

C#14767

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ARBITRATION AWARD

In the Matter of

**UNITED STATES
POSTAL SERVICE**

and

**NATIONAL ASSOCIATION
OF LETTER CARRIERS**

**E90N 4E C940 37643
E90N 4E C940 37598
CLASS ACTION**

Before

EDWIN R RENDER

Appearances

For the Service

THOMAS P KING

For the Union

PAUL L PRICE

Place of hearing

TACOMA WA

Date of hearing

17 AUGUST 1995

Date of award

9 SEPTEMBER 1995

Relevant contract provisions

**Articles III & XIX
Section 211.3, M39 Manual**

Contract year

1990-94

Type of grievance

CONTRACT INTERPRETATION

AWARD SUMMARY

**The Service violated Section 211.3 of the M39 Handbook and
a national settlement in H7N 3A C 39011 by failing to
complete route adjustments in downtown Tacoma
within 52 calendar days of the mail count.**

**Valid operational circumstances
substantiated by a written detailed
statement were not shown to have
caused the failure to complete the
adjustment within 52 calendar days.**

RECEIVED

SEP 21 1995

**JIM WILLIAMS, NBA
National Association Letter Carriers**

**EDWIN R RENDER
Arbitrator**

THE ISSUE

The stipulated issue in these cases is: "Did the Postal Service violate the National Agreement when they failed to make route adjustments within the prescribed 52 day time period? If so, what is the appropriate remedy?"

CONTRACT PROVISIONS

Article 19 of the contract provides:

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. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's instructions.

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 (including this Article), they may then submit the issue to arbitration in accordance with the arbitration within sixty [60] days after receipt of the notice of proposed change. Copies of those parts

of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions as they apply to employees covered by this Agreement, shall be furnished the Unions upon issuance.

Article 19 shall apply in that those parts of all handbooks manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to transitional employees only to the extent consistent with other rights and characteristics of transitional employees negotiated in this Agreement and otherwise as they apply to the supplemental workforce. The Employer shall have the right to make change to handbooks manuals and published regulations as they relate to transitional employees pursuant to the same standards and procedures found in Article 19 of this Agreement.

Section 211.3 of the M39 Handbook provides:

In selecting the count period, remember that all route adjustments must be placed in effect within 52 calendar days of the completion of the mail count, and no major scheme changes should be made between the period November 15 and January 1. Exceptions must be approved by the district manager. The local union will be notified promptly of any exception[s] granted.

THE FACTS

Two grievances were heard at the hearing. Both grievances involved allegations that the Service failed to complete route adjustments within the 52 day period required by section 211.3 of the M39 Handbook. The Seattle district made a decision to adjust several routes in that area during

the summer, fall, and winter of 1993-94. Among the routes to be adjusted were the downtown routes in Tacoma, Washington. It is undisputed that everyone involved understood that the route adjustments were required to be completed within 52 days pursuant to section 211.3 of the MJ39 Handbook as well as a national settlement in case **H7N 3A C 39011**. That settlement provides in part:

On May 21, 1992, Brian Farris met with Bill Molloy in a prearbitration discussion of the above referenced case.

The issue in this grievance is whether management was required by the National Agreement to provide the union with a detailed written statement describing valid operational circumstances which caused route adjustments not to be completed within 52 days of the inspections.

During the discussion, it was mutually agreed that the following constitutes full settlement of this grievance:

1. If the results of any route inspection indicate that the route is to be adjusted, such adjustment must be placed in effect within 52 calendar days of the completion of the mail count in accordance with section 211.3 of the M-39 Methods Handbook. Exceptions may be granted by a Division General Manager only when warranted by valid operational circumstances, substantiated by a detailed written statement, which shall be submitted to the local union within seven days of the grant of the exception.
2. Only following carrier-initiated inspections, under 271.g of the M-39 Handbook, may the granting of an exception be appealed directly to step 3 of the grievance procedure. Grievances concerning other

exceptions may be filed at step 2 of the grievance procedure.

