REGULAR ARBITRATION PANEL

In The Matter of	)
United States Post Office	)
and	)
National Association of	)
Letter Carriers (AFL-CIO)	)

Grievant: Class Action
Case No: E19N4EC23460648
DRT #: 02-633969
NALC No.: 232283

Before: Arbitrator Earlene R. Baggett-Hayes, Esq.

Appearance:

For the U.S. Postal Service:	Joshua Pope, Labor Relations Specialist
For the Union:	Nora Stamper, National Assigned Assistant
Location of Hearing:	1760 W. 21st Street, SLC Utah
Date of Hearing:	August 2, 2024
Post-Hearing Briefs Due:	None
Date Award Due:	September 2, 2024

AWARD

The Grievance is sustained.

Management shall cease and desist from violating Step 4 settlement H1N-5KK-C 6754J (M-00853), and from publicly displaying carrier performance and/or timekeeping information that can be associated with individual carriers on the display monitor.

September 13, 2024

Earlene R. Baggett-Hayes, Esq.,
Arbitrator

BACKGROUND

The National Association of Letter Carriers (NALC) (hereafter referred to as the "Union") in this matter challenged the United States Postal Service (hereafter referred to as the "Service," "Management," or "Employer") at the West Valley Salt Lake City Delivery Unit when it displayed a large television monitor in the workroom. The Union asserted that the display was for color-coding and posting route and time-keeping information. The monitor had rotating slides and presented the Informed Facility Route Status, GEO Return to End Tour, and All Clear in Office/On Street information. The Union complained that the slides broke down the routes by ID, early and late status, how many packages were delivered, carriers device ID, End 'tour time, GEO Return Time, GEO Fence Time, and which routes were in the office and on the street in live time. According to the Union, the information contained performance data of city letter carriers and made it available on the workroom floor. The Union complained that this negatively impacted the working environment, particularly because the information was associated with carriers by their route numbers which made it possible to identify the specific carriers. The screens purportedly showed up to 16 routes at a time. In response, the Service contended that the displayed information presented no harm to the employees because no names were on the screens and no other potentially identifiable information was included except route numbers.

The Union filed a grievance contesting the utilization of the display monitor. The grievance was not resolved; therefore, it was submitted to arbitration for resolution. According to contractual procedures, the undersigned was appointed to hear and decide the matter in dispute. An in-person hearing was conducted on August 2, 2024. During the hearing, the parties were afforded full opportunity to present testimony and evidence and to put forth arguments for their respective

positions. After oral testimony was taken and exhibits were presented, the parties elected to present oral closing arguments. Thereafter, the record was closed.

STIPULATED ISSUE STATEMENT

Whether management violate(d) Article 15.3.A and Article 19 of the National Agreement, Step 4, M-00853, and Handbook M-39, Section 115.4, when they publicly displayed carrier route performance data, on September 16, 2023? If so, what is the appropriate remedy?

EXHIBITS

J1 – Collective Bargaining Agreement
J2 – JCAM
J3 – Case File

WITNESSES

For the Union

Troy Scherzinger
Chris McGuire
Rudy Scherzinger
Anthony Wigren
Shon Garcia-Reesmon
Destiney Carillo

For the Service

Mike Pappas
Kelly Grater
Lolenne Simpson

CONTRACT AND OTHER PROVISIONS

JCAM, Page 16-4
Section 2. Discussion for minor offenses by an employee, management has a responsibility to discuss such matters with the employee. Discussions of this type shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grieveable.

M-00853
It was mutually agreed that the following would represent a full settlement of this case: Such leaving and returning time notations are inappropriate and will be discontinued upon receipt of this decision.

HANDBOOK M-39, Section 115.4
The National Agreement sets out the basic rule and rights governing management and employees

in their dealings with each other, but it is the front-line manager who controls management's attempt to maintain an atmosphere between employer and employee which assures mutual respect for each other's rights and responsibilities.

In support of its response to the grievance, the Service cited the following:

ELM 371 Introduction
ELM 372 Sound Supervision
ELM 373.1 Formal Evaluation
ELM 373.2 Informal Evaluation
ELM 374 Discussing Performance with Employees
ELM 375.2 Unsatisfactory Performance

POSITIONS OF THE PARTIES

The Union's Position

Carrier performance data was inappropriately displayed on a 60-inch monitor.

Carriers were identifiable by route numbers.

Information was posted in red, yellow, and green.

