

REGULAR ARBITRATION PANEL

In the Matter of Arbitration)	GRIEVANT: Class Action
)	POST OFFICE: Evansville, IN 47708
Between)	
UNITED STATES POSTAL SERVICE)	CASE NO.: C11N-4C-C 15365544
and)	NALC NO.: EVV-CA-DS-15-019
THE NATIONAL ASSOCIATION OF LETTER CARRIERS)	

BEFORE: **Glenda M. August, Arbitrator**

APPEARANCES:

For the USPS:	Mark J. Harvey
For the NALC:	Paul A. Toms
Place of Hearing:	800 Sycamore St., IN 47708
Date (s) of Hearing:	April 6, 2016
Briefs Received:	May 9, 2016
Date of Award:	May 27, 2016
Relevant Contract Provision:	Articles: 3, 5, 14, 15, 19 & 34
Contract Year:	2011-2016
Type of Grievance:	Contract

RECEIVED

JUN - 9 2016

VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

AWARD SUMMARY: Based on the foregoing, the grievance is sustained. Management shall cease and desist from violating Articles 5, 19 and 34 as well as the Joint Statement on Violence and Behavior in the Workplace by utilizing the DPT tool as a sole measurement of determining route times instead of the official methods according to Handbooks M-39 and M-41.

Glenda M. August

GLENDA M. AUGUST
Arbitrator

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NALC - REGION 6

I. ISSUE

Did Management in Evansville violate the Joint Statement on Violence and Behavior in the Workplace, section 115.4 of the handbook M-39 and section 665.24 of the Employee Labor Relations Manual (ELM) and or Articles 3, 5, 14, 15, 19 and 34 of the 2011-2016 National Agreement by the use of a list about the times needed in the office and street? If so, what is the appropriate remedy?

II. STIPULATIONS

The parties stipulated that Jeff Payne, Zach Stroud and Jeff Mullen, if called as witnesses would provide the same testimony as listed in the Joint Exhibit 2.

III. RELEVANT CONTRACT 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; B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees; 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; E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature. (The preceding Article, Article 3, shall apply to City Carrier Assistant Employees.)

ARTICLE 19 HANDBOOKS AND MANUALS

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 this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

ARTICLE 34
WORK AND/OR 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.

B. The Employer agrees that any work measurement systems or time or work standards shall be fair, reasonable and equitable. The Employer agrees that the Union concerned through qualified representatives will be kept informed during the making of time or work studies which are to be used as a basis for changing current or instituting new work measurement systems or work or time standards. The Employer agrees that the National President of the Union may designate a qualified representative who may enter postal installations for purposes of observing the making of time or work studies which are to be used as the basis for changing current or instituting new work measurement systems or work or time standards.

C. The Employer agrees that before changing any current or instituting any new work measurement systems or work or time standards, it will notify the Union concerned as far in advance as practicable. When the Employer determines the need to implement any new nationally developed and nationally applicable work or time standards, it will first conduct a test or tests of the standards in one or more installations. The Employer will notify the Union at least 15 days in advance of any such test.

D. If such test is deemed by the Employer to be satisfactory and it subsequently intends to convert the test to live implementation in the test cities, it will notify the Union at least 30 days in advance of such intended implementation. Within a reasonable time not to exceed 10 days after the receipt of such notice, representatives of the Union and the Employer shall meet for the purpose of resolving any differences that may arise concerning such proposed work measurement systems or work or time standards.

E. If no agreement is reached within five days after the meetings begin, the Union may initiate a grievance at the national level. If no grievance is initiated, the Employer will implement the new work or time standards at its discretion. If a grievance is filed and is unresolved within 10 days, and the Union decides to arbitrate, the matter must be submitted to priority arbitration by the Union within five days. The conversion from a test basis to live implementation may proceed in the test cities, except as provided in Paragraph I.

F. The arbitrator's award will be issued no later than 60 days after the commencement of the arbitration hearing. During the period prior to the issuance of the arbitrator's award, the new work or time standards will not be implemented

beyond the test cities, and no new tests of the new standards will be initiated. Data gathering efforts or work or time studies, however, may be conducted during this period in any installation.

