

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

Between

UNITED STATES POSTAL SERVICE

And

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

) GRIEVANT: Class Action

) POST OFFICE: Providence, RI

) CASE Numbers:

) USPS: B16N-4B-C 17669691

) NALC: 5160290417

) DRT: 14-416719

BEFORE: Sherrie Rose Talmadge, Esq., ARBITRATOR

APPEARANCES:

For the U.S. Postal Service:

Vern Tyler, Labor Relations Specialist
Jim Brien, Technical Advisor

For the NALC:

Karen Massarone, Arbitration Advocate

Place of Hearing:

24 Corliss Street, Providence, RI

Date of Hearing:

April 25, 2018

Date of Award:

June 1, 2018

Relevant Contract Provisions:

Articles 3, 5, 15, 19, M-39, Sections 122.1, 242.332

Date of Contract:

2016 - 2019

Type of Grievance:

Contract



AWARD SUMMARY

The Union met its burden of establishing that Management violated the parties' National Agreement, including the M-39 Handbook, when it changed the letter carriers' start time on September 5, 2017. Any change in the start time must be implemented in compliance with the factors in Section 122.11 of the M-39 Handbook.

For the remedy, Management shall reinstate the original Start Time of 7:30 a.m. to the carriers in the 02904 unit. There was no evidence of financial harm to the carriers and, thus, the \$100.00 payment to each affected carrier, requested by the Union, is not warranted.

Accordingly, the grievance is sustained.

Sherrie Rose Talmadge, Arbitrator

STATEMENT OF THE ISSUE¹

1. Did Management violate Articles 3, 5, 15 and 19 by way of the M-39, Section 122.1, Section 242.332, B06N-4B-C 12253110, B06N-4B-C 12233006 and M-01517, when they implemented a policy to change the start times based on performance issues using unilateral criteria?
2. If so, what is the appropriate remedy?

CONTRACT PROVISIONS, MANUALS and HANDBOOKS

ARTICLES 3, 5, 15 and 19

Handbook M-39

Section 122 Scheduling Carriers

Section 122.1 Establishing Schedules

Section 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.

FINDINGS OF FACTS²

The North Providence Carriers unit (02904) houses 26 city routes. Prior to September 5, 2017, the 02904 original start time was 7:30 a.m.

On August 2, 2017, Branch President Ingrid Armada attended a Labor Management meeting regarding the 02904 proposed start time change. Present at the meeting were Chief Steward Joan Crugnale, (A) MCSO J. Jackson, Providence Postmaster Ron Pauline and 02904 letter carrier Jeffery Campbell. Armada testified that the Postmaster began the meeting by stating that the overall carrier performance in

¹ Although the Service proposed a different issue statement than was framed by the Step B Team, without agreement by the parties to change the issue, the Step B issue is retained.

² At the hearing, the parties had the opportunity to question the sworn witnesses under direct and cross examination, and present material documentary evidence. At the conclusion of the hearing, the parties presented oral closing arguments.

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02904 was not performing to his expectations. Postmaster Pauline stated that routes were averaging over 8 hours and if the carriers did not show improvement, he would change the station's start times from 7:30 a.m. to 8:00 a.m. Armada testified that the Postmaster felt that the letter carriers took unauthorized overtime, he was not happy with the carriers' percent to standard and with routes going over eight hours a day, and on Saturdays and Tuesdays, which were low volume days, the carriers were not making time and not meeting goals. Armada testified that the Postmaster did not review truck reports, volume reports or operational reports at the meeting. Steward Crugnale also testified that the Postmaster said that he had issues with the carriers' productivity and if the productivity did not come up, he would change the carriers' start time from 7:30 to 8:00 a.m. Crugnale testified that the Union argued that performance standards are not among the criteria to establish a change in start time. Carrier Campbell testified that the Postmaster showed four routes, out of a total of 30, with a small amount above 8 hours. Campbell stated at the meeting that part of the problem was that the supervisors were continually changing.

Campbell testified that on the floor he had been asked separately by Supervisors Bonilla and McKeon whether he had talked to the carriers that the Postmaster had pointed out were not meeting time.

Chief steward Phillip Riggi testified that Supervisor Eric Thompson and Supervisor Bonilla told the carriers several times that the start time change was being considered because of the times of the routes.

On August 21, Postmaster Pauline sent a letter to Branch 15 President Armada which states, in relevant part,

...On a side note, I reviewed the performance of the 02904 carriers. Instead of getting better, in the last meeting they blamed Dawn Bonilla and she was not part of last week's supervisory staff. Therefore, 02904 will go to an 8 A.M. report time effective August 26, 2017.

