

28360

Regular Arbitration Panel

: : : : : : : : : : : : : : : :
In The Matter of Arbitration : Class Action Grievance
between :
United States Postal Service : Post Office: Evansville, IN
and :
National Association of : USPS Case No.: C06N-4C-C
Letter Carriers, AFL-CIO : 08306440
: NALC Case No.: EVV14MM080
: : : : : : : : : : : : : : : :

Before: Linda DiLeone Klein

Appearances

For the Postal Service: Angela Sachleben
For the Union: James W. Carl

Place of Hearing: Evansville, IN

Date of Hearing: May 13, 2009

Date of Briefs: June 27, 2009

Award Summary: The grievance is granted as set forth herein.

Date of Award: August 3, 2009

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ISSUE

The following is the issue framed by the Step B Team:

Did Management violate Articles 3, 5, 17, 19 and 31 of the National Agreement, including but not limited to, the M-39 Handbook Chapter 2 "Mail Count and Route Inspections", when they failed to adjust routes in strict compliance with the M-39, following the route inspection of April 26-May 2, 2008, and when they failed to provide information requested by the Union? If so, what is the appropriate remedy?

HANDBOOK M-39

242.222 In making a fair appraisal of the street time, consider the carrier's comments, the manager's knowledge of normal mail volume, and percent of coverage in connection with the information developed. The base street time must be identified as defined in 242.321 and shown in item 2 under Comments on the reverse of Form 1840. The street time selected will then be entered in the space provided on the reverse of the form.

(Copied from Step B)

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 weeks random timecard analysis and the week following the week of count and inspection; or
- b. The average street time used during the week of count and inspection.

242.322 The manager will note by explanatory Comment on the reverse of Form 1840 or attachments thereto why the base street time allowance for the route was established at the time selected. The

manager's selection of the street time allowance cannot be based on the sole criterion that the particular time selected was the lower.

242.345 Any time adjustment to a carrier's base street time due to identified improper practices or operational changes (such as, but not limited to, the elimination of relay or park points, or travel pattern changes), must be documented by appropriate Comments on the reverse of Form 1840 or attachments thereto. Such adjustments must be discussed with the carrier at the time of consultation concerning the route evaluation. If the carrier, at the time of the consultation, notes the absence of such documentation in writing on the Form 1840 or attachment thereto, and initials and dates the Form 1840 or attachments thereto, and management does not supply such documentation within 1 week, with a copy to the carrier, the time adjustment shall be disallowed.

243.232 To determine the territory to be transferred to or from any route, consider that:

- a. Scheme changes should be kept to a minimum and simplified where possible.
- b. Routes should be compact, avoiding dog-legs and should not cross ZIP Code boundaries except in unusual circumstances.
- c. Routes should begin and end as near as possible to the delivery unit or transportation.
- d. Excessive retracing or deadheading should be avoided.
- e. Adjustments should be made so that future growth may be absorbed by auxiliary routes.

f. Variations in territory, mail volume and methods of delivery will affect the final adjustment.

SETTLEMENT IN CASE NO. 001N-40-C 05022605

Recently our representatives met in pre-arbitration discussion of the above-referenced grievance.

After reviewing this matter, the parties agree to the following:

The Carrier Optimal Routing (COR) process is a management tool to assist with the adjustment of letter carrier routes pursuant to Chapter 2 of Handbook M-39. No components of the COR program or application of the COR process will be inconsistent with the route inspection, evaluation, or adjustment process found in Chapter 2 of the M-39 Handbook.

Should the Postal Service develop COR for use in the minor route adjustment process, related components of the COR program or application of the COR process will be consistent with the specific minor route adjustment formula in Section 141.19 of Handbook M-39. Local parties that have established, by mutual agreement, an alternate route adjustment method may also use applications of COR consistent with their alternate route adjustment process.

To facilitate the practical application of this understanding, when transferring territory the back of the PS Form 1840 will indicate, by sector segment, any change in street credit from the actual street time used in sector-segment on PS Form 3999; including all relay, travel, allied time, etc. Any such adjustment to the carrier's actual street time must be documented and explained by appropriate comments on the reverse of PS Form 1840. Additionally, any time adjustment to the base street time, which must be selected pursuant to M-39 Section 242.321, will be documented and explained under the comments section on the reverse of PS Form 1840. Travel To, Travel From, and Travel Within times must be validated, documented, and discussed during carrier consultation. The actual time should be taken from the Inspection PS Form 3999, unless a new pattern is created during the

route adjustment process. If a new travel pattern has been created, the new times must be validated.

