

BEFORE

HOWARD G. GAMSER

ARBITRATOR

C#03002

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

OPINION AND AWARD

Burlington, N.C. Route
Adjustment Arbitration
Case No. NB-S-5674

This case involves a dispute over an asserted misapplication/ change of the current work measurement system, embodied in Methods Handbook Series M-39, entitled "Management of Delivery Services". As alleged by the Union, the United States Postal Service conducted certain route inspections at the Burlington, North Carolina Post Office during the period from April 14 through 19th, 1975, in a manner which violated the Parties agreement as to the application and administration of the current work measurement system and time or work standards for Letter Carriers. By so doing, the Union charged that the Postal Service violated the provisions of the 1973 collective bargaining agreement. The specific portions of the Agreement which were thus violated, according to the Union, were Article V, Article XXXIV and Article XLI.

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- 1/ The undersigned held in the Decision in Case No. N-NAT-2992, issued under the 1971 Agreement, the route adjustment provisions of the M-39 Handbook affect the working conditions of Carriers and the alleged violation of same constitute a grievable event under the terms of the collective bargaining agreement, specifically Article XXXIV. The language of the 1973 Agreement does not alter this holding.

At the opening of the hearing, the Union attempted to offer a definition of the issues raised by the manner in which the Postal Service carried out the disputed inspections and route adjustments in Burlington. The Postal Service would not join in stipulating the matters to be submitted to the Arbitrator. Subsequently, in the post-hearing brief, the supplemental brief and the reply brief also submitted by the NALC, a further attempt was made to define the matters in dispute. Some question was then raised by the Postal Service as to whether these matters had been properly brought before the Arbitrator by having been raised in the grievance that was filed and then set forth in the Union's initial presentation in this arbitration proceeding. This latter contention will be dealt with below. At this time, the Union's statement of issues is defined as follows:::

1. May the USPS calculate the carrier office time allowances by (1) taking any day that the carrier exceeded the standard allowable office time for his office work; (2) reducing the net time used to the standard allowable office time for that day; and (3) then computing an average office time for the count week using the standard office time figure for the days where the net exceeded the standard and the net office time on the days that the net was less than the standard.
2. May the USPS add a time adjustment to a carrier's office time based upon subnormal mail volume during the week of the count and inspection using, as a basis for such credit, an office time allowance determined by the method employed in the paragraph above.
3. May the USPS add a time adjustment based on subnormal mail volume during the week of count and inspection to office time and then not make any such compensating adjustment for street time.

4. May the USPS exclude, for analysis and evaluation purposes, all street auxiliary assistance received by a carrier during the Form 1840 B six-weeks such time is recorded and then average street time used on the route for that period.
5. Did the June 1974 adoption and implementation of certain new provisions of the M-39 Handbook dealing with the standard for street time computation, in Section 242.222, violate Articles V, XXXIV, and XLI of the National Agreement, and most specifically the notice and bargaining requirements of Article XXXIV.

As to the first issue dealing with the calculation of a letter carrier's allowable office time for route adjustment purposes, it will not be necessary in this Opinion to set forth with any great degree of specificity the procedures by which routes of city letter carriers are inspected and adjusted to "as nearly 8 hours daily work as possible." The general and basic methods employed in the count and inspection week and the documents and data employed to carry out the count and inspection have been referred to in several earlier Awards dealing with the application and implementation of the provisions of the M-39 Handbook.

The claimed violation of the Agreement and M-39 Handbook complained of by the Union consists of the fact that carrier office time allowances were computed, in the first instance, by taking any day that the carrier exceeded the standard allowable office time and reducing the net time used that day to the standard allowable office time for that day. After this was done, the Postal Service then computed an average office time for the count week using the standard office time figure for the days on which net exceeded the standard and the net office time for the days on which that figure was less

than the standard. That average time then became the "base figure" upon which the carrier's allowable office time for route adjustment purposes was based.

The provision of the M-39 Handbook which governs how this calculation of the office time allowance is to be accomplished reads as follows:

Section 242.213 After the manager has full knowledge of all pertinent facts relating to the office time, he should enter the office time allowance. Under normal conditions, the carrier's office time is fixed at the average time required to perform his office work during the count period but not in excess of the average standard allowable office time.

