

NATIONAL ARBITRATION PANEL

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In the Matter of the Arbitration )  
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between )  
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UNITED STATES POSTAL SERVICE ) Case No. Q06R-4Q-C 10111225  
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and )  
 )  
NATIONAL RURAL LETTER )  
CARRIERS' ASSOCIATION )  
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BEFORE: Shyam Das

APPEARANCES:

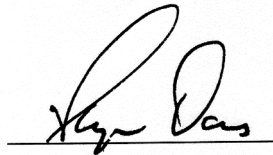
For the Postal Service:	Brian M. Reimer, Esquire Lucia Rich Miras, Esquire
For the NRLCA:	Michael J. Gan, Esquire Mark Gisler, Esquire Dennis D. Clark, Esquire
Place of Hearing:	Washington, D.C.
Dates of Hearing:	September 8, 2014
Award:	April 16, 2015
Relevant Contract Provision:	Article 19
Contract Year:	2006-2010
Type of Grievance:	Contract Interpretation

Award Summary:

The Union's position in this Article 19 appeal is sustained in part and denied in part as set forth in the above Findings.

The Postal Service is directed to include in the DPS Flats implementation and review procedures provisions similar to those in the DPS Letters implementation and review procedures relating to:

- (1) a 3-consecutive day 98 percent quality threshold before a route can be evaluated using the DPS Flats standard; and
- (2) a quality review procedure for DPS Flats in Handbook PO-603 Section 541.44.

A handwritten signature in black ink, appearing to read "Shyam Das", is written over a horizontal line.

Shyam Das, Arbitrator

The NRLCA filed this Article 19 appeal on February 22, 2010. At arbitration, the Union presented the following issue statement:

1. Whether the Postal Service's September 6, 2011 Article 19 change to Handbook PO-603, concerning Section 541.44 *Formal Review of DPS Flats Processing* is fair, reasonable, and equitable? And if not, what shall the remedy be?
2. Whether it is fair, reasonable, and equitable for the Postal Service's September 6, 2011 DPS flats implementation procedure not to include:
  - a. A 2,400 minimum weekly piece count before a route can be evaluated using the DPS flat standards; and
  - b. A 3-day 98% quality threshold before a route can be evaluated using the DPS flat standard.

And if not, what shall the remedy be?

Rural Carriers are salaried employees whose pay is based on a wide range of duties performed in the Post Office and numerous elements of their given routes. Most rural carriers are paid under an "Evaluated Compensation System." During a negotiated two to four-week period, usually each year, more than forty items are counted, timed or measured, and time standards are applied to each of those items. Then through multiplication and addition, a number of Standard Hours is calculated for each rural route. Article 9.2.C.6.a of the National Agreement is applied and the Standard Hours are converted into Evaluated Hours, coupled with a designation of "H", "J", or "K" for regular routes (these letters indicate the number of days worked each pay period). Each carrier's salary is based on these hours until the next evaluation, regardless of actual time spent working. One important element in the evaluation scheme is the amount of time taken to sort mail while preparing it for delivery on the route.

Before automated sorting of mail, rural carriers received letters in generally random or "raw" order and the carriers would then sort the mail, placing it in cases segregated by address. After the casing process, the mail would be "strapped out" and the carrier would deliver it in the ordered sequence. Beginning in the early 1990s new processing equipment permitted some letter mail to be provided to the carrier in rough sections that corresponded to

the geographical divisions of the carrier's case. This "sector/segment" mail was covered by separate standards because it needed less time to be processed by the carrier. Subsequently, Delivery Point Sequencing (DPS) equipment was developed which enabled the Postal Service to provide the carrier with letter mail sorted in delivery order, eliminating the need for further sorting. The parties conducted a joint study to develop a time standard for DPS Letters and then entered into negotiations to determine both the time standard and implementation and review procedures.

In 1994 the parties reached agreement on the time standard and the related procedures for DPS Letters. Previously raw mail was rated at 16 letters per minute, sector/segment mail, which involved some machine processing, was rated at 22.5 letters per minute, and the parties agreed that DPS mail would be rated at 30 letters per minute. The agreed implementation procedure included the following prerequisites:

- The route has been receiving DPS letter mail for at least 30 calendar days prior to the beginning of a mail count;
- The DPS letter mail has met the 98% quality threshold for at least three (3) consecutive days prior to the mail count; and
- The route receives an average of 2,400 DPS letter mail per week during the mail count period.

