C-32286A-B-C-D

REGULAR DISTRICT ARBITRATION PANEL
Ohio Valley District

In the Matter of an Arbitration Between **UNITED STATES POSTAL SERVICE** And **NATIONAL ASSOCIATION OF LETTER CARRIERS**	Grievant: Post Office: USPS Case No.: Union:	Class Action Columbus, OH C11N-4C-14152932; A C11N-4C-14153016; B C11N-4C-14299357; C C11N-4C-14227763 D LV308414;LV307414; LV72414; LV545714

Before: Robert Tim Brown, Esq., ARBITRATOR

Appearances:

For the Postal Service: Lee O. Bossa, Labor Relations Specialist

For the Union: Michael P. Brim, Local Business Agent, NALC

Place of Hearing: Columbus, OH Post Office

Date of Hearing: August 19, October 7, 2015 (Briefs submitted)
)

Date of Award: January 16, 2016

Relevant Contract Provisions: Art. 19, Handbooks and Manuals

Contract year: 2011

Type of Grievance: Contract (Disputed Route Inspection)

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Award Summary:

Grievance sustained in each case, as detailed herein.

Robert Tim Brown, Esq.

cc: Grievance and Arbitration Processing Center, Lee Bossa, Michael Brim, Daniel E. Toth, Manager Labor Relations Eastern

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DANIEL E. TOTH

AWARD

This case was heard under the auspices of the Regular Arbitration Panel established to hear disputes between the National Association of Letter Carriers and the United States Postal Service (Ohio Valley District), pursuant to the collective bargaining agreement in effect between them. Hearings in this case were held on August 19 and October 7, 2015 at the Columbus, Ohio Post Office. Labor Relations Specialist Lee O. Bossa represented the Service at the hearing, and NALC Local Business Agent Michael P. Brim represented the Union and the Class. The record with exhibits constituted over 1000 pages. At the close of hearing the parties requested leave to file closing post-hearing briefs, and each did so.

ISSUE: The issues in this case were:

Did management violate Article 19 of the National Agreement via Section 24 of Handbook M-39 and M-01661 when it conducted route adjustments at Lincoln Village? If yes, what shall the remedy be?

Did management violate Article 19 of the National Agreement via Sections 211.1 and 214 of the Handbook M-39 by failing to conduct a proper unit and route review and failing to share the results of such review with the local union and letter Carriers in advance preparation for the route count and inspection that started April 5, 2014 and ended April 18, 2014 at the Lincoln Village delivery unit? If yes, what should be the remedy?

Did management violate Article 19 of the National Agreement via Section 217 of the Handbook M-39 and Section 917 of the Handbook M-41 by failing to complete a proper "Dry Run" prior to beginning the route count and inspection that began on 4/5/2014 at the Lincoln Village delivery unit? If yes, what should be the remedy?

Did management violate the National Agreement by failing to review the implemented route inspections at the Lincoln Village Carrier unit and to ensure the routes were adjusted to as close to 8 hours work as possible? If so, what should be the remedy?"

INTRODUCTION

The class members are the Carriers employed at the Lincoln Village Carrier unit of the Columbus OH post office. In September, 2013, the Union was provided with a notice that

it was the Service's intent to adjust the unit's routes with a view toward accomplishing abolishments at Lincoln Village. The only review conducted prior to the adjustment was on March 18, 2014, and the Union asserted that the Union was never given notice of this review nor did it participate in it. A route inspection was conducted from April 5 through April 18, 2014, and the Union asserted that a proper "dry run" required to be performed prior to the inspection was not done, that the inspection itself was flawed in multiple ways, and that the results of the inspection were not reviewed properly with the affected Carriers.

There was agreement that a computerized process used by the Service to generate changed routes in response to the completed inspection malfunctioned and set up new routes with major faults. The Service then made changes designed to correct those faults, but according to the Union did so improperly.

Finally, in September, 2014 a new National process was agreed upon and was used to make further changes, which resulted in a final disagreement as to whether that new system pre-empted the authority of the arbitrator to order a remedy past the effective date specified in that new process.

The Service claimed that the Union was notified of the March 18, 2014, review, that a proper dry run was conducted, that the inspection was done properly, and that the mistakes made by the computerized process were properly corrected. Further, the Service asserted that even if there were failings in the process, the Union had failed to prove that harm resulted from those failings, or if any harm resulted, that the Union had failed to quantify any damages. Notwithstanding this position, the Service acknowledged that some routes were overburdened and unilaterally, prior to hearing in this case, paid compensation to eight Carriers for this/..

The Service unilaterally made certain payments to some Carriers for shortfalls it believed resulted from the inspection, but the Union disavowed any ratification of the propriety of the amounts of those payments.

These four grievances were consolidated for hearing by agreement of the parties, and were presented in two days of hearing, August 19 and October 7, 2015.

TESTIMONY

Local Union President Todd Hornyak testified that in September 2013, he was given a document (printed 9/5/2013) by Manager Rita Shanks that showed that it intended

to do route inspections at Westland station, which includes the Lincoln Village unit involved in this case, and he detailed how the document showed the projected elimination of two routes at Westland. He testified that he was told by a manager at Lincoln Village that they planned to take away two or more routes through the inspection. He testified that he became aware much later, after the inspections were begun, that the review on March 18, 2014 had been done, but he said that he had not received any of the results of the review until after a grievance was filed at that later point in time. He testified that section 214 of the M39 handbook [text is included elsewhere herein] listed 8 general categories of tasks that were required to be completed before a count could be commenced, and he said he believed these had not been completed, referring to a file list of many follow up items.

