

FROM A TO ARBITRATION

EPIISODE 68- THE LOVE AFFAIR. EFFECTIVELY GRIEVING MANAGEMENT CHANGING OUR START TIMES



TIAREAP PROGRAM AND THE SHOP STEWARD

- STEWARDS HAVE TO MAKE SURE THAT MANAGEMENT IS NOT VIOLATING ANY PROVISIONS OUTSIDE OF THE HANDBOOKS AND MANUALS
- TIAREAP ONLY PERTAINS TO THE NEW ROUTE COUNTING PROCESS WHICH STILL HAS TO FOLLOW ALL OF THE PROVISIONS OF THE AGREED UPON HANDBOOKS AND MANUALS WE USE FOR THE GRIEVANCE PROCESS

TOUGH LOVE FOR NALC

- SHOP STEWARDS, BRANCH PRESIDENTS, FORMAL A'S, BUSINESS AGENT'S OFFICE. WE'RE FAILING OUR PEOPLE ACROSS THIS COUNTRY.
- MESSAGES AND E-MAILS THAT COREY HAS GOTTEN IS PROOF THAT WE AS A UNION ARE FAILING MISERABLY TO DEFEND AND EDUCATE OUR MEMEBERS
- CARRIERS WHO ARE IN THOSE POSITIONS VOLUNTEERED TO DO THIS. WHAT IS THE REASON THAT YOU VOLUNTEERED TO THIS?
- IF YOU ARE WORKING AT ANY CAPASITY FOR THE NALC, YOU BETTER HAVE A SEARING, ZEALOUS, TORRID LOVE AFFAIR FOR THE CITY LETTER CARRIER. AND IF YOU DON'T YOU SHOULDN'T BE HERE

OUR JOB AS STEWARDS

- WHEN YOU PUT TOGETHER A CASE FILE IT WILL SHOW, AT EVERY LEVEL, WHETHER YOU HAVE THAT TORRID LOVE AFFAIR FOR THE CITY LETTER CARRIER
- WHEN YOU GET A MESSAGE FROM A CARRIER ASKING YOU IF YOU THINK THAT THERE IS A GRIEVANCE, DO NOT JUST ANSWER NO. DO YOUR HOMEWORK. LOOK DEEPER INTO THE SUBJECT. CALL YOUR BUSINESS AGENT. GET OTHER SHOP STEWARD'S OPINIONS.
- WITH ONLINE HELP 24/7 THERE SHOULD BE NO DROPPED BALLS WITHIN THE NALC
- WE NEED TO MAKE SURE THAT ALL CITY LETTER CARRIERS ARE PROTECTED AND REPRESENTED AT THE HIGHEST LEVEL THAT WE CAN GIVE. EACH AND EVERY TIME, REGARDLESS OF WHO THEY ARE, OR HOW OTHER CARRIERS VIEW THEM, OR EVEN HOW YOU VIEW THEM. THEY ARE YOUR BROTHERS AND YOUR SISTERS ARE WE SHOULD BE TAKING CARE OF THEM AGAINST THE BARAGE OF WHAT MANAGEMENT DOES AND WANTS TO DO TO EVERY SINGLE ONE OF US

FIND OUT WHAT HAS CHANGED

- IF AT ANY TIME A CARRIER WHO IS COVERED UNDER ANY SPECIAL CIRCUMSTANCE, SUCH AS LIMITED OR LITE DUTY OR FMLA, ALL OF A SUDDEN MANAGEMENT SAYS THAT THEY ARE NOT ALLOWED AT WORK, THE STEWARDS FIRST JOB IS TO FIND OUT WHAT CHANGED. WHY WAS THIS CARRIER ALLOWED TO COME TO WORK BEFORE, BUT THEY CAN NOT COME TO WORK, OR THERE IS NO WORK,NOW.
- IF THOSE REASONS ARE UNCONTRACTUAL, WE HAVE TO FIGHT THAT. IF MANAGEMENT CAN NOT ANSWER THAT QUESTION OF WHAT CHANGED, THEN WE NEED TO BE FIGHTING THAT AND FIGHTING THEM TO LET THAT CARRIER COME BACK TO WORK

WHAT ARE YOU AFRAID OF, HUH?

- WE CAN NOT BE AFRAID TO FILE A GRIEVANCE. WE CAN NOT BE AFRAID OF WHETHER THIS IS OR ISN'T A GRIEVANCE.
- FILE THE DANG GRIEVANCE. WE CAN'T BE AFRAID TO LOSE THAT GRIEVANCE
- WE HAVE A CARRIER SITTING AT HOME, MAKING NO MONEY. WE GOTTA GET THEM BACK TO WORK
- WHAT ARE WE DOING AS SHOP STEWARDS AND NALC ADVACATES IF WE ARE NOT DEFENDING OUR CITY LETTER CARRIERS WITH EVERYTHING WE GOT AND AT ALL COSTS, BABY?

THE AGENT / THE ADVOCATE

- WE HAVE GOT TO HAVE A SEARING LOVE AFFAIR FOR THE CITY LETTER CARRIER THAT WILL STAND UP TO ANYTHING AND EVERYTHING, AND FIGHT ANYTHING AND EVERYTHING. THAT'S WHAT WE HAVE TO BE ABOUT.
- IF YOU DON'T, THEN YOU ARE IN THE WRONG POSITION AND YOU ARE GOING TO FAIL THE CITY LETTER CARRIERS
- WE NEED TO BE HAVING MORE TRAINING AND MORE PODCASTS. WE NEED TO HAVE MORE CARRIERS WHO ARE STEPPING UP TO HELP EDUCATE OUR BROTHERS AND SISTERS

TIAREAP UPDATES

- COREY RECEIVED CORRESPONDENCE FROM CARRIERS WHO ARE, OR WHO HAVE, GOING THROUGH THE TIAREAP PROCESS
- SOME OF THE THINGS THAT WERE TOUCHED ON:
 - YOU MUST ALWAYS CARRY YOUR SCANNER, CARRIERS HAVE TO LOOK AT THE WORKHOUR WORKLOAD REPORT EACH AND EVERY DAY, ALWAYS VERIFY THAT YOUR SEQUENCED OR BUNDLED COVERAGES ARE RECORDED WHEN YOU ARE TAKING THEM OUT FOR DELIVERY, MAKE SURE THAT ANYTHING THAT POPS UP AS NEW, I.E. REDLINE POLICY, OR HAVING SWINGS OR MAIL NOT BEING DELIVERED, ARE REPORTED TO THE L.O.C. OR R.E.A.T. AS SOON AS POSSIBLE,

TIAREAP UPDATES CONTINUED

- MAKE SURE THAT CARRIERS ARE FILLING OUT THE 3996 AND 1571 IF NEEDED AND THAT ALL OVERTIME NOT CARRIED BY THE REGULAR CARRIER IS REPORTED TO THE L.O.C., MANAGEMENT IS GOING TO TRY TO MESS THIS PROCESS UP AND WE MUST BE READY FOR IT
- THE M.O.U. 1983 ON PAGE 12 STATES THAT THE L.O.C. MAY REQUEST COPIES OF THE UNEDITED DSR SUMMARY PAGE, THE EDITED DSR SUMMARY PAGE, AND P.S.3999 DSR PAGE AND SHOULD BE REQUESTING THEM FOR EVERY ROUTE
- WHEN CARRIERS ARE DRIVING AROUND THE POST OFFICE OR DRIVING THROUGH ANOTHER CARRIERS ROUTE THE DSR WILL MARK IT UNCHARACTERIZED TIME AND DEDUCT IT FROM THE ROUTE OR TREAT IT LIKE A SWING

TIAREAP UPDATES CONTINUED

- REATS ARE FIGHTING FOR EVERY MINUTE FOR THE CARRIERS DURING THIS PROCESS AND TRYING TO CATCH ALL THE LITTLE GLITCHES THAT ARE HAPPENING WITH THESE PROGRAMS
- BRAND NEW STEWARDS WHO ARE LEARNING THE ROPES, THANK YOU, BUT ARE ASKING ABOUT THE F.O.T. AND WHAT IT IS. SO, THE F.O.T. IS ANY TIME THAT A CARRIER IS ON OFFICE TIME AND IS NOT CASING MAIL. THIS MEANS GOING TO THE ACCOUNTABLE CART, PUTTING STUFF IN THE THROWBACK CASE, CHECKING OR PLACING LABELS ON YOUR PINK CARDS, GOING TO THE RESTROOM....
- SO, THE TIME IS FIXED. 33 MINUTES TO DO ALL OF THESE THINGS BUILT INTO THE OFFICE TIME EVERY DAY
- IF YOU HAVE AN OFFICE BREAK YOU GET 10 MINUTES MORE WHICH IS WHERE THE 43 MINUTES COMES IN

TIME ALLOWANCES FOR OFFICE WORK

- M-39 222.214
- THIS IS YOUR F.O.T.

Exhibit 222.214a(4)
Time Allowances for Carrier Office Work

TIME ALLOWANCES FOR CARRIER OFFICE WORK		
Form 1838 Line No.	Work Function	Pieces Per Minute 1-Trip 2-Trip
1	Routing letter-size mail.	18 18
2	Routing all other size mail. (Use Notice 26, Maximum Time Allowance for Routing Mail, to convert pieces to minutes.)	8 8
Minutes		
4	Strapping mail in bundles or placing in trays, preparing relays and placing mail into satchels; for each 70 pieces regardless of character (minimum allowance 3 minutes). Strapping mail in bundles for markup at computerized forwarding unit. Lines 1-2-3 combined mail volume (strapping out pieces and markup pieces) is used in determining time allowance at 70 pieces per minute.	1
8	For each 10 pieces of all classes of mail separated for forwarding or return.	1
9	Periodicals marked up (for each 2 pieces handled for forwarding or return).	1
10	For each Form 3579, Undeliverable Periodical, Standard A & B or Controlled Circulation Matter.	2
11	For each 4 pieces marked up (mail marked Deceased, Temporarily Away, Refused, Vacant (Occupant mail of obvious value) or No Mail Receptacle).	1
12	For each change of address, including Form 3546, recorded on Forms 1564-B and 3982.	2
13	Insured receipts turned in.	1
14	Registered, Certified, COD, Express Mail, Customs and Postage-Due; Keys, Form 3968, signing for, returning funds or receipts, and for partial completion of Form 3849 (name or address for identification). Base minimum allowance is 6 minutes.	*
15	Withdrawing mail where applicable (from distribution cases, trays, sacks, and/or hampers). Base minimum allowance is 5 minutes.	*
16	Sequencing and collating by-pass mail. (Representative time in minutes will be allowed for work function.)	
17	Strapping out time (when mail must be placed in order of delivery) see 922.51d. (Representative time in minutes will be allowed for the work function.)	
18	Break (local option).	
19	Vehicle inspection see 922.51f. Base minimum allowance is 3 minutes.	*
20	Personal needs, etc. (Time allowances are printed on the form for each trip, and must not be changed.)	
21	Office work not covered by form. (Work functions must be identified and approved as being necessary and of a continuing nature.) (Use "Comments" section.) Base minimum allowance is 9 minutes.	*
22	Waiting for mail (office) and all other office activities not performed on a continuing basis which are excluded in computing net office time. (Use "Comments" section.)	
23	Counting Mail and filling out Form 1838-C worksheet.	
Note: For piece items, grant the next higher allowance in minutes for fractional units. Use actual times for Lines 14 through 19 and Lines 21 through 23 when those functions are performed.		
* Computing Standard Office Time Under Columns (e), (f), and (g) on Form 1838: If the actual time for each of Lines 14, 15, 19, and 21 is less than the base minimum and the carrier performs the function the base minimum must be entered for the Line item in the appropriate column. If the actual time exceeds the base minimum, an adjustment to that time cannot be shown which is less than the base minimum.		