No standards existed for "early" or "late" completion, and other aspects of performance were not considered.

Carriers expressed their feelings of disrespect, unhappiness, and surprise.

Carriers had not been previously advised of the postings.

The Service can access the information through TACS and DOIS, which renders the display monitor unnecessary.

The Service has acted in violation of the National Agreement.

The Union requested the following remedies:

1. That Management cease and desist from violating Step 4 settlement H1N-5KK-C 6754J (M-00853), and Article 15.3.A of the National Agreement;
2. That Management cease and desist from violating M-39 section 115. A via Article 19 of the National Agreement;
3. That Management shall immediately cease and desist from publicly displaying carrier performance and/or timekeeping information;
4. And/or any other remedy deemed appropriate by the Arbitrator.

NALC citations presented:
Arbitrator Swanson, C2693
Arbitrator Lumbley, 4E 19N-4E-C 2218214

Arbitrator Talmadge, C11N-4C-C 16227981
Arbitrator Baggett-Hayes, E16N-4E-C 20101840
Arbitrator Bosland, 4E-19N-4E-D 21149690
Arbitrator Baggett-Hayes, 4E19N-4E-C 21261310

The Service's Position

The Service acted in good faith and did not violate any provisions of the National Agreement.

The Technology Integrated Alternate Route Evaluation and Adjustment process 2022-20033 was agreed upon between the parties and contains more information than the monitor.

The Union's contention is moot because the monitors have not been operational or functional for over six (6) months, and no data is currently being displayed.

The Union's claims that employees' feelings are being hurt is not a contractual issue and the displayed information was factual.

Not any employes have been disciplined or counseled regarding the displayed information.

The displayed data was not utilized for performance evaluations. Rather, it was presented as information at the West Valley City Office.

The Service requested the grievance be denied in its entirety

USPS citation(s) presented:
Arbitrator Bajork, H94N-4H-C 96035469

ANALYSIS AND FINDINGS

In this contract violation claim, the Union bears the burden of proof and must establish by a preponderance of the evidence that the Postal Service violated the National Agreement. The question is whether the Service did so by mounting the challenged information on a display screen. There is no dispute that the Service posted the carrier performance and timekeeping information prominently on a large display monitor. There is also no dispute over the location of the monitor. Likewise, there is no disagreement that those reports that were posted were the Informed Facility Route Status, GEO Return to End Tour, and All Clear in Office/On Street information. Although color photos were not allowed during the hearing, it was indisputable that the Service utilized distinguishing colors, red, yellow, and green (and sometimes blue) to differentiate between varying

levels of carrier performance and to record carrier movement. It went unchallenged that the monitors were not continuously on. It is also undisputed that the displays contained restricted information. Finally, during the hearing, the parties stipulated to the fact that the display monitors included neither dates nor carriers' names.

The Service claimed that the display monitor was solely intended to communicate route data and was not performance-based. The Service contended that a past grievance settlement requiring the Route/Carrier Daily Performance/Analysis Reports to be posted justified the display monitor in the instant matter. According to the Service, that report identifies carriers' names to specific routes, the date, and how much mail volume they had for that day. Management retorted that the displays neither contained a date stamp, carriers' names, letter or flat volumes, or what time the carrier left for the street. The Service also alleged that it is not appropriate for the Union to argue that the information in the instant case is disallowed as performance-based data.

The Union, however, aptly pointed out, and it went unchallenged, that the Route/Carrier Daily Performance/Analysis Report merely shared an accounting of the previous day's mail volume and assignments. The Union explained that Route/Carrier Daily Performance/Analysis Report does not update in real time, does not attach evaluative colors to the carriers, does not track carrier times, and does not indicate whether a route/carrier is early, late, or on time. The Union also argued that the information presented on the challenged display screen established a new work/time standard of measurement, one that is not in accordance with Article 34 of the National Agreement.

Additional evidence regarding the Route/Carrier Performamce Analysis Report may have been helpful to the Arbitrator as it was not clear to the Arbitrator if, when, how, and where the Route/Carrier Daily Performance/Analysis Report was posted. However, the Arbitrator tends to

distinguish between the apparent previously-decided joint agreement to post mail volumes and what is being posted in the current case that is relatable to specific employees via their respective route numbers.

