

C# 03235

UNITED STATES POSTAL SERVICE : Case No. NB-NAT-2705

: Reading Time Dispute

and

NATIONAL ASSOCIATION OF : ISSUED:

LETTER CARRIERS, AFL-CIO :

July 30, 1975

BACKGROUND

This national dispute between the above parties, concerning interpretation of the July 21, 1973 National Agreement, was initiated September 23, 1974 under Article XV, Section 2. A hearing was held in Washington, D. C., on January 29 and March 11, 1975. Thereafter both parties submitted their principal briefs as of May 9, 1975 and their reply briefs as of May 28, 1975.

The background facts presenting the interpretive issue are not seriously in dispute and relate to issuance of the new M-41 Handbook, which was transmitted on June 14, 1974 to become effective September 1, 1974. The NALC urges that under the National Agreement (and the Fair Labor Standards Act) all City Carriers should be compensated for time spent (either heretofore or hereafter) in the review and study of the new M-41 Handbook.

The earlier M-41 Handbook had been issued in 1966 and was titled "The City Carrier Instruction Book." Primarily this was an instructional tool for new employees, but it also

was a reference available for each Carrier to use in the normal course of his work. There were numerous operational changes and methods innovations after 1966 affecting the work of City Carriers which were introduced with appropriate training (when necessary) but the M-41 Handbook was not revised as these changes occurred. Largely for this reason a review to update the old M-41 Handbook was undertaken at the same time that revision of the M-39 Supervisor's Handbook was undertaken.

The first page of the new M-41 consists of a "Transmittal Letter" dated June 14, 1974 and signed by Frank M. Sommerkamp, Director, Delivery Services Department Operations Group. It includes the following:

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"1 EXPLANATION

- .1 The title of Methods Handbook M-41 has been changed to CITY DELIVERY CARRIERS DUTIES AND RESPONSIBILITIES and has been updated. This publication instructs delivery employees on the day-to-day functions of the city delivery service, and covers office and street duties of letter routes, collection routes, parcel post and combination services routes, and special delivery service.
- .2 A separate chapter is included on mail count and route inspection.
- .3 In view of the numerous changes made, delivery service managers, regular and part-time city carriers, and special delivery messengers should review this handbook to become thoroughly familiar with the changes and arrangement of instructions.

3.

NB-NAT-2705

"2 DISTRIBUTION

Postmasters will furnish one copy of the handbook to:

- .1 Carrier branch or station superintendent.
- .2 Delivery service manager.
- .3 Regular city carrier.
- .4 Part-time city carrier, excluding casuals.
- .5 Regular special delivery messenger.
- .6 Part-time special delivery messenger,
excluding casuals.

"3 REVISIONS

Changes will be published as necessary and carriers and special delivery messengers are responsible for keeping their copies of the handbook current."

(Underscoring added.)

On the second page of the new M-41, the following
"Preface" appears:

"City carriers perform an important function
in the United States Postal Service. They
serve millions of families and business
firms daily."

"City carriers are highly respected by the
American public. This respect has been
earned by many years of dedicated service,
especially during national and local emer-
gencies, including prolonged periods of
extreme weather conditions."

"You are now a member of this group of faith-
ful and dedicated employees. This handbook
will help you give a high quality service
that you will be proud of. Study this in-
formation carefully; ask your postmaster or
manager to explain any points that are not
clear to you."

"We offer you our best wishes for a long and
happy postal career."

(Underscoring added.)

Since the new M-41 Handbook describes Carrier duties and responsibilities in detail, and provides a reference for duties typically performed by City Carriers, it is clear that a competent Carrier should be essentially familiar with the substance of those portions of the M-41 which bear upon his particular work assignment. (A Carrier may, of course, acquire such familiarity through on-the-job training and experience.) Thus the earlier M-41 had been used as an instructional reference in training new Carriers and regular Carriers used it as a reference when needed. Except during training no Carrier had been compensated, specifically, for reading or reviewing the earlier M-41 or the various other Handbooks applicable to a Carrier's work until the present dispute arose.

Some time late in August or early September of 1974 NALC President Rademacher suggested to Postal Service officials that all City Carriers be compensated for time required to study the new Handbook. This request was denied. Thereafter the present grievance was initiated by a September 23, 1974 letter of President Rademacher to Senior Assistant Postmaster General Brown, reading:

"The purpose of this letter is to ascertain whether a dispute exists between the Union and the Employer as to interpretation of our National Agreement and, if so, to initiate and present a grievance pertaining thereto at the national level, pursuant to the concluding paragraph of Article XV, Section 2, of this Agreement.