Postmaster Ron Pauline testified that each Manager is responsible to answer to the efficiency of the unit. Pauline testified that he had a conversation with Manager Spencer about office performance and he suggested that they change the carrier reporting time to 8:00 a.m., to which he agreed.

On September 5, 2017, Postmaster Pauline officially changed the 02904 letter carrier start times from 7:30 A.M. to 8:00 A.M.

Chief Steward Riggi met with Supervisor Thompson at the Informal A in this matter. Riggi testified that when he asked Thompson about the reason for the change in

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the carriers' start time, Thompson responded that it was the Postmaster's decision and that Thompson did not want to touch it. Thompson did not share any documents with the Union at the Informal A.

Providence Chief Steward John Barbery, Jr., met with Manager of Corliss Park Station, James Spencer, at Formal A. The Union argued that the Postmaster changed the start time of carriers for personal reasons, as noted in the August 2 meeting and in the letter to the Branch President, and not for operational reasons. The Union considered the change in start time as punitive. Barbery pointed out to Spencer that in the 02904 section, 80% of the carrier's mail was cased when they reported for work at 7:30 a.m.

Spencer testified that he made the decision to change the start time of the station based on operational reasons. Spencer testified that based on the profile of the mail to the installation they needed to ensure the efficiency of the letter carriers that they would have enough mail to case when they report to work. He noted that there were four delivery zones at 55 Corliss Street and 02904 (along with 02906) are FSS. They had a significant shift in the caseable volume including an increase in the Amazon volume in the summer of 2017 and, as a result, the mail was arriving later than 7:30 a.m. carrier start time. Spencer provided a Distribution Up Time Report for the period September 28 – November 6, 2017 that indicated that 40% of the mail was delivered late to the carriers. Spencer also noted that because their station is across the street from the plant, they get the mail dispatch, including parcels and SPRs, last and have to take that into consideration when scheduling the carriers. Spencer also testified that he did not consider the carriers' performance when he decided to change the start time. He noted that it would be unreasonable to ask the carriers to perform their jobs without giving them the mail to do so. Spencer testified that he also gave the Union PS Form 1767 Safety Forms to show there were other factors besides those in the M-39 to consider for the mail to be distributed efficiently and safely. Spenser explained that when he arrived in February 2017 to become Manager at the Corliss Park Station he noted that there was insufficient parking in the lot and he had to immediately consider staggered start times to address the overcrowding. In support of this issue he provided the Union with some PS 1767 Safety Forms concerning overcrowding in the parking lot. Barbery testified that he objected to these safety forms, which were over a year old, some of which dealt with lack of equipment in the plant and stacking DPS trays on the floor as a hazard, as not relevant to the change in start time.

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During the grievance procedure, the Union submitted the following pre-arbitration agreement dated February 22, 2013 which applied to grievances (B06N-4B-C 12253110, B06N-4B-C 12233006) in Garden City, part of the North Providence Installation. President Armada and MCSO Gary Neirinickx were signatories the pre-arb agreement which stated:

The local parties agree the following language is a complete and final settlement of the above listed cases. This agreement is without prejudice to either party's position and is non-precedent setting.

1. Any proposed changes to the begin tour time of an assignment will be discussed in detail with the Branch President prior to implementation. Any input from the Branch President will be taken into consideration before making any changes.
2. When it is operationally necessary the begin tour time of an assignment may be changed in compliance with the National Agreement.
3. The begin tour time of the assignment for both the Regular Carrier and the Carrier Technician will be the same.
4. Carrier Simpson will be paid 10 hours of out of schedule pay.

POSITIONS OF THE PARTIES

UNION'S POSITION

Although Management retains the right to manage, including their right to change carriers' start times, Management abused their rights, in violation of Article 3, by changing carriers' start times in 02904 from 7:30 to 8:00 a.m. based solely on office performance which is not consistent with the M-39, Section 122.11. At the August 2, 2017 meeting, Management informed the Union that the Postmaster was not pleased with the times for the carriers in the North Providence station. Postmaster Pauline told Campbell that he was not happy with the carriers' percent to standard and with routes going over eight hours a day. Campbell's written statement indicates that "it was made known to me that if 02904's times didn't improve immediately that the start time would move from 7:30." This reflects that the Postmaster was developing his own work standards, rather than following the work standards agreed to by the national parties.

At the August 2nd meeting, the run-in conversations with Supervisors Bonilla and McKeon, and the letter written and signed by Postmaster Pauline to President Armada, and the Informal A meeting when Supervisor Thompson stated that the change in start times was Ron's deal, the only issue discussed as the basis of changing start times was

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the carriers' performance. From August 2 to September 5, when the start times were changed to 8:00 a.m., there were no operational issues mentioned to the Union.

