

REGULAR ARBITRATION PANEL

C# 10574

A + B

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

: GRIEVANT: Class Action (2)
: POST OFFICE: Memphis, TN
: CASE NO: S7N-3C-C 29133
: : S7N-3C-C 29135
: GTS 004138, 004139

BEFORE: James F. Scearce, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Carolyn Shirkey, Labor Relations Rep.
(Presenting)
C. Norman, B. L. Davis (Witnesses)

For the Union: Collier James, Regional Adm. Asst.
(Presenting)

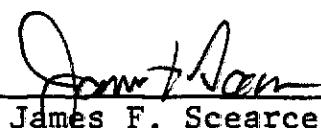
D. Cianciolo, W. Williams, J. Vaughn, E. Cline
(Witnesses)

Place of Hearing: MPO - Memphis, TN

Date of Hearing: November 27, 1990 Briefs followed: Union 12/23
Service 1/7/91

Award:

The Service violated the Agreement and related regulations by the manner in which it conducted the Special Route Inspections at Raleigh Station between April 30-May 5, 1990. It is ordered to implement the corrective action set out in the DISCUSSION AND FINDINGS section of this document. The arbitrator retains jurisdiction over this matter.


James F. Scearce

Date: January 30, 1991

BACKGROUND

By date of April 30, 1990 a Special Route Inspection was conducted at the Raleigh Station in the Memphis, Tennessee postal system involving Routes 2800, 2804, 2809, 2811, 2812, 2813, 2816, 2817, 2820 and 2824. The Union took exception to the manner in which the inspections were scheduled and took place and, on May 18, 1990, formalized two (2) grievances covering groups of such routes, which set out complaints in that regard. Both grievances demanded that the route inspection be declared invalid and re-inspected in accordance with the Agreement and relevant policies/procedures; one grievance (which is referenced in S7N-3C-C 29133) demanded punitive compensation for assigned carriers allegedly adversely affected. Denial by the Service of such demands at all Steps of the grievance-handling procedure now brings this matter to arbitration for final disposition.

POSITION OF THE UNION

The Service has grossly and flagrantly violated numerous provisions of the M-39 as well as the Agreement, commencing in such violations even before the inspections began. The Service was obliged, per 242.32 of the M-39, to provide the Union the opportunity to make a drawing of seven random weeks for purposes of establishing average street time for routes to be inspected. Such drawings were supposed to be made "within 4 weeks prior to the week of the count;" in fact, they did not even take place until July of 1990 after the grievances were appealed to Step 3 and were of no value. The M-39 at Part 217 requires a "Dry-Run Count" to be held so as to acquaint carriers on routes to be inspected with the proper procedure to complete the forms (PS 1838-

A and C) used to record mail volume data. Part 217.1 of the M-39 requires such review "within 21 days prior to the start of the count and route inspection;" in fact, no dry-run was ever conducted.

As far as the mail count itself was concerned, the Service violated Part 220 of the M-39 and Article 1, Section 6 of the Agreement by not requiring or allowing carriers to count the mail; it violated Part 222 by refusing to allow carriers to complete the appropriate forms. In fact, members of management did the actual count and forms completion, doing so on the clock prior to permitting carriers to report for duty. Furthermore, the affected carriers never were afforded the opportunity to see the mail count results and thus were unable to evaluate the project. Insofar as alerting the affected employees of the impending count is concerned, Part 215 of the M-39 requires that the notice be posted "at least 5 working days before the start of the count period." This was not done. The Service further violated the M-39 by interfering with carriers on their routes, attempting to change the pace, giving work directions, auxiliary assistance and curtailing mail; such actions were violative of Part 232 of the M-39. The Service violated the Agreement and Part 242.332 of the M-39 by disciplining several carriers for failure to meet standards. Even though such improper discipline eventually was overturned or withdrawn, the harassment and attempt to intimidate the carriers occurred.

The Service attempts to justify its actions by claiming that the "practice" in the Memphis postal system for mail count supports some or all of its departures from the M-39. In fact,

there has been a continuing problem with the Memphis postal management refusing to comply with established procedure.

