

ROUTE EXAMINATIONS Special

ROUTE EXAMINATIONS, SPECIAL

The M-39 Handbook, which is incorporated into the National Agreement by Article 19, requires that a special route inspection be given whenever a carrier requests one and it is warranted. M-39 Section 271 states:

271g. If over any six consecutive week periods (when work performance is otherwise satisfactory) a route shows over 30 minutes of overtime or auxiliary assistance on each of three days or more in each week during this period, the regular carrier assigned to such a route shall, upon request, receive a special mail count and inspection within four weeks of the request. The month of December must be excluded from consideration when determining a six consecutive week period. However, if a period of overtime and/or auxiliary assistance begins in November, and continues into January, then January is considered to be a consecutive period even though December is omitted. A new consecutive week period is not begun.

271h. Mail shall not be curtailed for the sole purpose of avoiding the need for special mail count and inspections.

National Arbitrator Britton held in C-11099 Management must complete special route examinations within four weeks of the request whenever these criteria have been met even if the inspection must be conducted during the months of June, July and August.

The guarantees provided by Section 271 of the M-39 Handbook were further strengthened by a Memorandum of Understanding on special counts and inspections incorporated into the 1987 National Agreement. The Memorandum states:

The United States Postal Service and the National Association of Letter Carriers, AFL-CIO, agree that it is in the best interests of the Postal Service for letter carrier routes to be in proper adjustment.

*Therefore, where the regular carrier has requested a special mail count and inspection, and the criteria set forth in Part 271g of the Methods Handbook, M-39, have been met, such inspection must be completed **within four weeks** of the request, and shall not be delayed. If the results of the inspection indicate that the route is to be adjusted, such adjustment must be placed in effect **within 52 calendar days** of the*

*completion of the mail count in accordance with Section 211.3 of the M-39 Methods Handbook. Exceptions may be granted by a Division General Manager only when warranted by valid operational circumstances, substantiated by a detailed written statement, which shall be submitted to the local union **within seven days** of the grant of the exception. The union shall then have the right to appeal the granting of the exception directly to Step 3 of the grievance procedure within 14 days. (Emphasis added)*

Most Arbitrators have held that special inspections are mandatory when the union can prove that the criteria in M-39 Section 271 have been met. This is true even in cases where the regular carrier has been absent for part of the six-week period. The provisions of Section 271 refer to the **route** and not the carrier on the route, despite the fact that the purpose of any such inspection is to adjust the route to the individual carrier (See M-01262, M-01263, M-00688). Moreover, once a carrier requests a special route inspection and demonstrates that it is warranted, the Postal Service cannot evade the requirement to conduct the inspection by unilaterally providing relief, or making an adjustment. (See C-08727)

The special route inspections provided for in M-39 Section 271 must be conducted in exactly the same manner as regular counts and inspections. They differ from regular route inspections only in that they may be conducted in June, July or August. It is, however, not always in the best interest of letter carriers to request them during the low volume summer months.

Special route inspections are not unit and route reviews. The right to a special route inspection is unaffected by the fact that the office involved may be undergoing, or be scheduled for, a unit and route review.

Special route examinations are not a meaningless exercise. The M-39 Handbook requires not only that special inspections be conducted when warranted, but also that special inspections result in permanent adjustments to eight hours. M-39 Section 242.122 states:

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 eight hours daily work as possible.

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Arbitrators have held that it is not sufficient for the Postal Service merely to follow the procedures specified in the M-39 when examining and adjusting routes. Rather, the final result must be an eight hour route. In C-07630 Regional Arbitrator Dilts wrote as follows:

The inspections are not before the arbitrator as part of the present issue. What is before this Arbitrator is the matter of adjustments. In examining the record it is clear that the subject routes are not eight hour routes. This does not mean that the procedures for adjustment were somehow violated. The methods by which adjustments are made and the results of those adjustments on letter carrier work loads may be viewed as separable issues under the language of the M-39.

Arbitrators have granted monetary remedies in cases where the Postal Service violated the contract by refusing to conduct special route inspections when they were required to do so by the terms of M-39 Section 271. They reasoned that, since the grievants were required to work overtime they should not have worked, no possible future remedy could return that time. Since merely instructing the Postal Service not to violate the agreement in the future would not, in their view, be sufficient to make the grievants whole, monetary remedies were ordered. Arbitrator Pribble, in C-05545, wrote as follows:

Without clear evidence in this record that the Parties anticipated some way to make whole the three Grievants, who have been harmed by clear and repeated breaches of the Agreement, some monetary award is needed for the Grievants. Unlike the Gamser award, no restructuring of future opportunities or equalization formula applies here. In this case the three Grievants have been required to work overtime they should not have worked. No possible future remedy can return this time to them. Moreover, it would be an insufficient remedy here merely to instruct the MSC not to breach the Agreement in the future. This remedy will make the Grievants as whole as possible at this time. The Employer is ordered to pay [the grievants] one extra hour's pay at their regular rates of pay for each and every day that each Grievant has worked overtime until the results of their special route inspections are implemented.

