

C#08614
A-D

ARBITRATION AWARD

In the Matter of

**UNITED STATES
POSTAL SERVICE**

and

**NATIONAL ASSOCIATION
OF LETTER CARRIERS**

G. CoblenTz	W4N-5T-C 2960
M. Weinberg	W4N-5T-C 2961
R. Ruble	W4N-5T-C 2962
S. McVicker	W4N-5T-C 2963

APPEARANCES

For the Service:

David English
Mahlon D Valentine

Rosalyn Wiedhop

For the Union:

Thomas H Young jr

Susan McVickers

ARBITRATOR:

EDWIN R RENDER

By the terms of the Contract between the **UNITED STATES POSTAL SERVICE**, hereinafter referred to as "the Service", and the **NATIONAL ASSOCIATION OF LETTER CARRIERS**, hereinafter referred to as "the Union", there is provided a grievance procedure including arbitration. Accordingly the parties selected **Edwin R Render, Seattle Washington** as impartial arbitrator. A hearing was held in **Reseda California** on **October 20, 1988**. Equal opportunity was given the parties for the preparation and presentation of evidence, examination, and cross-examination of witnesses, and oral argument.

THE ISSUE

The issue in this case is whether the Service violated the contract by failing to conduct route inspections on the routes of each of the grievants during the month of September 1987 and if so, what is the appropriate remedy.

CONTRACT PROVISIONS

Article 15.2, Step 2 of the contract provides in part:

In all grievances appealed from Step 1 or filed at Step 2, the grievant shall be represented in Step 2 for all purposes by a steward or union representative who shall have authority to settle or withdraw the grievance as a result of discussions or compromise in this Step. Installation or designee in Step 2 shall also have authority to grant or settle the grievance in whole or in part.

Article 15.2, Step 3 of the contract provides in part:

The Union representative shall have authority to settle or withdraw a grievance in whole or in part. The Employer's representative shall likewise have authority to grant the grievance in whole or in part.

THE FACTS

The four grievants are letter carriers who are assigned routes in the Reseda California Post Office. On February 6, 1987 each grievant informed the Service that he/she wished to have an inspection of their route in accordance with section 271 of the M-39 handbook. For reasons that were not explained at the hearing, the inspections were not conducted, although both parties agreed that each grievant was

qualified for a special inspection under section 271 of the M-39 handbook.

Sometime prior to July 14, 1987 the union filed several grievances involving route inspections. The grievants involved in this hearing all filed grievances. In addition, three or four other employees also filed grievances requesting inspections. On July 14, 1987 the Service and the Union held a step 2 meeting to discuss four of the grievances. As a result of this meeting, Mr. Valentine, the officer in charge, agreed to inspect the four routes of the grievants who are presently before the Arbitrator. On August 7, 1987 Mr. Valentine wrote a memorandum which stated in part:

It is agreed that route 3505, 3520, 3523, and 3526 will be inspected in September. Based on the above, these grievances are resolved.

This agreement was entered into with both parties realizing that there were additional requests for route inspections pending.

Mr. Valentine testified that in July it appeared that the four inspections could be conducted in September with no difficulty. According to Mr. Valentine several two events occurred in late July or early August and October which delayed the inspection. First, the former postmaster at the Reseda Post Office was indicted for embezzlement or theft and was apparently tried in federal court and sentenced. According to Mr. Valentine, the former postmaster's embezzlement trial and subsequent resignation were quite disruptive. About August 1 Mr. Valentine, who had previously been the

supervisor of postal operations, became the officer in charge. Another individual was brought in as his replacement as supervisor of postal operations. Apparently Mr. Valentine was absent from the office during part of July or September and a third officer in charge assumed control of the office for a brief period of time.

There was also a period of time during which Mr. Valentine testified that he was, in effect, holding down the job of officer in charge and superintendent of postal operations. Mr. Valentine testified that by September 15 he became aware that the route inspections could not be accomplished in September. However, he did not specifically recall informing either the grievants or the Union steward of the fact that it would be impossible to do the route inspections in September, although he thought that informing the Union about such a matter would have been his normal practice. The Union offered oral testimony that it was not informed that the inspections could not be completed in September.