Notwithstanding any disputes regarding documentation of and/or justification for time adjustments made, the intent of the previous paragraph is for the letter carrier to be made aware of any proposed time adjustment to the carrier's base street time and/or to the street time of the territory being transferred. Time adjustments for territory being transferred will be by sector-segment, including all relay, allied parcels, accountables, etc. Any time adjustment to a carrier's base street time must comply with the M-39 Section 242.345 through 242.347.

Any grievance held pending a decision on this case will be resolved consistent with the principles of this agreement.

Please sign and return the enclosed copy of this decision as acknowledgment of your agreement to settle this grievance and remove it from the national arbitration docket.

Sincerely,

Doug Tulino
Vice-President
Labor Relations
U.S. Postal Service
Date: 7-30-07

William H. Young
President
National Association of
Letter Carriers, AFL-CIO

The terms of this settlement became effective September 11, 2007 with ratification of the 2006-2011 National Agreement.

FACTS AND CONTENTIONS

An official count and inspection of all city carrier routes at the River City Post Office was conducted during the week of April 26 through May 2, 2008. The results thereof were implemented on July 19, 2008.

According to the Union, sixteen of the thirty-three routes were found to be 8 hour assignments. Thirteen routes were found to be less than 8 hours and four routes were "overburdened". Nevertheless, says the Union, all of the routes were adjusted through the use of the Carrier Optimal Routing (COR) process.

The Union contends that what occurred in this instance was in violation of the Handbook M-39. For example, says the Union, there was no basis for adjusting routes which were found to be 8 hours in duration; the Postal Service did not properly document time adjustments relating to base street times on the reverse of Form 1840; the Postal Service failed to respond to requests for an explanation of how the times were calculated within the one week time frame cited in Section 242.345; the Postal Service did not keep scheme changes to a minimum; and various requests for information were not timely answered.

On August 13, 2008, an Informal Step A grievance was initiated asserting a violation of the Handbook M-39. The grievance was denied at that level and the parties met at Formal Step A in September 2008.

The Union claimed as follows at Step A:

During the week of April 26 through May 2, 2008 the River City Station in Evansville, IN 47714 underwent a count, inspection, and subsequent route adjustment where management used the COR computer program in the adjustment process. On July 19, the adjustment was implemented in the Zone.

The results of the count and inspection week showed that a base decrease of 4 hours and 57 minutes would be appropriate. However, COR took an additional 9hrs, 38min beyond the 4hrs and 57min out of the Station. Route 54, Route 68 (which was an auxiliary route), and a T-6 position were abolished. Another route, 52, was converted to an auxiliary route after 100% of its' original possible deliveries were removed and all new territory was added. Management did not adjust the routes consistent with the Station's evaluated time. Rather, they unilaterally conducted a major restructuring of the Zone. These facts will be documented in our contentions by 34 Exhibits. The Exhibits are all contained in an Exhibit Notebook, with the exclusion of Exhibits #2 and #3. [sic]

The July 2007 Step 4 decision M-01661 states, "The Carrier Optimal Routing (COR) process is a management tool to assist with the adjustment of letter carrier routes pursuant to Chapter 2 of Handbook M-39. No components of the COR program or application of the COR process will be inconsistent with the route inspection, evaluation, or adjustment process found in Chapter 2 of the M-39 Handbook."

At the heart of this grievance, the Union contends that Management is in noncompliance to Chapter 2 of the M-39 in the Zone 47714 route adjustment and has violated the spirit and letter of Step 4 decision M-01661. Branch 377 respectfully submits for consideration the following contentions.

. . .

Conclusion:

Although the Union could list a number of other contentions, we rest our case with these. The restructuring of Zone 47714 was heavy-handed, unreasonable, and inefficient. Although the COR computer program has gone through a number of upgrades, it remains a seriously flawed Management tool. When route adjustments are micromanaged at the District level and configured by a computer, without input from real people who have real knowledge of the facts on the ground, they are inferior and a waste of Postal resources. A simple transfer of the geographical territory between overburdened and underutilized routes conducted between the Local Managers

and the Union who have real knowledge of Zone 47714 routes would be a much better solution.

