

INFORMAL STEP A RESOLUTION

UNION: NALC POST OFFICE: Rockville
UNION REP: Shearlyn M. Shawn OFFICE/STATION: Rexwood
GRIEVANCE #: 55-09-SMS1 MANAGEMENT REP: Juanita Burgess
GRIEVANT: Jim Kolb DATE: 1-6-09

As a result of our discussion on this date, it is mutually agreed that the above referenced grievance/dispute is resolved in accordance with the following:

From this point forward Jim Kolb, A work Assignment employee, will not be instructed to curtail mail on his own route to create artificial undertime.

This settlement is made in accordance with the language of Article 15 and the Dispute Resolution Process in the National Agreement.

Shearlyn M. Shawn
Union Representative
1-6-09
Date

Juanita Burgess
Management Representative
1/6/09
Date

NALC / USPS DISPUTE RESOLUTION TEAM
 ERIE and PITTSBURGH DISTRICTS
 WOODS RUN CARRIER ANNEX
 2840 NEW BEAVER AVENUE
 PITTSBURGH, PA.15233-9998
 PHONE 412-766-1756 or 1758

STEP B DECISION

Step B Team: *Franczak & Strobel*
District: *Connecticut*

Decision: *RESOLVED*
USPS Number: *BOIN-4B-C 08266626*
Grievant: *Class Action*
Local Grievance #: *08-06109-053*
Branch #: *86*
Finance #: *08-3355*
Installation: *Connecticut*
Delivery Unit: *Hartford, CT 06109*
Date Step A Initiated: *6/13/08*
Step A Meeting Date: *07/14/08*
Date Received at CT Step B: *7/15/08*
Date Received at Pgh Step B: *8/5/08*
Step B Decision Date: *9/11/08*
Issue Code: *41.2000*

ISSUE: Did management violate Article 41 of the National Agreement by ordering Letter Carriers to curtail third class mail on their full time duty assignments to create under time, so that they could be assigned to perform work on other assignments that were anticipated to be vacant?

DECISION: RESOLVED The DRT has resolved this grievance. Previous grievances have been resolved by the Connecticut DRT with cease and desist and monetary awards being applied as remedies. The Connecticut DRT has set precedence for the Hartford Post Office in its decision case – B01N-4B-C05177937 – 05-06118-027. Management shall comply with the previous decision and in addition, pay all affected Carriers in this installation \$20.00 per Carrier in order to insure future compliance. The Union will be afforded the copies of the adjustments within 14 days receipt of this decision.

EXPLANATION: There were no Undisputed facts listed in this case.

The Union contends that management scheduled the unit to have vacant assignments on the day in question so that Those assignments could be worked on under time.

The Union contends that on May 27, 2008, management ordered the following Carriers to curtail 3rd class mail on their own routes to create under time, and then assigned them to work on other routes: Wabble, Costello, Givehand, Quesada, Ennin, Rosa-Paez, Purcaro, Brazal, Tatro, Sanchez, and Kukielka.

The Union contends that it is a violation of Article 41 .1 .0.4 of the National Agreement to curtail mail on a Carrier's assignment in order to require the Carrier to have under time for in order to pivot on another route.

The Union contends that there was sufficient work on the above listed carrier's own assignments to provide them eight (8) hours work that day.

The Union contends that no unanticipated circumstance existed.

The Union contends that the following national and regional awards support the contentions of the Union: M-775, M-105, M-73, M-1292, C-3001, C-8309, C-3633, C-23458 and CO-1 N-4C-C02249902.

The Union contends that the only appropriate remedy in this grievance is to pay each of the carriers that were forced to curtail mail on his/her assignment to perform work on another assignment. This pay should be at the time and one half rates and this is a make whole remedy.

Management contends The POM, Section 645.1 states in part that non-preferential may be curtailed within delivery time standard on vacant route and/or the route of the carriers being pivoted. Pivoting is not limited to period when mail volume is light. This alone shows mail might be curtailed during pivoting.

Management contends the carriers who pivoted on other routes did curtail Standard A mail but minimal amounts. This mail was worked the next business day.

Management contends it has the right to pivot routes based on under time, either due to light volume or manufactured by the curtailing of non preferential mail.

Management contends that if it feels that it is more efficient to curtail non preferential mail creating under time and pivot routes, Article 3 gives it the right to do so.

Management contends the B-Team ruled on this grievance for Shields Street which is another station in the Hartford Post Office and the Union is attempting to gain a different decision on the same situation by grieving in a different station.

Management contends that in order to make its budget, it has scheduled routes to be open, knowing that volume is so low that all carriers do not have 8 hours of work. By keeping a route open, it is making work for Carriers who do not have 8 hours of work. The amount curtailed on the routes listed, shows the carrier had sufficient time to pivot on the other route and case the mail on their own route. The carriers listed did not perform to standard on this day.

Article 41.1.C.4 of the National Agreement reads:

The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to Carrier Technician assignments, unless the local agreement provides otherwise.

This is very clear language. Letter Carriers who bid and are awarded routes are to work those routes as they were posted except under the narrow circumstances of unexpected nature. Letter Carrier routes are set up with specific office and street duties that deal with the specific addresses that are contained within their routes. By instructing a carrier to curtail available mail in order to shorten their time spent on their own route so that they can spend time within their normal eight hour tour on another route circumvents and violates the language of Article 41.1.C.4. Arbitrators have already ruled on this issue. Arbitrator Jerome Ross wrote, in a decision dated June 21, 2002 (C-23458):

Moreover, management forced carriers to pivot where there was an indication that the work on their own routes was light. Such use of pivoting violated the Article 41.1.C.4 requirement that carrier work their bid assignment unless unanticipated circumstances arise and present a need for their temporary change in assignment.

The position of the Union that this was improper was sustained by the arbitrator.

Based on a thorough review of the entire case file, the Step B Team has determined that management violated Article 41.1.C.4 of the National Agreement. There is indication in the file that this has occurred before in the Hartford offices. Therefore the proper remedy is listed above

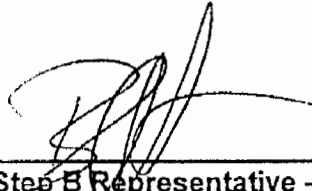
The time limits were extended by the mutual consent of the Erie/Pittsburgh Step B Team.

According to Article 15.2 (c) The Step B Team will attach a list of all documents included in the case file.

Documents attached to case file:

1. Step B Decision – 2 pages
 2. PS Form 8190 – 1 page
 3. Union's contentions and attachments – 99 pages
 4. Management's position and attachments – 6 pages
- The total number of documents in case file is 108 pages.


Step B Representative - USPS
Michael D. Franczak


Step B Representative – NALC
Brian C. Strobel

Cc: Connecticut DRT

NALC / USPS DISPUTE RESOLUTION TEAM
 ERIE and PITTSBURGH DISTRICTS
 WOODS RUN CARRIER ANNEX
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STEP B DECISION

Step B Team: *Franczak & Strobel*
District: *Connecticut*

Decision: *RESOLVED*
USPS Number: *BOIN-4B-C 08266642*
Grievant: *Class Action*
Local Grievance #: *08-06109-047*
Branch #: *86*
Finance #: *08-3355*
Installation: *Connecticut*
Delivery Unit: *Hartford, CT 06109*
Date Step A Initiated: *6/13/08*
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ISSUE: Did management violate Article 41 of the National Agreement by ordering Letter Carriers to curtail third class mail on their full time duty assignments to create under time, so that they could be assigned to perform work on other assignments that were anticipated to be vacant?

DECISION: **RESOLVED** The DRT has resolved this grievance. Previous grievances have been resolved by the Connecticut DRT with cease and desist and monetary awards being applied as remedies. The Connecticut DRT has set precedence for the Hartford Post Office in its decision case – B01N-4B-C05177937 – 05-06118-027. Management shall comply with the previous decision and in addition, pay all affected Carriers in this installation \$20.00 per Carrier in order to insure future compliance. The Union will be afforded the copies of the adjustments within 14 days receipt of this decision.

EXPLANATION: There were no Undisputed facts listed in this case.

The Union contends that management scheduled the unit to have vacant assignments on the day in question so that those assignments could be worked on under time.

The Union contends that on May 20, 2008, management ordered the following Carriers to curtail 3rd class mail on their own routes to create under time, and then assigned them to work on other routes: Dryburn, Kolios, Ennin, Alexinski, and Sullivan.

The Union contends that it is a violation of Article 41 .1 .0.4 of the National Agreement to curtail mail on a Carrier's assignment in order to require the Carrier to have under time for in order to pivot on another route.

The Union contends that there was sufficient work on the above listed carrier's own assignments to provide them eight (8) hours work that day.

The Union contends that no unanticipated circumstance existed.

The Union contends that the following national and regional awards support the contentions of the Union: M-775, M-105, M-73, M-1292, C-3001, C-8309, C-3633, C-23458 and CO-1 N-4C-C02249902.

