

C.21475

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)
between)
UNITED STATES POSTAL SERVICE)
and)
NATIONAL ASSOCIATION OF)
LETTER CARRIERS, AFL-CIO)

GRIEVANT: A BECERRA

POST OFFICE: SAN FRANCISCO,
CALIFORNIACASE NO: F94N-4F-C 9801967
GTS# 49747

BEFORE: Gary L. Axon, ARBITRATOR

APPEARANCES:

For the U. S. Postal Service:

Susan Johnson

For the Union:

Alan J. Apfelbaum

Place of Hearing:

San Francisco, California

Date of Hearing:

September 20, 2000

Date of Award:

December 9, 2000

Relevant Contract Provisions:

Article 19
Article 41

Contract Year:

1998-2001

Type of Grievance:

Contract

Award Summary

The grievance of Alberto Becerra is arbitrable. The Postal Service violated the National Agreement and Chapter 2 of the M-39 Handbook when they improperly adjusted Route 1258 at Station F. The Postal Service is ordered to compensate Grievant Becerra \$10 per day, based on a five-day workweek for the first one hundred twenty (120) calendar days his route was out of adjustment. The starting date should begin at approximately fifty-three (53) calendar days after the completion of the mail count through the first one hundred twenty (120) calendar days Grievant Becerra's route was out of adjustment.


Gary L. Axon

I.

INTRODUCTION

The grievance of Alberto Becerra (Grievant) arose out of a readjustment of his route in March 1997. During March 1997, the Postal Service conducted an office-wide route inspection at Excelsior Station. As a result of the inspection, Grievant and other carriers at Excelsior Station, or what is referred to as Station F, had their routes adjusted. The Union filed separate grievances on behalf of Becerra and other letter carriers alleging improper procedures were followed in making the route inspections which resulted in incorrect route adjustments.

When Grievant Becerra's case was not resolved during the lower levels of the grievance procedure, the grievance was advanced to arbitration. At the hearing both parties were accorded the full and complete opportunity to present evidence and argument in support of their respective positions. Post-hearing briefs were timely filed. The case is now properly before the Arbitrator for decision.

II.

STATEMENT OF ISSUES

The parties were unable to agree on a statement of the issues. The Union framed the questions to read:

Did the United States Postal Service violate the National Agreement and Chapter 2 of the M-39 Handbook when they improperly adjusted Route 1258 at Station "F"? If so, what is the appropriate remedy?

be:

1. Should Case No. F94N-4F-C 9801767 be dismissed under the doctrine of "res judicata"?
2. Is the Grievant's [sic] entitled to any monetary remedy related to the Grievant's route adjustment, other than correction of an adjustment?

Based on the submissions of the parties, the Arbitrator adopts from the parties' proposed issue statements as follows:

1. Should Case No. F94N-4F-C 9801767 be dismissed under the doctrine of "res judicata"?
2. Did the United States Postal Service violate the National Agreement and Chapter 2 of the M-39 Handbook when they improperly adjusted Route 1258 at Station "F"?
3. If so, what is the appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 3

ARTICLE 15

ARTICLE 19

(For sake of brevity, these sections not reproduced in this Award)

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**ARTICLE 41
LETTER CARRIER CRAFT**

Section 3. Miscellaneous Provisions

S. City letter carrier mail counts and route inspections and adjustments shall be conducted in accordance with Methods Handbook M-39, Management of Delivery Services, as modified

by the parties' Memorandum of Understanding dated July 21, 1981 and October 22, 1984 (incorporated into December 24, 1984 Award).

IV. STATEMENT OF FACTS

Grievant Becerra is a letter carrier assigned to Station F in San Francisco, California. A station-wide route inspection was conducted at Excelsior Station, or Station F, between the dates of March 24, 1997 and March 29, 1997. Based on those route inspections, several carriers at Station F, including Becerra, had their routes adjusted. The Union believed that the Postal Service incorrectly adjusted Grievant Becerra's route. During the week of the inspection, Becerra averaged 35 minutes under standard, that is 35 minutes better than the minimum standard set by the Service. During the week of the inspection, Becerra's route averaged 56 minutes over the eight-hour goal.