The manner in which and the reasons for changing start times are outlined in the M-39, Section 242.332 which states, "No carrier shall be disciplined for failure to meet standards, except in cases of unsatisfactory effort which must be based on documented, unacceptable conduct that led to the carrier's failure to meet office standards." The requirement that the carriers must meet the Postmaster's standards, or there will be a change in start time is punitive in violation of M-39, Section 242.332. The Postmaster's unilateral creation of his own standards for changing the start time is also a violation of Article 5.

Branch 15 President Armada testified that the February 2013 pre-arb settlement, to which she was a signatory, that the intent of the agreement was to apply to the Providence Installation only, and thus, it should apply to Garden City and North Providence which are stations in the Providence Installation.

Management did not mention any operational reasons for changing the carriers' start time until November 8, 2017 at the Formal A meeting, 64 days after the change had occurred. The NALC Formal A designee testified that he felt blindsided by this new argument. The documents presented at Formal A, the All Up Report from September 28 – October 6, 2017, well after Management had changed the start times, was irrelevant. The safety forms presented by Management were over a year old. Moreover, there were data integrity questions.

Management did not dispute that carriers had 80% of their caseable mail at their cases as is required in M-39. Although Manager Spencer stated in his contentions that he was the one who made the decision to change the start time, Supervisor Thompson said it was Ron Pauline's "deal" and the Postmaster wrote a letter stating that he was changing the start times based on a lack of improvement in carrier performance. Management was looking, after the fact, for ways to claim the change was made for operational issues. This unilateral action was random, punitive and inconsistent with the M-39 and the National Agreement.

The Union requested that the grievance be sustained, and that carriers in 02904 have their start time returned to 7:30 a.m. Further, the Union requested the Management cease and desist the use of any criteria other than those set forth in section 122.1 of the M-39. The Union also sought a lump sum of \$100.00 paid to each carrier affected

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including T-6 Replacement, CCA's with hold downs and/or any other remedy deemed appropriate by Arbitrator. Additionally, the Union requested intervention.

POSTAL SERVICE POSITION

The Union did not carry its burden of proving a contractual violation. The Postal Service has the exclusive right to change the starting time of letter carriers pursuant to Articles 3 and 41. Management followed the M-39, Section 112, and supported Management's move to change the start time from 7:30 to 8:00 a.m. Manager Spencer testified credibly that he made the decision to change the carriers' start time based on the operational needs of the station, specifically noting that 40% of the mail was not available when the carriers report at 7:30 a.m. and he had to ensure that the carriers had enough mail to case. Manager Spencer testified that he did not consider letter carrier performance when deciding to change the start time. He noted that it was unreasonable to ask the carriers to perform their job without giving them the mail to do so. Spencer testified that he also considered that staggered start times would help the congestion in the parking lot. As the Formal A designee, Spencer provided the Distribution Up Time Report for the period September 28 – November 6, 2017, which showed that 40% of the time the mail was delivered late to the carriers.

There was no evidence that the Postmaster sought the change in start time to punish the letter carriers. The Postmaster testified that he had a conversation with Manager Spencer about office performance and his suggestion was to change the reporting time, with which the Postmaster agreed. The M-39, Section 112 discusses Management's obligation to run an efficient operation. The Manager would be in violation of Section 112 if he did not make the change and continued to allow the carriers to report to work early when the mail was not available. The Up-Time Report reflected that 40% of the mail is not in on time. The Service urged a denial of the grievance. Management did the right thing to change the start time of letter carriers to increase the efficiency of the operation. The Service argued that if the grievance is sustained, the carriers should not be awarded \$100 per carrier, as the Union requested, because there had been no financial harm to the carriers.

DISCUSSION

At issue is whether Management violated Articles 3, 5, 15 and 19 by way of the M-39, Section 122.1 and Section 242.332 when they implemented a policy to change the

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start times based on performance issues using unilateral criteria. The Union has met its burden of proof that Management violated the National Agreement.

The Union argued that on September 5, 2017 the Employer unilaterally changed the start time of the carriers in the 02904 unit from 7:30 a.m. to 8:00 a.m. based solely on office performance issues and not based on operational needs and the criteria established under the M-39 Handbook, Section 122.11. The Union also maintained that the change in start times violated the 2013 pre-arbitration agreement.

Article 3 of the National Agreement provides that Management has the right to determine the method, means, and personnel by which operations are to be conducted and to make reasonable decisions that maintain the efficiency of the operation. Management has control of work schedules, including start times; however, deference must be given to the M-39 Handbook. The M-39 Handbook, which pursuant to Article 19 has been incorporated into the parties' National Agreement, specifies that schedules must be fixed to coincide with the receipt and dispatch of mail, and to make a permanent schedule change when it is apparent that one or more days' mail volume varies to where it is causing late leaving. Section 122.11 (b) and (f) 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 percent of the carriers' daily mail to be cased should be on or at their cases when they report for work.
- (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.