The process of adjusting routes involved several different steps. First, it must be determined that the routes are in fact out of adjustment. This is done by means of a route inspection which in this case was performed by "co-leaders". Mr Wooding, the union president served as co-leader in making one of these inspections. After the inspections are completed it is necessary to make the actual adjustments to the routes. Doing this is a fairly complex process in heavily populated areas. Since much of the mail on these routes is processed on LSMs it is necessary to revise the schemes of LSM operators. This may require some retraining of the LSM operators. In addition, the cases of the affected carriers must be redesigned to conform to the adjusted route. This requires producing new labels to go on the cases.

Prior to the inspection of the two routes in question management in the Tacoma called a meeting which was attended by approximately 12 individuals who would be involved in carrying out the adjustment. This included both management representatives from customer services and mail processing and union officials. This meeting was held about

October 8 or 9, 1993. All of those in attendance at the meeting recognized that several different things had to be done in a timely manner in order for the route adjustments to be completed within the 52 day period.

The co-leaders did route testing during the week of October 18 through 23, 1993. They inspected several routes within ZIP codes 98422 and 98424. It was agreed that the routes that were tested during this period should be adjusted no later than December 14, 1993. The second group of route testings which is relevant to this case occurred during the week of November 1 through 6, 1993. It was agreed that the 52 day period for route tested during this week expired on December 28, 1993. It is also undisputed that routes which were inspected during both time periods were not fully adjusted within the 52 day time period. The postmaster realized this before the expiration of 52 days and on December 10, 1993 postmaster Boettger wrote the district manager requesting extensions for additional time in which to complete the adjustments in accordance with section 211.3 of the M-39 Handbook. The letter states:

The route adjustments at downtown station are due to go into effect as follows:

December 13 [51st day]
December 27 [51st day]

98422 and 98424
98402/98421/98403

I request all adjustments be delayed until January 8, 1994, in accordance with M-39, section 211.3.

The reason for this request is that before inspections began, a meeting was held on October 7, 1993, with Processing and Distribution Customer Services, NALC, and AMS. During this meeting, dates were committed to between Processing and Distribution and Customer Services as to when the inspections and adjustment would be completed to ensure ample time for scheme training before the 52 day time limit.

Although the inspection team was timely in providing Processing and Distribution with the territory changes affecting schemes, that was still inadequate advance notice for completion of distribution clerk training before the December 4 cutoff for such training.

Processing and Distribution stated that by December 13 they would be able to run the automated mail the post-adjustment way but the manual would still be run the pre-adjustment way. At least 70% of the downtown station mail is manual. During the Christmas period much of the volume is cards which are not achievable. I would suspect that the 70% figure would be much higher during the Christmas period.

The scheme changes at the stations were major. It would not be cost effective to have to pass over 70% of the mail between carrier routes during this period.

When the Service failed to adjust the routes within the 52 day time period the Union filed a grievance. The grievance filed on the October inspection states:

A full 6 day count and inspection was conducted for Downtown Station zones 98422 and 98424 from 10-18-93 through 10-23-93. December 14, 1993 was the 52d day following the completion of the count and inspection. M-39 Section 211.3, incorporated into the National Agreement by Article 19, states 'In selecting the count period remember that all route adjustments must be placed in effect within 52 calendar days of the completion of the mail count and no major scheme changes should be made between the period November 15 and January 1. Exceptions must be approved by the district manner. The local union will be notified promptly of any exception[s] granted.

The Union contends less than 50% of the scheme items for zones 98422 and 98424 changed and that it is not accurate to state that the carriers would ' . . . have to pass over 70% of the mail between carrier routes. . . ' if the adjustments had been implemented by 12-14-03. The delay in adjustment implementation was not for valid operational circumstances. Lack of coordination between Customer Services and Processing and Distribution, a lack of follow through by Processing and Distribution, and the timing of the inspections are all completely determined and controlled by management. The violation of the cited provisions was caused by management failing to manage. The Union contends the failure to manage is not a valid operational circumstance per M-39 Section 211.3.

