

C-34817

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REGULAR ARBITRATION PANEL

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Javier Bernal  
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Region #10

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IN the Matter of the Arbitration	) GRIEVANT: Class Action
Between the	) POST OFFICE: Conroe, Texas
UNITED STATES POSTAL SERVICE	) CASE No.: G16N-4G-C 19371269
and	) UNION: 19C301150
NATIONAL ASSOCIATION OF LETTER CARRIERS	) DRT No.: 10-477487

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BEFORE: DONALD J. BARRETT, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Mr. Gilbert Miranda, LR Specialist<sup>1</sup>

For the Union: Mr. Arturo G. Ramirez, Regional Grievance Assistant

Place of Hearing: Conroe, Texas Post Office

Date of Hearing: June 30, 2020<sup>2</sup>

AWARD: This grievance is sustained

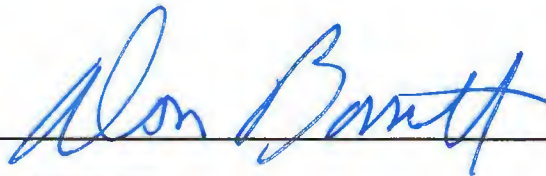
Date of Award: August 28, 2020

Award Summary

The Union provided persuasive evidence that the examiners charged with conducting the route examination at the Conroe, Texas Main Post Office during the period April 13-19, 2019 improperly evaluated said routes, and implemented adjustments on June 15, 2019 utilizing incorrect data.

The utilization of improper data resulted in routes that were not as close to eight hours as possible, and demonstrated a violation of the M-39 Handbook.

Arbitrator



<sup>1</sup> In the second seat for the Postal Service was Ms. Celana Casey

<sup>2</sup> The parties submitted post hearing briefs. Both were in hand on July 18<sup>th</sup>, and the parties agreed to an additional two weeks beyond the thirty-day time frame, until September 1, 2020. I am grateful to the parties for their understanding.

**STATEMENT OF PROCEEDINGS:**

The matter brought forth in this document came from a hearing held on June 30, 2020 at the postal facility located at 809 West Dallas Street, Conroe, Texas. This proceeding was conducted pursuant to the applicable provisions of the 2016-2019 National Agreement (Agreement or Contract) between the National Association of Letter Carriers (Union), and the U.S. Postal Service (Service or Management).

Pursuant to current societal customs all parties to this hearing practiced safe distancing, and wore a face covering when appropriate.

This hearing proceeded in an orderly manner with each party represented by experienced, competent counsel.

The parties to this hearing were given a full opportunity to be heard, to present argument, evidence, and witnesses in support of their position(s) taken. At the request of each counsel, the arbitrator administered an oath to each witness prior to their being examined.

The Union called the following witnesses:<sup>1</sup>

Mr. John David Thierry, City Letter Carrier, Conroe, Texas

Mr. Justin Wade Shaw, Union Steward, Conroe, Texas

The Service called the following witness:

Honorable Robert Allen Austin, Postmaster, Conroe, Texas

There were no procedural issues raised at hearing by the parties.

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<sup>1</sup> It was agreed by the parties that the statements offered in the Moving Papers from four other Union witnesses, Bagley, Cox, Stone and Taylor would exist as if they took the stand.

3.

**STIPULATED FACTS NOT IN DISPUTE:**

The parties agreed that no routes were eliminated due to the subject route inspection(s).

**JOINT EXHIBITS:**

Joint 1- The National Agreement, inclusive of the Joint Contract Administration Manual (JCAM)

Joint 2 – Moving Papers, Pages 1-896 & Pages 1-25 (DRT)

Joint 3 – Handbook M-39, Chapter 2

**ISSUE TO BE DECIDED:**

“Did management violate Chapter 2 of the M-39 Handbook and Chapter 9 of the M-41 Handbook via Article 19 of the National Agreement by improperly evaluating route count and inspection data and implementing improper route adjustments at the Main Post Office in Conroe, TX? If so, what is the appropriate remedy?”<sup>2</sup>

Counsel for the parties both provided written, and oral OPENING STATEMENTS. Each counsel then provided written POSTHEARING BRIEFS.

Each counsel also provided previously issued arbitral awards in support of their position. I have read each one and if found to be relevant to the issue before me I shall cite it in the findings of this award.

