National Arbitration Panel

In the Matter of Arbitration	)	
	)	
	)	
between	)	
	)	
	)	Case No.
United States Postal Service	)	Q94T-4Q-C 98099959
	)	
and	)	
	)	
American Postal Workers Union	)	

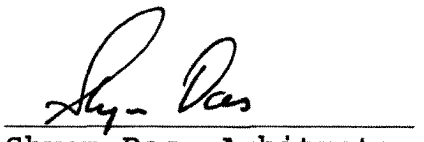
Before: Shyam Das

Appearances:

For the Postal Service:	Ann R. Cronin, Esq.
For the APWU:	Lee W. Jackson, Esq.
Place of Hearing:	Washington, D.C.
Dates of Hearing:	April 23, 2008 April 24, 2008 May 15, 2008
Date of Award:	May 27, 2009
Relevant Contract Provision:	Articles 3, 5, 19 and 34
Contract Year:	1994-1998
Type of Grievance:	Contract Interpretation

Award Summary

The Union's appeal in this case is denied on the basis set forth in the above Findings.



Shyam Das, Arbitrator

On June 1, 1998, the Postal Service promulgated and transmitted to vehicle maintenance managers Vehicle Maintenance Bulletin V-07-98 (1998 VMB), which covers Preventive Maintenance Inspection (PMI) Program. This 1998 VMB replaced Fleet Management Bulletin V-11-93, dated February 25, 1993, (1993 FMB).

The 1993 FMB included guidelines for inspecting various categories of Postal vehicles. The stated purpose of the guidelines was "to provide a thorough, systematic and consistent method of vehicle inspection." The guidelines consisted of detailed checklists of the inspection work to be performed and estimated repair times (ERTs) for various segments of the inspection, e.g., cab area, electrical compartment area. The 1993 FMB, which was a revision of an earlier 1984 FMB, continued the policy of "a service is a service," under which each inspection covered all of the items to be inspected on that type of vehicle. Frequency of inspections varied on the basis of average mileage.

The 1998 VMB encompassed a number of changes. Most significant, two levels of inspection were established. As set forth in the bulletin:

> These guidelines have been changed to allow for two levels of inspection: A and B. In all cases, the B level inspection is more in-depth and takes more time than the A level inspection. This two-tiered approach allows VMFs to perform the necessary level of PMI based on each vehicle's mileage and operating history....

For smaller vehicles, the difference between the A and B inspection is that brake linings and emission control systems are checked only on B inspections (at least once a year) and waxing -- which had not previously been included in PMI -- is done on B inspections. On larger vehicles, certain additional tasks are to be performed only on B inspections. These changes reflect a management determination that the previous "a service is a service" policy was wasteful and unduly expensive.

The 1998 VMB also added detailed narrative descriptions of individual inspection tasks, designed to eliminate confusion and promote consistency at the various motor vehicle facilities. Checklists were revised so as to eliminate repetitive raising and lowering of the vehicle and to otherwise optimize inspections. New ERTs now cover inspection of the entire vehicle. There are separate ERTs for A and B inspections and for A and B inspections of CNG vehicles. The 1998 VMB provides that the estimated time to wax a vehicle is one hour, which is in addition to the ERT for the inspection and is to be added as a separate line item on the work order.

On July 9, 1998, the Union filed an appeal to national arbitration regarding the 1998 VMB.[1] The appeal states:

> Please be advised that pursuant to Article 19 the APWU is appealing the above

[1] The Union pointed out that its national office first learned of the changes included in the 1998 VMB when a copy was provided by a Union representative in the field.

> referenced matter to arbitration. The particulars of this case are provided at the close of this letter.
>
> The issuance of the Vehicle Maintenance V-07-98 titled Vehicle Maintenance Inspection (PMI) dated June 1, 1998 to the field is in violation of Articles 5, 19, and 34 of the National Agreement. The Postal Service failed to provide the Union with any input prior to issuing this bulletin that has a great impact on the wages, hours and working conditions of vehicle maintenance employees that work in the VMFs. The Union was never notified of any time work study, pilot programs or test programs that were conducted in a fair and equitable manner that would warrant reducing the ERT times that have long been in place in the VMF. These vehicle maintenance bulletins come to the Union under the guidelines set forth in Article 19. The PO-701 Fleet Management Handbook was violated as it relates to Section 344.5, and this was a unilateral action taken in violation of Article 5 of the National Agreement.

