

29717

REGULAR ARBITRATION

In the Matter of the Arbitration ()
between () Grievant: Class Action
UNITED STATES POSTAL SERVICE () Post Office: Fort Collins, CO
and () USPS No. E06N-4E-C 11198887
NATIONAL ASSOCIATION OF () NALC DRT No. 04-199496
LETTER CARRIERS, AFL-CIO ()

BEFORE: Kathy L. Eisenmenger, J.D., Labor Arbitrator

APPEARANCES:

For the U. S. Postal Service: Shirley T. Pointer
For the Union: Michael T. Doherty
Place of Hearing: Fort Collins, CO
Date of Hearing: September 1, 2011¹

AWARD:

Date of Award: November 15, 2011

PANEL: Colorado/Wyoming or Arizona

Award Summary

The grievance is sustained. The Postal Service violate Article 19 of the National Agreement and specifically Section 122 of the M-39 Handbook when Management at the Fort Collins installation change the letter carriers' start time from 8:30 a.m. to 9:00 a.m. effective April 16, 2011. The start time of 8:30 a.m. is to be reinstated.


Kathy L. Eisenmenger, J.D.

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¹ The parties submitted timely post-hearing briefs. I closed the record upon receiving the Union's brief on September 30, 2011, and the Postal Service's brief on October 3, 2011.

Issues

Did the Postal Service violate the National Agreement by changing the reporting time for City Carriers from 8:30AM to 9:00 AM at both Fort Collins facilities? If so, what is the appropriate remedy?

Pertinent 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; . . .

* * * *

Article 5 Prohibition of Unilateral Action

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violated the terms of this Agreement or are otherwise inconsistent with its obligations under law.

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. This includes, but is not limited to, the Postal Service Manual and the F-21. Timekeeper's Instructions.

Postal Regulatory Provisions

M-39 Handbook, Management of Delivery Services

122 Scheduling Carriers

122.1 Establishing Schedules

122.11 Consider the following factors in establishing schedules:

- a. Schedule carriers to report before 6 a.m. only when absolutely necessary.
- b. Fix schedules to coincide with receipt and dispatch of mail. At least 80 percent of the carriers' daily mail to be cased should be on or at their cases when they report for work.
- c. Schedule carriers by groups. Form groups of carriers who make the same number of delivery trips and whose office time is approximately the same.
- d. Generally, schedule carriers of the same group to begin, leave, return, and end at the same time.
- e. Schedule so that delivery to customers should be approximately the same time each day.
- f. Make a permanent schedule change when it is apparent that one or more days' mail volume varies to where it is causing late leaving.
- g. Schedule carriers' nonwork days in accordance with the *National Agreement*.

Statement of Facts

The Step B Team (Dispute Resolution Team or "DRT") entered into the following stipulated facts:

- Management changed the start time at both stations in Fort Collins on 4/16/2011 from 8:30am to 9:00 am.
- The dispatch log attachment 4, included in the grievance is the current truck log for Fort Collins P.O./s. (Entered into the arbitration record at Joint Exhibit [JX] 3, pages 13 through 16).

- The same truck brings the mail to the Main first and then brings Old Town Station their mail.
- The truck schedule has not changed.
- ODL [Overtime Desired List] carriers that are double casing are allowed to start at 8:30 am as needed.
- The grievance is timely.

Immediately prior to the change in start time, Postmaster Adam Sena sent a letter to Danielle Fake, the local Branch 849 NALC ("the Union") President dated April 11, 2011, to advise the Union that the Fort Collins installation would change the reporting time from 8:30 a.m. to 9:00 a.m. The start time change applied to the City Letter Carriers at both the Main Post Office (MPO) and the Old Town Station (OTS). On April 12, 2011, Management conducted standup meetings to advise the carriers at both stations of the change.

The Union filed an Informal Step A on April 29, 2011, to contest the change in the carriers' start time.

Postmaster Sena testified that prior to October 2009 the Fort Collins installation processed its own mail. He added; however, that due to deteriorating economic reasons, the Postal Service centralized mail processing in October 2009 by having the General Mail Facility/Processing & Distribution Center (GMF/PDC) in Denver, Colorado, process Fort Collins' mail. The Postal Service contracted with private trucking companies to transport the mail from Denver to Fort Collins for the latter installation's personnel to complete the casing of mail.

Postmaster Sena stated that once the Fort Collins installation lost their [mail processing] machines it left the installation dependent on the trucks coming from Denver. When asked why the trucks' schedules were not changed instead of changing the start time for the carriers Postmaster Sena testified that he is held at the mercy of the Denver GMF. He stated that initially the trucks were to leave Denver at 6:30 a.m. but they were unable to do so because the Denver GMF was not yet finished with the mail at that time. He further added that the trucks' arrival time has been renegotiated between the Postal Service and the trucking company from a 7:40 a.m. arrival time to a 8:10 a.m. arrival and the trucks are given a ten (10) minutes window without incurring a monetary penalty.

