

C#10474

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration) GRIEVANTS:
between) Wm. Crutchfield
UNITED STATES POSTAL SERVICE)
and)
NATIONAL ASSOCIATION OF LETTER) POST OFFICE:Brownsville,
CARRIERS) TN
AFL - CIO) Case No:
S7N-3C-C 28108

BEFORE: J. Reese Johnston, Jr., Arbitrator

APPEARANCES:

For the U.S. Postal Service:

Labor Representative
United States Post Office
Carolyn D. Shirkey, Lab. Rels Rep.
Memphis Division
1407 Union Avenue
Memphis, TN 38166-0979

For the Union:

J. A. "Andy" Barnett, II
Local Business Agent
National Association of Letter Carriers
Chickasaw-Bluff City Branch No. 27
3929 Whitebrook Drive, Building G, Suite 210
Memphis, TN 38118-3726

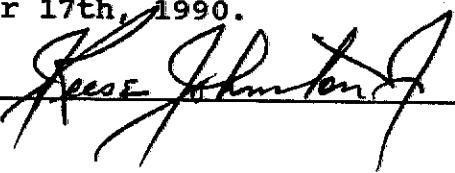
Place of Hearing: Post Office, 201 Anderson Avenue,
Brownsville, Tennessee

Date of Hearing: September 13th, 1990

AWARD: The Postal Service, due to its consistent and wrongful refusal to conduct a special route inspection on route #1203 when properly requestd by the carrier of such route; shall compensate such carrier by paying him at straight overtime rates (one and one half his usual hourly rate) for all hours worked by the auxiliary on the required

work on Route #1203. Under the circumstances as disclosed by the testimony, no other punitive action should be imposed. The Arbitrator retains jurisdiction of this matter in the event either party notifies him in writing that the parties are unable to resolve mutually the amount due to the grievant. The amount as requested in the grievance is limited to the period of time beginning on 1/21/90 and running until the date a special route inspection of City Route #1203 has been made and the results followed.

Date of Award: October 17th, 1990.

_____, Arbitrator

BACKGROUND

The grievance work sheet seems to set out fairly well what was the basis for the grievance. The work sheet stated as follows: "On 11-2-89 Carrier (William Crutchfield) requested a special count and inspection of City Mail Route #1203. Requested inspection according to Part 271G of M-39 Handbook. Postmaster at this time stated that he denied request and had no intention of having a mail count or route inspection. Grievance is now being filed as the four week period for compliance of Part of 271G of M-39 Handbook has expired." The corrective action requested was "That route inspection requested be completed and that after 52 day period expires all overtime be paid as double time and that auxiliary assistant used be paid double time. Plus \$2,500.00 pay penalty be paid to regular carrier." The Postmaster denied the grievance at the first step and according to the Union stated: "Postmaster said that his position had not changed since his decision on 11-2-89."

On 11-2-89 the grievant gave a letter addressed to Mr. Lowery, the Postmaster, in which he stated as follows: "I, William Crutchfield, on this date do request a special

count and inspection of my City Mail Route #1203. According to the Memorandum of Understanding in 1987-1990 Agreement between NALC and U. S. Postal Service and according to Method Handbook M-39 Part 271G, this inspection shall be completed no later than four weeks from this, on 11-30-89, and any adjustment shall be made within 52 days after completion of count (no later than 1-21-90) period of consideration is 9-11-89 through 10-27-89 (3996's).

It was the testimony of Mr. Crutchfield that he gave to the Postmaster at that time copies of his 3996's for the period from September 11th, through October 27th. The standard grievance form filed by the Union stated that its contentions were, "We contend grievant's route has met the requirements set forth in M-39 Chapter 271 Paragraph G for a special route count and inspection. Management has not met its responsibility because they have not responded with the time limits set forth for special route inspections."

The corrective action requested by the Union was: "Special route inspection requested by grievant completed at once. After 52 day period expires all overtime used if route is not adjusted will be double time, auxiliary time

used will also be double time. \$2,500.00 penalty pay paid to regular carrier. Or any other appropriate remedy."

On March 16th the Postal Service gave its Step 2 answer which read as follows:

Dear Mr. Jackson:

We discussed the above captioned grievance on several occasions, the last being March 6, 1990.

