

REGULAR ARBITRATION PANEL

C# 10071

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

GRIEVANT: Larry Gutshall
POST OFFICE: Altoona, Pennsylvania
CASE NO:
USPS - E7N-2F-C 18778
NALC - 101-89-004

BEFORE: Carl F. Stoltenberg,

ARBITRATOR

APPEARANCES:

For the U.S. Postal Service:

Marsha L. Hopkins

For the Union:

Jack Race

Place of Hearing:

Altoona, Pennsylvania

Date of Hearing:

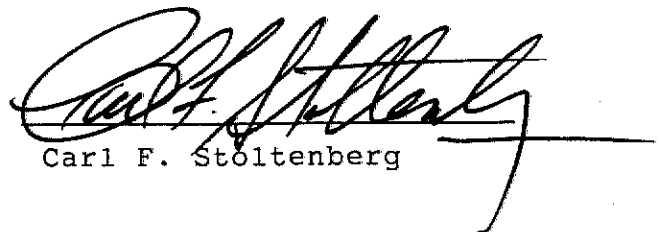
March 14, 1990

AWARD:

The grievance is sustained. The Postal Service is directed to compensate the Grievant at his overtime rate for two hours and nine minutes for each day that he was scheduled to work during the period running from January 10, 1989 to such time as his route is or was permanently adjusted.

Date of Award:

June 21, 1990


Carl F. Stoltenberg

RECEIVED
JOHN W. O'SHEA
NALC

JUN 25 REC'D

ADMINISTRATION

By letter of February 8, 1990, the undersigned was notified of his selection by the Parties to hear and decide a matter then in dispute between them. A hearing went forward on March 14, 1990 where both Parties presented testimony, written evidence and arguments in support of their respective positions and where the Grievant appeared and testified in his own behalf. The record was closed at the conclusion of the Hearing and the matter is now ready for final disposition.

GRIEVANCE AND QUESTION TO BE RESOLVED

On January 19, 1989 the following grievance (Joint Exhibit - 2) was filed:

EXACTLY WHAT HAPPENED: Mr. Gutshall (Route #2) had a special route. Inspection (which was late.) and it showed over office 40 minutes and over street time 1 hr. + 38 minutes. The 52 calendar days for the adjustment ended on 10 January 89. Until this time an adjustment still has not been made.

CORRECTIVE ACTION REQUESTED: The adjustment be made and the Grievant to be paid overtime rate of pay for 2 hr. 18 minutes for each day the adjustment is over the 52 calendar days and Grievant to be made whole. (sic: Larry Gutshall)

The question to be resolved is whether or not the Grievant is due any compensation for Management's failure to permanently adjust his overburdened route subsequent to the requested 52 day period.

CITED PORTIONS OF THE AGREEMENT

The following portions of the Agreement (Joint Exhibit - 1) were cited:

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

The following portions of the M-39 Manual were cited:

211 SELECTING PERIOD FOR MAIL COUNTS AND
ROUTE INSPECTIONS

211.3 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.

242.1 GENERAL

.22 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.

The following letters of agreement are pertinent:

UX-5

Mr. Joseph H. Johnson, Jr.
Director, City Delivery
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 2001-2197

May 2 1985

Re: S. Kraus
Springfield, OR 97477
H1N-5D-C 26168

S. Kraus
Springfield, OR 97477
H1N-5D-C 26466

Dear Mr. Johnson:

On January 22, 1985, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in these grievances is whether management improperly adjusted the grievant's route in violation of the M-39 Handbook.

After further review of this matter, we mutually agreed that no national interpretive issue is fairly presented.

The parties at this level agree that the handing off of delivery territory is a means of providing temporary relief to an overburdened route.

Accordingly, we agreed to remand these cases to Step 3 for further consideration by the parties.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand these cases.

Time limits were extended by mutual consent.

Sincerely,

/s/ Leslie Bayliss
Labor Relations Department

/s/ Joseph H. Johnson, Jr.
Director, City Delivery
National Association of
Letter Carriers, AFL-CIO

UX-2

December 11, 1987

Mr. Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 2001-2197

Re: Class Action
Stuebenville, OH 43952
H4N-4E-C 4252

B. Smith
Middletown, OH 45042
H4N-4F-C 14665

Branch
Yakima, WA 98901
H1N-5D-C 17140

Dear Mr. Hutchins:

The subject arbitrations are settled based on the following understanding:

When a route requires permanent adjustment to place the route on as nearly an 8-hour basis as possible, permanent relief will be afforded. The amount of daily relief will be identified by management in advance and such relief will be permanent relief and documented on Forms 1840 or a minor adjustment work sheet for the assignments being adjusted.