On October 1, 1987 Mr. English, a regional labor relations executive and Mr. Young, the Union's representative in this matter met and discussed route inspections. At the conclusion of their meeting, they telephoned Mr. Valentine and obtained his agreement to perform the inspections by November 14. Mr. Valentine testified that he understood that the telephone call dealt with the routes of the four grievants whose cases are presently before the Arbitrator. However, it appears that Messrs. Young and English actually discussed and conducted step 3 meetings on the three other cases

involving employees Doyle, Hestert, and Mr. Coblenz. The grievance numbers covered by Messrs. Young's and English's step 3 settlement were cases W4N-5T-C 47346, W4N-5T-C 47347, and W4N-5T-C 47348. Their agreement states:

If the employees are eligible, special route inspections will be given commencing no later than 11-14-87. Based on the above, this grievance is settled.

This settlement is dated October 16, 1987.

An earthquake occurred in the Los Angeles area on the afternoon of October 1, 1987. It did some damage to the Reseda Post Office but it caused a complete shut down of the Van Nuys sectional center for a period of several days. There was testimony that during the first two weeks after the earthquake, the volume of third class mail at the Reseda Post Office was greatly reduced. It was estimated that the total mail volume was down by approximately 40% during the first two weeks after the earthquake. Conversely, Mr. Valentine testified that it would have been impractical to conduct a route inspection during the last two weeks of the month because the volume of mail was greatly increased because of the back log of mail created by the earthquake.

On October 19, 1987 the Union filed four grievances which in substance alleged that the Service had violated its July agreement to conduct the route inspections in October. The second set of grievances state, in part:

WK7, route 3505-McVicker request a special route inspection received by postmaster February 6, 1987. No inspection was given. Grievance was filed step 2 answer was route will be given inspection in September 1987. As

of October 1 no inspection had been given, nor has any explanation mention request by management been asked for or received. There has been a change in OICs from August to September. Mr. Valentine remained in the office. Served as OIC. There were three weeks from August 7 settlement date until beginning of September and four weeks in September to organize route inspections or ask for extensions. The relief requested by the Union is 'Union requests that for every minute of overtime and/or auxiliary assistance used on route 3505 from October 1, 1987 to the time routes are adjusted, carrier on 3505 receive one minute equity or administrative leave. And that management adhere to article 15 of the national agreement.

These grievances were denied by the Service and were presented to the Arbitrator for a final and binding decision. The basis upon which they were denied was that the routes were inspected on November 16, 1987 in accordance with the step 3 settlement between Messrs. Young and English.

POSITIONS OF THE PARTIES

Position of the Union

The Union contends that the Service violated a step 2 settlement agreement that it made with the Union to the effect that it would conduct inspections of the four routes involved in this case during the month of September 1987. It failed to comply with its agreement. Moreover, the Union contends that the Service did not notify the Union that it would not be able to comply with its agreement, nor did it ever seek an extension of the agreement that was made in July.

The Union contends that the step 2 settlement agreement is final and binding on the Service. It also contends that by way of relief the aggrieved employees are entitled either to compensation or to

administrative leave for all overtime hours worked between October 1 and the day on which the routes were inspected and adjusted.

The Union denies that the settlement agreement which was signed by Messrs. English and Young has any bearing on the grievances before the Arbitrator. The agreement that was reached between Messrs. Young and English dealt with different routes than are involved in this case. For the foregoing reasons the Union requests that the grievances be sustained and that the Service be directed to pay the grievants at the overtime rate for all excess hours worked between October 1 and November 16, 1987 or that they be granted an equal amount of administrative leave.

Position of the Service

The Service contends that the grievances should be denied for several different reasons. First the Service contends that the step 3 settlement between Messrs. English and Young resolves the cases presently before the Arbitrator. When Messrs. Young and English arranged a conference call with Mr. Valentine, Mr. Valentine understood that all seven routes would be inspected by November 14. According to the Service the step 3 settlement clearly supersedes the step 2 settlement and constitutes an agreement that the routes should be inspected no later than November 16.

The Service also contends that the resignation of the former postmaster at the Reseda Post Office was such a disruptive event that the Arbitrator should take this into consideration and not require the

Service to be held to an unreasonable standard of performance when such an unusual event as this occurs. The evidence was undisputed that the former postmaster's theft and subsequent trial was an extremely disruptive event.

Furthermore, the earthquake which occurred on October 1 made it impossible to conduct an inspection during the month of October because that event disrupted the regular flow of mail. During the period that the Van Nuys sectional center was not processing third class mail the volume of mail in the Reseda Post Office was reduced by as much as 40%. When the Van Nuys operation got back on line, the mail volume was extremely heavy for the remainder of the month. Clearly it would have been unfair to the employees to conduct an inspection during the first two weeks of the month when there was insufficient mail and it would have been unrealistic to have conducted one in the second two weeks because of the unusually heavy volume mail.

