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C# 03236

ARBITRATION AWARD

February 24, 1981

UNITED STATES POSTAL SERVICE

-and-

Case No. N8-NA-0220

NATIONAL ASSOCIATION OF LETTER
CARRIERS

Subject: Route Evaluation - Mail Volume Adjustment -
13% Rule - Arbitration Procedure

Statement of the Issues: Whether the NALC grievance should be dismissed without prejudice on the ground that it is not "ripe" for decision? If "ripe", whether the Postal Service directive on permissible mail volume adjustments is a violation of the Agreement, namely, Section 242.31(b) of the M-39 Methods Handbook?

Contract Provisions Involved: Article XV, Sections 3 and 4; Article XIX; and the Memorandum of Understanding with respect to the M-39 Methods Handbook of the July 21, 1978 National Agreement.

<u>Grievance Data:</u>	<u>Date</u>
Grievance Filed:	February 13, 1980
Step 4 Meeting:	March 5, 1980
Appeal to Arbitration:	March 19, 1980
Case Heard:	November 25, 1980
Transcript Received:	December 8, 1980
Briefs Submitted:	December 31, 1980

Statement of the Award: The grievance is "ripe" for decision and the merits of this dispute are properly before the arbitrator. The Postal Service directive in question is a violation of Section 242.31 (b) of the M-39 Methods Handbook. That directive should therefore be rescinded.

BACKGROUND

This grievance concerns a directive issued by the Northeast Regional Office of the Postal Service with respect to permissible mail volume adjustments in the route evaluation process. NALC insists that this directive was a violation of Section 242.31 (b) of the M-39 Methods Handbook. The Postal Service disagrees. It urges not only that there has been no contract violation but also that NALC's claim is not "ripe" for decision and should therefore be dismissed without prejudice.

Route evaluation is a well-established principle in this collective bargaining relationship. A brief description of the evaluation process is necessary to an understanding of this dispute. Each route consists of two distinct elements. The first is office time, i.e., time spent in a postal facility casing mail, strapping out mail, and so on. The second is street time, i.e., time spent traveling to a designated area, delivering the mail, and returning to the postal facility. Periodically, Management evaluates each route in order to estimate the amount of time needed to complete these work functions.

A route evaluation is based on the Letter Carrier's activity within a specified period, normally, six days. The principal information accumulated during this period is the mail volume and mix handled, the number of possible and actual deliveries made, and the time spent performing such work. This hard data is combined with some historical data in an effort to develop a realistic picture of the time it will take to "carry" a given route. This is the essence of the evaluation process. If the route calls for more (or less) than eight hours' work, it is adjusted by subtracting (or adding) workload. For example, where the evaluation indicates it will take eight and one-half hours to "carry" a particular route, some deliveries are transferred elsewhere so that this route will encompass just eight hours. The purpose of the evaluation, in other words, is to provide each Letter Carrier with as close to eight hours' work as possible.

This dispute involves the office time portion of the evaluation process. In determining office time,

Management uses actual or observed data for certain work functions and standard data for others. Some of the actual data may be subject to adjustment. Mail volume recorded during the count period is a significant piece of actual data. It has a direct impact on office time because of casing standards, the Letter Carrier being expected to case 18 letters or 8 flats per minute. Thus, as mail volume increases, office time increases.* But the actual mail volume is occasionally not representative of the mail volume normally carried on a given route. In the past, at least prior to the July 1978 Agreement, Management would in these circumstances adjust the mail volume figure used in the evaluation process. It made a downward adjustment where the mail volume was abnormally high, thus decreasing office time. It made an upward adjustment where the mail volume was abnormally low, thus increasing office time.

This adjustment in mail volume is the subject of the present arbitration. NALC believed Management's decision to make such an adjustment was highly subjective and caused distortions in the evaluation process. It sought an objective standard for mail volume adjustments. It won a significant concession in the July 1978 Agreement, the language of Section 242.31 (b) of the M-39 Methods Handbook being changed to read as follows:

"No mail volume adjustments will be made to carrier office work (casing and strapping out functions) or street work evaluations unless the mail volume for the week of count and inspection is at least 13% higher or lower than the average mail volume for the period between the most recent regular and the current inspection (excluding the months of June, July, August, and December).

NALC regarded this language as a flat and unconditional prohibition of any mail volume adjustment which did not meet this 13% test. In its view, an adjustment is appropriate only where the mail volume in the count period is 13% higher or lower than the average mail volume figure referred to in Section 242.31 (b).

* By the same token, as mail volume increases, street time may also increase.

The Postal Service took a different position. It believed Section 242.31 (b) dealt only with normal mail volume and should be construed in a manner consistent with the parties' objective to make routes "consist of as nearly 8 hours daily work as possible." It claimed, accordingly, that if an abnormal one-time situation causes a mail volume increase of less than 13%, Management should nevertheless make a downward adjustment in the volume figure. Its Northeast Regional Office expressed this view in a directive to the District Director of Customer Services:

"...[W]hen management does have specific, documentable evidence that a volume increase of less than 13%, for example, was due totally to a one-time mailing (grand opening of a new store, special town celebration, census, etc.) reasonable adjustments to account for the increase should be made."

