

REGULAR ARBITRATION PANEL

C# 10134

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO

GRIEVANT: Class Action

CASE NO: S7N-3S-C 88049 & 88050

GTS NO: 12115 & 12116

B. R. SKELTON, ARBITRATOR

APPEARANCES:

For the U. S. Postal Service: Maxine C. Counts

For the Union: Charles Windham

Place of the Hearing: West Palm Beach, FL

Date of the Hearing: May 9, 1990

Briefs: June 11, 1990

AWARD:

These grievances are arbitrable. Those carriers affected by these grievances who worked on January 2, 3, 4 and 5, 1990 are to be paid for one hour of pay at the premium rate for each of these four days on which they actually worked. Management is admonished to abide by the rules and regulations of the National Agreement and relevant handbooks when it conducts counts and inspections and implements changes in routes as a result of the counts and inspections.

Date of the Award: July 23, 1990

B.R.Skelton

B. R. Skelton, Arbitrator

STATEMENT OF THE CASE

On March 10, 1989 a route count and inspection was completed on zones 10 and 18 in the West Palm Beach Post Office. Based on postal regulations any changes in those routes should have been completed by May 2, 1989. The route changes were finally implemented on January 6, 1990.

On November 8, 1989 the Union initiated a request for information as a basis for filing a grievance. The grievance was heard in Step 1 under the UMPS procedure on December 15, 1989. The grievance was denied as untimely and also on its merits. The grievance remained unresolved through the remaining steps of the grievance procedure and is now the subject of this arbitration.

ISSUE

There are two issues to be resolved in this matter. The first issue is :

Is this grievance arbitrable?

If arbitrable, the second issue to be resolved is:

Did the Postal Service violate the National Agreement and relevant handbooks when it did not implement timely the route changes after a count and inspection? If so, what shall the remedy be?

POSITION OF THE POSTAL SERVICE

The Postal Service makes the following contentions and allegations in support of its position that the grievance is untimely and should be denied on its merits:

1. The grievance is untimely filed because the Union knew from the very beginning that the date of implementation of the changes in zones 10 and 18 would be the fall of 1989.
2. The Union acquiesced to this time frame for implementation of the route changes.
3. To be timely, the grievance would have had to have been filed within 14 days of May 2, 1989 under provisions of the National Agreement or within five (5) working days under provisions of UMPS.
4. Management admits that it did not seek an exception to the 52 day implementation period because it had verbal agreement with the Union to delay the implementation of the route changes.

5. There were no injured parties even if the Postal Service did violate the National Agreement. All affected carriers were either on the overtime desired list or had special adjustments made to their routes so they did not have to work overtime.

Because the Postal Service did not violate the National Agreement and relevant handbooks in the manner in which it made route adjustments in zones 10 and 18, the grievances should be denied and dismissed in their entirety.

POSITION OF THE UNION

The Union makes the following contentions and allegations in support of its position that the grievances were timely filed and should be granted on their merits:

1. The grievances were timely filed because the violation continued on a daily basis until route adjustments were made on January 6, 1990.
2. The Union never waived its right to appeal the delay in implementation.
3. Management violated the 52 day rule without seeking an exception required by Part 211.1 of the M-39 Handbook.
4. The only question left to decide is the appropriate remedy. All carriers who worked more than 8 hours when their routes were out of adjustment are entitled to a remedy from May 2, 1989 to January 6, 1990.

Because the Postal Service violated the National Agreement and relevant handbooks when it did not implement the required route adjustments in zones 10 and 18 in a timely manner, every affected carrier should be paid a lump sum of \$500.00 each. This applies to the 15 affected carriers.

DISCUSSION AND OPINION

The credible testimony and documentary evidence of record establishes that Postal Management began an inspection in zones 10 and 18 in the West Palm Beach Post Office in early 1989. This count and inspection was completed on March 10, 1989 but the changes called for were not implemented until January 6, 1990.

The Union was informed at the outset that the changes warranted could not be implemented within the 52 day time period called for by handbook regulations. Postal Management believed the Union agreed to an extension of the time limit and, for this reason, did not request an exception under Part 211.1 of the M-39 Handbook. Throughout the summer of 1989 the Union was kept informed of the status of the changes that were to take place. The changes necessitated new cases, new vehicles and extensive changes in route territories and work assignments. All the work was completed manually without the aid of computers and was done in the West Palm Beach Post Office.

On November 1, 1989 approval was granted for the scheme changes and on that afternoon the carriers and stewards were informed that the changes had been approved and would be implemented January 6, 1990.

From the time of the Union's request for information on November 8, 1989 throughout the grievance process, including the arbitration hearing, the Postal Service challenged the timeliness of the filing of the grievance. The Postal Service argued and presented direct testimony and documentary evidence that the Union had agreed to a waiver of the 52 day time limit until at least the fall of 1989. And yet the Postal Service contends that a grievance should have been filed within 14 days of May 2, 1989. The Postal Service cannot have it both ways. It cannot argue that an extension of the implementation date was agreed to and at the same time require the Union to abide by a 14 day time limit from May 2, 1989.