. . .

Management claimed as follows at Step A:

1. The 1840 reverse includes comments for deductions made to the street times (see Management exhibit #6). It also includes handwritten comments from Supervisor Ric Myers noting items discussed during carrier consultations. Issues that arose during these consultations were discussed with the carrier at that time.
2. Management's Position:

First the Union claims a violation of National Arbitration H7N-1T-C 39547. This is inappropriate inasmuch as grieving dicta is inappropriate and not a provision included in Article 15.

The Union asserts National Arbitrator Mittenthal found: "Where a route consists of 8 hours daily work, there is no basis for any route adjustment." (p. 11) "Stable eight hour routes are the goal of route evaluation." (p. 12) "Where the route is 8 hours, neither more nor less, no realignment of territory is appropriate." (p. 13)

The Union has referenced three obscure sentences from a National Settlement. The National Settlement which has widely been incorporated into the Handbooks and Contracts and referenced as the "Hempstead Methodology." Also the facts of that case involved an office prior to DPS implementation, a formal inspection was conducted, all routes were evaluated at eight hours and management adjusted them to the 2-6 ideology which existed prior to this arbitration decision.

. . .

4. Documentation was provided at the time of carrier consultation with the PS Forms 1840 Reverse. Management appropriately responded to any questions which arose at this time. No further response was necessary.

5. Scheme changes were kept to a minimum as much as possible, however in formal adjustments such as this one, scheme changes are effected based on changes in the routes.
6. Union has not explained which specific carriers were not considered. To management's knowledge, there are no carriers with any limitations.
7. Management contends that information was provided to the Union as requested. Union contends that they received COR technical gibberish (Union Exhibit #28). This is the information that is available to Management. The COR process was discussed with and agreed to by Union National Agent. Any further technical guidance and explanation should be provided to the Union by National. It should not be requested nor expected of local management nor the Evansville Postmaster to provide such technical guidance.
8. Union Exhibit #35 while technically a period of time, is not representative of an effective COR adjustment. It is a period of time inclusive of 8 delivery days only including 1 day after Labor day, and 1 Monday. It is not reasonable to assess adjustment effectiveness or the effectiveness of a COR adjustment based on 25% of the time being a Monday or a day after a Holiday.
9. The union requested remedy for a complete reversal of this implementation is not consistent with several of its own arguments. It argues management should have kept scheme changes to a minimum, but reversing an adjustment that was implemented almost 2 months ago and causing the scheme clerks to relearn the original scheme only to turn around and relearn a third scheme is not consistent with minimizing scheme changes. The union has offered no proof that the original routes "Considered the abilities of the carriers" any more or less than the currently adjusted routes. Changing them back to their "pre-implementation state" is not any

more or less "considering of carriers abilities".

10. While management appreciates the unions' faith in local managements ability to adjust routes. The union offers no proof that another adjustment would be better than the current adjustment. It is possible that redoing the adjustment could be more harmful than the current adjustment to all parties. [sic]

Lastly, the Union points to DRT decision C01N-4C-C 07030022 from Beaumont Station. This adjustment was completed and the grievance was filed prior to the COR settlement and thus is not relevant in this case. After the COR settlement was reached at the national level management revised the program and their procedures to be in compliance. . . .

Management also supplied a statement from the Supervisor which provided in part:

1. The issue at the heart of this grievance is that application of the COR (carrier optimal routing) program and its use in the recent zone inspection for the River City Station.
2. Undisputed fact #1. Base street time before the inspection for the entire zone was 193:15 (Hrs:Mins) daily. (See management exhibit #2)
3. Undisputed fact #2. Base street time after the implantation date of 7/19/2008 is 192:29 (Hrs:Mins) daily. (See management exhibit #3) [sic]
4. Undisputed fact #3. The net change for the entire unit was a loss of 43 Minutes.
5. Management Exhibit #11 is the 1840 from the evaluation consultation where all carriers were informed of the selected street time and the rationale behind it. All carriers were educated at this time about how even though the street times were selected. They are subject to change due to the nature of the COR program and the inefficiencies currently in the delivery of the zone. I also

explained to all carriers that whatever street time that exists now or in the future is only an approximate and that they would be given a chance to establish their own demonstrated performance and that follow-up adjustments would be necessary. [sic]

