In the Matter of the Arbitration
between
UNITED STATES POSTAL SERVICE and
AMERICAN POSTAL WORKERS UNION, AFL-CIO

BEFORE: Zachary C. Morris, Arbitrator

APPEARANCES:
For the Service: Kim Parkhurst, Labor Relations Specialist
For the Union: Mike Sullivan, National Business Agent
Place of Hearing: 10401 Post Office Blvd., Orlando, FL 32862
Date of Hearing: Tuesday, January 13, 2015
Date of Award: Monday, February 23, 2015
Relevant Contract Provision: Article 19
Contract Year: 2010-2015
Type of Grievance: Contract

Award Summary:
The grievance is sustained. The Service is ordered to Cease and Desist from using the 1.5 rotation and to comply with the relevant Step 4 agreement.

Zachary C. Morris, Arbitrator
I. PROCEDURAL BACKGROUND

This grievance is the lead case in a series of similar grievances. The other cases are currently being held in abeyance, pending the outcome of this grievance.

This particular grievance was filed March 15, 2014, alleging that management at the Orlando P&DC was improperly initiating a new work standard whereby DBCS machines would be operated by 1 or 1.5 persons, as opposed to the normal two person model.

Unable to reach a resolution at the various steps of the grievance procedure, the grievance is now properly before the Arbitrator for a full and binding decision.

At the hearing, both the Postal Service and the Union were ably represented and were given a fair opportunity to present evidence, examine and cross examine witnesses, and make arguments. At the closing of the proceedings, the parties agreed to submit post-hearing briefs. The Arbitrator received these briefs on January 28, at which point the record was closed. In reaching the conclusions and making the Award set forth herein, the Arbitrator has given full consideration to all evidence of record.

II. ISSUE

Did the Postal Service violate Article 19 of the National Agreement by staffing Delivery Bar Code Sorter (DBCS) machines with less than two persons per machine? If so, what shall be the remedy?

III. STATEMENT OF THE CASE

The normal staffing for a DBCS machine is that there are two mail processing clerks for every machine – one who feeds the machine and one who sweeps it. This was agreed to by the parties in a Step 4 settlement, signed on December 11, 2003. The parties mutually agreed that “normal staffing for the OCR, BCS, and/or DBCS will be two Mail Processing Clerks to perform the loading, feeding and sweeping functions.” This was followed by a series of Questions and Answers pertaining to that settlement. The Q&As indicate that there need not always be two clerks per machine, but that is the normal operating procedure. Low volume is given as an
example of when it might be permissible for only one clerk to operate the machine: 
"If the volume available for a DPS zone is such that there is no or minimal sweeping activity required during the run, one operator may be sufficient. One operator may also be sufficient if the volume is such that one operator can load, then sweep before the bins fill up, and then return to loading."

This grievance was initiated when Tour 1 MDO John McTeague created a system (and subsequent Power Point presentation) whereby these machines can be run with 1 or 1.5 persons per machine.

According to the presentation as presented in the joint exhibit, staffing is needed for thirty-six machines, nine of which can be run on a daily basis with only one clerk. Five machines were always to be operated by two clerks, and the remaining twenty-two would use the 1.5 rotation. Essentially, there would be one feeder for each machine and a sweeper would be assigned to two different machines.

The actual rotation of roles would coincide with breaks. The sweeper would go on break and, upon returning, replace the feeder from the first machine so that they could go on break. The first feeder would then replace the second feeder when they went on break, and when that person returned, they would assume the sweeping function.

This staffing configuration seems to be ongoing, although the P&DC does return to the standard two person rotation during those times of the year when mail volume in Florida is higher.

IV. POSITION OF THE UNION

There are two primary contentions put forth by the Union in regard to MDO McTeague’s 1.5 rotation. First, the Union argues that this was a predetermined rotation, which was to be used regardless of mail volume or any other circumstances. As such, it violates the Step 4 agreement and the JCIM, which state that two people shall normally be stationed on each machine. Secondly, the Union points to an OSHA safety study that suggests employees working the DBCS machines should rotate roles every half hour. McTeague’s rotation provides for much longer interims between rotations and is therefore unsafe for the clerks.
To prove its first point, the Union relies heavily upon the Power Point presentation created by Mr. McTeague. Admitting that there are certain situations where less than two people might run a machine, the Union claims that the staffing plan was initiated without any idea of what the mail volume or sweeping requirements would be. Management has tried to make this 1.5 rotation the normal staffing at the Orlando P&DC when the Step 4 clearly states that normal staffing shall be two persons per machine. The Union’s sole witness and Step 2 advocate, Bob McSorley, testified that the 1.5 machine rotation was used extensively and regularly by management in Orlando.

Management’s lone argument throughout the history of the grievance has been that there was low volume and minimal sweeping requirements on these machines during the dates in question. Yet, the Union argues, management has failed to provide any documentation supporting this assertion.

