

Award Summary:

The grievance is sustained on the following basis:

1. For the reasons set forth in the above Findings, the Postal Service is required to electronically transmit copies of Final Worksheets to the NRLCA before the CDS expiration/renewal date in accordance with the parties' agreed procedures for implementing Article 32.4 of the 2010-2015 National Agreement.
2. The Postal Service is ordered to comply with Article 32.4 and the agreed implementation procedures consistent with the Findings in this Award.
3. The Postal Service is directed to provide Final Worksheets not previously transmitted to the NRLCA relating to CDS renewals from 2014 to the present.
4. In those instances where the Final Worksheets, corrected if necessary, show that the CDS contract should have been converted to rural delivery, rather than renewed, the route is to be converted to rural delivery as soon as practicable and the affected rural carrier(s) are to be made whole.
5. I retain jurisdiction for 90 days -- or such other period as the parties agree -- to resolve any disputes relating to implementation of the remedy provided for herein.



Shyam Das, Arbitrator

This grievance was filed by the NRLCA on April 10, 2014 disputing the Postal Service's failure to provide final costing data to the Union in accordance with Article 32.4 and associated rules and regulations, including but not limited to, the "Renewal of Contract Delivery Service (CDS) Routes" instructions and worksheet. This grievance concerns the process the parties negotiated related to renewing CDS contracts pursuant to the 2012 Clarke interest arbitration award.

The relevant contract language in Article 32 of the 2010-2015 National Agreement is as follows:

Section 4. Renewal of Contract Delivery Service (CDS) Routes

The Employer and the Union agree that, in those instances in which delivery is provided by contract delivery service routes in offices with only rural delivery, a cost comparison will be completed prior to renewal of any such contract delivery route. Should rural delivery be at a cost less than CDS, the contract will not be renewed and the route will be converted to rural delivery at the expiration of the contract. All territory must qualify for rural delivery under the Employer's regulations before conversion.

After negotiations for a new National Agreement to begin in 2010 ended in impasse, the parties entered into interest arbitration before a panel chaired by Arbitrator Jack Clarke. In the panel's interest arbitration award issued on July 3, 2012, the parties were directed to modify "the language of Article 32.4 to ensure that Rural Letter Carriers can compete with contractors on a level playing field." The parties subsequently agreed to the language in Article 32.4 quoted above.

The parties met in December 2012 to discuss implementation procedures. They agreed on a CDS Renewal Worksheet (Worksheet) to be used for cost comparisons. The Worksheet includes: (1) the calculated cost of rural delivery for the territory covered by the CDS contract based on established criteria; (2) the negotiated cost of renewing the CDS contract; and (3) the difference between the two costs.

On January 31, 2013 the Postal Service issued procedures for Renewal of Contract Delivery Service (CDS) Routes, which provided step-by-step implementation instructions to the field. These instructions, which were based on the parties' December 2012 discussions and agreement, are as follows:

As a result of the July 3, 2012 Interest Arbitration Decision, a cost comparison of rural delivery must be completed before renewing a regular Contract Delivery Service (CDS) contract providing box delivery. If rural delivery is determined to be more cost effective, the contract will not be renewed and the deliveries will be converted to rural delivery. Districts will complete the Contract Delivery Service (CDS) Renewal Worksheet by entering the data in the appropriate highlighted cells. The only exception is the Contracting Officer will enter the "CDS Route Annual Contract Amount" data entry cell.

After completion, Districts will send an electronic copy of the CDS Renewal Worksheet to their respective Area, Delivery Operations for review.

After completing their review, Areas will send an electronic copy of the CDS Renewal Worksheet to the appropriate Transportation Category Management team (Contracting Officer) and to the NRLCA – CDSCosting@nrlca.org.

After completing negotiations with the supplier, the Contracting Officer will enter the amount of the CDS Route Annual Contract Amount in the worksheet.

The Contracting Officer will compare the total annual costs for contract delivery service with rural delivery service from the worksheet. If the rural delivery cost is less than contract delivery service, the contract will not be renewed and the contracted deliveries will be converted to rural delivery.