The Union filed a grievance challenging the inspection which was conducted at Station F alleging that management made improper deductions of office and street time, creating erroneous figures upon which the route adjustments were made. By way of corrective action the Union sought a cease and desist order from adjusting the route at Station F and that management use proper office and street time to adjust Grievant's route. In addition, the Union demanded \$100 per day for each day Becerra's route was out of adjustment. The Step 1 meeting was held on May 30, 1997. Management denied the grievance.

The Union appealed the grievance to Step 2 on June 2, 1997. The Step 2 meeting was held on January 30, 1998. Superintendent Nars Parcumio admitted that management made improper deductions of office and street time, creating erroneous figures/data upon which the route adjustments were made. Superintendent Parcumio agreed that office and street time deducted from Becerra's route were to be re-credited. However, Parcumio denied the monetary remedy of \$100 per day requested by the Union as punitive and excessive.

The Union advanced Becerra's grievance to Step 3, citing a number of reasons why the remedy sought should be granted. Jt. Exs. 2-3 through 2-6. Among the reasons offered were management violated the contract and caused an unnecessary disruption to the carriers' work assignments. The Union also claimed that management has repeatedly on prior occasions continued to make improper route adjustments in violation of prior cease and desist orders.

Postal Service representative, Stephen Bushelman, offered the Step 3 grievance decision. In his response, Bushelman stated the merits of the issue had already been resolved and that the appropriate remedy was to order management to cease and desist. Bushelman conceded management erred in making their deductions, acknowledged those errors, and had made the appropriate corrections. The monetary relief was denied on the grounds that it was punitive and therefore inappropriate. Jt. Ex. 2-41.

During the same time period as the Becerra grievance, the Union filed 59 other grievances concerning the route inspections

and adjustments at Station F during March of 1997. Three of those route inspection cases were presented to arbitrator Edna Francis for resolution. Mgt. Ex. 1, Case No. F94N-4F-C 98061768; Case No. F94N-4F-C 98061770; and Case No. F94N-4F-C 98061772. Having admitted a violation of the Collective Bargaining Agreement, the issue presented to arbitrator Francis was whether the three letter carriers were entitled to monetary relief. Arbitrator Francis rejected the Union's claim of \$100 per day for each letter carrier for the days the routes were out of adjustment. The Francis Award formed the basis for the Postal Service's *res judicata* claim that the Becerra grievance should be dismissed.

Following the publication of arbitrator Francis' Award on September 11, 1999, the Postal Service and Union met and resolved 26 other grievances challenging the March 1997 route inspections. The pre-arbitration settlement was dated December 13, 1998. Jt. Ex. 5. The settlement agreement listed by name and case number the grievants subject to the settlement agreement. Grievant Becerra was not one of the cases listed in the pre-arbitration settlement.

The Arbitrator advised the parties he would take the evidence of the Becerra case on the merits subject to a later ruling on the Postal Service's *res judicata* claim. Evidence was presented at the arbitration hearing related to the *res judicata* issue and the merits of the Becerra case.

V.

POSITIONS OF THE PARTIESA. National Association of Letter Carriers

The Union begins by noting the Postal Service has admitted it violated the contract with respect to Grievant Becerra. The only issue remaining for the Arbitrator to decide is the appropriate remedy to be applied. The evidence presented at the hearing shows that during the week of the inspection, Becerra's route was 56 minutes over eight hours. The testimony also established that Becerra's route was out of adjustment for a period of over ten months. The testimony of Becerra was unrebutted that his route averaged one-half hour to one hour of overtime per day after the adjustment to his route.

