C#01702

UNITED STATES POSTAL SERVICE

AND

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO.

Re: Case No. S8N-3-U-1613
Grievance of I. E. Rosser
San Antonio, TX

APPEARANCES

FOR THE POSTAL SERVICE:	C. D. Weiser, Labor Relations Representative.
FOR THE UNION:	S. T. Pantoja, Jr., Labor Relations Representative.
ARBITRATOR:	John F. Caraway, selected by mutual agreement of the parties.

The grievant, Mr. Rosser, a carrier with twenty-one (21) years tenure with the Postal Service, was instructed that he could not use a stool while casing mail. This instruction occurred on February 8, 1979. The Union filed the instant grievance protesting that instruction.

Mr. Hierholzer, the chief job steward testified that Mr. Inselmann, the delivery manager of the Cresthaven Facility, placed Mr. Rosser on restricted sick leave which required that he produce a doctor's certificate covering any absences. The Union filed a grievance protesting this action. On the same day that Mr. Rosser was placed on sick leave, Mr. Inselmann gave him the instruction that he could not use his stool in casing mail. Mr. Hierholzer testified that he talked to Mr. Inselmannon February 9, 1979, and was advised that the reason for the instruction was that Mr. Rosser did not meet standards and was inefficient in his job performance.

Mr. Hierholzer stated that he knew of his own knowledge that Mr. Rosser had always cased his mail using a stool since 1973. He had received an Incentive Award dated August 8, 1977, which attested to his excellent job performance.

The chief job steward stated that he believed the reason why Mr. Inselmannissued the instruction was because he was angry and upset when he knew that Mr. Rosser was filing a grievance protesting his being placed on restricted sick leave.

The grievant stated that the last ten (10) years he has

used a stool in casing mail. The primary reason is that he has Arthritis and required the taking of medication. This medicataion caused him to develop an Ulcer. It was because of his seeking medical treatment and these illnesses that he was absent from work. This was the reason why Mr. Inselmann placed him on restricted sick leave.

Mr. Rosser stated that he does not remain seated at all times when he is casing his mail. He only sits down when his legs become tired. There were no complaints about his work prior to the February 8, 1979, instruction by Mr. Inselmann. He pointed out that he was a technician in 1979 responsible for five (5) different routes. He helped sub-carriers case their mail and then he would run his own route. This was why he left the facility on some occasions. But even when he did this, he completed his route within the prescribed time allotted. He pointed out that Mr. Inselmann had never criticized him for being late and leaving the station prior to February 8, 1979.

Mr. Inselmann testified that talked to Mr. Rosser on February 8, 1979, and instructed him that he could not use his stool longer as it was hampering his efficiency. Sitting down required him to case his letter mail one piece at a time. If he stood up he could take a handful of letters and place them properly and case them much faster. Casing the mail when seated required two separate handlings of the same letter.

Mr. Inselmann identified a schedule which he had prepared showing the number of times, dates and periods during which Mr. Rosser left the facility late. This was the basis of his instruction removing the stool.

Mr. Inselmann stated that leaving the station late causes the carrier to rush his street delivery time with safety jeopardized. He denied that the filing of a grievance by Mr. Rosser pertaining to restricted sick leave had anything to do with his decision on stool usage. Mr. Inselmann also denied that Mr. Rosser ever assisted the sub-carriers in casing their mail.

Mr. Inselmann testified that the reason Mr. Rosser was late leaving the facility was not because he was assisting the sub-carriers but was because he had bad practices in casing his mail which was caused by the use of the stool. Mr. Rosser never produced a medical statement to him from a doctor stating that Mr. Rosser needed a stool to perform his assignment of casing mail. He had no knowledge of any arthritic condition of Mr. Rosser.

Mr. Perez was the acting superintendent at the Cresthaven facility during the time in question, testified that he permitted Mr. Rosser to use the stool after February 9, 1979, because he did not know of the instruction which Mr. Inselmannhad given to Mr. Rosser not to use the stool. He further testified that the few times he asked Mr. Rosser to help a new carrier, Mr. Rosser refused saying that the sub-carrier was being paid and should perform his job duties.

On rebuttal, Mr. Hierholzer testified that he observed Mr. Rosser casing mail. He did not case one letter at a time, but cased the mail with a bundle in his hand. He also stated that Mr. Rosser left late because he was a floating technician and assisted sub-carriers on other routes.

Mr. Rosser, on rebuttal, stated that he took a handful of letters and cased them while seated. He works faster while seated. He denied he cased one letter at a time. He further explained that at this time there were two (2) "open routes" with no regular carriers. He helped on these two (2) routes voluntarily to assist the new carriers. He denied that he wasted time in his mail handling. He did not waste time while casing mail.

CONTRACT PROVISIONS INVOLVED

Article XLI, Section 3. - Part A:

> "The carrier may use stools while casing mail and performing other office duties, provided the use of such stools does not interfere with or affect the efficiency and standard job performance."

