

C# 03207 ✓

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE

National Level Dispute  
Case No. NC-C-11675

and

NATIONAL ASSOCIATION OF  
LETTER CARRIERS

APPEARANCES: R. Andrew German, Esq., for the Postal Service;  
Mr. Lawrence Frichtel for the Union

#### DECISION

This grievance arose under and is governed by the 1975-1978 National Agreement between the above-named parties (JX-1). The undersigned having been jointly selected by them to serve as arbitrator, a hearing was held on 19 April 1979, in Tallmadge, Ohio. Both parties appeared and presented evidence and argument on the following issue:

Did the Postal Service, upon review of the results of the special count and inspection of the route of the grievant, James Aurand, for the period 29 October through 4 November 1977, erroneously conclude that the route was in proper adjustment?

No remedy is requested.

A verbatim transcript was made of the arbitration proceedings. Each side filed a post-hearing brief. The

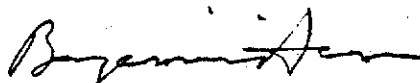
record was officially closed on 18 June 1979, but was reopened in July to permit resubmission of Joint Exhibit 3, which the arbitrator had lost. The exhibit was received on or about 24 July.

On the basis of the entire record, the arbitrator makes the following

AWARD

The Postal Service, upon review of the results of the special count and inspection of the route of the grievant, James Aurand, for the period 29 October through 4 November, 1977, erroneously concluded that the route was in proper adjustment.

The grievance is sustained.



Benjamin Aaron  
Arbitrator

Los Angeles, California  
1 August 1979

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### OPINION

#### I

The grievant, James Aurand, is a full-time city letter carrier at the Tallmadge, Ohio, post office, and has been a Postal Service employee for the past 17 years. In May, 1977, an annual count and inspection of the Tallmadge post office was conducted (EX-1). As a result of this inspection, all city routes in Tallmadge were "adjusted"; that is, delivery points were either added to or subtracted from each route, with the objective of making each one 8 hours, or as close to it as possible. Aurand was assigned to Route 6, which was evaluated as consisting of 2 hours, 56 minutes of office time and 4 hours, 23 minutes of street time, for a total of 7-hours, 15 minutes (EX-1 at 7B). Accordingly, effective July, 1977, 68 delivery points were added to the route to bring it up to 8 hours.

Subsequent to the foregoing adjustment, Aurand made

frequent requests for overtime or auxiliary assistance to complete his route. He claimed that the route was not properly adjusted, because of the greater than anticipated daily volume of mail and the additional delivery points (UX-1; Tr. 14-20).

On 3 August 1977, Foreman of Delivery Services Loren Szeligo conducted a one-day office check and street accompaniment of Aurand. Szeligo then prepared a memorandum to Ralph Williams, Tallmadge Superintendent of Postal Operations, summarizing his evaluation of Aurand's performance (EX-3 at E). The memorandum made several criticisms of Aurand's performance, both in the office and on the street. "Overall office performance" was termed "satisfactory." As to street performance and overall evaluation, Szeligo's conclusion was as follows: "Route is not overburdened. Total of 8.36 with 2084 deliverable pieces is not true picture of Route (92% coverage)."

On 19 October 1977, Aurand was notified by Williams that, pursuant to Aurand's request, a six-day special count would be conducted on his route from 29 October through 4 November (UX-2). The purpose, Williams wrote, was "to determine whether management's contention that the route is in adjustment, or yours that the route is out of adjustment [is correct]. The route will be adjusted based on this special count per regulations."