1. Arbitrability

The Arbitrator should reject the Postal Service's claim that the Francis Award rendered the Becerra grievance moot. While the grievance arose out of the same route inspection as the three cases heard by arbitrator Francis, the facts are not the same. In addition, the Postal Service did not develop any evidence that the facts in the Francis case were the same as in the Becerra case. Only three of the 59 grievances filed on those Station F inspections were considered by Francis. After the decision, the Union and Postal Service entered into a non-citeable agreement that settled an additional 26 grievances based on the Francis Award. Jt. Ex. 5. The settlement agreement clearly shows that the Becerra grievance was not one of those settled by the parties after the

publication of the Francis Award. Finally, the Becerra grievance was not a part of the three cases heard by arbitrator Francis.

Moreover, the Service in another group of route inspections in San Francisco took a totally different position. In Case No. W0N-5M-C 8963, arbitrator Edward E. Hales determined the Service failed to properly adjust a route to as near eight hours as possible and awarded monetary relief amounting to \$10 per day during the period the route remained out of adjustment. The arbitrator's decision was rendered on March 19, 1997. Arbitrator Francis heard the three cases involving a different route inspection and denied monetary relief even though presented with the Hales Award granting monetary relief to the letter carriers. The Union argues that these two awards illustrate that arbitrators may rule on similar events and may come to totally different and opposite positions. The Service seems to feel that *res judicata* only applies when they have won the first arbitration case.

Based on all of the above-stated arguments, the Arbitrator should find that *res judicata* does not apply to the Becerra grievance and should issue an award on the merits of the Becerra grievance.

2. Merits

The Postal Service has conceded they admittedly failed to properly adjust Grievant Becerra's route. The fact that Becerra's route was evaluated with over eight hours worth of work brought him in daily contact with his supervisor which caused conflict between carriers when an over-burdened carrier sees other carriers in the

office that have routes with less than eight hours of work. The Union contends this causes major conflict not only for the overburdened carriers and their supervisors, but among the carrier craft due to the unequal workload for carriers in some offices. Union asserts the testimony of Becerra was consistent with this line of reasoning.

3. Remedy

At the arbitration hearing the Union modified its claim for monetary relief from \$100 per day to \$10 per day for every day Becerra's route was out of standard. The testimony and evidence adduced at the hearing demonstrated the Postal Service violated multiple articles of the National Agreement. According to the Union, the monetary remedy is justified and necessary to make the Grievant whole and it is fully within the Arbitrator's authority to grant. The Union cited numerous arbitration awards where the arbitrator granted monetary relief.

The Union takes the position in light of the deliberate and flagrant violations of the National Agreement, and previous grievance settlements, it is apparent that a substantial monetary remedy is necessary to protect the integrity of the National Agreement and to force the Postal Service not to violate the contract at whim. A violation of the contract must be redressed. The failure of the Arbitrator to provide an appropriate remedy would allow management to make a mockery of the National Agreement and make useless the grievance/arbitration procedure. The impact of this is to erode faith and confidence of the letter carriers in

the grievance adjustment system. The only way the Union can convince the Postal Service to abide by the contract is for the Arbitrator to fashion a remedy which both protects the contractual rights of the grievants who were denied relief, and penalizes the Postal Service for the arbitrary and capricious fashion in which they violated this Agreement.

The Union offered a number of awards it believed supported its position which are listed as follows:

<u>Arbitrator</u>	<u>USPS Case No.</u>	<u>Date of Award</u>
Edward E. Hales	WON-5M-C 8963	March 19, 1997
Edna E.J. Francis	WON-5M-C 8965	May 29, 1997
Howard Gamser	NC-S-5426	April 3, 1979
Neil N. Bernstein	H1N-1J-C 23247	August 7, 1987
George E. Bowles	C8N-4F-C 13163	April 23, 1981
Benjamin Aaron	H1N-5-FD 2560	December 19, 1984
Elliott H. Goldstein	C8N-4J-C 12091	June 29, 1981
William Eaton	W8N-5K-C 13928	February 10, 1983
William Eaton	W1N-5G-C 24783	December 6, 1984
Richard Mittenthal	N8-NA-0141	July 7, 1980
Nicholas Duda	E7N-2J-C 46370	March 13, 1992
Irvin Sobel	S7N-3D-C 39898	March 31, 1992
Alan Walt	J90N-4J-C 93032396	March 13, 1995
Linda DiLeone	C90N-4C-C 94069025	April 14, 1995
Edwin R. Render	E90N-4E-C 94037643	September 9, 1995
J. Reese Johnson	G90N-4G-C 94044445	November 21, 1994
Louis M. Zigman, Esq.	WON-5M-C 10259	June 30, 1998

