

REGULAR ARBITRATION PANEL

In the Matter of Arbitration)	
)	
between)	GRIEVANT: Class Action
)	
UNITED STATES POSTAL SERVICE)	POST OFFICE: Germantown, MD
)	
and)	CASE# K06N-4K-C 09342141
)	
NATIONAL ASSOCIATION OF)	
<u>LETTER CARRIERS, AFL-CIO</u>)	

BEFORE: Mark A. Rosen, Arbitrator

APPEARANCES:

 For the Postal Service: Sylvester Johnson, Labor Relations Specialist

 For the Union: Delano Wilson ,Local Business Agent, Region 13

Place of Hearing: Germantown, MD

Date of Hearings: March 26, 2010

Date of Award: April 16, 2010

AWARD SUMMARY: The grievance is granted in part and denied in part for the reasons stated herein. Management violated Article 19 of the National Agreement, by not complying with M-39, Section 126.42 and ELM Sections 665.16 and 665.44 as discussed below. The appropriate relief is that Management shall cease and desist from intentionally using inaccurate time codes. Management is on notice that subsequent similar violations shall not be tolerated and may justify more severe corrective action, depending upon the circumstances involved therein. The Union's requested relief regarding the disciplining of Supervisor Bedi is denied

FACTS

This is an unusual case in many regards. The record in this case before the Step B team consisted of 1217 pages. The majority of those pages are copies of Germantown carriers' Employee Everything Reports over three months used for the Route Inspection of May 20009. There are 37 routes in Germantown. Branch 3825 Vice President and Shop Steward Amy Campain filed this grievance alleging Management, in particular supervisor Harmeet Bedi, violated the Articles 15 and 19 of the Agreement , including (but not limited to) Section 665.16 and 661.2 of the Employee and labor Relations Handbook (ELM) , M-00600605, and Section

126.42 of the Handbook M-39, "Management of Delivery Services", by intentionally and repeatedly falsifying portions of carriers' office time with the Time and Attendance Control System (TACS) operation 782 (code for training), when in fact no such training occurred. Campaign's extensive four plus pages of Contentions attached to the grievance form states in pertinent part:

.....

The Union discovered that Supervisor Harmeet Bedi (Fingerprint code /Employee 10 number -[deleted]) was falsifying carrier clockrings. Upon discovery of the falsification on August 4, 2009, the union went back 3 months to the Route inspection period of May 2009. The entire 3 month period of May, June and July are filled with Supervisor Bedi going into TACS and falsely putting down a training code of 782 (training) when in fact, no training had occurred. Falsification of the training 782 code can be proven by the very fact that all of the times that the alleged training took place were different (such as 9.55, 9.33 10.00 etc) for the same day, the amounts of times used for the 782 codes were different amounts (such as .41 hours, .55 hours .89 hours etc). Mgt. does not dispute this fact. In the Formal A meeting, Mgt attempted to claim that Supervisor Bedi was putting in the codes for stand-ups and talks. This can clearly be disproven by the sheer number of "training" codes that took place almost daily and apparently not for all of the carriers in a day. The 782 training codes were numerous throughout the week, sometimes up to 5 or 6 days. In Germantown Md., we have one to two Standup (Service talks) meetings a week using about 10 minutes in a day. These stand-ups are always given right before break time which is scheduled for 9:00 a.m. IF these were standup codes, as mgt. claims, they would be uniform, they would have been for all of the carriers working that day and they would have been for the same amount of time at the same time of day.

Stand-ups (Service Talks) are line 21 items. Arbitration M-00605 is enclosed (please see item #2). The training code of 782 is meant for training such as a work video, a newly introduced work method implementation such as FSS, etc. Supervisor Bedi continuously used this code to falsify and manipulate the office time to make better numbers for the office.

The month of May was especially important because all of the supervisors, managers and carriers were trained about the importance of the clockrings during May that would be used to show the office and street times for the routes. Sup. Harmeet Bedi was fully aware of the importance of clock ring integrity. This Union Rep gave several stand-ups, with the supervisors present, to the employees regarding this matter. Mgt. does not dispute this. On August 4, 2009, this Union Rep. gave the Lead Team the clockrings for May 2009, showing the clock ring falsification. The Lead Team and the DEAT team agreed that the clock rings were falsified (please see notes in the route inspection documentation packet enclosed.) and gave every route in Germantown Standard Office time. This can be proven

by the notation from the DEAT Team in the comment box on the routes that were under standard that "Due to questionable/fraudulent clock-rings, Standard office time was mandated."

.....

