

**REGULAR REGIONAL ARBITRATION**

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In the Matter of the Arbitration ) Grievant: Class Action  
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between ) Post Office: Germantown, MD - Main  
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UNITED STATES POSTAL SERVICE ) USPS Case #K11N-4K-C 14228143  
 )  
and ) BRANCH Case #74-14-CC-45  
 )  
NATIONAL ASSOCIATION OF ) DRT #13-312818  
LETTER CARRIERS, AFL-CIO )  
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BEFORE: Tobie Braverman ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Louis W. Minor

For the Union: Alton R. Branson

Place of Hearing: Germantown, MD

Date of Hearing: March 10, 2015

AWARD: The grievance is sustained. The Employer shall cease and desist from utilizing DOIS projections as the sole determinant of letter carrier leaving times, and shall cease and desist in its practice of announcing all mail as "up" prior to complete distribution of the mail.

Date of Award: April 10, 2015

PANEL: USPS Capital Metro Area / NALC Region 13

Award Summary

The evidence demonstrated that the Employer used DOIS projections as the sole determinant of carrier leaving times in violation of various Step 4 Settlements. This, with the practice of announcing all mail as up prior to the distribution of all mail contributed to making the office environment unduly stressful, and both practices should therefore cease.

  
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Tobie Braverman

The instant case is submitted to the Arbitrator pursuant to the terms of the grievance arbitration provisions of the Collective Bargaining Agreement of the parties. Hearing was held at Germantown, Maryland on March 11, 2015. The parties argued their respective positions orally at the conclusion of hearing, and the hearing was declared closed on that date. The parties stipulated that the matter is properly before the Arbitrator, and further stipulated that the issue before the Arbitrator for decision, as framed by the DRT Team is as follows:

Did Management violate Articles 19 and 34 of the National Agreement, the M-30 Section 122.2 and various DOIS Settlements when carriers were instructed to leave the office at a specified time, and if so, what is the appropriate remedy?

### **FACTS**

The instant case arose as a result of a series Pre Disciplinary Interviews (“PDI”) and Letters of Warning issued to letter carriers at the Germantown, Maryland main post office in February, March and early April, 2014. All of the incidents concerned the letter carriers’ failure to leave the office by the time instructed by management on particular dates during those months. Among the letter carriers, some were not issued any discipline after the PDI, while others were issued Letters of Warning. None was issued discipline beyond a Letter of Warning. Those Letters of Warning were the subject of separate grievances, and although all of the Letters of Warning were ultimately rescinded, the instant grievance was filed as a class action grieving the practice of instructing letter carriers to leave the office at a specific time and threatening or imposing discipline if they did not leave at the time specified.

The testimony of the letter carriers who testified at hearing was that shortly after they arrive at work each morning the supervisor circulates to each carrier, and reading from a document on a clip board, advises the carrier of his leaving time that day. The times stated are to the minute, and the letter carriers either observed or presumed that the document from which the supervisor is reading is the day's DOIS projections for the route. They further testified that although they were being told to leave, and the mail was being called as all up by management, in fact, the mail is not ready at that time. The carriers testified that they are frequently required to wait on mail or parcels after supervision has announced that all mail has been distributed. As a result, they simply can not leave by the time directed by management.

According to Branch Vice President and Chief Steward, Charles Clark, during the PDI's he observed that the Supervisor was asking why the carriers had not left at a specific leave time based upon a DOIS report. Based upon that, he believed that the leave times concerning which the carriers were being questioned were based solely upon DOIS projections.<sup>1</sup> According to the PDI notes, while the carriers were asked why they failed to leave at the appointed time, there were no questions concerning any alleged misconduct or time wasting practices. The letter carriers further testified that the imposition of the requirement that they leave at times which were not achievable resulted in undue stress. Some testified that they felt pressured to skip breaks and lunch, and the threat of discipline was intimidating and stressful.

Postmaster Hugo Aldana, testified that expectations are given to each carrier each day, and this includes the leave times as well as other daily expectations. According to Aldana, however,

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<sup>1</sup> The Union did not request the DOIS reports, and they were not in evidence to substantiate the testimony.

those leave times are routinely based on several factors, not just DOIS projections as alleged. The factors include mail volumes, which are found in DOIS, the arrival time of the mail, the type of mail, and the time when the mail is ready. The instructions regarding leaving times are not based strictly on DOIS mail volumes as alleged. Aldana explained that mail is called "up" on the intercom at the appointed "up time" each day, and after this announcement is made, all carriers are expected to pull down and leave the office as soon as possible. According to Aldana, all mail should be distributed by the "up time", but that is not necessarily the case.