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Management contends The POM, Section 645.1 states in part that non-preferential may be curtailed within delivery time standard on vacant route and/or the route of the carriers being pivoted. Pivoting is not limited to period when mail volume is light. This alone shows mail might be curtailed during pivoting.

Management contends the carriers who pivoted on other routes did curtail Standard A mail but minimal amounts. This mail was worked the next business day.

Management contends it has the right to pivot routes based on under time, either due to light volume or manufactured by the curtailing of non preferential mail.

Management contends that if it feels that it is more efficient to curtail non preferential mail creating under time and pivot routes, Article 3 gives it the right to do so.

Management contends the B-Team ruled on this grievance for Shields Street which is another station in the Hartford Post Office and the Union is attempting to gain a different decision on the same situation by grieving in a different station.

Management contends that in order to make its budget, it has scheduled routes to be open, knowing that volume is so low that all carriers do not have 8 hours of work. By keeping a route open, it is making work for Carriers who do not have 8 hours of work. The amount curtailed on the routes listed, shows the carrier had sufficient time to pivot on the other route and case the mail on their own route. The carriers listed did not perform to standard on this day.

Article 41 .1 .C.4 of the National Agreement reads:

The successful bidder shall work the duty assignment as posted. V Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to Carrier Technician assignments, unless the local agreement provides otherwise.

This is very clear language. Letter Carriers who bid and are awarded routes are to work those routes as they were posted except under the narrow circumstances of unexpected nature. Letter Carrier routes are set up with specific office and street duties that deal with the specific addresses that are contained within their routes. By instructing a carrier to curtail available mail in order to shorten their time spent on their own route so that they can spend time within their normal eight hour tour on another route circumvents and violates the language of Article 41.1 .C.4. Arbitrators have already ruled on this issue. Arbitrator Jerome Ross wrote, in a decision dated June 21, 2002 (C-23458):

Moreover, management forced carriers to pivot where there was an indication that the work on their own routes was light. Such use of pivoting violated the Article 41.1 .C.4 requirement that carrier work their bid assignment unless unanticipated circumstances arise and present a need for their temporary change in assignment.

The position of the Union that this was improper was sustained by the arbitrator.


Based on a thorough review of the entire case file, the Step B Team has determined that management violated Article 41 .1 .C.4 of the National Agreement. There is indication in the file that this has occurred before in the Hartford offices. Therefore the proper remedy is listed above

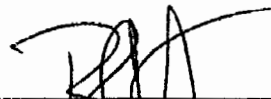
The time limits were extended by the mutual consent of the Erie/Pittsburgh Step B Team.

According to Article 15.2 (c) The Step B Team will attach a list of all documents included in the case file.

Documents attached to case file:

1. Step B Decision – 2 pages
 2. PS Form 8190 – 1 page
 3. Union's contentions and attachments – 86 pages
 4. Management's position and attachments – 6 page
- The total number of documents in case file is 95 pages.


 Step B Representative - USPS
 Michael D. Franczak


 Step B Representative – NALC
 Brian C. Strobel

Cc: Connecticut DRT

**NALC/USPS
DISPUTE RESOLUTION TEAM
P.O. BOX 1221
BRIDGEPORT CT 06601-1221**

STEP B TEAM
Austin/Mascolo

DECISION:
USPS NUMBER:

RESOLVE
B01N-4B-C
06272493

GRIEVANT:
NALC NUMBER:

M. Santoro
06-Z-09-95C
32

BRANCH:
INSTALLATION:

Bridgeport
Stratford

DELIVERY UNIT:
STATE:

Connecticut

DISTRICT: Connecticut

DATE STEP A INITIATED:

09/30/06

STEP A METTING DATE:

03/09/07

DATE REC'D AT STEP B:

06/01/07

STEP B DECISION DATE:

06/14/07

ISSUE CODE:

41.2260

ISSUE: Did management violate Articles 3, 7, 34 and 41 of the National Agreement when the Grievant was ordered to curtail and delay mail on her full time duty assignment, and case mail on a route the Service knew in advance would be vacant?

DECISION: The Dispute Resolution Team has **resolved** this grievance. Management is directed to abide by the terms of article 41 of the National Agreement, and ensure that in the future, they do not instruct carriers to curtail mail on their own assignments to create undertime to then assign them to work on another route, except under unanticipated circumstances.

EXPLANATION: The Undisputed Facts listed in this case are as follows;

1. Time limits were extended by mutual consent (ex. U-1).
2. The Grievant has medical restrictions to work only 8 hours per day (ex. U-2).
3. The Grievant was instructed to curtail and delay mail on her own assignment and instructed to case mail on route 1447, a vacant assignment (ex. U-3).
4. The Grievant, via PS Form 1571 notified Management of distributed mail for delivery that was left in the office and was approved (ex. U-4).
5. The workload status report confirms the curtailed mail (ex. U-5).
6. The Grievant worked 8 hours on 9/7/06 (ex. U-6).
7. There was no projected undertime on route 1414, but had projected overtime (ex. U-5).
8. There was not insufficient work on this particular day for the Grievant's own scheduled assignment under article 7.2.B (ex. U-7).
9. As mandated in article 41.1.C.4, "The successful bidder shall work the duty assignment as posted." (ex. U-8)

10. Carriers on the OTDL are not working up until the last dispatch of value, due to a 5:00pm window of operations.

The Union contends that there was no indication that the work on the Grievant's assignment was light. In fact, Management own DOIS projections even showed that the Grievant's route showed overtime.

The Union contends that curtailing and pivoting is being improperly used to balance workloads or overtime.

The Union contends that Management's actions in this case have created artificial undertime, resulting from carriers curtailing their own third class mail and pivoting on another route.

The Union contends that management scheduled the unit to have vacant assignments on the day in question so that those assignments could be pivoted on undertime, in accordance with a district mandate to pivot 10% of routes.

The Union contends that pivoting must be limited to "unanticipated circumstances" as dictated by article 41 of the National Agreement.

The Union contends that on 9/7/06, management ordered the Grievant to curtail mail on her own assignment (route 1414) to create undertime then assigned her to work on another assignment was scheduled to be vacant (route 1447).

The Union contends that it is a violation of Article 41.1.C.4 of the National Agreement to curtail mail on a carrier's assignment in order to require the carrier to work undertime for pivoting.

The Union contends that there was sufficient work on the Grievant's own assignment to provide her at least eight (8) hours work that day.

The Union contends that no unanticipated circumstance existed.

The Union contends that the following national and regional awards support the contentions of the Union: M-775, M-105, M-73, M-1292, C-3001, C-8309, C-3633, C-23458 and CO-1N-4C-C02249902, as well as previous decisions from this office.

Management contends that they have the right to assign personnel as it sees fit to direct employees in the performance of official duties.

Management contends that it has the right per Article 3.D "To determine the method means, and personnel by which such operations are to be conducted."

Management contends that they have the right to curtail mail in order to meet service obligations and time windows and to maintain the efficiency of the operations entrusted to it, according to article 3 of the National Agreement.

Management contends that they did not cause any unnecessary duress to the Grievant by having her case on another route.

Article 41.1.C.4 of the National Agreement reads:

4. The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to Carrier Technician assignments, unless the local agreement provides otherwise.

This is very clear language. Letter Carriers who bid and are awarded assignments are to work those routes as they were posted except under the narrow circumstance of an unexpected nature. Letter Carrier routes are set up with specific office and street duties that deal with the specific addresses that are contained within their routes. By instructing a carrier to curtail available mail in order to shorten their time spent on their own route so that they can spend time within their normal eight hour tour on another route circumvents and violates the language of Article 41.1.C.4.

Arbitrators have already ruled on this issue. Arbitrator Jerome Ross wrote, in a decision dated June 21, 2002 (C-23458):

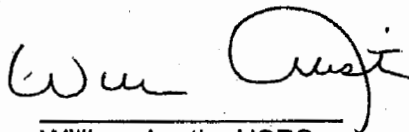
Moreover, management forced carriers to pivot when there was no indication that the work on their own routes was light. Such use of pivoting violated the Article 41.1.C.4 requirement that carrier work their bid assignment unless anticipated circumstances arise and present a need for their temporary change in assignment.

The position of the Union that this was improper was sustained by the arbitrator.

Based on a thorough review of the entire case file, the Step B Team has determined that there is insufficient evidence in the case file to indicate that the assignment in question was planned, that there were no unanticipated circumstances on the day in question, or that such assignment was in accordance with any particular directive from the district.

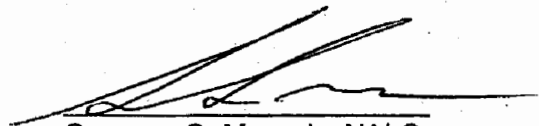
However, the Team agrees that if there were no unanticipated circumstances on the day in question, then said assignment would have been improper, and would have been a violation of Article 41.1.C.4 of the National Agreement. There is no indication in the file that this has occurred before in this office before.