Although the Service portended that the display monitor contained no identifying information, it significantly compromised its position by acknowledging that route information is included on the displayed monitors. This was also evident to the Arbitrator because carriers testified that not only are route numbers displayed, but, and it went unchallenged, the carriers are also significantly familiar with the routes numbers of each other, and they can readily identify each other by name based on the route number. To the Arbitrator, if carriers can attribute specific routes worked to the red, yellow, green, and blue designations, this provides carriers with specific information about the carriers' individual performance.

The issue regarding the posting of information was not new to the parties. A significantly similar issue gave rise to M-00853, which involved the requirement of carriers to record their daily leave and return times on a tablet placed on their carrier cases. In the settlement of that grievance, it was mutually agreed that leaving and returning time notations were inappropriate and would be discontinued. The Arbitrator is persuaded by the Union's argument that although M-00853 specifically regarded the carriers posting leave and return times on tablets located on the carriers' cases, the actual prohibition against posting the leave and return times continues to stand. The fact that the carriers, rather than the Service, do not effectuate the posting of the data in the current case does not sufficiently distinguish it from M-00853. Also, M-00853 does not explain that it is only inappropriate for the carriers to be required to track leave and return times. Posting the leave and return times was what was determined to be unacceptable. M-00853 states that said notations (leaving and returning times) will be discontinued. The language, to the Arbitrator, is clear. As

stated in Elkouri & Elkouri, 8th Edition, if words "are plain and clear, conveying a distinct idea, there is no occasion to resort to interpretation, and their meaning is to be derived entirely from the nature of the language used. Because the language is clear, the Arbitrator sees no reason to further examine or interpret it.

In this matter, the Arbitrator is not promulgating that no performance-based data can be posted on the workroom floor. Performance-based is a broad term and it has not been, nor does it need to be, examined further in this case. The issue here is whether the information is not only performance-based but also attachable or relatable to individual employees. To the Arbitrator, the information, as posted, serves essentially as a public report card. This is not what is envisioned by the contract which speaks to the confidentiality and privacy that is required when any employee is addressed regarding personal performance. JCAM 16-4 instructs that discussions about minor offenses should be done privately. In the Arbitrator's view, the posting amounts to a public display of an employee's performance. This appears to be exactly what JCAM 16-4 tries to avoid.

To explain further, clearly, those employees with "red" and "late" indications are those who are more likely to be addressed regarding their transgressions. It follows that they may be more likely to be talked to, which may or may not eventually lead to further action. Although the record was clear that, to date, no such counseling or discipline had been assessed, the posted information makes it obvious what the varying levels of performance are for individual employees. This removes the privacy protection espoused in JCAM 16-4.

The parties bantered over whether the public display monitor constituted public information. While the Union argued that it did constitute public information, the Service claimed that it did not. Union members testified that although the display was in the workroom, the fact that other employees could review the performance of co-workers rendered it public information.

Likewise, the Union asserted that other non-employees entered the workroom and could readily review the information.

In this Arbitrator's view, information that relates to a carrier's individual performance, even if by route number, becomes public once it is posted in a manner for other carriers to view it and discern it. Arguably, the employees are not the same members of the public who may walk into areas of the post office outside of the workroom such as the lobby. Those individuals may be the customers or delivery persons. Of course, since they enter the lobby area, the information in the workroom may not viewable by them. Also, although the Union averred that others, such as family members, Amazon employees, and DHL or UPS workers also enter the workroom, the evidence presented did not establish that these individuals would have been able to identify individual performance levels of carriers based on their route numbers.

The Service indicated that the TIAREAP process report was even more informative and had been posted for all to see. The testimony, however, did not explicate this claim. The Arbitrator notes that on May 11, 2022, the Union and the Service entered into an agreement regarding the Technology Integrated Alternate Route Evaluation and Adjustment Process (TIAREAP) 2022-2033. The purpose of the TIAREAP agreement was to jointly evaluate, analyze, adjust, and maintain city delivery routes.

Page 11 of that jointly developed document provides as follows:

> "On each workday during the life of this agreement, the Workhour Workload Report for all routes, for the previous day, will be posted daily in a convenient location."

It was compelling to the Arbitrator that the TIAREAP report did not reflect the evaluative information triggered by the "red, yellow, green" colors and the "early and "late" notifications.

During their independent testimony, both Manager Pappas and Supervisor Grater indicated that they were unable to point to any benefit or other positive value to be derived from the information presented on the display monitor. Manager Pappas also testified that he did not know what "early" and "late" meant. Nor was he aware of whether the indications on the display monitor related to performance. While he testified that no carriers had been disciplined, he continuously stated, "I don't know" in response to questions asked about the display monitor. He further testified that the screens could not be utilized because they were not accurate, but he did not indicate why or how they were inaccurate or unreliable. On cross-examination, Pappas acknowledged that leave and return information is included on the display monitor and stated that both sides stipulated to the survey information. Pappas concluded his testimony by indicating that the posting of the information is controlled by Headquarters.

