Changes to expedited arbitration

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There are three types of arbitration that make up our system for hearing cases at the regional level: expedited, regular and impasse arbitration. This month, I want to talk about the expedited arbitration process. Expedited and regular panel arbitration hearings are the same as far as how the hearing is conducted. There are other differences, however.

In expedited arbitration, there are no briefs permitted, so both parties have to orally close their case on the day of the hearing. Until this year, expedited arbitrators had 48 hours to issue a decision, as opposed to 30 days for regular arbitrators. Also, expedited decisions do not set precedent and cannot be cited in future cases. Regular panel decisions do not set precedent either, but may be cited in future cases for persuasive value.

Additionally, expedited arbitrators never are permitted study days, whereas regular panel arbitrators are permitted up to two study days per hearing date.

I want to explain the contract language changes pertaining to the expedited arbitration process that were made in the 2019 National Agreement and in the Conditions of Appointment for expedited arbitrators, but first a bit of history.

We always have had an expedited arbitration process, but way back when, it was used only for letters of warning and suspensions of 14 days or less. That brought in plenty of business, because suspensions were served as "lost time" suspensions. In other words, you would serve your suspension off the clock first, then file a grievance to get your record cleared and your money back for the time you were forced off the clock by management.

On average, we had about a thousand expedited arbitration hearings a year nationwide back in those days. The reason for so many hearings each year was the money. Management in most cases was simply not willing to pay us for the money we lost from the time frame they kicked us out of work unless an expedited arbitrator ordered them to do so.

Things changed in the 2001 National Agreement. This is when we went to the "no time off" suspensions, where you still grieve to get your record cleared, but there is no loss of pay. This was quite a controversial issue at the time. There were many who believed that going to "no time off" suspensions would lead to a sharp increase in discipline being issued to letter carriers. That did not happen, and it became easier for the parties to resolve such discipline disputes short of arbitration because there was no money involved.

The end result of all this was that the expedited arbitration process was used less and less. We were down to fewer than 50 expedited arbitration hearings nationwide by 2010. That number has been pretty consistent each year since then.

The parties agreed in the 2011 National Agreement to use expedited arbitration for 12 contractual issues, but did not change anything else.

The Memorandum of Understanding (MOU) Re: Expedited Arbitration was continued in the 2016 National Agreement, with an additional 23 contractual issues added; once again, the parties did not change anything else.

I have never seen a downside to adding contractual issues to the expedited arbitration process, because of the language in Article 15.4.C.2 of the National Agreement that states:

> If either party concludes that the issues involved are of such complexity or significance as to warrant reference to the Regular Arbitration Panel, that party shall notify the other party of such reference at least seven (7) days prior to the scheduled time for the expedited arbitration.

The MOU Re: Expedited Arbitration was continued again in the 2019 National Agreement, with 10 additional contractual issues added to the 35 already in the MOU. This time, the parties agreed to make some changes to the expedited arbitration process:

1. We changed the time frame for expedited arbitrators to render a decision from 48 hours to five calendar days. This will give expedited arbitrators time to study the contractual issues before them.
2. We changed the language in Article 15.4.C.4 of the National Agreement to say:

   > No decision by a member of the Expedited Panel in such a case shall be regarded as a precedent or be cited in any future proceeding **except to enforce its terms**, but otherwise will be a final and binding decision.

   This change makes it crystal clear that expedited arbitration awards are enforceable.
3. We agreed to allow expedited arbitrators a study day for contract cases in their conditions of appointment. This change will allow advocates to submit citations to persuade and educate expedited arbitrators who hear cases regarding contractual issues.
4. We expanded the number of expedited arbitrators around the country from 38 to 60.

The hope is that the combination of these changes will make using the expedited arbitration process more attractive to both parties. The MOU Re: Expedited Arbitration allows the parties to agree to add other contractual issues to the expedited arbitration process.

The ultimate goal is to produce timely and fair decisions. Also, to go "back to the future" and choose regular panel arbitrators from the expedited arbitrator ranks when the need arises, as we used to do back in the days when we heard a lot of cases in expedited arbitration.