

REGULAR ARBITRATION PANEL

28081

In the Matter of Arbitration)
between) Grievant: Class Action
United States Postal Service) Post Office: Buffalo NY—Southside Station
and) Case No: B06N4BC08194517
National Association of) Union No: 37908
Letter Carriers, AFL-CIO)

Before: EILEEN A. CENCI

Appearances:

For United States Postal Service: Francis McNamara

For National Association of Letter Carriers: Lawrence Kania

Place of Hearing: Buffalo, New York

Date of Hearing: December 10, 2008

AWARD: Management violated the National Agreement in their application of the Carrier Optimal Routing (COR) program at the Southside Station. Management is ordered to cease and desist from applying the COR program in a manner inconsistent with the COR MOU and the M-39 Handbook. Future route inspections and adjustments are to be completed in a manner consistent with the COR MOU and the M-39 Handbook, including their requirements that new travel times be validated and discussed with carriers at consultations prior to the implementation of changes.

Date of Award: February 26, 2009

Regular Regional Arbitration Panel

RECEIVED

MAR 5 2009

VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

MAR 2 2009

Eileen A. Cenci

Eileen A. Cenci

OPINION

STATEMENT OF PROCEEDINGS:

This matter was arbitrated pursuant to the grievance and arbitration provisions of a collective bargaining agreement (National Agreement) between the United States Postal Service (Service) and the National Association of Letter Carriers (NALC or Union). A hearing was held before me on December 10, 2008 in Buffalo, New York. The parties appeared and were given a full and fair opportunity to be heard, to present evidence and argument, and to examine and cross-examine witnesses. At the conclusion of the testimony the parties elected to file post-hearing briefs in lieu of making oral closing arguments. They originally agreed that the briefs would be postmarked no later than January 9, 2009. The Union thereafter requested an extension until January 16, 2009 to file its brief and management agreed to the request. The arbitrator received the last of the briefs on January 26, 2009 after returning from several days away from her office. The record was closed at that time.

ISSUE:

The parties agreed to the following statement of the issue before the arbitrator:

Did management violate the National Agreement in their application of the Carrier Optimal Routing (COR) program at the Southside Station?

If so, what shall the remedy be?

FACTS:

This case concerns route inspections that were conducted in Zone 10 at the Southside Station during the week of September 19, 2008. The inspections were completed using the Carrier Optimal Routing (COR) process, which is a management tool designed to assist with the route adjustment process. It is a computer program that is used to build new routes and map them as efficiently as possible. The COR program has been used by the Postal Service in route inspections for a relatively

short time and the inspections at the Southside Station were the second inspections in the nation to apply COR.

The first route inspections in which the COR program was utilized took place in Boston, Massachusetts. The Union grieved the application of COR following those inspections and the parties resolved those grievances with a pre-arbitration settlement at the national level. They signed a Memorandum of Understanding (COR MOU) on July 30, 2007 related to the utilization of the COR program. Pertinent parts of that Agreement read as follows:

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

...

To facilitate the practical application of this understanding, when transferring territory the back of the PS Form 1840 will indicate, by sector segment, any change in street credit from the actual street time used in sector-segment on PS form 3999; including all relay, travel, allied time, etc. Any such adjustment to the carrier's actual street time must be documented and explained by appropriate comments on the reverse of PS Form 1840. Travel to, travel from, and Travel Within times must be validated, documented, and discussed during carrier consultation. The actual time should be taken from the inspection PS Form 3999, unless a new pattern is created during the route adjustment process. If a new travel pattern has been created, the new times must be validated.

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

...

During the week of count and inspection at the Southside station inspectors walked with carriers and recorded their actual street time on Form 3999's. Following the route inspections and prior to the first consultations carriers were each given a Form 1840 showing office and street times and the total time for each route. The numbers on the Form 1840's were based upon the Forms 3999 from the inspection with very few, if any deductions. Each 1840 included the notation "Pending

COR adjustment" after the times.

Initial consultations were held with the carriers on October 3 and 4, 2007. Union representative Lawrence Kania was present at the consultations. At the first consultations none of the carriers complained about their office or street times and the consultations went smoothly. Union officer Peter Preziotte was also at the consultations and he questioned the phrase "pending COR adjustments" because deductions are supposed to be made by the first consultation and the office and street times are supposed to be established by that meeting. Management explained to the carriers that the COR program would be run and routes would be rebuilt and optimized after the consultations.

Following the first consultations the COR program was run on the routes and the routes were optimized by the program. This resulted in changes including the reduction in total street time from approximately 83 hours per day for the zone after the initial consultations to 74.47 hours of street time following COR. Office time was added to some routes.