The instant grievance was filed alleging a violation of the National Agreement and Step 4 settlements regarding the use of DOIS. The grievance also alleges that the stress engendered by the PDI's and Letters of Warning regarding not leaving at the appointed time is a violation of the Joint Statement on Violence. The grievance proceeded through the grievance procedure without resolution to arbitration.

### **POSITIONS OF THE PARTIES**

Union Position: The Union contends that it has met its burden of proof to demonstrate that the Employer has violated the provisions of the National Agreement and binding Step 4 Settlements regarding the use of DOIS. The evidence as demonstrated through the testimony of all of the letter carriers who testified at hearing demonstrated that the Employer has routinely advised them of a very precise leaving time based upon a document from which the supervisor was reading approximately ten minutes after clocking in for the day. The time was given after up time had been called, but before all mail was distributed. As a result the carriers could not

possibly be ready to leave for the street as instructed. Despite this fact, the carriers were called in for PDI's and some were given Letters of Warning. The parties at the National level have agreed that DOIS cannot be used for discipline without additional evidence of carrier time wasting or other misconduct. According to the testimony of Vice President Clark, the supervisor was reading times from the DOIS document when he questioned carriers in the PDI's. There was nothing more provided. There is no doubt that the sole basis for the leaving times and the threatened discipline was DOIS. This is a clear violation, and additionally creates an atmosphere of stress and intimidation. While there have not been any additional disciplinary actions, the Employer is still giving carriers leaving times based solely upon DOIS. The Union therefore requests an order that the Employer cease and desist from this practice.

Employer Position: The Employer argues that the Union has failed to meet its burden of proof to demonstrate a violation of the National Agreement. Although the Union makes a very specific allegation concerning the use of DOIS, it never requested any supporting DOIS documents, and they are not before the Arbitrator. The Union has simply not met the threshold burden of proof to demonstrate that in fact the Employer relied exclusively on DOIS in assigning letter carrier leaving times. The testimony of Postmaster Aldana was that the leaving times were determined based upon DOIS as well as several other factors, including arrival of mail, distribution of mail, weather conditions and other factors which may be relevant on any particular day. Clearly each day is different, and the determining factors will therefore vary day to day. Ultimately, the Employer has the right to manage the work force, and clearly, instructing carriers as to their leaving and return times is an entirely appropriate exercise of management rights. Finally, while the carriers may have been upset or stressed by being called in for a PDI, the

conduct of a PDI simply does not rise to the level of intimidation and a violation of the Joint Statement. The grievance should be denied.

### **RELEVANT CONTRACTUAL PROVISIONS**

#### **ARTICLE 3 - MANAGEMENT RIGHTS**

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties; ...
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted; ...

#### **ARTICLE 34 - WORK AND TIME STANDARDS**

- A. The principle of a fair day's work for a fair day's pay is recognized by all parties to this Agreement.

#### **Handbook M-39 122-21 Establishing Leaving Schedule**

The leaving time for the carrier is determined by the following:

- a. Workload. The normal workload for the route;
- b. Availability of mail. The time for all the mail for the same day's delivery is available;
- c. Necessary Office Time. Time required to case this mail, withdraw, tray or strap out mail, obtain parcel post, and complete other required office duties; and
- d. Business Hours. Normal community business hours.

#### **M-01769**

... The efficiency tool ... will not be used as the sole determinant for establishing office or street projections. Accordingly, the resulting projections will not constitute the sole basis for corrective actions. This agreement does not change the principle that, pursuant to section 242.332 of Handbook M-39, 'no carrier shall be disciplined for failure to meet standards, except in cases of unsatisfactory effort which must be based on documented, unacceptable conduct that led to the carrier's failure to meet office standards.'

Projections are not the sole determinant of a carrier's leaving or return time, or daily workload. The use of any management created system or tool that calculates a workload projection does not change the letter carrier's reporting requirements ... the supervisor's scheduling responsibilities, or the letter carrier's or supervisor's responsibilities. ...

### **Joint Statement On Violence And Behavior In The Workplace**

We all grieve for the Royal Oak victims, and we sympathize with their families, as we have grieved and sympathized all too often before in similar horrifying circumstances. But grief and sympathy are not enough. Neither are ritualistic expressions of grave concern or the initiation of investigations, studies or research projects.

The United States Postal Service as an institution and all of us who serve that institution must firmly and unequivocally commit to do everything within our power to prevent further incidents of work-related violence.

This is a time for a candid appraisal of our flaws and not a time for scapegoating, fingerpointing or procrastination. It is a time for reaffirming the basic right of all employees to a safe and humane working environment. *It is also the time to take action to show that we mean what we say.*

We openly acknowledge that in some places or units there is an unacceptable level of stress in the workplace; that there is no excuse for and will be no tolerance of violence or any threats of violence by anyone at any level of the Postal Service; and that there is no excuse for and will be no tolerance of harassment, intimidation, threats, or bullying by anyone.

