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Javier Bernal
National Business Agent
N.A.L.C.
Region #10

REGULAR ARBITRATION PANEL

IN the Matter of the Arbitration) GRIEVANT: Class Action
Between the) POST OFFICE: Dallas Texas
UNITED STATES POSTAL SERVICE) CASE No.: G16N-4G-C 18148833
and) UNION: SE 0418
NATIONAL ASSOCIATION OF LETTER CARRIERS) DRT No.: 10-427746

BEFORE: DONALD J. BARRETT, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Mr. James D. Chandler, Jr. LR Specialist

For the Union: Mr. Arturo G. Ramirez, Local Business Agent

Place of Hearing: Dallas, Texas

Date of Hearing: April 9, 2019 & May 7, 2019 (Briefs Received May 17th)

AWARD: This grievance is sustained

Date of Award: May 26, 2019

Award Summary

The Union provided clear and convincing evidence that Management failed to follow the requirements of the M-39 Handbook in the manner by which they conducted, and then implemented the results of the route count/inspection at this station.

The routes were not adjusted as close to eight hours as possible, time disallowed was unreasonable and unfair, and there was no discernable evidence of consultations with the letter carriers.



Arbitrator

STATEMENT OF PROCEEDINGS:

The grievance discussed within was brought to an arbitration hearing on April 9, 2019, and May 7, 2019 at the U.S. Post Office facility located at 401 DFW Turnpike, Dallas, Texas pursuant to the provisions established by the parties 2016-2019 National Agreement, or Agreement, or Contract between the National Association of Letter Carriers, or Union and the U.S. Postal Service, or Service, or Management.

The Union filed a timely grievance dated January 16, 2018, and the parties met throughout their established grievance procedure but were unable to find a resolution to their differences, and the Union then timely appealed this grievance to arbitration.

I was selected to hear this grievance by the parties as a current member of their Regular Regional Arbitration Panel, and did afford them a full, fair, and objective opportunity to present argument, evidence, and witnesses on behalf of their stated position(s).

The counsel for the Union, and the Postal Service were fully prepared at hearing, experienced, articulate, and professional throughout both hearings. I thank each counsel for their enthusiasm, and presentation skills.

In the second seat at both hearings for the Postal Service were Ms. Kimberly D. Waller, Labor Relations Specialist, Dallas TX District, and Mr. Eugene Lott, Labor Relations Specialist, Dallas TX District.

As stated above, this matter was first brought to hearing on April 9th, and continued on May 7, 2019.

At the conclusion of the second day, the parties expressed their desire to file Post-Hearing Briefs to the Arbitrator. It was agreed that Briefs would be post-marked no later than May 15, 2019. I received both timely, and thank the parties for insuring compliance.

Both parties provided previously issued arbitral decisions in support of their positions.

I will reference them as I find appropriate in my opinion later in this award.

3.

The parties expressed their intention to present witnesses on their behalf, and requested that each be sworn an oath prior to being examined. This request was so honored.

The Union called the following witnesses:

Mr. Stephen Ellenberg, Treasurer

Mr. Brian Thompson, City Letter Carrier

Ms. LaShawn Silas, City Letter Carrier

It was stipulated by the parties at hearing that the following witnesses' statements contained in the Moving Papers/Case File represent what their testimony would be if presented at hearing.

Mr. Damian Duncan (Page 1637)

Ms. Cheryl Jackson (Page 1608)

Mr. Michael Hubbard (Page 304)

Mr. Marcus Burking (Page 1629)

Ms. Kimetra Lewis, President, Branch 132¹

The Service called the following witness:

Ms. Rovyn King, Senior Operations Programs Specialist

JOINT EXHIBITS:

Joint 1, The National Agreement including the Joint Contract Administration Manual (J-CAM)

¹ This witness was presented as rebuttal to testimony offered by the Service's witness.

4.

Joint 2A, Step B Team decision, Pages 1-13

Joint 2B, Moving Papers, Pages 1-1772

STIPULATED FACTS NOT IN DISPUTE:

“Zone 75203 Prior to adjustments: 10 Routes and 1 Auxiliary Route, after adjustments: 9 Routes and 1 Auxiliary Route.”