G. The issue before the arbitrator will be whether the national concepts involved in the new work or time standards are fair, reasonable and equitable.

H. In the event the arbitrator rules that the national concepts involved in the new work or time standards are not fair, reasonable and equitable, such standards may not be implemented by the Employer until they are modified to comply with the arbitrator's award. In the event the arbitrator rules that the national concepts involved in the new work or time standards are fair, reasonable and equitable, the Employer may implement such standards in any installation. No further grievances concerning the national concepts involved may be initiated.

I. After receipt of notification provided for in Paragraph D of this Article, the Union shall be permitted through qualified representatives to make time or work studies in the test cities. The Union shall notify the Employer within ten (10) days of its intent to conduct such studies. The Union studies shall not exceed one-hundred fifty (150) days, from the date of such notice, during which time the Employer agrees to postpone implementation in the test cities for the first ninety (90) days. There shall be no disruption of operations or of the work of employees due to the making of such studies. Upon request, the Employer will provide reasonable assistance in making the study, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in providing such assistance. Upon request, the Union representative shall be permitted to examine relevant available technical information, including final data worksheets that were used by the Employer in the establishment of the new or changed work or time standards. The Employer is to be kept informed during the making of such Union studies and, upon the Employer's request the Employer shall be permitted to examine relevant available technical information, including final data worksheets, relied upon by the Union.

(The preceding Article, Article 34, shall apply to City Carrier Assistant Employees.)

IV. FACTS

The Union at the Evansville, Indiana Post Office filed the instant grievance alleging Management violated the National Agreement and the Joint Statement on Violence and Behavior in the Workplace when they began utilizing the Demonstrated Performance Tool (DPT) in September, 2015, to call into question City Letter Carriers daily performance. According to the Union, at least

five (5) Letter Carriers at the Evansville Post Office have complained about harassment and associated stress as a result of the DPT utilization. Management disputes the Union's allegations and cites their rights under Article 3 of the National Agreement to "determine the methods, means and personnel by which such operations are to be conducted". The parties failed to reach a resolution through the grievance process; therefore the matter is before this Arbitrator for decision pursuant to the National Collective Bargaining Agreement between the parties.

UNION'S CONTENTIONS

The Union contended that the Demonstrated Performance Tool being used by Management is a flawed system. They further contended that although it is Management's right to utilize the DPT as a tool, the sole purpose of that tool is for estimating a carrier's daily workload.

The Union maintained that the use of any *management created* system or tool that calculates a workload projection does not change the letter carrier's reporting requirements outlined in section 131.4 of Handbook M-41, the supervisor's scheduling responsibilities outlined in section 122 of Handbook M-39, or the letter carrier's and supervisor's responsibilities contained in Section 28 of Handbook M-41. Additionally, according to the Union, there is no *time standard* associated with a Carrier's street duties.

It was the position of the Union that Management, in their "zest" to utilize this "management created" DPT tool, has used it to create a hostile work environment in violation of the Joint Statement on Violence and Behavior in the Workplace (JSOVV). The Union argued that the parties' intention in the JSOVV was to recognize and correct volatile situations and defuse them prior to any escalation. They further argued that testimony at hearing, by two (2) letter carriers, indicated that Management's use of the DPT tool has resulted in extreme and escalating stress to them. The Union noted that Management's own testimony at hearing verified that the data used in the DPT tool "could be inaccurate", yet they argued, Management continues to use the tool to harass, bully, intimidate and threaten letter carriers with discipline.

