

REGULAR ARBITRATION PANEL

In the Matter of Arbitration between United States Postal Service and National Association of Letter Carriers, AFL-CIO	Grievant: Class Action Post Office: Baldwin, NY USPS No: B16N4BC19360246 DRT No: 15-473802 Union No: 003
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Before: EILEEN A. CENCI

Appearances:

For United States Postal Service: Steven Santiago

For the National Association of Letter Carriers: Roy Jancio

Place of Hearing: Freeport, NY

Date of Hearing: July 28, 2020

AWARD SUMMARY

Management violated the M-39 Handbook via Article 19 of the National Agreement by improperly conducting the mail count and route inspections of the Baldwin Station 11510 Post Office. As remedy, the arbitrator orders that a new count and inspection be conducted if the parties are unable to agree on inspection through the J-RAP process. The new count and inspection shall be conducted within forty-five (45) days of the date of this award.

Date of Award: October 8, 2020

Regular Regional Arbitration Panel



Eileen A. Cenci

OPINION

STATEMENT OF PROCEEDINGS:

This matter was arbitrated pursuant to the grievance and arbitration provisions of a collective bargaining agreement (National Agreement) in effect between the United States Postal Service (Service) and the National Association of Letter Carriers (NALC or Union). A hearing was held before me on July 28, 2020 in Freeport, New York. The parties appeared and were given a full and fair opportunity to be heard, to examine and cross-examine witnesses and to present argument. Each party called witnesses who testified under oath. Following the testimony, the parties agreed to file post-hearing briefs on August 28, 2020. The arbitrator received the briefs and closed the record on that date.

ISSUE:

The parties agreed to the following issue statement:

Did management violate the M-39 Handbook Management of Delivery Services and Handbook M-41 City Delivery Carriers Duties and Responsibilities via Article 19 of the National Agreement (NA) by improperly conducting the mail count and route inspections of the Baldwin Station 11510 Post Office?

If so, what shall the remedy be?

FACTS:

This grievance concerns route inspections conducted at the two stations of the Baldwin Post Office between October 27 and November 2, 2018. The two Baldwin stations are located only about one-half to three-quarters of a mile apart. The result of the route inspections was that two routes and three full-time positions were eliminated at one station, and an auxiliary route was added at the other.

Following the week of count and inspection, consultations were held with the carriers.

Carriers were shown the Forms 1840 and 1840 Reverse (840R) for their routes. These forms contain a great deal of information, including the net office and street times used each day, and the time used over or under standard. The 1840R shows the adjustment to each route. Each carrier signed these forms at their consultation. Branch President Walter Barton, who was the Union official involved in the count and inspection, was not present at the consultations. He testified at arbitration that he tried to go into one consultation but the management representative would not proceed with him in the room, so he left and did not attempt to go to the other consultations.

The parties stipulated at arbitration that four Union witnesses, if called to testify, would state that they signed the 1840 forms without their signatures signifying agreement to anything contained on the forms, and without understanding what they were signing. The parties further stipulated that a management witness would testify, if called, that he went over the 1840s in detail with the carriers before having them sign, and that all deductions were explained.

The Union filed a grievance claiming that the route adjustments at the Baldwin stations violated the National Agreement including the M-39 and M-41 Handbooks. In particular, the grievance alleged that consultations with carriers following the count and inspection were conducted in violation of proper procedures, and that the adjustments based on information in the Form 1840's and 1840Bs were in violation of applicable handbooks and manuals. The requested remedy was a *status quo ante* order that would restore all carrier routes and assignments to their original duties and return the carrier who had been assigned to the route to his or her former assignment. The grievance further asked that a new route count and inspection be conducted, similar to the Joint Route Evaluation Process (J-RAP).

Steward Thomas Leonard discussed the grievance at the Informal A level on July 9, 2019. He brought up what the Union believed were inconsistencies with the 1840 forms. The grievance was denied at that level.

