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REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)	Grievant: Class Action
	(
Between)	Post Office: Shawnee, OK
	(
UNITED STATES POSTAL SERVICE)	USPS Case Nos: G06N-4G-C 09143626
And	(G06N-4G-C 09146049
)	
NATIONAL ASSOCIATION OF)	NALC Case Nos: 88309008
LETTER CARRIERS UNION	(88309007
)	

BEFORE: PETER J. CLARKE, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Robert McCoy, Labor Relations Specialist

For the Union: Sandra Emerson, Arbitration Advocate

Place of Hearing: Shawnee, Oklahoma

Date of Hearing: August 21, 2009

Record Closed: September 14, 2009

Date of Award: November 23, 2009

Relevant Contract Provisions: Articles 3.C & 19, M-39 Handbook 115.2, 115.4, 122.21, 122.22, 122.23, 242.311 & 242.321

Contract Year: 2006-2011

Type of Grievance: Contract

Award Summary:

The grievances are sustained. The Postal Service improperly utilized the Delivery Operations Information System (DOIS) figures to set the carriers' leave and return times in violation of the M-39 Handbook. In addition, the improper use of the DOIS figures created a hostile work environment for the carriers.

PETER J. CLARKE
Arbitrator

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ISSUES¹

- 1) Whether the Postal Service violated the National Agreement, including the applicable Handbooks and Manuals, by using DOIS recordings to set carriers' daily office and street time each morning? If so, what is the appropriate remedy?
- 2) Whether a hostile work environment was created by the Postal Service's use of DOIS to set carriers' daily office and street time? If so, what is the appropriate remedy?

STATEMENT OF THE CASE

The hearing opened on August 21, 2009 in the Post Office located at 116 East 9th Street in Shawnee, Oklahoma. The parties offered a joint exhibit (JX-2) of 108 pages. The parties were afforded an opportunity for opening statements, direct and cross examination of witnesses. In lieu of closing arguments, the parties requested to do written closings. The record was held open through September 11, 2009 to allow for the mailing of the parties' written closings and arbitration cites. The record was closed upon receiving the last written closing on September 14, 2009.

RELEVANT CONTRACT PROVISIONS

Based on the facts adduced at the hearing, the Arbitrator determined that the relevant contract provisions are the following:

Article 3.C (Management Rights) of the National Agreement states, "The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations: C. To maintain the efficiency of the operations entrusted to it."

Article 19 incorporates into the National Agreement, "Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions as they apply to employees covered by the [National] Agreement."

¹ The issues stated by the Arbitrator differ from the issues identified by the Step B team, but essentially asks the same questions just in a more concise way. The actual issues stated by the Step B team were: "1) Management, using their DOIS recordings, stops at each carrier case in a morning, and records the imprecise piece count of letters and flats for that route. Management then attempts to set the carrier's daily office and street time, by informing the carrier when he or she needs to leave the office and return. Has Management violated the National Agreement, including but not limited to Article 19, the Joint Statement and the Methods Handbook, M-39 Section 242.3? If so, what should the remedy be?; and 2) Management is intentionally creating a hostile work environment by using their DOIS to set the carriers daily office and street time. If the carrier cannot make or meet Management's imprecise numbers, the carrier can look forward to being abused, harassed and in some cases threatened with discipline. Has Management violated the National Agreement, Articles 14 and 19, the Joint Statement and the Methods Handbook, M-39, section 115.4? If so, what should the remedy be?"

Section 115.2 of the M-39 Handbook (Using People Effectively) provides,

Managers can accomplish their mission only through the effective use of people. How successful a manager is in working with people will, to a great measure, determine whether or not the goals of the Postal Service are attained. Getting the job done through people is not an easy task, and certain basic things are required, such as:

- a. Let employees know what is expected of him or her.
- b. Know fully if the employee is not attaining expectations; don't guess—make certain with documented evidence.
- c. Let the employee explain his or her problem—listen! If given a chance, the employee will tell you the problem. Draw it out from the employee if needed, but get the whole story.

