

C# 11099

**NATIONAL ARBITRATION PANEL**

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| <i>In the Matter of the Arbitration</i><br><br><i>between</i><br><br><b>UNITED STATES POSTAL SERVICE</b><br><br><i>and</i><br><br><b>NATIONAL ASSOCIATION OF LETTER<br/>CARRIERS, AFL-CIO</b> | ) <b>GRIEVANT:</b> Vincent R. Sombrotto<br>(<br>) <b>POST OFFICE:</b> Washington DC<br>(<br>) <b>USPS CASE NO:</b> H7N-NA-C-68<br>(<br>) <b>NALC CASE NO:</b> 003108<br>(<br>)<br>(<br>)<br>(<br>) |
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**BEFORE:** Raymond L. Britton, *Arbitrator*

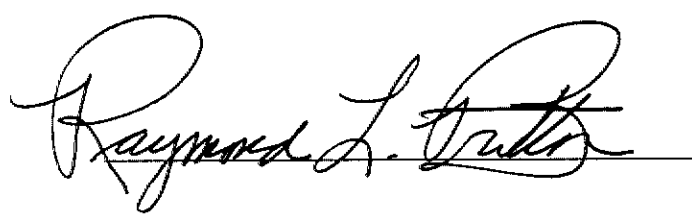
**APPEARANCES:**

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|-------------------------------------|------------------------------------|
| <i>For the U.S. Postal Service:</i> | C.B. Weiser                        |
| <i>For the Union:</i>               | Sophia Davis                       |
| <i>Place of Hearing:</i>            | U.S. Postal Service Headquarters   |
| <i>Dates of Hearing:</i>            | June 29, 1990 and February 1, 1991 |

**AWARD:**

For the reasons given, the grievance is sustained and management is directed to complete special route inspections within four weeks of a request by a regular carrier whenever the criteria set forth in the M-39 Handbook have been met even if the inspection must be conducted during the months of June, July, and August.

*Date of Award:* August 12, 1991



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## ISSUE

Whether management is required to conduct special route inspections during the months of June, July, and August?

## 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 stipulated by the parties that this matter was properly before the Arbitrator for decision and that all steps of the arbitration procedure had been followed and that the Arbitrator had the authority to render the decision in this matter. After the Hearing, it was agreed that the parties would submit Post-Hearing Cross-Briefs to the Arbitrator by placing such Cross-Briefs in the mails no later than June 28, 1991. A Transcript of the Hearing, prepared by Diversified Reporting Services, Inc., Washington, D.C., was received by the Arbitrator on February 19, 1991. The Post-Hearing Cross-Brief filed by the National Association of Letter Carriers, AFL-CIO (hereinafter referred to as "Union") was received by the Arbitrator on June 28, 1991. The Post-Hearing Cross-Brief filed by the United States Postal Service (hereinafter referred to as "Employer") was received by the Arbitrator on July 3, 1991. A Reply Brief filed by the Employer was received by the Arbitrator on July 19, 1991.

## SUMMARY STATEMENT OF THE CASE

On October 6, 1989, Union President Vincent R. Sombrotto sent a letter to Assistant Postmaster General Joseph Mahon, Jr., that states in relevant part as follows (Joint Exhibit No. 2):

*Pursuant to Article 15, Section 3.D. of the National Agreement, I hereby initiate as a grievance at the Step 4 level the dispute between the parties as to whether special route inspections under the provisions of Section 271g of the M-39 Handbook may be conducted during the summer months.*

*It has recently come to my attention that Postal Service management in the Western Region has taken the position that it will not conduct special route inspections during June, July, or August. This refusal appears to be based on a memorandum to the field from Anthony J. Vegliante, dated August 29, 1989 (copy enclosed).*

*It is the position of the NALC that the Postal Service's refusal to conduct special route inspections during the summer months violates the Memorandum of Understanding between the Postal Service and the NALC, dated July 21, 1987, captioned "RE: Special Count and Inspection -- City Delivery Routes." The memorandum expressly provides that "where the regular carrier has requested a special mail count and inspection, and the criteria set forth in Part 271g of the Methods Handbook, M-39, have been met, such inspection must be completed within four weeks of the request, and shall not be delayed."*

*We seek a settlement or an award recognizing that special inspections must be completed within four weeks of a request by a regular carrier whenever the criteria set forth in the M-39 Handbook have been met even if this means that the inspection must be conducted during the summer months. Appropriate field instructions should be issued to the field confirming this position.*

The memorandum to the field from Anthony J. Vegliante, General Manager of the Programs and Policies Division, dated August 29, 1989, referenced in the above letter, states in relevant part as follows (Joint Exhibit No. 2):

