

C#01163

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| IN THE MATTER OF THE ARBITRATION BETWEEN:) |) |
| United States Postal Service) |) Opinion and Award |
| and) |) in |
| National Association of Letter Carriers) |) SIN-3A-D-5595 |
| AFL-CIO) |) D. Murphy |
| _____) |) Duncanville, Texas |

Pursuant to the provisions of the current National Agreement between the above cited parties the subject matter in dispute was assigned to Arbitrator J. Fred Holly for hearing and decision. A hearing was held in Duncanville, Texas on July 27, 1982, at which time the parties were afforded full and equal opportunity to present evidence and argument.

APPEARANCES:

For the Employer:

Theodore Faulkner, Jr., Labor Relations Assistant

For the Union:

Carl Barnett, Local Business Agent

ISSUE:

The subject matter in arbitration poses the following issue:

Did the Employer have just cause for the removal of the Grievant? If not, what is the proper remedy?

BACKGROUND:

The Grievant has been a carrier in the Duncanville, Texas Post Office for the past ten (10) years. Also, in recent times he has served

as a Steward in Duncanville. The Grievant suffers from a coronary artery disease which, according to his physician, causes easy fatigue. His physician recommended that the Grievant work no more than eight (8) hours per day and forty (40) hours per week. The Employer placed him on an auxiliary route and added Special Deliveries and Collections to attain an eight (8) hour day. The Grievant was scheduled to report for duty at 8:00 a.m. and scheduled off at 2:00 p.m. Then he was scheduled to return at 4:00 p.m. and work until 6:00 p.m. During the first six hour period he delivered his "Specials," cased and delivered his route. During the 4:00 - 6:00 p.m. period he made his collections.

On February 11, 1982 the Grievant was issued a "Notice of Proposed Removal" which in pertinent part stated:

This is notice that it is proposed to remove you from the Postal Service no earlier than 30 days from the date you receive this letter.

Reason: Continued unsatisfactory performance - unacceptable variation of street time; abuse of auxiliary assistance (Form 3996) and failure to properly process forwardable mail.

The following elements of your past record will be considered in determining the disciplinary action to be imposed if the charges are sustained:

On August 18, 1980, you were issued a letter of warning for continued deviation from established street time.

On August 28, 1980, you were issued a 7-day suspension for continued unsatisfactory performance - deviation from established street time.

On October 28, 1980, you were issued a notice of proposed removal for continued unsatisfactory performance - deviation of route; extension of lunch break; delay of mail. Subsequently, on June 7, 1981, this removal action was modified through arbitration, to a 14-day suspension.

Charge No. 1 Unacceptable variation of street time.

Since your return to employment from the previous disciplinary action issued to you in June, 1981, your work performance has continued to be unsatisfactory as evidenced below:

On November 6, 1981, your assigned route No. 1622, which is a special accommodation due to your physical limitations, was changed. The change required centralizing the mail boxes of the Aztec Apartments located on Merrill Street. You were allowed one week to familiarize yourself with the change on your route.

From November 16, 1981 to December 2, 1981, your street performance was measured on PS Form 1627. Within this period your street time varied from 2.38 hours to 2.85 hours. Taking into account the variables of types of mail and total mail volume, such street variations were unacceptable.

On December 3, 1981, I informed you of your unsatisfactory performance, specifically your erratic street time. You were instructed not to expand your street time, not to take your morning break on street time, and not to break your relays unless they exceeded the 35 pound limit.

From December 4, 1981 to December 22, 1981, your street performance continued to be measured on PS Form 1627. Your street time remained erratic and unacceptable. Within this period of time, your street performance shows a variance of 2.20 hours to 2.83 hours. Again, considering the variables of the total mail volume for each day, your street time variations were unacceptable. Therefore, on December 22, 1981, I informed you that I was going to perform a one day mail count and route inspection of the next day.

On December 23, 1981, I counted your mail and accompanied you on your route delivery. You delivered your route in 2.28 hours; you averaged 106.4 paces; and the method of mail measurement was used to determine your mail volume.

On this day, you established a time value for your route of 2.28 (hundreths). I rounded the time to 2.34 or 2.20 (hours).

From December 24, 1981 to January 14, 1982, your street performance continued to be measured on PS Form 1627. Your street time continued to vary from 2.34 to 2.91 hours.

On January 15, 1982, I again informed you of your failure to be consistent in your street time on your route. I instructed you to meet your street time as established by you on December 23, 1981.

On January 16, 1982, your street time on your route was 2.96 hours which was unacceptable. A comparison of mail volume (1021 pieces) on this day was comparable to December 23, 1981 (1002 pieces). Yet, you exceeded your established street time by 37 minutes.