“Zone 75216 Prior to adjustments: 32 Routes and 1 Auxiliary Route, after adjustments: 29 Routes and 0 Auxiliary Routes.”²

ISSUE TO BE DECIDED:

“Did management violate Article 19 (M-39) of the National Agreement in the manner it implemented adjustments following the Route Count and Inspections (RCI) at Caesar Clark Station? If so, what is the appropriate remedy?”³

BACKGROUND:

Management conducted a Route Count Inspection at the Caesar Clark Postal Station beginning on October 21, 2017, ending on October 27, 2017, and the results of this inspection were implemented in that station on January 6, 2018.

The inspections for these two zones, 75203 and 75216 determined the loss of one full time route in Zone 75203, and the loss of three full time routes, and one auxiliary route for Zone 75216.

² See J-2B, Page 1, Number 16

³ See Step B Team Issue, J-2A, Page 1

The Union disagreed with the manner in which this inspection was conducted, the results of it, and the loss of the routes, while the Service maintains that the inspection/route count was conducted in compliance with its obligations pursuant to the M-39 Handbook.

The Union grieved these outcomes, and without the parties able to resolve their disagreements, the Union appealed this grievance to arbitration, with the two hearings being the result of such appeal.

RELEVANT CONTRACT PROVISIONS TO THE MATTER AT HAND:

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. This includes, but is not limited to, the Postal Service Manual and the F-21, Timmekeeper’s Instructions.”

M-39 Handbook

Section 241 Summary of Count and Inspection

241. “Purpose: Form 1840, Carrier Delivery Route-Summary of Count and Inspection, provides for the consolidating and completing the evaluation of data recorded on Forms 1838 of the count and inspection period. It provides also for comments by the examiner inspecting the route and by the postmaster or designated manager making the adjustments.”

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 examiners 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."

M-41 Handbook

911.2 "The count of mail is used to gather and evaluate data to adjust routes fairly and equitably to insure that the workload for each route will be as near as possible to an 8-hour workday for the carrier."

POSITION OF THE PARTIES IN THIS MATTER:

The National Association of Letter Carriers

The Union maintains that the Service has violated Article 19 of the National Agreement, inclusive of the M-39, Chapter 2 when they made inappropriate adjustments to the routes at the Caesar Clark Station on January 6, 2018.

That Management evaluated routes, and made territory adjustments based on times that did not include base minimum times for line 14-21 items on the PS Form 1838.

That letter carriers record actual times for line items throughout the week of inspection on PS Form 1838-C, with those items transferred onto the electronic version of Form 1838.

That should the examiner find the time recorded by the carrier is less than the base minimum time, the base time must be entered on this form. And if the time recorded by the carrier is greater than the base minimum, the actual time used must be entered in the appropriate column, and can be adjusted to a representative time only if the examiner or supervisor provides specific reasons for the adjustment. No such adjustment may reduce the allowed....

..... time below the specified base minimum time. That the M-39 states that, "In no event may the standard time for these functions be below the base minimum."

Further, Management failed to give a base minimum time to routes for the office break option that if doing so would have resulted in forty three (43) minutes base office time instead of the thirty three (33) minutes allotted by Management in this inspection.

That Management improperly disallowed time on the street evaluations for such things as drinking water or hydrating, interaction with customers, personal needs time, restroom breaks, fixing knee brace, or no explanation offered at all in some instances where time was disallowed.

That these deductions were not discussed with the letter carrier at any time during the evaluation process, or during a consultation process, and the carrier was not given any opportunity to object to such improper disallowances.

That Management failed to solicit any authentic input from the carrier, with the carrier only being brought into a room and told to sign the forms.

That Management failed to provide the carriers with any data to support the changes being made to the routes, and also failed to provide the carriers with PS Form 1840 at least one day in advance of the consultation, only providing it on the day of the consultation.

