



Mr. Murray filed a new claim with the contracting officer seeking \$72,351.56 in which he made two allegations. First, he alleged that he was entitled to \$46,557.96 because he was required to provide rescreening information for himself and his drivers. We granted the Postal Service's motion for summary judgment and denied this portion of the claim. *See Murray v. United States Postal Service*, PSBCA Nos. 6635, 6640, 18-1 BCA ¶ 37,058. Second, Mr. Murray alleged that the Postal Service negotiated his contract renewal in bad faith by discriminating against him because of his age, entitling him to an additional \$25,793.60. Mr. Murray raised a genuine dispute as to a material fact which led us to deny that portion of the Postal Service's motion for summary judgment. *Id.* We also granted the Postal Service's motion for summary judgment as to \$3,411.24 it inadvertently paid Mr. Murray for work he did not complete in January 2016 after the contract's termination date.

We now address Mr. Murray's remaining claim that he is entitled to damages because the Postal Service acted in bad faith during the negotiation process in 2011.

## **FINDINGS OF FACT**

### **Background**

1. Mr. Murray delivered mail for the Postal Service as a contractor since July 2000. In 2011, Mr. Murray held Contract HCR 96046 (the "contract") for delivery service with the Postal Service, delivering mail near Cottonwood, California, at an annual rate of \$45,325.32. The contract was set to expire on June 30, 2011. (AF 1 at 1; AF 5 at 13, 14; Tr. 84, 304, 455-56).

2. Eight delivery service contractors, including Mr. Murray, operated out of the Cottonwood Post Office. They delivered mail across an area of approximately 320

square miles. The postmaster for Cottonwood, California, served as the administrative official for the eight contracts. (AF 5 at 29-30; Tr. 258, 270, 308, 261-62, 456-57; see *a/so* 18-1 BCA ¶ 37,058, Findings 14, 16).

3. In June 2011, the Cottonwood contractors ranged in age from 39 to 80. One of the contractors comprised a father and son team, although the father had a limited role in the contract in 2011. The son was 48 and the father was 80. The ages of the other contractors were 39, 39, 50, 57, 57, 58, and 67. (AF 47; Tr. 55-56, 67-68, 309-10, 312).

4. The contract defined “administrative official” as “[a]ny Postal Service official designated by a contracting officer to supervise and administer a contract awarded under this solicitation.” (AF 1 at 41).

### **Renewal Process**

5. The Postal Service’s contract renewal process for these eight contractors started in the late summer and early fall of 2010 (Tr. 386).

6. During the process, the postmaster, with the assistance of other Postal Service employees, gathered information about each contract. This information, referred to as a route survey, included the following: (1) the volume of mail delivered in a week; (2) the mileage and line of travel for each route; (3) the number of mail boxes on the route; and (4) the timed duration to complete the route. (Tr. 386-87).

7. In September 2010, the Postal Service counted each route’s mail volume. The mail counts were done by measuring each linear foot of stacked mail and counting parcels for each day during the survey week. (Tr. 386-87, 404-05, 469).

8. The postmaster drove all of the routes in September and early October 2010, to verify each route's mileage (Tr. 386-88).

9. The postmaster provided the route survey information to the contract specialist and the contracting officer responsible for the eight contract renewals (Tr. 205-06).<sup>1</sup>

10. As part of the contract renewal process, the contract specialist sent correspondence to the contractors with expiring contracts asking if they wanted to renew their contracts (called renewal letters). Seven of those letters are in the record.<sup>2</sup> All of those letters referred to the Postal Service's "dire financial condition" and four of the letters explained that due to mail volume decline, hours would be reduced. (AF 40 at 371; AF 41 at 643; AF 42 at 856; AF 43 at 1,145; AF 44 at 1,394; AF 45 at 1,639; AF 46 at 1,861).

11. At the same time Mr. Murray's contract was renewed, seven other contracts at Cottonwood Post Office were also renewed. To protect the contractors' privacy, the contracts are identified as Contracts A through H. (AF 47).

