

**REGULAR ARBITRATION PANEL**

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<b>In the Matter of the Arbitration</b>		)
<b>Between</b>		) <b>GRIEVANT:</b> Class Action
<b>UNITED STATES POSTAL SERVICE</b>		) <b>POST OFFICE:</b> Orchard Park, NY
<b>And</b>		)
<b>NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO</b>		) <b>CASE Numbers:</b>
		) <b>USPS:</b> C11N-4C-C 16227981
		) <b>NALC:</b> 129-16
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**BEFORE:** Sherrie Rose Talmadge, Esq., ARBITRATOR

**APPEARANCES:**

<b>For the U.S. Postal Service:</b>	Michael S. Kulikowski, Labor Relations Specialist Jill Miniard, Technical Advisor
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<b>For the NALC:</b>	Douglas Fordyce, Union Advocate
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<b>Place of Hearing:</b>	60 School Street, Orchard Park, NY
<b>Date(s) of Hearing:</b>	October 18, 2016
<b>Date of Award:</b>	December 3, 2016
<b>Relevant Contract Provisions:</b>	Articles 5, 19 and 41
<b>Date of Contract:</b>	2011-2016
<b>Type of Grievance:</b>	Contract

**AWARD SUMMARY**

Management violated Articles 5, 19 and 41 by using the PET based on one 3999 to establish a demonstrated street time by which carriers are expected to perform on a daily basis. Accordingly, the grievance is sustained.

Management shall cease and desist from violating Articles 5, 19 and 41 by utilizing the PET as a sole measurement of determining route times instead of the official methods according to Handbooks M-39 and M-41.



**Sherrie Rose Talmadge, Esq., Arbitrator**

### **STIPULATED ISSUE**

1. Did Management violate Articles 5, 19 and 41 by using the PET based on one 3999 to establish a demonstrated street time by which carriers are expected to perform on a daily basis?
2. If so, what shall the remedy be?

### **FINDINGS OF FACT<sup>1</sup>**

On or around April 1, 2016, Management at the Orchard Park Installation instituted the Performance Engagement Tool (PET) program. John Carlson, Program Analyst for the Eastern Area, testified that he wrote the power point used for the training of the PET. He testified that the program uses the last 3999 and the mail volume from that date. It compares mail volume on subsequent days and establishes a street time expectation for that day. The PET is a desktop tool which draws its data from the Delivery Operation Information System (DOIS). Its purpose is to assist supervisors in communicating with the letter carriers regarding work expectations. Carlson testified that that the PET does not make projections, it is information for the Supervisor to evaluate the PS Form 3996 request for auxiliary assistance. Carlson testified that this information is intended to help the supervisor engage in a better conversation with the carrier who can explain why he or she may need extra time. Then, based on the information from PET and the conversation with the carrier, the supervisor can tell the carrier when are the expected leave and return times. Carlson also noted that the PET information provided during April 2016 was an old version of the tool that did not provide as much information as the more recent versions of PET.

On February 17, 2016, Delivery Supervisor Swanson was detailed to the Orchard Park Installation and he began to use the PET on April 1, 2016. Swanson testified that he would get a projected time for each route from the PET after the mail was up and would provide the projected time to the carrier. Swanson further testified that then the carrier would look at the projected time and if the carrier informed Swanson that it was not enough time, he might have a conversation at that time. He noted that the carrier might still put in a PS Form 3996. In his Informal Step A response, Swanson wrote, in part:

...Management contends that the PET toll is a program that uses the carrier's demonstrated performance from the last 3999 walk that was

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<sup>1</sup> At the hearing the parties had an opportunity to question the sworn witnesses under direct and cross examination and to submit material documentary evidence. At the conclusion of the hearing the parties presented oral closing arguments.

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performed while supervised and compares the mail volume that day to every day workload. This tool gives management a time for the work to be completed based on demonstrated performance. This tool does not provide a projected time based on any type of estimate, this was their actual performance.

All attached documents provided at the Informal A are about tools that are based on projections and not actual demonstrated performance. Since management believes that a carrier should work to the same time as their demonstrated performance on their 3999, this grievance is denied.

