

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. Q00V-4Q-C-06231177

)

DSI Qualification Standard

and)

)

AMERICAN POSTAL WORKERS)

UNION, AFL-CIO)

)

BEFORE: Stephen B. Goldberg, Arbitrator

APPEARANCES:

United States Postal Service: John C. Oldenburg, Labor Counsel; Todd C. Coffey, Labor Relations Specialist

American Postal Workers Union, AFL-CIO: Darryl J. Anderson, Attorney; Sarah Kanter, Attorney (O'Donnell, Schwartz & Anderson, P.C.)

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

Hearing Dates: September 16-17, 2014

Date of Award: February 16, 2015

Relevant Contract Provisions: Article 19

Contract Year: 2010-2015

Type of Grievance: Contract Interpretation

SUMMARY OF AWARD

1. The Postal Service's 2006 change in the DSI qualification standard does not violate the 1994 DIE Settlement Agreement, the 2004 Das Award, or the Article 19 requirement that changes in handbooks that directly relate to wages, hours and working conditions must be "fair, reasonable, and equitable".
2. The Postal Service's failure to provide the Union with the 15-day statement required by Article 19 does not warrant an Award overturning the 2006 change in the DSI qualifying standard.



Stephen B. Goldberg, Arbitrator

February 16, 2015

I. SUMMARY OF RELEVANT EVIDENCE

A. DIE Qualifying Standards, 1977–1994

Beginning in 1977, and continuing until the 2006 change giving rise to the present dispute, the qualification standard for the Driver Instructor and Examiner position (DIE) required that the successful bidder hold a license to drive all vehicles used in the local post office. In those post offices in which tractor trailers were in use, this meant that only those employees holding a commercial driver's license (CDL) could qualify for the DIE position, since they were the only employees holding a license to drive all vehicles in the post office. Although DIE positions were posted for bid by all employees, and were to be awarded to the best qualified bidder, regardless of craft, the CDL requirement effectively insured that all DIE positions were held by members of the Motor Vehicle Craft . Occasionally, a member of another craft, who had a CDL as a result of prior employment, qualified and was the successful bidder on a DIE position, but on being selected for that position, was transferred to the Motor Vehicle Craft.

In post offices at which there was a need for part-time DIEs, the Postal Service posted for bid the opportunity for employees to serve as an Ad Hoc DIE. The same qualification standard applied to Ad Hoc DIEs as to full-time DIEs, so the Ad Hoc DIEs, too, were almost exclusively members of the Motor Vehicle Craft. An Ad Hoc DIE was not, however, required to change crafts, so that in the rare situation in which an employee from outside the Motor Vehicle Craft was the successful bidder on an Ad Hoc DIE position, the work of that position would be performed by an employee outside the Motor Vehicle craft.

The practical effect of the CDL requirement in the 1977 qualifying standard, which remained essentially unchanged in the 1987 qualifying standard, was that almost all DIE positions were held by members of the Motor Vehicle Craft. This virtual "lock" on DIE positions was a source of both pride and comfort to Motor Vehicle Craft members, many of whom testified to that effect. For example, Peter Johns, Sr., a long-time DIE, testified:

Oh, I like my work. I love it, actually, because . . . I'm physically with these people showing them what they need to do. . . . I have a family out there, and I'm not going to cut you lose out here when you could run into my family or run over my family. You know it protects my family and the general public . . . So I enjoy my job.

Similarly, Motor Vehicle Director Michael Foster testified:

I can't even fathom. . . the scenario where there would not be a motor vehicle employee that would bid on these jobs. . . As we get older, that's a much more attractive position than bouncing up and down on that truck . . . And we get other types of illness and injury, diabetes, all these things which makes it much more attractive.

B. The 1994 Settlement Agreement.

Some time in 1993, the Postal Service announced its intention to eliminate the full-time DIE position nation-wide. The Union filed both grievances and unfair labor practice charges , all of which were resolved by a settlement agreement dated January 24, 1994. This agreement, in relevant part, provides:

1. 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. . . .

5. . . . This Settlement Agreement shall be without prejudice to the positions of either party in any matter, present or future, not directly resolved by this Settlement Agreement.

C. The August 1994 Revision to the DIE Qualification Standard and the 2004 Das Award

On August 26, 1994, the Postal Service notified the Union that it intended to revise the DIE qualifying standard effective September 10, 1994. In relevant part, this revision consisted of altering the language of the existing qualifying standard which provided that:

Before being assigned, promoted, or reassigned to this position, candidates *must have qualified on* . . . all motor vehicles used in the local post office. (Emphasis supplied.)

The Postal Service revision would have changed that language to read:

Before being assigned, promoted, or reassigned to this position, candidates *must be able to qualify on* all motor vehicles used in the local post office. (Emphasis supplied.)

The Union challenged the proposed revision by filing an Article 19 appeal to arbitration, asserting that the change was not fair, reasonable and equitable. It argued that the change in language had the effect of reducing the DIE appointments of MOTOR VEHICLE CRAFT employees with a CDL by allowing employees with a satisfactory driving record and no more to be appointed to a DIE position.

