C-33218

REGULAR ARBITRATION

IN the Matter of the Arbitration	) GRIEVANT: Class Action
BETWEEN	) POST OFFICE: New Haven, CT
UNITED STATES POSTAL SERVCE	) CASE No.:B11N-4B-C17565292
and	) DRT No.: 14-406583
NATIONAL ASSOCIATION OF LETTER CARRIERS	) UNION No.: 1967317

BEFORE: DONALD J. BARRETT, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Ms. Rebecca Peperni, LR Specialist

For the Union: Mr. Vincent J. Mase, President, Branch 19

Place of Hearing: New Haven CT Plant facility

Date of Hearing: February 15, 2018

AWARD: The grievance is sustained

Date of Award: February 26, 2018

Award Summary

The Union provided sufficient evidence that postal officials were changing the end tour clock rings of five letter carriers who were actually "on the street" during the time Management shows them in the office, or completed tour. There is sufficient evidence that Management did this to avoid data inconsistent with a nineteen hundred hours directive to be off the street.

There is sufficient contractual evidence that refutes any reason offered for making such changes, and which places limitations for making clock ring changes.

Arbitrator

STATEMENT OF PROCEEDINGS:

Pursuant to the provisions of the parties 2011-2016 National Agreement, or Contract an arbitration hearing was held at the New Haven CT postal facility on February 15, 2018 between the National Association of Letter Carriers, also known as the Union, and the US Postal Service, also known as the Service, or Management.

The parties to this hearing were provided a full, fair, and objective opportunity to be heard, to present argument, evidence, and testimony from their respective witnesses. By request of the parties, each witness was duly sworn an oath prior to their offered testimony.

Counsel for each party was prepared, and passionate concerning their respective positions.

The Union called the following witnesses:

Ms. Donna Ryasa, Union Official

Mr. Kenneth Honore, Union Official

Both parties provided oral Opening & Closing Statements

JOINT EXHIBITS:

Joint 1, - The National Agreement, inclusive of the parties Joint Contract Administration Manual (J-CAM)

Joint 2, - Moving Papers, Pages 1-77

UNION EXHIBIT:

U-1, Step B Team decision, December 7, 2017

The Service provided two (2) previously issued Regional arbitration decisions for consideration.

The Union provided one (1) previously issued Regional arbitration decision for consideration.

I have read thoroughly each decision submitted, and shall offer comment in my opinion where it may be found to be relevant to the matter before me.

STIPULATED FACTS NOT IN DISPUTE BY THE PARTIES:

There is none.

ISSUE TO BE DECIDED:

The parties ask the arbitrator to decide the issue as stated by their parties Step B Team.

"Did management violate Articles 15 and 19 of the National Agreement specifically the ELM 661.2 (1), 665.16, 665.44, the F-21 and previous DRT decision when Postmaster Sullivan and Supervisor Jackson altered some carrier's clock rings to falsely show them back in the office before 19:00 without their knowledge? If so, what shall the remedy be?"

BACKGROUND:

The Union maintains that postal officials inappropriately changed the end time clock rings for letter carriers Cusack, (twice), Smith, Lamb, Wyman and King on various dates to make it appear that these employees were back in the office before the cut off time of 19:00 hours (7:00PM) when in fact, these same employees were still on the street.

The Service maintains that they were simply correcting errors made by these employees throughout the day, as the time cards reflect, and there was no malice intended, nor did the employees lose any pay by these changes.

CONTRACT PROVISIONS CITED:

Article 15 - GRIEVANCE-ARBITRATION PROCEDURE

Section 1. Definition

"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, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement."

Article 19 - HANDBOOKS AND MANUALS

"Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions."

THE POSITION OF THE PARTIES IN THIS MATTER:

The National Association of Letter Carriers

The Union, with exhibited passion, argues that the postmaster and supervisor knowingly manipulated employee clock rings to make it appear these employees had returned to the office before the district mandated cutoff time for letter carriers to be back in the office no later than nineteen hundred hours (19:00, or 7 PM). That on these occasions, May 27 & June 28, 2017 for carrier Cusack, May 27, 2017 for carrier's Jackson, Lamb, and Wyman, and June 5, 2017 for carrier Smith, they were in fact still on the street at the times their clock rings were later changed to reflect them in the office before nineteen hundred hours.

That Management is without any right to alter an employee's clock rings to make it appear to be something different than what is factual, and fail to inform the employee that they have done so.

