

REGULAR REGIONAL ARBITRATION PANEL

In the Matter of the Arbitration

between

United States Postal Service

and

**American Postal Workers Union,
AFL-CIO**

Post Office: Milwaukee, WI

USPS Regional Case Nos:

J10C-1J-C 14005256

J10C-1J-C 14006867

Local Nos. 6323913 & 6327013

Grievants: Rose Vosswinkel & Class Action

Before: ANN S. KENIS, ARBITRATOR

Appearances:

For the Postal Service: Ronald J. Hirn, Labor Relations Specialist

For the Union: Willie Mellen, National Business Agent

Place of Hearing: 345 West St. Paul Ave., Milwaukee, 53201

Date of Hearing: May 28, 2015

Date of Award: June 17, 2015

Contract Provisions: Article 19; Article 37 JCIM

Contract Term: 2010-2015

Award

The two grievances are sustained in their entirety. The Postal Service violated the National Agreement and the JCIM by assigning only one clerk to a DBCS machine on October 8, 2013 and by assigning only one clerk to each of two DBCS machines on October 14, 2013. The Postal Service is hereby ordered to cease and desist staffing the DBCS machines with only one clerk except in such circumstances as provided in the JCIM. The Postal Service is also ordered to compensate each of the three identified clerks the differential between their normal hourly rate and the applicable overtime rate for the hours they operated the DBCS machines unassisted.

Ann S. Kenis

ANN S. KENIS, Arbitrator

I. STATEMENT OF THE ISSUE

The parties stipulated to the following issue:

Did the Postal Service violate the National Agreement and the applicable handbooks and/or manuals when they assigned clerk craft employees to work alone on DBCS machines? If so, what shall the remedy be?

II. BACKGROUND

The two consolidated grievances in this case arose at the Milwaukee P&DC. In the first case, Grievant Rose Vosswinkel worked alone on the Delivery Bar Code Sorter (DBCS) for approximately six hours on October 8, 2013. In the second case, which is designated as a class action, mail processors Mark Carstens and Melody Dupree-Jackson worked without assistance on their respective DBCS machines for periods of time on October 14, 2013. The Union claims that the Postal Service violated the relevant provisions of the Joint Contract Interpretation Manual (JCIM) by staffing the DBCS machines with a single clerk. The Union contends that the JCIM specifies that the proper staffing level for each DBCS machine is two clerks. As a remedy, the Union seeks a cease and desist order and the payment of an additional fifty percent penalty to each of the affected employees for the time they spent working alone on the dates in question.

Management does not dispute the fact that “normal” staffing on the DBCS machines consists of two mail processing clerks. The JCIM is clear on that point. However, the JCIM also recognizes a number of exceptions to that general rule where it is appropriate and proper to staff the DBCS machine with one mail processing clerk instead of two. The Postal Service contends that the facts in this matter fall under the designated exceptional circumstances set forth in the JCIM and therefore reduced staffing was not a violation of the contract.

III. USPS-APWU JOINT CONTRACT INTERPRETATION MANUAL (JCIM)

ARTICLE 37- OCR-BCS-DBCS STAFFING

Normal staffing for the OCR, BCS and/or DBCS will be two Mail Processing Clerks to perform the loading, feeding and sweeping functions.

1. Does the settlement mean that there must always be two Mail Processing Clerks assigned to the OCR, BCS and/or DBCS?

Response: No, that is the normal staffing.

2. Would it be a violation if there was only one clerk working on the OCR, BCS and/or DBCS at the start of the run?

Response: No. There may not be a need for two Mail Processing Clerks at start up or close out.

3. Would it be a violation if there was only one clerk working on the OCR, BCS or DBCS because of the limited volume for that sort program?

Response: Once again, the “normal” staffing is two Mail Processing Clerks, but there may be circumstances where the staffing is reduced.

4. Would low volume zone runs be an example?

Response: Yes, 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 settlement address minimum staffing, and is not intended to impact those offices where there have been agreements involving more than two operators per machine (due to unique rotations or other local factors.)