As for the issue of clerk safety, the Union points out that even Mr. McTeague testified that the mail processing clerks would shift roles every two hours. And while Mr. McTeague may have seen no safety issues with this rotation, OSHA clearly did.

The Union feels that it has shown a prima facie violation of the Step 4 settlement and JCIM, incorporated into the National Agreement via Article 19. As such, it is management’s burden to show that there were justifiable reasons for deviating from the two person scheduling. They have been unable to do so.

Accordingly, the Union requests that the Arbitrator sustain the grievance and order the Service to cease and desist using less than two clerks per machine. Going beyond what even the Step 4 says, the Union claims that management at the Orlando P&DC has abused the staffing over the years and should therefore lose the ability to ever staff a machine with only one clerk. Additionally, the Union requests that the affected employees should be paid an additional 50% of their hourly rate for the hours they worked by themselves or as part of the 1.5 scheme.

V. POSITION OF THE SERVICE

Management refutes the Union’s argument that the implementation of the 1.5 system is ongoing. The Power Point presentation that the Union relies so heavily on does not state that this
is the new policy. It simply shows, if used, how the staffing would look. Management does not deny that a 1.5 rotation was used for low volume runs. But there is nothing in the file supporting the contention that this was done on an ongoing basis.

The Union relies upon schedules found in the joint packet showing that management had scheduled employees as if the 1.5 rotation was to be used. However, McTeague testified that these were merely drafts and were regularly edited, depending on mail volume and employee attendance. Additionally, there were Tour 3 employees who would not have been on that schedule who often stay late to help support Tour 1 operations. When employees have worked alone or in the 1.5 rotation, it is due solely to low mail volume.

Maintenance Diagnostic Reports that the Union relies on to show that the machines were understaffed capture only mail volumes for an entire week. These reports are not accurate indicators of what the mail volume was on an individual night. Notwithstanding this, the reports actually do support, to the extent possible, that mail volume was actually low. Management suggests that these reports show that some of the machines were only even operational a few hours per night due to the low volume.

The Union has entered employee statements into the file concerning how the 1.5 rotation affected them. However, for 36 DBCS machines, there are only five supported incidents of an employee working in this rotation from March 13 through March 20, 2014. And some of these statements even indicate that mail volume was low. For example, a Mr. Kirschner stated that he worked in the 1.5 rotation on March 18 and March 19. However, he stated he ran approximately 50,000 and 61,000 pieces of mail each night respectively. This equates to only about an hour and a half of run time. These statements clearly show low volume, management argues.

As to the issue of safety, management merely claims that there is no evidence at all that any employees worked more than 30 minutes without a rotation. Furthermore, the parties at the National level would not allow employees to ever work a DBCS machine on their own under any circumstances, if they felt there was a safety issue.

The Service claims that the Union has failed to meet its burden of proving a violation and accordingly requests that the grievance be denied in its entirety.
VI. OPINION

As stated above, the Step 4 agreement and accompanying JCIM language indicate "normal staffing for the OCR, BCS, and/or DBCS will be two Mail Processing Clerks to perform the loading, feeding and sweeping functions." Management readily admits that it was staffing the DBCS machines in question with less than two people, so the question that must be answered is whether they were doing this on a regular basis or whether they staffed with 1 or 1.5 persons per machine only when mail volume was low.

While this is a contract case and the burden is ultimately on the Union to show a violation, they have been able to meet their initial burden of showing that the machines were staffed with less than two people. The burden now shifts to the Postal Service to show that there was a legitimate reason (such as low mail volume) for doing so.

Much was made, at the hearing, of the Maintenance Diagnostic Reports for these machines. This report shows, among other things, how many jams and 'stacker full events' each machine had during the course of a week. However, it is clear to the Arbitrator that these reports are unreliable indicators of what mail volume actually was.

Management claims that the Mr. Henegar, management's Step 2 designee, offered to give Machine Run Charts to the Union, but they declined. Apparently these documents would have been able to show that mail volume was low. One wonders, then, why management did not include these documents in the file as their own exhibits.

The Union submitted the daily Tour 1 schedules as evidence of the fact that management was staffing machines with less than two people. These schedules, however, seem to be merely starting points and are heavily edited on a daily basis, dependent on factors such as employee attendance and mail volume. Additionally, there are Tour 3 employees who will sometimes help the Tour 1 mail processing clerks run the machines. So, according to management, even if one person is scheduled for a machine, that does not necessarily mean that only one person is working that machine. I do not doubt that this is true and that these schedules are not reliable sources of information as it pertains to who was actually working each machine. But of course, they also do nothing to show that mail volume was low on a particular day, which is ultimately what management must show. Additionally, it seems that if management were truly concerned
about call outs and mail volume fluctuations, they would actually schedule more people for each machine.