We initially discussed this grievance on December 18, 1989. At that time the only information contained in the grievance file was the Union's Step 2 Standard Grievance Form and a copy of a letter to the Postmaster from the grievant. There was no information to show that the criteria for a special route inspection set forth in the M-39 Handbook, Part 271g had been met. I requested the information during this meeting and you told me that you would provide PS Forms 3996.

We discussed this grievance on several occasions after our initial meeting on December 18, 1989. You did not provide the Forms 3996 until February 23, 1990. You had not reviewed the file and we agreed to review the file and discuss the grievance again on March 6, 1990. On March 6, 1990 I made an offer to conduct an examination of the grievant's route within 4 weeks. You would not agree to any resolution that excluded the monetary requests on the Standard Grievance Form, which is (1) After 52

days period expires all overtime used if route is not adjusted will be double time, (2) auxiliary time used will also be double time, and (3) a \$2,500 penalty paid to regular carrier. I rejected your corrective action requested as unreasonable. In addition, the Union has an obligation to support its contentions in a contract grievance. You provided no information to support the grievance until February 23, 1990.

Since you refused any resolution that did not include the corrective action requested on the standard grievance form, the grievance is denied.

On April 26th the Union filed its additions and corrections and stated as follows:

Dear Mr. Nix:

In accordance with Article 15, Section 2, Step 2(g) of the National Agreement, the Union submits the following additions and corrections to the above referenced grievance(s).

Contrary to your step 2 written decision, the documents to support the request for a special route inspection were provided by Larry Jackson when he first discussed this grievance with you at step 2.

The Union contends the requested remedy is indeed reasonable and appropriate."

The Union appealed the grievance to Step 3 setting out the same reasons for the grievance and the same corrective action was requested.

The Postal Service in its Step 3 answer stated as follows:

Dear Mr. Johnson:

This is to confirm the disposition of the subject Step 3 grievance appeal which was recently discussed with your representative, Mr. Collier James.

Based on information presented and contained in the grievance file, the grievance is denied. While there appears to be no dispute at Step 2, after the union produced appropriate documentation in support of this grievance, that the routes in question met the criteria for a special count and inspection, the greatest part of the delay in inspection was due to the union's delay in supporting this grievance. As the moving party, this was the union's responsibility. Under these circumstances, the remedy requested at Step 3 is unrealistic and unreasonable.

The time limit for processing at Step 3 was extended by mutual consent.

In our judgment, the grievance does not involve any interpretive issue(s) pertaining to the National Agreement or any supplement thereto which may be of

general application. Unless the union believes otherwise, the case may be appealed directly to regional arbitration in accordance with the provisions of Article 15 of the National Agreement."

The parties agreed to the issue which should be stated as follows: "Did the Postal Service violate the National Agreement and M-39 Section 271-G when it failed to give a special route inspection when requested by the grievant? If so, what should the remedy be?

APPLICABLE CONTRACT PROVISIONS

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Re: Special Count and Inspection - City Delivery Routes

The United States Postal Service and the National Association of Letter Carriers, AFL-CIO, agree that it is in the best interests of the Postal Service for letter carrier routes to be in proper adjustment.

Therefore, where the regular carrier has requested a special mail count and inspection, and the criteria set forth in Part 271g of the Methods Handbook, M-39, have been met, such inspection must be completed within four weeks of

the request, and shall not be delayed. If the results of the inspection indicate that the route is to be adjusted, such adjustment must be placed in effect within 52 calendar days of the completion of the mail count in accordance with Section 211.3 of the M-39 Methods Handbook. Exceptions may be granted by a Division General Manager only when warranted by valid operational circumstances, substantiated by a detailed written statement, which shall be submitted to the local union within seven days of the grant of the exception. The union shall then have the right to appeal the granting of the exception directly to Step 3 of the grievance procedure within 14 days.

Date: July 21, 1987."

