

C# 12098

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration between)
UNITED STATES POSTAL SERVICE ()
-and- ()
NATIONAL ASSOCIATION OF LETTER CARRIERS ()

GRIEVANT:
RECORDING SECRETARY,
BRANCH 6000, NALC

CASE NO.
H7N-1T-C 39547

BEFORE: Richard Mittenthal, Arbitrator

APPEARANCES:

For the Postal Service: James K. Hellquist
Headquarters Labor Relations

For the NALC: Keith E. Secular
Attorney (Cohen Weiss &
Simon)

Place of Hearing: Washington, D.C.

Dates of Hearing: October 11, 1991
March 17 and 18, 1992

Date of Post-Hearing Briefs: May 22, 1992
Date of Reply Briefs: June 3, 1992

AWARD:

The grievance is remanded to the parties for further discussion and resolution in light of the observations made in this opinion. Should either party wish to return the dispute to national arbitration, it may do so and a final decision will be promptly rendered.

Date of Award: July 10, 1992.


Richard Mittenthal
Arbitrator

BACKGROUND

This grievance involves Management's action in restructuring Carrier routes in Hempstead, New York in January 1991. Specifically, it abolished 20 of 116 full-time routes, transferred the territory covered by the abolished routes to the surviving 96 routes, and made the latter eight-hour routes by assigning much of their office time to 15 newly created Router jobs. NALC claims that this restructuring was contrary to the terms of the M-39 Handbook and hence a violation of Article 19 (Handbooks & Manuals) and Article 41, Section 3S as well as a violation of Article 5 (Prohibition of Unilateral Action). The Postal Service disagrees.

The M-39 Handbook, entitled Management of Delivery Services, has been incorporated into the National Agreement through Articles 19 and 41. These provisions state:

Article 19

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable...

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least sixty (60) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement..., they may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change...

Article 41, Section 3S

City letter carrier mail counts and route inspections and adjustments shall be conducted in accordance with Methods Handbook M-39, Management of Delivery Services, as modified by the parties' Memorandums of Understanding dated July 21, 1981 and

October 22, 1984 (incorporated into December 24, 1984 Award). (Emphasis added)

The M-39 concerns all phases of Carrier work. It contains detailed instructions for mail counts (subchapter 220), route inspections (subchapter 230), route evaluations (subchapter 242), and route adjustments (subchapter 243). The count, inspection and evaluation serve to determine whether an adjustment is necessary. The purpose of route adjustments is to insure "an equitable and feasible division of work among all of the carrier routes assigned to the office" and to establish "regular routes...of as nearly 8 hours daily work as possible" (242.122). Such evaluations also play a large role "in maintaining regularity of deliveries and in conserving workhours" (242.11).

Each Carrier route consists of two distinct elements. The first is office time, i.e., time spent in a postal facility casing mail, strapping out mail, and miscellaneous other work. The second is street time, i.e., time spent traveling to a designated area, delivering the mail, and returning to the postal facility. Periodically, Management evaluates each route in order to estimate the amount of time needed to complete these work functions.

A route evaluation is based on the Carrier's activity within a specified period, normally, six days. The principal information accumulated during this period is the mail volume and mix handled, the number of possible and actual deliveries made, and the time spent performing such work. This hard data is combined with some historical data in an effort to develop a realistic picture of the time it will take to "carry" a given route. This is the evaluation process. If the route calls for more (or less) than 8 hours' work, it is adjusted by subtracting (or adding) workload. For example, where the evaluation indicates it will take 8-1/2 hours to "carry" a particular route, some deliveries are transferred elsewhere so that this route will encompass just 8 hours. For the purpose of the adjustment, as indicated above, is "to place the route on as nearly an 8-hour daily basis as possible" (243.11).

The M-39 carefully details in 243.2 the methods by which Management may correct routes evaluated at more or less than 8 hours. Because this Handbook language is critical to a full understanding of this dispute, it should be quoted:

243.2 Providing Relief to Routes

.21 Routes of More than 8 Hours. If, after correcting improper practices, a route still shows a

total daily time consistently in excess of 8 hours on most days of the week, plan to provide permanent relief by transferring the workload or providing temporary relief on heavy days, as follows:

a. Temporary relief must be provided in the most efficient and economical manner, either by using auxiliary assistance in the office or on the street or by authorizing necessary overtime.

b. Permanent relief may be provided by reducing carrier office or street time. Consider such items as additional segmentations, use of routers, hand-offs, relocating vehicle parking, withdrawal of mail by clerks or mailhandlers, providing a cart system for accountable items, etc. Where actual transfer of territory is necessary, see 243.23...