He testified that following the implementation of the adjustments, he received repeated calls from Carriers at the unit complaining of forced overtime, and, in response to a statement in management's opening, said that there had never been an offer to adjust the routes prior to the September, 2014 effective date of a new program that froze such local adjustments.

Hornyak testified that a new procedure with the mnemonic "CDRAAP" was instituted in September, 2014, and the Union sought reviews of this unit, among others, pursuant to that program, in November, 2014. He identified a November 21, 2014 email string in which he named the Tri-Village, Hilltop, Lincoln Village and Grove City delivery units as needing re-inspection, and noted a reply from Shanks in which she asked only, "what's wrong with Grove City???". Hornyak said this was to him an admission that she acknowledged the need for adjustment of the other three, including the one in this case.

On cross-examination Hornyak noted that M-39, sect. 211.1 required that annual reviews be done including the list in section 214, and also required that the results of the review be share both the "local NALC President or designee and the regular letter Carrier(s) of the route(s) requiring adjustment," and he said that he was given nothing relating to the March 18 reviews until after a grievance was filed in April, 2014, and that the grievance protested, among things, the failure to conduct a review, because of the failure to notify the Union that there had been one. He noted that in April, the Union asserted that many of the items noted in the review list of shortcomings were still flagged. He said that the unit was not implementing DPS or any other automation event.

Union Official Roger Martin testified that he had extensive experience with route adjustments, and had worked for some time as the Union liaison with Shanks over time as such processes went on in the District. He testified from file documents that upon the feeding of the counts into the computerized system, the average street time for the Carriers was cut back about 5 hours, and there was neither any way to determine why or how this happened nor any explanation from management as to the mechanism by which this happened. The result, he said, was that once the changes were implemented, the routes were overburdened.

Local Union Vice President and Lincoln Village Steward Mark Beach testified regarding his involvement with the grievance, which he said he initially filed. He said that a manager told him when the adjustment was being planned that the Service was seeking to eliminate two or three routes from the unit.

He said that the procedurally required dry run at the unit was done with a group, in a classroom on a white board, and not with actual forms, and said he was not there but did a series of file interviews during which other Carriers told him that. He said that he did one himself at the main office, also with a group on a white board, and the trainer who did the session told him the other dry runs were done the same way. He said the dry run was required by the manual to be done with an actual form, by the Carriers, at their respective cases (the latter so that information could be pulled down from the case to the form.

He testified that his route regularly ran over about half an hour, although he only carries mail on Mondays due to union activity for which he is released from his USPS job.

He testified that he, too, obtained the review summary from the March 18 review only in response to the filing of the grievance. He identified a series of questionnaires he prepared and used for interviewing the unit's Carriers, which demonstrated all said that they had not discussions with management in connection with the regarding their routes. He said that all of the requirements should have been addressed prior to the inspection, and were not. He also noted that although Shanks had reportedly said that Manager Rezes had supplied the unit review she did with the Union, a statement within managements Formal A contentions mentions the conduct of the review several times but does not mention giving the review to the Union, and the witness said he was not given it until after the grievance in this case was filed.

He testified that in response to an information request for the forms that should have been filled out by the Carriers during the dry runs, management responded "not kept," and the Carriers he interviewed said they had either not filled them or filled them out incompletely.

He noted that procedure requires that routes be adjusted as close as possible to 8 hours (and that he had agreed to accept the span of 10 minutes under to 10 minutes more than 8 hours, the routes were over far more than that allowance.

He noted that for the form that detailed his route inspection carried by someone else that day, substantial and significant information as missing from all of the forms. He said that that pattern was followed on the forms for others. As to the two routes that were eliminated, no forms at all were provided and the Carriers that did those were not informed of the results. He noted that the manual required that after the inspections, Carriers, in addition to supervision, be consulted as to the results and that their comments must be taken into consideration, but he said that all of the Carriers he interviewed said not such consultation had occurred until two or three days before the changes were implemented, and that those consultations could not have and did not result in any changes in either direction.

Beach stated that after the inspection results were fed onto the computerized process, 5 hours was taken out of the time allowed on the routes, without any explanation of the rationale for doing so. Beach said that travel times were changed and that management had told him that Google Maps was used to calculate time, when procedure required that new travel patterns must be validated by walking with the Carrier on the route.

Beach said that once the computerized COR system downloaded the new route data, the data became corrupted and the routes came out looking nothing like the adjustment results, some being so out so far as to reverse the direction of travel mid-block. He said that Carriers were then permitted to correct the errors by changing their line of travel as they saw fit, with no management validation of the changes. He note that Shanks acknowledged the errors and said that a delay in her learning about the lapses caused a delay in repairing them, which Beach said he doubted due to the closeness of her involvement.

Manager Lisa Shanks testified that she personally completed the March 18, 2014 review preparatory to beginning the route inspections. She said that she identified a substantial group of items that, pursuant to the handbooks, needed to be corrected prior to beginning the count, and said that she passed this information on to local management, who, she said, passed on the fact that a review had been done and the to-do list to the Union. She said that it was her understanding that the listed items were indeed completed. She was not personally involved in those follow-up procedures.