Finally, the Service asserts that the remedy requested by the Union in this case is totally inappropriate. The employees worked insignificant amounts of overtime during the period between October 1 and November 16. The overtime that each worked was no more than would normally be expected of carriers. Furthermore, they were paid for this overtime and the Service contends that they were not unduly inconvenienced. To grant them additional administrative leave or pay amounts to paying them double time and a half for trifling amounts of overtime worked. Because of the extenuating circumstances that are

present in this case, the Service should not be subjected to such a harsh remedy, even assuming the Arbitrator were to find that the Service did not live up to its step 2 agreement with the Union.

DISCUSSION

Based on the provisions of the Contract, the testimony given at the hearing, and the arguments of the representatives of the parties, the Arbitrator has concluded that the Service violated the step 2 agreement regarding grievants Winberg, Ruble, and McVicker. He has also concluded that providing the grievants with an amount of administrative leave equal to the amount of the number of hours of overtime they worked between October 1 and November 16, 1987 is an appropriate remedy. The grievance of Mr. Coblenz is denied.

At the outset the Arbitrator must note that the problem concerning the routes of the four grievants involved in this case did not suddenly arise in September or October 1987. The original requests for inspections were submitted in February. Nothing was done about the requests until grievances were filed in the summer of 1987. It is true that management at the Reseda Post Office experienced some unusual occurrences during the summer and fall of 1987. However, in view of the fact that the requests to inspect these routes laid dormant for several months must be taken into account in evaluating the Service's overall conduct in this case.

It is clear that the step 3 settlement which was made by Messrs. English and Young covered only the grievance of Mr. Coblenz. That settlement did not deal with the cases of Winberg, Ruble, and McVicker. It is clear from USPS exhibit 1 that the step 3 agreement covered grievants named Doyle, Hestert, and Coblenz. Even though Mr. Valentine may have understood that he was discussing all seven inspections with Messrs. English and Young on the telephone, it is clear that the document which was authored by Mr. English simply did not cover all of the cases. Furthermore, there is no evidence from which the Arbitrator can infer that the Union misled the Service in agreeing to the step 3 settlement on October 16. Thus, the step 2 settlement of the other three grievances was not affected in any way by the settlement that was agreed to by Messrs. Young and English and the Service's obligation to inspect the routes of Winberg, Ruble, and McVicker continued.

The Arbitrator has already noted that the Service did not act on the requests for inspections in a timely manner. In addition to this, it seems to the Arbitrator that the Service was remiss in not communicating with the Union when it became apparent that it could not conduct the inspections in September. On this particular point, the Arbitrator is required to credit the Union's testimony that no official from the Service ever contacted a responsible Union official and informed the Union that it would be impossible to do the inspections in October. That is the very reason the second set of grievances were filed and it is obvious from reading the face of the grievances that this is the case.

Finally, there was testimony about the details of the inspections which indicated to the Arbitrator that while the officer in charge spends some time conducting such inspections, the brunt of the work falls on first line supervisors who are required to actually count the mail with the carrier and accompany him on the route one day during the course of the inspection. It is the Arbitrator's understanding that arrangements had been made for two other supervisors to perform these functions. Hence, it is somewhat difficult for the Arbitrator to agree with the Service that it would have been impossible to have done these inspections during the month of September even though the Arbitrator is sympathetic with the difficult position in which Mr. Valentine found himself.

The Arbitrator also has some question about the disruptiveness of the earthquake. During the hearing, overtime records of the grievants were introduced into the record. Had the earthquake disrupted operations in the receipt of post office to the extent that the Service alleged that it did, it seems to the Arbitrator that the amount of overtime worked during the last two weeks of October would have been substantially more than it was.

The Arbitrator has also concluded that the grievants are entitled to administrative leave in the amount of overtime that they worked between October 1 and November 16. It appears to the Arbitrator that this was a case in which the Service did not act upon employee requests in a timely manner. It also appears to the Arbitrator that the grievants can only be made whole by a remedy such as granting

administrative leave. The Arbitrator recognizes that many of the events which occurred here were beyond the control of Mr. Valentine but the M-39 handbook and the grievants' settlement which he made were binding agreements which should be followed.

AWARD

The grievances of Winberg, Ruble, and McVicker are sustained. These three employees are entitled to administrative leave equal to the amount of overtime worked between October 1 and November 16, 1987. The grievance of Mr. Coblenz is denied.

3 December 1988



EDWIN R RENDER
Arbitrator