The Union argues that there are postal regulations mandating Management to accurately reflect the time of their employees, and in this matter they deliberately falsified the clock rings to make it appear to the district that their employees were off the street before the cutoff.

The Union maintains that local Management has been made aware previously, as stated by the parties Step B Team (which is precedent) that they must insure proper clock rings, and not alter such without reference to the M-32, and F-21 Handbooks.[1]

The Union argues that both postal officials clearly acknowledged that they changed the clock rings, and offer no plausible explanation for doing so, and also acknowledge they are aware of relevant postal regulations.

The Union acknowledges that these changes do not negatively impact the employee's pay, but does reflect incorrect data for how long a letter carrier spends on the street, and may impact any future route inspection.

The Union asks that this grievance be sustained, and seeks, among other things outlined in their grievance[2] each employee listed receive a one hundred dollar (100.00) lump sum payment, and an apology.

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[1] See Union Exhibit 1

[2] See J-2, Page 10

The US Postal Service

The Service argues with equal passion that the Union has failed to meet its burden of proof, and this grievance must be denied in its entirety.

The Service maintains that while acknowledging the postmaster and supervisor did make changes to the employee's clock rings the next morning (or later) it was only to make corrections. That corrections were made to show multiple deviations from assigned lines of travel, incorrect route cites, incorrect numbered locations, or incorrect moves to street. That in each instance, there were numerous changes made on those dates for each letter carrier because of those issues.

The Service maintains further that they have an obligation to insure correct clock rings to accurately reflect what the letter carrier is doing at all times, and also to correspond to the MSP reports, and scanners employed.

The Service offers that there was no malicious, or devious intent in changing the clock rings, and no impact to the employee's pay. Further, that they have already notified the Union that no route inspections are contemplated within the next year, and any data from the period cited in this grievance shall not otherwise be used, thus eliminating any issue the Union should have about the data.

The Service, through its capable advocate argues that this grievance has no merit and should be denied, and further, that the remedy is excessive, and irrational, and should not be considered by the arbitrator.

FINDINGS & OPINION OF THIS ARBITRATOR:

An old Irish saying goes, "May you get all your wishes but one, so that you will always have something to strive for!"

In the instant, contentious matter before me the Union seeks a variety of remedies as a solution to their grievance. Many of their requested remedies lie outside the authority given to the arbitrator by the parties, and their Agreement.

However, the arbitrator is not immune to the obvious frustrations shared by the Union, if for no other reason than they cite what to them is a similar matter that has previously been resolved in their favor by the local Step B Team.[3]

[3] See Union 1

The Union argues that the postmaster, and supervisor falsified the cited employee's clock rings on the dates cited to make it appear that they returned to the office before a time, arguably set by the district of no later than 7 PM. The Service, through the postmaster and supervisor acknowledge changing the cited clock rings, but only to correct the letter carrier's incorrect clock rings attributed to using the wrong route numbers, leaving at the wrong times, working auxiliary routes but not changing from a regular route to the X route, and other wrong numbers put into the time keeping system incorrectly by the letter carrier.

In both the moving papers[4] and their respective testimony offered at hearing, both postal officials acknowledge that it is their employee identification numbers on the "Employee Everything Reports"[5] making the cited changes. They both vigorously maintain that there was no intent to hide their actions, nor were they made maliciously, or to impact the employee's pay.

The officials offer that it is their duty to accurately correct incorrect clock rings entered by the employee, and to properly reflect the employee's actual duties during the times noted. That the following morning, if not later they will review each letter carrier's clock rings in relationship to what they actually worked, or should have been working but inadvertently clocked onto the wrong number, or location, and when found to be clocked incorrectly, they will make the adjustment.

The postal officials offer that there is no monetary harm to the employee, and no data associated with this period will be later cited.

However, the Union maintains that the postal official's actions constitutes falsification of official postal forms, and Management should be punished accordingly.

After a thorough review of all submitted exhibits, related, and relevant material, and carefully parsing witness testimony I find the need to reduce this opinion to the simplest possible position.

There is no dispute that the letter carrier's cited made their own end tour (ET) clock rings, and those clock rings were after 7 PM. There is no dispute that until the time the cited letter carrier's made their end tour clock rings, they were, in fact "on the street."

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[4] See J-2, Pages 6-7, 12, 13, 29 & 30.

[5] See J-2, Pages 21-27

And there is no dispute that the postmaster, and/or supervisor after the dates cited for each relevant letter carrier did change those end tour times to reflect a return to the office, and an end tour before 7 PM.