.22 Routes Less than 8 Hours. On routes where the evaluated time is less than 8 hours, make permanent additions by transferring territory through a realignment of the territory in the delivery unit. This realignment could reduce or eliminate an existing auxiliary route, reduce a regular route to auxiliary status, or eliminate it entirely.

.23 Transferring Territory

.231 Before transferring territory, determine the objectives of the final route adjustments and consider the following points:

- a. Implementation of new programs.
- b. Whether the adjustments should be:

* * *

c. Consider adjustments in terms of sectors and segments to be added to or taken from the route. Adjustments must not result in the splitting of a segment.

* * *

.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...

c. Routes should begin or 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.

One other comment on the M-39 seems appropriate. It was initially written by Management alone. But its terms have been modified over the years through collective bargaining and through at least one Article 19 grievance. Thus, during the 1978, 1981 and 1984 negotiations, Memorandums of Understanding were executed with respect to route inspections and route evaluations. Each of these MOUs altered or added to M-39 language. Then, in 1985, Management proposed for the M-39 a "segmentation" concept through which mail is sorted into certain groupings for the purpose of reducing Carrier casing time and thereby relieving overburdened routes. After a NALC grievance, the matter was discussed and a lengthy Settlement Agreement was negotiated. Part of that Settlement involved an amendment to 243.21b which recognized that Routers could be used to adjust overburdened routes.

The present dispute arose in Hempstead, one of the "Big Six" offices on Long Island. Hempstead consists of four stations - Hempstead, West Hempstead, Uniondale, and East Meadow. In May 1990, there were 110 full-time Carrier routes and 12 full-time Routers in these four stations. There were also 10 Combination/Truck runs and 1 Auxiliary Router. Carriers had routes which, for the most part, called for 3 to 3-1/2 hours in the office and 4-1/2 to 5 hours on the street. Routers did office work which would otherwise have been done by Carriers. All of these employees are represented by NALC.

At that time, the Postal Service was in the process of changing its mail handling system from a manual/mechanical mode to a largely automated mode. A huge automation program was underway and will continue into the mid-1990s. Mail is moved at speeds in excess of 10,000 pieces per hour past optical character scanners that read the address and convert it into

the bar code equivalent of the zip code. These bar codes are later read by mail processing bar coders (MPBCs) to sort the mail on its way to its destination. Such machines enhance efficiency and allow placement of mail into sector segments for Carriers, thus simplifying the casing of mail by Carriers. The final step is delivery bar coders, the so-called advance bar coding (ABC), which will sort mail into walk sequence so that Carriers will have little, if any, casing to perform. Mail not suitable for optical scanning is to be processed through a remote bar coding system (RBCS) which will provide the appropriate bar codes through electronic imaging and computer search of addresses. There is other automated equipment as well but it is not relevant to this dispute.

The automation program impacted Hempstead mail to some extent in May-June 1990. Some portion of that mail was then being sector-segmented. Management was also implementing a vertical flat case program. It anticipated, moreover, that the introduction of RBCS and MPBCs in late November 1990 would mean a large increase in sector-segmented mail. As much as 80 percent of all letter mail might be sector-segmented at that time. Management believed that this would save Carriers, on average, 20 to 40 minutes of office time per route.¹ It also expected that about a year later, late 1991 or early 1992, ABC would arrive on Long Island and would begin to sort mail in walk sequence. It believed that this would save Carriers, on average, an additional 60 minutes of office time per route.¹

Management determined that substantial changes in the Carrier route structure would be necessary. It met with NALC branches on Long Island, including Hempstead Branch 6000, in mid-1990 in an attempt to win NALC's cooperation. It explained the automation program and the probable impact of the program on routes. NALC representatives insisted that no changes be made without prior route inspections and evaluations. They urged that no route be adjusted until the evaluation revealed that such route was in fact more or less than 8 hours. Management thought, initially at least, that inspections were not required under the particular circumstances existing at that time.