But is there any indication that use of this 1.5 system was continuous, regardless of mail volume? Clerk James Loss wrote a statement included in the record. It states, “On 3/20/14 working on DBCS machine #16 & 17. I had to work on sweeping two machines again just like any other night. And it always seems like I’m one of the same guys doing it. But I see a lot of people working by themselves as well. I don’t think it’s right and it’s hurting a lot of people.” Mr. Loss echoed these words in another statement he wrote for March 18.

Management points out that several of the employee statements show that they were only running 50-60,000 pieces of mail per shift. This, according to management, is a low number of pieces to be run. As someone who has no postal background, I cannot know from experience whether this is true or not. But Loss, on page 54 of Joint 2, claimed that the average mail volume for him is between 45,000 and 65,000 pieces of mail. So while I cannot know whether this is low mail volume, if Loss’ statement is to be believed, then the 50-60,000 pieces management claims is low cannot be seen as abnormally so.

Furthermore, a brief glance at McTeague’s Power Point, tends to show that his plan was meant to be used, not as a backup plan when mail is low on a particular day, but on a more consistent basis. It states, “9 machines can be run daily with 1 person. 5 machines will be run with 2 people at all times. The remaining machines will use the 1.5 rotation as follows.” (Emphasis added) This language indicates to the Arbitrator that this plan was meant to be more permanent than used only during periods of low mail volume. The fact that McTeague felt nine machines could be run with only one person on a daily basis seems to show that he felt this way regardless of fluctuations in the mail volume. Further, there is nothing in the Power Point that indicates this plan is to be used only during periods of lower mail volume. This, in combination with employee statements claiming that this was done repeatedly, is enough to convince this Arbitrator that this 1.5 rotation was used on a regular and continuous basis. At any rate, the Postal Service has been unable meet their burden to show that it was not.

There is little that need be said about the safety ramifications of this plan. It flies directly in the face of OSHA’s guidelines and former Plant Manager Eric Chavez’s instructions to managers: “Per instructions in current JSAs, employees (whether working alone or with a partner) are to exchange these job duties every 30 minutes.”
McTeague, himself, admitted that his plan would not call for a rotation until the first person goes on break – roughly two hours into their shift. While the managers at the Orlando P&DC might not understand why it would be unsafe to sweep two machines or rotate less often, and I cannot say that I do either (as, again, I am unfamiliar with the physical wear and tear these duties can place upon the body), I must assume that OSHA’s study of the subject was quite thorough and they did not recommend a 30 minute rotation for no reason at all.

Ultimately, I must find that management did violate the Step 4 and JCIM by consistently allowing mail processing clerks to work either alone or under the 1.5 rotation regardless of mail volume. Accordingly, a remedy is due the Union.

The Service must cease and desist from using this 1.5 rotation. In addition to the fact that it seems to be used on a regular basis, it flies in the face of safety guidelines issued by the former Plant Manager and OSHA.

However, the Union additionally requests that management be prohibited from ever staffing a DBCS machine with only one person. I cannot grant this remedy. Regardless of the fact that there is no evidence to indicate that management at the Orlando P&DC has “abused the staffing over the years”, it would be inappropriate for an Arbitrator to strip a power away from the Service that is explicitly granted them in Article 3. However, if management feels there is low mail volume in the future and decides to staff a machine with less than two people, they must be able to show the reasons why they have done so. It is their burden to show this – not the Union’s.

I am also not inclined to grant the Union’s request for back pay at the overtime rate for those employees who have had to work either alone or in a 1.5 rotation. Those employees may have had to work a little harder than normal, but they were already paid for their time. There will always naturally be moments where work is either harder or easier in any job. One does not vary the rate of pay based upon how hard the employee had to work on a given day. There is nothing in the National Agreement or JCIM that has been brought to my attention, which would support such a remedy. The Union presented an Award from Arbitrator Hoppe who granted a monetary remedy in Case No. F06C-1F-C 08366915. In it, Arbitrator Hoppe writes: “While the Postal Service does not pay its employees on a piecework basis, the negotiated hourly wage of its employees is clearly based upon the reasonable expectations of the parties and their agreements.
To merely pay someone their normal hourly rate while requiring them to work twice as hard as agreed to would not be equitable.” Id. at 24.

While I understand Arbitrator Hoppe’s reasoning and am not suggesting that there can never be a situation where such a remedy might be awarded, I decline to do so in this case. The Step 4 and the JCIM indicate that there are times when employees will have to work a DBCS machine by themselves, even if it is not the normal way of doing things. As such, the reasonable expectations of the parties that Arbitrator Hoppe alludes to are such that employees may be asked to work a machine by themselves. But they can expect no additional compensation as a result of this extra work.

VII. AWARD

For the reasons stated above, the grievance is sustained. The Service is ordered to Cease and Desist from using the 1.5 rotation and to comply with the relevant Step 4 agreement.

Zachary C. Morris, Arbitrator

February 23, 2015