She identified a statement in the case file in which she detailed the training for the dry run and noted the extensive time devoted to the session. She said that the training was done by Supervisor Nate Dent, and she said that she was the data entry person for the forms filled out during the inspection and found them to be excellent. The statement did not deal with the practice forms that were to have been filled out by each Carrier and the corrected by management after the dry run training session, and Dent did not testify.

With reference to the post-adjustment consultations that were supposed to take place after the new routes had been formulated, she testified that the Union's allegation that these were not done was false, and that they were done with the attendance of a manager and Mark Beach. [She was the only management witness and did not do these consultations herself. The management statements in the file state in some detail the effort put into the training, but none were provided regarding the filling out of practice forms or the post-adjustment consultations, and several Carriers said neither the practice forms nor the post adjustment consultations were done, or at least were incomplete—Arbitrator].

On cross-examination she acknowledged that the forms 1840 in the case file did not show Carrier comments, and that the lead time from the consultations to implementation had to be much shorter than required. She acknowledged that the computer run that produced the final routes was jumbled and did not provide proper lines of travel, but said this was repaired, although she said she did not become aware of the lapse for about two weeks and this caused a delay.

Four Carriers testified as to their experiences before and during the count, detailing how overtime became excessive, paths of travel were shuffled so that they reversed halfway down a street and then turned back the other way again, etc. There was testimony that because the routes were newly adjusted, there was much "pushback" from

management in resistance to Carrier overtime authorization requests, as supervisors, under pressure to minimize overtime, were skeptical or disbelieving that Carriers at the Station could not finish their routes on time. There was testimony that once managers began to believe that there were issues, Carriers were solicited for suggestions as to how to repair the paths of travel, but changes were not accomplished for a very long time. Labels for the cases came back a mess, according to one Carrier, and overtime, although lucrative, was so extensive as to disrupt home life.

HANDBOOK AND MANUAL PROVISIONS

M-39 Handbook

211 Selecting Period for Mail Counts and Route
Inspections

1. 211.1 In order to achieve and maintain an appropriate daily workload for delivery units and routes, management will make at least annual route and unit reviews consisting of an analysis of items listed in section 214, and workhours, volumes, and possible deliveries. Items listed in section 213 may also be utilized in the review. These reviews will be utilized to verify adjustments which have been taken by management, or need to be taken by management, in order to maintain efficient service. The results of the review will be shared with the local NALC President, or designee, and the regular letter Carrier(s) serving the route(s) that require adjustment. In some units it may be necessary to proceed with mail counts and route inspections on one or more routes. These inspections will be conducted between the first week of September and May 31, excluding December.
   214 Review of Operating Procedures
   All operations at the delivery units should be reviewed and any unsatisfactory conditions should be corrected before the count is commenced. The review should include at least:
   Letter Routes

- (1) Scheduled reporting and leaving times in relation to arrival time of mail at the unit and public transportation schedules.
- (2) Adequacy of Carrier case equipment and condition of Carrier case labels (see exhibit 126.5, Review of Carrier Case and Work Area).
- (3) Volume of preferential mail received on each dispatch prior to the Carrier's leaving time.
- (4) Amount of missent/misthrown mail distributed to Carriers.
- (5) Whether all approved segmentations of mail are being made up in the most efficient manner practicable.
- (6) Handling of accountable and signature mail by Carriers at central markup offices. At the largest installations receiving a large volume of accountable and signature mail for delivery, local managers may make an exception allowing Carriers to mark up this mail if accountable clerks are unable to expedite rehandling of the pieces in clearing Carriers of proper responsibility.
- (7) Review of Carrier Route Book to determine if:

1. (a) Form 1564A — all items completed.

2. (b) Forms 1564-B and 3982 — posted on a current basis (see exhibit 126.5).

3. (c) Edit Book and/or Form 1621 — completed to show current number of deliveries (see exhibit 128.21, Delivery Management Report).

- (8) Review DPS Handling Procedures.

217 Dry-Run Count

- A review of the count procedures will be made within 21 days prior to the start of the count and route inspection to teach the Carrier how to accurately complete count forms (1838-C and 1838-A) during the period of count and inspection. An actual count of mail or recording of time used will not be kept on the day the dry run is made.
- The sample dry-run count items, forms, and completion instruction must be furnished each Carrier concerned in time to allow for completion and review prior to start of the period of count and inspection (see exhibits 217.2 (p. 1, 2, and 3)). Overtime or auxiliary assistance should not be used for the completion of the dry run. Therefore, a lighter volume day should be selected. Use only the appropriate data (EPM/Non-EPM) for the unit being inspected.
- An instruction period should be held following the issuance of the dry-run materials but before the completion of the dry-run exercise.
- The Carrier must be furnished a sample list of mail-count items and time-used items. The Carrier must enter these items on a dry-run form. A manager must review each completed dry-run form for accuracy, error, and omissions, and they must be discussed and explained to the Carrier. When necessary, the manager may require a second completion of the form to assure that the Carrier is thoroughly familiar with completing the form to be used.

M41 Handbook

917 Dry-Run Count

A review of count procedures shall be made within 21 days prior to the start of the count and route inspection.

The sample dry-run count items, forms, and completion instructions are furnished to each Carrier concerned early enough to assure that the dry-run can be completed and reviewed before scheduled count and inspection period.

An instruction period is held following issuance of the dry-run materials but before completion of the dry-run exercise.

M39 Handbook Sect 241

121. A manager will review each completed dry-run form for accuracy. Errors and/or omissions are discussed and explained to the Carrier. When necessary, the manager may require a second completion of the form to assure that the Carrier is thoroughly familiar with its completion.