The parties also bargained the terms of §541.42 of the Rural Carrier Duties and Responsibilities Handbook PO-603, entitled "Formal Review of DPS Processing," which states:

If a route receiving DPS mail frequently experiences significant decreases in the quality of the DPS mail or there is a disproportionate reduction in DPS volume in relationship to the total letter volume of the route, the carrier may make a written request asking for a formal review of the DPS processing for the route. If the formal review indicates a zone or route is no longer being properly processed on automated equipment, quality has deteriorated significantly, or a pattern of random automated processing is revealed. Management will take corrective action to ensure that the processing is returned to levels equivalent to those experienced during the previous mail count period.

However, if the corrective action has not resolved the problem within 30 calendar days of the carrier's written request, Management will prepare a form 4003, Official Rural Route Description, discontinuing the application of DPS standards. The DPS volume will be reclassified as sector/segment mail (if processing standards are achievable) or raw mail, as appropriate, and a base hour change made to adjust the route evaluation. The form 4003 will be processed with an effective date beginning with the first day of the pay period in which the carrier provided written notification requesting a review of DPS processing.

(Emphasis added.)

In 2003, National Arbitrator Richard Bloch heard Case D-95R-4D-C #00104717, which involved a 2000 dispute as to the meaning of "disproportionate reduction" in §541.42. In a decision issued on June 17, 2004, (DPS Review I) Bloch concluded that a "disproportionate reduction" meant any reduction.

In 2008, the Postal Service invoked Article 19 of the National Agreement, and made substantial changes to §541.42. The Postal Service's 2008 unilateral revision of §541.42 provided in relevant part:

If a route receiving DPS letter mail experiences an increase or decrease in the quantity of the DPS letter volume in relationship to the total letter volume of the route as compared to the latest mail count (or adjusted base following a DPS letter mail formal review), the assigned carrier may make a written request for, or management may elect to schedule, a formal review of the DPS letter mail processing for the route.

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If the DPS letter mail formal review indicates a route is experiencing an increase or decrease in the quantity of DPS letter volume in relationship to the total letter volume of the route, which is equivalent to or greater than one (1) hour (60 minutes) in the evaluation of the route's hours, management will prepare a Form 4003, *Official Rural Route Description*, effecting a base hour change for the time associated with the resulting variance in the percentage of DPS letter volume. The Form 4003 will be

processed to be effective on the first day of the pay period in which the DPS Letter Mail Formal Review Request/Notice was received.

\* \* \*

(Emphasis added.)

The Union objected to the changes, arguing that the changes were not fair, reasonable, and equitable as required by Article 19. The Union's Article 19 appeal was heard by Arbitrator Bloch in 2009 in Case No. Q00R-4Q-C 08243218. In a decision issued on January 22, 2010 (DPS Review II), Arbitrator Bloch ruled in favor of the Union, finding that the Postal Service's changes to §541.42 were not fair, reasonable or equitable, and directed the Postal Service to rescind the 2008 revisions and reinstate the 1994 language. Bloch stressed that this was an agreed upon procedure and that the Postal Service had not provided any profound justification for changing the agreed-to review procedure.

Meanwhile, in the 2000s the Postal Service developed the Flat Sequencing System (FSS) machine which provides flats to carriers in DPS order. There are approximately 100 FSS machines nationwide. These are utilized on a zip code basis and sort mail in DPS order for delivery by both city and rural carriers in the affected zip codes. In 2008, the parties again conducted a joint study to develop a new time standard and entered into negotiations to determine the time standard and new implementation procedures for DPS Flats. The parties were unable to reach agreement. The time standards for DPS flats were determined in arbitration by Arbitrator Bloch pursuant to Article 34.

The Postal Service, again through the Article 19 process, promulgated implementation and review procedures for DPS flats effective January 21, 2010. The Union then filed this Article 19 appeal. The Postal Service subsequently modified the DPS Flats procedures on September 6, 2011. It is those modified procedures that are at issue here. The Union alleges that the DPS flats procedures are not fair, reasonable, and equitable to the extent they differ from the negotiated procedures for DPS letters. The DPS Flats implementation procedures adopted by the Postal Service provide as follows:

A rural route receiving DPS flats may be counted and evaluated using the appropriate DPS flats standard provided the route begins receiving DPS flats at least 30 calendar days prior to the beginning of the mail count. ...

The review procedures adopted by the Postal Service are set forth in the Handbook PO-603 Section 541.44 as follows:

If a route receiving DPS flats frequently experiences a decrease in the quantity of the DPS flats volume in relationship to the total flats volume of the route as compared to the latest mail count, the assigned carrier may make a written request for a formal review of the DPS flats processing for the route by submitting the DPS Flats Formal Review Request form.