The Union filed written contentions, and at the Formal A level filed additional written contentions that were more detailed. The Union's contentions stated in part, "Management has also not commented and explained on the 1840s how they made the adjustments. In many cases, management has reduced carrier street time without advising why they were reduced. Also, in some cases, management has use (sic) 1840(B) times in lieu of the carrier's actual performance without explanation. Samples of how summary of count and inspections are supposed to be

completed in accordance with the M-39 handbooks and manual are provided to support the Union's contentions." Documents pertaining to the count and inspection, including the 1840s and 1840Rs, and summaries of the adjustments made to office and street times on each route were available at the Formal A meeting. Branch President Barton, the Union's Formal A representative, testified at arbitration that at the Formal A meeting he discussed the changes that were made to the individual routes as a result of the evaluations, and based that discussion on the summary pages the Union had included in the record. Mr. Barton argued, based on the Form 1840s, that management had failed to follow the proper Handbooks and procedures during the count and inspection. Manager Kevin McGhee, who met with President Barton at Formal A, testified President Barton "pointed to times" but was not specific.

The grievance was denied by Manager McGhee at Formal A. The denial summarized the Union's position, stating that the Union had claimed that additional times had been added to the office and street for many routes, in violation of established procedures. In his denial Manager McGhee stated that all contractual procedures, handbooks and manuals had been followed, and that during the consultation process, each carrier had signed the Form 1840 indicating that they had no issue with the results of the adjustment. After the B Team reached impasse, the matter was appealed to arbitration.

Walter Barton testified at arbitration to a number of the specific routes on which the Union alleged improper office or street times were selected. On Route 1, for example, management did not select either the demonstrated street time (6:51) or the 8-week average (6:28). Instead, it used 6:38. The written explanation on the form was, "Demonstrated 8 week average selected. Plus street aux added." On the same route, office time was not transferred properly. It should have been 1:38 but instead 1:27 was used. No explanation was given for the discrepancy. On Route 2, the office time should have been 1:36 but 1:29 was used, without explanation. Similar discrepancies were identified on a total of twenty-four (24) of the routes that were inspected, resulting in a total loss of 2 hours and 39 minutes of office time.¹

Keith Ficeto, who served as Delivery Manager for the Long Island District at the time of

¹ Although the Union raised additional arguments regarding improprieties on the Forms 1840 and 1840R, I have not addressed all those arguments, having concluded that improper office time selections constituted a violation.

the count and inspection, oversaw the inspection. He testified at arbitration that he gave the Form 18387Cs, which contain raw information about the inspections each day, to the Union on a daily basis during the week of count and inspection, and sat down with Walter Barton to discuss any issues that were brought to his attention. It was his opinion that all Handbooks, Manuals and procedures were followed correctly during the count and inspection. He testified that the office time selected might not match one of the two methods identified in M-39 section 242.311 if, for example, there was no third bundle, and that such discrepancy would not necessarily constitute an error.

CONTRACT:

Article 19 Handbooks and Manuals

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable...

M-39 Handbook

241.34 The examiner who inspected the route or a designee must analyze the office and street time entries for all days shown and make appropriate comments in the space provided for this purpose or on a separate paper which is to be attached to the Form 1840. Any additional recommendations concerning any needed adjustment may also be made in this space. The information is needed by the manager who will make the actual adjustments of the route.

242.311 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.

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

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

242.347 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.

243.611 After the adjustment of routes has been placed in effect, the manager must carefully study and analyze PS Form 3997 or electronic equivalent from a nationally approved computer system that provides equivalent information; PS Form 3997-B, *Operations Analysis Report*; PS Form 1813; street management records; volume recording data; and carrier's time records to see that the objective has been met, especially for those routes where extensive changes have been made.

