

National Arbitration Panel

In the Matter of Arbitration)
)
 between) Case No.
) Q90V-4Q-C 95004852
)
United States Postal Service)
)
 and) (DIE Qualification
) Standards)
American Postal Workers Union)
)

Before: Shyam Das

Appearances:

For the Postal Service: Charles J. Dudek, Esq.

For the APWU: Lee W. Jackson, Esq.

Place of Hearing: Washington, D.C.

Dates of Hearing: March 25, 2003
 May 13, 2003

Date of Award: April 13, 2004

Relevant Contract Provisions: Article 19

Contract Year: 1990-1994

Type of Grievance: Contract Interpretation

Award Summary

This Article 19 appeal is resolved as set forth in the above Findings. The DIE Qualification Standard shall be revised to state that: "Before being assigned, promoted, or reassigned to this position, candidate must have qualified on all motor vehicles used in that local post office."



Shyam Das, Arbitrator

This case involves an Article 19 appeal relating to a change in the Qualification Standard for Driver Instructor and Examiner (DIE), a Level 6 position in the Motor Vehicle Craft (MVC). As set forth in the DIE Standard Position Description, selection for this position is: "Best Qualified selection on an office wide basis regardless of craft."

In a letter to Union President Moe Biller dated August 26, 1994,¹ William Downes, Manager of Contract Administration, stated:

As a matter of general information, enclosed is a copy of the Qualification Standard for Driver Instructor and Examiner-Level 6 (5752-01) which has been revised.

If you have any questions regarding the foregoing, please contact Joyce Ong of my staff....

The enclosed DIE Qualification Standard is dated September 10, 1994. The preceding Qualification Standard was dated November 30, 1987.

The specific changes in the Qualification Standard the Union objects to are in the Function description and in Additional Provision No. 1. The Function of this position was described in the 1987 Qualification Standard as:

¹ In its post-hearing brief, the Union states that this letter was not received by the Union until September 12, 1994, but the copy included in Joint Exhibit 2 has a date-stamp indicating it was received in the Office of the President on September 1, 1994.

Conducts road tests, vehicle familiarization, and assists in classroom training related to the safe operation of motor vehicles and powered industrial equipment. Maintains driver-related records and assists in the licensing process.

The 1994 revision states:

Conducts vehicle familiarization and assists in classroom training related to the safe operation of motor vehicles and powered industrial equipment. Initiate driver-related records and assists in the certification process.

Additional Provision No. 1 in the 1987 Qualification Standard reads:

Before being assigned, promoted, or reassigned to this position, candidates must have qualified on the Postal Service road test and must possess a valid OF-346, *U.S. Government Motor Vehicle Operator's Identification Card*, for all motor vehicles used in the local post office.

The 1994 revision states:

Before being assigned, promoted, or reassigned to this position, candidate must be able to qualify on all motor vehicles used in that local post office.

Donald Ross, who was MVC Director from 1985 to 1995 and is now retired, testified that he first learned of the 1994

changes to the DIE Qualification Standard when the Union received Downes' August 26, 1994 letter. He noted that the letter states that the Qualification Standard "has been revised", which he read as meaning the revision already was in effect. He said he made a couple of phone calls to his Postal Service counterpart, Labor Relations Specialist Joyce Ong, but got no response. On September 19, 1994, the Union filed this Article 19 appeal.

Ross and Robert Pritchard, the current MVC Director who succeeded Ross in 1995, indicated that two changes concerned the Union. First, the requirement that a candidate "must have qualified on ... all motor vehicles used in the local post office" was changed to "must be able to qualify" The Union saw this change as having the effect of reducing the potential and actual DIE appointments of MVC employees who already were qualified to operate all motor vehicles in a facility, by allowing any employee with a satisfactory driving record to be appointed to the coveted DIE position. The Union also objects to changing the DIE's Function from "Maintains driver-related records" to "Initiate driver-related records". Prior to this change, Pritchard testified, more than half of the DIE's job was clerical work maintaining various driver-related records. Limiting DIEs to initiating these records and reassigning work relating to maintaining these records, the Union asserts, diminished the amount of MVC bargaining unit work.