The Union became aware of the falsification using the training code 782 on August 4, 2009. The Union made mgt aware of the clock rings on the same day. On August 11, 2009, Mgt. told all employees to go to the time clock for a standup talk and to use code 782. (Mgt. has agreed as of today's date not to use operation 782 code for carriers during stand up talks as this is a line 21 item and is part of our regular duties.) Later in the week, this Union rep asked to see a random selection of 2 days clock rings. On August 11, 2009, (please see enclosed clock rings) not only did the carriers themselves clock on to code 782 for the service talk as instructed by management but Supervisor Harmeet Bedi then went back into TACS and gave the carriers ADDITIONAL FALSE TRAINING!!!! Highlighted is the carrier clock ring for 782 by the employees (very uniform, same time and amount) and the additional time added by Sup. Bedi. This kind of persistent, blatant disregard for the rules and integrity of Postal documentation and Data entry cannot be for put aside or forgiven.

The ELM 661.2.L states "Prohibition against fraud or false statements" Falsifying the clock rings with premeditation to alter the office time clearly constitutes fraud and false statements.

The ELM 665.16 states

Deliberate falsification week after week, month after month, is not honest, is not trustworthy, and is not being of good character and reputation....

The M39 Section 126.42 states "Assure that all clock rings are accurate because their carrier report could be selected as a basis for completing the Form 1840-8, Carrier Time card Analysis. II That comes directly from the supervisor's handbook and is BASIC. This supervisor violated the accuracy of the carrier's time which then completely and falsely skewed the Time Card Analysis for the May 2009 Route inspection and adjustments. Included in the Union's packet are 2 prior settlements regarding falsification by mgt. in Germantown. The first is the Formal A Grievance # 74-09-MGB2 dated September 4, 2007 states "From this point forward. Management personnel who deliberately falsify clockrings or instruct Carriers to *falsify clockrings. will be removed from the Postal Service subject to a complete and fair scrutiny* of the facts. 11.(Also enclosed in this packet is a similar Formal A from another city, Rockville, signed by a different Postmaster to show that this settlement is fair and reasonable.) Complete and fair scrutiny of the clockrings, will without a doubt, show that deliberate falsification took place by Supervisor Harmeet Bedi. This grievance settlement is binding and should be the foundation to remove this supervisor from his position as City Letter Carrier Supervisor. (Please see the 3 enclosed documents from Postmaster General Potter and Patrick Donahoe regarding compliance with binding grievance settlements and Arbitration Awards.) The second is a sustained Step B Decision regarding falsified documents Grievance # 74-07- ACS45 B Decision date 01/10/08. On the first page under Decision: Resolved it states "*Management will be advised of their obligations to truthfully and*

accurately record data entries on ALL Postal documents.” The management team in place is the same one for all of these grievances.
This is the third time that the Union has grieved falsification by management in Germantown.

While the formal grievance seeks the general “appropriate” relief remedy, the Union specifies in this case the only appropriate relief is that Bedi no longer perform supervise Germantown carriers. That specific relief the Postal Service contends is outside of this Arbitrator’s authority, as discussed in detail below. Officer in Charge Elise Nash denied the grievance when issuing Management Contentions, which stated in pertinent part

Management met with the Union on 8/2012009

Grievance: Have Supervisor Bedi removed from supervising the carrier craft.¹

Contention: When Supervisor Bedi used code operation code 782 (training code) it was to have documentation for talks given in the unit. The Union has instructed the craft employees not to sign any forms that state the employee has received training. The office needed some other form of documentation for the talks.

The intention was not to falsify clock rings.

The Supervisors in the unit have agreed not to use operation code 782 (training code) for standup service or safety talks. The incident has been resolved at the local level.

This operation code 782 (training) will only be used for FORMAL training.

For these reasons Supervisor Bedi should not be removed from supervising earners, Hence, the unions request for removing Supervisor Bedi as a Carrier Supervisor is denied.

The Step B impasse decision of September 4, 2009, stated in pertinent part

ISSUE: Did Management violate Articles 15 and 19 of the National Agreement, to include but not limited to, Sections 665.16 and 661.2 of the "Employee and Labor Relations Manual" (ELM), M-00605, and Section 126.42 of the Handbook M-39, "Management of Delivery Services", when they falsified TACS clock rings and, if so, what is the appropriate remedy?

.....

DISCUSSION:

¹As discussed above, only that portion of the grievance pertaining to the remedy addressed Bedi no longer supervising Carriers. The substance of the grievance was directed at the improper use of code 782.

EXPLANATION: The Union alleges that for the period of time dating back to at least May, 2009, and continuing until the incident date, August 4, 2009, a Supervisor at the Germantown Post Office has falsified TACS city letter carrier clock rings. The case file contains hundreds of pages of TACS carrier clock rings which show that carriers were placed by the Supervisor (EID 01244496) on training time (operation 782) for multiple days during each week of the period cited for varying amounts of time (generally 30 minutes or less). The case file contains copies of the "Alternate Adjustment Worksheet" for each route from the latest DEAT Team Review, who, when they were made aware of the Union's allegation, decided to place the following notation on the comments section of each PS Form 1840:

"Due to questionable/fraudulent clock rings, Standard office time was mandated".