A second round of consultations was held with the carriers. Prior to the second consultations the carriers were given the back of the Forms 1840 showing the new routes and times by sector/segment. The structure of the new routes that had been built by COR was discussed at the second consultations. Carriers reported that there were significant problems with the routes generated by COR such as routes that required traveling the wrong way on a one-way street or making U-turns on major roads. Carriers challenged some lines of travel and raised safety issues at the second consultations, and the Service made some changes to the proposed routes on the basis of the input received from carriers. Many of these changes addressed safety concerns raised by the carriers. The changes were made manually and not through the COR program. No changes were made to the times generated by the COR program even when manual changes were made to the routes.

The adjustments that followed the count and inspection resulted in the elimination of two routes. One carrier was excessed from the station. A Workhour Workload report for the adjusted Zone 10 routes showed that from January 2008 until April 1, 2008 the actual street time on the routes was 73:26 plus 6:26 of street assistance. The COR program had projected 73:27 of street time. As a result of the discrepancy there was an increase in overtime, including forced overtime. The Union presented no evidence at arbitration regarding the amount of forced overtime.

The Union filed a grievance over the route inspections at the Southside Station and requested as a remedy that the routes be returned to their status prior to the adjustments and that carriers made whole by being paid for an additional eight hours per day for each day the improperly adjusted routes were in place. Union officer Peter Preziotte met with Station Supervisor Aaron Smith at the Informal A level on April 8, 2008. Mr. Preziotte testified at arbitration that Supervisor Smith was unable to explain how COR worked and why it had made changes to relay, travel to, travel from and travel within times. Mr. Smith denied the grievance on May 6, 2008.

The parties met at the Formal A level on May 30, 2008 and agreed to the following stipulations:

1. At the first consultation the carriers agreed to the PS Form 1840's.
2. Lines of travel were changed to correct all carrier safety issues.

The same stipulations were adopted at arbitration. The Union modified its remedy request at the Formal A level and asked that the routes be rebuilt using the times from the initial consultation and that the carriers be paid \$10 per day for each day they had worked on the improperly adjusted route.

On September 16, 2008 management walked all Southside routes in order to validate the street times. The result showed that for the 12 inspected routes the actual street time recorded on Forms 3999 on that day was 72.1 hours or 2 hours and 34 minutes less than the base street time of 73.27 hours COR had calculated. Management believed that the discrepancy resulted from changes in volume and travel conditions. There was an unprecedented decline in mail volume after May 2008 and travel often took longer in the earlier months of the year when winter conditions were common.

None of the carriers in Zone 10 at Southside Station has requested a special route inspection since the 2007 inspections. Union witnesses explained that special inspections would produce the same results if the COR program was applied in the same way, and also said that most of the carriers "seem to enjoy the overtime."

CONTRACT:

Article 19 Handbooks and Manuals

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...

M-39 Handbook

241.34 The examiner who inspected the route or a designee must analyze the office and street time entries for all days shown and make appropriate comments in the space provided for this purpose or on a separate paper which is to be attached to the Form 1840. Any additional recommendations concerning any needed adjustment may also be made in this space. This information is needed by the manager who will make the actual adjustments of the route.

241.4 Providing Carrier With Summary

A completed copy of the front of Form 1840—reflecting totals and averages from forms 1838, day of inspection date, route examiner's comments, and analysis of office work functions and actual time recordings—will be furnished the carrier at least 1 day in advance of consultation. Completed copies of Form 1838 will be given to the carrier at least 5 calendar days prior to consultation.

242.11 Importance of Route Adjustments

Route adjustments are a very important part of the city delivery service and the promptness and efficiency with which they are made depends directly on the use made of mail count records and route inspection reports. Careful analysis of the data developed will assist the delivery service manager in determining poorly laid out routes and areas for service improvement. In addition, the route adjustments play a prominent part in maintaining regularity of deliveries and in conserving work hours. If minor adjustments have been made throughout the year as needed, few adjustments will be required after each count and inspection period.

242.122 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 8 hours daily work as possible.

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

242.321 For evaluation and adjustment purposes, the base for determining the street time shall be either:

- a. The average street time for the 7 weeks random timecard analysis and the week following the week of count and inspection; or
- b. The average street time used during the week of count and inspection.

242.322 The manager will note by explanatory Comment on the reverse of Form 1840 or attachments thereto why the base street time allowance for the route was established at the time selected. The manager's selection of the street time allowance cannot be based on the sole criterion

that the particular time selected was the lower.

242.325 The base time selected under 242.321 may be adjusted where appropriate provided the reasons for such adjustment are documented in Form 1840 or attachments thereto.

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

242.347 All time disallowances and related comments will be noted on Form 1840 or attachments thereto, and furnished the letter carrier at least 1 day prior to consultation.