CHANGING THE START TIME

- WHEN MANAGEMENT PUTS UP A NOTICE THAT THE OFFICE TIMES ARE GOING TO CHANGE, WE NEED TO GRIEVE IT RIGHT THEN. WE WILL CONSIDER THAT AS THE START OF THE 14-DAY PERIOD FOR THE GRIEVANCE
- IF MANAGEMENT SETS A RETURN TIME FOR ALL CARRIERS OF 6P.M. AND THEN CHANGE THE START TIMES THEY ARE ESSENTIALLY CUTTING YOUR DELIVERY TIME AND THAT PUTS CARRIERS BEHIND THE 8 BALL

WHERE TO START

- THE BEST WAY TO LEARN HOW TO FILE GRIEVANCES IS TO READ THE ARBITRATIONS THAT HAVE COME OUT ABOUT THE SUBJECT YOU ARE GRIEVING
- AS MUCH AS POSSIBLE USE THE GRIEVANCE TEMPLATES THAT ARE AVAILABLE ONLINE, OR CONTACT YOUR LOCAL NALC OFFICE, ASK OTHER STEWARDS OR BUSINESS AGENTS OFFICE
- WHEN MANAGEMENT CHANGES THE START TIMES, THEY HAVE THE BURDEN OF PROOF TO PROVE WHY THEY DID IT AND THEY HAVE TO JUSTIFY WHY. THAT WOULD BE YOUR FIRST QUESTION TO MANAGEMENT

YOU NEED TO INTERVIEW MANAGEMENT

- QUESTIONS TO ASK MANAGEMENT WHEN YOU INTERVIEW THEM:
 - WHAT IS THE REASON FOR THE START TIME CHANGE-
 - IF THEY ARE SAYING FOR EFFICIENCY, MAKE THEM SHOW YOU HOW
 - SAYING THAT THE CARRIER'S PERFORMANCE WAS UNSATISFACTORY, MAKE THEM SHOW YOU WHAT THEY DID TO SUPPORT THAT CLAIM
- PARCELS ARE NOT PART OF CARRIER'S START TIMES. IF MANAGEMENT CAN NOT GET THE PARCELS TO THE CARRIERS IN TIME, THAT IS NOT A REASON TO CHANGE START TIMES. M-39 122 DOES NOT LIST PARCELS AS THE 80 PERCENT OF THE CARRIERS DAILY MAIL TO CASE THAT NEEDS TO BE THERE BEFORE THE CARRIER REPORTS TO WORK.

GRIEVANCE STARTER FOR CHANGING START TIMES

LANGUAGE IS VERY
IMPORTANT BECAUSE IF
THIS GOES TO ARBITRATION
THE ARBITRATOR WILL USE
THE LANGUAGE IN THEIR
DISCUSSION AND THAT IS
EXACTLY WHAT WE WANT

Changing Start Times

Local Grievance # _____

Issue Statement (Block 15 of PS Form 8190):

1. Did management violate Article 5 and Section 122 of the M-39 Handbook via Article 19 of the National Agreement when they changed Letter Carrier start times on [date]? If so, what is the appropriate remedy?

Union Facts and Contentions (Block 17 of PS Form 8190):

Facts:

1. Letter Carriers in the [installation name] were notified that their start times will be changed from [0:00am] to 0:00am effective [date].
2. Carrier start time in the [installation] has been [0:00] since [date].
3. At least 80% of the carrier's daily mail to be cased is on or at the carrier cases when they report for work.
4. Management cited [explanation] as the justification for changing start times.
5. Article 5 as explained on page 5-1 of the JCAM states in relevant part:

Prohibition on Unilateral Changes. Article 5 prohibits management taking any unilateral action inconsistent with the terms of the existing agreement or with its obligations under law. Section 8(d) of the National Labor Relations Act prohibits an employer from making unilateral changes in wages, hours or working conditions during the term of a collective bargaining agreement.

6. Article 19 as explained in part on page 19-1 of the JCAM provides:

Handbooks and Manuals. Article 19 provides that those postal handbook and manual provisions directly relating to wages, hours, or working conditions are enforceable as though they were part of the National Agreement.

Taken together the above referenced cites provide that management is prohibited from taking actions affecting wages, hours or working conditions that are inconsistent with its own handbooks and manuals. Further, those parts of handbooks and manuals that directly relate to wages, hours and working conditions are enforceable as though were a part of the National Agreement.

7. The M-39 section 122 lists the factors that must be considered when establishing schedules as follows:

122.11 Consider the following factors in establishing schedules:

a. Schedule carriers to report before 6 a.m. only when absolutely necessary.

b. Fix schedules to coincide with receipt and dispatch of mail. At least 80 percent of the carriers' daily mail to be cased should be on or at their cases when they report for work.

c. Schedule carriers by groups. Form groups of carriers who make the same number of delivery trips and whose office time is approximately the same.

d. Generally, schedule carriers of the same group to begin, leave, return, and end at the same time.

e. Schedule so that delivery to customers should be approximately the same time each day.

f. Make a permanent schedule change when it is apparent that one or more days' mail volume varies to where it is causing late leaving.

g. Schedule carriers' non work days in accordance with the National Agreement.

8. National Arbitrator Carlton Snow interpreted the regulations of section 122 of the M-39 in decision C-23986 in relevant part as follows:

It is indisputable that the Employer has a right to determine the method, means, and personnel by which operations are to be conducted and also to make reasonable decisions that maintain the efficiency of the operation. Managerial control of work schedules, however, is not totally unfettered or without limitations. The M-39 Handbook specifies that schedules must be fixed to coincide with the receipt and dispatch of mail....

The instruction is not a suggestion but is stated as an imperative. The Handbook, which pursuant to Article 19 of the labor contract has been incorporated into the parties' collective bargaining agreement, eliminates a manager's unfettered control over Start Times. Start Times remain within management's control but must be exercised after giving due deference to the M-39 Handbook.

9. National Arbitrator Neil Bernstein gave the following guidance in his decision for case C-07233 :

Further, the present National Arbitrator is not bound in any way by awards issued by regional arbitrators on this issue. The whole purpose of the national arbitration scheme is to establish a level of definitive rulings on contract interpretation questions of general applicability. National decisions bind the regional arbitrations, and not the reverse.

The above case makes clear that National Arbitration decisions are definitive and binding on Regional Arbitrators. Therefore, National Arbitrator Snow's ruling that the considerations enumerated in section 122 of the M-39 must be given due deference is a binding requirement on management.

Once the union has established a prima facie case that management has not complied with the M-39, it is the burden of management going forward to prove that it has complied.

Contentions:

1. The union has established a prima facie case that 80% of the case-able mail is at the carrier cases at the current start time. [cite evidence] And that, prior to the change in start time, management failed to properly consider the criteria of section 122 of the M-39.
2. Once the union established its prima facie case, the burden shifted to management to prove that it complied with section 122 of the M-39.
3. The agency has failed to demonstrate that 80% of case-able mail is not at carrier cases at the current start time.
4. The agency has failed to prove that it gave due deference to the requirements [cite which ones] listed in section 122 of the M-39 prior to making the schedule change.

Remedy (Block 19 of PS Form 8190):



1. Management will cease and desist violations of Article 5 and 19.
2. Management will cease and desist violations of Handbook M-39 Section 122.
3. Management will pay the appropriate out-of-schedule pay and/or overtime pay.
4. The original start times for city carriers will be reinstated.
5. Any other remedy seen fit by an Arbitrator.

GRIEVANCE STARTER FOR CHANGING START TIMES CONTINUED

- YOU MUST MAKE ALL OF THESE CONTENTIONS TO SHOW THAT THE START TIMES WERE NOT CHANGED FOR EFFICIENCY, BUT BECAUSE OF SOME OTHER REASON

ADDITIONAL FORMS

- SUBMIT YOUR REQUEST FOR INFORMATION
- REQUEST FOR STEWARDS' TIME

 <p data-bbox="1386 211 1651 268">National Association of Letter Carriers Request for Information</p> <p data-bbox="1200 337 1600 372">To: _____ Date _____ Supervisor Customer Services</p> <p data-bbox="1200 396 1396 418">Station/Installation _____</p> <p data-bbox="1200 458 1365 479">Dear _____,</p> <p data-bbox="1200 489 1612 525">Pursuant to Article 17 and 31 of the National Agreement, I am requesting the following information:</p> <ol data-bbox="1212 536 1561 679" style="list-style-type: none">1. Copy of notification of change in start time2. Unit Volume Feedback Reports [enter time frame]3. Distribution Clerks Employee Everything Report [enter time frame]4. City Carriers Employee Everything Report from [enter time frame]5. Truck Schedule/Contract for the last [enter how many] years6. Clerk/Carrier Schedule from [enter time frame] <p data-bbox="1200 704 1651 758">I am also requesting copies of any and all documents, emails, statements, records, reports, audio/video tapes, photographs, or other information learned, obtained, developed or relied upon prior by management to make the decision to change carrier start times.</p> <p data-bbox="1200 768 1651 803">Your cooperation in this matter will be greatly appreciated. If you have any questions concerning this request, or if I may be of assistance to you in some other way, please feel free to contact me.</p> <p data-bbox="1200 815 1243 836">Sincerely,</p> <p data-bbox="1200 889 1340 925">_____ Shop Steward NALC</p>	 <p data-bbox="2015 175 2275 232">National Association of Letter Carriers Request for Steward Time</p> <p data-bbox="1819 332 2219 368">To: _____ Date: _____ Supervisor Customer Services</p> <p data-bbox="1819 394 1989 415">Station/Post Office _____</p> <p data-bbox="1819 454 1984 475">Dear _____,</p> <p data-bbox="1819 485 2275 506">Pursuant to Article 17 of the National Agreement, I am requesting the following steward time to:</p> <p data-bbox="1819 516 2219 538">Investigate a Grievance <input type="checkbox"/> Write & Prepare a Grievance <input type="checkbox"/> Interview Witnesses <input type="checkbox"/></p> <p data-bbox="1819 548 2275 602">I anticipate needing approximately _____ (hours) of steward time, which needs to be scheduled no later than _____. In the event more steward time is needed, I will inform you as soon as possible.</p> <p data-bbox="1819 612 2010 634">Individuals the union needs to interview:</p> <p data-bbox="1819 644 2275 665">_All City Carriers _____</p> <p data-bbox="1819 675 2275 696">_All Distribution Clerks _____</p> <p data-bbox="1819 706 2275 728">_The Management representative that made the decision to change the start time _____</p> <p data-bbox="1819 738 2275 759">_Any Management personnel who were consulted regarding start times _____</p> <p data-bbox="1819 769 2275 791">_The Truck/Contract Driver _____</p> <p data-bbox="1819 801 2275 836">Your cooperation in this matter will be greatly appreciated. If you have any questions concerning this request, or if I may be of assistance to you in some other way, please feel free to contact me.</p> <p data-bbox="1819 846 1862 868">Sincerely,</p> <p data-bbox="1819 921 1959 956">_____ Shop Steward NALC</p>
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THE IMPORTANCE OF LANGUAGE