In sum, the Arbitrator should award Grievant Becerra \$10 per day for each day in which his route was out of adjustment.

B. United States Postal Service

The Postal Service conceded that it had violated Grievant Becerra's contractual rights resulting from the March 1997 route adjustment. However, the Postal Service contended that the violation had been properly corrected by a cease and desist order

to management and the acknowledgment of the errors and subsequent correction to bring the routes into conformance with the National Agreement. The Postal Service takes the position that the monetary relief sought by the Union is improper and should be denied by the Arbitrator.

1. Arbitrability

The Postal Service maintains that the Becerra grievance should be dismissed under the doctrine of res judicata. Arbitrator Francis' Award has resolved the remedy issue in the instant case. A comparison of the moving papers in the Francis arbitration and those of the case before this Arbitrator reveals identical arguments and contentions. The Step 2 and Step 3 appeals of the Union are identical. The Step 2 and Step 3 decisions by management are identical. The only difference is the Grievant's name and case number.

Moreover, the evidence and testimony at the arbitration hearing supports the parties' intent that the post-Francis settlement agreements were to be dispositive of the March 1997 route inspection issues. After receiving the Francis Award, the Union and management agreed to a pre-arbitration settlement of the other grievances arising out of the Station F route adjustments. Postal Service representative, Larry Young, testified that it was the parties' intent to resolve all of the related grievances. Joint Exhibit 5 supports the parties' intent to resolve all of the cases in accordance with the Francis Award. The Francis Award and the settlement agreement did not provide for monetary relief.

The doctrine of res judicata is based on the theory that adherence to precedent fosters finality and certainty, and serves to maintain stable labor relations. Res judicata applies where a prior award involved issues which are identical and the subsequent dispute cannot be distinguished from the earlier decision. The Arbitrator must be satisfied that the issue he is required to decide is identical to that presented in the previous case and must ascertain whether there have been any changes in circumstances or conditions material to the original holding that would make it inappropriate to follow the earlier ruling. The Arbitrator is also obliged to inquire whether or not any extraordinary or compelling reasons exist why the initial decision should not be followed.

The evidence presented in the Becerra case shows that the issues and facts were similar, and there are no compelling reasons why the Francis Award should not be applied to the Becerra case. Therefore, the Arbitrator should give preclusive effect to the Francis Award and apply the doctrine of res judicata to the Becerra grievance. The Becerra grievance should be denied and dismissed.

2. Merits

The Postal Service concedes it violated the National Agreement regarding Becerra's route inspection and adjustment. The Postal Service denies that monetary relief is an appropriate remedy.

3. Remedy

Even if the Arbitrator rejects the *res judicata* argument of the Postal Service, no additional remedy is appropriate other than the adjustment of Becerra's route. The evidence shows the Becerra route had been adjusted within the 52-day requirement of the M-39 Handbook. Grievant testified that during the pertinent period he was on the Overtime Desired List. Grievant voluntarily worked overtime on his own route and other routes. Grievant did not request a special route inspection so that his route could be reinspected. The Union presented no evidence that Becerra was financially harmed because his route was not properly adjusted.

The Postal Service next claims that it acted in good faith and restored the time in question to Grievant's route within the appropriate 52-day requirement of the M-39 Handbook. To award the \$100 per day, modified to \$10 per day at the arbitration hearing, would be punitive. Arbitral authority clearly supports the position that penalties are rarely imposed and such exceptions are clearly denoted. The Postal Service submits that granting a punitive award is outside the authority of the Arbitrator.