\* \* \*

*Although we have met with the NALC to discuss this issue, no satisfactory resolution was reached. Consequently we have maintained our position that Special Route inspections under the provisions of the M-39 Section 271-g may not be held during June, July, or August.*

*The rationale for this position is the long standing past practice of the Postal Service and the provisions of Section 272 of the M-39 which states "When special inspections are made because of the conditions mentioned in 271 they must be conducted in the same manner as the formal count and inspection." The time period for conducting the route inspections is contained in part 211.1 of the M-39 and states in part "...[i]nspections will be conducted between the first week of September and May 31, excluding December. See Part 242.3 of the M-39."*

\* \* \*

After a Step 4 meeting was held, the grievance was denied by Dominic J. Scola, Jr., Grievance and Arbitration Division. In a letter dated March 30, 1990 to Union President Sombrotto, Mr. Scola provided the following rationale for his denial (Joint Exhibit No. 2):

\* \* \*

*The July 21, 1987 Memorandum of Understanding states, in pertinent part, that " . . . where the regular carrier has requested a special mail count and inspection, and the criteria set forth in Part 271g of the Methods Handbook, M-39, have been met, such inspection must be completed within four weeks of the request, and shall not be delayed." The Memorandum of Understanding must be read in conjunction with the cited provisions of the M-39 Handbook and Article 41 of the National Agreement. Section 272 states that "When special inspections are made because of the conditions mentioned in 271 they must be conducted in the same manner as the formal count and inspection." Article 41.3 S clearly states, in pertinent part, "City letter carriers mail counts and route inspections and adjustments shall be conducted in accordance with Methods Handbook M-39, . . ." (emphasis added). The period for conducting the inspection process is specified in Section 211, Selecting Period for Mail Counts and Route Inspections. Subsection 211.1 clearly and unambiguously states that ". . . These inspections will be conducted between the first week of September and May 31, excluding December."*

*Therefore, based upon the aforesaid provisions of Article 41 and the M-39, this grievance is denied.*

\* \* \*

On April 4, 1990, Union President Sombrotto authorized and requested certification of the case for arbitration.

Provisions of the National Agreement effective July 21, 1987, to remain in full force and effect to and including 12 midnight November 20, 1990, (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.*

ARTICLE 41

LETTER CARRIER CRAFT

\* \* \*

Section 3. Miscellaneous Provisions

\* \* \*

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

\* \* \*

MEMORANDUM OF UNDERSTANDING BETWEEN THE  
UNITED STATES POSTAL SERVICE AND THE  
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Re: *Special Count and Inspections--City Delivery Routes*

*The United States Postal Service and the National Association of Letter Carriers, AFL-CIO, agree that it is in the best interests of the Postal Service for letter carrier routes to be in proper adjustment.*

*Therefore, where the regular carrier has requested a special mail count and inspection, and the criteria set forth in Part 271g of the Methods Handbook, M-39, have been met, such inspection must be completed within four weeks of the request, and shall not be delayed. If the results of the inspection indicate that the route is to be adjusted, such adjustment must be placed in effect within 52 calendar days of the completion of the mail count in accordance with Section 211.3 of the M-39 Methods Handbook. Exceptions may be granted by a Division General Manager only when warranted by valid operational circumstances, substantiated by a detailed written statement, which shall be submitted to the local union within seven*

*days of the grant of the exception. The union shall then have the right to appeal the granting of the exception directly to Step 3 of the grievance procedure within 14 days.*

*Date: July 21, 1987*

Provisions of the Methods Handbook, Series M-39, Management of Delivery Services, dated November 15, 1985 (hereinafter sometimes referred to as "M-39 Handbook") (Joint Exhibit Nos. 3 and 4) considered pertinent to this dispute are as follows:

## CHAPTER 2

### MAIL COUNTS AND ROUTE INSPECTIONS

#### 210 ADVANCE PREPARATIONS

#### 211 SELECTING PERIOD FOR MAIL COUNTS AND ROUTE INSPECTIONS

*211.1 In order to achieve and maintain an appropriate daily workload for delivery units and routes, management will make at least annual route and unit reviews consisting of an analysis of items listed in section 214, and workhours, volumes, and possible deliveries. Items listed in section 213 may also be utilized in the review. These reviews will be utilized to verify adjustments which have been taken by management, or need to be taken by management, in order to maintain efficient service. The results of the review will be shared with the local NALC President, or designee, and the regular letter carrier(s) serving the route(s) that require adjustment. In some units it may be necessary to proceed with mail counts and route inspections on one or more routes. These inspections will be conducted between the first week of September and May 31, excluding December.*