Management advised Carriers in July 1990 that it was abolishing 25 full-time routes effective August 3. A grievance was filed, alleging that Management had failed to conduct route inspections demonstrating that any of the abolished routes was under 8 hours. Management rescinded its action in mid-August

¹ These estimates would vary with the letter volume of the particular route.

and had route inspections made in September. NALC insists these inspections were done as a mere procedural formality which in no way intended to alter Management's earlier decision. Management issued another notice in October 1990 abolishing 24 routes but that action was also rescinded.

Management again informed NALC on November 29, 1990, that 20 routes would be abolished effective January 5, 1991. This time it did not change its mind. The affected Carriers, those who had worked the abolished routes, became unassigned regulars. All full-time assignments held by Carriers junior to those displaced were posted for bids. Carriers submitted bids to protect themselves. Successful bidders were chosen. These new arrangements went into effect on January 7, 1991.

It is not clear how the 20 abolished routes or the 96 surviving routes had been evaluated during the inspection process. Apparently none of them had been evaluated at less than 8 hours. The route restructuring was not broken down into distinct steps. But there are only two possibilities as to how that restructuring could have been accomplished. One possibility was to transfer territory from the abolished routes to the surviving routes, thus making the latter more than 8-hour routes, and then transferring much of their office time to Routers so that they would become no more than 8-hour routes. The other possibility was to transfer office time from all the routes to Routers, thus producing routes of less than 8 hours, and then transferring territory from the abolished routes to the surviving routes in order to provide the latter with 8 hours of work. Whichever direction the restructuring took, the result is the same.

At the same time, an additional 15 Router assignments were created and filled. Management anticipated that office time would substantially decline as the automated equipment was installed and had its full effect. The surviving routes involve less office time and more street time than in the past. Carriers now spend just 2 to 2-1/2 hours in the office and 5-1/2 to 6 hours on the street. This is referred to by NALC as a "6 and 2" route.

Management's explanation for this kind of route restructuring is contained in an internal March 1990 Memorandum by Assistant Postmaster General Kane. He addressed the critical question of how decreased office time for Carriers, as a result of automation, could best be handled:

...the use of [R]outer, as a flexible buffer, that will be reduced as each new program comes on line, is the most effective tool for keeping route

stability during a time of constant change while at the same time significantly reducing the workload associated with route adjustments and scheme changes that impact both the Postal Service and the carrier route presort mailers. Offices that have five or more routes should plan to move toward route stabilization by establishing a sufficient buffer based on the forthcoming programs. This buffer equates to approximately one hour per average route in the FY '90 to FY '93 timeframe, with an additional hour required from FY '93 and beyond. Most importantly, the buffer should be established in advance of the automation scheduled for deployment in each affected office.

I am not advocating the systematic adjustment of the route structure on an office by office basis at this time, but rather as part of the normal process of managing changes impacting route structure. More specifically, as an event occurs, i.e., volume growth or loss, vertical flats, sector/segmented volume, route inspection, etc., an appropriate amount of buffer or [R]outer time must be established for each route. The actual amount of time for a particular office is determined by local management predicated on current route structures, workload conditions, ability to manage various levels of [R]outer time and the equipment deployment schedule...

DISCUSSION AND FINDINGS

NALC's argument, simply stated, is that the route eliminations in the Hempstead facility as of January 1991 were contrary to M-39 requirements and hence a violation of Article 19 and Article 41, Section 3S and were also a violation of Article 5. The Postal Service vigorously disagrees. It contends too that this grievance is "not arbitrable" because it seeks limitations on how Routers can be used after NALC failed to achieve such limitations in contract negotiations and after NALC failed to invoke Article 19 in 1985 to protest Management's establishment of Routers in the M-39.

Arbitrability

Article 15, Section 4A6 states that the arbitrator's authority is "limited to the terms and provisions of this Agreement" and that such terms shall "[not] be altered, amended, or modified..." A grievance alleging a violation of

the "terms and provisions" of the National Agreement is arbitrable. Here, NALC complains that the route restructuring in Hempstead was improper under the "terms and provisions" of the M-39 which has been expressly incorporated in the National Agreement through Article 41, Section 3S. Its grievance is thus arbitrable.