The Contracting Officer will provide an electronic copy of the final CDS Renewal Worksheet to the respective areas.

The area will send the Districts an electronic copy of the final CDS Renewal Worksheet and send a copy to the NRLCA – CDSCosting@NRLCA.org.

If applicable, Districts will take the appropriate action to convert deliveries to rural delivery before the expiration date of the existing contract.

Worksheets that show only the calculated cost of rural delivery are referred to as "Initial Worksheets." Worksheets that show all three elements of a cost comparison -- (1) the cost of rural delivery; (2) the cost of renewing a CDS contract; and (3) a cost comparison -- are referred to as "Final Worksheets."

The Union contends that the Postal Service is required to provide the Final Worksheet to the Union prior to renewal of a CDS contract. The Union stresses that the Postal Service did not dispute this in its discussions with the Union regarding this grievance or in its Step 4 statement of position prior to arbitration. The Postal Service maintains that Article 32.4 requires only that the Postal Service compare costs and convert routes to rural delivery when rural delivery costs less than CDS. The Postal Service denies that it is required to provide copies of Final Worksheets to the Union before renewing CDS contracts. The Postal Service asserts that its failure to expressly state this in its Step 4 statement of position was an oversight.

CDS contracts typically run for six years and, for the most part, expire either on March 31 or June 30. In 2013, 251 of 278 Final Worksheets were provided to the Union prior to the expiration of the CDS contracts subject to review that year. The parties discussed and were able to resolve issues relating to the others. In 2014, 237 of 435 Final Worksheets were provided to the Union prior to the expiration of the CDS contracts. The Union filed this National-level Step 4 grievance on April 10, 2014. As a remedy, the Union requested, "conversion of all routes for which costing data was not provided to rural delivery, retroactive to April 1, 2014. Any rural carrier who would have been assigned to carry any of those routes will be made whole in any and all respects."

In 2015, 42 of 293 Final Worksheets were received by the Union prior to the expiration of CDS contracts. Joey Johnson, the Union's Director of Labor Relations, asked Reggie Rabon, Postal Service Labor Relations Specialist, if a new Step 4 grievance needed to be filed. Rabon said that no new grievance was necessary. In 2016, 137 of 211 Final

Worksheets were received by the Union prior to the expiration of CDS contracts. In 2017, 23 of 209 Final Worksheets were received by the Union prior to the expiration of CDS contracts. In response to a September 13, 2017 information request from the Postal Service the Union provided lists identifying for the years 2015, 2016 and 2017, the Final Worksheets that were provided after the CDS contract was renewed and those that never were provided to the Union.

At arbitration, Director Johnson stressed that the Postal Service as well aware that in cases where CDS delivery was to be converted to rural delivery this would have to occur at the beginning of the last pay period prior to the CDS expiration date due to the rural pay system. He also noted that if the Union does not receive the Final Worksheet prior to the CDS expiration date it has no way to know whether the Postal Service continued to negotiate the CDS price after the expiration date.

Johnson testified that some of the Final Worksheets the Union received after the CDS contract expiration date were found to include errors in costing rural delivery. In response to Postal Service testimony that the only difference between Final Worksheets and the Initial Worksheets -- whose transmission to the Union is not in dispute in this case -- is inclusion of the CDS cost and (resulting) cost comparison, Johnson said many times there are differences in costing between the Initial and Final Worksheets. As a result, he said, the Union does its review when it gets the Final Worksheet.

Cathy Perron, Manager of Contract Administration for the NRLCA at Postal headquarters, testified that at the parties' December 2012 meeting the Union indicated it wanted a mechanism to allow it to calculate that the Postal Service was doing the rural costing correctly. She said that led to the agreement to provide an Initial Worksheet to the Union. Her understanding was that the Union would send these Initial Worksheets to its local representatives to check that the Postal Service's costing was correct. Sean Rice, who prior to his retirement was the Postal Service's Coordinator for Rural Delivery CDS, testified that the only difference between the Initial and Final Worksheets is the addition of the CDS rate and (resulting) cost comparison.

