness claimed that mail curtailments and auxiliary assistance probably explained the Management observation.

On several occasions the Postal Service cross examined witnesses concerning the methods they employed in delivering their routes. The Postal Service attempted to show that it was possible that the reason the letter carriers were taking in excess of 8 hours to deliver their routes was that they were not applying the most efficient and economical methods of casing and

delivering mail. No independent evidence was adduced that the letter carriers were employing inefficient or uneconomical methods in the delivery of their routes. Further, there was no evidence adduced that the letter carriers were instructed to change methods after the adjustments to their routes had been implemented.

In examining the 3996s [Union exhibits 1, 7, 9, 11, 13, 15, 18, 20, 22, 23, and 29] this Arbitrator finds the Union's witnesses' testimony concerning the overtime and auxiliary service is corroborated. The question now becomes whether the evidence which clearly shows the routes in the Sheboygan Post Office are in excess of eight hours violates Part 242.122 or 243.2 of the M-39 and Articles 3, 5, and 8 of the 1984 National Agreement.

It is clear that many of the routes cited by the Union are chronically in excess of eight hours. Even with auxiliary time most of the cited routes still require overtime to complete. There is, however, substantial variation in the amount of auxiliary assistance and overtime utilized on many of the routes.

The Postal Service contends that the inspection and adjustment of these routes were accomplished in accordance with the various provisions of the M-39 and M-41. This Arbitrator does not doubt that the Postal Service performed the inspections and the adjustments in accordance with the applicable regulations. The inspections are not before this Arbitrator as part of the present issue. What is before this Arbitrator is the matter of the adjustments. In examining the record it is clear

that the subject routes are not 8 hour routes. This does not mean that the procedures for adjustment were somehow violated. The method by which adjustments are made and the results of those adjustments on letter carrier work loads may be viewed as separable issues under the language of the M-39. It is clear that the M-39 contemplates that the proper adjustment procedures could have been followed, yet yield results which are inconsistent with an eight hour day. Part 243.21 of the M-39 is entitled *Routes of More than 8 Hours* and Part 243.22 is *Routes of Less Than 8 Hours*. These, and subsequent sub-paragraphs describe the appropriate actions to bring adjustments into compliance with the eight hour day requirement. It is the considered opinion of this Arbitrator that the adjustments are not within the eight hour day limitation.

Part 243.21 (a) addresses temporary relief for out of adjustment routes. This paragraph contemplates only temporary relief and authorizes auxiliary assistance and overtime. These are the methods employed in the Sheboygan Post Office. Part 243.21 (b) addresses permanent relief. Permanent relief is authorized through the changing of arrangement for office time and provides examples of additional firm holdouts, relocating of vehicle parking and other such actions which are not associated with overtime or auxiliary assistance. The case before this Arbitrator is what can only be characterized as a need for permanent relief. Permanent relief is not accomplished through overtime and auxiliary assistance.

Finally, the Union's contention that Management failed to consider the letter carriers' input into the instant adjustments



is simply irrelevant. The grievance before this Arbitrator with respect to this aspect of the adjustments is left unproven and has no bearing on the result. The adjusted routes are for more than eight hours. It does, however, appear that Management sought input from the letter carriers. What weight was assigned this input was addressed by the Postal Service's witness Charles Hayes. This Arbitrator finds nothing in this record which refutes his testimony concerning this specific item of contention.

It is this Arbitrator's considered opinion that the clear preponderance of the evidence supports the Union's contentions that the Postal Service has violated the National Agreement by adjusting routes to duty time in excess of eight hours. The instant grievance must therefore be sustained.

#### Remedy

The Union has requested two things be ordered by the Arbitrator as remedy for this grievance. The Arbitrator's considered opinion is that neither of the Union's requested remedies are appropriate. The Arbitrator does agree, however, that the matter of an appropriate remedy consists of two parts. The first requires that the routes be brought into compliance with the requirements of the M-39, Part 242.122. The second involves making the effected employees whole.

The 1984 National Agreement contemplates a delicate balance of rights. Management is vested, by Article 3, with the right to determine the methods, personnel, and means by which mail

delivery will be effected. This, however, is limited to using employees in 8 hour shifts under normal and permanent conditions. Overtime can be required, but at some point, when overtime becomes the norm, then the employee's rights to an eight hour day and forty hour week are violated. This is the case in the Sheboygan Post Office.

The Union [through Union exhibit 6] has shown that during calendar year 1987 the minimum number of routes consistent with the hours worked is just over 45. The Postal Service has not refuted the Union's contention in this matter. There are several elements which confound this analysis. The curtailment of mail is left unaccounted for and the mail volume is not known to this Arbitrator for the respective days and routes. The remedy requested by the Union is that the Postal Service be ordered to create 5 new regular routes in the Sheboygan Post Office. This Arbitrator remains unconvinced that the requested remedy is what is required to correct the route adjustments to assure as close to eight hours as possible. The M-39 contemplates route inspections which result in data which form the bases for efficient and equitable routes for the delivery of mail. From the record made before this Arbitrator it is impossible to determine what the precise number of routes are for the Sheboygan Post Office to properly deliver mail.

This Arbitrator is convinced that additional routes and adjustments must be made to provide for permanent relief and to bring the subject routes within the eight hour requirements contained in Part 242.122 of the M-39. This Arbitrator is also convinced that a significant variation exists across the routes

examined in this matter and therefore variations must also occur in the relief granted. The M-39 provides that special route inspections may occur when a route is found out of adjustment [Part 243.682 of the M-39]. It is this Arbitrator's considered opinion that this is one of the proper remedies for this element of the grievance. The Arbitrator also notes that the Union contends that the team which conducted the route inspections of September of 1986 should not conduct the special route inspections or make adjustments to the routes. [see Joint exhibit 2 addendum to Standard Grievance Form].