The Postal Service presented witnesses who testified that there was no “real” difference between the prior requirement that a candidate “must have qualified on all vehicles used in the local post office” and the 1994 requirement that the candidate “must be able to qualify” on all such vehicles. Both provisions, the two witnesses testified, required that before an employee is assigned, promoted or reassigned to a DIE position, the employee must show that he or she is qualified on all motor vehicles used in the local post office. The Postal Service, relying on this testimony, asserted that no substantive change had been made in the qualification standard.

Arbitrator Das sustained the Union’s argument that the Postal Service’s change in the language of the DIE qualification standard violated Article 19. He stated:

Accepting the Postal Service’s assurance that no substantive change was intended, it seems to me that the changed language . . . 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.

Consistent with that conclusion, Arbitrator Das held that the DIE qualification standard should be revised to state that: “Before being assigned,

promoted, or reassigned to this position, [the] candidate must have qualified on all motor vehicles used in that local post office”.¹

D. The 2006 Change in the DIE Qualification Standard

On December 22, 2005, the Postal Service notified the Union that as part of a new “Safe Driver Program”, it intended to change the title of the existing Driver Instructor Examiner (DIE) to that of Driver Safety Instructor (DSI). The proposed change would also eliminate the existing requirement that the DIE/DSI (hereinafter referred to as the DSI) “must be qualified on all motor vehicles used in that local post office”, substituting a requirement that applicants for the DSI position “must either possess a CDL or have current driving privileges on every vehicles (sic) used in the posted duty assignment”.

The Union did not object to the change in the position title from DIE to DSI, but did object to the change in the qualification standard, which, it asserted, violated the 2004 Das Award. On February 7, 2006, the Postal Service withdrew its proposed Safe Driver Program. Subsequently, however, on May 19, 2006, the Postal Service sent the Union a second notification of the proposed Safe Driver Program, including the previously proposed change in the DSI qualifying standard.

According to Postal Service witness John Blalock, who was the Program Manager of the Safe Driver Program from 2004 until March or April 2006, when he took a two-month medical leave of absence before returning in an advisory role, the Safe Driver Program grew out of unfavorable publicity that the Postal Service received in 2004 due to a number of childrens’ deaths in accidents involving the LLV, the standard vehicle operated by city mail carriers to deliver mail.

The LLV is a white, boxy, light weight, aluminum vehicle which, different from nearly all other American cars and trucks, has a right-hand drive. The steering wheel is thus on the curb side of the vehicle, which is convenient for placing mail into curb-side mail boxes. Driving a right-hand drive vehicle is, however, not within the experience of most American drivers.

¹ Case No. Q90V-4Q-C 95004852 (DIE Qualification Standards)(Das, 2004)

The LLV is characterized by a number of blind spots, both front and back, which significantly obstruct the driver's vision. In order to enable the driver to maneuver the vehicle safely, despite these blind spots, the LLV is equipped with 7 mirrors - one straight mirror on each side of the vehicle, one convex mirror on each side of the vehicle, and three pot lid mirrors, two on the left front fender to enable the driver to see in front of the vehicle's front bumper and one hanging from the rear of the vehicle to permit rear vision. A tractor trailer has 6 mirrors, which, according to DSI Peter Johns, are used somewhat differently because the tractor trailer is a longer, taller vehicle. Still, Mr. Johns testified, "it's not that big a difference, because . . . you're still using the mirrors the same way, except . . . you don't see the front bumper with the convex mirrors on the fenders."

Postal Service analysis of accidents involving the LLV showed that most of them involved drivers with less than two years' driving experience on that vehicle. Additionally, evidence in the litigation arising from these accidents showed that Postal Service training of LLV drivers "could have been better". These factors led the Postal Service to seek a training program that would better prepare new drivers of Postal Service motor vehicles, particularly the LLV.

The change at issue in this case – requiring that the DSI "must either possess a CDL or have current driving privileges on every vehicle used in the posted duty assignment", rather than be qualified on "all motor vehicles used in the local post office" – grew out of the effort to improve the driver training program as it existed in 2004. Under the existing program, in every post office at which tractor trailers were in use, the only employees who qualified to train drivers, regardless of the vehicle on which those drivers were being trained, were those employees who had a CDL authorizing them to drive tractor trailers. However, 90-95% of the drivers being trained were city mail carriers who would drive LLVs, not tractor trailers.² This, according to Mr. Blalock, created a mismatch between the qualification required of the DSI – a license to drive a tractor trailer - and the primary function of the DSI – to train city letter carriers to drive LLVs. The key to eliminating this mismatch, Mr. Blalock testified, lay in

² Only 2.5% of all Postal Service craft employees who regularly drove motor vehicles to perform their duties were PVS (Postal Vehicle Service) truck drivers.

eliminating the CDL as the sole qualification for the DSI position, and opening that position also to employees with substantial experience operating LLVs – what Mr. Blalock called “time in type”. He continued:

We found that, yes, you can be a tractor trailer operator, yes, you can be a box truck operator, but every vehicle . . . has distinct handling characteristics. If you have someone that’s been in type for a while, they’re more familiar with those distinct handling characteristics than somebody who does it occasionally. . .