Section 115.4 of the M-39 Handbook (Management Delivery of Services) states,

Maintain Mutual Respect Atmosphere

The National Agreement sets out the basic rules and rights governing management and employees in their dealings with each other, but it is the front-line manager who controls management's attempt to maintain an atmosphere between employers and employee which assures mutual respect for each other's rights and responsibilities.

Section 122.21 of the M-39 Handbook (Establishing Leave Schedule) provides,

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 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.

Section 122.22 of the M-39 Handbook (Maintaining Leaving Schedule) states,

Carriers must be trained and motivated to complete their office work so that they may leave the office on time each day. The delivery unit manager must be aware of and record the daily workload for each route, and:

- a. Provide assistance where necessary for carriers to meet scheduled leaving times;
- b. Recognize when a judicious use of curtailment of non-preferential mails is appropriate; and

- c. Use carrier late leaving reports to help determine performance efficiency and also to indicate possible training needs. Delivery managers at all levels must take positive steps to instill every employee with a sense of importance in the daily need to maintain schedules and perform all assigned duties within the allocated time.

Section 122.23 of the M-39 Handbook provides,

The employee, upon request, will be provided a Form 3996, Carrier-Auxiliary Control, after the supervisor has been verbally informed as to the reason for the request. The employee shall not be denied the form and, upon request, a duplicate of the completed form will be provided the employee.

Section 242.311 of the M-39 Handbook states,

Under normal conditions, the office time allowance for each letter route shall be fixed at the lesser of the carrier's average time used to perform office work during the count period, or the average standard allowable office time.

Section 242.321 of the M-39 Handbook provides,

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.

RELEVANT FACTS

On February 14, 2009, Supervisor Reece Davis (Supervisor Davis) posted a laminated placard at each carrier case. The placard had spaces to write in the number of letter pieces, flat pieces, and the expected leave and return times for the individual carrier. On February 17, 2009, Supervisor Davis was questioned about why the placards were posted at the carriers' cases. Supervisor Davis responded that the placards were only there to comply with the POOM who may come by the facility and would want to see the placards displayed. Nothing further was discussed with the carriers at that time. On February 24, 2009, before the carriers' begin tour, a Supervisor Davis began walking around to each carrier's case and recording on the posted placard the piece count amount of letters and flats taken from the Delivery Operations Information System (DOIS numbers). The DOIS numbers were generated from the Workload Status Report. The DOIS numbers were also recorded before all the mail was available for the

carriers to case for their routes. In addition to recording the DOIS numbers, the supervisor began informing the carriers of their leave and return times based on the DOIS numbers.

After receiving the DOIS numbers and their leave and return times, the carriers would then inform the supervisor if they needed any help to complete their route in the allotted eight hour time period. If additional time was needed a Carrier Auxiliary Control Form 3996 (3996) was filled out and the supervisor would either approve or disapprove the request. On March 10, 2009, a grievance was filled regarding the new manner in which Postal management utilized the DOIS numbers and determined the carriers' leave and return times. The grievances went unresolved through the lower grievance levels and were appealed to arbitration to be heard by this duly appointed arbitrator.

DISCUSSION AND OPINION²

NALC's Position

The Union argues that the Postal Service is violating the National Agreement by using the DOIS numbers to determine the office and street times (leave and return times) for the letter carriers. The Union points out that the Postal Service has admitted using the DOIS numbers to determine leave and return times for carriers. *See* JX2 at 10 ¶ 3, 4, 6. The evidence establishes that imprecise piece count of flat and letter mail and DPS machine and flat sorting machine volumes are entered into the DOIS computer program which then prints out the Workload Status Report (WSR). JX-2 at 64. The DOIS numbers from the WSR is then recorded on placards at the carriers cases *See* JX-2 at 56-58. The information includes letter volume and flat volume and leave and return time for the route that day. The Postal Service tries to hold carriers to DOIS numbers as close as possible. The Postal Service's reliance on DOIS numbers is in violation of the nation's class action grievance settlement #M-01664 (effective September 11, 2007) which specifically states: "DOIS projections are not the sole determinant of carriers leaving or return time, or daily workload." *See* JX-2 at 32.