- THE IMPORTANCE OF USING ARBITRATOR'S LANGUAGE IN YOUR GRIEVANCE IS THIS: MANAGEMENT CAN BRING IN 50 REGIONAL ARBITRATOR'S DECISIONS AND 6 FULL BOXES ON START TIME CHANGES BUT THAT ONE DECISION BY ARBITRATOR SNOW TRUMPS ALL OF THEM
- IT IS MANAGEMENT'S BURDON OF PROOF THAT THEY FOLLOWED THE LANGUAGE OF THE M-39 TO CHANGE THE START TIME, AND IF THEY CAN NOT PROVE THAT THEN WE HAVE THE ARBITRATOR'S LANGUAGE TO BACK UP OUR POSITION
- THE PENDULUM OF THE CASE. WHEN THE UNION STARTS OUT ON A CONTRACT CASE, THEY ARE GOING TO SWING THAT PENDULUM BACK TO MANGEMENT, AND IT KEEPS GOING UNTIL THEY FINISH
 - IN THIS CASE WE ARE GOING TO SWING THAT PENDULUM BACK TO MANAGEMENT AND IT WONT SWING BACK WITH THE LANGUAGE FROM ARBITRATOR SNOW ON THIS SUBJECT

WHAT IS PRIMA FACIE

- BASED ON THE FIRST IMPRESSION GIVEN TO THE ARBITRATOR; ACCEPTED AS CORRECT UNTIL MANAGEMENT PROVES OTHERWISE
- WE COME IN THERE AND GIVE THEM A PRIMA FACIE CASE, THE ARBITRATOR ACCEPTS THAT AS FACT UNTIL MANAGEMENT CAN SOMEHOW PROVE US WRONG

CONTENTIONS AND HOW TO PROVE IT

- USE THE CONTENTIONS IN THE TEMPLATE BUT YOU HAVE TO PROVE YOUR CASE BY ADDING HOW YOU GOT TO THAT POINT. WHEN IT SAYS UNION HAS ESTABLISHED A PRIME FACIE CASE THAT 80% OF THE CASE-ABLE MAIL IS AT THE CARRIER CASES, YOU NEED TO PROVE THAT WITH DOCUMENTATION. PROVE THAT MANAGEMENT VIOLATED THE M-39 SECTION 122 WHEN THEY FAILED TO CONSIDER IT.
 - NOW MANAGEMENT HAS TO PROVE THAT THEY DID CONSIDER IT

GET YOUR EVIDENCE TOGETHER

- THE EVIDENCE THAT WE CAN CITE IS:
 - THE CARRIER'S STATEMENT- A MUST HAVE. GET AS MANY STATEMENTS AS YOU CAN WITH THE CARRIERS IN THE OFFICE. IF YOU CAN'T GET STATEMENTS THEN INTERVIEW ALL OF THE CARRIERS IN THE OFFICE
 - INTERVIEW THE SUPERVISOR AND ASK HOW MUCH, AND WHAT KIND OF, MAIL ARE THEY INPUTTING INTO DOIS ON THE FIRST TRIP, SECOND TRIP AND THIRD TRIP. ALSO, AT WHAT TIME DID THEY INPUT THOSE NUMBERS INTO DOIS
 - DO NOT BE SCARED TO INTERVIEW TRUCK DRIVERS AND PEOPLE OUTSIDE OF THE POST OFFICE, THIS IS OUR TIMES AND LIVELYHOOD THEY ARE TRYING TO TAKE AWAY

ARBITRATIONS AND CITES TO USE

- ARBITRATOR EISENMENGER- C-29717
 - THE GRIEVANCE IS SUSTAINED. THE POSTAL SERVICE VIOLATED ARTICLE 19 OF THE NATIONAL AGREEMENT AND SPECIFICALLY SECTION 122 OF THE M-39 HANDBOOK WHEN MANAGEMENT AT THE FORT COLLINS INSTALLATION CHANGED THE LETTER CARRIERS' START TIME FROM 8:30 A.M. TO 9:00 A.M. EFFECTIVE APRIL 16, 2011.. THE START TIME OF 8:30 A.M. IS TO BE REINSTATED AT THE BEGINNING OF THE NEXT FULL PAY PERIOD AFTER RECEIPT OF THIS AWARD, UNLESS THE PARTIES MUTUALLY AGREE TO A LATER DATE. NO OTHER REMEDY IS GRANTED.

- IMMEDIATELY PRIOR TO THE CHANGE IN START TIME, POSTMASTER ADAM SENA SENT A LETTER TO DANIELLE FAKE, THE LOCAL BRANCH 849 NALC ("THE UNION PRESIDENT DATED APRIL 11, 2011, TO ADVISE THE UNION THAT THE FORT COLLINS INSTALLATION WOULD CHANGE THE REPORTING DINE FROM 8:30 AM. TO 9:00 AM. THE START TIME CHANGE APPLIED TO THE CITY LETTER CARRIERS AT BOTH THE MAIN POST OFFICE (MPO) AND THE OLD TOWN STATION (OTH). ON APRIL 12, 2011, MANAGEMENT CONDUCTED STANDUP MEETINGS TO ADVISE THE CARRIERS AT BOTH STATIONS OF THE CHANGE.
- THE UNION FILED AN INFORMAL STEP-A ON APRIL 29, 2011, TO CONTEST THE CHANGE IN THE CARRIER'S START TIME.

ARBITRATOR EISENMENGER- C-29717 CONTINUED

- POSTMASTER SERN TESTIFIED THAT PRIOR TO OCTOBER 2009 THE FORT COLLINS INSTALLATION PROCESSED ITS OWN MAIL. HE ADDED HOWEVER THAT DUE TO DETERIORATING ECONOMIC REASONS, THE POSTAL SERVICE CENTRALIZED MAIL PROCESSING IN OCTOBER 2009 BY HAVING THE GENERAL MAIL FACILITY/PROCESSING & DISTRIBUTION CENTER (GMF/PDC) IN DENVER COLORADO, PROCESS FORT COLLINS' MAIL. THE POSTAL SERVICE CONTRACTED WITH PRIVATE TRUCKING COMPANIES TO TRANSPORT THE MAIL FROM DENVER TO FORT COLLINS FOR THE LATTER INSTALLATION'S PERSONNEL TO COMPLETE THE CASING OF MAIL

ARBITRATOR EISENMENGER- C-29717CONTINUED

- POSTMASTER SENA STATED THAT ONCE THE FORT COLLINS INSTALLATION LOST THEIR [MAIL PROCESSING] MACHINES IT LEFT THE INSTALLATION DEPENDENT ON THE TRUCKS COMING FROM DENVER WHEN ASKED WHY THE TRUCKS' SCHEDULES WERE NOT CHANGED INSTEAD OF CHANGING THE START TIME FOR THE CARRIERS. POSTMASTER SENA TESTIFIED THAT HE IS HELD AT THE MERCY OF THE DENVER GMF. HE STATED THAT INITIALLY THE TRUCKS WERE TO LEAVE DENVER AT 6:30 AM. BUT THEY WERE UNABLE TO DO SO BECAUSE THE DENVER GMF WAS NOT YET FINISHED WITH THE MAIL AT THAT TIME. HE FURTHER ADDED THAT THE TRUCKS' ARRIVAL TIME HAS BEEN RENEGOTIATED BETWEEN THE POSTAL SERVICE AND THE TRUCKING COMPANY FROM A 7:40 AM ARRIVAL TIME TO AN 8:10 AM. ARRIVAL AND THE TRUCKS ARE GIVEN A TEN (10) MINUTES WINDOW WITHOUT INCURRING A MONETARY PENALTY.

ARBITRATOR EISENMENGER- C-29717CONTINUED

- THE RECORD CONTAINS A MATRIX CREATED BY SUPERVISOR NICK GOODWIN SHOWING THE TRUCK ARRIVALS TIMES TO THE FORT COLLINS INSTALLATION AT THE MPO AND THE OTS SEPARATELY. A REVIEW OF THE SUMMARY OF THE INFORMATION REVEALS THAT THE LAST TRUCK IS SCHEDULED TO ARRIVE AT 7:40 AM. BUT DURING THE PERIOD OF ELEVEN (11) DAYS FROM MARCH 19, 2011 TO MARCH 31, 2011 THE AVERAGE ARRIVAL TIME WAS 8:34 AM AND THE TRUCK WAS LATE AN AVERAGE OF 54 MINUTES. FOR THE OTS THE LAST TRUCK IS SCHEDULED TO ARRIVE AT 8:10 AM. HOWEVER, THE AVERAGE ARRIVAL TIME AT THE OTS FOR THE TEN (10) DAY PERIOD OF MARCH 28, 2011, THROUGH APRIL 9, 2011, AS 9:17 AM AND THE TRUCK WAS LATE AN AVERAGE OF 67 MINUTES.

ARBITRATOR EISENMENGER- C-29717 CONTINUED

- THE DOCUMENT ALSO SHOWS THAT THERE WAS AN AVERAGE OF 69% OF CASEABLE MAIL AT 8:30 AM. AT THE MPO DURING THE SURVEY PERIOD AND AN AVERAGE OF 65% OF CASEABLE MAIL AT 8:30 AM AT THE OTS THE DOCUMENT, COMPILED FROM INFORMATION GATHERED BY SUPERVISOR GOODWIN DURING THE SURVEY PERIOD. SHOWS THERE WERE NO TIMES WHERE THE CARRIERS AT EITHER LOCATION HAD AT LEAST 80% OF CASEABLE MAIL AT 8:30 AM.