IV. EVIDENCE AND TESTIMONY

A. The DBCS Machine

The DBCS machine sorts and sequences letter trays of mail for transport directly by the carrier to the vehicle for customer delivery. The DBCS can also be used to sort letter mail to carriers in sector-segment sequence using a two-pass operation. Sector-segment sorting places the mail in block face delivery sequence. A DBCS machine has three components: feeder,

reader and stackers. The feeder allows an employee to jog mail and load it on a feed table to await induction through the reader where the barcode is read and sent to the stacker based upon the sort program. At the time these grievances were filed, the Milwaukee P&DC processed 70 DPS sort plans using 48 DBCS machines; 96 mail processors were needed to fully staff those machines. When there were two employees assigned to a DBCS machine, they generally rotated between the feeder and sweeping positions. Sweeping was performed to ensure that the amount of mail accumulated in the stackers did not exceed desired levels.

Tour 1 Automation Clerk Larry Brown, Jr. was the steward of record for these grievances. Brown testified without dispute that the Grievants were working alone at their assigned DBCS machines on the dates in question. As a result, they were performing both feeder and sweeper duties that normally would have been assigned to two employees.

B. Events of October 8, 2013

According to Brown's testimony, Rose Vosswinkel's grievance arose on Monday, October 8, 2013, a day with normal mail volume. Vosswinkel reported that she had been running value packs, which are advertising packages containing coupons. These packages are letter size, but thicker, which causes the DBCS machine to run slower and fill up faster. According to Vosswinkel's statement, she had to feed and sweep continuously because the racks filled up quickly with the advertising packages.

Steward Brown testified that he spoke with Supervisor Wayne Olheiser about the fact that Vosswinkel was working alone. Olheiser purportedly responded, "I must have forgot. When I looked over there somebody was with her." However, when Brown spoke with the other individual in the area, PSE Diane Martin, he learned that Martin had been assigned to work on a different DBCS and she had not worked with Vosswinkel for over a month. Brown then

informed Supervisor Olheiser that Martin had not been assigned to work with Vosswinkel and that Vosswinkel indeed had been working alone. According to Brown's testimony, Supervisor Olheiser responded that it had slipped his mind and he would have sent someone to work with Vosswinkel had he known she was alone.¹

Manager Distribution Operations (MDO) Ellen Reynolds testified that management makes every effort to staff the DBCS machines with two employees. If necessary, she testified, she will pull employees from other machines to help sweep or tie off. No one works an entire shift on a DBCS by themselves, MDO Reynolds emphasized. Thus, when MDO Reynolds learned sometime after 3:00 a.m. that Vosswinkel did not have a partner, she immediately assigned an employee to assist her.

MDO Reynolds also testified that Vosswinkel was running low volume on October 8, 2013. According to MDO Reynolds, there were only three containers of mail processed at Vosswinkel's DBCS machine, so sweeping would have been minimized. MDO Reynolds stated that staffing a DBCS with only one employee is sometimes unavoidable due to call offs. With the small volume of mail on October 8, 2013, Vosswinkel should have been able to run first or second pass by herself.

Although Steward Brown met with Supervisor Olheiser at Step 1, MDO Reynolds completed the Form 2608, Step 1 Summary. MDO Reynolds stated that she completed the form because she was the management individual who provided Vosswinkel with a partner on October 8, 2013. MDO Reynolds denied the grievance, stating that "we make every effort to staff all machines with two clerks; cannot help if call-ins cause poor staffing. We did not have any clerks available to staff properly."

¹ Supervisor Olheiser did not testify at hearing.

Step 2 designee Ronald Colby issued the Step 2 decision on March 26, 2014. In his Step 2 denial, he pointed out that 96 mail processors were needed to fully staff the Automation machines with two people. On October 8, 2013, there were 95 clerks on the machines until 2:25 a.m. Outgoing volume was heavy and therefore the two Automation train Outgoing clerks could not be moved from the Manual Primary. The End of Run Report for Vosswinkel's DBCS machine was included in the Step 2 denial. It shows the start and end times as well as the number of pieces fed for the operations and sort programs she ran. The Step 2 denial contends that the Union did not show that there was a violation of the JCIM language and goes on to state:

The DBCS is an operator-paced machine and not machine paced equipment. With this in mind, the operator can stop feeding the mail and start sweeping when the bins appear full. Also this machine is fitted with devices that will indicate when a bin reaches capacity and needs to be swept. There was no evidence presented that indicates that the grievant was being rushed or pushed to finish on time, or of the grievant being disciplined for not being able to finish on time. Nor was there evidence provided of the grievant being expected to perform his/her duties in an unsafe manner.

