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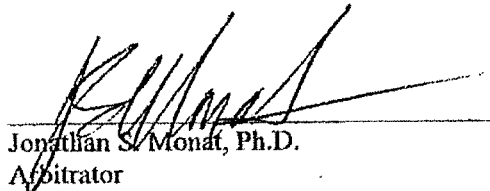
REGULAR ARBITRATION PANEL

In the Matter of Arbitration	(Grievant:	Class Action
)		
between	(Post Office:	San Diego Scripps Ranch, CA
)		
UNITED STATES POSTAL SERVICE	(USPS Case No:	F06N 4F C 11246919
)		
and	(NALC Case No:	11C503
)		
NATIONAL ASSOCIATION OF	(
LETTER CARRIERS)		

BEFORE:	Jonathan S. Monat, Ph.D., Arbitrator
For the U.S. Postal Service:	Barbara Rodriguez
For the Union:	John Matson
Place of Hearing:	San Diego Post Office
Date of Hearing:	December 8, 2011
Date of Award:	February 17, 2012
Relevant Contract Provision:	Article 34
Contract Year:	2006-2011
Type of Grievance:	Class Action

Award Summary:

The grievance is sustained. Management violated Articles 3, 5, 15, 19 and/or 34 of the National Agreement when it posted a daily Pivot Board. The remedy shall be as specified at the top of page 10.


Jonathan S. Monat, Ph.D.
Arbitrator

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INTRODUCTION

A hearing was held at the San Diego District Offices on December 8, 2011. The parties agreed that the matter was properly before the Arbitrator for a final and binding decision under the terms of the National Agreement (NA)(J1). All evidence and testimony were admitted under oath duly administered by the Arbitrator. The hearing proceeded in an orderly manner. The advocates had a full and fair opportunity to present their cases, examine and cross-examine witnesses, and make oral and written arguments. Each party presented one witness. The Moving Papers were admitted (J2:1-54). In lieu of oral closing arguments, the advocates agreed to file written post-hearing briefs no later than a January 12, 2012, postmark. The post-hearing briefs were received by the Arbitrator on January 13, 2012, upon which the hearing was closed. The Arbitrator will not reproduce entire sections of the NA; rather pertinent sections will be quoted as essential and appropriate to the discussion.

The parties stipulated that the use of the "pivot chart" was discontinued in the above facility on or about October 27, 2011.

ISSUES

The advocates agreed to the statement of the issue from the Step B Team Impasse decision:

"Did management violate Articles 3, 5, 15, 19 and/or 34 of the National Agreement when it posted a daily Pivot Board? If so, what is the appropriate remedy?"

BACKGROUND

Scripps Ranch became of the first stations in the San Diego District to install the Flat Sorting Sequence (FSS) creating a mismatch of office time and workload. Under Article 34, requires management to provide a fair day's work for a fair day's pay. Around May 11, 2011, local management began to use a dry erase board to allegedly demonstrate the expected workload due to excessive office time. The routes were adjusted about October 27, and the pivot board was no longer in use. The Informal A was held on May 27, 2011. After progressing through the grievance procedure, the Step B Team 'Impassed'

the dispute. The Union moved the matter to arbitration.

POSITION OF THE NALC

Shop Steward LC Kathy Akana testified that the so-called pivot board was rarely changed after the names of the carriers and the amount of time to be pivoted was listed. The volumes were not posted. Carriers were instructed to take the pivot and call in by 3 PM if assistance was needed. Parcels were not considered and were not given to carriers until the route was pulled down. Consequently, there was a lot of mandatory overtime which led to settlements totaling about \$8000. FSS reduced office time by about 50%. Management was posting pivot assignments before carriers reported without communicating with carriers to determine how much, if any, undertime each has. Management's claim that the day's mail volume is captured before the carriers report is not correct. It does not include the extra carrier work in handling hot mail, packages and accountables. Numbers are posted before carriers report. Extra swings are determined before the carriers arrive at the office begin tour.