"The question of interpretation is whether letter carriers are entitled to compensation at rates specified in the National Agreement for time spent in reading and study of the instructions relating to work standards and job performance contained in Management's new M-41. Thorough knowledge of the aforesaid instructions is, of course, essential to performance of carriers' duties, and carriers are held responsible by Management for such knowledge.

"The question arises out of approaches, inconsistent in part, which have been taken by various Postmasters in the field, which do not provide working time for reading and study of the new instructions. On the one hand, carriers in some offices have been told that the M-41 is to be kept at all times in the carrier's route book, which cannot leave the premises. This, of course, precludes reading and study of the M-41 at home. But no time during the work week is allotted the carriers to read and study the instructions on the premises. On the other hand, other carriers have been told that they may take the M-41 home and they are expected to read and study the instructions on their own time, outside working hours.

"It is the Union's position that reading and study of the new M-41 is a requirement imposed by Management in the exercise of its powers

under Article III A, of the Agreement, and that, as a matter of fact and of law, it constitutes 'work' for which carriers must be compensated in accordance with Article VIII of the National Agreement. Our position is buttressed by Article IV, Section 3, which recognizes that it is the obligation of the employer to provide 'training' for the performance of new or changed jobs and explicitly provides that the employee 'will maintain his rate' during such training. Obviously, reading and study of the new instructions constitutes 'training' in the performance of the carrier's job as 'changed' by Management, and time 'on the job' must be provided therefore by Management.

"We believe that this position is so clearly correct that, upon having the matter brought to your attention, you will concur therein. It is immaterial to us whether carriers' regular assignments are reduced, for as long as necessary, so as to leave a portion of the regular work week available for reading and study of the M-41, or whether regular assignments are maintained and carriers are authorized and instructed to read and master the new M-41 at home or on the premises on overtime. Patently, the amount of time required to master the new instructions will vary from carrier to carrier. We are concerned only that as much working time as necessary be allotted each carrier for this purpose. We shall be glad to meet with you and discuss this aspect of the matter.

"In view of the immediacy of this issue, we invite your early attention and prompt response to this letter. If you find yourself in disagreement with our position as above stated, please consider this letter a request for arbitration of the question stated in the second paragraph hereof, within the meaning of the first paragraph of Section 3, Article XV, of the National Agreement, and a certification of the aforesaid case for referral to arbitration at the earliest possible date within the meaning of the second paragraph."

(Underscoring added.)

On September 30, 1974 Assistant Postmaster General Gildea replied to President Rademacher's letter, stating (in relevant part): 8

"The new M-41 Handbook is essentially similar to the old M-41, and we do not believe it appropriate to provide extra compensation for familiarization with the Handbook.

"As requested in your last paragraph, I am referring your letter to the Office of Arbitration Procedures in order to submit the issue to arbitration."

THE CONTRACTUAL PROVISIONS**"ARTICLE III--MANAGEMENT RIGHTS**

"The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To make rules and regulations for the government of its employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;

"ARTICLE XIX--HANDBOOKS AND MANUALS

"Copies of all handbooks, manuals, and regulations of the Postal Service that contain sections that relate to wages, hours, and working conditions of employees covered by this Agreement shall be furnished to the Unions on or before January 20, 1974. Nothing in any such handbook, manual, or

regulation shall conflict with this Agreement. Those parts of any such handbook, manual, or regulation that directly relate to wages, hours, or working conditions, as they apply to employees covered by this Agreement, 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.

"ARTICLE XLI--LETTER CARRIER CRAFT

"Section 3. Miscellaneous Provisions

K. Supervisors shall not require, nor permit, employees to work off the clock."

In addition to Article XLI, Section 3, K, the NALC relies upon those provisions of the Fair Labor Standards Act (29 USCA Sections 201-209) which require payment for all overtime work at time and one-half the regular rate of pay. The Fair Labor Standards Act was extended to cover Postal Service employees as of May 1, 1974 by P.L. 93-259 (29 USCA Sections 203-(e)-(2)-(B)).

THE ISSUES

While the parties disagree in their respective views of the issues involved here, it is enough for present purposes to set forth the issues described in the Union's brief in the following passage:

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"... The questions thus posed are (1) whether the National Agreement, properly construed, and/or the Fair Labor Standards Act, entitle letter carriers to be paid at rates specified in the Agreement for time spent heretofore and hereafter in review and study of the manual, and (2) whether the National Agreement, properly construed, requires the Postal Service to provide compensated time sufficient for each carrier to learn the manual before it may rely in any way on M-41 methods or procedures as a basis for adversely affecting any carrier's conditions of employment."