At hearing, Colby added that he reviewed all the service runs for service date October 8, 2013. It appeared to him that the volume of mail run on Vosswinkel's machine was lower than the other DBCS machines that night. Accordingly, he testified, the Postal Service was justified in assigning only one operator due to low or limited volume of mail.

C. Events of October 14, 2013

Like the first grievance, the second grievance alleges that mail processing clerks were assigned to work alone on DBCS machines on Sunday night, October 14, 2013. In so doing, the Union contends that management failed to comply with the JCIM's "normal" staffing requirements. At Step 1, the grievance was denied based on management's contention that "when only running 1st pass DPS only one clerk is required."

The record shows that October 14, 2013 was the Columbus Day holiday for Tour 1 employees. There was no dispatch of mail from the Automation section on this day, and only first pass mail was processed on most of the machines. According to evidence not in dispute, 78 mail processing clerks were scheduled to work but only 71 reported for work. Six PSE clerks and one overtime volunteer did not report. Management called two hours of after-tour overtime for fifteen Tour 3 mail processing clerks. Twelve of these mail processors began their overtime at 21:05, and the other three began their overtime at 00:30.

Grievant Mark Carstens has been employed as a mail processing clerk for 22 years. On October 14, 2013, he worked his normal DBCS machine with assistance for only one hour between 10:00 p.m. and 11:00 p.m. Carstens testified that he did a fan-sort when he started his shift at 9:00 p.m. because the mail was slippery. He started Zone 2 when a helper arrived. There were 55 holdouts, which had to be banded for separate dispatch to downtown locations. Carstens stated that there are normally two clerks assigned to his machine because of the extra work involved in sorting downtown mail. In addition, he stated that first pass mail is a “hodge podge” that has to be separated. For Zone 2, certain bins fill up quickly and they must be swept. During the week, he runs about 55,000 pieces but on a Sunday holiday, there may be 80,000 pieces of first pass which require sweeping all night long. He turned off his machine after running every 20,000 pieces to do a total sweep.

Melody Dupree-Jackson has been an automation clerk for 19 years. She is assigned to DBCS machine 38. Dupree-Jackson testified that she and her regular partner rotate feeding and sweeping. She feeds first pass; he sweeps and pulls heavy mail. Because they only have three racks, they must put trays up on a larger rack with shelves, with each tray in numerical order, when first pass has been finished. They usually run West Bend 53095 mail.

On October 14, 2013, her partner was off and a Tour 3 clerk worked overtime with her for two hours, until 11:00 p.m. Because it was a holiday weekend, they were running two days of first pass mail. She worked alone on the machine from 11:00 p.m. to 5:00 a.m., feeding the mail and sweeping. She also had to stack trays and prepare for second pass the next day with no assistance. Dupree-Jackson stated that she was sweeping as she was going along, but when the mail accumulated, she had to shut down the machine and perform a thorough sweep.

In its Step 2 denial, management pointed out that the End of Run Reports for all the automation machines that were utilized on October 14, 2013 show that DBCS machines operated by Carstens and Dupree-Jackson ran lower in mail volume than most of the other machines. Carstens ran 57,700 pieces; Dupree-Jackson ran 46,965 pieces. The amount of mail processed on their machines ranked 34 and 36, respectively, out of the 42 DBCS machines that were in use that evening.

Management also noted that October 14, 2013 was the Columbus Day holiday and therefore there was no cut-off time for processing and clearing the mail; no second pass sortation was performed; and there was no dispatch to city stations or associate offices. Essentially, once Tour 1 ended, the mail sat on the racks until the Tour 1 mail processors returned the following evening. Since the mail was not going anywhere, there was no justification in calling penalty overtime, management asserted.

V. CONTENTIONS OF THE PARTIES

A. THE UNION

The Union contends that the National Agreement was violated on October 8, 2013 and October 14, 2013 at the Milwaukee P&DC. The JCIM specifies the normal staffing requirement

as two mail processing clerks for the DBCS. Two clerks are required to perform the loading, feeding and sweeping functions on the machine, as the parties themselves recognize.

