This packet of arbitrations (including arbitrations from this very city- Rockville) justifies the remedy sought by the Union concerning the payment to NALC Branch 3825 due to repeat violations.

Kenneth Lerch

Kenneth Lerch

REGULAR REGIONAL ARBITRATION

In the Matter of the Arbitration between UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	Grievant: Class Action Post Office: Rockville, MD - Main USPS Case #K11N-4K-C15230700 BRANCH Case #50-15-SL57 DRT #13-350725

BEFORE: Tobie Braverman ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: James A. Martin

For the Union: Alton R. Branson

Place of Hearing: Rockville, MD

Date of Hearing: March 2, 2016

AWARD: The Grievance is sustained in part. The Union shall be paid a compensatory remedy in the amount of $1,500.00. Grievant Southerland and Saint-Aimee shall be paid the sum of $20.00 per day from June 4, 2015 through October 19, 2015. The Employer is ordered to take all necessary steps to insure that future pay adjustments are paid within twenty-eight days of grievance settlements.

Date of Award: March 24, 2016

PANEL: USPS Capital Metro Area / NALC Region 13

Award Summary

The Employer's repeated failure timely make agreed upon pay adjustments violates Article 15 of the National Agreement, deprives the employees of compensation due, and results in harm to the Union, both in terms of credibility and expense in pursuing otherwise unnecessary grievances, warranting a monetary remedy.

Tobie Braverman

The grievance here is submitted to the Arbitrator pursuant to the terms of the grievance arbitration provisions of the Collective Bargaining Agreement of the parties. Hearing was held at Rockville, Maryland on March 2, 2016. The parties argued their respective positions orally at the conclusion of hearing, and the hearing was declared closed on that date. The parties stipulated that the matter is properly before the Arbitrator. The parties further stipulated that the issue before the Arbitrator for decision, is as follows:

What is the appropriate remedy for Management's repeated violations of Article 15 by failing to timely process agreed upon pay adjustments in a timely manner?

FACTS

The facts of this case are straight forward and, for the most part, undisputed. On May 7, 2015 the parties resolved a grievance at Formal Step A regarding overtime for two non-overtime desired list employees, Rodney Southerland and Roland Saint Aimie. That resolution required that the two be paid a premium on their base rate of pay. Specifically, the amounts to be paid were $144.85 to Southerland and $79.91 to Saint Aimie. It is further undisputed that these parties have agreed that payments on grievance settlements are to be paid within twenty-eight days of the settlement. The instant grievance, which was filed because payment had not yet been made, was discussed with supervision at Informal Step A on July 9, 2015, and heard at Formal Step A on September 22, 2015. As of that date, there had still been no payment as agreed in the settlement. The grievance was appealed, and the B Team resolved the grievance in part, awarding the amounts noted above to the two carriers. The B Team processed the payment directly, and

Southerland and Saint Aimie were paid on October 19, 2015. The B Team impassed the grievance however, as to the additional monetary remedies which the Union requested both on behalf of the two letter carriers as well as the Union. Specifically, the Union requested payment of $20.00 per day from June 4 until the agreed payments were made as well as lump sum payments in the amount of $300.00 to each of the carriers, as well as payment to the Union in the amount of $1,500.00.

Union President Kenneth Lerch testified at hearing that this office has a history of failing to make timely payments on grievance settlements. He identified a substantial number of Step B decisions which were provided to the B Team in his contentions in this grievance on this point. The Union additionally provided a substantial number of arbitration awards between these parties from regional arbitrators which awarded a monetary payments to both Grievants and the Union as a result of the Employer's repeated failures to take timely action on payments and other remedies either agreed upon or ordered, and repeated failures to comply with other contractual requirements such as providing information and meeting on grievances. Lerch testified that, while the Employer complains about the number of grievances filed, the Union is required to file multiple grievances in order to enforce grievance settlements and B Team decisions, costing resources and time.

Supervisor Customer Sevices, DeWan Pinthiere, testified that she began a detail at Rockville in November, 2015. Among her duties has been to help manage the pay adjustment process, so that pay adjustments are processed and paid in a timely manner. She testified that the situation had been improving, but recently regressed when she was advised that the individual who was signatory to each grievance settlement was obligated to sign the pay request before it

could be processed. She additionally testified that there is a plan to bring in another person to process payments, but, at the time of hearing, there had been a delay in his assignment. As a result, while the timely payment of pay adjustments had been improving, that progress appears to have stopped for now.

POSITIONS OF THE PARTIES

Union Position: The Union contends that it has met its burden of proof to demonstrate that the remedy requested should be awarded. The evidence clearly demonstrated that the Employer failed to pay the employees in a timely fashion. The parties have agreed that pay adjustments will be completed within twenty-eight days, or two pay periods. There is no evidence that this time is unreasonable. Despite settling the grievances and agreeing to pay, the Employer has repeatedly failed to timely pay. This, together with the many demonstrated previous similar violations, warrants the remedy requested. Management in Rockville continues to disregard contractual obligations The Union is forced to repeatedly file grievances in order to force compliance. There must be progressive compensation awarded in a continuing effort to impress upon management that it must adhere to its contractual obligations. While there was a period of some improvement in the situation, it has again regressed as a result of new requirements and lack of training. This situation not only costs the employee who is not paid, but creates additional expense for the Union and exposes the Union to duty of fair representation liability. As a result of the Employer's continued, repeated and persistent failure to comply, the escalating remedy here should be awarded. The employees involved should be awarded $20.00 per day from the date the pay

adjustments should have been paid until the date on which they were paid as well as a $300.00 lump sum payment each, and the Union should be awarded $1,500.00.

Employer Position: The Employer argues that although the B Team found a violation of Articles 15 in failing to pay the pay adjustments in a timely manner, the impasse on the issue of remedy indicates that there was disagreement on the issue of the propriety of the remedy sought in this case. The Union's request for relief is out of line with the harm done and represents a windfall to both the two individual letter carriers and the Union. The purpose of a remedy is to make the harmed parties whole. The requested monetary payments here go far beyond that, and are punitive in nature. There is no contractual language which supports such punitive relief, and it is therefore inappropriate. Additionally, the evidence demonstrated that the Employer is making a sincere and concerted effort to improve and correct the situation. Although the progress has been slow due to the unavailability of personnel and the need for various individuals to sign requests for pay adjustments, progress has been made, and Union Steward Sergio Lemus acknowledged this fact. This too should be taken into consideration and should militate against the requested remedy. The grievance should be denied in its entirety.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 15 - GRIEVANCE-ARBITRATION PROCEDURE

15.3.A The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. ...

J-CAM 15-8 A Step B decision establishes precedent only in the installation from

which the grievance arose. For this purposed, precedent means that the decision is relied upon in dealing with subsequent similar cases to avoid the repetition of disputes on similar issues that have been previously decided in that installation.

DISCUSSION AND ANALYSIS

As noted above, the sole issue in this case is that of the appropriate remedy for the Employer's failure to timely provide the agreed upon pay adjustments for two letter carriers. There is no question but that the Employer agreed to the resolution of an overtime grievance for the two on May 7, 2015, but never processed the pay adjustment as agreed. When the employees had still not been paid one month later, a grievance was filed, but the pay adjustment was still not processed at that time. It was not until it was processed by the B Team that the two employees were finally paid in October, 2015, some four months after the agreed upon time. Were this an isolated or unusual occurrence, that would end the inquiry in this case. As the Employer urges, the purpose of a remedy in arbitration is generally to correct a breach and restore the parties to the status quo ante. An occasional delay may occur for any number of reasons, and that alone does not warrant an additional monetary remedy.

The evidence is clear in this case, however, as evidenced by the sheer number of B Team decisions as well as in a number of other similar cases between these parties heard by this Arbitrator and other regional arbitrators, that this incident is far from an isolated mistake. Rather, it is a common, ongoing and intractable problem at this office. In fact, the Arbitrator has heard similar testimony concerning the Employer's efforts to improve contractual compliance in regard to issues relating to processing and payment of grievances as well as other related issues in several

of those cases over the past several years. And while the Arbitrator does not doubt the sincerity of those efforts, the fact of the matter is that there has been little quantifiable improvement. The circumstances of this case demonstrate that to date, those efforts have simply not been effective to remedy the situation. In fact, the Union provided a number of grievances regarding the same issue subsequent to this one as proof that matters have not improved in any substantial way.

As this Arbitrator has stated previously, it is clear that these parties have considered and acknowledged that there are occasions in which an award of a monetary remedy is appropriate in order to impress upon management the need for future contractual compliance. In particular, the parties have utilized this approach in instances wherein there have been repeated and egregious instances of noncompliance. A number of recent grievances have in fact been resolved by these parties with an agreement to pay the affected employees $20.00 dollars per day and the Union $1,500.00.

Just as the Employer has failed to demonstrate any substantial sea change in the relations in this office, the Union did not present any substantive evidence in support of the lump sum payments of $300.00 to the two carriers involved. While it is clear that they were denied pay to which they were entitled for more than four months, there was no compelling argument to support the additional lump sum payment. The payment of $20.00 per day is already an escalation of the remedy from prior amounts, and should be more than sufficient to both compensate for the undue delay and to encourage future compliance by the Employer.

As to the payment to the Union, the requested $1,500.00 is additionally an escalated remedy over past amounts. The parties have, however, agreed to the payment of this sum to the Union in a number of settlements presented at hearing. As this Arbitrator has noted in other

decisions on this issue, the Employer's serial non-compliance with contractual obligations clearly harms the Union in two important respects. First, it requires the time and expense involved in processing a grievance to obtain payments to which the Employer has already agreed. Second and third generation grievances to enforce prior grievance settlements should be required in only the rarest of circumstances. In this office, they are a routine necessity, and they undoubtedly require a great deal of additional time and expense on the part of the Union. As importantly, the Union's inability to obtain reasonable and timely compliance by the Employer serves to undermine the Union's credibility with the members it is obligated to represent, and, as the Union notes, opens it to potential claims of breach of its duty of fair representation. For these reasons, the payment of the sum of $1,500.00 to the Union in this case is warranted.

AWARD

The Grievance is sustained in part. The Union shall be paid a compensatory remedy in the amount of $1,500.00. Grievant Southerland and Saint-Aimee shall be paid the sum of $20.00 per day from June 4, 2015 through October 19, 2015. The Employer is ordered to take all necessary steps to insure that future pay adjustments are paid within twenty-eight days of grievance settlements.

Dated: March 24, 2016

Tobie Braverman, Arbitrator

C-24921

A+

REGULAR ARBITRATION PANEL
(PACIFIC AREA)

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Grievant: Ms. Carol Richards

Post Office: Cbino, California

USPS Case No: F98N-4F-D02246082
F01N-4F-C03003434
NALC Case No: CH-1765-02-D
CH-1766-02-C

BEFORE: Donald E. Olson, Jr., Arbitrator

For the U.S. Postal Service: Mr. Wayne Marshall

For the NALC: Mr. Charlie Miller

Place of Hearing: Chino, California

Date of Hearing: March 5, 2003, July 1, 2003, September 10, 2003, October 27, 2003, and November 14, 2003.

Date of Award: January 2, 2004

Relevant Contract Provisions: Articles 3, 5, 13, 15, 16, 17, 19, and 31
ELM Sections 661.53 & 666.2

Contract Year: 2001-2006

Type of Grievances: Discipline and Contract

Award Summary:

Both grievances are denied.

Donald E. Olson, Jr., Arbitrator

OPINION OF THE ARBITRATOR

PROCEDURAL MATTERS

This matter was conducted in accordance with the provisions outlined in Article 15 of the parties' National Agreement. Hearings were held before the undersigned on March 5, 2003, July 1, 2003, September 10, 2003, October 27, 2003, and November 14, 2003, in the postal facility located at 5375 Walnut Avenue, Chino, California. On March 5, 2003, the hearing commenced. The case numbers assigned these two (2) disputes were ***F98N-4F-D02246082, CH-1765-02-D, F01N-4F-C03003434,*** and ***CH-1766-02-C.*** During the first day of the hearing the arbitrator ordered the U.S. Postal Service to provide the National Association of Letter Carriers, AFL-CIO with an entire copy of the video taken during its investigation. Subsequently, the United States Postal Service complied with this directive. On July 1, 2003, the National Association of Letter Carriers, AFL-CIO requested an opportunity to file a brief on a matter pertaining to the arbitrator's jurisdiction to hear the instant dispute(s). The arbitrator granted the parties an opportunity to file briefs, which were to be post-marked no later than July 18, 2003. The arbitrator received the National Association of Letter Carriers, AFL-CIO brief on July 19, 2003, and the United

States Postal Service brief on July 22, 2003. After reviewing the parties' briefs the arbitrator denied the Union's motion for summary judgment on August 1, 2003. Thereafter, a third day of hearing was set for September 10, 2003. Prior to the hearing on October 27, 2003, the National Association of Letter Carriers, AFL-CIO requested the arbitrator to issue a subpoena for the entire Postal Inspection file regarding grievance number ***F98N-4F-D02246082***. On October 21, 2003, the Postal Inspection Service notified Mr. Charles Miller, President of Local 1100 of the National Association of Letter Carriers, AFL-CIO that it would not comply with the subpoena. During the hearing on October 27, 2003, the arbitrator ordered the United States Postal Service to provide the entire file to the National Association of Letter Carriers, AFL-CIO representative within seven (7) calendar days. On November 14, 2003, the arbitrator was informed the entire file had been made available for the National Association of Letter Carriers, AFL-CIO representative(s) to review. The hearing proceeded in an orderly manner. There was a full opportunity for the parties to make opening statements, to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The advocates fully and fairly represented their respective parties. The parties

stipulated that theses disputes had been submitted properly to arbitration. The parties submitted the matter on the basis of the evidence presented at the hearing and through argument set forth in their respective post-hearing briefs. The parties were unable to frame the issue(s) to be determined, however, agreed the arbitrator could frame the issue(s). Mr. Wayne Marshall, Labor Relations Specialist, represented the United States Postal Service, hereinafter referred to as "the Employer". Mr. Charlie Miller, President of Branch 1100, represented the National Association of Letter Carriers, AFL-CIO, hereinafter referred to as "the Union", and Ms. Carol Richards, hereinafter referred to as "the Grievant". The parties submitted four (4) joint exhibits, all of which were received and made a part of the record. The Union submitted eight (8) exhibits, all of which were received and made a part of the record. The Employer objected to the introduction of Union exhibits 7 and 8. The arbitrator noted the Employer's objections. The Employer introduced one(1) exhibit, which was received an made a part of the record. The parties requested an opportunity to file post-hearing briefs, which were to be postmarked no later than December 19, 2003. The arbitrator received the Employer's brief on December 14, 2003, and the Union's brief on December 24, 2003, at which time the hearing record was closed. The arbitrator promised to render his

written opinion and award within thirty (30) calendar days after the hearing record had been closed. This opinion and award will serve as this arbitrator's final and binding decision regarding these disputes. The Grievant acknowledged her understanding that this arbitrator's decision regarding these two (2) disputes was a final and binding resolution of these matters.

ISSUE(S)

The Arbitrator frames the issues to be determined as follows:

> Did the Employer have just cause to issue a Notice of Removal to the Grievant on September 4, 2002 for misrepresenting her medical condition? If not, what is an appropriate remedy?
>
> Did the Employer violate Articles 2, 3, 5, 13, 15, 16, or 19 of the National Agreement when they denied the Grievant's request for light duty? If so, what is an appropriate remedy?

STIPULATIONS

1. The Grievant suffered an on-the-job injury on September 30, 1989.

2. The Grievant was placed on total disability due to this on-the-job injury as April 30, 1993.

3. During the period June 29, 1999 through August August 10, 2000, Postal Inspectors conducted video surveillance on the Grievant.

4. On September 11, 2000, the Office of Workers Compensation notified the Grievant that they were proposing to terminate her total disability benefits based on her injury of September 30, 1989.

5. On November 30, 2000, the Grievant was notified to report to work on December 4, 2000. Grievant reported to work and was sent home.

6. On June 1, 2001, the Office of Workers Compensation notified the Grievant that they were proposing to terminate her total disability benefits based on her injury of September 30, 1989.

7. The Grievant continued to receive total disability compensation from the Office of Workers Compensation (OWCP) from April 30, 1993, through July 1, 2001.

8. On August 29, 2001, the Grievant requested a permanent light duty position.

9. The Grievant had an OWCP oral hearing concerning the notice of proposed termination of her benefits on January 9, 2002.

10. The issue presented to the OWCP hearing officer was: "Whether the claimant has any condition or disability after July 1, 2001, casually related to the September 30, 1989, injury and whether she has any permanent partial impairment of the right arm due to her September 30, 1989, injury, which would entitle her to compensation under the schedule award provisions of the Act.

11. A decision was rendered April 8, 2002. The hearing officer affirmed the lower decision to terminate total disability benefits as of July 1, 2001.

12. The Grievant has appealed that decision to the Employees' Compensation Appeals Board (ECAB).

13. On September 24, 2002, the Service issued a Notice of Removal with the following charge:
"MISREPRESENTING YOUR MEDICAL CONDITION"
. . .Your conduct as noted above was clearly motivated by your intent to receive OWCP benefits that you otherwise may not have

been entitled."

14. The Union filed a timely grievance on the Notice of Removal and is properly before the Arbitrator.

15. The Union filed a timely grievance on the denial of light duty work and that issue is properly before the arbitrator.