The evidence suggests management is using DOIS to determine leaving times. Based on this testimony, Postal Service management violated Article 19, M-39 and M-41, Article 34 and Article 15. There have been prior Step B decisions (5) in the San Diego installation and one pre-arb settlement regarding the improper use of DOIS. It has been made clear to management that DOIS is not the sole factor used in determining leaving time and pivots. The Station Manager cannot count mail and calculate casing time at 18 and 8 is less than 30 minutes, but then gets parcels and completes the pivot board before carriers arrive.

At the very least, the pivot board violates relevant sections of the M-39 and M-41. Management is required by a prior Step B Decision to discuss the workload and other factors with carriers when determining leave time. Management must use the base street time in DOIS (or its own system) to calculate a "base average street time for a particular day." The M-39 requires that all the mail be counted before management can determine office times. Pivoting routes and capturing undertime are management's

tools to provide each full-time carrier with a full-time workload.

The Union seeks a remedy that includes secession of the use of the pivot board and DOIS to determine a carrier's daily workload, secession of instructing carriers on their project leave times, and cease and desist bullying of carriers by using DOIS as a speed-up tactic.

POSITION OF THE USPS

Management argued that DOIS was not a factor utilized to determine a carrier expected leave and return time. Supervisor Mancía used annual leave and sick calls and the pivot board did not replace Form 3996. A carrier's expected AM office time is calculated using casing standards of 18/8 per minute plus fixed office time. The base average time for a route is added to determine how much time the route should take for the day. Subtracting this amount from 8 hours yields the amount of time the carrier is available for auxiliary assistance.

There is a settlement letter in the file (J2:17) signed by VP of Labor for the USPS and the President of the NALC stating that DOIS is a management tool for estimating a carrier's daily workload. The use of DOIS does not change the carrier's reporting requirements in the M-41, the supervisor's responsibilities in the M-39 or the joint responsibilities as stated in M41, Section 28. DOIS cannot be used as the sole basis of corrective action. Management is responsible for accurately recording volume and other data in DOIS. Route based information may be change only through a full count and inspection or minor route adjustment.

The use of the pivot board did not create changes affecting wages, hours and other terms and conditions of employment nor did such use create changes to Article 34 "Work or Time Standard." The pivot board did not replace Form 3996. The Union failed to provide any hard evidence, offering only assumptions that DOIS was used to complete the pivot board. Supervisor Mancía's testimony was un-rebutted. According to the M-39, section 122, the leave time for carriers is determined by 1) the normal workload for the route, 2) the time all mail for the same day's delivery is available, and 3) the time

required to case this mail, withdraw, tray or strap out, obtain parcels and complete other required office duties. It is the responsibility of the delivery unit manager to record daily workloads for each route and provide assistance where necessary so carriers meet scheduled leaving times.

The Union failed to prove by a preponderance of the evidence that the M-41 and/or the M-39 were violated. There was no proof any carrier was harmed with respect to wages, hours and working conditions. There have been about fifteen (15) grievances for improper OT scheduling related to the use of the pivot board. The documents were not placed in the grievance file by the Union. There is no evidence of bullying, intimidation or use of DOIS as a speed-up tactic. Pivoting routes and capturing under-time are management's tools to provide each full-time carrier with a full-time workload.

Arbitrator Mittenthal held that there is no remedy when either party is in the position they would have been in had there been no contract violation. A remedy restores the *status quo ante*. In the instant case, there is no proof management scheduled swing carriers before they entering the facility. There is nothing in the case file to show that management used only DOIS to determine a carrier's workload for the day or as a speed-up tactic. The Step B Team did recognize management's right to use DOIS in determining work loads and leaving times.

ARBITRATOR'S FINDINGS AND DISCUSSION

The Arbitrator has studied the entire record including examination and cross-examination of both witnesses, Moving Papers, NA and JCAM, other arbitration decisions and the post-hearing briefs of the parties. The Union has the burden of proving a contract violation by a preponderance of the evidence. All evidence has been considered and given appropriate weight whether or not specifically discussed below. Discussion of the Arbitrator's rationale focuses on the salient and compelling reasons underlying the decision.