We also affirm that every employee at every level of the Postal Service should be treated at all times with dignity, respect, and fairness. The need for the USPS to serve the public efficiently and productively, and the need for all employees to be committed to giving a fair day's work for a fair day's pay, does not justify actions that are abusive or intolerant. *"Making the numbers" is not an excuse for the abuse of anyone.* Those who do not treat others with dignity and respect will not be rewarded or promoted. Those whose unacceptable behavior continues will be removed from their positions. ...

## DISCUSSION AND ANALYSIS

As in any arbitration alleging a non-disciplinary contractual violation, the burden of proof is on the Union to demonstrate a breach of the relevant contractual language. In this case, the Union has the burden of proving that the Employer improperly relied upon DOIS projections alone to instruct carriers regarding daily leaving times, and that the instruction, taken together with the threats of discipline and disciplinary action taken as a result of letter carriers' failure to meet the leaving times, created such a hostile working environment or treated carriers with such a lack of respect and dignity so as to constitute a violation of the Joint Statement on Violence. The Union must meet this burden of proof by a preponderance of the evidence. That is, it must demonstrate that it is more likely than not that the violations occurred as alleged.

The evidence supporting the allegation that DOIS alone was used in the office to give each carrier a leaving time shortly after clocking in for the day was substantial. Seven letter carriers testified independently that they were routinely given leaving times that were precise to the minute by supervisors who were reading from a report on a clip board each morning. While most either were somewhat unclear as to what a DOIS report looked like or what the document being used was, Charles Clark, who attended the PDI's with carriers who were charged with Failure to Follow Instructions, testified that he is familiar with DOIS reports. He directly observed the Supervisor conducting the PDI reading from DOIS reports when asking about the failure to meet specific leaving times drawn from the report. This testimony was not refuted, and the Supervisor who conducted the PDI's was not called as a witness.

The Employer points out that the Union could have, but did not, request DOIS reports for



the relevant dates. While this would have made the evidence more concrete, in view of the un rebutted testimony, the absence of the documents is not fatal. While Postmaster Aldana testified that leaving times are based upon a number of factors, and that DOIS is only one tool among them, there was no evidence to support that these other factors were used in giving the leaving times. When balanced against Clark's testimony that he saw the DOIS reports being used during the PDI's as the sole basis for precise to the minute leaving times, the preponderance of the evidence is that this is in fact what has occurred.

The other salient evidence which supports the Union's case here is the testimony that supervision routinely announces that all mail is up and carriers should begin to pull down and load before all mail is actually available. Again, all of the carriers who testified complained that this occurs regularly. Carriers are told to leave at a specified time, but they must wait for either mail or parcels, making it impossible to leave. Postmaster Aldana denied that this occurs, but his testimony made it apparent that he considers all mail to be "up" at the time appointed as the "up time" for the station. He acknowledged, however, that this time is rarely met, but was unclear when asked if mail is declared to be "up" before it is all distributed to the carriers.

Based upon the preponderance of the testimony at hearing, it appears that what is regularly occurring is that supervision is utilizing DOIS projections to assign each carrier a precise leaving time, and this, combined with announcing that all mail is up before it is actually completely distributed, is placing in the carriers in a situation which makes it impossible to leave at the designated time. The evidence also establishes, however, that while there were a series of PDI's and Letters of Warning issued around the time of the filing of this grievance, there have been no further disciplinary actions or PDI's on this issue. Additionally, all of the Letters were grieved

and removed.


While the practice of threatening discipline for failure to leave on time appears to have stopped, the issue of the stressful environment created remains. There is no question that by routinely giving letter carriers instructions that cannot possibly be met, the Employer is unduly increasing the stress level in the office. This appears to be done in order to appear to meet assigned "up times", even though doing so is an impossibility based upon mail arrival and distribution times. This in turn increases stress and pressure on the carriers, and as several testified, makes them feel pressured to forego breaks and lunch on the street in order to make up time. While it is subject to argument as to whether this rises to the level of "abuse to make the numbers" it clearly does increase the stress in the office in violation of at least the spirit of the Joint Statement on Violence.

Clearly the Employer has the right to determine the time at which carriers should leave the office, and to instruct them accordingly. Just as clearly, however, the parties have agreed that DOIS projections may not be the sole basis for this determination. It is similarly inappropriate to announce that mail is all distributed before this task is actually complete and all mail and parcels are actually distributed to the carriers. These two practices, which when taken together result in the creation of an unduly stressful environment, and should cease.

**AWARD**

The grievance is sustained. The Employer shall cease and desist from utilizing DOIS projections as the sole determinant of letter carrier leaving times, and shall cease and desist in its practice of announcing all mail as "up" prior to complete distribution of the mail.

Dated: April 10, 2015

  
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Tobie Braverman, Arbitrator