Although there are limited circumstances set forth in the JCIM where fewer than two clerks may be utilized, the Union argues that the Postal Service failed to establish that those limited circumstances apply in the instant case. On the contrary, some of the Service's shifting and varied explanations are not even among the accepted circumstances in which fewer than two clerks can be used on a DBCS machine. Aside from start-up and close-out, the only prerequisite for not complying with normal staffing requirements is where there is light or limited volume. The Union points out that on October 8, volume was normal. On October 14, volume was greater than normal because it was a holiday Sunday. The fact that mail volume was lower on the DBCS machines operated by only one clerk compared to mail volume on many of the DBCS machines staffed with two clerks merely shows that the clerks did their best in a bad situation.

In short, there was one employee doing the job of two employees on the dates identified in these grievances. The fact that the DBCS is an operator-paced machine does not justify a violation of the contract. Similarly, absenteeism is not a defense when management has the ability to add employees on overtime or rearrange staffing. The Union met its burden here. Accordingly, the grievances must be sustained in their entirety.

B. THE POSTAL SERVICE

The Postal Service maintains that the Union has filed numerous cases on this issue; indeed, whenever one clerk is assigned to a DBCS machine, a grievance is filed. To the Postal Service, it is apparent that the Union has not acknowledged that the JCIM allows for the staffing of one clerk on a DBCS. Management has the right to schedule employees based on operational

need. In this case, staffing was appropriately reduced on October 8, 2013 and October 14, 2013, and therefore no violation of the contract has been established.

According to the Postal Service, Grievant Vosswinkel had short runs with only minimal sweeping activity on October 8, 2013. Equally important, because this is an operator-paced machine, she could stop feeding the machine and sweep the binds when necessary and in fact she did so. The numbers alone do not tell the whole story, management submits. When her hours of running alone are carefully reviewed, it can be seen that her machine was down approximately half as long as it ran. This is clearly a circumstance in which one operator was properly assigned to perform the available work on the DBCS machine.

Equally important, a total of 96 mail processors were needed to fully staff the automation machines with two people. On this date, there were a total of 95 clerks on the machines until 2:25 a.m. It is readily apparent that management staffed all but one machine with two clerks. Thus, 98% of the machines were staffed with two clerks. This shows that management complied with the “normal” staffing requirements in accordance with the JCIM.

The same is true when one reviews the evidence pertaining to the two clerks who ran DBCS machines alone on October 14, 2013. The evidence once again shows that the two operators had short runs with minimal sweeping. There was no dispatch of mail from Automation on this day and only first pass mail was processed. Management utilizes a smaller staff on a holiday to accommodate employees who would like to be off. Even so, seven employees did not report out of the 78 mail processing clerks who were scheduled. Operational adjustments had to be made and evening overtime was called. Management submits that staffing all but two DBCS machines with two clerks is staffing to the “normal” level, particularly when one considers the need to adjust to unforeseen absenteeism issues that arose that evening. The

Postal Service also notes that mail volume on the two DBCS machines in question was much lower than the mail volume run on most of the other DBCS machines that night.

Given these circumstances, and in the absence of evidence that the contract was violated, the Postal Service submits that the grievances must be denied.

VI. FINDINGS AND DISCUSSION

This Arbitrator has carefully reviewed the evidence and arguments presented by the parties as well as the precedent awards on the subject in dispute. There appears to be general consensus among arbitrators as to the interpretation of the Q&A section of the JCIM which addresses Article 37 OCR-BCS-DBCS Staffing. Arbitrators agree that disagreements under this provision must be analyzed within the framework of a shifting burden of proof. The Union bears the initial or *prima facie* burden of establishing that the Postal Service did not comply with the “normal” staffing level for DBCS machines. If the Union is successful, the burden then shifts to the Postal Service to justify the departure from the normal staffing requirements.²

The JCIM specifies that two mail processing clerks normally staff the DBCS machines to perform loading, feeding and sweeping functions. To the extent that the Postal Service argues that “normal” staffing means that most, but not all DBCS machines have two clerks assigned, the argument is not persuasive. “Normal” staffing in the context of the JCIM means that there are two mail processing clerks to perform the work on a DBCS machine, not the overall number of clerks assigned on a particular shift. In the instant case, unlike some of the awards relied upon by the Service, there is no dispute that a single clerk operated each of the DBCS machines in