We said, all right, where we don’t have large trucks, how do we broaden our pool to get the most experience in type? . . . How do we leverage the fact that they have time in type which will give them experience with the handling characteristics of that vehicle? . . . Because of the character of the LLV – it’s a large vehicle, but it’s very light. . . It’s not too much fun for the driver in crosswinds. . . It’s a big barn door.

If I’m driving a combination vehicle, Class A tractor trailer, totally different handling characteristics, totally different set of skills needed from driving an LLV. Can a tractor trailer operator successfully drive an LLV? . . . Yeah. They’re good. They’re professional drivers. Not taking that away. But there are certain nuances with the LLV that experience makes a difference. . . As you drive, you have the things that you pick up in the written word . . . and you have the helpful hints that you pick up from actually having done what you’re doing. . .

The best that we determined you could do is to have people that have experience in type. You wouldn’t take a [driver] with LLV experience, even though he can drive and he’s a DSI, and put him in a tractor trailer, even if he

has a CDL that he got 20 years ago, because he hasn't had much time in type. We wanted to make sure that we got the best representation of handling the vehicle recently and over a period of time to talk to our people in training.³

As a result of this analysis, the Postal Service altered the DSI qualification standard to open the position of a DSI training LLV drivers to employees who, though they did not have a CDL, the Postal Service believed were qualified to instruct on the LLV by virtue of experience driving that vehicle. This change benefitted primarily members of the letter carrier craft, who drove the LLV every day in the course of their mail delivery duties. Members of the Motor Vehicle Craft who possessed a CDL retained the exclusive right to train PVS truck drivers. They also remained qualified for DSI positions involving LLV training, since possession of a CDL continued to satisfy the qualification standard for that position. However, members of the Motor Vehicle Craft with a CDL lost the "lock" they had on all DSI positions at the time when a CDL was a practical necessity to be selected as a DSI. The DSI position would continue to be awarded to the best qualified bidder, regardless of craft, but the possession of a CDL was no longer necessary to be qualified to the extent that the DSIs were to train solely LLV drivers.

At the same time it opened the DSI position of training LLV drivers to employees other than members of the Motor Vehicle Craft, the Postal Service also bifurcated the existing driver skills program into two separate programs, the Delivery Skills Course for right-hand drive Postal Service Delivery Vehicles (the LLV), and the Large-Truck Skills Course.

The Union called six witnesses, five of whom were former tractor trailer operators, and four of whom were or had been DSIs, to testify about the 2006 change in the DSI qualification standard. The key elements of their testimony were these:

³ Mr. Blalock acknowledged that he had never delivered mail or driven an LLV.

- Michael Foster (former tractor trailer operator , currently Director of the Union’s Motor Vehicle Division)
 - Tractor trailer drivers operate tandem axle tractors and 53-foot trailers, combination vehicles in highways and city settings. “It seems unreasonable to even believe that it would be more difficult to drive an LLV than a 53-foot tractor trailer and a tandem axle tractor”.
 - The 2006 change in the DSI qualification standard was not fair, reasonable, and equitable because it deprived the members of the Motor Vehicle Division of the “lock” they had on DSI positions for over 40 years.
 - The change in the DSI qualification standard served to dilute the quality of the drivers being trained.
 - The vast majority (90%) of the DSIs who come from the Motor Vehicle Craft are drivers, not mechanics.

- Robert Pritchard (former motor vehicle mechanic; Mr. Foster’s predecessor as Director of the Motor Vehicle Division)
 - The effect of the 2006 change in the DSI qualifying standard has been to sharply reduce the availability of DSI work for Motor Vehicle Craft employees. That work has been performed instead by letter carriers, particularly in the case of Ad Hoc DSI assignments. (Mr. Pritchard’s testimony in this respect was supported by documentary evidence which showed that in early 2010 there were approximately 200 Ad Hoc DSIs from APWU crafts and approximately 470 Ad Hoc DSIs who were letter carriers.)
 - Nearly all mechanics drive the LLV regularly in the course of performing maintenance and repairs on that vehicle. It is rare, however, that they will drive an LLV for a substantial period of time.
 - Because all USPS trucks other than the LLV are left hand drive, PVS drivers, whose operate large trucks, have no

occasion in the course of their duties to gain experience on right hand drive vehicles such as the LLV.

- Keith Lorton (DSI, Boston District, 1988 - present)
 - The vast majority (95%) of our driver training has been for letter carriers. That hasn't changed over the years.
 - Over the years, the amount of time allowed for training has been gradually reduced. Additionally, the amount of computer training has increased, with the result that there is less interaction between the DSI and the trainees.