Perron also testified that at the December 2012 meeting the Union requested that it receive Final Worksheets at least 30 days prior to the CDS expiration date. She said the Postal Service did not agree to that, noting that negotiations with CDS suppliers could continue very close to, if not up to, the expiration date. She added that due to multiple internal Postal Service transmissions of the Final Worksheet, the Postal Service did not want to put a date on when it would provide the Final Worksheet to the Union. Her understanding was that, while the Postal Service "would strive" to provide the Final Worksheet by the CDS expiration date, its obligation was to do so: "As soon as practicable after the costing was complete, the validation was done, it was returned to the area and then returned to the NRLCA." She stressed that this did not mean the Postal Service would not take the required action to convert a CDS route to rural when the latter cost was cheaper.

Perron noted that at some later date there was discussion between the parties regarding the need to convert routes at the start of a pay period which would require the costing comparison be done by then. But, she insisted, the Postal Service did not commit to giving the Final Worksheet to the Union by that time.

UNION POSITION

The NRLCA argues that the Postal Service waived its right to contest the Union's primary contention that Final Worksheets must be provided to the Union prior to the renewal of CDS contracts. Under Article 15 of the National Agreement, the parties are committed to developing all facts and issues during the grievance procedure. Article 15.1 states, "Grievances which are filed pursuant to this Article are to be processed and adjudicated based on the principle of resolving such grievances at the lowest possible level in an expeditious manner, insuring that all facts and issues are identified and considered by both parties." Article 15.4.D states in relevant part:

[A] grievance shall be initiated in writing and must specify in detail the facts giving rise to the dispute, the precise interpretative issues to be decided and the contention of the Union. Thereafter the parties shall meet at Step 4 within (30) days in an effort to define the precise issues involved, develop all necessary facts,

and reach agreement. Should they fail to agree, then, within fifteen (15) days of such meeting, each party shall provide the other with a statement in writing of its understanding of the issues involved, and the facts giving rise to such issues.

The Union stresses that the Postal Service did not indicate during the grievance procedure that it disagreed with the Union's position that the Postal Service is required to provide it with final cost comparisons prior to the renewal of CDS contracts. The Union points out that the Postal Service's statement of position stated that it "agrees the Union should be provided a copy of the cost comparison before renewing regular CDS contracts that provide box delivery in offices with only rural delivery." That statement is unequivocal and is supported by the unrebutted testimony of Joey Johnson, Director of Labor Relations for NRLCA, who recalled that during their Step 4 meetings, Reggie Rabon, Postal Service Labor Relations Specialist, never suggested that the Postal Service was permitted to provide the cost comparison worksheets after CDS contract renewal, or not at all. The Union dismisses the testimony of Cathy Perron, Manager of Contract Administration, indicating that it was an oversight that the Postal Service's statement of position did not contest the Union's main contention in its national level grievance, and points out that Rabon and Perron had many opportunities to raise such an objection on behalf of the Postal Service.

The Union argues that the Postal Service changing its position at arbitration is no different from introducing new evidence or argument, something that national arbitrators in the Postal Service routinely have found to violate the various national agreements.

On the merits, the Union contends that the Postal Service was required to provide it with Final Worksheets prior to the renewal of CDS contracts. Although it insists that the Postal Service's statement of position explicitly confirms this contention, the Union also asserts that the parties' jointly-developed protocol and the messaging to Postal managers across the country support this contention.

Initially, the Union points out that it has good and obvious interests in seeing the Final Worksheets. Not only is it important to verify whether rural delivery or CDS delivery is less expensive, the timing of any such verification is also critical. The Union stresses that for any

such review to be effective, it must be completed prior to the renewal of the CDS contract as these contracts are re-let for a period of six years.

The Union contends that the protocol (implementation instructions) designed by the parties requires the Postal Service to provide a copy of the Final Worksheet to the Union at the same time it provides a cost comparison worksheet to the District in order for the District to "take the appropriate action to convert deliveries to rural delivery before the expiration date of the existing contract" should rural delivery cost less. The instructions state: "The area will send the Districts an electronic copy of the final CDS renewal worksheet and send a copy to the NRLCA."