**BACKGROUND:**

Management conducted a route count inspection at this office beginning April 13, 2019, and ending April 19, 2019.

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<sup>2</sup> See J-2, Page 1, Step B Team Issue

4.

The implementation date for any changes as a result of this inspection was June 15, 2019.

The Union argues that Management violated various handbooks and manuals (M-41, M-39), and Article 15 of the Agreement when Management failed to conduct the inspection in conformance with applicable provisions as stated above.

Management argues that there is no harm demonstrated by the Union to support any violation, and that letter carriers are paid at the overtime rate if the need is there.

Management also argues that the Union has failed to raise any issues of impropriety in the post-inspection period to identify any route changes that resulted in any route being over, or less than the required eight (8) hours.

**RELEVANT CONTRACTUAL PROVISIONS:**

**Article 15, Grievance-Arbitration Procedure**

“Section 1. Definition. A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.”<sup>3</sup>

**Handbook M-39, Chapter 2 Mail Counts and Route Inspections**

“Section 242.122, 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.”

“Section 221.11, Schedule, The count of mail on all letter delivery routes, regular and ....

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<sup>3</sup> See Agreement, Pages 64-76 for full text

5.

... 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.”

“Section 241.4, 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.”

“Section 243.11 c. 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.”

“Section 222.214b, There shall be established for each letter carrier route a base minimum time allowance for each of line functions 14, 15, 19, and 21 of Form 1838, where applicable. Those base minimum times shall be fixed at 6 minutes for line 14; 5 minutes for line 15; 3 minutes for line 19; and 9 minutes for line 21. If during the week of count and inspection, the carrier’s average actual time for any of those line items exceeds the base minimum for the function, the carrier shall be credited with the average actual time, unless an adjustment to that time can be supported by appropriate comments of Forms 1838 or 1840 or any attachments thereto. In no event may the standard time for these functions be below the base minimum.”

Handbook M-41, Section 911.2: The count of mail is used to gather and evaluate data to adjust routes fairly and equitably to ensure that the workload for each route will be as near as possible to an 8-hour workday for the carrier.”

6.

**POSITION OF THE PARTIES IN THIS MATTER:**

**The National Association of Letter Carriers**

The Union maintains that Management has violated Articles 15 and 19 of the National Agreement when they made inappropriate adjustment(s) to the routes at the Conroe, Texas postal facility on June 15, 2019 after conducting a route count inspection between April 13-19, 2019.

The Union argues that while no full-time routes were eliminated, one auxiliary route (01072) was eliminated while letter carriers not on the Overtime Desired List (OTDL) were forced to work overtime, and their routes continually exceeded eight (8) hours each day.

That Management failed to credit proper time for line items during the evaluation process, instead made territory adjustments based upon times not reflective of actual times used for line 14-21 on Form 1838.

The Union states further that the examiner, during this route count took the liberty of changing the letter carrier's entry of actual times for line items throughout the week of inspection, and instead entered base minimum times on the Form 1838.

The Union argues further that Management, during this route count inappropriately disallowed time on the street evaluations. Evidence of record documents cases of disallowed time on numerous PS Form 3999's that should instead be considered appropriate, and not time wasting as noted by the examiners. The Union offers as examples, but not limited to, checking one's vehicle, receiving, or turning in accountables, participating in safety talks, retrieving hampers, picking up scanners, and personal needs, customer interactions.

The Union maintains that time being disallowed by the examiners is so egregious that it defies common sense. Examples such as waiting for a gate to open, waiting for a school bus to pick up, or dislodge students, and awaiting security clearance at a jail to deliver its mail.

7.

Further, Management failed its requirement to solicit any carrier's input prior to implementing adjustments, instead simply placing the form on the table with its results finalized. The carriers were not given any data which an examiner used to support the results of the evaluations, and/or failed to justify why they selected the lower of the two street evaluations.

The Union states that routes were not adjusted to as near eight hours as possible pursuant to the M-39, Section 242.122.

Management also violated Section 243.11 by refusing to consider, or seek any input from the very letter carriers serving the routes. Testimony offered at hearing by the postmaster supported these facts that Management failed to consider any carrier comments, and further stated that changes could have been made with little effort after the review process, yet none were ever conducted.

The Union states that Management's actions regarding this subject route inspection were arbitrary and capricious, and as such demands an appropriate remedy.