The Service had conducted what it called "full route inspections" at Raleigh Station in April of 1989, the results of which were not even made known to the affected employees until September of that year. Some such carriers demanded special route inspections as a consequence and were denied; whereupon, a Class Action grievance was filed and while it was formally denied, a commitment was made to conduct such special route inspections within a specified time. When the Service failed to meet its commitment, a separate grievance had to be initiated in order to force the special inspections, the validity of which are now being challenged.

This alleged mail count/analysis should be declared null and void, an objective count/analysis ordered, the affected employees should be compensated for those periods when they were denied the right to perform the mail count activities in lieu of management, and paid overtime for all hours required to work outside of their route schedules if they had been properly adjusted. The arbitrator should also fashion a punitive remedy for such affected employees based upon management's refusal to comply with specific directives for a special mail count and then knowingly violating the procedure when it was accomplished.

POSITION OF THE SERVICE

The cited claims of violation of the M-39 are without substance. The M-39 does not require that carriers make the mail count and supervisors did the counting and since they did, they properly completed the records. Since this occurred, there was no need for a dry-run demonstration. The basis for the special route examination was a grievance decision and, thus, did not allow time for the random drawing of routes beforehand. When the Union was afforded the opportunity to do so later, it refused. Notice of the route inspection was posted per procedure. The special route inspection was scheduled in April of 1990 even though a full route inspection at Raleigh Station had been conducted in April of 1989. As was in the case in 1989, the 1990 special examination results indicated the routes to be close to 8 hours and, thus, no adjustments were necessary. As regards a dry-run, there was one conducted on April 27, 1990; the M-39 contemplates such activity "within 21 days" of the examination and, thus, was followed. The Union improperly raised the claim for the first time at the hearing that supervisors were doing bargaining unit work, i.e. counting the mail. Part 221.131 of the M-39 does not mandate that a carrier count mail; it uses the term "should" in that regard; Section 231.3 requires that "sufficient mail must be counted before the carrier reports" in order to avoid interference with normal duties and this was done. The count of mail during inspections has been the practice in the Memphis postal system for years. While the Union

had the right to verify the mail count, no request to do so was forthcoming. As regards the matter of auxiliary assistance during the inspection period, the Union has offered no proof that any was ordered or implemented. As regards the matter of the random drawing of 7 weeks random time analysis, the Station Manager asserts that such drawing occurred some two weeks prior to the inspection and any delay in its effectiveness arose out of a lack of cooperation by the Union. No discipline in relations to the inspection can be demonstrated in the record. The Service has complied with the M-39 and any directives relative to the conduct of a special route inspection; the Union's grievances should be denied.

**CITED/RELEVANT PROVISIONS OF THE
AGREEMENT AND RELATED REGULATIONS**

AGREEMENT

Article 19 - Handbooks and Manuals

(Not reproduced here for sake of brevity)

(Jt Ex 1)

MANAGEMENT OF DELIVERY SERVICES (M-39)

211 SELECTING PERIOD FOR MAIL COUNTS AND ROUTE INSPECTIONS

211.2 The period selected for the mail count and route inspections should be determined as far in advance as possible, and the local union should be notified of this schedule.

215 POSTING NOTICE OF SCHEDULED MAIL COUNT AND INSPECTION

215.1 A notice must be posted at the delivery unit in advance of the scheduled mail counts and route inspections, showing the beginning date and date each route is scheduled for inspection. This notice must be posed at least 5

working days before the start of the count period. If a decision is made to inspect on days other than the scheduled date, 1 day's advance notice must be given.

217 DRY-RUN COUNT

- 217.1 A review of the count procedures will be made within 21 days prior to the start of the count and route inspection to teach the carrier how to accurately complete count forms (1838-C and 1838-A) during the period of count and inspection. An actual count of mail or recording of time used will not be kept on the day the dry-run is made.
- 217.2 The sample dry-run count items, forms and completion instruction must be furnished each carrier concerned in time to allow for completion and review prior to start on the period of count and inspection...
- 217.3 An instruction period should be held following the issuance of the dry-run materials but before the completion of the dry-run exercise.
- 217.4 The carrier must be furnished a sample list of mail-count items and time-used items. The carrier must enter these items on a dry-run form. A manager must review each completed dry-run form for accuracy, error and omissions, and they must be discussed and explained to the carrier. When necessary, the manager may require a second completion of the form to assure that the carrier is thoroughly familiar with completing the form to be used.