Moreover, by basing carrier office/leave and street/return time solely on DOIS numbers the Postal Service is attempting to set new street standards and office standards for the carriers in violation of national pre-arbitration settlement #M-01444 (signed July 30, 2001) which

² Though not specifically addressed, the Arbitrator considered all arguments, testimony and evidence presented at arbitration. In many instances arguments were paraphrased from what the advocates actually argued.

specifically states in part: "Furthermore, the pre-arbitration settlement H1N-1N-D 31781, dated October 22, 1985, provides that 'there is no set pace at which a carrier must walk and no street standard for walking'" See JX-2 at 30-31. The pre-arbitration settlement also held,

It is additionally understood that the current city letter carrier route adjustment process is outline din Subchapter 141 and chapter 2 of the M-39 Handbook. All those functionalities in DOIS, which relate to the route inspection adjustment process, must be in compliance with these tow parts of the M-39 as long as they are in effect. *Id.*

The only agreed upon method for changing office or street standards is outlined in the M-39 Handbook. The Postal Service's insistence on trying to hold carriers to the DOIS projected office/leave and street/return times violates the criteria set forth in the M-39 Handbook. See JX-2 at 26. M-39 Handbook 242.311 states that, "Under normal conditions, the office time allowance for each letter route shall be fixed at the lesser of the carrier's average time used to perform the office work during the count period, or the average standard allowable office time." In addition, M-39 Handbook 242.321 provides, "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." The Postal Service failed to follow those provisions and that has led to a hostile work environment for carriers.

In particular, carriers have complained about how stressful the environment is since Supervisor Davis has utilized the DOIS numbers to determine the leave and return times. The carriers felt badgered, bullied and harassed. PM Hansen has also threatened the carriers with possible termination if they don't meet the DOIS numbers. See JX-2 at 103. In all, the improper use of DOIS as the sole factor for determining carrier's leave and return time and the manner in which Postal management interacts with the carriers regarding their DOIS numbers, violates the National Agreement. The Postal Service should be required to cease and desist from using DOIS and from creating a hostile work environment for the carriers.

The Postal Service's Position

The Postal Service argues that it is difficult to determine exactly what the Union is challenging. The initial problem in this grievance is the position taken by the Union (utilization of DOIS to "set" carrier's leaving and return times) doesn't match the remedy requested or the relevant citation contained in the defined issue. The Union provides no evidence that routes were

adjusted due to any projected leaving or return times. As such, unless the Union wished to change its issue at this late state, it would be impossible for the Arbitrator to find a violation as defined by the issue. Moreover, there appears to have been no change in the evaluation of any route based on the evidence contained in this appeal.

Notwithstanding the above, the evidence in the record reflects no violation of the terms of the National Agreement. Evidence establishes that the Postal Service has utilized the DOIS numbers to initiate discussion with the relevant carriers regarding leaving times. However, evidence also establishes that the DOIS numbers is not the sole factor when determining a carrier's leaving and return times and carriers are not held to the projected leaving and return times. Reviewing the records reflects that several carriers (12 out of 20) complete their routes in less time than the DOIS projections. Others complete their routes in more time than the DOIS projections (7 out of 20). Only one carrier in the record met the DOIS projected times, which accounts for only 5% of all the carriers. Nevertheless, no evidence exists that any carrier was ever disciplined for failing to adhere to the DOIS projected times.

The Postal Service acknowledges that use of the DOIS numbers as the sole basis to "set" or "establish" carriers leaving or return time is improper. However, no evidence suggests that the Postal Service has set or established carriers leave or return times because only one carrier has met the DOIS projections. Furthermore, the grievance settlement relied upon by the Union acknowledges that DOIS may be utilized to "estimate" a carrier's daily workload. *See JX-2* at 32. Evidence also establishes that the use of DOIS was nothing more than a beginning point to begin discussion with the carriers. Such discussion is a proper exercise of managerial authority and found in the M-39 Handbook, Sections 115.2 & 122.21.

Regarding the Union's claim of the existence of a hostile work environment, it appears that his claim is based more on perception than factual evidence. What is clear is that a few of the carriers assigned to Shawnee Post Office disapproved of Supervisor Davis' management style. It must be assumed that if Supervisor Davis was truly harassing the carriers or a bully, as suggested, he would have continued this path with an ultimate desire to issue disciplinary action. However, fatally missing to support these assertions of harassment and bullying is a single piece of disciplinary action issued to any carrier at the Shawnee Post Office. Indeed, throughout the record, Supervisor Davis issued not a single disciplinary action based on the issue of carrier leaving and return times.