While there are additional facts, beyond those already noted, which bear upon proper disposition of this case, they need not be detailed here but will be noted where appropriate in the balance of this Opinion.

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CONTENTIONS1. NALC

The principal NALC argument stresses language in the June 14, 1974 transmittal letter for the new M-41 Handbook insofar as it states that city carriers "should review this handbook to become thoroughly familiar with the changes and arrangement of instructions," as well as the sentence in the Preface which reads: "Study this information carefully; ask your postmaster or manager to explain any points that are not clear to you." Section 352.6 of the Postal Manual, it notes, declares that: "Employees will perform duties as outlined in the Methods Handbook, Series M-41 . . .," and all Carriers are instructed to review Chapter 9 of the new M-41 before performing a "dry run" (which precedes the annual route count and inspection), which includes completion of a Form 1838. According to various Union witnesses, field management in some locations interpreted their instructions in connection with the new M-41 to mean that experienced Carriers should read the new M-41, but should do so on their own time. Even if field management in some locations instructed Carriers to study the new M-41 on under-time, the NALC claims that most routes are so overburdened that Carriers seldom return to their stations in less than 8 hours. 12

Stressing that the new M-41 Handbook contains numerous provisions which are new or revised when compared with the old M-41 and the old M-39, the NALC asserts that study of the new M-41, even by experienced Carriers, entails a substantial amount of work. 13

Given these facts, the NALC urges that familiarization with the new M-41 Handbook must be deemed part of a Carrier's official duties, and holds that the Postal Service either must authorize time "on the clock" for all Carriers to study the new M-41, or pay for any time spent reviewing and studying the new M-41 outside regular working hours. This conclusion should apply not only to Carriers who already may have reviewed the new M-41, but also to any Carrier who might review it in the future. Moreover, any Carrier who has not yet reviewed the new M-41 cannot be disciplined in any way, according to the NALC, for failure to perform duties in accordance with methods and procedures set forth in the new M-41.

The NALC also urges that negotiating history makes clear the intent of Article XLI, Section 3-K, to require the Postal Service to pay for any work performed off the clock, whether or not characterized by it as "required." This history, as described by Executive Vice President Vacca, and the express language of Article XLI, Section 3-K, require a conclusion that the Postal Service must pay for work which it permits Carriers to perform "off the clock."

Even if the language of Article XLI, Section 3-K were less clear, the NALC holds that the Fair Labor Standards Act plainly would require that time spent studying the new M-41 should be compensated as "work." Here it cites numerous judicial holdings deemed to establish that the FLSA requires compensation for all work performed for the benefit of the employer. Against the background of these precedents, and administrative criteria developed in administering the FLSA, the NALC has no doubt that any time devoted by Carriers to studying the new M-41 clearly is compensable. The Wage Hour Administrator, indeed, has ruled specifically that training,

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outside working hours, is compensable if "designed to make the employee handle his job more effectively" (29 C.F.R. Sec. 785.27 and 785.29).

Under the "suffer or permit" standard defined in the FLSA, work is compensable where an employer "knows or has reason to believe" that an employee is continuing to work, and the NALC asserts that the Postal Service itself has recognized the applicability of this standard. Thus a Postal Bulletin dated November 14, 1974 recites:

"A non-exempt employee is entitled under the FLSA to overtime pay if management suffers or permits him to work more than 40 hours ... This is true whether the work has been requested or not if the manager or supervisor knows or has reason to believe it is being performed."

According to the NALC three categories of relief are appropriate under the evidence here: (1) all Carriers who have studied, or hereafter study, the new M-41 should be paid for that work, (2) the Postal Service should be barred from disciplining any Carrier because of a failure to comply with procedures of standards set forth in the new M-41 until such Carrier receives sufficient compensated time to study the new M-41 and become familiar with changes contained therein, and (3) the Postal Service may not effectuate any route adjustment which depends on a Carrier's knowledge of the new M-41. The NALC also suggests that the Award should require overtime payments to be made on the basis of each Carrier's own statement as to time spent studying the new M-41, provided that such claim appears reasonable.