POSITIONS OF THE PARTIES:

NATIONAL ASSOCIATION OF LETTER CARRIERS (NALC OR UNION)

The Union has met its burden of proving that management failed to follow the procedures set forth in the M-39 Handbook. When selecting office times, Section 242.311 requires that the lesser of the average time used during the count period or the average standard allowable office time must be selected and entered on the 1840 Reverse form (1840R). Those two numbers are the only allowable choices. The Union introduced evidence that in many cases, different office times than the two possible choices were selected, and that written explanations for the selected office times were not provided. There were 2 hours and 39 minutes of deductions from the office times that should have been entered.

Improper adjustments were also made to street times, resulting in 3 hours and 7 minutes of street time lost in violation of the M-39 Handbook. Section 242.321 of the M-39 Handbook sets forth only two ways to calculate street time. As with office time, management is required to choose street time by one of the two identified methods. Here, however, street times were selected that were not obtained by one of the two approved methods, and few explanations for the deductions were provided.

The fact that individual carriers signed the 1840Rs during consultations, attesting that they had no problems with the adjustments, is not dispositive. The carriers had no Union representation and were provided very little information at the time they signed the forms.

The Union's arguments in this case were not new at arbitration. The 1840s, 1840Rs, and summary documents identifying what the Union considered improper deductions were introduced and discussed at the Formal A level.

The Union asks that the grievance be sustained. At arbitration, it requested that management agree to a new J-RAP inspection of the Baldwin routes. Since management did not agree to that suggestion and J-RAP is a voluntary process, the Union asks that the arbitrator order another route count and inspection, and order that the adjustment take place within sixty (60) days

of the arbitrator's decision.

UNITED STATES POSTAL SERVICE (USPS OR SERVICE)

The Union has the burden of proving a contract violation in this matter, and has failed to meet that burden.

Most of the argument by the Union at arbitration was new evidence and new argument that should be excluded because it was not raised by the Formal A level as required under Article 15.2. The Union made general allegations at Informal and Formal A, but did not specify how management was in violation of the contract, Handbooks or Manuals. It did not argue that management violated the M-39 by using office times that were unexplained and were not permitted under section 242.311. That argument was made for the first time at arbitration, but should be considered waived since it was not made at the lower levels of the grievance process. Similarly, throughout the grievance process prior to arbitration, the Union did not point to specific routes on which street times were improperly calculated.

Consultations were conducted properly according to the terms of the applicable Handbooks and Manuals, and carriers signed during those consultations that they had no problem with the adjustments that had been made. They should not be permitted to raise issues about the forms at a later date, after having signed without identifying any problems.

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

DISCUSSION:

The argument made by the Union at arbitration focused on unexplained alterations made on the 1840 and 1840Rs, to both office and street times. As a result, the Union argues that improper times were selected without adequate explanation.

The M-39 Handbook provides only two ways that office time can be determined:

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.

In a National Award, which is binding precedent in regional arbitrations, Arbitrator Benjamin Aaron ruled that the Postal Service could not reduce office time below the average

standard allowable time, even when there was evidence that a carrier was regulating his time. In a regional decision cited by the Union (Case #C93040588), Arbitrator Donald Olson applied Arbitrator Aaron's decision to find that the Service could not reduce the grievant's office time to less than the standard office time, and less than the net time, used by the grievant.

In this case, the Union introduced evidence, including the 1840 and 1840Rs, demonstrating that the office time selected for a number of routes was not the lesser of the average time used by the carrier or the average standard allowable office time. On a number of routes, the office time selected was lower than the lesser of those two numbers. Based upon Arbitrator Aaron's binding National Award in Case # C93040588, the Service therefore violated Handbook M-39 in its selection of office times.

The M-39 Handbook also provides only two choices for determining base street times. Section 242.321 provides that the base for determining the street time shall be either:

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

M-39 section 242.347 provides that 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.