Because of your unsatisfactory performance on January 16, 1982, I accompanied you on your route on January 18, 1982. By mail measurement, you had a total of 1122 pieces of mail for delivery. While evaluating you on your route, I had to order you to quit stalling while delivering mail, i.e., you would remain standing on porches fingering the flats for the next delivery, rather than doing this while walking to your next delivery. I also had to instruct you to continue walking towards your next delivery point when crossing a street, rather than standing still at the street curb and waiting when the traffic was clear. You also slowed your pace from 107 paces per minute on the first part of your route, to 105 paces on the second half of Merrill Street. When I told you that you had slowed down, you stated that you knew how fast you were walking. Your statement indicated to me that you were pacing yourself. Even with all of the deficiencies noted on this day, your street time was 2.32 hours which is within your required street time of 2.34 hours established on December 23, 1981.

Charge No. 2 Failure to properly process forwardable mail and abuse of auxiliary assistance (Form 3996).

On December 4, 1981, I received a customer complaint relative to timely newspapers not being delivered to the

customer at her new address, 811 Link Street, Apartment 33. I drove to the customer's old address, 506 N. Merrill, Apartment 162, Duncanville, TX and retrieved two newspapers dated November 6, 1981 and December 3, 1981, and one circular. A check of the records show that you had a change of address card (Form 3982) on this address. You failed to properly process this mail.

On January 20, 1982, you submitted a form 3996 requesting 1.5 hours auxiliary assistance/overtime. I measured your mail and arrived at 1291 pieces. Based on the total mail volume, you were authorized one hour overtime. You carried the first portion of your route in 1.82 hours. You returned to the office at 12:55 p.m. and informed Mr. B. Bledsoe, supervisor, that you could not finish the rest of your route by 2:00 p.m. At the time Mr. Bledsoe informed you that you still had one hour to finish your route. Your PS Form 3999 shows that on January 18, 1982, you had delivered that portion of your route in 45 minutes. Because of your statement of not being able to finish, Mr. Bledsoe sent you home, to return at your next duty time at 4:00 p.m. Another carrier had to be sent out to finish your route, which was delivered in 54 minutes. The carrier further stated that you had relayed some of your flats which caused a five minute delay. Your street performance on this day was an abuse of auxiliary assistance. Additionally, your relaying of flats was contrary to previous instructions given to you.

On January 28, 1982, you submitted a Form 3996 for one-half hour. I measured your mail and arrived at a mail volume of 893 pieces. Your request for assistance/overtime was disapproved. On this day you made street time of 2.28 hours. Your request for overtime was an abuse of Form 3996.

On January 29, 1982, you submitted a Form 3996 for 1.75 hours. I measured your mail and determined a mail count of 1077 pieces. You were authorized overtime of .66 units. You left on your route and at 1:10 p.m. you returned to the office and informed Mr. Bledsoe and myself that you could not finish the last portion of your route by 2:00 p.m. You still had 50 minutes left to finish that portion of your route where you previously had covered it in 45 minutes. Another carrier had to be sent out to finish your route. The carrier finished it in 45 minutes. Your request for auxiliary assistance/overtime coupled with your street performance was an abuse of Form 3996.

It is apparent that you have established an inconsistent street performance that is wholly unsatisfactory and unacceptable. You have received repeated verbal and written warnings that continued variation of street time was unsatisfactory and would not be tolerated. Additionally, it is apparent that your usage of Form 3996 coupled with your street performance is an abuse of overtime.

It is an inherent nature of the job that a city carrier works with minimum supervision while on his route. It is also obvious that the only way you will perform satisfactorily on your street performance and in the usage of Form 3996 is by constant and direct supervision. The Postal Service cannot afford to have a supervisor accompany you on the street every day. Therefore, this removal action is warranted and is taken to promote the efficiency of the Service.

EMPLOYER CONTENTIONS:

The Employer asserts that progressive disciplinary measures have been administered to the Grievant on three prior occasions for the same basic deficiencies; yet, he has not corrected his shortcomings. His continued failure to put forth a better effort leaves removal as the only recourse.

The Grievant's route (1622), a special accommodation assignment, was established in accordance with his physical limitations. He established the necessary street time on the route; yet, he continued to use an unacceptable amount of time on the street except when accompanied by a supervisor. He failed to respond to admonishments and warnings regarding his performance deficiencies. His only response was the usual remark that "I am doing the best I can." Significantly, he could not document a single factor that caused him to utilize more than his standard street time.

In like manner, the Grievant abused the procedure for requesting auxiliary assistance or overtime (Form 3996). With his experience he should be able to correctly estimate the street time required for delivery of a given volume of mail.

The Employer further contends that the "Code of Ethical Conduct" requires Postal employees to put forth a good effort. The Grievant has not done so, and if all employees were to behave in a similar fashion cost escalations would be horrendous.

Based on the foregoing the Employer requests the Arbitrator to find that just cause existed for the removal.

