

NATIONAL ARBITRATION
BEFORE IMPARTIAL ARBITRATOR STEPHEN B. GOLDBERG

In the Matter of Arbitration)

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between)

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UNITED STATES POSTAL SERVICE)

Case No. Q06T-4Q-G-09374748

)

RMSS Scoring

and)

)

AMERICAN POSTAL WORKERS)

UNION, AFL-CIO)

BEFORE: Stephen B. Goldberg, Arbitrator

APPEARANCES:

United States Postal Service: Julianne W. Bramesco, Attorney; Terry LeFevre, Labor Relations Specialist

American Postal Workers Union, AFL-CIO: Anton G. Hajjar, Attorney; Lisa Manson, Attorney (O'Donnell, Schwartz & Anderson, P.C.)

Place of Hearing: United States Postal Service, 475 L'Enfant Plaza, SW., Washington, D.C.

Hearing Dates: October 10-11; December 2, 2013

Date of Award: April 16, 2014

Relevant Contract Provisions: Articles 3, 5, 19, 31, 38; MOU re Revamped Maintenance Selection System (RMSS)

Contract Year: 2006-2010

Type of Grievance: Contract Interpretation

Summary of Award

1. The Postal Service violated Articles 5 and 19 of the Agreement by unilaterally changing the MOU re Revamped Maintenance Selection System (RMSS) from providing that 70 would be a passing score on Exam 955 to providing that 70 would be a passing score on Exam 955, unless the Postal Service decided to rescore portions of the Exam, in which event the employee's original passing score would be nullified in favor of his or her revised score.
2. The case will be remanded to the parties with the direction that they seek to agree on an appropriate remedy for the Postal Service's violation of Articles 5 and 19. If they are unable to do so within 60 days of the issuance of this Decision and Award, i.e. by June 16, 2014, either party may, at any time thereafter, request the Arbitrator to resolve the remedial issue.
3. Contrary to the Postal Service's contention, the information sought by the Union in Mr. Raymer's November 20, 2009, e-mail was not confidential. Accordingly, the Postal Service violated Article 31 by refusing to provide the Union with that information, and will be ordered to do so.



Stephen B. Goldberg, Arbitrator

April 16, 2014

I. SUMMARY OF RELEVANT EVIDENCE

Pursuant to Article 38.5.B. 2 of the Agreement, promotions in the Maintenance Craft are based on seniority and qualifications. Employees are promoted from a Promotion Eligibility Register (PER). Inclusion on the PER, prior to the events giving rise to the instant grievance, was based upon a Maintenance Selection System that consisted of three parts – an examination which tested the applicant's knowledge, skills, and ability (KSAs) to perform the job for which he/she was applying; a supervisor evaluation; and a review panel interview.

In May 2008, the Postal Service advised the Union that it wished to revise the Maintenance Selection System, in large part because the low pass rate in that System was leading to a high number of Maintenance Craft vacancies. The Union, which was also critical of the existing Maintenance Selection System, readily agreed to negotiate changes in that System. The parties engaged in mid-term bargaining from May 2008 through June 2009, with the Union being represented in the negotiations by Steve Raymer, APWU National Maintenance Craft Director, and Maintenance Craft officers Gary Kloefer, Idowu Balogun, and Greg See. The Postal Service participants in the negotiations, according to Mr. Raymer, were Ron Scott (Labor Relations Dept.), Terry LeFevre (Maintenance Policies and Programs Dept.), Dr. Martha Hennen (Selection, Evaluation, and Recognition Dept.)(SER), John Lewis (SER), and, towards the close of the negotiations, Mangala Gandhi, SER Director.

The parties eventually agreed to a Memorandum of Understanding establishing a Revamped Maintenance Selection System (RMSS). The MOU, which modified the provisions of Article 38, was also integrated into a revised version of Handbook EL-304.

The goal of the RMSS, which was designed, validated, and implemented by SER, was to replace the existing skills-based test for job qualification with an aptitude test designed to determine if an applicant could, with training, develop the skills necessary to successfully perform the job for which he/she was applying.