Finality of a decision is contemplated by Article 15 of the 1984 National Agreement only when the Arbitrator can do so within the four corners of the contract and based upon the record before him. The remedy provided must therefore be one which recognizes the employee's rights to a normal tour of duty of eight hours. The remedy ordered for the adjustment of the subject routes is that Management adjust the subject routes to bring them to as near eight hours of work as possible.

The data from the September route inspections may be used or special route inspections. The result shall be that the routes in the Sheboygan Post Office shall be adjusted, providing relief by the transfer of territory and the addition of routes as well as what other means other than auxiliary assistance and overtime that are in accordance with Part 243.21 of the M-39. It is also clear that a significant number of additional routes must be created.

This adjustment shall be made as soon as possible within the

receipt of the award. The process shall begin within 15 calendar days of the receipt of this award and be conducted as expeditiously as possible. It is this Arbitrator's opinion that a number of routes must be added to the Sheboygan Post Office. Whether 5 routes must be added is unclear, but the adjustments shall require the addition of routes.

The employees are entitled to a remedy for the violation of their rights under the M-39 to a normal tour of duty of as close to eight hours as possible. The Union has requested that the Arbitrator award 1 hour of pay for each day an employee was required to work overtime. This Arbitrator has carefully studied the case citations offered by the respective parties. It is clear to this Arbitrator that the 1984 National Agreement does not limit his authority to provide a remedy appropriate to making the employees whole and assure compliance with the Agreement.

The remedies provided must be consistent with the rights intended by the parties to the National Agreement. It is this Arbitrator's opinion that he must look to the National Agreement and provide a remedy consistent with its provisions.

There is no specific mention of remedies for the specific contract violation before this Arbitrator. In examining the National Agreement's provision relating to overtime this Arbitrator finds that the parties intended to limit the use of overtime for those not on the overtime desired list. This intent is the core of the present controversy and provides guidance in what the proper remedy shall be.

Overtime is viewed by some letter carriers as a benefit and not a lost benefit, (i.e., an eight hour day). Those letter

carriers on the overtime desired list during the relevant time periods have not been harmed by the heavy routes. It is this Arbitrator's considered opinion that those letter carriers desiring overtime [as evidenced by their volunteering for overtime by being placed on the overtime desired list] are not entitled to a monetary remedy for those hours of overtime worked while on the desired overtime list. It is not only possible, but likely that some carriers were on the overtime desired list during a portion of calendar year 1987 but not on the list during other portions. For the period that a letter carrier was not on the overtime desired list, that carrier is entitled to a monetary remedy.

This Arbitrator relies on Article 8, Section 5, paragraph G for guidance as to the parties' intent and the formulation of an appropriate remedy.

For those letter carriers required to work overtime, who were not on the overtime desired list a monetary remedy is necessary to assure compliance with the National Agreement, the proper route adjustments, and that the effected employees are made whole. These letter carriers shall receive the 50% of their straight-time wages overtime penalty rate in addition to pay already received for those hours worked in excess of the eight hours per day for the period from the Step 1 meeting concerning the instant grievance [February 24, 1987] through the time the final adjustments are made to the routes. The continuing monetary remedy shall be applicable to only those letter carriers not on the overtime desired list for regularly scheduled days on

the date of this award. It is not the intent of this Arbitrator to permit letter carriers to withdraw from the overtime desired list to become eligible for the penalty rates.

This monetary remedy shall be implemented as soon as possible after the receipt of this award and continue until such time as the effected route is adjusted to bring it within the eight hour requirement. The final date for which a monetary remedy is applicable is the date on which an adjustment, providing permanent relief is made, without use of auxiliary assistance. If the adjustment does provide sufficient relief to bring the route within the eight hour day requirement the monetary relief shall continue until such time as the route is properly adjusted.

#### AWARD

The grievance is sustained. The remedy herein ordered is:

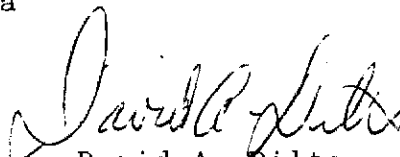
1. The effected routes shall be adjusted to bring them to nearly eight hours of work as possible. This can be accomplished through the use of the data available from the September 1986 inspection or through a special route inspection. The results of these adjustments shall be to add routes and to provide permanent relief as contemplated by Part 243.21 (b) of the M-39. Such relief shall not consists of auxiliary assistance or routine overtime.

2. The Arbitrator is not ordering that 5 routes be created, but he maintains jurisdiction over the remedy to assure compliance with the intent of this award. Routes shall be created and the need for routine auxiliary assistance and routine

overtime shall cease. The number of newly created routes shall be specified by this Arbitrator if adjustments do not produce as nearly eight hour routes as possible on or before October 15, 1987.

3. Those employees, not on the overtime desired list, who were required to work overtime between February 24, 1987 and the final adjustment of their specific route shall be paid overtime at the penalty rate contained in Article 8, Section 4.D. This overtime penalty rate shall be paid for all overtime hours worked during regularly scheduled tours of duty from February 24, 1987 until the employee's specific route is properly adjusted. Backpay for the overtime penalties due shall be made as soon as possible after the receipt of this award.

At Fort Wayne, Indiana  
September 1, 1987:

  
David A. Dilts  
Arbitrator