The Union requests this grievance be sustained in favor of the Union, Management cease and desist violating Chapter 2 of the M-39 Handbook, and Section 911.2 of the M-41 Handbook. That Management cease and desist violating the relevant provisions of the National Agreement, via the National level settlement, M-01661. Further, the list routes shall be adjusted to as near eight (8) hours as possible, in accordance with the M-39, Section 242.122 by providing relief within the time increments listed in the Union's Post-Hearing Brief.

Lastly, the Union seeks that each letter carrier at the Conroe, Texas postal facility be awarded the sum of twenty five (25) dollars per calendar day from June 15, 2019 (date of route exam implementation) until the routes are adjusted to as near eight (8) hours of work per day as possible for the regular letter carrier assigned and or any other remedy the arbitrator deems appropriate.

8.

The U.S. Postal Service

The Service maintains that the Union has failed in their contractual obligation to demonstrate their burden of proof of a violation(s) of the Agreement, and/or parts thereof.

That the Union has within their array of challengers the opportunity to seek auxiliary assistance on a route that is overburdened, or file a PS Form 3996 if their route is overburdened, yet the letter carrier(s), and the Union provided no evidence that anyone ever did so at anytime after adjustments were made on June 15, 2019.

Further, the Union has failed to demonstrate any harm caused to any letter carrier as a result of this route count, and the implementation of.

The Service argues that during those limited times when a carrier is required to work beyond eight (8) hours, they are duly paid at the overtime rate.

Further, the Union had the opportunity to request a special route inspection per the 271-G of the M-39 Handbook if any letter carrier was incurring over thirty (30) minutes of overtime yet they did not do so, instead filing this grievance instead.

The Service argues that the Workhour Workload Report for all city routes at Conroe shows clearly the total time used as a result of the subject route inspection, and this demonstration shows only a deminimis amount of time over or under the eight (8) hour bench mark required.

The Service argues further that testimony offered at hearing by the postmaster clearly demonstrated that letter carriers were provided copies of the PS Form 1838C's each day during the route count, and each was instructed to bring any/all errors to a inspection team leader, yet the carrier's and Union withheld any information until the Formal Step A procedure.

Further, all documentation submitted to this file demonstrates the subject inspection was conducted in full compliance with the applicable provisions of the M-39 Handbook, and any remedial action if a route is found to be out of adjustment following an inspection does not call for a complete reversal of the route inspection, nor does it call for a punitive remedy.



The Postal Service maintains that the remedy the Union is requesting is improper, and not warranted, and exceeds the boundaries which the arbitrator is held to pursuant to the National Agreement. The Service requests this grievance be denied in its entirety.

**FINDINGS & OPINION OF THIS ARBITRATOR:**

“There can be hope only for a society which acts as one big family, and not as many separate ones.”<sup>4</sup>

The counsel for the Postal Service maintains that the Service suffered many workplace issues that required everyone to pull together to get the job done during such crisis, and with the rapid decline in first class mail. He is not wrong to articulate such a position.

However, as much as Article 3, Management’s Rights gives the Service the opportunity to manage its mission on a daily basis, they must do so in tandem with all other Article’s of the National Agreement.

The issue before me that seeks a decision is whether Management violated the Agreement, and parts thereof in the manner they conducted the route count, evaluated the data, and implemented the adjustments.

The Service argues that they conducted a fair inspection, and did implement the results of such on June 15, 2019 without argument by the Union except this grievance.

The Service argues that the Union had means to challenge the results of the examination but chose not to instead choosing to file a grievance.

First, let it be known that this grievance remains the Union’s right to respond to their belief of a violation of the Agreement notwithstanding any other avenue of appeal they may also have.

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<sup>4</sup> Anwar al-Sadat, Egyptian Leader, 1918-1981

The Union claims that Management at the Conroe Post Office, through examiners brought in specifically to conduct a route count inspection the week of April 13-19, 2029 failed on various items that should have been credited to the letter carriers. The Union maintains that Management violated Section 222.214 of the M-39 by not crediting proper time for line items during the evaluation process. They state, "When the time recorded by the carrier is greater than the base minimum time, the time actually used must be entered in the appropriate column and can only be adjusted to a 'representative time' if the route examiner provides specific reasons for the adjustment." I find no such reasons offered anywhere on PS Forms 1838-C by an examiner or supervisor that offer a substantial, or relevant reasoning.

