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C# 03245

In the Matter of Arbitration between
UNITED STATES POSTAL SERVICE

N8-W-0039

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

APPEARANCES: R. Andrew German, Esq. and Joyce Turney, Atty.
for the Postal Service; Cohen, Weiss and Simon,
by Bruce H. Simon, Esq. for the NALC

DECISION

This grievance arose under and is governed by the 1978-1981 National Agreement (JX-1) between the above-named parties. The undersigned having been jointly selected to serve as sole arbitrator, a hearing was held on 10 April 1980, in Washington, D. C. Both sides appeared and presented evidence and argument on the following issue:

Whether the Postal Service may deny credit, in the route evaluation process, to letter carriers on Line 15 of Form 1838 for time that they actually spend in the office withdrawing mail from trays, at or near their desks, and preparing that mail for casing.

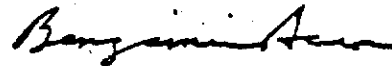
A verbatim transcript was made of the arbitration proceedings. Each side filed a post-hearing brief. Upon receipt of both briefs on 27 May, the record was officially closed.

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

AWARD

The Postal Service may not deny credit to letter carriers on Line 15 of Form 1838 for time that they actually spend in the office withdrawing mail from trays, at or near their desks, and preparing that mail for casing.

The Postal Service shall grant credit on Line 15 of Form 1838 to all letter carriers for all such time.



Benjamin Aaron
Arbitrator

Los Angeles, California
24 June 1980

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NATIONAL ASSOCIATION OF LETTER CARRIERS

OPINION

I

Article XIX of the 1978-81 National Agreement (JX-1)
provides in part:

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 Timekeeper's Instructions.

Section 222.214b of the Methods Handbook M-39, Management of Delivery Services (EX-1), provides in part:

b. Lines 14 through 23

The entries on lines 14 through 23 except line 20 are obtained from carriers recorded time on Form 1838 worksheet. (NOTE: Items on lines 14 through 23 are work functions for which actual time is recorded and the recordings are in minutes.) . . .

(2) Line 15, Withdrawing Mail

So far as possible, mail will be withdrawn from distribution cases and placed on carriers' desks by clerks or

mailhandlers, especially that mail received early in the morning. If necessary for carrier to withdraw mail from distribution cases or remove mail from sacks or hampers, actual time will be recorded. Two withdrawals of letter mail and one of papers for each trip, with a final pull just prior to leaving time, generally are sufficient. On the day of inspection, record actual time used by the examiner in withdrawing mail if the carrier normally pulls his own mail. NOTE: The actual time used by examiner for withdrawal of mail will be added to the carrier's net office time on the day of inspection. [Emphasis added]

Similarly, section 922.51b of the Methods Handbook

M-41, City Delivery Carriers Duties and Responsibilities

(UX-8) provides:

b. Line 15, Withdrawing Mail. As much as possible, clerks or mail handlers withdraw mail (especially that mail received early in the morning) from distribution cases and place it on your desk. If it is necessary for you to withdraw mail from distribution cases or to remove mail from sacks or hampers, record the time. Two withdrawals of letter mail and one of papers for each trip, with a final pull just prior to leaving time, are generally sufficient. On the day of inspection, the actual time used by the examiner in withdrawing mail (1) is recorded--if the carrier normally pulls his/her own mail and (2) is added to the net office time. [Emphasis added]

The instant dispute centers on the Postal Service's policy of denying credit, in the route evaluations process, for time spent by letter carriers in removing mail from trays, at or near their cases, and preparing that mail for casing.

According to NALC, prior to 1975, time spent by letter carriers in these activities was recorded and credited as "withdrawal time" on Line 15 of Form 1838. In 1975, the Postal Service began to implement its Methods Improvement Program and Standard Operating Procedures (MIPSOP), which

was designed, in part, to reduce the role of letter carriers in the withdrawal of mail. Subsequently, in some instances, Postal Service management eliminated the credit previously allowed for time spent withdrawing mail from trays and similar receptacles and preparing it for casing.

In a letter dated 11 April 1979 to William Henry, Labor Relations Executive of the Postal Service (JX-4), Vincent R. Sombrotto, President of NALC, protested the denial of credit, alleging it to be a violation of Sections 922.14 and 922.51b of the M-41 Methods Handbook. Section 922.14 provides:

.14 The worksheet side of the form (not a separate sheet of paper) must be used to record the mail count each time a withdrawal of mail is made from the distribution cases, sacks, hampers, trays, etc., and must be used to show actual time entries on the bottom of the form in the columns headed, Actual Time Entries, for each type of work performed. [Emphasis added]

By letter dated 1 May 1979 (JX-5), Henry replied to Sombrotto. His letter stated in part:

Historically, Line 15 (formerly Line 4) has been used, as it is currently, to provide time allowances when it is necessary for a carrier to leave his or her case to obtain mail from cases, trays, sacks, or hampers located at a point away from the carrier's immediate work area or case.