12. Mr. Murray and Contractor E (the father and son team) received a renewal letter that referenced declining mail volume. Contractor D, who was 39 years old, and Contractor H, who was 50 years old, received the same letter. (Tr. 203-05; AF 40 at 371; AF 41 at 643; AF 42 at 856; AF 43 at 1,145; AF 44 at 1,394; AF 45 at 1,639; AF 46 at 1,861).

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<sup>1</sup> For Mr. Murray's contract, the results of Mr. Murray's route survey will be discussed below.

<sup>2</sup> The Postal Service produced the contract files for the eight contractors (AF 39-46). AF 39 does not include a renewal letter for one of the contractors.

13. If the contractor indicated that they were interested in renewing their contract, the contract specialist would review the contract file to ensure that information necessary to conduct negotiations had been gathered (Tr. 203-05).

14. The Postal Service used a computer software program, the Transportation Contracting Support System (TCSS), to estimate the number of hours needed to perform each contract based on the mail count, mileage, and number of boxes. This information was then used to develop the Postal Service's price estimate. Age was not a variable used in TCSS to create an estimate. (Tr. 205-06, 242).

15. The Postal Service's Western Transportation Contract Management Team (Western TCMT) managed these eight renewals along with all of the renewals for ten western states (Tr. 244-46). In the spring and summer of 2011, there was one contracting officer covering the Western TCMT and several contract specialists.<sup>3</sup> The office was at less than 50% of normal staffing because of retirements. The contract specialist responsible for the Cottonwood renewals was working on approximately 90 different contract renewals and recompetes, all of which expired on June 30, 2011. (Tr. 202-03, 245).

### **Renewal of Mr. Murray's Contract**

16. The route survey showed that the route's total mileage remained the same at 50.5 miles (AF 1 at 22-23; AF 43 at 1,180-81; Tr. 386; 428).

17. During the last week of September 2010, the postmaster tracked how long it would take Mr. Murray to complete four tasks:

- a. Daily time to case (sort) the mail,
- b. Daily time to load vehicle,

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<sup>3</sup> The record also referred to the contract specialist as a "purchasing analyst," a "transportation contract specialist," "renewal specialist," and "contract specialist." For consistency, we use "contract specialist."

- c. Daily time necessary to deliver mail, and
- d. Daily time in office after completion

(AF 43 at 1,177, 1,182; Tr. 402-10).

18. Based on the survey and Mr. Murray's own time cards, the postmaster calculated the following performance times over a six day period:

Saturday, September 25, 2010	6 hrs. 20 min.
Monday, September 27, 2010	6 hrs. 15 min.
Tuesday, September 28, 2010	7 hrs. 30 min.
Wednesday, September 29, 2010	5 hrs. 42 min.
Thursday, September 30, 2010	7 hrs. 30 min.
Friday, October 1, 2010	6 hrs. 15 min.

The average for the six days was 6 hours and 36 minutes.<sup>4</sup> (AF 43 at 1,177, 1,182; Tr. 402-10).

19. The 6 hour and 36 minute average was 80 minutes less than the 7 hours and 56 minutes in Mr. Murray's expiring contract (AF 43 at 1,177, 1,180, 1,182; Tr. 398, 409-10). The 80 minute difference relates to tasks c and d. The daily average time to deliver mail was 43 minutes less, and the daily average time in the office after route completion was 37 minutes less. (AF 43 at 1,180; Tr. 402-03).

20. After comparing several hundred similar contracts in TCSS with Mr. Murray's contract, the Postal Service estimated that Mr. Murray's route could be completed in 88 minutes less each day (i.e., 6 hours and 28 minutes). Being within 8 minutes, both the actual time and TCSS comparative estimate show similar reductions. (Tr. 212, 412; AF 43 at 1,130).

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<sup>4</sup> In tracking the time to complete each activity, the postmaster converted the total to two significant decimal places (for example, 6 hours and 15 minutes became 6.25 hours). In converting to decimal places the average became 6.59 hours. Instead of rounding down to 6 hours and 35 minutes, the postmaster rounded up to 6 hours and 36 minutes. (Tr. 474-75).