Therefore, the team finds the aforementioned decision to be appropriate under the specific fact circumstance present in this grievance.



William Austin, USPS
Step B Representative

06/14/07
Date



Gennaro G. Mascolo, NALC
Step B Representative

06/14/07
Date

cc: R. Sherrod USPS Step A Representative
J. Barker NALC Step A Representative
J. Casciano NALC, NBA
J. McClusky NE Area
A. Schubert Mgr. Human Resources
D. Elliott LR Manager
J. Barker Branch President
File

DOCUMENTS

1. Form 8190
2. Form 8190
3. Remand B-Team decision (2 pages)
4. Undisputed facts
5. Union's Contentions
6. Management's Contentions
7. Time Extension
8. Medical documentation
9. Grievant's statement
10. PS Form 1571
11. DOIS Workload Status Report
12. TACS Employee Everything Report
13. JCAM page 7-6
14. JCAM page 41-7
15. Remedy requested
16. GATS Report (2 pages)

ORIGINAL

RECEIVED

DEC 24 2008

REGULAR ARBITRATION PANEL

MICHAEL L. WILLADSEN
President NALC Merged Br. 86

In the Matter of Arbitration)
)
 between)
)
 United States Postal Service)
)
 and)
)
 National Association of)
 Letter Carriers, AFL-CIO)

Grievant: Class Action
Post Office: Hartford, CT
Case No: B01N4BC07342447
Union No: 14-091661

Before: EILEEN A. CENCI

Appearances:

For United States Postal Service: Joseph Panek

For National Association of Letter Carriers: Thomas Cronin

Place of Hearing: Hartford, CT

Date of Hearing: September 25, 2008

AWARD SUMMARY

The grievance is sustained. Management violated Article 41 of the National Agreement by ordering letter carriers to curtail third class mail on their full-time duty assignments to create undertime, so that they could be assigned to perform work on other assignments that were anticipated to be vacant. Prior B Team decisions in favor of the Union have precedential value at the Hartford installation and should have been followed.

Management at the Hartford installation is ordered to cease and desist from the practice of requiring carriers to curtail mail in order to create undertime on a carrier's duty assignment and then assigning the carrier to pivot on another route. Carrier Hill is to be paid at the overtime rate for all time spent on August 24, 2007 working on another assignment. Since Carrier Hill is no longer a Postal employee and it may be difficult or impractical to locate a former carrier and issue payment to him, payment may be made to the Union or to other carriers designated by the Union if the parties so agree.

Date of Award: December 13, 2008

Regular Regional 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) between the United States Postal Service (Service) and the National Association of Letter Carriers (NALC or Union). A hearing was held before me on September 25, 2008 in Hartford, Connecticut. The parties appeared and were given a full and fair opportunity to be heard, to present evidence and argument, and to examine and cross-examine witnesses. At the conclusion of the hearing the parties presented oral closing arguments in support of their respective positions and the record was closed at that time. Following the hearing the parties notified the arbitrator that a national level issue was presented by the case. They asked that the arbitrator hold the file but not render a decision until the national issue could be resolved. On November 13, 2008 the parties notified the arbitrator that she should render a decision.

ISSUE:

The parties agreed to the following issue which was taken from the Step B decision:

Did management violate Article 41 of the National Agreement by ordering letter carriers to curtail third class mail on their full-time duty assignments to create undertime, so that they could be assigned to perform work on other assignments that were anticipated to be vacant?

If so, what is the appropriate remedy?

FACTS:

This case concerns the right of the Postal Service to curtail non-preferential mail on a carrier's bid assignment in order to create undertime so that the carrier can pivot on another route. The case specifically involves the curtailing of mail on Route 737 at the Hartford, Connecticut installation on August 24, 2007, but it is a representative case.

The parties stipulated to the following facts:

- There were no unanticipated circumstances in this case.
- Carrier Hill was assigned to Route 737 on August 24, 2007. He worked 7.54 hours on Route 737 and he worked .46 hours on Route 747.

- Carrier Hill curtailed 3 ¼ feet of non-preferential mail on Route 737.
- The Form 1571 completed by Carrier Hill on August 24, 2007 showing that 3 ¼ feet of mail was curtailed is correct (J. 2 #18). The Volume report for August 24, 2007 which shows that no mail was curtailed on Route 737 is incorrect (J. 2 #20).
- Carrier Hill had a bid job as a jumper at the time of this grievance. He was normally assigned to Route 743 on Fridays but on August 24, 2007 he was properly bumped from that route because the regular carrier came in on overtime. He then had the option to choose among his other four routes if any of them were open. He chose Route 737 which was the only one open that day. Carrier Hill was working within his bid on August 24, 2007.
- Carrier Hill is no longer employed by the Postal Service.

Management does not deny that Carrier Hill was instructed to complete a Form 1571 and curtail 3 ¼ feet of non-preferential mail on August 24, 2007 so that he could pivot on another route. Manager of Customer Services Kim Horan made the decision to have Carrier Hill curtail non-preferential mail so that he could cover another route and explained her reasons for doing so. Six carriers were out on annual leave that day. All carriers who had non-scheduled days were working but there were still additional routes that had to be covered. The only other option to obtain the necessary coverage would have been to pay carriers overtime or penalty overtime. Ms. Horan saw no reason to take that step since it is permissible to curtail non-preferential mail within delivery standards. Non-preferential mail can be delivered at any time within a period of several days and delivery of the mail curtailed on August 24, 2007 was not delayed beyond the final day it could be delivered. No one else cased or delivered the non-preferential mail that was curtailed from Carrier Hill's route. It was left for him to work the following day. By curtailing some non-preferential mail Carrier Hill was able to do the split as well as his own route within an eight-hour workday.

The Union filed a grievance alleging that management violated Article 41 when it instructed the carrier to curtail mail on his full-time duty assignment in order to create undertime on the route so it could assign the carrier to perform work on a vacant route. In its grievance contentions and at Step B management argued that undertime existed on Route 737 on August 24, 2007 and was not created on the route by the curtailment of mail. According to management Carrier Hill intentionally and deliberately slowed down casing his own route to avoid pivoting and would have had eight full hours of work on the route if he had not slowed down. There is no evidence that any manager spoke

to Carrier Hill about intentionally slowing down his work on August 24, 2007 and he was never given a PDI or disciplined regarding his performance on that day. During the Informal A grievance meeting between Michael Jedson and Kim Horan there was no mention of Carrier Hill's performance on August 24, 2007.

Route 737 is adjusted to 7.57, with 2.32 office time and 5.25 street time. At Step B management argued on the basis of the Workhour Workload Report for Route 737 on August 24, 2007 that Carrier Hill had a projected 18 minutes of undertime on that day. The Workhour Workload report is based in part upon the Volume report, which contained inaccuracies for Route 737 on August 24, 2007 (J. 2 #20). For example, the Volume report showed a total of 0 cased letters on Route 737 for the day and showed that no mail was curtailed on Route 737. Since the daily Workhour Workload report for the route was based in part upon information taken from the Volume report it was also inaccurate.

Prior to the Step B decision in this case there were two B Team decisions from the Hartford installation in favor of the Union in cases involving the curtailing of mail in order to create undertime. In October 2005 the B Team resolved a case that arose in the Silver Lane station of the Hartford Installation in favor of the Union (USPS #B01N4BC05177937). The B Team found that management violated Article 41 when they instructed letter carriers to curtail mail from their full-time duty assignment in order to create undertime and work on other routes. The B Team instructed management to cease and desist from further violations. A similar case from the Newington station of the Hartford installation was resolved in favor of the Union in October 2007 (USPS # B01N4BC07283442). That decision stated that the B Team decision in the Silver Lane station case had set a precedent for the Hartford Post Office. Management was ordered to comply with the previous decision and also to pay all affected carriers in the Hartford installation \$10.00 per carrier in order to ensure future compliance.

A Step B decision from the Hartford installation dated May 9, 2007 was decided in favor of management (USPS #B01N4BC07156907). In that case the B Team found that the carrier worked the normal amount of office time even though he curtailed some mail. He took a little less time on the street than usual but this was not related to the curtailing of mail and there was no showing that management intended for the grievant to work less than eight hours on his bid assignment. The B Team also found that the amount of time in question, 15 units, must be considered *de minimus*.

Another Connecticut Dispute Resolution Team ruled in favor of the Union on June 14, 2007 in a case from the Stratford office of the Bridgeport Installation (USPS #B01N4BC06272493). In that case the B Team ordered management to abide by the terms of Article 41 and not to instruct carriers in the future to curtail mail on their own assignments to create undertime and assign them to work on another route, except in unanticipated circumstances.

The Union offered into evidence several Step B decisions that post-dated the Step B decision in this case. Management objected on the grounds that cases decided after this one are irrelevant and have no precedential value. Management's objection to the introduction of those decisions is sustained and the decisions will not be considered.

