

C-25134

Regular Arbitration Panel

In the Matter of the Arbitration

Grievant:

Robert March, Jr.

between

United States Postal Service

Post Office:
Bethesda, Maryland

and

National Association of
Letter Carriers, AFL-CIO

USPS Case No.:
K01N-4K-C03012661

DRT: 13-040035

ARBITRATOR:

Mollie H. Bowers

APPEARANCES:

For the Postal Service:
For the Union:

Carolyn Turner-Williams
Robert Harnest

Place of Hearing:

Bethesda, Maryland

Dates of Hearing:

July 9, Sept 9 and 30,
and December 9, 2003

Dates Briefs Received:

NALC and USPS - 2/23/04

Record Closed:

March 1, 2004 (Receipt of
Hearing Exhibits UX-1 & 2)

Date of Award:

April 14, 2004

Relevant Contract Provisions:

Articles 3, 15, 19, 41
M-39, Sections 141, 211.1
and 271

Contract Year:

2001-2006

Type of Grievance:

Contract Interpretation

AWARD SUMMARY

Based on witness testimony and documentary evidence, the Arbitrator finds that the Service violated the National Agreement in implementing "Minor Route Adjustments" on September 9, 2002. Therefore, the grievance is sustained. Full discussion of the award follows.

Mollie H. Bowers
Mollie H. Bowers, Arbitrator

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USPS K01N-4K-C03012661 Robert March, Jr. DRT 13-040035
Hearing: Bethesda Maryland - July 9, Sept 9 and 30, and
and December 9, 2003

ISSUE

Did Management violate Articles 3, 5, 15, 19 and 41 of the National Agreement and Sections 141, 211.1 and 271 of the M-39 "Management of Delivery Services" in the method and manner in which they performed "Minor Route Adjustments" within the Bethesda, MD Post Office and if so, what is the appropriate remedy? (JX-2, pg. 5)

RELEVANT CONTRACT PROVISIONS

Handbook M-39, TL-13, 03-01-98

Section 141 Minor Adjustments

- 141.1 Route Adjustment Without Special Inspection
- 141.11 Minor Adjustments
- 141.111 The routes must be maintained in reasonable adjustment throughout the year. In order to fulfill this requirement, local managers may find it necessary to make minor route adjustments, to provide relief, add deliveries, capture undertime, etc.
- 141.112 When considering if a mail count and route inspection is necessary, review the nature and scope of the adjustments needed. If the review discloses that only minor adjustments are necessary, the adjustment should be made from current management records and information.
- 141.18 Management should carefully review and analyze street management records, Forms 3997, 1813, 3996, 1571, 3921, and 3921-A, and carriers time cards or PSDS reports in order to determine the current evaluation for each route and the needed adjustments. The manager using Forms 1840 should prepare a Summary of Minor Adjustment Worksheet for each route. The summary should contain the post office name, ZIP code, delivery unit name, route number, carrier's name, ID number, age, length of service, length of service on route, route designation, number of trips, type of route, type of vehicle used on route, and other appropriate information as indicated in exhibit 141.18.
- 141.19 Formula for Making Minor Adjustments

A simple formula for making minor adjustments, without mail counts and inspection, may be made in the following manner if the previous count and inspection data is reasonably current and the same carrier is serving the route being considered. _

Chapter 2 Mail Counts and Route Inspections

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 work hours, 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.

271 Special route inspections may be required when one or more of the following conditions or circumstances is present:

- d. A simple adjustment to a route cannot be made.

BACKGROUND and POSITIONS OF THE PARTIES

By letter dated April 11, 2002 Jeffrey Lewis, Operations Program Support Manager, informed Branch 142 President Joseph Henry that the Capital District "will be conducting Minor Route Adjustments during the months of April through August 2002." (JX-3d, Attachment 2) On September 9, 2002 route adjustments were implemented in Zone 15 (Chevy Chase) of the Bethesda Post Office. The Union filed this grievance, together with other individual grievances on behalf of other Zone 15 carriers, at Step A on October 4, 2002. The grievance alleged violations of Articles 3,

5, 15, 19 and 41 of the National Agreement and Handbook M-39. (JX-3a, pg. 3) The detailed statement of disputed facts required from the Union consisted of an attached 47 page document referenced in item #7 of the Grievance Form (8190). The document was entered into the record as Joint Exhibit 3b.

As the overarching allegation of violations of the National Agreement the Union asserts that the route adjustments made in Zone 15 were not minor but rather massive. The adjustments consisted of the abolishment of "7 full-time bid assignments, realigning territory and shifting territories to and from routes."