That the regular carriers holding the bids on the routes which had delayed adjustments be paid an hour of pay at the overtime rate for each and every day of delay in adjustment implementation over 52 days and that management cease and desist violating the cited provisions and that the grievants be made completely whole and receive any other remedies that may be deemed appropriate.

The other grievance before the Arbitrator makes substantially the same allegations.

The Union's proof at the arbitration hearing basically was directed toward demonstrating that "valid operational circumstances" did not exist for the extensions which the district manager, Seattle, granted to the Tacoma office. The Union's evidence that valid operational circumstances were lacking is summarized next.

Mr Jimenez, a former training technician, testified to the amount of scheme training that would have been required of the clerks to have made the changes in the routes that gave rise to this grievance. He noted that there were two zones in the downtown area, zones 2 and 3. Zone 3 is substantially larger than zone 2. Zone 2 has 140 scheme items whereas zone 3 has 130 scheme items. Based on the number of changes in the schemes making up these zones, he testified that the changes in zone 2 required one hour and twenty-four minutes to train on the manual changes in that zone and one hour twenty-four minutes of training to train for the scheme changes in that zone. The total training time would have been two hours forty-eight minutes. In zone 3 nine hours forty minutes of training were required for the manual changes and four hours to learn scheme changes resulting from these inspections. He stated that this amount of training could have easily been accomplished within the 52 day

time period. There was documentary evidence from which one could infer that the scheme training of the clerks was not in a timely manner and that most of their training on these changes occurred in January and February 1994.

Ms Tierney was responsible for creating labels and ZIP code changes in connection with these route inspections. She was present at the October 8 meeting. In addition to making labels she was also in charge of making edit sheets and checking transfer sheets on these routes. She testified that her portion of this work was done in a timely manner.

Mr Wooding, the president of the local union, testified about a number of different subjects at the hearing. Mr Wooding was one of the co-leaders and he participated in the downtown testing. He said that the downtown testing was done in a timely manner. However, he said that following the testing he experienced considerable difficulty in scheduling meetings with various members of management for the purpose of making the actual route adjustments. He gave several examples of situations in which inspections were made and managers were simply unavailable to meet and discuss adjustments following the inspection.

Postmaster Boettger's December 10 letter contains several statements which Mr Wooding analyzed in some detail. In particular, the last sentence of Mr Boettger's letter states: "It would not be cost effective to have to pass over 70% of the mail between carrier routes during this [the Christmas] period." An earlier sentence in this letter states that 70% of the downtown station mail is processed manually. Mr Wooding did not agree with these figures. He strongly disagreed with Mr Boettger's assertion that 70% of the mail was assigned to different routes following the adjustments. To put the matter in perspective, Mr Wooding said that as he understood the Boettger letter, it claimed that if ten linear feet of mail were assigned to a carrier, as a result of these inspections, seven feet of that mail would have to be redistributed to other carriers following the inspection. Mr Wooding thought this figure was totally inaccurate.

He testified that the figure should be approximately 14%. He produced union exhibits 4 and 5 which stated the number of changes which were made as a result of these inspections. These exhibits were based on other data which was produced at the hearing and he concluded that the changes were in the neighborhood of 16% or 17% of the mail

involved. Union exhibit 13 was a similar document which reached a similar conclusion. Mr Wooding's testimony about the magnitude of the changes required by these inspections and adjustments were not impeached by cross examination or by the introduction of contradictory evidence.

In addition, Mr Wooding testified that changes in the amount of mail resulting from these inspections could have been handled by the carriers with little difficulty. He said that when changes are made in routes what typically happens in a post office is that mail is sent to a carrier but that the mail no longer belongs on the carrier's route. The carrier to whom mail is improperly sent usually knows the identity of the carrier to whom the mail should have been sent. It is a fairly simple matter for a carrier to place such mail in a pile at his case and then at some point during the morning give it to the carrier who should have received it in the first place. Given the magnitude of the changes that were made in the downtown area, this would not have been an unreasonably burdensome matter even during the Christmas season, according to Mr Wooding.