A Step 4 decision dated July 28, 1997 is part of the record and includes the following language:

The parties agreed that application of section 617.2, Pivoting, of the Postal Operations Manual (POM) does not change the provisions of Article 41, Section 1.C.4 of the National Agreement. Routers must be kept on their bid assignments and not moved off the duties in the bid description unless there is an undertime situation, or in "unanticipated circumstances." (J. 2 #25).

CONTRACT, HANDBOOKS 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...transfer, assign, and retain employees in positions within the Postal Service...
- 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 41.1.C.4

The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to Carrier Technician assignments, unless the local agreement provides otherwise.

Joint Contract Interpretation Manual (JCAM)

15-8

Step B Decision

...

A Step B decision establishes precedent only in the installation from which the grievance arose. For

this purpose, precedent means that the decision is relied upon in dealing with subsequent similar cases to avoid the repetition of disputes on similar issues that have previously been decided in that installation.

Postal Operations Manual (POM)

645.1 Pivoting Definition

Pivoting is a method of utilizing the undertime of one or several carriers to perform duties on a temporary vacant route or to cover absences. Nonpreferential mail may be curtailed within delivery time standards on the vacant route and/or on the route of the carriers being pivoted.

645.2 Pivoting Usage

Pivoting is not limited to periods when mail volume is light and when absences are high, but also can be utilized throughout the year for maintaining balanced carrier workloads.

M-39 Handbook

111.2 Daily Operations

The delivery service manager must on a daily basis:

...

i. Determine need for auxiliary assistance, overtime or curtailment of mail, and determine the most economical manner of providing relief.

...

l. Level the workload of carriers by having them deliver other than preferential mail as promptly as practicable. Identify and manage mail in order of classification, type, and sequence of receipt.

POSITIONS OF THE PARTIES:

NATIONAL ASSOCIATION OF LETTER CARRIERS (NALC)

The Union asked for a ruling in its favor at the outset of the hearing on the grounds that this issue has been repeatedly resolved in its favor by previous B team decisions involving the Hartford installation. Those decisions set a precedent that is binding on the parties at the Hartford installation under the JCAM, 15-8. The only B Team decision from the Hartford installation that was decided in management's favor was based upon facts that are inapplicable to this case. The B Team in that case found that the curtailing of mail did not create undertime on the route. The undertime came about on the street and was unrelated to the curtailing of mail. The B Team also concluded in that case that the amount of time in question, 15 units, was *de minimus*.

Under Article 41.1.C.4 carriers have the right to work their duty assignment as posted except if unanticipated circumstances occur. Management concedes that there were no unanticipated

circumstances here. The Union does not deny that carriers with bid assignments may be required to pivot on other routes if the workload on their duty assignment is light or that management can curtail mail in order to prevent overtime. The Union maintains, however, that management cannot curtail mail in order to create downtime on a route so that a carrier holding a bid assignment can pivot on another route. If there is eight hours of work on the carrier's bid assignment the carrier has the right to deliver his route.

Carrier Hill would not have had undertime on his bid route on August 24, 2007 if he had not been instructed to curtail mail. Management's contention at the lower levels of the grievance process that the carrier slowed down in order to avoid pivoting has not been proved. The contention that there was undertime on the route was based upon an inaccurate Workhour Workload report for August 24, 2007 that underreported the mail to be cased. There is no evidence that the carrier was spoken to or disciplined for slowing down his work. Management curtailed non-preferential mail on Route 737 on August 24, 2007 in order to create undertime and require the carrier to pivot on another route rather than working his bid assignment.

The Union asks that the grievance be sustained and that management be ordered to cease and desist from the practice. In addition, a carrier forced to curtail mail on his own routes in order to create undertime and work on another route should be paid at the overtime rate for all time spent working on another assignment. This is an appropriate remedy in light of the repeated nature of the violation following previous cease and desist orders and payment orders. In addition it is a make whole remedy since the carrier would have been paid overtime for the pivot if he had not improperly been ordered to curtail mail.

UNITED STATES POSTAL SERVICE (SERVICE)

The Service argues that it has the right to curtail non-preferential mail in order to create undertime so that a carrier can pivot on another route. Section 645.1 of the POM specifically permits the practice. In addition, Section 111.2 of the M-39 Handbook requires the delivery service manager to determine the most economical method of delivery and to level the workload of carriers.

In this case delivery was accomplished in the most economical manner. By curtailing non-preferential mail, which can be delivered at any time within a period of several days, all carriers were able to complete their deliveries within eight hours and no overtime had to be paid. Carrier

Hill's bid assignment was not altered since no other carrier cased or delivered the mail that was curtailed on his route.

The Service argues that previous B Team decisions from the Hartford installation that were decided in favor of the Union are not binding on the arbitrator. There have been conflicting B Team precedents on this issue. In a case decided on May 9, 2007 the B team determined that there was no merit to the Union's claim and the B Team that heard this case reached impasse. B Team decisions from installations other than Hartford and B Team decisions that post-date the grievance in this case should not be included in the record.

There have also been conflicting arbitration decisions on this issue. There is no consensus and the arbitrator is free to reach a conclusion on the merits, based upon her interpretation of the relevant contract and manual provisions. Based upon the contract language and the language of applicable handbooks and manuals the Service acted within its authority and no violation occurred. The grievance should be denied in its entirety.

DISCUSSION:

Article 41.1.C.4 provides that carriers will work their duty assignment as posted unless there are unanticipated circumstances that require a temporary change in assignment. At the same time management has the right, under Article 3, the M-39 Handbook and the POM, to direct its operations in the most efficient and economical manner, to curtail non-preferential mail within delivery standards when necessary and to utilize the undertime of carriers to pivot on other routes. The parties recognize that a carrier holding a bid assignment may be assigned to pivot on another route if the workload on his bid assignment is light and that management can curtail non-preferential mail in order to avoid overtime. However, the question of whether management can curtail non-preferential mail in order to create undertime on a carrier's duty assignment and assign that carrier to pivot on another route is a contentious issue that has been addressed by arbitrators throughout the country with mixed results.

My review of the arbitration decisions submitted by the parties reveals that arbitrators who have addressed the issue have reached divergent interpretations of the contract. Some have concluded that, except in unanticipated circumstances, Article 41 gives carriers with duty assignments the right to deliver their assigned route as long as there is enough mail of any kind,

including non-preferential mail, to fill an eight-hour assignment. It follows from this perspective that third-class mail cannot be curtailed so that a carrier who would otherwise have eight hours of work on his bid assignment can be assigned to help out on another route. Other arbitrators find no violation of Article 41 where non-preferential mail is curtailed to create undertime allowing a carrier with a bid assignment to pivot on another route. These arbitrators believe that the creation of undertime by curtailing mail is within management's authority to level workload among carriers and arrange for the most efficient and economical mail delivery, and they generally do not consider pivoting on another route to be a temporary change of assignment under Article 41.1.C.4.

It is unnecessary for me to decide which interpretation of Article 41.1.C.4 I find more persuasive because the case before me is not one of first impression in Connecticut or at the Hartford installation. There were two Step B decisions in favor of the Union at the Hartford installation prior to the Step B hearing in the current case. Each of the previous cases involved management's decision to curtail mail in order to create undertime on a bid assignment.¹ Under Article 15 of the JCAM, Step B decisions are considered precedent in the installation from which the grievance arose and are "...relied upon in dealing with subsequent similar cases to avoid the repetition of disputes on similar issues that have previously been decided in that installation." (JCAM, p. 15-8). If, therefore, the previous Step B decisions are applicable to the facts of this case those decisions have precedential value and will control the outcome.

The parties have stipulated in this case that there were no unanticipated circumstances that would have justified a temporary change of assignment for Carrier Hill on August 24, 2007. Management has also conceded that Carrier Hill was instructed to complete a Form 1571 and curtail non-preferential mail on August 24, 2007. The only remaining issue is whether the curtailment of that mail created undertime on a route that would otherwise have had enough work to occupy the carrier for a full eight hours. Management argued below that the direction to the grievant to curtail mail on Route 737 did not create undertime since there was already undertime on the route on August 24, 2007 and the carrier could have done the pivot without curtailing mail if he had not

¹ I find that the Hartford installation B Team decision in management's favor (USPS #B01N4BC07156907) is inapplicable because it was based upon facts that are not analogous to those presented here. The curtailing of mail did not create the undertime in that case and the violation was *de minimus*.

intentionally slowed down. No evidence supports that contention, however. The only evidence of undertime on Route 737 on August 24, 2007 came from a flawed and inaccurate Workhour Workload report. Since that report was based in part upon a Volume report that inaccurately showed no cased letters, it is reasonable to assume that both reports understated the office time for Route 737 on August 24, 2007 and showed undertime that did not exist.