The Union argues that a contemporaneous January 30, 2012 memo sent by the Postal Service to area and district managers regarding the CDS renewal worksheet confirms the order of events. According to the Union, the third paragraph of this memo makes it clear that the final cost comparison must be shared with the districts and the Union prior to CDS renewal so that the steps necessary to convert a route can be implemented:

Following completion of negotiations with the CDS supplier, Contracting Officers will enter the proposed CDS contract amount in the designated cell and return the worksheet electronically to their respective area. A scanned copy of the finalized worksheet will be provided to the appropriate district and to the NRLCA at the e-mail address listed above. The results of the cost comparison, as indicated on the CDS Renewal Worksheet, will determine whether the cost of rural delivery is less than CDS. If so, the contract will not be renewed and the deliveries will be converted to rural delivery.

The Union contends that the Postal Service would not have remained silent for the three years of the grievance procedure if it really believed that it could provide the Union with Final Worksheets after CDS renewals or not at all. Even Manager Perron testified that, in her estimation, the final cost comparison should be provided as soon as practicable and acknowledged that it is an obligation of the Postal Service to provide it. Perron also agreed that it was "a problem" that 173 final cost comparison worksheets were never received for the years 2015-2017.

The Union argues that the following requested remedy is appropriate for the Postal Service's longstanding and systemic violations of Article 32.4 and the parties' protocol:

- (1) An order requiring the Postal Service to comply with Article 32.4 and the parties' protocol;
- (2) For the period of April 2014 to the present, an order requiring the Postal Service to convert to rural delivery all CDS routes in rural-only offices where the Postal Service did not e-mail the final cost comparison worksheets to the Union prior to the renewal of corresponding CDS contracts; and
- (3) For the period of April 1, 2014 to the present, an order providing for full make-whole relief, including back pay and interest for the rural carriers who would have carried the converted CDS routes in the preceding paragraph but for the Postal Service's repeated and wide-spread contractual violations.

The Union maintains that it was deprived of the benefit of its bargain in the Clarke interest arbitration award to meaningfully compete for CDS deliveries on a level playing field when it was not provided with Final Worksheets prior to CDS contract renewal. The parties agreed that sharing the Final Worksheets was a condition precedent to the Postal Service renewing these contracts and if the new Article 32.4 language and the parties' protocol is read in any other way, then the protocol is meaningless. Since the Postal Service met the protocol in 2013 with few exceptions, the parties know it can be done. The Postal Service's unwillingness to follow the protocol from 2014 to the present should have consequences.

Moreover, in the cases where the Postal Service did not timely provide the Union with Final Worksheets, or provide them at all, it is impossible to know (1) whether the Postal

Service continued to negotiate with its CDS contractors after the expiration of the CDS contracts or (2) whether the Postal Service made errors that could require reversion.¹

The Union stresses that in the 173 cases during the period 2015-2017 in which no Final Worksheet was provided to the Union there is no way to know whether a conversion from CDS to rural was required by Article 32.4 and the parties' protocol. The Union should not be made to suffer for the Postal Service's failure to comply with the requirements under the National Agreement and the parties' protocol. Therefore, in the 173 cases where the worksheets were not provided and in the 536 cases where the worksheets were not provided prior to CDS contract renewal, these routes should be converted immediately to rural delivery together with the requested make-whole relief, including back pay and interest.

The Union cites this arbitrator's original APWU St. Petersburg grievances and 2016 decision in USPS and APWU, Q06C-4Q-C 11182451, involving the Postal Service's failure to provide notice of highway contract (HCR) renewals as required by the APWU National Agreement. In those cases, it was determined that an important factor in crafting an appropriate remedy where the Postal Service does not provide the Union with notice/information prior to renewing subcontracts is whether the Postal Service's conduct "was a very rare inadvertent exception....or was just one example of a more wide-spread failure to provide notice." The Union stresses that the Postal Service's conduct in this case constitutes a wide-spread failure to provide notice. Although the Postal Service initially complied in 90 percent of the cases, by 2017 its compliance rate had fallen to just over 10 percent. The Union analogizes the Postal Service's conduct in the instant case to its conduct in the 2016 APWU HCR notice case, but asserts that the Postal Service's conduct here is much worse. From 2014 to the present, the Postal Service made little or no effort to comply with the jointly developed protocol to implement the parties' new Article 32.4. The violations here were widespread and repeated, as well as