Supervisor Davis is a large man with a loud voice. This is apparently his nature and hardly rises to the level to substantiate any claims of harassment, bullying or badgering. Supervisor Davis is a former city letter carrier who has sufficient experience to engage in discussions with carriers regarding necessary time to case and carry the routes. Even assuming some of these discussions became somewhat heated between Supervisor Davis and the carriers at issue, that alone does not equate to bullying, harassment or badgering. As stated by Arbitrator Eisenmenger in an award involving similar claims by the Union:

The Union witnesses claimed that during these conversations Mr. Jones became angry, to which Mr. Jones denied he ever became angry. I do not doubt that on some occasions the conversations digressed to some extent, but there is insufficient evidence that Mr. Jones negligently or intentionally engaged in conduct that was disrespectful lacked dignity to others or was manifestly unfair. It may well be that Mr. Jones lacks the experience and demeanor to interface with more experience carriers and that undoubtedly he could have benefited by the use of more tact and diplomacy. On the other hand, there were no specific descriptions of abusive, offensive or rude behavior or comments from Mr. Jones on any particular occasion. The sole specific comment attributed to Mr. Jones by one carrier was that Mr. Jones questioned the carrier's Form 3996 and said that other carriers could carry that route in eight (8) hours then why couldn't he, referring to the carrier. While it is understandable that the carrier felt offended by this comment, it is equally possible that under the circumstances Mr. Jones was merely making an observation. His lack of tact; however, does not equate to a violation of the three (3) authorities cited in this grievance.

See H01N-4H-C 03070199 at 13 (2004). The similarities in the present appeal are clear. Claims of Supervisor Davis' alleged bullying and harassment rest with relatively few carriers and of those, Mr. Davis claimed he continued to maintain personal relationships with some outside of work. There simply is insufficient evidence to find a hostile work environment.

Analysis

The Union contests the Postal Service's use of DOIS numbers to determine carriers' leave and return times. In addition, as a result of the use of the DOIS numbers, the Postal Service has created a hostile work environment. These complained about are allegedly in violation of the M-39 Handbook. For the reasons stated below, the grievances are sustained.

The grievances were nothing more than a tale of two different stories, or, put differently, the same story told two different ways. Either way, the Union's account of what transpired beginning on February 24, 2009, paints a picture of harassment, intimidation and otherwise

rough handiness by the Shawnee Postal management, most notably PM Hanson and Supervisor Davis. The Postal Service's account, on the other hand, merely reflects that it is utilizing DOIS and other factors to efficiently run its operations at Shawnee. The testimony that was presented at the arbitration hearing reflected the divergent positions, but gave the Arbitrator a clearer understanding of which version of the story was more plausible.

Shane Whitehead testified that he is currently a T-6 letter Carrier and has worked for the Postal Service for 14 years. He is also the Branch President for the Shawnee local Union. Prior to the change to the DOIS numbers on February 24, 2009, carriers would case their mail and then Supervisor Davis would walk around and ask carriers how they were looking today, a reference to whether they felt they would need a 3996 to request auxiliary help to complete their routes. The typical responses would be "we're okay" or "we may need [X] amount of time." Once the placards were placed at the carrier cases he asked Supervisor Davis about their significance and he was told not to worry about them. He believed Supervisor Davis and did not pursue the matter any further at that time. About a week later, Supervisor Davis began instructing carriers that they had to abide by the numbers he recorded on the placard. Mr. Whitehead asked Supervisor Davis where he got the numbers he used to record on the placard and he responded, "DOIS." When carriers would ask him for a 3996, Supervisor Davis would argue or get combative with them and respond like, "You don't really need that time or I can't justify that time...my numbers don't match." One of the biggest problems with the Postal Service's use of DOIS was that at the time Supervisor Davis came around and gave the leave and return times, some of the mail had not yet arrived at the station. There were additional parcels, letters and other types of mail that would arrive on a later truck that were not taken into account when the leave and return times were given.

