

C#09381

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION
Between

UNITED STATES POSTAL SERVICE

And

NATIONAL ASSOCIATION OF LETTER CARRIERS

GRIEVANT:
A. L. Machart

POST OFFICE:
Houston, TX

CASE NUMBER:
S7N-3V-C-11464

BEFORE: P. M. WILLIAMS, ARBITRATOR, SOUTHERN REGION

APPEARANCES:

FOR THE POSTAL SERVICE:

Tahara A. Wesley, Labor Relations Assistant

FOR THE NATIONAL ASSOCIATION OF LETTER CARRIERS:

V. L. Dickson, Local Business Agent

PLACE OF HEARING:

Post Office Annex, Houston, TX

DATE OF HEARING:

September 12, 1989

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JOE Z. ROMERO
NATIONAL BUSINESS AGENT
D.A.L.C.
DALLAS REGION #10

DECISION AND AWARD

BACKGROUND:

At the time of the incident which created the situation that resulted in the grievance being filed the grievant was employed as a full time regular letter carrier assigned to the Westfield Station, Houston, TX. His craft seniority is approximately 21 years, and in that time he had served approximately 10 years as the Union's chief steward at the station.

The facts are not in dispute. On March 13, 1987, after he opted not to hold the steward's position for 1987 his route was given an interim 24 minute adjustment to reflect that he was no longer the steward. When he was re-elected to the position in November, 1987 he asked that steward time be reinstated to his route effective January 2, 1988, the date he would resume the office.

Officials at the station declined to reinstate the requested time of 45 minutes per day for Line #21. Ultimately a grievance was filed over this failure and it is that grievance which is before me now for decision.

The Step 1 hearing was held on February 8, 1988. The grievance was moved to Step 2 on February 21st and then progressed to Step 3 May

6th. The Step 3 declination letter stated: "There is no provision of the National Agreement that provides for a steward's route to be adjusted to provide for union time or guarantee a steward a specific amount of time daily for union business."

All interested parties appeared at the hearing where they were given an opportunity to present such evidence and argument as was deemed appropriate under the circumstances. The grievant was the Union's only witness. He was placed under oath and was cross-examined by the Employer's representative. The Employer called no witnesses.

Joint Exhibit 1 was the National Agreement (NA). Joint Exhibit 2 was the grievance packet. Joint Exhibit 3 was an arbitration award of Arbitrator Robert W. Foster in "Expedited Backlog Arbitration Case No. S8N-3U-C-33163. The Award is dated March 19, 1983 and involves this grievant and this Union. The issue before Mr. Foster was the precise issue that is before me. More will be said about this below.

POSITION OF THE PARTIES:

National Association of Letter Carriers (Union):

The Union contends that the grievant reasonably spent approximately 45 minutes per day on Union business either involved in discussing actual or potential grievances or involving himself in matters at the request of Employer officials directly relating to Union business. It contends the time spent by him on such matters should be credited on Line 21 of the Form 1838-C. It asks that the grievance be sustained.

United States Postal Service (Employer):

At the hearing the Employer conceded that steward time should be credited to Line #21. It claimed however that 45 minutes was unreasonable. It said 24 minutes, which was the amount of time adjusted from his route in March 1987, was reasonable. It asked that the request for 45 minutes be denied and that 24 minutes be awarded.

ISSUE: What is a reasonable time to be included on Line #21 of the Form 1838-C for Route 6800 for the grievant performing the duties of chief steward at the station?

OPINION:

The testimony of the grievant was clear and concise when he recited his duties as the steward. Everything he said need not be repeated. It is noted however that twice daily he was required to change the station and the volume of the public address radio. Almost daily he visited at length with the station manager (at times up to 30 minutes) about events and circumstances at the station and/or among the 80 carriers there. Twice a month he reviews the Overtime Desired List (ODL) tabulations, which takes over an hour each time. Regularly he is asked by carriers to check the Forms 3997 and 3971 to see if a violation of the 14% rule regarding annual leave has occurred. He is responsible for keeping the bulletin board. As steward he attends labor/management meetings 2 or 3 times a week. And almost daily carriers come to him with questions about the NA and concerned about what has occurred,

and whether they ought to file a grievance. He has one or two Step 1 meetings per week and files one or two Step 2 appeals per month and he attends all Step 2 meetings. He gets periodic calls from the Union, the Employer's area manager and E&LR people about pre-arbitration matters. He prepares the Form 1723 for employee upgrades. He said his best estimate of the average time he spent on these and other Union matters was approximately 45 minutes per day.