From the testimony offered by the Postal Service, it would appear that it is arguing that on each and every day that a carrier's net office time exceeded the standard allowable office time the carrier was failing to meet the "minimum acceptable performance standard" and is thus operating under conditions that cannot be characterized as normal. That being the case, argued the USPS, the manager should reduce the office time employed that day to the standard allowable figure. Management appears to be saying that the employment of over standard allowable time on such a day creates an abnormal condition permitting this daily reduction before an average for the count week is taken..

The undersigned is of the opinion that the Postal Service is arguing that an indicia of the existence of abnormal conditions is the failure to perform each day below the standard allowable time. The existence of this situation standing alone justifies the reduction of the carrier's time to the standard allowance for each day his work requires more than the standard allowable time. The

Union has taken the position, during the course of this proceeding, that the Postal Service is entitled to reduce a carrier's net street time to the allowable standard time for each day of the count period on which management can establish that normal conditions did not exist. This is the same manner in which representative time may be used for the actual time items on lines 14, 15, 18, 19 and 21 of Forms 1838 and 1840.

If the Postal Service's view were to prevail, then the average figure referred to in Section 242.213 would only be based upon a calculation of daily net time divided by the number of days involved when the carrier performed at times below the standard allowable on each day used in that calculation. While recognizing that carriers are advised in the M-41 Handbook that, "time standards for carrier office work represent the minimum acceptable performance standards", an overall general characterization of carrier performance and Service expectations cannot be substituted for the clear dictate of the language cited above in the M-39 Handbook.

That language directs that the "carriers office time is fixed at the average time required to perform his office work during the count week but not in excess of the average standard allowable office time." The time required each day must be added together to achieve that measure of central tendency called the average time for the days under review. Only when conditions are not normal, and the Service has established the existence of such abnormal situation, may the manager reduce the daily time to the average standard allowable time. The overall reduction to average standard allowable office time is then permitted when the daily net times and the daily justified and adjusted standard allowable times for the entire number days under review exceeds

the average standard allowable office time. Variances in day to day performance, above and below standard office time, are recognized and compensated for by averaging. After this has been done, the language of the Handbook further provides that the average figure thus attained shall not be greater than the average standard allowable office time.

It should be pointed out that the conclusion reached above is consistent with the holding in Case No. N-NAT-2992 wherein it was provided that the Employer was not obligated to grant credit for what was regarded as an abnormal performance where the Employer can establish that on an individual day under review the carrier was guilty of a regulated performance or used what was considered to be an inordinate amount of time. There the Employer can reduce the time, as provided above, and he can be called upon to justify his action through resort to the grievance procedure. The burden of establishing that the adjustment of the net office time downward to the standard allowance would then quite properly fall upon said Employer.

The second issue raised by the Union, regarding the April 14-19, 1975 route adjustments at Burlington is very closely related to the one treated above. During that period of the route evaluation, the carriers had a 4.1% low-mail-volume time allowance added to the time used for casing and strapping out their mail. That low mail volume adjustment was determined by taking the carrier's "average allowable office time" for the week of the inspection as the basis for the calculation. In this proceeding the Union did not quarrel with the Service's right to make such an adjustment. The Union simply contended that if the "average office time allowance" was improperly

calculated, and in the cited instances understated for the reasons advanced in the first issue presented, then the adjustment was not based upon a proper determination of that time allowance and thus must be recalculated after the proper office time allowance for each route improperly evaluated has been substituted for the one employed in April of 1975.

It does not appear to the undersigned that the Union was in any way raising the issue of whether, in seeking to adjust the routes to as near 8 hours of daily work as possible, a low mail volume time adjustment was permissible under the conditions for route evaluations and adjustments established in the M-39 Handbook. The Union did not grieve management's right to make an adjustment of office time based upon a determination that the volume of mail handled was not normal. That being the case, the only issue raised by this portion of the Union's grievance is a reiteration of the contention that the allowed office time was improperly calculated and the 4.1% allowance should have been added to the properly calculated office time allowance.