The record contains a matrix created by Supervisor Nick Goodwin showing the truck arrivals times to the Fort Collins installation at the MPO and the OTS separately. A review of the summary of the information reveals that the last truck is scheduled to arrive at 7:40 a.m. but during the period of eleven (11) days from March 19, 2011 to March 31, 2011, the average arrival time was 8:34 a.m. and the truck was late an average of 54 minutes. For the OTS, the last truck is scheduled to arrive at 8:10 a.m. However, the average arrival time at the OTS for the ten (10) day period of March 28, 2011, through April 9, 2011, was 9:17 a.m. and the truck was late an average of 67 minutes. The document also shows that there was an average of 69% of caseable mail at 8:30 a.m. at the MPO during the survey period and an average of 65% of caseable mail at 8:30 a.m. at the OTS. The document, compiled from information gathered by Supervisor Goodwin during the survey period, shows there were no times where the carriers at either location had at least 80% of caseable mail at 8:30 a.m. JX 3, page 9-b.

Prior to changing the start time for the Fort Collins letter carriers on April 16, 2011, Management had changed the start time for the carrier complement at both stations on a few occasions. Originally before July 16, 2008, the carriers' start time at both the MPO and the OTS was 7:30 a.m. On July 16, 2008, Management changed the start time for the carriers at both facilities to 7:45 a.m. Sometime in March 2009, Management changed the carriers' start time at both facilities to 8:00 a.m. Then sometime in November 2009 Management changed the start time at both facilities for the carriers to 8:15 a.m. Within a few months later in February 2010, Management changed the start time for the carriers at both the MPO and the OTS to 8:30 a.m. On June 5, 2010, Management changed the start time for the carriers working from the MPO to 9:00 a.m. but retained the 8:30 a.m. start time for the carriers at the OTS.

On September 4, 2010, the Union initiated a Step A grievance complaining about the change in start time. The grievance was denied and the Union pursued the grievance to the Step B.² On September 24, 2010, the Step B Team resolved the aggrieved issue that "the Postal Service violated Article 19 of the National Agreement when they changed the starting time from 8:30 AM to 9:00 AM for City Carriers." The Step B Team (DRT) ordered that upon receipt of its decision to the Management of Fort Collins, Management would notify the carriers that the original start time of 8:30 a.m. would be reinstated. The Step B Decision also states that, "The

² Case No. E06N-4E-C10331997/Branch No. 9AMSTART.

8:00³ AM start time is to be implemented no later than 10/02/10.” The Step B Decision further mandated the following instructions:

Additionally, the DRT finds it appropriate to issue local management an instructional “cease and desist” in lieu of the compensatory monetary remedy requested by the union. This [*sic*], to insure that if in the future it is determined that changes to scheduled reporting times are necessary, they will be based upon legitimate operational needs and exercised in accordance with the provisions of the National Agreement and all applicable Handbooks and Manuals.

Documentation submitted with the merits of the instant grievance includes computerized print-outs of truck schedules from two (2) different trucking companies contracted by the Postal Service to move mail. Joint Exhibit (JX) 2, pages 13-27. Generally, the documents show the trucks’ departure time from the Denver Priority Facility, Denver, Colorado, and then the Denver Processing and Distribution Center (PDC). The documents bear two (2) different effective dates; i.e., July 12, 2010 and July 24, 2010 (the documents for the latter date contain no information pertaining to delivering trucked mail to the Fort Collins’ stations). The contract term for one of the trucking companies is for the term of July 1, 2009 to June 30, 2013. Not all of the documents contain information that show delivery times of trucked mail to the Fort Collins installation. None of the documents bear the exact date of the trucks’ activities, or at least that can be deciphered by this Arbitrator. Not all of the truck schedules provided here show arrival times for the two (2) stops for the Fort Collins installation. The schedule information shows that the trucks do not make direct stops from the Denver Priority Facility and Denver P&DC to the Fort Collins installation. The trucks generally stop at other cities, such as Longmont, Loveland and/or Berthoud, Colorado, before arriving at Fort Collins. A couple of the schedule printouts showed that the trucks arrived at the Fort Collins’ two locations in the afternoon or evening. Other schedule print-outs showed that the trucks arrived at the MPO and the OTS at 6:25 a.m. and 6:55 a.m.; 4:30 a.m. and 5:00 a.m.; 5:00 a.m. and 5:30 a.m.; 7:40 a.m. and 8:15 a.m.; 4:10 a.m. and 4:40 a.m.; and, 3:20 a.m. and 3:50 a.m. respectively.

Branch President Fake testified that one of the clerk craft employees who works at the Fort Collins installation is also the local President for the American Postal Workers Union (APWU), Mark Tindall. She indicated that Mr. Tindall usually works from 4:00 or 5:00 a.m. to

³ This appears to be a typographical error.

11:00 a.m. and is in the MPO when the mail is received. Branch President Fake recalled her telephone conversation she had with Mr. Tindall and the interview notes she made of that conversation on April 25, 2011. In her notes, Branch President Fake wrote that Mr. Tindall said to her, "The flats to be distributed to the cases arrive early at around 5am." According to Branch President Fake, Mr. Tindall identified the problem as the office had no mail handlers to do the work anymore and that the office did not have a clerk doing that job either so the mail would sit for a while. Branch President Fake added that Mr. Tindall said the mail was distributed on average prior to 8:00 a.m. JX 3, page 29. At the arbitration hearing, attempts were made by the Union call Mr. Tindall as a witness via telephone. No one answered the telephone number called by the Union Advocate. The timing of the call occurred when Mr. Tindall was off work.