Arbitrator Snow has noted that the instruction that "At least 80% of the carriers' daily mail to be cased, should be on or at their cases when they report for work" is not a suggestion but is stated as an imperative. Snow concluded that "Start times remain within management's control but must be exercised after giving due deference to the M-39 Handbook". [USPS and NALC, F98N-4F-C 02062648, NALC: 3982102C (2002), Snow].

The Union asserted that the only issue raised by Management prior to the change in start times was that certain carriers were not performing to the Postmaster's expectations, which is not among the factors listed in Section 122.11 (b) for establishing schedules. In support of its position the Union pointed to the August 2, 2017 meeting at which time Postmaster Pauline informed the Union that the overall carrier performance

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in 02904 was not performing to his expectations, and if the carriers did not show improvement, he would change the station's start times from 7:30 a.m. to 8:00 a.m. As a follow-up to the August 2 meeting, Carrier Campbell testified that Supervisors Bonilla and McKeon, separately, had spoken to him about whether he had talked to the carriers that the Postmaster indicated were not performing to expectations. To further emphasize the point, Postmaster Pauline sent the August 21, 2017, letter to President Armada, which stated in part:

On a side note, I reviewed the performance of the 02904 carriers. Instead of getting better, in the last meeting they blamed Dawn Bonilla and she was not part of last week's supervisory staff. Therefore, 02904 will go to an 8 A.M. report time effective August 26, 2017.

Moreover, at the Informal A meeting Supervisor Thompson stated that the change in start times was the Postmaster's deal and did not offer any further reasons for the change in start time.

Management asserted that the change in start time was made to increase productivity and efficiency and was not based on carrier performance. A factor that a manager must consider when establishing the work schedule is that 80% of the mail must be present at the carriers' cases when they report to work. The Employer did not establish whether 80% of the mail had been delivered to cases at the original start time prior to management's changing the work schedule. Postmaster Pauline testified that Manager Spencer had made the decision to change the start time, a decision with which the Postmaster agreed. Spencer testified that based on the profile of the mail to the installation, to ensure the efficiency of the letter carriers, they needed to ensure that the carriers would have enough mail to case when they reported to work. He noted that they had a significant shift in the caseable volume, including an increase in the Amazon volume in the summer of 2017 and, as a result, the mail was arriving later than the 7:30 a.m. carrier start time. Part of the evidence used by management to support its decision failed to be persuasive. At the Formal A, Spencer provided a Distribution Up Time Report for the period September 28 – November 6, 2017, which, he testified, indicated that 40% of the mail was delivered late to the carriers. However, this documentation, which covered a period after the September 5 change in start time had taken effect, did not establish whether 80% of the mail had been delivered to carriers' cases at the original start time.

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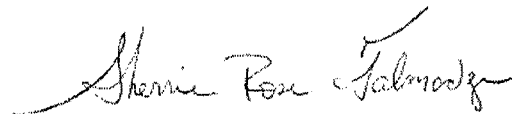
Although it would have been reasonable for management to take into consideration an increase in caseable mail arriving later than the carriers' 7:30 original start time when setting the work schedule, but without sufficient supportive data, Management failed to establish that less than 80% of the mail was at the carriers' cases when they arrived for work or that it was apparent that one or more days' mail volume varied to where it is caused late leaving. Instead, the Union presented evidence that the significant factor considered by the Postmaster when deciding to change the start time was based on individual carriers not meeting performance expectations, which is not one of the enumerated factors to be considered under the M-39, Section 112.11.

Therefore, the Union established a prima facie case that Management did not comply with the M-39 Handbook. Any change in the start time must be implemented in compliance with the factors in Section 122.11 of the M-39 Handbook. For the remedy, Management shall reinstate the original Start Time of 7:30 a.m. for the carriers in the 02904 unit. There was no evidence of financial harm to the carriers and, thus, the \$100.00 payment to each affected carrier, requested by the Union, is not warranted.

AWARD

The Union met its burden of establishing that Management violated the parties' National Agreement, including the M-39 Handbook, when it changed the letter carriers' start time on September 5, 2017. Any change in the start time must be implemented in compliance with the factors in Section 122.11 of the M-39 Handbook. For the remedy, Management shall reinstate the original Start Time of 7:30 a.m. to the carriers in the 02904 unit. There was no evidence of financial harm to the carriers and, thus, the \$100.00 payment to each affected carrier, requested by the Union, is not warranted. Accordingly, the grievance is sustained.

Respectfully submitted by:



Sherrie Rose Talmadge, Arbitrator