

C#09970

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	<b>GRIEVANT:</b>
	)	PAUL E. GLATFELTER
-Between-	)	
	)	<b>POST OFFICE:</b>
UNITED STATES POSTAL SERVICE	)	Palmdale, California
	)	
-And-	)	<b>CASE NO:</b> W7N-5T-C 18440
	)	
NATIONAL ASSOCIATION OF	)	<b>NALC GTS NO:</b> 14825
LETTER CARRIERS, AFL-CIO	)	
	)	

**BEFORE:** CARL B.A. LANGE III, Arbitrator

**APPEARANCES:**

For the U.S. Postal Service: DONALD E. VANNOY  
Labor Relations Program Analyst,  
Senior  
850 Cherry Avenue  
San Bruno, CA 94099-0841

For the Union: THOMAS H. YOUNG, JR.  
Regional Administrative Assistant  
3636 Westminster Avenue, Suite A  
Santa Ana, CA 92703-1445

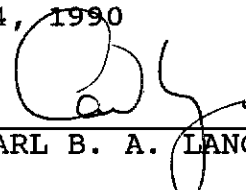
**Place of Hearing:** 38560 9th Street East  
Palmdale, California

**Date of Hearing:** March 7, 1990

**AWARD:**

The Service violated the National Agreement when it denied the Grievant's September 29, 1989 request for a Special Route Inspection. The Remedy shall be as set forth herein.

**Date of Award:** April 4, 1990

  
\_\_\_\_\_  
CARL B. A. LANGE III

**BACKGROUND**  
(Glatfelter - Special Route Inspection)

Pursuant to the National Collective Bargaining Agreement ("National Agreement") between the UNITED STATES POSTAL SERVICE ("Service" or "Employer") and the NATIONAL ASSOCIATION OF LETTER CARRIERS ("NALC" or "Union"), the undersigned was selected from the Western Region Regular Arbitration Panel to serve as the Arbitrator in this matter.

An evidentiary hearing was held on March 7, 1990, at the postal facility located at 38560 9th Street East, Palmdale, California. The Service was represented by Don Vannoy, Labor Relations Program Analyst, Senior. The NALC was represented by Tom Young, Regional Administrative Assistant. The parties agreed that there were no issues of substantive arbitrability to be resolved and that the matter was properly before the Arbitrator. During the course of the hearing, the parties were afforded a full and complete opportunity to be heard, to call, examine, and cross-examine witnesses, to develop arguments, and to present relevant evidence. Witnesses appearing before the Arbitrator were duly sworn. Paul Glatfelter ("Grievant" or "Employee") was present at the hearing and testified on his own behalf. An official transcript of the hearing was not made. The parties made closing arguments on the record. The matter was deemed submitted for decision as of March 7, 1990, at the close of the hearing.

The parties agreed that the issue to be determined should be stated as:

"Did the Postal Service violate Articles 19 or 41 of the National Agreement when it denied the Grievant's September 29, 1989, request for a Special Route Inspection?"

"If so, what is the appropriate remedy?"

This matter arises as a result of the Service's denial of the Employee's request for a Special Route Inspection. The Employee, a Letter Carrier with three year's experience at the Palmdale Post Office, was the successful bidder for a vacancy on Route 5022. Prior to assuming the position on Route 5022, the Employee held a regular bid position on Route 5006 at the same station. The Employee assumed his new position on August 12, 1989. From the beginning, the Employee needed more than eight hours to complete the route on a regular basis. On September 29, 1989, the Employee submitted a request for a Special Route Inspection. The request was denied on October 12, 1989. A formal Step 2 grievance was filed on October 19, 1989. The grievance alleged a violation of Articles 19 and 41 of the National Agreement and Section 271g of the M-39 and sought completion of a Special Route Inspection, any

adjustments of the Grievant's route found to be appropriate as a result of the Inspection, and payment of \$100 per pay period for each pay period that passed until the Inspection was conducted and adjustments were implemented.

#### Stipulations of the Parties

Prior to making their opening statements, the parties agreed to several stipulations that are germane to the resolution of this dispute. Several of the stipulations are integrated into the basic statement of the case background. The major stipulation agreed to by the parties is that the six-week time requirement to qualify for a Special Route Inspection pursuant to Section 271g of the Postal Service's "Management of Delivery Services" manual ("M-39") was met at the time of the Employee's request.