ISSUE

Did the Postal Service violate the National Agreement

when Mr. Inselmann instructed Mr. Rosser on February 8, 1979, that he could not use a stool while casing mail?

ARGUMENT

The Postal Service maintains that Mr. Rosser was habitually late in leaving his facility. This was caused by his poor casing procedures. This involved a double handling of mail because he was seated and could not reach the top levels of his case. This caused him to be late. Since he was inefficient in his job performance Mr. Inselmann had the right to eliminate his use of a stool. While it is true that Mr. Rosser finished his route within the required time, his deliveries were rushed up with increased safety hazards.

The Postal Services denies that the placing of Mr. Rosser on restricted sick leave had anything to do with the instruction pertaining to the use of the stool. In fact, the grievance protesting the restricted sick leave was filed a number of days after the instruction of February 8, 1979. The Postal Service also denies that Mr. Rosser was late because he was assisting sub-carriers. He was late because of his bad casing habits.

The Union argues that the reason Mr. Inselmann issued the instruction regarding the use of a stool by Mr. Rosser was because he was angry and upset at the carrier because of his filing a grievance pertaining to the restricted sick leave. The evidence showed that Mr. Rosser for at least ten (10) years has used a stool while casing mail. He was most efficient in performance of his duties receiving a Incentive Award on August 8, 1977. There was no evidence of any prior complaint by Management that Mr. Rosser was inefficient in the performance of his duties until Mr. Inselmann gave that instruction. Mr. Inselmann never warned Mr. Rosser that he was creating a problem by being late in leaving the facility.

The Union denies that Mr. Rosser was inefficient in performing his job duties. His casing the mail did not cause his leaving the station late but was because he was voluntarily assisting sub-carriers.

DECISION

At the outset the Union argument that Mr. Inselmann was engaging in a pattern of harrassment of Mr. Rosser must be disposed of. The Union argued that Mr. Rosser was placed on restricted sick leave on February 8, 1979, and on that same date Mr. Inselmann issued the instruction that Mr. Rosser could not use his stool while casing. The Union's argument is that the stool instruction was a result of Mr. Rosser filing a grievance protesting his being placed on sick leave. But at as the Postal Service pointed out in its brief, the filing of the grievance protesting the placing on restricted sick leave occurred several days after February 8, 1979. This could not serve as the motive for Mr. Inselmann issuing the instruction regarding the use of a stool to Mr. Rosser. Further, Mr. Inselmann denied that this had anything to do with his action regarding the stool usage by Mr. Rosser.

The issue in this case is whether the use of a stool by Mr. Rosser interferred with his efficiency and job performance. The primary basis of the Postal Services contention that Mr. Rosser's use of the stool caused inefficiency in his work performance was because of his lateness in leaving the facility. The Postal Service documented the occasions when Mr. Rosser was late leaving the facility. Mr. Rosser does not deny that he left the facility late. His explanation was that he was a technician in the carrier craft which meant that he covered routes. As a part of his work he helped the sub-carriers case their mail. Then he ran his own route. The reason he was late was his assisting the sub-carriers in casing their mail. While the Postal Service witnesses denied that Mr. Rosser had any responsibility to assist the sub-carriers to case mail, Mr. Hierholzer testified that Mr. Rosser did, in fact, help the various sub-carriers and that was the reason why he was late getting out of the facility. Even conceeding that there is a serious dispute as to whether Mr. Rosser did, in fact, help the sub-carriers case mail, it is diffi-

cult to believe that his leaving late was due to inefficiency in his job performance. Mr. Rosser is a carrier with some twenty-one (21) years experience. On August 8, 1977, he received the Incentive Award which is given infrequently to carriers for exceptional job performance. It is difficult to believe that Mr. Rosser's job performance deteriorated to such a point in two (2) years that his work would be classified as inefficient and sub-standard.

The argument is advanced by the Postal Service that Mr. Rosser had inefficient handling of the casing of his mail because he double-handled the mail when using the stool. But Mr. Rosser explained that he only used the stool on occasions. It was not a continuous situation. He only sat down when his legs became tired because he had an arthritic condition. Mr. Rosser said that he cases his mail faster when seated. That there was some merit to Mr. Rosser's statement is showed by the fact that prior to February 8, 1979, Mr. Rosser had received no complaints from any supervisor as to his job performance. To the contrary Mr. Rosser was regarded as one of the top carriers in the facility.

AWARD

The Union grievance is sustained. The Postal Service violated the Agreement by issuing an instruction to Mr. Rosser that he could not use his stool while casing mail. Any reference to this instruction shall be deleted from Mr. Rosser's personnel file. Mr. Rosser shall be permitted to use a stool while casing mail under Article XLI, Section 3., Part A of the National Agreement.

John F. Caraway
IMPARTIAL ARBITRATOR

New Orleans, Louisiana
May 19, 1981.