7. Base data is only part of the equation. The other part is actual carrier street performance. The efficiency aspect of CORS cannot be disputed. See management exhibits (2 and 3). The street variance to DOIS in Week 42 FY 08 (pre implementation) was + 14:08 (HRS:MIN). During Week 47 FY 08 (post implementation) the DOIS Street Variance was -:55 (:MIN) and this performance was with the new and lower base street time and equivalent total delivered mail volumes for both weeks.

The grievance was then sent to the Step B Team where an impasse was declared on December 29, 2008. Thereafter, the grievance was appealed to arbitration.

A hearing was held on May 13, 2009 at which time the parties submitted numerous documents into evidence. Testimony on behalf of the Union was provided by Steward Milligan and Greg Genord, a former Local President from Lexington, KY. Testimony on behalf of Management was provided by Supervisor Myers and Supervisor Hardin. The parties then agreed to file post hearing briefs.

The Union contends that the Postal Service violated the Handbook M-39 in this case. Section 243.345 clearly states that "any time adjustment to a carrier's base street time must be documented by appropriate comments on the reverse of Form 1840 or

attachments thereto"; such time adjustments do not appear on the reverse of Form 1840 or any attachment. The language of Section 242.322 reinforces this requirement, adds the Union.

The Postal Service also arbitrarily adjusted sixteen routes which were already 8 hour assignments and therefore required no adjustment, claims the Union.

The Union also alleges a violation of Section 242.321 of the M-39. In this regard, the Union stated as follows:

A review of the documentation in the case at bar reveals that management violated the National Agreement by failing to abide by the above requirements set forth in the Handbook M-39. Management must use either the 1840 inspection street time or the 1840-B average street time that is identified on each Form 1840. Form 1840 for route 14001 shows that management had a choice between 6:24 and 6:03 for that routes' street time. They arbitrarily chose 6:12 without documentation or reason, yet no reason exists because they only had two choices and they rejected both in direct violation of the M-39. Route 14021 (page 2122 of the moving papers) shows that management chose a street time that was 30 minutes less than the carrier's eight-week average and provided no explanation for their choice and no documentation as required. On routes 14054 and 14055, the street time selected was neither of the requisite choices. Route 14057 checked at 6 hours and 51 minutes on the street during the week of inspection. Management chose the 1840-B eight-week analysis time despite the knowledge that the carriers' possible deliveries had increased in number by 132. Management further (via use of the COR software) made wholesale changes of this routes' deliveries despite a time of 8:04, using the lower street time that was 40 minutes shorter than the actual time checked. The use of the COR software allowed management to claim an additional savings of nearly twelve minutes on this route for 'travel within route' time. A review of the route data in the case file reveals several more egregious violations of these sections of the Handbook M-39. Suffice it to say that management failed their

obligation to create equitable eight-hour assignments pursuant to the Handbook M-39.

The Union maintains that numerous carriers noted Management's failure to explain the reason for the "time selected", as well as the absence of an explanation or documentation therefor; as it regards this violation of Section 242.345, the Union stated as follows:

The Form 1840-Reverse is included in the moving papers as well as in the Union's abbreviated case file, for each letter carrier route at the River City Post Office. Under the "Comments" section, to the lower left side of each Form 1840-R, exist four separate and distinct numbered entries. Number three states, "street time for adjustment" and number four states "reasons for selection of street time." A review of the Forms 1840-Reverse from the River City inspection reveals that management failed to explain the reason for the time selected; additionally, they failed to document with appropriate comments the subsequent adjustments to the street times. Documentation in the case file (Exhibit 16, pages 971-995), reveals that the carriers duly noted the absence of the Employer's rationale for street times and adjustments to street times, and the Employer failed to provide the requisite documentation within seven days. Therefore, the time adjustments made to the carrier's routes must be disallowed pursuant to section 242.345 of Handbook M-39. All writing on the forms was performed after the data had been processed through the COR software, and was written by supervisor Myers, per his testimony at the hearing.