The Union argues that Management's own witness confirms that any carrier comments at the time of the final consultations were not considered, and that even if they had been, there was no opportunity remaining to implement changes prior to the implementation of the route adjustment(s), and changes could only be made after a review process, which never took place by Management.

The Union argues further that Management's own "Workhour Workload Report" supports their position that routes were not adjusted to as near eight hours as possible pursuant to the M-39, Section 242.122.

That this report is generated for Management's purposes only which only adds to its validity.

8.

The Union requests that the arbitrator find for the Union, order new inspections, order Management to cease and desist such violations in the future, order that routes be immediately adjusted to as near eight hours of work per day as possible for the regular carriers, and to serve as an incentive against future violations, award each carrier at this station twenty five (25) dollars per calendar day from January 6, 2018 until the routes are adjusted to as near eight (8) hours as possible for the regular carrier, and any other remedy the Arbitrator deems appropriate.

The U.S. Postal Service

The Service maintains that the Union has failed to meet its burden to prove a violation of the National Agreement has occurred in this matter. That contrary to the Union's assertions the Service followed all the requirements of Article 19, M-39 Handbook throughout the Route Count/Inspection at the Caesar Clark Station in December, 2017.

That if the Union, in their misplaced haste to file a grievance over this issue had waited the mandated sixty (60) days after the implementation of these adjustments, they would have found the routes to be as near as eight (8) hours as possible.

That any reliance upon the Workhour Workload Report by the Union is misplaced, as this report is based solely on the employee's clock rings, which may be corrected after the fact for improper clock rings made by the letter carrier, with such time disallowed.

That the Union has failed to demonstrate how the letter carriers have been harmed in anyway by these needed adjustments. That there is no evidence provided of forced overtime, or late delivery associated with the adjustments implemented.

That no letter carrier submitted a request for a special route count inspection after these adjustments were made, as is their right pursuant to the M-39, Section 271.

This is further evidence that the carrier has found no route actually overburdened by this count.

Management argues that letter carriers at Caesar Clark did, in fact sign the 1838's as accepted, and had ample opportunity to make comments, or to discuss any concerns with local Management but in most cases simply chose not to do so.

That Management did give consideration to those comments that were made by the letter carrier(s) where applicable.

That Management found the base minimum to be appropriately applied as thirty three (33) minutes for all routes, and that the evaluations were conducted fairly, and impartially.

That any time deductions made were from obvious clock ring recording errors committed by the employee's improper time card rings.

That consultations were done properly, and carriers were allowed to ask questions. And letter carriers went through a dry run previous to the actual examination, and trained how to properly complete line items.

The Service maintains that route inspections are not an exact science, but the Union has failed to provide factual evidence that Management actually failed to follow the mandates of the M-39 when conducting this examination.

The Postal Service states that for all these reasons, and more as articulated throughout these hearings, and case file the Arbitrator should deny this grievance in its entirety.

FINDINGS & OPINION OF THIS ARBITRATOR:

Falsus in uno, falsus in omnibus. In law this means simply, "False in one thing, false in everything."⁴

The matter brought before me is familiar, as it is to the parties, and a number of arbitrators.

⁴ See Dawson v. Bertolini, 70 R.I. 325, 38 A.2d 765,768

There has been a series of Route Counts/Inspections during a similar period of time as this matter throughout Dallas District Stations. I have been privileged to hear no less than two other similar matters as this grievance, and the parties have provided me with other arbitral decisions of a similar nature.

The familiarity for this arbitrator is not limited to the parties' advocates, (excellent) witnesses, (aptly prepared by counsel) and locations (Dallas Stations/Branches) but the similar claims made by each party that Management has failed to adhere to the requirements of the M-39 Handbook which outline the means and methods for conducting such inspections, or that Management has, in fact followed those citable dictates of the Agreement, and/or parts thereof.