The use of the Delivery Operations Information System (DOIS) has been a bone of contention between the NALC and management since its implementation. The Moving Papers contain at least four

(4) Step B Decisions in the period 2008-2009. The decisions issued cease and desist orders stopping DOIS from being used as the sole basis for determining leave times. In one case, the proposed leave times were written on a plastic card at each carrier's case before discussing workloads with carriers in a manner similar to the pivot board. The seventh Step B Decision held that management failed to abide by the other six Step B Decisions. The B Teams in each case concluded that DOIS was used improperly as the sole source of information for determining leave times.

The M-39, Section 122.21, sets out the criteria by which carrier leave times are determined. Four factors are listed: a) Workload - the normal workload for the route; b) Availability of Mail - the time all mail for the same day's delivery is available; c) Necessary Office Time - Time required to case this mail, withdraw, tray or strap out mail, obtain parcel post, and complete other office duties; and d) Business Hours - Normal community business hours. Furthermore, M-39, Section 122.22 (paraphrasing) states that the delivery unit manager "must be aware of and record the daily workload for each route," and provide assistance where necessary for carriers to meet scheduled leaving times; ...use carrier late leaving reports to help determine performance efficiency..." (J2:19)

Although the Step B Decisions recognized management's right to use DOIS in determining workload and leave time, DOIS cannot be the sole source of information when determining leave time. This is confirmed in a letter dated September 11, 2007 signed by NALC President Young and USPS VP Labor Relations Tulino stating that "DOIS does change the letter carrier's reporting requirements..., supervisors scheduling responsibilities..., or the letters carrier's and supervisor's responsibilities..."¹ (J2:17) "DOIS projections are not the sole determinant of a carrier's leaving or return time." This letter makes it clear that the M-39 and M-41 still govern although data may still be recorded in DOIS. DOIS does not take into account availability of mail or other office duties and does not include interaction with carriers to determine performance expectations.

¹ Citing M-41, Section 131.4, M-39, Section 122, M-41, Section 28 respectively.

The remedy in each of the Step B Decisions included an order to cease and desist using DOIS as the sole basis for determining street and office time. The Step B Decision dated July 31, 2009 (J2:43-45) added a cease and desist order for failing to abide by the prior Step B Decisions as well as pre-arb settlements and a National Step 4 Decision (Q01N-4Q-C 05022610). The San Diego installation was instructed by two Step B Decisions (J2:34-36; J2:29-31) to “cease and desist posting leave time for carriers solely on DOIS. Management will review the route’s workload with each carrier every day to determine leave and return times” (J2:44-45). Also, this same Step B Decision, citing a pre-arb settlement, held: “Management will cease and desist approaching letter carriers before they have received their last dispatch of mail, including accountables and parcels, and telling the Carriers what time they will be leaving for and returning from their routes based on DOIS projections.”

The summary and review of the several Step B Decisions, M-39 and M-41, particularly in relevance to the San Diego installation, is important to understand the issue and facts of the instant case and at Scripps Ranch Annex. There is unrebutted testimony by Union Steward Akana that the pivot times were posted by the time clock when the carriers reported for duty at 7:30 AM. Shop Steward Akana testified that the parcels and SPRS were not sorted by the clerks until after the carriers began tour. Nor was residual mail known. This was not disputed by management. It is clear mail volume is not uniformly distributed but will vary daily on each of the 27 routes.

Based on Ms. Akana’s unrebutted testimony, the carriers are not consulted before the data are posted on the pivot board. Given only one manager on the floor before 9 AM, there is a heavy burden on that supervisor to gather information from 27 carriers. Mr. Mancia testified that he knew much of the volume, parcel count and the mix of the mail before the carriers arrived at 7:30. The pivot board was completed by 7:25. According to Ms. Akana, again unrebutted, the times and data on the pivot board rarely were changed by the manager even though he claimed it was not definitive. The preponderance of the evidence suggests otherwise.

Mr. Mancia testified not only that he had completed his own counts by 7:30 AM, he testified that he made mental calculations for each route using standard time elements. He added the base street time (a standard number), his own survey of the work area and minimum standards for casing mail (18 + 8). Then he added fixed office time of 33 minutes pulling down at the rate of 70 pieces per minute. He calculated standard time for average pull down rates in minutes to arrive at office time. With street time determined to be 5.5 hours and 4.5 minutes for miscellaneous office time, Mr. Mancia came up with 6.25 hours or 1.75 hours of undertime. This is the basis for the pivot board which he testified was created in order to communicate with letter carriers.