Article 15, Section 4D1 states that national level arbitration concerns "only cases involving interpretive issues under this Agreement or supplements thereto of general application..." A grievance raising an "interpretive issue" under the National Agreement is arbitrable at the national level. Here, NALC's complaint deals with a fundamental "interpretive issue" with respect to the process of route adjustment under the M-39. It clearly falls within the province of national level arbitration.

The Postal Service arbitrability claim asserts that Management changed the M-39 in 1985 to permit the use of Routers to reduce Carrier office time, that NALC did not then protest this change through Article 19, that the present grievance is such a protest years too late, and that NALC has also sought unsuccessfully in recent years to negotiate restrictions on Routers. It urges that NALC now is attempting to gain through this grievance what it has been unable to realize through a timely Article 19 protest or through contract negotiations. It believes that grievance arbitration should not be available to NALC for this purpose and that the proper forum for NALC's claim was the 1991 interest arbitration.

The flaw in this argument is that NALC's complaint is not aimed at Router's work but rather at the reduction of Carrier routes in Hempstead from 116 to 96, the elimination of 20 routes. The parties' July 1987 Memorandum of Understanding states that the Router job shall "consist of casing, routing and sequencing of mail for a specific group of routes..." NALC accepts this job description. It does not seek to place any limits on these duties. What it does urge is that a transfer of office work from Carriers to Routers cannot by itself constitute an independent basis for the kind of systematic adjustment of the route structure which took place here. If this view is correct, there may well be an impact on Router use. But that would not transform this dispute into a question of what work Routers can or cannot do. It is the Carrier route adjustments which are the heart of the grievance. Whether a transfer of Carrier office work to Routers can trigger such route adjustments is a matter which was never addressed by any Memorandum of Understanding. That is an "interpretive issue" under the M-39 and hence an "interpretive issue" under the National Agreement.

NALC proposed in the 1987 negotiations to "develop a reasonable and realistic set of procedures for use of [R]outers"; it proposed in the 1990 negotiations to "specify and clarify the duties of [R]outers." Apparently it thought that the July 1987 MOU was not sufficiently clear on various points. Neither proposal, however, had anything to do with the relationship between Router work and Carrier route adjustments, a major issue in this case. Hence, it cannot be said that NALC seeks in this arbitration what it failed to achieve in negotiations. Moreover, I find no real significance in NALC's failure to invoke Article 19 to challenge Management's 1985 amendment to the M-39 allowing Routers to be used to reduce Carrier office time. NALC's acceptance of this arrangement did not mean it accepted the idea that substantial route adjustments could be successfully triggered, without more, by the transfer of Carrier office work to Routers.

The present grievance is arbitrable.

The Merits

I. The M-39

The M-39 Handbook sets forth detailed rules regarding route inspection, evaluation, and adjustment. Those rules are largely the product of Management initiative but they are also the product in part of collective bargaining and grievance settlement. Those rules are binding on Management inasmuch as they have been expressly incorporated into the National Agreement. The question in this case, briefly stated, is whether the route restructuring in Hempstead complied with the M-39 requirements.

II. The Arguments

The parties' briefs approach the problem from quite different directions. They stress entirely different portions of the M-39. It is difficult therefore to recite their arguments in such a way as to focus on a central theme. The Postal Service insists the route restructuring complied with the M-39. NALC insists it did not. Beyond such generalization, there is a thicket of disagreement. The following summaries reflect only a brief picture of the parties' claims.

NALC asserts that, prior to this grievance, Hempstead consisted of a large number of basically 8-hour routes and that Management transferred territory from one group of routes to another in order to create routes of "more than 8 hours" and thus justify route adjustments under 243.21. It believes the

M-39 does not permit this kind of route adjustment. It alleges further that Management's real purpose here was to make route adjustments which would anticipate the future impact of automation equipment on Hempstead mail delivery. It contends that this approach conflicts with the M-39 whose focus is strictly on present conditions, not the future. It insists there was no present condition, as of January 1991, which would have warranted this broad route restructuring. It maintains that even if more sector-segmented mail had then appeared and even if Carrier casing time was thereby reduced, the casing time standards for route inspections and evaluations have not been changed and therefore any route adjustment based on a different casing standard would be improper. It suggests that Management's course of action should have been to amend the M-39 to permit route adjustments under the kind of circumstances present here and thus allow NALC an opportunity, if it wished, to challenge the fairness or reasonableness of such an amendment under Article 19.