The afforded permanent relief may be provided by reducing carrier office and/or street time using any of the methods provided for in part 243.21b of the M-39 Handbook, Transmittal Letter November 15, 1985.

Permanent relief will not be provided by giving auxiliary assistance or by requiring the regular carrier to work overtime.

The parties acknowledge management's right to provide the cited relief in the most efficient and economical manner.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle cases no. H4N-4E-C 4252, H4N-4F-C 14665, and H1N-5D-C 17140 and remove them from the pending national arbitration listing.

Sincerely,

/s/ Stephen W. Furgeson
Acting General Manager
Grievance & Arbitration
Division

/s/ Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO

UX-6

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: Class Action
Boston, MA 02205
H7N-1E-C 22285

Dear Mr. Sombrotto:

Recently, a meeting was held with the NALC Director of City Delivery, Brian Farris, to discuss the above-

captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the Memorandum of Understanding concerning Special Count and Inspection Process of City Delivery Routes was violated in that the required adjustments were not implemented within fifty-two (52) calendar days following completion of the Special Count initiated by management.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. The referenced Memorandum must be read in conjunction with Chapter 2 of the M-39. As such, barring any valid operational circumstances, the adjustments must be completed within 52 calendar days, as prescribed by the MOU and Section 211.3 of the M-39.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including regional arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment to remand this case.

Time limits were extended by mutual consent.

Sincerely,

/s/ Dominic J. Scola, Jr.
Grievance & Arbitration
Division

/s/ Vincent R. Sombrotto
President
National Association of
Letter Carriers,

DATE 10-31-89

FACTUAL BACKGROUND

The Grievant is employed as a Letter Carrier with the United States Postal Service at the Altoona, Pennsylvania Post Office. He has been with the Postal Service for some nine years. The Grievant has been assigned to Route No. 2 for some three years.

On July 14, 1988 he requested a special inspection of his route but the request was refused by Management. Shortly thereafter he filed a grievance seeking a special inspection on the basis that his route was overburdened in excess of the regulations provided in part 271 of the M-39. His grievance was granted by the Postal Service at Step 3 of the grievance procedure.

The special inspection began on November 15, 1988 and ended on November 19, 1988. The special inspector revealed the Grievant's route to be overburdened both in office and street time to the extent of two hours and nine minutes daily. While the conclusion of the overburdened route was made on November 19, 1988, the Grievant did not receive auxiliary assistance until February 11, 1989. The auxiliary assistance provided was to have the Grievant hand off mail to Part-Time Flexible Carriers (PTF's) for the extra two hours and nine minutes.

On January 19, 1989 the instant grievance was filed seeking compensation for the Grievant at the overtime rate for the daily overburden for each day the adjustment of Route No. 2 is beyond the fifty-two day adjustment period. When the Parties were unable to resolve the dispute it was processed to arbitration hereunder.

CONTENTIONS OF THE PARTIES

UNION CONTENTIONS

The Union contends that Section 211 of the M-39 requires Management to permanently adjust the Grievant's route within 52 days of

finding that the route was overburdened. It points to the fact that the route has not yet been permanently adjusted as required. The Union seeks in relief that the Grievant be compensated at time and one-half for two hours and nine minutes each day that the route went over from January 10, 1989 to present.

POSTAL SERVICE CONTENTIONS

The Postal Service admits that it did not comply with the 52 day implementation period and it does not dispute that the "handing off" to PTF's is a temporary and not permanent relief. It argues that the Grievant is not entitled to any compensation as no hardship was imposed on the Grievant as he was not required to work overtime on an overburdened route as auxiliary assistance was provided on a daily basis. The Postal Service submits that while the Grievant was on the overtime desired list, he never pursued any grievance for being denied overtime. It submits that it was not their intention to delay the permanent relief and it requests that the grievance be denied.

DISCUSSION AND FINDINGS

Article 19 of the National Agreement embraces, "all handbook, manuals and published regulations of the Postal Service". Chapter 2 of the M-39, Paragraph 211.3 provides that:

211.3 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.
(emphasis added)

The record reveals that the mail count or special inspection was completed on November 19, 1988 which found that the Grievant's route was overburdened by two hours and nine minutes.

