C-32755

REGULAR DISTRICT ARBITRATION PANEL
Western New York District

In the Matter of an Arbitration Between **UNITED STATES POSTAL SERVICE** And **NATIONAL ASSOCIATION OF LETTER CARRIERS**	Grievant:	Class
	Post Office:	Rochester, NY
	USPS Case No.:	C11N-4C-C16338962
	NALC Branch No.	16118
	Before	Robert Tim Brown, Esq., Arbitrator
	Appearances:	

For the Postal Service: Michael S. Kulikowski, Area Labor Relations Specialist

For the Union: John Wilson, Vice President Branch 210, Arbitration Advocate

Place of Hearing: Rochester Post Office

Dates of Hearing: November 29, 2016

Date of Award: January 11, 2017

Relevant Contract Provisions: Art. 8, 12, JCAM, ELM

Contract year: 2011

Type of Grievance: Contract (Street Time Dispute)

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Award Summary:

Grievance dismissed, see details herein.

Robert Tim Brown, Esq.

cc: Grievance and Arbitration Processing Center, John Wilson, Daniel E. Toth, Michael Kulikowski, Area Manager Labor Relations

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DANIEL E. TOTH

AWARD

This case was heard under the auspices of the Regular Arbitration Panel for the Western New York District, pursuant to the collective bargaining agreement between the United States Postal Service and the National Association of Letter Carriers, AFL-CIO. Hearing was held on November 29, 2016 at the Rochester, NY Post Office. NALC Area Representative John Wilson represented the Union and the Grievants at the hearing, and Area Labor Relations Specialist Michael Kulikowski represented the Postal Service. Each side was given a full opportunity to call witnesses and to cross-examine witnesses for the other side, and did so. The issue in this case was as follows:

> ISSUE: Did the Postal Service violate the National Agreement in setting minimum street performance standards for carriers as well as creating a hostile work environment by harassing carriers using a new system using DOIS and a single 3999? If so what shall the remedy be?

INTRODUCTION

Parts of this case were undisputed, and those parts also provide useful background for this dispute insofar as the facts are actually in dispute. Letter Carriers deliver mail on set routes, and they bid for routes which, when awarded through the bidding process, are assigned semi-permanently. Carriers deliver mail according to a set sequence, and the Service maintains records as to the timing of those deliveries and for breaks, also prescribed. The Service maintains a system called DOIS, which serves as a resource for accessing the details of the route which vary each day and which are not expected to change, although they sometimes do. Each morning, Carriers are expected to survey the mail that they must deliver including parcels, factor in situations which they know from other recent delivery days exist on the street, look at any auxiliary assignments that they have been given that day, and if they believe it appropriate, fill out a form 3996 requesting additional time they think they will need in order to complete their work on time. The form has space for them to state specifically why they need what they think they will need. As a result of enhancements to the way mail is prepared for delivery now, mail counts, which used to be estimated with a ruler by the inch, now largely arrive electronically with the mail as it comes to the stations. Management, for its part, is also supposed to survey the mail, known street situations, special assignments and any other relevant day-to- day factors and then review the Carrier-

submitted form 3996. All, part, or none of the 3996 request may be granted, and at times the Carrier may be deemed to in fact have "undertime" (time to do more than the Carrier's own deliveries). Where the Carrier is granted less than the extra time requested or denied it altogether, the Carrier and supervisor are expected to discuss that, and if need be the Carrier may grieve the supervisor's response. Actual experience, the parties seemed to agree, often produces some sort of compromise, not uncommonly falling short of the Carrier's expectations, but generally workable and acceptable. In theory or practice, therefore, each Carrier should know, going out the door, how much time he/she has to complete delivery each day, or, in the alternative, that that issue is in dispute and has been placed in issue around the 3996.

The basic route timing that is imbedded in DOIS is partly derived from a periodic supervised walk-through of the Carrier's route, called a 3999 procedure. Such 3999 procedures are elaborate, extend over several days and accomplished periodically and routinely, or may be requested by a Carrier because of perceived anomalies in existing routes. The latter occur at times because a long interval intervenes since the last 3999 was done and route conditions change. Where a morning 3996 adjustment does not solve a delivery timing issue, the Carrier may call in from the street to request more time, and may or may not get what he/she asks for. The result of such a call also may be grieved if need be, albeit after the work is done.

This case grew out of a combination of factors. First, about half a year before this case was heard, a series of thirteen closely spaced disciplinary actions related to street time were issued against Carriers at this facility, and all were grieved. All of the discipline was resolved, either vacated or greatly reduced, prior to the B level or by the B team, after this case was grieved or before this case went to hearing. The Union perceived this flurry of disciplinary activity as emanating from the issuance and deployment of a new computer based program called the Perfomance Engagement Tool (PET), which supervisors were instructed to use to evaluate street performance. (PET was the "new system" to which the issue statement referred).