- Lee Nelson, Jr. (Ad Hoc DSI, 1995-2000; full-time DSI since 2000)
 - The time we have to train prospective drivers has been reduced, but the training is essentially the same. We still have to show them how to use the mirrors because there are many blind spots on the LLV,

- Peter Johns (DSI, San Francisco District, 2005 - present)
 - We do a minimum of 6 hours of classroom training on computers, then take the trainees out for 5 hours on the training course to show them the various maneuvers they will be required to do in the LLV (parallel parking, offset backing, mailbox delivery, right-angle turns, right turns, left turns, going through an intersection)
 - The LLV is a single-seat vehicle, but there are some two-seat LLVs that are used for training purposes. We used to ride in the two-seater LLVs in order to coach the trainee on what should be done in each maneuver but they don't want us to do that any more. Now we stay outside the vehicle and tell them what we want them to do.⁴

⁴ According to Mr. Blalock, the Postal Service discovered that only those trainees who were trained at the larger USPS facilities, at which 2-seat LLVs were available, were trained by a DSI riding in the LLV with the trainee; all

- Javier Pineres (Assistant Director, Motor Vehicle Division, former tractor trailer operator):
 - In my 20-plus years as a tractor trailer operator and I don't know how many years as a straight truck driver, if there is a vehicle on the road that has blind spots, it would be those two types of vehicles, not to diminish the blind spots of LLVs, but the fact of the matter is if there's anybody who knows how to use mirrors to try to diminish blind spots, it's a tractor-trailer operator or even straight truck driver. The size of the vehicle, the height of the vehicle, the boxiness of the vehicle has everything to do with blind spots.

Mr. Pineres also disagreed with Mr. Blalock's testimony that LLV's are more susceptible to wind gusts than are large trucks:

The boxiness of the LLV, I understand, but if you really want to know what wind does to a vehicle, you just get into a tractor trailer that's empty or not completely full, and you'll see what it does. At times, I've had my vehicle, tractor trailer, blown from one lane to the other because I was carrying or pulling a 53-foot trailer. Even a 38-foot trailer, which is kind of a standard for the Postal Service, it moves back and forth from one lane to the other.

I can express what wind would do, and a tractor trailer operator can explain and express the importance of being aware of the winds in your surrounding[s] . . .

other trainees were trained by a DSI outside the LLV. In order to standardize the training, DSIs were ordered not to ride in 2-seat LLVs, even where available, but instead to do all training from outside the LLV.

E. Evidence Relating to Satisfaction of the Procedural Requirements of Article 19

As noted, the initial Postal Service notification to the Union of the Safe Driver Program took place on December 22, 2005, and the final version of the Safe Driver Program was submitted to the Union on May 19, 2006. Included with the latter submission was the USPS Narrative Explanation of Purpose and Impact required by Article 19. According to the Narrative Explanation:

This change [in the qualification standard] more realistically corresponds to Postal Service needs and will increase the qualified candidate pool.

Two Article 19 meetings were held to discuss the proposed Safe Driver Plan, one on January 17, 2006, the other on July 17, 2006. According to Mr. Foster and Mr. Pritchard, both of whom attended these meetings, at no time did the Postal Service representatives in attendance assert that there were insufficient DSIs or that letter carriers might be more qualified than members of the Motor Vehicle Craft to serve as DSIs. Rather, the Postal Service representatives said that the problem with requiring a CDL to qualify for a DSI position was that it was “like using an elephant gun to shoot a rabbit”. Mr. Foster and Mr. Pritchard testified that they understood this statement to mean that the Postal Service viewed holders of a CDL as overqualified for the DSI position.

On September 21, 2006, the Union appealed the proposed changes to arbitration, and on October 11, 2006, submitted to the Postal Service its 15-day statement of “the precise issues involved and the facts giving rise to such issues”. In relevant part, the Union’s 15-day statement asserted:

The changes are not fair, reasonable, or equitable.

For example, the DIE Qualification Standards required that the employee holding that position “must be

qualified on all motor vehicles used in the local post office”. In the DSI Qualification Standards, that requirement has been changed to, “must be able to qualify on all motor vehicles used in the local post office”. . . . [T]he change in language spoken of above is exactly the same change that was the subject of a 1994 Step 4 dispute, and which was heard, and decided by Arbitrator Das in case no. Q90V-4-Q-C 95004852. In that case, the Postal Service changed the DIE Qualification Standards from “must be qualified on all motor vehicles used in the local Post Office” to, “must be able to qualify on all motor vehicles used in the local Post Office”. Arbitrator Das’ award ordered the Postal Service to restore the language to its original state, requiring that employees “must be qualified on all motor vehicles used in the local Post Office.” These changes are merely an attempt on the part of the Postal Service to unilaterally reverse the aforementioned award of Arbitrator Das.

The Postal Service did not provide the Union with a 15-day statement. It did, however, in June 2014, provide the Union with an undated draft 15-day statement that appears to have been prepared for use in this case.

II. DISCUSSION

A. Did the 2006 Change in the DSI Qualification Standard Violate the 1994 DIE Settlement Agreement?

The 1994 DIE Settlement Agreement, which grew out of the Postal Service’s 1993 decision to eliminate the full-time DIE position nation-wide, barred elimination of that position on a nation-wide basis. The Settlement Agreement also provided that if a local facility decided to discontinue the DIE position, all remaining DIE job duties would be assigned to qualified members of the Motor Vehicle Craft. If there were no qualified Motor Vehicle Craft employees available

at the facility, the Postal Service agreed to offer DIE training to Motor Vehicle Craft employees at that facility.

The Union argues that the Settlement Agreement provided permanent protection of the Motor Vehicle Craft's exclusive right to DIE work. It thus barred the Postal Service from making the 2006 change in the DSI qualifying standard, which would open DIE (now DSI) work to members of other crafts by eliminating the possession of a CDL as a necessary condition for qualification. As previously noted, the 2006 change in the qualification standard retained the CDL as one means of demonstrating the bidder's qualification, but also added another means of doing so – that the bidder “have current driving privileges on every vehicle used in the posted duty assignment”.

