

**REGULAR ARBITRATION PANEL**

|                              |   |                               |
|------------------------------|---|-------------------------------|
| In the Matter of Arbitration | ) |                               |
|                              | ) | Grievant: Class               |
| between                      | ) |                               |
|                              | ) | Post Office: Billings, MT     |
| UNITED STATES POSTAL SERVICE | ) |                               |
|                              | ) | USPS No. 4E 19N-4E-C 22182814 |
| and                          | ) |                               |
|                              | ) | NALC DRT No. 02-579979        |
| NATIONAL ASSOCIATION         | ) |                               |
| OF LETTER CARRIERS, AFL-CIO  | ) | NALC Branch No. DS-5-22       |

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Before: M. Zane Lumbley, Arbitrator, NAA

Appearances: For USPS: Kevin A. Cook For NALC: Matthew Parkin

Place of Hearing: Billings, MT Date of Hearing: November 14, 2023

**AWARD SUMMARY:**

- I. It is the Award of the Arbitrator that management violated Articles 5, 15, 19 and 41 of the National Agreement and the Step 4 Settlement Q06N-4Q-C-11022051, September 16, 2011, M-01769, at the Billings Installation by its implementation of and insistence on use of the 60-minute office time provision contained in the City Delivery Performance Expectation Play, its violations of the Joint Statement on Violence and Behavior in the Workplace flowing from the harassment and threats of discipline directed at carriers for their failure to meet the 60-minute office time standard and its failure to timely cooperate in the Union’s investigation of grievances.
- II. It is therefore Ordered that management cease and desist from its insistence on use of the 60-minute office time provision contained in the City Delivery Performance Expectation Play and formally advise employees of that fact, cease and desist from its harassment and threats of discipline directed at carriers for their failure to meet the 60-minute office time standard and cease and desist from its failure to timely cooperate in the Union’s investigation of grievances.
- III. The Arbitrator hereby retains jurisdiction for sixty days from the date of this Award for the limited purpose of assisting the parties as may be necessary in the implementation of the remedy directed above.

|                |                      |            |                   |
|----------------|----------------------|------------|-------------------|
| Date of Award: | December 27, 2023    | Corrected: | December 27, 2023 |
| PANEL:         | WestPac Area Regular |            |                   |

## OPINION

### **PROCEDURAL MATTERS**

This matter was convened pursuant to Article 15 of the National Agreement (“NA” or “Agreement”) at Billings, Montana, on November 14, 2023. The parties were represented, placed four exhibits into evidence and called two witnesses to testify under oath administered by the Arbitrator. The advocates argued their respective cases orally at the conclusion of hearing and the record was closed on November 14, 2023.

### **ISSUE**

The parties agreed upon the following Step B statement of issues to be resolved:

Did management violate Articles 5, 15, 19, and/or 41 of the National Agreement and/or a Step 4 Settlement Q06N-4Q-C-11022051, September 16, 2011, M-01769, at the Billings Installation?

If so, what is the appropriate remedy?

### **RELEVANT PROVISIONS OF THE NATIONAL AGREEMENT**

The relevant provisions of the National Agreement are:

#### **ARTICLE 3 MANAGEMENT RIGHTS**

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable law and regulations:

A. To direct employees of the Employer in the performance of official duties;

...

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;

...

**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 15  
GRIEVANCE-ARBITRATION PROCEDURE**

. . .

**Section 3. Grievance Procedure – General**

. . .

A. The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. At each step of the process the parties are required to jointly review the Joint Contract Administration Manual (JCAM).

. . .

**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**

. . .

B. The Employer agrees that any work measurement system 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.

...

**ARTICLE 41  
LETTER CARRIER CRAFT**

...

**Section 3. Miscellaneous Provisions**

...

M. The NALC will be informed concerning changes in existing regulations relating to the duties and functions of city letter carriers. Further it is agreed that when changes of a substantive nature are made they will only be made in accordance with the contractual obligations already binding upon the parties under Article 34, "Work and/or Time Standards."

...

**BACKGROUND**

This grievance arose in January 2022 in the Centennial Station of the Billings, Montana, Installation in response to management's use of the City Delivery Performance Expectation Play (hereinafter "PEP"), one provision of which provides, "Are carriers departing the office and loading within 60 minutes or less from their Begin Tour?"<sup>1</sup> The parties processed the grievance through the contractually mandated steps of the grievance procedure. When impasse was reached at Step B on August 23, 2022, it came on for arbitration before the undersigned as set forth above.