The Union believes that the changes in issue have had an impact on the overall number of DIE positions, which today is

less than half of what it was before these changes. The Union presented some DIE and driver qualification records from the Tampa facility to support its claim that a lot of DIE work now is being performed by employees certified as DIEs or Ad Hoc DIEs who are not in the MVC and are not qualified to operate all of the postal vehicles in their respective facilities.

Joyce Ong, who served as a Labor Relations Specialist from 1991 through 2000, testified that in 1994 she was asked to notify the Union regarding changes in the DIE Qualification Standard. She explained that the changes resulted from the prior elimination of the Postal Service road tests that had been conducted by DIEs in the past. (Those road tests, which were given to new hires in their own vehicles, are to be

² The parties entered into a Settlement Agreement on January 24, 1994 which included the following paragraph:

The USPS shall not eliminate the position of Driver Instructor/Examiner (DIE) on a national basis, rather local facilities shall have the option to retain all DIE positions at the locations where they exist on the date of the signing of this Agreement. In those local facilities that have DIE positions as of the date of the signing of this Settlement Agreement and which decide not to continue to utilize full-time DIEs, it is agreed that the USPS shall designate those DIE job duties which continue to be performed, to Motor Vehicle Craft employees provided that there are such employees qualified and available at that facility. It is further agreed that at any and all local facilities which decide not to continue to utilize full-time DIEs, and which have no qualified Motor Vehicle Craft employee(s) to perform such functions, the USPS shall, at the same time the use of full-time DIEs is discontinued, offer to Motor Vehicle Craft employees at that location, the opportunity to be trained and certified as an Ad Hoc DIE.

distinguished from the end-of-training tests that DIEs continue to conduct after an employee has been trained to operate a particular postal vehicle.) In addition, driver-related records no longer were to be maintained in the central office where the DIE was located, but at the local office where the driver was working. There also was a change in the provision relating to the required ability to drive safely. The 1987 Qualification Standard required that an applicant not have more than one preventable accident and no more than two moving traffic violations within the past three years. The 1994 Qualification Standard replaced that provision with a Table of Disqualifications and a requirement that an applicant have three years' experience driving postal vehicles.

Ong testified that she had a couple of face-to-face meetings and several phone calls with MVC Director Ross to discuss the changes in the Qualification Standard. She stated that Ross took strong objection to the Table of Disqualifications, although he favored the requirement that applicants have three years of postal driving experience. She added that Ross did not raise any procedural objections regarding the manner in which the Postal Service presented and implemented the revised Qualification Standard.

Shirley Plunkett, a Psychologist in the Office of Selection Evaluation and Recognition, who has had extensive experience developing Qualification Standards, addressed the 1994 change in Additional Provision No. 1. She said that change was necessitated by elimination of the Postal Service road test

and discontinuance of the OF-346 U.S. Government Motor Vehicle Operator's Identification Card. Although she had no direct involvement in this change, she maintained that there was no "real" difference between the prior requirement that a candidate "must have qualified on ... all motor vehicles used in the local post office" and the requirement in the 1994 revision that the candidate "must be able to qualify" on all such vehicles. In her professional opinion, the difference was merely one of "semantics". She read both provisions as requiring that before an employee is assigned, promoted or reassigned to a DIE position, the employee must show he or she is qualified on all motor vehicles used in the local post office.

Labor Relations Specialist Rodney Lambson similarly testified that candidates for the DIE position must demonstrate that they have the ability to operate all motor vehicles in their postal facility before being placed on that job. He noted that there is an evaluation procedure and records are kept of when an employee demonstrates he or she is qualified to operate a particular vehicle. He also disputed the Union's claim that the Postal Service has assigned Ad Hoc DIEs who are not qualified on all motor vehicles in their facility to train employees to operate those vehicles.

The Union submitted into evidence a letter, dated July 18, 1995 addressed to Union President Biller from Anthony Vegliante, Manager of Contract Administration, which states:

As a matter of general information, enclosed is a copy of the revised Qualification Standard for Driver Instructor and Examiner-Level 6 (5752-01). The revisions include the deletion of references to the OF-346 (U.S. Government Motor Vehicle Operator's Identification Card) and the Postal Service road test. The revised qualification standard also requires applicants for the position to have three years of Postal Service driving experience.

