

C-20039

In the Matter of Arbitration)	GRIEVANT: Ron Williams
between)	
UNITED STATES POSTAL SERVICE)	USPS NO: C94N-4C-C 97034863
Akron, OH)	
and)	NALC NO: A-148-C-2429
NATIONAL ASSOCIATION OF LETTER)	POST OFFICE: Ellet Station
CARRIERS, AFL-CIO)	
)	GTS NO: 12501

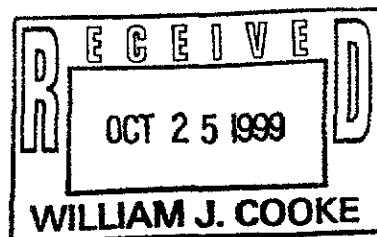
BEFORE: PHILIP W. PARKINSON, ARBITRATOR

APPEARANCES:

For the U. S. Postal Service:	William R. Pagan, Labor Relations Specialist
For the Union:	Mike Heitic, Arbitration Advocate
Place of Hearing:	Akron, OH
Hearing Date:	September 30, 1999
Record Closed:	September 30, 1999
Date of Award:	October 20, 1999
Type of Grievance:	Contract

AWARD SUMMARY

The grievance is granted in part. The parties are directed, in accordance with the above Opinion, to survey the 117 lawns in issue and if there continues to be a question after such survey regarding the propriety of the route adjustment then the arbitrator shall retain jurisdiction for a determination in this regard. The parties are provided with a sixty (60) day period subsequent to this Award to implement and complete their survey.




PHILIP W. PARKINSON

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BEFORE
PHILIP W. PARKINSON, ESQ.
ARBITRATOR

Representing the Postal Service - William R. Pagan,
Labor Relations Specialist

Representing the Union - Mike Heitic,
Arbitration Advocate

I. THE GRIEVANCE

This grievance was presented by Branch No. 148 of the National Association of Letter Carriers, (hereafter referred to as the "Union"), on August 16, 1996. The grievance arose at the Ellet Station of the Akron, OH Postal facility of the United States Postal Service, (hereafter referred to as the "Postal Service" or "Management"). The grievance was denied at Step 1 of the parties' grievance procedure and thereafter appealed to Step 2. The Grievance Form at Step 2 states:

On 7-15-96 route adjustments were made to RT. 1265. RT. 1265 checked at 7:50 during the week of count and inspection. Time deductions of :26 were taken from the average street time for failure of carrier to cross/cut 117 lawns. Route adjustments on 7-15-96 included additions to RT. 1265 based on a lower street average of 7:24.

The Union alleges that, as a result, the Postal Service violated Article 41.3.N of the parties' Collective Bargaining Agreement¹, as well as certain Sections of the Methods M-39 Handbook and Manual. As the "Corrective Action," they ask that the "average street time for the week of count and inspection be used and that adjustments based on not crossing/cutting lawns be disallowed." The appeal was discussed at Step 2 on January 14, 1997, and on January 28, 1997, the Postal Service issued a response denying the appeal stating that there was no violation by Management and "the remedy requested to be inappropriate." The Union next appealed the grievance to Step 3 on December 14, 1996 (this appeal was made prior to the Step 2 discussion of January 14, 1997). The basis for the Step 3 appeal was for the same reason as that which is set forth on the Step 2 Standard Grievance Form. In the appeal they ask, as the "Corrective Action", that "the average street time for the week of count and inspection be used and that adjustments based on not crossing/cutting lawns be disallowed." Subsequently the Step 3 appeal was discussed by the parties and by letter dated February 13, 1997, the Postal Service responded denying the appeal. The denial

¹ AGREEMENT between United States Postal Service and National Association of Letter Carriers, AFL-CIO, 1994 - 1998, (hereafter referred to as the "Agreement").

states, in pertinent part:

It is the union's responsibility to establish that a contractual violation exist. The union has not met its burden of proof. It is the position of management that the route adjustments were proper using the appropriate data and procedure. Any carrier that felt the adjustments were improper was given the opportunity for a special inspection. There was no showing of overburden among those who opted for the special inspection. There was no information in the file showing that a contractual violation occurred in this case. The remedy requested by the union is inappropriate. Accordingly this grievance is hereby denied.