The Postal Service recognizes that compensatory damages are within the power of an arbitrator to award. However, it is clear in the matter of compensatory damages that the amount awarded should normally correspond to specific monetary losses suffered by the employee. In most cases where monetary relief has been awarded, the awards clearly include a finding that management's

actions were dilatory or egregious and often involved repeated failures to comply with the Collective Bargaining Agreement.

Applying those principles to the instant case, the evidence presented by the Union failed to demonstrate management's actions were arbitrary or capricious or so unreasonable as to constitute an abuse of discretion. The Union has failed to establish that management acted in bad faith. There was no testimony solicited or evidence presented which proved that Becerra was financially harmed. The Grievant was compensated at the overtime rate for any additional hours he put in carrying his route and was a volunteer on the Overtime Desired List. Thus, the Arbitrator should deny the Union's request for monetary relief.

The Postal Service offered the following awards in support of its legal position:

<u>Arbitrator</u>	<u>USPS Case No.</u>	<u>Date of Award</u>
Jonathan Liebowitz	N7N-1K-C 28329	November 30, 1990
David Goodman	W7N-5K-C 31822	June 17, 1992
Edward E. Hales	F90N-4F-C 94009199	August 30, 1999
Kenneth M. McCaffree	W4N-5G-C 38512	Sept 30, 1988
Nancy Hutt	F90N-4F-C 94009200	November 17, 1999
Kenneth M. McCaffree	W0N-5M-C 5538 and W0N-5M-C 12449	Sept 25, 1997
Carlton J. Snow	W1C-5F-C 4734	Sept 11, 1987
Guy M. Parent	F94N-4F-C 99035955	May 18, 2000
Edna E.J. Francis	W0N-5M-C 8965	May 29, 1997
Sylvester Garrett	NB-NAT-6462	August 6, 1976
Edna E.J. Francis	F90N-4F-C 96005047	November 11, 1996
John F. Caraway	S4C-3T-C 43219	June 5, 1989
Irvin Sobel	S7N-3W-C 88021	October 15, 1990
William Eaton	W7C-5E-C 27191	July 1, 1992

VI.

DISCUSSION AND FINDINGSA. Res Judicata

This Arbitrator is in general agreement with the principle of res judicata as it applies to arbitration cases. The awards cited by the Postal Service, each in their own way, describe how res judicata operates in the arbitral context. After carefully considering the case authority cited by the Postal Service, the Arbitrator holds the Postal Service failed to demonstrate the principle of res judicata applied to the Becerra grievance.

The Postal Service based its position on the award of arbitrator Francis. Three grievances were presented to arbitrator Francis arising out of the March 1997 route inspections at Station F. Neither Grievant Becerra's case or the approximately 51 other cases were submitted to Francis for a final and binding resolution. The fact Grievant's case was not presented to arbitrator Francis means Becerra would never have his day in court if the Postal Service's position is correct. Arbitral authority teaches that individual cases are to be resolved on the merits if at all possible.

While it is true the grievances decided by arbitrator Francis involved issues arising out of the March 1997 route inspections and adjustments of Station F, they did not involve Grievant Becerra's route inspection or his subsequent route adjustment. The Arbitrator holds the basic facts among the three grievances which were the subject of the Francis Award were not proven to be identical or even similar in nature to the Becerra

case. Without an identical or similar set of facts, *res judicata* has no application. Becerra's situation involved its own peculiar and unique circumstances relating to his personal route inspection and adjustments.

Moreover, the parties' own conduct after the publication of the Francis Award undercuts the Postal Service's case. Following the September 11, 1999 decision by arbitrator Francis, the Postal Service and the Union met and resolved 26 other grievances "pursuant to the Edna Francis" award. The pre-arbitration settlement specifically incorporated 26 cases which were subject to the settlement agreement. If the parties had intended the Francis Award to have conclusive effect on other cases pending from Station F's route inspections, there would be no need for a pre-arbitration settlement agreement. The decision of arbitrator Francis would have automatically disposed of those 26 cases, if the parties truly believed *res judicata* applied.