242. The proper adjustment of Carrier routes means an equitable and feasible division of the work among all of the Carrier routes assigned to the office. All regular routes should consist of as nearly 8 hours daily work as possible.

M 41 Handbook

911.2 The count of mail is used to gather and evaluate data to adjust routes fairly and equitably to insure that the workload for each route will be as near as possible to an 8-hour workday for the Carrier.

Evaluating the Route Office Time

Under normal conditions, the office time allowance for each letter route shall be fixed at the lesser of the Carrier's average time used to perform office work during the count period, or the average standard allowable office time.

No mail volume adjustments will be made to Carrier office work (casing and strapping out functions) or street work evaluations unless the mail volume for the week of count and inspection is at least 13% higher or lower than the average mail volume for the period between the most recent regular and the current inspection (excluding the months of June, July, August, and December).

M39 Handbook

242.32 Street Time

For evaluation and adjustment purposes, the base for determining the street time shall be either:

1. The average street time for the 7 weeks random timecard analysis and the week following the week of count and inspection; or
2. The average street time used during the week of count and inspection.

The manager will note by explanatory *Comment* on the reverse of Form 1840 or attachments thereto why the base street time allowance for the route was established at the time selected. The manager's selection of the street time allowance cannot be based on the sole criterion that the particular time selected was the lower.

Providing Carrier With Summary

A completed copy of the front of Form 1840 — reflecting totals and averages from Forms 1838, day of inspection data, route examiner's comments, and analysis of office work functions and actual time recordings — will be furnished the Carrier at least 1 day in advance of consultation. Completed copies of Form 1838 will be given to the Carrier at least 5 calendar days prior to consultation.

M41 923.1

Providing Carrier With Summary

A completed copy of the front of Form 1840, *Carrier Delivery Route — Summary of Count and Inspection,* reflecting totals and averages from Forms 1838, day of inspection data, examiner's comments, and analysis of office work functions and time recordings, will be furnished Carrier at least 1 day in advance of consultation. Completed copies of Form 1838 will be given the Carrier at least 5 calendar days prior to consultation.

242.345

Any time adjustment to a Carrier's base street time due to identified improper practices or operational changes (such as, but not limited to, the elimination of relay or park points, or travel pattern changes), must be documented by appropriate Comments on the reverse of Form 1840 or attachments thereto. Such adjustments must be discussed with the Carrier at the time of consultation concerning the route evaluation. If the Carrier, at the time of the consultation, notes the absence of such documentation in writing on the Form 1840 or attachment thereto, and initials and dates the Form 1840 or attachments thereto, and management does not supply such

documentation within 1 week, with a copy to the Carrier, the time adjustment shall be disallowed.
42.347 All time disallowances and related comments will be noted on Form 1840 or attachments thereto, and furnished the letter Carrier at least 1 day prior to consultation.

M39 243.11
Unilateral Method
Management may decide to plan unilaterally for automation and the reconfiguration of the letter Carrier routes. The unilateral planning is governed by the Memorandum of Understanding resolving the outstanding Hempstead issues dated September 17, 1992, and should also utilize the following:
a. After considering all factors, the postmaster or designated manager shall decide the tentative amount of relief or addition required, to place the route on as nearly an 8-hour daily basis as possible. The Carrier should now be consulted concerning any proposed relief or addition recommended for the route and the reasons for the adjustment. The comments and recommendations of the Carrier and whether there is agreement or disagreement with the adjustments along with reasons should be entered on Form 1840. The Carrier should not be required to sign a statement; items mentioned should merely be entered on the form as a record. Promptly after consultation, if the Carrier requests that the reverse of his or her copy of Form 1840 be completed, the Carrier must immediately give the copy to the manager for completion and return no later than 7 calendar days.
After a tentative amount of relief or addition for each route has been determined and recorded on Form 1840, in the *Adjustments Approved by Postmaster or Designee* column, the postmaster or designated manager must plan the actual adjustments in terms of ZIP+4 sectors and segments to be added or taken from the route. A route adjustment must not result in the splitting of a segment. (See Section 243.231c.)
The postmaster or designee must consider the comments of the individual who inspected the route, consult with the manager of the delivery unit, and consider suggestions from the Carrier serving the route.
New construction, records of mail curtailed, auxiliary assistance, overtime used, and Form 1840-B should be analyzed and the data used in considering the adjustment. These considerations are essential in making a fair appraisal of the route and before placing the adjustments into effect. Except in unusual circumstances, adjustments should not be made to cross delivery unit boundaries.
243.232 To determine the territory to be transferred to or from any route, consider that:
1. Scheme changes should be kept to a minimum and simplified where possible.

221.11 **Schedule** The count of mail on all letter delivery routes, regular and auxiliary, must be for 6 consecutive delivery days on one-trip routes and for 5 consecutive delivery days, exclusive of Saturday, on two-trip routes or one-trip routes with abbreviated or no delivery on Saturday. It is not mandatory that mail

counts begin on Saturday and continue through Friday so long as they are made on consecutive delivery days.

POSITIONS OF THE PARTIES

Union

The Union argued that it had met its burden on all of the grievances. It said that there had been no rebuttal at all to its allegation of no notice to the Union and the Carriers on the review, no specific evidence of the correction of shortcomings discovered during the review, and that that prevented the Union from participating meaningfully in the process and protecting its members, and prevented the Carriers. It conceded that the dry run training had been done at meetings but asserted that part of it should have been done at cases, and said that the practice completion and management critique of the dry run forms was an essential element of the process to assure that every Carrier could have correct input into the inspection.