The Postal Service stresses that the M-39, 243.21b, says "permanent relief may be provided by reducing [C]arrier office or street time...[through the] use of [R]outers..." It claims that Management was free to reassign Carrier casing time to Routers, that the parties established the Router job for this very purpose. It argues that, having done so, the routes were obviously then "less than 8 hours" and called for "transferring territory through a realignment of territory in the delivery unit", a realignment which permits Management to "eliminate it [regular routes] entirely." It cites 243.22 for these propositions. It relies heavily in this connection on a "national practice" of using Routers to take over Carrier office work. Moreover, quite apart from this argument, it points to a decrease in Carrier casing time as a result of an increase in sector-segmented mail attributable to automation. It says this fact alone warranted the route adjustments under 243.22. It urges that Management, in making such permissible route adjustments, may take into consideration other changes which are due to occur within a reasonable period of time.

III. 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.

It is crucial, at the outset, to attempt to understand Management's view of the nature of its action. As of mid-1990,

Hempstead had 116 full-time Carrier routes. All of them were evidently at or very close to 8 hours. Management was aware of the pending automation program and its likely impact on mail delivery. It was anxious to assure route stability, to minimize the frequency of route adjustments, during the changes that automation was certain to bring. It hence planned an initial route restructuring with these steps - adding a substantial number of Routers, reassigning Carrier office time to Routers, eliminating 20 or more Carrier routes, and transferring such territory to the surviving routes. It expected Routers to serve as flexible buffers to be reduced in number as new equipment was placed in operation and office time was thereby reduced.

The Postal Service seems to say that these route adjustments were supported by 243.22. This provision calls for route adjustment, including transfer of territory and elimination of routes if necessary, whenever routes are "less than 8 hours." The question is whether Management can, where existing routes are indeed 8 hours, properly trigger route adjustments by reassigning Carrier office time to Routers for the sole purpose of producing Carrier routes of "less than 8 hours." The answer is "no". Stable 8-hour routes are the goal of route evaluation. When they exist, there is no reason for invoking the route adjustment procedures. Changes do occur. General business conditions cause mail volume to grow or decline. Management's quest for efficiency prompts new methods or new equipment for handling mail. Such changes result in stable 8-hour routes becoming "more than 8 hours" or "less than 8 hours", thus triggering route adjustments. Management simply responds to a change in circumstances which has impacted Carrier routes. It brings the overburdened or underutilized route back to the 8-hour standard. Its object is to react to a deviation from the norm, not to cause the deviation in order to effect a route adjustment. All of this can plainly be seen from a reading of 243.2.

In the present case, the reassignment of Carrier office time to Routers had no purpose other than to create routes of "less than 8 hours" and thus justify the restructuring.² Had there been no restructuring in mind, the reassignment of Carrier office time would not have taken place. For the routes were all then at or about 8 hours and required no adjustment. To embrace the Postal Service's view would be to undermine the 243.2 notion of a stable 8-hour route structure and to allow

² I assume here, for purposes of this argument, that there was no present event driving the January 1991 route restructuring. See Part V of this opinion.

Management to manipulate route adjustments by the simple expedient of reassigning work from Carriers to Routers. That could hardly have been what the M-39 intended. Indeed, the Postal Service's position would permit the very "systematic adjustment of the route structure on an office by office basis..." which Assistant Postmaster General Kane rejected in March 1990. Yet two months later Hempstead Management embarked on just such a program.

To this point, my analysis of the issue has tracked the Postal Service argument that the reassignment of Carrier office time to Routers produced routes of "less than 8 hours" with the resultant need for territorial transfers. But there is no reason whatever to assume that the reassignment of work preceded the territorial transfers. There was a single, discrete organizational change with everything occurring at once.