The RMSS provides a two-step process leading to placement on the PER for successful applicants. The first step consists of taking a new examination – Exam 955. That examination consists of (1) a non-proctored portion that measures the applicant’s “soft” skills (conscientiousness, motivation, and self-management), and (2) a proctored portion, which tests the applicant’s possession of basic technical knowledge and spatial aptitude, the latter of which predicts the applicant’s ability to learn the KSAs needed on the job. Only those applicants whose scores on the proctored portion of the test are satisfactory are allowed to take the non-proctored portion.

After completing the non-proctored portion of Exam 955, the applicant is either scored “ineligible” or receives a numerical score of 70 or higher. Thus, 70 is the minimum passing score (or “cut score”). Passing scores are grouped in bands of 70-74.9, 75-79.9, 80-89.9, and 90-100. Those applicants who pass both parts of Exam 955 are scheduled for a structured interview, and if found eligible after the structured interview, are placed on the PER, with those applicants in the higher scoring bands being placed higher on the PER. Those applicants found ineligible in either portion of Exam 955 or in the structured interview can repeat that portion after 120 days.

Mr. Raymer, who was the lead Union negotiator in the RMSS negotiations, testified:

[W]e asked early on if they had vetted and validated their system, and they said yes. . . . They came flat out and said their results were statistically significant. . . . Seventy and above would be an eligible rating, and this was how it was devised. . . . And we had no reason not to accept 70 as a valid result for this predictor method.

Mr Raymer was asked if, during the negotiations, the Postal Service had indicated that if the pass rate on Exam 955 were different from the pass rate in the validation sample they would rescore the test. He responded:

Absolutely not. They made no such hint, inclination, and nobody was even thinking like that.

Terry LeFevre, who was in the USPS Maintenance Policies and Programs Department as a liaison to USPS Labor Relations at the time of the 2008-2009 negotiations, and who participated in those negotiations, testified that there was extensive discussion about the validity of Exam 955, its ability to predict how the applicant would perform on the job, how scores would be reported to employees, and how the banded scores would be used in the selection process. There was, however, no discussion of cutoff scores. He also testified:

And so we had these bands. . . But what inside the box was going to cause you to arrive at a 70 or an 80 or a 90 was not a subject of discussion.

The RMSS was implemented in July 2009, with the administration of Exam 955. Within a few weeks, Mr. LeFevre heard reports from USPS managers in the field that patently unqualified applicants were passing the test. While applicants had, to this point, been notified of their test results immediately on completing Exam 955, the Postal Service decided, on July 16, 2009, to suspend test-taking and to withhold any further notification of test results. According to Mr. Raymer, the Union was not notified of these decisions, and he learned of them only on July 20, 2009, when he called Ron Scott to ask why candidates were not able to access the test.

Lia Reed, who holds a PhD in Industrial Psychology, and who was employed in SER in 2009, was the Postal Service's expert witness. She did not participate in the development of Exam 955, but was in SER when Exam 955 was implemented, and is experienced in test development. She also participated in the rescoring of Exam 955.

According to Dr. Reed, Exam 955 was validated by examining its content validity and its predictive validity. To determine content validity, the test designers did an analysis of the KSAs required in the jobs performed by approximately 250 Maintenance Craft employees (the validity sample) to determine the extent to which the KSAs measured by Exam 955 were related to those required by Maintenance Craft jobs. To determine predictive validity, the test designers analyzed the extent to which the job performance of employees in

the validity sample was related to the Exam 955 test scores of those employees. On both those measures, Exam 955 was determined to be a valid test.

Dr. Reed testified that she became involved with Exam 955 when USPS managers began reporting their concern that more people were passing Exam 955 than they had expected. An analysis of Exam 955 results, conducted by Dr. Martha Hennen, the Exam 955 team leader from SER, showed that 98% of the 2,000 applicants who had taken Exam 955 had received passing scores, a significantly higher percentage of passing scores than in the validation group. Scores of the test-takers were particularly high, when compared to the scores of Maintenance Craft employees in the validity sample, on questions related to conscientiousness, motivation, and self-management skills. The existence of differences between the scores of test-takers and job incumbents was not in itself surprising, since testing experts frequently find such differences and expect them. The differences in this situation, however, were larger than anticipated, and, according to Dr. Reed, led to two major concerns – “One, from an organizational standpoint is that you’re paying a lot of money for a test that’s really not screening people. But the concern on the other side is that if your test isn’t effectively screening people, then you potentially have people doing a job that they’re not qualified for.”

