

REGULAR ARBITRATION PANEL

In the Matter of Arbitration between United States Postal Service and National Association of Letter Carriers, AFL- CIO	Grievant: Class Action Post Office: Anchorage, AK USPS No: E16N4EC19363983 DRT No: 02-477972 Union No: 19-389
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Before: EILEEN A. CENCI

Appearances:

For United States Postal Service: Robert Boston

For the National Association of Letter Carriers: Kollin Luman

Place of Hearing: Anchorage, AK

Date of Hearing: August 31, 2022

AWARD SUMMARY

The grievance was timely filed and is therefore arbitrable. Management violated the National Agreement, M00852 and the Administrative Support Manual (ASM) section 324 when they modified Postal Form 13 and used it to record information during the May 2019 Anchorage, AK route inspections, without following the procedure outlined in ASM Section 324. Management is ordered to cease and desist from utilizing modified Routing Slips during route inspections unless and until the necessary clearances are obtained in accordance with Section 324 of the ASM.

Date of Award: December 30, 2022

Regular Regional Arbitration Panel

Eileen A Cenci

Eileen A. Cenci

OPINION

STATEMENT OF PROCEEDINGS:

This matter was arbitrated pursuant to the grievance and arbitration provisions of a collective bargaining agreement (National Agreement) in effect between the United States Postal Service (Service) and the National Association of Letter Carriers (NALC or Union). A hearing was held before me on August 31, 2022 in Anchorage, Alaska. The parties appeared and were given a full and fair opportunity to be heard, to examine and cross-examine witnesses and to present argument. Each party called a witness who testified under oath. Following the testimony, the Union gave an oral closing argument. Management elected to file a brief, due November 14, 2022. The Union reserved the right to file a brief to respond to any new argument, if necessary. On November 17, 2022 the Union notified the arbitrator and the Postal Service that it would not file a reply brief, and the record was closed at that time.

ISSUE:

The parties did not agree on the issue statement at either Step B or at arbitration.

The Union proposes the following issue:

Did Management violate Articles 3, 5 and 19 of the National Agreement, M00852, previous grievance resolutions and the Administrative Support Manual (ASM) section 324 when they promulgated modified and utilized local forms for route inspections?

If so, what is the appropriate remedy?

Management proposes:

Did Management violate the National Agreement by utilizing a pre-existing “Routing Slip” that has been in official use with the Postal Service since August of 1976?

If so, is the requested remedy appropriate?

Management also raised a timeliness issue at arbitration.

The arbitrator frames the issue as follows:

Is the grievance arbitrable?

Did Management violate the National Agreement, M00852, previous grievance resolutions and/or the Administrative Support Manual (ASM) section 324 when they promulgated, modified and utilized local forms for route inspections?

If so, what is the appropriate remedy?

FACTS:

This was the last of seven (7) grievances filed by the Union over route inspections that took place at the Lake Otis Station in May 2019. Twenty-four (24) routes were inspected. The route adjustments were put in place on July 2, 2019 and the Union received the inspection packets on July 11, 2019.

The grievance in this case concerned the use of modified postal service forms that were used during the count and inspection. The forms that were modified were Forms 13 or Routing Slips, commonly known as “buck slips”. Evidence presented at arbitration establishes that Form 13 is still an active form used by the Postal Service. There is no evidence that its use has been discontinued or that it is inactive or obsolete.

The generic Routing Slip or Buck slip (Form 13) includes information as to which department or office the slip is going to, who it is from, a date, and information as to what is needed (for example, Approval, Signature, Comment and other potential actions). The generic buck slip also includes a Remarks section. Buck slips were modified for use in the 2019 Anchorage inspections to add the following additional information which is not on the generic Routing Slip:

Carrier Follow-up Report City Route Count and Inspection	
<u>Errors, Omissions, or Incomplete Items (All corrections to Form 1838-C must be initialed)</u>	
Letter/Other Size Count	Line 14
Carrier Mark-up	Line 15
CMU Mark-up	Line 19
Accountable Count	Line 21
Parcel Post	Line 22
Change of Address	Line 23
Clock Rings	Other

Over Standard

Supervisor's Comments:

Supervisor's Initials

Carrier's Explanation:

Corrective Action:

Management contended in its grievance response that the entire inspection packet, including the forms that are the subject of this grievance, were provided to Robert Johnston when he filed an information request for another of the route inspection grievances, and that the grievance was not filed within 14 days of the date when the Union was first aware of the subject of the grievance.

James Frankford filed a statement that was included in the Joint file at arbitration that he first became aware of the use of modified forms when he spoke to Robert Johnson on August 1, 2019 and was shown the forms Steward Johnson had received. Mr. Frankford also testified at arbitration that he first saw the local forms on or about August 1, 2019, and filed a grievance the same day.