As a remedy for the violations in this matter, the Union requested the following:

The Union respectfully requests that (1) each letter carrier route at the River City Post Office in Evansville, Indiana that was part of the six-day count and inspection from April 26th, 2008 through May 2nd, 2008 be returned to its' geographical makeup as it stood during the week of inspection; (2) that each letter

carrier be returned to the route to which they were assigned during the original six-day count and inspection from which this grievance arose; and (3) that the local parties be instructed to jointly make the appropriate route adjustments based on the data accrued during the six-day count and inspection, using territory from the overburdened routes and the auxiliary route to create an equitable division of eight-hour assignments. Finally, the Union requests that (4) the Arbitrator maintain jurisdiction over this instant case until such time as the adjustments are jointly completed pursuant to the Handbook M-39, Chapter 2 and therefore Article 19 of the National Agreement.

The Postal Service takes the position that the Union was unable to show that Management violated the National Agreement or the M-39 Handbook in this case.

The Postal Service contends that the issue here relates more "to the usage of COR than the alleged M-39 violations". The application of COR to the route adjustment process is a matter which has been agreed upon at the National Level, therefore, says Management, its use in Evansville was permitted as an "accepted means to enact adjustments".

Although there may have been some questions about "Travel To, Travel From and Travel Within" various routes, there was testimony from Supervisor Myers to show that he provided the Union with the Line of Travel sheets generated by COR and he discussed any errors with the Steward. In this regard, Management stated as follows:

Supervisor Myers testified Management determined after discussion with the Union the best course would be to discuss the Line of Travel with the employees at the time of the carrier consultation and allow the carriers to have input. This was management's reasoning for not

validating the time prior to the consultations due to the times would change after the carriers corrected the lines of travel. Management's response attachment to the Union attachment to each 1840 Reverse states management would "verify the adjustments to all aspects of allied time including but not limited to Relay, Travel to, Travel within, Travel From, Load, Unload and deadhead."

Supervisor Myers also testified that several carriers made suggestions during the consultations regarding the changes to the route. This is supported by the documentation included in the Moving Papers. For example, Page 1716 the comments listed show Carrier Pfeffer recommended "313, 315, 317, 319 S. Rotherwood should go from 1457 back to this route." Supervisor Myers testified management did follow this carrier's suggestion.

As it regards the adjustments to routes which "checked in at 8 hours", Management argued as follows:

The Union has referenced three obscure sentences from a National Settlement. This National Settlement has widely been incorporated into the Handbooks and Contracts and referenced as the "Hempstead Methodology." First it is important to note in the National case the circumstances are not similar to what occurred in the case at hand. In Hempstead, the results from the route inspection demonstrated that all of the routes checked at eight hours. In River City several routes were found to be under/over.

As stated in Management's Step 2 Denial, it is inappropriate for the Union to grieve dicta. One also needs to examine the sentences the Union references in the context of how they were presented. The first sentence comes from page 931 of the moving papers, paragraph 3 under the discussion heading Route Adjustments Under 243.2:

The route adjustment procedures are carefully described in 243.2. Where a route consists of 8 hours daily work, there is no basis for any route adjustment. Only when the route is overburdened ("more than 8 hours") or underutilized ("less than 8 hours") is an adjustment appropriate. That principle does not appear to be in dispute. (p. 931) [sic]

Arbitrator Mittenthal was summarizing the instant situation as it occurred in Hempstead. As stated previously all of the routes in Hempstead were at or near eight hours following the inspection, this was not the case in River City. The Union argues as if this is a "rule" and thus it was inappropriate to adjust any route which was determined to be eight hours.

To avoid all routes which check at eight hours in an office-wide adjustment would create excessive travel times. It would not conform to the recommended considerations of M-39 242.232. A route which checked under could be circled by routes which checked at eight hours, therefore to enact an adjustment, the adjustment would have to be designed to have the carrier drive through a route which checked at eight hours. It would be the ideal situation if every route which checked over was located directly beside a route which checked under, unfortunately this is not the case.