The attached Qualification Standard is dated April 28, 1995. The description of the DIE Function in this 1995 revision is the same as in the 1994 revision at issue in this case. This 1995 revision also contains the same language previously found in Additional Provision No. 1 of the 1994 revision, relocated in Section 2(d) of the Proficiency Requirements. The 1995 revision eliminates the Table of Disqualifications -- which Ong testified Ross had taken objection to -- and reinstates the prior (1987) requirement regarding the number of preventable accidents and moving violations in the prior three years. As noted in Vegliante's cover letter, the 1995 revision also includes the requirement, added in the 1994 revision, that applicants have three years of postal driving experience -- which Ong testified Ross was in favor of.

Psychologist Plunkett testified that the current DIE Qualification Standard now is located on the Postal Service's intranet website -- which the Union does not have access to. This electronic formatted document is dated April 28, 1995 -- the same date as the hard-copy formatted Qualification Standard transmitted to the Union by Vegliante in July 1995. The two

documents are not entirely the same, however. The description of the DIE Function in the electronic version is virtually identical to that in the 1987 Qualification Standard, except for the substitution of "certification" for "licensing". It reads as follows:

Conducts road tests, vehicle familiarization, and assists in classroom training related to the safe operation of motor vehicles and powered industrial equipment. Maintains driver-related records and assists in the certification process.

Section 2(d) of the Proficiency Requirements in the electronic version also differs from the hard-copy version transmitted by Vegliante in July 1995, in that it contains no specific reference to past preventable accidents or moving traffic violations. It reads as follows:

Ability to drive safely. Applicants must know and observe safe driving laws and regulations. Applicants must have three years of USPS driving experience. (Before being assigned, promoted, or reassigned to this position, candidate must be able to qualify on all motor vehicles used in that local post office.)

Plunkett had no knowledge of whether the Union ever received notice of the electronic version of the April 28, 1995 DIE Qualification Standard currently in effect.

UNION POSITION

The Union initially contends that the Postal Service violated the National Agreement by failing to comply with the procedural requirements of Article 19 of the 1990 Collective Bargaining Agreement (CBA), which provides as follows:

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 Unions at the national level at least sixty (60) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article), they 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 Unions upon issuance.

(Emphasis added.)

The Union maintains that the 1994 revision to the DIE Qualification Standard had a direct impact on the working conditions of MVC bargaining unit employees for the reasons testified to by present and past MVC Directors Pritchard and Ross.

The Union stresses that in order to give meaning to the provisions in Article 19, it is essential that the Postal Service comply with the procedural requirements that protect the Union from unannounced unilateral changes which directly impact wages, hours or working conditions. Article 19 required the Postal Service to give the Union 60 days' notice prior to the effective date of the revised Qualification Standard, which it failed to do.

The Union further contends that the 1994 revision violated Article 19 because it was not fair, reasonable or equitable. The revised Qualification Standard allows less qualified individuals to be appointed to DIE positions with equal opportunity as those employees in the MVC who have earned the qualifications to operate the vehicles on which they will be expected to train other employees. The 1994 revisions also reduce the function of DIE employees with respect to control over driver records. By changing the function of "maintaining" driver-related records to "initiating" such records, the Postal Service has taken work from these employees and given it to other groups of employees and supervisors. The Union notes that

there are now fewer employees in the DIE position than in the past.

The Union is not mollified by the testimony of Postal Service witnesses that it did not intend to change the requirement that candidates be qualified to operate all motor vehicles at a facility. It stresses the difference in the plain language of the 1994 revision contrasted to the prior 1987 Qualification Standard. It also points to evidence it presented to show that the Postal Service has appointed employees to DIE positions who were not qualified to operate all motor vehicles in their post office. The Union has filed a number of grievances, including a pending 1994 grievance filed in Tampa, protesting such action.

The Union seeks an order requiring the Postal Service to reverse the 1994 revisions it made to the DIE Qualification Standard, and reinstate the standards as they existed before the 1994 revisions.