2. Postal Service

The Postal Service version of the origin, purpose and scope of the new M-41 largely appears in the following passages in its brief:

"By 1973, although numerous operational changes and innovations had been introduced, with appropriate training where necessary, the M-41 had never been revised and management undertook such a review in connection with the revision of the M-39 supervisors' handbook. Although the title of the M-41 was slightly changed, its purpose was essentially the same; i.e., a training tool for new carriers and a reference manual for incumbent carriers. The object of the revision committee was merely to incorporate those new programs and changes in procedure which were innovated since 1966 such as Park and Loop, Centralized Markup and other programs which were the subject of training at each installation where they were introduced. The committee additionally sought to incorporate into the carrier handbook those items which have always been applicable to carriers and the subject of special training but which were contained in other manuals and handbooks. Among the latter category were various provisions relating to motor vehicle operations which, although referred to in different chapters of the old M-41, were not the subject of a separate chapter as in the new

version. An additional change emphasized heavily by the Union at hearing was the addition of Chapter 9 relating to route inspections. This material was formerly contained in the M-39 supervisors' handbook but because of the carriers' zealous interest and in order to avoid the redistribution each year of the instructions relating to the dry run prior to inspections, much of this material was included in the new M-41.

"Consistent with its use as a training tool, the preface contained in the old M-41 was incorporated in the new in almost identical form. The new manual also contained a transmittal letter relating to its use by other carriers and supervisors which is discussed more fully below.

"Presumably under the provisions of Article XIX, the Union was furnished with a copy of the initial draft and a meeting was held between the parties in November of 1973, at which the contents of the M-41 were thoroughly discussed by the parties. Suggestions of changes were made by the Union, some of which were acted upon. A further meeting for the same purpose was held in June 1974. No question was raised at these meetings regarding training or on the clock review. Not until the book was already printed and distributed did the Union raise the question of on the clock time for review by carriers.

"It is undisputed that this request was unique, and in the past, time on the clock for review of reference manuals or instructional materials had never been granted or even requested." Of course, during the on the clock initial training program conducted for new carriers, the M-41 may be reviewed since it is used as a training tool but this is far different from what the Union requests herein."

The Postal Service does not view its issuance of a revised M-41 Handbook as in any way obliging it to provide on-the-job training or compensable time for study, since it is exclusively a Management function to determine what employee training is necessary. Where the parties intend to provide employees a familiarization period, they have spelled it out, as in Article XLI, Section 3-F, where Carriers assigned to new routes are allowed reasonable periods for familiarization. Nothing in Article XIX which deals specifically with Handbooks and Manuals suggests that Carriers should be provided with study time. Nor is there any practice to support the NALC position here. 20

The Postal Service characterizes the NALC request for paid time, on or off the clock, for all Carriers to study the M-41, and its request that all counts (and inspections) and disciplinary actions based on the new M-41 should be set aside, as constituting a "class action" grievance based on a claimed violation of the Agreement which allegedly occurred in August and September of 1974, when the new M-41 was distributed. In the Postal Service view such a class action cannot 21

properly be presented as a national "interpretive issue" under Article XV, Section 2, which states, insofar as relevant, "... in the event of a dispute between the Union and the Employer as to the interpretation of this Agreement, such dispute may be initiated as a grievance at the national level ..." If any individual employee has a grievance, it must be discussed within 14 days of the date on which the employee learns of its cause, according to Article XV, Section 2 (Step 1) and such discussion should be with the employee's "immediate supervisor." If any individual Carrier did not present a timely grievance in Step 1, there could be no proper basis for the NALC later to institute a class action grievance on such Carrier's behalf--the right to file national interpretive grievances was not intended to nullify the specific requirements concerning the filing of individual grievances.

The Postal Service stresses that in 1973 the NALC knew of the prospective distribution of the new M-41 and discussed drafts both in November of 1973 and again in the Spring of 1974. The NALC made no suggestion in these discussions that time on the clock be allotted Carriers for study of the new Manual. It was only after transmittal of the new M-41 that the NALC raised an issue as to whether Management was obligated to train employees. If this question had been raised in timely manner, the Postal Service could have drafted the transmittal letter more precisely to specify the Carriers' obligation in respect to study of the new Manual.

On this basis, the Postal Service urges that the only 23 question properly before the Impartial Chairman now is whether or not Carriers were required or permitted to work off the clock because of the Postal Service written instructions regarding the new M-41. Even if this interpretive question were

decided in favor of the NALC, says the Service, the only affirmative relief should be to employees who had filed timely grievances and who could demonstrate in their individual grievances that they had acted in reliance upon Management instructions in this regard.

On the merits, the Postal Service deems the statement in the June 14, 1974 transmittal letter that each Carrier "should review this handbook" to be only a suggestion to become familiar with the changes in format. In view of the extensive index, glossary, and table of forms, and given the fact that every regular Carrier already was familiar with the essential duties of his position, it says, such a review could be completed in no more than 15 minutes. It emphasizes that the expanded glossary and introduction of an index of forms confirm that the Manual is intended essentially as a reference tool.