The Union disputed the street times selected by the inspectors for a number of routes. It pointed out that in most cases, management used the lower of the two possible numbers it could have selected, and did so without giving adequate written explanations on the 1840s and 1840Rs for the choices. The Union claimed that the violations resulted in street times for the routes being a total of three hours and seven minutes less than the correct amount of street time. I find the evidence as to whether the street time selections violated Handbooks and procedures to be inconclusive, overall. In most cases, the lesser of the two acceptable methods of calculating base street time was used. The Union has not established, however, that using the lesser to the two possible base times is an automatic violation. While some of the written explanations for deductions are not self-explanatory to a third party, in the context of discussions that occurred during the consultations, those explanations may have been sufficient.

Having concluded that a violation occurred with respect to the calculation of office time, I

turn to management's argument. At the arbitration hearing and in its post-hearing brief, management argued strenuously that the Union's evidence and argument should be excluded because it was raised for the first time at arbitration.

If the Union did not properly raise the violations it alleges at arbitration at the lower levels of the grievance process, its arguments cannot be considered and the Union cannot prevail. It is essential, then, to closely examine the grievance record to determine whether the Union made management aware of its position prior to arbitration.

There is no question that comprehensive documentation was included in the grievance record at the Formal A level. The 1840s and 1840Rs were part of the record. The Union also prepared and introduced into the Formal A record a document summarizing the office and street times selected for each route, the average times on the routes and the adjustments made as a result of the inspection.

The parties agree that they discussed documents at the Formal A, but disagree about the specificity of the discussion. Walter Barton testified that he specifically discussed the routes, using the summary document that showed the times used and adjustments made on each route. Kevin McGhee, however, testified that Mr. Barton "pointed to times" but said nothing specific.

The Union's Formal A contentions must also be examined to determine whether they specifically set forth the arguments made by the Union at arbitration. Two separate written contention documents were included in the record. Both were provided to management prior to or at the Formal A meeting. The Union contentions specifically identified several problems that the Union has argued at arbitration. They stated that management had, in many cases, reduced street times without advising why they had been reduced. The contentions further stated that routes had had times added to office and street times in violation of established procedures. Management's Formal A denial, summarizing the Union claim, notes that the Union argued that additional time had been added to office and street times, in violation of Handbooks and Manuals. Management was clearly on notice at Formal A, then, that the Union was disputing the office and street times that had been selected, and the lack of explanation for additions or deductions that were made.

Given the amount of evidence shared by the parties at Formal A, testimony that the parties discussed that material at least to some extent during the Formal A meeting, and evidence that both parties understood the grievance to encompass arguments over the use of improper office and street

times without adequate explanation of deviations, it would be difficult to conclude that the Union's argument at arbitration was a surprise to management. It is true that the grievance at the lower levels was broader, and encompassed many more arguments, that the ones on which the Union focused most closely at arbitration. However, the arguments that formed the basis of the arbitration were included within the more broad-based arguments raised below. Specifically, the issue on which this arbitrator has found a violation, the use of improper office times, was included in the Union's Formal A contentions.

There is a further issue in this case as to whether any argument about the selection of improper times was waived when carriers signed the 1840Rs during consultations after the count and inspection. The carriers did not have Union representation at those meetings.

The parties have stipulated that four Union witnesses, if called to testify, would attest that their signatures on the forms did not signify their agreement the information contained in the documents, and that they didn't understand that information at the time they signed. The parties also stipulated that a management witness would testify, if called, that he explained the deductions before he asked the carriers to sign.

Although I accept the evidence that a management representative explained the documents to carriers and gave them an opportunity to ask questions, I also accept that individual carriers might not have fully understood those explanations. Certainly, they might not have understood that the selection of office times on those forms might have violated Handbooks and Manuals that have been imported into the National Agreement through Article 19. The fact that individual carriers signed the 1840Rs at the consultations did not waive the Union's right to grieve the count and inspection. The filed a timely grievance contesting the fairness of the count and inspection, and that grievance can go forward despite the signatures obtained during the consultations.

For the reasons stated above, I find that management violated the M-39 Handbook in its selection of office times on a number of routes that were lower than the lesser of the two allowable times. The remedy for the violation is set forth in the Award.