The case file also includes a Formal Step A Resolution settlement, dated September 4 2007, for the Germantown Post Office, in which the parties agreed the following: "From this point forward, Management personnel who deliberately falsify clock rings or instruct Carriers to falsify clock rings, will be removed from the Postal Service subject to a complete and fair scrutiny of the facts."

The Union contends that the Supervisor improperly coded office time of carriers in TACS operation 782 (training) when no actual training was being given and/or when service talks were being conducted. The Union claimed this was pre-meditated and intentional in an effort to manipulate the office time to make better numbers for the office and in doing so, falsified the route inspections. The Union claimed that these actions were in direct violation of Sections 661.2.L and 665.16 of the ELM which respectively prohibits fraud and sets standards of behavior. Section 126.42 of the M-39 was violated when clock rings were not accurate and Article 15 was violated when the local Management allowed the falsification of clock rings and failed to ensure that accurate data entries were made on all Postal documents. The Union requested that the Supervisor responsible no longer be allowed to supervise city letter carriers at the Germantown Post Office.

Management contends that the Supervisor's actions in this case were not knowingly fraudulent because when the Union instructed its members in the office not to sign any forms that they had received service or safety training, the Supervisor used TACS code 782 instead to have documentation of the activity. Management claims that it was not the intent of the Supervisor to falsify clock rings but to document time and this issue has now been resolved in the office with the instructions given to all the supervisors not to use TACS code 782 for any activity except formal training.

NALC Representative's Position

.....The case file contains a Germantown Formal Step A resolution dated September 4, 2007, which reads in relevant part as follows:

"From this point forward, Management personnel who deliberately falsify clockrings or instruct Carriers to falsify clockrings, will be removed from the Postal Service subject to a complete and fair scrutiny of the facts."

On January 10, 2008, the Erie/Pittsburgh Districts Dispute Resolution Team rendered a decision, K01 N-4K-C 07325616, finding that Management in Germantown made incorrect entries on PS Form 1017 -B's and directed the following in pertinent part:

"Management is advised of their obligations to truthfully and accurately record data entries on all Postal documents."

This is persuasive that this is not the first incident of 'falsifying clock rings' in the Germantown office, and that Management has been made fully aware of their obligation to accurately record employee clock rings.

The case before you contains over a thousand pages of T ACS Employee Everything Report (EER) clock rings for Carriers in the Germantown office, demonstrating **repeated** incidences of Management personnel falsely recording, coding and inputting employees work hours from May 4-August 14, 2009. This is undisputed. Management simply states that their actions were not 'knowingly fraudulent' and that the time codes were actually for service talks. I respectfully disagree.

One or two isolated incidences of Management correcting employees' clock rings would qualify as being an error of judgment, *not hundreds*. Moreover, the consistencies of the times entered (*average of ½ hour or more of Code 782 Training Delivery Service time*) for *each* employee multiple times per week, over a three (3) month period, is persuasive that Management knew exactly what they were doing. Even more compelling is that Management has provided no evidence that these employees were participants in any type of Delivery Service Training during any of these time frames nor any copies of 'Service Talks' given to these employees several times per week during this three (3) month period.

Additionally, the case file demonstrates that because of these "questionable/fraudulent clock rings", (*as stated on the Alternate Adjustment Worksheets*), Carrier's in the Germantown office were not given a fair review during the recent implementation of the Modified Interim Alternate Route Adjustment Process (MIARAP) and had their routes adjusted according to 'standard office times'. A 'complete and fair scrutiny of the facts' has proven that employee's clock rings were knowingly and fraudulently falsified.

The Formal Step A resolution, cited above, *clearly written and mutually agreed upon to be applicable in the event that future infractions occurred*, is binding in its direction that Management personnel that deliberately falsify clockrings would be removed from the Postal Service. The Union simply requested that the Supervisor responsible, be removed from supervisory duties in the Germantown office. This is not an unreasonable request given the magnitude of the impact on the Carrier's as a result of Management's actions and the history of this type of violation in the Germantown office.

My counterpart argues that the requested remedy is improper because this case is not a violation of the Joint Statement on Violence and Behavior in the Workplace (JSVBWP), *the only violation that would support the removal of a Supervisor from either supervisory duties or Postal Service employment*. However, Management administrative actions, that are repetitive and impact employee working conditions, cannot continue with impunity, under the pretext that they are inarbitrable, because they are not subject to the JSVBWP. I call your attention to arbitration decision A01 N-4A-C 03057175, included herein by the USPS Step B Representative, in which a relevant portion of Arbitrator Rosen's opinion is supportive of this position:

"The Union had reasoned that an arbitrator does have the authority to impose discipline

on a supervisor if the Violence in the Workplace Policy has been violated. While the change in clock rings can be considered a source of aggravation to an employee it does not raise to the level of violence in the workplace unless repeated."