Further, the Union contends even if the adjustments could be called "minor" they were not made in accordance with the negotiated procedures for such adjustments and that Management "implemented its own methods." The Union maintains that Management relied "completely on DOIS and 3999's from a one-day walk with the Carriers", thereby ignoring completely the requirements of the M-39, Section 141. Additionally, the Union points out that Form 3999 is to be used solely for the street report for a full 6-day mail count and inspection. Management's use of the modified form in this instance was a clear violation of the National Agreement.

The Union argues that the appropriate remedies for what it characterizes as an "egregious disdain for the negotiated procedures" and for "the adverse and disruptive impact" are:

1. Reinstatement of each route as it existed the day prior to the realignments.
2. Compensation of each Carrier \$50 per day for each day they were required to work the realigned route.

3. Compensate each Carrier whose route was abolished an additional \$100 for each day they were displaced from their regular bid assignment.
4. Compensate each Carrier \$50 for each day they were required to deliver new territory.
5. Compensate the Union the sum of \$20,000 to remedy the adverse and disruptive impact and to redress Management's noncompliance to National level agreements and grievance settlements.
6. Cease and desist the usage of the Form 3999 except in 6-day mail count and inspection.
7. Cease and desist implementing adjustments unless the M-39 is strictly adhered to.
8. Cease and desist making any adjustments and/or setting office time using DOIS and any other linear mail measurement.

Included with the Union's submission was a listing of Step 4 decisions referencing the appropriate use of DUVRS, Linear Measurement, a directive from NALC's national office outlining procedures for and problems of minor route adjustments, Arbitrator William LeWinter's decision sustaining a grievance over the use of DUVRS, and a March 20, 1998 Memorandum from USPS to Human Resource Area Managers stating that all arbitration awards and grievance settlements are to be strictly enforced.

The grievance was addressed at a Step A meeting on November 12, 2002 between Wayne Waters, representing the Service, and Robert Harnest, representing the Union. The grievance was not resolved. However, the parties did sign a Memorandum of Understanding (MOU) agreeing that the instant grievance would represent "the CLASS OF GRIEVANTS affected by the Zone 15 adjustments that were implemented on September 9, 2002. The MOU also stipulated that the "final

decision/resolution/award" would then "be applied to the remaining grievances." (JX-3a, pg. 4)

At the Step A meeting the Service provided the Union with a written response to the facts and contentions filed with the formal grievance. The document, which included a narrative statement together with 8 attachments, was entered into the record as Joint Exhibit 3d.

In its response to the grievance the Service maintains that the term "minor" in relation to the route adjustment process "is not an adjective, but instead refers to the name of the adjustment process." Further, the Service points out that the Union's own supporting documentation states that the parties have agreed that "there is no nationally agreed upon definition of minor." Therefore, the Service asserts that since it is Management's prerogative to select the method used to do route adjustments, no violation occurred when Management elected to use the Minor Route Adjustment method.

The Service also asserts that the provisions of the M-39, Section 141 were strictly adhered to. It maintains that the Union received the advance notification required by Section 141. The Service points first to the Joseph Henry letter of April 11, 2002, noted previously which alerted the Union that the Capital District would be "conducting Minor Route Adjustments during the months of April through August 2002." The Service further asserts that information on unit and route reviews were shared with the Union in a meeting on May 24, 2002. The Service asserts that both the

Grievant, as Local Chief Shop Steward, and Branch President Henry were the Union's representatives at the meeting. A copy of a handwritten, unsigned, document was included as the Service's representative's notes of the points covered in the meeting. The Service further contends that the results of the route reviews were shared with the individual Carriers, with the Grievant in attendance, during the month of June 2002. The information shared, the Service says, included the required Form 1840's and the Summary of Minor Adjustment worksheet, and were the result of Management's review of street records, mail volumes, and clock rings. Copies of sample Form 1840's were included as attachments to the Service's narrative response.

With regard to the Union's contention that Management violated Section 141.19 the Service notes that the section merely outlines a formula for making minor adjustments that "may" be used. The clear language of the provision does not require the formula to be used. The Service holds that the procedure used for Zone 15 "is in compliance with handbooks and manuals and is the established procedure in the Capital District."

The Service rejects the Union's contention that Articles 3, 5, 14, 15, and 41 of the parties' Agreement were violated. The Service holds that these articles "do not pertain to the minor adjustment process" and furthermore "the Union cited no specific violations.