As the Postal Service points out, the 1994 Settlement Agreement was not drafted with a view toward determining what the qualification standard for the DIE should be, much less freezing the then-existing qualification standard for the DIE. Rather, the Settlement Agreement was intended to protect the Motor Vehicle Craft against a massive loss of work stemming from a nation-wide elimination of the full-time DIE position and an assignment of remaining DIE job duties to members of other crafts. It did so, however, solely by guaranteeing the Union that there would be no nation-wide elimination of the DIE position, and that where the full-time DIE position was eliminated locally, MOTOR VEHICLE CRAFT employees would perform such DIE work as continued to exist.

Although the Settlement Agreement contains important guarantees for Motor Vehicle Craft employees, it contains no guarantee that the CDL qualification requirement, which protected Motor Vehicle Craft employees against competition from members of other crafts for DIE jobs, would remain unchanged. Indeed, there is not a word in the Settlement Agreement about qualification standards.

The silence of the Settlement Agreement with respect to the qualification standard for the DSI position is fatal to the Union's argument that the Settlement

Agreement froze the then existing qualification standard for all time, thus barring the change that the Postal Service made in 2006. Paragraph 5 of the Settlement Agreement provides that Agreement “shall be without prejudice to the positions of either party in any matter, present or future, not directly resolved by this Settlement Agreement”.

Nothing could be clearer than that future qualification standards for the DIE position were not “directly resolved by [the] Settlement Agreement”. Hence, the Settlement Agreement was not violated by the 2006 change in the qualification standard.

B. Was the 2006 Change in the DSI Qualification Standard Barred by the 2004 Das Award?

In August 1994, the Postal Service sought to alter the language of the DIE qualifying standard from:

. . . candidates *must have qualified on* . . . all motor vehicles used in the local post office.

to

. . . candidates *must be able to qualify on* all motor vehicles used in the local post office.

The Union appealed the proposed change to arbitration pursuant to Article 19, asserting that it did not satisfy the Article 19 criteria of being “fair, reasonable, and equitable”. Arbitrator Das ruled in the Union’s favor, issuing an Award that provided:

The DIE Qualification Standard shall be revised to state that: ‘Before being assigned, promoted, or reassigned to this position, candidates must have qualified on all motor vehicles used in that local post office.’

According to the Union, the 2006 revision in the DSI qualifying standard is in direct contradiction to the 2004 Das Award. Arbitrator Das directed the Postal Service to require that a DIE “must have qualified on all motor vehicles used in the local post office”, which would, as a practical matter have required nearly all DIEs to possess a CDL. The Postal Service 2006 qualifying standard for the DSI position qualifies an applicant to hold a DSI position if the applicant either possesses a CDL or “[has] current driving privileges on every vehicle used in the posted duty assignment”.

From the Union’s perspective, the vice of the 2006 change is the same as that of the 1994 change it defeated before arbitrator Das:

Both changes had the purpose and effect of opening up the [DIE] job to letter carriers with no more than an automobile driver’s license. Thus, the phrase Arbitrator Das rejected in 2004 (“must be able to qualify” for the work) described letter carriers with automobile driver’s licenses. The phrase at issue here (must be able to drive every vehicle “in the posted duty assignment”) likewise describes letter carriers with automobile driver’s licenses.

If one looks solely at Arbitrator Das’ Award, the Union’s argument would appear to have merit. Arbitrator Das ordered that candidates for the DIE position “must have qualified on all motor vehicles used in the local post office”, yet the 2006 qualification standard allows a candidate to qualify for the DSI position either by possessing a CDL (meaning that the candidate has qualified on all motor vehicles used in the local post office) or by having current driving privileges on every vehicle used in the posted duty assignment (meaning that if the posted duty assignment is serving as a DSI for LLV trainees, the candidate needs only a valid automobile driver’s license, which is the only license required to operate an LLV).

The difficulty with the Union's argument is that Arbitrator Das did not decide the case before him on the grounds that eliminating the CDL as a prerequisite for DIES training LLV drivers was not "fair, reasonable, and equitable" because it opened the DIE position to candidates with no more than an automobile driver's license. Rather, Arbitrator Das focused on the testimony of the Postal Service witnesses and the Postal Service position that by proposing to substitute a provision that DIE candidates "must either possess a CDL or have current driving privileges on every vehicle used in the posted duty assignment", the Postal Service intended no substantive change in the prior qualification standard which required that candidates "must be qualified on all motor vehicles used in the local post office".

Accepting the Postal Service position that its proposed new language in the DIE qualifying standard was not intended to bring about any substantive change in the existing DIE qualification standard, Arbitrator Das held that the Postal Service's proposed language was unnecessarily ambiguous, and to that extent was not "fair, reasonable, and equitable". He ordered the Postal Service to abandon its proposed language and to reinstate the DIE qualifying standard as it had been (candidates "must be qualified on all motor vehicles used in the local post office"), but without addressing, much less sustaining, the Union's position that the Postal Service could not, without violating Article 19, eliminate the CDL as a requirement to qualifying for the DSI position. Accordingly, Arbitrator Das' 2004 Award is no barrier to the Postal Service's 2006 provision that an applicant can qualify for a DSI position if the applicant either possesses a CDL or "has current driving privileges on every vehicle used in the posted duty assignment".