While, this arbitration decision is not similar in facts and circumstances to the present grievance and was denied, being found inarbitrable because the Union did not argue that this issue was an ongoing matter, in the case at hand the documentation supports otherwise.

In the matter of the second arbitration decision included by my counterpart, I submit too, that this case is not similar in facts and circumstances to the one at hand. Arbitrator Javits stated that he did not have the authority to discipline the Supervisor. However, in this case, the Union has not requested that the Supervisor be removed (in alignment with the Formal Step A resolution); they simply request that they be prohibited from supervising Carriers in the Germantown office-a *remedy that is indeed within the scope of the Arbitrator's authority*, in this instance. This is evidenced in the 'Award Summary' of decision K06N-4K-C 08367050, rendered by Arbitrator Ellen S. Saltzman, *from this same Region*, on March 17, 2009:

Award Summary:

The Grievance is sustained. The Postal Service will reassign Mr. Aldana to a Supervisor's position at another Post Office or any other position at another Post Office as it deems appropriate.

Based on the above, I respectfully submit that the Union has convincingly demonstrated a repeat violation of Management knowingly and fraudulently falsifying clock rings, and as such, the requested remedy is proper.

USPS Representative's Position

The USPS Step B Representative agrees with all the contentions provided by the Management Formal Step A Representative. Also, the decision by this Step B representative now not to address any specific argument or contention of Management which was previously presented at Step A does not constitute a waiver of that position at Step B. This Management representative asserts that all the arguments or contentions originally presented by local Management at Informal and Formal Step A continue to remain current and applicable to the case at hand.

First, the Union has failed to meet their burden of proof to support the Union's claim of fraudulent activity on the part of the Supervisor in this case. While the documentation does show that the Supervisor had erroneously coded service talks which occurred during Carriers' office times as training operations instead, the Union did not show this action of the Supervisor was anything more than a mistaken use of a T ACS code. There is no evidence, other than the Union's allegation, that this miscoding was a "criminal" act, done to gain advantage over the carriers or done to somehow "trick" the carriers out of something to which they were rightfully entitled.. Rather this USPS representative asserts it was an "honest" mistake, unfortunately made by an apparently inexperienced

Supervisor², to attempt to somehow memorialize a carrier's attendance at a service talk, in response to the urging by the local Union to the carriers not to initial on any forms or checklists their presence during any service talks given in the office. There was no documentation, and again, just an allegation, presented by the Union, to show how the carrier's "percent to standard" was negatively impacted by this action or how "better numbers" were achieved by this action. In fact, the notation written on the DEAT adjustment forms mandating the use of "standard office time" due to the "questionable" clock rings in the adjustment of routes was actually beneficial to every carrier in the office and was instead actually made to the detriment of local Management.

Second, the USPS Management representative respectfully contends that this grievance is non-arbitrable. The requested remedy of the Union, to prohibit the Supervisor from supervising letter carriers in the Germantown Post Office, is beyond the scope of the Arbitrator to grant in this instance. Although the Union included a Formal Step A Resolution Settlement, dated September 4, 2007, in which local Management agreed to the removal of any Management personnel who "deliberately falsify clock rings subject to a complete and fair scrutiny of the facts", the Union did not request that remedy in this instance, knowing that such a remedy would not be able to be granted by an Arbitrator. Instead, the Union requested that a permanent prohibition of supervisory duties in the Germantown Post Office for the individual responsible be granted, which is tantamount to a disciplinary action because it attempts to deny the Supervisor of his duly-awarded position.

While it is now generally acknowledged that Management can be held accountable (resulting in discipline or other adverse action) for the demonstrated failure of their adherence to the terms and conditions of the mutually agreed-to "Joint Statement on Violence and Behavior in the Workplace", as per the Snow award, the circumstances in this case clearly did not rise to the level of a violation of the Joint Statement.

The mistaken actions of the Supervisor cannot be now become a rationale for the Union to request action to which they are otherwise unentitled. Instead, Article 1 Section 2 provides that "managerial and supervisory personnel" are excluded from the terms of the National Agreement. Since Article 3.B gives the employer the exclusive right to discipline, assign, demote, discharge or take other disciplinary actions against employees, any decision to discipline (including the forced reassignment or prohibition of duties of the Supervisor requested by the Union in this case), would be a violation of the Supervisor's "due process" rights and cannot be allowed to stand. In the recent **GATS A01N-4A-C 06097741**, dated December 20, 2007, Arbitrator Joshua M. Javits, found, in a similarly applicable case with respect to Articles 1.2 and 3.B, the following:

"These contractual provisions are both clear and unambiguous in providing that supervisors are not subject to the Agreement. Since the Arbitrator is unable to award the relief requested in this case, he must declare the grievance non-

²As discussed herein, Management's position in this arbitration is that Bedi entry of the training code was not the result of a mistake and/or his inexperience. That new evidence/contention was not objected to by the Union and was therefore considered herein.

arbitrable.

