

C#06720

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration )  
between ) Grievant: P. W. Ronan  
UNITED STATES POSTAL SERVICE ) Post Office: Cambridge "A" Boston, MA  
and )  
NATIONAL ASSOCIATION OF LETTER ) Case No: N4N-1E-C 22422  
CARRIERS, AFL-CIO )

Before Harry Grossman , Arbitrator

Appearances:

For US Postal Service: William T. Evans, Sr., Manager, Labor Relations, Boston Div., GMF, Boston, MA

For Union: Carl G. Soderstrom, Jr., Trustee, Branch 34, NALC, South Boston, MA

Date of Hearing: December 2, 1986

Place of Hearing: GMF, Boston, MA

Award: The grievance is sustained. The grievant's route will receive a special mail count and inspection which shall commence after January 10, 1987, and be completed not later than January 31, 1987.

The grievant shall be given penalty pay at his regular hourly rate for all days worked in excess of eight and one half hours between May 1, 1986, and the date of implementation of the PS Form 1840 initialled by the Station Manager, Cambridge "A" on November 12, 1986.

Date of Award: DEC 16 1986

OPINION AND AWARD

The Issue

Did the Employer violate the National Agreement between the parties, specifically Article 19, and more particularly, Sections 270 and 271g of M-39, MANAGEMENT OF DELIVERY SERVICES, when it denied the grievant's request for a special route inspection under the provisions of the last cited publication? If so what shall be the appropriate remedy?

Background

The grievant is a full-time regular city carrier working at the Cambridge, MA "A" Station of the Boston, MA Post Office. He has been employed by the Postal Service for approximately two years and five months. He came to the Cambridge "A" Station in October 1985 as a Full Time Carrier and took over Route 38025 one day a week as a utility carrier. The route became his as the regular carrier by bid in February, 1986. At that time, and even before his bid, he ran over the eight hour work day on the route "all the time" according to his testimony. The grievant is also a Union Steward for NALC at Cambridge "A" Station.

On April 2, 1986, the grievant addressed a letter to the Manager, Delivery and Collection, at the General Mail Facility (GMF), Winifred Groux, requesting a special route inspection

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"in accordance with the provisions of Section 271g of the M-39 handbook." The letter stated that he felt that "(his) route is not in adjustment, as it is in excess of eight (8) hours and should receive a 6-day count and inspection within four (4) weeks." (Union Ex. 5)

Mr. Groux acknowledged receipt of the request by letter dated April 8, which answered the grievant's letter as follows:

The criteria which would cause your route to warrant an inspection or adjustment is currently under analysis by the Delivery Staff in conjunction with the supervisors from the Cambridge "A" Post Office. You will be advised of Management's decision on the disposition of your route as soon as it is available.

The Union grieved at Step 1 on April 17, 1986 (apparently to meet the deadline in Article 15, Section 2, Grievance Procedure - Steps), on which date the grievant met with his supervisor, Mr. Hobbs, whose decision was to deny the grievance. The GRIEVANCE WORKSHEET form of the Union showed the date of decision to be April 22, 1986 with the reason for denial reading, "Supr. Hobbs says Inspection will (be) given after proper analysis from Delivery & Collection & Cambridge A supervision team." (Joint Ex. 2)

The Union then grieved at Step 2, claiming that the reasons assigned at Step 1 in essence sustained, rather than denied, the grievance; asked that the special inspection be completed within four weeks from the date of the request; and

that the grievant be paid one extra hour's pay for each day worked overtime as a result of not having his special inspection. In connection with the latter request for penalty pay, the Union referred to an arbitration award by Arbitrator E.D. Pribble in Kenosha, Wisconsin. (Union Ex. 8) This will be treated below in more detail.

The grievance was subsequently denied at Step 2 by the Manager of Cambridge "A" (letter to M.J. O'Connor, President, Branch 34, NALC, June 25, 1986), and by the Northeast Region's Labor Relations Specialist (letter dated September 10, 1986, to J.J. Marco, National Business Agent, NALC, New England). In each of these decisions the Employer's justification for denying a special route inspection of the grievant's route was that he did not qualify for it under the applicable contract provisions. To the date of the arbitration hearing, December 2, 1986, no special route inspection was conducted by Postal Service Management.

