C#08555

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	**GRIEVANT:**	Class Action
between	**POST OFFICE:**	Montgomery AL
UNITED STATES POSTAL SERVICE	**USPS CASE NO:**	H4N-3D-C 9419
and	**NALC CASE NO:**	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO		

BEFORE: Raymond L. Britton, *Arbitrator*

APPEARANCES:

For the U.S. Postal Service:	Lynn D. Poole
For the Union:	Keith Secular
Place of Hearing:	USPS Headquarters
Date of Hearing:	September 30, 1988

AWARD:

For the reasons given, the grievance is sustained and it is directed that the Employer ensure that employees stop working during an office break.

Date of Award: December 22, 1988

Raymond L. Britton

ISSUE

When an employee does not desire to avail himself of the break time which has been granted by the collective bargaining agreement, is the Postal Service required to force the employee to do so?

HISTORY OF THE PROCEEDINGS

The parties failed to reach agreement on this matter, and it was submitted to arbitration for resolution. Pursuant to the contractual procedures of the parties, the undersigned was appointed as Arbitrator to hear and decide the matter in dispute.

At the commencement of the Hearing, it was suggested by the Employer that the matters herein need not be addressed at national level arbitration. After the Hearing, however, the Employer, because it believed that the grievance was properly denied, decided not to press its arbitrability concerns further. In addition, it was agreed that the parties would submit Post-Hearing Briefs to the Arbitrator by placing such Briefs in the mails not later than thirty days after receipt of the Transcript of the Hearing. The Transcript, prepared by Diversified Reporting Services, Inc., Washington, D.C., was received by the Arbitrator on October 13, 1988. Both the Post-Hearing Brief filed by the United States Postal Service (hereinafter referred to as "Employer") and that filed by the National Association of Letter Carriers, AFL-CIO (hereinafter referred to as "Union") were received by the Arbitrator on November 18, 1988.

SUMMARY STATEMENT OF THE CASE

On May 17, 1985, a Class Action grievance was filed on behalf of carriers at the Lagoon Park Station of the Post Office in Montgomery, Alabama, and the grievance was denied on that date by Station Manager Paul Kennedy. Pursuant to Article 15 of the National Agreement, the grievance was appealed on May 29, 1985 to Step 2 of the grievance procedure alleging a violation of, but not limited to, Article 19 of the National Agreement, and stating in relevant part as follows (Joint Exhibit No. 2):

> *Management is daily allowing carriers to work during their break. The carriers at 36109 voted to have their morning break in the office. By allowing some carriers to continue to work during their break makes other carriers feel they should work thru their breaks especially during the days they have a heavy volume of mail, and those not familiar with casing.*
>
> *Corrective Action Requested: Stop carriers from working during their breaks.*

On June 13, 1985, a Step 2 meeting was held, and on June 20, 1985, in a letter to Union President Kenneth W. Stephens, Supervisor of Employment & Services Paula W. Steadham denied the grievance, stating in relevant part as follows (Joint Exhibit No. 2):

* * *

During the discussion it was brought out by the Union that Management allows Carriers to work during their office break time. Management stressed the fact that all Carriers are allowed to vote once a year on whether their break will be taken in the office or on the street. This has been done in delivery zone, 36109, and it was voted that the morning break would be taken in the office. Management has not denied anyone their break; Management has provided the time for the break to be taken in the office; however, Management will not and should not force an employee to take a break. No violation of the contract has occurred, nor of FLSA requirements. The employees are not being forced to work during their break. If they choose to work during their break, it is by their own free will.

Based on the above, your grievance is denied.

On June 27, 1985, the Union appealed the grievance to Step 3 of the grievance procedure. On September 10, 1985, in a letter to National Business Agent Ben Johnson, the grievance was denied by Labor Relations Representative James Greason, Jr., who stated in relevant part as follows (Joint Exhibit No. 2):

* * *

Based on information presented and contained in the grievance file, the grievance is denied. The carrier has been authorized to take a break and he is paid the same salary whether he takes it or not.

* * *

On September 26, 1985, the Union appealed the grievance to Step 4, and on April 3, 1987, the Union certified the case for arbitration.

Provisions of the National Agreement effective July 21, 1984, to remain in full force and effect to and including 12 midnight July 20, 1987, (hereinafter referred to as "National Agreement") (Joint Exhibit No. 1) considered pertinent to this dispute by the parties are as follows:

ARTICLE 19

HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals, and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least sixty (60) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Unions upon issuance.