#### Union Position

The Union argued that the Service's denial of the Special Route Inspection request was improper. Although the Grievant was new to route 5022 in August, by late September he was familiar with the route. The Union countered the Service's claim that the Grievant's work performance was unsatisfactory and asserted that the route was simply out of adjustment. Route 5022, by virtue of the time required to complete the route, qualified for a Special Route Inspection.

#### Service Position

The Service argued that there was no violation of the National Agreement. Article 41 of the National Agreement requires that an employee be given sufficient time to "become proficient" on any new route. The M-39 supports management's contention that it may refuse to conduct a Special Route Inspection if the employee's work performance is not "otherwise satisfactory." In the Service's view, proficiency and satisfactory work performance are co-equal terms. At the time when the request was made, the Employee had not become proficient on his new route.

## Relevant Provisions of the Collective Bargaining Agreement

The Agreement between the United States Postal Service and the American Postal Workers Union, AFL-CIO and the National Association of Letter Carriers, AFL-CIO (Jt. Exhibit 1) provides:

### "ARTICLE 3

#### "MANAGEMENT RIGHTS

"The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

"A. To direct employees of the Employer in the performance of official duties;

"B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

"C. To maintain the efficiency of the operations entrusted to it;

"D. To determine the methods, means, and personnel by which such operations are to be conducted;

"E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and

"F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

...

## "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.

..."

**"ARTICLE 41**

**"LETTER CARRIER CRAFT**

**"SECTION 1. POSTING**

. . .

**"C. Successful Bidder**

. . .

"4. The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to T-6 and utility assignments, unless the local agreement provides otherwise.

**"SECTION 2. SENIORITY**

. . .

**SECTION 3. MISCELLANEOUS PROVISIONS**

"A. A carrier may use stools while casing mail and performing other office duties, provided the use of such stools does not interfere with or affect efficiency and standard job performance.

"B. The Employer will not assess or hold a carrier responsible for incorrect fees collected on mail improperly rated prior to being distributed to the carrier, who is expected to exercise reasonable care and judgment in the matter.

"C. The Employer will not assess or hold a carrier responsible for faulty checks accepted in payment for postal fees or postal charges provided the carrier follows regulations governing the acceptance of checks.

"D. The USPS may initiate the T-6 program in those offices in which the program has not been implemented. In such cases, the Union shall be notified.

"E. When the Employer requires the use of certain supply items for the proper perfor-

mance of a carrier's functions, such items will be supplied by the Employer.

"F. A newly appointed carrier or a carrier permanently assigned to a route with which the carrier is not familiar will be allowed a reasonable period to become familiar with the route and to become proficient.

"[see Memo, page 215]

"G. The Employer will advise a carrier who has properly submitted a Carrier Auxiliary Control Form 3996 of the disposition of the request promptly after review of the circumstances at the time. Upon request, a duplicate copy of the completed Form 3996 and Form 1571, Report of Undelivered Mail, etc., will be provided the carrier.

"H. The Postal Service recognizes that representatives of the NALC should be permitted to use available telephones. Accordingly, the Employer, at the local level shall establish a reasonable policy regarding the use of telephones by authorized Union officials and stewards for calls relating to the administration of the National Agreement. The policy will be made known to the President of the NALC Branch.

"I. Carriers shall not finger mail when driving, or when walking up or down steps or curbs, when crossing streets, or at any time it would create a safety hazard to the carriers or the public. Consistent with the efficiency of the operation, mail shall be placed in the delivery sequence in a bundle(s) during strapping out. The Employer shall not be required to conduct a special count or route inspection as a result of this Agreement.

"J. The Employer agrees that, except in matters where there is reasonable cause to suspect criminal activity, postal management or inspectors shall not inspect lockers unless the employee or the Union representative has been given the opportunity to be present. For a general inspection, in which a number of lockers are to be inspected, where employees have had prior notification of at least a week, the above is not applicable.

"K. Supervisors shall not require, nor permit, employees to work off the clock.