As it regards carrier consultations, Supervisor Myers provided the following accounting:

1. Each individual consultation lasted approximately 30 minutes.
2. I explained to each carrier the 60 day review process.
3. I explained to each carrier the "approximate nature" of the 1840R times and the opportunity for each carrier to establish their demonstrated performance.
4. I explained the need to verify the adjustments to all aspects of allied time including but not limited to Relay, Travel to, Travel within, Travel From, Load, Unload, and deadhead.
5. I gave each carrier full control over the line-of-travel for their route.
6. I gave each carrier carte-blanche latitude to change their route.
7. I listened to input from all carriers.
8. I tried to spend as much time as possible with each carrier including continued follow-up for route changes.
9. I explained to each carrier the process for special inspections and the requirements for 271g issues.

In this regard, Management stated as follows:

As documented on all of the 1840 forms, each selection was discussed with the carriers individually and each carrier signed the form. Some of the 1840s contained comments but none of them had comments demonstrating the carriers disagreed with the street time selected. The Union also did not argue there were any errors or disagreements regarding the selected times. In addition, Union Steward Milligan testified he was at every consultation and did not raise the issue of the missing comments at the time of the consultation.

Supervisor Myers testified some of his preliminary time selections were altered after consulting with the carriers. He testified for example after meeting with Carrier Merriss the regular carrier for Route 14047 (page 2127 of the Moving Papers) he altered his prior determination. This is demonstrated by the lining out of the lower number of the 1840-B and replacing it with the higher number of the week of inspection.

Arbitrator Philip Parkinson, Case No. C94N-4C-C 96063226 dated September 10, 1998 states in part:

. . . each Letter Carrier at the Northridge Branch, either personally or through a Union Representative, signed a statement agreeing to the times used and attesting to the fact that the opportunity to express ideas concerning individual routes was provided. The evidence presented does not indicate that the statements were signed under duress. . . . Based upon all of this evidence, it is my considered opinion that although the Postal Service failed to provide commentary on each 1840 printout, the error was harmless in nature since each Letter Carrier agreed to the time used for his or her route.

The Postal Service points out that all routes are currently 8 hours. There was no evidence to the contrary, adds Management.

The Postal Service states as follows as it regards the seven routes which were "out of adjustment":

Inasmuch as seven (7) of the thirty-three (33) routes were found to be out of adjustment does not necessarily support any of the Union's contentions. Rather it demonstrates the vast majority of routes were aligned correctly. These seven (7) routes would have been re-adjusted as part of the sixty (60) day review process but the carriers requested the inspections prior to the completion of sixty (60) days. It is clear the drafters of the M-39 Handbook realized the route inspection process is not perfect. This is evident from the inclusion of the Special Inspection Provisions and the review process agreed to in the Hempstead Methodology.

As stated by Arbitrator Claude Dawson Ames in case F01N-4F-C 02252138:

Although not exactly rocket science, the evaluation and adjustment process is not perfect, and is subject to many competing variables in its composition which must be balanced, including the allowance for daily office and street time, estimated mail volume, and squaring the route, as near as possible to an eight (8) hour day.

Due to this is a contract case it is the Union's burden of proof to demonstrate a violation. It is Management's position the Union failed to demonstrate a violation of M-39 Section 243.2. This section does not state routes which check at or near eight hours are to be excluded from the adjustment phase as the Union asserts.

In summation, the Postal Service contended as follows:

It is Management's position although there are no specific written comments on the reverse of the 1840 for the selection of street time, it is clear from the documentation in the file the criterion as to why the time was selected was not due to it was lower. The Union failed to proffer one witness or statement from one carrier who disagreed with the time selected. The Union failed to raise this issue while present at every consultation.

There was one violation presented in the case at hand, Management failed to validate the Travel to, Travel From and Travel Within changes resulting from usage of the COR program prior to meeting with the carriers. It is

acknowledged by the parties this occurs as a part of usage of the COR program. The carriers were made aware during the discussion phase of Management's intent to fulfill this requirement after the carriers had an opportunity to alter the travel and delivery patterns of their new routes. As Management stated during the consultations and in the written addendum attached to each sheet, these times would be verified in the future.

Supervisor Myers and Union Steward Milligan both testified they had concerns with the lines of travel generated by COR and had discussed how to handle the situation. Both testified the carriers were allowed to make alterations to the lines of travel. Supervisor Myers testified carriers are the experts when it comes to this and he deferred to them on setting up the routes.