There is more agreement among arbitrators that some monetary remedy is due in such cases, than there is upon the exact form any such monetary remedies should take. In contrast to Arbitrator Pribble's award cited above, Arbitrator Grossman, in C-06720, ordered the Postal Service to pay "one hour's pay at his regular rate of pay for each and every hour that he was required to work in excess of eight and one-half hours." Other Arbitrators have ordered, or memorialized consent awards agreeing to, monetary payments in fixed dollar amounts as remedies.

After review of all applicable arbitration awards, the Contract Administration Unit has concluded that the most appropriate remedy in such cases is similar to those granted in C-07630 and C-07536. The following wording is suggested:

The grievant(s) be paid an additional 50 percent premium for all overtime hours worked from the time the special route inspection should have been conducted until such time as the required adjustments are implemented.

All too often, the union has been able to convince an arbitrator that the terms of the contract have been breached, only to have the arbitrator find that the particular remedy requested is beyond his or her authority to grant, or otherwise inappropriate to remedy the specific violation. It is therefore advisable that all remedy requests include the additional catch-all phrase "or that the grievant be otherwise made whole." Awards, supporting the authority of arbitrators to grant monetary remedies in such cases include:

C-05545	Arbitrator Pribble	C4N-4J-C 6365	01-24-1986
C-06720	Arbitrator Grossman	N4N-1E-C 22422	12-16-1986
C-07229	Arbitrator Liebowitz	N4N-1K-C 33515	07-07-1987
C-07232	Arbitrator Grossman	N4N-4J-C 32218	08-06-1987
C-07536	Arbitrator Sirefman	N4N-1P-C 22802	11-09-1987
C-07630	Arbitrator Dilts	C4N-4J-C 30920	09-01-1987
C-07372	Arbitrator Stutz	N4N-1J-C 36001	08-22-1987
C-07569	Arbitrator Grossman	N4N-1F-C 30826	10-27-1987
C-07606	Arbitrator Grossman	N4N-1E-C 33973	11-27-1987
C-07613	Arbitrator Dennis	N4N-1G-C 35824	11-14-1987
C-08614	Arbitrator Render	W4N-5T-C 2960	12-03-1988
C-08727	Arbitrator Levak	W7N-5C-C 5445	03-10-1989
C-08792	Arbitrator Lange	W4N-5B-C 8594	03-21-1989
C-09327	Arbitrator Lange	W4N-5T-C 36919	08-23-1989
C-10071	Arb. Stoltenberg	E7N-2F-C 18778	06-21-1990
C-10474	Arbitrator Johnston	S7N-3C-C 28108	10-17-1991
C-10635	Arbitrator Roukis	N7N-1R-C32345	02-20-1991
C-10167	Arb. R.G. Williams	S7N-3F-C 26923	08-06-1991

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SUPPORTING MATERIAL

M-01476, Pre-arb
January 22, 2003, 194N-4I-C-98000468

The issue in this grievance is whether a local district policy is in violation of Handbook M-39, Section 271.g when it states that the six-week analysis period starts with the most recent Friday prior to the date of the special inspection request and works backward for six consecutive weeks.

While it is anticipated by the parties that a request for a Special Route Inspection pursuant to 271.g of Handbook M-39 will be based on reasonably current data, the local district policy as described above is unreasonably restrictive and will be rescinded.

This agreement is without prejudice to management's right to argue that a request for special inspection under 271.g was unreasonably delayed, or the union's right to contend that such argument is without merit.

M-01486, Step 4
April 29, 2003, E98N-4E-C-02007370

The issue in this case is whether the time limit for initiating an Informal Step A dispute over the denial of a request for a special route inspection made under Section 271.g of Handbook M-39 begins at the end of the six week qualifying period.

After reviewing this matter, we mutually agree that no national interpretive issue is presented in this case. The parties agree that the time limit for initiating an Informal Step A dispute over the denial of a request for a special route inspection does not begin at the end of the six week qualifying period unless it is the date the request is denied.

M-00872 CAU Paper, August 1, 1988
Contract Administration Unit publication summarizing arbitration awards concerning the failure of management to grant special route examinations.

C-11099 National Arbitrator Britton
August 12, 1991, H7N-NA-C 68

Management must complete special route examinations within four weeks of the request by a regular carrier whenever the criteria set forth in the M-39 Handbook have been met even if the inspection must be conducted during the months of June, July and August.

C-07232 Regional Arbitrator Grossman
August 6, 1987, N4N-1K-C 32218

(Consent Award) The parties agree that routes must be adjusted to as close to eight hours as possible. Therefore, in any future case where section 271(g) of the M-39 handbook is violated by Management; or the routes are not adjusted to eight hours, a monetary remedy is necessary to make the grievant(s) whole. In the instant dispute, the monetary remedy will be a cash payment of \$250.00 each to each of the eight grievants. See also C-07229

C-05952 Regional Arbitrator Levak
December 19, 1985, W4N-5B-D 3530

Where an employee meets the standard of M-39, Section 271.g, and requests a special route inspection, discipline for excessive office or street time, is inappropriate unless and until such an inspection is conducted.