The grievant was then appealed to arbitration and the undersigned was appointed to hear and decide the matter. Accordingly a hearing was held on September 30, 1999 in Akron, OH. At the hearing the parties were afforded full opportunity to present evidence, both oral and written, to cross-examine the witnesses, and to argue their respective positions. At the conclusion of the hearing the record was closed.

II. BACKGROUND

Mr. Anthony Heitic, a Letter Carrier who has been the President of the Union for some 9 years, testified that during the count inspection on Route 1265 at the Ellet Station that the route examiners who went out with the carrier, determined that the carrier did not cross 117 lawns. They claimed that the carrier could have crossed these lawns and as a result deducted time for each stop totalling 26 minutes for the street time for not crossing the lawns. This was reflected in the Form 1840, which is a summary of count and inspection of the Postal Service. It shows a lesser street time. The Union felt that this was improper and that they had the right to investigate to see if the patrons wanted their lawns crossed. They were not given this opportunity. They alluded to the Form 1840 and noted the various deductions of time which amounted to 26 minutes for each day as a result of not crossing lawns. Mr. Heitic further explained that during the processing of the grievance the Union requested the Form 3999, which is the documentation to show which of the 117 lawns that they deducted the time for on the inspection. They also requested a list of the 117 lawns that were not crossed. Mr. Heitic said that the Union never received this information and therefore filed a separate

grievance based on not receiving it. He claimed that the instant grievance was also filed as a lawn crossing issue as well as an adjustment issue because of the deduction of 26 minutes. This made it a 7 1/2 hour route "from a close to 8 hour assignment." The second grievance that was filed regarding the lawn crossing was settled at Step 3 on the following basis:

Shop Stewards have the right under Article 17 Section 3 of the National Agreement to investigate grievances as provided therein, including the right to interview postal patron witnesses during working hours in connection with situations in which a letter carrier has made an initial determination that a particular customer would object to his lawn being crossed and where a supervisor has overridden that determination and issued an order that such lawn be crossed.

This settlement was not implemented and another grievance was presented protesting the non-implementation of the Step 3 settlement. This third grievance was settled on the basis that the Union Steward would be granted two (2) hours to interview postal patrons on the grievance. Mr. Heitic reiterated that in the instant grievance the lawn crossing issue was the primary reason for the grievance because they were deducting the 26 minutes for not crossing the lawns. They deducted this street time and then added more time to his route. He claimed that if they had not deducted this time, they would not have added anything to Route 1265. As a result of the deduction of 26 minutes, they added a street to this route. The Union has never received the requested information on the 117 lawns and the last time he talked to Management, he was told they did not have this information or could not find it.

Mr. Vern Shepard is currently the OIC at the Cuyahoga Falls, OH Postal facility, however, his regular job is Manager of Customer Services at Akron, OH. As the Manager of Customer Services, he oversees the carrier operations and is responsible for all the Stations and Branches. He said that the original route inspection on Route 1265 at the Ellet Station had time deducted because the carrier did not cross 117 lawns. Management agreed, however, to give the Union Steward two (2) hours to investigate the time. He said that he had agreed to this because when he saw a previous settlement, he was not going to have somebody going out and beating on the

doors of postal patrons. With respect to the PS Form 3999, he related that this is a Form which lists all of the addresses on the route and the sequence of delivery. It is a worksheet for the inspectors to document the actual time the carriers are using on the street. The Union asked him for the Form 3999 as well as the 117 addresses, but he could not find these addresses. He agreed to take the Union Steward or their President out on the route to pinpoint the addresses or to take the carrier out. Mr. Shepard also alleged that this should have been documented in the carrier's route books and also in his reminder cards (used in case a substitute carrier carried the route so that he/she) would know about the lawns), however, apparently that information was not available. The Postal Service requires carriers to cross lawns unless the customer objects or unless there is a known safety hazard. They are required to take all obvious shortcuts and the most direct routes to the next delivery. He claimed that as a result of this route adjustment, the routes were adjusted as close to eight hours as possible. This resulted in a reduction of the overtime and they also eliminated a router position. The latter position is one in which a carrier does not go out on the street. Because of this, there were personnel moves made and the letter carrier involved herein is no longer on Route 1265.