Mr. Whitehead then explained how the DOIS numbers were derived. Each morning a supervisor would take a ruler and measure the amount of residual flats and letters sent into the office and convert that measurement into a piece count which is then inputted in the DOIS system. DOIS then generates the number of letters and flats a carrier has and determines the time a carrier will need that day to deliver the mail. He explained that DOIS is not an accurate and that based on DOIS, carriers have been denied their 3996 requests for auxiliary help. He stated that the M-39 Handbook sets forth the procedure for determining carriers' leave and return times. See JX-2 at 26. He also discussed several arbitration awards contained in the record which

reiterated that the M-39 Handbook governed the leave and return times for a carrier. *See* JX-2 at 28-32.

Mr. Whitehead added that supervisors have intimidated carriers by driving by their routes several times a day. He also discussed a grievance that was filed because the Shawnee Postmaster, Andre Hanson (PM Hanson), had a stand up talk with the carriers wherein she threatened them with termination if they did not meet the DOIS numbers. *See* JX-2 at 53. She also said she would become a "hard ass" towards them. He admitted that no carrier has been disciplined for failing to meet the DOIS numbers. There have been, however, several discussions with carriers who fail to meet the DOIS numbers which leads to the carriers feeling bullied and intimidated.

Rodney Youngwolfe, a carrier, testified that Postal Service management was only using the DOIS numbers to set his leave and return times rather than asking him how long he thought it would take to deliver the mail. *See* JX-2 at 91. He stated that he knew they were using the DOIS numbers because he has been showed the Workload Status Report which contains the DOIS numbers. He supported Mr. Whitehead's testimony by saying that at the time the supervisor gives the leave and return times, there is still additional mail yet to be delivered that affects the delivery time.

He feels like Postal management does not trust him and he feels angry by the use of the DOIS numbers and the way Supervisor Davis instructed him about his leave and return times. He stated that he has been threatened with discipline and referred to the standup talk by PM Hanson where she stated she would be a "hard ass." He also was threatened with discipline by his supervisor and recalled an incident where his supervisor told him he could "clock out and go home" if he did not agree with his [DOIS] numbers. He also talked about feeling harassed when supervisors would visit his route as if to check up on him. He stated that prior to the placard system and use of DOIS numbers his supervisor would walk around and give him his DPS mail count and then ask him about how much time he thought he would need to deliver the mail.

Virgil Newport, Jr., a letter carrier, testified that he has been employed with the Postal Service for over 27 years. He is also a Union Steward and actually filed the grievance. He stated that the DOIS numbers were used to determine his leave and return times and how he felt that Postal management harassed and bullied carriers to meet the DOIS numbers. He was harassed about meeting the DOIS numbers and had his 3996 request denied for not meeting the DOIS

numbers. He stated that he had numerous visits to his route by supervisors after the use of the DOIS numbers began. He also recalled the incident with PM Hanson during the standup talk. The Arbitrator asked him whether the visits to his route increased substantially since February 2009 and he said, "Yes."

Sandy Reece Davis (Supervisor Davis) testified that he is currently the temporary OIC in Luther, Oklahoma. He is normally a supervisor at the Shawnee PO, and has been for six years. He stated that DOIS is a tool used to help manage and determine times for routes. The DOIS numbers are derived from the mail volume that management counts and mail that comes in from the DPS machines and flat sorting machines in Oklahoma City, Oklahoma. He then described how he would on a daily basis instruct the carriers about their leave and return times based upon the DOIS numbers. He starts with the City 1 route and tells the carrier how many letters, flats, and DPS amount there is for that day. Then based on the carrier's percent to standard (how fast the carrier cases mail) and whether there is full coverage (mail that gets delivered to everyone on the route, e.g., circulars), he provides the carrier's leave and return times. If his numbers differ from the carrier's he stated that he asks the carrier why the carrier needs more time. He stated that he asks the carrier the reason because there are only five acceptable reasons for requesting auxiliary help, though he did not provide those reasons. In addition, if, for example, the carrier stated he had a lot of parcels, he (Supervisor Davis) would go to the Route Data Book that records what the carrier's base figure is for parcels and if the actual figure is over the base figure, then the carrier's time is adjusted to account for the overage.³ Supervisor Davis stated in some cases he would instruct the carrier to curtail some mail.⁴ In other cases, a carrier may say that there has to be a deviation from the route for some reason (e.g., construction on the route) or some other reason and then he determines if the request for additional time is justified. If he feels it is not justified, he will try to come to a common ground with the carrier.