The directive was discussed by representatives of the Postal Service and NALC at a Joint City Delivery Committee meeting on December 11 and 12, 1979. NALC insisted that the directive be rescinded on the ground it is contrary to the terms of Section 242.31 (b). The Postal Service refused to do so. NALC then filed a Step 4 level grievance on February 13, 1980, protesting the directive. Its grievance reads in part:

"...a dispute exists as to the interpretation of Section 6 of the Memorandum of Understanding dated July 1, 1978 relating to the M-39 Handbook -- specifically [Section] 242.31 (b) -- and I hereby initiate a Step 4 level grievance with respect to such dispute.

"The interpretive issue is whether there is any exception to the language of [Section] 242.31 (b) for any so-called 'unusual situations.' The NALC's contention is that there is no such exception..."

DISCUSSION AND FINDINGS

This case involves a directive published by the Northeast Regional Office of the Postal Service concerning permissible mail volume adjustments. That subject is covered by Section 242.31 (b) of the M-39 Methods Handbook. That section, the parties agree, is a part of their July 1978 Agreement. NALC urges that the directive in question is a violation of Section 242.31 (b). The Postal Service disagrees. Hence, there appears to be an "interpretive issue" under the July 1978 Agreement. It is clear from Article XV, Section 3(d) and Section 4D(1) that such an issue is arbitrable.

The Postal Service does not assert that NALC's claim is inarbitrable. Its procedural objection to the grievance raises an entirely different argument. It challenges not my authority to deal with the merits of NALC's grievance but rather the wisdom of my doing so.

I - Ripeness

The Postal Service states that NALC's grievance "should be dismissed without prejudice as not ripe... for decision." It stresses that although the Northeast Regional directive was published, there is no evidence that the directive was ever implemented. It alleges that no Northeast Regional route evaluation since July 1978 has involved a mail volume adjustment where the increase in volume was less than 13%. It believes that "there [has been] no specific alleged violation of the Union's interpretation of the 13% rule" and that the arbitrator, accordingly, should not make a ruling based on "uncertain and contingent future events that may not occur at all." It insists such policy considerations call for NALC's claim to be deferred until such time as an "actual case" arises, thus providing the arbitrator with the benefit of "arguments based on what actually happened in a particular installation at a particular time rather than arguments based on hypotheticals and speculations."

There are several difficulties with this argument. First, NALC is not raising a purely hypothetical question. The Postal Service did publish a directive calling for mail volume adjustments whenever an installation has "specific, documentable evidence" that

an increase in volume of less than 13% is "totally" attributable to a "one-time mailing." NALC contends that an adjustment in these circumstances would be a violation of Section 242.31 (b). The Postal Service disagrees. There is nothing speculative about this dispute. For the directive itself contains the factual setting which is the basis for NALC's claim. It is these facts to which the contract language must be applied.

Second, it is unrealistic for the Postal Service to suggest that this kind of mail volume adjustment "may not occur at all." Given the explicit instructions in the directive, some postal installation is certain to make a mail volume adjustment where the increase in volume is less than 13%. That situation is bound to occur. I take notice of the fact that management directives, in the Postal Service or in any business enterprise, are ordinarily carried out. It is just a question of time before an installation has "specific, documentable evidence" that an increase in volume of less than 13% is "totally" attributable to a "one-time mailing."

Third, the Agreement indicates that NALC can bring broad "interpretive issues" to arbitration. To the extent to which an "interpretive issue" lacks sufficient background, the parties are ordered by Article XV, Section 3(d) to meet in Step 4 and "develop all necessary facts." They met in Step 4 and apparently concluded that "all necessary facts" were stated in the directive. Had they felt a need for more facts, they presumably would have secured them and placed them before the arbitrator. Their failure to do so suggests that they believed the directive did contain sufficient background to resolve the "interpretive issue." Indeed, the Postal Service has nowhere explained what kind of additional facts would be helpful in determining whether or not the directive was consistent with the terms of Section 242.31 (b).

For these reasons, it would be inappropriate to dismiss NALC's claim on the ground that the grievance was "not ripe...for decision."

II - Alleged Violation

Turning to the merits of the dispute, it is essential to describe the precise situation which prompted NALC's complaint. That description is found in the Postal Service directive. A route evaluation is made for a given Letter Carrier. The mail count indicates that there has been a mail volume "increase of less than 13%" as contrasted to average volume for the period since the last regular count and inspection. Management has "specific, documentable evidence" that the volume increase is "totally" attributable to a "one-time mailing" (e.g., "grand opening of a new store, special town celebration, census..."). The Postal Service has instructed its route evaluators in these circumstances to make a "reasonable adjustment" downward in the volume figure.* Its object in calling for this adjustment is to prevent the volume increase from distorting the Letter Carrier's route.