On cross-examination, Mr. Shepard said that he had offered alternate solutions to knocking on the doors of postal patrons. He suggested the preparation of a questionnaire for individuals since he did not agree with the Step 2 settlement that had been made regarding interviewing customers and did not want to be knocking on doors. However, the Union did not want to settle for the preparation of the questionnaire. He also said that if any customer objects to a carrier crossing their lawn, the carrier is responsible to put it in his special instruction booklet. It is a carrier's responsibility and the manager's responsibility to review this. Mr. Shepard also offered that the new carrier is doing very well on the route. He claimed that he does not know what happened to the Form 3999 and this is why he agreed that they would drive around on the route and get the addresses if necessary.

III. POSITION OF THE PARTIES

A. UNION

The Union claims that this is a two fold grievance. The initial phase involves the unfair adjustment of Route 1265 at the Ellet Station. There was an improper adjustment based on a lawn crossing issue. The second part of it concerns the 117 addresses supposedly and allegedly whose lawns were not crossed. The Postal Service cannot produce which lawns were not crossed or the total number. They claim that Management violated the M-39 Handbook. All though this process the Union points out that there was no information provided to them. As a result of the adjustments, there was territory added to the route. The Union is not asking for any money in this grievance, but rather, that the Postal Service adjust the route properly. In the alternative, the Union asks that if they are unable to find the 117 lawns then the route should be adjusted on the basis of the summary or count that was made on April 12, 1996, which is contained in Form 1840, rather than the completed one that was used and based on the Form 1840 dated April 16, 1996.

B. POSTAL SERVICE

The Postal Service points out that the language of Article 43.N is clear. Carriers may cross lawns if customers do not object and there are not hazards to the carrier. They also contend that in its grievance at Steps 1, 2 or 3, the Union never raised the issue of either customers objecting or any particular hazards. As to the two 1840's that were submitted, in the first one dated April 12, 1996, it did not show the adjustments, but the second one dated April 16, 1996 showed the proper adjustments. The Postal Service also claims that the route book that the carriers are responsible for to make entries should have included those 117 lawns referred to and should have been recorded in the carrier's book. The language regarding crossing lawns first appeared in the early 1960's and has been part of the parties' collective bargaining agreements since 1975. They note that the Postal Service offered an alternative solution to this problem by offering to go out with the Union President or with the carrier to determine what lawns were in question. Although the Postal Service does not have the documents, they have offered a viable alternative to go out and investigate this

matter. The Union submitted Step 4 decisions as well as a number of arbitration awards which they claim support their position regarding the crossing of lawns and the raising of new arguments. They also pointed out that the grievant did not testify and ask who else would know better about the 117 addresses. The Steward who filed the grievance also did not testify. The sole witness for the Union was the President and his testimony was all hearsay. There was no evidence that Article 41 was violated or the M-39 Handbook. The burden of proof was on the Union and they failed in their evidence to support their contention.

IV. PERTINENT PROVISIONS OF THE AGREEMENT

ARTICLE 41 - LETTER CARRIER CRAFT

Section 3. Miscellaneous Provisions

N. Letter Carriers may cross lawns while making deliveries if customers do not object and there are no particular hazards to the carriers.