In light of these concerns, the Postal Service, following SER’s recommendation, decided that it was necessary to rescore all the tests that had been taken and to put in place a revised scoring system for future test-takers. As a result of the rescoring, the passing rate dropped from 98% to 70%. Approximately 630 applicants who had previously been notified that they had passed the test were then notified that they had not passed the test.

According to Dr. Reed, it is not unusual to change the scoring of a test after it has been implemented. She testified:

When we implemented Test 473. . . in 2004. . . we . . . withheld the scores and did some additional analysis before releasing the scores. And there was a score adjustment made at that time as well, but, of course, it

was invisible to the candidates because they didn't see what their original score would have been based on the planned scoring for the test.

Dr. Reed further testified that the Postal Service has adjusted the scores in other tests during the years in which she has been employed by the Service.

On August 7, 2009, Postal Service district offices were advised by e-mail that the RMSS scoring issue had been resolved, that all tests were being rescored, and that scores issued prior to August 7 were no longer valid. Mr. Scott forwarded this e-mail to Mr. Raymer, the Union's first notice that the rescoring had taken place.

On November 19, 2009, at the Step 4 meeting on the instant dispute, Mr. Raymer requested information from the Postal Service related to the RMSS scoring changes. On the following day, November 20, 2009, Mr. Raymer confirmed the information request in the following e-mail to Mr. Scott:

Ron,

This is to follow-up the earlier request by the APWU which was restated at yesterday's step 4 meeting on case HQT20094.

- 1) The APWU requested the specific identification of all changes made to the MSS rating/scoring process after June 3, 2009. This includes modifications to anchor points or other benchmarks used for scoring and rating of MSS applicants. Such information should be identifiable by job group and job family.
- 2) You were also provided yesterday with examples of Test 955 results which showed that employees with the same results, using the L, M, H ratings, had both failed and passed the Test 955. The APWU requests a specific response as to how it is possible to obtain the same result yet the rating be both eligible and ineligible.

- 3) You were also asked yesterday how a local maintenance manager can comply with the EL-304 under the PER section on page 16 which states, *“Maintenance supervisors can use the MSS Inservice/Incrafft Notice of Result (Exhibit H) and the MSS Interview Panel Consensus Final Rating sheet (Exhibit G) as effective tools to provide appropriate guidance and suggested training to employees.”* (UA) This seems impossible in light of the fact that the Service has re-rated everyone which generated different results, including employees receiving different eligibility scores and being changed to ineligible yet none of the scoring (L,M,H) for any of the 13 competencies listed changed.¹

According to Mr. Raymer, he sought this information in the anticipation that the Postal Service would contend that its changes in Exam 955 scoring were “fair, reasonable, and equitable”, and not in violation of Article 19. Hence, he wanted to determine how the Postal Service might seek to support such a contention.

The Postal Service refused to provide the Union with the information sought in Mr. Raymer’s November 20 e-mail. According to Mr. Scott, he was advised by the USPS Law Department that the information in the testing was proprietary, so that the Postal Service was under no obligation to provide the Union with the requested information. On that basis, Mr. Scott testified, the Service declined to provide the Union with the Exam 955 questions, the internal cut scores on individual portions of the test, and the manner in which Exam 955 was rescored. The Service did, however, provide the Union with statistical information relating to the number of applicants who passed Exam 955 before and after the rescoring. Additionally, according to Mr. Scott, Dr. Hennen offered to meet with an industrial psychologist designated by the Union, to whom she would explain, subsequent to the latter signing a confidentiality agreement, “the

¹ Emphasis in original.

process of the cutting score and why we were changing the cutting score, and what the ramifications were of the process”.

II. DISCUSSION

A. Did the Postal Service Violate Article 5 and/or Article 19 by Unilaterally Changing the Scoring of Exam 955? If so, what is the Appropriate Remedy?

1. Article 5

Article 5 provides:

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 the Agreement or are otherwise inconsistent with its obligations under law.

Section 8(d) of the National Labor Relations Act prohibits an employer from engaging in unilateral mid-term modifications of a collective bargaining agreement. Inasmuch as the RMSS was collectively bargained, and is the subject of a 2009 MOU to which both parties agreed (and which was subsequently incorporated into the 2010-2015 Agreement), it would appear that by unilaterally altering the RMSS scoring system, the Postal Service violated Article 5.