ARBITRATOR EISENMENGER- C-29717 CONTINUED

- PRIOR TO CHANGING THE START TIME FOR THE FORT COLLINS LETTER CARRIERS ON APRIL 16, 2011, MANAGEMENT HAD CHANGED THE START TIME FOR THE CARRIER COMPLEMENT AT BOTH STATIONS ON A FEW OCCASIONS. ORIGINALLY BEFORE JULY 16, 2008, THE CARRIERS' START TIME AT BOTH THE MPO AND THE OTS WAS 7:30 AM. ON JULY 16, 2008, MANAGEMENT CHANGED THE START TIME FOR THE CARRIERS AT BOTH FACILITIES TO 7:45 AM. SOMETIME IN MARCH 2009, MANAGEMENT CHANGED THE CARRIERS' START TIME AT BOTH FACILITIES TO 8:00 A.M. THEN SOMETIME IN NOVEMBER 2009 MANAGEMENT CHANGED THE START TIME AT BOTH FACILITIES FOR THE CARRIERS TO 8:15 AM. WITHIN A FEW MONTHS LATER IN FEBRUARY 2010, MANAGEMENT CHANGED THE START TIME FOR THE CARRIERS AT BOTH THE MPO AND THE OTS TO 8:30 A.M. ON JUNE 5, 2010, MANAGEMENT CHANGED THE START TIME FOR THE CARRIERS WORKING FROM THE MPO TO 9:00 AM. BUT RETAINED THE 8:30 A.M. START TIME FOR THE CARRIERS AT THE OTS.

ARBITRATOR EISENMENGER- C-29717 CONTINUED

- ON SEPTEMBER 4, 2010, THE UNION INITIATED A STEP A GRIEVANCE COMPLAINING ABOUT THE CHANGE IN START TIME. THE GRIEVANCE WAS DENIED, AND THE UNION PURSUED THE GRIEVANCE TO THE STEP B.2 ON SEPTEMBER 24, 2010. THE STEP B TEAM RESOLVED THE AGGRIEVED ISSUE THAT "THE POSTAL SERVICE VIOLATED ARTICLE 19 OF THE NATIONAL AGREEMENT WHEN THEY CHANGED THE STARTING TIME FROM 8:30 AM TO 9:00 AM FOR CITY CARRIERS." THE STEP B TEAM ORDERED THAT UPON RECEIPT OF ITS DECISION TO THE MANAGEMENT OF FORT COLLINS, MANAGEMENT WOULD NOTIFY THE CARRIERS THAT THE ORIGINAL START TIME OF 8:30 A.M., WOULD BE REINSTATED. THE STEP B DECISION ALSO STATES THAT, "THE 8:00 AM START TIME IS TO BE IMPLEMENTED NO LATER THAN 10/02/10"

ARBITRATOR EISENMENGER- C-29717 CONTINUED

- THE STEP B DECISION FURTHER MANDATED THE FOLLOWING INSTRUCTIONS:
 - ADDITIONALLY, THE DRT FINDS IT APPROPRIATE TO ISSUE LOCAL MANAGEMENT AN INSTRUCTIONAL “CEASE AND DESIST” IN LIEU OF THE COMPENSATORY MONETARY REMEDY REQUESTED BY THE UNION. THIS IS TO ENSURE THAT IF IN THE FUTURE IT IS DETERMINED THAT CHANGES TO SCHEDULED REPORTING TIMES ARE NECESSARY, THEY WILL BE BASED UPON LEGITIMATE OPERATIONAL NEEDS AND EXERCISED IN ACCORDANCE WITH THE PROVISIONS OF THE NATIONAL AGREEMENT AND ALL APPLICABLE HANDBOOKS AND MANUALS.
- DOCUMENTATION SUBMITTED WITH THE MERITS OF THE INSTANT GRIEVANCE INCLUDES COMPUTERIZED PRINT-OUTS OF TRUCK SCHEDULES FROM TWO (2) DIFFERENT TRUCKING COMPANIES CONTRACTED BY THE POSTAL SERVICE TO MOVE MAIL. GENERALLY, THE DOCUMENTS SHOW THE TRUCKS’ DEPARTURE TIME FROM THE DENVER PRIORITY FACILITY, DENVER, COLORADO. AND THEN THE DENVER PROCESSING AND DISTRIBUTION CENTER (PDC) THE DOCUMENTS BEAR TWO (2) DIFFERENT EFFECTIVE DATES I.E., JULY 12, 2010, AND JULY 24, 2010

ARBITRATOR EISENMENGER- C-29717 CONTINUED

- RECORD CONTAIN MR. TINDALL'S MEMORANDUM SIGNED ON APWU LOCAL #539 LETTERHEAD,
- DATED AUGUST 31, 2010, THAT STATED THE FOLLOWING:
 - ACCORDING TO OUR DOCK CLERK DEBBIE DIXON, THE FINAL TRUCK THAT ARRIVES IN FORT COLLINS EACH DAY WITH MAIL FOR DISTRIBUTION IS SCHEDULED TO ARRIVE AT 7:40 AM. THAT TRUCK IS THE DPS TRUCK, WHICH CONTAINS ALL OF THE DELIVERY POINT SEQUENCED MAIL, AND VERY LITTLE MANUAL MAIL. SO, IN REALITY, THE VAST MAJORITY OF MAIL TO BE DISTRIBUTED TO THE CARRIERS IS AVAILABLE BEFORE 7 AM, WITH THE FINAL BIT SCHEDULED TO BE AVAILABLE AT 7:40 AM.

ARBITRATOR EISENMENGER- C-29717 CONTINUED

- ANALYSIS AND DISCUSSION

- THE UNION OBJECTS TO THE CHANGE IN START TIME EFFECTIVE APRIL 16, 2011. CLAIMING THAT THERE WAS NO OPERATIONAL PURPOSE FOR THE CHANGE. THE POSTAL SERVICE DEFENDS ITS ACTION ON THE BASIS THAT LESS THAN 80% OF THE CARRIERS' CASEABLE MAIL WAS NOT AVAILABLE AT THE START TIME OF 8:30 THUS CONTENDING THAT MANAGEMENT PROPERLY MOVED THE START TIME TO 9:00 A.M. MANAGEMENT ALSO RELIED ON THE ALLEGEDLY LATE BUT CONSISTENT ARRIVAL OF THE MAIL DELIVERY TRUCKS FROM DENVER P&DC/GMF TO THE FORT COLLINS INSTALLATION AS THE REASON FOR THE UNAVAILABILITY OF MAIL FOR THE CARRIERS AT 8:30 AND THAT THE DELAY RESULTED IN UNPRODUCTIVE TIME SPENT BY THE CARRIERS UNTIL THE MAIL ARRIVED AFTER 8:30 AM. THE POSTAL SERVICE RELIED UPON SECTION 122.11 B OF THE M-39 HANDBOOK WHEREIN THE REGULATION INSTRUCTS MANAGEMENT TO FIX SCHEDULES TO COINCIDE WITH THE RECEIPT AND DISPATCH OF MAIL THE REGULATION REQUIRES AMONG OTHER FACTORS THAT THE CARRIERS SCHEDULE BE SET SO THAT AT LEAST 80 PERCENT OF THE CARRIERS DAILY MAIL TO BE CASED BE ON OR AT THEIR CASES WHEN THEY REPORT FOR WORK"

ARBITRATOR EISENMENGER- C-29717 CONTINUED

- IN THE PREVIOUS GRIEVANCE FILED OVER THE IDENTICAL ISSUE (SANS THE OLD TOWN STATION), THE DRT SET FORTH A MUTUALLY-AGREED UPON PROVISIO SHOULD MANAGEMENT DETERMINE (SUBSEQUENT TO OCTOBER CHANGES WILL BE BASED UPON LEGITIMATE OPERATIONAL NEEDS AND EXERCISED IN ACCORDANCE WITH THE PROVISIONS OF THE NATIONAL AGREEMENT AND APPLICABLE HANDBOOKS AND MANUALS" GENERALLY, THE UNION BEARS THE BURDEN OF PROOF TO SHOW BY CREDIBLE AND RELIABLE EVIDENCE THAT THE NATIONAL AGREEMENT HAS BEEN VIOLATED. HOWEVER, IN THIS INSTANT CASE THE AGGRIEVED ACTION RESTS ENTIRELY UPON EVIDENCE COMPILED BY THE POSTAL SERVICE WHERE MUCH OF THAT INFORMATION CANNOT BE VERIFIED AS TO THE RELEVANT AND MATERIAL CIRCUMSTANCES. ANOTHER FACTOR THAT SETS THIS GRIEVANCE APART FROM THE TRADITIONAL UNION CONTRACT GRIEVANCE IS THAT THE PARTIES' MUTUALLY DESIGNATED STEP B TEAM ISSUED FORT COLLINS MANAGEMENT A CEASE-AND-DESIST ORDER AND INSTRUCTED MANAGEMENT THAT ANY FUTURE START TIME CHANGES SHOULD BE DETERMINED ON THE BASIS OF 'LEGITIMATE OPERATIONAL" NEEDS IN ACCORDANCE WITH THE PROVISIONS OF THE NATIONAL AGREEMENT AND APPLICABLE HANDBOOKS AND MANUALS. IN THIS REGARD, THE STEP B TEAM PLACED THE ONUS PRIMARILY ON MANAGEMENT TO SHOW PROOF OF THE "LEGITIMATE OPERATIONAL NEEDS" FOR CHANGING THE CARRIERS' START TIME IF DONE SO IN THE FUTURE

ARBITRATOR EISENMENGER- C-29717 CONTINUED

- I FIND THAT SUPERVISOR GOODWIN CONDUCTED A THOUGHTFUL SURVEY OF THE SITUATION AS DIRECTED BY POSTMASTER SENA AND THAT SUPERVISOR GOODWIN ATTEMPTED IN GOOD FAITH TO PERFORM A THOROUGH COMPILATION OF DATA, UNFORTUNATELY, THE COMPILATION OF EVIDENCE SIMPLY FAILS TO SUFFICIENTLY MEET VERIFIABLE SUPPORT, AND THUS JUSTIFIABLE, TO CHANGE ALL OF THE CARRIERS' START TIME FROM 8:30 A.M., TO 9:00 A.M. THOSE DEFICIENCIES ARE DISCUSSED BELOW
- INASMUCH AS THE POSTAL SERVICE RELIED UPON THE ASSERTION THAT LESS THAN 80% OF THE CASEABLE MAIL WAS AVAILABLE TO THE CARRIERS AT THEIR 8:30 A.M. START TIME AND ATTRIBUTED THAT LATENESS TO THE ARRIVAL OF THE TRUCKS TRAVELING FROM DENVER, THE POSTAL SERVICE HAD THE OBLIGATION TO SHOW HOW MUCH ACTUAL CASEABLE MAIL WAS AVAILABLE TO THE CARRIERS AS OF AT LEAST 8:30A.M. THE ACTUAL AND SEPARATE ARRIVAL TIMES OF THE TRUCKS FROM DENVER TO THE FORT COLLINS MPO AND THE OTS, AND THE ACTUAL QUANTITY OF CASEABIE MAIL DELIVERED AT THOSE TIMES.