For the reasons stated in the discussion of the first issue above, it must logically be held that the Employer did not properly credit a 4.1% low volume mail time adjustment when it added the resultant figure to the office time allowance calculated in the manner followed by the Employer.

The third issue raised by the Union regarding the April 1975 route evaluations at Burlington was also related to the manner in which the low-volume-mail allowance was applied. The Union contended that this 4.1% allowance should have been applied to the carriers' street time allowance as well as the time allowed to their

easing and strapping out office work functions. The Union contended that the Postal Service had argued that there was no way to relate volume of mail to street time. The Union responded to this alleged claim by quoting from the testimony and evidence offered in another arbitration proceeding, AW-NAT-5753, A-NAT-2964 and A-NAT-5750, the LCRES Work Measurement dispute, by the Postal Service which allegedly established a direct relationship between mail volume (pieces per delivery) and the percent of coverage on letter carrier routes. The Union argued that Section 233.2c of the M-39 Handbook and the other provisions of the work measurement system required that routes be adjusted to as near 8-hours daily work as possible on a normal mail volume day.

Section 233 of the Handbook deals with conditions under which a route inspection should be cancelled at management's discretion. It lists, inter alia, some items which could bring about consideration for cancellation. Subsection 233.2c lists "Unrealistic mail volume, either abnormal or subnormal, which could prohibit a fair evaluation of the route."

From this provision and the others cited, the Union drew the implication that the Handbook required that all carriers be given appropriate time credit for all of their work functions. In the instant case, the Union alleged that the carriers in Burlington were not given proper credit for street time conducted under subnormal mail volume conditions.

In selecting street time, the manager making the adjustment considers all the information gathered pursuant to the provisions of Section 242.13 of the M-39 together with the carrier's comments, whether it was normal volume or coverage and selects, "...any time

that is most realistic for a fair and reasonable adjustment of the route."

Section 242.222 reads in full as follows:

"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 information developed. The street time then selected for evaluation and adjustment purposes may be any time that is most realistic for a fair and reasonable adjustment of the route. The reasons for using the street time selected must be fully discussed with the carrier and his comments entered on Form 1840. The street time selected will then be entered in the space provided on the reverse of the form."

There is no dispute that carriers are to be given appropriate time credit for all of their work functions. That requirement is clearly established by the Manual's provisions and the Interim Opinion and Award in Case No. NB-NAT-6462 cited by the Union. That means that street functions must be allotted appropriate time credit as the Union contended. However, the Union did not establish that in the instant case the failure of the Employer to assign a 4.1% low-volume mail allowance to the time allowance for street functions violated any specific requirement of Section 242.222 or related sections nor that a realistic time for a fair and reasonable adjustment of the route was precluded by the Employer's failure to do so.

Section 242.222 calls for a fair appraisal taking into consideration most specifically, among other things, the manager's knowledge of mail volume and percent of coverage in connection with the information developed. There is in this provision a recognition of the direct relationship between mail volume (pieces per delivery) and the percent of coverage on the carrier's route, but it does not require that an objective measurement such as the 4.1% low volume

mail allowance be automatically added to the street time allowance in order to compensate for abnormal volume or coverage. It does require that the route evaluator pay special attention to the impact of volume and coverage on the street time allowance and to adjust that allowance to take account of any material departure from a normal volume or coverage during the period of inspection that he, the route evaluator, may observe or that the carrier may bring to his attention. This must be done for each route individually.

If the individual carrier is of the opinion that the manager has not taken appropriate cognizance of the abnormal mail volume or coverage situation observed during the period that the route is being adjusted, that carrier may grieve this failure to apply proper credit or allowance for this abnormality in the street time allowance granted. The standard then established in the Manual is that street time allowance be "most realistic for a fair and reasonable adjustment of the route." The carrier can then, upon this occurrence of such a grievable event, bring forth his evidence that he has not been the recipient of such a street time allowance.