It argued that the inspection itself was defective, especially in that the computerized finalization of the cumbers and routes was so concededly faulty, that time allocated to routes disappeared in a way that could not be explained, resulting in excessive overtime and overburdened routes. The Union conceded that Carriers, many or most of who were on overtime-desired list, were paid overtime, but it asserted that this was not a remedy for the harm that was done. After detailing all of the issues with the various departures from procedure detailed herein, the Union argued that once the adjustment was shown to be defective in so many ways, its results were suspect, and the more appropriate way to appraise whether the work had been done properly was to look at the results in terms of overtime. It argued that it had a contractual right to have the routes built around 8 hours and to be accurately timed and adjusted, and that neither excessive overtime nor routes adjusted so that the time it to complete deliveries was significantly higher than allowed by the system were consistent with the handbooks and manuals nor the National Agreement. It acknowledged that Carriers were paid overtime for the excess hours, but that that was not adequate compensation for the extra pressure the violations caused nor was the overtime as great as it might have been had managers who assumed the adjustments were accurate not constantly pressured Carriers to work faster to meet impossible production standards.

The Union argued that it grieved promptly at each point that a violation occurred, and that the Service, once it was placed on notice of the issues, could have easily avoided incurring extra cost out of this case by backing up and correcting its missteps. It noted that Management had not called a witness to controvert Union testimony that its objective from the start was to eliminate routes, and it achieved that objective, at least until a new inspection took place over a year later. Additionally, the Union noted, CCA employees who would as a matter of course have become regular Carriers, did not as a result of the cutbacks, and that saved the Service money.

Postal Service

The Service opened in this case with a concession that the case was mostly about remedy, saying that it had already paid eight employees for a period after the adjustment, but believed that additional payments to others were unwarranted. It asserted nevertheless that the violations were unproven, saying that Shanks' testimony that local management had advised the Union of the review, that Union officials had attended service talks at which updates to the shortcomings addressed at the review were addressed and remedied (which it said made the Union aware of the review), and that the dry runs had been properly completed with training sessions conducted with all employees.

It argued that the computer malfunction that caused disruption early into the implementation period had been rectified, and that because the Carriers who worked overtime had been paid a premium for that time, there was no basis for further compensation. It noted that it had identified eight Carriers who it deemed to be overburdened, and had unilaterally paid them a premium.

As to remedy, the Service took the position that there was no basis for compensation subsequent to the date the new CDRAAP process went into effect as a bar to new adjustments in September, 2014, asserting that past that point the NALC had effectively waived this sort of remedy for this sort of violation and had instead agreed to have any adjustment go through the CDRAAP process.

DISCUSSION

As in any contract case, the Union had the burden here of proving that the Service had violated the collective bargaining agreement. The four issues in this case appeared on their face to be complex, but they all fit together in a way that is relatively easy to analyze.

The Service regulates its processes thoroughly and pervasively, and consistent with that, it has in place detailed procedures that prescribe the manner in which Carriers must deliver mail and the time within which they are required to do so. Its manuals require that each route be structured meticulously and that schemes be constructed for Carriers to follow. It has procedures for examining routes and procedures for documenting those examinations and timetables for doing all of this. The Union has negotiated for and obtained a voice and a part in that process, and Art. 19 of the agreement incorporates by reference the handbooks and manuals of the Service that relate to wages, hours and working conditions. The Service writes those regulatory documents, but must provide the Union with an opportunity to examine any proposed changes in advance, and to grieve, on a national level, any change which it believes to be inconsistent with the National Agreement or inherently unreasonable.

As a result of this structure, it is fair to say that all of the USPS handbook citations set forth in this award are a part of the National Agreement and bind the parties just as forcefully as the National Agreement itself. (A Service challenge to the inclusion of some provisions will be dealt with below).

At least in part as a result of this, the route inspection process and all of the regulations that go with it are an important part of the parties' relationship, and define the demands and requirements with which Carriers must live while delivering the mail. The Union must, by contract, be kept informed of the steps the Service takes to establish, eliminate and structure routes, so that the Union has the opportunity to protest if it perceives that the way the Service has proceeded in a particular process related to delivery violates the National agreement or the Handbooks and Manuals.

A corollary to that is that once the Union has properly been given the opportunity to have that input and the time to grieve has elapsed, and filed grievances on the particular adjustment process have been dealt with, route inspections and adjustments are binding on all of the parties, and for the Carriers, the resulting structure defines their work in a very important and specific way. If the requisite notice has been given, and whatever objections the Union may have been dealt with completely, there will be a contractual presumption that the timing and structure of a route is fair and equitable, and Carriers will be expected and required to perform to those standards. The Service maintains a database with the

mnemonic DOIS, which specifies the amount of time it should take for a Carrier to deliver a specified load of mail, and Carriers must, each day, if they believe it warranted, request expansion of that time based on excess volume or other factors that will slow the completion of deliveries.

Where variables are present that affect those standards one way or another, adjustments are required, and there are prescribed processes for that. Mail volume changes from day to day, Carriers are absent from work and work is redistributed, streets, highways and bridges are torn, newly built, closed, and delivery times may be adjusted.

