

C-24144

REGULAR ARBITRATION PANEL

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

Grievant: Class Action
Post Office: Boston
USPS Case No: B98N-4B-C 00133387
NALC Case No: 46C17
G.T.S. 29075

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JOHN J. CASCIANO, NBA
NALC NEW ENGLAND REGION

BEFORE: Philip Harris, Arbitrator

APPEARANCES:

For the U.S. Postal Service: James H. Ryan, Labor Relations Specialist
For the Union: Edwin A. Ahlstedt, Health Benefits/Advocate
Place of Hearing: Boston, MA
Dates of Hearing: September 4 and 23, December 17, 2002
Date of Award: March 31, 2003
Relevant Contract Provision: Articles 3, 5 and 19
Contract Year: 1998-2001
Type of Grievance: Contract

Award Summary:

Union Issue: Did Management violate the National Agreement when routes in the Brookline Station were not adjusted in a manner consistent with the guidelines in the M-39 Handbook (Management of Delivery Services)? Did Management violate Articles 3, 5 and 19 of the National Agreement? If so, what shall the remedy be?

Postal Service Issue: Did Management violate the National Agreement in the manner in which it adjusted the following routes: 92, 65, 53, 48, 61, 36, 90, 93, 56, 54, 39 and 37? If so, what shall the remedy be?

Charges: The routes were not adjusted as required, as near as possible to 8 hours of work daily, nor was there proper consultation.

Union Position: The Contract and M-39 were violated, and overtime plus auxiliary assistance were used instead of the adjustments.

Postal Service Position: The Contract allows for interim adjustments. Employees knew how their routes were being adjusted. The mapping software had limitations.

Opinion and Award: Management violated the National Agreement. The required consultations were inadequate and the twelve affected routes were the only ones among sixty Carriers which were "ironically" not signed and dated on Form 1840. Each of the twelve Carriers is awarded \$1000.00, with no other remedy.

Philip Harris

Union Issue

Did Management violate the National Agreement when routes in the Brookline Station were not adjusted in a manner consistent with the guidelines in the M-39 Handbook (Management of Delivery Services)? Did Management violate Articles 3, 5 and 19 of the National Agreement? If so, what shall the remedy be?

Management Issue

Did Management violate the National Agreement in the manner in which it adjusted the following routes: 92, 65, 53, 48, 61, 36, 90, 93, 56, 54, 39 and 37? If so, what shall the remedy be?

Facts

A threshold problem arose at the hearing on the statement of the Issue to be adjudicated. The Arbitrator felt then, and still does, that it is appropriate to adopt the Issue as framed and considered by the NALC-USPS Joint Dispute Resolution Team, and was never informed that his past practice is a violation. However, the Arbitrator did record at the hearing the Postal Service version of the Issue, and includes it as has also been his practice. The award will address both versions.

Concerning the grievance, the Union alleged on April 21, 2000 that Brookline routes were not adjusted properly. Page 4 of Joint Exhibit 2 lists the routes being grieved, the same ones identified in the Management Issue.

Relevant Contract Provisions

Articles 3, 5 and 19

Union Position

1. In February, 2000 the Brookline routes were inspected because 40% of caseable mail was being sequenced by machine. The routes were then to be adjusted, and stated on Form 1840, to as close to eight hours as possible. Most Carriers obtained relief by a territorial change. "However, twelve carriers received router relief, 'on paper', as the adjustment..." Form 1840 work transfers is then the basis for "a consultation as prescribed for in the M-39" between the Manager and the Carrier (Union Post-Hearing Brief page 3, hereafter U 3).

2. Black's law dictionary defines consultation. "The carrier should now be consulted concerning any proposed relief or addition recommended for the route and the reasons for the adjustment." Also, "The M-39 states that the delivery manager responsible for making the adjustments must sign and date Form 1840 in the spaces provided" (U 4).