During the special inspection Aurand averaged 4 hours, 2 minutes of office time--7 minutes over the standard office time--and 5 hours, 5 minutes of street time (JX-4 at 7A). The various route examiners who accompanied him on each day of the test period made a number of written comments on Aurand's performance. On 29 October, Foreman Burketh reported on a Form 1838 (JX-4 at 1A): "Regulated office performance, lost considerable time routing flats & personal time/All flats holes full due to volume." The same day Burketh wrote the following comment on a Form 3999 in response to the question, "Does carrier perform work and conduct himself in a business-like manner?" (JX-4 at 1C):

Discussed regulated performance in office. Also time for personal needs which has to be made up to make office time. Carrier lost considerable time, in routing flats. Carrier stated he could perform better on street if he prepares mail prior to stop. Very heavy mail volume. Traffic very heavy . . . due to Sat. del[ivery]. Discussed excessive conversation with customers, flow on delivery at boxes.

On 31 October, Foreman Kubeck reported on a Form 3999 (JX-4 at 2C):

Used extra time sorting at boxes. . . . Abnormally heavy mail volume today in flat category. Carrier gave a good performance in the office and street. . . . today. . . . Carrier made 94% of his stops and a lot of his misses were post office boxholders.

On 1 November, Superintendent Anderson reported on a Form 3999 (JX-4 at 3C): "Carrier paces himself in performing office work (Regulates). Carrier performance on

street was average but took too much time on some dismount stops, as much as 8 mins. . . .for a postage due, also extra time sorting at boxes."

On 2 November, Kubeck reported on a Form 3999 (JX-4 at 4C):

Used extra time sorting at Boxes. Carrier barely made standards in the office. . . .He gave satisfactory performance on the street, but not as good as Mon. [31 October], with a lot more mail to handle. . . .

Again on 3 November, Burketh reported on a Form 1838 (JX-4 at 5A):

Carrier gave regulated office performance-- heavy mail volume--two sets of 3rd class] circular]s which were folded into case making dist[ribution] difficult & even that much slower.

The following day Burketh reported on a Form 3999 (JX-4 at 5C):

28 min to del[iver] PD-PP & comfort stop. Gave regulated office performance. Mail volume very high. Additional time loss due to congested case. . . . Carrier takes more comfort breaks in office than normal. Carrier is over-cautious with safety causing him to be slower than normal between boxes on main roads. Takes excessive time fingering mail at boxes-- mail familiarity is established, to a degree, when casing. . . .Kids out of school caused delay in deliveries. Some excessive conversation with customers.

On Friday, 4 November, Route 6 was carried by substitute carrier, Joe Miller, who, according to the report of Foreman Lipscomb on a Form 3999 (JX-4 at 6C), "Had good pace in office & st[reet]." Miller's net office and street times of 3 hours, 4 minutes and 2 hours, 54 minutes,

respectively, were not included in the averages for the six-day special count.

Aurand's averages for the five-day period, 29 October through 3 November were 4 hours, 2 minutes (7 minutes over standard) for office time, and 5 hours, 5 minutes for street time (JX-4 at 7A). In evaluating the results of the special count and inspection, Szeligo and Williams concluded that Route 6 was not out of adjustment. They noted that the mail volume during that period had been unusually heavy, averaging 2157 pieces per day, as opposed to a normal mail volume estimated at 1700 to 1800 pieces per day. In addition, they noted that Aurand's performance against standard office time (computed on the basis of 18 letter-size pieces of mail and 8 pieces of mail of all other sizes per minute, as provided in JX-3, M-39 Handbook, Exh. 2-5, plus "strapping-out" time of 1 minute per 70 pieces of mail) had declined from an average of 12 minutes under standard during the annual count in May, 1977 (Ex-E1 at 7A), to an average of 7 minutes over standard during the week of the special count. They reasoned that if Aurand had performed in the latter period with the same efficiency that he had demonstrated in the former, his average office time would have been 3 hours, 43 minutes. This figure was arrived at by deducting 12 minutes from the average standard office time of 3 hours 55 minutes for the week of the special

count (Tr. 116).