It is apparent the carriers and the Union were actively involved in the post-adjustment process. It is clear from the testimony and evidence in the Moving Papers the carrier comments were discussed thoroughly, documented, and considered by Management.

....

It is Management's position this case should be denied in its entirety. The Union has failed to demonstrate management willfully violated the contract. The routes whose adjustments were underestimated and thus resulted in being overburdened have subsequently been re-inspected and adjusted. All of the routes were reviewed as promised by management at the completion of sixty (60) days post-inspection.

....

OPINION

The Arbitrator has examined the evidence presented at the hearing and considered the arguments of the parties as set forth in their post hearing briefs and finds therefrom that the Postal Service acted in a manner which was inconsistent with the cited provisions of the M-39 Handbook and the pre-arbitration settlement

in Case No. Q01N-4Q-C 05022605 as these documents relate to the completion of the reverse side of Form 1840.

The parties at the National Level have agreed upon the use of COR as a "Management tool to assist with the adjustment of letter carrier routes"; they have also agreed that the use of COR will not be "inconsistent with the route inspection, evaluation or adjustment process found in Chapter 2 of the M-39 Handbook".

In other words, it appears to the Arbitrator that the procedure and principles set forth in the M-39 are to be strictly followed and then COR will be used to "assist with the adjustment process". "No components of the COR program or application of the COR process will be inconsistent with the route inspections, evaluation or adjustment process found in Chapter 2 of the M-39 Handbook".

The significant inconsistency with the M-39 Handbook is found in the failure to make the appropriate comments on the reverse of Form 1840. The Arbitrator is of the opinion that this failure cannot be viewed as mere "form over substance" due to the clear language of the cited M-39 provisions and due to the fifth paragraph of the cited pre-arbitration settlement. These provisions must be given meaning and they must be interpreted and applied as written. A careful reading of these provisions leaves no doubt that the "comments" section on the reverse side of Form 1840 must be completed as set forth. Although the Supervisor made many

notations on the reverse of Form 1840 and although the carriers signed off on the Forms, relevant information such as "base time for route evaluation" is lacking at Item 2.

Section 242.222 of the M-39 requires the entry of the "base street time" in Item 2 under Comments on the reverse of Form 1840. Although the "street time for adjustment" was entered in Item 3, Item 2 was "blank".

Section 242.322 also requires a "Comment" on the reverse of Form 1840 as to "why the base street time allowance for the route was established at the time selected". Additionally, despite the language of Section 242.321, there were instances where neither "a" nor "b" were selected.

Section 242.345 also requires documentation of "any adjustment to a carrier's base street time due to identified improper practices or operational changes" . . . "by appropriate comments on the reverse of Form 1840". This was not consistently reflected thereon. Also, numerous carriers signed statements noting the "absence of documentation for several issues on the reverse of the 1840". That information was not provided within seven days, therefore, per Section 242.345, "the time adjustment shall be disallowed". The Union clearly raised this issue during the grievance procedure on P. 12 of the documentation:

3. The Union contends that Management violated the M-39 Section 242.321-242.322 (See Exhibit #12) when they failed to explain on the reverse of PS Form 1840 the

reason for their selection of the possible street times, either (1) the average time for the 7 weeks random timecard analysis, plus the week following the week of count and inspection, or (2) the average street time used during the week of count and inspection.

After the week of count and inspection, no explanation whatsoever was given on the reverse of the Forms 1840 for any Zone 47714 route why Management made their selection of the two possible base street times for evaluation and adjustment purposes. (See Exhibit #5, no comments displayed.)

This issue was also addressed at Step B.

4) Management failed to provide documentation within one week showing the basis for time disallowances in the carrier base street times. See section 242.345,

242.345 Any time adjustment to a carrier's base street time due to identified improper practices or operational changes (such as, but not limited to, the elimination of relay or park points, or travel pattern changes), must be documented by appropriate Comments on the reverse of Form 1840 or attachments thereto. Such adjustments must be discussed with the carrier at the time of consultation concerning the route evaluation. If the carrier, at the time of the consultation, notes the absence of such documentation in writing on the Form 1840 or attachment thereto, and initials and dates the Form 1840 or attachments thereto, and management does not supply such documentation within 1 week, with a copy to the carrier, the time adjustment shall be disallowed.