16. In May of 2003, the Union was provided copies of all video tapes made by the Postal Inspectors on the Grievant.

PERTINENT PROVISIONS OF THE 2001-2006 NATIONAL AGREEMENT

ARTICLE 3
MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted;

ARTICLE 13
ASSIGNMENT OF ILL OR INJURED REGULAR WORKFORCE EMPLOYEES

Section 1. Introduction

B. The U.S. Postal Service and the Union recognizing their responsibility to aid and assist deserving full-time regular or part-time flexible employees who through illness or injury are

unable to perform their regularly assigned duties, agree to the following provisions and conditions for reassignment to temporary or permanent light duty or other assignments. It will be the responsibility of each installation head to implement the provisions of this Agreement within the installation, after local negotiations.

Section 2. Employee's Request for Reassignment

A. Temporary Reassignment

Any full-time regular or part-time flexible employee recuperating from a serious illness or injury and temporarily unable to perform the assigned duties may voluntarily submit a written request to the installation head for temporary assignment to a light duty or other assignment. The request shall be supported by a medical statement from a licensed physician or a by a written statement from a licensed chiropractor stating, when possible, the anticipated duration of the convalescence period. Such employee agrees to submit to a further examination by a physician designated by the installation head, if that official so requests.

B. Permanent Reassignment

1. Any ill or injured full-time regular or part-time flexible employee having a minimum of five years of postal service, or any full-time regular or part-time flexible employee who sustained injury on duty, regardless of years of service, while performing the assigned duties can submit a voluntary request for permanent reassignment to light duty or other assignment to the installation head if the employee is permanently unable to perform all or part of the assigned duties. The request shall be accompanied by a medical certificate from a physician designated by the installation head giving full evidence of the physical condition of the employee, the need for reassignment, and the ability of the employee to perform other duties.

A certificate from the employee's personal physician will not be acceptable.

2. The following procedures are the exclusive procedures for resolving a disagreement between the employee's physician and physician designated by the USPS concerning the medical condition of an employee who has requested a permanent light duty assignment. These procedures shall not apply to cases where the employee's medical condition arose out of an occupational illness or injury. On request of the Union, a third physician will be selected from a list of five Board Certified Specialists in the medical field for the condition in question, the list to be supplied by the local Medical Society. The physician will be selected by the alternate striking of names from the list by the Union and the Employer. The Employer will supply the selected physician with all relevant facts including job description and occupational physical requirements. The decision of the third physician will be final as to the employee's medical condition and occupational limitations, if any. Any other issues relating to the employee's entitlement to a light duty assignment shall be resolved through the grievance-arbitration procedure. The costs of the services of the third physician shall be shared by the Union and the Employer.

C. Installation heads shall show the greatest consideration for full-time regular or part-time flexible employees requiring light duty or other assignments, giving each request careful attention, and reassign such employees to the extent possible in the employee's office. When a request is refused, the installation head shall notify the concerned employee in writing, stating the reasons for the inability to reassign the employee.

Section 3. Local Implementation

Due to varied size installations and conditions within installations, the following important items having a direct bearing on these reassignment procedures (establishment of light duty assignments) should be determined by local negotiations.

A. Through local negotiations, each office will establish the assignments that are to be considered light duty with each craft represented in the office. These negotiations should explore ways and means to make adjustments in normal assignments, to convert them to light duty assignments without seriously affecting the production of the assignment.

B. Light duty assignments may be established from part-time hours, to consist of 8 hours or less in a service day and 40 hours or less in a service week. The establishment of such assignment does not guarantee any hours to a part-time flexible employee.

C. Number of Light Assignments. The number of assignments within each craft that may be reserved for temporary or permanent light duty assignments, consistent with good business practices, shall be determined by past experience as to the number of reassignments that can be expected during each year, and the method used in reserving these assignments to insure that no assigned full-time regular employee will be adversely affected, will be defined through local negotiations. The light duty employee's tour hours, work location and basic work week shall be those of the light duty assignment and the needs of the service, whether or not the same as for the employee's previous duty assignment.

Section 4. General Policy Procedures

A. Every effort shall be made to reassign the concerned employee with the employee's present craft or occupational group, even if such assignment reduces the number of hours of work for the supplemental work force. After all efforts are exhausted in this area, consideration will be given to reassignment to another craft or occupational group within the same installation.

B. The full-time regular or part-time flexible employee must be able to meet the qualifications of position to which the employee is reassigned on a permanent basis. On a temporary reassignment, qualifications can be modified provided excessive hours are not used in the operation.

C. The reassignment of a full-time regular or part-time flexible employee to a temporary or permanent light duty or other assignment shall not be made to the detriment of any full-time regular on a scheduled assignment or give a reassigned part-time flexible preference over other part-time flexible employees.

D. The reassignment of a full-time regular or part-time flexible employee under the provisions of this Article to an agreed-upon light duty temporary or permanent or other assignment within the office, such as type of assignment, area of assignment, hours of duty, etc., will be the decision of the installation head who will be guided by the examining physician's report, employee's ability to reach the place of employment and ability to perform the duties involved.

E. An additional full-time position can be authorized with the craft or occupational group to which the employee is be reassigned, if the additional position can be established out of the part-time hours being used in that operation without increasing the overall hours usage. If this cannot be accomplished, then consideration will be given to reassignment to an existing vacancy.

F. The installation head shall review each light duty reassignment at least once each year, or at any time the installation head has reason to believe the incumbent is able to perform satisfactorily in other than the light duty assignment the employee occupies. This review is to determine the need for continuation of the employee in the light duty assignment. Such employee may be requested to submit to a medical review by a physician designated by the installation head if the installation head believes such examination to be necessary.

G. The following procedures are the exclusive procedures for resolving a disagreement between the employee's physician and the physician designated by the USPS concerning the medical condition of an employee who is on a light duty assignment. These procedures shall not apply to cases where the employee's medical condition arose out of an occupational illness or injury. On request of the Union, a third physician will be selected from list of five Board Certified Specialist in the medical field for the condition in question, the list to be supplied by the local Medical Society. The physician will be selected by the alternate striking of names from the list by the Union and the Employer. The Employer will supply the selected physician with all relevant facts including job description and occupational physical requirements. The decision of the third physician will be final as to the employee's medical condition and occupational limitations, if any. Any other issues relating to the employee's entitlement to a light duty assignment shall be resolved through the grievance procedure. The costs of the services of the third physician shall be shared by the Union and the Employer.

H. When a full-time regular employee in a temporary light duty assignment is declared recovered on medical review, the employee shall be returned to the employee's former duty assignment, if it has not been discontinued. If such form regular assignment has been discontinued, the employee becomes an unassigned full-time employee.

I. If a full-time regular employee is reassigned in another craft for permanent light duty and later is declared recovered, on medical review, the employee shall be returned to the first available full-time regular vacancy in complement in the employee's former craft. Pending return to such former craft, the employee shall be an unassigned full-time regular employee. The employee's seniority shall be restored to include service in the light duty assignment.

J. When a full-time regular employee who has been

awarded a permanent light duty assignment within the employee's own craft is declared recovered, on medical review, the employee shall become an unassigned full-time regular employee.

K. When a part-time flexible on temporary light duty is declared recovered, the employee's detail to light duty shall be terminated.

L. When a part-time flexible who has been reassigned in another craft on permanent light duty is declared recovered, such assignment to light duty shall be terminated. Section 4.1. above, does not apply even though the employee has advanced to full-time regular while on light duty.

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE

Section 2. Grievance Procedure—Steps

Formal Step A

(d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Articles **17 and 31**. The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. . . .

Step B:

(b) **The Step B team will review the appeal and issue a joint report of the decision and any supporting findings within fourteen (14) days of receipt of the appeal at Step B unless the parties mutually agree to extend the fourteen (14) day period. The Step B**

team will give priority consideration to discussion and decision of removal cases. It is the responsibility of the Step B team to ensure that the facts and contentions of grievances are fully developed and considered, and resolve grievances jointly. The Step B team may 1) resolve the grievance 2) declare an impasse 3) hold the grievance pending resolution of a representative case or national interpretive case or 4) remand the grievance with specific instructions. In any case where the **Step B team** mutually concludes that relevant facts or contentions were not developed adequately in **Formal Step A**, they have authority to return the grievance to the **Formal Step A** level for full development of all facts and further consideration at that level. . . .

ARTICLE 16
DISCIPLINE PROCEDURE

Section 1. Principles

In the administration of this Article, a basic principle shall be that discipline should be corrective rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

ARTICLE 17
REPRESENTATION

Section 3. Rights of Stewards

. . . The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance

exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied. . . .

ARTICLE 19
HANDBOOKS AND MANUALS

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. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

ARTICLE 31
UNION-MANAGEMENT COOPERATION

Section 3. Information

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or designee. . . .

BACKGROUND

The Grievant began her employment with the Employer at its facility in Chino, California as a Letter Carrier on February 22, 1988. On September 30, 1989, the Grievant sustained an injury to her right arm while performing her duties on her route. The Grievant claims she placed her right arm through a gate, inserting her arrow key into the lock on the opposite side when the gate started to move and she was pinned to the gate with her right arm sticking through the other side, since her arrow key was attached by a chain to her waist. According to the Grievant the chain broke and she was then fell to the ground. Thereafter, the Grievant was examined on September 30, 1989, by Dr. Gary Taff, who diagnosed her condition as a strain of the right shoulder, right elbow, and right wrist, and an abrasion of the left knee. Dr. Taff was of the opinion the Grievant was able to perform light duty work after his examination had concluded. The Grievant then submitted a Notice of Traumatic Injury and Claim for Compensation on Form CA-1. Subsequently, Dr. Taff referred the Grievant to a Dr. Richman, a neurologist. The Grievant was examined by the Dr. Richman on October 11, 1989. Later, Dr. Richman reported in his opinion there was no evidence of any significant trauma to the right upper extremity. Dr. Richman also concluded the Grievant at the time of his examination was malingering. Afterwards, the

Grievant was once again examined by Dr. Alfonso, a neurologist. Dr. Alfonso determined the Grievant was exaggerating her complaints. Dr. Alfonso diagnosed the Grievant's condition as a musculoligamentous injury of the right shoulder and right arm. Next, the Grievant was examined by Dr. Kropac, a orthopedic surgeon on October 16, 1989. Dr. Kropac after his examination of the Grievant opined that the Grievant should be able to work in a modified duty capacity. Meanwhile, the Grievant was examined on July 15, 1990, by Dr. Sexton, a neurosurgeon. This examination of the Grievant was made at the request of her attorney. Dr. Sexton concluded the Grievant was temporarily totally disabled for at least six to eight weeks. There were other medical evaluations made of the Grievant during 1990.

Once again, on April 25, 1990, the Grievant was examined by Dr. Sobol, an orthopedic surgeon. Dr. Sobol concluded the Grievant's condition demonstrated a mild reflex sympathetic dystrophy of the right upper extremity. The Office of Workers' Compensation accepted the claim that the September 30, 1989, accident caused right arm strain. Except for three days (October 12, October 17 and October 18, 1989), the Grievant did not work after September 30, 1989, until August 13, 1990, when she returned to work in a modified job working four hours per day with duties of labeling, photocopying and

other duties as needed. The OWCP paid the Grievant compensation for wage loss from November 8, 1989 through August 14, 1990, and also paid her compensation for four hours of wage loss per day beginning August 13, 1990. Thereafter, the Grievant stopped working effective April 30, 1993, and did not return to duty, claiming a recurrence of total disability due to work injury. The record of this case shows the Grievant received total disability compensation from the OWCP from April 30, 1993, through July 1, 2001. On May 13, 1996, the Grievant was examined by Dr. Nagelberg, an orthopedic surgeon. Dr. Negelberg reviewed the Grievant's medical history and treatment dating back to September 30, 1989. At this time, Dr. Nagelberg concluded the Grievant was suffering from right reflex sympathetic dystrophy and contracture, right upper extremity. He opined that the Grievant was temporarily totally disabled. Thereafter, the OWCP referred the Grievant for a second opinion examination by Dr. Barnett, an orthopedic surgeon. Dr. Barnett diagnosed the Grievant's condition as a residual of profound reflex sympathetic dystrophy, post-traumatic, right upper extremity. Later, on March 7, 1997, the OWCP advised the Grievant that her condition of reflex sympathetic dystrophy of the right upper extremity was accepted as causally related to the September 30, 1989 work injury. Afterwards, on September 19, 1997, the OWCP paid the

claimant compensation for total wage loss retroactive to April 30, 1993. Meanwhile, Dr. Nagelberg continued to examined the Grievant periodically, and treat her diagnosed condition. On December 7, 1997, Dr. Nagelberg completed a work restriction evaluation form OWCP 5-c, indicating that the Grievant was unable to use the right upper extremity for any work of any nature. Once again, on February 25, 1999, Dr. Nagelberg re-examined the Grievant. After the examination was completed Dr. Nagelberg stated that, "the patient has lost complete use of her right upper extremity for any significant activities." On March 2, 2000, Dr. Nagelberg re-examined the Grievant. Thereafter, Dr. Nagelberg completed a work restriction evaluation form on March 9, 2000, indicating that the Grievant was still unable to use her right upper extremity for any work of any nature. Meanwhile, the Employer's Injury Compensation Specialist, Carol Huggins had contacted the Postal Inspection Service prior to June of 1999, and referred this case for investigation. The Inspection Service began surveillance operations of the Grievant from June 29, 1999, through July 25, 2000. After this surveillance operation was concluded, the Inspection Service presented their findings to Dr. Nagelberg, the Grievant's treating physician on July 27, 2000. After having reviewed the video tapes, Dr. Nagelberg signed an affidavit on August 3, 2000, indicating he had reached a

conclusion that the Grievant misrepresented her medical condition to him, and that he felt she was a fraud. Dr. Nagelberg then released the Grievant to go back to work full-time, without any medical restrictions. On September 11, 2000, the Grievant was apprised by OWCP that it proposed to terminate all benefits regarding the injuries she had sustained on September 30, 1989, based upon her treating physicians decision to release her to return to regular work with no restrictions.

Thereafter, on August 29, 2001, the Grievant made a request for permanent light duty. This request was denied by the Postmaster of the Chino postal facility on September 11, 2001, when he informed the Grievant that after having reviewed the operations at the Chino facility, it was determined that work accommodations could not be made at that time based on the Grievant's medical restrictions. Later, the Grievant once again made a request in writing for light duty on September 19, 2002. Meanwhile, the Union filed a grievance on behalf of the Grievant after she had been denied light duty/permanent light duty based on an alleged ongoing violation, claiming violations of Articles 2, 3, 5, 13, 15, 16, and 19 of the National Agreement. This grievance was processed through the grievance procedure, which culminated in the Step B Dispute

Resolution Team reaching an impasse on this dispute on January 29, 2003.

Simultaneously, the Grievant returned to Dr. Barnett for re-examination on September 19, 2000, who determined the Grievant's medical condition was unchanged since his first examination on January 31, 1997. On October 2, 2000, the Grievant underwent a functional capacity evaluation by a physical therapist. Later, the physical therapist reported that the Waddell's overall testing result for the Grievant was positive, that is, (indicated that symptom magnification was present), that the validity profile was invalid, and that inappropriate illness behavior was demonstrated in six of six categories tested.

Subsequently, the OWCP prepared a Statement of Accepted Facts dated October 11, 2000, which led the OWCP to refer the Grievant for a second opinion examination by Dr. Ibrahim Yashruti, an orthopedic surgeon. The Grievant was examined on November 14, 2000. Afterwards, on November 17, 2000, Dr. Yashruti, issued his findings regarding the Grievant medical status. Dr. Yashruti reported that the examination findings did not reveal a typical picture of reflex sympathetic dystrophy. In addition, Dr. Yashruti opined that the only physical limitation the Grievant had would be no work with the right arm above shoulder level and no lifting with the right

arm over 40 pounds. Later, in a letter dated December 13, 2000, Dr. Yashruti indicated the Grievant highly exaggerated her symptoms. Eventually, the OWCP in order to resolve the conflict in medical opinion between Dr. Yashruti and the Grievant's treating physicians concerning her work restrictions, the OWCP referred the Grievant to a referee medical specialist. The specialist selected was Dr. Ball. The Grievant was examined by Dr. Ball on March 27, 2001. Dr. Ball issued his report on April 20, 2001. In that report Dr. Ball reported that that the Grievant showed no real measurable objective findings to support the multiplicity of subjective complaints she had. In addition, Dr. Ball noted that the Grievant's arm circumference bilaterally was virtually the same, suggesting that she had reasonably normal use of both upper extremities. Furthermore, Dr. Ball stated that the Grievant's right upper extremity appeared normal, and that she did not show any evidence of reflex sympathetic dystrophy with respect to skin coloration, edema, or sweating.

Shortly thereafter, on June 1, 2001, the Grievant was notified by OWCP that it proposed to terminate her compensation benefits on the basis that the weight of medical evidence established that she had no residuals of the September 20, 1989, employment injury. The Grievant objected

to the OWCP proposal, however, the Grievant's compensation benefits were terminated on July 2, 2001.