UNION CONTENTIONS:

The Union contends that while this case deals with deviations in standard street time, there is no standard street time for carriers. There are too many variables to permit such, and the Grievant's alleged standard was set solely on the basis of one day's performance (December 23, 1981). The establishment of such a standard is contrary to the clear provisions of the Employer's own Manuals which provide that standards must be based on performance for six (6) consecutive days or on the basis of a seven (7) week analysis. Moreover, says the Union, measured system accounting does not provide an accurate system of volume measurement.

The Union further charges that the Grievant has been the victim of continuous harassment regarding mail fingering, street crossings, pacing, etc. As a consequence, Management has not worked with the Grievant

in a manner designed to correct any real deficiencies. Management's approach has been that of building a case against the Grievant, and this is contrary to the accepted principle of corrective discipline.

It is also claimed that it is unrealistic to expect a carrier to give a precise figure for his assistance requirements. Form 3996 is an estimate and there is no standard as to how exact the estimate must be.

Finally, the Union submitted four (4) Postal Service arbitration awards which purportedly show that the Grievant was removed absent just cause. The Union requests the Arbitrator to sustain the grievance and make the Grievant whole.

DISCUSSION AND FINDINGS:

This is a disturbing case for the Arbitrator since the evidence fails to fall into neat categories. For example, it is true that the Grievant experienced rather wide variations in the street time utilized on his route, and that specific reasons for this were neither identified nor revealed. It is also true that the variations fluctuate widely when different delivery dates are utilized as benchmarks or standards for measurement. For example, the benchmark date of December 23, 1981, which the Postal Service selected, shows that all but four (4) dates were equal to or above the standard and with an accompanying positive range of 54 minutes. On the other hand, if 2.57 hours (a 15 minute deviation from 12/23/81) is used as the standard, only 23 of the 49 days utilized were above standard and the range would be reduced to approximately 30 minutes.

This shows the hazards involved in comparisons and the need for the exercise of great care in the determination of the standard.

Obviously, the selected standard must correctly reflect the normal time requirement for an assignment. This is where a serious question arises in this case. Management selected the standard on the basis of a one day (12/23/81) route inspection, and there is absolutely no showing that this was a normal or typical day. Why was this day chosen? We have not been told. Why was it chosen instead of the prior day which required 2.83 hours for delivery and would have yielded a standard higher by .49 hours? On the basis of the record this latter date would have been as satisfactory as the one chosen. Because of measurement problems such as this Postal Service Management has adopted and recorded in the M-41 Handbook (Management of Delivery Services) at Part 242.32 procedures for route evaluation and adjustment, as follows:

.32 Street Time

.321 For evaluation and adjustment purposes, the base for determining the street time shall be either:

- a. The average street time for the 7 weeks random timecard analysis and the week following the week of count and inspection; or
- b. The average street time used during the week of count and inspection.

.322 The manager will explain by Comment on Form 1840 or attachments thereto why the base street time allowance for the route was established at the time selected. The manager's selection of the street time allowance cannot be based on the sole criterion that the particular time selected was the lower.

Obviously local Management did not follow the prescribed methodology and the results of their own procedure are fatally flawed. Hence, the Form PS 1627 data submitted with regard to the Grievant cannot be used to justify discipline.

The record also provides concern since it leads to a reasonable conclusion that the supervisor was working hard to build a case against the Grievant. For example, there is the matter of the number of paces made per minute by the Grievant. The "Notice of Proposed Removal" indicates (page 2, paragraph 3) that the Grievant averaged 106.4 paces per minute on December 23, 1981. Then, in paragraph 7 it states that on January 18, 1982, "You also slowed your pace from 107 paces per minute on the first part of your route to 105 paces on the second half of Merrill Street." How picayunish can one get? Also, we are left to wonder why PS Form 1627 was maintained for the Grievant over a three month period (11/81 - 1/82) when such was not done for any other Duncanville carrier.

There is also inadequate proof to establish that the Grievant was guilty of the charge of failing to properly process forwardable mail. It was never established at the hearing that the three (3) pieces of mail that should have been forwarded were the responsibility of the Grievant.

There is evidence to support the charge that the Grievant requested auxiliary assistance on three (3) occasions when he either did not need such assistance or as much assistance as requested. What are we to conclude from this, however? Does this only show that he was a poor estimator; or does it show that he had a devious purpose in overstating the

need? One does not know the answer to this, but in view of the findings with respect to the first two charges this is of little consequence in the total case.

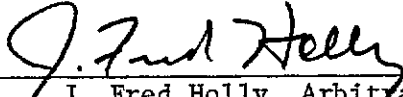
The conclusion is that the Employer has not established just cause for the Grievant's removal on March 19, 1982.

AWARD:

The Arbitrator hereby Awards as follows:

The Employer did not have just cause for the removal of the Grievant. He shall be returned to his carrier position as soon as practicable, and he shall be made whole in all respects.

Knoxville, Tennessee
August 4, 1982



J. Fred Holly, Arbitrator