21. The postmaster and contract specialist discussed the two estimated reductions and agreed that a reduction of 80 minutes should be recommended to the contracting officer instead of the 88 minute reduction suggested by TCCS (AF 43 at 1,143; Tr. 412-13).

22. The contract specialist used the same process for each of the eight renewals. Once the estimate was approved, the Postal Service provided a renewal packet to the contractor for signature. Often, the contractor wanted to negotiate the contract rate. The contracting officer remained the final decision maker for the Postal Service. (Tr. 207).

23. On May 17, 2011, the contracting officer sent a renewal letter to Mr. Murray with revised terms and conditions and a reduced annual rate. The new rate was \$36,379, which was \$8,946 lower than Mr. Murray's previous contract rate of \$45,325.32. The contracting officer explained in the renewal letter that the reduced annual rate was due to a reduction in contract hours based on the overall decline in mail volume and the Postal Service's "dire financial conditions." (AF 1 at 1-3; App. SAF Exh. K; Tr. 100, 103-04, 274, 488).

24. The contracting officer also advised: "If you are unable to accept a reduction to your current contract rate and decide not to renew your contract, a determination will be made to either solicit the service or consolidate it . . ." (AF 1 at 1-3).

25. The letter asked Mr. Murray to complete, sign, and submit a number of forms. The Postal Service would then send him "**the FINAL renewal documents.**" The letter ended with: "We look forward to concluding an equitable renewal negotiation

with you. If you have any questions relative to the renewal process, please call your renewal specialist . . . .” (AF 1 at 3, emphasis in original).

26. On June 10, 2011, Mr. Murray sent a letter to the Postal Service’s contract specialist asking how the solicitation could include an increase in the number of mail boxes on his route, but a reduction in the estimated number of hours to perform the work. The letter referenced a counteroffer previously submitted by Mr. Murray. He also asked for a copy of the calculations used for the contract awarded in July 2000, eleven years earlier. (AF 2).

27. During negotiations, the Postal Service raised its offer to \$37,621.59, which represented a reduction of 73 minutes a day instead of 80 minutes a day. Mr. Murray countered that his route increased by 15 mail boxes, justifying additional time to complete the route. The Postal Service then raised its offer to \$39,602.32. The revised offer resulted in a 314 hour per year reduction. (AF 43 at 1,142-43; AF 47 at 2,084; Tr. 215, 493).

28. Over the next two weeks, the contract specialist wrote two Renewal Memorandums. The first, dated June 13, 2011, stated, “Supplier [Mr. Murray] also strongly requests [that the] Contracting Officer call him to discuss inequities of contract renewals within the Cottonwood office[;] states he isn’t being treated fairly at renewal. . . . He has a point!” (AF 43 at 1,143). The second, dated June 23, 2011, explained the negotiations and included the contract specialist and postmaster’s recommendation that the contracting officer execute a contract at the \$39,602.32 rate (AF 43 at 1142-43). The negotiated price was 1.3% higher than the TCSS price based

on a cost comparison of more than 5,000 similar contracts. (AF 43 at 1,157; Tr. 297-98, 314).

29. By email on June 13, 2011, the contract specialist also told Mr. Murray that the contract either needed to be renewed that week or the Postal Service would compete the route. The contract specialist also explained that the rate was being reduced because there were too many hours for the number of mail boxes. Finally, he explained that the calculations from eleven years ago were irrelevant. (Pet. Exh. I).

30. Despite the contract specialist's statement that the contract would be recompeted within a week, on June 25, 2011, the contract specialist further responded to Mr. Murray's pricing question by email and provided two calculation sheets used in calculating the new rate (AF 3 at 6-7).

31. That same day, Mr. Murray (in an email sent by his wife) explained that negotiations had been stressful, and requested that the renewal specialist "please mail the contract and the Hours and Miles Projections for this and prior contract negotiations, including but not limited to the first contract negotiation in 2000." (AF 3 at 6).