NALC argues that this analysis should begin with the territorial transfer from abolished routes to survivor routes in which event the latter would become routes of "more than 8 hours" and would be returned to 8 hours through the reassignment of Carrier office time to Routers. This approach plainly demonstrates a violation of 243.2. Where the route is "more than 8 hours", 243.21 says one of several possible forms of permanent relief is "actual transfer of territory". Where the route is "less than 8 hours", 243.22 says the required form of relief is "transferring territory through a realignment of territory in the delivery unit..." Where the route is 8 hours, neither more nor less, no realignment of territory is appropriate. In short, the transfer of territory is essentially a remedy for overburdened or underutilized routes. Such a transfer cannot be used to create overburdened or underutilized routes.³ Yet that is exactly what Management did here. It used territorial realignment to create routes of substantially "more than 8 hours" and then made route adjustments through the reassignment of Carrier work to Routers. Such an arrangement makes 243.2 almost meaningless and undermines stable 8-hour routes.

Because NALC's approach to the interpretive question is entitled to as much weight as the Postal Service's approach, this argument serves to reinforce the observations already made with respect to the Postal Service claim. Accordingly, to the

³ None of this discussion should be read to preclude the normal processes of territorial realignment in the interest of "good lines of travel [or] squared up boundaries."

extent to which this case must be decided on the basis of the language of 243.2 alone, NALC's grievance has merit.

IV. Route Adjustments, Event-Driven

Assistant Postmaster General Kane testified that Management "adjust[s]...routes according to the handbooks based on an event happening..." and that route adjustments must be "driven by an event." NALC counsel, in his opening statement at the arbitration hearing, said much the same thing. An objective event must occur which enlarges the route to "more than 8 hours" or reduces the route to "less than 8 hours." When such a change is confirmed through route inspection and evaluation, a route adjustment follows. These observations concern the core of the route adjustment process. What I held in Part III of this opinion was that reassignment of Carrier office time to Routers (or territorial transfers from one route to another) for the sole purpose of effecting a broad route restructure was not the kind of "event" which would warrant such route adjustments.

There have been Management-initiated programs which resulted in widespread route adjustments. In the early 1970s, route pairings of adjoining Carrier routes were introduced. In 1973, a central markup unit was created with the responsibility for forwarding mail being transferred from the Carrier craft to the Clerk craft. In the mid-1970s, during the oil crisis, demotorization took place with vehicles being taken away from many Carriers. Between 1978 and 1981, motorization occurred with vehicles being added to make Carrier delivery more cost-efficient. Also mail boundaries have, over the years, been moved in response to congressional or municipal requests or as a consequence of customers wanting their mail delivered to a different area. These "events" led to routes of "more than 8 hours" or "less than 8 hours" and hence prompted route adjustments. But Management's object in these programs was clearly to rationalize existing postal operations, not to manipulate the route structure. The impact on routes was incidental to a then current improvement in operations.

True, there has been a Roster program in effect since at least 1983 and perhaps much longer. A Postal Service witness described how Routers have been used to case third class mail which would otherwise have been cased by Carriers at the end of their tour, thus permitting Carriers to remain on street time additional minutes. A small incremental transfer of work was followed by a small incremental transfer of territory. That may well be a kind of route adjustment contemplated by 243.22. Nothing in the evidence suggests, however, that the Router program had ever before been employed to justify the type of

broad community-wide route restructuring which took place in Hempstead. Management's goal in Hempstead was not to provide immediate additional street time for Carriers as a group⁴ but rather to prepare for future events, to revise the entire route structure to accommodate the coming impact of automation. That is a far cry from the small scale work realignments employed in the past. I am not convinced that any of this M-39 history or Management "practice" with respect to 243.2 calls for conclusions different from those already expressed in Part III of this opinion.

V. Route Adjustments, Present Event

If this route restructuring was entirely a response to a future automated environment, it would be improper. For the necessary pre-conditions to a route adjustment are route inspection and evaluation. The latter focus on the present state of a route - its current mail volume, its current workload, its current situation. The route adjustment procedures themselves, 243.2, speak of routes which "show" an evaluated time of "more than 8 hours" or "less than 8 hours." Clearly, for a route adjustment to be warranted, it must be triggered by some present condition.