Following receipt of the Service's written response to the grievance, the Union exercised its right to make additions and

corrections. This document, entered into the record as Joint Exhibit 3c, included a narrative statement, a rebuttal letter from Branch President Henry on the May 24, 2002 meeting, and sample copies of the Unit Review Process documents used by the Service in the adjustment process in Bethesda. On November 19, 2002 the grievance was appealed to Step B. (JX-3a)

On December 16, 2002 the Step B Dispute Resolution Team reported to the parties that it had declared an Impasse on the grievance. (JX-2, pgs. 5-8) The Team's report noted that the Union Representative "contends that Management failed to properly use the Minor Route Adjustment process as required in the M-39 and that a recent Step B (UX-1), as well as an attached arbitration, GATS H98N-4H-C00198388 (UX-2), reaffirmed that position." The report also noted the Service's Representative position that "Management did follow all applicable rules and regulations concerning the Minor Route Adjustment process and that the prior Step B decision and cited arbitration are not applicable to this case." In further discussion of the Union's position the report expanded on the contention of applicability of the previous Step B decision noting that "(T)his very Dispute Resolution Team found that Management in the Beltsville Post Office within the Capital District to have similarly violated National Agreement when they made Minor Route Adjustments without using the data from the most recent mail count and inspection." The Union Representative held that since the circumstances in the instant grievance were basically the same the Team should be guided by its previous decision.

In response to the Union's assertion of the applicability of the prior Step B decision, the Service's Representative opined that their reliance on that decision was "misplaced and now inapplicable." The Service Representative's position was "(W)hile the Team did find a violation in that case that decision was made . . . lacking all the complete documentation. With the receipt of the additional information, the Management Representative, now could not agree that there was a violation and wanted to reopen the case but his request was denied by the Union." Finally, the Service Representative dismissed the applicability of the cited arbitration award (Robert Lawrence, 10/5/01) noting that "it dealt with 3 day mail counts and not Minor Route Adjustments."

The grievance was appealed to arbitration on December 18, 2002. During the 4 days of hearing the parties presented testimony supporting their respective positions as articulated at the previous steps of the grievance process. In addition to the Joint Exhibits cited above, the Union entered into the record 5 additional exhibits and the Service entered 1 (a reiteration of the Workhour Workload Report included in JX-3d). The Union exhibits included copies of the full text of the Step B decision and the Lawrence arbitration award cited at Step B of this grievance. Also entered by the Union (UX-4) was a copy of a letter dated March 18, 1991 from Deputy Postmaster General Michael S. Coughlin to Regional Postmaster General Regional Directors, Operations Support Field Division General Managers/Postmasters. The letter stated in its sixth paragraph:

"Unless a route stabilization agreement can be reached with the NALC, the establishment of a base in delivery operations must be done in accordance with the mail count, route inspection, evaluation and adjustment process outlined in the M-39 Handbook, "Management of Delivery Services," and the M-41 Handbook, "City Delivery Carriers Duties and Responsibilities," and in accordance with the National Agreement. No other process for the Adjustment of city delivery routes is authorized.

Adjustment through the use of the Unit and Route Review Process are not permitted except for minor adjustments with the appropriate documentation as required by the M-39 Handbook (Section 141). These procedures are to be accurately followed.

In further support of their respective positions, the parties attached additional documents to their post-hearing briefs. The Union submitted 10 Step 4 decisions/agreements and the Service submitted 3 prior arbitral awards.

DISCUSSION AND OPINION

This Arbitrator concurs with the Service's position that the Union has failed to fulfill its burden to prove violations of Articles 3, 5, 15, and 41 of the National Agreement. Article 19 serves only to make the M-39 Handbook an enforceable document under the National Agreement. Therefore, a violation of this Article would occur when provisions of the M-39 are violated. In the instance case this Arbitrator finds that the Union has fulfilled its burden to prove the violations of the M-39 that it asserted.

First, the Arbitrator rejects the Service's position that the term "minor" was not used in Section 141 as an adjective but rather as simply the title of the second process for route adjustments. The Arbitrator agrees with the Union that this is a ludicrous interpretation. While it is clear that there has been no

established definition nationally for what constitutes a "minor" adjustment that does not negate the importance of the term in defining when such adjustments are acceptable. In the absence of definitive evidence to the contrary one must assume that the parties intended the term to carry its traditional definition - "lesser or smaller in amount, extent, or size" (Webster's II). It is patently clear to this Arbitrator that the extent of route adjustments carried out in Zone 15 was not "minor" but massive in extent and size. Therefore, this Arbitrator finds that the use of the Minor Route Adjustment procedure was inappropriate and constituted a violation of the National Agreement.