The Union offered the Step 4 decision in M-01769 (JX-2 Page 149) which stated in relevant part "*The office efficiency tool used in the Greater Indiana District or any similar time projection system/tool(s) will not be used as the sole determinant for establishing office or street time projections.*" The Union maintained that Management did not adhere to this agreement and it has

created a hostile work environment at the Evansville Post Office in violation of the JSOV. Management also violated Article 34 of the National Agreement, according to the Union, by the use of this new method of determining carrier's time in the office and on the street. Additionally, Management unilaterally pursued a new work measurement standard in violation of Article 34.C and Section 115 of the M-39; the new "earned" leave time only takes into consideration the time needed for the carrier to case letters and flats into the case and pull the route down to determine the leaving time for the carrier. The Union argued that this "improper" unilateral policy has no time included for any fixed office time, parcels or spurs, DPS check, vehicle check, am break, personal time, or time for the myriad of other duties the letter carrier must perform each morning to properly service his/her bid assignment.

The Union contends the use of this policy or instruction is both arbitrary and capricious. Management is attempting to "instruct" or "order" the least amount of time they can persuade or cajole or harass the carrier into using by instructing them on a leaving time that is inaccurate, misleading, understated, and in violation of postal manuals. As remedy the Union is requesting that the Postal Service "Cease and Desist" violating the National Agreement, specifically Articles 3,5,14,15, 19, Handbook M-39 Section 115.4, M-41 Section 28 and 665.24 of the Employee Labor Relations Manual (ELM); that the Postal Service cease and desist primarily utilizing the DOIS/DPT numbers to set the carriers' leave and return times; that in the future the Postal Service shall follow the provisions of the M-39 and M-41 Handbooks to determine the leave and return times; that the Service shall cease and desist from creating a hostile work environment; and lastly that failure to comply would result in additional monetary remedies for failure to comply with the award.

VI. MANAGEMENT'S CONTENTIONS

Management originally contended that the instant grievance was not properly before the Arbitrator based upon the procedural grounds of timeliness. Their argument was advanced at hearing and this Arbitrator ruled in favor of the Union based upon language in the Joint Contract Administration Manual (JCAM) between the parties. The ruling was based on the fact that Management failed to advance the timeliness argument in writing at Formal A, thus it is unable to bring this new argument at Arbitration.

It was Management's position that the Union's grievance in the case-at-bar is a matter of res judicata. According to the Service, the Union should not be allowed to continue to re-litigate a matter that has been repeatedly disposed of by the Dispute Resolution Team (DRT). Management offered nine (9) cases which were rejected by the DRT:

C11N-4C-C 13283902	J06N-4J-C 10261954
C11N-4C-C 13283912	J06N-4J-C 10261963
C11N-4C-C 13283907	J06N-4J-C 10261961
C11N-4C-C 13283935	J06N-4J-C 10261962
	J06N-4J-C 10264606

The Service contended that each time, in the cases above, the DRT held that "One of Management's duties is to interact daily with their employees, give expectations and monitor performance based on the tools at their disposal." They further contended that the DRT, in response to the fact that the grievant (s) did not agree with Management's assessment of their route times, the DRT held that "Giving expectations even if the carriers do not agree with them does not constitute harassment."

Management maintained that the matter of the Demonstrated Performance Tool (DPT), also called the "list" by the Union, at issue in the instant case, has already been disposed of in Step 4 Q06N-4Q-C-11022051 where the parties agreed that:

The subject office efficiency tool is a management tool for estimating a carrier's daily workload. The office efficiency tool used in the Greater Indiana District or any similar time projection system/tool(s) will not be used as the sole determinant for establishing office or street time projections. Accordingly, the resulting projections will not constitute the sole basis for corrective action. 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. "Furthermore, as stated in the agreement for case Hi N-1 B-D 31781, "there is no set pace at which a carrier must walk and no street standard for walking."

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 outlined in section 131.4 of Handbook M-41, the supervisor's scheduling responsibilities outlined in section 122 of Handbook M-39, or the letter carrier's and supervisor's responsibilities contained in Section 28 of Handbook M-41.

Management addressed the Union's allegations regarding a violation of the Joint Statement on Violence and Behavior in the Workplace's (JSOVB). They argued that the JSOVB was agreed upon to help facilitate resolving issues at the lowest levels but the Union has determined it should be used as a method of punishment, based on accusations and interpretation. Management cited Arbitrator Robert Leventhal who held that in a case where the Union asserts the Postal Service has violated a contractual provision, the Union "has the burden of proof to establish a fact picture and then to show how those facts are contrary to the express provisions of the agreement."