The Union on the other hand, argues that the time limit did not begin to run until the changes were finally implemented on January 6, 1990 and the Union could file a grievance challenging the implementation of the changes at any time because the violation continued on a daily basis. But the Union cannot have it both ways either. The Union cannot wait to file a grievance without having agreed to a fall implementation date for the changes and have the sought after remedy extend back to May 2, 1989. In other words, the Union either agreed to a fall implementation date of the changes warranted by the count and inspection conducted in early spring 1989 or it waived its right to any remedy during the period of time that it sat on its rights. If the Union wanted its remedy to date from May 2, 1989, it was obligated to file a grievance within 14 working days under the National Agreement or within 5 working days under the UMPS procedure from May 2, 1989.

The Union is correct when it contends that the violation was an ongoing violation until the changes were made in routes. For this reason, the Union was entitled to file a grievance and have it heard in Step 1 on December 15, 1989. The November 8, 1989 request for information began a time period or at least kept the time period alive for the Union's grievance which was finally heard in Step 1 on December 15, 1989. There was a good faith belief by both parties that the Postal Service had until the fall of 1989 to make the route adjustments, otherwise the time limits would have begun on May 2, 1989. As stated, neither party can have it both ways, so it is the conclusion of this Arbitrator that the parties agreed to extend the implementation date until the fall of 1989 and for this reason the Union's grievances are ruled arbitrable as of the date they were first heard in Step 1, December 15, 1989.

The Postal Service admits on the merits that it did not request an exception under Part 211.1 of the M-39 Handbook. For this reason, the Postal Service is in violation of that handbook because it did not implement the changes within the agreed to time frame, namely the fall of 1989. The first date on which the Postal Service was notified that the Union might have a potential grievance was November 8, 1989. As noted, the evidence is that the grievance was first heard in Step 1 under the UMPS procedure on December 15, 1989. The fall of 1989 is a nebulous time frame extending calendar wise from September through December 20. The National Agreement and Handbooks prohibit any scheme

changes during the period November 15 through January 1 of any year. When the Union representatives initially approached Management with the grievance their contention was that it was for the purpose to force an implementation of the changes in routes. Subsequent to this, Union representatives sought monetary damages because of the failure to implement in a timely manner. When Management conducts a count and inspection that results in

warranted changes in routes and these changes are not implemented in a timely manner and there is no request for an extension under Part 211.1 of the M-39 Handbook, Management is obligated to suffer the consequences of its failure to abide by the procedures.

But when Management is up front and notifies the Union that adjustments cannot take place within 52 days because of the amount of work that had to be done by hand and because of the approval necessary for new cases and new vehicles and when Management receives the approval of the Union representatives for an extension for the time period within which to implement the changes, Management can expect that approval to continue until there is some notification from the Union that it is being withdrawn. In other words, West Palm Beach Postal Management acted in good faith in its efforts to implement the changes, albeit Postal Management did not comply with the express provisions of Part 211.1. This is an error on the part of Postal Management for which the Union now wishes to hold Postal Management to a monetary penalty.

Postal Management violated the Agreement and must pay the cost of that violation. Postal Management contends that there is no evidence that any carrier suffered any burden as a result of the delay. The Union contends that there was a burden every day for every carrier whose route was out of adjustment to eight hours. Postal Management's contention is based primarily on the fact that all the carriers who worked overtime were on the 10 or 12 hour overtime desired list or on the work assignment overtime desired list. All other carriers, according to the Postal Service, had received special adjustments or relief and suffered no damage.

A person on the overtime desired list waives his right to have an 8 hour route. A carrier on the overtime desired list indicates by being on that list that he or she is willing to work overtime if necessary. However, routes that are not adjusted to 8 hours frequently impose other costs on carriers who have overburdened routes.

In summary, the award in this case is based on the following factual information and conclusions: First, the Union agreed to an extension of the time limits to implement the changes necessary on the routes, otherwise the grievance would not be timely filed. Second, the information request for a possible grievance was made on November 8, 1989, and the First Step was heard on December 15, 1989. Third, the fall of 1989 implementation date was not met by the Postal Service. Fourth, carriers who work on overburdened routes, even though they may be on the overtime desired list, do suffer damages. Fifth, the damages suffered and the remedy warranted are directly related to the time period for which the costs were incurred and the date on which the grievance was heard in the First Step. Sixth, the date on which the grievances were heard in Step 1, December 15, 1989, was within the time restricted for changes in schemes and for this reason no scheme changes were permitted until January 2, 1990.

Based on this, those carriers affected by these grievances who worked on January 2, 3, 4, and 5, 1990 are to be paid for one hour of pay at the premium rate for each of the four days on which they actually worked. Management is admonished to abide by the rules and regulations of the National Agreement and relevant handbooks when it conducts counts and inspections and implements changes in routes as a result of the counts and inspections.