If the DPS flats formal review indicates a route is experiencing a decrease in the quantity of DPS flats volume in relationship to the total flat volume of the route, management will take corrective action to ensure that processing is returned to levels equivalent to those experienced during the previous mail count.

However, if corrective action has not resolved the problem within 30 calendar days of the carrier's written request, management will prepare a Form 4003, *Official Rural Route Description*, effecting a base hour change for only the time associated with the resulting variance in the percentage of DPS flats. The Form 4003 will be processed to be effective on the first day of the pay period in which the DPS Flats Formal Review Request was received.

Article 19 of the applicable 2006-2010 National Agreement provides in relevant part:

#### ARTICLE 19 HANDBOOKS AND MANUALS

##### Section 1. Statement of Principle

Those parts of all handbooks, manuals, and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this

Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. . . .

(Emphasis added.)

### UNION POSITION

The Union contends that the DPS Flats review process in Section 541.44 of Handbook PO-603 is not fair, reasonable, and equitable. It insists there is no rational reason for two different DPS review procedures and that the policy rationale behind the 20-year-old DPS Letters review process applies with equal force to DPS Flats. Since a rural carrier's annual salary is set on the premise that DPS quality and quantity (ratio) will remain consistent throughout the year, any slippage in the quality or quantity of DPS mail adversely affects rural carrier compensation. As Joey Johnson, the Union's Director of Labor Relations, testified, there is no difference between DPS Letters and DPS Flats.

The Union asserts that for 20 years rural carriers receiving DPS Letters have been entitled to a quality review. The DPS Flats implementation procedures, however, do not provide for any such review. Moreover, during the discussions between the parties while the DPS Flats review procedures were in the Article 19 process, the Postal Service never articulated a substantive reason for omitting a quality review from the DPS Flats review procedures. Quality issues, contrary to a suggestion by the Postal Service, were not built into the time standard. Handling missequenced or missorted mail was not included in the standard. The Postal Service also has pointed to the lack of carrier complaints as a justification for not including a quality review process for DPS Flats, but without a quality review process in place carriers had no place to voice their concerns. Finally, the Postal Service hardly can argue that it would be onerous or burdensome for it to include a quality review process for DPS Flats like it has had for DPS Letters for 20 years.<sup>1</sup>

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<sup>1</sup> The Union points out that the Postal Service has not even suggested that maintaining a 98 percent quality threshold is unattainable for DPS Flats or any more difficult than for DPS Letters.



Similarly, the Union argues, for 20 years the DPS Letters quantity review process has served the parties well and given the Postal Service an extended opportunity (30 days after a request for review) to return the ratio of DPS Letters to total letter volume as measured during the last mail count. Beginning with DPS Reviews I and II and now in this case, the Postal Service has objected to the remedy for failed DPS quantity review. While much has been written about this so-called "stern penalty," the protection it offers to rural carriers is critically important because without it the Postal Service would have little or no incentive to keep DPS percentages constant after a mail count, as recognized by Arbitrator Bloch in DPS Review II. The Union stresses there is no reason to treat a reduction in the ratio of DPS Flats to total flats volume in a different manner than DPS Letters.

The Union asserts that an overall decline in DPS Flats volume, cited by the Postal Service, is not a relevant concern. What matters is that the ratio of DPS Flats to all flats does not decline, which is something completely within the Postal Service's control. The Postal Service offered no evidence to support the suggestion that a DPS Flats mailer could stop mailing DPS Flats between mail counts so as to affect the ratio of DPS Flats to all flat mail. There also is no evidence that the number of "flyouts," also cited by the Postal Service as causing a reduction in the ratio, increases from one mail count to the next so as to affect the ratio of DPS Flats to total flats volume.

The Union stresses that the Postal Service has an opportunity in every case of a requested review to cure any decline in the quality or quantity of DPS Flats and has not shown that it cannot cure the decline or even that its failure to cure (in the case of DPS Letters) has been a costly proposition. Given that there are far fewer DPS Flats than DPS Letters and that less than 10 percent of all rural routes have DPS Flats to begin with, the Postal Service cannot and has not suggested that using the same remedy for a failed DPS Flats review as has existed for DPS Letters for 20 years is onerous or burdensome in any way.