"L. In the interest of safety and health and other appropriate considerations, representatives designated by the NALC will be given an opportunity to examine, comment and to submit recommendations on new vehicle specifications during their development and before the specifications are transmitted to potential contractors, before manufacturing and upon completion of vehicles.

"M. The NALC will be informed concerning changes in existing regulations relating to the duties and functions of city letter carriers. Further, it is agreed that when changes of a substantive nature are made they will only be made in accordance with the contractual obligations already binding upon the parties under Article 34, 'Work and/or Time Standards.'

"N. Letter carriers may cross lawns while making deliveries if customers do not object and there are no particular hazards to the carrier.

"O. The following provision without modification shall be made a part of a local agreement when requested by the local branch of the NALC during the period of local implementation; provided, however, that the local branch may on a one-time basis during the life of this Agreement elect to delete the provision from its local agreement:

"'When a letter carrier route or full-time duty assignment, other than the letter carrier route(s) or full-time duty assignment(s) of the junior employee(s), is abolished at a delivery unit as a result of, but not limited to, route adjustments, highway, housing projects, all routes and full-time duty assignments at that unit held by letter carriers who are junior to the carrier(s) whose route(s) or full-time duty assignment(s) was abolished shall be posted for bid in accordance with the posting procedures in this Article.'

"That provision may, at the local NALC Branch's request during local implementation,



be made applicable (including the right to delete it) to selected delivery units within an installation. For purposes of applying that provision, a delivery unit shall be a postal station, branch or ZIP code area. Any letter carrier in a higher level craft position who loses his/her duty assignment due solely to the implementation of that provision shall be entitled to the protected salary rate provisions (Article 9, Section 7) of this Agreement.

"P. The Employer shall promptly notify the local Union President of any job-related vehicle accidents involving city letter carriers.

"Q. The Employer agrees to continue efforts to improve the comfort and temperature level in postal vehicles.

"R. A seasonal route is a route on which the weekly hours of required service are substantially increased as a result of an increase in the number of customers served during a specific period each year. These routes are generally located in resort or vacation areas. The following steps will be taken in regard to the service of those routes during the abnormal period of periods:

"(a) The duration of the seasonal periods shall be determined by management after discussion with the local Union.

"(b) During those periods, auxiliary assistance if requested shall be provided to the maximum extent possible.

"S. City letter carrier mail counts and route inspections and adjustments shall be conducted in accordance with Methods Handbook M-39, Management of Delivery Services, as modified by the parties Memorandums of Understanding dated July 21, 1981 and October 22, 1984 (incorporated into December 24, 1984 Award).

. . . ."

### Relevant Provisions of Handbooks and Manuals

The Service's Method's Handbook entitled "Management of Delivery Services" ("M-39") provides at Section 270, et seq., (Jt. Exhibit 2K) as follows:

#### "270 SPECIAL ROUTE INSPECTIONS

##### "271 WHEN REQUIRED

"Special route inspections may be required when one or more of the following conditions or circumstances is present:

"a. Consistent use of overtime or auxiliary assistance.

"b. Excessive undertime.

"c. New construction or demolition which has resulted in an appreciable change in the route.

"d. A simple adjustment to a route cannot be made.

"e. A carrier requests a special inspection and it is warranted.

"f. Carrier consistently leaves and/or returns late.

"g. If over any 6 consecutive week period (where work performance is otherwise satisfactory) a route shows over 30 minutes of overtime or auxiliary assistance on each of 3 days or more in each week during this period, the regular carrier assigned to such route shall, upon request, receive a special mail count and inspection to be completed within 4 weeks of the request. The month of December must be excluded from consideration when determining a 6 consecutive week period. However, if a period of overtime and/or auxiliary assistance begins in November and continues into January, then January is considered as a consecutive period even though December is omitted. A new 6 consecutive week period is not begun.

"h. Mail shall not be curtailed for the sole purpose of avoiding the need for special mail counts and inspections.

"272 MANNER IN WHICH CONDUCTED

"When special inspections are made because of conditions mentioned in 271, they must be conducted in the same manner as the formal count and inspection."

