

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)	GRIEVANT: Class Action
Between)	POST OFFICE: New Haven, CT
UNITED STATES POSTAL SERVICE))
And)	CASE Numbers:
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO)) USPS: B11N-4BC 17505444 NALC: 19-515-17GPO DRT: 14-413328

BEFORE: Sherrie Rose Talmadge, Esq., ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Vernon N. Tyler, Jr., Labor Relations Specialist

For the NALC: Vincent Mase, Esq., Branch President

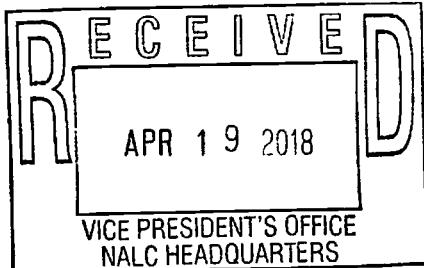
Place of Hearing: 24 Research Parkway, Wallingford, CT
Date(s) of Hearing: February 23, 2018
Date of Award: April 6, 2018
Relevant Contract Provisions: Articles 15 and 19
Date of Contract: 2011-2016
Type of Grievance: Contract

AWARD SUMMARY

Management violated Articles 15 and Article 19 of the National Agreement, as well as the M-39 Section 222.214(h) when they failed to assign union time as a line 21 item for union steward's time. The Union established that the union work performed by the stewards at the New Haven GPO was of a recurring and necessary nature. Accordingly, the grievance is sustained.

For the remedy, three hours Union time is to be built into Steward D'Aniello's assignment (Route 1147) and one-hour union time is to be built into Steward Malinowski's assignment (Route 1038).

Sherrie Rose Talmadge, Esq., Arbitrator



STIPULATED ISSUES

1. Did Management violate Articles 15 and Article 19 of the National Agreement, as well as the M-39 Section 222.214(h) when they failed to assign union time as a line 21 item for union steward's time?
2. If so, what is the proper remedy?

CONTRACT PROVISIONS, MANUALS and HANDBOOKS

Article 17.4 Payment of Stewards

....Employer authorized payment as outlined above will be granted at the applicable straight time rate, providing the time spent is a part of the employee's or steward's (only as provided for under the formula in Section 2.A) regular work day.

Handbook M-39 (2004)

222.214 (h) Line 21, Recurring Office Work not covered by Form. (Use Comment section to identify each activity.) Necessary time must be recorded for miscellaneous office activity not included on any of the lines 1 through 20. This would include miscellaneous review or other work that may require the carrier's time relating to handling of undeliverable mail. Describe activity performed and time spent. Each time entry is to be verified and initialed by a manager if it is authorized as a recurring carrier office work activity.

Note: Entries erroneously indicated as line 21 activities should be lined out and the correct line activity shown on Form 1838-C and initialed. For example, a line 21 entry for conversations pertaining to route inspection forms, etc., should be changed to line 22. The carrier must also be instructed as to proper recording of work functions at this time.

SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES POSTAL SERVICE AND THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO **(M-00605, 1980)**

This will serve as full and complete settlement of the disputes between the U.S. Postal Service and the National Association of Letter Carriers, AFL-CIO, regarding the issue of appropriate items which may be included for credit on line 21 of Form 1838-C, Carrier's Count of Mail-Letter Carrier Routes Worksheet, during the week of count and inspection.

The parties mutually agree that the following listed work activities may be appropriate for inclusion by the letter carrier for actual time credit on line 21 of the Form 1838-C when such activities are determined to be recurring and necessary in the performance of the carrier's office routines:

9. Union steward activities (grievance handling), when necessary and if occurring weekly or more often.

The following guidelines will be applied in implementing this settlement.

- a. The appropriateness for granting credit for the listed items on line 21 of Form 1838-C is dependent on a determination that the incident is (1) recurring; (2) necessary to

the successful completion of the activity; and (3) not otherwise properly included as part of another established time credit on lines 1 through 20.

