

C # 10392

REGULAR ARBITRATION PANEL

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

BEFORE: Robert W. Foster, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Clifton D. Wilks, Labor Relations
Assistant

For the Union: Robert L. York, Regional Administrative
Assistant

Place of Hearing: Winston-Salem, NC

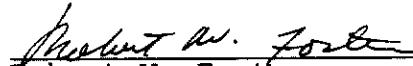
Date of Hearing: July 23, 1990

AWARD:

The Postal Service did not violate the National Agreement by failing to adjust the grievant's route.

Accordingly, the grievance is denied.

Date of Award: October 23, 1990



Robert W. Foster
Arbitrator

ISSUE

Whether the Postal Service violated the National Agreement by failing to adjust the grievant's route? If so, what is the appropriate remedy?

STATEMENT OF THE CASE

This grievance claims that the Postal Service improperly failed to adjust grievant's route following an inspection during the week of February 4, 1989. The corrective action requested is to adjust the route to as close as possible to 8 hours and reimburse grievant at the overtime rate for 1 hour per day beginning 52 days after the February 10, 1989 date of inspection. The grievance was denied on the ground that management's action was consistent with Section 242.34 of the M-39 Manual and time used by the carrier for improper practices was properly eliminated when calculating the time utilized for the route. It was in this posture of disagreement that the matter came to the instant arbitration for final decision.

BACKGROUND

Grievant's route was inspected during the week beginning on February 4, 1989 and ending February 10, 1989 by Supervisor Shatzel who accompanied grievant on February 4. Shatzel has conducted in excess of 100 route inspections. In accordance with Section 242.345 of the M-39, Shatzel documented performance deficiencies on PS Form 1840 as required when time adjustments to a carrier's street time is made. These included the examiner's observations that grievant failed to take safe short cuts, took

excessive time routing small parcels and rolls, failed to finger mail between stops and that grievant's pace was slow and deliberate with no sense of urgency. Shatzel calculated grievant's pace at 90 to 96 per minute with a two-foot stride. The summary of count and inspection shows that the grievant used about the same amount of street time each day despite variations in the volume of mail.

The average daily office and street times for the week of the inspection were 2.48 and 5.39, respectively, for an average daily time used to carry the route for the week of 8.26 hours. Based on his observations that grievant's time wasting practice on the street added about 35 minutes a day to the actual time used on the route, Supervisor Shatzel determined that no adjustment of grievant's route was called for.

Grievant's route was again inspected by Station Manager Gregory who had previously conducted 15 to 20 street inspections. Ms. Gregory's inspection report reached the same conclusion as Supervisor Shatzel that grievant's route did not need adjustment after deducting time used by grievant for excessive comfort stops and walking around seeded lawns, despite the absence of any records of customer's request not to walk on their lawns. This witness also observed that "carrier's pace was deliberate and methodical."

The grievant responded in writing and testimony at the hearing to each of the route examiners' comments. He explained that he did not cross lawns because they had been recently seeded or fertilized and did not finger mail because it would have been

unsafe to do so given the terrain. He considered his pace to be reasonable under the circumstances and that it is "slow only compared with the pace of most other carriers." He added that "my pace is deliberate in that I know that I must go at a certain pace to make it through my route and my postal career for that matter." Although grievant was not on the overtime desired list, records reflect that he uses overtime or auxiliary assistance to complete his route on the majority of days.

SUMMARIZED POSITION OF THE PARTIES

The Union

The Union points to the average net total time used of 8.26 hours for the 6 day inspection in February of 1989, and the frequent use of overtime and auxiliary assistance needed to complete grievant's route, from which it concludes that management failed to make the proper adjustment to satisfy the standard of Section 242.122 of the M-39 that "all regular routes should consist of as nearly 8 hours work as possible."

The Union accuses management of utilizing all excuses possible to disallow time on the street which were all answered by the grievant. With respect to the comment of grievant's paces, the Union cites the following language from two pre-arbitration settlements: "There is no set pace at which a carrier must walk and no street standard for walking." The Union also points to grievant's explanation for not crossing lawns because they were seeded or fertilized.