ARBITRATOR EISENMENGER- C-29717 CONTINUED

- SUPERVISOR GOODWIN'S MAIL VOLUME WORKSHEETS SHOW HANDWRITTEN NOTATIONS PURPORTEDLY MEANT TO RECORD THE DELIVERY OF MAIL FROM THE TRUCKS FROM DENVER. THE DIFFICULTY WITH THIS INFORMATION IS THAT THERE EXISTS RECORDABLE INFORMATION MAINTAINED IN A DATABASE FOR THE TRUCK'S DEPARTURES AND ARRIVALS AT ALL OF ITS STOPS ON ITS ROUTE FOR EACH DAY . THAT INFORMATION IS LACKING IN THE RECORD. MOREOVER, THE TRUCK DELIVERY REPORTS IN THE RECORD SHOW EVENING OR VERY EARLY MORNING ARRIVAL TIMES AT FORT COLLINS, SUGGESTING THAT AT LEAST ON SOME OCCASIONS FORT COLLINS RECEIVED MAIL THAT WOULD HAVE BEEN AVAILABLE FIRST THING IN THE MORNING WHEN THE CARRIERS REPORTED FOR WORK.

ARBITRATOR EISENMENGER- C-29717 CONTINUED

- IT IS ALSO INCONGRUENT THAT THE TRUCKS FROM DENVER ARRIVE FIRST AT THE MPO AND THEN MAKE THE NEXT STOP (USUALLY) AT THE OTS. THIS WOULD LEAD TO THE CONCLUSION THAT THE MAJORITY OF WAITING TIME WOULD OCCUR AT THE OLD TOWN STATION. BUT A REVIEW OF THE DOCUMENTS IN THE FILE DO NOT REFLECT THAT PRESUMPTION. THE DENVER TRUCKS' ROUTING RAISES THE ISSUE FOR PLACING THE MOST NORTHERN ARRIVAL POINT OF FORT COLLINS AS THE LAST ON THE ROUTE AS OPPOSED TO REVERSING THE ROUTING TO HAVE THE TRUCK DROP OFF MAIL FIRST AT FORT COLLINS. AND THEN BACK-TRACK TO THE OTHER CITIES ON THE WAY TO THEIR HOME BASE IN DENVER. THE LATTER ROUTING COULD ENABLE THE TRUCKS TO DELIVER MAIL TO FORT COLLINS AT LEAST AN HOUR EARLIER

ARBITRATOR EISENMENGER- C-29717 CONTINUED

- THE POSTAL SERVICE RELIED ON THEIR PROFFER THAT THE CARRIERS SPENT 527 MINUTES IN WAITING TIME (CODE 354) (DURING THE PERIOD OF MARCH 19, 2011 THROUGH APRIL 9, 2011) BECAUSE OF THE INSUFFICIENT AVAILABILITY OF MAIL (LESS THAN 80%) AT OR ON THEIR CASES WHEN THE CARRIERS ARRIVED AT WORK. INDEED, THE TAC REPORTS IN THE RECORD ESTABLISH THERE WAS WAITING TIME INCURRED DURING THE SURVEY PERIOD. HOWEVER, IT APPEARS THAT THE CIRCUMSTANCES PERTAINING TO THE WAITING TIME WAS NOT ANALYZED. THE TAC REPORTS DO NOT INDICATE WHAT TIME OF DAY THE WAITING TIME OCCURRED. THE REPORTS DO, HOWEVER, REFLECT THE NAMES OF THE INDIVIDUAL CARRIERS WHO EXPERIENCED CODE 354 TIME AND THE DAY/DATE OF THE WEEK ON WHICH THE WAITING TIME HAPPENED

ARBITRATOR EISENMENGER- C-29717 CONTINUED

- ONE EXTREME EXAMPLE HAPPENED ON SATURDAY, APRIL 9, 2011, WHEN TWENTY-EIGHT (28) CARRIERS EXPERIENCED WAITING TIME FOR A TOTAL OF 35-PLUS HOURS, WHERE THE CARRIERS INCURRED A RANGE OF WAITING TIME WITH ONE WITH ONE CARRIER HAVING THE LEAST AMOUNT OF WAITING TIME OF .80 HOURS WHEREAS ANOTHER CARRIER HAVING THE MAXIMUM AMOUNT OF WAITING TIME AT 2.29 HOURS. HOWEVER, ONE OF THE MPO CARRIERS IS SHOWN TO HAVE WAITING TIME ON NUMEROUS PREVIOUS OCCASIONS. SIX (6) TOTAL, AND FOR LARGE (OVER ONE HOUR) AMOUNTS OF TIME.

ARBITRATOR EISENMENGER- C-29717 CONTINUED

- ONLY A FEW OF THE CARRIERS AT THE OTS HAD EXPERIENCED WAITING TIME DURING THE SURVEY PERIOD PRIOR TO APRIL 9, 2011. A REVIEW OF THE TAC REPORTS ALSO SHOW THAT OTHER THAN THE APRIL 9, 2011, WORKDAY. THE WAITING TIME IS LIMITED TO INDIVIDUALS AND IS NOT INCURRED BY THE ENTIRE OR LARGE MAJORITY OF THE CARRIER COMPLEMENT AT THE FORT COLLINS INSTALLATION. THE UNION'S PRIMA FACIE CASE INVOLVED PRESENTING ANECDOTAL ACCOUNTS FROM THE UNION WITNESSES AND WRITTEN STATEMENTS FROM SEVEN (7) CARRIERS AND ONE CLERK APWU PRESIDENT TO SHOW THAT CASEABLE MAIL WAS AVAILABLE TO THE CARRIERS AT 8:30 A.M. GENERALLY, SUCH ANECDOTAL EVIDENCE, SOME OF WHICH CONSISTS CLEARLY AS HEARSAY, LACKS PROBATIVE VALUE TO OFFSET CONTRARY EVIDENCE, PARTICULARLY DOCUMENTARY EVIDENCE CREATED IN THE NORMAL COURSE OF THE EMPLOYER'S BUSINESS. THE OVERALL EMPHASIS OF THE STATEMENTS; HOWEVER, GIVES PROBATIVE VALUE TO THE INFORMATION IMPARTED

ARBITRATOR EISENMENGER- C-29717 CONTINUED

- FOR EXAMPLE, NEITHER PRESIDENT FAKE NOR STEWARD HOFFMAN'S NAMES ARE ON ANY TAC REPORT SHOWING EITHER PERSON HAD TIME RECORDED UNDER CODE 354. THEREFORE, THE TAC REPORTS CORROBORATE THEIR TESTIMONY THAT THEY DID NOT EXPERIENCE WAITING TIME FOR LACK OF CASEABLE MAIL. ADDITIONALLY, ONLY TWO OF THE SEVEN (7) CARRIERS WHO SUBMITTED STATEMENTS INCURRED CODE 354 TIME AND ONE INDIVIDUAL EXPERIENCED WAITING TIME ONLY ONCE DURING THE SURVEY PERIOD. THEREFORE, THE ANECDOTAL EVIDENCE TENDS TO SUPPORT THE UNION'S CLAIM THAT THE REASON GIVEN FOR CHANGING THE START TIME WAS NOT SHOWN TO BE FOR A LEGITIMATE AND JUSTIFIABLE OPERATIONAL REASON.

TAKE THEIR CASE APART

- IN THAT CASE MANAGEMENT PUT THE FULL GAMBIT OUT ON TRYING TO JUSTIFY WHY THEY NEEDED TO CHANGE START TIMES BUT DID NOT PROVE M-39 SECTION 122. THE UNION NEEDS TO PROVE THAT THEY FAILED TO EVEN CONSIDER IT.
- THE STATEMENTS TOGETHER WITH THE CLOCK RINGS DISPROVED MANagements FALSE CLAIMS OF WAITING TIMES
- YOU CAN COMBAT HEARSAY WITH STATEMENTS, WHEN THEY ALL SAY THE SAME THINGS, IT BECOMES FACT
- THIS ARBITRATION GIVES THE STEWARD ALL THE INFORMATION THAT MANAGEMENT WILL TRY TO USE TO PROVE THEIR CASE AND HOW TO FIGHT AGAINST IT
- STEWARDS SHOULD READ HOW THE ARBITRATOR SHOT DOWN EVERY ONE OF MANagements CLAIMS WITH WHAT THE UNION USED AS FACTS TO PROVE THAT SECTION 122 HAS TO BE CONSIDERED AND THAT THEY CAN'T JUST TAKE THE EASY WAY OUT AND UNILATERALLY CHANGE THE START TIMES OF THE CARRIERS

ARBITRATOR SNOW C-23986

- IN THIS CASE, THE UNION CHALLENGED THE DECISION OF THE EMPLOYER TO CHANGE THE START TIME OF EMPLOYEES . ON DECEMBER 29, 2001, THE EMPLOYER CHANGED THE START TIME OF LETTER CARRIERS FROM 8:15 TO 8:40 A.M. MANAGEMENT EXPLAINED TO EMPLOYEES THAT THE TIME CHANGE NEEDED TO BE MADE IN AN EFFORT TO INCREASE PRODUCTIVITY . IN A MEMORANDUM TO LETTER CARRIERS, THE EMPLOYER STATED THAT THE "CASE FEET PER HOUR" WAS THEN 2.9 BUT THAT IT SHOULD BE 3.60 FEET PER HOUR. THE "CASE FEET PER HOUR" IS THE TOTAL CASEABLE MAIL DIVIDED BY THE MINUTES USED TO CASE THE MAIL . THE EMPLOYER ALSO CITED OTHER PRODUCTIVITY GOALS OF REDUCING SICK LEAVE AND OVERTIME AS A JUSTIFICATION FOR THE OPERATIONAL CHANGE OF THE START TIME .

STATEMENT OF FACTS

- THE UNION CHALLENGED THE DECISION OF THE EMPLOYER TO MAKE THE TIME CHANGE AND CITED SECTION 122.11.B OF THE M-39 HANDBOOK . SECTION 122.11.B REQUIRES THE EMPLOYER TO SET WORK SCHEDULES TO COINCIDE WITH THE RECEIPT AND DISPATCH OF MAIL . THE M-39 HANDBOOK STATES THAT: AT LEAST 80% OF THE CARRIERS' DAILY MAIL TO BE CASED SHOULD BE ON OR AT THEIR CASES WHEN THEY REPORT TO WORK .
- WHEN ASKED HOW MANAGEMENT DETERMINES THAT 80% OF THE MAIL IS AT THE CARRIER'S CASE, MR. . STEPHENS STATED THAT, "WE COUNT THE MAIL EVERY DAY." MR. STEPHENS ALSO STATED, HOWEVER, THAT HE DID NOT KNOW THE VOLUME OF MAIL FOR THREE ROUTES AT THE CENTER OF THE CONFLICT. WHAT MR. STEPHENS KNEW WAS THAT, IF THE TRUCKS WERE ON TIME, 80% OF THE CASEABLE MAIL WILL BE AT THE CARRIERS' CASE IN A TIMELY FASHION.