Article 3 of the Agreement allows Management the exclusive right to, "maintain the efficiency of the operations entrusted to it", and also to, "...determine the methods, means, and personnel by which such operations are to be conducted."⁵

There can be no doubt as to the challenge today's business climate places upon the Postal Service to maintain an efficient, and cost effective operation to its customers, particularly in light of the overly competitive business models employed by the Postal Service's competitors.

Clearly, the Union's and its membership, all employees of the same Postal Service suffer the same fate as the Agency itself when such means of efficiency cannot be attained, or the Service's ability to attempt such efficiency is unduly hampered.

That said, the parties also operate pursuant to a bargaining agreement long established between one and the other that spells out the terms, conditions, procedures, and processes by which the Postal Service performs many of its tasks that relate to its employees, their wages, and working conditions. Law, statute, and bargaining history guarantee such compliance. Arbitration itself is a child of that marriage between these very parties.

⁵ See Article 3, Management Rights, Page 4-5, National Agreement

11.

While Article 3 of the Agreement grants Management such exclusive rights to manage their operations, it does so in conjunction with other contractual obligations that carry equal weight.

Just as the Postal Service cannot operate without its employees, and the employees have no employment without the Postal Service, one article of the Agreement must be fully recognized as another. Article 3, and Article 19 both apply with equal persuasion.

In the instant matter before me, the Union claims (passionately) that Management at the Caesar Clark Station in Dallas Texas, through the insight, and direction of their Operations Programs Support staff failed to follow the established mandates of Article 19, Handbooks and Manuals, and through that Article the M-39 Handbook when conducting the Route Count/Inspection at this station from October 21 through October 27, 2017, and then implementing the results of this inspection on January 6, 2018.

After a thorough review of the voluminous record before me, the articulate testimony offered at hearing, and the parties Post-Hearing Briefs, including the previously issued arbitral awards, I am persuaded with clear and convincing evidence that the Union's position is supported by this record.

While Management's witness states that the letter carriers at this station enjoyed a "dry run" where the forms associated with a route count and inspection were fully explained to them, the evidence before me disputes the other requirements of the M-39 Handbook.

Section 243 of the M-39 Handbook is specific regarding the obligation to consult with the carrier in these situations both before the actual inspection, and after the week of inspection.

Section 241.4 states in relevant part, "A completed copy of the front of Form 1840 – reflecting totals and averages from Form 1838, the day of inspection data, route examiners comments, and analysis of office work functions and actual time recordings will be furnished the carrier at least 1 day in advance of consultations. Completed copies of Form 1838 will be given to the carrier at least 5 calendar days prior to consultation."

There is no evidence before me that supports Management having done this as prescribed by the M-39 Handbook.

The clear and convincing evidence supports the Union's contentions that the Form 1838's were placed before the letter carriers, all on one day⁶, and they were simply instructed to sign, with little to no information shared with the carrier supporting the numbers, and changes displayed before them on the form(s).

There is no evidence that the carrier(s) were provided the 1838 a day before, nor is there supporting evidence that Management met their obligation to provide the supporting documentation (Completed copies of Form 1838) at least 5 calendar days prior to the consultation.

In fact, to my observation based upon the record before me the use of the word "consultation" is misplaced entirely.

I find reason to presume the obvious – that Management simply conducted this count/inspection, and placed their results before the letter carrier for their acknowledgment only.

Management states they gave consideration to comments offered by the letter carriers at the final "consultation" but at that point the cost, and effort needed to make any further changes would be prohibitive.

I agree. Because at that point Management's position regarding this route count/inspection had been set in stone, and the letter carrier's comments were irrelevant to the process, and the implementation of Management's findings.

I find little to no evidence of any solicitation, or consideration of letter carriers input regarding the possible changes to a route, or to the Union regarding the loss of routes in this station.

⁶ See J-2, Page 33

Further, I am in agreement with the Union's contentions that Management violated Sections 242.344 and 242.345 of the M-39 Handbook in the manner by which the inspection team made disallowances for time during the street evaluation part of the inspection.

Throughout the record before me are instances of time disallowances for such things as personal needs time – the need to use a toilet while on the route. While a letter carrier is allowed two breaks, normally one in the office, and one on the street I find that Management's position as stated in the record that the street break is for the purpose of "personal needs" to be unreasonable, and illogical.