As a supervisor, it is his job to set expectations and find out why a carrier needs additional time. If a carrier convinces him that additional time is needed then he approves it but if not he doesn't. In those instances where he doesn't approve the request he would instruct the carrier to take the mail and "see what he can do" and most of the times it works out, but sometimes it doesn't. He said he doesn't necessarily hold the carrier to the DOIS projected leave

³ In the case of parcels, a carrier is allotted two additional minutes per parcel over the base amount.

⁴ Curtailment means that the carrier leaves behind 3rd class mail.

time, although he tries to as much as he can. There are other variables that may prevent the carrier from leaving on time. He was asked whether the DOIS numbers were the only thing he used to set leave and return time and he responded, "No." Among the factors he also considers are: whether there is full coverage, parcels, accountable mail, and growth factors (routes that have grown). He also stated that he does get input from the carriers when setting the leave and return times.

Supervisor Davis was also asked about whether he always talked in a loud voice as he had been while testifying at the hearing and he responded, "Yes." He stated that he doesn't belittle or harass any carriers. He did admit that he did drive by carrier's routes but that a lot of times he's on his way to lunch and it is difficult to not drive by a carrier's route while driving around town. He also stated that he is required to do street observations of carriers and so sometimes he goes out to observe a carrier for various things, including seeing if the carrier is on time and checking for safety violations. Supervisor Davis said he has never issued discipline for any carrier who missed the DOIS projected leave or return times. He then read through some of the carrier statements contained in the record and was asked to comment on them. He stated he was disappointed in what they said, especially because he has socialized with several of them off duty. He talked about going fishing and to dinner with some carriers and trading CDs with some. In his opinion, if he were them and had harassed and belittled carriers as they alleged, he would not socialize with him as they had off duty.

On Cross-examination, he admitted that he did not always have all of the mail accounted for that the carriers would case on any particular morning. He also admitted that parcels do affect the carriers leave time and that parcels are not counted when he writes down the numbers on the placard, which records only letters and flats.

Whether DOIS was Primarily Used to Set Leave and Return Times

In the Arbitrator's opinion, the sum of the testimony provided at the hearing indicated that beginning on February 24, 2009 a shift occurred in the philosophy regarding how leave and return times are determined. What was once to the carriers a process whereby their experience and expertise were relied upon with management tools such as DPS mail counts, became more of a rigid "do as DOIS suggests" directive. What was never explained, strangely enough, was why a change was needed at all. Absolutely no evidence was introduced about what prompted the change of the process beginning on February 24, 2009. Perhaps some type of comparison of the

carrier's leave and return times before February 24, 2009 and after would have shed light on the need for the change. Instead, what was presented at the arbitration hearing was more argument about why the Postal Service could use DOIS numbers, among other factors, to determine carriers' leave and return times. The Arbitrator was simply left to speculate why the Postal Service believed the obvious reliance on the DOIS numbers after February 24, 2009 was justified. That said, the testimony by Supervisor Davis suggested that contrary to the M-39 Handbook and various grievance settlements contained in the record, the DOIS numbers are the primary, and in some cases only, method of determining carriers' leave and return times in Shawnee. As much as he later tried to incorporate other factors into his consideration, Supervisor Davis made it abundantly clear that the DOIS numbers were first and foremost the determining factor for carriers' leave and return times. Rather than it being one of many factors, utilization of the DOIS numbers is the starting point and, unless proved otherwise, ending point. Supervisor Davis' account of his daily routine started with the Workload Status Report (WSR) which compiled the DOIS numbers into the carriers' projected office and street times (leave and return times). From that point it was an uphill battle for a carrier to convince Supervisor Davis why the DOIS numbers were not accurate or why a 3996 was needed. The testimony of carriers Whitehead, Youngwolfe and Newport revealed that the carrier is, for the most part, now left out of determining the carrier's own leave and return times. The new procedure employed at Shawnee does not mirror the M-39 Handbook, Sections 122.21 and 242.321, which sets out the manner in which leave and return are established. Those provisions provide the following:

Section 122.21:

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 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.