The record contains Mr. Tindall's memorandum signed on APWU Local #539 letterhead, dated August 31, 2010, that stated the following:

According to our Dock Clerk, Debbie Dixon, the final truck that arrives in Fort Collins each day with mail for distribution is scheduled to arrive at 7:40 a.m. That truck is the DPS truck, which contains all of the Delivery Point Sequenced mail, and very little manual mail. So, in reality, the vast majority of mail to be distributed to the carriers is available before 7 a.m., with the final bit scheduled to be available at 7:40 a.m.
JX 3, page 30.

One of the spreadsheets compiled by Supervisor Goodwin shows that the DPS truck arrived at 8:05 a.m., and being twenty-five (25) minutes. Supervisor Goodwin counted the mail he considered to be available at 8:30 a.m., consisting of Bundles (bundled flats or DUMBOS), Automated Flats, Manual Flats and letters and then totaled the number of those pieces. He in turn counted the mail he considered to be available after 9:00 a.m. to be S-999, Automated Letters, Other Automated Letters, Manual Flats and Manual Letters and noted the total of those pieces. Based on his observations and the method by which he categorized the mail types, Supervisor Goodwin determined on one occasion that there was 79% of caseable mail at 8:30 a.m. JX 3, page 124.

Union witnesses disagreed with the method Supervisor Goodwin used in compiling his data and used the March 21, 2011, spreadsheet as an example (JX 3, page 124). The Union witnesses testified that S-999 mail is equivalent for counting purposes to DPS mail and therefore should not be counted among the pieces that were made available after 9:00 a.m. Additionally, the Union witnesses stated that Automated Letters and Other Auto Letters should not be counted

in as caseable mail. The Union witnesses calculated that given this method, when S-999, Automated Letters and Other Auto Letters are subtracted, the carriers had about 87% of their caseable mail by 8:30 a.m. on March 21, 2011.

Gerry Hoffman is a City Carrier in Fort Collins and also a Union Steward. He testified that he could not recall ever having to clock in and then wait for mail to be counted. He added that the mail was always counted and available when the carriers arrived. Mr. Hoffman testified that the change in start time has decreased morale because employees are ending work later and has caused one carrier to have childcare difficulties. He added that customers are complaining about their mail arriving later. He denied that the carriers ever sat around doing nothing and stated that most of the time the mail was counted, at least as much as three (3) or four (4) letter cases and two (2) quantities of flats. Mr. Hoffman testified that when he reported for work at 8:30 a.m. he would leave the office for making deliveries at 11:00 a.m. or 11:30 a.m. He added that he never had to wait around for his mail.

Mr. Hoffman testified that the S-999 mail that Supervisor Goodwin counted as some of the mail available after 9:00 a.m. is considered as mail counted because the JWRAP verifies the counts. He added that he was told by a named supervisor that DPS mail is never counted or considered as caseable mail, except when an audit is being conducted. He added that S-999 mail always has been counted as DPS mail is counted.

Union Branch President Fake testified that she filed a previous grievance when in June 2010 Management changed the start time at the Fort Collins Main Post Office. She added that in June 2010 the carriers' start time remained at 8:30 a.m. for the Old Town Station. President Fake further testified that Management should look into why the trucking companies do not get the mail to Fort Collins on time and if they cannot do so the Postal Service should contract with a company that can make deliveries on time. She stated that she reviewed the documents Supervisor Goodwin compiled when she met with him at the Formal A grievance step. President Fake worked as the carrier for Route 13 (annotated on the Route/Carrier Daily Performance/Analysis Report as Route 21013). She reviewed the Mail Volume Recording in Inches worksheet completed for March 28, 2011, during her testimony. JX 3, page 280. The worksheet shows that Route 13 received 38 in Letter Volume at 7:00 a.m. and 19 in Letter Volume at 10:00 a.m. for a total of 57 letter pieces. President Fake testified that the numbers on the worksheet did not appear to be correct. The copy of the Route/Carrier Daily

Performance/Analysis Report for March 28, 2011, shows that President Fake cased 157 letter pieces, although the form does not show the time in which that mail was received. The Route/Carrier Daily Performance/Analysis Report also shows that President Fake cased 414 pieces of Flat Mail (JX 3, page 279) whereas the volume work sheet shows that her route received 277 pieces of Flat mail (the time of the third delivery is illegible) on JX 3, page 280. In addition to the above, she testified that Supervisor Goodwin stated to her that sometimes when the trucks arrive the mail would sit without action because there is no employee around to do the mail.

President Fake testified that the Union compiled a listing to show the summary of all the grievances filed over the issue of Management mandating overtime to be worked by carriers who are not on the Overtime Desired List (ODL) from January 12, 2011, to April 25, 2011. JX 3, page 38. The summary shows that there were eighteen (18) grievances filed at each the Fort Collins offices where the mandated overtime incidents occurred prior to the change in start time on April 16, 2011. The summary shows there were three (3) grievances filed after the start time had changed. President Fake stated there were numerous additional grievances that have been filed since April 25, 2011, because of mandated overtime.