STATEMENT OF FACTS CONTINUED

- IN A 20-DAY PERIOD FROM DECEMBER 27, 2001, THROUGH JANUARY 16, 2002, THE 6:00 A.M. TRUCK WAS LATE AN AVERAGE OF 10 MINUTES ON 13 OF THE 20 DAYS. FOR THE SAME TIME PERIOD, THE 8:00 A.M. TRUCK WAS LATE AN AVERAGE OF 21 MINUTES ON 15 DAYS. ACCORDING TO SHOP STEWARD FARLEY, THE EMPLOYER NEVER ESTABLISHED WHEN THE MAIL WAS RECEIVED AT THE CARRIERS' CASES PRIOR TO THE ALLEGEDLY IMPROPER TIME CHANGE . MR. FARLEY ALSO TESTIFIED THAT, PRIOR TO THE EMERGENCE OF THE GRIEVANCE, LETTER CARRIERS NEVER HAD TO WAIT FOR THE MAIL. NOR DID HE HAVE KNOWLEDGE OF ANYONE ELSE WHO HAD TO WAIT . WHEN THE PARTIES WERE UNABLE TO RESOLVE THEIR DIFFERENCES, THE MATTER PROCEEDED TO ARBITRATION .

THE EMPLOYER'S POSITION

- THE EMPLOYER ARGUES THAT IT IS COMPLETELY WITHIN MANAGEMENT'S RIGHT TO ALTER THE START TIME BASED ON THE "MANAGEMENT RIGHTS" PROVISION OF THE NATIONAL AGREEMENT. ACCORDING TO THE EMPLOYER, MANAGEMENT CHANGED THE START TIME IN THIS CASE TO INCREASE PRODUCTIVITY . IT IS THE POSITION OF THE EMPLOYER THAT THE CHANGE IN STARTING TIME WAS DUE TO LOW MAIL VOLUME, DISPATCH TRUCKS ARRIVING LATE, AND A POOR MAIL FLOW . THE EMPLOYER ASSERTS THAT MANAGERS MADE EMPLOYEES AWARE OF THESE PROBLEMS AND CHANGED THE START TIME IN AN EFFORT TO OVERCOME THE PRODUCTIVITY DEFICIENCIES . THE EMPLOYER POINTS OUT THAT THE TIME CHANGE WAS PUSHED FORWARD BY 25 MINUTES AND MADE "OUT-OF-SCHEDULE" PREMIUM PAY INACCESSIBLE TO EMPLOYEES .

THE EMPLOYER'S POSITION

- ALTHOUGH ONLY A 25 MINUTES CHANGE, IT ALLEGEDLY HAD A SIGNIFICANT IMPACT ON THE EFFICIENCY OF THE OPERATION AND, ACCORDING TO THE EMPLOYER, "PRODUCES BETTER PRODUCTIVITY SINCE IT IS NOT NECESSARY FOR THE CARRIER TO WAIT FOR DPS VOLUME OR GO TO STREETS AND RETURN WHEN DPS IS AVAILABLE BECAUSE OF A LATE TRUCK ." IN VIEW OF THE POSITIVE IMPACT ON THE EFFICIENCY OF THE OPERATION, THE EMPLOYER CONCLUDES THAT THE CHANGED START TIME DID NOT VIOLATE THE AGREEMENT OF THE PARTIES AND THAT, THEREFORE, THE EMPLOYER MUST PREVAIL IN THIS CASE

ARBITRATOR'S DECISION

- THE UNION OBJECTED IN THIS CASE WHEN, ON DECEMBER 29, 2001, THE EMPLOYER UNILATERALLY CHANGED THE START TIME OF EMPLOYEES FROM 8:15 TO 8:40 A.M. IT IS INDISPUTABLE THAT THE EMPLOYER HAS A RIGHT TO DETERMINE THE METHOD, MEANS, AND PERSONNEL BY WHICH OPERATIONS ARE TO BE CONDUCTED AND ALSO TO MAKE REASONABLE DECISIONS THAT MAINTAIN THE EFFICIENCY OF THE OPERATION. MANAGERIAL CONTROL OF WORK SCHEDULES , HOWEVER, IS NOT TOTALLY UNFETTERED OR WITHOUT LIMITATIONS . THE M-39 HANDBOOK SPECIFIES THAT SCHEDULES MUST BE FIXED TO COINCIDE WITH THE RECEIPT AND DISPATCH OF MAIL. SECTION 122 .11 (B) OF THE M-39 HANDBOOK STATES: CONSIDER THE FOLLOWING FACTORS IN ESTABLISHING SCHEDULES : (B) FIX SCHEDULES TO COINCIDE WITH RECEIPT AND DISPATCH OF MAIL. AT LEAST 80% OF THE CARRIERS' DAILY MAIL TO BE CASED SHOULD BE ON OR AT THEIR CASES WHEN THEY REPORT FOR WORK.

ARBITRATOR'S DECISION

- THE INSTRUCTION IS NOT A SUGGESTION BUT IS STATED AS AN IMPERATIVE . THE HANDBOOK, WHICH PURSUANT TO ARTICLE 19 OF THE LABOR CONTRACT HAS BEEN INCORPORATED INTO THE PARTIES' COLLECTIVE BARGAINING AGREEMENT, ELIMINATES A MANAGER'S UNFETTERED CONTROL OVER START TIMES . START TIMES REMAIN WITHIN MANAGEMENT'S CONTROL BUT MUST BE EXERCISED AFTER GIVING DUE DEFERENCE TO THE M-39 HANDBOOK. THE EMPLOYER RESPONDED TO THE UNION'S CASE BY ASSERTING THAT MANAGEMENT MADE A CHANGE IN THE START TIME TO INCREASE PRODUCTIVITY AND EFFICIENCY . AN ARBITRATOR IS AS OBLIGED TO FOLLOW CONTRACTUAL PROCEDURES AS IS A MANAGER, AND THE PARTIES' AGREEMENT EXPRESSLY STATES THAT A FACTOR A MANAGER MUST CONSIDER IN ESTABLISHING THE WORK SCHEDULE AT A FACILITY IS THE FACT THAT 80% OF THE MAIL MUST BE PRESENT AT THE CARRIERS' CASES WHEN THEY REPORT TO WORK.

ARBITRATOR'S DECISION

- THE ARBITRATOR DID NOT RECEIVE PROOF FROM MANAGEMENT COVERING THIS CRUCIAL EVIDENTIARY LINK. THE EMPLOYER DID NOT ESTABLISH WHETHER OR NOT 80% OF THE MAIL HAD BEEN DELIVERED TO CASES AT THE ORIGINAL START TIME PRIOR TO MANAGEMENT'S CHANGING THE WORK SCHEDULE. WHAT THE EMPLOYER PREMISED ITS CASE ON WAS THE FACT THAT THE 6:00 A.M. AND 8:00 A.M. TRUCKS WERE FREQUENTLY LATE, AND THIS FACT ALONE ALLEGEDLY JUSTIFIED CHANGING THE START TIME . PART OF THE EVIDENCE USED BY MANAGEMENT TO SUPPORT ITS DECISION FAILED TO BE PERSUASIVE . MANAGEMENT RELIED, IN PART, ON THE FACT THAT THE 6:00 A.M

ARBITRATOR'S DECISION CONTINUED

- TRUCKS WERE GENERALLY LATE OVER A 20-DAY PERIOD FROM DECEMBER 27, 2001, TO JANUARY 16, 2002. BUT SUCH EVIDENCE WAS FAR FROM CONCLUSIVE IN LIGHT OF THE FACT THAT THE LETTER CARRIERS' START TIME WAS NORMALLY 8:15 A.M. THE ON AVERAGE 15-MINUTE DELAY OF THE 6:00 A.M. TRUCK FAILED TO PROVIDE SUFFICIENT JUSTIFICATION FOR MANAGEMENT'S DECISION . IT, HOWEVER, IS RELEVANT THAT THE 8:00A.M. TRUCKS WERE AN AVERAGE OF APPROXIMATELY 20 MINUTES LATE OVER THE SAME 20-DAY PERIOD AND WERE LATE 15 OF THE 20 DAYS .

ARBITRATOR'S DECISION

- IT WAS REASONABLE FOR MANAGEMENT TO TAKE SUCH A DELAY INTO CONSIDERATION WHEN SETTING THE WORK SCHEDULE, BUT THE TIME FRAME CONSIDERED BY MANAGEMENT OCCURRED IMMEDIATELY AFTER THE HOLIDAY SEASON AND PROVIDED CIRCUMSTANCES THAT LOGICALLY CONTRIBUTED TO THE LATENESS OF THE TRUCKS . A 20-DAY TEST PERIOD UNDER SUCH CIRCUMSTANCES FAILED TO PROVIDE SUFFICIENT EVIDENCE OF A CLEAR PATTERN OF LATENESS THAT JUSTIFIED THE CHANGE . THE POINT IS THAT THE LATENESS OF THE 8:00 A.M. TRUCKS, WITHOUT OTHER SUPPORTIVE DATA, FAILED TO ESTABLISH THAT LESS THAN 80% OF THE MAIL WAS AT THE CARRIERS' CASES WHEN THEY ARRIVED FOR WORK. THE POINT IS THAT THE UNION, AS THE MOVING PARTY, ESTABLISHED A PRIMA FACIE CASE THAT THE EMPLOYER WAS NOT COMPLYING WITH THE M-39 HANDBOOK. ONCE THE UNION MADE A PRIMA FACIE CASE, THE BURDEN OF GOING FORWARD WITH THE EVIDENCE SHIFTED TO THE EMPLOYER TO PROVE THAT IT COMPLIED WITH THE PARTIES' AGREEMENT .

ARBITRATOR'S DECISION CONTINUED

- THE EMPLOYER ELECTED TO PRESENT NO WITNESSES AT THE HEARING AND OFFERED ONLY A LIMITED EXPLANATION TO JUSTIFY THE SCHEDULE CHANGE, NAMELY, TO FOSTER PRODUCTIVITY . IN THE ABSENCE OF EVIDENCE, IT CANNOT BE CONCLUDED THAT THE EMPLOYER CARRIED ITS BURDEN OF GOING FORWARD WITH THE EVIDENCE. MANAGEMENT DID NOT ESTABLISH THAT IT COMPLIED WITH RELEVANT CONTRACTUAL PROVISIONS OR THAT IT GAVE CONSIDERATION TO THE AMOUNT OF MAIL ACTUALLY AT THE CARRIERS' CASES AT THE START OF THE SHIFT PRIOR TO MAKING THE SCHEDULE CHANGE . IN ORDER TO JUSTIFY A CHANGE IN THE WORK SCHEDULE, MANAGEMENT MUST SHOW (ONCE THE UNION PRESENTS A PRIMA FACIE CASE) IT COMPLIED WITH THE PARTIES' AGREEMENT AND CONSIDERED THE FACTORS SET FORTH IN SECTION 122 .11 OF THE M-39 HANDBOOK BEFORE CHANGING THE START TIME .