Any review of the new M-41, moreover, presumably, should take place during the regular workday as undertime occurs, even though the Service admittedly does not object if a Carrier wishes to take his copy home. The Postal Service stresses that none of the Union witnesses who were active Carriers indicated that he actually had studied the new M-41, and there is no evidence in the record to identify specific Carriers who did study it because of the instructions contained in the transmittal letter. On this state of the evidence, the Service urges, it would be impossible to find that the transmittal letter was intended to require study of the new M-41, or was so construed by the Carriers.

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The Postal Service also asserts that it did not in any way "permit" Carriers to "work off the clock" when it transmitted the new M-41. While the Service does "permit" Carriers to study the new M-41 at home, it says that the negotiating history of Article XLI, Section 3-K, requires that the phrase "to work" be given a very narrow interpretation. No individual who voluntarily reviewed the new M-41 at home thus could be deemed to have acted within the meaning of the phrase "to work" under this provision. The Postal Service emphasizes that it made no requirement, and claims that it did not suggest, that Carriers take the new M-41 home for study. Indeed, it asserts that the question of whether the M-41 could be taken home was raised initially by the NALC. If individual Carriers asked permission to take the M-41 home, this was strictly for their own purposes. Here the Postal Service brief elaborates:

"It certainly is reasonable to require payment for productive efforts an employee puts out with the permission and knowledge of an employer, even though not specifically directed; and this is essentially what Article XLI, Section 3k provides. However, it makes no sense whatsoever to allow payment for the purely voluntary performance of activities unconnected with primary job functions, especially when done primarily for the benefit of the employee, merely because the employer may derive some benefit by way of future improved job performance, and the contract cannot be so interpreted."

The Postal Service sees no possible application of the Fair Labor Standards Act here, since, under Article XV, Section 3, of the National Agreement, this case involves only "interpretation" of that Agreement. Another portion of Article XV, Section 3, declares that "All decisions of the arbitrator shall be limited to the terms and provisions of this Agreement." Even were the arbitrator to deal with interpretive problems under the Fair Labor Standards Act, this in no way could be a conclusive ruling as to proper application of the FLSA. Here the Service quotes from the Supreme Court Opinion in the Gardner-Denver case indicating that an arbitrator has no general authority to invoke public laws that conflict with the bargain between the parties. If the Service could be assured that decision in this case would resolve all FLSA issues effectively, it might be less objectionable for the arbitrator to pass upon such matters. But, the Service notes, the NALC itself may be unwilling and even powerless to give such an assurance.

Finally the Service suggests that under authoritative interpretations of the FLSA a one-time review of the new M-41, off the clock, presumably would be of a "postliminary" nature and not compensable. It also stresses that the minimal "study" of the new M-41 easily could be accomplished during Carriers' "undertime," since undertime arises whenever the work on a given day is below average to a significant degree.

FINDINGS1. Nature of the Case

This is a national level grievance. Under the last paragraph of Article XV, Section 2, such grievances include only disputes between "the Union and the employer as to the interpretation of this Agreement." Despite this limitation the NALC apparently deems the present proceeding as a sort of "class action," in which rights of individual employees under both the Agreement and the Fair Labor Standards Act may be finally adjudicated. The Postal Service rejoins that proper disposition of a national level grievance may result only in issuance of a "declaratory judgment," without relief to individual employees, and that no FLSA issues properly may be considered.

The efforts by counsel to define the proper scope of national level grievances in terms of concepts such as "class action" or "declaratory judgment" are understandable, and possibly even helpful in grappling with specific problems as to the scope of rulings which may be warranted under this unique provision in Article XV, Section 2.

Nonetheless the proper scope of national level disputes must be determined within the framework of the National Agreement alone, giving due regard to the nature of the issues and the facts in each such dispute. The initiation of a national level grievance in Step 4 bypasses the important first three Steps of the grievance procedure, where all basic facts and arguments normally should be developed and the great bulk of all grievances should be settled. There thus should be no doubt that this exception to the normal requirements of the grievance procedure is intended to apply only to disputes

concerning "interpretation" of the Agreement, where it is important to obtain an authoritative interpretation without awaiting the painstaking development of facts and arguments in a multitude of individual grievances.