The provisions of the Manual, as agreed upon by these parties, recognizes that a judgmental and subjective factor shall be employed based upon all the information available in the official documentation of the individual route required for all record keeping and route adjustment purposes as well as the manager and carrier's knowledge that is not reflected in the written records. There is no showing in this record that in considering this data and then adjusting the routes in Burlington in this case that the manager, or his designee, failed to take into account the impact of volume and coverage as di-

rected in the Manual provisions cited.

The Union raised as its fourth issue a further contention that the Postal Service in preparing the Form 1840B, Carrier Time Card Analysis, for carriers who had been assigned to their routes for more than six weeks prior to the week of the count and inspection, failed to meet the requirements of the Manual when the Service eliminated, for analysis and evaluation purposes, all street auxiliary assistance received by the carrier during the six-week period for which the Form 1840B had been prepared.

The Union argued that the Manual directs in Section 242.31 that the instructions for filling out the Form 1840B be followed carefully and these instructions are to be found on the form itself. The Union also asserted that Section 242.322 provides that in comparing the time used each day during the analysis period with the same day during the count the manager is to determine "...whether street time is more or less for comparable days..." In addition, the Union pointed out that the instructions on the Form itself and labeled "Important" provided that: "In making this comparative analysis be sure that all factors are considered."

The Union stated that in failing to include all street auxiliary assistance received by the carrier during the six week period in the record of street time kept on the Form 1840B, the Postal Service was using a deficient record as an analysis and evaluation tool and in making the comparative analysis for which the Form 1840 B was designed the Postal Service was not able to properly evaluate street performance during the count week in order to determine the street time "most realistic for a fair and reasonable adjustment of the route" as provided for in Section 242.222 quoted above.

The Union argued that, if, as the evidence disclosed in this case, the average street time from the Form 1840 B's was adopted in the case of thirteen routes under review in April of 1975 as the street time allowance for those routes, the street time so allowed was deficient in that it failed to take cognizance of the fact that the auxiliary street assistance received by the carriers on those routes was time spent, in most part, in delivering mail on those routes.

Although the Union argued most convincingly that certain auxiliary street time does reflect additional time needed to deliver mail on the route, the Postal Service argued that the failure to make allowance for auxiliary street assistance on the Form 1840 B does not necessarily have to lead to the conclusion that the street allowance provided on the route is not realistic and does not lead to a fair and reasonable adjustment of the route as required by Section 242.222. The Postal Service pointed out that the manager must take into account much other information when making an adjustment in the street time allowance. The various information which must be available and so employed is set forth in Section 242.13. That Section, after listing various types of information and comparative data that must be available to the manager who is making the adjustment concludes with the following paragraph:

"Route adjustments should not be based solely on the figures appearing on Forms 1838, 3999, and 1840 because these figures do not tell the entire story...By correcting improper operational procedures or bad working habits, it is possible to adjust the time on a route without actually transferring territory to or from the route."

Despite the directive contained in the paragraph quoted above to managers not to employ Form 1840 as the sole basis for route adjustments, the record in this proceeding did disclose that, as indicated above, some thirteen routes in April of 1975 were adjusted to provide a street time allowance identical with the average street time taken from the 1840 B. Since it is obvious that the data on the 1840 B has a significant influence on the determination of the manager or his designee as to what constitutes a realistic and fair and reasonable street time allowance, it does stand to reason that the data contained on that Form used for evaluation and adjustment, as directed in the Manual, should realistically reflect the time required to deliver the mail on the route during the six week period used for comparative purposes as "an analysis and evaluation tool."

The Postal Service indicated that auxiliary assistance time was not included in the 1840 B street time because not all street auxiliary assistance reflects additional time used to deliver the mail. Some of the assistance time is spent in travel time to and from the route. In addition, according to the Postal Service, the frequency rather than the actual amount of time of auxiliary street assistance required during the 1840 B period is more important for analysis and evaluation purposes. It was also indicated that some auxiliary assistance time was used in lieu of the carrier's own street time when that carrier's time on the route was interrupted and auxiliary assistance substituted.