POSITIONS OF THE PARTIES:

NATIONAL ASSOCIATION OF LETTER CARRIERS (UNION)

The Union contends that management did not use the COR program in accordance with the national MOU dated July 30, 2007. Carriers were not notified of their street adjustments at the first consultation as required by the M-39. Instead they were given 1840's with times based upon the 3999's but with the added notation "Pending COR adjustment." Carriers did not know what that phrase meant. They did not object to the travel times presented to them at the first consultations because those times were based upon the 3999's and accurately reflected actual street time. The subsequent reductions in street time made by the COR program violated the M-39 Handbook.

Management also violated the COR agreement by not indicating on the back of PS Form 1840 "by sector segment, any change in street credit from the actual street time used in sector-segment on PS Form 3999, including all relay, travel, allied time etc." Although the elimination of relay points was documented on the reverse of the 1840 as required, the Union disputes the relay time calculated by the COR program, which calculates the average relay time for each route and assigns that average per relay to each sector segment. In addition travel to, travel from and travel within times were not validated, documented and discussed during carrier consultations. At no time were any of the carriers provided with a reason or explanation as to how or why changes were made to their base street time.

The Union asks that the grievance be sustained and that one of the two routes eliminated following the route inspections be restored. In addition it asks that the carriers be paid \$10 per day for each day they worked on improperly adjusted routes.

UNITED STATES POSTAL SERVICE (SERVICE)

The Service claims that the Union is essentially challenging its right to use the COR program to optimize routes despite having agreed at the national level that the Service has the right to use the program. The Union bases its grievance on the fact that approximately eight or nine hours of street time were eliminated between the first and second consultations. This, however, is the time that was eliminated through the optimization of routes by COR. The argument that street time saved by COR should be restored is essentially an argument that the Postal Service should not be permitted to use COR, despite the agreement by the parties that the program can be used.

The 1840 Forms given to carriers at the first consultations notified the carriers that there would be changes to their routes since each read "pending COR adjustments". None of the carriers objected at the time of the first consultations. The COR program cannot be run until all manual changes have been made to the routes after the first consultations. The time adjustments that resulted from COR were listed on the 1840's when they became available prior to the second consultations. Carriers had an opportunity at the second consultations to voice their concerns or discuss any issues they had with the COR adjustments. The input of carriers who complained at the second consultations about lines of travel, park points and safety issues was considered and some changes were made based upon that input.

The Union's argument that carriers were never given explanations for reductions in their street time is without merit. The carriers were informed that the reductions were caused by the optimization performed by COR. COR provides no further explanation as to how or why routes are optimized.

The COR MOU states that if a new travel pattern has been created the new times must be validated. The validation cannot be done, however, until the proposed adjustments have been effected. In this case all new times were validated when managers walked the routes and completed 3999's after the changes were implemented.

The Service asks that the grievance be denied. If any violation is found the Service argues

that the monetary remedy sought by the Union is inappropriate and should be denied since the Union has not proved that any actual economic loss resulted from the alleged violations. Any remedy should be limited to a cease and desist order.

DISCUSSION:

The parties entered into a Memorandum of Understanding that allows the Service to use COR as a tool to optimize routes but at the same time provides that “No components of the COR program or application of the COR process will be inconsistent with the route inspection, evaluation, or adjustment process found in Chapter 2 of the M-39 Handbook.” In this case the Union has argued that the Service applied COR in a manner that was inconsistent with the COR MOU and several different provisions of the M-39 Handbook. The Union has met its burden of proof by establishing that management violated the explicit terms of the COR MOU and provisions of the M-39 when it failed to validate changes in street time prior the consultations.

The COR MOU explicitly states that “Travel to, travel from, and Travel Within times must be *validated, documented, and discussed during carrier consultation*. The actual time should be taken from the inspection PS Form 3999, unless a new pattern is created during the route adjustment process. *If a new travel pattern has been created, the new times must be validated*” (emphasis added.) The validation of new times involves walking or driving routes to compare the actual times needed to deliver those routes with the street time generated by COR.

The Union’s takes the position that discussion about changes in travel times must take place at the first consultation, while the Service argues that such an interpretation would make it impossible to utilize COR. COR is run as new routes are built and the program cannot optimize routes before manual changes have been made. Neither the COR MOU nor the M-39 provisions cited by the Union require explicitly that all changes in travel times must be validated and discussed at the first consultation. Here, however, the data was not validated prior to even the second consultations when the new routes were discussed with carriers. Validation was completed only in September 2008, months after the adjustments had been made and the grievance had been filed. It was only at that point that managers walked the new routes created by COR and completed 3999’s comparing the time it took to deliver those routes to the COR times.