² See, e.g., *USPS and APWU*, Case No. E06C-1E-C 08370422 (Meyers, 2009); *USPS and APWU*, Case No. K06C-4K-C 09281995 (DeMarco, 2015); *USPS and APWU*, Case No. J06C-1H-C 09327917 (Bartman, 2011); *USPS and APWU*, Case Nos. G06C-1G-C 11007171; G06C-1G-C 09351993 (Armendariz, 2013).

question on October 8, 2013 and October 14, 2013.³ Thus, the Union successfully met its threshold burden of showing that the DBCS machines were not operated in accordance with the normal staffing level of two clerks.

There are, of course, some circumstances in which a reduced staffing level on a DBCS machine may be appropriate. The Q&A's in the JCIM permit one clerk on a DBCS machine at start up or close out, where there is limited volume for a sort run, and where the volume available for a DPS zone is such that a single operator can handle both loading and sweeping. Management's defense must rest on one of these circumstances in order to establish that working one clerk on October 8 and October 14, 2013 was justified.

In my view, the Postal Service did not meet its evidentiary burden. With regard to the events of October 8, 2013, management offered various reasons for working Grievant Vosswinkel alone on the DBCS machine for six hours. At Step 1, MDO Reynolds denied the grievance due to the Service's inability to staff all the DBCS machines with two clerks as a result of the number of call-offs that evening. At Step 2, the Postal Service took the position that the DBCS is an operator-paced machine that would have allowed the Grievant to feed and sweep at her own pace. At Step 3, management argued that there was no evidence that the Grievant had more than minimal sweeping activity during the runs. During the arbitration hearing, Postal Service witnesses stated for the first time that the Grievant was running low volume and therefore the decision to staff her DBCS machine with a single clerk was a proper exercise of managerial authority.

There is no doubt that the Postal Service does possess the managerial authority to reduce its DBCS staffing levels in certain circumstances as provided in the JCIM. It must be

³ Compare: *USPS and APWU*, Case No. G06C-1C-C 09317244 (Neveu, 2013); *USPS and APWU*, Case No. C10C-1C-C 12182493 (Spilker, 2014), both cases in which the Union failed to prove as a *prima facie* matter that only one operator had been assigned to a DBCS machine.

emphasized, however, that if DBCS machines are not staffed at the normal level of two mail processing clerks, the Postal Service must provide the necessary proofs to establish that one of the circumstances set forth in the JCIM was the bona fide reason for doing so. I am not convinced that any of the reasons advanced by the Service during the grievance and arbitration process provided the basis for staffing Grievant Vosswinkel's DBCS machine with only one employee. My conclusion in this regard is based on the fact that the Service never refuted the testimony of Union Steward Brown, who stated that Supervisor Olheiser admittedly forgot or overlooked Grievant Vosswinkel's DBCS machine when staffing that night. Supervisor Olheiser was not called to testify at hearing notwithstanding the fact that he possessed critical information about the case. When the Postal Service without reasonable explanation failed to call him as a witness, it left a natural inference that his testimony would be unfavorable to the Service's position.

Moreover, MDO Reynolds admitted that management makes every effort to staff the DBCS machines with two clerks and in fact she did so as soon as she learned that Grievant Vosswinkel was working alone. Thus, it is reasonable to conclude that this was not a deliberate decision by the Postal Service to utilize one clerk on a DBCS machine based on low or limited volume, or for any of the other reasons asserted later by the Postal Service. Rather, there was an error in staffing on the evening of October 8, 2013 that was rectified when the MDO was informed of the situation. While I understand that the error appears to be inadvertent and not the result of an intentional decision to staff Grievant Vosswinkel's DBCS machine with only one employee, such errors are not identified in the Q&A section of the JCIM as a circumstance permitting reduced staffing on a DBCS machine.