With respect to the disciplining of Management Arbitrator Javits writes in the same decision:

"After carefully reviewing the parties' contract, the Arbitrator accepts that the language of the National Agreement leave the exclusive authority to discipline or demote supervisors to Postal Service Management. The Arbitrator does not believe that he has the authority to discipline a supervisory employee in the way the Association requests. The disciplinary rights, by the express terms of the National Agreement, are reserved and retained exclusively by the Postal Service. An Arbitrator may not unilaterally extend his/her authority beyond the permission and authority granted by the National Agreement."

Arbitrator Javits then comments in the same decision about the application of Arbitrator Snow's National Award, GATS Q90N-4F-C 94024977 and GATS Q90N-4F-C 94024Q38, dated August 16, 1996, in cases involving the granting of disciplinary action for Management for issues other than violations of the "Joint Statement on Violence and Behavior in the Workplace":

In reaching this conclusion [see above comments], the Arbitrator rejects the Association's contention that Postal Service managers may be disciplined in light of Arbitrator Carlton Snow's National Award [see above cases]. However, in that decision, Arbitrator Snow concluded that the "Joint Statement on Violence and Behavior in the Workplace", is a contractually enforceable agreement between the parties. Snow found that the Joint Statement "was a document that evidenced an intent to take action rather than a mere statement of opinions and predictions" (Page 17 of decision). He continued, "[the language of the Joint Statement itself, as well as the objective conduct of the parties evidenced their mutual assent to be legally bound by the Joint Statement" (Page 18).

It is well accept since this decision that the Association my now seek disciplinary action against supervisory employees. That being said, however, this mechanism for reviewing member of management is strictly limited to where the Association alleges that there has been a violation of the "Joint Statement on Violence and Behavior in the Workplace", Arbitrator Snows' decision does not create a universal right under the parties' National Agreement whereby the Association may request the discipline to of a supervisor. Rather, Snow's decision provided that the discipline of management exists because it is based on the Joint Statement, which is an independent contractual agreement between the parties. This agreement was separate and distinct from the parties' collective bargaining agreement which otherwise reserved the matter to the Postal Service By the express terms of the National Agreement, the right to discipline a supervisory employee is reserved exclusively by the Postal Service..... Therefore for the reasons outlined above, the Arbitrator concludes that he does not have the authority to award the remedy requested by the Association. The Arbitrator dismissed the instant grievance for being non-arbitrable.

Lest the reader thinks that Arbitrator Javits' opinions as expressed in his decision quoted above are exclusive, this USPS representative cites the following arbitration for review, in

which the Arbitrator Steven Rosen in GATS A01N-4A C 03057175, dated August 22, 2003, in a similar case (a supervisor altering an employee's clock rings) also agreed that the adverse action proposed by the Union against Management as a remedy for a contractual violation, other than of the "Joint Statement on Violence and Behavior in the Workplace", must be dismissed as non-arbitrable. While my esteemed Union colleague interprets Arbitrator Rosen's conditional comment below to mean that the large number of "repeated" improper clock ring now makes the Supervisor's actions a *de facto* violation of the "Joint Statement", this USPS representative disagrees with that conclusion.

"While the change in clock rings can be considered a source of aggravation to an employee, it does not raise to the level of violence in the workplace unless repeated", Since the documentation does not show that the Supervisor involved in this case had been previously made aware of his error and then continued to engage in the improper actions, in disregard of any instructions to stop, Arbitrator Rosen's *caveat* of "unless repeated" cannot be applied in this case. Furthermore, there is no evidence that the carriers in this office were ever "aggravated" by the Supervisor's use of the improper TACS code to the point of a violation of the "Joint Statement" because there is no evidence to show that these same carriers were even aware of what had been going on. Surely, this is not what Arbitrator Rosen meant when he used the phrase "unless repeated". Finally, the Union representative cites Arbitrator Saltzman's award, in which that Arbitrator directed, as a remedy, the reassignment of a Supervisor but it should be noted that that decision was made in a case involving a violation of the "Joint Statement", which has not been proven to have happened in this instance.