¹ The Union cites a sample Final Worksheet submitted by the Postal Service (Exhibit 9) covering a Dunlap, Tennessee rural route which erroneously indicated that it was a regular route when it actually was an auxiliary route with a much lower cost in annual salary/benefits. The Union acknowledges that this error did not affect the end result in the Dunlap route because CDS delivery still would have been less expensive than rural, but in many other cases a similar error would mean that the routes would be converted from CDS to rural.

systemic, knowing and not shown to have resulted from circumstances beyond management's control. Moreover, the Postal Service had over three years to correct its ways after the Union filed its National-level grievance. The Union stresses that, analogous to the remedy provided in the 2016 APWU HCR case, only a remedy that converts the 709 CDS routes at issue to rural delivery and provides rural carriers with appropriate make whole relief will "impress upon the Postal Service its obligations to fully comply with the procedures it agreed to with the Union."

The Union rejects any claim by the Postal Service that it was operationally difficult for the Postal Service to comply with the parties' agreement. Even if that were the case, the Postal Service was obligated to comply with its agreement. However, here, it was not operationally difficult. All the Postal Service had to do was "cc" the Union on the Final Worksheets sent by the areas to the districts.

POSTAL SERVICE POSITION

The Postal Service insists it is not required to provide copies of Final Worksheets to the Union before renewing CDS contracts. Article 32.4 requires only that the Postal Service compare costs and convert routes to rural delivery when rural delivery costs less than CDS.

The Postal Service stresses that this dispute is unlike the APWU HCR notice case cited by the Union because Article 32.4 does not require the Postal Service to provide copies of Final Worksheets to the Union before renewing CDS contracts. The APWU National Agreement details a step-by-step process the Postal Service must go through before renewing HCR contracts. These steps do not exist in Article 32.4 of the NRLCA National Agreement. The language in Article 32.2.B of the APWU National Agreement requires the Postal Service to furnish certain information to the Union within certain timeframes and to meet with the Union if the Union so requests. Furthermore, under the APWU Agreement, the Postal Service must consider public interest, efficiency, availability of equipment, and qualification of employees in addition to cost. The NRLCA National Agreement does not provide the same protections as that of the APWU National Agreement. Therefore, the NRLCA cannot rely on the APWU HCR decision to show that the Postal Service's actions amount to a contractual violation.

The Postal Service contends that the joint implementation procedures do not require the Postal Service to send the NRLCA copies of Final Worksheets before renewing CDS contracts and do not include a deadline by which the Postal Service must provide Final Worksheets to the NRLCA. Those procedures state with respect to Final Worksheets:

Following completion of negotiations with the CDS supplier, Contracting Officers will enter the proposed CDS contract amount in the designated cell and return the worksheet electronically to the respective area. A scanned copy of the finalized worksheet will be provided to the appropriate district and the NRLCA at the email address listed above.

The NRLCA did not request, nor did it get, specific language stating that Final Worksheets must be emailed to the NRLCA before renewing contracts. The joint implementation procedures do not provide a step-by-step, sequential process that requires that Final Worksheets be provided to the NRLCA before renewing CDS contracts. Determining the cost of rural delivery and the cost of renewing a CDS contract often occur simultaneously. The Postal Service determined which contracts required cost comparisons under Article 32.4 and then shared that information with both Postal Service contracting officers, to begin negotiations with CDS contractors, and with rural delivery operations, to determine the estimated cost of rural delivery. The Postal Service stresses that the procedures state that copies of Final Worksheets will be provided to the NRLCA, but do not state by when they must be provided.