What Mr. Mancia failed to do was communicate directly with and in cooperation with the letter carriers on each of the 27 routes as is required by the M-41 and M-39. Step B Teams Decisions discussed above held that DOIS does not relieve management of its responsibility to discuss the workload and other factors (M-39, Section 122.21 and others) when determining leave time. Discussion means face-to-face interaction with each letter carrier to negotiate the leave time and determine if auxiliary assistance or some other adjustment is necessary. This is a daily responsibility. Furthermore, the M-39 specifically requires letter carriers to "verbally inform management when you are of the opinion that you will be unable to case all the mail distributed to the route, perform other required duties, and leave on schedule or when you will be unable to complete delivery of all mail" (M-39, Section 131.41). Once informed, management has the responsibility to issue the carrier appropriate instructions. The pivot board does not meet this requirement.

What appears to have happened during the eight month period, October 2010 to May 2011, is those daily conversations did not take place. A letter carrier cannot provide meaningful information until he/she is aware of all the mail that is to be delivered on the route. The numbers on the pivot board were not determination through mutual discussion per the manuals. Carriers were given a leave time without any input and before the dispatch of mail, parcels and accountables.

The pivot board was used every day from October 2010 to May 2011 when its use was stopped because of completion of route adjustments. During the October-May period, however, the evidence supports the conclusion that pivot times were determined before the requirements of the M-39 and M-41 were met. Steward Akana testified on rebuttal that pivot schedules rarely changed even though Mancina testified carriers could use a 3996 to request assistance. The Arbitrator recognizes that many Form 3996 requests are not granted. However, the preponderance of the evidence supports the Union's claim that the pivot board remained essentially unchanged and, therefore, DOIS was the primary means on determining leave and return times.

This conclusion means that letter carriers are effectively left out of determining leave and return times, a violation of Article 19, M-39 and M-41, and Article 34. Management has argued that the use of DOIS does not impact wages, hours and working conditions. Certainly the carriers' pay is not impacted in a negative way, given the 8 hour per day/40 hours per week guarantee. The parties negotiated certain conditions of employment requiring that supervisors and letter carriers discuss the four factors set forth in M-39, Sections 122.21 and 122.22. By circumventing this requirement and making the pivot board the primary tool, management has made DOIS the sole decision tool contrary to the National letter of agreement (J2:17). Meaningful communication (discussing the M-39 factors) is a contractually required working condition.

There is not much hard evidence in the record that local management bullied and intimidated carriers by using DOIS as a speed-up tactic. One can look at the number of grievances during the period in question to get an indirect measure of worker sentiment and dissatisfaction. Certainly the carriers did not welcome DOIS. However, there is not sufficient evidence in the record to enable the Arbitrator reach conclusion of fact that management was engaged in bullying and intimidation of letter carriers at the Scripps Ranch facility.

Remedy

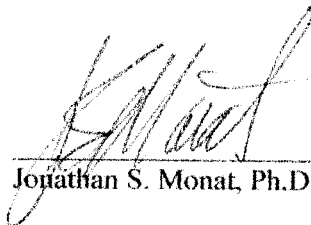
The Union has requested a specific set of cease and desist orders. The Arbitrator will order most of the orders requested even though the pivot board is no longer used at Scripps Ranch. The orders are:

- 1) Management shall cease and desist from utilizing pivot boards to assign daily pivots;
- 2) Management shall cease and desist using DOIS as the primary tool to determine a carrier's daily workload; and
- 3) Management shall cease and desist instructing carriers on their proper leave times without the required verbal communication and discussion.

AWARD

The grievance is sustained. Management violated Articles 3, 5, 15, 19 and/or 34 of the National Agreement when it posted a daily Pivot Board. The remedy shall be as specified at the top of this page.

February 17, 2012



Jonathan S. Monat, Ph.D., Arbitrator