32. Despite not receiving information about the calculations used by the Postal Service in the 2000 negotiations, on June 29, 2011, Mr. Murray signed and returned the amendment renewing the contract. The amendment provided: "As a result of renewal negotiations between [the] supplier [Mr. Murray] and the Postal Service, [the] contract is amended as stated." (AF 5 at 14). The annual rate of compensation was \$39,602.32 (about \$6,000 less than the previous annual rate) with a four-year term from July 1, 2011, to June 30, 2015. The contracting officer then signed the contract on July 16, 2011, and sent a copy to Mr. Murray. (AF 4; AF 5 at 11-12, 14-15, 21).

33. On July 20, 2011, approximately three weeks after signing the renewal, Mr. Murray sent a letter to a different contracting officer complaining about the negotiation process and requesting an investigation. Among other things, he believed that the contract specialist had agreed to pay a higher annual rate in the new contract. Mr. Murray asked the contracting officer to investigate how the hours were determined and the contract specialist's alleged promise of a higher annual rate. (AF 6).

34. Mr. Murray also complained that during negotiations the contract specialist used coercive and threatening language by saying "take it or leave it" and threatened to compete the contract if Mr. Murray did not agree with the Postal Service's terms. Furthermore, Mr. Murray complained that (1) the postmaster improperly provided information to the contract specialist, and (2) his time cards were used to calculate the contract duration. (AF 6 at 108-10, 112).

35. In December 2011, a different contracting officer responded to Mr. Murray's July 20, 2011 letter. The contracting officer had investigated the negotiation process used by the parties. He concluded that negotiations had been conducted properly and that the rates were mathematically correct. He also explained how the Postal Service used time cards as information to negotiate the contract rate. Finally, he explained that the role of the postmaster was to provide information to the contracting officer about the contract, such as the line of travel and mail counts. (AF 8).

### **Renewal of Other Cottonwood Contracts**

36. Mr. Murray only relies on two of the eight contracts to support his arguments. Contract A was renewed at \$34,728.98, which was the same as the prior award price even though the performance time was cut by 323 hours per year. The contractor who operated the contract was 39 years old. When Contract A was compared to other contracts in TCSS (using the reduced hours), its \$34,728.98 price was still slightly below the TCSS average price for similar contracts. Based on the TCSS data, the contracting officer believed it was a good value for the Postal Service. (Tr. 281-85, 289-95, 303-05; AF 41 at 651; AF 47).

37. Contract E was renewed at \$34,979.29, which was a reduction of \$6,161.34 from the prior price. Contract E was cut by 429 hours per year, and the mileage and number of boxes remained the same. Contract E was originally awarded to and performed by a father and son team. By 2010, however, the father, who was 80 years old, had retired. Thus, when the contract was renewed in 2011, the 48-year old son alone signed the contract. (Tr. 67, 281-82, 307-10, 313-15, 365-66; AF 45 at 1,711; AF 47).

### **DECISION**

Mr. Murray alleges that the Postal Service acted in bad faith during the contract renewal discussions by discriminating against him based on his age, which resulted in a substantially lower contract rate. Mr. Murray argues that the Postal Service's bad faith entitles him to contract reformation which would increase his contract price by \$25,793.60 over the relevant performance period. See *Lee's Ford Dock, Inc. v. Secretary of the Army*, 865 F.3d 1361, 1368-69 (Fed. Cir. 2017); *Samuel J. Tibbs*,

PSBCA No. 1523, 86-3 BCA ¶ 19,074. Previously, in ruling on the Postal Service's motion for summary judgment in this case, we allowed for the possibility that age discrimination could amount to bad faith, and thus be an "invalidating cause" supporting contract reformation. See *Murray*, 18-1 BCA ¶ 37,058; RESTATEMENT (SECOND) OF CONTRACTS § 214(d)(negotiations may be used to establish illegality, duress, or other invalidating cause).