Campaign testified confirming the statements made in her grievances contentions set out above. In addition, she discovered this problem when processing other unrelated grievances she found those carriers' Everything Reports reflected similar training code entries by Bedi for times when no training took place. Based upon that information, she told the OIC and Postmaster about this problem, but they did respond to her concerns; however, the Postmaster provided her access to those reports for all the Germantown carriers for the preceding three months. She stated those reports showed similar training code entries by Bedi when no training occurred, which she marked on those reports. She explained Code 782 is used for training matters involving new work methods which occur rarely- about once a year. She stressed such training is outside of normal

stand up safety/service talks. According to Campain, those standup talks occur approximately once or twice a week at the same time right before the 9 a.m. break and last approximately seven to 10 minutes on average. She pointed out that standup talk time are coded as part of normal office time, not training time. She found that the amount of time coded 782 on the same day showed different amounts of time occurring at different times for different carriers.

Campain testified that May was a critical month for route adjustments and such code fabrications could distort the significance of the carriers' actual time of the information considered for those route adjustments. She stated that on August 4 she shared that information with the Brentwood District Evaluation and Adjustment Team (DEAT), the parties' joint committee working on route adjustments, who agreed with her concern. She said Deat entered on their forms "Due to questionable/fraudulent clock-rings, Standard office time was mandated." She stated that action by DEAT corrected carriers' office time as best as possible under the circumstances for purposes of possible route adjustments, however, it could distort street time for purposes of the concept of an 8 hour operating window.

Campain stated that on August 11 management called all carriers to clock on the 782 code for a service standup talk. She said that had never happened before. She identified that service talk on her Everything Report showed up to 19 units (approximately 6 minutes). She pointed out that Bedi had enlarged that time on other employees' Everything Report. She identified a Formal Step A grievance Resolution she signed with the Postmaster Lakhjit Dheman on September 4, 2007, which provided in relevant part

From this point forward, Management personnel who deliberately falsify clockrings or instruct Carriers to falsify clockrings, will be removed from the Postal Service subject to a complete and fair scrutiny of the facts.

Section 126.42 of the March 1, 1998 edition of the M-39 handbook states in part that all clockrings are accurate because their Carrier report could be selected as a basis for completing the Form 1840-B, Carrier Time Card Analysis.

Section 665.16 of the July 20, 2006 edition of the ELM states in part: Postal employees must be honest and trustworthy.

Section 665.44 of the July 20, 2006 edition of the ELM prohibits the falsification in Recording Time.

Campaign testified that the above Resolution arose due to supervision entering various incorrect time code entries. She stated the Union has historically taken the position that carriers are only required to sign specified PS Forms and not sign in for other non-acceptable matters. She denied that the Union specifically told carriers to refuse to sign anything saying they had received training as asserted in Nash's Formal Step A Contentions. She agreed with Nash that 782 will not apply to standup talks and only applies to formal training time as it did on August 11. She stressed that Bedi improperly entered the 782 code for non-training time on her Everything Report for that date. She noted employees' morale has been negatively impacted by these improper clock rings by Bedi. It is for that reason, Campaign emphasizes Bedi must be ordered not to supervise their clock rings in the future. She stated he could retain his position and supervise other crafts at Germantown.

Campaign further testified that Bedi violated Article 19 by noncompliance with the ELM and M-39. She stated it is the Union's practice to cite Article 15 as its authority to grieve matters not necessarily meaning it was specifically violated. Upon review of 166 pages of Everything Reports gleaned from those she submitted as part of this grievance, Campaign acknowledged one or two supervisors other than Bedi entered code 782 for employees on the same day that Bedi entered Code 782 for the same employee. She explained Bedi is the AM supervisor, whose ID code came up initially in this matter and she focused only on his ID code in reviewing the three

months of Everything Reports in this grievance file. Campain also admitted incorrectly citing Bedi for entering Code 782 twice when he did not do so. She also acknowledged incorrectly overstating on two occasions the amount of time Bedi coded two different employees' time as 782.

Elisa Nash is the Officer in Charge (OIG). She testified that Bedi did nothing wrong or different than other supervisors. She did not believe Bedi falsified employees' times or committed a criminal act by moving employees into code 782 because the carriers are paid by the hour. She noted it is the supervisor's duty to make code entries. Nash stated it has been the Union practice for many years that its members are not to sign anything out of the normal routine. She noted, because of the number of carriers, it takes carriers 14 minutes to clock in and out of time codes depending on the length of a service talk, which are approximately 7 minutes, but can go longer. Prior to August 11, supervisors would put carriers on 782. She stated supervisors put in 782 for service talks. If there was no basis to code 782, Nash testified, supervisors should not enter the code for training. She noted carriers can look better/efficient by the entering 782. She pointed out supervisors perform 277 tasks in a day; so mistakes can happen, which can be later corrected.