The Postal Service’s argument to the contrary rests upon Article 3, the Management Rights provision of the Agreement, which provides in relevant part:

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

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- 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;

The Postal Service points out that there is no language in the MOU dealing with how Exam 955 is to be scored, and that the Union never sought to bargain about scoring procedures. Accordingly, the Postal Service concludes, Article 3 authorizes it to determine – and alter – scoring procedures.

Both of the Postal Service's factual assertions are accurate. It is equally true, however, that the MOU explicitly provides that 70 is a passing score on the second part of Exam 955. Yet the Postal Service did not treat 70 as a passing score for those employees who took Exam 955 prior to July 16, 2009, unless they also scored 70 or above after the Postal Service had rescored portions of Exam 955. The Postal Service thus changed the MOU from providing that 70 would be a passing score on Exam 955 to providing that 70 would be a passing score on Exam 955, unless the Postal Service decided to rescore portions of the Exam, in which event the employee's original passing score would be nullified in favor of his or her revised score. The result of this change was that approximately 630 applicants who had passed Exam 955 prior to July 16, 2009, and who had been notified by the Postal Service of their passing score and their eligibility for the structured interview, were subsequently notified by the Postal Service that they had not passed Exam 955 and were not eligible for the structured interview.

The Postal Service defends took this action on the grounds that it had decided that the discrepancy between the applicants' scores on Exam 955 and the scores on Exam 955 in the validity sample was so great as to cause concern that

some of the applicants who scored 70 or higher were not in fact qualified for jobs in the Maintenance Craft. Hence, the Postal Service rescored Exam 955.

The Postal Service decision to rescore Exam 955 was supported by its expert witness, Dr. Lia Reed. According to Dr. Reed, it is not unusual for the Postal Service to change test scores after a test has been implemented. It did so on Exam 473, although the Exam 473 test-takers were unaware that it had done so, and on other tests as well.² Thus, the Postal Service, through its SER Department, knew that there was a possibility that the test scores on Exam 955 would be altered, and that some applicants who had originally scored 70 or above would be rescored below 70.

There is, however, no evidence that the Union was aware of the Postal Service's prior rescoring of tests. Nor was the possibility that Exam 955 would be rescored ever communicated to the Union. During the 12 months that Exam 955 was developed and the RMSS MOU was being negotiated, no Postal Service negotiator, among whom were SER Department representatives, ever said to the Union that 70 was a passing score "unless we decide that the too many test-takers have achieved a 70 score when compared to the test scores of the validity sample, in which event we reserve the right to rescore the test and drop some of the 70 scores below 70". Nor did the Postal Service negotiators use any words to this effect. Indeed, it is safe to assume that had the Postal Service done so, there would have been extensive negotiations between the Postal Service and the Union concerning the circumstances under which rescoring would be allowed.

Instead of communicating to the Union the possibility that the Postal Service might rescore Exam 955 and that some applicants who had passed the test would be rescored as not passing it, the Postal Service said and did nothing until the situation arrived in which it found that too many applicants had passed Exam 955. At that point, rather than discussing with the Union what action should be taken to deal with the situation, the Postal Service simply told the Union that it had rescored all Exam 955 results and that some employees who had previously

² Exam 473 is an entry-level test, used to screen primarily external applicants for high-volume jobs such as city and rural mail carrier, mail handler, and mail processing clerk.

scored 70 or higher were now below 70. By doing so, however, the Postal Service unilaterally modified the MOU, which contained no provision, express or implied, for passing scores of 70 or above to be rescored to below 70.

None of this is to suggest bad faith on the part of the Postal Service, its negotiators, or its SER Department. It is more than likely that after having conducted extensive validation tests of Exam 955, SER did not consider the possibility that Exam 955 would not be an accurate predictor of job performance, or considered that the possibility of that occurring and so warranting rescoring was too slim to be mentioned. Furthermore, the Postal Service appears to have quite honestly believed that the substantially higher Exam 955 scores among applicants for promotion compared to the scores of Maintenance Craft employees in the validity sample raised a legitimate concern that some applicants who had passed Exam 955 with a score of 70 or above were not in fact qualified, even with training, to hold certain Maintenance Craft jobs. Be that as it may, the fact remains that by changing the scoring on those Exams taken prior to July 16, 2009, without negotiating that change with the Union, so that some applicants who had scored 70 or higher were not allowed to proceed to the structured interview in the face of an MOU which explicitly provides that 70 is a passing score, the Postal Service unilaterally modified the MOU. I find this to constitute a violation of Article 5.