It is important to be aware, however, that where a properly completed adjustment is in place, Carriers will be required, day by day, to be governed by a presumption that those basic calibrations are correct, e.g. that it takes so many minutes to drop mail at ten houses along a particular route under normal conditions. This is because the parties have, in effect, agreed to a particular procedure for making those measurements, and if that procedure is followed, it is presumed that it will produce a fair result.

One consequence of this is that when a Carrier, on a normal day with normal mail volume and no special circumstances, takes longer than allowed to complete deliveries, negative consequences, possibly including discipline, will ensue. When the Union steps in to defend the Carrier, it will not have the right to assert that a properly completed route inspection and adjustment is faulty, because the process described above will have been completed

This is why the Service is held to the handbooks and manuals when it inspects and adjusts routes—it is because the procedure is designed and agreed upon as a way to assure a fair result, and without proper adherence to the procedure there is no such assurance.

An example is found in the street time for a route: where the route is properly established, it will be assumed, absent the presence of a number of anomalies, that a Carrier who can't complete the route in its prescribed time is deficient. Where the route inspection/adjustment process fails to follow procedure, it may be argued that that it is no less likely that the route is overburdened and the Carrier is performing adequately.

In the present case, the steps that the Union asserts were defective have a certain inescapable logic.

--They require, because the world and everything on it changes continually, routes be reviewed annually, and that the results of those reviews be shared with the Union.
--They require that prior to a route inspection a review be completed to assure that all of the job elements that may affect performance are as they should be, and there is a prescribed list of those elements.
--They require, so that the Union is on notice as to what such a review has identified as needing correction (and perhaps what the review has missed), that the result of the review be shared with the Union and each affected Carrier substantially before an inspection is begun.
--They require that a "dry run" of the inspection be completed, in effect training each Carrier to fill out the required forms that accompany the inspection, so that when they do so during the inspection they do so correctly. This is designed to protect both parties. A manager is required to review the completed dry run practice forms to assure they are done correctly, which in turn provides some assurance that the Carriers will fill out the forms for the actual inspection correctly.
--They require that management periodically review the routes and delivery times to assure that the routes are adjusted correctly.
--They require that once a route adjustment is complete and available for review, each Carrier be asked for feedback on any changes, and of course those comments must be reviewed and appraised.

An issue must be discussed at the outset. Management's advocate asserted in his closing brief that because it could not be shown that the alleged non-compliance with certain handbook language had a direct impact on wages hours or working conditions, those sections were not intended to be incorporated by Art. 19 into the National Agreement. That argument is innovative and somewhat unique, but is not correct. Art. 19 states that it incorporates into the agreement those handbook and manual provisions that relate directly to wages, hours and working conditions. The advocate's argument attempts to stand that language on its head. The language is drawn from law developed under the National Labor Relations Act, and means that the handbook provision itself must relate directly to wages, hours, and working conditions, and not that in order to make that

connection there must be an act or omission pursuant to that handbook or manual provision that has that effect.

The provisions that govern route inspections and adjustments all relate directly to Carrier workload, efficiency and performance standards. They all are part of a matrix that can be and is used, when completed and implemented, to make judge and discipline Carriers and lead them to work harder or less hard every day. They provide procedures for telling Carriers exactly how and where to walk, drive and park, when to eat and take breaks, and when to leave for the street and return to the office. They even prescribe methods for handing and sorting mail, down to details such as the number of letters to cradle at one time and where to stage letters when sorting them.

It is undeniable that these handbook provisions are integral with Carriers hours and working conditions, and to the extent that they result in more or less overtime being worked, wages. Route adjustments sometimes lead to elimination of routes and to excessing of Carriers, and they (as the Union alleged in this case) can affect whether CCA employees become permanent.

The Service's argument in this regard is therefore rejected.

In this case, there were serious issues related to these requirements.

First, as background, the entire process was first planned in September, 2013, at a time when there had been no count and inspection at the unit, required annually, for close to two years. That made it highly likely that adjustments to routes, and catch-up housekeeping would be needed.

Next, Union President Hornyak testified that while he was advised by Shanks in September, 2013 of a planned inspection that had the objective of cutting routes, he received no notice of the reviews until after he filed a grievance protesting their omission with a count and inspection about to begin. The review disclosed multiple deficiencies that required correction, and what should have happened was that Hornyak should have been notified of those findings with lead time adequate to assure their correction by management before the count and inspection began. Shanks testified that she passed the review materials on to local Manager Rezes for correction. The Service did not present Rezes as a witness. The Service argued that Rezes said in his contentions in the case file that he discussed all of the issues raised in the review with Carriers and that Hornyak was

present for many of these reviews. No dates were mentioned, but it is notable that in one of the case files there is a statement by Rezes which reads, in part:

> The forms have not been updated as a replacement had not been named for the previous manager who retired. James Rezes was named as the manager of Westlake effective 4/19/14 and PS Forms 1564a have been printed out and will be given to letter carriers for any updates to approved break and lunch times and locations. When this process has been completed forms 1564a will be placed in the route books.

April 19, 2014 was after the completion of the route inspection, and it must be observed that even at that point, the Rezes statement was prospective at least as to that form, and implies that corrections were ongoing at that point and could not have been implemented prior to the inspections. The case files stated in multiple places that the Union asserted that it had received no notice of the review prior to the inspections, so it was no surprise that Hornyak testified to just that at hearing. Rezes was not called to rebut that testimony, and as previously noted, his statement in the case file does not say that he did share those results as they related toa review, or even that he told Hornyak that a review was done, and given that that was the main allegation of one of the grievances here, the failure to even say that in a statement in the case file is the equivalent of an admission that Hornyak's and the Union's assertion is true. Rezes only said that says that Hornyak was present when issues were discussed with the Carriers at service talks, and places no date on that.