The Union also argues that the Postal Service's failure to incorporate minimum quality and piece count preconditions in its DPS Flats implementation procedures is not fair,

reasonable, and equitable. During the Article 19 process the Postal Service offered no substantive reasons to justify these critical omissions. According to the Article 19 principles enunciated by Arbitrator Bloch, the Postal Service can show no justification for a change to longstanding provisions that on their face afford considerable protections to the bargaining unit. Clearly this change from the parties' 20-year practice is dramatic and requires justification by evidence of profound demands that reasonably warrant such a response. The Postal Service has presented no such evidence.

The Union adds that if the 2400-piece threshold for DPS Flats is too high, it was incumbent on the Postal Service to offer a different number, but surely the number cannot be zero in the context of the parties' longstanding implementation procedures for DPS mail.

By way of remedy, the Union requests that the Postal Service be ordered to immediately rescind the September 6, 2011 DPS Flats implementation and review procedures and be required to adopt procedures parallel to the existing Section 541.42 of Handbook PO-603 and the November 1, 2012 DPS Letters implementation procedures.

The Union also maintains that the Postal Service must be ordered to retroactively reclassify all rural routes as the 98 percent quality threshold precondition must be met before a route can be counted under DPS standards. Similarly, the minimum 2400 weekly piece count must be met before a route can be counted under DPS standards which similarly requires retroactive route reclassifications. In cases where a carrier requested a DPS Flats quantity review and the Postal Service was unable to correct the problem within the 30-day window, the carrier must receive complete make whole relief, including retroactive route classification and back pay. The Union asks that all retroactive route classifications include a full make whole remedy, including back pay and interest.

#### EMPLOYER POSITION

The Postal Service insists that the implementation procedures for DPS Flats do not need to be the same as the procedures for DPS Letters. It points out that the DPS Letters

procedures were the product of a bargain where the Union agreed to a less favorable time standard in exchange for added procedural protections. In the case of DPS Flats, however, there was no bargain. The time standard was established in arbitration. Moreover, there are distinctions between DPS Letters and DPS Flats that justify different procedures. The Postal Service does not control mail or behavior that can change the percentage of flats that will be provided in DPS order. Most DPS Flats consists of periodicals or catalogues, not first class mail. Changes in mailer behavior can easily affect the percentage of flats that can go through the FSS. For example, mailers may decide to include so-called "flyouts" in their magazines, causing trouble with the machinery. Mailers also can choose to increase their web presence and decrease their mailings. Thus, the mere fact that a remedy is appropriate when the DPS Letters percentage decreases does not necessarily make it appropriate, much less mandatory, for DPS Flats.

The Postal Service contends that the DPS Flats review procedures are fair, reasonable, and equitable because the Postal Service pays rural carriers for the actual work they are performing. For example, if a DPS Flats review shows that the percentage of flats in DPS order has decreased from 50 percent to 45 percent, the Postal Service reclassifies the 5 percent difference as raw flats. Moreover, this is a one-way street favoring the carriers because the Postal Service cannot request a review if it thinks the DPS percentage has increased since the last mail count.

The Union maintains that if the DPS review shows a decrease -- however small -- all of the mail that was classified as DPS Flats must be reclassified as "raw." The basis for this argument is the Union's belief that the review for DPS Flats should mirror the review for DPS Letters. Arbitrator Bloch's decisions in the DPS Review I and II cases, however, were based on his interpretation of the bargain between the parties relating to DPS Letters. Such considerations are irrelevant here, where there was no bargain.<sup>2</sup>

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<sup>2</sup> In the DPS Letters bargain, the Postal Service had agreed to reclassify all the mail after a "disproportionate reduction." Knowing how Arbitrator Bloch defined the term "disproportionate reduction" (to mean any decrease) in DPS Review I, the Postal Service was unwilling to agree to the same procedure for DPS Flats.

In addition, as previously noted, the Postal Service does not have the ability to ensure that the percentage of flats in DPS order always will remain at the level provided during the mail count. So to force upon the Postal Service the draconian remedy of paying rural carriers as if all of their flats are raw, when that is not the truth, is not fair, reasonable, and equitable.

The Postal Service also contends that it is fair, reasonable, and equitable for the Postal Service to pay rural carriers using the DPS Flats standard without a minimum piece count. Even if there were a minimum piece count for flats, there is no reason why it should be the same as the number for letters (2400). The average rural carrier receives many more letters than flats in a week and the percentage of DPS Letters to total letters is much higher than the percentage of DPS Flats to all flats on those rural routes that receive DPS Flats. Furthermore, the Postal Service stresses there is no evidence that the total number of DPS Flats provided to a carrier has any effect on the time it takes the carrier to handle each piece. And, to the extent it did, that is incorporated in the time standard because the study on which it was based had no requirement that routes have 2400 pieces in a week. Finally, as testified to by Postal Service witness James Boldt, the designated Manager of Rural Delivery, flats are declining in number at a significantly more rapid rate than letters. The flats volume has fallen more than 40 percent since 2006. The Postal Service further points out that, as Boldt also testified, the use of a one-size-fits-all minimum is also problematic in regard to smaller routes which may be as low as two hours a day in length.