On July 10, 1998, Robert (Bob) Pritchard -- Director of the APWU's Motor Vehicle Division -- sent the following letter to Sam Pulcrano, Manager of Contract Administration:

> On June 24, 1998, I received a copy of the Vehicle Maintenance Bulletin, V-07-98, Preventive Maintenance Inspection (PMI) Program with a Transmittal Letter date of June 1, 1998.
>
> I find it disturbing that the Union was not involved with this prior to its implementation in the field. The APWU is seeking information on how this program was

> devised, and how it adhered to the provisions of Article 34 of the National Agreement.
>
> This document greatly alters wages, hours and working conditions in the VMF. It raises concerns for safety issues since brakes are no longer to be inspected on a semiannual basis. The Union received no prior notification of any work and/or time studies in this matter, and we were not aware that any tests were performed.
>
> The Fleet Management Handbook, PO-701 requires ERT times. Section 344.5 requires that "designated employees must used pertinent manufacturers's flat rate schedules as guides in developing and entering estimated repair times in the absence of individual vehicle maintenance programs." This does not appear to have been done.
>
> We would like to request all information on the source of the ERT involved in the inspection program, an explanation on why brakes are not being inspected semiannually, a list of what test were performed in the field for justification of this procedure and these ERT times, along with the notification that was sent to the Union that this was occurring. We would like an explanation on why ERT times long held as standard in the VMF were cut.

Pritchard was subsequently informed that because the issues addressed in his letter were included in the Union's July 9, 1998 appeal, these issues would be addressed by the Grievance and Arbitration office. Pritchard testified that he received no

response from the Postal Service regarding the issues raised in his July 10, 1998 letter.

The Postal Service presented a series of emails it found in its case file for this appeal which appear to indicate that a labor relations representative and Colin Dunning, then Manager of Vehicle Services, did meet with Pritchard on or about September 25, 1998. The file also includes undated handwritten notes that reflect a discussion, primarily involving "RP" and "CD", regarding certain aspects of the 1998 WMB. Pritchard had no recollection of such a meeting, and the Union questioned whether these notes are from 1998 because they include a notation: "(Mailed to Teddie Days)." Days had been an Assistant Director of the APWU's Motor Vehicle Division, but left that position in late 1995. The reference to something being emailed to Days is unclear. Other parts of the text of the notes make clear, however, that the discussion must have involved the 1998 VMB because they refer, among other things, to "A" and "B" inspections as well as to the addition of waxing.

One of the issues in this case is whether the Postal Service was required to notify the Union of the changes included in the 1998 VMB under Article 19, which provides:

> 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....
>
> Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. At the request of the Union, the parties shall meet concerning such changes. If the Union, after the meeting, believe the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Union upon issuance.

The Union relies, in part, on what it contends is evidence it found in its files that the Postal Service notified the Union under Article 19 when it promulgated the 1993 FMB. These documents include: (1) an internal Postal Service routing slip dated January 19, 1993 from Colin Dunning, Vehicle Maintenance Specialist at headquarters, to Tom Valenti in Labor Relations enclosing a draft copy of the 1993 FMB and requesting that Valenti provide a copy to Don Ross (then Director of the APWU's Motor Vehicle Division) "for his comments"; (2) a similar routing slip also dated January 19, 1993, from Dunning to Ross, stating "I sent the enclosed material to Tom Valenti: If you

have any questions please give me a call"; and (3) a letter dated January 26, 1993 from Valenti to Ross, stating:

> This letter is in further regard to my previous discussion with Teddie Days of your staff concerning the Preventive Maintenance Inspection Program (PMI). As discussed, I have enclosed a draft copy of the PMI Fleet Maintenance Bulletin.
>
> If there are any questions regarding the foregoing, you may contact me at....

Attached to the correspondence to Ross is a draft of the 1993 VMB dated January 25, 1993 -- one month prior to its issuance on February 25, 1993 -- which includes checklists for the inspection of various kinds of vehicles with certain handwritten revisions. Greg Bell, APWU Director of Industrial Relations, stated that these documents represent good faith discussions between the parties pursuant to Article 19 after the Union was notified of the changes, whenever or however that was done.

John Dockins, Manager of Contract Administration, insisted that the 1993 documents submitted by the Union did not constitute Article 19 notice. He testified that in his experience all Article 19 notices are on official USPS letterhead from a Manager in Labor Relations to (normally) the President of the Union, and include an attachment showing the proposed revisions (additions and deletions). From the content of the documents submitted by the Union, Dockins surmised that the attached draft of the 1993 FMB was sent to Ross only as a courtesy.