This conclusion is reinforced by the contrast between 32 the narrow phrase "dispute ... as to the interpretation of this Agreement" and the broad definition of "grievance" in Article XV, Section 1, which includes any "... dispute, difference of opinion or complaint between the parties related to wages, hours, and conditions of employment." The Impartial Chairman, therefore, rules that the national level dispute provision in Step 4 was not intended to provide a vehicle for considering a multitude of individual grievances as a sort of "class action." If any grievances actually have arisen on behalf of individuals under Step 1, advancing claims under Article XLI, Section 3-K, they should be processed through the normal Steps of the grievance procedure until settled. Nothing in the June 4, 1973 decision in Case No. NB-NAT-3233 is inconsistent with this result. That case involved failure by the Postal Service to observe an obligation under Article XXXIV owed directly to the NALC as representative of all the Carriers, and the remedial action there was essential to eliminate direct consequences of that failure.

It also seems clear that issues of compliance with 33 the Fair Labor Standards Act are not within the proper scope of a national level dispute. Indeed, when the national level dispute provision was written the FLSA did not apply at all to the Postal Service--it became applicable only in 1974. Even though FLSA issues may properly be raised on behalf of individual employees in Step 1 of the grievance procedure under the broad definition of "grievance" which applies there, therefore, they cannot be treated as a national level dispute.

2. Application of Article XLI, Section 3-K

Article XLI, Section 3-K states that "Supervisors

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shall not require, nor permit, employees to work off the clock." While each party provides a different version of the negotiating history to support its interpretation of this provision, no useful purpose can be served by seeking to ascertain the various motives, hopes, and expectations of the various negotiators on either side. This type of inquiry usually proves fruitless in the end, and assuredly is unwarranted where the controlling provisions of the Agreement are clear enough on their face. That is the situation here.

Application of Article XLI, Section 3-K, here requires consideration of (1) whether a Carrier's review of the new M-41 might constitute "work," and if so (2) whether Carriers may be instructed or permitted to perform such work "off the clock" without being compensated for time so spent.

When the new M-41 was circulated most Carriers already were trained adequately and reasonably familiar with the requirements, responsibilities, and procedures applicable to their normal work assignments. Normally, moreover, it is for Management alone to determine the nature and extent of training to be provided experienced employees under Article III, subject to application of the other provisions of the 1973 National Agreement. Thus the Service now urges that there was no real need for experienced Carriers to have any specific period of time at all to study the new M-41. This argument fails, however, to face the real problems in the present case, which arose only because the Postal Service appeared either to require or to permit

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the Carriers to study the new M-41 in order to become familiar with changes and the arrangement of instructions therein.

Study of the M-41 Handbook undoubtedly is "work" when performed by new Carriers in training. Use of the M-41 as a reference tool in performing Carrier duties also is "work." And surely review and study of the new M-41 during a Carrier's "undertime" constitutes work compensable under the Agreement. 37

In these circumstances it should be obvious that review or study of the new M-41 by a Carrier at home also constitutes "work," for purposes of Article XLI, Section 3-K, if performed at the direction of Management or with its permission. 38

On this score, the NALC characterizes the June 14, 1974 Transmittal Letter as a specific direction to all Carriers to study the new M-41. Such an interpretation of the Transmittal Letter is unrealistic, not only because of the language involved but also because of the nature of the Letter itself. It surely would be unusual for a specific order--applicable over the indefinite future--to be given to all Carriers in such a broadcast letter from national headquarters. The sentence in question, moreover, is totally silent as to when or where any such review by individual Carriers "should" take place. Finally, the operative and critically important word in this sentence is "should," and not "must."

Given these circumstances it would not have been reasonable for individual Carriers to construe the Transmittal Letter as requiring that detailed study of the new M-41 should be undertaken promptly, without further clarification by his or her immediate supervisor. The need for such clarification,

indeed, would seem even more apparent in view of the vague nature of the exhortation to become "familiar" with the "changes" and "arrangement of instructions" in the new M-41.

Finally, there is no evidence in this record that any individual Carrier actually did construe this language as an order. None of the NALC witnesses who were active Carriers actually had studied the new M-41 as a result of reading the Transmittal Letter. Accordingly, the Transmittal Letter did not embody an order to individual Carriers requiring them to review or study the new M-41 at any particular time or place.

This is not the end of the matter, however, since the ambiguity of the Transmittal Letter imposed upon field Management the necessity to respond to inquiries by Carriers and NALC representatives as to what actually was intended. There is no suggestion that specific instructions were sent to the field by National Headquarters, and the following NALC evidence as to events in several Post Offices has not been challenged for purposes of this case.