Finally, Mr Wooding testified that the Tacoma offices failed to complete inspections and adjustments within the 52 day period in the past and that the penalty typically has been \$10 per route per day that the inspection has not been completed.

The Service called Mr Underwood, the former manager of customer service at the Tacoma office. He testified in general terms about how delivery schedules are made. He also testified about the procedure for granting him extensions under section 211.3. He indicated that the problem in this case arose from the inability to train the clerks on the new schemes in a timely manner and he also suggested that Ms Tierney did not have the labels done on time. However, his testimony on all of these issues was very vague. He did not have a specific recollection of any dates or times in which events happened.

He testified that it is generally undesirable to make a lot of adjustments in December when the mail volume is heavy. He also agreed that the final sentence in the Boettger letter said that 70% of the mail in the downtown area changed routes as a result of the inspections. He also gave testimony which suggested that one of the reasons that the Seattle

district was interested in adjusting the downtown Tacoma routes was that downtown Tacoma was slated for DPS. However, that procedure has not been implemented as of this writing.

The Service also called Mr Robert Nelson as a witness. Mr Nelson is a manager of development programs. His specialty is designing delivery programs, address management, and related issues. Mr Nelson possessed a good overall view of how route adjustments work and their purpose. However, he did not have specific recollection about the details of the inspections in downtown Tacoma.

Over the Service's strong objection, the Union introduced a memorandum which was authored by Dennis J Pyle, the manager, in-plant support at the Tacoma office. This memorandum, although written after the grievances were filed, contained several statements which suggest that one of the reasons that the Tacoma failed to complete these adjustments within 52 days was a lack of coordination between production support and customer service. Even though the letter was written after the grievances were filed, the Arbitrator felt that it was admissible for the

purpose of showing what at least one manager thought were the real reasons that the adjustments were not made in a timely manner.

One final point must be made in the statement of facts. Mr Underwood prepared a memorandum summarizing the October 8, 1993 meeting. His minutes indicate that Messrs Pyle, Knoll and several other managers attended this meeting. It is worth noting that several of the principals involved with the Tacoma management in the fall of 1993 did not testify at the hearing. The former postmaster did not testify. Neither did Messrs Pyle or Knoll. Presumably these individuals would have had specific knowledge of the events leading to this grievance.

POSITIONS OF THE PARTIES

Position of the Union

The Union concedes that it has the burden of proof in this case. However, the Union contends that on the specific issue of justification for its failure to comply with the 52 day requirement, the Service bears the burden of proof. The Service has access to this information and should be required to produce it.

The Union also contends that throughout the grievance procedure and the arbitration hearing, the Service has failed to provide any evidence as to why it failed to comply with the 52 day requirement. The Service has only said that it was impractical to meet the deadline and that the training could not be accomplished after December 3. However, these points were not made until the arbitration hearing and the Union met them with detailed testimony and documentary evidence.

The Union also notes that during the hearing the Service failed to call several witnesses who had direct involvement in this case. The Service called two witnesses who had very limited knowledge of the facts of the case. In these circumstances the Union contends that Mr Wooding's analysis of the extent of the changes and the things that went wrong in making the adjustments is much more credible than that of the Service's witnesses.

The Union contends that keeping routes out of adjustment is bad business on the part of the Service. It also creates unnecessary burdens on employees. There are no good reasons for the Service insisting on keeping routes that are too large to complete in an eight hour shift. This

is one of the reasons for the 52 day rule. It minimizes overtime and provides better services for the customers.

The Union also notes that the Tacoma office has failed on four prior occasions to make timely route adjustments. In all of these cases the union has sought and received a monetary remedy. It requests such a remedy here.

The Union also contends that the Service's assertion that the clerks could not have been trained to do the adjusted routes in time does not bear scrutiny. The amount of training required was not extensive. Mr Jimenez gave undisputed testimony was given that the training could have occurred even after December 3.

The Union also notes that it proved that the Service's argument that 70% of the mail was transferred from one carrier to another in this adjustment is simply untrue. The Union's evidence is persuasive that there was no more than a 14% change in the routes.

