

ULAR ARBITRATION PANEL

C # 10635

In The Matter of the Arbitration

-between-

UNITED STATES POSTAL SERVICE

Richard Shaw

-and-

LaSalle Station
Niagara Falls, New York

NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

USPS No. N7N-IR-C32345
NALC LOCAL NO. L3-10-90

Before: George S. Roukis, Arbitrator

Appearances:

FOR THE UNITED STATES POSTAL SERVICE

Jerry Brozell, Manager, EEO Buffalo, New York
Paul C. Johnson, Postmaster, Niagara Falls Post Office
John Sanchez, Superintendent of Postal Operations, Niagara Falls
Post Office

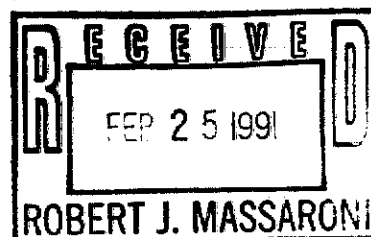
FOR THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO
Nicholas S. Santora, President, Branch 355 NALC

PLACE OF HEARING: United States Post Office
615 Main Street
Niagara Falls, New York

DATE OF HEARING: February 6, 1991

AWARD: The Postal Service violated Article 19, specifically as it relates to Section 271 of the M-39. Letter Carrier Richard Shaw shall be paid one (1) hour extra pay at the Letter Carriers regular rate for the overtime worked during the period March 24, 1990 through May 3, 1990.

Date of Award: February 20, 1991



Pursuant to the arbitration procedures set forth under Section 4 B of Article 15 of the National Agreement between the United States Postal Service and the American Postal Workers Union, AFL-CIO, hereinafter referred to as the Postal Service and the Union respectively, the undersigned was appointed Arbitrator to hear and decide the grievance herein. Accordingly, a hearing was held in Niagara Falls, New York, at which time the parties were afforded ample opportunity to present evidence and testimony germane to their positions.

The adjudicative issues before the Arbitrator are:

Did the Postal Service violate Article 19 of the National Agreement, specifically as it relates to Sections 271 and 272 of the M-39 by failing to schedule timely a special route inspection? If so, what shall be the remedy.

PERTINENT AGREEMENT PROVISIONS

ARTICLE 19 HANDBOOKS AND MANUALS (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.

Sections 271 and 272 of the M-39- Management of Delivery Services.

Re: 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 demoliton 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 a 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.

BACKGROUND

On February 23, 1990, Letter Carrier Robert Shaw requested a special route inspection. The request was made to the Manager of the LaSalle Post Office and involved an inspection of Route 470.

This letter is referenced as follows:

"I request a Special Route Inspection for Route 470 at the LaSalle Station. This request is made based upon criteria outlined in the Management of Delivery Services M-39, Sections 270 and 271, items A, E, and G and the National Contract, Memorandum of Understanding. Re: Special Count and Inspection-City Delivery Routes dated July 21, 1987." (See Union Exhibit No. 1).

According to the Union, the inspection was not held within four (4) weeks of the date of the written request (February 23, 1990) and a grievance was filed on April 5, 1990. The union charged that postal management violated Sections 270 and 271 of the M-39 and requested penalty payment for every hour used on Route 470 beyond eight (8) hours. (See Joint Exhibit No. 2- Grievance Appeals record).

In the interim and by letter dated April 6, 1990, The Officer-In-Charge of the Niagara Falls Post Office wrote Letter Carrier Shaw the following response.

"After reviewing your request for a Special Route Inspection based upon M-39, Sections 270 and 271, the following determination is made.

As outlined in M-39 Section 271d, 'A simple adjustment to a route cannot be made.'

A simple adjustment can be made. Your route will be converted to Vertical Flats and a router for the flats will be assigned. This will eliminate the need for overtime used by you in delivery of 470 by physically removing your workload.

Vertical Flats and router assignment will be implemented week of April 7-13, 1990." (See Joint Exhibit No. 2).

As the grievance reached the 2nd step of the appeals process, the parties by mutual agreement on May 3, 1990 held the grievance at this level and the Special Inspection was conducted during the time frame May 12, 1990 through May 18, 1990, by Routing Slip dated May 7, 1990. The Manager of the LaSalle Station apprised Letter Carrier Shaw that the inspection would take place during week of "May 12 through May 18, 1990". (See Union Exhibit No. 3).

Subsequently thereafter, adjustments were made to Letter Carrier Shaw's route, but the Union pursued the grievance on the grounds that a violation occurred and consistent with past arbitral awards, the grievant was entitled to commensurate penalty overtime payment. See USPS case Nos. C4N-4J-C30920 and W7N-5C-C5445).

The Postal Service's 3rd step denial letter dated October 22, 1990 stated that there was no contractual requirement to pay double-time for the overtime hours worked under the instant circumstances and further that the grievance was held in abeyance by mutual agreement and Special Inspection was promptly conducted. It also maintained that adjustments were made to Letter Carrier Shaw's route within the appropriate time frame.

UNION'S POSITION

The Union agrees that there was a pressing need for a Special Route Inspection of Route 470 and, as such, Letter Carrier Shaw properly submitted a request for an inspection consistent with the applicable M-39 provisions. It points out that notwithstanding this request, postal management at the LaSalle Station did not respond in timely fashion thus requiring twenty (20) hours additional overtime during the March 23, 1990 through May 18, 1990 period.¹

It does not contest that the grievance was held in abeyance at Step 2 on May 3, 1990, but asserts this mutually determined action did not waive or modify the grievance's merits.