The Union has proven by a preponderance of the evidence that the instruction to Carrier Hill to curtail non-preferential mail on Route 737 on August 24, 2007 created undertime on his bid assignment and that the carrier was then instructed to utilize that undertime to pivot on another route. Previous Step B decisions at the Hartford installation stated unequivocally that management violated Article 41 of the National Agreement by engaging in this practice and ordered management to cease and desist. The second of these Step B decisions also ordered a monetary remedy because of management's failure to comply with the first decision.

Since this is the second time management has failed to abide by a Step B decision from the Hartford installation that was on point and resolved this issue in the Union's favor, the Union's remedy request is warranted and will be granted. Management at the Hartford installation is ordered to cease and desist from the practice of requiring carriers to curtail mail in order to create undertime on a carrier's duty assignment and then assigning the carrier to pivot on another route. Carrier Hill is to be paid at the overtime rate for all time spent on August 24, 2007 working on another assignment. Since Carrier Hill is no longer a Postal employee and it may be difficult or impractical to locate a former carrier and issue payment to him, payment may be made to the Union or to other carriers designated by the Union if the parties so agree.

C-25392

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)	
between)	Grievant: Class
))	
United States Postal Service)	Post Office: Toledo, Ohio
))	
and)	USPS Case No: C01N-4C-C 02249902
))	
National Association of Letter Carriers,)	NALC Case No: 197C02
AFL-CIO)	

Before: Colman R. Lalka, Arbitrator

Appearances:

For the U.S. Postal Service: Richard L. Acker

For the Union: Michael Miskiel

Place of Hearing: Toledo, Ohio

Date of Hearing: March 2, 2004

Date of Award: August 15, 2004

Relevant Contract Provisions Article 41.1.C.4

Contract Year: 2001 - 2006

Type of Grievance: Contract

Award Summary: The Postal Service ordered Carriers to curtail third-class mail on their Duty Assignments, and pivot onto vacant routes. The vacancies were not unanticipated. The grievance is sustained. The Postal Service shall cease and desist the practice, and all affected Carriers shall receive one hour of pay at the overtime rate for each day they were forced off their Duty Assignments.

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AUG 23 2004

VICE PRESIDENT'S OFFICE NALC HEADQUARTERS

Colman R. Lalka

Colman R. Lalka, Arbitrator

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AUG 19 2004
WILLIAM J. COOKE

ISSUE

Did the Postal Service violate the Parties' Labor Agreement by ordering Letter Carriers to curtail third-class mail on their Duty Assignments and carry first class mail on routes the Postal Service knew in advance would be vacant? If so, what is the remedy?

CONTRACT AND MANUALS

The Parties identified following provision of the their Labor Agreement as applicable to these proceedings:

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 . . . transfer, assign, and retain employees in positions within the Postal Service . . . ;
- 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 41 LETTER CARRIER CRAFT

* * *

Section 1. Posting

* * *

B. Method of Posting

* * *

4. Information on notices shall be shown as below and shall be specifically stated:

- (a) The duty assignment by position title and number (e.g., Key or Standard).
- (b) Grade.
- (c) Hours of duty (beginning and ending), including, in the case of a Carrier Technician assignment, the hours of duty for each of the component routes.
- (d) The fixed or rotating schedule of days of work, as appropriate.
- (e) The principal assignment area (e.g., section and/or location of activity).
- (f) Invitation to employees to submit bids.
- (g) Physical requirement unusual to the assignment.
- (h) If a city carrier route is involved, the carrier route number shall be designated. If a Carrier Technician assignment is involved, the route number of the Carrier Technician assignment and the route numbers of the component routes shall be designated.
- (i) Date of last inspection and date of last adjustment.

* * *

C. Successful Bidder

4. The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to Carrier Technician assignments, unless the local agreement provides otherwise.

The Postal Service identified the following provisions of the Postal Operations Manual as being applicable to this matter:

617.2 Employee Overtime Utilization — Pivoting

.11 Pivoting is a method of utilizing the overtime of one or several carriers to perform duties on a temporarily vacant route or to cover absences. Non-preferential mail may be curtailed within delivery time standards on the vacant route and/or on the routes of the carriers being pivoted.

.12 Pivoting is not limited to periods when mail volume is light and when absences are high but can be utilized throughout the year for maintaining balanced carrier workloads.

DISCUSSION

This is a representative case involving more than one-hundred fifty grievances. The facts of this representative case are straightforward. On four days over a two week period at the Manhattan Postal Center of the Toledo, Ohio Post Office, August 2, 3, 9, and 10, 2002, numerous Letter Carriers were ordered to curtail third-class mail on their assigned routes and carry first-class mail on vacant routes. The vacancies were due to, for example, the regular Carrier's Scheduled Day Off on an odd route with no assigned Floater. That is, the routes were not vacant due to unanticipated circumstances.¹ Management was aware in advance the routes would be vacant, and used curtailing and pivoting as part of its work plan to cover the vacant routes.

Management contends the curtailing of third-class mail as a work leveling device has been an on-going practice at the Postal Service for at least the last thirty years. Moreover, Management continues, Article 3 expressly grants it the right to direct the work force, and the Postal Operations Manual (POM), § 617.2, specifically provides for the curtailing of third-class mail and pivoting.

¹ Management attempted to establish through cross-examination that unanticipated circumstances may have been the cause of the curtailing and pivoting. Nothing substantive was elicited, however, and the Arbitrator is convinced by a preponderance of evidence of record Management was aware well in advance of the dates at issue the routes would be vacant, i.e., the vacancies were anticipated.

While Article 3 does grant Management the right to direct the work force, in doing so Management is subject to all other provisions of the Parties' Labor Agreement. Article 41 provides the procedure for posting bids, for bidding, and further provides that the successful bidder shall work the Duty Assignment as posted. An exception to working the Duty Assignment is made for unanticipated circumstances. The Parties' Labor Agreement does not define unanticipated circumstances, however, the Parties jointly submitted a dictionary definition as not anticipated, unexpected, or unforeseen. In this matter no unanticipated circumstances exist, and, it follows, the exception provided in Article 41 is not applicable.

The POM, § 617.2, which is incorporated into the Parties' Labor Agreement through Article 19, does, as argued by Management, provide for curtailing of third-class mail and pivoting as a method of utilizing the undertime of one or more Carriers and as a work leveling device. The POM goes on to provide, however, the pivoting is to perform duties on a temporarily vacant route or to cover absences. This exception is outside the scope of the factual situation herein. The routes in the within matter were not temporarily vacant, but vacant as the result of Carriers not being assigned to cover the routes on scheduled days off. Additionally, on July 28, 1997, the Parties reached a Step 4 settlement regarding POM, § 617.2, as follows:

The issue in this grievance is whether management violated the National Agreement when it utilized routers in undertime basis to perform delivery duties.

The parties agreed that application of section 617.2, Pivoting, of the Postal Operations Manual (POM) does not change the provisions of Article 41, Section 1.C.4. of the National Agreement. Routers must be kept on their bid assignment and not moved off the duties in the bid description unless there is an undertime situation, or in "unanticipated circumstances."

While the underlying factual situation leading to the Step 4 Settlement dealt with Routers, the agreement did provide that POM, § 617.2 does not alter Article 41, § 1.C.4, the operative section in the within matter. Moreover, there is nothing in the record to lead the Arbitrator to believe the Parties, when entering into the Step 4 Settlement, ever intended to keep Routers under the protection of Article 41.1.C.4, while stripping Carriers of that same protection.

The Postal Service relied heavily on the Arbitration Award of *United States Postal Service and National Association of Letter Carriers*, N.E. 1561 (Jensen, 1973), which it identified throughout the Arbitration Hearing and in its Post Hearing Brief as a National Award.

Subsequently, however, the Parties jointly submitted a letter wherein they stated the Jensen Award was Regional, not National.

The Jensen Award held that the curtailment of third-class mail has always been used as a work leveling device, however the Award did not address a situation of curtailing and pivoting to the extent it can be considered to have changed a Carriers' Duty Assignment. Following the Jensen Award, the Parties in 1976 reached the following Step 4 Settlement:

Having reviewed the evidence in this grievance file, we find that under the unique circumstances set forth, the T-6 Carrier's route assignment was not temporarily changed due to unanticipated circumstances.

This is not to be interpreted as implying that a T-6 Carrier cannot be temporarily scheduled from one route to another within his string when a Carrier is called in on his off-day to carry his normal route and the T-6 Carrier is moved to another route to cover an absence. Local management must have a rational basis for determining that unusual circumstances exist before moving a T-6 Carrier from his normal route. (emphasis in original)

Thus, almost thirty years ago, in 1976, the Parties agreed legitimate unusual circumstances must exist before moving a T-6 Carrier off his or her Duty Assignment.