On September 24, 2002, the Employer issued a Notice of Removal to the Grievant, alleging that she had Misrepresented Her Medical Condition, that is, the Grievant's alleged conduct clearly was motivated by her intent to receive OWCP benefits that she otherwise may not have been entitled. Thereafter, the Union filed a timely grievance on the Grievant's behalf. The grievance was appealed through grievance procedure, until it was impassed by the Step B Dispute Resolution Team decision rendered on January 13, 2003.

During the processing of this dispute the Union consistently claimed the Employer did not have just cause to issue the Notice of Removal to the Grievant. On the other hand, the Employer maintained it did have just cause to do so. The Union contended the Employer's action were punitive in nature, rather than corrective. In addition, the Union argued the Employer had not established the Grievant acted as charged in misrepresenting her medical condition. Moreover, the Union alleged the Employer had failed to provide any evidence that the Grievant violated any rule or condition of employment, or that the Grievant was aware of the consequences for the violation she was being charged with. Further, the Union contended that the discipline meted out to the Grievant

was not timely issued, in that the Employer had the knowledge it based its decision on for actions which took place some 30 months prior to the time the instant discipline was issued. Likewise, the Union insisted the Employer based its decision to issue its Notice of Removal to the Grievant solely on edited videotapes provided by the Postal Inspection Service. Also, the Union averred that the "edited" version of the videotapes used to establish the Grievant's alleged guilt, were insufficient to establish a thorough and objective investigation by management prior to issuing the Notice of Removal to the Grievant. And then too, the Union avowed that the allegation of "misrepresentation" without evidence of willful misconduct, is insufficient to support a Notice of Removal being issued to the Grievant. Additionally, the Union claimed that the Employer violated Articles 17.3 and 31.3 of the National Agreement when they failed to provide all requested information to the Union, which was essential to the Union's defense on behalf of the Grievant. Equally important, the Union claimed the Employer violated the Privacy Act, when the Employer used and released the Grievant's medical records to establish their case against the Grievant, without first obtaining her consent to do so. Based upon the foregoing claims, the Union requested that the Notice of Removal issued to the Grievant be rescinded and the Grievant be reinstated

and made whole for all lost wages, fringe benefits, and seniority rights.

On the other hand, the Employer argued there was just cause to issue the Grievant the Notice of Removal. In support of that contention, the Employer claimed the case file surrounding the instant dispute establishes that the Grievant was motivated by her intent to receive OWCP benefits that she was not otherwise entitled to, and that the Grievant engaged in dishonest conduct that was prejudicial to the Employer in violation of the ELM. Furthermore, the Employer maintained the videotapes of the Grievant's activities clearly demonstrated the Grievant engaged in those activities, albeit she represented to physicians that she was unable to perform those same activities. Moreover, the Employer argued it did in fact conduct a thorough review of the Grievant's medical record, Postal Inspection Service videotape, the OWCP file after being notified the Department of Labor had concluded its review and addressed all of the Grievant's appeals on or about April 23, 2002. In addition, the Employer insisted it did in fact conduct an investigative interview with the Grievant, and that the Postmaster of Chino concurred in the decision by Supervisor Nolan to issue the Notice of Removal to the Grievant. Lastly, the Employer alleged it did not violate any provision of the Privacy Act, or illegally collect evidence to

support its issuance of a Notice of Removal to the Grievant. In conclusion, the Employer requested that the grievances be denied.

DISCUSSION

This arbitrator has carefully reviewed the entire evidentiary record, pertinent testimony, and the parties' post-hearing briefs, as well as cited arbitration decisions.

At the outset, this Arbitrator finds specifically no violation of the National Agreement by the Employer surrounding either of the two (2) disputes as it pertains to Articles 2, 3, 5, 13, 16, or 19. Yet, this Arbitrator has concluded the Employer did egregiously violate Articles 15, 17, and 31 of the National Agreement, when it failed in a timely manner to provide requests made by the Union for relevant information pertaining to the administration and enforcement of the terms and conditions of the National Agreement, specifically related to the Notice of Removal issued to the Grievant. Clearly, if the information sought by the Union in the processing of the grievance surrounding the issuance of a Notice of Removal to the Grievant had not been unreasonably denied, in all likelihood the Union may have refused to process that grievance to arbitration.

The Employer's actions of refusing to provide requested information, which the Union thought was relevant to their

case surrounding the Notice of Removal issued to the Grievant baffles the imagination of this Arbitrator. Unquestionably, the parties' National Agreement mandates in Article 15, Section 2, Formal Step A (d), Article 17, Section 3, and Article 31, Section 3, that all "relevant information" will be made available to the Union upon request. Normally it is the Union that determines what is relevant to support their case in the processing of a grievance, rather than the Employer. Clearly, the Union made a request(s) for an opportunity to review all videotapes taken by the Inspection Service of the Grievant during the processing of the Notice of Removal grievance. This information was not provided until this arbitrator ordered the Employer at the arbitration hearing to provide same. Without question, in the opinion of this arbitrator the Employer's withholding of the entire videotape collection until it was ordered to provide the material at such late date in the grievance procedure, not only put the Union in a distinct disadvantage to properly represent the Grievant, but also violated the Grievant's due process rights. Normally that kind of activity alone would be a sufficient reason for this arbitrator to overturn a removal action. The Employer's decision not to provide the entire videotape collection to the Union after it had requested same several times was an outrageous violation of the National Agreement.

As such, this arbitrator will later address a remedy for this violation of the National Agreement. Conversely, this Arbitrator finds no merit to the Union's claim that the Employer's lack of cooperation in making the medical doctors who treated the Grievant available for the Union to interview, somehow prejudiced the Union in presenting their case. If the Union felt the testimony of the physicians who examined the Grievant, namely, Dr. Nagelberg, Dr. Ball, or Dr. Yashruti was important, there was nothing that prohibited the Union from seeking a subpoena(s) to compel the testimony of those individuals at the hearing. The same holds true for personnel of the Postal Inspection Service.

Next, this arbitrator will deal with the Notice of Removal issued to the Grievant on September 4, 2002. The question to be asked is: Did management have just cause to issue the Notice of Removal on September 4, 2002, for misrepresenting her medical condition?

To say the least, this arbitrator concludes the overwhelming clear and convincing evidence adduced during the hearing supports a finding that the Employer did have just cause to issue the Notice of Removal to the Grievant on September 4, 2002, for misrepresenting her medical condition, as well as violating some regulations of the ELM.

This arbitrator has held on several previous occasions that in order for an employer to satisfy the "just cause" standard, at a minimum there must be evidence that the employer conducted an investigation of the employee's alleged misconduct, that the investigation was conducted fairly and objectively, and the degree of discipline administered by the employer must be reasonably related to the seriousness of the employee's proven offense. In this case, the Employer did indeed conduct a fair and objective investigation utilizing the Inspection Service to conduct surveillance and videotaping of the Grievant. After the Department of Labor (OWCP) had concluded it's review and had addressed all appeals made by the Grievant, then the Employer continued its own investigation regarding the Grievant's conduct. Without doubt, in the opinion of this arbitrator this was the proper time for the Employer to continue its own investigation of the Grievant's conduct, rather than having instituted its own investigation immediately after the videotaping of the Grievant had concluded. Moreover, prior to issuing the Notice of Removal the Employer conducted its own investigative interview with the Grievant and her Union representative, allowing the Grievant to explain her actions. In short, the Employer in this case met its "just cause" obligations prior to issuing the Notice of Removal to the Grievant. Obviously,

in the opinion of this arbitrator the Employer was under no contractual obligation to investigate any further prior to issuing the Notice of Removal to the Grievant, since it had at that time adequate proof to take such action.

Undeniably, the Employer claimed it had just cause to issue a Notice of Removal to the Grievant for misrepresenting her medical condition and for violating regulations set forth in the ELM. Article 3 of the parties' National Agreement grants the Employer the exclusive right, subject to the provisions of that Agreement and consistent with applicable laws and regulations to discharge employees. However, in order to take such an action the Employer must first have "just cause" to do so. Article 16, Section 1 of the parties' National Agreement sets forth examples of misconduct which constitute "just cause". This arbitrator notes that one of the examples expressly agreed upon by the parties at the National level, which constitutes outright "just cause" for disciplining or discharging employees is "a violation of the terms of this Agreement". Furthermore, Article 19 of the National Agreement incorporates the Employer's published regulations by reference as they apply to employee's covered under the National Agreement.

In this case the Employer claims the Grievant violated the following published regulations:

ELM Section 542.31 Penalty for False Statement

Any employee, supervisor, or representative who knowingly makes a false statement with respect to a claim under FECA may be subject to a fine of not more than $10,000 or 5 years in prison, or both.

ELM Section 661.53 Unacceptable Conduct

No employee will engage in criminal, dishonest, notoriously disgraceful or immoral conduct, or other conduct prejudicial to the Postal Service. Conviction of a violation of any criminal statute may be grounds for disciplinary action by the Postal Service, in addition to any other penalty by or pursuant to statute.

ELM Section 666.2 Behavior and Personal Habits

Employees are expected to conduct themselves during and outside of working hours in a manner which reflects favorably upon the Postal Service. Although it not the policy of the Postal Service to interfere with the private lives of employees, it does require that postal personnel be honest, reliable, trustworthy, courteous, and of good character and reputation. Employees are expected to maintain satisfactory personal habits so as not to be obnoxious or offensive to other persons or to create unpleasant working conditions.

At first blush, it appears to this arbitrator that the Notice of Removal issued to the Grievant on September 4, 2002, is not clear regarding the charge of misrepresentation pertaining to injury compensation claims for an on-the-job injury for the period from September 30, 1989, through July 2, 2001. It seems to this arbitrator that the crux of the Employer's charge of misrepresentation deals with matters that fall squarely under the jurisdiction of the Department of

Labor. Any re-evaluation of the Grievant's OWCP claims, triggered by concern that the Department of Labor's first determination may have been erroneous if the Grievant had not misrepresented or exaggerated information regarding her medical condition, is a matter to be determined by the Office of Worker's Compensation of the Department of Labor. Accordingly, this arbitrator's adjudication of any charges of misrepresentation pertaining to matters under the Department of Labor's jurisdiction, would by outside of my purview. Clearly, the Employer made an assertion in the Notice of Removal issued to the Grievant that "misrepresenting your disability for the purpose of gaining OWCP benefits is very serious misconduct". (See Jt. 2, page 5, item 6). On the other hand, allegations made by the Employer regarding violations of its promulgated rules and regulations, which are in turn covered under Article 19, would be within the scope of this arbitrator's jurisdiction.

On the face of it, the Notice of Removal issued to the Grievant indicates that the Employer was of the opinion that after reviewing the videotapes taken by the Inspection Service of the Grievant's activities during the period June 29, 1999 through July 25, 2000, her medical reports, and the Department of Labor's hearing review, that in addition to having Misrepresenting Her Medical Condition, she had also violated

three (3) of the above-referenced regulations set forth in the ELM.

This arbitrator concludes that Section 542.31 of the ELM is not applicable to this case. Obviously, this section of the ELM deals with an employee making false statements with respect to a claim under FECA, and the penalties associated with same. There is no evidence in this record that the Grievant violated the provisions of Section 542.31 of the ELM. However, this arbitrator is convinced the Grievant violated both Section 666.2 and Section 661.53 of the ELM. Section 666.2 of the ELM requires employees to be "honest". While Section 661.53 of the ELM mandates that employees will not engage in dishonest or other conduct prejudicial to the Employer.

This arbitrator has reviewed the entire videotapes taken by the Inspection Service of the Grievant's activities at least three times. Although the Grievant testified that she suffered from extreme pain in her shoulder and arm with any particular movement, and that she could not extend her right arm without crying, or raise her right arm above her shoulder after she had suffered her on-the-job injury in 1989, and for a period of nearly 12 years thereafter, the videotapes do not support such claims. This arbitrator notes the contents of the entire videotapes demonstrate the following regarding the

Grievant's subjective complaints of constant severe pain in the right shoulder: (1) the Grievant was able to freely move her right arm and hand while having a manicure, (2) she was able to lean on her arm and elbow, reach fully with the arm extended at the shoulder and use the right hand for gesticulations without any obvious restriction or hesitation, (3) the Grievant was able to walk with a fully normal and natural arm swing, (4) the Grievant was able to open and close her hand without any apparent restriction, (5) she carried beverage containers in both hands, (6) the Grievant used her right hand to place a drink on the back of her car while reaching through a partially closed window to open the car door, (7) she was able to back and drive a vehicle with both hands on the steering wheel without any difficulty in manipulating her right hand and arm, which demonstrates her right shoulder could sustain a "torquing or rotating force", and many other activities, which demonstrate to this arbitrator that it is reasonable to assume that much if not all the Grievant's claimed disabilities have been voluntarily "exaggerated", or "feigned". Undoubtedly, the videotapes show the Grievant's right upper extremity to be functioning normally, without any evidence of pain or restriction. Although this arbitrator is not a medical doctor, it is evident that the Grievant not only "exaggerated" her medical

condition, but in fact misrepresented same to the Employer's Injury Compensation office. The adage that a "picture is worth a thousand words" is appropriate in this case, however, a videotape is worth even more. As such, this Arbitrator concludes the Grievant's acts of exaggerating and misrepresenting her claimed upper right extremity medical condition, to be a dishonest act(s), which in turn was conduct that was prejudicial to the Employer. The FECA program is financed by the Employees' Compensation Fund, which consists of monies appropriated by Congress. The charge back system is the mechanism by which the costs of compensation for work-related injuries are assigned to employing agencies annually, that is, the Employer in this case. Each year OWCP furnishes the Employer with a statement of payments made from the fund on account of injuries suffered by its employees. Thereafter, the Employer includes these amounts in their budget request to Congress. In the finally analysis, when you have an employee such as the Grievant exaggerating or being dishonest in reporting her medical condition to the Employer, her conduct is prejudicial to the Employer in that it affects the Employer's budget in a negative manner.

Thus, based upon the record and for the reasons set forth above, this Arbitrator concludes the Employer had just cause

to issue a Notice of Removal to the Grievant on September 4, 2002, for misrepresenting her Medical condition.

This arbitrator will now address the question, did the Employer violate Articles 2, 3, 5, 13, 15, 16, and 19 of the National Agreement when they denied the Grievant's request for light duty? The evidence of record indicates the Grievant requested on August 29, 2001, to work a permanent light duty assignment, and later requested a temporary light duty assignment on September 19, 2002. In this type of alleged contractual violation, the Union assumes the burden of proof to establish a violation. Needless to say, in the opinion of this Arbitrator the Union was unable to establish by adequate proof that the Employer violated any provision of the National Agreement when the Employer denied the Grievant's request for temporary light duty. The record clearly shows the Grievant declined work as a modified carrier technician on December 4, 2000, even after the Employer reduced the lifting requirement from 70 lbs to 40 lbs. Thereafter, the Grievant for the first time since being injured in 1989 made a request for permanent light duty on August 29, 2001. Once again the Employer made an effort to find such work for the Grievant, however, the Postmaster of the Chino postal facility determined that work accommodations could not be made at that time based on the Grievant's medical restrictions. Furthermore, the evidence

adduced at hearing indicates the Postmaster considered positions in the Clerk craft, but due to excessing of three (3) clerk positions from the Chino postal facility, that option was not available as the excessed clerks had retreat rights back to vacant clerk assignments. This arbitrator notes that neither the Union or Grievant identified any vacant assignments they thought the Grievant could perform at that time, which leads this arbitrator to believe there were none.

Furthermore, this arbitrator takes cognizance of the fact that the Grievant's treating physician had released her to return to work full time, without any restrictions on or about August 3, 2000. However, rather than returning to work full-time, the record indicates the Grievant continued to "doctor" shop, which leads this arbitrator to conclude she did not want to return to work full-time, part-time, or in any capacity, including light duty temporary/permanent status. The Grievant in the opinion of this arbitrator was attempting to perpetuate her alleged medical condition, when she did not make any effort to return to work until August 29, 2001, nearly 13 months after having been released by her treating physician to return to work full time, without any medical restrictions. Clearly, there is no reason for the Employer to reward an employee that has acted in a dishonest, concocted, or

exaggerated manner in feigning the extent of her medical condition.

Accordingly, this arbitrator concludes the Employer did not violate the National Agreement when they denied the Grievant's request for light duty.

As stated earlier, this arbitrator was shocked by the Employer's refusal to provide relevant information that the Union had requested in timely manner, that is, the entire collection of videotapes taken by the Postal Inspection Service. The Employer had no contractual right or excuse for not providing the tapes to the Union in a timely manner. As such, the Employer will be directed to pay the Union five-thousand dollars ($5000.00)for this flagrant violation of the National Agreement. As stated earlier, in all likelihood the Union may not have processed this grievance, if the Employer had provided the relevant information sought in a timely manner.

AWARD

Both grievances are denied. The Employer is hereby ordered to pay $5000.00 to the Union within thirty (30) calendar days after receipt of this decision. The Employer's check will be sent to the office of the Union's National Business Agent for Region 1.

Dated this 2nd day of January 2004.