EMPLOYER POSITION

The Postal Service contends that its revision of the DIE Qualification Standard was not in violation of any provision of the CBA. The changes made in 1994, it insists, were insignificant and accurately reflect the true nature of the DIE position. The pay level has not changed. The revisions reflect changes in Postal policy and included certain stylistic modifications. No substantive changes were made.

The Postal Service disputes the Union's claim that it was not provided an opportunity to discuss the 1994 revisions. Ong's testimony shows that the Union was notified of the revisions, and then met and discussed the revisions with Postal Service representatives.

The Postal Service insists that the Union presented no material evidence that the inconsequential changes to the qualification Standard were not fair, reasonable and equitable.

FINDINGS

On the basis of Manager Downes' August 26, 1994 transmittal to the Union, it is reasonable to conclude that the enclosed revised DIE Qualification Standard was effective September 10, 1994. MVC Director Ross testified that he received no earlier notice of proposed changes. While Labor Relations Specialist Ong testified that she had several conversations with MVC Director Ross regarding the 1994 revision, she did not state that those conversations occurred prior to the September 10, 1994 effective date. Moreover, Ong's testimony that Ross objected to the Table of Disqualifications, but approved of the requirement that candidates must have three years of Postal driving experience, suggests those discussions occurred at a later date, as they appear to be a basis for changes made in the subsequent April 1995 revision.

Thus, to the extent the September 1994 changes in the DIE Qualification Standard directly relate to wages, hours or working conditions, the record supports a finding that the Postal Service failed to give the requisite 60 days' prior notice pursuant to Article 19 of the CBA. At least some of the changes, in particular those relating to a candidate's prior driving record -- which were further revised in 1995 -- did directly relate to working conditions.

The 1994 revision followed elimination of the road test and discontinuance by the Postal Service of the OF-346 U.S. Government Motor Vehicle Operator's Identification Card. Those actions are not challenged here. The Union does object to the change in the requirement in the 1987 Qualification Standard that DIE candidates "must have qualified on ... all motor vehicles used in the local post office". The 1994 revision -- which was carried forward in the 1995 revision(s) -- states that a candidate "must be able to qualify" on all such vehicles. The Postal Service insists that this change in language did not reflect any substantive change, but is merely a matter of semantics. The Union is at least skeptical about that.

Accepting the Postal Service's assurance that no substantive change was intended, it seems to me that the changed language in this portion of the 1994 revision is unnecessarily ambiguous. To that extent, the revised provision is not "fair, reasonable, and equitable", as required by Article 19. If the intent is that a candidate must have qualified on all motor vehicles used in the local post office before he or she can be

assigned, promoted or reassigned to a DIE position -- as the Postal Service insists -- the Qualification Standard should state that straightforwardly.

The Union also objects to a change in the Function description included in the 1994 revised Qualification Standard. Specifically, it objects to the change from "Maintains driver-related records" to "Initiate driver-related records". The basis for the Union's objection is that work has been transferred from the DIE position to other non-MVC positions. Even assuming that occurred, however, it was not as a result of any change in the Qualification Standard. The Function portion of the Qualification Standard should reflect the actual duties of the job, but its purpose is not to govern what duties the job performs. As Postal Service Psychologist Plunkett explained, the Function portion of a Qualification Standard should, and presumably normally does, simply correspond to the Standard Position Description for the particular job.

This issue, in any event, also appears to be moot. The Postal Service asserts that the electronic formatted DIE Qualification Standard located on its intranet website is the actual current Qualification Standard for this position. That Qualification Standard, which is dated April 28, 1995, includes "Maintains driver-related records" in the Function description,

which also corresponds to the DIE Standard Position Description. Thus, the current Qualification Standard includes the very language which the Union seeks as a remedy in this case.

AWARD

This Article 19 appeal is resolved as set forth in the above Findings. The DIE Qualification Standard shall be revised to state that: "Before being assigned, promoted, or reassigned to this position, candidate must have qualified on all motor vehicles used in that local post office."



Shyam Das, Arbitrator

³ The record includes a 1979 Standard Position Description (part of Joint Exhibit 2) and a 1994 Standard Position Description (Postal Service Exhibit 2), which evidently still is in effect. Both state "Maintain driver-related records", as part of the position's Functional Purpose.