In addition to the Jensen Award, other Regional Awards were submitted by the Parties. In *United States Postal Service and National Association of Letter Carriers*, G90N-4G-C 94067055 (Dennis, 1996), a case resulting from one Carrier curtailing and pivoting for one-half hour, the Arbitrator held, "The Postal Service has a right to curtail third class mail in order to pivot a Letter Carrier to save overtime and deliver preferential mail on time." In dicta later in the Award, Arbitrator Dennis opined:

The Supervisor of Mails has an obligation to respect the integrity of a Carrier's bid assignment and to schedule the work in such a way so that an employee can plan on performing his bid assignment each day in the manner that it is established. On occasion, it is understood that all employees may have to deviate in one way or another from established routines in order to get the mail delivered on time. The supervisor in charge, however, should not be allowed to work pivoting of regularly assigned Carriers into his or her Management plan for avoiding overtime pay or equalizing Carriers on a permanent, long term basis. Carriers have a right to expect that they will be allowed to work their bid assignments, as designated.

In *United States Postal Service and National Association of Letter Carriers*, C94N-4C-C 99216894 (Britton, 2001), a matter involving a Router given street duties even though he had eight hours of work on his Duty Assignment, unanticipated circumstances had not been

established, and there were Overtime Desired List Carriers who were not maximized, Arbitrator Britton held:

While the router position may not be automatic, it nevertheless differs from that of a PTF or casual. A router cannot be removed from his job and placed on the street unless "unanticipated circumstances" are found to exist.

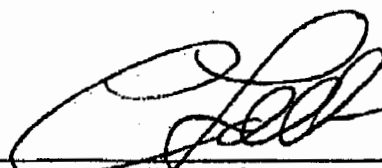
Finally, in *United States Postal Service and National Association of Letter Carriers*, C94N-4C-C 02138830 (Ross, 2002), a case arising in the Toledo, Ohio Post Office with the same factual circumstances as this representative grievance, Arbitrator Ross held:

Management improperly used pivoting to plan around anticipated circumstances and force carriers to pivot when there was no indication that the work on their own routes was light. The grievance is sustained. Management shall cease and desist from this practice. All affected carriers shall receive one hour of pay at the overtime rate for each day they were forced off their bid assignment during the period at issue.

In spite of the cease and desist order in the Ross Award, Larry Ramsey, NALC Branch President, testified the curtailing and pivoting has continued, as further evidenced by this matter being a representative case for over 150 grievances. Article 41.1.C.4 is clear, and provides Carriers shall work their Duty Assignments as posted unless unanticipated circumstances exist that require a temporary change. Under the evidence of record in the within matter, this Arbitrator is convinced Management was using curtailing and pivoting as part of an ongoing management plan of filling anticipated vacancies with Carriers ordered to curtail mail on their Duty Assignments and pivot onto the vacant routes.

CONCLUSION

Based upon the foregoing, this Arbitrator finds a violation of the Parties' Collective Bargaining Agreement, and the grievance is sustained. The remedy granted in the Ross Award is carried forward. The Postal Service shall cease and desist the practice of ordering Carriers to curtail third-class mail on their Duty Assignments and pivot onto vacant routes, in the absence of unanticipated circumstances requiring a temporary change in assignment as provided in Article 41.1.C.4. Additionally, all affected Carriers shall receive one hour of pay at the overtime rate for each day they were forced off their Duty Assignments.



Colman K. Lalka, Arbitrator

C-23458

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: Toledo
USPS No. C98N-4C-C 02138830
NALC No. 11-040001

BEFORE: Jerome H. Ross, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Sonja Trimble
For the Union: Michael Miskiel
Place of Hearing: Toledo, OH
Date of Hearing: June 12, 2002
Date of Award: June 21, 2002
Relevant Contract Provisions: Article 41.1.C.4
Contract Year: 1998-2001
Type of Grievance: Contract

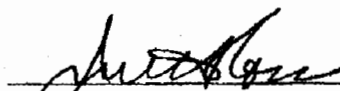
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JUN 28 2002

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OFFICE
NALC HEADQUARTERS

Award Summary

Management improperly used pivoting to plan around anticipated circumstances and force carriers to pivot when there was no indication that the work on their own routes was light. The grievance is sustained. Management shall cease and desist from this practice. All affected carriers shall receive one hour of pay at the overtime rate for each day they were forced off their bid assignment during the period at issue.



Jerome H. Ross, Arbitrator

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JUN 24 2002
WILLIAM J. COOKE

Statement of the Case

In this grievance, dated April 11, 2002, the Union asserts that management of Station A, under the Toledo Center, violated Article 41.1.C.4 of the National Agreement by pre-scheduling pivoting and forcing carriers to pivot when there was no indication that the work on their own routes was light. As a remedy, the Union requests a cease and desist order and payment to all affected carriers of one hour at the overtime rate for each day they were forced off their bid assignment.

By way of background, Station A services 25 routes. Auxiliary Route 27, which has no full-time carrier assigned, required about 30 minutes of casing and two hours of street time. The route rarely shows curtailment due to its low mail volume.

The period covered by this grievance is February 25, 2002 through March 14, 2002. Excluding Sundays, which are non-work days, there is no evidence for the following days: February 28 (Thursday), March 5 (Tuesday), March 6 (Wednesday), March 12 (Tuesday) and March 13 (Wednesday). The Union acknowledges that evidence concerning these days was not presented, because no carrier was curtailed and pivoted. In this regard, the record reflects that curtailing and pivoting generally does not occur on Tuesdays, when "advos" are delivered.

The evidence establishes the following facts concerning curtailing and pivoting on the remaining days during the period at issue.

On February 25 three carriers, all with projected overtime, pivoted onto Route 27. Two other carriers with projected undertime did not pivot. They curtailed mail and worked eight hours but did not carry auxiliary mail from the six carriers who work over eight hours.

On February 27 four carriers had projected undertime and curtailed mail. Two of these carriers pivoted onto Route 27, and two did not but worked eight hours and did not carry auxiliary mail on another route. Nine carriers worked overtime.

On March 1 four carriers with projected overtime were curtailed and pivoted onto Route 27. Another carrier with projected undertime was curtailed and worked eight hours but did not pivot.

On March 2 four carriers with projected undertime and three carriers with projected overtime were curtailed, while two others with projected undertime were not curtailed and four others worked overtime. Three of the four carriers with projected overtime pivoted onto Route 27.

On March 4 two carriers with projected overtime were curtailed and pivoted onto Route 27, while two other carriers with projected undertime were curtailed and did not pivot or carry mail from routes with projected overtime but did work eight hours.

On March 6 two carriers with projected overtime were curtailed and pivoted onto Route 27, while four other carriers with projected undertime were curtailed.

On March 7 four carriers were curtailed and pivoted onto Route 27. Two of the carriers had projected undertime and the two others had projected overtime. Three other carriers with projected undertime were curtailed but did not pivot and worked eight hours.

On March 8 four carriers were curtailed and pivoted onto Route 27 and another route. Three of these carriers had projected overtime. One carrier with projected undertime did not pivot and did not carry auxiliary mail on another route. Five other carriers with projected undertime were curtailed but did not pivot. Seven carriers worked overtime.

On March 9 five carriers with projected undertime were curtailed and pivoted onto Route 27. One carrier with projected overtime was curtailed and pivoted onto Route 27 and worked eight hours.

On March 10, 18 carriers were curtailed. Seven had projected undertime. One carrier with projected overtime was curtailed and pivoted onto Route 27. Three carriers work overtime.

On March 11 three carriers pivoted onto Route 27. Eight carriers worked overtime, of whom five had projected undertime and three had projected overtime. Seven of the eight carriers were curtailed. Three carriers with projected overtime were curtailed and pivoted onto Route 27.

The record also contains an e-mail, dated February 11, 2002, from the Toledo Postmaster to station managers. It states in part:

The purpose of the 2:30 pivoting telecon daily is to find out how many hours under base you are pivoting for the next day...[D]ue to the current financial crisis and cased volume 17% below SPLY YTD...there will be no route allowed to be over 8 hours. We will expect all routes to take a 10 minute bundle everyday except for light days when they will need to take a 20 minute bundle.

Relevant Authorities

The National Agreement contains the following provisions cited by the parties:

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 7
EMPLOYEE CLASSIFICATIONS

Section 2. Employment and Work Assignments

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

ARTICLE 34
WORK AND/OR TIME STANDARDS

A. The principle of a fair day's work for a fair day's pay is recognized by all parties to this Agreement.

ARTICLE 41
LETTER CARRIER CRAFT

Section 1. Posting

C. Successful Bidder

4. The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to Carrier Technician assignments, unless the local agreement provides otherwise.

The M-39 Handbook, TL-13, states under Administration of City Delivery Service:

111.2 Daily Operations

The daily service manager must on a daily basis:

- i. Determine need for auxiliary assistance, overtime or curtailment of mail, and determine the most economical manner of providing relief.
- l. Level the workload of carriers by having them deliver other than preferential mail as promptly as practicable. Identify and manage mail in order of classification, type and sequence of receipt.

122.3 Authorizing Overtime and Auxiliary Assistance

122.31 Before overtime or auxiliary assistance is authorized, determine whether

- b. Leveling the daily workload can be achieved by observing provisions in Section 612, Postal Operations Manual.