FINDINGS OF FACTS¹

Routes in the New Haven GPO were inspected from May 6 through May 20, 2017; the first route inspection in three years. This was the first route inspection in the New Haven GPO since letter carriers D'Aniello and Malinowski became Union stewards. Route 1038 is assigned to Union Steward Stephen Malinowski. Route 1038 was inspected from May 6 through May 12, 2017. Route 1147 is assigned to Union Steward Stephanie D'Aniello. Route 1147 was inspected from May 15 through May 20, 2017.

Dan Bevins, Operations Program Specialist and Team Leader for the May 2017 Route Inspection in New Haven, testified that he changed the Union time for both stewards from Line 21 to Line 22 because he understood from local management that during the route inspections the stewards were performing union work related to the route inspections and otherwise would not have been performing union work on a recurring basis. Thus, Management determined that the union work being performed was not of a recurring nature and changed Union time for Route 1038 (Steward Malinowski) from line 21 to line 22. On Form 1840 reverse for Route 1038 Management wrote

Carrier is a union steward and averaged (32 or 33) minutes per day of union time. The time will not be reflected in the routes office evaluation time. The carrier (steward) will be afforded auxiliary assistance or overtime if auxiliary assistance is not available as needed on the day that he is on union business.

The TAC rings for the week of inspection showed that carrier steward Malinowski averaged 4 hours and 29 minutes of union time daily (Code 613). Malinowski, is a Formal A representative as well as a steward. He investigates possible violations of the National Agreement daily and participates in pre-disciplinary investigations on a near daily basis. He explained that the city section in the GPO had over 300 grievances in 2017. From January 4 through June 7, 2017 there were 144 grievances filed for 44 routes. He noted that Steward D'Aniello handles most of the grievances. The TACS rings for Malinowski on Route 1038 show an average of 4.17

¹ At the hearing the parties had the opportunity to question the sworn witnesses under direct and cross examination, and present material documentary evidence. At the conclusion of the hearing, the parties presented oral closing arguments.

Arbitration decision continued.

hours per day of union time from March 1, 2017 to May 19, 2017. After the week of inspection Malinowski had 29.88 hours of union work.

On the Form 1840 reverse for Route 1147 (Steward D'Aniello), Management changed the union time from line 21 to line 22. On Form 1840 reverse Management wrote that carrier D'Aniello is a union steward and averaged 32 minutes per day of union time. By changing the union time from line 21 to line 22, the union time is not reflected on the route evaluation and would be afforded to the union steward as auxiliary assistance or overtime.

Carrier Steward D'Aniello, works as a steward at the New Haven GPO and is on the Union Executive Council. The TAC rings for the week of inspection showed that Steward D'Aniello worked 26.98 total hours of union time, averaging 5 hours and 39 minutes of union time daily (code 613). The TACS rings for Steward D'Aniello on route 1147 show an average of 4.37 hours union time a day from March 1, 2017 to May 19, 2017. During 2017, D'Aniello had been involved in processing over one hundred grievances and monitored the overtime call-in list as well as the daily overtime desired list and handled daily overtime grievances. She also does pre-disciplinary interviews, processes Informal Step A grievances, investigates possible grievances daily and assists carriers with their FMLA packages, as needed. Steward D'Aniello explained that PDIs and interviews must be performed during the day, and she can only work 8 hours and does not work overtime.

M-00605 states, "Union steward activities (grievance handling) when necessary and if occurring weekly or more often" as a line 21 function.

During the week of inspection, the Union stewards provided Supervisor Dan Bevins and Manager Chris Rogers copies of M-00605 along with C-09381, in which Arbitrator Williams ruled that union steward duties are line 21 items and Management is to adjust union steward routes accordingly, until such time less time is required by the union steward. Malinowski testified that during the week of inspection the stewards were processing grievances and none of the PDIs or grievances were related to the route inspection. Both stewards requested route adjustments to reflect the recurring union work they continue to perform.