An example would be helpful. Suppose a 12% volume increase is due entirely to a one-time mailing. Suppose further that no mail volume adjustment is made. The Letter Carrier's route would thereafter reflect that increase, that abnormal condition. Hence, he would probably not have enough work for a full eight-hour day under normal conditions. The Postal Service directive seeks to prevent such an occurrence.

NALC's position is that where the mail volume is less than 13%, any adjustment would be a violation of Section 242.31 (b). It stresses the flat prohibition found in this section: "No mail volume adjustments will be made...unless the mail volume for the week of count and inspection is at least 13% higher or lower than the average volume..." for an earlier period. It insists that this contract language is clear and unambiguous, that it specifically forbids the kind of adjustment contemplated by the Postal Service directive. It believes that the 13% condition must be satisfied, regardless of whether the higher mail volume arises from normal or abnormal conditions. In its opinion, the cause of the increased volume is immaterial.

* Similarly, where a mail volume decrease of less than 13% occurs due to some kind of one-time event, its instructions are to make a "reasonable adjustment" upward in the volume figure.

The Postal Service emphasizes that Section 242.31 (b) is part of the M-39 Methods Handbook. It claims the 13% rule in that section should therefore be construed in light of the objectives set forth in M-39. It cites Section 242.122 ("All regular routes should consist of as nearly 8 hours daily work as possible") and urges that in order to accomplish this objective a route must be evaluated "under as normal circumstances as possible." It asserts that an evaluation based on abnormal mail volume would result in a route which had too little (or too much) work under normal conditions. It says these realities account for the instruction in Section 211.1 ("Counts of mail and route inspections shall be conducted on each...route...during normal volume periods..."). Its position is that the 13% rule applies only to normal deviations in mail volume and that because the directive concerns an abnormal situation, Section 242.31 (b) is inapplicable here.

Thus, the crux of this case is the scope of the 13% rule in Section 242.31 (b). The Postal Service reads the rule narrowly. It would apply the Section 242.31 (b) prohibition only to normal mail volume changes of less than 13%. NALC reads the rule broadly. It would apply the Section 242.31 (b) prohibition to both normal and abnormal (i.e., one-time mailing) volume changes of less than 13%.

The contract language supports NALC's position. Section 242.31 (b) states, in the broadest possible terms, that "no mail volume adjustments will be made..." unless a volume change of at least 13% has taken place. This prohibition is conditioned only upon the size of the mail volume change. Nowhere does Section 242.31 (b) mention the nature of the mail volume change. Nowhere does it refer to normal or abnormal mail volume. Had the parties intended to limit the application of the 13% rule to normal mail volume changes, it would have been a simple matter for them to say so. Their silence indicates they did not consider the cause of the volume change to be a matter of importance.

The Postal Service and NALC negotiated a number of procedures in the July 1978 Agreement to deal with

abnormal conditions in the evaluation of street time. Examples can be found in Sections 242.32 (b) (3) and 242.34 (f). However, they did not negotiate any procedure to handle abnormal mail volume in the evaluation of office time.* They must have been aware of the significance of "normal conditions" in the evaluation of office time. Section 242.31 (a) states, "Under normal conditions, the office time allowance for each letter route shall be fixed at the lesser of..." The very next clause, 242.31 (b), the crucial contract language in this case, says nothing whatever about "normal conditions." The Postal Service nevertheless reads 242.31 (b) as if it too said, "Under normal conditions, no mail volume adjustments will be made..." But I have no authority to add these underscored words to 242.31 (b). My powers are limited. Article XV, Section 4A(6) states that "in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator."

I recognize that the M-39 Methods Handbook says "all regular routes should consist of as nearly 8 hours daily work as possible" and that this goal can best be achieved by making route evaluations under normal conditions. But that is not a sufficient basis, under the circumstances of this case, for implying that the 242.31 (b) prohibition is concerned only with normal mail volume changes. As explained earlier, the parties were fully conscious of the significance of such terms as "normal" and "abnormal" in the route evaluation process. They used those terms in making amendments to M-39 in the July 1978 Agreement. Their failure to refer to "normal" volume in stating the 242.31 (b) prohibition cannot be disregarded. This omission indicates that they did not intend to make the cause of the mail volume change a factor in the application of 242.31 (b).**

* I refer here, of course, to a change in volume of less than 13%.

** I recognize too that Section 211.1 of M-39 says "counts of mail and route evaluations shall be conducted...during normal mail volume periods..." These words state the standard procedure. They do not preclude a count being made during an abnormal mail volume period. The Postal Service could presumably discontinue such a count when it realized it was confronted by an abnormal volume.

III - Conclusion

My conclusion, accordingly, is that the Postal Service directive is a violation of Section 242.31 (b). The directive creates an unwarranted exception to the clear and unambiguous principle stated in 242.31 (b). This ruling does not mean, however, that no exception could ever be imposed on the application of 242.31 (b). It means only that the directive is not a proper exception.

AWARD

The grievance is "ripe" for decision and the merits of this dispute are properly before the arbitrator. The Postal Service directive in question is a violation of Section 242.31 (b) of the M-39 Methods Handbook. That directive should therefore be rescinded.


Richard Mittenthal, Arbitrator