The Postal Service cites a number of cases in which USPS actions have been sustained by National Arbitrators, despite their sometimes substantial impact on employees, on the ground that those actions fell within the Service's management rights under Article 3. See Case No. A-NAT-4157 (Gamser, 1973) (change in the complement of mail handlers and clerks on Tours II and III at Grand Central Station Station); No. AC-NAT 3052 (Garrett, 1977) (changing procedures for sorting contiguous state first class mail); No. AC-E-22, 783 (Fasser 1978) (increased mechanization of mail sorting operation resulting in excessing of 41 clerk craft employees in Scranton, PA); HLC-NA-C 49 (Mittenthal, 1983) (change in method of rotating Keyboard Operators on letter sorting machines); No. Q06C-4Q-09051867 (Das) (2010) (nationwide elimination of Tour 2 operations). See also NLRB v. Postal Service, 8 F.3d 832 (D.C. Cir. 1993) (nationwide reduction in

service hours). According to the Postal Service, those decisions should lead to a conclusion in this case that the Postal Service was authorized by Article 3 to change Exam 955 scores.

The short answer to that assertion is that the Postal Service's Article 3 rights are subject to other provisions of the Agreement, and in none of the cases cited by the Postal Service did the Arbitrator find other provisions of the Agreement to be applicable. In the instant case, however, I have found Article 5 to be applicable and to prevail over the Service's asserted Article 3 rights.

A further response to the Postal Service's reliance on Article 3 can be drawn from Arbitrator Richard Mittenthal's decision in one of the cases cited by the Postal Service (HLC-NA-C 49 (Mittenthal, 1983)). In that case, as in each of the other cases relied upon by the Postal Service, the management action that impacted employees was the result of a change in the means by which Postal Service operations were to be conducted. It was in that context that Arbitrator Mittenthal stated:

These rights [set forth in Article 3] are, of course, subject to other provisions of the National Agreement. But their presence in Article 3 serves to emphasize the parties' acceptance of the customary management functions which are necessary to the successful conduct of any enterprise. If the managerial initiative contemplated by Article 3 is to have any meaning, it must allow for change. New 'methods', new ways of doing things, are the lifeblood of any business.

To be sure, the means by which employees are selected and promoted is important to the success of the Postal Service. A change in the method by which employee selection or promotion tests are to be scored under a jointly negotiated program cannot, however, fairly be described as the type of "new methods, new ways of doing things [that] are the lifeblood of any business". Hence, the

underlying purpose of Article 3 – to protect management’s ability to operate the enterprise in new ways - is not undercut by the decision here reached.

2. Article 19

Article 19.1 bars the Postal Service from making changes in handbooks relating to wages, hours or working conditions that are inconsistent with the Agreement. Handbook EL-304 contains the same provisions relating to 70 being a passing score on Exam 955 as does the MOU. Hence, the Postal Service’s unilateral decision to rescore Exam 955 and to reduce some employee scores that had been 70 or above to below passing violated Article 19.1 just as it did Article 5.³

3. Remedy

As a remedy for the Postal Service’s violation of Articles 5 and 19, the Union requests that the Arbitrator order the Postal Service to:

1. Rescind all the Exam 955 rescoring and reinstate all eligible results or ratings obtained before June 3, 2009;
2. Place all employees affected by the rescoring of Exam 955 retroactively on PERs;
3. Retroactively promote all employees deprived of promotion opportunities on account of the rescoring of Exam 955 and make them whole, including but not limited to, paying higher level pay and out of schedule premiums.
4. Prohibit the Postal Service from reverting or adjusting downward any staffing level in any

³ Inasmuch as I have concluded that the Postal Service violated Article 19 by unilaterally changing Handbook EL-304, it is unnecessary for me to consider whether the Postal Service also violated Article 19 by failing to provide 60 days’ notice of that change.

occupational group as a result of these promotions or subsequent vacancies created by promotions.