The Union argues that collecting keys, picking up accountable mail in the morning before leaving for the street, performing the daily vehicle checks, attending the occasional safety, or managerial talk on the workroom floor, and retrieving one's scanner all represent an average actual time, not "extended time" as instructed by the examiner during this route count.

Further, examples of disallowed time made on the street evaluations adds to the Union's position of a violation(s) of the Agreement, and parts thereof.

Of particular interest are the deductions made for the letter carrier's interactions with customers.<sup>5</sup> Surely Management, while not encouraging the carrier to dismount and have coffee with customers would not discourage the carrier from responding to a customer's inquiry, or a simple "hello, how are you." While much lately from higher quarters appears to minimize any "timewasting practices", the Postal Service remains a "Service" to its customer's, and the letter carrier remains an ambassador between the Postal Service and the customer.

Yet another deduction found throughout the case file is the carrier's need to sort DPS, small parcels and rolls throughout his/her daily route. This is a common, and necessary practice for the letter carrier to move the mail closer to him/her self in order to have it available for delivery into each box along the route. Simply, if deductions are made for this practice, the carrier ....

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<sup>5</sup> See J-2, Pages 79, 247, 248, 397, 699, and 802

.... will not have the mail ready when the carrier arrives at another section of his/her route. While the examiner may view this practice, and the time the carrier takes to perform it as a time wasting practice, I believe it is a reasonable, and necessary part of the letter carrier's performance, and could reasonably be viewed as a safe way to work instead of having to reach back for more current mail, or placing empty plastic containers in the rear of the vehicle.

Yet another example of the examiners deducting time needlessly is "personal needs time/restroom breaks." There is no doubt that an examiner on any given day can find such needs to be excessive, and it may be likely that a letter carrier could take advantage of this need. However, how does one reasonably determine whether the carrier actually has a need on this given day without placing oneself in the area of his/her personal needs. If there is one category for reasonableness, I believe this may be the one, yet the file before me gives examples where reasonableness may have eluded the examiner.<sup>6</sup>

The Union cites a few examples where time was disallowed such as waiting for a gate to open, a school bus picking up children or dropping them off, and a carrier who delivers mail to a jail, and must wait for security to clear them for entrance – a unique situation indeed that was not refuted by the Service.

Equally important in this matter is the Service's failure to genuinely solicit the employee's input prior to implementing the adjustments of this route exam.

The evidence before me supports the carriers impacted by this examination were also not provided the data used to support the results of the evaluations.

In support of this position is the testimony offered at hearing by Postmaster Austin. This arbitrator found the postmaster to be a very credible witness, sincere, forthright, and knowledgeable. He was not evasive in any way and answered questions from both counsel with the same responsiveness.

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<sup>6</sup> See J-2, Pages 164, 202, 203, 204, 329, 364, 395, 434, 589 & 590

12.

Postmaster Austin stated, in relevant part that he relied completely upon the examiners, and when confronted with some of the numbers supporting the evaluations, stated that to his knowledge more credit should have been given to the letter carrier.

He also offered that changes could have been made prior to June 15<sup>th</sup> but none were made. Further, he was unaware if anyone had spoken to the letter carriers about the evaluation times prior to the implementation date – that he “trusted the examiners.” He also agreed that some of the examiner’s “comments” were inappropriate.

As stated, I found the postmaster’s testimony to be honest and forthright and while his testimony alone does not lead me to my conclusions, in totality I find the Union has demonstrated violations of the Agreement, inclusive of the M-39 Handbook.

The M-39 provides an easy guide to conducting route examinations but only if one chooses to follow this guide. In the matter before me I find that the examiners failed to do so. More examples can be added to these findings but I find no need to overkill when a few examples serve the purpose.

For the reasons stated throughout, I find the Union has demonstrated violations of the Agreement, and parts thereof.

**AWARD:**

Management must cease and desist any violation(s) of the M-39 Handbook, and Section 911.2 of the M-41 Handbook.

Management shall cease and desist any violation(s) of National Settlement M-01661

A second route examination shall be undertaken within sixty (60) days. This examination shall include Union representative(s) for the purpose of bringing the cited routes as close to eight (8) hours as reasonably possible.

The Union shall be paid the sum of two thousand (2,000.00) dollars to disburse as they see fit, and to cover their costs for having to bring this matter to hearing.

Nothing follows this August 28, 2020 @ Manatee County, Florida by DjB