Provisions of the Management of Delivery Services Handbook dated May 1, 1985 (Joint Exhibit No. 4) (hereinafter sometimes referred to as "M-39 Handbook") considered pertinent hereto are as follows:

242.34 Street Time Allied Work Rules

.341 The carriers at the delivery unit will receive two 10-minute break periods. The local union may annually opt to have either (a) both breaks on the street or (b) one of the 10-minute breaks in the office and one break on the street. If two 10 minute breaks are taken on the street, they will be separate from each other. Breaks must be separate from the lunch period. The carrier shall record on Form 1564-A, Carriers Route Book--Route Instructions, *the approximate location of the break(s). Reasonable comfort stops will not be deducted from the carrier's actual time.*

POSITION OF THE PARTIES

The Position of the Union

It is the position of the Union that the Employer violated the National Agreement by permitting letter carriers to work through the ten-minute break. The Union contends that individual carriers may not waive the break and that management must be held responsible for permitting such a waiver to occur. The Union maintains, therefore, that an Award should be issued requiring management to instruct carriers not to work through the break.

The Position of the Employer

The Employer takes the position that the Union's requested relief, not the actions of the Employer, violate the letter and spirit of the collective bargaining agreement. The Employer contends that a break is a discretionary time period that can be used by a carrier for situations other than those for which the time was originally granted, if the carrier so desires. The Employer maintains that its conduct does not violate the National Agreement and that the grievance should be dismissed.

OPINION

The question raised by the parties in this proceeding concerns the relatively straightforward matter of whether a letter carrier may be forced by management to stop working during the ten-minute break period taken in the office.

Although the facts giving rise to this grievance are not in dispute, a brief review of the Union's statement of those facts is helpful to an understanding of the underlying reasons for its appeal to arbitration. Letter carriers at the Lagoon Park Station decided to hold one of their ten-minute break periods in the office, and each morning, the steward would announce the beginning of the break period, which varied slightly each day. Nonetheless, four or five carriers continued to work through the break and, according to the Union, the majority of those carriers were in a van pool, that is, they were transported to the starting point for their routes in a van. Since the van could not leave until all of the employees in the pool were ready, these employees, the Union claims, felt pressured to be ready to leave at about the same time in order that others would not be required to wait in their behalf. Citing the testimony of branch president Kenneth Walker Stephens, Jr., the Union contends that management was trying to rush these van pool employees. Additionally, according to the Union, employees new to the station began to notice that some carriers did not stop working at the break time, and some of these new employees likewise began omitting their break in favor of continuing to work at their cases. The Union contends that management knowingly tolerated this practice and refused to advise employees that they should not work during the contractual break period thereby giving rise to the grievance made the basis of this arbitration.

The Employer, in defense of its conduct in permitting employees to continue working through their breaks, argues that the time limits for breaks were negotiated with the Union and became part of the modifications to the M-39 Handbook in 1978. According to the Employer, during 1978, the Union complained that employees were being disciplined in some installations for taking unauthorized breaks, while other installations had a practice of permitting such breaks. The Union, the Employer maintains, demanded that breaks be recognized in the National Agreement as applying to letter carriers. The parties thereupon negotiated a Memorandum of Understanding, which was incorporated into the M-39 Handbook, and after modification in 1984 now appears as Section 242.341 of the present M-39 Handbook. Citing the testimony of William Henry, a Postal Service negotiator, the Employer contends that at no time during the negotiations did either party suggest that the break time would be mandatory.

Additionally, the Employer argues that the Union's requested relief violates the letter and spirit of the National Agreement. According to the Employer, this matter is not a case where management refused to observe the language of its collective bargaining agreement with the Union, nor is it a case in which management tried to make an individual contract with employees, in violation of its contractual obligations. The Employer stresses that the employees involved in this matter did receive ten minutes office time every day to take a break in specific compliance with the terms of the

contract. Further, the Employer argues that, contrary to the Union's assertions, this matter is about discipline, since the Union's objective is to use the coercive power of management to solve an essentially internal Union matter. In this regard, the Employer argues that the grievance should be dismissed, since the language of the collective bargaining agreement does not support the Union's position.