Grievant Becerra's case was not among those listed in the pre-arbitration settlement. The document specifically incorporated the cases subject to the settlement agreement. Postal Service witness Young's testimony that the agreement was intended to settle all cases arising out of the Station F route inspection is in direct contradiction to the clear and unambiguous language of the pre-arbitration settlement agreement. Thus, the Arbitrator is compelled to conclude Grievant Becerra's case was not subject to the terms of the pre-arbitration settlement agreement.

Based on all of the above-stated reasons, the Arbitrator holds the grievance of Alberto Becerra is not barred from a decision on the merits based on the doctrine of *res judicata*.

B. Merits

Grievant's route was inspected between the dates of March 24, 1997 and March 29, 1997. As a result of those route inspections, management made several decisions that impacted on Grievant's route. Further, management implemented those decisions based on the route inspections. The Union protested and filed a grievance on behalf of Becerra.

A Step 1 meeting was held on May 30, 1997. Management denied the grievance. The Union appealed the Becerra case to Step 2. A Step 2 meeting was conducted on January 30, 1998. A Step 2 decision was rendered on January 30, 1998, in which the Postal Service agreed to make certain adjustments to Grievant's route. Jt. Ex. 2-8. However, the Postal Service denied the \$100 per day monetary relief requested by the Union for Becerra. In the Step 2 answer, the Postal Service acknowledged no wrongdoing and did not agree to the requested cease and desist order sought by the Union.

The Union advanced the case to Step 3. In the April 29, 1998 Step 3 decision the Postal Service, for the first time, admitted in writing, "[m]anagement erred in making their deductions, acknowledged this and corrected it." Jt. Ex. 2-41. Further, the Postal Service for the first time stated in writing, "[t]he appropriate remedy is to order management to cease and

desist." Step 3 officials denied the requested monetary relief as punitive.

Based on the admissions of the Postal Service, the Arbitrator must hold the Postal Service violated the National Agreement and Chapter 2 of the M-39 Handbook when they improperly adjusted Becerra's Route 1258 at Station F. The recitation of the facts surrounding the grievance handling is relevant to the determination of the appropriate remedy.

C. Remedy

The starting point for the review of the third issue of the appropriate remedy to be applied is the Postal Service's admissions it violated the National Agreement concerning the March 1997 route inspections and subsequent adjustments made at Station F to Grievant Becerra's Route 1258. The critical part about this case is the Union was forced to file a grievance to correct the contract errors made by management in addressing Route 1258 and 55 other routes at Station F.

A Step 1 meeting was held on May 30, 1997, where the grievance was denied. The Step 1 official stated the grievance could not be resolved at this level. It was not until some eleven months after the disputed route inspection that management admitted in the Step 2 decision it made improper deductions of office and street time, creating figures which resulted in improper route adjustments. The undisputed evidence offered at the arbitration hearing was Grievant's route remained out of adjustment for at least ten months.

The case did not end at Step 2 because of the dispute over the remedy. Some fourteen months later at Step 3, the Postal Service admitted management erred and for the first time agreed to a cease and desist order for management on the subject of route inspections and adjustments. Jt. Ex. 2-41. The monetary issue of the \$100 per day remained in dispute and the grievance was advanced to arbitration.

The parties offered a combined total of 34 arbitration awards involving the power of an arbitrator to award monetary relief. The vast majority of the cases submitted, including those from the Postal Service, recognized the inherent power of an arbitrator to award monetary relief for a contract violation. The crux of the disagreement centers over whether it is appropriate for an arbitrator to award monetary relief under a given set of facts and circumstances.