Turning now to the events of October 14, 2013, my review of the record shows that widely conflicting evidence has been presented in support of the parties' respective positions. The Service defended staffing two DBCS machines with one employee at each machine by arguing that Grievants Carstens and Dupree-Jackson performed minimal sweeping activity on that date because the volume of mail was low. Dupree-Jackson and Carstens, both highly experienced automation clerks, disputed management's claims. They insisted that the nature of the mail being processed (i.e. valuepaks and holdout mail for downtown dispatch) created a need for frequent sweeping. Dupree-Jackson and Carstens also claimed that weekend holiday mail volume is generally higher than usual because the mail has accumulated over the weekend.

It must be remembered that the burden here was on the Postal Service to prove that working one clerk at each of these two machines was warranted under the Q&A's referenced in the JCIM. Reduced staffing may be justified if volume drops to the point that one operator has minimal sweeping activity or where the operator can perform both the loading and sweeping functions. The Postal Service argues that there is probative evidence to tip the burden of proof in its favor. Management provided data indicating that the mail volume on the DBCS machines worked by Carstens and Dupree-Jackson was ranked lower than the mail volume run on most of the other DBCS machines that night. As the Union correctly pointed out, however, that result would not be surprising since Carstens and Dupree-Jackson were working alone while the other DBCS machines were staffed with two clerks. It would be expected that two clerks working together to perform the sweeping and feeding functions would be able to run more mail than a single clerk who could not perform those functions simultaneously.

The Postal Service did not provide data that would permit a valid comparison between the operations of the two DBCS machines under a normal range of mail volume when two clerks

were assigned to those machines on a weekend holiday. Essentially, the Postal Service is conflating cause and effect. It cannot be determined with any degree of certainty that the mail volume run on the two DBCS machines at issue actually dropped to the point that justified a staffing reduction in accordance with the Q&A provisions in the JCIM.

Management also argues that the JCIM permits the staffing of a single clerk when the volume is such that the operator can safely load, sweep, and then return to loading. The Postal Service emphasizes that the DBCS machine is operator-driven and therefore a single clerk can safely perform the loading, sweeping and feeding functions simply by turning off the machine when the bins appear full. That argument misses the mark, in my view. If management's argument were accepted, there would be no reason for the parties to agree that "normal" staffing for a DBCS machine is two mail processing clerks. The Postal Service could simply staff all the DBCS machines with one operator and claim that they could perform all the machine functions at their own pace. Moreover, the operator-paced nature of the DBCS machine does not address or refute the testimony of Carstens and Dupree-Jackson which indicates that they were performing more than minimal sweeping on October 14, 2013.

Thus, for the reasons stated, management did not justify its decision to assign one clerk rather than two on the dates in question. In contrast with the awards cited by the Postal Service in which low volume was proven, the Service failed to establish by a preponderance of the evidence that the reduced staffing on the DBCS machines was warranted under the terms of the JCIM due to the low volume of available mail.

The remaining issue concerns the remedy. The Postal Service claims that any monetary remedy in this case would be improper because there is no justification for paying employees an additional fifty percent of their base rate for a period of time that is their regularly scheduled day.

However, this Arbitrator believes that there are proper and sound reasons for following the rulings of arbitrators who have previously addressed this subject and have awarded a monetary remedy when the Service violated the staffing provisions under Article 37 of the JCIM.⁴ One reason is to provide a disincentive for the Service to engage in the same conduct in the future. Additionally, additional monetary compensation is appropriate where a single clerk must perform work normally performed by two clerks. Accordingly, the two grievances in this case must be sustained in their entirety.

VII. AWARD

The two grievances are sustained in their entirety. The Postal Service violated the National Agreement and the JCIM by assigning only one clerk to a DBCS machine on October 8, 2013 and by assigning only one clerk to each of two DBCS machines on October 14, 2013. The Postal Service is hereby ordered to cease and desist staffing the DBCS machines with only one clerk except in such circumstances as provided in the JCIM. The Postal Service is also ordered to compensate each of the three identified clerks the differential between their normal hourly rate and the applicable overtime rate for the hours they operated the DBCS machines unassisted.

Ann S. Kenis

ANN S. KENIS, Arbitrator

Dated June 17, 2015.

⁴ *USPS and APWU*, Case Nos. C06C-1C-C 10271456, et. al. (Duncan, 2014); *USPS and APWU*, Case No. F06C-1F-C 08366915 (Hoppe, 2014).