122.32 When relief is essential, use the following criteria (not necessarily in the order listed) in determining the most economical manner in providing it:

- b. Use auxiliary street assistance in the field when it would be more economical than using overtime....

c. Use auxiliary assistance in the office when it would be more economical than using overtime....

Union Position

The Union contends that management's mandating of curtailment and pivoting on a daily basis violates Article 41.1.C.4, because pivoting is being improperly used to balance workloads or overtime. It emphasizes that the routes being pivoted out have no curtailment, and management is curtailing 3rd Class (bulk) mail on routes so that the carriers can take mail on the pivoted routes. The Union asserts the absence of any unanticipated circumstances that would require carriers to curtail and pivot on a daily basis. The Union maintains that management's actions have created artificial undertime, resulting from carriers curtailing their own 3rd Class mail and pivoting to another route. It rhetorically asks why routes without curtailment are pivoted if management's aim is to balance workloads through pivoting. The Union acknowledges management's right to use pivoting on an ad hoc basis; however, it asserts, in the instant case the daily use of pivoting violates the carriers' right to work their bid assignment, as provided under Article 41.1.C.4. In sum, the Union argues, curtailment, pivoting and overtime occur on an almost daily basis, while carriers with undertime on four and five consecutive days are not asked to pivot. Finally, the Union points to the Postmaster's e-mail, which orders supervisors to require daily pivoting of ten to 20 minutes.

Service Position

The Service argues that management's actions were taken pursuant to its retained rights to direct employees and maintain efficient operations. It also cites the contractual principle of a fair day's work for a fair day's pay. The Service maintains that the Postmaster's e-mail is not

relevant, because the carriers did not pivot every workday during the period at issue. It points out that the only route that was curtailed daily was Route 27, which was significantly under eight hours. The Service further observes that Workload Status Reports, which contain the information for the days at issue, are final reports, which are created during pull down or after the carriers have left for the street; and, as a result, the curtailment data could include mail with color-coded dates and in-home dates or mail received after the dispatch of value. It emphasizes that a pivot bundle is used to meet a carrier's eight-hour day, in accordance with the above-cited contract and handbook provisions. The Service further points out that Station A's mail volume is down from the SPLY. It also asserts that the Union has not met the burden of proving a contract violation, because the evidence does not include all of the workdays during the period at issue and all of the clock rings for the workdays addressed during the hearing. In this regard, the Service explains, it is altogether possible that carriers took leave or worked another route not reflected on the summary sheets and thus worked eight hours. In sum, the Service observes that different carriers pivoted on different days, and a carrier rarely pivoted on a Tuesday.

Discussion and Findings

Although the record does not contain an official Postal Service issuance defining the term "pivoting", an arbitration decision submitted by the Service cites the following Postal Operations Manual (POM) provisions:

617.2 Employee Undertime Utilization – Pivoting

.11 Pivoting is a method of utilizing the undertime of one or several carriers to perform duties on a temporarily vacant route or to cover absences. Non-preferential mail may be curtailed within delivery time standards on the vacant route and/or on the routes of the carriers being pivoted.

.12 Pivoting is not limited to periods when mail volume is light and when absences are high but can be utilized throughout the year for maintaining balanced carrier workloads.

These POM provisions set forth two pre-requisites for the use of pivoting: 1) the undertime of one or several carriers, and 2) a temporarily vacant route or to cover absences.

With regard to the first pre-requisite, arbitral authority recognizes the element of undertime in connection with pivoting. "There seems to be no question about the Postal Service's right to make an assignment to a letter carrier in addition to work on his own route if work on his own route is light." (Underling added.) N.E. 1561, Rochester, Dec 1973; Jensen, arb.

Article 41.1.C.4 amplifies the second pre-requisite by limiting pivoting to "unanticipated circumstances", under which a carrier may be required to temporarily change his or her bid assignment. Arbitral guidance establishes the test for unanticipated circumstances as whether the occasion constitutes "an anticipatory event, and therefore one which supervisors should be able to plan around". S4N-3W-C-23922, Tampa, Apr 1988; Britton, arb. The purpose of this test is to maintain "the integrity of a Carrier's bid assignment...so that an employee can plan on performing his bid assignment each day....The Supervisor in charge...should not be allowed to work pivoting of regularly assigned Carriers into his or her Management plan for avoiding overtime pay or equalizing Carriers on a permanent, long-term basis". G90N-4G-C-94067055, Westwego, Jul 1996; Dennis, arb.

The evidence clearly demonstrates that management regularly used pivoting to plan around anticipated circumstances. Moreover, management forced carriers to pivot when there was no indication that the work on their own routes was light. Such use of pivoting violated the Article 41.1.C.4 requirement that carriers work their bid assignment unless unanticipated

circumstances arise and present a need for their temporary change in assignment.¹ Even without considering the Postmaster's e-mail directive (which refers to a daily 2:30 pivoting telecon), there is no doubt that the Station A Manager used pivoting to address what she termed a financial crisis in the Postal Service and a significantly reduced mail volume for the entire fiscal year.

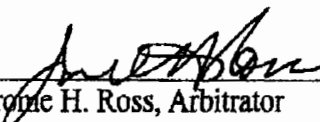
I find that management's efforts to solicit volunteers prior to forcing carriers to pivot do not shield it from the Article 41 violations. Consistent with the above findings, it is reasonable to credit the hearsay testimony of the Station A shop steward that carriers volunteer because they know that they will have to pivot one way or another. Management's actions in soliciting volunteers are properly viewed as an adjunct to its policy of using pivoting as a method for equalizing carriers' work time on a permanent long-term basis.

AWARD

The grievance is sustained. Station A management shall cease and desist from using pivoting to plan around anticipated circumstances and forcing carriers to pivot when there is no indication that work on their own routes is light.

The grievance is remanded to the parties to determine the affected carriers, who shall receive one hour of pay at the overtime rate for each day they were forced off (including volunteers) their bid assignment during the period at issue.

I shall retain jurisdiction of this grievance for 30 days from the date of this Award to resolve any dispute concerning implementation of the remedy.



Jerome H. Ross, Arbitrator

June 21, 2002

¹I further note the Article 7.2.B reference to undertime and ad hoc use of reassignments in stating: "In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work...." (Underlining added.)



National Association of Letter Carriers

William H. Young, President

June 13, 2007

Timothy W. Dowdy

National Business Agent

NALC Region 13

2484 Pruden Blvd.

Suite A

Suffolk, VA

23434

757.934.1013

To: Branch Presidents
NALC Region 13

Re: Pivoting Plans

The attached directive from the District Manager of the Northern Virginia District should be reviewed by all very carefully. It details numerous actions to be taken by USPS management, relating to pivoting routes, in that particular district.

I anticipate all districts in Region 13, and probably across the whole country, may be attempting similar things now or very soon. USPS is attempting to use mail volume decline forecasts, to project specific amounts of undertime which they think may be experienced by routes. To capture this "projected undertime" they will be attempting to maximize pivoting and minimize work hours.

Some of what they may be attempting would be violations of the contract. I'd anticipate the predominant types of violations would be:

1. Working people off their routes, and/or altering routes, in violation of Article 41.1.C.4. (See, read, and use the enclosed arbitration decision to fully understand and argue Article 41.1.C.4. in this type of situation and grievance. Put copies of this arb decision in such appealed grievances.)
2. Overtime violations, by forcing non-ODL carriers to pivot and running them into overtime—either on their own route or on the route held by someone else. (See Articles 8.5.C.2.a., 8.5.G., Work Assignment Overtime memorandum, and Article 8 memorandum ("Letter Carrier Paragraph.")
3. Opting or "hold down" violations, by not placing people on opted routes or not giving them the schedule of the regular of the route being opted upon. (See Articles 41.2.B.3. and 41.2.B.4)

Recognize, of course, that regular carriers on regular assignments may be required to pivot work from other routes where an undertime situation (having less than eight hours work) truly exists. However, for management to make pivot assignments based on mail volume forecasts, and perhaps a day or days in advance, violates the contract.

William H. Young
President

Fredric V. Rolando
Executive Vice President

Gary H. Mullins
Vice President

Jane E. Broendel
Secretary-Treasurer

George C. Mignosi
Asst. Secretary-Treasurer

Dale P. Hart
Director, City Delivery

Brian E. Hellman
Director, Safety & Health

Myra Warren
Director, Life Insurance

Timothy C. O'Malley
Director, Health Insurance

Ernest S. Kirkland
Director, Retired Members

Board of Trustees:

Larry Brown Jr.
Chairman

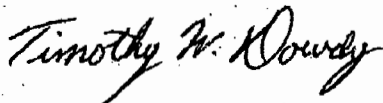
Randall L. Keller
Michael J. Gill

It can't be determined whether any route actually has any undertime, on any day, until all mail for that day has been received by the letter carrier and he/she has reached a conclusion, as to the amount of time it will take to case and carry all mail available for delivery that day.