The Employer further argues that the Union's position is inimical to other provisions of the National Agreement. Referencing Article 15.2, the Employer points out that only the Union can appeal a grievance to Step 2 and beyond. Thus, despite the Union's disclaimer at the Hearing, the Employer contends that it is patently obvious that the Union intends that the Employer use its disciplinary power, if necessary, to whip into line any employee who does not take his full ten-minute break. Citing the testimony of Union President Kenneth Stephens that the Union expected the Employer to use whatever management prerogatives it needed, the Employer points out that if an employee were disciplined for failing to take a break, the Union would be in the anomalous position of having to assert on the employee's behalf that the discipline was without just cause when the Union had forced the Employer to issue the discipline. Such a position, the Employer urges, not only flies in the face of the Union's obligation to fairly represent all carriers but also flies in the face of the Union's own complaint that there were too many grievances filed by its members. In short, the Employer argues that the Union's position in this arbitration guarantees that more--not less--discipline will be required.

The Arbitrator is not unmindful of the dilemma posed by the Union's position herein, nor is he unaware of the difficulties that would be created for supervisory personnel should they be required to police the taking of breaks. Nonetheless, that it may become necessary, as the Employer argues, to discipline employees for continuing to work during the break time cannot properly be considered a factor that would justify overriding the plain meaning of the language in question. Specifically, Section 242.341 of the M-39 Handbook states that "The carriers at the delivery unit will receive two 10-minute break periods." In the *American Heritage Dictionary*, 2nd college ed., (Boston: Houghton Mifflin Company, 1985), p. 206, the definition of the word *break*, as used in this context, is "a pause or interval, as from work." Thus, in the considered judgment of the Arbitrator, since the words *break* and *work* are mutually exclusive, an employee who does not stop working during the break period has not *received* a break. This view, it seems to the Arbitrator, comports with the intent of the parties that employees will have two periods during the day during which a cessation of work will promote the overall welfare and well-being of such employees.

The Employer further contends that this arbitration involves the Union's desire that the Employer enforce the local Union's decision that office break time be observed by all employees. According to the Employer, nothing in the Union's grievance or subsequent arbitration presentation suggested that it was at all concerned with whether break time on the street was enforced or not. To the contrary, both Union and Postal Service witnesses are said by the Employer to have agreed that break time on the street was not monitored by anyone and no one was certain whether those breaks are observed by

employees. In this regard, it is argued by the Employer that the Union's position runs afoul of Section 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act, which states that "It shall be an unfair labor practice for a labor organization or its agents (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 157 of this title . . . . (2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section. . . ." According to the Employer, the Union is attempting to selectively enforce its interpretation of break time in violation of the cited sections of the Act.

In the considered judgment of the Arbitrator, however, this argument is without persuasive merit. The parties negotiated an arrangement whereby the local union would decide whether one break would be taken in the office. Once the local union made its choice known, it seems to the Arbitrator that the Employer's obligation is merely to ensure that this decision is carried out by employees present in the office at the time the break is announced. This being so, the argument of the Employer that no one knows whether a carrier on the street takes his break has no relevance to the matter at hand, for the question presented here only concerns breaks in the office after a union decision to have an office break. The provisions of the National Labor Relations Act referenced by the Employer do not advance its position in this matter inasmuch as no coercion of employees by the Union can be said to occur when the latter insists that management adhere to the language of the M-39 Handbook as regards office break time. Nor can the Union be said to have caused the Employer to discriminate against an employee when all employees are directed by the Employer to discontinue working during a contractually mandated break period. Thus, the decisions rendered in *General Motors Corp.*, 272 NLRB 110, 117 LRRM 1392 (1984), *enf'd, Auto Workers Local 594 v. NLRB*, 776 F.2d 1310 and *Maui Surf Hotel*, 235 NLRB 957, 98 LRRM 1001 (1978), *modified*, 601 F.2d 603 (9th Cir. 1979), as referenced by the Employer, are found by the Arbitrator to be inapplicable hereto.

The Employer additionally maintains that the right to take a break is but one of a series of discretionary amounts of time, such as time for withdrawing mail, personal needs, and vehicle inspection, that a carrier has in the overall makeup of his route. Referencing the uncontroverted testimony of Station Manager Paul Kennedy, the Employer points out that a carrier can use such time periods for purposes other than those for which the time originally had been granted, if the carrier so desires.

While the Employer may be correct in its assertion that carriers have certain discretionary time periods during which they may carry out objectives other than those originally designated, the office break does not, in the view of the Arbitrator, fall within this category. Once the Union has elected to take an office break, the time period is no longer discretionary with the carrier. It is a specific ten-minute period, the starting and ending times of which are established locally, during which work is to be discontinued.

In accordance with the foregoing, it is the conclusion of the Arbitrator that the Employer is required to ensure that employees stop working during an office break.