



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 Hudson, Ohio on March 21, 2017. The parties argued their positions orally at the conclusion of the hearing, and the hearing was declared closed on that date. The parties stipulated that the matter is properly before the Arbitrator for decision. The parties did not stipulate as to the issue before the Arbitrator, but requested that the Arbitrator fashion the issue for decision. The issue, as framed by the Arbitrator, is as follows:

Did the Employer violate Articles 5, 19, 34 and/or the Joint Statement on Violence and Behavior in the Workplace (“JSOVB”), when it implemented the Performance Engagement Tool (“PET”) to determine street times and imposed discipline when those times were not met, and if so, what is the appropriate remedy?

### **FACTS**

The instant grievance arises out of the implementation of the Performance Evaluation Tool at the Hudson, Ohio post office in June, 2016. John Carlson, Operations Program Analyst, who was involved in creation and supervisor training for the PET, testified at hearing concerning the operation and uses of the PET. His testimony established that the PET is a new tool created by the Employer to assist in determining letter carriers’ appropriate street times each day. It was created out of a need to reduce the amount of time required for supervisors to assess daily street times for each route due to ever shrinking office times for letter carriers due to automation. The PET consolidates information which was formerly contained in several DOIS reports into a single

program and pulls in the most recent full 3999 completed within the past year for the carrier on the route in question. It then compares the volumes and the percentage of houses delivered on the date of the 3999 with the base time for the route and the current day's work load. The PET then suggests the required street time for the day. The PET additionally notes other relevant information, such as additional or fewer parcels, but does not include that in its time calculation. The time calculated, together with the other relevant information is then expected to be used by the supervisor as a basis for discussion with the carrier to negotiate the leave time and street times for the day and to determine the availability of the carrier to take a pivot. The PET also provides comparative data for the past six weeks in order to flag potential issues with carrier performance.

The PET was available to the Hudson office beginning in June, 2016. The evidence presented at hearing demonstrated that beginning in June, and continuing until the holiday mail volumes increased, management implemented use of the program to compare carrier performance to the most recent 3999 performance. The testimony established that PET did not appear to be used in daily negotiations of street times. Street times were established in the customary manner through a discussion between the supervisor and carrier without any obvious reference to PET data. The affected carriers were routinely returning within the agreed upon daily time. Despite meeting the negotiated time, however, carriers began to be advised the following day that they had exceeded expected times for the day based upon comparison with their 3999.

Additionally, several carriers were disciplined with written warnings for having exceeded street times as determined by the PET comparison with their 3999. This discipline generally occurred weeks later after management reviewed PET data. Carriers were generally questioned during a PDI weeks after the dates involved, making it difficult to recall why they agreed to time

was necessary rather than the time determined by the PET based upon the demonstrated 3999 performance. Supervisor Matthew Myers testified that the discipline was not for unauthorized overtime or any other specified unsatisfactory conduct, but was rather because the carrier did not meet the street times which he demonstrated he could meet based upon volumes and his demonstrated performance during the most recent 3999. This information was made available as a result of the PET. Each of the disciplinary actions was later either expunged or reduced to a formal discussion through the grievance procedure, and there have not been any additional disciplinary actions taken based upon comparing 3999 times to street times on any particular day.

The testimony of Union witnesses was consistent that the questioning of carriers as to why they did not meet their 3999 times as well as the discipline of some carriers created a stressful environment in the office. The most senior carrier in the office, Richard G. Fortin, testified that he felt that his work and competence was being questioned unfairly. Union Steward Eric Poston, testified that he received many complaints from carriers who were especially concerned when the Fortin, who had never been disciplined in all his years of service, and who was uniformly considered to be a superior carrier, was disciplined as a result of having failed to meet expectations pursuant to the PET comparisons to his 3999 times after the fact. Due to this increased stress, many complained to both the Union and to Management.

The instant grievance was filed alleging initially that use of the PET should be discontinued and that its use at the Hudson office had resulted in a violation of the JSOVB. At hearing, the Union agreed that the tool was appropriate in its use to aid in establishing street times, but retained its allegations that the discipline based on the PET was a violation of the National Agreement and that the roll out of the PET resulted in a violation of the JSVOB. The

grievance proceeded through grievance procedure to without resolution to arbitration.

### **POSITIONS OF THE PARTIES**

**Union Position:** The Union argues that it has met its burden of proof to demonstrate a contractual violation in this case. The Union does not dispute that the Employer has the right to implement a plan like the PET, and concedes that it is appropriate for its intended purpose to promote discussion regarding street times. The problem here was that times were negotiated and agreed for any given day and weeks later carriers were called in and questioned about why those times did not coincide with 3999 times on days weeks prior based upon volumes as shown on the PET. The evidence was that supervision appeared not to be using PET as a tool as part of the negotiation for the day's street time, but instead as a disciplinary tool to discipline carriers for failing to meet the times on a one day 3999. This is clearly in violation of the Step 4 resolutions of the parties in which it was agreed that a one day count cannot be used as a time standard against which the carrier's performance is measured for discipline. Further, the use of the PET in this manner unquestionably created an extremely stressful environment in the office during which the carriers were treated in a disrespectful and demeaning manner. The grievance should be sustained and the Employer should be ordered to cease and desist using PET to discipline carriers together with a finding that the Employer has violated the JSOV in this case.