I found the grievant's testimony to be credible and deserving of belief. Moreover, on cross-examination he said that in January, 1988 he was filing 7 to 10 grievances per week and that 1 or 2 of those were taken to Step 2 each week. He also said that his conversations with the carriers and with the station manager (who was not at the station when the grievance was filed) had improved the situation there, thus it was worthwhile for him to spend as much time as it was taking to make labor/management relations there better. He also said he had requested that he be furnished the exact amount of time that he had been recorded for him when he clocked in as being on Union business (which was not but a small part of what he actually was doing), however management had not seen fit to furnish him with that information. And he said he was not required "to hit the clock" each time he involved himself in Union business. Rather "613 time" was only recorded when he was directly engaged in grievance activity and in checking the ODL.

Before proceeding it needs noting that the Employer's representative, despite agreeing to the Foster Award as a Joint Exhibit, argued against its precedential value because of the agreement of the parties that "expedited arbitration cases" have no precedential value. I know what the representative is saying and the basis for it. However I also believe I know that Mr. Foster would not have written an opinion of the sort that was written had he not, as the caption tends to indicate, been of the opinion that the matter before him was indeed a case for the regular panel, and its expedited reference related solely to how the matter was categorized by the parties for one of their so-called "blitzes". I therefore have no hesitancy in citing it. But if I err in that regard I nevertheless subscribe to the result he reached because I find his analysis to be correct, and I support it.

In sustaining the grievance before him Mr. Foster, in part had this to say about the matter:

"...Despite management's suggestion of difficulties that may be encountered by building in route time for grievance handling by a steward-carrier due to variations in the actual time used, this does not justify the apparent practice of including this time on line 22 when such grievance handling is occurring weekly or more often as it appeared to be with the Grievant during the period in question. Management has several alternatives available to avoid an abundance of non-productive time should circumstances reduce or eliminate the time needed for this purpose, including an adjustment of the route should the carrier no longer hold the steward's position. Moreover, management's position that the Grievant will suffer no personal harm since overtime or other alternatives may be offered to him is irrelevant in view of the contractual mandate to provide line 21 time in order to insure the proper handling of grievances..."

The Employer's argument against sustaining the grievance as filed is that 45 minutes is unreasonable. It claims that a reasonable time is the 24 minutes that it adjusted out of his route when the grievant was no longer the steward. It does not however support its argument with evidence that the 24 minutes had any reasonable relationship to the time that he spent on Union affairs. Instead it implies that 24 minutes is reasonable because that was what was put into the route and what was backed out of it later.

While the Employer's argument has merit it nevertheless fails to be persuasive because the grievant has credibly testified that it was not unusual for him to have daily conferences with the station manager that consumed the better part of 30 minutes. Moreover, the Employer failed to challenge his claim, either by way of questioning it on cross-examination or in having the manager testify as a witness and denying that that much time was taken on anything approximating a regular basis. Under the circumstances I am constrained to find that the Employer has failed to prove either that 24 minutes is reasonable or that 45 minutes is unreasonable. The question then becomes: has the Union proved that 45 minutes is a reasonable time?


I find that the Union has met its burden in that regard therefore 45 minutes should be credited to Route 6800 on Line #21. This is not to say however that the 45 minutes is to be permanent. Rather it is only to say that until the Employer is able to satisfy itself, and potentially disinterested persons as well, that less than 45 minutes is required for the grievant's conducting Union business the 45 minutes shall remain credited to Route #6800 at Westfield Station.

On the basis of the entire record in this case the undersigned makes the following

AWARD

Forty-five minutes is a reasonable time to be included on Line #21 of Route #6800 at Westfield Station. The grievance is sustained in accordance with the opinion expressed above.

IT IS SO ORDERED.



P. M. Williams
Arbitrator

Dated at Oklahoma City, Oklahoma
this 30th day of September, 1989.