*212.2 The period selected for the mail count and route inspections should be determined as far in advance as possible, and the local union should be notified of this schedule. If it is necessary to change the period, the local union should be notified of the revised schedule as far in advance as practicable.*

*211.3 In selecting the count period, remember that all route adjustments must be placed in effect within 52 calendar days of the completion of the mail count, and no major scheme changes should be made between the period November 15 and January 1. Exceptions must be approved by the district manager. The local union will be notified promptly of any exception(s) granted.*

*\* \* \**

#### 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.*

\* \* \*

### POSITION OF THE PARTIES

#### The Position of the Union

The Union takes the position that the language concerning special route inspections in the M-39 Handbook supports the Union view that such inspections can be required during the summer months. The Union contends that both past practice and policy reasons support the allowance of special route inspections during the summer. The Union maintains, therefore, that based on both the language of the M-39 Handbook and the policies underlying the special route inspection provisions, an exclusion of June, July, and August for such inspections should not be found, and the grievance should be sustained.

#### The Position of the Employer

It is the position of the Employer that when the relevant provisions of the National Agreement and the M-39 Handbook are read in conjunction, it is clear that the intent of the parties was to exclude route inspections from the summer months. The Employer contends that its position is not new but rather that it has consistently applied the relevant contract provisions over a number of years. The Employer further maintains that since the provisions of the M-39 Handbook have not been modified by the Memorandum of Understanding dated July 21, 1987, the grievance must be denied.

### OPINION

In endeavoring to resolve the controversy presented herein, the Arbitrator is required to examine several provisions of the M-39 Handbook as they relate to the conduct of special route inspections.

Specifically referenced by the Employer in support of its position that such inspections need not be conducted during the summer months is the provision found in Section 272 of the M-39 Handbook, which states

that "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." According to the Employer, the foregoing language must be read in conjunction with the provision found in Section 211.1, which states that "These inspections will be conducted between the first week of September and May 31, excluding December." The Employer argues that its position in this respect is not new, as is shown by the testimony of various Postal Service witnesses, all of whom indicated that the Employer has consistently applied Sections 211.1, 271, and 272 of the M-39 Handbook over a number of years. Further, the Employer contends that it has presented evidence to show that it has consistently interpreted the term "manner" in Section 272 of the M-39 Handbook to mean both *when* and *how* a special route inspection is conducted.

It is additionally argued by the Employer that the provisions of Sections 211.1 and 272 of the M-39 Handbook have not been modified by the Memorandum of Understanding dated July 21, 1987. In this regard, the Employer notes that when it was negotiating the Memorandum with the Union, there was no intent on its part to include the months of June, July, and August as months when special route inspections could be conducted. Postal Service witnesses Mortimer F. Miller and Michele Denny both testified without rebuttal that no discussions were held with the Union that special inspections would be conducted during the summer months. Additionally, according to the Employer, it is readily evident that the parties had "no meeting of the minds" with regard to whether special route inspections would be held during the summer, since neither side discussed the issue.

The Arbitrator has carefully reviewed the various provisions of the National Agreement, the Memorandum of Understanding, and the M-39 Handbook that relate to the conduct and timing of special route inspections. Within the National Agreement, the language of Article 41, Section 3S mandates that ". . . route inspections and adjustments shall be conducted in accordance with Methods Handbook M-39 . . ." As has been pointed out by the Employer, the provisions that relate to the conduct of route inspections have been part of the M-39 Handbook for some twenty years.

It is found by the Arbitrator to be significant that although the language of Section 211.1 and Section 272 may have changed only minimally during the past twenty years, the language of Section 271 has been revised substantively on at least three occasions during this time period. Specifically, in 1969, the special route inspection provisions, which, at that time, were found in Section 227.1 of the M-39 Handbook (Joint Exhibit No. 9), stated in paragraph (j) that "When a carrier requests a special inspection and it is warranted, supervision will take prompt action to make necessary arrangements for the count and inspection."

In 1974, the special route inspection provisions appear in Section 271 of the M-39 Handbook (Joint Exhibit No. 7) and state that "Special route inspections may be required when . . . a carrier requests a special inspection and it is warranted.

In the 1981 version of the M-39 Handbook (Joint Exhibit No. 8), the language now in force had appeared, stating in relevant part that "If over any 6 consecutive week period . . . 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." Thus, for the first time does there appear a mandated deadline for completing the special route inspection. Seemingly, therefore, the parties were in agreement that prior efforts to effect speedy special route inspections had been unsuccessful and they recognized that accomplishment of this end might be improved by requiring a specific time frame within which to complete the task. Indeed, the use of the phrase ". . . shall . . . receive . . . within 4 weeks of the request . . ." reveals the parties' intent that, once the criteria are met for conducting a special route inspection, no other condition should interfere with its prompt completion.