Despite the NLRCA's assertion that the Postal Service agreed at a December 2012 meeting to provide copies of the Final Worksheets before CDS contract renewal, the Postal Service insists it intentionally never agreed to a date by which it would provide Final Worksheets. It did not agree to a deadline: (1) prior to the start of the last pay period preceding the renewal of a contract; or (2) before renewing CDS contracts. Instead, the Postal Service asserts, Manager Perron informed the Union that the Postal Service would provide the Union with copies of Final Worksheets "as soon as practicable after the costing was complete [and] the validation was done...." The Postal Service urges that this is consistent with the statement

in its Step 4 statement of position, quoted by the Union, that the NRLCA "should be provided" copies of the Final Worksheets before CDS contracts are renewed.

Since negotiations to renew CDS contracts sometimes occur up until the day the contract expires, the Postal Service asserts, it knew it could not ensure that copies of Final Worksheets could be completed, validated, and shared with the Union by a certain date. Personnel from three different departments (Delivery Operations, Supply Management and Labor Relations) at three different levels (District, Area and Headquarters) were involved in gathering and verifying the information to complete CDS Renewal Worksheets. The Postal Service says its priority was to complete cost comparisons pursuant to Article 32.4 before sharing final cost comparison information with the NRLCA.

The Postal Service contends that the NRLCA was not harmed when it did not receive copies of Final Worksheets before CDS contracts were renewed. The Postal Service points out that the information that the NRLCA says it needed to validate the cost comparisons that the Postal Service performed was provided to the Union on the Initial Worksheet for each expiring CDS contract. The Initial Worksheet contained the information for the first component of a cost comparison: the estimated cost of rural delivery. The NRLCA can only validate calculations related to the cost of rural delivery, not the negotiated cost of renewing the CDS contract. The only difference between the Initial and Final Worksheet is that the cost to renew the CDS contract is added and a cost comparison automatically populates to show which type of delivery costs less. Therefore, the Postal Service insists that the NRLCA has the information it needs to validate the cost comparisons when it receives the Initial Worksheet; the NRLCA has the opportunity to check the Postal Service's calculations at that time.

The Postal Service also asserts that the NRLCA failed to show how it was harmed by the error it pointed out on a sample Final Worksheet for a route in Dunlap, Tennessee that the Postal Service referenced at the hearing. The NRLCA would have had the opportunity to notice any costing error when it received the Initial Worksheet. The Union does not need the negotiated CDS cost or the resulting cost comparison to validate the calculation of the cost of rural delivery.

The Postal Service recognizes that it must comply with Article 32.4 by comparing costs and converting routes to rural delivery when rural delivery costs less than CDS. It argues that it complied with Article 32.4 when it compared costs and converted routes to rural delivery when rural delivery cost less than CDS. The Postal Service explains that beginning in the March 2015 renewal cycle, it began tracking the CDS renewal process with a master spreadsheet showing -- among other data -- CDS route numbers, the cost of renewing the CDS contract, the cost of rural delivery, and whether the route should be converted to rural delivery. The Postal Service contends that the master spreadsheets show that for the March 2015, June 2015, March 2016, June 2016, and March 2017 CDS renewal cycles, the vast majority of cost comparisons were completed and recorded before the contracts expired.

The Postal Service stresses that the NRLCA has not alleged that the Postal Service failed to meet the requirement in Article 32.4 that it convert routes when rural delivery costs less than CDS. Both parties acknowledge that on the few occasions where the Postal Service did not convert a route to rural delivery when rural delivery cost less than CDS, the Postal Service took steps to investigate and correct the error as soon as it was discovered. Finally, the Postal Service argues that since the NRLCA does not identify a single CDS contract that should have been converted to rural delivery but was not, the NRLCA's requested remedy -- converting all routes for which Final Worksheets were not provided before renewing CDS contracts to rural delivery -- is wholly inappropriate.

FINDINGS

The Union stresses that in the grievance procedure prior to arbitration, particularly in its Step 4 statement of position, the Postal Service did not contest the Union's assertion that the Postal Service is required to provide the Union with its final cost comparisons (Final Worksheets) prior to renewal of CDS contracts. The Union strenuously argues that the Postal Service thereby waived its right to do so at arbitration. Even if the Postal Service's contentions are considered, the Union's position on the merits is correct.