Director Pritchard presented a comparison he prepared showing differences between the 1993 FMB and the 1998 VMB. He testified that, in the Union's opinion, the changes were not fair, reasonable, and equitable. The ERTs in the 1998 VMB require more work to be performed in the same or less time than before. Moreover, they are not based on manufacturers' flat rate time schedules, as provided in Section 344.5 of Handbook PO-701 (Fleet Management), which states:

> 344.5 General Use of Form 4543. While examining the vehicle, the designated employee(s) will determine the nature and extent of work to be performed by referring to the vehicle jacket. Mechanics and other service personnel are encouraged to identify vehicle defects. Designated employees must use pertinent manufacturers' flat rate time schedules as guides in developing and entering estimated repair time (ERT) in the absence of individual vehicle maintenance programs....
>
> (Emphasis added.)

Pritchard stressed that postal vehicles are used 5-6 days per week -- sometimes 7 days -- and braking can deteriorate rapidly. Limiting brake inspections to once a year (B inspection) raised a safety issue for the Union. The Union also was concerned about pollution resulting from reduced emission control system checks.

Pritchard pointed out that certain additional inspection tasks are included in the 1998 VMB guidelines, such

as, but not limited to, a voltage regulator check and checking of wiring and hoses. Previously, the former was not done, and the latter was only done when there was a problem to be checked. He also noted that the ERT for a B inspection on an administrative vehicle is 2.0 hours and for an A inspection it is 1.5 hours. The ERT for an A inspection does not include checking brake linings. When a brake problem has been reported, a brake check will be done on an A inspection, in which case the 1998 VMB provides an additional .5 hour ERT for that work. Pritchard stressed that this added .5 hour accounted for the total difference between an A and a B inspection, yet the B inspection also includes checking the emission control system, which takes additional time that is not provided for. He also noted that the 1998 VMB calls for replacing or recycling coolant as required by the manufacturer. This used to be done every two years. He estimated this would take 15-20 minutes, yet the ERT for an inspection is the same whether this work is done or not. Pritchard further pointed out that the ERT for waxing a vehicle is 1.0 hour without regard to the type of vehicle. For example, the same ERT is provided for waxing a car as for a cargo van.

Pritchard testified that employees are expected to follow the detailed directions in the 1998 VMB and to sign off on the checklists. He stated that an employee who exceeds the ERTs could be subjected to discipline or to remedial or additional training. Some supervisors, he added, stop assigning employees to particular work if they cannot complete it within the ERTs. As Director, he said, he periodically has received calls that an employee has received a letter of warning for

consistently working outside the ERTs. When asked if he recalled any specific set of circumstances, he testified:

> ...I got one out of Jackson, Mississippi where they were saying that...they were going to issue this person a letter of warning; and we also got one and, I believe, it was from the Anaheim area because they have a couple of plants out there and a couple of VMFs and I don't remember which one it was, where they instructed them on the work order.
>
> There's a spot for comments [on the work order] which you can if you go over your ERT time, you could say well...this, that or the other thing happened [...] and [management] instructed them not to put anything in the comment box; and therefore...we felt at that time they were trying to set certain employees up who they had difficulty with for some sort of discipline or to say that they were not qualified for their jobs.

Pritchard noted that he always told employees he represented in New Jersey, before he came to the APWU's national office in 1995, that if they exceed an ERT they should write an explanation on the work order to document the reason in case they later are questioned about it.

Pritchard said he considered ERTs to be work or time standards subject to Article 34 because failure to meet them can lead to a letter of warning, and, more importantly, because the Union believes the Postal Service uses ERTs to determine its staffing requirements at a facility.

Director Bell testified that work or time standards are not contingent on applicability of discipline or effect on pay. The intent of Article 34 was to deal with the concern that employees are being required to do more work in less time. If it is something employees are expected to do -- whether a guideline or a regulation -- it directly affects working conditions and falls under Article 34.

Wayne Corey, Manager of Vehicle Operations, has worked in the Office of Fleet Management at headquarters since 1998. He noted that currently, as in 1998, the Postal Service has over 300 vehicle maintenance facilities nationwide where it services some 220,000 vehicles. Vehicle Maintenance Bulletins, such as the 1998 VMB at issue, are used to communicate information from headquarters to the field.