Postmaster Sena testified that the first time he decided to change the carriers' start time from 8:30 a.m. to 9:00 a.m. was grieved by the Union. He could not recall the reason why the start time for the carriers at the OTS was not changed in June 2010. He added that the June 2010 start time change was overturned because Management did not have evidence to support the basis for the change and the start time resumed to 8:30 a.m. Postmaster Sena added that the Fort Collins installation continued to receive late arrivals of the trucks from Denver with the mail. He stated that the trucks were initially scheduled to arrive at the Main Post Office first at 7:40 a.m., but the trucks came at 8:30 a.m. and sometimes as late as 9:00 a.m. Initially, Postmaster Sena testified at the hearing that currently the trucks are to leave earlier, presumably before 7:40 a.m. Later, on cross-examination, he testified that the Postal Service renegotiated with the truck company whereby the trucks are now to arrive at the MPO at 8:10 a.m. He stated that he preferred to have the trucks from Denver arrive by 7:00 a.m. so that the mail could be delivered earlier but under the circumstances the installation offices were experiencing a lot of stand-by time, which was non-productive. He stated that if the trucks could arrive earlier on a consistent basis he would change the carriers' start time to an earlier time.

Postmaster Sena stated that the clerks' morning schedule is based on the arrival times of the trucks delivering mail from Denver. He added that the installation has approved pre-tour overtime. He also testified that mandating overtime increased during the peak period when employees took vacation time. He added that since March there have been seven (7) carriers on long-term absences due to surgeries and that they returned in mid-August. He acknowledged that the installation mandated overtime three (3) to four (4) times a week but that the mandates are now done infrequently.

Supervisor Nick Goodwin testified that after the 2010 grievance was sustained, the Postmaster asked him to determine how much mail was available and when. He explained that he noted the Letter Volume and the Flat Volume on the worksheets entitled Mail Volume Recording in Inches for each of the days in the survey and listed the respective volumes (estimated piece count of mail) of the time of day when mail was available to the carriers. The notations were then transferred to a worksheet to show the mail available at 8:30 a.m. versus the mail available after 9:00 a.m. and the percentage of available mail at 8:30 a.m. For each day of the survey, Supervisor Goodwin relied upon reporting documentation the Postal Service uses in the normal course of operation in arriving at his mail percentage chart; i.e., End-of-Run Carrier Piece Counts for ZIP Codes 80525 and 80526, DOIS Web Reporting Volume Reports, Route/Carrier Daily Performance/Analysis Reports, an untitled worksheet annotated to show the DPS truck's arrival times and the times S-999 was given to the carriers, and the TAC report showing the amount of waiting time under Operation Code 354. JX 3, pages 109 through 396, covering the period of March 19, 2011, through April 9, 2011.⁴ For example, the TAC Report for the date of March 21, 2011, shows ten (10) carriers had a total of five (5) hours and twenty-nine (29) minutes of Code 354 time. JX 3, page 138. The TAC Report for March 22, 2011, shows two (2) hours and three (3) minutes of Code 354 for five (5) carriers that day. A review of the TAC Reports submitted in the record show that almost without exception some carriers had Code 354 time, except on two (2) days where there was no Code 354. The amounts of Code 354 time are generally in the plus-one to plus-two hours. However, one day the installation incurred over thirty-five (35) hours of Code 354 time. The Code 354 TAC reports also showed erratic usages with seven (7) minutes one day, sixteen (16) minutes on another day but on following days there was six-plus hours and then seven-plus hours of Code 354 time on two (2) different

⁴ This time frame is hereinafter referred to as the survey period.

days. Supervisor Goodwin stated that after the start time change the installation captured 25% of unproductive time for the MPO and 91% for the OTS.

Supervisor Goodwin testified that he used estimations to determine the mail volume and did not do an actual piece count. He acknowledged the numbers could have errors, but he added that the conversion method using inches has been a recognized valid method for estimating mail volume and is used by the carriers when they seek to have route adjustments. He stated that the DPS mail was not counted in his survey because DPS mail is already sorted in order and does not need to be cased by the carrier. He differentiated DPS mail from Auto Mail stating that the latter is not delivery point sequence. He further stated that S-999 mail involves different types of mail, such as vacation holds, out of sequence mail, changes of address, mail that is missing a suite number or other types of mail. He added that the S-999 mail must be handled by the carrier at the case. Supervisor Goodwin also identified the types of mail he used in his survey chart, whether it was caseable mail and where it comes from. He explained that Bundle mail, known also as DUMBOS, is mail the clerks take and throw. The Auto Flats are run by the Denver GMF. The Manual Flats are sorted by the clerks. The Letters, or raw mail, is sorted and cased by the carriers.

Supervisor Goodwin testified that he did not provide notice to the Union before or during his survey of mail and its availability time frames. He conceded that the Union was not given the opportunity to check his figures while he conducted the survey.

The record contains personal statements from seven (7) letter carriers submitted to the Union pertaining their dissatisfaction with the 9:00 a.m. start time. JX 3, pages 31-37.