The evidence in this case regarding the PET was confusing and hard to follow. Several things were clear: First, there were aspects of the program as an analysis tool that might well have led supervisors to evaluate performance based on improper or overly rigid standards, such as a single day 3999 observation. Second, the resulting discipline was, when contested, set aside or

reduced to official discussions because of such missteps, and past the point that that flurry of disciplinary actions was issued, further discipline has apparently not been inspired by use of the program. Given that the Service has argued here that the PET program is simply one of several that are used to evaluate street performance, and has asserted that rigid standards are neither proper nor being applied by the program, one can hope that the wording of the PET guidance materials misled supervisors into rushing to improvident disciplinary action, and that the use of the program has been fine tuned to avoid further similar dispute.

It is clear here that that the PET program is an analytical tool, not a set of rules, and at least for the sake of argument, possibly a flawed one, at least to the extent that it relies in part on a "single 3999". The Service in its opening and at hearing acknowledged that there were problems with it when it first was deployed, and all of the discipline that emanated from those problems has been resolved jointly with the Union. As the Union has pointed out here and management has affirmed, the standards for evaluating Carrier street performance are well established by contract, regulation, case law and step 4 decisions, and the PET program is not put forward as any sort of reference, regulation or binding authority on the application of those rules. To the extent that it was utilized in a flawed way at the outset, the Service has apparently pulled back from that application, and that is known in part by the fact that subsequent to the resolution of discipline against 13 letter carriers, no new discipline is cited here by the Union as being relevant to this case.

What the Union seeks here is in effect a declaration that wrong methods were used in deciding on issuing discipline in those thirteen cases, by way of a finding that the PET program is flawed and produces results violative of the National Agreement. To the extent that that was true, the resolution of the thirteen discipline cases has already, either directly or by implication, accomplished that task. Had that not been so, then during the months that have passed since that time, additional specific disciplinary events or conflicts would most likely have arisen over the issue. So far as we know, none has. If they do in the future they can be resolved in the same way as the others.

The PET program was assertedly designed as a device to assist supervisors in analyzing workload and in formulating expectations as to work performance. To the extent that it leads

supervisors down the wrong track, the grievance procedure is available to right any resulting wrongs.

It also seems apparent that it should be possible for each Carrier, each day, to utilize the 3996 form where needed, to resolve (or dispute) the day's projections. Then, if such projections are derailed by intervening events on the street (e.g., vehicle breakdown, traffic obstacle, customer interactions, mis-sorted mail, etc), a call to the office should accomplish a modification of those projections (or generate a grievance, which experience in connection with the disciplinary actions that inspired this case tells us can resolve such problems).

The purpose of the collective bargaining agreement is to regulate what the parties, in relation to employment and the workplace, do, don't do and say, not how they think or reach conclusions except to the extent that handbooks and manuals are promulgated. A foray into the management "thinking" area is a thankless and unauthorized enterprise. If the Service chooses to train or guide its supervisors to behave in ways that violate the National Agreement, its reward will be, particularly with this able and aggressive Union, successful and at times successful costly grievances. Where the Service persists in such misdirected conduct, cease and desist orders and exemplary remedies can result and at times have resulted.

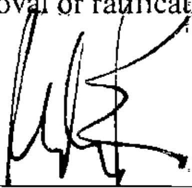
It would also be a mistake to attempt to refine the PET program in any effort to correct its methodology, because the means by which management plans its management is outside an arbitrator's authority and is one of management's rights, and in this case, the complexity of delivery planning and the need for specialized expertise to appraise street time are within the capabilities of the Union and management but beyond mine, at least on my own. The Service makes no contention here that it is entitled to cite to the PET program as authority for what it does, and given that, it is inappropriate for me to judge the content of that program here. It is not, it must be stated, an Article 19 handbook or manual, and if it was, its promulgation would be subject to grievance nationally to the extent the Union regarded it as in conflict with the agreement.

The Union's burden in a contract case is to prove that the Service has violated the National Agreement, directly or through failure to comply with handbooks and manuals, law or regulation.. Here, the Union seeks to prove that a guide provided to its supervisors to be used internally will

lead the latter to violate the agreement. It would appear that the latter proposition may be supported by the history of ill-advised disciplinary actions that preceded this case, and those cases have all been resolved. The Union has not proven or even asserted that the Service has persisted in such action.

The Union has also contended that the counseling and discipline (which it regards as invalid) that has emanated from the use of PET violates the Joint Statement on Violence in the Work Place, in that it has created a hostile work environment. That allegation has no merit. The Joint Statement is intended to prohibit abuse, harassment and actual violence of persons in the workplace. Counseling and discipline is often by its nature unpleasant and unwelcome, but it is only when by its nature it is escalated well above the everyday business-like level to ugliness, threats, abuse, shouting, bullying or harassment or other conduct that strays well outside of even unjustified discipline that it violates the joint statement. While it is possible that malicious, repeated persecution of an employee may violate the joint statement in some way, mere corrective action, delivered in a civil fashion, right or wrong, is not violence and does not, on its own, create a hostile work environment.

I find that the Union has failed to prove that a violation of the National Agreement occurred in this case. I specifically do not by so finding, extend any sort of approval or ratification of the use of the PET program. The grievance is dismissed.



Robert Tim Brown, Esq., Arbitrator, Dated and issued January 11, 2017.