Following the Clarke interest arbitration award in 2012, the parties agreed to the language in Article 32.4 of the National Agreement, including the requirement that "a cost comparison will be completed prior to renewal of any such contract delivery route." The parties then met in December 2012 to discuss and agree on implementation procedures. The agreed procedures were transmitted by the Postal Service as instructions to the field at the end of January 2013. Those procedures include the following:

After completing negotiations with the supplier, the Contracting Officer will enter the amount of the CDS Route Annual Contract Amount in the worksheet.

The Contracting Officer will compare the total annual costs for contract delivery service with rural delivery service from the worksheet. If the rural delivery cost is less than contract delivery service, the contract will not be renewed and the contracted deliveries will be converted to rural delivery.

The Contracting Officer will provide an electronic copy of the final CDS Renewal Worksheet to the respective areas.

The area will send the Districts an electronic copy of the final CDS Renewal Worksheet and send a copy to the NRLCA – CSDCosting@NRLCA.org.

If applicable, Districts will take the appropriate action to convert deliveries to rural delivery before the expiration date of the existing contract.

Read as a whole, there can be little doubt that these procedures provide that a copy of the Final Worksheet is to be sent to the district -- with a copy to the NRLCA -- before the expiration date of the existing CDS contract. How else would a district know whether or not to convert deliveries to rural delivery in a timely fashion? Moreover, the Postal Service presented no compelling evidence or explanation for why it was not practicable -- as a general matter -- to provide the Final Worksheet to the district and NRLCA before the CDS renewal date as it did in almost all instances in 2013 and to varying extents in subsequent years.²

² The agreed procedures provide that after the district completes the Initial Worksheet, which sets forth the rural delivery costing, it is to send a copy to the area "for review" and that the area will send the Initial Worksheet to the Contracting Officer and the NRLCA "[a]fter completing their

The Postal Service's assertion that it was an oversight that in its Step 4 statement of position it did not set forth its current position that it is not required to provide Final Worksheets to the Union before the CDS renewal date -- or at any specified time for that matter -- is difficult to accept. This is especially so since the Postal Service conceded in that statement of position that it "agrees the Union should be provided a copy of the cost comparison before renewing regular CDS contracts that provide box delivery in offices with only rural delivery."

The Postal Service asserts that Manager Peron informed the Union either at the December 2012 meeting or in other discussions relating to the implementation procedures that the Postal Service would provide the Union with copies of Final Worksheets "as soon as practicable after the costing was complete...[and] the validation was done...." This seems to overstate Perron's testimony that this was her "understanding" about when the Postal Service would send the Final Worksheets, and that in the December 2012 meeting the Union requested and the Postal Service did not agree to provide the Final Worksheet at least 30 days prior to the expiration of the contract.³

The record, in any event, does not establish that there was an understanding by both parties that the Final Worksheet would be provided at some unspecified date ("as soon as practicable"). On the contrary, for the reasons discussed above, I find that there was an agreement that the Final Worksheet be electronically transmitted to the Union when it was transmitted to the district and that this had to occur by the CDS renewal date. Certainly, the Union had an interest in being able to confirm the cost comparison before a CDS contract was

review." After the Contracting Officer negotiates the CDS price, in contrast, the procedures state the Contracting Officer will enter that amount in the Final Worksheet and provide a copy to the area. The area, notably, is not called on to "review" the Final Worksheet -- there really is nothing to review -- but to transmit it to the district (to take the appropriate action) and the NRLCA.

³ The evidence also does not show there was an actual agreement that Final Worksheets had to be provided by the start of the last pay period before the renewal date, although the Postal Service did not contradict NRLCA Director Johnson's testimony that this was required as a practical matter in order to convert a route by that date.

renewed, rather than at some indefinite time in the future. This is not to say that there might not be an occasional exception when unusual circumstances prevented this from occurring, which the parties then could discuss how to deal with.

Accordingly, the NRLCA is entitled to an order requiring the Postal Service to comply with Article 32.4 and the agreed implementation procedures (protocol) consistent with the findings in this Award. In addition, the Postal Service will be ordered to provide without further unnecessary delay any Final Worksheets that never were transmitted to the Union from 2014 to the present.