In order to prevail, Mr. Murray must show by clear and convincing evidence that the contracting officer or some other Postal Service official acted with malice or specific intent to harm him because of his age. *Am-Pro Protective Agency, Inc. v. United States*, 281 F.3d 1234, 1240 (Fed. Cir. 2002); *Finley v. United States Postal Service*, PSBCA No. 6606, 17-1 BCA ¶ 36,676; *Bowles v. United States*, 144 Fed. Cl. 240 (2019)(a postmaster's false allegations of assault by the contractor shows bad faith). We are permitted to hear such allegations only to the extent that a party alleges bad faith and there is a logical nexus between the bad faith and a contract provision or performance. See *Innovative Tel. Servs., Inc. v. Dept. of Veterans Affairs*, CBCA No. 12, 07-2 BCA ¶ 33,685.

Mr. Murray relies on a series of facts which when considered as a whole, he argues, show a specific intent to harm him because of his age. Specifically, Mr. Murray argues: (1) the Postal Service mistreated him during the contract renewal negotiations; (2) the Postal Service improperly ignored his past performance record; and (3) the Postal Service treated him differently than similarly situated, but younger, contractors working out of the Cottonwood Post Office.

## **Treatment By Postal Service Employees During Contract Negotiations**

Mr. Murray raises a series of arguments that his treatment by the Postal Service's employees shows bad faith in the form of age discrimination. To prove bad faith, Mr. Murray must show by clear and convincing evidence that the Postal Service had a specific intent to harm him. He must also overcome the presumption that Postal Service employees acted in good faith. *Am-Pro Protective Agency, Inc.*, 281 F.3d at 1239-40; *Murray*, 18-1 B.C.A. ¶ 37,058; *Finley*, 17-1 BCA ¶ 36,676.

We address each of Mr. Murray's arguments. Specifically, he argues that during contract negotiations, he was treated with disrespect because of his age. He asserts, for example, that the contract specialist spoke gruffly to him. Mr. Murray also points to the fact that the contract specialist used the phrase "take it or leave it" during discussions and said that if Mr. Murray did not accept the price offered by the Postal Service, it would compete the contract. We believe Mr. Murray's testimony that the contract specialist made these statements, but do not believe the statements prove bad faith. *Cf. Falmouth Scientific, Inc.*, ASBCA No. 60776, 19-1 BCA ¶ 37,389 (in the context of an allegation of a breach of the duty of good faith and fair dealing, a contracting officer's take it or leave it statement did not support a finding that the duty was breached), citing *Metcalf Const. Co. v. United States*, 742 F.3d 984, 990-91 (Fed. Cir. 2014); *cf. Southern Def. Sys., Inc.*, ASBCA No. 54045, 12-1 BCA ¶ 34,949 (contracting officer stating that government was not obligated to award additional work to this contract was not bad faith).

During the summer of 2011, the contract specialist was responsible for the renewal of 90 contracts. These agreements had to be completed by June 30 to avoid a

break in mail delivery service. Having reviewed the emails and heard testimony from both Mr. Murray and the contract specialist, we agree that the negotiations may have been gruff and curt. *Falmouth Scientific, Inc.*, 19-1 BCA ¶ 37,389 (the contractor did not identify any law or contract clause which precluded hard-nosed negotiations); *6800 Corp.*, GSBCA No. 5880, 83-2 BCA ¶ 16,581 (“A lack of good faith bargaining may not be found merely because a party attempts to secure that which the other party deems unacceptable . . . .”); see generally J. Harley, *Economic Duress and Unconscionability: How Fair Must the Government Be?*, 18 Pub. Con. L.J. 76 (Oct. 1988). But we also believe the Postal Service acted reasonably during the negotiations under the circumstances. Furthermore, the statements relied on by Mr. Murray do not show a specific intent to harm him because of his age. The Postal Service was merely trying to get the best possible bargain given the particular circumstances of this contract renewal. In light of the reduced mail volume and time necessary to perform the route each day, we do not believe the Postal Service acted in bad faith when it negotiated a reduced rate.