In the Step B Team's narrative statements of the parties' respective contentions, Management asserted that it was unreasonable for the Union to insist on an actual count of every single piece of mail to verify the quantity in its worksheets made prior to making the start time change. Management further asserted that based on a study made at both offices in Fort Collins it was shown that only 69% of the caseable mail was available to the carriers at the Fort Collins MPO and 65% was available at the OTS. JX 3, page 8-b.

Positions of the Parties

For the Union

The Union acknowledged that Management has certain rights under Article 3 of the Negotiated Agreement; however, many of those rights enumerated are limited by negotiated contract provisions. Reference Joint Contract Administration Manual (JCAM), page 3-1. The Union argued that when trucks scheduled to dispatch the mail to the Postal Service offices are late by an average of 54 to 67 minutes Management has failed to “maintain the efficiency of the operation entrusted to it,” per Article 3.

The Union contended that part of efficiency includes financial responsibility. The Union noted that Postmaster Sena testified that he made the start time change as a sound business decision. The Union cited the documentary evidence in the file at Joint Exhibit (JX) 3, pages 39-87, and Ms. Fake’s testimony to show that the Union filed numerous grievances concerning Management’s actions to mandate employees for overtime when the employees were not on the ODL. The Union contended that the resolution of those grievances filed prior to the start time change totaled over \$10,000.00, and since the start time change the Union has filed additional grievances over improper mandating actions to force overtime on the non-ODL carriers. The Union asserted that the decision to change carrier start time and the growing number of grievances gives credence to the fact that Postmaster Sena is not maintaining the efficiency of the operation entrusted to him.

The Union claimed that Management should have scheduled distribution clerks so that there would be an even flow of mail to be provided to the carriers each day and that service standards are met.

The Union alleged that Management violated Article 5 of the National Agreement by failing to notify the Union of Management’s intention and to negotiate a proposed change to hours of work for the carriers.

The Union also alleged that Management violated Article 19 by failing to act according to Section 122 of the M-39 Handbook. The Union relied upon the regional arbitration award rendered by Arbitrator Carlton Snow.⁵ Arbitrator Snow stated in his Award that “Managerial control of work schedules, however, is not totally unfettered or without limitations,” and that the

⁵ Case No. F98N-4F-C 02062648 (2003).

“M-39 handbook specifies that schedules must be fixed to coincide with the receipt and dispatch of mail.” After quoting the contents of Section 112.11(b) of the M-39 Handbook (reproduced at page 3 above), Arbitrator Snow held the following:

The instruction is not a suggestion but is stated as an imperative. The Handbook, which is 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 Union contended that Management’s pile of numbers and data is flawed and inaccurate and skews the truth pertaining to the arrival of mail received at the Fort Collins installation. The Union asserted that the spreadsheet compiled by Supervisor Goodwin shows only “mail available @ 8:30” and “mail available after 9:00” but does not show the various mail categories involved in that simple division. The Union noted Supervisor Goodwin’s testimony that he did not allow the Union to observe the arrivals of the mail to verify his accounts. In contrast, the Union relied upon the interview notes taken by Branch President Fake of her telephone interview with President Mark Tindall and his written statement. JX 2, pages 29 and 30. The Union’s brief provided a point-by-point review of the documents Management relied upon in making the start time change. The Union observed that March 21, 2011, was Monday and asserted that because Sunday is a non-delivery day the plant would have had processed mail for Monday. The Union pointed to the “0” quantity of mail Supervisor Goodwin placed in the column for “Letters” for Zone 80526 for March 21, 2011. The Union alleged that it would be nearly impossible to have “0” letters available at 8:30 a.m. for an entire zip code on a Monday. JX 3, page 124. The Union reviewed the other documents and found that the total counts on three documents had three different sets of counts, except for DPS mail, which the parties agree is not cased by the carriers. The Union asserted that Management should have done an actual piece count to verify the accurate amount of mail available to the carriers by 8:30 a.m.

The Union pointed to other documents alleged to contain inconsistencies. For example, Management alleged that on March 26, 2011, there was 67% of the mail at issue at 8:30 a.m. (JX3, page 198); however, the mail was not actually counted until 8:45 a.m. (JX 3, page 199).⁶

⁶ The PAC report for March 26, 2011 shows five (5) carriers incurred Code 354 in respective amounts of seventeen (17) minutes, fifteen (15) minutes, forty-seven (47) minutes, twenty-four (24) minutes and one (1) hour.

The Union questioned Management's claim and asserted its doubts that the carriers waited for the mail for fifteen (15) minutes. The Union cited Union Steward Hoffman's testimony wherein he stated he could not recall ever having to clock in and then wait for mail to be counted, that the mail was always counted and available when the carriers arrived. The Union submitted that when Supervisor Goodwin was asked if there were any errors in his documents, which he denied, he admitted that if there were errors it could throw off the data.

The Union claimed that Management failed to follow the previous Step B Decisions. The Union stated that when Management had attempted to change start times in 2010 the DRT resolved the grievance and issued a "cease and desist" order. The Union noted that the DRT also held that "if in the future it is determined that changes to scheduled reporting are necessary, they will be based upon legitimate operational needs and exercised in accordance with the provisions of the National Agreement and all applicable Handbooks and Manuals." The Union proffered that based on the foregoing assertions the current start time change was not made in accordance with the provisions of the National Agreement and all applicable Handbooks and Manuals.