The case file included a list prepared by Shanks at the review of at least 12 deficiencies that she identified, including forms 1564a that had not been updated since 2011. There was no dated indication of correction of these items. Even if there were, an important purpose of sharing these with the Union is to give the Union the opportunity to assure that the deficiencies were corrected properly, and in good time for the route count to begin. Identification of such shortcomings is management's primary expertise and responsibility, not that of the Union, and management will be quick to protect that role when appropriate. The Union's responsibility in this regard is to keep informed as to these matters and to police the correction of such omissions when that benefits its members. It could not do that without timely acquisition of that list, and even to the date of hearing there was no record of just when those items were dealt with, if at all.

I have no choice but to conclude that this grievance has been substantiated and that this violation did occur.

Beach testified that the Carriers he interviewed said that although they all attended classroom training for the dry run (as did Beach), they said that there was no training at their cases, their forms were in many cases incomplete and were not returned with corrections. No manager who took part in this process testified at the hearing, even though this issue was far from a surprise. The completed dry run forms were not in the case files. There statements in the file supporting this, and some did say that the authors completed the forms. The Service effectively dealt with the training aspect of the dry run process by citing to the classroom training, but did not deal with the aspect of the incomplete forms and the failure of management to critiques the forms to the extent they were completed. Instead the Service argued that this was one of the provisions that did not relate directly to wages hours or working conditions, and argument I have already dealt with. It argued that it could not be shown that the violation alleged by the Union affected those conditions.

While the Service is wrong in saying that the language requiring and governing the dry run is not binding, there is some merit to its argument that an adverse effect cannot be shown. There was no such specific showing, but what still remains is the fact that the dry run process is one of the elements in place to assure the integrity of the of the ensuing inspection, and it must be assumed that it is in the handbook for a reason, especially since the review and correction of the forms is burdensome for management and consumes substantial time on the clock for the Carriers. This raises this element to a significant position, and that indicates, if the Service was willing to require that that cost be incurred, it was important. The conclusion must be that its omission was likely to undercut the quality of the process.

I find that this violation was substantiated.

Beach testified at length working from documents in the case file, that the count itself was flawed, pointing to the documents that showed that the Service had dropped hours, used low averages instead of high ones and other issues. These details were not well explored and the number are not examined in detail in either brief. It would be presumptuous of me to substitute my judgment or analysis for that of either party in that regard and I decline to do so.

There was evidence that management did not, as it was required to do, consult with each Carrier after sharing the new routes with them, to obtain feedback on issues, was not done, and no Service witness had personal knowledge that it was done.

I conclude that the route inspection and adjustment was flawed, because it departed in significant and meaningful ways from the procedures required in the M-39 and M-41 handbooks, at least one of which, the failure to share the results of the inspection with the Union, fenced the Union out of the route inspection process. It also produced a result proven to be faulty. If the process was flawed, then, based on the reasoning set forth earlier in this award, the times established by the inspection no longer may be presumed to be correct, and it is appropriate to look to the actual work times as a measure of whether the routes are overburdened. This is especially so because the computer run used to implement the adjustments to begin with produced a result which both parties agreed was hopelessly jumbled, and that was supposedly "repaired" through a process that was not made clear at hearing.

SUBSEQUENT EVENTS AND THEIR IMPACT ON THIS CASE

On September 23, 2014, the National Parties to this agreement entered into an agreement to accomplish route inspections and adjustments in a new and different way, and although the parties here disagreed to some extent as to the effect that the agreement should have on the remedy here, they were in accord that the new agreement, M-01845, City Delivery Route Adjustment Alternative Adjustment Process ("CDRAAP") precluded a remedy here that would involve any sort of direction to the parties that the routes of this unit be re-evaluated. The routes were, in fact, re-evaluated by use of CDRAAP during the past year, and that re-evaluation in effect ended the use of the adjustment and implementation that precipitated this case.

Paragraph 4 of that agreement provided, in relevant part, as follows:

> As of the date of this agreement, in any zones where a mail count and inspection has begun, but adjustments have not yet been implemented, all mail count and inspection data will be forwarded to the district lead team, which will assign a route evaluation and adjustment team to make any needed route adjustments. In zones where a locally developed joint route adjustment process has begun as of the date of this agreement, resulting route adjustments may be implemented. ...In all other

zones, locally developed joint route adjustment processes may only be used in accordance with the Memorandum of Understanding Re: Alternative Evaluation and Adjustment Processes.

It seems clear that for the situation in this case, where a route adjustment process is no longer ongoing but has rather already been completed and implemented, this new agreement does not apply, except that if the process were to be redone, it would have to go through CDRAAP, which is exactly what has occurred.

REMEDY

In terms of remedy in this case, the Service argued that once this agreement became effective in September 2014, no arbitral remedy could go past that point. The Union argued that it was seeking status quo ante, so that Carriers affected by the flawed adjustment process would be placed in the position they would have occupied had the violations claimed here had not occurred.

The Carriers affected by the adjustment here continued to work under the new, disputed routes until a new adjustment was implemented by CDRAAP. The Service, the Union argued, had ample time to correct the errors of its ways through a new inspection and adjustment between June 2014 and September 2014, and need not have been blocked by the institution of the CDRAAP process. The Union seeks a remedy which runs from 60 days after the June 9, 2014 institution of the new routes, August 8, 2014, through September 23, 2015.