The process of picking up mail at the carrier case and sorting it into the case constitutes the current maximum time allowance for routing mail shown on Notice 26 in Handbook M-39. "Withdrawing Mail" is recognized as a distinct task for which a separate daily allowance is given when it is necessary for the carrier to leave the case to obtain mail.

The difference between routing mail allowances and withdrawing mail allowances during mail counts and route inspections have been made crystal clear over the years. . . .

The intent of the wording "remove mail from sacks or hampers" was to cover mail processing sortation points or dispatch methods that were used in addition to the regular distribution cases. "Withdrawal time" as a separate office time allowance was discussed at length in the arbitration case N-B-S 4334, issued January 30, 1978, by Impartial Chairman Garrett.

With regard to your contention that a time credit should be allowed on Line 15 for removing rubber bands or twine from bundled mail, it should be noted that not all bundles are to be broken by the carriers, i.e., direct bundles or sacks prepared by mail processing for firms or individuals.... However, when a carrier must leave the case to withdraw mail from distributions cases, etc., time spent removing rubber bands or twine from bundled mail is included in Line 15 (Item 12, November 1974, National Joint Delivery Committee Meeting). If there are offices where mail is placed on carrier cases by clerks or mailhandlers and that mail is in fact tied in several bundles with twine or rubber bands, which require opening in order to case, the carrier may be entitled to an allowance. This situation would not normally occur if an office is under fully implemented MIP-SOP procedures. If there are specific examples where carriers followed proper office procedures during count and inspection but were not granted the time allowances required to efficiently perform the work, you should advise us accordingly.

This answer was unsatisfactory to NALC, and the grievance was eventually appealed to arbitration.

II

NALC argues that the above-quoted provisions of the M-39 and M-41 Handbooks, read together, "explicitly require that the actual time spent by the carriers withdrawing mail from trays be recorded and credited on Line 15 of Form 1838" (NALC Br., p. 12). It points out that neither manual contains any other provisions specifically dealing with carrier withdrawal of mail from trays.

NALC also claims that the Postal Service has violated

Article XXXIV (Work and/or Time Standards) of the Agreement.

That provision reads in part:

2. The Employer agrees that any work measurement systems or time or work standards shall be fair, reasonable and equitable. . . .

3. The Employer agrees that before changing any current or instituting any new work measurement systems or work or time standards, it will notify the Union or Unions concerned as far in advance as practicable [and will observe certain prescribed procedures.]

In addition, NALC relies on Article V, which prohibits the Postal Service from taking any actions "affecting wages, hours and other terms and conditions of employment. . .which violate the terms of this Agreement. . . ."

Finally, NALC asserts that the position taken by the Postal Service in this case "is fundamentally incompatible with the basic objectives of the route evaluation system" (NALC Br., p. 13). It cites Section 242.122 of the M-39 Manual:

The proper adjustment of carrier routes means an equitable and feasible division of the work among all of the carrier routes assigned to the office. All regular routes should consist of as nearly 8 hours daily work as possible.

Because the recurring carrier activities at issue in this case involve a significant increment of time, NALC declares, "[i]f the system is to function with the requisite level of accuracy, then those activities must be recorded somewhere on the Form 1828" (NALC Br., p. 14).

The basic position of the Postal Service in this case is that the issue--whether time spent picking up mail from

the floor underneath or by the carrier's case should be reflected on Line 15 of Form 1838--has already been decided, and that the arbitrator has no power to change it. As the Postal Service reads the M-39 Manual in respect of Line 15, "Line Fifteen credit will only be given if it is necessary for the carrier to withdraw mail from distribution cases or remove mail from sacks or hampers" (Tr. 15).

Pursuing the same argument in its brief (p. 2), the Postal Service declares:

The M-39 Handbook, therefore, clearly and specifically sets forth those activities preparatory to casing of mail which trigger an entry on line 15. Application of the familiar rule of construction expressio unius est exclusio alterius, moreover, leads to the inescapable conclusion that those activities -- withdrawing mail from distribution cases or removing mail from sacks or hampers -- are the only ones which cause such an entry to be made.

