

C-26523

RECEIVED

MAY 08 2006

Regular Arbitration Panel

John J. Casciano, NBA
NALC - New England Region

In the Matter of Arbitration)

between)

United States Postal Service)

and)

Grievant: Pizzuto

Installation: Waterbury
Post Office: Brass City

Case No: (USPS) B01N-4B-C
06046336

(NALC): 010206

DRT 14-048594

National Association of
Letter Carriers, AFL-CIO)

Before: Harvey M. Shrage, Arbitrator
Appearances:

For the Postal Service: Anthony Salzo, Jr., Labor Relations
Specialist

For the NALC: Jonathan Daniels, Advocate

Place of Hearing: **Waterbury, Connecticut**

Date of Hearing: **April 17, 2006**

Date of Award: **May 5, 2006**

Relevant Contract Provision: Article 19, M-39 Handbook, Section
271-G

Contract Year: 2001-2006

Type of Grievance: Contract Interpretation

Award: Summary of Award

Management violated Section 271 of the M-39 Handbook when it refused to grant carrier Pizzuto a special route inspection. Assuming the Grievant is working on the route in question at the time this decision is issued, a special count and inspection of his route shall be conducted within three weeks of the issuance of this decision. In addition, the Grievant shall be awarded one hour of penalty pay at his regular hourly rate for all days worked in excess of his regular work day for the period starting four weeks after the Grievant's request of November 16, 2005 and continuing until he ceased working on the route or a route inspection was conducted, whichever occurred earlier.

RECEIVED

MAY 12 2006

1

VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

Introduction and Issues

In accordance with the Collective Bargaining Agreement between the parties, the Undersigned was appointed to hear and decide the following issue:

Did management violate Section 271 of the M-39 Handbook when they refused to grant carrier Pizzuto a special route inspection?

At hearing, representatives of the Postal Service, and NALC appeared. They had full opportunity to offer evidence and argument. The evidence and argument presented at the hearing has been fully considered by the Arbitrator.

SUMMARY OF THE CASE

The issue in this case is whether the Postal Service violated Article 19 the National Agreement and the M-39 Handbook, Section 271g when it refused to conduct and implement a timely special route inspection and adjustments on the Grievant's route. It is undisputed that the Grievant requested a special route inspection on November 16, 2005. In a memorandum to the Grievant dated January 6, 2006, Manager Dennis Kassimis informed the Grievant that his request for a special route inspection was denied, "based on the facts that your work performance was unsatisfactory for the weeks prior to your request." The Grievant conceded that during the six weeks prior to his request he did attend pre-disciplinary investigations with his Union representative. Although the Grievant was not certain how many PDI's he attended concerned expanded street time he recalled attending one PDI that concerned that issue. According to the Grievant, during the PDI's the Postal Service did not provide evidence that he had expanded his street time. He recalled being presented with copies of his "clock rings" and reviewing "management's contentions" written by Manager Dennis Kassimis which stated:

On November 10, 2005, I conducted street management with Mr. Pizzuto and followed him out to his route. During my observation I had instructed Mr. Pizzuto not to roll his window down and up every time he was dismounting. The beginning of his route consisted of all dismounts. Some of these dismounts were 10 to 20 feet away from each other. It was 49° that day and Mr. Pizzuto claimed he needed air conditioning. I told him it was a deliberate time wasting practice and Mr. Pizzuto did not want to follow my

instructions. He continued to roll the window down and I instructed him again. He said, "I don't care what you tell me". On October 29, 2005 Supervisor Kathy Genua went out to observe Mr. Pizzuto and could not find him anywhere on his route. Mr. Pizzuto's has demonstrated poor work performance. On April 3, 2006 Brass City Annex 06708 scheduled his schedule for formal route inspections. All routes in zone 06708 are scheduled to be inspected the week of April 3, 2006.

At hearing, the Grievant reviewed Management's contentions. He stated that he did not believe that they involved time wasting practices. He conceded that when the grievance was discussed with management, these observations were brought to his attention.

With regard to the specifics of the management contentions, Manger Dennis Kassimis testified that at the time that he questioned the Grievant about rolling down his window the Grievant simply responded by telling him he did not care. Kassimis indicated that he only observed the Grievant rolling up and down his window on that one day. He also conceded that no other supervisor reported observing the Grievant rolling his window up and down. With regard to the supervisor who could not find the Grievant, he stated that he would estimate that she had looked for the Grievant for approximately 30 minutes.

According to Kassimis, a PDI was held with the Grievant the day after the supervisor could not find him on his route. The parties stipulated that a PDI does not constitute discipline. Moreover, Kassimis testified that he checked to see if there were any changes on the Grievant's route that might support the fact that his route was taking an additional 1 ½ hours to complete than anticipated. Kassimis testified that upon his review of the route he found that the number of deliveries had actually gone down on the route and that no other changes had been made. He also testified that no formal discipline was issued to the Grievant.