THIS ARBITRATION SHOWED US

- MANAGEMENT WENT AFTER START TIMES IN THIS ARBITRATION USING THE TRUCK SCHEDULES, MAIL VOLUME NOT ACCESSIBLE, CARRIERS NOT HAVING TO COME BACK TO GET DPS MAIL, AND CLAIMS THAT PRODUCTIVITY HAS GONE UP SINCE THE TIMES WERE CHANGED

ARBITRATOR COLLINS C-34444

- ISSUE STATEMENT AWARD SUMMARY:
 - THE GRIEVANCE IS GRANTED . MANAGEMENT VIOLATED ARTICLES 3, 5, AND 19 OF THE NATIONAL AGREEMENT, INCLUDING SECTION 122.1 OF THE M-39 HANDBOOK AND THE NATIONAL LABOR RELATIONS ACT, WHEN THEY UNILATERALLY CHANGED LETTER CARRIER START TIMES ON 08/24/2019.
- THIS COMES STRAIGHT OUT OF ARTICLE 5 AND THE LABOR RELATIONS ACT WAS TACKED ON TO THE ISSUE STATEMENT, AND THERE IS NOTHING WRONG WITH THAT

DISCUSSION

- TURNING TO THE MERITS OF THIS CASE, WHILE MANAGEMENT HAS THE MANAGEMENT RIGHT UNDER ARTICLE 3C TO ADJUST HOURS OF WORK IN ORDER TO MAINTAIN THE EFFICIENCY OF THE OPERATIONS ENTRUSTED TO IT, THIS RIGHT IS SUBJECT TO OTHER PROVISIONS OF THE NATIONAL AGREEMENT, INCLUDING ARTICLE 5, PROHIBITION OF UNILATERAL ACTION. IN THIS CASE, THE EVIDENCE IN THE RECORD CLEARLY SHOWS THAT MANAGEMENT ACTED UNILATERALLY IN CHANGING THE START TIME OF THE MYSTIC PO'S LETTER CARRIERS. SUCH ACTION VIOLATED SECTION 8(D) OF THE NATIONAL LABOR RELATIONS ACT, AS CHANGING THE CARRIERS' START TIME OBVIOUSLY AFFECTED THE CARRIERS' HOURS OF WORK AND AS MANAGEMENT WAS MAKING THE CHANGE UNILATERALLY. THE CIRCUMSTANCES HERE WERE ESPECIALLY AGGRAVATING SINCE MYSTIC CARRIERS HAD BEEN STARTING WORK AT 7:30 AM FOR DECADES, AND THE CHANGE WAS TO TAKE EFFECT JUST ONE WEEK AFTER THE CARRIERS WERE NOTIFIED OF THE CHANGE BY PM CLARK.

DISCUSSION CONTINUED

- MOREOVER, MANAGEMENT OFFERED NO COMPELLING REASON WHY THEY NEEDED TO ACT IN SUCH HASTE. ALTHOUGH THE CASE FILE CONTAINS FIVE MONTHS OF TACS CLOCK RINGS SHOWING CARRIERS ON STAND-BY TIME, WAITING FOR MAIL TO BE SORTED, I CREDIT STEWARD PENDOLA'S UNCONTROVERTED TESTIMONY THAT STAND-BY TIME VARIES SEASONALLY AND THAT THE OTHER SEVEN MONTHS OF THE YEAR WOULD NOT HAVE SHOWN EXCESSIVE STAND-BY TIME TO THIS EXTENT. AMONG OTHER ISSUES THAT COULD HAVE BEEN DISCUSSED AND NEGOTIATED WITH THE UNION HAD MANAGEMENT NOT ACTED UNILATERALLY, THIS FACT ISSUE COULD, AND SHOULD, HAVE BEEN ADDRESSED AND RESOLVED PRIOR TO ANY CHANGE IN THE LETTER CARRIERS' START TIME.

DISCUSSION CONTINUED

- ACCORDINGLY, I CONCLUDE THAT MANAGEMENT VIOLATED ARTICLES 3, 5, AND 19 OF THE NATIONAL AGREEMENT, INCLUDING SECTION 122.1 OF THE M-39 HANDBOOK AND THE NATIONAL LABOR RELATIONS ACT, WHEN THEY UNILATERALLY CHANGED LETTER CARRIER START TIMES ON 08/24/2019. THE REMEDY IS THAT CARRIER START TIMES IN THE MYSTIC POST OFFICE SHALL BE RESTORED TO 7:30 AM, EFFECTIVE IMMEDIATELY; AND, THAT MANAGEMENT SHALL CEASE AND DESIST FROM FUTURE SUCH VIOLATIONS OF THE NATIONAL AGREEMENT.

MANAGEMENT'S CONTENTIONS

- MANAGEMENT CONTENDS THAT THEY DID NOT VIOLATE THE NATIONAL AGREEMENT WHEN THEY CHANGED THE START TIME OF THE MYSTIC CT CARRIERS ON AUGUST 24, 2019. MANAGEMENT TAKES THE POSITION THAT THEY HAVE THE EXCLUSIVE RIGHT UNDER ARTICLE 3 TO CONTROL UNNECESSARY COSTS, PROTECT THE SERVICE, AND MAINTAIN THE EFFICIENCY OF OPERATIONS; THAT MANAGEMENT IDENTIFIED INEFFICIENCIES IN THE MORNING'S OPERATIONS AND CORRECTED THEM; AND THAT MANAGEMENT HAD A VIABLE BUSINESS REASON TO CHANGE THE LETTER CARRIER START TIME AT THE MYSTIC POST OFFICE FROM 7:30 AM TO 8 AM. IN ADDITION, MANAGEMENT ARGUES THAT THE UNION'S FORMAL A REPRESENTATIVE VIOLATED ARTICLE 15.2 OF THE NATIONAL AGREEMENT BY FAILING TO PROVIDE HIS WRITTEN APPEAL, VIA PS FORM 8190, TO PM CLARK.

MANAGEMENT WILL HANG ON ARTICLE 3, THEY HAVE THAT RIGHT. BUT WE CAN DEFEAT IT

ARBITRATOR TALMADGE C-33356

- POSTAL SERVICE POSITION-
- THE UNION DID NOT CARRY ITS BURDEN OF PROVING A CONTRACTUAL VIOLATION. THE POSTAL SERVICE HAS THE EXCLUSIVE RIGHT TO CHANGE THE STARTING TIME OF LETTER CARRIERS PURSUANT TO ARTICLES 3 AND 41. MANAGEMENT FOLLOWED THE M-39, SECTION 112, AND SUPPORTED MANAGEMENT'S MOVE TO CHANGE THE START TIME FROM 7:30 TO 8:00 A.M. MANAGER SPENCER TESTIFIED CREDIBLY THAT HE MADE THE DECISION TO CHANGE THE CARRIERS' START TIME BASED ON THE OPERATIONAL NEEDS OF THE STATION, SPECIFICALLY NOTING THAT 40% OF THE MAIL WAS NOT AVAILABLE WHEN THE CARRIERS REPORT AT 7:30 A.M. AND HE HAD TO ENSURE THAT THE CARRIERS HAD ENOUGH MAIL TO CASE. MANAGER SPENCER TESTIFIED THAT HE DID NOT CONSIDER LETTER CARRIER PERFORMANCE WHEN DECIDING TO CHANGE THE START TIME. HE NOTED THAT IT WAS UNREASONABLE TO ASK THE CARRIERS TO PERFORM THEIR JOB WITHOUT GIVING THEM THE MAIL TO DO SO. SPENCER TESTIFIED THAT HE ALSO CONSIDERED THAT STAGGERED START TIMES WOULD HELP THE CONGESTION IN THE PARKING LOT. AS THE FORMAL A DESIGNEE, SPENCER PROVIDED THE DISTRIBUTION UP TIME REPORT FOR THE PERIOD SEPTEMBER 28 - NOVEMBER 6, 2017, WHICH SHOULD THAT 40% OF THE TIME THE MAIL WAS DELIVERED LATE TO THE CARRIERS.

ARBITRATOR TALMADGE C-33356 CONTINUED

- THERE WAS NO EVIDENCE THAT THE POSTMASTER SOUGHT THE CHANGE IN START TIME TO PUNISH THE LETTER CARRIERS. THE POSTMASTER TESTIFIED THAT HE HAD A CONVERSATION WITH MANAGER SPENCER ABOUT OFFICE PERFORMANCE AND HIS SUGGESTION WAS TO CHANGE THE REPORTING TIME, WITH WHICH THE POSTMASTER AGREED. THE M-39, SECTION 112 DISCUSSES MANAGEMENT'S OBLIGATION TO RUN AN EFFICIENT OPERATION. THE MANAGER WOULD BE IN VIOLATION OF SECTION 112 IF HE DID NOT MAKE THE CHANGE AND CONTINUED TO ALLOW THE CARRIERS TO REPORT TO WORK EARLY WHEN THE MAIL WAS NOT AVAILABLE. THE UP-TIME REPORT REFLECTED THAT 40% OF THE MAIL IS NOT IN ON TIME. THE SERVICE URGED A DENIAL OF THE GRIEVANCE. MANAGEMENT DID THE RIGHT THING TO CHANGE THE START TIME OF LETTER CARRIERS TO INCREASE THE EFFICIENCY OF THE OPERATION. THE SERVICE ARGUED THAT IF THE GRIEVANCE IS SUSTAINED, THE CARRIERS SHOULD NOT BE AWARDED \$100 PER CARRIER, AS THE UNION REQUESTED, BECAUSE THERE HAD BEEN NO FINANCIAL HARM TO THE CARRIERS.

ARBITRATOR TALMADGE C-33356 CONTINUED

- DISCUSSION-
- AT ISSUE IS WHETHER MANAGEMENT VIOLATED ARTICLES 3, 5, 15 AND 19 BY WAY OF THE M-39, SECTION 122.1 AND SECTION 242.332 WHEN THEY IMPLEMENTED A POLICY TO CHANGE THE START TIMES BASED ON PERFORMANCE ISSUES USING UNILATERAL CRITERIA. THE UNION HAS MET ITS BURDEN OF PROOF THAT MANAGEMENT VIOLATED THE NATIONAL AGREEMENT. THE UNION ARGUED THAT ON SEPTEMBER 5, 2017, THE EMPLOYER UNILATERALLY CHANGED THE START TIME OF THE CARRIERS IN THE 02904 UNIT FROM 7:30 A.M. TO 8:00 A.M. BASED SOLELY ON OFFICE PERFORMANCE ISSUES AND NOT BASED ON OPERATIONAL NEEDS AND THE CRITERIA ESTABLISHED UNDER THE M-39 HANDBOOK, SECTION 122.11. THE UNION ALSO MAINTAINED THAT THE CHANGE IN START TIMES VIOLATED THE 2013 PRE-ARBITRATION AGREEMENT.