## ANALYSIS AND CONCLUSION

The Postal Service has, and retains, the right to direct its work force, to provide for efficient operations, and to determine the methods, means, and personnel through which its mission will be accomplished (Jt. Exhibit 1 at Article 3). The Service's rights are limited and regulated by provisions of the National Agreement and by local Memoranda of Understanding negotiated pursuant to Article 30. The various Postal Service Handbooks, Operating Manuals, and Regulations also contain limitations and restrictions that are integrated with the National Agreement by operation of Article 19.

There are two major questions in this case. First, may a request for a Special Route Assignment pursuant to Section 271g of the M-39 be denied because an employee's work performance on the route was not "otherwise satisfactory"? If the answer to the first question is in the affirmative, then, was the denial of the Employee's September 29, 1989, request for a Special Route Inspection appropriate.

In support of its position that a request for a Special Route Inspection may be denied if there is unsatisfactory work performance, the Service submitted a recent decision authored by Arbitrator Eaton in case number W7N-5T-C 2054, Simi Valley, California (June 22, 1989). In that case, Arbitrator Eaton was faced with a situation quite similar to the matter before this Arbitrator. The grievant had assumed a bid position on a new route. Six weeks later, the grievant made a request for a Special Route Inspection pursuant to Section 271g. The request was denied on the basis that the grievant's work performance was not "otherwise satisfactory." It was management's opinion that the grievant had not yet become proficient on the route due to his short time on the route. Proficiency and satisfactory work performance meant essentially the same thing. In support of the denial, management pointed out that the carrier who had the route prior to the grievant usually completed the route on time, as did the regular T-6. Management asserted that with some additional familiarization the grievant should become proficient on the route. In support of that position, management fixed a date for the commencement of the six consecutive week qualification period. The date was set at four weeks following the grievant's first day on the new route. In finding for the Service's position, Arbitrator Eaton stated:

"The Employer, under these provisions of the M-39 Handbook and National Agreement, is entitled to rely upon a presumption of non-proficiency for some 'reasonable' period following a Carrier's initial assignment to a new route, and to insist that the mandatory six consecutive week period provided for in Sec-

tion 271g can commence only at the end of such a reasonable period."

The Union submitted two Step Four settlement letters (case numbers N8-W-0343/W8N5BC9396, Norwalk, CA [August 27, 1980], and H8N-4B-C 21531, Saginaw, MI [July 2, 1982],) in support of its position and in opposition to the conclusions drawn by Arbitrator Eaton. In the Norwalk case, the Grievant worked on the route only eight days in the six week qualifying period. The settlement letter stated:

"The Union contends that the provisions of the M-39, Section 271 refers [sic] to the route and not the regular carrier assigned to the route and that the grievant's request should be honored even though he was not serving his route during the entire period in question. This position is consistent with that of the Postal Service."

In the Saginaw case, the Grievant requested a Special Route Inspection. That request was denied because the Grievant did not work on his route at all during the qualifying period, due to illness. The settlement letter stated:

"The Union contends the criteria for the special inspection has been met even though carrier was not serving his route during the entire period in question. This position is consistent with that of the Postal Service."

The Arbitrator is of the belief that the general rule, as set forth in the Step Four settlements, is that the route, not the employee, qualifies for a Special Route Inspection. That must be the case if the Service is willing to settle cases where the bid holder requested a Special Route Inspection even though he did not work on the route at all, or for only a few days, during the qualifying period.

At the same time, the Simi Valley decision recognized the terms of the parenthetical phrase "where work performance is otherwise satisfactory." The phrase infers that an employee's individual lack of proficiency and/or unsatisfactory work habits could be the factors that precipitate the automatic application of Section 271g. Thus, it seems that, in certain limited circumstances, an employee's on-the-job performance could serve as justification for the Service's denial of a request for a Special Route Inspection. However, the undersigned Arbitrator is not willing, at this point, to accept the presumption that the work performance of a carrier who bids onto a new type of route is always "unsatisfactory" during the familiarization period as stated in the Simi Valley decision. Nonetheless, the same result might have been

reached if the performance of the prior bid holder and the T-6 showed that the grievant's work performance was not "otherwise satisfactory."