To account for the abnormally heavy mail volume during the week of the special count, Szeligo and Williams subtracted 28 minutes from the 3 hours, 43 minutes, thus reducing the standard average office time for Route 6 to 3 hours, 15 minutes. Explaining the computation in another way, Szeligo testified that Aurand's average office time had increased from 2 hours, 42 minutes during the annual count in May to 4 hours, 2 minutes during the week of the special count--a difference of 1 hour, 20 minutes. Szeligo and Williams had concluded that half of this increase (40 minutes) was attributable to Aurand's declining efficiency and to the abnormal mail volume during the latter period, and that the remainder was due to the increase resulting from the upward adjustment of delivery points following the annual count in May. Accordingly, they subtracted 40 minutes from the standard office time of 3 hours, 55 minutes during the week of the special count, and arrived at a figure of 3 hours, 15 minutes (Tr. 117-18).

In evaluating Aurand's street time, Szeligo and Williams started with the figure of 4 hours, 23 minutes arrived at during the annual count in May. To this they added 22 minutes, representing the time it took to deliver mail to the extra 68 delivery points added to Route 6 following that annual count. The 22 minutes was derived from the



time taken by the carrier to whose route they had previously been assigned. The new total street time was thus 4 hours, 45 minutes, which, when added to the new average standard office time of 3 hours, 15 minutes, produced a total office and street time of exactly 8 hours.

## II

The Union raised a number of procedural objections to the manner in which the special count was conducted, but these were not initially included in the grievance, and were dismissed during the hearing (Tr. 29). The sole issue, as indicated in the Decision, is whether the Postal Service erred in concluding, after completion of the special count and inspection, that Aurand's route was in proper adjustment.

On the merits, the Union contends that the Postal Service erred in fixing the standard office time for Route 6 at 3 hours, 15 minutes. It argues that because Aurand had an average office time of 4 hours, 2 minutes during the week of the special count, the standard office time of 3 hours, 55 minutes should have been used. This was required, the Union insists, by section 242.213 of the M-39 Handbook (JX-3), Management of Delivery Services, which reads in part:

Under normal conditions, the carrier's office time is fixed at the average time required to perform his office work during the count period but not in excess of the average standard allowable office time.

In reply, the Postal Service relies on the considerable variations in Aurand's office time during the week of the special count. Thus, on 31 October, when the route generated 2588 pieces of mail--the heaviest of the week--Aurand bettered the standard office time by 29 minutes; yet the next day, when the route generated only 1600 pieces of mail--the lowest volume of the week--his performance exceeded standard office time by 36 minutes (JX-4 at 7A). This conclusively proves, according to the Postal Service, that Aurand was "regulating" his performance--a term used to describe conduct approximating soldiering on the job, or pacing his effort according to the day's volume, instead of putting forth a consistent effort. The Postal Service concludes, therefore, that in these circumstances, which were not "normal conditions" within the meaning of section 242.213, it was justified in basing its calculation of standard office time on Aurand's demonstrated ability to better standard by 12 minutes.

The Union also points out that an annual count and inspection conducted in April, 1978, showed that Aurand had bettered standard office time (3 hours, 56 minutes) by 17 minutes during that week, and that the average daily volume of mail had been over 2000 pieces. Accordingly, it asserts that all of the assumptions made by the Postal Service, following the special count and inspection in the

previous November, including the assumption that the average daily volume of mail for the route was only 1700 to 1800 pieces, were clearly erroneous. This is reasoning after the fact, however, and is based upon evidence relating to events that occurred well after Aurand's grievance was filed. I conclude, therefore, that this part of the Union's argument must be disregarded.

The Union charges further, however, that the Postal Service has disregarded the rulings of arbitrator Howard G. Gamser in Case Nos. N-NAT-2992 (14 December 1973) and NB-S-5674 (3 November 1976) between these same parties, concerning the interpretation and application of the M-39 Manual and of Article XXXIV of the National Agreement ("Work and/or Time Standards"). Both decisions deal with the basic issues raised by the instant case. Gamser's opinions in the two cases are well-reasoned and persuasive; therefore, I shall follow his conclusions to the extent that they are applicable.

