

C-23986

REGULAR ARBITRATION PANEL

In the Matter of Arbitration	)	
	)	
between	)	Grievance: Class Action
	)	
UNITED STATES POSTAL	)	Post Office: Rialto, California
SERVICE	)	
	)	Case No.: F98N-4F-C 02062648
and	)	3982102C
	)	
NATIONAL ASSOCIATION OF	)	
LETTER CARRIERS	)	

BEFORE: Carlton J. Snow, Professor of Law

APPEARANCES: For the Postal Service: Mr. Timothy Arntz

For the Union: Mr. Manuel L. Peralta

PLACE OF HEARING: Rialto, California

DATE OF HEARING: November 15, 2002

RECEIVED

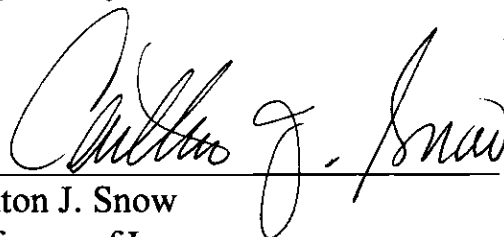
FEB 13 2003

VICE PRESIDENT'S  
OFFICE  
NALC HEADQUARTERS

## AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes the Employer violated the parties' National Agreement when it changed the employees' Start Time in this case. The Employer shall reinstate the original Start Time of 8:15 A.M., unless management can prove compliance with factors in Section 122.11 of the M-39 Handbook. The arbitrator shall retain jurisdiction in this matter for 90 days from the date of the report in order to resolve any problems resulting from the remedy in the award. It is so ordered and awarded.

Respectfully submitted,



Carlton J. Snow  
Professor of Law

Date January 22, 2003

IN THE MATTER OF	)	
ARBITRATION	)	
	)	
BETWEEN	)	
	)	
UNITED STATES POSTAL	)	ANALYSIS AND AWARD
SERVICE	)	
	)	
AND	)	Carlton J. Snow
	)	Arbitrator
	)	
NATIONAL ASSOCIATION OF	)	
LETTER CARRIERS	)	
(Class Action Grievance)	)	
(Case No.: F98N-4F-C 02062648	)	
3982102C	)	

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from 1998-2001. A hearing occurred on November 15, 2002 in a conference room of the postal facility located at 241 West Rialto Avenue in Rialto, California. Mr. Timothy Arntz, Labor Relations Specialist, represented the United States Postal Service. Mr. Manuel L. Peralto, Regional Administrative Assistant, represented the National Association of Letter Carriers.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The arbitrator tape-recorded the proceeding as an extension of his personal notes. The advocates fully and fairly represented their respective parties.

There were no challenges to the substantive or procedural arbitrability of the dispute, and the parties stipulated that the matter properly had been submitted to arbitration. The parties authorized the arbitrator to retain jurisdiction in the matter for 90 days after issuance of a decision, and they submitted the matter on the basis of evidence presented at the hearing as well as oral closing arguments, and the arbitrator officially closed the hearing on November 15, 2002. An ear infection slowed production of a report.

## II. STATEMENT OF THE ISSUE

The issue before the arbitrator is as follows:

Did the Employer violate the parties' National Agreement and/or Local Agreement when it changed the start time from 8:15 A.M. to 8:40 A.M. and, then, to 8:30 A.M.? If so, what is the appropriate remedy?

## III. RELEVANT CONTRACTUAL PROVISIONS

### ARTICLE 3 - MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted;

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

## 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.

### IV. STATEMENT OF FACTS

In this case, the Union challenged the decision of the Employer to change the Start Time of employees. On December 29, 2001, the Employer changed the Start Time of Letter Carriers from 8:15 to 8:40 A.M. Management explained to employees that the time change needed to be made in an effort to increase productivity. In a memorandum to Letter Carriers, the Employer stated that the "case feet per hour" was then 2.9 but that it should be 3.60 feet per hour. (*See* Joint Exhibit No. 2, p. 17.) The "case feet per hour" is the total caseable mail divided by the minutes used to case the mail. The Employer also cited other productivity goals of reducing sick leave and overtime as a justification for the operational change of the Start Time.