Corrected Copy of front page
C-26008

REGIONAL ARBITRATION PANEL

In the Matter of Arbitration	Grievant:	Class Action
Between	Post Office:	Norman, Oklahoma
United States Postal Service	USPS No.:	G01N-4G-C 04041218
And	DRT No.:	CJS1A2003
National Association of Letter Carriers,		

BEFORE: Jo Ann Nixon, Arbitrator

APPEARANCES:

For the U.S. Postal Service — J. P. Turner

For the National Association of Letter Carriers — David Miller

Place of Hearing: 129 West Gray; Norman, Oklahoma 73069

Date of Hearing: February 1, 2005

Briefs Due: March 1, 2005

Date of Award: June 20, 2005

Relevant Contract Provision: Article 15 - Compliance with Dispute Resolution Decision

Contract Year: 2001 - 2006

Type of Grievance: Contract

AWARD: The grievance is sustained. Management failed to honor the settlement agreement in the previous grievance. Management is to Cease and Desist this practice and is to take every effort to comply with the letter of the National Collective Bargaining Agreement in this regard as well as grievance settlements and awards. Management's failure to comply is found to be willful and repetitive. The matter at hand was handled in an arbitrary and capricious fashion with indifference to its responsibilities under the governing agreements. As such, an award of punitive damages is made to the Union in the amount of Two Thousand Five Hundred and no/100 ($2,500.00)

Jo Ann Nixon, Arbitrator

C-26008

REGIONAL ARBITRATION PANEL

In the Matter of Arbitration	Grievant:	Class Action
Between	Post Office:	Norman, Oklahoma
United States Postal Service	USPS No.:	G01N-4G-C 04041218
And	DRT No.:	CJS1A2003
National Association of Letter Carriers,		

When faxing/scanning/copying this award. do not include this page. This page is for CAU informational purposes only. J

BEFORE: Jo Ann Nixon, Arbitrator

APPEARANCES:

For the U.S. Postal Service

For the National Association of Letter Carriers

Place of Hearing:	129 West Gray; Norman, Oklahoma 73069
Date of Hearing:	February 1, 2005
Briefs Due:	March 1, 2005
Date of Award:	March 15, 2005
Relevant Contract Provision:	Article 15 - Compliance with Dispute Resolution Decision
Contract Year:	2000 - 2003
Type of Grievance:	Discipline
AWARD:	The grievance is sustained in part however the discipline is modified in accord with the provisions contained in the Award.

Jo Ann Nixon
Arbitrator

I. ISSUE

Did Management violate Article 15 of the National Collective Bargaining Agreement by failure to comply with a previous Dispute Resolution Team (DRT) decision, if not, what is the appropriate remedy[1]?

II. STIPULATIONS

The parties agreed the following documents are to be considered as exhibits:

1. The Collective Bargaining Agreement between the National Association of Letter Carriers and the United States Postal Service – November 21, 2000 - to November 20, 2003. (Joint Exhibit No. 1)

2. A packet of information consisting memoranda and letters documenting the grievance presented to the Dispute Resolution Team (DRT) (Joint Exhibit No. 2)

3. An excerpt from the Handbook M - 39 (Management of Delivery Services) (Joint Exhibit No. 3)

4. The Local Orientation Package titled *The Article 15 Dispute Resolution Process*. (Joint Exhibit No. 4)

In addition to the jointly introduced documents, the Union also proffered the following documents

1. PS Form 1840 Relative to the Record of Office and Street Adjustment made to Route No. 72079. (Union Exhibit No. 1)

2. PS Form 1840 Relative to the Record of Office and Street Adjustment made to Route No. 72079. (Union Exhibit No. 2)

3. Request for Information made by Union on November 22, 2003 (Joint Exhibit No. 3)

4. PS Form 1840 Relative to the Record of Office and Street Adjustment made to Route No. 72091. (Union Exhibit No. 4)

5. PS Form 1840 Relative to the Record of Office and Street Adjustment made to Route No. 72091. (Union Exhibit No. 5)

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[1]The issue was taken from the Impassed DRT decision. Management disputes the allegation of non-compliance. The award will address whether the actions of Management were as a matter of fact non-compliant.

6. Dispute Resolution Team Decision in Case No. 99-220. (Union Exhibit No. 6)

7. Dispute Resolution Team Decision in Case No. G01 N4G-C-03036008. (Union Exhibit No. 7)

8. Dispute Resolution Team Decision in Case No. G01N4G-C-04041215. (Union Exhibit No. 8)

9. Dispute Resolution Team Decision in Case No. G01N4G-C-05002916. (Union Exhibit No. 9)

10. Dispute Resolution Team Decision in Case No. G01N4G-C-05034940. (Union Exhibit No. 10)

In addition to the jointly introduced documents, Management proffered these documents.

1. An excerpt from the Handbook M - 39 (Management of Delivery Services) (Management Exhibit No. 1)

2. Step 4 Decision in case No. E-94N-4E-C (Management Exhibit No. 2)

3. PS Form 1840 Relative to the Record of Office and Street Adjustment made to Route No. 72091. (Management Exhibit No. 3)

4. Handwritten statement concerning the Grievance. (Management Exhibit No. 4)

5. PS Form 1840 Relative to the Record of Office and Street Adjustment made to Route No. 72079. (Management Exhibit No. 5)

6. Dispute Resolution Team Decision in Case No. G01 N4G-C-04058362. (Management Exhibit No. 6)

7. Dispute Resolution Team Decision in Case No. G01 N4G-C-04058370. (Management Exhibit No. 7)

III. RELEVANT CONTRACT PROVISIONS

National Collective Bargaining Agreement

Article 15 – Grievance Arbitration Procedure

Section 1. Definition

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include but is not limited to the complaint of an employee or of the Union which

involves the interpretation, application of, or compliance with the provision of this Agreement or any local Memorandum of Understanding not in conflict with this agreement.

Section 2 – Step B

(a) Any appeal from an unresolved case in Formal Step A shall be in writing to the Step B team at the appropriate Step B office, with a copy of the Formal Step A representative, and will include a copy of the Joint Step A grievance Forms, and shall specify the reasons for the appeal.

(b) The Step B Team will review the appeal and issue a joint report of the decision and any supporting finding within fourteen (14) days of receipt of the appeal at Step B unless the parties mutually agree to extend the fourteen(14) day period. The Step B. Team will give priority consideration to discussion and decision of removal cases. It is the responsibility of the Step B team to ensure that the facts and contentions of grievances are fully developed and considered and resolve grievances jointly. The Step B team may 1) resolve the grievance 2) declare an impasse 3) hold the grievances pending resolution for the representative case or national interpretative case or 4) remand the grievance with specific instructions. In any case where the Step B team mutually concluded that the relevant facts or contentions were not developed adequately in Formal Step A, they have authority to return the grievance to Formal Step A level for full development of all facts and further consideration at that level. If the grievance is remanded, the parties' representative Formal Step A shall meet within seven (7) days after the grievance is returned to Formal Step A. Thereafter, the time limits and procedures applicable to Formal Step A grievances shall apply.

(c) The written Step B joint report shall state the reasons in detail and shall include a statement of any additional facts and contentions not previously set forth in the record of the grievance as appealed to formal Step A. The step B team shall attach a list of all documents included in the file.

IV. BACKGROUND

The National Association of Letter Carriers (NALC) initiated this grievance. It is before the Arbitrator for decision pursuant to the National Collective Bargaining Agreement between the parties, the United States Postal Service (USPS) and NALC from 2000 – 2003. The hearing was held on February 1, 2005 at the Main Post Office in Norman, Oklahoma. Both parties agreed that the case was properly before the Arbitrator.

V. FACTS

On or about October 14, 2003, the DRT resolved a grievance in case No. G01N-4G-C03103541) including the following salient language.

> After reviewing the documentation, the DRT finds that an adjustment was made to the Grievant's route and that management should have provided corresponding paperwork to show the adjustments made to the route. The DRT contacted the Formal Step A representative concerning these deliveries and their status after the count and inspection. The deliveries are being transferred to route 72091 and will be properly documented on the Form 1840. *In the future, management in the Norman Installation will conform to the language and intent of section 141 of the M-39 handbook. When work is added to a route, the addition of that work and the time needed to perform the work will be shown.*

Emphasis supplied.

Following an adjustment to route 72079 and 72091, is alleged to have been made without the proper notification.

VI. UNION'S POSITION

The position of the Union is that the actions of Management here violated the National Collective Bargaining Agreement and specifically the decision of the DRT on this specific issue.

As a remedy, the Union has asked that the Arbitrator find that there is a violation of the in failing to comply with the settlement agreement and that Management and further that it be required to pay punitive damages for that failure.

VII. MANAGEMENT'S POSITION

Management argues that the actions taken here were appropriate. Management takes the following positions.

Management has contended that it complied with the requirements of the DRT resolution in that it provided information on the route adjustments to the Union. Management has asked the arbitrator to dismiss the grievance. Management further notes that if a violation is found, that the claim for punitive damages is denied.

VIII. DISCUSSION

It is the opinion of this Arbitration that the Union was correct in the filing of the grievances. In the present case, Management not only violated the spirit but the letter of the agreement as well.

The Arbitrator is struck by the Management's purported effort to comply with the agreement. The parties agree that when the Union requested that it be provided with the information concerning the route adjustments, it was not provided or provided only in incomplete form to the Steward. After the grievance was filed, and after the Informal Step A meeting, Steward Schrivner was given a *tub* and directed to search the documents if she so desired. She testified that this information was incomplete and that the correct information was not discovered until it was collateral information of another grievance.

Management in its argument places little emphasis on the violation. Management argues that the settlement agreement was applicable only to minor route adjustments. That argument is not supported by the language of the agreement. The parties in the "carefully chosen" wording of the agreement, notes that the parties should comply with the "language and intent" of the regulations. One can only opine that the regulations were put in place to afford the worker as well as the Union an opportunity to have information assuring that adjustments if necessary were being made fairly. Clearly if an employee contends that he has been subjected to an unfair adjustment, if the employee or Union has information concerning how all adjustments, many grievances could be averted. Some employees may choose to grieve the adjustments other may not, however contemplating a cooperative productive work environment, the members of the DRT in resolving the earlier grievance emphasized that this type of information should be shared made available. In the present case, although the information was eventually made available, neither party could contend that it was the intention of the DRT nor the M - 39 that this information is made available at the late date.

Management also contends that one reason this grievance should not be sustained is because the route inspection related to this situation occurred in September 2003 before the DRT settlement. However, as the implementation of the changes clearly occurred after the settlement in November 2003.

The Union provides a copy of a letter from Patrick Donahoe, Chief Operations Officer and Executive Vice President of the United States Postal Service. That letter provides as follows.

> Headquarters is currently responding to union concerns that some field offices are failing to comply with grievance settlements and arbitration awards. While all managers are aware that settlements reached in any stage of the grievance/arbitration procedures are final and binding, I want to reiterate our policy on this subject.
>
> *Compliance with arbitration awards and grievance settlements is not optional.* No manager or supervisor has the authority to ignore or override an arbitrator's award or a signed grievance settlement. Steps to comply with arbitration awards and grievance settlement should be taken in a timely manner to avoid the perception of noncompliance, and those steps should be documented.
>
> Please ensure that all managers and supervisors in your area are aware of this policy and their responsibility to implement arbitration awards and grievance settlements in a timely manner.

Emphasis supplied

United States Postal Headquarters takes the position that compliance is important. If the Supervisor did not have the needed information requested by the union, after several request, providing the steward with a tub hardly seems to meet his responsibility under the grievance settlement or under the M - 39.

Management suggests that a "cease and desist" order should be issued. That certainly will be done. However, the previous grievance and eventual settlement proved that Management was well aware of this problem. The citations given by Management of Arbitrator Snow in case W1C-5F-C 4734 and Arbitrator Leibowitz in case N7N-1K-C 28329 note that although punitive damages are not favored, they have been used when "violations are constant and repeated or malicious" (Arbitrator Snow) or a "violation was repeated or intentional" (Arbitrator Leibowitz). The violation here was not only repeated. It was previously litigated and settled. Notwithstanding this, the violation still occurred.

In the present case, punitive damages are appropriate. Management will pay the Union the sum of two thousand five hundred dollars in punitive damages in this matter. This award is made in an effort to defray the Union's cost in the prosecution of this grievance.

AWARD

The grievance is sustained. Management failed to honor the settlement agreement in the previous grievance. Management is to Cease and Desist this practice and is to take every effort to comply with the letter of the National Collective Bargaining Agreement in this regard as well as grievance settlements and awards. Management's failure to comply is found to be willful and repetitive. The matter at hand was handled in an arbitrary and capricious fashion with indifference to its responsibilities under the governing agreements. As such, an award of punitive damages is made to the Union in the amount of Two Thousand Five Hundred and no/100 ($2,500.00)

JO ANN NIXON
Arbitrator

New Iberia, Louisiana
March 15, 2005

C-26617

REGULAR ARBITRATION PANEL

UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	GRIEVANT: Class Action POST OFFICE: Huntington Beach, CA CASE NO. F01N-4F-C 0516737 (05161737) NALC DRT NO: 01-052243

APPEARANCES:	Postal Service:	Carol A. Cook
	Union:	Charles Pinckney
PLACE OF HEARING:		Huntington Beach, California
DATE OF HEARING:		May 2, 2006
CONTRACT YEAR:		2001 - 2006
TYPE OF GRIEVANCE:		Remedy
DATE OF AWARD:		June 27, 2006

AWARD: The remedy for repeated violations of Article 31 of the National Agreement: The Service is directed to cease and desist from violating Article 31 and to comply with the settlement agreements contained in the record. The Service is directed to pay the Local Branch $1000.00 within 30 days of the date of this award.

Nancy Hutt

Nancy Hutt, Arbitrator

I.

INTRODUCTION

As parties to a collective bargaining agreement, the Union and Postal Service submitted this matter to arbitration after completion of the pre-arbitral process. Both parties were afforded a full opportunity to present evidence and argument and to examine and cross-examine witnesses. However, the advocates mutually decided to submit the record for decision after making opening arguments. The record consists of Joint exhibits and awards submitted by both parties.

II.

ISSUES

The parties gave the arbitrator authority to frame the issue.

What is the appropriate remedy for the repeated violations of the National Agreement?

III.

STIPULATIONS

The Dispute Resolution Team (DRT) resolved the portion of the grievance as it relates to the contractual violation in the following manner:

> The Employer violated the National Agreement by their failure to timely provide the Union the requested information as previously agreed. Management is instructed to cease and desist future violations of this nature.

The DRT declared an impasse on the matter of the remedy.

IV.

FACTS AND CONTENTIONS

This grievance arose following the Union's request for information and the delay of that information. The specific facts are not before me regarding the underlying grievance in that the DRT addressed the merits of the grievance and found a violation.

The Union contends the settlements listed below are final and binding agreements between the parties and Article 15 mandates the good faith observance of these settlements. The blatant and continuous violations of the contract and the non-compliance with the cease and desist orders have a harmful affect on the Union in numerous ways. The general expense of litigating the denial and delay of information is costly and the poor relationship between the parties impacts the speedy resolution of issues. According to the Union a monetary remedy is appropriate because the Huntington Post Office has a long history of similar violations and persists in violating the collective bargaining agreement regardless of the prior mandates.

The Service specifically argues that the arbitrator has the authority to provide a monetary remedy, but that the remedy should be equal to the economic harm suffered as a result of the violation. A punitive monetary remedy, the Service asserts, is not provided for in the National Agreement and therefore the monetary remedy must be limited to compensatory damages. The Service provides numerous awards which indicate a monetary award is not appropriate when the Union has made no showing of demonstrable harm. The Service requests and I quote, from their written position: "Management has already made the grievants cited in the instant grievance whole. According to the

previous grievance settlements, the Article 8 violation involved a grand total of 1.06 hours (approximately $30.00). The union is requesting punitive damages of an additional $3000.00. Management, in good faith, has completed the required paperwork to pay the 6 grievants an additional $150.00 each. As argued in today's hearing, the delay was not intentional or deliberate." In light of the facts in this record the Service argues the Union's request is unreasonable as the delay was not a deliberate violation of the contract.

Joint 2 contains resolutions and/or settlements between the Huntington Beach Post Office and NALC Branch 1100 concerning the denial of information. These are set forth below:

1. Without prejudice to either party the grievance is settled as follows: Non-precedent setting, management will not arbitrarily deny the union requested information. By no way does this settlement wave the unions rights to increase monetary remedies for future delaying and or denying information request. (Resolved, 6/29/05) Joint 2, p. 16.

2. Labor Management Intervention Meeting, 4/22/04: Management and Union agreed to the following: "The OIC assured that information that was readily available would be given to the union within 24 hours of receipt of the request, if not received the union will notify OIC/Postmaster and she/he will intervene. In the event that part or all of the information is unavailable, management will inform the Steward of the status." Joint 2, p. 17.

3. Prearbitration settlement: Management shall cease and desist from future violations and is directed to pay to the local union steward the lump sum amount of $250.00. Future requests for information shall be provided to the union in accordance with Article 17 and 31 of the National Agreement. Management shall respond to the questions and to requests for documents in a cooperative and timely manner. When a relevant request is made, management should provide for the review and/or produce the requested documentation as soon as reasonably possible. This agreement constitutes a full and final settlement of all issues and disputes pertaining to the grievance and is considered precedent setting.... (Settled, 8/24/04)
Joint 2, p. 18.

4. Prearbitration settlement: Management shall cease and desist from future violations and is directed to pay a one time lump sum amount of $500.00 to be distributed equally among the following letter carriers: [4 named carriers] This agreement constitutes a full and final settlement of all issues and disputes pertaining to the grievance and is considered precedent setting.... (Settled, 8/24/04) Joint 2, p. 20.