The Postal Service alleges that there was such a present condition in January 1991. Management testimony was that some sector-segmented mail was being processed by Hempstead Carriers in mid-1990, that a RBCS and MPBCs were installed on Long Island in November-December 1990, and that this new equipment increased the amount of sector-segmented mail received by these Carriers. Management testimony also was that this sector-segmented mail was being cased or should be cased⁵ by Carriers at a speed in excess of the casing standard of 18 letters per minute and that this meant 20 to 40 minutes less casing time per day for each such Carrier. Management concluded that, given these circumstances, Carrier routes were "less than 8 hours" and hence required route adjustments.

⁴ Note that the previous 116 Carrier routes in Hempstead averaged 4-3/4 hours per day of street time for a total of 516 hours. The present 96 Carrier routes average 5-3/4 hours per day of street time for a total of 523 hours. Thus, as a practical matter, the route restructuring did not entail any significant change in Carrier street time.

⁵ It is not entirely clear from the record which of these propositions is being asserted by Management.

Any response to this argument must begin with the M-39 description of how office time is to be treated in a route evaluation. The relevant provision is 242.311:

Under normal conditions, the office time allowance for each letter route shall be fixed at the lesser of the carrier's average time used to perform office work during the count period, or the average standard allowable office time.

In short, the office portion of the evaluation is based on either the Carrier's actual time or a standard allowed time whichever is less. Where a Carrier's actual time is less, his route may well be "less than 8 hours" and he may prompt his own route adjustment.

There are just two possibilities here. First, if the Postal Service argument rests on the claim that sector-segmented mail should be cased at a speed in excess of the casing standard of 18 letters per minute, its argument fails. For the route adjustments would then be based not on what Carriers actually do but rather on what Management believes they ought to do, namely, work at a new and higher casing standard. But new casing standards cannot be developed on an ad hoc, community by community basis. New standards can be implemented only through the procedures set forth in Article 34. Management has not invoked that clause and has not sought to establish a new casing standard for sector-segmented mail. Route inspection and evaluation at Hempstead must continue to honor the casing standard in the M-39, 18 pieces per minute. Under that standard, no route adjustments would have been justified. This ruling is consistent with Arbitrator Garrett's award in Case No. NB-NAT-3233, decided June 4, 1975.

Second, if the Postal Service argument rests on the claim that sector-segmented mail was actually being cased by Carriers at a speed in excess of 18 letters per minute and if this can be proven, its argument has merit. In this situation, Management is not attempting to change the casing standard. That standard remains unchallenged at 18 pieces per minute. Management is simply responding to the Carrier's actual office time which is less than the standard office time. Under 242.311, the route evaluation should then rely on actual office time which presumably would result in a route of "less than 8 hours" and thus call for a route adjustment. None of this conflicts with Article 34.

No final decision on this matter is possible on the present state of the record. Most important of all, it is not clear which of these arguments the Postal Service is pursuing.

Having dismissed the first argument, I shall assume the second is before me although that may not be the case at all. There is no hard evidence on the Postal Service's principal allegations. No mail counts were introduced to show how much more sector-segmented mail was produced by the newly installed equipment in late 1990. No time studies were introduced to show how much less casing time was demanded of Carriers because of the alleged greater volume of sector-segmented mail. No time studies were introduced to show that Carriers were in fact casing such mail at a speed faster than the casing standard. This phase of the case must be returned to the parties for their further consideration.

VI. Route Adjustments, Present & Future Events

If, upon further inquiry, it appears that there had been no present event to drive the January 1991 route adjustments, the grievance would have to be granted. If there was such a present event, route adjustments were warranted. But another issue would then have to be addressed, namely, whether Management may, when route adjustments are called for by a present event, take into consideration some future event in determining the scope of such route adjustments.

Examine again the facts of this case. The January 1991 route adjustments were based not only on the claimed elimination of Carrier casing time stemming from the introduction of RBCS and certain MPBCs on Long Island in November-December 1990 but also on the anticipated introduction of ABCs in early 1992. NALC objects to any part of the route adjustments being made on the basis of any future event. The Postal Service replies that so long as the January 1991 adjustments were prompted by a legitimate present event, Management should be free to consider at the same time future events which would further impact the Carriers in question. It expected that ABCs would soon place most of the letter mail in walk sequence and that an additional 60 minutes of each Carrier's casing time would thereby be eliminated. It then factored this event into the January 1991 route adjustments. Its position is that to have done otherwise would have meant two large route adjustments (instead of one) within roughly a one-year period and that common sense called for the entire adjustment to be made in January 1991.