Corey testified that prior to the 1998 VMB, waxing of vehicles was covered by a separate 1991 bulletin which identified it as an annual requirement. In response to the Union's questioning of a one-hour ERT for waxing a vehicle, regardless of the vehicle's size, Corey pointed out that the expectation was that only administrative and light delivery vehicles would be completely waxed. On larger vehicles, only the cab or tractor was to be waxed. Corey stated that it might take 5 minutes to retrieve and connect the coolant flush and refill machine when that was required, and probably less than 10 minutes for the machine to complete that operation. He stated that a voltage regulator check is performed using the same volt amp tester that the mechanic uses to perform three other checks

-- battery load test, starter cranker test and alternator output test -- that were carried over from the 1993 FMB checklist. He estimated the added time to perform the voltage regulator test would be about 10 seconds.

Corey noted that a typical light delivery vehicle travels about 5,000 miles a year. Absent a particular problem, he stated, management decided there was no need to inspect brakes more than once a year (B inspection). Similarly, there was no need to inspect emission control systems more than once a year. No state requires more frequent inspections.

Corey stressed that ERTs are just estimates. They are guidelines, not requirements, for the approximate time needed to perform an inspection or a repair. They are used by local managers to estimate the length of time a particular task, such as an inspection, should take for purposes of daily scheduling of work. He stressed that ERTs are not used for staffing purposes. Staffing is based on actual work hours according to the Postal Service. Corey also pointed out, in response to the Union's reliance on Section 344.5 of Handbook PO-701, that while vehicle manufacturers publish ERTs for various repair work, this does not include inspections or waxing.

Corey noted that the actual time taken to complete a particular inspection or other task might be more or less than the ERT. If the ERT was greatly exceeded, he stated, the employee would be expected to include an explanation on the work

order. With respect to possible employee discipline, Corey testified:

> Q. Is it the policy of the Postal Service to issue discipline if an ERT is exceeded?
>
> A. Typically not as a first offense-type of item. If an employee becomes a habitual offender, then discipline is certainly an option that can be pursued.
>
> Q. Are the ERTs times guidelines or requirements?
>
> A. They are guidelines.

Manager Dockins asserted that Labor Relations policy would not permit issuance of discipline for exceeding ERTs. He testified:

> A. An ERT is a guideline. It's a point of reference. It's an internal management tool. It's not used to give discipline. It's not used for a wage determination. It's not used for staffing purposes. It's a point of reference so managers can get a gauge as to how long a certain task is going to take approximately.
>
> If the task takes longer, that might be a red flag to go look and see what's the problem. Is [sic] there's something wrong with the vehicle, are there mechanical problems, does the employee need further training. Are there some other issues.
>
> And if the employee is continuously not working up to what we think they should

> be, that would raise a red flag certainly. And if the investigation of the situation revealed that the employee is engaging in time-wasting practices, if they were taking excessive breaks, if they weren't doing what they were told, that they failed to follow instructions, those things might lead to discipline.
>
> But the violation of the ERT by itself is not discipline. It's not the policy of Labor Relations to issue discipline solely on the violation of the ERT.
>
> Q. What if an employee habitually violates an ERT, one or more ERT, would that be -- standing alone, would that be a subject for discipline?
>
> A. No. Standing alone an ERT is not a basis for discipline. It would have to be something more than just they didn't do the work in the approximate time. It's just a guideline that we use for a point of reference. That by itself is not the basis for just cause under Article 16 discipline. You need something more than that.

Dockins stated that millions of vehicle inspections have been performed since 1998 and he has never heard of discipline being issued for violation of an ERT. That would not pass muster under the just cause standard in Article 16. ERTs are not work standards under the National Agreement, he said, because they do not impact wages, hours or working conditions. If ERTs were work standards, he added, there would have been discipline for not meeting those standards.

EMPLOYER POSITION

The Postal Service initially contends that the APWU's appeal should be denied because the Union did not pursue an Article 15 grievance over issuance of the 1998 MVB. The Postal Service insists the Union may only file an Article 19 appeal if the Postal Service has given the Union Article 19 notice, which it did not do in this case. Had the Union wanted to challenge the Postal Service's failure to give notice, it should have filed an Article 15 grievance. See: Case No. H7C-NA-C 10 (Snow 1990). By disregarding the Article 15 processes and filing an Article 19 appeal instead, the Union deprived the Postal Service of an opportunity to learn the exact issues in dispute and to discuss those issues at the various steps, including during a possible Step 4 conference, and to correct any problem and attempt to resolve disputed issues.[2] The Postal Service argues that it raised this procedural objection in a timely manner before it rested at the arbitration hearing, and it notes that the Union responded with factual arguments and proffered relevant documents.

