

ISSUE:

Did management violate the provisions of the M-39 Sections 233 and 242? Did management violate provisions of the M-41 Sections 440 and 441? If so, what shall the remedy be?

DECISION:

The DRT has **RESOLVED** this grievance. The use of the 3M case is not a violation of Handbooks and Manuals as long as it does not replace the standard throwback case. Letter Carriers are not required to sort and mark-up mail while on street time. The sorting tray provided by management is not approved Postal equipment and Letter Carriers can not be required to use this equipment.

EXPLANATION:

The Union contends management has required all Letter Carriers to sort and mark-up their undeliverable mail while on street time. They claim management has provided equipment called a "3M Box" in order to facilitate this task. Upon return to the office, the Union charges they are required to then take this mail from the separations in the "3M Box" and place them in the corresponding spot on the "3M Case". The Union argues the "3M Box" and "3M Case" are not in any manual and the associated work methods are in violation of the M-39 and the M-41. The Union has requested management "cease and desist" from requiring Letter Carriers to use the "3M Box" and "3M Case".

Management contends they have the right to invoke Article 3 (Management's Rights) and instruct Letter Carriers to use the "3M Case". Management claims the "3M Case" is a tool to correct deficiencies we may have with DPS technology. They claim the case will prevent future delayed first class mail. Management states the "3M Box" was purchased to help carriers sort their mail after each loop. They claim this will avoid a line at the "3M Case" when the carriers return from the street. Management argues they are merely trying to assist the Letter Carrier with changes in the Postal Service and keep them productive by avoiding a line at the "3M Case" in the afternoon. In addition, management claims they have used this process since 2004. Therefore, they state this grievance is untimely and should be rejected as such.

The DRT has examined the contentions and applicable handbook provisions referenced in the case file. This is not the first case appealed to Step B contending a violation of Handbooks and Manuals in relation to the "3M Case". The DRT contacted their respective Regional and National counterparts to establish their positions on the subject. The consensus obtained from those parties is that it is agreed there is no violation of the M-41 as long as the

throwback case as described in the M-41 remains intact and in use in the office. The standard throwback case will be used in the morning for undeliverable cased mail. The “3M Case” will be used only to sort DPS errors in the afternoon upon return from the street.

The second issue raised by the local Union contends that sorting of undeliverable mail and marking-up of this mail is office not street work. The M-41 Section 441 explains this function and when it should be performed. It states:

4 Office Time — Return

44 Undelivered Mail

441 Processing Undelivered Mail

Follow procedures listed in part 24 to process *forwardable and undeliverable mail* (1) that you didn't process before leaving the office and/or (2) that you picked up on route. After processing, place this mail in throwback case, as explained in part 24.

This provision clearly defines this type of work as office time not street time. The equipment provided by management, while it may be helpful if a carrier decides to utilize it, is not Postal approved equipment and management may not require employees to use this tray.

Therefore, the DRT has determined the use of the “3M case” is not a violation of Handbooks and Manuals as long as it does not replace the standard throwback case. Letter Carriers are not required to sort and mark-up mail while on street time. The sorting tray (3M box) provided by management is not approved Postal equipment and Letter Carriers can not be required to use this equipment. However, management can make the tray available on a voluntary basis for any Letter Carrier who wishes to utilize the “3M Box”.

With regard to management's claim that the grievance is untimely because the process has been in place since 2004, the violation charged by the Union is classified as a “Continuing Violation”. The JCAM Article 15 Section 2 explains:

Continuing violations are an exception to the general rule stated above. In H1N-5D-C 297, June 16, 1994 (C-13671), National Arbitrator Mittenthal explained the theory of continuing violations as follows:

Assume for the moment, consistent with the federal court rulings, that the Postal Service incorrectly calculated FLSA overtime for TCOLA recipients under the ELM. Each such error would have been a separate and distinct violation. We are not dealing here with a single, isolated occurrence. Management was involved in a continuing violation of the ELM. The affected employees (or NALC) could properly have grieved the violation on any day the miscalculation took place and such grievance would be timely provided it was

submitted within the fourteen-day time limit set forth in Article 15. This is precisely the kind of case where a “continuing violation” theory seems applicable. To rule otherwise would allow an improper pay practice to be frozen forever into the ELM by the mere failure of some employee initially to challenge that practice within the relevant fourteen-day period.

In the opinion of the DRT, this grievance describes a continuing violation and is not in violation of time limits set forth under Article 15 of the National Agreement.