C. Does the 2006 Change In the DSI Qualifying Standard Satisfy the Article 19 Requirement of Being "Fair, Reasonable, and Equitable" ?

The Postal Service position is that the 2006 change, which created an alternative route for satisfying the DSI qualifying standard for those DSIs who are training LLV drivers, was fair, reasonable, and equitable. Initially, the Postal

Service analysis of 2004 accidents involving the LLV, and the evidence introduced in the post-accident litigation, showed that most of those accidents involved drivers with less than two years' experience driving an LLV, and that Postal Service training of new LLV drivers could be improved. The change at issue grew out of the Postal Service's effort to bring about that improvement.

In support of that change, the Postal Service points out that the pre-2006 qualifying standard (possession of a CDL) effectively limited the occupants of the DSI position to experienced tractor trailer operators. This was, however, incompatible with the fact that 95% of the trainees were letter carriers being trained to operate right-hand drive LLVs. It was also incompatible with the fact that few, if any, tractor trailer operators have substantial experience operating a right-hand drive vehicle of any type, much less an LLV, while the full-time operation of an LLV is commonplace among letter carriers. Both these facts, the Postal Service asserts, support its conclusion that former tractor trailer operators should not have a "lock" on the work of training LLV drivers. Rather, that work should be equally open to qualified employees with experience on an LLV.

The Postal Service also points out that the 2006 change in the DSI qualifying standard did not bar Motor Vehicle Craft employees from qualifying and competing for a DSI position providing training on the LLV. It did no more than open the competition for such positions to other employees with experience on the LLV. Which employee would be awarded a particular DSI position was not determined by the Postal Service in expanding the qualification standard. That issue would be determined, as it always had been, by applying the criterion of "best qualified bidder regardless of craft". In this respect, too, the 2006 change in the DSI qualifying standard was fair, reasonable, and equitable.

The Union, in opposing the 2006 change in the DSI qualification standard, relies substantially on the fact that for nearly 30 years prior to the 2006 change, the DIE (later DSI) position was held almost exclusively by Motor Vehicle Craft employees. In addition, the Union points out, the Motor Vehicle Craft members who operated tractor trailers were highly skilled, so much so that, as Mr. Foster

testified, “It seems unreasonable to even believe that it would be more difficult to drive an LLV than a 53-foot tractor trailer and a tandem axle tractor”. Thus, from the Union’s perspective, opening up the DSI position to Postal Service employees who are not qualified to drive a tractor trailer would lead to an inevitable dilution of standards in the DSI position and, as a result, lessen the quality of the training provided to new employees. Finally, the Union points out, the Postal Service’s change in the qualification standard has resulted in a substantial transfer of work out of the Motor Vehicle Craft, primarily to letter carriers. In early 2010, there were approximately 470 Ad Hoc DSIs who were letter carriers compared to approximately 200 Ad Hoc DSIs who were from APWU crafts.

In sum, the Union argues that the long history of Motor Vehicle Craft performance of DSI work, the lack of any evidence that it has not performed that work satisfactorily, and the importance of DSI work to the Motor Vehicle Craft, require a very substantial showing by the Postal Service that its proposed change in the DSI qualification standard satisfies the Article 19 requirement that it be fair, reasonable, and equitable. It is the Union’s position that the Postal Service has not made such a showing.

According to the Union, there is no evidence showing that an experienced letter carrier would be more effective than an experienced tractor trailer driver with a CDL in effectively training prospective LLV operators of the risks involved in operating an LLV. Similarly, the Union asserts, there is no evidence that a letter carrier would do better in training LLV drivers on the use of mirrors to deal with LLV blind spots, or in handling an empty LLV in high winds, than would an experienced tractor trailer driver with a CDL. To re-quote Mr. Pineres, “if there’s anybody who knows how to use mirrors to diminish blind spots, it’s a tractor trailer operator or even a straight truck driver”, and “If you really want to know what wind does to a vehicle, you just get into a tractor trailer that’s empty or not completely full, and you’ll see what it does”. In sum, it is the Union’s position that there is no basis for the contention that an experienced letter carrier would be more qualified to serve as a DSI, even in training prospective LLV drivers, than would an experienced tractor trailer operator with a CDL.

The question raised by the 2006 change in the DSI qualification standard is not, however, whether an experienced letter carrier is better qualified to train LLV drivers than is an experienced tractor trailer operator with a CDL. That might have been the question if the Postal Service had proposed replacing the pre-2006 qualifying standard, which required that the successful bidder possess a CDL, with a qualifying standard requiring that the successful bidder have substantial experience delivering mail in an LLV. That is not, however, what the Postal Service has done. It has not proposed to eliminate the possession of a CDL as a sufficient qualification to hold the DSI position, even for DSIs who will be training LLV drivers. Rather, it has added another route to qualifying for the position of a DSI who will be training prospective LLV drivers – “to have current driving privileges on every vehicle used in the posted duty assignment”.