Postmaster Lakhjit Dheman testified Bedi did nothing wrong. He explained that putting carriers in Code 782 does not adversely harm carriers or their pay. It is his opinion that falsifying time codes involving changing their time codes to improperly change their time for pay purposes. He stated route adjustments were not effected by incorrectly placing employees on Code 782 time. He commented that other offices have used Code 782 as was done here. Dheman stated Bedi and other supervisors have the authority to enter 782 as part of their authority in order to correct clocking codes as necessary. Postmaster Lakhjit Dheman also testified he entered into the September

4, 2007 grievance resolution as a result of a supervisor "cheating an employee out of appropriate pay time." He said the current grievance does not involve any lose of pay by carriers. He stated he has instructed Bedi and other supervisors to enter Code 782 for employees, who have been given training, service and/or safety talks. He stated that was the only way that time could be documented because the Union has instructed its members not to sign documents acknowledging those activities. He noted each office provides such activities, which has to be documented. He stated formal training, as noted by Nash in her Management Contention, is different from normal talks. He stated talks given employees about foul (snow, rain, etc) weather conditions would not constitute formal training. He explained formal training involves new mailing processes, like new bar codes, as well as, new equipment.

Kenneth Lerch is President of Branch 3825. He testified it was his opinion that falsification of clock rings means any change of accurate clock rings to something not accurate of a carrier' time. He stated such improper clock rings are in violation of applicable regulations.

PARTIES' POSITIONS

NALC

Management violated Sections 665.16 and 661.2 of the "Employee and Labor Relations Manual" (ELM), M-00605, and Section 126.42 of the Handbook M-39, "Management of Delivery Services" and thereby Article 19 of the National Agreement, when they falsified TACS clockrings.

There is no evidence carriers refused to enter code 782 when instructed to do so by supervision on August 11. There are multiple improper Code 782 entries, when there was only service talks, at most, occurring. Those entries occurred at different times of varying lengths for

different carriers. There were no formal training shown to be taking place on those occasions, when Code 782 was entered. This is not a matter of unintentional mistakes. It was more a pattern, which is not acceptable. There have been prior similar instances, which management acknowledged and signed off on a Resolution with a remedy more severe than that requested here. Campain noted on August 11 her time reflected Code 782, when she had not received any training and after she had complained to her OIC and Postmaster about such changes.

Falsification does not only occur when pay is at stake, as the Postmaster asserted. Any incorrect time code entry not accurately reflecting an employee's time is false and should not be permitted.. Employees are entitled to accuracy by supervision in their time codes. Any employee engaging in such misconduct would be removed. The Union is not seeking such a remedy in this case, even though management had previously agreed to do so. The Union only wants Bedi to not be involved with carrier supervision and/or clock rings. Even supervision says it won't make such clock rings any more. The Union says it is within an Arbitrator's authority to grant such relief in this case because of the intentional repetitive nature of this problem. In support of its position, the Union cites G06N-4G-C 09143626 (Peter Clarke, November 23, 2009)

Postal Service

Grievance is not arbitrable because of the remedy the Union seeks is beyond the Arbitrator's authority. Rather, the direction of supervision and their duties it is solely within Management's authority to determine, under Article 3. Moreover, the Union has failed its burden of showing Bedi violated any provision the Union relies upon. There was nothing fraudulent in Bedi's inputting the clock rings in question. Contrary to management's instruction to carriers to move to 782 training and to sign Safety/Service Talk sign in sheets, carriers followed the Union

policy of not doing so, resulting in supervision making those time ring entries. In doing so, Bedi and other supervisors were following instructions from the Postmaster and OIC. Therefore, Bedi was not doing anything different than other supervisors and is being improperly singled out by the Union. Placing carriers on training operation Code 782 during Service/Service talks was not inappropriate and consistent with Management's rights to direct the work force under Article 3. There is nothing to support an Article 19 or 15 violation.

The Union has not substantiated its claim that Bedi improperly manipulated clock rings. The record rather reflects he was doing the same thing other supervisors did on numerous occasions. Even in the arbitration award relied upon by the Union required a finding of a "hostile work environment" to prevail. Here, such a situation was not proven. Rather, the Union has singled out Bedi personally. Supervisors have very complex demanding jobs, in which mistakes can occur. They may be tardy in entering clock ring codes. Even Campaign admitted to making mistakes in the evidence she relied upon. Based upon the decisions of Arbitrators Stephen Rosen and Javits noted in Step B the discipline of supervision in cases of this nature are not arbitrable.

DISCUSSION AND ANALYSIS

Preliminary Matters

The issue here, as it was before Step B is "Did Management violate Articles 15 and 19 of the National Agreement, to include but not limited to, Sections 665.16 and 661.2 of the "Employee and Labor Relations Manual" (ELM), M-00605, and Section 126.42 of the Handbook M-39, "Management of Delivery Services", when they falsified TACS clock rings and, if so, what is the appropriate remedy?" Therefore, Management's attempt to frame the issue solely as to whether this Arbitrator has authority to discipline supervisor Bedi, while creative, is misplaced.