This Arbitrator is generally in accord with the principle stated by arbitrator Eaton "that where a violation has occurred a remedy must be afforded." Case No. W8N-5K-C 13928. As stated by arbitrator Eaton, the common law maxim has long held "there is no right without a remedy." Arbitrator Eaton correctly reasoned that the parties "to the National Agreement did not fashion empty provisions, nor did they intend that violation of the rights therein provided should occur, or continue, without impunity." Case No. WIN-5D-C 24783. The obvious reason being that if management ignores its own regulations, if left unchecked, serves

to frustrate and diminish the Collective Bargaining Agreement and the grievance process.

To correct the contract violation the Union was compelled to file 56 grievances, including the Becerra case, in order to secure compliance with the Collective Bargaining Agreement and the M-39. Fourteen months elapsed from the date of the inspections until management came clean for an admitted error and agreed to a cease and desist order. The record shows this is not the first time a problem had surfaced in San Francisco regarding route inspections. Grievant Becerra testified that while the process continued, his route was out of adjustment for at least ten months.

The holding of arbitrator Allen Walt in Case No. J90N-4J-C 93032396 is particularly instructive in a case of this type. Arbitrator Walt wrote:

In view of local management's refusal to take action that it knew was mandated, money damages are indeed appropriate. In fashioning a remedy, the undersigned believes it would be unfair to limit compensation only to those carriers not on the Overtime Desired Lists (ODL) between February 5, 1993 and the date in November 1993 when route adjustments were implemented. Nor can it be assumed that carriers on the ODL lists whose routes required adjustment were not adversely affected, even though to a lesser degree, than those who did not sign the lists. It also is essential to recognize the Union's interest in achieving, on behalf of its members, adherence to the terms of the National Agreement. Management's ability to successfully frustrate rights granted to bargaining unit members would seriously undermine the Union's ability to effectively represent Letter Carriers.

Emphasis added.

The Union in this case must share part of the fault for the inability of the parties to settle the Becerra grievance. In the initial written grievance and throughout the grievance procedure, the Union claimed \$100 per day for Becerra until management corrected the errors and readjusted his route to eight hours. At the arbitration hearing, the Union modified its demand to \$10 per day. In the judgment of this Arbitrator, \$100 per day for the violation at issue in the case at bar would be excessive and punitive. Nothing in the record of this case comes close to demanding a payment of \$100 per day to Becerra, until management corrected its errors, and properly adjusted Grievant's route.

There is precedent for the \$10 per day remedy for failure to properly adjust a letter carrier route. Management has 52 days to implement route adjustments under the M-39. Because of the Union's unreasonable initial demand for a monetary award of \$100 per day during the entire period Grievant's route was out of adjustment, the Arbitrator will limit the days the remedy is to be applied. Therefore, the Arbitrator will set a time frame covered by this Award to one hundred twenty (120) calendar days.

The regular workweek for a letter carrier is five days per week. Management had 52 calendar days from the completion of the mail count to make the route adjustments. Jt. Ex. 3. When that date became effective is not clear from the record in the instant case. The Arbitrator is confident the parties can agree on that day or some other suitable date to start the running of the

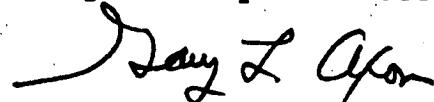
one hundred twenty (120) calendar day period for the payment of the \$10 remedy ordered for Becerra.

Accordingly, the Arbitrator will enter an Award consistent with the above discussion and findings.

AWARD

The grievance of Alberto Becerra is arbitrable. The Postal Service violated the National Agreement and Chapter 2 of the M-39 Handbook when they improperly adjusted Route 1258 at Station F. The Postal Service is ordered to compensate Grievant Becerra \$10 per day, based on a five-day workweek for the first one hundred twenty (120) calendar days his route was out of adjustment. The starting date should begin at approximately fifty-three (53) calendar days after the completion of the mail count through the first one hundred twenty (120) calendar days Grievant Becerra's route was out of adjustment.

Respectfully submitted,



Gary L. Axon
Arbitrator
Dated: December 9, 2000