5. Settlement: Information request delayed, adhere to previous pre-arb and local decisions regarding union requests for information. Further incidents will result in the Union seeking monetary remedies per... (Settled 1/13/05) Joint 2, p. 19

6. Settlement: That management will cease and desist denial of information and if any further violations occur a monetary remedy will be considered. (Settled 7/11/03) Joint 2, p. 24.

7. Settlement: Cease and desist denial or delay of information (4/15/03) Joint 2, p. 26.

8. Settlement: Cease and desist denial or delay of information (12/20/02) Joint 2, p. 30.

As a remedy, the Union seeks an order directing the Post Office to abide by the prior settlements and a monetary award in the amount of $500.00 dollars for each of the carriers listed in the appeal of the Union.

V.

DISCUSSION

The National Agreement requires the Service to provide information when reasonably requested pursuant to Article 31. The procedure benefits the Union and management. First, it permits the Union to determine that, in fact, no grievance exists and secondly, the parties can resolve the matter at the lowest possible level. When management delays the information reasonably requested the delay hinders and obstructs the grievance resolution process. Moreover, as the Union argued and I agree, repeated

delays or denials not only harm the relationship between the parties, but impact the financial resources of the Union.

The settlements contained in Joint 2 illustrate repeated difficulties with information requests. Clearly, and as argued by the Service, I do not have the facts behind the settlements contained in Joint 2 to determine if the circumstances are the same or similar. However, the documentation demonstrates a history of information delays and/ or denials have been problematical at the Huntington Post Office for several years, which indicate that management is disregarding, at times, the contracted rights of the Union. Perhaps in the instant case the conduct was not egregious, as evidenced by the limited facts contained in the record, but the violation itself is part of a continuation of such conduct and not an isolated incident.

Without acknowledging a monetary award under the circumstances is appropriate, the Service offered $150.00 to each of the grievants for the delay in providing the information. It appears the grievants were made whole and are not due any compensatory damages. However, as the various cease and desist orders and settlements have only been minimally effective in changing the atmosphere and conduct concerning information requests, it is appropriate to compensate the Local Union for the economic hardship in having to repeatedly pursue this issue which has persisted for a sustained period of time. Thus, a monetary remedy is awarded.

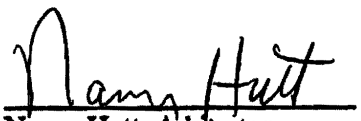
/ /

/ /

VI.

AWARD

The remedy for repeated violations of Article 31 in the National Agreement: The Service is directed to cease and desist from violating Article 31 and to comply with the settlement agreements contained in the record. The Service is directed to pay the Local Branch $1000.00 within 30 days of the date of this award.



Nancy Hutt, Arbitrator

DATED: June 27, 2006
San Francisco, CA

C-25286

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	Grievant:	Class Action
between	Post Office:	Huntsville, AL
UNITED STATES POSTAL SERVICE	USPS No.:	HO1N4HCO3072480
and	DRT No.:	08-04043
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	Grievance No.:	B462-11-03

BEFORE: Stanley H. Sergent

APPEARANCES:

For the U.S. Postal Service: Annette M. Poole
Labor Relations Specialist

For the Union: Lew Drass
National Business Agent

Place of Hearing: Huntsville, AL

Date of Hearing: April 13, 2004
Postal Service Briefs Received: May 13, 204

AWARD:

For the reasons given, the grievance is sustained. As a remedy for the Agency's repeated failure to implement a grievance settlement, it must pay the Union $1,000.00.

Date of Award: May 30, 2004

Stanley H. Sergent, Arbitrator

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ATTORNEY · ARBITRATOR
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IN THE MATTER OF ARBITRATION BETWEEN

UNITED STATES POSTAL SERVICE	USPS No. H01N-4H-C-03072480
And	DRT No. 08-04043 NALC No. B462-11-03
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	Grievant: Class Action Huntsville, Alabama

STATEMENT OF THE CASE

The instant dispute stems from a memorandum which was issued by Gloria Tyson, District Manager, Alabama District, on December 7, 2001, for all employees. The subject of the memorandum was "Return to Work Procedures." It was designated as a permanent posting for all bulletin boards. Copies of the memorandum were mailed to all employees in the Alabama district. The memorandum contained the following statement that the Union found objectionable on the grounds that it conflicted with the National Agreement.

> The return to work clearance forms should be provided to the medical unit as soon as your physician anticipates your return to work, and no later than 3-5 work days before the anticipated return to work date.

A grievance was filed by the Union protesting the memorandum and on March 4, 2002, the Step B team issued a decision instructing Management to amend the posting to conform with the memorandum of understanding of the National Agreement. When Management failed to abide by that decision another grievance was filed on June 21, 2002, seeking enforcement of the settlement that had been reached. The Step B team issued a decision dated September 18, 2002, which contained the following instructions:

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The Dispute Resolution Team has resolved this grievance after a review of the case file. The reference to 3-5 days shall be removed from the District Policy Letter. The inaccurate Policy Letter shall be removed from all bulletin boards and the accurate letter posted. A letter notifying all employees of this correction shall be posted on the office bulletin board. This letter shall also make reference to this correction for page 15 of the district sick leave booklet.

Due to the fact that Management did not change the permanent posting regarding the return to work procedure and failed to abide by either of the previous Step 3 decisions, the instant grievance was filed on January 29, 2003. In it as a remedy the Union requests that Management be required to comply with the Step B decisions regarding the "return to work procedures memorandum" at issue. In addition, as a deterrent to future action of a similar nature on the part of Management, the Union requests that a penalty of $100.00 per calendar day be assessed against Management starting January 19, 2003, and continuing until they are in compliance with the MOU and the two Step B decisions. The Union proposes that this money be divided equally between all Letter Carriers (approximately 200) in the Huntsville installation.

THE ISSUE

The Step B team resolved part of the instant grievance when it issued a ruling that Management violated Article 15 of the National Agreement by failing to abide by the Step 3 decisions. Accordingly, the only issue that remains is what is the appropriate remedy.

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RELEVANT CONTRACT PROVISION

ARTICLE 15

GRIEVANCE-ARBITRATION PROCEDURE

Section 3. Grievance Procedure – General

A. The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. At each step of the process the parties are required to jointly review the Joint Contract Administration Manual (JCAM).

SUMMARY OF THE EVIDENCE

The operative facts of this case are relatively simple and largely undisputed. The dispute had its genesis on December 7, 2001, when Gloria Tyson, District Manager of Customer Service and Sales, issued a memorandum for all employees in the Alabama district pertaining to "return to work procedures." It was designated as a permanent posting for all bulletin boards. It contained the following paragraph that the Union considered objectionable on the grounds that it conflicted with the National Agreement:

> If you are absent from work due to one of the conditions listed above, it is your responsibility to be cleared by the medical unit prior to returning to work. The return to work clearance forms can be obtained by contacting your Postmaster or Supervisor or by contacting the District medical unit at (205) 521-0223. The return to work clearance forms should be provided to the medical unit as soon as your physician anticipates your return to work and no later than 3 – 5 workdays before the anticipated return to work date. Providing this information as early as possible will facilitate the return to work process and help you avoid unnecessary delays due to incomplete medical information.

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A grievance was filed alleging that Management violated Article 5 and the return to duty MOU of the National Agreement by posting the revised return to duty procedures. A decision was issued by the Step B team on March 4, 2002, which reads as follows:

> The Dispute Resolution Team has resolved this issue after a review of the case file. The posting entitled, "Return to Work Procedures" issued at the Mestin Lake Station shall be amended to conform to the Memorandum of Understanding of the National Agreement.
>
> The team also agreed that the "return to work procedures" as written expands on the language of the National Agreement and therefore should be amended.

The next event of significance was the mailing out of a sick leave booklet to all employees on or about May 1, 2002, which contained the same return to work procedures that had been the subject of the permanent posting. This action on the part of Management prompted a second grievance by the Union alleging that Management had decided to ignore the March 4, 2002, Step B decision. The issue presented to the Step B team in that case was whether Management violated Article 15.3.A of the National Agreement by failing to comply with the Step B decision in the previous grievance (B-469-06-02), and if so, what is the proper remedy. The decision reached by the Step B team reads as follows:

> DECISION: The Dispute Resolution Team has resolved this grievance after a review of the case file. The reference to 3-5 days shall be removed from the District Policy Letter. The inaccurate policy letter shall be removed from all bulletin boards and the accurate letter posted. A letter notifying all employees of this

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correction shall be posted on the office bulletin board. This letter shall also make reference to this correction for page 15 of the District Sick Leave booklet.

When Management still failed to comply with the previous Step B decisions, a third grievance was filed on January 29, 2003, requesting that Management comply with the Step B decisions and suffer a monetary penalty for its continuing flagrant, intentional failure to comply with the Step B decisions.

The only significant factual point of contention concerned whether or not the December 7, 2001, Memorandum concerning the return to work procedures had in fact been removed from the bulletin boards and replaced with the memorandum that is consistent with the terms of the National Agreement. In that regard, John Winston, President of the Local Union, testified that he had checked all of the five stations in the Huntsville district within the week preceding the arbitration hearing and found that all of the bulletin boards at those locations still contained the posting in question. He further testified that this non-compliance by Management with grievance settlement and arbitration awards is an ongoing problem at Huntsville.

In response to Management's contention that no Letter Carrier has been harmed by the fact that a revised return to work policy has not been posted, Winston contends that all of the Carriers were potentially subject to harm because they may have had to use sick leave that they did not need to use to comply with the posting. He acknowledged, however, that he could not name a specific employee who had in fact been harmed. He also agreed that he was not

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aware of any employee who had been disciplined for failing to provide the return to work form within three to five days.

Diana Bennett has been an Acting Labor Relations Specialist since June, 2003. She was the formal Step A representative for the instant grievance. She testified that when she met with Winston to discuss the grievance he contended that Management had not complied with the previous Step B decision regarding the memo. She responded that Pete Marcou, the Postal Service Representative in the previous grievance, told her that he had met with the Union on many occasions to try to formulate new language for the memorandum but they could not reach an agreement because the Union was trying to change the language of the Memorandum of Understanding in the National Agreement. Marcou also told her that the Union had not named any employees who had been harmed by Management's failure to implement the settlement.

Bennett further testified that she and the Union ultimately developed a revised return to work procedure which did not require employees to present forms 3-5 days in advance. She stated that she showed the revised procedure to Winston and offered to put it on the bulletin boards in April, 2003. In the meantime, however, the Postmaster instructed each Station Manager to remove the Tyson posting from the bulletin boards. Bennett testified that although she visited each location on a regular basis, she did not see the posting on any of the bulletin boards. She added that if the posting was still on the bulletin boards after the date of the hearing she would be suspicious as to how they got there.

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Bennett also noted that under the current procedures if an employee is on an extended sick leave he or she is mailed the updated return to work procedure which does not contain the 3-5 day requirement.

Testifying in rebuttal, Winston disputed several aspects of Bennett's testimony. He testified that the posting was on the bulletin board at the West Station as of 6:30 a.m. on the date of the hearing and he had seen it posted at all of the other stations within the past week. In addition, he denied that Bennet ever told him the postings were being removed.

DISCUSSION AND DECISION

Since this is a contract case the Union, as the moving party, would ordinarily be required to demonstrate by a preponderance of the evidence that Management violated the National Agreement. It must also convincingly establish that the proposed remedy is reasonable and permissible under the terms of the National Agreement. In this particular case the Union need not prove that a contract violation occurred because the NALC Step B team has already resolved that aspect of the dispute. In essence, they resolved the grievance at hand when they issued a decision that Management violated Article 15 of the National Agreement by failing to abide by the Step B decision regarding the permanent posting concerning the return to work procedures. Thus, the only issue to be resolved here concerns the appropriate remedy.

As to remedy, the Union requests the following:

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1. That the Postal Service be directed to fully and completely comply with the Step B Decisions associated with the instant case immediately.

2. That the Postal Service be directed to remove all postings on the subject of Return to Work Procedures that contain the following language:

> ...The return to work clearance forms should be provided to the medical unit as soon as your physician anticipates your return to work and no later than 3-5 workdays before the anticipated return to work date.

3. That the Postal Service be directed to pay $100.00 per calendar day beginning March 10, 2002 and continuing each calendar day until #1 of the requested remedy is accomplished.

4. That the Postal Service be directed to divide this sum equally among the Career City Delivery Letter Carriers currently on the rolls in the Huntsville, Alabama, Installation.

5. That you retain jurisdiction in this matter for a sufficient period of time so as to insure compliance with your award.

It is Management's contention that the Step B decision in question has been complied with and that the postings that are the subject of the instant dispute have been removed from the bulletin boards.[1] With respect to the monetary award the Union has requested Management contends that such an award is inappropriate because the Union has failed to establish that any Letter Carrier has suffered any financial harm. As to the Union's request for punitive damages Management argues that there is no provision in the National

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[1] It should be noted that some of the arguments advanced by Management in the Agency's post-hearing brief focused on the merits of the grievance. Those arguments are misplaced, however, based on the fact that the merits of the grievance were resolved by the Step B decision, which left only the decision of remedy to be decided.

Agreement for such an award and that national arbitrators have ruled that such damages are generally inappropriate in arbitration.

Based on the evidence presented the Union clearly has a justifiable complaint regarding the failure of Management to honor its obligation to comply with grievance settlements on a timely basis. In that regard the undisputed facts of this case demonstrate that Management ignored that obligation and wholly disregarded directives from the Step B team regarding the correction of the disputed posting on the three occasions. Moreover, the record shows that Management at the Huntsville Facilities have a history of failing to comply with grievance settlements and by so doing have violated the spirit and intent of Article 15, Section 3A of the National Agreement. As the Union aptly noted, such actions on the part of Management strikes at the very heart of labor/management relations and causes harm to the Union individually and its members collectively. Consequently, notwithstanding the lack of any evidence that any member of the bargaining unit was harmed by the posting in question, the Union is clearly entitled to a remedy that will effectively discourage Management from failing to implement grievance settlements on a timely basis in the future.

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Both parties have submitted several arbitration awards in support of their respective positions. All have been reviewed and most were found to be useful and instructive. It is important to point out, however, that most of the awards relied upon by the Union involved monetary awards that were either a)

compensatory in nature, or b) a relatively minor punitive award to penalize Management for failing to honor a grievance settlement.

In contrast to the awards cited by the Union, all of which were at the regional level, the three awards submitted by the Agency were all at the national level. As such, they must be regarded as establishing binding precedent.

In National Arbitration Case H1C-NA-C97, Arbitrator Mittenthal explained the principle of measuring contract damages as follows:

> ...the purpose of a remedy is to place employees (and management) in the position they would have been in if there had been no contract violation. The remedy serves to restore the status quo ante.

In a second National Arbitration Case H7C-NA-C36, he further explained the purpose of a damage award in labor arbitration as follows:

> It is generally accepted in labor arbitration that a damage award, arising from a violation of the collective bargaining agreement, should be limited to the amount necessary to make the injured employees whole. Those deprived of a contractual benefit are made whole for their loss. They receive compensatory damages to the extent required, no more and no less.

Finally, in National Arbitration Case W1C-5F-C4734, Arbitrator Snow acknowledged that arbitrators have reasonably broad authority to fashion an effective remedy. He then went on to explain the principle that should guide the formulation of a penalty as follows:

> In fashioning remedies, however, arbitrators generally have adhered to the principle that damages should correspond to the harm suffered. The deeply rooted principle of measuring contract damages is that such damages must be based on the injured party's expectation.

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Arbitrator Snow went on to say that:

> It is recognized that some arbitrators have awarded punitive damages when a party's violation of an agreement has been constant and repeated or malicious. That approach, however, has not been consistent with the common law, which has taught that no matter how reprehensible a breach punitive damages which were in excess of an injured party's lost expectation generally have not been awarded for breach of contract.

Based on the reasoning expressed in these national decisions the punitive award requested by the Union in terms of compensation for all of the Letter Carriers in the Huntsville, Alabama, installation would be inappropriate because there is no evidence to support a finding that any employee suffered financial harm. On the other hand, as previously explained, the Union does suffer harm to its image as well as its relationship with the employees it represents whenever Management fails to keep its commitments. Moreover, it suffers a financial loss whenever, as in the instant case, it must utilize its resources when forced to take a case to arbitration that has already been settled. In short, as one arbitrator aptly noted, there must be some price to be paid when Management repeatedly fails to keep its commitments. In this case, that "price" is an award to the Union of the sum of $1,000.00.

STANLEY H. SERGENT
ATTORNEY · ARBITRATOR
PHONE/FAX: (941) 925-2260

AWARD

In accordance with the foregoing opinion and to the extent set forth therein the grievance is sustained.

