

NATIONAL ASSOCIATION OF LETTER CARRIERS

CONTRACT ADMINISTRATION UNIT

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OVERBURDENED ROUTES

Many of the problems most commonly experienced by letter carriers have their origin in overburdened routes. Fortunately, contract provisions are in place to enforce the right to an eight hour assignment. Despite these contractual protections, overburdened routes continue to be a problem in some locations.

This paper has been prepared by the NALC Contract Administration Unit in order to assist branch officers and stewards in handling these problems. The paper summarizes the results of an extensive review of the bargaining history of the relevant handbook provisions as well as all applicable arbitration awards.

The M-39 Handbook, which is incorporated into the National Agreement by Article 19, requires that a special route inspection be given whenever a carrier requests one and it is warranted. M-39 Section 271 states:

271g. If over any six consecutive week periods (when work performance is otherwise satisfactory) a route shows over 30 minutes of overtime or auxiliary assistance on each of three days or more in each week during this period, the regular carrier assigned to such a route shall, upon request, receive a special mail count and inspection within four weeks of the request. The month of December must be excluded from consideration when determining a six consecutive week period. However, if a period of overtime and/or

auxiliary assistance begins in November, and continues into January, then January is considered to be a consecutive period even though December is omitted. A new consecutive week period is not begun.

271h. Mail shall not be curtailed for the sole purpose of avoiding the need for special mail count and inspections.

The guarantees provided by Section 271 of the M-39 Handbook were further strengthened by a Memorandum of Understanding on special counts and inspections incorporated into the 1987 National Agreement. The Memorandum states:

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. (Emphasis added)

Arbitrators have unanimously held that special inspections are mandatory when the union can prove that the criteria in M-39 Section 271 have been met. This is true even in cases where the regular carrier has been absent for part of the six-week period. The provisions of Section 271 refer to the route and not the carrier on the route, despite the fact that the purpose of any such inspection is to adjust the route to the individual carrier. Moreover, once a carrier requests a special route inspection and demonstrates that it is warranted, the Postal Service cannot evade the requirement to conduct the inspection by unilaterally providing relief, or making an adjustment.

The special route inspections provided for in M-39 Section 271 must be conducted in exactly the same manner as regular counts and inspections. They differ from regular route inspections only in that they may be conducted in June, July or August. It is, however, not always in the best interest of letter carriers to request them during the low volume summer months.

Special route inspections are not unit and route reviews. The right to a special route inspection is unaffected by the fact that the office involved may be undergoing, or be scheduled for, a unit and route review.

Special route examinations are not a meaningless exercise. The M-39 Handbook requires not only that special inspections be conducted when warranted, but also that special inspections result in permanent adjustments to eight hours. M-39 Section 242.122 states:

242.122 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 eight hours daily work as possible.

Arbitrators have held that it is not sufficient for the Postal Service merely to follow the procedures specified in the M-39 when examining and adjusting routes. Rather, the final result must be an eight hour route. In C-07630 Regional Arbitrator Diits wrote as follows:

The inspections are not before the arbitrator as part of the present issue. What is before this Arbitrator is the matter of adjustments. In examining the record it is clear that the subject routes are not eight hour routes. This does not mean that the procedures for adjustment were somehow violated. The methods by which adjustments are made and the results of those adjustments on letter carrier work loads may be viewed as separable issues under the language of the M-39.

Arbitrators have granted monetary remedies in cases where the Postal Service violated the contract by refusing to conduct special route inspections when they were required to do so by the terms of M-39 Section 271. They reasoned that, since the grievants were required to work overtime they should not have worked, no possible future remedy could return that time to them. Since merely instructing the Postal Service not to violate the agreement in the future would not, in their view, be sufficient to make the grievants whole, monetary remedies were ordered. Arbitrator Pribble, in C-05545, wrote as follows:

Without clear evidence in this record that the Parties anticipated some way to make whole the three Grievants, who have been harmed by clear and repeated breaches of the Agreement, some monetary award is needed for the Grievants. Unlike the Gamser award, no restructuring of future opportunities

or equalization formula applies here. In this case the three Grievants have been required to work overtime they should not have worked. No possible future remedy can return this time to them. Moreover, it would be an insufficient remedy here merely to instruct the MSC not to breach the Agreement in the future. This remedy will make the Grievants as whole as possible at this time. The Employer is ordered to pay [the grievants] one extra hour's pay at their regular rates of pay for each and every day that each Grievant has worked overtime until the results of their special route inspections are implemented.

There is more agreement among arbitrators that some monetary remedy is due in such cases, than there is upon the exact form any such monetary remedies should take. In contrast to Arbitrator Pribble's award cited above, Arbitrator Grossman, in C-06720, ordered the Postal Service to pay "one hour's pay at his regular rate of pay for each and every hour that he was required to work in excess of eight and one-half hours." Other Arbitrators have ordered, or memorialized consent awards agreeing to, monetary payments in fixed dollar amounts as remedies.

After review of all applicable arbitration awards, the Contract Administration Unit has concluded that the most appropriate remedy in such cases is similar to those granted in C-07630 and C-07536. The following wording is suggested:

All carriers not on the Overtime Desired List be paid an additional 50 percent premium for all overtime hours worked from the time the special route exam should have been conducted until such time as the results of the exam are implemented.

All too often, the union has been able to convince an arbitrator that the terms of the contract have been breached, only to have the arbitrator find that the particular remedy requested is beyond his or her authority to grant, or otherwise inappropriate to remedy the specific violation. It is therefore advisable that all remedy requests include the additional catch-all phrase "or that the grievant be otherwise made whole."

Awards supporting the authority of arbitrators to

grant monetary remedies in such cases include:

C-05545	Arbitrator Pribble	01-24-1986
C-06720	Arbitrator Grossman	12-16-1986
C-07229	Arbitrator Liebowitz	07-07-1987
C-07232	Arbitrator Grossman	08-06-1987
C-07536	Arbitrator Sirefman	11-9-1987
C-07630	Arbitrator Diltz	10-01-1987
C-07372	Arbitrator Stutz	08-22-1987
C-07569	Arbitrator Grossman	10-27-1987
C-07606	Arbitrator Grossman	11-27-1987
C-07613	Arbitrator Dennis	11-14-1987

The skill and success of NALC arbitration advocates has greatly strengthened the position of union officers and stewards handling special route inspection grievances. It is not always necessary to proceed to arbitration with these grievances. Rather, the Postal Service representative often sustain such grievances in full during the earlier steps of the grievance procedure.

Failure to make standards, or the inability to finish a route in the allotted time is not, in itself, just cause for discipline. However, letter carriers who have requested a special route inspection are afforded even additional protection. Regional Arbitrator Levak held in C-05952 that once a route qualifies for a special inspection and the regular carrier requests one, any discipline for expansion of street time "is inappropriate unless and until such time as an inspection is conducted."

The Contract, and the incorporated handbook provisions, provide an enforceable mechanism to assure adjustment of routes to eight hours. Where conditions warrant, we should not hesitate use it.

References in this paper to "C" cases identify arbitration awards indexed by and contained in NALC's Computer Arbitration System. References to "M" cases identify national level settlements and Step 4 decisions indexed and contained in NALC's Materials Reference System. Both "C" and "M" cases may be obtained from NALC's National Business Agents.