Included in the case file are statements from 25 carriers who attest to the fact that they noted the absence of documentation for several issues on the reverse of the 1840. The carriers also state that over 7 days have passed and Management had not supplied the noted absent documentation. The previous is evidenced in Exhibit #16.

Also at Step B, the Union addressed the language of Section 242.321 as follows:

3) The Union contends Management failed to explain on the reverse of the PS Form 1840 the reason for their selection of street times.

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 weeks random timecard analysis and the week following the week of count and inspection; or
- b. The average street time used during the week of count and inspection. 242.322 The manager will note by explanatory Comment on the reverse of Form 1840 or attachments thereto why the base street time allowance for the route was established at the time selected. The manager's selection of the street time allowance cannot be based on the sole criterion that the particular time selected was the lower.

The documentation (reverse of 1840's) in the case file supports the Union's contention Management failed to provide any explanation whatsoever as to the reason for selecting the 1840 B time or the average street time used during the week of inspection.

A review of the Forms 1840 shows that such explanation was not consistently given.

It appears to the Arbitrator that the pre-arbitration settlement was intended to address compliance with the M-39 in a COR environment. The parties reinforced their understanding and addressed the issue of facilitating the practical application thereof. On three occasions, they cited the entry of information on the reverse of Form 1840. This shows the parties' recognition that the "Comments" portion must be completed, especially as it relates to "actual street time" and documentation for any changes.

Based upon the clear lack of strict compliance with the cited provisions of the M-39, the Arbitrator finds that Management was in violation of the National Agreement.

Prior to addressing the issue of remedy, the Arbitrator notes that there is merit to Management's claim that this case can be distinguished from the Mittenthal decision in Grievance No. H7N-1T-C 39547 for the reason that several routes were "overburdened or underburdened" in Evansville. In this regard, the decision of Arbitrator Harris in Case No. A-01N-4A-C 05115654 is persuasive:

Mittenthal's above comments about individual routes came within the framework of a discussion relative to Management's attempt to restructure carrier routes in Hempstead, New York in expectation of future productivity improvements.

. . .

In the instant case, Management conducted office-wide route inspections and found sufficient number of routes with times less than 8 hours that it was able to reduce the number of routes by one and to redistribute the work of 25 carriers among 24 carriers. Stable 8-hour routes did not exist. In Mittenthal's case, however, the "existing routes" were "indeed 8 hours." The different situations are crucial. In the North Bergen office, Management had the right, while making overall adjustments, to make territorial switches among routes that in some cases added minutes to routes and in other cases reduced them. No single route is sacrosanct; it must be seen within the framework of an office's network of routes.

In the instant case, it may not have been practical to make the necessary adjustments without considering the transfer of

territory to or from the routes which were already 8 hours. (See M-39 243.232.)

As it also regards Section 243.232, by Management's own report (Union Exhibit #19), there were "386 changes which represented approximately 72% of the total Zone 47714 scheme". This does not appear to be consistent with keeping scheme changes to a minimum.

As stated above, the Arbitrator finds from the evidence that the Postal Service was in violation of the cited provisions of the M-39 due to the absence of certain critical information from the reverse of Form 1840. The Arbitrator nevertheless recognizes that Management fulfilled its obligation to consult with the carriers and give due consideration to their input. It should also be noted that the Union is not seeking a "monetary form of relief" here.

AWARD

The grievance is granted to the following extent:

- 1) The letter carrier routes at the River City Post Office shall be returned to the geographical locations that existed during the week of count and inspection (April 26 - May 2, 2008).
- 2) The letter carriers shall be returned to the routes to which they were assigned during the cited week of count and inspection.

3) The local parties shall utilize the data gathered during the week of count and inspection to make the appropriate route adjustments in accordance with the provisions of the M-39.

4) Every reasonable attempt should be made to avoid territorial adjustments to routes which "checked in at 8 hours", however, the "framework of the office's network of routes" must be given due consideration when establishing routes as near to 8 hours as possible within the River City Office. As stated by Arbitrator Harris, "no single route is sacrosanct".

5) This process shall be completed within 45 days.

6) At the request of the Union, the Arbitrator shall retain jurisdiction in this case for 60 days. However, it is this Arbitrator's opinion, that the route adjustment process belongs to the parties as set forth in the M-39.



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