Further, there is no dispute that the issue of a supervisor in the same office improperly changing an employee's clock rings was resolved favorably for the Union in December, 2017. And the parties Step B Team cited this as a violation of the National Agreement. The parties at the national level acknowledge that a Step B decision establishes precedent only for the office cited in the grievance, and that precedential decision can be relied upon when addressing similar issues in the future.[6] (It must be noted that the postmaster stated he was not aware of this grievance resolution.)

The postal officials both offer that many corrections were made to the cited employee's clock rings on the days claimed by the Union, and those many other corrections are proof that there was no intent to deceive or violate the Agreement, but only to appropriately correct misplaced clock rings. There is no dispute that multiple clock ring adjustments were made at the same time the end tour clock rings were being changed, or that the employees were not harmed financially on those cited days.[7]

The Service's witnesses appeared before me as sincere, and openly attempting to explain their positions in support of their changing the clock rings of these employees.

However, what I expected to hear (or to discover in the moving papers) was a simple, explainable reason for the need to change the end tour times, when in fact the employee was still on the street after 7 PM, and did clock out after 7 PM on their own. I did not hear, nor find any such plausible reason(s), or any contractual right for making these changes.

There is offerings that the letter carrier clocked onto the wrong route, used the wrong numbers, didn't make the correct move to street, or back to office, but no satisfactory answer, to this arbitrator as to why the actual end tour time had to be changed when the employee made their own, factual end tour clock ring.

The Service states that "it is what it is" if a letter carrier is out past 7 PM, and that there are occasions when that happens, and they deal with that.

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[6] See J-CAM, Page 15-8

[7] See J-2, Pages 21-27

There was no dispute offered that there is an imposed, or accepted return to office from the street time, either imposed by the district, or locally of 7 PM.

And there is no dispute that the F-21 Handbook allows a postal official to record an employee's clock rings, under limited circumstances such as travel, or an assignment away from the employee's normal time card location.[8] Or that the PO 209 Handbook allows Management to review the accuracy of employee clock rings, and to correct any incorrect operational transactions.[9] Based on the offered Management testimony, I believe they are relying on this section, "to correct incorrect operational transactions."

However, while this may (or may not) be their reasoning for changing the end tour times of the employees cited, I find it to be misplaced.

The M-39 Handbook states in relevant part, "Assure that all clock rings are accurate…"[10] To be *accurate* the clock rings for an end tour cannot be changed when in fact, the time that Management changes it to reflects the time the employee was actually still working, and had not ended their tour.

Changing the end tour clock rings to reflect a different end tour than that which the employee factually clocked out at the end of their tour is not being *"accurate"*, it is, without good cause shown misrepresenting what is in fact *"accurate."*

The Service states that they only corrected "errors" made by the letter carrier but offers no substantive evidence of why the letter carrier coming back into the office after 7 PM, and clocking out on their own needs to be changed to reflect an earlier end tour time – especially in light of management testimony that a carrier out on the street after 7 PM,"Is what it is."

Doing so lends itself to the argument, and/or evidence that local Management is attempting to avoid submitting data that may reflect poorly on them by having letter carrier's on the street past the imposed time limit of 7 PM.

Further, by not informing the employee that their end tour time has been changed, and a reason offered for doing so impugns their stated reasons for doing so, no matter there being no impact to their salary. Management has an obligation, when changing clock rings, no matter how insignificant it may appear to them to share this information with the employee.

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[8] See F-21, Section 141.21

[9] See Handbook PO-209, Section 4.4.2

[10] See M-39, 126.42

This can lead to the elimination of reason for the perceived deficiency causing them to be on the street so long, or late, or simply because you want them to know what they did led to such a change.

Any change affecting working conditions is a mandatory subject of discussion with the employee, and the Union. If Management believes they have cause to alter clock rings because of the negative impact perpetrated by employees that impact working conditions, it must be shared.

The parties ask the arbitrator to decide disputes between them, and limit his/her authority to interpret those contractual disputes to the confines of the parties Agreement.[11] The arbitrator's award must "draw its essence" from that Agreement.[12]

If the intent of the parties was to allow Management to change clock rings for other than those reasons cited in the F-21, M-32, M-39, or Postal Handbook 209, as submitted by the parties before me, it is safe to say alternative reasons would have been offered - yet none are offered, and none are found.