Management contended the JSOVB was entered into by the parties to prevent Violence in the Workplace. They further contended that instructing an employee as it relates to their performance is not a violent or harassing act but rather a necessary obligation and contractual right of Management. The Service maintained that one of Management's duties is to interact daily with their employees, give expectations and monitor performance based on the tools at their disposal, historic data, previously demonstrated performance and basic math. According to Management there will always be disagreements, however these daily reviews, in and of itself is not a violation of the National Agreement or the JSOVB.

It was argued by Management that this case is about a contractual grievance in which the Union bears the burden of proving by a preponderance of evidence that management violated the provisions of the National Agreement, including Handbooks and Manuals, the Joint Statements on Violence and Behavior in the Workplace when determining office time and street times for carriers. The union must prove that management was arbitrary or capricious in making those determinations regarding leave and return times. In this case, according to Management, the Union failed to meet their burden the grievance should be denied in its entirety.

VII. DISCUSSION AND OPINION

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, finger-pointing, 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.

We obviously cannot ensure that however seriously intentioned our words may be, they will not be treated with winks and nods, or skepticism, by some of our over 700,000 employees. But let there be no mistake that we mean what we say and we will enforce our commitment to a workplace where dignity, respect, and fairness are basic human rights, and where those who do not respect those rights are not tolerated.

Our intention is to make the workroom floor a safer, more harmonious, as well as a more productive workplace. We pledge our efforts to these objectives.

Dated February 14, 1992

PLEASE POST ON BULLETIN BOARDS IN ALL INSTALLATIONS

The language of the Joint Statement on Violence and Behavior in the Workplace was entered into by the parties at a much sadder time in postal history. According to Management's closing brief in this case, in 1986, there were 14 employees shot and killed and six wounded at the Edmond, Oklahoma Post Office by a Postman who then committed suicide with a shot to the forehead. In 1991, at the Royal Oak, Michigan Post Office, an employee killed five people, including him.

Following the Royal Oak tragedy, the parties saw fit to begin a path of healing which included making sure that everyone in the Postal Service was treated with "dignity and respect" from that day forward. In the JSOVB agreement, the Postal Service and its' Unions added emphasis by incorporating the following words into the statement; "*we mean what we say*". That statement, coupled with the decision of National Arbitrator Carlton Snow where he decided that the Joint Statement was an extension of the National Agreement, and therefore subject to grievance procedures, provided the basis for the Union's issue in this case to be heard.

The Statement is clear in its language and the parties addressed the behaviors that would not be tolerated:

"There is no excuse for and will be no tolerance of harassment, intimidation, threats, or bullying by anyone...". The parties' in their attempts to create a safer workplace did not stop at violent behavior such as assaults but they wanted to nip the issue in the bud by removing the threat of violence, so they also addressed the behaviors that lead to the violence. Harassment, intimidation, threats, bullying...all the behaviors known to lead to violence were addressed by the parties and the Joint Statement requires that those behaviors will not be tolerated by anyone.

ARTICLE 34 WORK AND/OR 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.

B. The Employer agrees that any work measurement systems or time or work standards shall be fair, reasonable and equitable. The Employer agrees that the Union concerned through qualified representatives will be kept informed during the making of time or work studies which are to be used as a basis for changing current or instituting new work measurement systems or work or time standards. The Employer agrees that the National President of the Union may designate a qualified representative who may enter postal installations for purposes of observing the

making of time or work studies which are to be used as the basis for changing current or instituting new work measurement systems or work or time standards.

C. The Employer agrees that before changing any current or instituting any new work measurement systems or work or time standards, it will notify the Union concerned as far in advance as practicable. When the Employer determines the need to implement any new nationally developed and nationally applicable work or time standards, it will first conduct a test or tests of the standards in one or more installations. The Employer will notify the Union at least 15 days in advance of any such test.