The August 1, 2019 grievance alleged that management had violated the National Agreement, M-82 and the Administrative Support Manual (ASM) section 324 by promulgating, modifying and utilizing local forms for route inspections. It identified the Incident Date as "ongoing". The grievance alleged that when completed, the forms included individualized information for each carrier, including handwritten notes and typewritten information. The

Union contended that the use of the modified forms, apart from the content of the forms, was a violation. The evaluation and adjustment of routes based upon the data on the forms that are grieved in the current case is the subject of separate grievances. Postmaster Tim Bruno testified at arbitration that the Routing Slips were modified to support management in taking accurate, adequate notes during route inspections. The Official forms had small comment sections and did not allow enough room for accurate and complete notes. Postmaster Bruno testified that all forms were put into the route inspection packets. Those were shared if the carrier asked to see them.

Postmaster Bruno created the forms that are the subject of this grievance locally for use in route inspections when he was in Oklahoma. They have been adopted in other WESPAC districts and continue to be used in Oklahoma. They are used instead of blank paper because it is helpful to have an organizational format in which to record information. The documents in question were included in Workbooks for route inspections. He was unaware of any other grievances filed over their use.

Postmaster Bruno testified at arbitration that the Union was aware well before it filed the grievance that modified Buck slips had been used during the count and inspection. He believed Mr. Frankford had received copies during the consultation following his route inspection. He also had no doubt that copies had been provided to the Union in connection with the six (6) earlier grievances.

The joint arbitration file contained a number of Step B decisions, pre-arbitration settlements and Formal A settlements which the Union claimed management violated when it utilized the modified Buck slip.

CONTRACT, HANDBOOK AND MANUALS

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

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

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 15—Grievance Procedure

15.2. Grievance Procedures—Steps

Informal Step A

(a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause.

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.

JOINT CONTRACT ADMINISTRATION MANUAL (JCAM)

Page 19-2

Local Policies. Locally developed policies may not vary from nationally established handbook and manual provisions...Additionally, locally developed forms must be approved consistent with the *Administrative Support Manual (ASM)* and may not conflict with nationally developed forms found in handbooks and manuals.

Administrative Support Manual (ASM)

321...[a] form captures, transmits, and stores data used to support postal business processes.

322.13 Local Forms

Local forms are designed by field units for local Postal Service use only. Local forms are neither listed in Publication 223 nor stocked in the material distribution centers.

323.3. Field Management

Field managers must:

a. Follow all policies and guidelines in corporate directives (such as *Postal Bulletin* articles management instructions, and handbooks) when completing or processing a form.

- b. Ensure that the correct forms are used to support business processes.
- c. Ensure that completed forms are managed, retained and disposed of as described in Handbook AS-353, *Guide to Privacy, the Freedom of Information Act and Records Management*.
- d. Ensure that local forms do not interfere or conflict with nationally approved forms.

324.1. Development

Headquarters organizational units approve the requirements for new or revised forms within their functional areas. Forms Management analyses and designs the form and assigns an identifying number.

324.2. Coordination and Clearance

The originating office obtains the necessary clearances from other affected organizational unit before a new or revised form is approved. Required clearances include:

Type of Form	Required Clearance
Forms that affect wages, hours, and other terms and conditions of employment, or that concern any work and/or time standards or studies relating to any bargaining unit employees.	<p>PS: Through the vice president of Labor Relations using the clearance option 3 memo (see MI AS-310-96-3, Management of Policy and Procedure Information-Paper and On-Line).</p> <p>Local: Through the appropriate area Human Resources manager.</p>
<p>PS and local forms that:</p> <ul style="list-style-type: none"> a. Collect personally identifiable information about a customer, employee, or other individual (such as name or Social Security number) directly from those individuals. b. are completed by a customer, employee or other individuals. 	Through the manager, Records Office, using the clearance option 3 memo (see MI AS0310-96-3) for Privacy Act considerations (for details see Handbook AS-353, <i>Guide to Privacy, the Freedom of Information Act, and Records Management</i>).

Step 4 Decision M-00852

...

We also agreed that the issuance of local forms, and the local revisions of existing forms is governed by Section 324.12 of the Administrative Support Manual (ASM)...

POSITIONS OF THE PARTIES:

NATIONAL ASSOCIATION OF LETTER CARRIERS (NALC OR UNION)

The Union claims that the grievance is timely, since it first became aware that Routing Slips had been modified when it received copies of the modified forms on or about August 1, 2019 in response to an information request pertaining to another grievance. The Service has provided no evidence that the Union was aware of the forms prior to that date. In addition, Postmaster Bruno testified that management would continue to use the forms, so the violation is ongoing.

Management is prohibited from modifying numbered forms, as it did in this case. The Modified Routing Slips have not been given new numbers and therefore have not been approved, since all approved forms are given a PS form number.

Although management claims that the modified Routing Slips were approved at the Area level for use in counts and inspections, there is no record in the file of Area approval.