The Postal Service maintains that it is fair, reasonable, and equitable to pay rural carriers for DPS Flats without providing a quality qualifier or a quality review. It argues that experience is an important factor here and that such procedures are unnecessary. In 1994 when the DPS Letters procedures were put into place DPS technology was new. By the time the FSS came around almost 25 years later, permitting DPS Flats, the experience with DPS Letters dictated that quality was not a problem. The record in this case shows that quality problems are virtually nonexistent for DPS Letters today. Since 2011, Boldt testified, only 123 rural carriers have even requested a quality review for DPS Letters and not a single one of

those reviews resulted in reclassification. Boldt testified that he had no reason to think the situation would be different for DPS Flats and that to his knowledge the Union never has complained about quality problems for DPS Flats. The Postal Service points out there still is a minimum 30-day period prior to a mail count where a rural route receives actual DPS Flats but the DPS Flats standard does not yet apply. The reason for this time period, as Union witness Joey Johnson testified, is to ensure that quality meets the 98 percent threshold.

The Postal Service stresses that the Union presented no evidence of real life quality problems with DPS Flats. Even without a quality review procedure, if there were a quality problem, rural carriers could complain to their supervisors, file grievances, and alert their stewards. The Postal Service also has an economic self-interest in keeping the quality for DPS Flats as high as possible, as all 100 FSS machines also provide DPS Flats for city delivery.

Finally, even if this Arbitrator were to agree that there should be a quality qualifier or review for the rural carriers for DPS Flats, the Union's claim for back pay worth tens of millions of dollars is unwarranted. Any relief should be prospective only.

### FINDINGS

Addressing the issues raised by the Union in reverse order, I conclude that it is not fair, reasonable, and equitable for the Postal Service's September 6, 2011 DPS Flats implementation procedure not to include a 3-consecutive day 98 percent quality threshold before a route can be evaluated using the DPS Flats standard. The Postal Service has not argued that this threshold should be less for flats than for letters or that following this procedure is onerous. It simply contends it is unnecessary to include this threshold as a precondition to utilizing the DPS Flats standard (or to provide for a quality review), citing the improvement in DPS equipment and operations since the threshold was put in place for letters in 1994 and evidence indicating that in recent years carriers rarely seek a quality review for DPS Letters and, when they do, the results have not resulted in reclassification. The 3-day 98 percent quality threshold offers protection to the affected carrier -- the same basis for including it for DPS Letters -- and while FSS operations may be more reliable today than DPS Letters sorter

operations were in 1994 the extra burden this imposes on the Postal Service has not been shown to be significant.<sup>3</sup>

The Postal Service points out that the 2400 minimum weekly piece count threshold for DPS Letters originated in a 1994 management directive, although Joey Johnson testified that the directive was based on the parties' agreement on implementation procedures. Unlike the quality threshold, the purpose of a 2400 minimum for DPS Letters is not obvious, and there is no evidence that would explain why 2400 was determined to be the threshold two decades ago. Moreover, the evidence in this record is that, in any event, 2400 would not be an appropriate number for DPS Flats, which are significantly fewer in number than DPS Letters.<sup>4</sup> The Union does not contest this, but argues that the Postal Service, if need be, should have come up with some other quantity threshold and that it cannot be zero. While it cannot be zero - - for then there would be no mail to apply the DPS Flats standard to -- the Union has not suggested an alternative number. More importantly, it has not effectively countered the Postal Service's contention that from the perspective of fairness to the carrier (and to the Postal Service) there really is no current need for a minimum quantity threshold. What is important is the ratio of DPS flats volume to total flats, and that such ratio be maintained, which is addressed in the review procedure. The 98 percent quality threshold differs both because it is equally applicable to any route and because some assurance that it is being met before the carrier's route is reevaluated using the DPS Flats standard, as discussed above, provides protection to the legitimate interests of the carrier. The argument supporting a quantity threshold seems to boil down to "we have it for DPS Letters so we should have it for DPS Flats." In these circumstances, this is not a persuasive argument for concluding that a minimum quantity level is required to satisfy Article 19.