POSITIONS OF THE PARTIES

UNION'S POSITION

The Union met its burden of proving that Management violated Article 15 and 19, as well as the M-39, Section 222.214(h) when it failed to assign union time as a line 21

item for union stewards' time. Management scheduled a route inspection during May 2017. Line 21 items, work performed on a recurring basis, work necessary to get the job done are critical for the carriers to get credit for the day. The two stewards testified that when they represent grievants, meet with management, file grievances, and investigate grievances, they should get credit for those duties during the normal work day. In New Haven there has been a lot of discipline for which the stewards have had to perform thorough investigations and PDIs. Under Article 17.4, the stewards get paid straight time rate on the clock to investigate grievances during the regular work day, otherwise it would be an undue burden on the stewards.

During the route inspections, when the examiner changed the union time from Line 21 to Line 22 it hurt the carriers' routes. Union work is a steward's regular activity. In New Haven, investigating, handling grievances and PDIs are part of the recurring nature of the stewards' duties. Thus, it should be credited on Line 21.

For the remedy, the Union is requesting three hours Union time built into Steward D'Aniello's assignment and one hour built into Steward Malinowski's assignment.

POSTAL SERVICE POSITION

The Union did not meet its burden of proving a violation of Section 222.214 of the M-39 during the route inspection when the union time used by the two union stewards was not credited on Line 21. Nowhere in Section 222.214 of the M-39 does there exist language that provides for "union time" being credited on Line 21. A reasonable reading of the language reveals that it does not, nor was it intended to include, union time. That section includes the following specific language: "recurring office work", "miscellaneous office activity", "other work that may require the carrier's time relating to handling of undeliverable mail". "Union time" is not specifically mentioned, nor does it meet the criteria as outlined in Section 222.214. As a result, union time should not be credited on Line 21.

The Service acknowledged that the parties signed a Settlement Agreement at headquarters on August 26, 1980. The parties agreed that work activities may be appropriate for inclusion for actual time credit on Line 21 when the activities are recurring and necessary in the carrier's office routines. In this case, union time cannot be considered recurring or necessary. Management approved the union time which was the result of route inspection process going on during that week of inspection, such as PDIs, and as such, could not be considered recurring. The issues that arose from those inspections cannot be considered recurring.

It is significant that Section 222.214 provides an example, specifically, a line 21 entry for conversations pertaining to route inspection forms, should be changed to line 22. This is a clear inference that any activity pertaining to route inspections should be credited to line 22 and not line 21.

Moreover, the union time used by the stewards is not the activity of the routes to which they are assigned, but rather the activity of the stewards who hold those assignments. Thus, when the stewards are absent or on leave or other union business, any replacement carriers are effectively working, and being paid to work on, under-evaluated routes. A further concern is when the steward bids off the route, there will be a route under 8 hours.

The issues that gave rise to the local union's "union time" used during the route inspections in New Haven in May 2017 were not of a recurring nature because the route inspections themselves are not recurring. Consequently, the union time used during the inspections, cannot reasonably be credited to line 21. The Service requested that the grievance be denied.

DISCUSSION

At issue is whether Management violated Articles 15 and Article 19 of the National Agreement, as well as the M-39 Section 222.214(h) when they failed to assign union time as a line 21 item for union steward's time during the route inspection at the New Haven GPO in May 2017. Union met its burden of establishing a violation.

The crux of the matter is whether the Union stewards at the New Haven GPO perform recurring and necessary work that should have been recorded in Line 21 during the week of route inspection. The M-39 describes what should be recorded in Line 21:

222.214 (h). Line 21, Recurring Office Work not covered by Form. (Use Comment section to identify each activity." Necessary time must be recorded for miscellaneous office activity not included on any of the lines 1 through 20. This would include miscellaneous review or other work that may require the carrier's time relating to handling of undeliverable mail. Describe activity performed and time spent. Each time entry is to be verified and initialed by a manager if it is authorized as a recurring carrier office work activity.

Although Section 222.214(h) does not reference union work, in 1980 the parties at the National Level reached a settlement agreement (M-00605) which states in pertinent part:

The parties mutually agree that the following listed work activities may be appropriate for inclusion by the letter carrier for actual time credit on line 21 of the

Arbitration decision continued.