Section 242.321:

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.

Although Section 122.21 does reference the utilization of workload data, it is only one of several factors for determining leave time. Therefore, the Postal Service violated the M-39 Handbooks, and related settlement agreements, by primarily utilizing DOIS numbers to set carriers' leave and return time.

Whether the Postal Service Created a Hostile Work Environment

The Union argues that Postal Service created a hostile work environment by using the DOIS numbers to set the carriers' leave and return times. Eleven carriers out of twenty submitted written statements to express their feelings of harassment caused by the use of DOIS and the manner in which Supervisor Davis instructed them on their leave and return times. *See* JX-2 at 87-98. The statements expressed feelings that indicated Supervisor Davis badgered, argued with, and threatened carriers. A standup talk by PM Hanson wherein she threatened carriers with termination was also mentioned, but that situation was already the subject of a grievance and, thus, is not in consideration.

Section 115.4 of the M-39 Handbook states, "...it is the front-line manager who controls management's attempt to maintain an atmosphere between employers and employee which assures mutual respect for each other's rights and responsibilities." According to the Union, the testimony of the three carriers and the statements in the record reveal that a hostile environment was created by Postal management beginning on February 24, 2009. The Postal Service disagrees and cites to a grievance decided by Arbitrator Eisenmenger involving similar claims by the Union. *See* H01N-4H-C 03070199 (2004). In that grievance, the Union claimed that a supervisor was verbally abusive towards letter carriers. Part of the complaints made by the carriers was that the supervisor berated them and talked to them as if they were lying when they requested a 3996. *Id* at 4. In all, nine of the approximate 27 carriers made complaints about the supervisor, six through live testimony and 3 with written statements. *Id*. Arbitrator Eisenmenger did not find that the supervisor's behavior was, "disrespectful, lacked dignity to others or was manifestly unfair." *Id* at 13. She added that, [a]s a carrier supervisor, he had a responsibility to ensure the Form 3996 request rested on a sound basis. Therefore, it was not untoward for him to question carriers' basis for his or her estimate." *Id*.

The Arbitrator believes the facts of this grievance are distinguishable from the cited grievance. First, the evidence adduced did paint Supervisor Davis in a negative light and could be considered hostile to some. The complaints made by the carriers who testified and the carriers who submitted written statements center around the conflict between the DOIS numbers and the previous manner in which their leave and return times were determined. In addition, the carriers also complained about how their 3996 requests were handled, perceived heightened supervision and feeling of a lack of trust. All of the complaints resulted from or were subsequent to the use of the DOIS numbers as the primary method for determining leave and return times. In the Arbitrator's opinion, part of the problem is that the carriers have resisted the change and prefer the old method. The other part is the manner in which Supervisor Davis and others have attempted to implement the new process. There is no doubt that people are creatures of habit and that when a profound change occurs it is often met with resistance and animosity. In the instant grievance, had the Arbitrator found that the Postal Service's use of the DOIS numbers did not violate the National Agreement, most likely Supervisor Davis' behavior would be construed much like the supervisor's behavior was in the cited grievance decided by Arbitrator Eisenmenger. However, by concluding that the Postal Service did violate the National Agreement, the improper use of the DOIS numbers led to the resistance and animosity and ultimately created a hostile work environment for the carriers. In essence, but for the Postal Service's improper utilization of the DOIS numbers a hostile work environment would not have been created.

AWARD

For the foregoing reasons, the grievances are sustained. The Postal Service is to cease and desist from primarily utilizing the DOIS numbers to set carriers leave and return times. Going forward, the Postal Service shall follow the provisions of the M-39 Handbook to determine the leave and return times. In addition, the Postal Service must cease and desist from creating a hostile work environment by not following the M-39 Handbook to determine leave and return times.

November 23, 2009

PETER J. CLARKE
Arbitrator