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<sup>3</sup> Indeed, the Postal Service seems to recognize the need for a quality threshold, asserting that is the purpose of the requirement that a route has been receiving DPS Flats for 30 days prior to a mail count.

<sup>4</sup> Boldt testified that DPS Flats are about 50 percent of the total volume of flats on rural routes with DPS Flats, and the average DPS Flats volume on such routes is about 364 pieces.

Accordingly, addressing the second issue raised by the Union, I conclude that in the Postal Service's September 6, 2011 DPS Flats implementation procedure: (a) the absence of a 2400 (or other fixed) minimum weekly piece count before a route can be evaluated using the DPS Flats standard does not render it not fair, reasonable, and equitable; and (b) the lack of a 3-consecutive day 98 percent quality threshold before a route can be evaluated using the DPS Flats standard is not fair, reasonable, and equitable.<sup>5</sup>

For essentially the same reasons as set forth above with respect to the 98 percent quality threshold provision, I find that not including a quality review procedure for DPS Flats equivalent to that provided for DPS Letters is not fair, reasonable, and equitable. That recent quality reviews for DPS Letters may have consistently found the standard to have been met and that carriers have not complained in some other fashion about DPS Flats quality does not convincingly establish that there is no need to offer equivalent protection to rural carriers as is provided in the quality review procedure for DPS Letters.

I am not persuaded on the present record, however, that the severe remedy sought by the Union -- retroactive reclassification of all rural routes to exclude any use of the DPS Flats standard, with a full make whole remedy -- is justified. The evidence in the record all points in the direction of there being little, if any, likelihood that DPS Flats quality actually has been below 98 percent. In these circumstances, the appropriate remedy is to direct the Postal Service prospectively to include a quality review procedure equivalent to that for DPS Letters which a carrier can avail herself or himself of if the carrier frequently experiences significant decreases in the quality of DPS Flats, and to include a 3-consecutive day 98 percent quality threshold before a route initially can be evaluated using the DPS Flats standard.<sup>6</sup>

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<sup>5</sup> The remedy issue is addressed below.

<sup>6</sup> As promulgated on September 6, 2011, Handbook PO-603 §541.44 does not provide for a quality review and, therefore, contains no provision addressing what action is to be taken if management is unable to resolve a quality problem through corrective action. Section 541.42, covering DPS Letters, provides in such circumstances for discontinuing the application of DPS standards and reclassification of DPS Letters volume as segment/sector or raw mail. The Postal Service did not address this question except to argue against any quality review. The Union generally seeks the identical procedure provided for in §541.42. It is difficult to see what

The remaining issue relates to the consequences when a review shows that the ratio of DPS Flats to total flats volume has decreased and this is not corrected within 30 days. The Union relies heavily on the two prior National arbitration decisions rendered by Arbitrator Bloch in DPS Reviews I and II. In its view, the Postal Service is improperly seeking a third bite of the apple.

In 1994 the parties negotiated time standards, implementation and review procedures for DPS Letters. The review procedure was included at that time in a new provision of Handbook PO-603, Section 541.42. It permits a carrier to seek formal review if there is a "disproportionate reduction in DPS volume in relationship to the total letter volume of the route." If necessary, management takes corrective action to return to the levels in the previous mail count period. If the problem is not resolved in 30 days, §541.42 provides, application of the DPS Letters standard is to be discontinued and the DPS volume is to be reclassified as sector/segment or raw mail. In DPS Review I, issued on June 17, 2004, Arbitrator Bloch held that "disproportionate reduction" meant any reduction. He recognized that: "Without doubt, this can be a stern penalty," concluding it "reflects both the importance of the issue to the Union and the confidence on the part of Management in its ability to avoid that outcome." As he noted, "this was a system designed with a firm expectation of continued expansion of DPS mail." He repeatedly stressed that this was a "bargained" system.

Sometime after issuance of DPS Review I, in an apparent effort to ameliorate the effect of that decision, the Postal Service significantly revised §541.42 in 2008. The Union's challenge under Article 19 was decided by Arbitrator Bloch in DPS Review II, issued on January 22, 2010. In that Award, Bloch described what he termed the "dramatic" changes as follows:

(1) As originally drafted, §541.42 required that, in the event of a drop in DPS volume, as compared to total letter volume, "Management will take corrective action..." The new process

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remedy appropriately should apply if the Postal Service is unable to correct a significant decrease in DPS Flats quality below acceptable standards other than to discontinue application of DPS standards and reclassify DPS Flats volume as raw mail, as is provided for DPS Letters in §541.42. Unless the parties agree otherwise, such a provision is to be included in §541.44.



specifies certain adjustments to base hour changes. Gone, however, is any requirement on the part of management to adjust the DPS volume to the prior mail count level.