Letter Carriers Mark Fried and Michael Freeman testified that with the implementation of PET, after the carriers had completed the PS Form 3996, Supervisor Swanson made his determination of auxiliary help based solely on the PS Form 3999. The Supervisor told the carriers that based on the PET program this was their “demonstrated performance” and that they must meet that street time unless the mail volume was a lot more than the demonstrated 3999. The Supervisor would not engage in a conversation about other variables that would impact the carriers’ street time. Carrier Fried, who is a T-6, testified that he was given a 3999 for each route he carried and before he put in a PS Form 3996 Supervisor Swanson told him how much time each route should take. When he could not make it back in time, Carrier Fried would call at 2:30 p.m. to find out whether the supervisor wanted him to continue the route or return. Fried testified that the next day Supervisor Swanson would ask why he could not meet the timeline and Fried would explain the various issues he encountered, such as weather, road construction and the volume of parcels. Fried testified that when Swanson told him how much time each route should take him based on the 3999, this caused extreme stress and pressure because as a T-6 he tried to meet the timelines he was given but could not complete the routes as quickly as the regulars.

The parties stipulated that the two other Letter Carriers (Quinlan and Manasco) who were to testify would have testified substantially similar to the Letter Carriers who had already testified about their Branch 3 Questionnaires. (On the Branch 3 Questionnaires these carriers indicated that Management told them on a daily basis that they were expected to meet the street times from the 3999.)

Branch 3 President Lawrence Kania testified that this application of the PET program changed the manner in which Management accepted or denied the carrier’s PS Form 3996 request for auxiliary assistance. The application of the PET program in this manner lasted about four weeks at this facility.

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President Kania testified that on or about May 12, 2016, when he met with Mr. Faulk, Management's Formal A representative, Management agreed to use all the variables for assessing street time, in addition to the PET, when considering the carriers' request for auxiliary assistance. Kania testified that as a result of that agreement, the matter was addressed by Management at the Orchard Park facility.

## **POSITION OF THE PARTIES**

### **UNION'S POSITION**

Management violated Articles 5, 19 and 41 by using the PET based on one PS Form 3999 to establish a demonstrated street time by which carriers were expected to perform on a daily basis. The Union does not dispute that Management has the ability to develop and utilize tools to evaluate and manage the floor, but any tool they develop must be consistent with the National Agreement and the Step 4 Agreements, including the agreement for case Q06N-4Q-C 11022051, M-01769 (2011) in which the parties agreed that "Projections are not the sole determinant of a carrier's leaving or return time, or daily workload."

Several carriers testified that all were told that there was an expectation that they meet the prior demonstrated performance based on one PS 3999. When Management gave the carriers the projections there was no discussion. Discussion occurred only after the carriers were given their projections. The carriers testified that they were held to the projection given by Swanson. Swanson's written statement indicates that he contended that the PET is a program tool that gives the time for the work to be completed. He said that this is the carriers' actual performance. This is in conflict with the Step 4. Swanson gave the carriers their PET expectation for that day solely based on the PS 3999 prior to engaging in a conversation with the carriers. Swanson created the conflict with and stress for the carriers.

Carlson testified that the PET program was intended to have the supervisor engage in conversation with the carriers. This is not what happened. Instead, Swanson told that carriers that this is what they were expected to do. Swanson compared the carriers' base tour with one day of the PS Form 3999 and no other variables were considered. This was inconsistent with the Step 4, Article 19.

The issue of harassment was raised by the Union at Step B, but it was raised in the letter carrier's statement and the Union worksheet. Both the Step B reps have an obligation under Article 15.2, 15-7 and 15-8 to fully develop the facts. The Step B team is responsible

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for making sure the joint files are fully developed. Therefore, the Step B rep raising the issue of harassment or coercion is not new evidence.

In Arbitrator August's Decision [USPS and NALC, C11N4C-C 15365544, EV V-CA-DS-15-019 (2016)], she considered the DPT program, which has the same regulations as the PET, and her decision should be applied in this matter. In the present case, the letter carriers were told this is what you did before and we expect you to do it today. For Swanson, estimation and projection were the same thing. But the tool cannot be used to project, which he did.