Positions of the Parties

Postal Service

The Postal Service argued that it had the contractual right to deny the special inspection requested by the Grievant. The Postal Service points to one supervisor's observation of the Grievant rolling up and down his window and an observation by a second supervisor that the Grievant could not be found on his route during a 30 minute period as evidence that the Grievant had engaged in time wasting practices. It also notes that the

Grievant's route had not increased deliveries but rather had a decrease in deliveries. It argues that the Grievant was involved in time wasting activities which led to an increase in his street time. According to the Postal Service, under the applicable rules it has a right to deny a special route inspection if the carrier has poor performance. In this case it contends that it is undisputed that the Grievant had been present at several PDI's during the applicable time and therefore it had a basis for denying the special route inspection. With regard to any potential remedy in this case the Postal Service contends that even if it is found it improperly denied the route inspection no monetary remedy should be directed. In this regard, the Postal Service contends that it had at least a good-faith belief that the Grievant was not entitled to a special route inspection.

NALC

The Union contends that the Postal Service's refusal to grant the Grievant's request for a special route inspection violated Article 19 of the National Agreement and the M-39 Handbook, Section 271. It is the position of the Union that the Postal Service's denial of the Grievant's request due to his unsatisfactory performance is not supported by the evidence. Additionally, the Union argues that there is no evidence to support the Postal Service's contention that the Grievant purposely expanded his route time. As a remedy in this case, the Union requests that a route inspection be directed and that the Grievant be made whole for any losses resulting from the Postal Service's denial of the route inspection.

DISCUSSION AND FINDINGS

The M-39 Handbook, Section 271(g) provides in relevant part:

g. If over any six consecutive week period (where work performance is otherwise satisfactory) a route shows over 30 minutes of overtime or with auxiliary assistance on each of three days or more in each week during this period, the regular carrier assigned to such route shall, upon request, receive a special mail count and inspection to be completed within four weeks of the request. The month of December must be excluded from consideration when determining a six consecutive week period. However, if a period of overtime and/or auxiliary assistance begins in November and continues into January, then January is considered as a consecutive period even though December is omitted. A new 6 consecutive week period is not begun.

In its memorandum to the Grievant dated January 6, 2006 the Postal Service informed the Grievant that his request for a special route inspection was denied, "based on the facts that your work performance was unsatisfactory for the weeks prior to request." The Postal Service does not contend that the Grievant's route did not meet the basic time requirements set forth in Section 271(g) for allowing a request for a route inspection. However, it contends that it was justified in denying the Grievant's request for a route inspection based upon the clause in Section 271(g) concerning satisfactory performance. Although it is undisputed that the Grievant attended PDI's during the period in question and that one of the PDI's could be characterized as concerning time delaying conduct by the Grievant, there is no evidence that the PDI's constituted official discipline. Moreover, the evidence concerning the Grievant's time delaying conduct appears to be confined to one supervisor observing him rolling his window up and down during one observation, and another supervisor not being able to find the Grievant during a 30 minute period. Although the Postal Service suggests that the Grievant was insubordinate to the supervisor when he questioned him about his conduct of moving his window up and down at dismount there is no evidence that official discipline was taken against the Grievant or that any other official performance review reflects the Grievant's poor performance. Without evidence of some level of official discipline during the relevant period, or substantial evidence of unsatisfactory performance related to time delaying conduct, I am not persuaded that the Grievant's performance was not satisfactory and therefore justified the Postal Service's decision not to grant his request for a route inspection. Under the facts of this case, to conclude otherwise would diminish the clear directive of the M-39 Handbook, Section 271(g) which states in part, "... the regular carrier assigned to such route shall, upon request, receive a special mail count and inspection to be completed within 4 weeks of the request." (Emphasis added).

The Postal Service suggests that even if it violated the contract by not granting the Grievant's request for a route inspection, its actions were taken in good faith and therefore no monetary remedy should be granted by the Arbitrator. A review of the contract, as well as the applicable handbook, does not offer support for the Postal Service's position. There is no language to suggest that the Postal Service's obligation is to simply make a good faith determination. Rather, the language of the M-39 handbook only indicates "where work performance is otherwise satisfactory" by the employee requesting the route inspection. Therefore, assuming the Grievant is working on the route in question at the time this decision is issued, a special count and inspection of his route shall be conducted within three weeks of the issuance of this decision. In addition, the Grievant shall be awarded one hour of penalty pay at his regular hourly rate for all days worked in

excess of his regular work day for the period starting four weeks¹ after the Grievant's request of November 16, 2005 and continuing until he ceased working on the route or a route inspection was conducted, whichever occurred earlier.

Summary of Award

Management violated Section 271 of the M-39 Handbook when it refused to grant carrier Pizzuto a special route inspection. Assuming the Grievant is working on the route in question at the time this decision is issued, a special count and inspection of his route shall be conducted within three weeks of the issuance of this decision. In addition, the Grievant shall be awarded one hour of penalty pay at his regular hourly rate for all days worked in excess of his regular work day for the period starting four weeks after the Grievant's request of November 16, 2005 and continuing until he ceased working on the route or a route inspection was conducted, whichever occurred earlier.



Harvey M. Shrage
Arbitrator
May 5, 2006

¹ The four week period reflects the number of weeks the Postal Service has under the M-39 Handbook, Section 271(g) to complete the inspection from the point of the carrier's request.