It further maintains that while the Officer-In-Charge converted Letter Carrier Shaw's route to Vertical Flats and router assignment, effective the week of April 7-13, 1990, this modification was not the substantive adjustment (s) contemplated under the requirements of a Special Route Inspection. In other words, no Special Route Inspection was held on or before April 6, 1990.

¹ This Union calculation is predicated upon the following factors: The thirty (30) days response period tolls from February 24, 1990 through March 23, 1990. No liability would attach to this period. However, following the thirty (30) day response period, liability would attach for the time frame March 24, 1990 through May 19, 1990. (See Union Exhibit No. 4).

POSTAL SERVICE'S POSITION

The Postal Service contends that since a Unit and Route Review Process was scheduled on March 24, 1990 at the Niagara Falls Post Office, there wasn't any need for a Special Route Inspection. In effect it argues that since a Unit and Route Review Process leads to the same end result, namely an adjustment of a carrier's route, postal management at the Niagara Station acted prudently and in accordance with the scheduled review process. It also points that the defining language of Section 271 of the M-39, uses the word "may" rather than a more definitive word, which indicates that a Special Route Inspection is not a mandatory undertaking. It asserts that the Union was aware that a Unit and Route Review Process was scheduled on March 24, 1990 and aware of the time frame within which to implement adjustments. That is, adjustments must be placed in effect within fifty-two (52) calendar days of the mail count. (See section 211.3 of the M-39).

It observes that the Officer-In-Charge tried to accommodate Letter Carrier Shaw's concerns by converting Route 470 to Vertical Flats and router assignment, which reflected a good faith effort to effectuate a simple route adjustment.

It further maintains that Letter Carrier Shaw was on the Overtime Desired List (ODL) for the time period January 1, 1990 through June 30, 1990 and accordingly was paid overtime for the identified time worked in excess of eight (8) hours daily work. (See Joint Exhibit 2- ODL for this period). On this point, the Postal Service asserts that penalty overtime is unwarranted and not supported by the pertinent provisions of Article 8 of the National Agreement.

Postmaster Paul C. Johnson testified that he assumed his responsibilities as the Niagara Falls Postmaster on April 7, 1990. He indicated there was a unit review in progress which required that each route in delivery unit undergo a route review. He stated that he went to each unit to determine how mail was counted and established a special route review. In the meantime, he testified that he informed the Union (NALC) of his review and also noted that both sides agreed to hold the Shaw grievance in abeyance. He also pointed out that the Officer-In-Charge's simple adjustment lacked substance and didn't specify the router help("too vague"). However, he testified he didn't believe his predecessor stalled Carrier Shaw's request. He noted that Letter Carrier Shaw was on the Overtime Desired List and was paid overtime when he worked in excess of eight (8) hours.

On closer examination, he acknowledged that Mail Counts and Route Inspections conducted in accordance with Section 211 of the M-39 differs from Special Route Inspections conducted pursuant to Section 271 of the M-39.

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ARBITRATOR'S OPINION

In this case, there is no dispute that Letter Carrier Shaw requested a Special Route Inspection on February 23, 1990 and no dispute that the Postal Service responded to this request on April 6, 1990. There is also no dispute that Item G of Section 271 of the M-39 was applicable, since there was not contestation during the grievance appeals process of Item G's applicability. (See Union Exhibit No. 2- Undelivered Mail reports for the period January 3, 1990 through February 22, 1990).

Letter Carrier Shaw was entitled to a special mail count and inspection within four (4) weeks of the requests while the Postal Service's belated April 6, 1990 response was a reasonable attempt to address his concerns, it fell short of what the M-39 required.

To be sure, a facility wide unit and Route Review Process was scheduled for March 21, 1990, but this review process was separate and apart from Letter Carrier Shaw's request. There are no indications that a scheduled review overrides or diminishes the request for a special route inspection and there are no indications, at least from this record, that Mr. Shaw or the Union were palpably aware of the review.

In early April 1990, where Postmaster Johnson assumed command of the Niagara Falls Post Office, he understandably wanted to insure that each route was carefully reviewed. The instant grievance was held in abeyance pending the completion of the special inspection (week of May 12 to 18, 1990), but this interim suspension was not an implicit agreement to abandon the grievance.

Thus, even though Mr. Shaw's route was adjusted based upon the May 12-18,

1990 special inspection, this adjustment would not moot the grievance, unless both sides agreed to this denouement or the Union withdrew the grievance. Neither event occurred herein.

Accordingly, since the Arbitrator finds that postal management violated Article 19 of the National Agreement, particularly Section 271 of the M-39, and in the absence of any cited postal authority that a monetary remedy is unwarranted under these facts and circumstances, the Arbitrator awards Letter Carrier Shaw one (1) hour extra pay at the Letter Carriers regular rate for the overtime worked during the period March 24, 1990 through May 3, 1990.

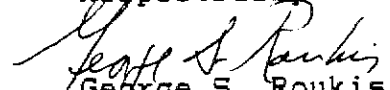
As previously indicated in the opinion, the parties agreement to hold the grievance in abeyance does not negate the claim, it does arguably limit the Postal Service's liability. Thus the Postal Service will not be held liable for the period after May 3, 1990 and up to May 18, 1990. The dates he worked overtime were as follows: March 24, 27, 28, 29, 31; April 2, 4, 5, 7, 9, 10, 12, 16 and 17.

AWARD

The Postal Service violated Article 19, specifically as it relates to Section 271 of the M-39. Letter Carrier Richard Shaw shall be paid one (1) hour extra pay at the Letter Carriers regular rate for the overtime worked during the period March 24, 1990 through May 3, 1990.

Issued in Niagara Falls, New York
February 20, 1991

Respectfully Submitted,


George S. Roukis
Arbitrator