Moreover, the Postal Service’s hard bargaining was reasonable given the reduced mail volume and time to complete the route. Hard bargaining is bad faith when not supported by a reasonable basis. See, e.g., *Allied Materials and Equip. Co., Inc.*, ASBCA No. 17318, 75-1 BCA ¶ 11,150. However, such is not the case here. Declining mail volume provided a reasonable basis to seek a price reduction. See *AFR v. Department of Housing and Urban Development*, CBCA No. 946, 09-2 BCA ¶ 34,226 (an unsupported allegation of bad faith will not obviate a clear reasonable basis for a specific contract action); *Pennyrile Plumbing, Inc.*, ASBCA No. 44555, 96-1 BCA

¶ 28,044 (even the existence of animus towards a contractor by government officials cannot obviate a clear reasonable basis for a discretionary decision); *Highland Al Hujaz Co., Ltd.*, ASBCA No. 58243, 16-1 BCA ¶ 36,336 (in reviewing whether there is bad faith, we will look to see whether there was a reasonable basis for the decision; the degree of discretion reposed in the contracting officer, and whether applicable laws have been followed).

Mr. Murray also complains that the contracting officer never responded to his request for a telephone conference during negotiations. At the time, the contracting officer was covering ten different states and working in an understaffed office. He reasonably believed the request for the call was moot once Mr. Murray signed the contract. The record thus does not show that the contracting officer refused to speak to Mr. Murray because of his age.

Mr. Murray also argues that the Postal Service failed to review his contract file carefully. First, there is no evidence, other than Mr. Murray's unsupported allegation, that the Postal Service failed to carefully review his contract file. Second, Mr. Murray does not demonstrate how, even if true, failure to review the contract file establishes a specific intent to harm him because of his age.

Mr. Murray further argues that the Postal Service mistreated him by providing "false, fabricated, and fake data" in the route survey. For example, Mr. Murray argues that the postmaster lied about the time needed to complete the route.<sup>5</sup> The evidence simply does support these assertions. The mileage for the new contract, 50.5 miles a

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<sup>5</sup> "For the Postmaster to 'play God' with Appellant's financial life, his very existence, by blithely stat[ing] she would be 'comfortable with 80 minutes' per day being improperly shaved off Appellant's contract . . . was unconscionable and it was malicious in its result." See Appellant's Post Hearing Reply Brief at 7.

day, was the same as the old contract. Mr. Murray also does not explain how an overall reduction in mail volume would not result in a reduction in the amount of time needed to perform the contract. More significantly, Mr. Murray did not present any evidence to show the six-day average of 6 hours and 36 minutes in the route survey was wrong. Further, all the survey times were less than the prior contract rate of 7 hours and 56 minutes. Simply put, Mr. Murray provides no evidence that the route survey data is false, fabricated, or fake.

Finally, Mr. Murray contends that the contract specialist, in his June 13, 2011 Renewal Memorandum, agreed that Mr. Murray was mistreated. In relaying Mr. Murray's complaint to the contracting officer that the price reduction was unfair, the contract specialist agreed by saying: "He has a point!" While that may have been the contract specialist's opinion, it is not sufficient to support Mr. Murray's bad faith argument—especially given the reduction of mail volume and reduction in time needed to complete the route. The Postal Service, therefore, provided a reasonable basis for reducing the price, thereby defeating Mr. Murray's assertion of age discrimination.

### **Past Performance**

Mr. Murray argues that, during the renewal negotiations, the Postal Service failed to consider his excellent past performance. If it had done so, Mr. Murray believes he would have received a higher annual rate under the new contract. For its part, the Postal Service does not dispute Mr. Murray's characterization of his past performance.

The issue before us, however, is not Mr. Murray's past performance, or even the Postal Service's failure to consider it. The issue before us is whether that failure amounted to bad faith. To answer that question, we begin by noting that Mr. Murray

has not alleged that the Postal Service was legally required to consider his past performance. He has not referred us to any statute or regulation mandating such a review. He has also failed to point out any law or regulation requiring the Postal Service to pay a higher rate based on past performance. In the absence of such legal requirements, we see no reason to find that the Postal Service's conduct amounted to bad faith.