Form 1838-C when such activities are determined to be recurring and necessary in the performance of the carrier's office routines:

9. Union steward activities (grievance handling), when necessary and if occurring weekly or more often.

The following guidelines will be applied in implementing this settlement.

- a. The appropriateness for granting credit for the listed items on line 21 of Form 1838-C is dependent on a determination that the incident is (1) recurring; (2) necessary to the successful completion of the activity; and (3) not otherwise properly included as part of another established time credit on lines 1 through 20.

The Union has established that Steward Malinowski and Steward D'Aniello at the New Haven GPO are performing recurring and necessary union steward activities daily. Over the course of 2017 they handled over 300 grievances. During the week of route inspection, Malinowski averaged 4 hours and 29 minutes of union time daily (Code 613). Malinowski, a Formal A representative as well as a steward, investigated grievances and participated in pre-disciplinary investigations on a near daily basis. Malinowski continues to perform these duties on an ongoing basis. During the two and one-half months prior to the route inspection (March 1 to May 19, 2017), Malinowski's TACS established that he performed an average of 4.17 hours per day of union time. As further evidence of the recurring nature of his steward activities, the TACS rings reflect that during the week after inspection Malinowski had 29.88 hours of union work.

During first half of 2017 D'Aniello, a steward and Union Executive Officer, had processed over one hundred grievances, monitored the overtime call-in list as well as the daily overtime desired list, and handled daily overtime grievances. She also handled pre-disciplinary interviews, processed Informal Step A grievances, investigated possible grievances daily and assisted carriers with their FMLA packages, as needed. She continues to perform these duties. The TAC rings for the week of inspection showed that Steward D'Aniello worked 26.98 total hours of union time, averaging 5 hours and 39 minutes of union time daily (code 613). As evidence of the recurring nature of her union activities, the TACS rings for Steward D'Aniello on route 1147 showed an average of 4.37 hours of union time worked a day during the period preceding the route inspection from March 1, 2017 to May 19, 2017.

Although Management explained that during the route inspection they had changed the stewards' line 21 union activities to line 22 because they had been informed by local management that the stewards' duties being performed related exclusively to

the ongoing route inspection and, thus, were not of a recurring nature, the evidence presented at hearing supports a finding that this was not the case. Malinowski credibly testified that none of the grievance work being handled during the week of inspection was related to the ongoing route inspection. Even if some of the stewards' work had been related to the route inspection, the evidence indicates that there was extensive grievance handling that was of an ongoing nature at the New Haven GPO.

In response to the Service's concerns about building in route time for grievance handling by a steward carrier, this issue has been previously addressed by other arbitrators who have found that despite the difficulty of building in route time for grievance handling because of the variation in the actual time used, this does not justify the practice of including this time on line 22 when such grievance handling is occurring weekly or more frequently. Management has several options to avoid an abundance of non-productive time, should circumstances reduce or eliminate the time needed for this purpose, including adjustment of the route, should the carrier no longer hold the steward's position. See Arbitrator P. M. Williams (USPS and NALC, S7N-3V-C11464, 1989) citing to Arbitrator Foster.

The Union has met its burden of proving that Management violated Articles 15 and Article 19 of the National Agreement, as well as the M-39 Section 222.214(h) when they failed to assign union time as a line 21 item for union stewards' time during the route inspection at the New Haven GPO in May 2017. For the remedy, three hours Union time is to be built into Steward D'Aniello's assignment (Route 1147) and one-hour union time is to be built into Steward Malinowski's assignment (Route 1038).

AWARD

Management violated Articles 15 and Article 19 of the National Agreement, as well as the M-39 Section 222.214(h) when they failed to assign union time as a line 21 item for union steward's time. Accordingly, the grievance is sustained.

For the remedy, three hours Union time is to be built into Steward D'Aniello's assignment (Route 1147) and one-hour union time is to be built into Steward Malinowski's assignment (Route 1038).

Respectfully submitted by:



Sherrie Rose Talmadge, Arbitrator