Stanley H. Sergent
Arbitrator

Sarasota, Florida
May 30, 2004

STANLEY H. SERGENT
ATTORNEY • ARBITRATOR
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27562

REGULAR ARBITRATION PANEL

In the Matter of Arbitration	) Grievant: P. Bzura
Between	) Post Office: Wyandotte, Mi.
UNITED STATES POSTAL SERVICE	) Case No. J01N-4J-C08106377
And	) DRT - 06-093373
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	)

BEFORE: Thomas J. Erbs, Arbitrator

APPEARANCES:

U.S. Postal Service:	Johnnie Jordan, Jr. - Labor Relations Specialist
Union:	Bobbi Green - Advocate
Place of Hearing:	Riverview, Michigan
Date of Hearing:	March 26, 2008
Date of Award:	April 10, 2008
Contract Provision:	Article 15
Contract Year:	2001
Type of Grievance:	Contract
Award:	The grievance is sustained. The Postal Service failed to comply with a previous settlement and failed to meet at Formal Step A in violation of the National Agreement. This is the third such Article 15 violation in less than a year. As a remedy the Arbitrator orders the Postal Service to pay the entire invoice of the Arbitrator rather than only half.

Thomas J. Erbs, Arbitrator

OUTLINE OF CASE

The instant grievance is the result of previous grievances which were filed and then resolved but, according to the Union, the settlements were not implemented. The Dispute Resolution team (DRT) on March 3, 2008 reached an impasse over the following issue:

> Did Management violate Articles 15 and 19 (various memos and settlements) of the National Agreement by failing to abide by a previous settlement? If so, what is the remedy?

The DRT package reflects the initial grievance being filed on September 26, 2006 with the Union contending that Management failed to display a map of the zip code served. On October 10, 2006 the DRT resolved the grievance and held that Management was required to provide a "City Delivery Area Map per Handbook M-39, 114."

As of January 4, 2008 maps still had not been provided in the Wyandotte and Southgate facilities although one had been posted in the Riverview facility and another grievance was filed. On January 9, 2008 this grievance was resolved with Management agreeing that a map would be provided in Wyandotte and Southgate no later January 31, 2008.

As of February 6, 2008 Management had not complied with that settlement and the instant grievance was filed. The Union also alleges that Management failed to meet at Formal Step A of the dispute resolution process.

At the outset of the hearing the Postal Service stipulated that it was in violation of the January 9, 2008 settlement and the only issue was the remedy. Management indicated that it already had begun to process a $500.00 payment to the Union as the remedy for this violation.

Stewart Troia testified that Management during the last 6 to 8 years has consistently violated Article 15. She testified that four (4) interventions have been required at the office all over Article

15 matters. Another intervention is pending. She testified there have been two (2) recent arbitration cases in which the Arbitrators have awarded the Union $500.00 as a result of Management's Article 15 violations. She testified that there have been other settlements that have not been implemented by Management during this period of time.

Arbitrator Suardi, in a September 24, 2007 award in J01N-4J-C07030670, ordered the Postal Service to pay Branch 758 the sum of $500.00 for Management's failure to meet at Informal Step A.

On March 20, 2008 Arbitrator Walt, in J01N-4J-C08014967 found the Postal Service in violation of Articles 15, 17 and 31 of the National Agreement, as well as the local agreement, by failing to timely respond to the Union's request for relevant information. He held "Since it is clear that yet another directive to local management to timely furnish relevant information to the Union would not correct the continuing contract violation, the Employer is directed to forthwith compensate the Union in the amount of $500."

Contract Citations

The parties have cited Articles 15 and 19 of the National Agreement and the Joint Contract Administration Manual.

UNION CONTENTIONS

The Union states that this a simple case of another non-compliance by Management with a negotiated settlement. The Union argues that more than one agreement has been reached on basically the same issue. The Union first filed this grievance over these maps in September 2006. As of February 6, 2008 Management still had not complied with the two prior agreements that it made to provide the maps. Management now comes to the arbitration hearing and wants to

implement what they think is a proper settlement for their admitted violation of the Contract. It is obvious that the awards of prior arbitrators for $500.00 for those Contract violations had no impact on Management. Therefore the monetary award for this violation must be in excess of $500.00 or else Management will be able to, at its will, violate more settlement agreements and the National Agreement. Contrary to Management's claim the Union is not requesting punitive damage but only damages which will make Management aware of its Contractual obligations.

The Union points out that in the initial two (2) grievances over this matter it did not request compensation. It was only when those two previous settlements had been ignored by Management did the issue of compensation arise. It is obvious that "Management signs these agreements with no intention of adhering to them, ignoring the National Agreement, much like management in Wyandotte and Southgate and Riverview ignores the union."

There have been four (4) interventions already over these same issues and another one is pending. The Postal Service has had fourteen (14) months to comply with the settlements and it has done virtually nothing. Management must be made aware of its obligations and the previous awards by Arbitrators Suardi and Walt had no impact. Therefore, it is clear that a cease and desist order and an award of $500.00 will not get Management's attention. The Union states that Management "must be held accountable for their non-compliance of Article 15." Management has been attempting to rewrite Article 15 for its own purposes. Management can not be left with the "impression that they can violate the CBA, ignore the union and treat the arbitration process like it is a bargain basement - ignoring the settlements they enter into repeatedly, then risking it all in hopes they will get a better deal in arbitration."

Based upon Management's continued non compliance with the National Agreement and with negotiated settlements the Union requests a monetary amount to be awarded to the Union in the fair amount of $2,500.00. The Union points out that this is "a small price for such a huge business to pay when they had the option all along to pay nothing and provide the information."

POSTAL SERVICE CONTENTIONS

Management at the outset acknowledges that a violation has occurred and states that "a payment of $500.00 to the Union is in progress."

Management states that in this office there is a "flawed system that is in need of repair" as is obvious given the prior awards from Arbitrators Suardi and Walt. It points out that the present system for notification to each side lends itself to failure as there is no way to show reception for any faxes. Management is working on a system to provide accountability for both parties. Management's failure in this case "was not the result of willful or malicious intent, but rather the result of a flawed system." The Postal Service points out that Arbitrators Suardi and Walt have already ruled that an appropriate remedy for similar type violations is $500.00. Management has already authorized this settlement but the Union, instead, is seeking punitive damages.

Management points out that the Walt award was just issued so there has been little, if any time, to implement changes in order to address the defects which were pointed out by Arbitrator Suardi and especially by Arbitrator Walt.

Management cites several decisions stating that damages should be compensatory rather than punitive. Punitive damages have only been awarded in the most unusual cases and only if there was a flagrant and malicious act involved. Here there was no willful, malicious or bad faith action on the part of Management. The breakdown in the communication system is what caused the failure

to comply and Management is in the process of rectifying that breakdown. It would be inappropriate to award anything beyond that $500.00 which has already been established by other arbitrators as the appropriate award for such a violation.

DISCUSSION

Management has acknowledged the merits of the Union's instant grievance. It has stipulated that another Contract violation has occurred. Management further states that as a remedy for the violation a payment to the Union of $500.00 is already in progress. It is not clear, however, whether that $500.00 is the amount that is due as a result of the March 20, 2008 award by Arbitrator Walt or if this $500.00 is an additional amount which Management is unilaterally offering as a settlement of the third grievance over this same issue. If it is the latter the Union has rejected this offer.

The Union has detailed the many Labor/Management problems that apparently have been prevalent in the Riverview, Wyandotte, Southgate area for some period of time. The four (4) interventions that have already taken place, with a fifth scheduled, is obvious corroboration of the Union testimony in such regard. In addition Arbitrator Suardi and Walt both made comments in their awards as to the lack of true cooperation between the parties. As Arbitrator Suardi stated:

> "The 'real world' of grievance processing between the parties reflects a far different picture, however. The frequency of local grievances over the present issue, the diametrically opposed positions set forth in the parties' Step B contentions, and the fact that there have been no less three (3) interventions over Article 15 all demonstrate, far better than the Arbitrator can express, just how far apart the parties truly are." J01N-4J-C07030670 (pg. 6).

The lack of cooperation is apparent. Since the date of the arbitration before Arbitrator Suardi on August 16, 2007 there has been a fourth intervention with even a fifth intervention pending.

Arbitrator Walt in his March 20, 2008[1] award, which also involved an Article 15 violation for failure to provide information, commented upon the number of local grievances involving the failure to provide information. He then stated:

> "Clearly, the repeated directions and admonitions to local management to comply with the 48 hour rule have been to no avail. That agreement was again violated in this case."

He went on to state:

> "Since the undersigned finds that yet another directive to abide by the 48 hour rule will not cure local management's repeated and continuing violations of the 48 hour rule, the Union will be award compensatory damages in the amount of $500." pg. 9.

Here Management has provided no logical justification for its continuing violation of the previous settlements. While it may be that the "system is flawed"there is absolutely no justification that has been presented which excuses this blatant failure to comply with settlements.

Nor is a claim of failure to communicate supported by the facts. It might well be that the failure to schedule a Formal A meeting was the result of some failure of communication but the failure to comply with the two (2) grievance settlements could not have been the result of a failure of communications. Management was clearly aware as to what was required by the resolution of each of the grievances. Why Management could eventually comply in regard to Riverview but could not comply in regard to Wyandotte and Southgate is unclear and unsupported by any logical reasoning.

If the failure to have a Formal Step A meeting was the result of a communication problem that problem should be addressed immediately, however, Management should hold Formal A meetings in order to comply with the spirit of the negotiated grievance procedure. As Arbitrator

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[1] J01N-4J-C08014967 (Walt, 2008).

Suardi stated on page 9 of his cited opinion:

> "In the Arbitrator's opinion, Management's view of the relevant language leaves its Step A duty to discuss and decide in doubt. It also leaves open the possibility of mischief if local Management does not believe it advantageous or convenient to meet in a given case. Further, it denigrates the possibility of lower level grievance resolution. In simple terms, Management cannot have it both ways. It cannot fail to schedule a Step A meeting or render a Step A decision, thus placing the onus on the Union to move the case along and, at the same time, say that it has met its duty of resolving grievances at the lowest possible step."

Such language is particularly apt in this case where the Formal Step A meeting was to address an obvious failure on the part of Management to comply with a previously negotiated settlement. The "possibility of mischief" is obvious as Management could sit back and hope the Union would forget to appeal the grievance and then claim it was resolved without ever complying with the settlement. If that were Management's intent it would be contrary to the spirit of the admonition to settle disputes at the lowest possible step.

Management has argued that any award in excess of the $500.00 already established by Arbitrators Suardi and Walt would be punitive and therefore inappropriate as a remedy in this case. However, damages which make the injured party whole are not at all punitive. Such damages place the injured party where they should have been except for the other's breach of their agreement.

Here local Management, for whatever reason, has once again violated Article 15 of the National Agreement and negotiated settlements. The Union was forced to take this case to arbitration with the resulting expense of not only the Arbitrator but that incurred for its own advocates and witnesses. But for Management's repeated failure to comply with its obligations the Union would not have been faced with these obligations. While the Arbitrator will not, in this case, order reimbursement of the Union's expenses for its advocates and/or witnesses an order directing

Management to promptly implement all settlements and an order requiring all of the Arbitrator's invoice to be paid by the Postal Service is appropriate.

Ruling:

The grievance is sustained. Management violated Articles 15 and 19 by failing to abide by a previous settlement. As a remedy the Postal Service is directed to pay the entire invoice of the Arbitrator rather than only half.

Signed in the County of St. Louis, State of Missouri, this 10th day of April, 2008.

Thomas J. Erbs, Arbitrator

27562
Amended decision

REGULAR ARBITRATION PANEL

In the Matter of Arbitration	) Grievant: P. Bzura
Between	) Post Office: Wyandotte, Mi.
UNITED STATES POSTAL SERVICE	) Case No. J01N-4J-C08106377
And	) DRT - 06-093373
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	)

BEFORE: Thomas J. Erbs, Arbitrator

APPEARANCES:

U.S. Postal Service:	Johnnie Jordan, Jr. - Labor Relations Specialist
Union:	Bobbi Green - Advocate
Place of Hearing:	Riverview, Michigan
Date of Hearing:	March 26, 2008
Date of Award:	April 10, 2008
Contract Provision:	Article 15
Contract Year:	2001
Type of Grievance:	Contract
Award:	The grievance is sustained. The Postal Service failed to comply with a previous settlement and failed to meet at Formal Step A in violation of the National Agreement. This is the third such Article 15 violation in less than a year. As a remedy the Arbitrator orders the Postal Service to pay the Union $1,000.00.

Thomas J. Erbs, Arbitrator

AMENDED RULING

Upon further consideration, and after a conference with the parties, the Arbitrator reverses the April 10, 2008 ruling and substitutes in lieu thereof, the following ruling.

Ruling:

The grievance is sustained. Management violated Articles 15 and 19 by failing to abide by a previous settlement. As a remedy the Postal Service is directed to pay the Union the sum of $1,000.00.

Signed in the County of St. Louis, State of Missouri, this 2nd day of May, 2008.

Thomas J. Erbs, Arbitrator

27272

REGULAR ARBITRATION PANEL

In the Matter of Arbitration	)	Grievant:	F. Fleurant
between	)	Post Office:	Wyandotte-Southgate
UNITED STATES POSTAL SERVICE	)	USPS Case No:	J01N-4J-C 07030670
and	)	DRT Case No:	None Provided
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	)	Branch No:	W-2614

BEFORE: Mark W. Suardi, Arbitrator

APPEARANCES:

For the U.S. Postal Service:	Mona Patel, Labor Relations Specialist
For the Union:	Jim Wolstencroft, Executive Vice President, Branch 2184
Place of Hearing:	Detroit, Michigan
Date of Hearing:	August 16, 2007
Date of Briefs:	September 15, 2007
Date of Award:	September 24, 2007
Relevant Contract Provision:	Article 15
Contract Year:	2001-2006
Type of Grievance:	Contract

Award Summary:

The grievance is arbitrable. The grievance is sustained. The Postal Service is ordered to pay Branch 758 the sum of Five Hundred Dollars ($500.00) to compensate for local Management's failure to meet at Informal Step A in Grievance No. W-2515. Allocation of the amount awarded will be at the discretion of the Branch 758 leadership. IT IS SO ORDERED.

MARK W. SUARDI, ARBITRATOR

ISSUE

The issue as expressed in the Dispute Resolution Team (DRT) Step B Decision is as follows:

> Did Management violate Article 15.3.C and several agreements at all steps of the grievance procedure by failing to meet? If so, what is the appropriate remedy?

BACKGROUND

This grievance was initiated by Full-Time Letter Carrier Francis Fleurant. Mr. Fleurant acts as a Union Steward for Local Branch No. 758. His steward duties include handling Informal Step A and Formal Step A meetings within the Wyandotte, Michigan installation, including the Riverview and Southgate delivery units.

By all accounts, Mr. Fleurant acted as steward on a grievance (W-2515) arising out of the Southgate unit in November 2006. He requested an Informal Step A meeting in writing (Un. 1). Though the Postmaster assigned a supervisor (Mr. Dan O'Donnell) to schedule and hear the Informal Step A, no meeting occurred. Later, the grievance was settled.

The instant grievance protests what the Union perceives as egregious and deliberate action on local Management's part when it fails to convene Informal and Formal Step A meetings. Management responds that movement to the next step of the grievance-arbitration procedure under Article 15.3.C is the only remedy available if it fails to meet.

The instant grievance *was* the subject of Informal and Formal Step A meetings, both of which occurred in late November 2006. There was no resolution at Step A. Thereafter, the matter was received at Step B in early December 2006. The Step B Team's decision impassing the matter is dated February 1, 2007. The Union's appeal to arbitration followed.

An arbitration hearing on the grievance was held at the Detroit, Michigan Post Office on August 16, 2007. At that time, each side presented its respective case through sworn testimony and various exhibits. Following the hearing, each side submitted a capable brief.

UNION CONTENTIONS

The problem of failing to meet has a long history at the Wyandotte installation. Though the Union properly requested an Informal Step A meeting in Grievance W-2515, no meeting occurred. Still, the requirements of the National Agreement and the parties' collective expectations are clear and unambiguous. The parties should have met.

The grievance is arbitrable. It was not until the hearing that local Management raised the arbitrability issue. Additionally, the issue should be heard, as it involves a willful and deliberate practice which must be stopped. In such situations, the arbitrator has the inherent power to provide a remedy.

By failing to meet at Step A, grievants are denied due process rights. "They lose any type of input and ability to possibly remedy their grievance at the lowest level." Management's argument that Article 15.3.C precludes a remedy is incorrect. Rather, a meeting is required, and Management's failure to meet amounts to non-compliance. Leaving the Union to appeal to the next level is not an appropriate result.

The grievance is arbitrable. The grievance should be sustained and the Union provided with a compensatory remedy.

POSTAL SERVICE CONTENTIONS

The grievance is not arbitrable. The grievance was filed individually, and it claimed an injury due to Management's failure to meet on grievance W-2515. However, the grievance was settled and, in any event, Article 15.3.C controls. Moreover, Management was penalized by having no input at the Step A level in grievance W-2515. No other remedy is required or permitted, as other arbitrators have held.[1] The grievance is barred by the contractual language.

Even if arbitrable, the Union bears the burden of proof. It has failed to meet its burden. The matter before the Arbitrator seeks an impermissible remedy in the form of a compensatory award. Further, the Union's claim that the grievance involves a class action amounts to new argument and should be disregarded. Case authority outlawing new argument is considerable.[2]

The greater weight of the evidence indicates that Supervisor O'Donnell never refused to meet with the Union. As he testified, if the Union had approached and reminded him of a grievance meeting, he would have attended. Though Supervisor O'Donnell was relatively unfamiliar with the grievance procedure, he nevertheless knew -- correctly -- that failure to schedule a meeting or render a decision in any steps of the grievance procedure is deemed to move the grievance to the next step.