The carriers' routes were adjusted as close as possible to 8 hours based on the full carrier route inspection over a period of time. When applying the PET, Swanson attempted to use data only from a given day. When Swanson applied the PET to the carriers without engaging in conversation, this created conflict. The carriers felt stressed and squeezed.

The Joint Statement on Violence was intended to decrease the misuse of numbers and tools that create a hostile environment. Every employee is to be treated with dignity and fairness. The use of numbers does not justify being abusive.

Management violated the National Agreement and Step 4 Agreement. The Union requested that the grievance be sustained. Management is not currently applying the PET in the same manner as before. But, Management never said that they should not have done this. The Union wanted the decision to recognize that Management utilized a tool that for a period was in conflict with the Step 4. Management should be directed to cease and desist from violating Articles 5, 19 and 34 as well as the Joint Statement on Violence and Behavior I the Workplace by utilizing the PET tool as a sole measurement of determining route times instead of other methods according to Handbooks M-39 and M-41. The Union also requested that each carrier be paid \$10.00 per day until the practice ceases.

### **POSTAL SERVICE POSITION**

Management did not violate Articles 5, 19 and 41 by using the PET based on one 3999 to establish a demonstrated street time by which carriers are expected to perform on a daily basis.

The PET program is a management desktop tool to assist the delivery supervisors in their duties. The use of the PET does not change the route evaluation process as provided for in the M-39 Handbook, Chapter 2 in establishing office and street time averages or projections. This tool assists management in determining their own estimate independent of the letter carriers, if applicable. No letter carrier has been issued corrective

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action because of this tool. The PET serves as a conversation starter for work expectations with the carriers when the Service believes the carrier's estimate is not entirely accurate. The Service has not changed anything in relation to work or time standard. The use of PET does not change the 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 and Supervisor's responsibilities contained in Section 28 of Handbook M-41. PET is another management tool for estimating a carrier's daily workload in accordance with the Step 4.

The Union's charge of harassment is a new argument that should be dismissed. The issue statement as provided in the Step B joint file does not include any reference to harassment, nor does it cite a violation of the CBA under Article 2. Additionally, the Formal A Union's contention did not cite any allegations of harassment, hostile environment or a violation of the Joint Statement of Violence in the Workplace. The NALC DRT representative first introduce that argument at Step B when he compared the instant matter to the alleged harassment in Evansville, IN discussed in the August Award. This new argument should be disallowed pursuant to Article 15. Furthermore, any conversation or engagement between the Employer and the employee about expectations does not automatically equate to harassment; nor does it, by design, create a hostile work environment simply because the employee's estimate is being challenged. Moreover, the Union has failed to prove a violation of Article 5 and Article 34.

For all the above, the Agency requested that the grievance be denied in its entirety.

### **DISCUSSION**

At issue is whether Management violated Articles 5, 19 and 41 by using the PET based on one 3999 to establish a demonstrated street time by which carriers are expected to perform on a daily basis. The Union met its burden of proof in this matter.

The Union acknowledged that Management has the ability to develop and utilize tools, such as the PET, consistent with the National Agreement, to evaluate and manage the floor. The narrow issue is the manner in which the PET was applied to the carriers during the month of April 2016.

The parties have established the method for evaluating city letter carrier routes as defined in Chapter 2 of the M-39 and Chapter 9 of the M-41, which developed a method of "averages" for route evaluations. The PET is a management efficiency tool for estimating a carrier's daily workload, which uses an "exact" number of hours from one

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distinct day. The PET derives its information from DOIS. Although Management has the right to utilize this efficiency tool to assist in its assessment of the carrier's workload and auxiliary assistance requests, as noted in a number of Step 4 settlements, the PET cannot be the sole basis for disapproving auxiliary assistance requests or approving more time than requested.

The September 16, 2011 Step 4 (M-01769) (Q06N-4Q-C 11022051) provides that any similar time projection system will not be used as the sole determinant for establishing office, street time or daily workload. The Step 4 (M-01769) states, in pertinent part:

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 H1N-1N-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.