#### Applicable Contract Provisions

Article 19 of the National Agreement between the parties in effect at all times material to this dispute, in essence incorporated into the Agreement "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" covered employees. (Joint Ex. 1)

M-39 is such a Handbook or Manual. Section 270 simply reads "SPECIAL ROUTE INSPECTIONS." It has no text of its own. It is followed immediately by "271 WHEN REQUIRED," which reads as follows:

271 WHEN REQUIRED

Special route inspections may be required when one or more of the following conditions or circumstances is present:

- a. Consistent use of overtime or auxiliary assistance.
- b. Excessive undertime.
- c. New construction or demolition which has resulted in an appreciable change in the route.
- d. A simple adjustment to a route cannot be made.
- e. A carrier requests a special inspection and it is warranted.
- f. Carrier consistently leaves and/or returns late.
- g. If over any 6 consecutive week period (when work performance is otherwise satisfactory) a route shows over 30 minutes of overtime or auxiliary assistance on each of 3 days or more in each week during this period, the regular carrier assigned to such route shall, upon request, receive a special mail count and inspection to be completed within 4 weeks of the request. The month of December must be excluded from consideration when determining a 6 consecutive week period. However, if a period of overtime and/or auxiliary assistance begins in November and continues into January, then January is considered as a consecutive period even though December is omitted. A new 6 consecutive week period is not begun.

Other pertinent contract provisions are found in Article 8 which establish the basic eight (8) hour workday, overtime, when needed and maximum amounts, and penalty pay for excess

overtime. Additionally, M-39, Section 211.1 was changed by a Memorandum of Understanding dated October 22, 1984, whereby the Employer agreed to make "at least annual route and unit reviews" consisting of analyses of items in Sections 213 and 214 of M-39 "in order to achieve and maintain an appropriate daily workload for delivery units and routes." The understanding recognized that "in some units, it may be necessary to proceed with mail counts and route inspections on one or more routes." (Union Exs. 9, 10)

The Union's Position

The Employer's principal witness before me, the Manager of Cambridge "A", readily acknowledged that the mail volume on Route 38025 was building on a day to day basis. He agreed "with reasonable certainty" that the grievant's route was overburdened at all times material to the grievant's request. This is further borne out by the abundance of PS Forms 3996, CARRIER-AUXILIARY CONTROL forms completed by the grievant and approved by his supervisor for many, many hours of overtime and/or auxiliary assistance on almost a daily basis from December, 1985 to April, 1986 (Union Exs. 12, 13), and PS Form 407's and 697's, EXTENSION OF CITY DELIVERY SERVICE, applicable to Route 38025 because of new multi-occupant buildings completed. Official notice is also taken by the Arbitrator, a lifelong resident of the Boston area, based on common

knowledge of the hi-rise urban renewal in the Memorial Drive-Harvard Square, Cambridge area during 1984-1986.

Finally, on the point of the grievant's route being overburdened, it was shown that the Manager made adjustments by "relief" given to both office time and street time, PS Form 1840, 11/12/86. (Union Ex. 6)

Based upon the weight and preponderance of the evidence before me, I find that the grievant's route clearly met the "conditions or circumstances" for a special route inspection set out in M-39, Section 271, when he submitted his request in April, 1986, namely, "a consistent use of overtime or auxiliary assistance," "c. New Construction . . . which has resulted in an appreciable change . . ." and "e. Carrier requests a special inspection and it is warranted" (over 30 minutes of overtime or auxiliary assistance on each of 3 days or more in each week).

#### Management's Position

Management's position on the denial of the grievant's request for a special inspection first emerged at Step 2 of the grievance procedure, asserting that his work performance was not "otherwise satisfactory" over the six consecutive week period as specified in Section 271g of M-39, above. Additionally, the route was receiving auxiliary assistance on a daily basis. (Step 2 decision, June 25, 1986, Joint Ex. 2)

The assertion of the grievant's performance not being acceptable was again given as reason for the denial in the Step 3 decision. (Letter dated September 10, 1986, Joint Ex. 2)

Analysis of Evidence and Findings

At the arbitration hearing, the Cambridge "A" Manager testified that the grievant's performance was "mediocre at best," that there had been complaints of late delivery, mis-delivery and a non-delivery; that two contemplated letters of warning were changed to informed meetings with the grievant. The grievant would show improvements for a while and then his performance would again slip. Fault was found in the grievant's method of casing mail and extending street time.

The grievant acknowledged that he was spoken to about his performance and answered that he was doing the best he could; that he was not issued any letters of warning but was told that the meetings were in lieu of such letters. He also testified, and other evidence supported his testimony, that after he made his request, he was subjected to closer and more frequent close supervisory observation both in the office and on the street than previously or than others.