In Case No. NB-S-5674, the Postal Service argued, according to Gamser, "that an indicia [sic] of the existence of abnormal conditions is the failure to perform each day below the standard allowable time," and that "the existence of this situation standing alone justifies the reduction of the carrier's time to the standard allowance for each day his work requires more than the standard allowable time."

In this case the Postal Service went further, and concluded that because Aurand's performance during the annual count and inspection in May, 1977, was 12 minutes better than standard office time, the appropriate standard office time against which his performance should have been measured during the special count and inspection in October-November, 1977, was 12 minutes less than the actual average standard time of 3 hours, 55 minutes.

Gamser rejected that argument. In Case No. NB-S-5674 he quoted section 242.213 of the M-39 Manual, the same provision relied upon by the Union in the present case. He then observed:

The time required each day must be added together to achieve that measure of central tendency called the average time for the days under review. Only when conditions are not normal, and the Service has established the existence of such abnormal situation may the manager reduce the daily time to the average standard allowable time. [Emphasis supplied]

In both Case No. N-NAT-2992 and Case No. NB-S-5674 Gamser ruled that the Postal Service was not obligated to grant credit for "what was regarded as an abnormal performance where the Employer can establish that on an individual day under review the carrier was guilty of a regulated performance or used what was considered to be an inordinate amount of time." In such a situation, he decided, the Postal Service could reduce the time, "as provided above," that is, to the "average standard allowable time." He added,

however, that the "burden of establishing that the adjustment of the net office time downward to the standard allowance would then quite properly fall upon said Employer."

(Emphasis supplied)

I interpret the foregoing rulings by Gamsner as establishing two principles that are applicable to the instant case. First, contrary to the argument pressed by the Postal Service, it, rather than the grievant, has the burden of proof. Second, even though the Postal Service can demonstrate that the grievant was regulating his performance, it cannot reduce the office time below the average standard allowable time. This latter conclusion is borne out by section 242.211 of the M-39 Manual, which provides:

If the actual office time is under standard on some days and over standard on other days during the count week, the carrier should be interviewed to determine the reason for the irregular performance. The causes of slow and irregular performance and the corrective action taken should be indicated under Comments on Form 1840.

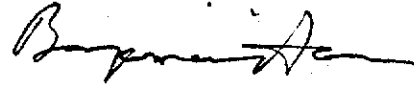
Aurand testified that he had been told that his performance was regulated, but that he did not know what was meant by that term (Tr. 49). I find that answer impossible to believe: a carrier with 17 years' experience must know what is meant by the term, "regulated performance." Also, Aurand's denial that anyone had discussed with him his alleged regulated performance (Tr. 50) was contradicted by Burketh's report on 29 October, previously quoted. On

the other hand, although both Burketh and Anderson reported that Aurand was regulating or pacing his performance, Kubeck rated his performance satisfactory on two occasions.

Conclusions that an employee is regulating his performance are in their nature subjective; there are so many variables that may affect performance that it is almost impossible to determine quantitatively how much delay, if any, is due to the deliberate attempt by a worker to slow down. The evidence adduced by the Postal Service to support its conclusion that Aurand was, in effect, soldiering on the job during the week of the special count and inspection in October-November, 1977, is insufficient to sustain its burden of proof. Even if it had sustained that burden, however, it seems clear that the only course available to it was to discuss the problem with Aurand, as provided in section 242.211 of the M-39 Manual, and to reduce the allowable office time to the average standard allowable time, as provided in section 242.213. What the Postal Service actually did was unilaterally to change a current work or time standard without advance notice to the Union, in violation of Article XXXIV of the National Agreement.

For all the foregoing reasons, I conclude that the Postal Service, upon review of the results of the special

count and inspection of Aurand's route, erroneously determined that the route was in proper adjustment. The grievance is sustained.



Benjamin Aaron  
Arbitrator