There is no question but that the delay in validating data violated the both the specific

requirements of the COR MOU and its intent. The MOU states that “Travel to, travel from, and Travel Within times *must be validated, documented, and discussed during carrier consultation*” (emphasis added). The COR MOU also requires that 3999 times be used unless a new travel pattern is created, in which case the MOU again states that the new times must be validated. The MOU further states that, “the intent ...is for the letter carrier to be made aware of any *proposed* time adjustment to the carrier’s base street time and/or to the street time of the territory being transferred” (emphasis added), indicating that the validation and discussion should be completed before changes are implemented. In another specific provision the COR MOU states that “Any time adjustment to a carrier’s base street time *must comply with the M-39 Section 242.345 through 242.347*” (emphasis added). Section 242.345 in turn requires that changes to a carrier’s base street time be documented and discussed with the carrier at the consultation.

The failures to validate street times generated by COR and discuss changes with carriers at consultation before implementing adjustments is more than a minor technical violation. The fact that COR MOU addresses the validation requirement explicitly and repeatedly is undoubtedly related to the practical importance of this step in the route inspection and adjustment process. Computer programs such as COR are valuable tools that can increase efficiency, but they can also produce flawed results because of their inability at times to account for crucial factors such as one-way streets and heavy traffic. Anyone who has relied upon Mapquest or a GPS system while driving has undoubtedly experienced their remarkable efficiency but also the occasionally nonsensical routes and inaccurate time estimates such programs produce. The requirements that data be validated and discussed with carriers prior to the implementation of changes are clearly designed to test the computer data against real-world conditions and thereby eliminate avoidable problems with route adjustments.

To its credit management did discuss the proposed new routes with carriers at the second consultations and it made manual changes to some routes drawn by COR in response to safety and line of travel concerns raised by carriers. No changes were made to the street times generated by COR, however, even when manual changes were made to the routes. The COR base street times were adopted without validation even though the estimated times could have been skewed by traffic patterns, the volume of mail that had to be loaded at relay points, manual changes made to the line of travel in the COR routes and other factors that a computer program might miss. This failure to

validate the COR data and discuss it with carriers at the second consultations constituted a clear violation of the COR MOU and the M-39 Handbook.

The appropriate remedy for a violation of the route inspection process, as with any contract violation, is one that makes the parties whole by placing them as nearly as possible in the position they would have been in had the violation not occurred. This may include compensation for actual monetary losses that have been suffered but it is generally accepted that in arbitration monetary remedies should be limited to an amount that compensates a party for actual losses incurred as a result of the contract breach. Punitive damages, or those that do more than make a party whole by compensating for actual losses, are rare in arbitration. Some prominent arbitrators, including National Arbitrator Carlton Snow, have questioned the authority of arbitrators to award punitive damages in any circumstances. Other arbitrators have concluded that punitive damages may be awarded in egregious cases where the contract violation has been flagrant, willful or repeated.

In the circumstances of this case I find that an award of monetary damages is not warranted. This conclusion is based upon several factors. First, there has been no showing that any of the carriers at the Southside station suffered economic harm as a result of the route adjustments. Those who worked overtime were paid to do so and, in the words of one Union witness, "seemed to enjoy the overtime." Despite the misapplication of COR that resulted in a contract violation it is not entirely clear that most routes were significantly overburdened over a long time period. The Workhour Workload report from January to April 2008 does show that the actual street time was greater than the COR base street time and that the actual total time spent on each route was over eight hours and was longer than had been projected. This may, however, have been due in part to winter weather conditions at that time of year. In September 2008 when the COR times were validated by walking the routes carriers were spending less actual time on the street than the COR base time.

It is also significant that the Southside inspections were only the second ones nationally to involve the use of the COR program and were apparently the first conducting under the terms of the COR MOU. Because the program was so new the violations cannot be considered repetitive or egregious even though management failed to comply with explicit requirements of the COR MOU. The Service exhibited good faith by discussing the new routes drawn by COR with carriers at the second consultations, considering their input and making some changes, particularly involving safety

concerns and lines of travel, on the basis of carrier input.

The Union's request that one of the two routes that were eliminated following the inspections be restored must also be denied. Despite the contract violation there is no evidence that the two routes were eliminated in error or that the adjustments would have been different if the COR data had been validated earlier. The actual street time exceeded the time projected by COR by approximately seven hours per day from January to April 2008. This is not an insignificant discrepancy but it is less than a full route. Management might have elected to cover the additional hours with auxiliary assistance even if the data had been validated and validation had revealed that the projected times were too low. Since May 2008 mail volumes have declined dramatically and actual street times are less than those projected by COR. Under the circumstances restoration of even one route would be an inappropriate remedy.

For the reasons set forth above I find that management violated the National Agreement in their application of the Carrier Optimal Routing (COR) program at the Southside Station. Management is ordered to cease and desist from applying the COR program in a manner inconsistent with the COR MOU and the M-39 Handbook. Future route inspections and adjustments are to be completed in a manner consistent with the COR MOU and the M-39 Handbook, including their requirements that new travel times be validated and discussed with carriers at consultations prior to the implementation of changes.