ARBITRATOR TALMADGE C-33356 CONTINUED

- ARTICLE 3 OF THE NATIONAL AGREEMENT PROVIDES THAT MANAGEMENT HAS THE RIGHT TO DETERMINE THE METHOD, MEANS, AND PERSONNEL BY WHICH OPERATIONS ARE TO BE CONDUCTED AND TO MAKE REASONABLE DECISIONS THAT MAINTAIN THE EFFICIENCY OF THE OPERATION. MANAGEMENT HAS CONTROL OF WORK SCHEDULES, INCLUDING START TIMES; HOWEVER, DEFERENCE MUST BE GIVEN TO THE M-39 HANDBOOK. THE M-39 HANDBOOK, WHICH PURSUANT TO ARTICLE 19 HAS BEEN INCORPORATED INTO THE PARTIES' NATIONAL AGREEMENT, SPECIFIES THAT SCHEDULES MUST BE FIXED TO COINCIDE WITH THE RECEIPT AND DISPATCH OF MAIL, AND TO MAKE A PERMANENT SCHEDULE CHANGE WHEN IT IS APPARENT THAT ONE OR MORE DAYS' MAIL VOLUME VARIES TO WHERE IT IS CAUSING LATE LEAVING.

ARBITRATOR TALMADGE C-33356 CONTINUED

- SECTION 122.11 (B) AND (F) OF THE M-39 HANDBOOK STATES:
 - CONSIDER THE FOLLOWING FACTORS IN ESTABLISHING SCHEDULES: (B) FIX SCHEDULES TO COINCIDE WITH RECEIPT AND DISPATCH OF MAIL. AT LEAST 80 PERCENT OF THE CARRIERS' DAILY MAIL TO BE CASED SHOULD BE ON OR AT THEIR CASES WHEN THEY REPORT FOR WORK.
 - (F) MAKE A PERMANENT SCHEDULE CHANGE WHEN IT IS APPARENT THAT ONE OR MORE DAYS' MAIL VOLUME VARIES TO WHERE IT IS CAUSING LATE LEAVING.
- ARBITRATOR SNOW HAS NOTED THAT THE INSTRUCTION THAT "AT LEAST 80% OF THE CARRIERS' DAILY MAIL TO BE CASED, SHOULD BE ON OR AT THEIR CASES WHEN THEY REPORT FOR WORK" IS NOT A SUGGESTION BUT IS STATED AS AN IMPERATIVE. SNOW CONCLUDED THAT "START TIMES REMAIN WITHIN MANAGEMENT'S CONTROL BUT MUST BE EXERCISED AFTER GIVING DUE DEFERENCE TO THE M- 39 HANDBOOK". [USPS AND NALC, F98N-4F-C 02062648, NALC: 3982102C (2002), SNOW].

ARBITRATOR TALMADGE C-33356 CONTINUED

- THE UNION ASSERTED THAT THE ONLY ISSUE RAISED BY MANAGEMENT PRIOR TO THE CHANGE IN START TIMES WAS THAT CERTAIN CARRIERS WERE NOT PERFORMING TO THE POSTMASTER'S EXPECTATIONS, WHICH IS NOT AMONG THE FACTORS LISTED IN SECTION 122.11 (B) FOR ESTABLISHING SCHEDULES. IN SUPPORT OF ITS POSITION THE UNION POINTED TO THE AUGUST 2, 2017, MEETING AT WHICH TIME POSTMASTER PAULINE INFORMED THE UNION THAT THE OVERALL CARRIER PERFORMANCE IN 02904 WAS NOT PERFORMING TO HIS EXPECTATIONS, AND IF THE CARRIERS DID NOT SHOW IMPROVEMENT, HE WOULD CHANGE THE STATION'S START TIMES FROM 7:30 A.M. TO 8:00 A.M.

ARBITRATOR TALMADGE C-33356 CONTINUED

- AS A FOLLOW-UP TO THE AUGUST 2 MEETING, CARRIER CAMPBELL TESTIFIED THAT SUPERVISORS BONILLA AND MCKEON, SEPARATELY, HAD SPOKEN TO HIM ABOUT WHETHER HE HAD TALKED TO THE CARRIERS THAT THE POSTMASTER INDICATED WERE NOT PERFORMING TO EXPECTATIONS. TO FURTHER EMPHASIZE THE POINT, POSTMASTER PAULINE SENT THE AUGUST 21, 2017, LETTER TO PRESIDENT ARMADA, WHICH STATED IN PART: ON A SIDE NOTE, I REVIEWED THE PERFORMANCE OF THE 02904 CARRIERS. INSTEAD OF GETTING BETTER, IN THE LAST MEETING THEY BLAMED DAWN BONILLA, AND SHE WAS NOT PART OF LAST WEEK'S SUPERVISORY STAFF. THEREFORE, 02904 WILL GO TO AN 8 AM. REPORT TIME EFFECTIVE AUGUST 26, 2017.

ARBITRATOR TALMADGE C-33356 CONTINUED

- MOREOVER, AT THE INFORMAL A MEETING SUPERVISOR THOMPSON STATED THAT THE CHANGE IN START TIMES WAS THE POSTMASTER'S DEAL AND DID NOT OFFER ANY FURTHER REASONS FOR THE CHANGE IN START TIME. MANAGEMENT ASSERTED THAT THE CHANGE IN START TIME WAS MADE TO INCREASE PRODUCTIVITY AND EFFICIENCY AND WAS NOT BASED ON CARRIER PERFORMANCE. A FACTOR THAT A MANAGER MUST CONSIDER WHEN ESTABLISHING THE WORK SCHEDULE IS THAT 80% OF THE MAIL MUST BE PRESENT AT THE CARRIERS' CASES WHEN THEY REPORT TO WORK. THE EMPLOYER DID NOT ESTABLISH WHETHER 80% OF THE MAIL HAD BEEN DELIVERED TO CASES AT THE ORIGINAL START TIME PRIOR TO MANAGEMENT'S CHANGING THE WORK SCHEDULE. POSTMASTER PAULINE TESTIFIED THAT MANAGER SPENCER HAD MADE THE DECISION TO CHANGE THE START TIME, A DECISION WITH WHICH THE POSTMASTER AGREED. SPENCER TESTIFIED THAT BASED ON THE PROFILE OF THE MAIL TO THE INSTALLATION, TO ENSURE THE EFFICIENCY OF THE LETTER CARRIERS, THEY NEEDED TO ENSURE THAT THE CARRIERS WOULD HAVE ENOUGH MAIL TO CASE WHEN THEY REPORTED TO WORK

ARBITRATOR TALMADGE C-33356 CONTINUED

- HE NOTED THAT THEY HAD A SIGNIFICANT SHIFT IN THE CASEABLE VOLUME, INCLUDING AN INCREASE IN THE AMAZON VOLUME IN THE SUMMER OF 2017 AND, AS A RESULT, THE MAIL WAS ARRIVING LATER THAN THE 7:30 A.M. CARRIER START TIME. PART OF THE EVIDENCE USED BY MANAGEMENT TO SUPPORT ITS DECISION FAILED TO BE PERSUASIVE. AT THE FORMAL A, SPENCER PROVIDED A DISTRIBUTION UP TIME REPORT FOR THE PERIOD SEPTEMBER 28 - NOVEMBER 6, 2017, WHICH, HE TESTIFIED, INDICATED THAT 40% OF THE MAIL WAS DELIVERED LATE TO THE CARRIERS. HOWEVER, THIS DOCUMENTATION, WHICH COVERED A PERIOD AFTER THE SEPTEMBER 5 CHANGE IN START TIME HAD TAKEN EFFECT, DID NOT ESTABLISH WHETHER 80% OF THE MAIL HAD BEEN DELIVERED TO CARRIERS' CASES AT THE ORIGINAL START TIME.

ARBITRATOR TALMADGE C-33356 CONTINUED

- ALTHOUGH IT WOULD HAVE BEEN REASONABLE FOR MANAGEMENT TO TAKE INTO CONSIDERATION AN INCREASE IN CASEABLE MAIL ARRIVING LATER THAN THE CARRIERS' 7:30 ORIGINAL START TIME WHEN SETTING THE WORK SCHEDULE, BUT WITHOUT SUFFICIENT SUPPORTIVE DATA, MANAGEMENT FAILED TO ESTABLISH THAT LESS THAN 80% OF THE MAIL WAS AT THE CARRIERS' CASES WHEN THEY ARRIVED FOR WORK OR THAT IT WAS APPARENT THAT ONE OR MORE DAYS' MAIL VOLUME VARIED TO WHERE IT IS CAUSED LATE LEAVING. INSTEAD, THE UNION PRESENTED EVIDENCE THAT THE SIGNIFICANT FACTOR CONSIDERED BY THE POSTMASTER WHEN DECIDING TO CHANGE THE START TIME WAS BASED ON INDIVIDUAL CARRIERS NOT MEETING PERFORMANCE EXPECTATIONS, WHICH IS NOT ONE OF THE ENUMERATED FACTORS TO BE CONSIDERED UNDER THE M-39, SECTION 112.11.

ARBITRATOR TALMADGE C-33356 CONTINUED

- THEREFORE, THE UNION ESTABLISHED A PRIMA FACIE CASE THAT MANAGEMENT DID NOT COMPLY WITH THE M-39 HANDBOOK. ANY CHANGE IN THE START TIME MUST BE IMPLEMENTED IN COMPLIANCE WITH THE FACTORS IN SECTION 122.11 OF THE M-39 HANDBOOK. FOR THE REMEDY, MANAGEMENT SHALL REINSTATE THE ORIGINAL START TIME OF 7:30 A.M. FOR THE CARRIERS IN THE 02904 UNIT. THERE WAS NO EVIDENCE OF FINANCIAL HARM TO THE CARRIERS AND, THUS, THE \$100.00 PAYMENT TO EACH AFFECTED CARRIER, REQUESTED BY THE UNION, IS NOT WARRANTED.

WRAPPING IT UP

- THOSE 4 CITES ARE GOING TO HELP THE STEWARD TO:
 - GET MANAGER'S ARGUMENTS AND HOW THEY ARE GOING TO CONTEND THEIR POSITION, THEY WILL MORE THAN LIKELY BE THE SAME ONES
 - HAVE A GREAT ISSUE STATEMENT AND USING THE TEMPLATE WILL HELP AS WELL
 - HOW ARBITRATORS CONSIDER THE GRIEVANCE AND HOW TO USE THE LANGUAGE THEY NEED TO HELP US GET A GOOD DISCUSSION, THEY PUT A LOT OF PRIORITY ON THE M-39 112.11 ABOUT THE 80% AND WE NEED TO GET THAT INFORMATION TO THE ARBITRATOR
 - MANAGERS MAY TRY TO BLUFF WITH TRUCK SCHEDULES AND DATA AND PRODUCTIVITY AND EFFICIENCY, BUT THEY HAVE TO HAVE THE ACCURATE PERCENTAGE OF THE MAIL AT THE CASE AT THE CARRIER'S START TIME