Read literally, as the Union points out, no more is required to satisfy the latter criterion than to possess an automobile driver’s license and a satisfactory driving record. As a practical matter, however, since the DSI position will be awarded to the best qualified bidder, regardless of craft, the successful bidder for the coveted DSI position, if not in possession of a CDL, will undoubtedly need substantial experience on the LLV. Thus, again as a practical matter, the effect of the 2006 change is to make the position of a DSI training on the LLV available to both tractor trailer drivers with a CDL and other Postal Service employees – mostly mail carriers – with substantial experience driving LLVs. In light of the differences between the LLV and the tractor trailer, particularly the fact that the LLV has right-hand drive, on which tractor-trailer drivers have little or no experience, and which letter carriers operate for essentially their entire shift every working day, it was entirely reasonable for the Postal Service to determine that experience on the LLV should serve, along with the CDL, as a sufficient qualification to compete for a position of a DSI who will be training LLV drivers.

The Union also argues that although the Postal Service’s stated reason for altering the qualification standard was to permit letter carriers to qualify as DSIs, and to share with trainees the knowledge they had gained as long-time LLV operators, the revised training program for the LLV reduces the amount of face-to-face contact between the DSI and the trainees. More of the classroom training

is done on computers, rather than by live presentations, with a loss of opportunity for interaction between the DSI and the trainees. Additionally, all field training in the LLV is now done with the DSI outside the LLV, whereas prior practice was for the DSI to ride in the LLV with the trainee when the training took place at those USPS facilities at which 2-seat LLVs were available. This further demonstrates, the Union asserts, that it was not fair, reasonable, and equitable for the Postal Service to open up the training of potential LLV drivers to employees who do not possess a CDL.

If the revised training program served to prevent all or nearly all contact between the DSI and the trainee, so that the background and experience of the DSI became irrelevant, the Union's argument that it was not fair, reasonable, and equitable to open up the DSI position to experienced letter carriers might have merit. The training program changes, however, while they may reduce the amount of such contact, do not eliminate it. Further, Mr. Blalock testified that these changes served the purpose of standardizing training across the many DSIs who provide that training and the many locations at which they do so. Under these circumstances, the Union's argument that the changes in the DSI training program cause the Postal Service's decision to fail the Article 19 test of being fair, reasonable, and equitable cannot succeed.

Finally, the Union relies on another decision by Arbitrator Das (Case No. HOC-NA-C 19007 (2002) at p. 21:

The Postal Service is entitled to change its policies, subject to its contractual obligations. But if it seeks to change long-standing provisions that on their face afford considerable protection to the bargaining unit, it needs at least to provide a convincing explanation of why it determined such a change to be necessary if it is to satisfy Article 19's requirement that the change be fair, reasonable, and equitable.

The Union asserts that the Postal Service has not succeeded in providing a convincing explanation of why it determined the change in the DSI qualification standard to be necessary. I disagree. In light of the Postal Service experience

with accidents involving inexperienced LLV drivers, and the undisputed fact that the pre-2006 qualification standard effectively limited the DSI position to tractor trailer operators with a CDL, but little or no experience operating a right-hand drive LLV, it was entirely reasonable for the Postal Service to open up the qualification standard for those DSI positions that would be training LLV operators to include experienced LLV drivers. To be sure, this change in the qualifying standard has the wrenching effect of depriving Motor Vehicle Craft employees of work that was almost exclusively theirs for many years, and which they had come to view as belonging to their craft. Still, to deny the Postal Service the right to make this change would be tantamount to holding that it was required to restrict the training of LLV operators to former tractor trailer drivers because it had done so in the past, and that it could not allow experienced LLV drivers to compete, on a best qualified basis, for the work of training LLV operators. Neither the Das decision quoted above, nor any other decision of which I am aware, suggests that such an outcome is required by Article 19.

D. Should the Postal Service's Failure to Provide the Union with the 15-Day Statement Required by Article 19 Result in an Award Overturning the 2006 Change in the DSI Qualifying Standard?

It is undisputed that the Postal Service did not comply with that portion of Article 19 which requires that:

Within fifteen (15) days after the issue has been submitted to arbitration, each party shall provide the other with a statement in writing of its understanding of the precise issues involved, and the facts giving rise to such issues.

The Union argues that the Postal Service's failure to comply with this requirement of Article 19 should result in a summary disposition in the Union's favor. Arbitrator Das, however, rejected that argument in a prior case (Case No. HOC-NA-C 21 (2002), stating (at p. 13):

The Union has offered no contractual or arbitral authority in support of its claim that it is entitled to a summary award sustaining the grievance on the merits because the Postal Service was untimely in submitting its statement of issues.

To be sure, in the instant case the Postal Service failed entirely to submit a statement of issues, but that would not appear to lead to a conclusion different from that reached by Arbitrator Das, and the Union does not argue to the contrary.