220 CONDUCTING THE COUNT OF MAIL

- 221.122 All count forms should be completed daily in their entirety by the manager who is also required to post daily from Form 1838 the time items for columns A through G and the volume items for columns 1 through 7 on Forms 1840 for his or her group of routes. This is required to detect errors or irregularities on forms so that the manager may immediately discuss the matter with the carrier and, if necessary, initiate corrective action before the next day's count so that the mistake will not be repeated.

- 221.13 General Rules for Making Count

221.131 The Carrier should count and record the mail every day except on the day of inspection when the mail must be counted and recorded by a manager. On one or more days during the count week, each route will be inspected by a manager. When management performs the mail count the carrier serving the route, upon request, may verify themail count.

211.138 Only in very unusual circumstances or emergencies when excessive late delivery would result should auxiliary assistance be granted the regularly assigned carrier during the week of the count.

232 CONDUCT OF ROUTE EXAMINER

232.1 The route examiner must:

- a. Not set the pace for the carrier, but should maintain a position to observe all delivery points and conditions.
 - b. Not suggest or forbid any rest or comfort stops but should make proper notations of them.
- . . .

240 ANALYSIS AND ADJUSTMENTS - LETTER ROUTES

242.3 Evaluating the Route

242.32 Street Time

242.321 For evaluation and adjustment purposes, the base for determining the street time shall be either:

- a. The average street time for the 7 week random timecard analysis and the week following the week of count and inspection; or
- . . .

242.323 Selection of the 7 weeks for the random timecard analysis shall be based on the following:

- a. Within 4 weeks prior to the week of count and inspection, the local union representative will make a random drawing of numbered lots from 1-4 to be used in determining the 7 random weeks to be selected for all routes at the delivery unit.
- . . .

242.33 Office Time Allied Work Rules

242.332 No carrier shall be disciplined for failure to meet standards, except in cases of unsatisfactory effort which must be based on documented, unacceptable conduct that led to the carrier's failure to meet office standards.

270 SPECIAL ROUTE INSPECTIONS

272 Manner in Which Conducted

When special inspections are made because of conditions mentioned in 271, they must be conducted in the same manner as the formal count and inspection.

(Jt Ex 3)

THE ISSUE

Did the Service violate the Agreement and/or related regulations by the manner in which the Special Route Inspections were conducted during the week of April 30 through May 5, 1990; if so, what is the proper remedy?

DISCUSSION AND FINDINGS

The validity of the Union's demand for special route inspections and any monetary remedy accruing to the affected employees prior to such inspections have been addressed in two prior arbitration cases (S7N-3C-C 2745 and S7N-3C-C 27448, 27519, 27520, 27521, 27522) wherein the Union's contentions were affirmed by the arbitrator (J. D. Dunn in both cases). The questions before the undersigned thus are limited to the appropriateness of how the special route inspections were conducted, which bears upon the results found, and what remedy should issue if they are

found to have been conducted at variance with established procedures. I would remind the parties at this point that, by virtue of Article 19 of the Agreement, operating policies and procedures established by the Service are made a part of the Agreement. This includes the M-39, which is directly applicable here. The Service contends that a "longstanding practice" in the Memphis postal system allows it to have management personnel conduct the mail count and complete the necessary paperwork involved in route inspections; it also asserts that no exception has been taken by the Union to such action in the past. It is a well-established arbitral axiom that so-called "practices" cannot and do not abrogate written provisions of a collective bargaining agreement; here, it is applicable provisions of a Service-generated procedure which has been accepted as part of the bargaining relationship. (Indeed, the Union points out that a significant provision of the M-39 had been negotiated as part of an earlier Agreement and later incorporated into the M-39.) Thus, management in the Memphis postal system cannot prevail in any claim which would have the effect of excepting it from the M-39 merely because it may have varied from established procedures in the past -- even if it did so without challenge. Neither can it prevail in its claim that the M-39 supports its decision to conduct the mail count as it did here. While the drafters of this procedure concededly used the qualified "should" rather than "must" relative to the carriers counting of the mail, it must be presumed that the use of others to do so was contemplated to be the exception rather than the rule; otherwise, the establishment of the elaborate process to train the carriers in