The Service has already paid a group of Carriers some penalty overtime based on a selection process which it chose: It separated street and office time, eliminated from the remedy Carriers who had auxiliary assistance and days not showing any street time, and calculated an average number of hours for those routes. Its payments ran through September 23, 2014, stopping at that point on the theory that the CDRAAP agreement was a bar to going past that point.

It seems clear to me that while the CDRAAP agreement bars an adjustment outside of its parameters past that date, it does not bar a monetary remedy for an already completed, flawed adjustment such as this one, where the remedy does not change routes or delivery time and is merely compensation for the added burden of the bad routes.

The Service argued that it was inappropriate to issue an award beyond payment of overtime. In a situation such as this one, however, when Carriers work day to day on routes that are set too tight, they face a situation in which, each day, they know from experience they do not have enough time to finish without overtime, which they may not work without permission. They seek that permission, and supervisors who are trained to use the calculated routes as a guide push back and resist, and where the Carrier cannot obtain permission to work overtime, they must rush and at time fail anyway, facing discipline at times. Over the course of 15 months or more, this causes tangible damage. The argument that most of these Carriers liked to work overtime is greatly diluted because of this broader picture.

The parties seemed in agreement that an award issued by Arbitrator Klein (GATS12240382), which held, in similar circumstances, that any Carrier who averaged more than 8 hours 15 minutes on their regular route would be paid a penalty of 50% of their hourly rate for all hours worked on their regularly scheduled day in excess of 8 hours 15 minutes during the period.

The Service identified 8 employees who fit that description, eliminated days when there was auxiliary assistance, and paid them according to the formula from the period June 9-September 23, 2014, arguing that the effective date of the CDRAAP procedure should be the cut off. The Union which did not separate street from office time nor cull out those who received auxiliary assistance, identified 16 employees but sought the penalty from August 8th through September 23 of the following year.

Arbitrator Klein issued two similar awards on this subject in this district. In addition to the one cited above in April 2014, he issued another following a different formula in 2015 in Toledo, OH, in a different district. (GATS 12230908). In that case, unlike the earlier one, he cited to prior violations as a factor in awarding this, which is, after all, pay for no time worked. The penalty in that case was a flat daily penalty for every Carrier for a period somewhat over two months. Many arbitrators are reluctant to order a remedy which goes beyond just make whole for losses.

This case is different, however, from some other route inspection violation cases, because a remedy that directs a new mail count and adjustment is barred by the CDRAAP agreement. If that were not the case, then such an order would approximate make whole in

a situation where persistent violations had not occurred. Another way in which this case is different from some others is that the Union grieved each of the components of the violation separately, and the Service had to know quite early that it had stepped over the line. It may have been eager to achieve head count reduction, and did not do what it could have done, which was to delay implementation of the route adjustment and remedy its missteps, this avoiding any impact on the Carriers and any monetary obligation. If it obtained the Carrier comments on the 1840 forms and properly reviewed them prior to implementing the changes, it had to know that the initial computerized result was faulty on the scrambled paths of travel alone, and given its omissions to that point could have started the process over without liability.

I am persuaded that a monetary award is appropriate here.

The Service urges that street and office time be separated and the office time calculated based on book numbers, independently, and that for any day on which a route received auxiliary assistance no remedy should be awarded. The Union opposes both of those exclusions and presented a roster that included, according to its advocate, all excessive overtime of all Carriers.

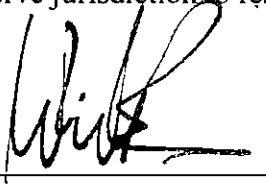
I am not persuaded that the separation of street time and office time is appropriate here, as the Service urges, because the one has a continual effect on the other, and a delay getting out of the office (for any of a number of reasons) can set a Carrier's street time off. I also am persuaded that Carriers who receive auxiliary assistance on certain days should have those days counted, as the extra time is a reflection of the route, not the Carrier, and the provision of auxiliary assistance can be a reflection of any of a number of circumstances. Additionally, where auxiliary assistance is provided, the respective regular Carrier and auxiliary will each be less likely to have excess overtime. If either of them still has excess overtime, they should be compensated for that.

The Klein award involved a period of just over a month in June and July. The period the Union seeks to cover in this case runs much, much longer, and includes the summer months, and December, normally excluded from a route evaluation. The Union urges that its exhibit, Revised Jt. 5 be used as prepared by it, saying its accuracy was not challenged at hearing. In reality, that exhibit was not explored in detail and I do not find it comfortable to accept it without such exploration. Instead, I award the following:

The grievance is sustained as follows: Each letter Carrier who averaged more than 8:15 hours/day on their regularly scheduled days (including utility Carriers) for the period August 6, 2014 through September 25, 2015 shall be paid extra for the additional time over 8:15 worked on those regularly scheduled days during that period at the rate of ½ the employees' base straight time hourly rate, except that the months of June, July, August and December of each respective year shall be included neither for the calculation of averages nor compensation. Employees already paid unilaterally by the Service as a remedy in this case shall have that payment deducted from this entitlement.

Additionally, the Service is directed to comply with the National Agreement and the applicable handbooks and manuals in reviewing, inspecting and adjusting routes in the future.

I reserve jurisdiction to resolve any dispute as to the implementation of this award.



Robert Tim Brown, Esq., Arbitrator Issued and Dated January 1, 2016.