The Union cites a number of provisions from the M-39, Part 243.21, including plans to provide permanent relief of a route showing time in excess of 8 hours on most days. The Union also cites 242.13 listing items to be utilized in making an analysis of the street time, which the Union claims was not used in this case.

The Union cites a number of arbitration cases holding that routes should be adjusted to bring them to nearly 8 hours work as possible and the award of penalty rate overtime paid to the carrier whose route was not properly adjusted. The Union also cites this arbitrator's December 1989 award ordering a route inspection at this facility and adjustment of those routes found to be overburdened.

Accordingly, the Union concludes that time was improperly reduced to defy adjusting grievant's route. The Union ask that grievant's route now be adjusted to 8 hours and grievant be reimbursed 1 hour per day at the appropriate overtime rate beginning 52 days after the February 10, 1989 date of inspection.

The Employer

The Employer cites the findings of Supervisor Shatzel from the inspection of grievant's route, consistent with the similar finding by Supervisor Gregory, as establishing that grievant was not giving reasonable effort. The Employer rejects the explanations offered by grievant to the observations of these experienced supervisors regarding grievant's pace and work habits on the route. The Employer also claims that grievant has not corrected

his deficiencies found in the first inspection, as evidenced by the findings in the subsequent inspection.

The Employer concludes that grievant's route was evaluated in accordance with Section 242.3 of the M-39 and that the Union has failed to show that management's action in not adjusting the grievant's route was arbitrary, capricious, and/or discriminatory. The Employer further says that the use of overtime or auxiliary assistance on the route does not automatically indicate a need for adjustment and that the Postal Service is in compliance with this arbitrator's prior decision in requiring routes to be evaluated.

DISCUSSION AND OPINION

Inspection of grievant's route in February, 1989 was done in compliance with the prior award authored by this arbitrator directing management to evaluate routes at this facility and adjusting those routes found to be overburdened. The prior award did not, of course, call for automatic adjustment of the grievant's route. Such adjustment is called for when the route cannot be completed within 8 hours by the carrier using reasonable efforts in accordance with established practices. Even though grievant used more than 8 hours of actual time to carry his route, management's elimination of over thirty minutes of that time resulted in the decision not to alter grievant's route. Resolution of this grievance challenging that decision turns on whether management properly applied its regulations in evaluating grievant's route from which it concluded that it was not overburdened.

Section 242.122 of the M-39 states the basic provision governing management's obligation to adjust routes as follows:

"The proper adjustment of carrier routes means an equitable and feasible division of the work among all of the carrier routes assigned to the office. All regular routes should consist of as nearly as 8 hours work as possible."

Section 242.3 sets out in considerable detail the procedure for evaluating the route and the recording of information on Form 1840 which was followed by Supervisor Shatzel in the inspection of grievant's route. His several observations leading to the conclusion that grievant was not giving reasonable effort were not adequately explained by the grievant. For example, grievant's failure to finger mail does not appear to be justified on the ground that it created a safety hazard as would be the case when walking up steps or curbs or crossing streets. And while Article 41, Section 3.N of the National Agreement suggest that letter carriers should not cross lawns if customers object, there is no indication of such objection. Even if grievant's failure to take shortcuts across newly seeded or fertilized lawns could be justified in some cases, this is not a continuing condition that would permanently preclude grievant from traveling the shorter distance across the yards of customers who do not register complaints.

Supervisor Shatzel found a significant loss of time by grievant carrying his route at a slow and deliberate pace. While the Union correctly observes that a carrier is not required to walk at a set pace, a carrier is not free to establish his personal pace that is unnatural and slow when compared with other carriers.

Grievant's statements about pacing his route, along with the fact that grievant used about the same amount of street time each day despite substantial variations in the volume of mail, supports the judgment of management that grievant was not giving reasonable effort in carrying his route.

Based on the objective evaluation by two experienced supervisors following the guidelines contained in the M-39 Manual, it cannot be said that management was unreasonable in concluding that grievant's route consist of approximately 8 hours work with grievant putting forth reasonable effort. Accordingly, the Union has failed to satisfy its burden of establishing the claim that management acted improperly in failing to adjust grievant's route.