Here once again, although the Union is contending that the Postal Service failed to make proper notations on a Form 1840 B which could be used for analysis and evaluation in route inspection

and adjustment, the Union failed to sustain the burden of proving that the alleged inadequate or deficient information available to management caused routes and particularly the street time allowance to be adjusted in a manner detrimental to the interests of any individual carrier whose route was adjusted between April 15th and 19th, 1975 at Burlington. In addition, the Union's argument that the failure to record auxiliary street time provided in the street time credited, during the six weeks covered on the Form 1840 B, was in violation of some obligation placed upon the Service under the provisions of the Manual or the instructions contained on the Form itself requires a finding that, in making the comparative analysis in which the Form 1840 B might be employed, all factors are not appropriately considered. The evidence, chiefly in the form of testimony from the management designee who made the count and inspection during the period under review herein and assigned street time allowances to the routes also under review, just does not support a contention that this failure to record the actual daily street time, including auxiliary assistance provided, on the 1840 B Forms, led to a violation of the Employer's obligation to realistically provide for a fair and reasonable adjustment of the route.

Here again, if any individual grievant were to protest the street time allowance credited for his route during the count and inspection period, and then was met with a contention from the Employer that the comparative data on the 1840 B supported the street time allowed, there is nothing to prevent this grievant from disputing the value of this comparative data and the reliance which can be placed upon it by requiring consideration of the amount and or frequency of auxiliary assistance time that was needed on his route, during the

six week period covered by the 1840 B, or at any other time for that matter. The time actually required to deliver the mail over and above the 8-hour day employed by this grievant and which is covered by auxiliary assistance on the route certainly is a material and relevant consideration when evidence of an improper street time allowance is presented.

The final issue briefed by the Union in this proceeding was a claim that the Employer violated Articles V, XXXIV and XLI of the National Agreement by adopting and implementing the terms of the revised M-39 Handbook in June of 1974 without meeting the notice and bargaining provisions of Article XXXIV dealing with work measurement standards. In addition, in this issue, the Union also charged that the Employer materially increased the speed, skill and effort required of a letter carrier, by the application of these new work measurement standards, without the concurrence of the Union during the term of the National Agreement.

The Employer, after receipt of the Union's brief, made a motion to strike the final issue, as outlined above, on the grounds that the Union's grievance, as presented to the Employer at Burlington and as set forth at the arbitration hearing in the opening statement of the issue or issues by the Union, did not include such a charge. Accordingly, the Employer argued that it had not introduced any evidence or addressed itself to any such contention.

A careful examination of the grievance as presented at Burlington, and as introduced into evidence as Jt. Exhibit 2 in this proceeding reveals that in this three page single spaced document there is no mention made that the adoption and implementation

of the revised M-39 Handbook in June of 1974 was a violation of the notice and bargaining provisions of the Agreement now cited by the Union. In point of fact, the Union in the initial grievance quoted extensively from the M-39 Handbook in support of its contentions that Management violated the contract by the manner in which routes were inspected between April 1 th and 19th, 1975, but the Union failed to distinguish the language employed in the earlier Handbook from that employed in the revision and quoted in support of the grievance.

The Union also argued that in the opening eleven pages of the transcript of the first day of this arbitration proceeding the Union outlined the issues in dispute and that outline encompassed the allegation raised as the fifth issue and defined furth above. Once again, a careful perusal of those eleven pages cited by the Union fails to disclose a contention of this nature. There were several issues raised by the Union at the opening of the hearing on which evidence was not presented and about which argument was not presented in the Union's initial, supplementary or reply briefs, but these issues are not related to the charge that the notice and bargaining provisions of the National Agreement were violated by the manner in which the route adjustments were conducted in Burlington in April of 1975.

The Union also contended that additional reference to the record of this proceeding and the basis for the introduction into evidence of Jt. Exhibit 6, certain provisions of Chapter Two of the preceding M-39 Handbook, would demonstrate that the contention raised in the final Union issue above had been developed during the course of the hearing. Here to an examination of the record does not disclose that Jt. Exhibit 6 was introduced for this

purpose. The relevant portions of the testimony in which this Exhibit was discussed indicate that it was introduced primarily for the purpose of supporting the Union's claim that the Employer was improperly computing street time under either set of provisions governing the use of the Form 1840.