Having examined the foregoing history of the provisions of the M-39 Handbook, the Arbitrator is required to determine whether, despite the absence of any exclusionary language with respect to summer months

in Section 271, such an exclusion must nevertheless be presumed applicable in light of the provisions of Section 272 which specifies that special route inspections " . . . must be conducted in the same manner as the formal count and inspection."

The formal count referenced in Section 272 comprises the bulk of Chapter 2 of the M-39 Handbook. It is noted by the Arbitrator that, at the Hearing, testimony was presented revealing that such counts were originally called annual counts and that the terminology was revised to formal counts after such counts were no longer required on an annual basis. Chapter 2 begins with Section 210, entitled "Advance Preparations." Thereafter, Section 211.1 follows with a discussion of the purpose of such counts, stating that " . . . management will make at least annual route and unit reviews . . . ." Included in Section 211.1 is the language now relied upon by the Employer that "These inspections will be conducted between the first week of September and May 31, excluding December." Significantly, the parties chose the word "These" when referencing what is now considered a formal inspection; seemingly, the parties, if they had so intended, might just as easily have chosen the word "All."

Following the "Advance Preparations" portion of Chapter 2, there begins Section 220, which is entitled "Conducting the Count of Mail." The Arbitrator has found no reference within Section 220 to any exclusionary time period as is found in Section 210. After Section 220, there begins Section 230, entitled "Conducting the Route Inspection." Similar to Section 220, Section 230 appears to contain no restrictions about when such inspections shall be accomplished but is rather a statement of the methods by which the inspection process will be accomplished. Sections 240 and 250 are concerned with "Analysis and Adjustments," which may be presumed to cover the method by which management will act upon the results of the mail count or route inspection just completed. It therefore appears to the Arbitrator that when Section 272 states that special route inspections " . . . must be conducted in the same manner as the formal count . . . ", it may be considered that the thrust of this proviso is to ensure that special route inspections follow the procedure specified in Section 230 and that the results of such an inspection be analyzed in accordance with Sections 240 and 250.

As to the question of whether all of the strictures found in Section 210 are also required to be followed, including, as the Employer argues, the summer exclusion, the language is less clear. However, an examination of Section 211.2 sheds some light on this point. Section 211.2 states that "The period selected for the mail count and route inspections should be determined as far in advance as possible, . . . ." Yet Section 271 specifies exceptions to Section 211.2 by requiring that special route inspections be conducted when certain conditions are met. Among these conditions are the occasions provided for in Section 271g, when a carrier, over a six-week period, uses over thirty minutes of overtime or auxiliary assistance on each of three days or more in each of the six weeks. Thus, it seems clear that unlike a regular route inspection a special route inspection cannot be planned as far in advance as possible as is envisioned by Section 211.2. It follows therefrom that not all of the provisions of Section 210 can be literally applied to special route inspections; indeed, it appears to the Arbitrator that this is why they are designated as "special."

Additionally, it seems to the Arbitrator that the headings used in Section 270 are significant in this respect: Section 271 is headed "When Required" while Section 272 is headed "Manner In Which Conducted." While the Employer argues that it has consistently interpreted the term "manner" in Section 272 of the M-39 Handbook to mean both *when* and *how* a special route inspection is conducted, the two separate headings, it seems to the Arbitrator, negate such an interpretation, for the heading of Section 271 specifies *when* a special inspection is required while that of Section 272 relates to *how* such an inspection is to be conducted. Thus, the argument of the Employer that it has always interpreted "manner" to mean both *when* and *how* cannot serve as advancing its position in this matter as past practice cannot properly be permitted to override the clear and explicit language contained in Section 271g, which requires that a special route inspection be completed within four weeks of a carrier's request if the other specified conditions exist, regardless of whether the completion of the inspection will require that it be undertaken during the summer.



Consistent with the above interpretation is the language found in the Memorandum of Understanding dated July 21, 1987, which states in relevant part that ". . . where the regular carrier has requested a special mail count and inspection, and the criteria set forth in Part 271g of the Methods Handbook, M-39, have been met, such inspection must be completed within four weeks of the request, and shall not be delayed." The inclusion of the words "and shall not be delayed" in the judgment of the Arbitrator underscores the importance of finding, as he now does, that management is required to conduct special route inspections, when conditions warrant, during the months of June, July, and August.