conducting these counts and the dry-runs would be without purpose. It is obvious that the procedure established in the M-39 anticipated the involvement of the affected carriers in the count, perhaps if for no other reason than to make it clear to them corrections that might be necessary in the execution of their assigned duties. Arguendo, if the affected group is left out of the steps and elements of the route inspection, the educational aspect of the process is lost and doubts and suspicions as to the results could remain. Apparently, that is what has occurred here. Service management conducted the mail count, made all record entries and later announced that no changes to the routes were necessary -- apparently a repeat of the original route inspections which fomented the series of events which followed.

It is interesting and important to note the Service was not even consistent in its explanation of the events which occurred. The Step 2 respondent to the grievances now before this forum conceded that the carriers were not afforded dry-run training (made unnecessary since the carriers did not complete the forms) and that no "seven-week analysis" was done prior to the time of the special route inspections, purportedly due to a lack of time following the "result of a grievance decision and notification of beginning of inspections." In testimony before this tribunal, however, the manager at Raleigh Station (Davis) asserted there was a dry-run shortly before the inspections began. Davis also asserted the random drawings were made -- on April 17 -- prior to the commencement of the inspection and that notice of

the impending inspections was posted two weeks prior to such inspections.

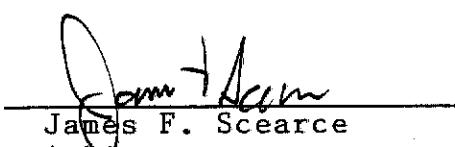
Such variations in the account of events between two Service officials raises a serious question about the validity of its position on this matter. Union carrier witnesses assert that no posted notice of the inspection was made, although one carrier indicated some advance knowledge a day or so before it occurred. Union witnesses also attest that they were warned that their office times had better be within established limits and that interference occurred on the routes contrary to procedure. Given the questions of credibility of Service witnesses raised heretofore, I am inclined to credit the Union's version of events. I also take note of the Service's issuance of Letters of Warning during the inspection period in violation of procedure, even though such actions were later withdrawn. In sum, I find the conduct of the special route inspection to be in violation of the M-39; such conclusion raises sufficient doubts about the outcome of the alleged findings or results to declare them invalid. I order that special route inspections on these routes to be commenced within six (6) weeks of receipt of this Opinion/Award and that the affected carriers be afforded a dry-run and training in the mail count and preparation of necessary forms and to participate in both. The Service is directed to follow the M-39 in all respects in this regard. Given the apparent disinclination of local management to follow procedure in this regard, it is recommended that the Region take the initiative in implementing this Order. The employees adversely affected by

the improper execution of the special route inspection in April of 1990 will be compensated for one(1) hour at the overtime rate for each day they were denied the opportunity to participate in the mail count during such inspection, unless valid records will demonstrate that they failed to work a full tour on such dates. This arbitrator will retain jurisdiction over this matter and is to be notified that the special route inspection has been properly scheduled and conducted; if not, I will consider a request for imposition of punitive damages. Exception to the timing of this order must be jointly agreed-upon by the parties. Reference is made to the arbitrator's Award in Cases S7N-3C-c 27448, etc. dated December 3, 1990 should these routes be found to have been out of adjustment.

In closing, I would remind the parties that the undersigned has had it impressed upon him many times that the various established procedures are incorporated by reference at Article 19 into the Agreement and relationship. Arbitral decisions, including stern discipline, have been predicated upon acceptance of the inviability of such procedures. It is reasonable to conclude that such procedures are equally binding on both parties and the bargaining relationship need not be required to endure repeated violations by either party.

AWARD

The Service violated the Agreement and related regulations by the manner in which it conducted the Special Route Inspections at Raleigh Station between April 30-May 5, 1990. It is ordered to implement the corrective action set out in the DISCUSSION AND FINDINGS section of this document. The arbitrator retains jurisdiction over this matter.



James F. Scearce

Arbitrator

January 30, 1991

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