The Postal Service, in return, asserts that those Employees who no longer had passing scores following the rescoring sustained no real harm, hence are not entitled to remedial relief. It states (Brief, p. 16):

Passing Exam 955 did not automatically result in an individual being placed on the [PER}. The test was only one step in the process. An employee with a passing score on Exam 955 was required next to pass a structured interview. Even then, an employee's place on the [PER] was determined not just by his/her total score following the test and the interview, but also by seniority.

Furthermore, the Postal Service points out that a failure to pass Exam 955 did not disqualify an employee from promotion; it merely required the employee to wait 120 days to retake the Exam. Accordingly, the Postal Service asserts that the rescoring of Exam 955 resulting in an ineligible score did not necessarily lead to a denial of promotion and that the Union's request for relief for those employees whose Exam 955 results were rescored to below 70 should be denied.

Although the Postal Service seeks to minimize the harm to the employees who initially passed Exam 955 and were subsequently rescored to a below passing grade, those employees were at very least delayed in obtaining the promotions they sought. Indeed, if they subsequently failed to pass Exam 955 under the revised USPS scoring system, they might never receive those promotions.

On the other hand, I am reluctant, at this stage of the proceedings, to award the relief sought by the Union. As previously noted, the Postal Service was legitimately concerned that some of the employees who passed Exam 955 prior to the rescoring might be incapable, even with training, of performing satisfactorily in the jobs to which they sought promotion. While that concern did not warrant the Postal Service's unilateral decision to rescore Exam 955, it does give me pause

in concluding that the retroactive promotion of all those employees who originally passed Exam 955 is an appropriate remedy for the Postal Service's violation of Articles 5 and 19. Accordingly, I shall remand the case to the parties with the direction that in light of my holding on the Article 5 and 19 issues, as well as the Postal Service's concern (shared, I should think, by the Union) about the risk of placing employees in jobs which they might be incapable of performing, the parties should seek to agree on an appropriate remedy for the Article 5 and 19 violation. Should they prove unable to reach agreement, they may return to the Arbitrator for final resolution.

B. Did the Postal Service Violate Article 31 by Failing to Provide the Union with the Information Requested in Mr. Raymer's November 20, 2009, E-Mail?

Article 31 of the Agreement provides in relevant part:

Section 3. Information

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement.

It is undisputed that the Postal Service did not provide the Union with the information requested in Mr. Raymer's e-mail of November 20, 2009. It defends its failure to do so on the grounds that "Disclosure of test results can degrade the validity of the test results, and the Postal Service was understandably concerned about the validity of the test" (Brief, p. 16).

In support of its position, the Postal Service relies on the Supreme Court's decision in Detroit Edison Co. v. NLRB, 440 U.S. 301 (1979), in which the Court refused to enforce an NLRB decision ordering the employer to disclose to the union certain information about employee aptitude tests. The information which

the union had requested, and the employer had refused to disclose, consisted of the test questions, the employee answer sheets, and the scores linked with the names of the employees who received them.

In the instant case, however, Mr. Raymer requested neither test results nor any of the other information which the Court held the employer could maintain confidential. Nor does the Postal Service provide any basis on which it could legitimately be argued that the information actually sought by Mr. Raymer in his November 20 e-mail (set out at page 8) could conceivably compromise the confidentiality of the test or its results. The Postal Service does assert that it provided other information, not regarded by it as confidential, to the Union, but that is no defense to its failure to provide the information requested by Mr. Raymer.⁴

In sum, the Postal Service has set forth no valid justification for its failure to provide the information.⁵ Its failure to do so violated Article 31, and it will be ordered to provide the Union with the requested information.

III. AWARD

1. The Postal Service is hereby directed to provide the Union with the information requested in Mr. Raymer's e-mail of November 20, 2009.

2. The case is remanded to the parties with directions that they seek to agree on an appropriate remedy for the Postal Service's violation of Articles 5 and 19. If they are unable to do so within 60 days of the issuance of this Decision and Award, i.e. by June 16, 2014, either party may, at any time thereafter, request the Arbitrator to resolve the remedial issue.

⁴ Because the information requested by Mr. Raymer was not confidential, the Postal Service was not entitled to limit its disclosure to an industrial psychologist selected by the Union.

⁵ Postal Service witness Ron Scott testified that the information sought by Mr. Raymer was not disclosed to the Union because it was proprietary in nature. That assertion was not presented in the Postal Service's brief, hence is not discussed here.



Stephen B. Goldberg, Arbitrator

April 16, 2014