The Union asserted that the display was a unilateral action taken by Management, one that was neither presented to the Union, nor discussed with the carriers. The Postal Service did not deny its failure to communicate but retorted that because previous postings had been done, there was no need to address the display monitor with the Union. In the Arbitrator's view the Service's introduction of the color coding and the early and late indications significantly modified any prior postings that may have been agreed upon between the parties and created a need to communicate and discuss the display monitor before its implementation.

The Union averred that contrary to the Handbook, M-39, Section 115.4, the display posting runs afoul of the Service's requirement to ensure dignity and respect in the workplace. The Union supported its position by tendering surveys completed by employees. This Arbitrator is not one to automatically yield to surveys because they can certainly be developed to generate whatever conclusion the drafters are seeking to impart. However, the Case File (J-3) demonstrates that the

surveys generally frowned upon the display monitor. The testimony and surveys indicated that some members were embarrassed; claimed the information was inaccurate; stated they felt their privacy had been violated; felt competition was being generated; said they were unaware of any purpose for the display; felt the monitor was unnecessary; and felt disrespected.

In a purportedly supportive case submitted by the Service, Arbitrator Bajork, in H94N-4H-X 96035469, determined that the Union failed to present evidence that the form was used as an instrument to intimidate carrier employees The Arbitrator distinguishes the current matter from the case presented by the Service. Here, the differentiation between red, yellow, and green performance and the distinction between "early" versus "late" sends a message that is not a positive one. The Service stated that the Union's argument is limited to the feelings of some carriers. Although the Service indicated that the carriers were unaffected except for their feelings being affected, the Arbitrator is persuaded that the display monitor information sufficiently impacted the employee's conditions of employment. Also, the Arbitrator is more focused on the fact that the display was posted and contained information that was inappropriate because it provided performance-based data specific to individual carriers. The Union also pointed out, without challenge, that the National Agreement does not iterate the standards that were both implicit in and created by the Service in posting the display information.

The Service contended that the Union's argument was moot because the Service has not recently utilized the display monitor. In addition, in the Service's view, due to the Service's inability to turn the display monitor on or off, this matter is no longer an issue. No specific evidence was presented on how the monitor is controlled. To the Arbitrator, at some point, the monitor was installed, which implies that the ability to operate it does exist. Likewise. the fact that it hasn't

been used over a period of time does not establish that it cannot, or will not, be used in the future if assigned to do so

Both the Union and the Service testified that the posted display monitor information had inaccuracies on it. Neither side delved into those inaccuracies, but the Union complained that several variables, such as traffic or vehicle issues, as well as other incidental occurrences, may have had an impact on carrier routes, and that those variables were not considered in the "scores" that were assigned to the routes on the display monitor.

CONCLUSION

Based on the analysis above, the Arbitrator finds that although the information on the monitor was displayed as route data, it amounted to carrier performance data as well as route data. The carriers are significantly familiar with the route numbers of each other. The display amounted to a publicized report card for each carrier. The absence of the carriers' names did not ascertain anonymity or privacy. Rather, highlighting performance levels in red, yellow and green generated attention toward individual performance levels. Employees expressed the negative impact this creates in the work environment. The monitors presented the route numbers based on standards that have not been negotiated, and also impact working conditions. The posted information was not determined to be accurate by either the Service of the Union. Publicly posting the information was inappropriate. Although no discipline or counseling took place, the red, yellow, and green color and promptness denied the carriers the privacy protections afforded by the National Agreement. The record did not clearly indicate that the Service knew what the information represented, what it meant, or how it would be used. The Arbitrator is left with the question: *If no one knows what the data meant, where it came from, whether any benefit was derived from it, or why it is there, what is the reason for maintaining it?*

While some issues may have gone unaddressed, they were not determined to be critical to the outcome of this matter.

AWARD

The Union's grievance is sustained.

Management shall cease and desist from violating Step 4 settlement H1N-5KK-C 6754J (M-00853), and from publicly displaying carrier performance and/or timekeeping information that can be associated with individual carriers on the display monitor.

September 13, 2024

Earlene R. Baggett-Haye, Esq.
Arbitrator