The most relevant position to take in this matter is that the parties' intention was for all information relied upon to document the operations of a postal facility be accurate, and in the matter before me the end tour clock rings for the cited employees is not accurate, and was unilaterally changed to reflect something that would be more favorable to the operations of the New Haven Post Office. After all the evidence submitted, there is simply no other conclusion.

Arbitrators generally review three principles as guides in determining contractual intent. The "standards of contract interpretation", such as prior arbitral awards, judicial decisions (such as the Step B Team), and industry practices.

In this matter, the Union has provided relevant arbitral decisions in their favor.[13] They have also provided the previous Step B Team decision, relevant to this issue.[14]

A second principle utilized is the "concept of past practice." The submitted Step B Team decision demonstrates how this practice of changing clock rings has been addressed in New Haven.

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[11] See Steelworkers v. Enterprise Wheel & Car Corp., 80 S.Ct. 1358, 46 LRRM 2423, (1960)

[12] See Enterprise...

[13] See J-2, Page 5, and submitted decision by Arbitrator Talmadge dated December 2, 2009

[14] See Union Exhibit 1

The third principle that may be utilized is the "principle of reasonableness."[15]

It is simply not reasonable, given the circumstances before me to change clock rings accurately made by the employee to reflect something different - to a time that reflects more favorably for local Management (before the 7 PM cutoff time) than what is true.

Further, it is an unreasonable assumption that the parties intended during their deliberations, no matter the circumstances for Management, or anyone to skew data to appear more favorable, and enhance a position. Any such proposition would be inherently unfair, and presents a false impression at odds with the facts.

The Service retains the right to correct late arrivals/street time without changing the employee's own clock rings. This can be, among other ways, retraining, more detailed instructions, a closer observation, and as a last resort, disciplinary measures. Each of these measures may accurately correct the problems, if any without resorting to altering accurate clock rings, and providing misleading data.

"Expressio unius est exclusion alterius", an ancient Latin phase which means, "The expression of one thing is the exclusion of another."

In the matter before me, I find no expression conveying Management's right to change the end tour clock rings of those employees who accurately clocked out at the end of their tour of duty on the dates in question. Without such an expression, or evidence to the contrary, Management is not excluded from its own obligation to maintain accurate data, and avoid any violation of the parties' Agreement.

Remedy

The Union request for remedy, in this arbitrator's opinion borders on a declaration of war. As a former president was noted for saying, "I feel your pain." The Union has a previously issued local decision that addresses this very same issue, yet the issue appears to repeat itself in this matter.

[15] See The Common Law of the Workplace, the views of arbitrators. 2nd ed. National Academy of Arbitrators

However, labor-management disagreements that cannot be resolved amicably are left to a neutral party to decide. And while such a party has an abundance of authority bestowed by the parties' themselves, after such a decision, the arbitrator leaves, and the two parties remain to live, and work together.

In the matter before me, the Union expresses such desires to remedy this grievance that many of them would, in my opinion only serves to inflame the relationship. I believe most arbitrators would view it the same such way. Therefore I shall not entertain those.

I would instead ask that the parties recognize the cost of this endeavor, financially, emotionally, and for the shared goals they often work toward, and to "seek a newer world" in their relationship. It matters not who takes the first step.

Based upon the reasons outlined above, I find that the Service has violated Article's 15 & 19 of the National Agreement.

I choose not to address claimed violations of the ELM, as it serves no useful purpose, and fails to accomplish a needed improvement in the parties' relationship.

AWARD:

1. All data collected, and/or maintained related to any letter carrier's clock rings during the period cited in this grievance shall be null and void for data record keeping, and shall not be relied upon in any future evaluations.
2. The Union shall be paid the sum of one thousand dollars ($1,000.00) for having to take this matter to arbitration after having received a Step B Team decision finding Management in violation of the Agreement for a same/similar issue in the same office. (The Union asks for a lump sum of one hundred dollars for each letter carrier cited, as a punitive award. A punitive award is intended solely to punish and deter the breaching party.[16] I am not inclined to "punish" anyone as I do not find the Service willfully caused harm to the employees. Any subsequent same such issue may alter that opinion.)
3. The Service is ordered to cease and desist from inappropriately changing employee clock rings, and shall in all otherwise instances follow the mandates of the Agreement, and its inclusions.

Nothing Follows

[16] See Sheet Metal Workers Local 416 v. Helgesteel Corp., 335 F. Supp. 812, 80 LRRM 2113 (1971)