The Union challenged the decision of the Employer to make the time change and cited Section 122.11(b) of the M-39 Handbook. Section 122.11(b) requires the Employer to set work schedules to coincide with the receipt and dispatch of mail. The M-39 Handbook states that:

At least 80% of the carriers' daily mail to be cased should be on or at their cases when they report to work.

On January 12, 2002, the Union requested time card "rings" from December 1, 2001 through January 12, 2002 for all clerks and casual workers at the Annex and "data showing daily mail volume distributed to routes prior to 'begin tour' from January 1, 2001 to December 31, 2001." (See Joint Exhibit No. 2, p. 11.) Management believed that the Information Request was unreasonable and informed the Union that "if we furnish you with this we are going to charge the union for the time it takes us." (See Joint Exhibit No. 2, p. 11.) Approximately 90 days later the Union received some of the requested information.

In February, the Union grieved management's decision to change the Start Time. Steward Farley testified that at least two or three "Step A" meetings took place. As a part of the Union's investigation into the dispute, Steward Farley interviewed the Employer's Step A representative and Officer in Charge, Mr. Elijah Stephens. Mr. Stephens told Mr. Farley

that the first truck arrives at the facility at 5:00 A.M.; the second truck arrives at 6:00 A.M.; and the final truck is expected to arrive at 8:00 A.M. (*See Joint Exhibit No. 2, p. 14.*)

When asked how management determines that 80% of the mail is at the carrier's case, Mr. Stephens stated that, "We count the mail every day." (*See Joint Exhibit No. 2, p. 14.*) Mr. Stephens also stated, however, that he did not know the volume of mail for three routes at the center of the conflict. (*See Joint Exhibit 2, p. 15.*) What Mr. Stephens knew was that, if the trucks were on time, 80% of the caseable mail will be at the carriers' case in a timely fashion. (*See Joint Exhibit No. 2, p. 15.*) In a 20-day period from December 27, 2001 through January 16, 2002, the 6:00 A.M. truck was late an average of 10 minutes on 13 of the 20 days. For the same time period, the 8:00 A.M. truck was late an average of 21 minutes on 15 days. (*See Joint Exhibit No. 2, p. 80.*)

According to Shop Steward Farley, the Employer never established when the mail was received at the carriers' cases prior to the allegedly improper time change. Mr. Farley also testified that, prior to the emergence of the grievance, Letter Carriers never had to wait for the mail. Nor did he have knowledge of anyone else who had to wait. When the



parties were unable to resolve their differences, the matter proceeded to arbitration.

## V. POSITION OF THE PARTIES

### A. The Union

The Union argues that the Employer violated the parties' National Agreement when it changed the Start Time from 8:15 to 8:40 A.M. The Union asserts that the Employer is relying on an internal productivity standard, rather than relying on the M-39 Handbook. The Union contends that the M-39 Handbook requires management to fix schedules so that at least 80% of the mail is in carriers' cases when they report to work. The Union contends that management cannot tell from the Mail Volume Report when 80% of the mail is at the carriers' cases. Hence, the Union concludes that the Employer violated the parties' agreement by making the time change in the absence of an appropriate justification for doing so.

B. The Employer

The Employer argues that it is completely within management's right to alter the Start Time based on the "management rights" provision of the National Agreement. According to the Employer, management changed the Start Time in this case to increase productivity. It is the position of the Employer that the change in starting time was due to low mail volume, dispatch trucks arriving late, and a poor mail flow. The Employer asserts that managers made employees aware of these problems and changed the Start Time in an effort to overcome the productivity deficiencies.

The Employer points out that the time change was pushed forward by 25 minutes and made "out-of-schedule" premium pay inaccessible to employees. Although only a 25 minutes change, it allegedly had a significant impact on the efficiency of the operation and, according to the Employer, "produces better productivity since it is not necessary for the carrier to wait for DPS volume or go to streets and return when DPS is available because of a late truck." *See* Joint Exhibit No. 2, p. 183.) In view of the positive impact on the efficiency of the operation, the Employer concludes that the changed Start Time did not violate the agreement of the parties and that, therefore, the Employer must prevail in this case.