The November 14, 2005 Step 4 (M-01624) emphasizes that the DOIS projected leave time cannot be the sole basis for disapproving auxiliary assistance requests or approving more time than requested. The Step 4 (M-01624) states, in pertinent part:

Other than obvious data entry errors, route-based information may only be changed through a full count and inspection or minor adjustment as defined in Handbook M-39, Chapter 2, Mail Counts and Route Inspections, and Section 141, Minor Adjustments. Exceptions are offices with agreements pursuant to the August 4, 2004, Memorandum of Understanding regarding route adjustments.

In addition, DOIS does not replace a supervisor's ability or responsibility to make decisions. Supervisors are to continue evaluating requests for assistance (PS Form 3996), and assess any unusual circumstances or conditions that have occurred. The DOIS projected leave time cannot be

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the sole basis for disapproving auxiliary assistance requests or approving more time than requested.

John Carlson, Program Analyst for the Eastern Area, who wrote the power point used for the training of the PET, testified that the program's purpose is to assist supervisors in communicating with the letter carriers regarding work expectations. Carlson testified that that the PET does not make projections, it is information for the Supervisor to evaluate the PS Form 3996 request for auxiliary assistance. Carlson testified that this information is intended to help the supervisor engage in a better conversation with the carrier who can explain why he or she may need extra time. Then, based on the information from PET and the conversation with the carrier, the supervisor can tell the carrier when are the expected leave and return times.

In the present case, on February 17, 2016, Supervisor Swanson was detailed to the Orchard Garden facility and on April 1, when the PET became available at the facility, he began to utilize this tool with the carriers. Swanson began utilizing the information derived from the PET to establish a street time projection for the carriers' routes, rather than using it as only one of his tools and involving the carrier in a conversation about his mail volume and other variables such as the makeup of the mail, percentage of delivery or weather conditions, before the carrier left for the street. By using the PET for the sole street time projections, Swanson did not evaluate requests for assistance (PS Form 3996) and assess any unusual circumstances or conditions that may have occurred. His use of PET to establish a street time projection for the carriers' routes and failure to have a conversation with the carriers about other variables prior to carriers leaving for the street violated the terms of Articles 19 and 41 of the National Agreement. This unilateral change in the manner for establishing street time protections and assessing auxiliary assistance, which affected hours and other terms and conditions of employment (as defined in Section 8(d) of the NLRA) violated the terms of Article 5.

The Union also argued that the supervisor's actions violated the Joint Statement on Workplace Violence and Behavior (JSOVV) because it caused the carriers to feel harassed and stressful. Although no carriers were disciplined for failure to meet the times established by the PET, Carriers were questioned by the supervisor about why they were not able to meet the projections which ultimately created a hostile work environment. Two carriers testified that when Swanson provided them with PET projections, without engaging in a conversation prior to leaving for their routes, they felt harassed and found his actions stressful because, without consideration of the daily



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variables, these projections were at times difficult to meet and they felt accountable. The T-6 carrier testified that although he sought to meet the given deadlines, it was difficult to achieve the same PET projections for each route as the regular carriers and, therefore, it was very stressful. The parties intended the Joint Statement to cover all employees, including guaranteeing the right to be treated with dignity and respect. The letter carriers demonstrated that a lack of trust was created when Management inappropriately utilized a new system for determining daily route times. This case is similar to the decision by Arbitrator Glenda M. August in USPS and NALC, [C11N-4C-C 15365544, EV V-CA-DS-15-019 (2016)] in which she held that a lack of trust was created when Management decided to utilize the Demonstrated Performance Tool (DPT) to call into question City Letter Carriers daily performance in violation of the National Agreement which led to a hostile work environment in violation of the Joint Statement. However, in the present case I note that after the Branch President met with Management at the Formal A, the matter appears to have been resolved at the Orchard Park facility.

Based on the foregoing, the grievance is sustained.

#### **AWARD**

Management violated Articles 5, 19 and 41 by using the PET based on one 3999 to establish a demonstrated street time by which carriers are expected to perform on a daily basis. Accordingly, the grievance is sustained.

Management shall cease and desist from violating Articles 5, 19 and 41 by utilizing the PET as a sole measurement of determining route times instead of the official methods according to Handbooks M-39 and M-41.

Respectfully submitted by:



**Sherrie Rose Talmadge, Esq.,  
Arbitrator**