The Step 2 decision letter dated June 25, 1986, from the then Cambridge "A" Manager, M. Bertolino, referring to the Step 2 meeting on May 13, 1986, enumerated the following

shortfalls in the grievant's performance to warrant denial of his request: "Using improper practices; not using proper methods and engaged in time-wasting habits." More specifically, it asserted that the grievant has conducted union business without receiving permission or making proper clock rings on February 28, 1986; and expansion of office time and failure to follow instructions. Misdelivery of mails and expansion of street time were cited as was a discussion for the grievant's using office time to sell tickets for the Union (no date shown).

Having found that one or more of the route conditions in M-39, Section 271 warranting a special route inspection were met, I move to the parenthetical condition on which Management relied--"(where work performance is otherwise satisfactory)." The question which the Arbitrator needs to address on that point is this: Was that the real reason or did Management use it as a pretext to avoid the needless expenditure of time and human resources to arrive at what Management knew to be the foregone conclusion, i.e., that the route was heavily overburdened and in need of permanent adjustment under M-39, Section 243.

As I construe the parenthetical condition, it was meant to rule out a situation where the direct and proximate cause of a carrier's route consistently exceeding eight and a half hours time over the six consecutive weeks is known to be the carrier's

delinquent performance as such, e.g., loitering, chatting with others, dawdling or otherwise wasting time which needs to be corrected (see Section 243.21 of M-39) (Union Ex. 2). I do not find that that was the case here.

Conclusion

Upon careful and thorough examination and consideration of all the evidence before me, I conclude that the grievant's work performance was not shown to be the direct and proximate cause of his consistent use of overtime and/or auxiliary assistance beyond eight and a half hours in the six consecutive weeks preceding April 2, 1986. Rather, I conclude that the real cause was simply a continuing substantial growth in mail volume in an expanded delivery area brought on by new construction, and the fact that the route caters predominantly to people of higher income, largely professional or entrepreneurial, who customarily receive higher quantities of mail.

One may ask if these elements are already known to those Postal Service officials concerned, why have a special mail count and route inspection on request of the carrier? The only answer that needs to be given is that M-39, Section 271g states that the carrier shall receive them on request. The Employer has agreed to provide it by a non-discretionary manual provision incorporated into the collective bargaining

agreement's Article 19, which the Arbitrator must apply without adding to or detracting from its express terms.

This arbitrator cannot declare the issue moot on the basis of the adjustments made by Management on November 2, 1986, reflected in PS Form 1840 (Union Ex. 6). The reason for this conclusion is again the non-discretionary language of Section 271g.

The final point that needs to be addressed is the Union's request for penalty pay to the grievant for non-compliance with Section 271g. This request was buttressed by an award of Arbitrator E.D. Pribble on January 24, 1986 (Union Ex. 8) involving the same parties in another Postal Service Region, Case Nos. C3N-4J-C 6365, 4720, and 6273). There the Arbitrator awarded the grievants penalty pay, "an extra hour's pay at their regular rates of pay for each and every day . . . that each Grievant has worked overtime until the results of their special route inspections are implemented." The Arbitrator's rationale for this award of penalty pay read: "Grievants have been required to work overtime they should not have worked. No possible future remedy can return this time to them. Moreover, it would be an insufficient remedy here merely to instruct the MSC not to breach the Agreement in the future. This remedy will make the Grievants as whole as possible at this time."

This Arbitrator agrees in principle with the reasoning

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expressed by Arbitrator Pribble. On the facts in this dispute, however, I am inclined to limit extra pay penalty to the grievant to one hour's pay at his regular rate of pay for each and every hour that he was required to work in excess of eight and one half hours on all such days beginning on May 1, 1986, when the special mail count and route inspection should have been completed under Section 271g, until the date of actual implementation of the November 12, 1986 PS Form 1840, blocks L and M. I so limit the penalty pay award on the reasoning that if after the implementation of the adjustment, however made, the grievant still found that the route required more than eight and a half hours on a continuing basis, a new request under Section 271 could and should have been initiated by the grievant after six weeks.

Arbitrator Pribble concerned himself with the distinction between temporary and permanent forms of relief for overburdened routes (see paragraphs 9, 10, pages 9-10). In my view the process and procedures that flow from a special mail count and inspection must be left to be carried out by Management under pertinent Postal Service regulations, handbooks and manuals with whatever role and/or input those publications and the collective bargaining agreement accord to the Union.

AWARD

The grievance is sustained. The grievant's route

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shall receive a special mail count and inspection which shall commence after January 10, 1987, and be completed not later than January 31, 1987.

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DATED: DEC 16 1986

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Arbitrator