

C#08792

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration) GRIEVANT:
) BRANCH
)
-Between-) POST OFFICE:
UNITED STATES POSTAL SERVICE) Palos Verdes, CA
)
-And-) CASE NO: W4N-5B-C 8594
)
)
NATIONAL ASSOCIATION OF) NALC CASE NO: 8527
LETTER CARRIERS, AFL-CIO,)
)

BEFORE: C. B. A. LANGE III, Arbitrator

CARL B. A. LANGE III, Arbitrator

APPEARANCES:

For the U.S. Postal Service: J. CARSON MOORE
Regional Labor Relations Executive
13031 West Jefferson Boulevard
Inglewood, CA 90311-9203

For the Union: DALE P. HART
Regional Administrative Assistant
855 Civic Center Drive
Santa Clara, CA 95050

Place of Hearing: 13031 West Jefferson Boulevard
Inglewood, California

Date of Hearing: February 27, 1989

AWARD:

The parties stipulated that a Remedy, if appropriate, was the sole issue to be determined. The appropriate Remedy is that the carriers who had requested route adjustments in October 1984 shall receive Administrative Leave in an amount equal to fifty percent (50%) of all overtime hours worked from September 13, 1985, to the day when the route adjustments were implemented.

(Background and Reasoning attached)

Date of Award:

March 24, 1989

CARL B. A. LANGE III

BACKGROUND AND REASONING
(Branch - Route Adjustments)

Pursuant to the National Collective Bargaining Agreement (Jt. Exhibit 1) between the UNITED STATES POSTAL SERVICE ("Service" or "Employer"), and the NATIONAL ASSOCIATION OF LETTER CARRIERS ("NALC" or "Union"), the undersigned was selected from the Western Region Regular Arbitration Panel to serve as the arbitrator in this matter.

This matter arises as the result of the Service's initial failure to conduct route inspections as requested by twenty-seven (27) carriers at the Palos Verdes Post Office in October 1984. Originally, local union and management officials agreed to try to get together on the implementation of the route inspections. A grievance was filed when it became apparent that the inspections were not being done. At Step 3 it was agreed that the inspections would be completed by June 10, 1985. The inspections began on June 10 and were completed on June 22, 1985. Based on the June 22 completion date, implementation should have occurred not later than August 13, 1985. The Palos Verdes Postmaster requested an extension of the implementation date. Pursuant to the M-39, an extension was granted by the Management Sectional Center ("MSC") on August 13, 1985. The Union filed a Step 2 grievance on September 27, 1985, in which it alleged that an extension beyond thirty (30) days was unreasonable and unjustified. The grievance was then processed pursuant to the National Agreement. For the purposes of this Decision, it must be noted that the route adjustments were implemented in February 1986.

An evidentiary hearing was held on February 27, 1989, at 13031 West Jefferson Boulevard, Inglewood, California. The Service was represented by J. Carson Moore, Regional Labor Relations Executive. The NALC was represented by Dale P. Hart, Regional Administrative Assistant. The parties agreed that there were no issues of procedural or substantive arbitrability to be resolved and that the matter was properly before the Arbitrator. The parties further agreed that the issue to be determined by the undersigned would be what, if any, Remedy would be appropriate for the failure of the Palos Verdes Post Office to implement route adjustments that had originally been requested in October 1984. No official transcript of the hearing was made. The parties made closing arguments on the record. The matter was deemed submitted for decision as of February 27, 1989, at the close of the hearing.

The parties stipulated that a violation of the National Agreement had occurred and that the matter before the undersigned for determination was the Remedy, if any. Due to the limited nature and scope of the instant proceeding, it is unnecessary to cite the provisions of the National Agreement. Further, it is unnecessary to make a detailed recapitulation of the events that

led either to the delay in conducting the inspection or to the delay in implementing the adjustments. It is equally unnecessary to cite and analyze the provisions of the M-39 Handbook relating to route inspections and adjustments, beyond the observation that the M-39 requires both route inspections and, within a specified time, route adjustments to an eight-hour (8-hour) route when certain criteria are met. Further, the M-39 provides that an extension of time for adjustments may be granted by management at the sectional level.

The Union argued that the undersigned has the authority to grant an appropriate Remedy under the National Agreement, even when a Remedy is not specifically set forth therein. The Union further argued that Compensatory Time Off or Administrative Leave would be appropriate in this matter. The Union offered several arbitration decisions in support of its position. The Union also suggested that the Remedy should be charged to MSC since, in its view, the MSC was responsible for the initial delays regarding the inspections in early 1985 and the delays in implementation of the adjustments in late 1985. Finally, the Union argued that the implementation of the Remedy should be based upon the original requests for route inspections in October 1984.

The Service argued that, although there had been a violation, no real harm had been done to the employees. The adjustments had taken place, albeit after an extended length of time. Certainly some of the affected carriers were on the Overtime Desired List ("ODL"), thus any overtime they worked was not only desired but expected. The Service also suggested that the delays had been caused by the MSC. Finally, penalty overtime would be inappropriate in that no case was made for such payment.

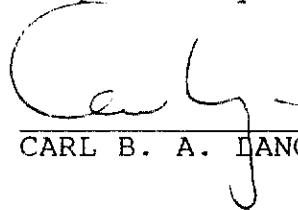
In this matter, the undersigned is of the opinion that an award of Administrative Leave for each carrier who requested and was entitled to an inspection and subsequent adjustment is appropriate. The awards issued by Arbitrator Pribble, Arbitrator Dilts, and Arbitrator Render bear striking general similarities to the fact patterns and arguments urged by both parties in the instant matter. In each circumstance the arbitrator ordered some form of pay or time off related to the overtime required to be worked by the carriers due to the failure of the Service to appropriately respond to the route inspection requests. It is true that Arbitrator Dilts limited his award to those carriers who were not on the ODL. Arbitrator Dilts' reasons for limiting the Remedy to only those employees who were not on the ODL may be appropriate, based upon the facts before him.

The Service's inaction on the inspections and adjustments violated the carriers' rights to an eight-hour (8-hour) route, regardless of their individual desire or need for overtime work. A violation of an employee's basic rights is not automatically excused because the employee has volunteered for and received hours of work beyond his or her guaranteed eight (8) hours. As

is pointed out in the often quoted Eaton award (W8N-5K-C 13928), "there is no right without a remedy."

At the same time, the undersigned is of the opinion that the appropriate beginning date for the Administrative Leave is September 13, 1985. Regardless of the various contentions surrounding the delays in this process, both the Step 2 and Step 3 grievances request that an adjustment be made as of September 13, 1985. Finally, since both parties suggest that the ultimate responsibility for the delays rests not with the Palos Verdes Post Office but with the MSC, the undersigned adopts the "Pribble doctrine" that if "the arbitrator has the power to so direct, these moneys be paid from the MSC budget," rather than the local post office's budget.

Respectfully submitted,



CARL B. A. LANGE III