The Union also pointed to the fact that the initial grievance, as well as later discussions, involved reference to Articles V and XXXIV of the Agreement which cover the prohibition of unilateral action and notice and bargaining provisions on which the Union is relying to support its fifth issue claim. Obviously, general citations of alleged relevant contractual provisions do not define with sufficient specificity the claims or contentions so the Employer can be required to defend. The same holding must be made as to the claim that Management was verbally placed upon notice that certain issues would be raised at the hearing. This is not sufficient notice to provide assurance the issue would be joined for appropriate disposition.

The undersigned does not believe that in arbitration it is appropriate to exalt form over substance nor to place any undue premium on pleadings. Normally the arbitrator has an obligation to recognize that the parties are engaged in a bona fide dispute and that a resolution of same through an Award may dissipate the cause of contention. If he can, based upon the evidence available and the arguments advanced by both parties, resolve the existing dispute the parties are better served if he does so. However, in this case, the undersigned is of the firm opinion that the record does not provide sufficient evidence to adjudicate this final alleged violation of Articles V and XXXIV without also having in that same record such evidence that the Employer might wish to supply

to rebut this charge. In addition, without argument from the Employer, after finding that argument could not be expected for the reasons set forth above, fairness and the dictates of simple justice require that disposition of this final issue be deferred until and unless its is properly presented in an appropriate grievance and processed in the manner anticipated under Article XV of the National Agreement.

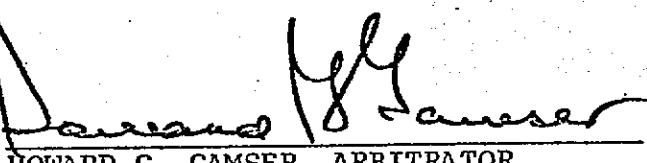
Thus, after due consideration and careful review of the evidence and argument presented, the undersigned makes the following

A W A R D

1. The USPS violated the provisions of Article XXXIV of the National Agreement and Sections of the M-39 Handbook when for the route adjustment at Burlington, N.C. for the count period of April 14th through 19th, 1975, Management calculated the carriers' office time allowance by taking any day that the carrier exceeded the standard allowable office time and reducing that net time recorded to the standard allowable office time before calculating the average for the period of the count and inspection.
2. The USPS violated the provisions of Article XXXIV of the National Agreement and sections of the M-39 Handbook when it added a low-volume-mail adjustment to a carrier's office time for the count week when that office time average was calculated improperly in the manner described in Paragraph 1 above.
3. The USPS did not violate any provision of the National Agreement or the requirements of the M-39 Handbook when it failed to make a low-mail volume adjustment for street time after it had done so for office time during the count and inspection period.
4. The USPS did not violate any provision of the National Agreement or the requirements of the M-39 Handbook when it failed to include street time auxiliary assistance in the recording of street time employed on the Form 1840 B and the subsequent calculation of average street time employed for the six week period covered on the form.
5. For the reasons stated in the Opinion above, the Union's

proposed issue regarding the failure to provide for notice and bargaining prior to the adoption and implementation of the revised edition of the M-39 Handbook in June of 1974 is returned to the Parties for processing in accordance with the requirements of Article XV of the National Agreement.

Remedy- Because of the findings made in Paragraphs 1 and 2 above that the Employer violated the provisions of Article XXXIV and pertinent sections of the M-39 Handbook by the manner in which averages for office time allowances were calculated and then adding the low-mail-volume time allowance to this improperly calculated average figure, the Employer is directed to recalculate the office time allowance for each carrier at the Burlington, N.C. Post Office in the manner required by the Opinion above and then add any low-mail-volume time allowance to the recalculated average office time. This shall shall be done for the route adjustment which was made effective immediately prior to the issuance of this Award and such routes which require readjustment because of this recalculation shall be so adjusted.



HOWARD G. GAMSER, ARBITRATOR

Washington, DC
November 3, 1976