D. If such test is deemed by the Employer to be satisfactory and it subsequently intends to convert the test to live implementation in the test cities, it will notify the Union at least 30 days in advance of such intended implementation. Within a reasonable time not to exceed 10 days after the receipt of such notice, representatives of the Union and the Employer shall meet for the purpose of resolving any differences that may arise concerning such proposed work measurement systems or work or time standards.

E. If no agreement is reached within five days after the meetings begin, the Union may initiate a grievance at the national level. If no grievance is initiated, the Employer will implement the new work or time standards at its discretion. If a grievance is filed and is unresolved within 10 days, and the Union decides to arbitrate, the matter must be submitted to priority arbitration by the Union within five days. The conversion from a test basis to live implementation may proceed in the test cities, except as provided in Paragraph I.

F. The arbitrator's award will be issued no later than 60 days after the commencement of the arbitration hearing. During the period prior to the issuance of the arbitrator's award, the new work or time standards will not be implemented beyond the test cities, and no new tests of the new standards will be initiated. Data gathering efforts or work or time studies, however, may be conducted during this period in any installation.

G. The issue before the arbitrator will be whether the national concepts involved in the new work or time standards are fair, reasonable and equitable.

H. In the event the arbitrator rules that the national concepts involved in the new work or time standards are not fair, reasonable and equitable, such standards may not be implemented by the Employer until they are modified to comply with the arbitrator's award. In the event the arbitrator rules that the national concepts involved in the new work or time standards are fair, reasonable and equitable, the Employer

may implement such standards in any installation. No further grievances concerning the national concepts involved may be initiated.

I. After receipt of notification provided for in Paragraph D of this Article, the Union shall be permitted through qualified representatives to make time or work studies in the test cities. The Union shall notify the Employer within ten (10) days of its intent to conduct such studies. The Union studies shall not exceed one-hundred fifty (150) days, from the date of such notice, during which time the Employer agrees to postpone implementation in the test cities for the first ninety (90) days. There shall be no disruption of operations or of the work of employees due to the making of such studies. Upon request, the Employer will provide reasonable assistance in making the study, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in providing such assistance. Upon request, the Union representative shall be permitted to examine relevant available technical information, including final data worksheets, that were used by the Employer in the establishment of the new or changed work or time standards. The Employer is to be kept informed during the making of such Union studies and, upon the Employer's request the Employer shall be permitted to examine relevant available technical information, including final data worksheets, relied upon by the Union.

(The preceding Article, Article 34, shall apply to City Carrier Assistant Employees.)

In the case at bar there are a few stipulations that affect the dispute between the parties. Notwithstanding the fact that the Union alleges a violation of the JSOV B based on Management's use of the Demonstrated Performance Tool (DPT) in the Evansville, Indiana Post Office; they also have acknowledged Management's right to use the tool. The dispute arises, according to the Union, in the manner with which the tool has been used against City Letter Carriers in their office.

The Union alleges that Management, in their zest to use this Management "created" tool, has used the DPT to harass carrier to levels of performance not associated with the agreed upon methods for determining time standards. The Union maintained that the "use of any management created system or tool that calculates a workload projection does not change the letter carrier's reporting requirements outlined in section 131.4 of Handbook M-41, the supervisor's scheduling responsibilities outlined in section 122 of Handbook M-39, or the letter carrier's and supervisor's responsibilities contained in Section 28 of Handbook M-41. **Additionally, according to the Union, there is no time standard associated with a Carrier's street duties.**" The parties agree that there is **"no time standard associated with a Carrier's street duties."** In Management's own

contentions they maintained that the “matter of the Demonstrated Performance Tool (DPT), also called the “list” by the Union, at issue in the instant case, has already been disposed of in Step 4 Q06N-4Q-C-11022051 where the parties agreed that:

“there is no set pace at which a carrier must walk and no street standard for walking.”