The Union also notes that at the hearing the Service's witnesses did not have detailed knowledge of the events and tended to testify in generalities. Furthermore, the Service had other avenues open to it in order to bring these routes into adjustment. The Union notes that in this case absolutely no scheme training occurred for the clerks until after the 52 day had expired and that it continued long into 1994. For all these reasons the Union requests that the grievance be sustained.

Position of the Service

The Service contends that the M-39 Manual permits extensions in the 52 day period for valid business reasons. The extension in this case was requested in a timely manner and was for legitimate reasons that were beyond the control of the Service. The Union was notified of the approval of the extension in a timely manner. The Service contends that it was impossible to have trained the clerks on the new schemes in a timely manner. The Service also argues that the Union makes improper use of the amount of training that the clerks did based on the documents that were introduced at the hearing. Much of this training could have occurred for reasons other than this route adjustment such as bid backs.

The Service also notes that mail volume substantially increases during December and that it would have been bad business to have put these changes into effect during the month of December. For all these reasons the Service requests that the grievances be denied.

DISCUSSION

Based on the provisions of the contract, the testimony given at the hearing, and the arguments of the representatives of the parties, the Arbitrator has concluded that no valid operational circumstances existed which would justify the delay in implementing the above described adjustments. For the reasons given in detail below, the grievance is sustained. The Arbitrator also directs that a \$10 per day per route penalty be imposed.

During the hearing the Union introduced several exhibits and oral testimony which suggested in great detail that the assertion made in the final two paragraphs of postmaster Boettger's December 10 letter were simply incorrect. Union exhibit 4 and 5 provide detailed evidence about the scheme changes made in these two zones. The data contained in

these exhibits was taken from other exhibits that were introduced at the hearing. The Service did not introduce any evidence which in any way indicated that the Union exhibits were inaccurate. Union exhibit 13 further detailed the changes in these routes and reduced them to a percentage of mail volume. Again, the Service did not meet this evidence with conflicting evidence nor did it demonstrate that the exhibit was factually inaccurate. Furthermore, Mr Wooding, who was a direct participant in these adjustments gave very specific testimony on these points. He said that it was simply incorrect that 70% of the mail in the downtown area would be changed from one route to another. He said that a more accurate percentage was 14%. Again, the Service could not impeach Mr Wooding's testimony either by cross examination or by the introduction of other testimony or documentation which was in conflict with it. On this state of the record, the Arbitrator has no choice but to credit Mr Wooding's testimony as well as the Union exhibits which tend to support his assertions.

There is considerable other evidence from which the Arbitrator can infer that the problem with these route adjustments was not as postmaster Boettger stated in his December 10 letter. For example, there

is a memorandum in the record authored by Mr Pyle dated January 21, 1994 which strongly suggests that the reason that the route adjustments were not done in time was a lack of coordination between customer services and the in plant support section. The Service objected to the introduction of this document because it was authored after the grievances were filed. However, even though the document was written after the grievances were filed, it is clearly a statement of reasons for the failure to meet the 52 day deadline which are inconsistent with those stated in the postmaster's December 10 letter. In addition, Mr Wooding testified in a general way about the lack of coordination and the failure of managers to attend meetings as contributing to this problem.

Mr Underwood had a vague recollection about there being a problem with the labels for the cases. However, Ms Tierney clearly testified to having a specific recollection of having this work done in plenty of time. If the inability of the Service to have the clerks trained in time is thought to be the reason for the delay, Mr Jimenez' testimony is much more specific and indicates that the training could have been done in time in contrast to the general statements of Mr Underwood that it could not have been.

Finally, the Arbitrator must note that several of the key participants from the Service did not testify in this case. Neither the postmaster, Mr Pyle, nor Mr Knoll testified. Legitimate speculation by the Arbitrator as to the reason they failed to testify can be stated in the form of a question: Had they testified would not one or more of these individuals given testimony that would have been inconsistent with the main thrust of the Service's case? Based on the foregoing analysis, the grievances are sustained.

AWARD

The grievance are sustained.

9 September 1995



EDWIN R RENDER
Arbitrator