The Postal Service next asserts that the Union's appeal should be denied because the 1998 MVB does not directly relate to wages, hours or working conditions. Therefore, it is not subject to Article 19. See: Case No. H4C-NA-C 81

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[2] The Postal Service also points out that it got no response to a letter it sent the Union after this case was scheduled for arbitration seeking more details regarding the position set forth in the Union's 1998 appeal to arbitration.

(Mittenthal 1990). Indeed, the Postal Service maintains, the 1998 MVB does not relate to wages, hours or working conditions either directly or indirectly. In particular, the ERTs for various inspection tasks in the 1998 MVB are mere guides for supervisors to estimate the time needed to complete the tasks, and not inflexible rules or work standards. The Postal Service stresses that no employee has been disciplined for failure to complete work within an ERT. It also argues that the safety issues raised by the Union at arbitration were untimely and should not be considered. They were not raised in the Union's Article 19 appeal and the Union did not respond to the Postal Service's pre-arbitration letter seeking clarification of the Union's claims. Moreover, the Union's safety allegations lack merit.

The Postal Service contends the 1998 MVB relates to preventive maintenance of postal vehicles, and that Article 19 does not cover efficiency initiatives, because at most they relate only indirectly to employee wages, hours and working conditions. Even if improvements in postal operations have a minor, tangential impact on bargaining unit employees, the Union is not authorized to challenge the merits, value or wisdom of the improvements.

The Postal Service denies the Union's claim that it acknowledged that changes in ERTs are subject to Article 19 by providing notice to the Union when the 1993 FMB was promulgated. The correspondence relied on by the Union to support this claim, the Postal Service insists, did not constitute Article 19

notice. At most, it shows that the parties informally discussed some changes in a maintenance bulletin.

The Postal Service contends that issuance of the 1998 MVB was an exercise of its management rights under Article 3. Moreover, the modifications are fair, reasonable, and equitable. They improved the efficiency of postal operations and did not affect employees deleteriously.

The Postal Service rejects the Union's assertions that it violated Articles 5 and 34. All of the changes related to managerial initiatives regarding preventive maintenance policies. As such, they were not mandatory subjects of bargaining. Even if such policies were mandatory subjects of bargaining, there was no unlawful unilateral action violating Article 5 because the changes were too insubstantial to trigger the bargaining obligation under the National Labor Relations Act. The ERTs are estimates, they are not work standards subject to Article 34.

Finally, the Postal Service claims there is no merit to the Union's argument that the 1998 MVB violated Section 344.5 of Handbook PO-701. Not only did the Union waive this argument by not filing an Article 15 grievance, but there are no manufacturers' time schedules for performing inspections or waxing vehicles. Moreover, any differences between Postal Service handbooks and manuals that set operational policies unrelated to wages, hours or working conditions are not subject to resolution through labor arbitration.

UNION POSITION

The APWU insists the Postal Service's procedural arbitrability argument is itself barred because it was waived by the conduct of Postal Service representatives during the processing of the grievance and at arbitration. Over the Union's objection, the Postal Service first raised its argument that this appeal should be dismissed on the grounds that the Union should have pursued an Article 15 grievance only after each party had completed its respective case in chief at arbitration. The Union asserts that the parties uniformly have presented issues of procedural arbitrability at the outset of an arbitration proceeding. In no case, says the Union, has the Postal Service first raised a threshold issue of procedural arbitrability at a point in time when the entire case, for all intents and purposes, is over. The Union urges that the Postal Service should not be permitted to wait until after it has had the opportunity to assess the evidence and presentations by both parties before raising such a procedural objection.

The Union further maintains that the Postal Service's procedural arbitrability argument is without merit. Essentially, the Postal Service argues that if it violates the provisions of Article 19, then, according to its tortured interpretation of the 1990 Award of Arbitrator Snow in Case No. H7C-NA-C 10 (hereinafter 1990 Snow Award), the Union is prohibited from filing an Article 19 appeal to challenge violations of Article 19, and can only file an Article 15

grievance. The Union insists that the Snow Award does not speak at all to the issue of whether the Union has a right to file an Article 19 appeal when the Postal Service gives no notice. Further, both custom and past practice, and national arbitral precedent, support the Union's position that it has a right to file an Article 19 appeal in the circumstances of this case.