The Union has not established, however, that it is entitled to the retroactive remedy it seeks: an order requiring conversion to rural delivery of all covered CDS routes where the Final Worksheet was not provided to the Union prior to the renewal date and full make-whole relief with respect to those routes.

The contractual language and agreed implementation procedures in this case differ from those in the 2016 APWU HCR case cited by the NRLCA. Under the APWU contract, timely notice of HCR renewals triggered the APWU's contractual right to request a meeting to discuss the specific HCR route including the parties' basic cost analyses that were to be exchanged prior to the meeting, and the Postal Service -- before deciding on HCR renewal -- was required to consider the factors (public interest, cost, efficiency, et al.) set forth in Article 32.2.A of the APWU Agreement. In rejecting the Postal Service's contention that the APWU had the opportunity to trigger these procedures even if it received the notice after the HCR contract had been renewed, I stressed:

But discussion and review and consideration by the Postal Service of the factors in Article 32.2.A after a service contract has been let cannot be presumed to be equivalent to the procedure the National Agreement provides for and, critically, is not what the parties bargained for.

Under Article 32.4 of the NRLCA National Agreement at issue a cost comparison is determinative. Moreover, the rural delivery cost is calculated based on data inserted in the

agreed Worksheet. The NRLCA's only basis for challenging the cost comparison on the Final Worksheet -- assuming the negotiated CDS cost is accurately recorded -- is to show that the rural delivery cost shown on the Worksheet is inaccurate and that, when corrected, the rural cost is cheaper.

For retroactive remedy purposes in this case, if the Union can show, based on the Final Worksheets already provided by the Postal Service (albeit in an untimely fashion) or to be provided as directed in this Award, corrected if necessary, that a CDS contract should have been converted, rather than renewed, it is entitled to the remedy it requests -- conversion of the route and a make whole monetary remedy. In other instances, where the cost comparison supports CDS renewal, this remedy is not appropriate.

It should be pointed out, based on the evidence in this record, that the rural delivery cost on the Final Worksheets in most, if not all, cases presumably will be the same as on the Initial Worksheets which evidently were provided to the Union on a timely basis. While on rebuttal Director Johnson broadly asserted that "many times" they are not, in his direct testimony he pointed out that the districts do the rural costing which is set forth in the Initial Worksheet and that after the rural costing then is sent to the area to negotiate with the CDS supplier and:

...then there's just one block. All they enter is in what that -- what that contracting cost is, and then it completely compares that, and then they would e-mail that final costing to -- also to the NRLCA....

Johnson also testified that without receipt of the Final Worksheet prior to the renewal date the Union has no way of knowing whether the Postal Service continued to negotiate the CDS cost after that date. There is no evidence of that actually happening, but the Postal Service should confirm to the NRLCA that this did not occur. If there were instances when that did occur, the parties should discuss and attempt to resolve the matter.⁴

⁴ In the unlikely event they are not able to do so, the matter can be returned to me under my retention of jurisdiction to resolve remedial issues.

The Union contends that the Postal Service's failure to provide the Final Worksheets in a timely fashion under the parties' agreement should have consequences. But, on this record, those consequences do not include awarding rural carriers CDS routes they were not entitled to under the agreed criteria and established data.

AWARD

The grievance is sustained on the following basis:

1. For the reasons set forth in the above Findings, the Postal Service is required to electronically transmit copies of Final Worksheets to the NRLCA before the CDS expiration/renewal date in accordance with the parties' agreed procedures for implementing Article 32.4 of the 2010-2015 National Agreement.
2. The Postal Service is ordered to comply with Article 32.4 and the agreed implementation procedures consistent with the Findings in this Award.
3. The Postal Service is directed to provide Final Worksheets not previously transmitted to the NRLCA relating to CDS renewals from 2014 to the present.
4. In those instances where the Final Worksheets, corrected if necessary, show that the CDS contract should have been converted to rural delivery, rather than renewed, the route is to be converted to rural delivery as soon as practicable and the affected rural carrier(s) are to be made whole.
5. I retain jurisdiction for 90 days -- or such other period as the parties agree -- to resolve any disputes relating to implementation of the remedy provided for herein.



Shyam Das, Arbitrator