Based upon the holding that there may be situations where the denial of an employee's request for a Special Route Inspection pursuant to Section 271g of the M-39 might be justified, it is necessary to review the basis for the Palmdale Post Office's denial of the Grievant's September 29, 1989, request. The Letter denying the request (Jt. Exhibit 2F) was signed by the Superintendent of Postal Operations. It states, in pertinent part:

"Your bid onto Route 5022 became effective 8/12/89. During this time unsatisfactory work performance on your part had been observed. In addition, it is reasonable to assume that this being a new route and route type to you, a reasonable amount of time was required on your behalf to become familiar with this new job assignment. During this time of unfamiliarity [sic], it is also reasonable to assume that your work performance was unsatisfactory."

The Step 2 grievance response (Jt. Exhibit 2D) was signed by the Postmaster. It expands the explanation for the denial as follows:

". . . he was not qualified to make the request, and qualification is the issue. Section 271g of the M-39, contains the qualification that the inspection maybe [sic] requested 'where the performance is otherwise satisfactory,' and the grievant's is not. The grievant is new on the route, and it is a new kind of route for him. The issue of proficiency is supported by Article 41, Section 3.F. A carrier on a new route must be allowed a 'reasonable period' to become familiar with the route and to become proficient. Under this provision, we should be able to presume the grievant was not 'proficient' at the outset, and for some period thereafter."

Both of the above-cited documents seem to reflect the presumptions articulated in the Simi Valley decision. Neither sets forth any specific act or acts of allegedly unsatisfactory work performance. The written record of this case is devoid of any support for the contention that it was the Employee's unsatisfactory work performance that caused route 5022 to meet the standards of Section 271g. In that regard, the Grievant's supervisor testified that he had informal discussions with the Grievant about how to perform some office duties "differently and better." Further, the supervisor

had spent time on the street with the Grievant in order to show him how to make deliveries to "cluster boxes more efficiently in order to increase his productivity." It is of note that the supervisor testified only to the assistance given to the Employee, but not to the results achieved. If the Employee had not followed his supervisor's instructions, that fact would certainly have been reflected either in the documents or testimony of this case in support of management's assertion that the Employee's work performance was not satisfactory. Thus, it may be inferred that the Employee followed the instructions given and achieved the desired results. The 3996's (Union Exhibit 1) and the "Route Worksheets - Time/Volume" (Union Exhibit 2) for the relevant time period show that route 5022 required an amount of additional office and street assistance that supported a request for a Special Route Inspection. Management's failure to provide more than an unsupported allegation of unsatisfactory work performance, in tandem with an unproven and unacceptable presumption that the work performance of carriers who bid onto a new type of route is ipso facto unsatisfactory during the familiarization period, violated the right of this Grievant to have a Special Route Inspection conducted pursuant to Section 271g of the M-39, as well as his right to an eight-hour route.

#### The Remedy

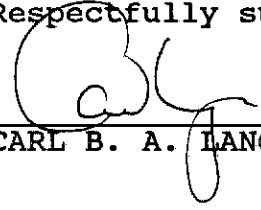
The record of this case does not indicate that a Special Route Inspection has been conducted on route 5022. If it has not been done, it must be done within four weeks of the date of this Award. Any adjustments to the Grievant's route that are justified by the Special Route Inspection must be made as soon as possible after its completion, and in no case later than 52 days thereafter.

In case number W4N-5T-C 36919, Palmdale, CA (August 23, 1989), this Arbitrator discussed a formula for a monetary remedy for the failure to conduct a Special Route Inspection where one was called for by operation of Section 271g. That the instant case arises at the same installation warrants consideration of a more substantial Remedy. However, the Arbitrator is of the opinion that the facts of the instant case do not support the imposition of a more substantial Remedy, although future violations of the same nature might provide that support. Thus, if the Grievant was on the Overtime Desired List ("ODL"), he shall receive one-half hour's pay for each overtime hour worked. If the Grievant was not on the ODL, he shall receive one hour's pay for each overtime hour worked. The period for the Remedy commences as of the day that adjustments in the Grievant's route should have been made if the Grievant's original request had been granted and processed. The period shall terminate as of the implementation date of adjustments to the Grievant's route that are justified by the Special Route Inspection.

AWARD

The Service violated the National Agreement when it denied the Grievant's September 29, 1989 request for a Special Route Inspection. The Remedy shall be as set forth herein.

Respectfully submitted,



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CARL B. A. LANGE III