The Union contended that there was no operational need to change the carriers' start time. The Union asserted that the problems persist for which Management could make corrections and return the carriers' start time to an earlier time. The Union claimed that Management in Fort Collins has failed to enforce the truck schedules to be on time. The Union further claimed that Management has failed to properly staff the clerk function to receive the mail in the stations. The Union requested as remedial relief that the start time be reinstated to 8:30 a.m., that a compensatory settlement of administrative leave be granted or any other monetary award the Arbitrator deems appropriate.

For the Postal Service

The Postal Service denied that Management's change to the letter carriers' start time violated the National Agreement. The Postal Service maintained that Management made the change under the provisions of Article 3 and all of the Articles of the National Agreement.

The Postal Service asserted that extensive evidence shows there was less than 80% of the caseable mail available to the carriers at 8:30 a.m. and referred to documentation contained in the arbitration record at JX 2, pages 109-397. The Postal Service contended that after the start time change as of April 16, 2011, the letter carriers experienced a significant decrease in their time

spent waiting for caseable mail. The Postal Service claimed the Union was aware of the concerns pertaining to the excessive waiting time for the carriers to receive sufficient mail to case and the loss of productivity due to the delay in the arrival of the trucks from Denver to Fort Collins carrying their mail. The Postal Service claimed that the trucks were constantly later than their appointed arrival time.

The Postal Service contended that the letter carriers' start time change to 9:00 a.m. adjusted their schedules to be realistic with the circumstances described above. The Postal Service asserted that Management had articulated a legitimate business interest for making the change to the letter carriers' start time. The Postal Service opined that the changes in business mail volumes and revenue dictate such changes may be necessary. The Postal Service asserted that when mail is not available it serves no purpose to have earlier start times and that it increases costs unnecessarily. The Postal Service claimed that the Union's argument based upon the Management's singular input error made by a supervisor into the DIOS database could not be shown to change the amount of mail available to be cased. The Postal Service further contended that the Union's challenges to Management's analysis of the mail volume for the first time at arbitration is inappropriate because the Union had a prior opportunity to do so during the grievance procedure but failed to do so.

The Postal Service asserted that the time change in this grievance is distinguishable from the time change done in the past for which the prior grievance was resolved by the Step B Team. The Postal Service claimed that the Step B Team overturned the prior time change because Management had failed to conduct a documented analysis about the lack of available mail to be on hand earlier in the morning. The Postal Service argued that in the instant case Fort Collins Management conducted an analysis of the lack of mail volume, thus supporting with evidence the need to make the change to letter carriers' start time. The Postal Service summarized that the effectuation of DPS mail and changes pertaining to moving the processing operations and the lateness of mail to Fort Collins dictated the time change.

The Postal Service submitted six (6) arbitration awards in support of its positions.⁷

⁷ Case No. B06N-4B-C 09199341 (Barrett, 2009) (finding that local management had changed start time for work tours numerous times there existed no settled past practice, thus, "to overturn a management decision that is made within the confines of Article 3 that does not violate any other article, handbook, manual, agreement or law is not within the purview of an arbitrator."); Case No. B06N-4B-C 08223150 (Ross, 2009) ("[The start time changes] were taken as cost

Analysis and Discussion

The Union objects to the change in start time effective April 16, 2011, claiming that there was no operational purpose for the change. The Postal Service defends its action on the basis that less than 80% of the carriers' caseable mail was not available at the start time of 8:30 a.m., thus contending that Management properly moved the start time to 9:00 a.m. Management also relied on the allegedly late but consistent arrival of the mail delivery trucks from Denver P&DC/GMF to the Fort Collins installation as the reason for the unavailability of mail for the carriers at 8:30 a.m. and that the delay resulted in unproductive time spent by the carriers until the mail arrived after 8:30 a.m. The Postal Service relied upon Section 122.11b of the M-39 Handbook wherein the regulation instructs Management to fix schedules to coincide with the receipt and dispatch of mail. The regulation requires, among other factors, that the carriers' schedule be set so that "[a]t least 80 percent of the carriers' daily mail to be cased be on or at their cases when they report for work."

In the previous grievance filed over the identical issue (sans the Old Town Station), the DRT set forth a mutually-agreed upon proviso should Management determine (subsequent to October 2, 2010) that changes to the scheduled reporting times are necessary, stating such

measures and improvement in efficiency. The authority to change the starting time to maintain the efficiency of the operations rests with Management."); Case No. K01N-4K-C 07162991 (Trosch, 2008) (Parties' LMOU required a postal notice if changes were made to start times up to two hours. Grievance denied upon finding the Postal Service relied on the 80% criterion in Section 122.11 of the M-39 and had the necessary basic information upon which to make the change); Case No. B01N-4B-C 05082195 (Deinhardt, 2005) (Parties' LMOU provided the letter carrier may ask that his/her route or assignment be posted for bid if his/her route or bid assignment schedule is changed by more than one(1) hour. Grievance denied by finding that Article 41 and the Local Agreement contemplates changes to carriers' start times); Case No. B94N-4B-C-99206131 (Sharkey, 2000) (grievance denied based on conclusion that the change of one hour poses no violation of the National Agreement); C94N-4C-C 99235545 (Roberts, 2002) (Based upon the direction at Section 112.11 of the M-39 Handbook that at least 80% of the carriers' daily mail to be cased should be on or at their cases when they report for work, that Management retained the right to determine the personnel by which operations are conducted and that Article 41.1.4 allows for change in start time of one hour or less the adjustment of the grievants' start time of one-half earlier [to 7:30 a.m.] the change was in accord with the National Agreement).

changes “will be based upon legitimate operational needs and exercised in accordance with the provisions of the National Agreement and applicable Handbooks and Manuals.”