The Union further argues that even if the failure of the Postal Service to provide it with a 15-day statement does not, without more, lead to an Award granting the relief it seeks, at very least the Postal Service should be barred from raising at arbitration any evidence or argument relating to issues not previously raised with the Union.⁵ Relying on this principle, the Union asserts that the Postal Service should be barred from introducing evidence or argument that CDL drivers are not highly qualified to be DSIs; that USPS had insufficient numbers of DSIs; and that letter carriers would be more qualified to become DSIs than would CDL drivers.⁶

The evidence and argument that the Union would bar because not previously raised with the Union are these:

- *CDL drivers are not highly qualified to be DSIs.* I do not understand the Postal Service to contend that CDL drivers are not highly qualified to be DSIs. Indeed, CDL drivers continue to satisfy the 2006 DSI qualification standard. A Postal Service conclusion that letter carriers with LLV experience are also qualified to be DSIs does not mean that CDL drivers are not highly qualified for

⁵ See Case No. NC-E-11359 at p. 3 (Aaron, 1984) (“It is now well settled that parties to an arbitration under a National Agreement . . . are barred from introducing evidence or arguments not presented at preceding steps of the grievance procedure, and that this principle must be strictly observed.”)

⁶ The Postal Service, for its part, asserts that deficiencies in the Union’s 15-day statement should bar the Union from raising any arguments based on the 1994 Settlement Agreement. Inasmuch as I have rejected the Union’s 1994 Settlement Agreement arguments on the merits, I shall not address whether they should also be rejected on procedural grounds.

that position. In any event, I have not found CDL drivers to be not highly qualified to be DSIs, and no part of this Decision rests upon such a finding. Hence, the Union's argument that the Postal Service should be barred from introducing evidence or argument to support such a finding is essentially moot.

- *The Postal Service had insufficient numbers of DSIs.* Similar to the previous point, I do not understand the Postal Service to contend that a shortage of DSIs was a basis for expanding the DSI qualification standard to include letter carriers with LLV experience. Nor does any part of this Decision rest upon a finding that the Postal Service had an insufficient number of DSIs. Hence, as with the previous point, the Union's argument that the Postal Service should be barred from introducing evidence or argument to support such a finding is essentially moot.

- *Letter carriers would be more qualified to become DSIs than would CDL drivers.* The Union asserts that it was surprised and prejudiced when the Postal Service raised this argument for the first time at the arbitration hearing. The Postal Service, for its part, asserts that it alerted the Union to this argument in its May 2006, Narrative Explanation of Purpose and Impact, which stated that the change in the qualification standard to allow letter carriers to qualify, "more realistically corresponds to Postal Service needs", implying that letter carriers were more qualified than tractor trailer drivers to train LLV operators. The Postal Service also asserts that the Union was advised of the Postal Service position by the remark made by a Postal Service representative at the January 17, 2006, meeting, that "It doesn't take an elephant gun to kill a rabbit". For, according to the Postal Service, while the Union witnesses testified that they understood that statement to mean that the Postal Service regarded CDL drivers as overqualified to train letter carriers to drive the LLV, the

more logical interpretation was both that the elephant gun was overkill, and that another instrument would be more appropriate. That “other instrument”, the Postal Service asserts, was clearly the letter carrier with LLV experience.

Whatever the merit of the Postal Service argument that well before the arbitration hearing it raised its argument that letter carriers were more qualified than tractor trailer operators to train LLV drivers, with the result that the Union should have been amply prepared to respond to that argument at arbitration, the evidence shows that the Union was in fact prepared. Thus, prior to any evidence having been presented by the Postal Service, Michael Foster, Director of the Union’s Motor Vehicle Division, testified:

- “It seems unreasonable to even believe that it would be more difficult to drive an LLV than a 53-foot tractor trailer and a tandem axle tractor”.
- The change in the DSI qualification standard served to dilute the quality of the drivers being trained. (This, of course, amounts to saying that tractor trailer drivers are better trainers than are letter carriers with LLV experience.)

Javier Pineres, Assistant Director of the Motor Vehicle Division, testified:

- “If there’s anybody who knows how to use mirrors to try to diminish blind spots, it’s a tractor trailer operator or even straight truck driver.”
- “The boxiness of the LLV I understand, but if you really want to know what wind does to a vehicle, you just get into a tractor trailer that’s empty or not completely full, and you’ll see what it does. . . [A] tractor trailer driver can explain and express the importance of being aware of the winds in your surroundings”.

In sum, the evidence does not support the Union's assertion that it had no notice that the Postal Service would take the position at arbitration that letter carriers with LLV experience would be more satisfactory trainers of LLV drivers than would tractor trailer operators. Hence, there was no barrier to the Postal Service introducing evidence and argument in support of its position that letter carriers with LLV experience would be more satisfactory trainers of LLV drivers than would tractor trailer operators.⁷

III. AWARD

The Union's appeal is denied.



Stephen B. Goldberg, Arbitrator

February 16, 2015

⁷ Arbitrator Aaron, in the case cited by the Union in note 5, went on to state (page 4):

The reason for the rule [that parties to an arbitration under a National Agreement . . . are barred from introducing evidence or arguments not presented at preceding steps of the grievance procedure], is obvious: neither party should have to deal with evidence or argument presented for the first time in an arbitration hearing, which it has not previously considered and for which it has not had time to prepare rebuttal evidence and argument. The spirit of the rule, however, should not be diminished by excessively technical construction. The evidence establishes to my satisfaction that the [Union] was aware from the outset of the reason for the [Postal Service's action. The Union] is therefore in no position to claim surprise by the testimony and argument offered by the Postal Service during the arbitration hearing.

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