On December 11, 1987 the Parties agreed to the following:

When a route requires permanent adjustment to place the route on as nearly an 8-hour basis as possible, permanent relief will be afforded. The amount of daily relief will be identified by management in advance and such relief will be permanent relief and documented on Forms 1840 or a minor adjustment work sheet for the assignments being adjusted.

On May 2, 1985 the Parties signed an agreement as to the use of temporary relief. That agreement provides in pertinent part that:

The parties at this level agree that the handing off of delivery territory is a means of providing temporary relief to an overburdened route.
(emphasis added)

Review of the foregoing results in the conclusion that once a route is found to be overburdened, the Postal Service has 52 days in which they may "hand-off" as a temporary relief. However, at the end of the 52 day period permanent relief of the overburden must occur. The Parties agree that handing off is not considered as permanent relief.

In the instant case the determination of the two hours and nine minutes of overburden occurred on November 19, 1989, this began the 52 day period set forth in 211.3 of the M-39. The 52 calendar day period ended on January 10, 1989. The record establishes that the Grievant did not receive "temporary assistance" in the form of handing off to PTFs until February 11, 1989, approximately one month after the 52 day period. Accordingly, it must be found that Management violated the Agreement when it simply ignored the 52 day period set forth in the M-39 and embraced by the Agreement at Article 19.

The Union seeks in relief that the Grievant be paid two hours and nine minutes at the overtime rate for each day beyond January 10, 1989 to date as Management has continued to refuse to provide the contractually mandated permanent relief. The Company argues that no hardship has been imposed on the Grievant that would merit granting this monetary request.

The Postal Service does not deny that it violated the 52 calendar day implementation of permanent relief to the Grievant's route as required through the Agreement in Article 19 and the M-39 Manual. However, it argues that the Grievant has suffered no hardship in handing off his two hours and nine minutes of excess work to PTFs. As such, with the admission of a breach of contract by the Postal Service, the only remaining issue is one of relief.

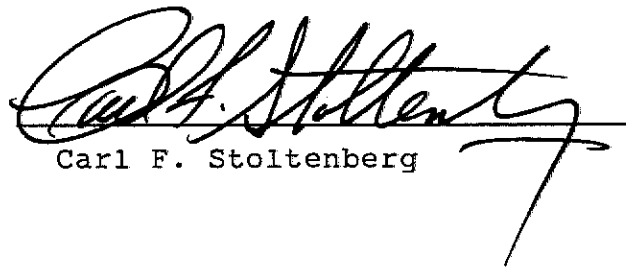
Postal Management testified that it did not implement permanent relief because it was waiting on a higher level response which never came. It must be observed as significant that the waiting period has spanned a period from January 10, 1989 to at least the date of the instant hearing on March 14, 1990 without any attempt to rectify the 52 day violation by providing the required permanent relief. Critical to the Postal Service argument is that this thirteen month period is on its face a flagrant disregard and defiance of contractual obligation by Management. While the Grievant may not have suffered a direct hardship, the failure of the Postal Service to follow and implement its own regulations set forth in the M-39 Manual, if left unchecked, serves to frustrate the intent of the grievance procedure, the Agreement and the collective bargaining process. Indeed, there exists not one shred of evidence that might tend to indicate that Management had a valid, convincing or

good faith reason that circumstances beyond its control would not permit their honoring their contractual commitment in a timely fashion.

On balance, it must be found that Management's blatant disregard for its contractual obligation, if left unchecked, strikes at the very heart of the Collective Bargaining Agreement. While Management's act may not be one of direct hardship to the Grievant, it is an act of deliberate damage to the Agreement, the Union and indirectly to the Grievant. The record reveals that the determination of the two hours and nine minutes of overburden was made on November 19, 1989. This is the beginning date for the 52 day period. However, Management did not even provide the Grievant with "temporary assistance" in the form of handing off to PTFs until February 11, 1989; some eighty four days after the overburden was determined and one month after the 52 day period. As such, Management further exacerbated the situation by failing to provide even the most elemental relief to the Grievant's scheduled route. Accordingly, the grievance is sustained and the Postal Service is directed to compensate the Grievant at his overtime rate for two hours and nine minutes for each day that he was scheduled to work when a permanent adjustment was not made to his route from January 10, 1989 to such time that the Grievant's route is permanently adjusted.

A W A R D

The grievance is sustained. The Postal Service is directed to compensate the Grievant at his overtime rate for two hours and nine minutes for each day that he was scheduled to work during the period running from January 10, 1989 to such time as his route is or was permanently adjusted.



Carl F. Stoltenberg

June 21, 1990

Pittsburgh, Pennsylvania