V. OPINION

This grievance, which dates to August, 1996 as a result of a route adjustment made on July 15, 1996 to Route 1265 protests time deductions of .26 from the average street time of this route for failure of the carrier to cross or cut across some 117 lawns. Because of these time deductions, the street average time was lowered. The Union alleges a violation of the Agreement and asks that the adjustments made that were based on not crossing these lawns be disallowed. As the grievance developed through the steps of the grievance procedure it became apparent that one of the chief problems that created a deterrent to potentially settling the matter concerned a lack of information. The record reveals that the Union sought the information concerning the 117 lawns that were supposedly not crossed, but this information was unavailable and/or was never received by the Union. Additional grievances were filed to secure this information and certain resolutions were proposed, such as, interviewing postal patrons. The latter was rejected by Management because of the possibility that they would be "knocking on patrons' doors." Instead a resolution was proposed that the

carrier could go out on the route with a supervisor and/or a questionnaire could be composed to provide the various postal patrons. The above summary illustrates the fact that the communication and information concerning the 117 lawns seems to be the key element in concluding, not only this grievance, but subsequent grievances that had been presented, concerning the particular count and inspection of July 15, 1996. As early as August, 1996, the Postal officials were aware that the Union was protesting the Route 1265 adjustment based on the lawn information, yet for some unexplainable reason, the PS Form 3999, which lists the addresses on the route and sequence of delivery, never was made available and/or was lost by Postal Management officials. There may have been a legitimate reason, but nevertheless, this Form should have been a part of the proceedings during the discussions in the grievance procedure pursuant to the parties' policy of full disclosure. There would not have been a need for the Union to have then filed a subsequent grievance requesting this information in order to receive what appeared to be basic information concerning the heart of the reason for the instant grievance. It is clear, as the Postal Service alleges, that letter carriers can cross lawn if customers do not object and there are no hazards apparent to the carrier. It is also undisputed that the safe and shortest route from delivery to delivery is the desirable method for deliveries. Here, the result of not having this key information is that on the one hand the Postal Service reduced the street time because of not crossing these lawns, yet on the other hand, the Union could not intelligently and rationally determine whether this was a proper action because they were never provided with the information concerning these lawns. Efforts to resolve the matter have been attempted, yet neither party has seen fit to agree to any method. There is a charge by the Postal Service that the carrier's route book should have included this information about the lawns. Despite this, it would seem to me that this is a Management responsibility to make this information available and to provide it to the Union when the route adjustments are made and particularly where it involves a reason for a major reduction in street time. It is even more compelling when it is contested via the grievance procedure. Thus, the Postal Service cannot hide behind the fact that the information is not available inasmuch as less than a month went by subsequent to the

adjustment when the grievance was presented. On the other hand, the most prudent offer to resolve the information question, given the fact that the Form 3999 was either lost or is unavailable, would be that which the Postal Service offered, i.e., to have the Union President and/or the carrier to go out with the proper Management official to ascertain the lawns in question. Once this is determined, then the parties, particularly the Union, would then be better able to determine whether the adjustments made to Route 1265 were proper. Thus, the arbitrator is persuaded to rule that a preliminary survey be jointly made by the Postal Service official, who is aware of the situation, with the Union President and/or the carrier in order to secure the information regarding the lawns. Once this is done, if there is a follow-up question regarding the propriety of the route adjustments as a result of not crossing of these lawns, then the arbitrator would retain jurisdiction to determine whether an additional route adjustment in accordance with the Union's request shall be ordered. In the event, as the Union alleges, that the parties cannot locate the 117 lawns, then it would appear that the count that was made on April 12, 1996 on Form 1840 may be considered to be the proper adjustment rather than the one that was completed on April 16, 1996. The latter being that made subsequent to the alleged improper route deliveries because of not crossing of the 117 lawns.

AWARD

The grievance is granted in part. The parties are directed, in accordance with the above Opinion, to survey the 117 lawns in issue and if there continues to be a question after such survey regarding the propriety of the route adjustment then the arbitrator shall retain jurisdiction for a determination in this regard. The parties are provided with a sixty (60) day period subsequent to this Award to implement and complete their survey.


PHILIP W. PARKINSON

October 20, 1999

Washington, Pennsylvania