3. "Then management's advocated stipulated that all the 1840s in Joint Exhibit #3 were signed and dated for all carriers except the twelve carriers in the instant case." The consultations were conducted in a job huddle by Supervisors, not the Manager. After the Union grieved, Carriers were given a handwritten set of 1840s (U 5).

4. The twelve Carriers had no route adjustments nor were their routes as close to eight hours as possible; they were all more. The Union grieved that they "were not adjusted in a manner consistent with the guidelines in the M-39" (U 6).

5. The twelve routes were given router assistance and not on the 1840 form. Corrected forms were later distributed.

Union's position on the consultations

1. The twelve carriers that received router assistance in the instant grievance did not receive a consultation (J-3, J-4).
2. The three letter carriers at the arbitration hearing DeMambro, Jones, and Hart all testified that they never received a consultation.
3. Management stipulated that all the 1840's in J-3

were signed and dated except for the twelve carriers in the instant grievance.

4. The carriers at the hearing testified that they never received a copy of an 1840 and they never saw the 1840 form until the handwritten form was handed to them by the steward, Joseph DeMambro (J-4).

5. Management attempted to make a claim that a standup talk with all the carriers was the consultation.

6. The Postal Service had the opportunity to have Supervisor McNulty testify for the service as to whether he conducted a consultation with the carriers in the instant grievance. They also had supervisor McGill testify and he stated that he conducted consultations, however, he never testified that he conducted a consultation with the carriers in the instant grievance.

7. The manager never knew about the revised 1840 forms (J-2, pg. 3), "The step "B" Team contacted the (A) Station Manager, in authority at the time of inspection and adjustment, and he had no knowledge that any corrected PS 1840 package was used to consult with the carriers on these corrected PS 1840's.

8. Management testified that the Postal Service conducted a consultation with the twelve carriers, although no one knows who conducted it.

9. If you read the 1840 in J-3 you can see that the adjusted route in the upper right hand corner is not as close to eight-hours as possible. And when you look at the J-4 1840's the time is further adjusted. This shows that it was not just an oversight of hand writing the word router on the 1840. The time was not deducted until the second sets of 1840's were written. Management never had any intention of placing a router on these routes. They didn't deduct the time and they never assigned any carrier to the work.

The Basic Standards require that "Auxiliary assistance or overtime should be necessary only on extra-heavy days" (U 7, 8).

6. The M-39 supports the Union position. The routes in question were not adjusted nor had consultations (U 9).

7. The NALC never consented to the adjustments as is required, and "these routes never received the route adjustment as permanent relief" (U 10).

8. Management can make interim adjustments but not supercede the M-39.

No permanent relief was provided (U 11, 12).

9. The authority and limitations of the Arbitrator are contained in Article 15. In 1987 the Parties settled a National Level grievance on route adjustments (U 13).

10. It was stipulated herein that "the 12 regular route carriers were used to route their own mail on overtime approximately 99% on [sic] the time," violating the Step 4. The Service worked the Regular Carriers on overtime and/or provided auxiliary assistance daily (U 14).

11. All twelve 1840s show router assistance in the office. Form 3996 is used in connection with assigned duties. But router work was transferred away (U 15).

12. Route inspections should lead to permanent adjustments, not daily ones. There were no consultations or adjustments.

An award by Arbitrator Thomas Germano, Case No. N7N-1E-C 25035, supports the Union. In that grievance the Postal Service agreed it did not provide router assistance, but denied the monetary remedy sought. Germano awarded pay equal to the hours routes qualified for assistance but did not get it (U 16).

13. A second award submitted was by Edwin Render, Case No. 4E0C 94037643. The Arbitrator sustained a grievance claiming that the Service did not complete route adjustments within the allotted time period. He awarded \$10 per day penalty for the delay. In the case at bar, the routes were out of adjustment for about one year (U 17).