Generally, the Union bears the burden of proof to show by credible and reliable evidence that the National Agreement has been violated. However, in this instant case the aggrieved action rests entirely upon evidence compiled by the Postal Service where much of that information cannot be verified as to the relevant and material circumstances. Another factor that sets this grievance apart from the traditional union contract grievance is that the parties’ mutually designated Step B Team issued Fort Collins Management a cease and desist order and instructed Management that any future start time changes should be determined on the basis of “legitimate operational” needs in accordance with the provisions of the National Agreement and applicable Handbooks and Manuals. In this regard, the Step B Team placed the onus primarily on Management to show proof of the “legitimate operational needs” for changing the carriers’ start time if done so in the future. The Step B Team issued its Decision on September 24, 2010. The Fort Collins installation did not begin its mail volume survey until March 19, 2011. Thus, when Management conducted its survey beginning March 19, 2011, Management was on specific notice of the June 2010 grievance pertaining to the change in start time for the carriers and the terms of the DRT’s resolution. Management conducted the mail volume survey unilaterally without notice to the Union and without input or participation with the Union. Normally, a joint labor-management effort is not required when Management expends efforts to gather facts before exercising its decision-making authority. However, given the fact that the previous grievance over the exact issue had been sustained by a joint representation from the Postal Service and the Union, a joint survey could have avoided some issues that surfaced in the second attempt to the change the carriers’ work schedule more than six (6) months later.

I find that Supervisor Goodwin conducted a thoughtful survey of the situation as directed by Postmaster Sena and that Supervisor Goodwin attempted in good faith to perform a thorough compilation of data. Unfortunately, the compilation of evidence simply fails to sufficiently meet verifiable support, and thus justifiable, to change all of the carriers’ start time from 8:30 a.m. to 9:00 a.m. Those deficiencies are discussed below.

Inasmuch as the Postal Service relied upon the assertion that less than 80% of the caseable mail was available to the carriers at their 8:30 a.m. start time and attributed that lateness to the arrival of the trucks traveling from Denver, the Postal Service had the obligation to show

how much actual caseable mail was available to the carriers as of at least 8:30 a.m., the actual and separate arrival times of the trucks from Denver to the Fort Collins MPO and the OTS, and the actual quantity of caseable mail delivered at those times. Supervisor Goodwin's mail volume worksheets show handwritten notations purportedly meant to record the delivery of mail from the trucks from Denver. The difficulty with this information is that there exists recordable information maintained in a database for the truck's departures and arrivals at all of its stops on its route for each day. That information is lacking in the record. Moreover, the truck delivery reports in the record show evening or very early morning arrival times at Fort Collins, suggesting that at least on some occasions Fort Collins received mail that would have been available first thing in the morning when the carriers reported for work. It is also incongruent that the trucks from Denver arrive first at the MPO and then make the next stop (usually) at the OTS. This would lead to the conclusion that the majority of waiting time would occur at the Old Town Station, but a review of the documents in the file do not reflect that presumption. The Denver trucks' routing raises the issue for placing the most northern arrival point of Fort Collins as the last on the route as opposed to reversing the routing to have the truck drop off mail first at Fort Collins, and then back-track to the other cities on the way to their home base in Denver. The latter routing could enable the trucks to deliver mail to Fort Collins at least an hour earlier.

The Postal Service relied on their proffer that the carriers spent 527 minutes in waiting time (Code 354) (during the period of March 19, 2011 through April 9, 2011) because of the insufficient availability of mail (less than 80%) at or on their cases when the carriers arrived at work. Indeed, the TAC reports in the record establish there was waiting time incurred during the survey period. However, it appears that the circumstances pertaining to the waiting time was not analyzed. The TAC reports do not indicate what time of day the waiting time occurred. The reports do, however, reflect the names of the individual carriers who experienced Code 354 time and the day/date of the week on which the waiting time happened. One extreme example happened on Saturday, April 9, 2011, when twenty-eight (28) carriers experienced waiting time for a total of 35-plus hours, where the carriers incurred a range of waiting time with one carrier having the least amount of waiting time of .80 hours whereas another carrier having the maximum amount of waiting time at 2.29 hours. However, one of the MPO carriers is shown to have waiting time on numerous previous occasions, six (6) total, and for large (over one hour) amounts of time. Only a few of the carriers at the OTS had experienced waiting time during the

survey period prior to April 9, 2011. This particular day clearly appears to be an anomaly and would certainly negatively skew the "averages" calculated by the Postal Service to support its position that the carriers' start time was changed in part to offset or reduce the time of carriers waited for their morning mail. The total number of minutes under Code 354 for April 9, 2011, was shown as 2,139. Reference JX 2, page 9-b. If one disregards that particular day, especially inasmuch as the chart compiled by Management does not show the delivery truck from Denver to have arrived late, the average waiting time in minutes would equate to 180.55 minutes, not 376 minutes as reported by the Postal Service. More importantly, the documents also do not reflect the circumstances that may have caused the anomaly on April 9, 2011. The "Mail Volume Recording in Inches" report for April 9, 2011, initially shows delivery times for mail but the columns are marked out as if to show errors in the information. JX 3, page 386.