M-00211 Pre-arb, March 22, 1974, NE 418

The Postal Service reaffirms that when special inspections are made pursuant to Part 227 (sic) of the M-39 Handbook, they shall be conducted in the same manner as the annual count and inspection.

M-00632 Step 4, January 19, 1978, NCW 7959

When a regular special office count is conducted, it will be accomplished in accordance with the applicable provisions of Handbook M-39.

M-00728 Step 4
September 28, 1977, NCW 5287

Special inspections shall be conducted in the same manner as the annual count and inspection.

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**C-09970 Regional Arbitrator Lange
April 4, 1990**

Management wrongly denied grievant's request for a special examination on the ground that he had not served the route long enough to become proficient; monetary remedy ordered.

**C-10474 Regional Arbitrator Johnston
October 17, 1990**

Where management wrongfully refused to give special route examination, remedy is to pay aggrieved carrier at the overtime rate for all hours of auxiliary assistance.

**C-10516 Regional Arbitrator R. G. Williams
December 28, 2990**

Management violated the contract when it denied grievances requesting special route examinations with the statement, "Although the grievance is denied for the reason stated above, the grievant's route will be checked within 4 weeks," but then refused to conduct the route check.

**M-00660 Step 4
July 31, 1978, NCE 10846**

A supervisor should normally reserve any comments about the grievant's performance during a special route inspection until the inspection is later discussed with the carrier.

M-00609 Step 4, August 27, 1980, N8 W 0343

In the instant case, the grievant, who is the regular carrier on the route in question, requested a special count and inspection of his route because the provisions of Section 271 of the M-39 had been met. His request was refused because he only served on his route eight (8) days out of the thirty-eight (38) day period.

The Union contends that the provisions of the M-39, Section 271 refers to the route and not the regular carrier assigned to the route and that the grievant's request should be honored even though he was not serving his route during the entire period in question. This position is consistent with that of the Postal Service.

M-00219 USPS Policy Letter, April 14, 1982

In the Memorandum of Understanding of July 21, 1981, between the USPS and NALC, we agreed that our joint objective is to reduce the number of carrier route that will be scheduled for annual mail counts and route inspections. The Memorandum does not limit or preclude inspections required under the provisions of Section 271g, Handbook M-39. If a route meets the criteria in Section 271g, M-39, and the regular carrier assigned to the route requests a special mail count and inspection, management must conduct the count and inspection within 4-weeks of the request. Unsatisfactory conditions such as "poor case labels", "poor work methods", or "no route examiners available" should not be used as an excuse not to conduct the inspection within the 4-week time frame.

**M-00695 Step 4
October 14, 1982 H1N-5H-C 6171**

Section 221.121 of Methods Handbook, Series M-39, provides for carrier verification of count when the manager counts the mail during a mail count and inspection. The intent of this language is also applicable to special office mail counts as provided for in Section 141.2 of the same handbook. There simply are no provisions for mail count verification of linear measurements.

**M-00690 Step 4
November 3, 1983, H1N-5G-C 14443**

A letter carrier who is limited to eight hours of duty may still qualify for a special route inspection if no other limitation exists which could distort a proper evaluation.

**C-10635 Regional Arbitrator Roukis
February 20, 1991**

Management violated the contract when it refused grievant's request for a special route exam because a unit and route review was scheduled.

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M-00688 Step 4

July 2, 1982, H8N-4B-C 21531

A route may qualify for a special count and inspection pursuant to the provisions of M-39, Section 271, even though the regular carrier was not serving the route during the entire six-consecutive-week period due to illness.

M-01262 Step 4

July 19, 1983, H1N-5D-C-12264

Pursuant to 271, M-39 Handbook, the regular carrier may request a special mail count if, during any six consecutive weeks, the route shows over 30 minutes overtime or auxiliary assistance on each of the three days or more in each week during the period. The special mail count should be granted where the carrier's work performance is otherwise satisfactory. The absence of the regular carrier during a portion of the period is not currently a controlling factor.

Note: In this case, the grievant had only carried the route for 30% of the qualifying period. During the rest of the time it had been carried by a PTF carrier. See file.

M-01263 Step 4

August 10, 1984, H1N-5C-C-22733

The parties agree that the M-39 Handbook provision (Part 271.g) refers to the route and not the regular carrier assigned to the route. Further, we agreed the only question in this case is whether the part-time flexible carrier's work performance was satisfactory during the six consecutive week period. Therefore, this case is suitable for regional determination.

Note: In this case, the grievant was new on the route. The route had been vacant during the qualifying period and had been carried by PTF carriers and the T-6. See file.