**DISCUSSION AND ANALYSIS**

**Position of the Union**

The Union asserts the 60-minute office time provision violates the Agreement by

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<sup>1</sup> Joint Exhibit No. 2 at 46.

unilaterally imposing a time standard that disregards management's own statistics, including its Delivery Operations Information System (hereinafter "DOIS") projections, runs afoul of the 2011 Step 4 settlement codified in the M-01769 as well as the 2007 Step 4 settlement announced in the M-01664 and led to supervisory violations of the Joint Statement on Violence and Behavior in the Workplace (hereinafter "JSOV") by virtue of the harassment and threats of discipline directed at carriers for their failure to meet the standard. The Union also argues management unreasonably delayed its investigation of this matter and necessitated the filing of an unfair labor practice charge with the NLRB before it would cooperate.

By way of remedy, NALC seeks cease-and-desist orders as well as directives that management cooperate with the Union's right to investigate grievances and formally advise employees of retraction of the 60-minute policy at issue.

### **Position of the Service**

The Service contends the Union, by its grievance and various remedy requests, seeks to circumvent bargaining and eliminate Article 3 of the Agreement and the intent of national grievance resolutions that provide the authority for management to use time standard programs as long as they are not the sole determinant for establishing office or street projections. According to the Employer, the provisions contained in the Performance Expectation Play merely set goals for the office and have not led to supervisory interactions with employees that run afoul of the JSOV or any provision of the Agreement. It also contends that the failure of employees to satisfy the 60-minute goal of the PEP has not provided the basis for any disciplinary action against employees. Moreover, the Employer asserts it did not inappropriately delay the Union's

investigation of the grievance.

Thus, the Employer seeks dismissal of the grievance.

### **Decision of the Arbitrator**

Having now had the opportunity to consider the full record in this matter, I have decided that management violated Articles 5, 15, 19 and 41 of the National Agreement and the Step 4 Settlement Q06N-4Q-C-11022051, September 16, 2011, M-01769, at the Billings Installation by 1) its implementation of and insistence on use of the 60-minute office time provision contained in the City Delivery Performance Expectation Play, 2) its violations of the Joint Statement on Violence and Behavior in the Workplace by virtue of the harassment and threats of discipline directed at carriers for their failure to meet the 60-minute office standard and 3) its failure to timely cooperate in the Union's investigation of grievances. Although I have studied all the evidence submitted and considered each argument raised, the following discussion will address only those considerations I found either controlling or necessary to make my decision clear.

It is undisputed that the PEP was unilaterally implemented by local management in response to orders from above. It is also undisputed that the PEP contains language aimed at having carriers "departing the office and loading within 60 minutes or less,"<sup>2</sup> the portion of the PEP at issue here. The Service's claim that does not amount to an "expectation" but merely a "goal" cannot be adopted inasmuch as the PEP itself refers to the policy in question as "[c]lear leave time expectations"<sup>3</sup> and requires "supervisors [to] identify and correct office performance deficiencies by completing PS Forms 1838-C." That management

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<sup>2</sup> Joint Exhibit No. 2 at 46.

<sup>3</sup> *Ibid.* Emphasis added.

considers the 60-minute leave time an expectation to be met by carriers is buttressed by the testimony of the Union's two witnesses supported by numerous employee statements in the file that supervisors have harassed and threatened carriers with discipline on a daily basis. The fact that no carrier has yet to be issued discipline for failure to satisfy the expectation cannot change the impact of such conduct on carriers. *Case No. C11N-4C-C 16227981/NALC Branch No. 129-16* (Talmadge, 2016). To his credit, while Manager, Customer Service Sovieraj, the sole management witness to testify, stated he has never instructed carriers to move to the street before completing casing or told his subordinate supervisors to do so, he conceded he was not there at all times and, thus, could not say that no yelling at or threatening of carriers occurred.

As the Union notes, Article 5 of the Agreement prohibits management from taking any unilateral action inconsistent with the terms of the Agreement and Article 19 provides that all handbook and manual provisions directly relating to wages, hours and working conditions are considered a part of the parties' bargain. Both of those articles must be found to have been violated here where, as the Union argues, management appears to have promulgated the PEP out of thin air rather than on the basis of those considerations set forth in Section 122.21 of the Handbook M-39 that specifically require that carriers' leaving times be determined by, *inter alia*, the "[t]ime required to case the mail, withdraw, tray or strap out mail, obtain parcels, and complete other required office duties" or Section 242.311 specifying, "Under normal conditions, the office time allowance for each letter route shall be fixed at the lesser of the carrier's average time used

to perform office work during the count period or the average standard allowable office time.” Instead, management’s approach here ignores the reality of its own projected and actual numbers that, during times relevant, demonstrate the impossibility of meeting the one-hour expectation.<sup>4</sup> Thus, it is difficult to argue with the Union’s view that the one-hour expectation set forth in the PEP was the sole determinant of leaving times in violation of the M-01769 stating as follows:

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.<sup>5</sup>

I also believe, given the aforementioned demonstrable impossibility of satisfying the PEP expectation, that management’s approach here, by definition, was not “fair, reasonable and equitable” as unequivocally required by Article 34. As a result, the Union is correct that the Employer violated Article 41 of the Agreement requiring that “changes of a substantive nature . . . will only be made in accordance with the contractual obligations already binding upon the parties under Article 34.” To be clear, management’s reserved right to direct employees, maintain the efficiency of its operations and determine the methods by which its operations will be conducted listed in Article 3 do not entitle it to ignore other equally valid provisions of the Agreement.