While this finding alone stands to sustain the grievance, this Arbitrator also finds that the Service did not fulfill the procedural requirements of Section 141, particularly with respect to the documents and formula used. Deputy Postmaster General Coughlin's March 18, 1991 letter clearly established that "no other process for the adjustment of city delivery routes is authorized" and that the procedures "are to be accurately followed." With this directive, which was unrebutted by the Service, any choice between documents and formula which was given to the Service by the use of the word "may" in Section 141 was eliminated by USPS Headquarters.

In light of the above articulated findings, this Arbitrator herewith issues a cease and desist order to the Service and admonishes the Service to be more diligent in adhering to the National Agreement when contemplating or making route adjustments. Since route assignments are the essence of a Carrier's workday, the

protections afforded to Carriers in how changes are made are obviously important in assuring morale remains high when changes are necessary.

As to the matter of additional daily pay for Carriers affected by the September 2002 route changes, this Arbitrator cannot support the Union's request. This Arbitrator certainly understands the Union's frustration with the Service's lack of willingness to resolve the matter. However, in the absence of evidence to the contrary this Arbitrator must accept that all Carriers were paid appropriately for the hours worked, both regularly scheduled time and overtime. Therefore, as individuals, the Carriers are not entitled to additional compensation.

Given the passage of time and the obvious negative impact on the unit's operational efficiency this Arbitrator cannot in good conscious grant the Union's request that the routes be returned to their pre-September 9, 2002 state. However, the Union is certainly entitled to the appropriate documentation that the changes implemented are consistent with requirements of the National Agreement. Therefore, this Arbitrator is directing the Service to conduct a full 6-day mail count and route inspection in Zone 15 within 45 days of the date of this award.

While this Arbitrator has granted punitive damages to aggrieved parties in the past, she has done so only when finding that the violations resulted from willful and flagrant disregard of contractual requirements. In this instance the Arbitrator finds that the Service's actions met this standard. Furthermore, given

the severe negative impact of the Service's continuing actions on positive labor-management relations, the Arbitrator considers a monetary assessment to be essential to place the appropriate level of import on her findings. Therefore, the Service is directed to pay the Union the sum of \$5,000 within 30 days of the date of this award.

AWARD

The grievance is sustained.

Remedies:

1. The Service is directed to cease and desist from violating the National Agreement when considering, planning, or implementing Route Adjustments.
2. The Service is directed to conduct a full 6-day mail count and inspection in Zone 15 within 45 days of the date of this award.
3. The Service is directed to pay the Union the sum of \$5,000 within 30 days of the date of this award.

This Arbitrator will retain jurisdictions for 90 days from the date of this award to resolve any issues arising from the implementation of the granted remedies.

Date: April 14, 2004

Mollie H. Bowers
Mollie H. Bowers, Arbitrator

C-25637

In the Matter of the Arbitration

between

United States Postal Service

and

National Association of Letter Carriers,
AFL-CIO

USPS Case No:
K01N-4K-C03012661

Post Office:
Bethesda, Maryland

DRT: 13-040035

ARBITRATOR:

Mollie H. Bowers

ADVOCATES:

For the Postal Service:
For the Union:

Tony Franklin
Robert Harnest

ISSUE

Clarification of Arbitrator's award issued April 24, 2004 in the above referenced case.

AWARD

1. The Service is directed to cease and desist from violating the National Agreement when considering, planning, or implementing Route Adjustments.
2. The Service is directed to conduct a full 6-day mail count and route inspection within 45 days of the first date after the holiday block out period expires on such inspections.
3. The Service is directed to pay the Union the sum of \$5,000 within 30 days of the date of this award.

The Arbitrator acknowledges that the parties have agreed to accept this clarification as the final disposition of the case giving rise to the above-referenced award. The Arbitrator also acknowledges that the single portion of the award to be clarified is the amount of the punitive damages awarded to the Union.

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The Union posits that because the arbitration which, through a Memorandum of Understanding between the parties, was representative of some forty-three grievances the total amount of the punitive award is not \$5,000, but rather \$215,000. The Union is incorrect. The purpose of the punitive award was to signal to the parties that the Arbitrator viewed the Service's attempt to characterize route adjustments as "minor" as a willful and egregious violation of the collective bargaining agreement. The punitive damages award is \$5,000.00; no more and no less.

The remedy which speaks to the individual grievances is the requirement that a full 6-day mail count and route inspection be conducted at the facility. During the initial Hearings in this case, the Arbitrator was not apprised that the parties were signatory to a Memorandum that, in effect, placed a moratorium on implementation of a full mail count and route inspection. That moratorium has now been lifted and, thus, the Service is ordered, again, to conduct such a count and inspection with respect to the Bethesda office within 45 days of the first date the holiday block out period expires on such inspections.

Date: December 13, 2004

Mollie H. Bowers
Mollie H. Bowers, Arbitrator