Postal Service Position

1. There were consultations and huddles. The M-39 section 243.216 was/is an option. "...the computer mapping software could not annotate roster as an adjustment and thus, the reason for the hand written 1840 found in JX-4....local management could decide daily who would perform router work." There is no requirement to establish full-time router positions in

cases like the instant one. The 1840 router time in JX-4 was "a separate and distinct assignment." The 2000 inspection data cannot now be used. The twelve Carriers involved were on the ODL and wanted the overtime, officially separating them from office time (Postal Service Post-Hearing Brief, page 4, hereafter PS 4).

2. UX-1 should be ignored as pre-dating DPS. All twelve routes were brought to eight hours. The 1840s were given to the Shop Steward prior to the adjustments. "The Union never established we did not comply with the above [re 1840s and 1838s]." "The contract does not require the Postal Service to provide JX-4 [1840] to the Union or its members prior to the consultations."

"The Union has failed to identify any section of the contract which was violated (PS 5).

3. The arbitrator can only determine if there was a contract violation because the remedy language was excluded.

In support of its position, the Service included two awards by Arbitrator Richard Mittenthal, the first being Case No. H1C-NA-C 97. He said the purpose of a remedy is to restore the status quo ante, or the position the Grievant would have been in if the contract was not violated. In the instant case the Carriers were paid, so any monies now would be unjust enrichment. If there was a violation, only a cease and desist order would be appropriate.

In Mittenthal's other award, Case No H4C-4Q-D 32814, he addressed a disagreement that arose between the Parties as to his earlier award above. He reaffirmed that back pay was inappropriate for the same reason he previously stated.

In the case at bar, "To award any monies would equate to an unjust enrichment which the contract does not allow" (PS 6).

Opinion

Concerning the Issue, at the outset on his copy of the Moving Papers, JX2, the Arbitrator memorialized as he verbalized, "If so, what shall the remedy be?" He assumed he had the authority to do so, and bring to closure the allegation of a contract violation. Also, on page 1 of his notes the Arbitrator recorded Management's version of the Issue, and here too the remedy sentence was included. It would have been an error in judgment to included the remedy concept in one version and not the other. Furthermore, the Union heard the Arbitrator speak on the remedy matter because it was included on page 2 of the Union Brief.

The preponderance of evidence favors the Union because two points predominate over all testimony and documentation to the contrary. One is the consultation. Management's action did not rise to the level intended in the quality of a one-on-one meeting. Certainly the huddle is not an exemplary way to meet the M-39 requirement to consult. The Union's position on the consultation is more persuasive than Management's. Consulting means deliberating and exchanging views to cast light on the subject being discussed. The Postal Service did not prove that this occurred as prescribed. The Arbitrator believes the case was not there to be made.

The second overwhelming point favoring the Union is what Management described as "ironic," namely, that of some sixty routes that were inspected, the only ones that were not signed and dated were the twelve in this grievance! The Arbitrator believes it is less rather than more likely to be a mere coincidence. It tends to back up the Union view on Management's intentions in using overtime and auxiliary assistant: "The NALC would and has the right to expect a new position created" (U 6).

Concerning the financial remedy sought by the Union, the Postal Service argued that the status quo ante and the Contract disallow "punitive damages, any compensatory award, or anything that equates to an unjust enrichment." As to the latter, no Contract article was specified, and no documentation disallowing it was provided with the Postal Service Post-Hearing Brief even

though the Union previously spoke of a monetary award at the hearing. Given the absence of proof by the Service, and given evidence by the Union of two awards granting such a remedy, a monetary resolution is viewed as withing the Arbitrator's realm.

In further justification of this conclusion, the Arbitrator sees status quo ante as being a double-edged argument, as when the Postal Service violates the National Agreement and profits thereby, such as by not creating a new position. The gain by Management is an offset to the argument that the Carriers were already paid for their time. Hence the Arbitrator feels free to make a monetary award for the violations cited by the Union wherein the twelve routes specified in the Postal Service Issue were out of adjustment for approximately one year.

Award

Management violated the National Agreement. Each of the Carriers on the twelve routes is awarded \$1000.00 (one thousand) in resolution of this grievance. There is no other remedy.