(2) While the previous version of Section 541.42 mandated reclassification of all DPS mail as sector/segment or raw letters, the new rules required reclassifying only the percentage drop in DPS level.

(3) The new rules imposed a "buffer" with respect to the penalty imposed for failing to adjust the DPS mail volume. Previously, management was obliged to re-evaluate the route by the full amount of the time increase generated by reclassifying mail from DPS to sector/segment or raw. Under the revised §541.42, no route evaluation occurs unless DPS volume drops 60 minutes or more per week in carrier workload.

(4) Under §541.42 as originally drafted, a DPS review was mandatory upon request by the rural carrier. Under the new section, there is no obligation by management to initiate a review if it deems the request, for some reason, inadequate. [Footnote omitted.]

Concomitantly, under the previous system, management could not initiate a DPS review on its own, absent a request for such review by the carrier. Instead, it was obliged to await the next annual mail count. Under the new section, however, management could perform such a review on its own initiative.

(5) . . . .

In concluding that these changes were not fair, reasonable, and equitable, Bloch stated:

Three factors arguably impact the scope of management's ability to modify the provision at issue. First, this is not a run-of-the-mill employment provision. It is instead, a mechanism that directly impacts the wages of affected Bargaining Unit Members. Second, the terms of Section 541 were not left to management in the normal course of affairs with the understanding it would implement an otherwise undisputed precept. Instead, the regulation at issue was, in fact, discussed at length and subjected to bona fide bargaining between the parties. [Footnote omitted.] Finally, as the Union notes, the exercise of the managerial right in this instance has the effect of overturning an arbitration award and

thereby devitalizing a process the parties have agreed would be final and binding.

\* \* \*

. . . One cannot ignore the nature of the regulation at issue, its genesis and the history behind its administration. All these facts are directly germane to the question of whether the changes are "fair, reasonable, and equitable", as they must be if they are to be endorsed.

(Emphasis added.)

Bloch then quoted from an APWU/USPS decision I issued in 2002, Case No. HOC-NA-C 19007:

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.

Bloch continued:

As negotiated, the goal of this system, it should be reiterated, was to protect carriers by reinstating DPS levels in the event of a drop. The anticipated response by the employer was to adjust the volume, not to pay the penalty. . . .

\* \* \*

There is no question, as indicated in DPS Review I, that the monetary penalty is steep. It is, however, the mechanism that was freely bargained and accepted by management in the course of the 1994 negotiations. . . .

\* \* \*

. . . Particularly considering the bargained genesis of the rule at issue, it would follow the parties should discuss and agree upon

subsequent modifications, should they be in order. Indeed, modifications were discussed, but there was no agreement and Management proposed no changes during the 2007 interest arbitration proceedings.

The stern penalty provided in the original regulation acted as incentive to Management to meet the jointly understood goal of maintaining a rural route's DPS percentage at the level achieved during the last mail count and to take immediate steps to restore pre-existing levels in the event of a drop. The revised rule substantially devitalizes the penalty and, moreover, by adding a requirement that the drop in DPS volume must equal at least 60 minutes of additional evaluated time before it will qualify for addition to the route's evaluation, effectively gains for management the type of buffer it had sought, but failed, to achieve in the original arbitration. On balance, the contractual mandate of "fair, reasonable, and equitable" cannot be seen as being satisfied by what amounts to this second bite of the apple.

(Emphasis added.)

Bloch found no evidence to support the Postal Service's claim that it had become more difficult since the review procedure was bargained in 1994 for the Postal Service to correct a decline in DPS Letters volume.

On January 21, 2010 -- as it turns out, the day before DPS Review II was issued -- the Postal Service notified the Union that it was implementing the DPS Flats implementation procedures, including Handbook PO-603 §541.44 Formal Review of DPS Flats Processing which was similar to the 2008 revision of §541.42 addressed in DPS Review II. The Union then filed the present Article 19 appeal. A subsequent revision of the DPS Flats implementation procedures, including §541.44, was issued on September 6, 2011.<sup>7</sup> The Union challenges the failure of §541.44 to include a quality review -- a matter previously addressed in this opinion -- and the provision that if management is unable to correct a decrease in the ratio of DPS Flats to total Flats volume, the required adjustment is only proportionate to the decline in that ratio -- not a total reclassification of all flat mail to raw mail.