## VI. ANALYSIS

The Union objected in this case when, on December 29, 2001, the Employer unilaterally changed the Start Time of employees from 8:15 to 8:40 A.M. It is indisputable that the Employer has a right to determine the method, means, and personnel by which operations are to be conducted and also to make reasonable decisions that maintain the efficiency of the operation. Managerial control of work schedules, however, is not totally unfettered or without limitations. The M-39 Handbook specifies that schedules must be fixed to coincide with the receipt and dispatch of mail. Section 122.11(b) of the M-39 Handbook states:

Consider the following factors in establishing schedules:

(b) Fix schedules to coincide with receipt and dispatch of mail. At least 80% of the carriers' daily mail to be cased should be on or at their cases when they report for work. (See Joint Exhibit No. 2, p. 172, emphasis added.)

The instruction is not a suggestion but is stated as an imperative. The Handbook, which pursuant to Article 19 of the labor contract has been incorporated into the parties' collective bargaining agreement, eliminates a manager's unfettered control over Start Times. Start Times remain within management's control but must be exercised after giving due deference to the M-39 Handbook.

The Employer responded to the Union's case by asserting that management made a change in the Start Time to increase productivity and efficiency. An arbitrator is as obliged to follow contractual procedures as is a manager, and the parties' agreement expressly states that a factor a manager must consider in establishing the work schedule at a facility is the fact that 80% of the mail must be present at the carriers' cases when they report to work. The arbitrator did not receive proof from management covering this crucial evidentiary link. The Employer did not establish whether or not 80% of the mail had been delivered to cases at the original Start Time prior to management's changing the work schedule. What the Employer premised its case on was the fact that the 6:00 A.M. and 8:00 A.M. trucks were frequently late, and this fact alone allegedly justified changing the Start Time. (See Joint Exhibit No. 2.)

Part of the evidence used by management to support its decision failed to be persuasive. Management relied, in part, on the fact that the 6:00 A.M. trucks were generally late over a 20 day period from December 27, 2001 to January 16, 2002. But such evidence was far from conclusive in light of the fact that the Letter Carriers' Start Time was normally 8:15 A.M. The on average 15 minute delay of the 6:00 A.M. truck failed to provide sufficient justification for management's decision. It, however, is relevant that the 8:00

A.M. trucks were an average of approximately 20 minutes late over the same 20 day period and were late 15 of the 20 days. (See Joint Exhibit No. 2, p. 80.)

It was reasonable for management to take such a delay into consideration when setting the work schedule, but the time frame considered by management occurred immediately after the holiday season and provided circumstances that logically contributed to the lateness of the trucks. A 20 day test period under such circumstances failed to provide sufficient evidence of a clear pattern of lateness that justified the change. The point is that the lateness of the 8:00 A.M. trucks, without other supportive data, failed to establish that less than 80% of the mail was at the carriers' cases when they arrived for work. The point is that the Union, as the moving party, established a prima facie case that the Employer was not complying with the M-39 Handbook.

Once the Union made a prima facie case, the burden of going forward with the evidence shifted to the Employer to prove that it complied with the parties' agreement. The Employer elected to present no witnesses at the hearing and offered only a limited explanation to justify the schedule change, namely, to foster productivity. In the absence of evidence, it cannot be concluded that the Employer carried its burden of going forward with the

evidence. Management did not establish that it complied with relevant contractual provisions or that it gave consideration to the amount of mail actually at the carriers' cases at the start of the shift prior to making the schedule change. In order to justify a change in the work schedule, management must show (once the Union presents a prima facie case) it complied with the parties' agreement and considered the factors set forth in Section 122.11 of the M-39 Handbook before changing the Start Time.

## AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes the Employer violated the parties' National Agreement when it changed the employees' Start Time in this case. The Employer shall reinstate the original Start Time of 8:15 A.M., unless management can prove compliance with factors in Section 122.11 of the M-39 Handbook. The arbitrator shall retain jurisdiction in this matter for 90 days from the date of the report in order to resolve any problems resulting from the remedy in the award. It is so ordered and awarded.

Respectfully submitted,



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Professor of Law

Date January 22, 2003