Further, the Postal Service argues that NALC implicitly recognized during the 1978 negotiations that all functions preparatory to casing do not trigger a Line 15 entry. In those negotiations NALC submitted a sweeping proposal (EX-3) relating to mail counts and route inspections. That proposal included the following provision:

- (3) letter routes for which no withdrawal of mail is currently performed by the route carrier shall have this portion of their office time reduced by five (5) minutes. . . .

Referring to NALC's stated position that anything a carrier does preparatory to the casing of mail is a "withdrawal" function that should be reflected on Line 15, the

Postal Service states in its brief (p. 5):

Manifestly, every carrier must do some preparation before he can begin to case his mail. . . . Yet, the NALC's . . . bargaining proposal recognized that not every carrier performed a withdrawal of mail. Implicit in that recognition was the acknowledgment that not all preparatory activities are recordable on line 15 of Form 1838.

If that was NALC's position then, the Postal Service concludes, its present grievance represents an attempt to gain in arbitration what it "did not obtain, or even attempt to obtain, during the 1978 negotiations". (P.S. Br., p. 5)

III

I do not agree with the Postal Service that the issue raised by NALC has already been decided by the language of the M-39 Manual, incorporated by Article XIX into the Agreement. First, relevant parts of all manuals, including the M-41, are also incorporated by Article XIX. As previously noted, although Section 222.214b. of M-39 refers only to withdrawing mail from distribution cases or removing mail from "sacks or hampers," Section 922.14 of the M-41 Manual refers to withdrawing mail from "distribution cases, sacks, hampers, trays, etc." (Under-scoring added)

Second, the failure to mention trays in the M-39 Manual, in my opinion, lacks the all-important significance attached to it by the Postal Service. As NALC points out in its brief (p. 17*),

It would seem self-evident that no single national handbook could possibly catalogue each and every activity in which 180,000 carriers engage in 100,000 post offices.

Common sense dictates that the question of recording time spent by a carrier in a recurring work activity cannot turn on whether that activity is specifically described in the M-39.

In the absence of specific language in the Agreement declaring that Postal Service manuals shall be construed as excluding from consideration all functions not specifically mentioned, the maxim, "expressio unius est exclusio alterius," has no application here.

The argument of the Postal Service based on NALC's contract proposal during the 1978 negotiations also seems to me to miss the mark. It is fully answered in NALC's brief (p. 19):

With respect to the issue now before the Arbitrator, this proposal is a non-sequitur. The overall proposal was to change the entire system of office time evaluation by creating a single 30-minute standard covering most office functions, subject to certain standardized deductions, including the five minutes cited by management. Ultimately, this proposal was rejected. The traditional system has been retained whereby the actual time spent by each individual carrier in the office is measured and recorded for each activity reflected on Lines 14-19 and 21-23 of Form 1838.

For the present case, NALC is asking only that actual time spent by carriers in withdrawal-related activity be measured and recorded on Line 15. The concept addressed in the bargaining proposal -- of a standardized deduction from a standardized allowance -- simply has nothing to do with this issue.

In his opening statement at the arbitration hearing, counsel for the Postal Service said in part (Tr. 16):

I note. . .that. . .the time spent in picking up mail from the floor, straightening out mail on the ledge of the case is not. . .disregarded or viewed as diminimis [sic].

... [R]outes are structured based on two components, office time and street time.

The office component. . . is the lesser of the actual time the carrier spends in the office, i.e., the time he clocks in to the time he hits the street or the office standard time.

Everything that the carrier does during the day, obviously is reflected in the actual time. And accordingly, it is hardly disregarded in the way routes are structured.

Again, NALC's counter-argument in its brief (p. 14*) seems more persuasive:

Obviously for those carriers whose standard time total is less than the actual time total, Form 1838 will be the basis for evaluating the carrier's office time. In those instances, the elimination of credit for withdrawal activity on Form 1838 would necessarily cause such activity to be disregarded in the final evaluation of the route. Moreover, the elimination of credit on Form 1838 may itself cause the standard time total to be lower than the actual time total in the first instance.

Finally, Henry's letter of 1 May 1979 to Sombrotto, previously referred to, suggests that, historically, the job activities presently in dispute were considered to be part of the casing function, rather than the withdrawal function. However, the uncontradicted testimony of Joseph Johnson, NALC Director of City Delivery (the only witness for either side to testify at the arbitration hearing), was specifically to the contrary.

For all of the foregoing reasons, the grievance is sustained. NALC is entitled to the remedy requested.



Benjamin Aaron
Arbitrator