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<sup>7</sup> The parties agreed to consider the relevant provisions on the basis of the changes made on September 6, 2011.

The Union, not surprisingly, sees this as a case of "déjà vu all over again." It stresses that there is no significant difference between DPS Flats and DPS Letters. Arbitrator Bloch rejected the Postal Service's attempt to change §541.42 to limit the consequences of an uncorrected decrease in the relative volume of DPS Letters to a proportionate reclassification of DPS Letters, rather than a total reclassification, and, the Union maintains, the same result should be reached here. The Postal Service asserts that there are significant differences and that the provisions governing DPS Letters should not be determinative.

Central to the holding in DPS Review II, as I read it, is Arbitrator Bloch's determination that the relevant provisions in §541.42 were based on a joint understanding that management could and would correct any decrease in the ratio of DPS Letters to total letter volume, in part because the Postal Service was confident of the expansion of DPS letters, and that the parties bargained a "stern" or "steep" penalty to ensure that happened. Bloch does not opine that a proportionate reclassification inherently would not be fair, reasonable, and equitable. Rather, the emphasis throughout is on the bargained or negotiated nature of that penalty.<sup>8</sup>

In 1994, the parties negotiated or bargained an entire procedure for treatment of DPS Letters for compensation purposes, including time standards. That is not the case with respect to DPS Flats. The parties did not agree on DPS Flats time standards -- that was settled in an Article 34 arbitration -- or on implementation and review procedures. The Postal Service was not agreeable to including a stern/steep penalty provision similar to that in §541.42 to cover situations where there was an uncorrected decrease in the ratio of DPS Flats volume to total flats volume for a number of reasons. These included its determination that its ability to

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<sup>8</sup> The Union asserts that it is "ironic" that the Postal Service in this case would stress that prior bargaining matters when it strongly argued in DPS Review II that the provisions of §541.42 were not collectively negotiated. It is not uncommon, however, that parties shape their arguments to the matter at hand. In DPS Review II, the Union (according to Arbitrator Bloch) asserted that §541.42 was the product of collective bargaining and could not be changed unilaterally. More importantly, Bloch stressed throughout his decision that §541.42 was bargained.

"correct" a change in relative volume was significantly more limited in the case of flats because of the nature of DPS Flats which are mostly catalogues and periodicals and its lack of control over mailers' behavior, such as reductions in catalogue mailing and insertion of "flyouts" which make FSS processing problematic.<sup>9</sup> The Postal Service also was not agreeable to extending that penalty to DPS Flats knowing that -- following the decision in DPS Review I -- it could be triggered by any decrease in relative volume, no matter how small. Moreover, there is no sector/segment classification for DPS Flats, so that if the penalty were to be triggered all flats would be reclassified as raw mail, despite the fact that a significant portion of flats remained DPS mail.

As promulgated by the Postal Service, §541.44 provides a mechanism by which a carrier can seek a quantity review for DPS Flats and it provides that if the ratio cannot be corrected to the level it was during the most recent mail count a proportional adjustment is to be made so that the carrier's compensation is not negatively affected by the change.<sup>10</sup> On the present record, I am not persuaded by the Union's contention that this is not fair, reasonable and equitable. Nor, given the difference in context between this case and DPS Reviews I and II, is this an impermissible third bite of the apple.

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<sup>9</sup> The Postal Service further points out that even without the penalty provision it has an economic incentive to maximize the volume of DPS flats because FSS usage is based on zip code and the affected zip codes also include city delivery routes where DPS processing reduces costs.

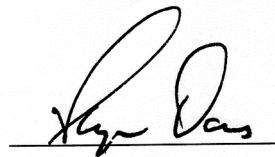
<sup>10</sup> If the relative volume of DPS Flats increases, to the carrier's advantage, §541.44 does not provide for a review or reclassification at the Postal Service's initiative. The September 2011 revision, that followed DPS Review II, eliminated this along with certain other provisions included in the initial January 2010 version that were less favorable to carriers.

AWARD

The Union's position in this Article 19 appeal is sustained in part and denied in part as set forth in the above Findings.

The Postal Service is directed to include in the DPS Flats implementation and review procedures provisions similar to those in the DPS Letters implementation and review procedures relating to:

- (1) a 3-consecutive day 98 percent quality threshold before a route can be evaluated using the DPS Flats standard; and
- (2) a quality review procedure for DPS Flats in Handbook PO-603 Section 541.44.

A handwritten signature in black ink, appearing to read "Shyam Das", is written over a horizontal line.

Shyam Das, Arbitrator