Article 34 determines the methods to be used to change current or institute new work measurement systems or work or time standards, and the National Agreement dictates that those changes must be done in cooperation with the Union. Management, although provided certain exclusive rights under Article 3 to “direct employees of the Employer in the performance of official duties” and to “To maintain the efficiency of the operations entrusted to it”, it must do so subject to the provisions of the remainder of the National Agreement and consistent with applicable laws and regulations. One of the provisions which must be maintained is that of ARTICLE 5:

PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting wages, hours and **other terms and conditions of employment** as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law. (The preceding Article, Article 5, shall apply to City Carrier Assistant Employees.)

Based on the provisions of the National Agreement, Management alone cannot implement measurement tools which are not based upon the agreed upon methods for determining the reporting times for carriers. The M-39 and M-41, incorporated into the National Agreement by Article 19 are clear about the methods to be used for managing City Letter Carrier routes and is the only agreed upon method for use. While Management has the right to utilize other methods and tools for their own identification of performance issues, performance discussions which may lead to progressive discipline should be based upon times established by the use of the M-39 Section 122.21 and 242.321 for establishing leave and return times for City Letter Carriers.

Management held the position that use of the DPT tool is just one of their duties and responsibilities in the daily interaction with employees. Included in those duties is the responsibility to give expectations and monitor performance based on all the tools at their disposal. It was Management’s position that the Union failed to meet their burden of proof by a preponderance of the

evidence that there was intimidation and harassment at the Evansville Post Office in violation of the JSOVB. However, the Union offered the statements and testimony at hearing of the very Carriers who are being managed by the DPT. The perception of the Carriers demonstrated frustration at best and intimidation at worst. Those perceptions were apparently based on what was determined to be a "flawed" system of determining the workload for carriers on any given day. Most of the carriers testified that they did not understand the system and the information provided to them was inaccurate on many occasions. Based on their testimony and statements, it appeared that being called into the office to discuss their "short comings" was synonymous with being harassed in their minds. Intimidation and harassment is only about one person's perception, the person who states that they have been harassed or intimidated.

In support of their position, the Union offered the decision of Arbitrator Peter J. Clarke in case number G06N-4G-C 09143626 and 09146049 where he opined:

The Union argues that Postal Service created a hostile work environment by using 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.

...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.

...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 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.

Likewise in the instant case, Management first violated the National Agreement with the use of the DPT tool to determine route times for City Letter Carriers. The M-39, not the DPT, tool is the recognized method for determining Carrier office and street times; Management was in violation of the National Agreement Articles 5 and 34, when they decided to unilaterally implement the use of the DPT tool to set reporting times for Carriers at the Evansville Post Office. In the case at bar, Management fell short of disciplining any carriers for failure to meet times established by the DPT, however, Carriers were counseled by their supervisor in his office which potentially could be viewed as an Investigative Interview. As in Arbitrator Clarke's cited case, the improper use of the DPT tool in this case is what led to "resistance and animosity" and ultimately created a hostile work environment for the carriers.

The Joint Statement was meant to cover all employees, including guaranteeing the right to be treated with dignity and respect. The parties were adamant that they "meant what they said" in the Joint Statement and Arbitrators are expected to ensure the parties' intent is adhered to when deciding disputes. In relevant part the JSOVB states:

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.

Here the letter carriers at Evansville Post Office demonstrated that a lack of trust was created when Management decided to utilize a new system for determining daily route times. The Supervisor utilized a system which has been deemed "inaccurate" at best and "flawed" at its' worst, but most importantly in violation of the National Agreement. The distrust of the "flawed" system then led to a hostile work environment which is contrary to parties' intent and in violation of the JSOVB.

Based on the foregoing, the grievance is sustained. Management shall cease and desist from violating Articles 5, 19 and 34 as well as the Joint Statement on Violence and Behavior in the Workplace by utilizing the DPT tool as a sole measurement of determining route times instead of the official methods according to Handbooks M-39 and M-41.

AWARD

Based on the foregoing, the grievance is sustained. Management shall cease and desist from violating Articles 5, 19 and 34 as well as the Joint Statement on Violence and Behavior in the Workplace by utilizing the DPT tool as a sole measurement of determining route times instead of the official methods according to Handbooks M-39 and M-41.

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