METHODS HANDBOOK, SERIES M-39

270 SPECIAL ROUTE INSPECTIONS

271 WHEN REQUIRED

Special route inspections may be required when one or more of the following conditions or circumstances is present:

- a. Consistent use of overtime or auxiliary assistance.
- b. Excessive undertime.
- c. New construction or demolition which has resulted in an appreciable change in the route.
- d. A simple adjustment to a route

cannot be made.

e. A carrier requests a special inspection and it is warranted.

f. Carrier consistently leaves and/or returns later.

g. If over any 6 consecutive week period (where work performance is otherwise satisfactory) a route shows over 30 minutes of overtime or auxiliary assistance on each of 3 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 4 weeks of the request. The month of December must be excluded from consideration when determining a 6 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.

h. Mail shall not be curtailed for the sole purpose of avoiding the need for special mail counts and 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.

DISCUSSION

I have reviewed my tapes of the testimony of the witnesses, examined the exhibits offered by the parties and I have read and considered, including the arbitration citations presented by the parties, the excellent briefs filed by the representatives of both parties. From testimony it is apparent to this Arbitrator that a request was made by the grievant for a special route inspection. That one or more of the conditions or circumstances set out in Section 271 of M-39 Manual were present. It is acknowledged by the Postal Service that a special route inspection was not made. The justification for this as stated by the Postmaster was that acting on the directions of Management over him that due to the mechanization program that was in progress and the fact that a study was made of this particular route that he did not feel it was necessary at that time to make a special route inspection. It is conceded that no overtime is worked in the Brownsville Post Office and therefore there is no overtime desired list kept in that office. In the effort to not work any employees overtime the Postmaster has directed that some of the casing

of the flats and circulars on their route be done by auxiliary employees rather than being performed by the regular carrier. This consistent and daily use of auxiliary assistance is not denied by the Postal Service and is the condition described as (a) under paragraph 271 of M-39. (b) Both parties admit there was no excessive undertime. (c) The Postmaster states that there has been little new construction or demolition which has resulted in an appreciable change in the City Route #1203 that is carried by the grievant. The Postmaster also stated that (d) "A simple adjustment to the route could not be made." (e) That the carrier did request a special inspection but that in the opinion of the Postmaster it was not warranted. (f) Both parties agreed that the carrier did not consistently leave or return late from his route. (g) Sets out how the time periods in which the special route inspection will occur and (h) says that mail shall not be curtailed for the sole purpose of avoiding the need for special mail counts and inspections. That the mail was not curtailed in this particular case.

The language of the Memorandum of Understanding quote above and Section 271 of the M-39 is clear that when one or more of the conditions are present that a carrier will be entitled to have a special route inspection made on his request. There is no question the request was made and the special route inspection was not made as required by Section 271.

The Post Office has consistently failed to make a special route inspection of route #1203. This has continued up to the present time which is approximately one year from the time the initial request was made. The Postal Service admits that it was improper to fail to make this special route inspection when properly requested.

The only question that appears to remain is what penalty should be imposed on the Postal Service or what benefit to the carrier would be appropriate in such circumstances.

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) GRIEVANTS:

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) POST OFFICE: Brownsville,
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) Case No:

) S7N-3C-C 28108

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3929 Whitebrook Drive, Building G, Suite 210
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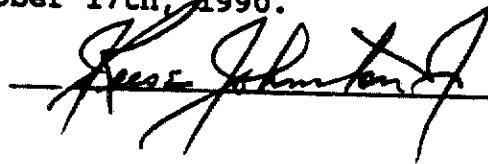
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work on Route #1203. Under the circumstances as disclosed by the testimony, no other punitive action should be imposed. The Arbitrator retains jurisdiction of this matter in the event either party notifies him in writing that the parties are unable to resolve mutually the amount due to the grievant. The amount as requested in the grievance is limited to the period of time beginning on 1/21/90 and running until the date a special route inspection of City Route #1203 has been made and the results followed.

Date of Award: October 17th, 1990.



George Johnston Jr., Arbitrator

BACKGROUND

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The time limit for processing at Step 3 was extended by mutual consent.

In our judgment, the grievance does not involve any interpretive issue(s) pertaining to the National Agreement or any supplement thereto which may be of

general application. Unless the union believes otherwise, the case may be appealed directly to regional arbitration in accordance with the provisions of Article 15 of the National Agreement."

The parties agreed to the issue which should be stated as follows: "Did the Postal Service violate the National Agreement and M-39 Section 271-G when it failed to give a special route inspection when requested by the grievant? If so, what should the remedy be?

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