The Union asks that the grievance be sustained in its entirety.

UNITED STATES POSTAL SERVICE (USPS OR SERVICE)

The grievance is untimely. The forms being grieved were used to take notes while in discussion with the Formal A representative during the week of count and inspection, dating back to May 4, 2019, and the Union was aware of them for at least six weeks prior to filing the grievance. The entire inspection packet was provided to the Union in connection with earlier grievances. This was the seventh grievance the Union filed over the same inspections, and the information being grieved was provided in response to requests related to the earlier grievances.

The Service argues that the modified buck slips used in the Otis Lake Count and Inspection are not postal forms. Rather, they are pages designed to allow route examiners to take detailed notes during the route inspection process.

If the modified buck slips are considered postal forms, they have been vetted and approved by the Area Human Resources Manager, since the Note Pages are provided by the Area for use during the Route Count and Inspection process. They are simply outlines for examiners to use during the count and inspection. All notes captured on the pages are transferred to official forms such as 1838C, 3999, 1840 and others. The fact that notes were taken on modified buck slips, rather than blank paper caused no harm to the Union or any carrier.

The Service asks that the grievance be denied in its entirety.

DISCUSSION:

Timeliness

The Postal Service bears the burden of proving its claim that the grievance was not filed in a timely manner, within fourteen (14) days of the date when the Union knew, or should have known, that the forms it has grieved were used in the May 2019 count and inspection. The Service has been unable to meet that burden. Union steward James Frankford testified that he filed the grievance on August 1, 2019 when he first learned that modified Buck Slips had been used in the count and inspection. He claimed that he and the Union had not been aware of the use of modified forms until he received them in response to an information request filed in connection with another grievance over the count and inspection. Although Postmaster Bruno testified that the Union had seen the forms earlier, and that he thought Mr. Frankford had received the form during the consultation following his route inspection, and before changes were implemented, he was unable to testify to personal knowledge of that information. Neither Postmaster Bruno nor any other management witness testified that they provided modified Form 13's to the Union prior to August 1, 2019.

Based upon the general arbitration principle favoring the arbitrability of grievances and the lack of definitive evidence in this case that the Union was aware, more than fourteen (14) days in advance of the grievance filing, that modified forms had been utilized, I find that the Postal Service has not met its burden of proving that the grievance was untimely. Having decided the issue on other grounds, I do not address the Union's argument that the grievance should be found arbitrable

because management expressed an intention to continue to use the modified forms for route inspections.

Merits

The modified Buck Slip used during the May 2019 count and inspection in Anchorage meets the definition of a postal “form” in that it was used to capture, transmit, and store data used to support postal business processes. It also meets the Section 324.2 definition of a form that affects wages, hours, and other terms and conditions of employment, or that concern any work and/or time standards or studies relating to any bargaining unit employees. The adjustment of routes clearly affects the terms and conditions of employment for letter carriers, and a form that gathers information used to make such adjustments is one that affects working conditions. Such a form can only be promulgated or modified in accordance with ASM 324.2. ASM 324.2 provides two methods of obtaining Required Clearance for such forms. For PS forms, that method is through the vice president of Labor Relations using the clearance option 3 memo. For local forms, clearance can be obtained through the appropriate area Human Resources manager.

Form 13 or the buck slip is a Postal Service form, which contains a PS number, having been approved and adopted through the ASM process. It is not a completely local form, but rather a local modification of a Postal Service form. Based upon my reading of ASM 324.2, such a form can only be modified “Through the vice president of Labor Relations using the clearance option 3 memo...”. There is no evidence in this case that the Routing Slip or Buck Slip used in the route inspections was cleared through the appropriate ASM method.

In a case that is closely on point, Arbitrator Johnathan Klein ruled in Case #C11164406 (Cleveland, Ohio 2021) that a locally developed “Office Observation Checklist (Improper Work Methods)” form used for carrier observations clearly affected the terms and conditions of a letter carrier’s employment. He further found that the form was not properly promulgated according to the provisions of ASM 324.2 when it had not been cleared through the local Human Resources Manager but not the Area Human Resources Manager.

Similarly, in this case, local approval of the modified buck slip would be insufficient to properly modify and use a numbered Postal Service form to gather and record information that

affects the working conditions of carriers. Moreover, the evidence presented at arbitration that the modified form was approved by the Area Manager is weak. The Area Manager did not testify to having approved the modification, and an assumption of local approval was made on the basis that the form had been provided by the Area for use in route inspections.

Since PS Form 13 was not modified in accordance with the procedures outlined in ASM 324.2, as required by M00852, it cannot be used in route inspections until properly cleared for use. Having decided the case on other grounds, I do not address in detail the Union's contention that management violated previous Step B and Step 4 decisions when it modified Form 13. However, I note that based upon my review of the Step B and Step 4 decisions provided to me, none were directly on point with the current case.