Under Article 15, arbitrators are bound to the record and issues contained in the Step B decision. In any event, that does not of itself make the grievance as a whole not arbitrable for purposes of whether or not a contract violation occurred.

The Union as the moving party in this contract enforcement action has the burden of persuasion to demonstrate with sufficiently reliable evidence that the Agreement has been violated by Management. Likewise, the Union has the burden of proof as to the remedy. However, as stated above that goes to the “appropriate remedy” part of the issue in this case.

Merits

The fact that falsified or inaccurate clock rings violate the Agreement, under Article 19's incorporation of the Postal Service Rules and Regulations, has been already been acknowledged by these local parties in their September 4, 2007 Formal Step A Resolution³ of grievance # 74-07-MGB2 signed by Campaign and Postmaster Dheman. Therein, the parties recognized that M-39, Section 126.42 “assures that all clockrings are accurate” and that ELM Sections 665.16 and 665.44 respectfully require “Postal employees to be honest and trustworthy” and “prohibits the falsification in recording time”. The parties agreed so strongly on those matters that they further agreed therein that “Management personnel who deliberately falsify clockrings or instruct Carriers to falsify clockrings, will be removed from the Postal Service subject to a complete and fair scrutiny of the facts.” Moreover, Step B ruled in K01N-4K-C 07325616 that the Germantown “Management is advised of their obligations to truthfully and accurately record data entries on all

³ The record also contains a “Pre-arbitration Settlement Agreement” (K01N-4K-C 07083313) dated July 19, 2007, containing the same operative language as the September 4, 2007 Formal Step A Resolution, signed by Branch President Lerch and Kathryn Harris for management involving the neighboring Rockville, MD Post Office.

Postal documents.”

The Union has placed in the record ample evidence of numerous⁴ Code 782 Formal training entries on carrier clock rings by supervision at times and for durations, when in fact no such training occurred. The fact that service/safety standup talks occurred on the days such entries were made does not rectify the fact that such 782 entries were not accurate. It is undisputed that service/safety talks are part of normal carrier office time and not the same thing as Formal training. The fact that supervisors may have used Code 782 to record such routine standup office time pursuant to management instructions or somehow carry out their time code entry duties does not negate the fact that such entries were inaccurate and at odds with the above binding Formal Step A Resolution and Step B decision.

There is no need to get into legal semantics over the meaning of “falsification”. The fact that no carrier lost wages as a result of the placement of these inaccurate clock rings does not somehow mean “falsification” did not occur. When shown these same Employee Everything Reports, the parties jointly administered DEAT team commented on effected routes “Due to questionable/fraudulent clock-rings, Standard office time was mandated.” Therefore, for purposes of this case, such intention insertion of inaccurate time codes constitutes falsification. In fact, in the processing of this grievance, Management in its formal Step A Contentions admitted as much by Management met with the Union on 8/2012009, when it unequivocally stated that “operation code(782) will only be used for FORMAL training “ and “Supervisors in the unit have agreed not to use operation code 782 (training code) for standup service or safety talks.” Therefore,

⁴ The fact that Campaign made mistakes as to which supervisors were making such entries and the amount of actual amount of time so coded does not change this finding.


Management did violate Article 19, under the circumstances of this case. The next critical issue to resolve is "what is the appropriate remedy?"

The Union's requested remedy to somehow transfer Bedi away from carriers supervision, in order to effectively remove his carrier TACS duties is not supported by this record. The fact is that this record shows other supervisors were also making similar inaccurate Code 782 entries in carriers clock rings. Therefore, there is no justifiable grounds to single Bedi out as part of any appropriate remedy. However, for the reasons stated above, such intentional inaccurate entries violate applicable regulations and, therefore, violate Article 19, by operation thereof. Under the circumstances of this case, the appropriate remedy is that Management shall cease and desist from intentionally using inaccurate time codes. Management is on notice that subsequent similar violations shall not be tolerated and may justify more severe corrective action, depending upon the circumstances involved therein.

AWARD

The grievance is granted in part and denied in part for the reasons stated above. Management violated Article 19 of the National Agreement, by not complying with M-39, Section 126.42 and ELM Sections 665.16 and 665.44 as discussed above. The appropriate relief is that Management shall cease and desist from intentionally using inaccurate time codes. Management is on notice that subsequent similar violations shall not be tolerated and may justify more severe corrective action, depending upon the circumstances involved therein. The Union's requested remedy regarding the disciplining of Supervisor Bedi is denied.

DATED: April 16, 2010


Mark A. Rosen, Arbitrator