I recognize that there is always the possibility an employee may abuse such an opportunity, the fact of this is that the need to use the toilet while on the route is not a privilege, it is very likely a need that most often needs to be fulfilled at a reasonable time from awareness.

Time was disallowed for drinking water, or hydrating while on the route.

I shall trust that a reasonable person becoming aware of a letter carrier in Texas drinking water, or another such drink to remain hydrated is more a necessity that should be encouraged instead of penalized.

There is further evidence throughout the case file where the examiner disallowed time(s) with no explanation whatsoever. While these instances may not represent the majority, it does represent the arbitrary manner by which the Service conducted this count/inspection at Caesar Clark Station during December, 2017.

It is obvious from the record before me that the Postal Service, in this instance undertook a process that is fully regulated through Article 19 of the Agreement, the M-39 Handbook and simply treated the letter carrier involved as a collateral, unnecessary part of the process, with indifference toward their right to participate as prescribed in the M-39 Handbook.

There is simply no other reasonable conclusion that can be reached in this matter.

14.

Management was insistent on conducting this process on their own, with results most favorable to their preconceived position(s), and demonstrated very little, if any intention to “consult” with the letter carrier, or the Union.

Doing so (consultation) is not an option, it is a requirement that subscribes to the proposition that Management will conduct a route count/inspection that is fair to both parties, that seeks adjustments, if needed that in the end bring the route to as close to eight hours as possible.

While the very articulate and capable advocate for the Service objected passionately to the Union’s submission, and the Arbitrator’s acceptance of the Workhour Workload Report for the period January 2, through April 30, 2019⁷ the purpose of such a Management generated report details the hours of each route at Caesar Clark during this cited period.

Management argues that this report is based on clock rings of the employee, and is not truly reflective of the total hours because local Management must make adjustments to the employee’s clock rings made in error.

I do not find this argument to be persuasive. This is not a “daily” report but instead appears to reflect a four (4) month period of time. And during this period, after the implementation of the route count/inspection demonstrates routes that are not close to eight hours, further supporting the Union’s contentions.

Arbitral precedent has long established that unless some deliberate attempt to mislead the other party is disclosed, or if new evidence appears substantially immaterial, an arbitrator will be disinclined to rule the matter out. It is for these reasons that Union-1 has been accepted, and why I find it to be relevant to the matter at hand.

This Management document does not change the issue, or broaden the scope of this grievance but does highlight what appears to be a very important result of this route count/inspection, and therefore makes it relevant.

⁷ See Union 1, Two Pages

15.

As I previously stated, and sincerely believe that the Postal Service faces new challenges to its very existence every new day, and needs the ability to respond to those challenges, as well as the support to do so. Many of those challenges may result in staffing changes, realignment of routes, elimination of facilities, etc.

However, while the Service needs the freedom to perform in today's business environment, they cannot do so in a vacuum. They must adhere to the bargaining agreement long in place that mandates compliance.

Unlike that old adage that states it is easier to seek forgiveness than permission, the cost of non-compliance is far greater than simply seeking forgiveness.

For the reasons cited above, I find that the Union has provided clear and convincing evidence that Management has violated the National Agreement, Article 19/M-39 Handbook.

AWARD: This grievance is sustained.

Management is ordered to cease and desist from any future violations of the Agreement, M-39 Handbook.

The results of the subject route count/inspection shall be maintained only until a new route count/inspection is held at the Caesar Clark Station within one hundred and twenty days (120) from the date of this award.

The Union shall be informed of the details of the new count throughout the entire process, including the consultation procedure.

Each letter carrier at the Caesar Clark Station relevant to this grievance shall receive a one-time payment of five hundred (500) dollars. The parties shall jointly determine who is relevant.

The Union shall receive a one-time payment of five thousand (5,000) dollars toward the costs of processing this grievance.

Nothing follows this date May 26, 2019 @ Manatee County Florida, DjB