The grievance is not arbitrable. The grievance should be denied.

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[1] See Arbitrator Bernstein in Case No. C8N-4C-D 8416, et. seq.

[2] See Arbitrator Stallworth in Case No. W0C-5G-C 11544. See too, Arbitrator Owens in Case No. D94C-1D-C 98068395.

DISCUSSION

Sometimes the clearest and best-intended contract language can be the most difficult to apply. Within the context of the National Agreement, "every effort" cases (Article 7.1.B.2), "full consideration" for transfer cases (Article 12.6), and "maximization" cases (Article 7.3.B) come immediately to mind. Still, the only practical starting place to determine what a contract *really* means is what the parties *really* say. The relevant language here is Article 15.2, Article 15.3.A, and Article 15.3.C, together with the agreed-upon JCAM comments about them.

Judging by the wealth of grievance settlements contained in the dispute resolution package, the parties appear committed to compliance with the negotiated Grievance-Arbitration Procedure. This would include their bilateral duty to cooperate, to schedule meetings, and to resolve grievances at the lowest possible step. Indeed, Management's Step A written response echoes the need for open and honest discussion upon the initiation of a grievance (Jt. 2, p. 69):

> The Informal and Formal Meetings are necessary and it is in Local Management's best interest to hold them because if they are not the opportunity to present facts relevant to its case is lost by the persons who have the ability to best make the argument.

Even more eloquent are the 2001 comments of Wyandotte Postmaster Emanuel (Jt. 2, p. 32):

> The USPS is a large entity in the business world. We need to conduct ourselves in a business manner at all times. This means conducting our daily obligations in a courteous and professional manner. Please schedule and meet with the NALC with professionalism.

The "real world" of grievance processing between the parties reflects a far different picture, however. The frequency of local grievances over the present issue, the diametrically opposed positions set forth in the parties' Step B contentions, and the fact there have been no less than three (3) interventions over Article 15 all demonstrate, far better than the Arbitrator can express, just how far apart the parties truly are.

First things first. Management argues that the Arbitrator cannot reach the merits of the grievance since whatever protest the Grievant had over failure to schedule an Informal Step A meeting in Grievance No. W-2515 merged into the settlement thereof on November 28, 2006. Management adds that while Mr. Fleurant bears the burden of proof, he has failed to show how he is aggrieved. Contrariwise, the Union argues that Management never questioned arbitrability of the instant grievance in the earlier steps, thus waiving its right to do so now.

In the Arbitrator's opinion, this is a situation where "actions speak louder than words." Careful review of the moving papers shows that, on other occasions, the institution of a new, separate grievance over failure to hold a prior Step A meeting was fully addressed by local Management, without objection. Further, the Arbitrator agrees with the Union that if Management truly perceived the current grievance as either moot or lacking arbitrability, it should have said so long before the arbitration hearing.[3] As it is, there was no objection to arbitrability in the moving papers, and Management's Step B contentions fully addressed the substantive issue presented. The grievance is arbitrable.

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[3]Accord, see *Triangle Construction,* 120 LA 559 (Sergent 2004) and cases assembled therein.

In reaching the merits, it is necessary to move from the general to the specific. As a general proposition, the Arbitrator must presume that the national-level parties intended local parties to avail themselves of each step of the dispute resolution process. In fact, such an assumption finds *express* support in the language of Article 15.3.A, where the parties articulate their expectation of good faith observance to the contractual procedures, and where they impose an affirmative duty on one another to resolve substantially all grievances at the lowest possible step.

Next, there is no dispute that both Article 15.2. Informal Step A (a) and Article 15.2 Formal Step A (c) contain mandatory language requiring meetings and related discussion between the parties. There was no Informal Step A meeting and discussion in Grievance W-2515. In the Arbitrator's opinion, the Union's protest amounts to prima facie proof of a contract violation, proof which shifts to Management the burden of explaining why no Informal Step A meeting occurred.

Management offers no real explanation why there was no meeting. In the Step B Decision, Management states that there was ". . . no information or evidence on how the Union communicated its intention to pursue the grievance with management." However, this apparent impediment was cured at the hearing in the form of the November 3, 2006, memo directed to Supervisor O'Donnell requesting a meeting (Un. 1). Based on the content of the memo and Management's November 6, 2006, response (i.e., "Dan O'Donnell to schedule and hear the Informal A"), it is clear -- to the Arbitrator at least -- that local Management was on notice of the written directive, but it was simply was not acted upon through no fault of the Union.

In any event, local Management answers that however confusion over the meeting might have occurred, the language of Article 15.3.C controls. In Management's opinion, though "Article 15.3.C can easily be misunderstood," it is clear enough to preclude the Union from any relief. This is so because in those cases where a Step A decision or meeting does not occur, the Union has two (2) options. It can either do nothing, in which case the grievance will be waived (Article 15.3.B), or it can rely on the "deemed to move" language of Article 15.3.C in order to advance the grievance to the next step.

When construing contracts, the practical application the parties place on given language in advance of a dispute is entitled to great weight.[4] In the parties' relationship here, they have actually reduced their practical understanding to writing, in the form of the JCAM. Under the JCAM, there is no automatic appeal of a grievance to the next step under Article 15.3.C. *unless* the Union does something.[5] Importantly however, the bargain which the Union originally struck with Management was that the Union would *not* have to "do something" until there was a good faith yet unsuccessful attempt by both sides to comply with the principles and procedures set forth in Step A.

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[4] *Klapp v. United Insurance Group Agency, Inc.*, 663 N.W. 2d 447, 459 (Mich. 2003), citing *People ex. rel. Attorney General v. Michigan Central R. Co.*, 108 N.W. 772 (Mich. 1906).

[5] Article 15.3.C:

> C. Failure by the Employer to schedule a meeting or render a decision in any of the Steps of this procedure within the time herein provided (including mutually agreed to extension periods) shall be deemed to move the grievance to the next Step of the grievance-arbitration procedure.

> Warning. Article 15.3.C can easily be misunderstood. It *does not* mean that grievances are automatically appealed if management fails to issue a timely decision. Rather, if management fails to issue a timely decision (unless the parties mutually agree to an extension) the union must appeal the case to the next step within the prescribed time limits if it wishes to pursue the grievance. In cases where management fails to issue a timely decision, the time limits for appeal to the next step are counted from the date management's decision was due.

In the Arbitrator's opinion, local Management's construction of Article 15.3.C "changes the deal" and deprives the Union of a negotiated benefit. This is so because, according to the JCAM -- which, incidentally, is to be jointly reviewed at each Step of the process (Article 15.3.A) -- movement to the next step under Article 15.3.C is not automatic. Rather, it must be initiated by the Union.

Local Management replies that *it*, and not the Union, is at risk when Step A meetings do not occur. In such cases, Management loses the right to "have input into the DRP at that level." What Management forgets is that by failing to hold Step A meetings, it is also depriving the Union of input at that level. Such a result is contrary to the recognized principle of contract law that each party has a right to expect the other to perform.[6]

In the Arbitrator's opinion, Management's view of the relevant language leaves its Step A duty to discuss and decide in doubt. It also leaves open the possibility of mischief if local Management does not believe it advantageous or convenient to meet in a given case. Further, it denigrates the possibility of lower level grievance resolution. In simple terms, Management cannot have it both ways. It cannot fail to schedule a Step A meeting or render a Step A decision, thus placing the onus on the Union to move the case along and, at the same time, say that it has met its duty of resolving grievances at the lowest possible step.

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[6] "The duty arising is that which accompanies every contract: a common-law duty to perform with ordinary care the thing agreed to be done." *Home Insurance Co. v. Detail Fire Extinguisher Co., Inc.*, 538 N.W. 2d 424, 428 (Mich. App. 1995).

Understandably, there are situations where Step A meetings cannot be held. The parties' good faith efforts to avoid such situations and to cooperate in extending deadlines should be the norm. As it is, while failed meetings may be few in number when compared to overall grievance handling, they have nevertheless continued in a persistent manner at the local level for several years, without abatement, despite considerable local and higher level effort to rectify the problem. In the Arbitrator's opinion, the problem lies at the feet of Management, and the grievance must be sustained.

As for a remedy, the Union seeks a monetary award. Admittedly, monetary awards for non-compliance with prior grievance settlements are the exception, not the rule. Yet some of the cited settlements in the dispute resolution package actually reflect the prospect of a compensatory award based on non-compliance with a grievance settlement (Jt. 2, p. 49 and p. 63). In any event, the myriad of grievance settlements set forth in the present record suggests that local Management's commitment to its Step A obligations has been tepid, making a compensatory award proper on the particular facts of this case.

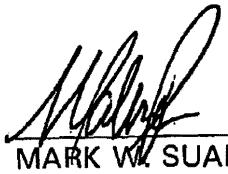
Finally, the fact the Grievant is listed individually on the grievance form has been considered, but this fact does not preclude a finding in the Union's favor, nor collective relief in general. Borrowing from Arbitrator LeWinter in Case No. S1N-3U-C 31205 at p. 13: "The terms of the grievance as to facts, position and demand are written in terms of a general or group grievance."

In the Arbitrator's opinion, there comes a time when a reasonable, compensatory, monetary award is appropriate in order to impress upon Management the importance of the principles involved. This is that time.

AWARD

The grievance is arbitrable. The grievance is sustained. The Postal Service is ordered to pay Branch 758 the sum of Five Hundred Dollars ($500.00) to compensate for local Management's failure to meet at Informal Step A in Grievance No. W-2515. Allocation of the amount awarded will be at the discretion of the Branch 758 leadership. IT IS SO ORDERED.

Signed in the County of St. Louis this 24th day of September, 2007.



MARK W. SUARDI, Arbitrator

27529

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	Grievant: Philip Bzura
between	Post Office: Riverview, MI
UNITED STATES POSTAL SERVICE	USPS Case No: J01N-4J-C 08014967
and	Branch Grievance No: W3367
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	

BEFORE: Alan Walt — Arbitrator

APPEARANCES:

For the U.S. Postal Service: Johnnie E. Jordan, Jr.
Labor Relations Specialist

For the Union: Bobbi Green
Branch 3126 Vice President

Place of Hearing: Riverview, MI

Date of Hearing: March 11, 2008

Date of Award: March 20, 2008

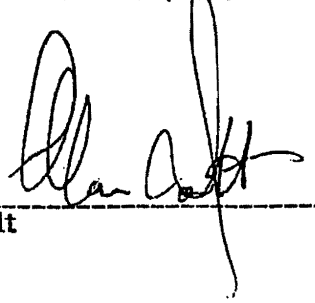
Relevant Contract Provisions: Articles 15, 17 and 31

Contract Year: 2006-2011

Type of Grievance: Contract

Award Summary:

The grievance is granted. The Employer violated Articles 15, 17 and 31 of the National Agreement as well as a local agreement in failing to timely respond to the Union's request for relevant information. Because of management's repeated failure to adhere to the agreement, the Union was unable to properly fulfill its collective bargaining agreement responsibilities in this and prior cases. Since it is clear that yet another directive to local management to timely furnish relevant information to the Union would not correct the continuing contract violation, the Employer is directed to forthwith compensate the Union in the amount of $500.



Alan Walt

ARBITRATION OPINION

This arbitration is pursuant to Article 15 of the 2006-2011 National Agreement. Following the presentation of evidence, the case was submitted for opinion and award on oral argument.

Grievant is the President of Branch 758 and serves as its Chief Steward. Following issuance of an Emergency Placement and Notice of Removal to a postal worker ("Cheramie") at the Wyandotte, Michigan Post Office in September and October of 2007, grievances were filed on her behalf (Grievance Nos. W-5122 and W-5150).

On October 5, 2007, grievant submitted a request for information to a supervisor at the Southgate Post Office which, in addition to other information sought, requested that management supply him with a copy of a specified unedited tape -- he was either in possession of or had viewed the edited tape -- as well as a copy of a "letter explaining exclusion of HIPPA the OIG is afforded." Although not fully explained in this record, apparently both the unedited and edited DVDs involved work activities of Cheramie while the HIPPA (Health Insurance Portability And Accountability Act) data was sought because the Office of Inspector General (OIG) had obtained medical information directly from Cheramie's doctor.

Management's reply to the information request was forwarded to the Union on October 9. While some of the requested information was provided, the Southgate Manager stated that the Union's request

for the unedited DVD and the information relating to the right of the OIG to obtain an employe's privileged medical records had been "Faxed To Labor Relations". In fact, the information request was not faxed to Detroit District Labor Relations until October 12.

On October 22, grievant was shown or received a copy of a fax sent by the Detroit District Labor Relations Manager to the Southgate Post Office Manager which stated that the Union's request for information had been forwarded to the OIG and that "both requests must be forwarded to their General Counsel (law dept), once they provide a response, I will forward that to your office."

On October 24, the Informal Step A grievance was filed with the Union contending that management had violated Articles 17 and 31 "by failing to provide important, relevant, and necessary requested information" to the Cheramie grievances. According to the Union's informal Step A representative, the Employer made no effort to provide the requested information at that level. The formal Step A grievance was submitted on October 30 and again, the requested information was not provided to the Union at that level.

It was grievant's testimony that it was not until issuance of the Step B Dispute Resolution Team's decision on or after November 19, 2007 that he first learned the unedited tape had been in local management's possession all along. Testimony of Employer witnesses established that the Union's Step B Team representative had contacted Detroit District Labor Relations and was provided with the unedited

DVD which the Step B Team subsequently viewed -- which facts also are set forth in the Step B Decision. The grievance was subsequently appealed to arbitration.

The undisputed evidence reveals that for at least 8 years, there has been an agreement by the local parties that management is obligated to respond to Union information requests for "routine information" within 48 hours. However, if the requested information cannot be provided within that time period or is not "routine", mangement must request an extension from the Union prior to the 48 hour period expiring.

At the arbitration hearing, the parties stipulated that management was in possession of a copy of the unedited surveillance DVD taken by an OIG special agent.

Relevant provisions of the National Agreement state:

ARTICLE 15

GRIEVANCE-ARBITRATION PROCEDURE

...

Section 2. Grievance Procedure—Steps

Informal Step A

(a) ... During the meeting the parties are encouraged to jointly review all relevant documents to facilitate resolution of the dispute.

...

Formal Step A

...

(d) ... The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Articles 17 and 31.

...

Step B:

• • •

(b) • • • **It is the responsibility of the Step B team to ensure that the facts and contentions of grievances are fully developed and considered, and resolve grievances jointly. The Step B team may 1) resolve the grievance 2) declare an impasse 3) hold the grievance pending resolution of a representative case or national interpretive case or 4) remand the grievance with specific instructions. In any case where the Step B team mutually concludes that relevant facts or contentions were not developed adequately in Formal Step A, they have authority to return the grievance to the Formal Step A level for full development of all facts and further consideration at that level.**

(c) The written Step B joint report shall state the reasons in detail and shall include a statement of any additional facts and contentions not previously set forth in the record of the grievance as appealed from Formal Step A. The Step B team will attach a list of all documents included in the file.

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ARTICLE 17

REPRESENTATION

Section 1. Stewards

Stewards may be designated for the purpose of investigating, presenting and adjusting grievances.

• • •

Section 3. Rights of Stewards

• • •

The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.

• • •

ARTICLE 31

UNION-MANAGEMENT COOPERATION

Section 3. Information

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or designee. All other requests for information shall be directed by the National President of the Union to the Vice President, Labor Relations.

In the Joint Contract Administration Manual (JCAM), the parties agreed to certain interpretations of the National Agreement. Referencing Article 15 on page 15-22, certain responsibilities of the Step B Team are set forth:

Step B teams are not responsible for building the grievance file. It is the responsibility of the parties at Step A to exchange documentary evidence and place copies in the file. If, however, a file lacking proper documentation is received, the grievance should be remanded to the local level, or the Step B team should jointly call the local parties with a request for the submission of specific information within a specific timeframe, whichever is more effective. The primary responsibility of the Step B team is making timely decisions on the merits of disputes.

The Union submits its ability to properly represent Cheramie in her grievances was undermined by management's failure to provide the requested relevant information to the Union within 48 hours of its October 5 request or to request an extension of time in which

to provide that information, which extension must be requested within the 48 hour time frame. Although Cheramie prevailed in both of her grievances and was made whole, she had been out of work some 4 months and might have been reinstated sooner had the requested information in management's possession been provided to the Union in accordance with the parties' agreement.

The Employer contends the unedited tape was neither relevant nor relied on by management and in fact, was properly viewed in the grievance procedure by the Step B Team. Furthermore, the Employer submits the unedited tapes contained "dead time" which had been removed from the edited DVD. As to the authority of the OIG to obtain medical records of postal employes under a HIPPA exception, the Employer argues that this information was available to the Union in Federal regulations and through the internet. Finally, it is the Employer position that the Union is not entitled to monetary damages since Cheramie was made whole in all respects and management's failure to provide the requested information within the established time frame was not willful, malicious or intended to undermine the Union's ability to represent a member of the bargaining unit.

The issue presented for determination may be stated as follows:

DID MANAGEMENT VIOLATE ARTICLES 15, 17 AND 31 BY FAILING TO PROVIDE RELEVANT REQUESTED INFORMATION TO THE UNION WITHIN THE ESTABLISHED TIME FAME AGREED TO LOCALLY BY THE PARTIES?