APWU Director of Industrial Relations Greg Bell testified without contradiction that this is the first time the Postal Service has ever claimed the Union may not file an Article 19 appeal if the Postal Service has failed to give Article 19 notice. Moreover, in Case No. Q90V-4Q-C 95004852 (Das 2004), the arbitrator considered an Article 19 appeal in a case where no notice was given by the Postal Service prior to implementing a change in the D.I.E. Qualification Standards. The Postal Service in that case (hereinafter 2004 Das Award) made no comparable procedural arbitrability claim, but conceded that the Union did have the right to file its Article 19 appeal, and the Arbitrator ruled on the merits, requiring the Postal Service to revise standards it had changed without prior notice.

The Union also rejects the Postal Service's argument that it was prejudiced by the Union's filing of an Article 19 appeal, instead of an Article 15 grievance, pointing out that even a cursory perusal of the Union's appeal shows that the APWU laid out its Article 19 argument in more detail than is contractually required.

Finally, the plain language of Article 19 supports the Union's position that it has a right to file the Article 19 appeal in this case. To the extent changes have been made by the Postal Service in a manner that is not consistent with the terms of the National Agreement, including Article 19, such conduct may be reached through the provisions of an Article 19 appeal.

The Union contends that the Postal Service's substantive arbitrability argument also is without merit. The record establishes that certain of the changes made by the Postal Service when it implemented the 1998 VMB do directly and negatively impact the wages, hours and working conditions of bargaining unit employees. Clearly the checklists and the ERTs contained within them constitute work directions from management to bargaining unit employees, and those employees are expected to adhere to those directions. Each employee performing a PMI must first read the detailed explanation in order to know exactly what directions they are given with regard to each inspection function. There were no such detailed explanations prior to the 1998 VMB. Thus, employees are required to do more work simply because they must read and adhere to more detailed instructions. Moreover, according to the uncontradicted testimony of Bob Pritchard, the overall impact of the new ERTs, together with the increased functions employees are required to perform, is that employees are required to perform more work during the same or a reduced time period.

The Union insists that, contrary to the Postal Service's claim, it is clear that bargaining unit employees may be, and some have been, disciplined if they fail to adhere to the ERTs in the 1998 VMB, as Pritchard testified without contradiction. Postal Service witness Wayne Corey essentially agreed that discipline was a possibility for an employee who failed to meet the ERTs. He also stated that an employee was expected to explain in detail, in the appropriate section of the work order, why an ERT had been exceeded. The Union argues that Corey's testimony should be given greater weight than that of Postal Service witness John Dockins because Corey is the subject matter expert with regard to ERTs within the Motor Vehicle Division. Moreover, even Dockins conceded that discipline is possible for employees who exceed ERTs, even if it is not Labor Relations policy that discipline be issued solely based on violation of an ERT.

The Union also stresses that prior to the implementation of the 1993 FMB, the Postal Service gave the Union notice and a copy of the draft document. Discussions then ensued between the Union and Postal Service officials, and changes were made to the 1993 FMB. The Union argues that this course of prior notice and discussion comports with the Postal Service's obligation under Article 19, and constitutes a concession that changes in ERTs do have a direct effect on wages, hours and working conditions.

The Union contends the Postal Service failed to comply with the procedural requirements of Article 19 when it issued

the 1998 VMB without prior notice to the Union. The Union further asserts that the changes included in the 1998 VMB were not fair, reasonable, or equitable. First of all, the 1998 VMB includes detailed instructions for performance of each inspection function for each type of vehicle. There were no such instructions in the 1993 FMB. Thus, the 1998 VMB requires employees to read and adhere to detailed directions that they were not required to adhere to previously. The 1998 VMB also requires employees perform other additional functions. In a number of circumstances, the 1998 VMB shortened the ERTs, while at the same time it increased the inspection functions employees must perform.

The Union contends the Postal Service also violated the requirements of Article 34, Article 5 and Handbook PO-701. It insists that the ERTs included within the 1998 VMB are time standards for purposes of Article 34. The ERTs dictate the maximum amount of time bargaining unit employees must spend performing each inspection function. Leaving aside whether a bargaining unit employee may be disciplined for failing to meet the ERTs -- which the Union insists can and does occur -- it is clear the Postal Service holds each employee responsible to adhere to those ERTs or to state in writing why they were not met. The Union cites national arbitral precedent in support of its position, as well as language contained in a 2004 training manual given to employees who were being trained on the 1998 VMB. It quotes the following passage, among others, from that manual:

> If a company is going to be fair to its employees, time standards should be established. Too often, only twenty percent of the work force is doing eighty percent of all of the work. ... This exercise should help you understand that we should use ERT in our shops. ...