The M-39 route adjustment language offers some guidance. In transferring territory from one route to another, 243.232e provides that "adjustments should be made so that future growth may be absorbed..." Presumably, adjustments should also be made so that a future decline in Carrier work may be absorbed. That is exactly what Management sought to do here. Moreover,

in transferring territory, 243.231a provides that Management should consider the "implementation of new programs." The "new program" here was the automation of mail handling through new technology and new equipment. Such equipment was part of a single comprehensive plan. There is something artificial about forcing Management to make several incremental changes in routes based on the implementation of each phase of a "new program." No doubt this was not a sufficiently common occurrence to warrant specific treatment in the M-39. Indeed, nothing in the evidence suggests that this present-future interrelation had ever arisen before.

There are practical factors as well. NALC's position would preclude Management, in determining the scope of a route adjustment, from considering any future event, however imminent and significant that event might be. The result could well be a two-step adjustment procedure where one step would suffice. That extra step would probably entail needless disruption and inefficiency. It is difficult to believe the M-39 was intended to be applied in such a narrow fashion. Of course, the Postal Service view, cast in a somewhat different light, does not seem reasonable either. Suppose, for instance, Management had some immediate but minor basis for a route adjustment yet relied largely on some distant future event in determining the scope of the adjustment. That could hardly be what the M-39 contemplates. It seems to me that future events could be an appropriate factor in some situations and inappropriate in others, depending on whether their use would effectuate the underlying purpose of the M-39.⁶

For these reasons, this matter should also be remanded to the parties for further consideration. Both sides have a large interest in a fair and sensible application of the M-39 route adjustment machinery. Management's concern is to make the routes reflect a rapidly changing automated environment, to minimize the disruptions to customers, and to use Carrier time in the most cost-effective manner. NALC's concern is the establishment of realistic routes and a true cause-effect relationship between changing events and route adjustments. There are no doubt other concerns as well. Surely, this subject can best be handled by the parties themselves through a sympathetic consideration of one another's needs. For NALC to

⁶ The kinds of questions that might be relevant are: how certain is the future event; how near or distant is the future event to the present event; to what extent, if at all, does the present event affect the route adjustment; what is the basis for determining the effect of the future event on the route adjustment; how speculative is that determination; and so on.

ignore all future events no matter how near makes no more sense than for the Postal Service to consider all future events no matter how distant. For NALC to consider only the significance of the present event makes no more sense than for the Postal Service to ignore the differential impact of the present and future events. The parties have the experience, understanding and imagination to resolve this complex problem. I trust they possess the will to do so.

VII. Article 5 - Unilateral Action

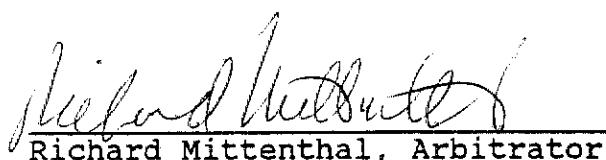
Article 5 states:

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

Sections 8(a)(5) and 8(d) require the Postal Service to bargain with NALC "in good faith with respect to wages, hours, and other terms and conditions of employment." This duty prohibits Management from making unilateral changes in terms and conditions of employment. Here, Management made extensive route adjustments in Hempstead. But the M-39 permits such adjustments in appropriate circumstances. If the final ruling is that the Hempstead route restructuring was justified by the M-39, there could be no improper unilateral change. If the final ruling is that the restructuring was not justified by the M-39, there would be a violation of Article 19 and Article 41, Section 3S. In short, the grievance will be resolved through the M-39 issue. There is no need to pursue this Article 5 claim further.

AWARD

The grievance is remanded to the parties for further discussion and resolution in light of the observations made in this opinion. Should either party wish to return the dispute to national arbitration, it may do so and a final decision will be promptly rendered.



Richard Mittenthal
Richard Mittenthal, Arbitrator