It may be helpful to remind our members of the requirement to follow instructions and grieve afterward. We do not want to see anyone disciplined for refusing to follow an instruction, however convinced they may be of its unfairness or that the instruction is a violation of the contract.

Thank you for monitoring closely any developments with pivoting. Please inform my office if you acquire any written instructions to local management, or written instructions to carriers, regarding pivoting.

Sincerely and fraternally,

A handwritten signature in cursive script that reads "Timothy W. Dowdy".

Timothy W. Dowdy
National Business Agent
NALC Region 13

TWD/ys

From: Furey, Michael S - Merrifield, VA
Sent: Monday, June 04, 2007 4:56 PM
To: Northern Virginia-DL-CS Postmasters; Northern Virginia-DL-CS Managers; Northern Virginia-DL-EAS Customer Service
Cc: Mcadams, Kevin L - Merrifield, VA; Coutry, Greg - Dulles, VA; Voorhees, Dennis - Merrifield, VA; Budzynski, John F - Alexandria, VA; Brinckman, Edward - Merrifield, VA; Sharma, Sonia - Merrifield, VA
Subject: Pivoting Process
Importance: High

In order to improve our evolving pivoting process, I am instructing every office to begin using a "Pivot Plan" each day on either a rip chart or grease board. You should use a marker to record on the chart/board the routes that are scheduled to be pivoted, with the carriers by name that will perform the various portions of those routes.

Identify the route by number that will be pivoted, and list each carrier that will work on the route, with the specific timeframe and work assigned (Route 13: Wilson case from 0800-0830, Jones case from 0830-0915, Smith pull-down and break into street pivots from 0915-0935, etc.). The chart or board should have the information available for all carriers to view, prior to their begin tour. That means you should begin planning at least the day prior, and finalize your plans prior to the carriers beginning their workday. Stage your "Pivot Plan" in a location that will be most convenient for your use and for employees' review; near the time clock or near the supervisor's desk seem the most likely places. Give a service talk to inform everyone about its' purpose. If you have any questions, after reviewing this information, contact your MPOO.

We have not implemented the pivoting process as well as needed. Everyone must review your performance and consider the important points that were provided at the quarterly meeting, some of which are;

- Do NOT schedule regular carriers to work on their non-scheduled days.
- Have the office portion of vacant routes cased first, prior to the regular carriers casing their own routes.
- Include pull-down as an assigned part of office pivoting.
- Use a worksheet of some kind. Don't rely on what is inside your head; too much goes on in the morning.
- Assure the street portions of pivoted routes go to the street with carriers who will carry them; don't have carriers return to the office to pick up pivots. That only wastes street time.
- As much as possible, pivot in a geographically smart manner. Don't pivot a route that is at the farthest part of your delivery zone if you can pivot one in a central location that minimizes street travel time.
- Pivot "stable" routes as much as possible, to minimize COA or UBBM issues.
- Know your strengths and use good office carriers to pivot in the office; knowledgeable T-6's are good potential.
- Use DOIS to identify carriers that know routes.

It is critical that you utilize your PTF's properly during pivoting. During the summer months, you should not have PTF's scheduled to work early as a rule. They should be scheduled to begin work at around 10:00, at which time they should arrive to find a vehicle loaded with mail to be delivered (loading mail for a PTF can be an office portion of a pivot). If you are really good, the vehicle will contain a route and a half worth of (light volume) mail and the PTF will carry the mail and still be finished by 5:30 or so. Yes, that means they will be carrying 7 or so hours on the street, but with FSS on the horizon, they may as well get used to it. While a PTF on a hold-down may seem the exception to this rule, remember that a PTF on a hold-down is entitled to the assignment, but if the route has under time you can assign pivot work the same as with regulars.

Communication is a key component of pivoting success. You must let all employees know what is expected and you must explain why. Let your union representatives know what we are doing and why. I have discussed this with union leadership and all they ask is that we follow our national contract. Pivoting does that if done properly, and we must all understand, craft employees included, that pivoting is a normal part of our daily business. All Postmasters and Managers need to be on the workroom floor during the first few hours to assure your supervisors are pivoting properly and that your employees understand why we are pivoting and that you are

supportive of the process.

You should expect as we improve management of office performance by improving office pivoting, street performance will suffer if left unchecked. So keep your eyes on this and be sure to get out onto the street, find carriers and bring them back on time or early. Thanks for your compliance. **"PIVOT PLAN" CHARTS/BOARDS MUST BE OPERATIONAL BY WEDNESDAY, JUNE 6.** I want to see who can make this happen most quickly and with quality; positive monetary recognition will be provided.

Mike

6/4/2007

- 41.1.C.4 4. The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to Carrier Technician assignments, unless the local agreement provides otherwise.

Carrier Technician Assignments. The five routes on a Carrier Technician's string or group which constitute a full-time duty assignment are normally carried in the posted sequence. In the absence of any Local Memorandum of Understanding provisions or binding past practice concerning this issue (see Article 5), management has discretion to move a Carrier Technician off the assignment he or she is working in the regular rotation to another route on the Carrier Technician's string. If a Carrier Technician is moved to another route on the string, that route becomes the carrier's assignment on that day for the purposes of Article 41.1.C.4 and the application of the overtime provisions of Article 8.5.

If a Carrier Technician is moved to another route on the string with a different starting time, he/she still retains and is still entitled to be paid for the hours of his/her regular schedule. However, if appropriate advance notice of a schedule change is given, the carrier receives out-of-schedule pay instead. (See the explanation of out-of-schedule pay under Article 8.4)

Management may *not* move the Carrier Technician off the string entirely, unless the Local Memorandum of Understanding so provides or "unanticipated circumstances" arise. It is *not* an "unanticipated circumstance" when the regular carrier, whose route the Carrier Technician is working, comes in and works his or her non-scheduled day.

41.1.D **D. Other Positions**

City letter carriers shall continue to be entitled to bid or apply for all other positions in the U.S. Postal Service for which they have, in the past, been permitted to bid or apply, including the positions listed below and any new positions added to the list:

SP 2-188 Examination Specialist

SP 2-195 Vehicle Operations-Maintenance Assistant

Examination Specialist and Vehicle Operations-Maintenance Assistant (VOMA) positions are multi-craft assignments. Clerks, Maintenance, Level 5 and 6 Mail Handlers and Motor Vehicle employees are also eligible to bid for Examination Specialist positions. Clerks, Maintenance and Level 5 and 6 Motor Vehicle employees are also eligible to bid for VOMA positions.

Letter carriers in these positions continue in the carrier craft bargaining unit with seniority, bidding and representation rights. If selected, the employee remains in his/her craft and in the installation (see M-01514,

- 41.1.C.4 4. The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to Carrier Technician assignments, unless the local agreement provides otherwise.

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INFORMAL STEP A RESOLUTION

UNION: NALC POST OFFICE: Rockville

UNION REP: Robert Weisner OFFICE/STATION: Potomac

GRIEVANCE #: 54-09-RW165 MANAGEMENT REP: Randy Tucker

GRIEVANT: Daniel Henkel DATE: 07-08-09

As a result of our discussion on this date, it is mutually agreed that the above referenced grievance/dispute is resolved in accordance with the following:

From this point forward Daniel Henkel, A work assignment employee, will not be instructed to curtail mail on his own route to create artificial undertime.

Robert J. Weisner

Union Representative

07-08-09

Date

Randy Tucker

Management Representative

7/8/9

Date

FORMAL STEP A RESOLUTION

UNION: NALC **POST OFFICE:** Rockville

UNION REP: Robert Weisner **OFFICE/STATION:** Potomac

GRIEVANCE #: 54-09-RW157 **MANAGEMENT REP:** Sharon MacLin

GRIEVANT: Brian Hennigan **DATE:** 06-22-09

As a result of our discussion on this date, it is mutually agreed that the above referenced grievance/dispute is resolved in accordance with the following:

From this point forward Brian Hennigan, A work assignment employee, will not be instructed to curtail mail on his own route to creat artificial undertime

Robert Z. Weisner
Union Representative

06-22-09
Date

Sharon MacLin
Management Representative

6-23-09
Date

FORMAL STEP A RESOLUTION

UNION: NALC **POST OFFICE:** Rockville

UNION REP: Robert Weisner **OFFICE/STATION:** Potomac

GRIEVANCE #: 54-09-RW146 **MANAGEMENT REP:** Sharon Maclin

GRIEVANT: Shing Der **DATE:** 06-22-09

As a result of our discussion on this date, it is mutually agreed that the above referenced grievance/dispute is resolved in accordance with the following:

From this point forward Shing Der, A work assignment employee, will not be instructed to curtail mail on his own route to create artificial undertime

Robert E. Weisner

Union Representative

06-22-09
Date

Sharon Maclin

Management Representative

6-23-09
Date