### **Alleged Age Discrimination During the Renewal Process**

Eight Cottonwood Post Office contracts for delivery service were renewed in June 2011. As Mr. Murray tells it: "So out of the eight routes that went through renewal in 2011, it was [the] two old guys that got socked approximately \$12,000 combined. The six other contractors, all under the age of 60, lost a combined amount of approximately \$4,285. . . . This to me, clearly shows age discrimination." (Tr. 28-29).

We begin by noting that six of the eight contractors at the Cottonwood Post Office were over 40 years old, meaning that they, like Mr. Murray, were members of a protected class for purposes of federal law. See, e.g., Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-34. In this case, however, Mr. Murray is not relying on that statute as a basis for his age discrimination claim. Instead, he is relying on the more general idea that the other contractors who were younger than him were treated more favorably during the renewal process in 2011. We will examine Mr. Murray's claim in that context.

With regard to the renewal letters, he argues that because there were slight differences in the language, he received disparate treatment. While there were two different form letters, all of them referenced the Postal Service's dire financial condition

as a reason for changes in the upcoming contract. The letter that Mr. Murray received also stated that reduced mail volume would lead to reduced contract hours. In and of itself, this statement does not show age discrimination. Furthermore, while Mr. Murray along with the contractor composed of the father (80 years old) and son (48 years old) team received the letter, two other contractors who were 39 and 50 also received the letter. Mr. Murray has not shown that age was the reason for receiving the renewal letter which referenced reduced mail volume.<sup>6</sup>

For example, Mr. Murray argues that Contractor A, who was 39 years old when her contract was renewed, had her contract cut by 323 hours a year, yet her annual rate remained the same at \$34,728.98. In comparison, Mr. Murray's contract was cut by 314 hours a year and his price was cut by \$5,723. Mr. Murray attributes the disparate treatment to their age difference.

The Postal Service responds by explaining that it did a survey for Contractor A's route, comparing miles, number of boxes, and mail volume for that route with several hundred contractors in TCSS. Based on this comparison, it determined that, even with the reduced hours, her rate was competitive and no change was recommended during the renewal process. When the Postal Service ran the same comparison for Mr. Murray's contract, however, it determined that his rate was too high and therefore needed to be reduced. We find the survey results credible and persuasive. We thus

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<sup>6</sup> During the hearing, Mr. Murray explained that mail was sorted in a warehouse like building near the Cottonwood Post Office. Half of the contractors would sort on the left side of the building and half on the right side of the building. Mr. Murray argued that contractors on one side were treated differently than those on the other, but provided no evidence or argument that the treatment was based on age. (Tr. 34-35).

agree with the Postal Service's argument that age did not enter into its survey calculations for either contract.

Mr. Murray also cites the renewal of Contractor E, who was 80 years old, to support his age discrimination claim. Like Mr. Murray's rate, Contractor E's rate was also cut. Contractor E's rate was cut by \$6,161.34, and Mr. Murray's rate was cut by \$5,723. The evidence, however, does not support this argument.

First, Contractor E was originally run by a father and son business. The son was 48 years old at the time of renewal in 2011, and he was performing the contract by himself as his father had retired. His father was not actively participating in the contract, though he may have had minor involvement with the business. This evidence establishes that the Postal Service cut the contract rate for a contract being performed by someone much younger than Mr. Murray, thereby undermining Mr. Murray's argument.

Second, the Postal Service again explained that it used TCSS to compare miles, number of boxes, and mail volume with several hundred other contractors. And age was not a variable in the comparison. Based on this comparison, the Postal Service sought a price reduction during renewal negotiations. Seeking a price reduction based on miles, number of boxes, and mail volume was reasonable and does not prove age discrimination.

**ORDER**

The appeals are denied. Mr. Murray has not proved that the Postal Service has discriminated against him based on his age.



Peter F. Pontzer  
Administrative Judge  
Board Member

I concur:

I concur:



Alan R. Caramella  
Administrative Judge  
Acting Chairman



Diane M. Mego  
Administrative Judge  
Board Member