In September of 1974 the President of Branch 176 unsuccessfully asked the Baltimore Superintendent of Delivery Services to authorize time "on the clock" for the Carriers to study the new M-41. Route inspections were scheduled to begin in a few days in some Offices in the Baltimore area. The same Branch President later was advised by several Postmasters in the Baltimore area that ... "This office has instructed City Carriers to study the Handbook when they had the time on a light day. Also the Carriers have been given permission to take the Handbook home to study" (underscoring added).

When the new M-41 was handed out in several Post Offices in the Baltimore area, all Carriers were told that they

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could take it home to review. In one instance a copy was sent to the home of a Carrier who was absent because of illness.

Local NALC officials in Tampa initially discussed the situation with Postal Service representatives in September of 1974 and in a grievance meeting on October 10 the Postal Service stated that-- "No time will be allowed on the clock. The Carrier is authorized to take the M-41 home so he can become thoroughly familiar with it" (underscoring added). Minutes including this statement were posted by Management for information of the Carriers. In view of impending route inspections the Tampa Post Office instructed all Carriers on January 8, 1974 to "review" Chapter 9 of the new M-41 Handbook "for detailed instructions."

In Little Rock, Arkansas, Carriers who received the new M-41 late in 1974 were required to sign a statement including-- "I also understand that I am to study the information contained in this Handbook so that I will be knowledgeable in carrier duties and responsibilities."

On September 18, 1974 a grievance was filed in Clute, Texas, protesting that route inspections were being conducted before Carriers had adequate time to study the new M-41. Denial of this grievance was upheld by the Clute Postmaster on October 2, 1974. According to President Lloyd of Branch 4723, the Postmaster told him that Carriers "didn't need the time to read the M-41 because there was nothing different in it from the old one."

In a September 11, 1974 grievance from Almeda Station (Houston, Texas) Branch 283 protested that Management had instructed Carriers to take the new M-41 home, contrary to the

specific statement in the M-41 that it should be kept in the Carrier's route book. The Step 3 denial of this grievance asserted that-- "The carriers were not ordered to take their M-41 Manuals home with them to review them. There is no agreement or provision for carriers to review this manual on the clock or on overtime" (underscoring added).

These local instances are by no means exhaustive but serve to establish that field Management, in a significant number of instances, either instructed or permitted Carriers to review the new M-41 at home. In many such offices, of course, some Carriers may have had sufficient undertime to review the M-41 while "on the clock" in the office. But in other instances, particularly where route inspections were scheduled to begin at an early date, it seems reasonable to infer that many Carriers were able to review the new M-41, and particularly Chapter 9 (as required), only at home or otherwise "off the clock."

In any such situation the review or study of the M-41 at home or "off the clock" indubitably was work within the meaning of Article XLI, Section 3-K and should be compensated as such. This is not to suggest that any given Carrier necessarily now has a right to insist, for the future, that he or she should be given any particular amount of paid time-- either in the office or at home--to become familiar with the M-41. Nothing in this Opinion can bar the Postal Service from now issuing clear instructions indicating that no Carrier should study the M-41 at home and that any necessary review of the M-41 should be performed only on undertime, except as directed by a supervisor on the basis of defined special circumstances applicable to individual Carriers or groups of Carriers.

3. Remedial Action

The NALC requests an Award which would require that (1) all Carriers who have studied the new M-41, or who hereafter may study it, should be compensated for time so spent; and that (2) the Postal Service refrain from holding any Carrier responsible for knowing the contents of the new M-41 until such Carrier in fact has devoted time to studying the Manual--with the consequence that the Postal Service could not make (or effectuate) any route adjustments or impose any disciplines which rested upon any given Carrier's ignorance of relevant contents of the new M-41.

Since Management can implement only such Manual changes as are "fair, reasonable and equitable" under Article XIX, the NALC also urges that the Postal Service now should be enjoined from in any way seeking to hold Carriers responsible "at their peril" for changes in the M-41 without providing time for review and study of such changes.

a. Payment to Individual Carriers

Since this is a national level grievance involving a dispute as to interpretation of the National Agreement, it is inappropriate for the present Award to require payment of compensation to specific individual employees. Whether any individual Carrier is entitled to overtime under the interpretation of Article XLI, Section 3-K set forth in this Opinion necessarily will depend upon the facts in each individual case. To be entitled to overtime compensation, for example, an individual Carrier must establish that in fact he or she did study

the Manual at home (or "off the clock") at the direction of, or with the permission of, supervision. It also would seem essential for each such Carrier to establish the nature of such review, when undertaken, and how much time actually was required. Such details concerning individual grievances cannot be developed in a national level grievance, without eviscerating the grievance procedure established in Article XV.