The Union stresses that Greg Bell testified without contradiction that the negotiation history of Article 34 shows that when Postal Service rules require employees to perform work in less time, as do the ERTs in the 1998 VMB, those rules constitute time and work standards for purposes of Article 34. The provisions of Article 34, as Bell testified, were agreed to in order to ensure that employees receive "a fair day's pay for a fair day's work." Finally, the Union maintains, the terms of Section 344.5 of Handbook PO-701 were violated because it is clear that the ERTs in the 1998 VMB were not created using "pertinent manufacturer's flat rate time schedules."

FINDINGS

The 1990 Snow Award cited by the Postal Service does not address the issue of whether the Union is contractually limited to filing an Article 15 grievance when the Postal Service fails to provide Article 19 notification of changes in handbooks, manuals and regulations that the Union believes are subject to the procedures of Article 19. The parties have arbitrated appeals filed under Article 19 in such cases. See:

2004 Das Award.[3] At the very least, this shows that the Postal Service can waive an objection to the filing of an Article 19 appeal in these circumstances.

Without deciding whether there would be merit to such an objection, I find that the Postal Service waived its right to raise that issue in the present case by not doing so until just before it rested its case in arbitration on the second day of hearing. By then, the parties had expended many hours presenting position statements, testimony and exhibits relating to the merits of the Union's appeal as well as the Postal Service's contention -- notably raised at the outset in its opening statement -- that Article 19 did not apply to the issuance of the 1998 VMB. I am not persuaded by the Postal Service's argument that before the Union completed presentation of its case the Postal Service had no evidence as to whether the Union had a basis for filing an appeal under Article 19, instead of a grievance under Article 15. Not only does this argument not explain why the Postal Service did not raise its procedural objection before it proceeded to present its case, but it does not jibe with the Postal Service's position that an Article 19 appeal can only be filed when the Postal Service provides Article 19 notice. The Postal Service knew it had not provided such notice from the moment it received the Union's appeal in 1998.

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[3] In that case, unlike the present one, the Postal Service provided a courtesy copy of the revised qualification standard to the Union shortly before the revision took effect. But that was not an Article 19 notice and it did not appear that the parties met to discuss the changes before they went into effect.

The more difficult issue is whether the PMI Program set forth in the 1998 VMB, which replaced the 1993 VMB, directly relates to wages, hours or working conditions of APWU-represented employees. If it does not, notice was not required under Article 19 and there was no violation of Article 5 or Article 34.[4]

The Postal Service is correct in stating that the Union does not have a right to bargain over how and when vehicles are maintained, absent exceptional circumstances. As I understand the Union's position in this case, it contends that the 1998 VMB negatively impacts wages, hours and working conditions by requiring employees to do more work -- reading more detailed instructions and performing increased inspection/waxing functions -- in the same or less time than before.[5]

The evidence does not show that employees are required on each inspection to read the detailed description of each applicable inspection function included in the 1998 VMB. They

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[4] Obviously, if the ERTs in the 1998 VMB constituted work or time standards for purposes of Article 34, the ERTs would directly relate to wages, hours or working conditions.

[5] In his testimony, Director Pritchard raised certain safety issues relating to brake and emission control inspections being performed less frequently than before, but the Union presented no evidence, beyond the fact there was a reduction in frequency of inspections, to show that the changes impacted on employee safety.

are trained on the PMI Program, and these are repetitive functions they perform on a routine, recurring -- if not daily -- basis as vehicle mechanics. But even if employees at times are required while performing PMIs to refer to these detailed descriptions, this does not establish that inclusion of those instructions directly relates to wages, hours or working conditions.

The heart of the matter in this case is whether the ERTs included in the 1998 VMB -- which undoubtedly are different from (not necessarily shorter than) those in the 1993 FMB -- are work or time standards for purposes of Article 34 or otherwise directly relate to wages, hours or working conditions. The Postal Service insists, as stated in its post-hearing brief:

> Manifestly, ERTs do not establish rules or work standards to measure employee performance and to hold employees accountable for infractions. Rather, ERTs are used as a management tool to gauge the amount of repairs that may be completed in a given period of time in order to schedule vehicle preventative maintenance.

There is no evidence in this record that establishes that motor vehicle maintenance ERTs have been the subject of Article 34 or Article 19 procedures in the past. The evidence relating to the promulgation of the 1993 FMB indicates that a copy of that bulletin in draft form was provided to the Union as a courtesy, not as Article 19 notice. The Union has indicated that it views the handwritten revisions on the checklists attached to the correspondence it found in its files as being

the result of discussions between the Union and the Postal Service after the draft was provided to the Union. Absent additional evidence, this is merely speculative. Moreover, a review of the substance of the handwritten revisions -- including deletion on each page of "Office of Fleet Management" -- suggests that it is more likely that these are marked-up copies of the then applicable checklists that were to be replaced by the 1993 FMB, showing the changes management was making.

