An old provision resurrected

The ***Handbook M-39—Management of Delivery Services*** Section 126.3 has been around for a long time. However, a relatively recent arbitration award has brought to light several possible uses. The language states:

> **126.3 Record of Carrier Work Hours, Absences, Replacements, and Overtime**
>
> Complete PS Form 3997, Unit Daily Record, as per instructions on the form or electronic equivalent from a nationally approved computer system that provides equivalent information. (See exhibit 126.3.) Prepare PS Form 3997 *several days in advance.* Since scheduled absences and scheduled replacements are known, add only the unscheduled absences and their unscheduled replacements. *(Emphasis added.)*

Between withholding and staffing issues, we are seeing an increase in the number of assignments that are regularly left uncovered. In many instances, management leaves those vacant duty assignments open and fills them on the day of the vacancy by having carriers curtail and pivot. More often than not, management forces non-ODL letter carriers to work off of their bid assignments. While not a magic bullet, this provision can force management to handle vacant duty assignments in different manner.

In Regional Arbitration Case No. C01N-4C-C 05149941 (C-26543)*, May 2006, Arbitrator Jonathan I. Klein determined that management must fulfill its obligation to *M-39* Section 126.3 by assigning carriers into vacant duty assignments two days in advance of the vacancy. The USPS took the position that the language of 126.3 was merely "instructional" and that, by assigning carriers on the day of the vacancy, they had satisfied the requirements. Arbitrator Klein disagreed and stated, "The arbitrator finds 126.3 of the *M-39* to be clear and unambiguous. It requires that the Unit Daily Record, Form 3997, be prepared 'several days in advance.'" Arbitrator Klein noted Exhibit 126.3 in *M-39* even requires management to fill auxiliary assignments in advance. Arbitrator Klein issued a cease-and-desist order in this case.

While filling vacant assignments in advance closes a loophole and lessens the likelihood of pivoting, it does not preclude it. If there are no available employees to be assigned to these vacant assignments in advance, or if the assignment becomes vacant unexpectedly, such as when an employee calls in sick, etc., management may not be able to fill the assignment in advance. However, oftentimes, part-time flexible carriers, transitional employees and overtime-desired-list carriers are left home while non-ODL carriers are forced either to curtail and work those vacant assignments or to cover those assignments in an overtime status.

So, when you file a pivoting or overtime grievance based on 126.3 of the *M-39*, what additional arguments and evidence do you need to develop? First, you need to continue to make all the arguments that you have made in the past. Nothing has changed in that regard. What has changed is, when you make the 126.3 argument, you need to prove how, if management had assigned carriers to those vacant assignments in advance, the outcome would have been different.

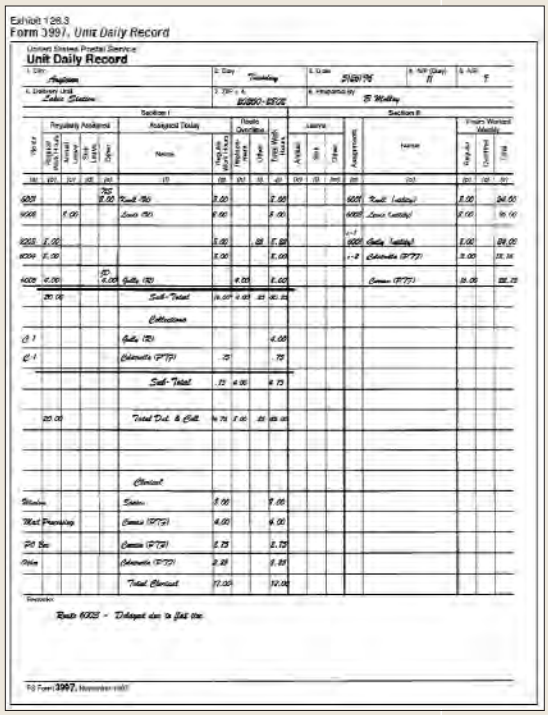
Exhibit 126.3
Form 3997, Unit Daily Record

Unit Daily Record

For example, if a route is left uncovered while an ODL carrier is non-scheduled, and non-ODL carriers are forced to curtail and pivot and/or are forced to work overtime off of their assignments, an argument easily can be made that, had the ODL carrier been scheduled in advance on the vacant assignment, many, if not all, of the non-ODL carriers would not have been required to work overtime off of their assignments.

Think of Section 126.3 of the *M-39* as another tool in your toolbox, one that will help keep some of the forced overtime by non-ODL letter carriers to a minimum.

* Regional arbitration awards are citeable but not precedent-setting. Because the NALC National Agreement makes an arbitrator's award final and binding, "final and binding" applies only to the case before the arbitrator.