The present decision thus seeks only to establish criteria for determining the merits of any proper grievances involving individuals which are pending in the grievance procedure or which may be filed hereafter. This is not to suggest that only individuals who themselves have filed grievances can be entitled to compensation under the present interpretation of Article XLI, Section 3-K. Grievances on behalf of individual Carriers or groups of Carriers already have been filed by the NALC locally, as authorized in the Step 1 provisions of Article XV. The evidence also suggests a possibility that, either by express or implied local agreement, the filing of grievances on behalf of individual Carriers in some instances has been delayed pending decision of this national level dispute.

The parties' presentations indicate such a great difference of opinion concerning the nature of an appropriate "review" of the M-41, and the time required therefor, as to warrant comment here.

The time to be compensated should not in any case exceed that which is reasonable under the given circumstances. Moreover, the claim of some NALC representatives that every Carrier should be so familiar with the new M-41 as to be able to handle every detailed or complicated problem which might

arise in the course of a Carrier's work (without consulting a supervisor) is unrealistic and specifically rejected by the Impartial Chairman, for reasons indicated in discussion at the hearing.

Both parties have provided estimates of time reasonably required for an experienced Carrier to review the new M-41, with the Postal Service suggesting no more than 15 minutes, and the NALC claiming that 10 to 12 hours or more might be essential. Neither estimate seems reasonable to the Impartial Chairman, or even close to the mark. No doubt an experienced Carrier in most instances would not have needed more than a few hours to familiarize himself or herself in a general way with the basic information in the new M-41 and the arrangement of instructions therein, when the Handbook initially was circulated. Whether an experienced Carrier, today, would need as much time is doubtful since the Handbook now has been available for use as a reference tool by all Carriers for many months.

b. Route Adjustments

It is impossible in this record to find any tangible evidence that all or most Carriers were materially prejudiced in their route inspections by not having had prior opportunity to review the new M-41. Supervisors are instructed to familiarize Carriers with necessary detail (including Chapter 9 of the new M-41) prior to all route inspections, and there is no reason here to assume that this was not done in most instances. Even if some Carriers did not review the new M-41 or at least Chapter 9, this does not automatically establish that the inspection of their route necessarily produced an unfair result. Finally, the M-39 Handbook, in Section 271, requires a special

route inspection upon request by the Carrier whenever a route is so overloaded as to require consistent use of overtime or auxiliary assistance.

Likewise, any case of possible improper discipline based on a Carrier's lack of familiarity with the new M-41, as such, can be dealt with adequately in the grievance procedure. There must be proper cause for discipline in any case, so that where discipline in fact was imposed solely for lack of knowledge which could have been obtained only by studying the new M-41, a grievance would have merit.

c. Injunctive Relief

There is no apparent need for an order broadly directing the Postal Service to refrain from holding Carriers responsible "at their peril" for changes in the M-41. Where Management has held or seeks to hold a Carrier responsible for such knowledge and the Carrier has had no opportunity to become familiar with relevant portions of the new M-41, an individual grievance protesting any action adverse to the Carrier presumably would be meritorious. Thus no useful purpose could be served by a directive here which simply would reinforce protections provided under the National Agreement.

AWARD

1. No opinion can be expressed concerning application of the Fair Labor Standards Act, as urged by the NALC, since (1) this would not constitute a dispute as to the interpretation of the National Agreement within the meaning of

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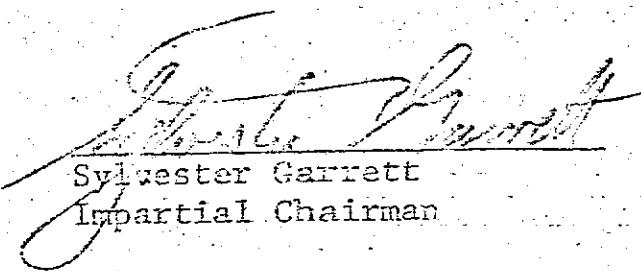
Article XV, Section 2-Step 4, and (2) Article XLI, Section 3-K provides adequate basis for decision here.

2. Article XLI, Section 3-K requires payment of a Carrier for time spent studying the new M-41 Handbook at the direction of the Postal Service or with the permission of the Postal Service; but only to the extent detailed in the Opinion in this case.

3. All issues as to whether individual Carriers are entitled to compensation under the present interpretation of Article XLI, Section 3-K, shall be handled through the grievance procedure established under Article XV, giving due consideration to the facts in each individual case. No Carrier in any event shall be compensated for more study time than reasonably required for the study undertaken by that individual Carrier.

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Sylvester Garrett
Impartial Chairman