Moreover, in view of the way in which it attempted to cause employees to comply with the 60-minute expectation, I am satisfied that management violated

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<sup>4</sup> See, e.g., Joint Exhibit No. 2 at 34-36, the Route/Carrier Daily Performance/Analysis Report, an element of DOIS, from January 29, 2022, that shows both projected and actual office hours significantly exceeded one hour for all 21 routes in the office and exceeded two hours in many.

<sup>5</sup> Nor, although they were ignored here, can even DOIS projections serve as “the sole determinant of a carriers [sic] leaving or return time,” according to the M-01664 cited by the Union. *Case No. K11N-4K-C 14228143/NALC DRT No. 13-312818* (Braverman, 2015).

Section 115.4 of the Handbook M-39 by failing to “maintain an atmosphere between employer and employee which assures mutual respect for each other’s rights and responsibilities.” Thus, I am convinced by the testimony of Union President Senn and Steward Quilliam confirmed by the numerous consistent employee statements contained in the file that the yelling, harassment and threats of discipline made by Centennial Station supervisors failed to live up to management’s part of that bargain. The approach of local management, instead, exhibited a devotion to the cause placed on them by then-MPOO Longshore in her email to then-acting Officer-in-Charge Spitzer and others stating, in relevant part:

If you can not pull this off daily I will make it an accountable item. Starting tomorrow good quality commitments and push out the door prior to 60 minutes.<sup>6</sup>

In agreement with the Union, and applying the reasonable person standard, I also find that approach violated the Service’s commitment in the JSOV codified in the March 19, 1992, M-01242 to treat “every employee at every level of the Postal Service . . . with dignity, respect, and fairness.” *Case No. D94N-4D-C 98005421/NALC GTS No. 040474* (Poole, 2000) and *Case No. B94N-4B-C 99231980/NALC GTS No. 27650* (Shea, 2000). As the JSOV goes on to provide, “*Making the numbers’ is not an excuse for the abuse of anyone.*”<sup>7</sup>

Lastly, I agree with the Union that management’s proven failure to cooperate in its investigation in a timely fashion violated Article 15 of the Agreement. Nothing more than the credible testimony of Union Steward Quilliam

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<sup>6</sup> Joint Exhibit No. 2 at 22.

<sup>7</sup> Joint Exhibit No. 2 at 211. Emphasis in original.

verified by the March 29, 2022, unfair labor practice charge she filed after numerous requests for an interview of MPOO Longshore made over a period of two months were not granted is required to demonstrate the lack of an intention to cooperate contrary to the Service's agreement in Article 15 to a "good faith observance . . . of the principles and procedures set forth above" aimed at achieving "resolution of substantially all grievances initiated hereunder at the lowest possible step." Indeed, if any additional evidence of Longshore's cavalier attitude toward the Union's representational rights were necessary to prove the point, one need only examine the credible recitation by Quilliam of Longshore's responses to the questions asked during her eventual April 21, 2022, interview in which Longshore makes such claims as "We can use anything" to establish base street time, "If a carrier can do it a certain time one day, they can do it any day," "You are not going to tell me how to establish demonstrated performance, thank you" and her meritless out-of-hand denial of Quilliam's observation that the Union had filed NLRB charges in an effort to move its investigation forward.<sup>8</sup> Such an approach fails abjectly to live up to the Service's Article 15 obligations.

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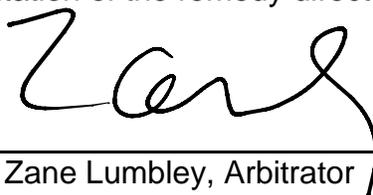
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<sup>8</sup> Joint Exhibit No. 2 at 66-68. Longshore did not testify.

**A W A R D**

- I. It is the Award of the Arbitrator that management violated Articles 5, 15, 19 and 41 of the National Agreement and the Step 4 Settlement Q06N-4Q-C-11022051, September 16, 2011, M-01769, at the Billings Installation by its implementation of and insistence on use of the 60-minute office time provision contained in the City Delivery Performance Expectation Play, its violations of the Joint Statement on Violence and Behavior in the Workplace flowing from the harassment and threats of discipline directed at carriers for their failure to meet the 60-minute office time standard and its failure to timely cooperate in the Union's investigation of grievances.
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- III. The Arbitrator hereby retains jurisdiction for sixty days from the date of this Award for the limited purpose of assisting the parties as may be necessary in the implementation of the remedy directed above.

  
\_\_\_\_\_  
M. Zane Lumbley, Arbitrator

December 27, 2023  
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Date