**Employer Position:** The PET is a new tool created by the Employer, and as with every new tool, there are challenges by the Union while both supervises and carriers adjust to its use. The purpose of doing a 3999 is to provide a snap shot of what the carrier can do on his route in

between route inspections to account for changes in the route. The PET was created to allow supervisors to make accurate determinations as to daily street time before carriers leave for the street since office time is now greatly reduced. It is imperative in the current competitive environment that all available work time be captured. Clearly no carrier likes to be questioned concerning his work, but it is appropriate and necessary when it is demonstrated that the carrier is not performing to his demonstrated ability with similar or lower volumes based upon his most recent 3999. Such inquiry, however is necessary and appropriate. The discipline here was removed through the grievance procedure, and there was no evidence of any continuing discipline. Questioning a carrier regarding performance is simply not harassment merely because carriers do not like or are upset by it. There was no evidence that there was any abusive or inappropriate conduct on the part of management which would warrant a finding of a violation of the JSOV. The grievance should be denied.

### **RELEVANT CONTRACTUAL PROVISIONS**

#### **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.

#### **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. ...

## **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 system or time or work standards shall be fair, reasonable and equitable. ...

### **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.

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 7000,000 employees. But let there be no mistake that we mean what we say and 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. ... (emphasis in original)

**M-00829 ...**

[T]he parties agree that a one day count and inspection may not be used as the sole basis to establish a standard against which a carrier's performance may be measured for disciplinary purposes. ...

**M-01769 ...**

No carrier shall be discipline 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 H1N-1ND31781, '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 and 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 ... or the letter carrier's and supervisor's responsibilities. ...

### **DISCUSSION AND ANALYSIS**

While the grievance in this case originally challenged the Employer's right to implement the PET, the Union conceded at hearing that it was within its right to do so. The parties both agreed that all of the discipline imposed during the period when the PET was first rolled out in Hudson, Ohio has since been expunged or reduced through the grievance procedure. Based upon these two concessions, what is left before the Arbitrator here is a determination whether the PET was properly used in the circumstances of this case, and whether its implementation constituted a violation of the JSOVB. As in any allegation of a non-disciplinary contractual violation, the burden of proof is on the Union to demonstrate a breach of the Agreement here by a preponderance of the evidence.



As noted above, while the discipline of the individual carriers has been resolved through the grievance procedure, this grievance asks the more global question of whether discipline is permissible when based upon a comparison of the carrier's demonstrated performance in a 3999 to piece counts for other days. There is no doubt that the PET permits supervisors to get a better assessment of carriers' comparative performance over a period of time than was readily available in the past. There is further no doubt that it is an appropriate tool for both engaging in discussion regarding daily street times and flagging potential problems with a carrier's performance based upon comparative data. The problem, however, is that the data is a starting point which should prompt further inquiry. It alone is an insufficient basis on which to base discipline.

In each of the instances of discipline involved here, the inquiry began and ended by asking the carrier as to why his performance did not meet the expectations for any particular day as compared to his most recent 3999. Discipline was then forthcoming when the carrier could not provide adequate explanation. These inquiries, however, were made weeks after the fact. It is patently unreasonable to expect a carrier to remember why his street time was slower on a day with perhaps less volume than his 3999 well after the fact. The possible reasons are myriad, including weather, construction, traffic, physical illness or pain or the need to gas the vehicle. The list could go on. The point is that it is simply not reasonable to confront a carrier several weeks later and expect total recall of the circumstances which existed on a specified past date. The unsatisfactory answers which were provided were likely as a direct result of the lapse in time.

More importantly, however, these parties have already agreed in the two Step 4 Settlements referenced above, that a single day count and inspection may not serve as a standard against which a carrier will be measured for disciplinary purposes. That, however, is precisely

what the Employer did in this case. The 3999 was held up as the standard, and the carriers were disciplined when they could not explain why they did not meet it. While the PET comparative data might lend support to the conclusion that a carrier is not performing to expectations, without some additional evidence of unsatisfactory performance, these parties have determined that comparison to a single 3999 is an insufficient basis for discipline on its own. The use of the PET in this manner was therefore improper.

While the Union has demonstrated that the PET was utilized in a way that violated the National Agreement, the fact that the Employer misused the new tool does not necessarily equate to a violation of the JSOVB. In reading the JSOVB, it is clear that its intention is to create a clear policy which not only disavows physical violence in the work place, but which also prevents the conduct which can lead to violence. To this end, the policy expresses a clear intolerance for intimidation, abuse and bullying and expresses the need for all employees to be treated with dignity and respect. The policy further acknowledges that stress levels can become unacceptable, leading to violence. What it does not do, however, is commit to a stress free work environment. Such a commitment would clearly be impossible to keep.

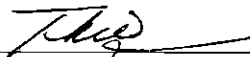
In this case, the testimony from Union witnesses was that being questioned concerning performance on past dates based upon their 3999 performance clearly did increase the stress levels in the office. Further, carriers who were not questioned or disciplined became concerned and stressed based upon what was happening to others. It is entirely logical that this would result. On the other hand, there was no evidence that carriers were in any way held up to ridicule or spoken to in an abusive manner. There was no evidence of yelling, threats or that carriers were required to meet impossible expectations. Rather, the evidence was that what occurred, was that carriers

who were unused to being questioned concerning their performance, were questioned in a professional manner and given discipline. While the experience was undoubtedly personally upsetting, there was no evidence that it went beyond the bounds of a typical action by a supervisor who believes that discipline is appropriate. That discipline was removed through the grievance procedure, but certainly discipline does not rise to the level of a violation of the JSOVB merely because it is later determined to be without just cause. There was simply no evidence in this case to support the conclusion that the additional stress caused by the use of the PET in disciplining carriers rose to the level of a violation of the JSOVB.

**AWARD**

The Grievance is sustained in part. The Employer is ordered to cease and desist using the PET as the sole basis for discipline of letter carriers in the absence of demonstrated performance deficiencies or failure to complete the route within daily negotiated times.

Dated: April 21, 2017

  
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Tobie Braverman, Arbitrator