A review of the TAC reports also show that other than the April 9, 2011, work day, the waiting time is limited to individuals and is not incurred by the entire or large majority of the carrier complement at the Fort Collins installation. It appears that there were twenty-two (22) carriers at the MPO and nineteen (19) carriers at the OTS. Reference Postmaster Sena's testimony and JX 3, page 110. Of the seven (7) carriers who wrote personal statements for the grievance, only two (2) incurred waiting time per the TAC reports, and one of those carriers experienced waiting time on only one occasion. Of the forty-three (43) carriers shown on the TAC reports to have experienced waiting time, nine (9) had waiting time only once, twelve (12) had waiting time on two (2) occasions, nine (9) had waiting time on three (3) occasions, three (3) carriers had waiting time on four (4) occasions, four (4) carriers had waiting time on five (5) occasions, five (5) carriers had waiting time on six (6) different dates and one (1) individual carrier had waiting time on eight (8) occasions during the survey period of March 19, 2011 through April 9, 2011. There was no information presented by the Postal Service to show the reasons or circumstances under which most carriers incurred very small amounts of waiting time but their counterparts would have waiting time, sometimes in significant amounts, five (5), six (6) and eight (8) times each. The Postal Service's analysis of the data captured for the Fort Collins installation does not address other possible systemic problems but appears to have relied solely on the trucks' arrival time as the culprit. Moreover, while the TAC reports show that waiting time actually happened, they fail to show the time of day so spent and the reason why some employees experienced waiting time whereas their coworkers did not and why no one on

any one particular day had the same or similar amount of waiting time. Overall, there appears to be no analysis to address the great fluctuations in the totals listed for the waiting time. On two (2) days during the survey period, there were no minutes recorded under Code 354, thus no time spent waiting for anything by any carrier. On another day, there was only seven (7) minutes under Code 354, and on a different day only sixteen (16) minutes shown under Code 354. There is also no explanation for the large number of waiting time minutes for March 21, 2011 (329) and April 6, 2011 (438) but where the percentage of caseable mail available at 8:30 a.m. was at 79% and 77% respectively, thus almost meeting the 80% threshold. If the Union's method for counting what constitutes caseable mail, those days would have realized more than the regulatory 80% standard. Additionally, there is no documentation in the record to substantiate the Postal Service's assertion that after the start time change as of April 16, 2011, the letter carriers experienced a significant decrease in their time spent waiting for caseable mail.

The Union's *prima facie* case involved presenting anecdotal accounts from the Union witnesses and written statements from seven (7) carriers and one clerk/APWU President to show that caseable mail was available to the carriers at 8:30 a.m. Generally, such anecdotal evidence, some of which consists clearly as hearsay, lacks probative value to offset contrary evidence, particularly documentary evidence created in the normal course of the employer's business. The overall emphasis of the statements; however, gives probative value to the information imparted. For example, neither President Fake nor Steward Hoffman's names are on any TAC report showing either person had time recorded under Code 354. Therefore, the TAC reports corroborate their testimony that they did not experience waiting time for lack of caseable mail. Additionally, only two of the seven (7) carriers who submitted statements incurred Code 354 time and one individual experienced waiting time only once during the survey period. Therefore, the anecdotal evidence tends to support the Union's claim that the reason given for changing the start time was not shown to be for a legitimate and justifiable operational reason.

For the foregoing reasons, I find that the Fort Collins Management failed to support its assertion that all of the carriers at the installation's locations lacked at least 80% of their caseable mail at least by 8:30 a.m. Therefore, the start time of 9:00 a.m. must be rescinded and the start time of 8:30 a.m. must be reinstated. The reinstatement of the 8:30 a.m. start time does not mandate that the time be set in perpetuity. As Arbitrator Snow indicated in his award on the

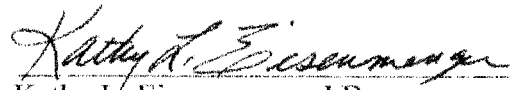
same type of issue, Management may make necessary adjustments upon proof in compliance with the factors in Section 122.11 of the M-39 Handbook. (See footnote 3, page 13).

Award

The grievance is sustained.

The Postal Service violated Article 19 of the National Agreement and specifically Section 122 of the M-39 Handbook when Management at the Fort Collins installation change the letter carriers' start time from 8:30 a.m. to 9:00 a.m. effective April 16, 2011. The start time of 8:30 a.m. is to be reinstated at the beginning of the next full pay period after receipt of this Award, unless the parties mutually agree to a later date. No other remedy is granted.

Date: November 15, 2011


Kathy L. Eisenmenger, J.D.
Labor Arbitrator