The evidence in this case does not show that the PMI ERTs dictate the maximum time an employee must spend on particular tasks, as the Union asserts. Nor does it show that employees are required to document reasons for every occasion on which an ERT is exceeded, only that if there is a significant difference it would be appropriate to do so in the "Remarks" box on the work form. There is no evidence from any affected mechanic that they were adversely affected by the ERTs included in the 1998 VMB.

There is no proof of any employee actually having been disciplined or otherwise adversely affected for exceeding ERTs in the 1998 VMB -- or, for that matter, for exceeding the ERTs in effect under the 1993 FMB or its predecessor(s). The testimony regarding two situations -- in Jackson, Mississippi and Anaheim, California -- not only was hearsay, possibly multiple hearsay, but was inconclusive as to what actually happened.

There also is no convincing evidentiary support for the Union's belief that ERTs are used for staffing purposes. The Postal Service is on record in this case as specifically disavowing use of ERTs for that purpose, stating that staffing is based on actual hours.[6]

The prior national arbitration awards cited by the Union in support of its position that the ERTs in the 1998 VMB are work or time standards subject to the provisions of Article 34 are all distinguishable.

Two involved standards relating to casing of mail by letter carriers. There was no dispute in those cases that the standards in issue were time standards subject to Article 34. Those standards were recognized as constituting minimum acceptable performance standards used both for route evaluation and disciplinary purposes. In Case No. NC-W-3752 (Mittenthal 1979), the parties agreed to submit to arbitration the issue of which of two standards applied to a specific task. While that issue arose at a particular location in a training context, there is no basis for concluding that once the applicable standard was determined it would not be used for route evaluation and disciplinary purposes. In Case No. NB-NAT-3233 (Garrett 1975), the issue was whether the Postal Service had

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[6] In this respect this case differs from Case No. Q98-4Q-C 00183263/01002200 (Das 2005), in which estimated times for performing preventive maintenance on certain mail processing equipment admittedly were used for staffing purposes.

changed a time standard or simply redistributed work within existing time standards.

A third case, Case No. NB-S-5674 (Gamser 1978), related to standard allowable time for office time to be used in letter carrier route adjustments. A fourth case involving APWU employees, Case No. H1C-NA-C-70 (Bloch 1986), related to keying of letter sorting machines. In that case, operation below a certain proficiency subjected employees to discipline.

The Union has cited a 2004 training manual used in connection with the 1998 VMB which, in a section on "Management of Time (Labor Expense)," seems to equate ERTs to "time standards." It is unclear where some of the strong opinions expressed in this section originate. There are several references to what a "company" should do and a reference to the experience of "this writer." Manager Corey's testimony also is somewhat troubling to the extent he indicated that an employee who was a "habitual offender" of ERTs could be subject to discipline. Manager Dockins clearly stated, however, that Labor Relations policy precludes any discipline based only on violation of ERTs. Habitual exceeding of ERTs might lead to an investigation, Dockins stated, but discipline would have to be based on something else, such as taking excessive breaks or not following directions.

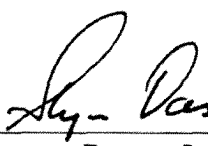
On the basis of the official position taken by the Postal Service in the presentation of this case, which has not been shown to be contrary to the actual manner in which the

applicable ERTs are used, I find that they do not directly relate to wages, hours or working conditions. Accordingly, the Postal Service was not required to provide Article 19 notice to the Union before implementing the 1998 VMB, and the 1998 VMB did not violate the National Agreement.

The Postal Service, however, cannot have it both ways. It cannot, consistent with the official position it has taken in this case that ERTs are internal management tools to be used for purposes of daily scheduling of work, cite a failure to perform work within an ERT -- whether once, twice or multiple times -- as a basis for discipline. It cannot otherwise use ERTs as a gauge of work pace for purposes of evaluating employee performance. And, while employees can be expected to comment on a work form when a particular task or inspection takes significantly more time than usual, they cannot be required to document reasons for exceeding ERTs as a matter of course.

AWARD

The Union's appeal in this case is denied on the basis set forth in the above Findings.



Shyam Das, Arbitrator