The issue in this case does not involve the question of whether management acted properly in referring the Union's request for information first to the District Labor Relations Office and subsequently to the OIG. Rather, it is whether management violated its obligation to provide the Union with the requested information within 48 hours or if it was unable to do so, to request an extension of time within the 48 hour time frame. Clearly that agreement was violated. The Union's initial information request was sent to management on October 5. There was no response to that request nor did management request an extension of time in which to comply with it within the 48 hour time frame. Four days later, on October 9, the Union was advised only that two of the requested items had been "Faxed To Labor Relations". Again, a time extension was not requested.

The Step B record is replete with management directives and precedent-setting grievance settlements which state and restate the agreed upon obligation of local management to adhere to the time frame for providing the Union with information to which it is entitled under Articles 17 and 31 and which is mandated under Article 15.2, Steps A (both Informal and Formal) and B of the National Agreement. As far back as 2001, "interventions" were

requested to insure that local management adhered to its agreed upon obligation to answer information requests within 48 hours or if that is not possible, to obtain an extension of time within the 48 hour time frame. There have been numerous local grievance settlements involving violations of the 48 hour rule and its restatement on a precedent-setting basis.

Clearly, the repeated directions and admonitions to local management to comply with the 48 hour rule have been to no avail. That agreement again was violated in this case. Although the Union seeks a monetary award for Cheramie, claiming she possibly was harmed when information relevant to her grievances was not timely provided to the Union, the make-whole remedy awarded in both of her grievances is the proper contractual standard of damages.

However, mangement's violations in this case did in fact adversely affect the Union's ability to properly represent Cheramie in her grievances. It had the right, pursuant to the agreement of the parties at the local level, to receive requested information within 48 hours or within the extended time period if that extension had been requested within the 48 hour time frame.

Since the undersigned finds that yet another directive to abide by the 48 hour rule will not cure local management's repeated and continuing violations of the 48 hour rule, the Union will be awarded compensatory damages in the amount of $500. While it cannot be found that local management's conduct in violating the 48 hour

rule was malicious or willful, it did in fact undermine the Union's ability to fully and properly represent a member of the bargaining unit at the lowest step in the grievance procedure.

Regular Panel 28456

In the Matter of the Arbitration	(	Grievant: Thomas-Williams
between	(	Post Office: WDC-Ward Place
UNITED STATES POSTAL SERVICE	(	USPS Case No. K06-N-4k-0926017 09256017
and	(	NALC Case No. 142WP37015-9
NATIONAL ASSOCIATION OF LETTER CARRIERS AFL-CIO	(	

BEFORE: Joseph Brock, Sr.

APPEARANCES:

For the U.S. Postal Service: Robyn Ford, LRS

For the Union: Robert E. Harnest, EVP, NALC Branch 142

Place of Hearing: 900 Brentwood Rd., Washington, DC 20066

Date of Hearing: August 18, 2009

Date of Award: October 8, 2009

Relevant Contract Provision: Article 15

Contract Year: 2006 - 2011

Type of Grievance: Procedure – Non-Compliance

Panel: Regular

Award: Management violated Article 15 and is ordered to pay $300.00 to the Union in accordance with the full award.

Arbitrator: Joseph Brock Sr.

Background

This matter was arbitrated pursuant to the grievance and arbitration provisions of a Collective Bargaining Agreement (National Agreement) in effect between the United States Postal Service (USPS) and the National Association of Letter Carriers (NALC). A hearing in this matter was held before me on August 18, 2009, in Washington, DC. The parties appeared and were given a full and fair opportunity to be heard, to present evidence and argument and to examine and cross-examine witnesses. The parties presented testimony and documentary evidence separately in this case. At the conclusion of the evidence the USPS presented oral arguments in support of their respective position; and the NALC chose to present a brief in support of their arguments. The brief was received by me on September 21, 2009 and at that time the record was closed. I utilized a voice recorder to supplement my notes and erased the tape at the completion of this award.

Statement of Fact

The original dispute in this case involved a just cause determination of the suspension discipline of employee R. Thomas Williams.

There was no formal Step A and the discipline was appealed by the Union to Formal Step B. In addition the Union grieved the fact that there was no Formal Step A meeting and placed the blame squarely on Management.

On June 15, 2009, the Dispute Resolution Team (DRT) resolved that Management did not have "just cause" to issue discipline to the grievant, R. Thomas Williams and that the "Notice of Seven Day Suspension" be rescinded and expunged from the grievant's personnel file.

However, as it relates to the Article 15 complaint and subsequent remedy, the DRT declared impasse. The NALC then appealed the Article 15 impasse to arbitration. The parties could not resolve the issue and therefore the issue is properly before me.

Issue

As stated in the DRT impasse report:

"Did Management violate Article 15 when they failed to schedule and meet with the Union at Formal Step A of the grievance process and if so, what is the appropriate remedy?"

Witnesses

Union: Keith Hooks, Shop Steward

USPS: Bryant Hubbard, Acting Station Manager

Robert Fauntleroy, Acting Station Manager

Denise Carbone, Customer Service & Sales Operations

The record includes numerous arbitration award citations introduced by both parties.

Union Position

Because there was no attempt by the Management Formal Step A Designee to make any contact, either written or verbal, to schedule and meet at Formal Step A, to protect the Union and its grievance, the Union Formal Step A Designee was required by Article 15.3C to appeal the grievance to Step B, without any meeting at Formal Step A. When the Union Formal Step A Designee appealed the case to Step B, the Union added the fact that Management failed to abide in the good faith principles of Article 15.3A, by failing to schedule and meet at Formal Step A. This was a repetitive violation, again wiping away the Union's right and the grievant's right to have the grievance settled at the lowest possible grievance step, per the good faith principles espoused in Article 15.3A of the NA. Several Step B precedents setting grievance decisions were included in the Union's Step B appeal grievance papers, due to the fact that Management was notorious for not meeting at Formal Step A and heretofore, there had been little if any consequence to Management.

The DRT's "STEP B DECISION" makes it clear that, because Management failed to

schedule and meet at Formal Step A, that Management made no contentions or rebuttals against the Union's contentions. Therefore, the discipline was rescinded and expunged from the records. Ordinarily, the Step B DRT made its decision to include a remedy for the violation of Management's failure to schedule and meet at Formal Step A. But this time, the remedy was sent to IMPASSE. Given these facts, it is clear that the issue surrounds nothing more than the answer to this question: What is the appropriate remedy for Management's incessant and repeated failure to schedule and meet at Formal Step A?

To be succinct, it was a foregone conclusion by the DRT itself, in fashioning its "ISSUE" on page 1 of the "Step B Decision," that Management indeed failed to schedule and meet at Formal Step A, as it was similarly a foregone conclusion that the remaining issue that was sent to IMPASSE and eventuated this arbitration hearing was quite simply the question directly above.

Based on the above, it appears that the Management Advocate's/MA's ploy is to backtrack and persuade the Arbitrator that the Management DRT's arguments and contentions, never made at Formal Step A, should now be entertained and given weight by this Arbitrator. The Union objected and pointed directly to Article 15 itself and argued that if this latent argument by the DRT, first made in the Step B Decision, is not dismissed and given no weight, this threatens the very integrity of the Formal Step A process and renders the good faith principles of Article 15.3A of the National Agreement (NA) meaningless. Moreover, Article 15 places an obligation on both Formal Step A Designees that they must develop all facts and contentions the parties are presenting and arguing at the Formal Step A meeting. The language states, (c) The installation head or designee will meet with the steward or Union representative as expeditiously as possible, but no later than seven (7) days following receipt of the Joint Step A Grievance Form unless the parties agree upon a later date. In all grievances at Formal Step A,

the grievant shall be represented for all purposes by a steward or a Union representative who shall have authority to resolve the grievance as a result of discussions or compromise in this Step. The installation head or designee also shall have authority to resolve the grievance in whole or in part. (d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Articles 17 and 31. The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. In addition, in cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above.

The Union Formal Step A Designee was not afforded the opportunity to make its presentations at Formal Step A due to the repetitive violation and the failure of the Management designee to schedule and meet at Formal Step A. Management must not be able to rehabilitate its case by inserting all of its facts and contentions for the first time in the Step B Decision.

Given these facts, the Management DRT stepped outside of the scope of his duties in order to rehabilitate Management's side of the grievance. Given these facts, the Arbitrator should decide this case based on the grievance papers that were appealed to Step B after the Management designee failed to schedule and meet at Formal Step A for the umpteenth time. A decision to permit such bad faith actions on the part of Management would be an incentive to not

ever meet at Formal Step A in the future. Management at the local level and this particular Management DRT member already believe that Management's failure to schedule and meet at Formal Step A and the many cease and desist orders rendered at Step B cannot result in anything other than the Union appealing the grievance to Step B pursuant to Article 15.3C.

The Union has demonstrated that nothing has had the deterrent affect to end these violations and force the Management designee to act in good faith with the Formal Step A grievance process.

After the record is closed, the Union has confidence that the Arbitrator will not award another meaningless cease and desist, but rather, order a cease and desist along with the remedy requested at Formal Step A of $300, to increase each future violation.

Management Position

Management contends the Union has a responsibility to fully and contractually support their alleged contractual violation, including the requested remedy. In this instant case, the Union has fallen short.

It's undisputed and consistent with contractual language that the local parties are required to jointly review the JCAM through each stage of the grievance-arbitration procedure. However, while Article 15 provides distinct clarity to the procedures contained within, additionally, it provides a remedy when those procedures are not properly respected.

For example:

15.3.B The failure of the employee or the Union in Informal Step A, or the Union thereafter to meet the prescribed time limits of the Steps of this procedure, including arbitration, shall be considered as a waiver of the grievance. However, if the Employer fails to raise the issue of timeliness at Formal Step A, or at the step at which the employee or Union failed to meet

the prescribed time limits, whichever is later, such objection to the processing of the grievance is waived.

In short, if the Union fails to meet the required timeliness at each step of the grievance process, then the grievance shall be considered "waived." On the contrary, Article 15, Section 3.C explains:

15.3.C Failure by the Employer to schedule a meeting or render a decision in any of the Steps of this procedure within the time herein provided (including mutually agreed to extension periods) shall be deemed to move the grievance to the next Step of the grievance-arbitration procedure.

This language is clear and unambiguous in that the remedy for Management's failure to meet or render a timely decision requires that the Union advance the grievance to the next step if it wishes to pursue the dispute. It does not render the grievance "moot," nor does it grant the Union monetary benefits. It appears the local Union is trying to gain a remedy through Arbitration which is inconsistent with what the national parties established through contract negotiations.

The Union has provided no such language contained anywhere in the Collective Bargaining Agreement which entitles them to a punitive monetary remedy. In this case file the grievant's suspension letter was rescinded and expunged for lack of "Just Cause." Just Cause was not met, in large part, because Management failed to meet and provide any written contentions to support their allegations.

The Union argued that Management "refused to meet," and annotated that language on the PS Form 8190 (USPS NALC Joint Step A Grievance Form) dated May 27, 2009. This statement is incorrect. In this case file, the Union has asserted, "Management refused to meet," as evidenced by the notations on the PS Form 8190. However, the Union has not documented

who refused to meet, when they refused to meet, or where they refused to meet. How is it possible that the USPS Formal Step A Representative can schedule a Formal Step A meeting, when the Union's Formal Step A Representative is not responsive to the USPS Formal Step A Representative's attempts to schedule the meeting. There is no evidence of a response or supporting documentation that the Union Formal Step A Representative did so.

On the NALC Form for dates of meetings, decisions and appeals, the Union did nothing more than provide a timeline for what the National Agreement requires when a dispute is filed. This does not constitute evidence that the USPS Formal Step A Representative did not attempt to schedule the Formal Step A meetings as required or that the Union Formal Step A Representative was unresponsive to any of the USPS Formal Step A Representatives' attempts to schedule the Formal Step A meeting.

The Union requests Management pays a compensatory remedy of $300.00 for non-compliance to grievance settlements for failing to schedule and meet at the Formal Step A level again. The Union's remedy is in clear violation of Article 15 of the National Agreement and is inappropriate and without merit. The Postal Service requests that based on the evidence and testimony, which will be before you today that you find the remedy is inappropriate and deny this grievance.

Discussion and Opinion

The relevant issue in this grievance is Article 15, section 2A, Formal Step A. It is important to include certain parts in this discussion. It reads as follows in the relevant sections:

Formal Step A

"(a) The Joint Step A Grievance Form appealing a grievance to Formal Step A shall be filed with the installation head or designee. In any associate Post Office of twenty (20) or less employees, the Employer shall designate an official outside of the installation as the Formal Step

A official, and shall so notify the Union Formal Step A representative.

(b) Any grievance initiated at Formal Step A, pursuant to Article 2 or 14 of this Agreement, must be filed by submitting a Joint Step A Grievance Form directly with the installation head within 14 days of the date on which the Union or the employee first learned or may reasonably have been expected to have learned of its cause.

(c) The installation head or designee will meet with the steward or a Union representative as expeditiously as possible, but no later than seven (7) days following receipt of the Joint Step A Grievance Form unless the parties agree upon a later date. In all grievances at Formal Step A, the grievant shall be represented for all purposes by a steward or a Union representative who shall have authority to resolve the grievances as a result of discussions or compromise in this Step. The installation head or designee also shall have authority to resolve the grievance in whole or in part.

(d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Articles 17 and 31. The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. In addition, in cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above.

(e) Any resolution will be sent to the steward and supervisor who initially were unable to

resolve the grievance.

(f) The Formal Step A decision is to be made and the Joint Step A Grievance Form completed the day of the meeting, unless the time frame is mutually extended. The Union may appeal an impasse to Step B within seven (7) days of the date of the decision.

(g) Additions and corrections to the Formal Step A record may be submitted by the Union with the Step B appeal letter within the time frame for initiating the Step B appeal with a copy to the Management Formal Step A official. Any such statement must be included in the file as part of the grievance record in the case."

Formal Step A is significant in the grievance procedure and should not be ignored. If the parties did not believe Step A important, they could have, should have eliminated it and proceeded to Formal Step B directly from Informal Step A. But despite numerous opportunities they did not.

There is a reason: This clause assists the parties to develop their arguments, and not be "ambushed" at the DRT or eventually arbitration, if it is unavoidable.

At the hearing Management presented 3 supervisors who testified as to their only true defense of the failure to initiate a Step A Meeting. Unfortunately I did not find the testimony of these gentlemen to be convincing and compelling. The testimony carried a staunch aroma of having been rehearsed and refined. The culmination of their testimony can best be summarized as more shadow than substance. It is not my intention to impugn the testimony but their efforts to contact Mr. Hooks to arrange a Step A meeting were weak and completely inadequate. Given the events of the past, replete with the cease and desist directives which serve as a paper sword, and an occasional $100.00 fine, it appears to this arbitrator that the Management representatives' are unsympathetic to the necessities of this language. It appears to this arbitrator that the continued failure to schedule formal Step A was an organized, structural snub of the Union.

In this situation, Management was obligated to make a vigorous effort to contact and arrange a meeting. Word of mouth is not going to, in most cases, be sufficient or acceptable.

The record is an abomination. The Union presented over 20 incidents whereby the Step A Formal was never arranged. Management did not contest or challenge these records. In most of the cited cases, the DRT issued an ineffectual "cease and desist order" and on at least 2 occasions ordered a lump sum payment of $100.00. Obviously, this superficial amount had little influence on Management.

However, in this issue – the precedent for the remedy has been affirmed by the DRT.

I find Management's assertion that their failure to arrange a Formal Step A meeting was advantageous to the Union to be ludicrous and disconnected with good faith obligations and only serves to obstruct the negotiated grievance procedure. Knowing you will probably lose the grievance if you fail to appear at Step A Formal and then attempt to prevail at Step B, or in arbitration, is absurd. Management could conserve funds and time by just settling the grievance at Formal Step A. In this instant grievance the Union is compelled to a costly arbitration, to make a point!

Management and Union are obligated to attempt to resolve the grievance at the earliest step in the procedure. Management must affect a transparent effort to schedule the contractual meetings.

As to the question did Management violate Article 15? It is clear to me Management did violate this Article and by doing so fracture the integrity of the agreement between the parties.

As to the Union's remedy request for a remedy:

There is an overall lack of agreement among arbitrators as to the type remedy proposed by the Union. This is evident in the several award citations presented by the parties. A review of these awards demonstrates a fairly equal division of opinions regarding the awarding of what

some would consider a penalty remedy. I am not influenced by the theory that the remedy in this case would be a penalty, but is a progressive and corrective action.

I strongly support the statement of Arbitrator, Louis M. Zigman, Esq. in Case #F98-4F-C020912732/SG-194-10C:

"As such, and in view of the narrow fact in this case, I agree that the Union's request for additional compensation be granted. However, because I agree that there was no monetary harm to any of the grievants, I agree that no remedy should be awarded to them. The monetary remedy should inure to the benefit of the Union because the Union has to bear additional expenses in processing grievances over these repetitive violations.

For all of these reasons, local Management is directed to cease and desist from these violations. And, rather than directing a remedy based upon the number of days from when a request was granted, I shall direct that the Service pay to the Union the sum of $200.00, keeping in mind that the remedy could escalate based upon the nature of the conduct in other cases."

And in Case #J01N-4J-C07030670 (no Union number provided), Arbitrator, Mark W. Suardi, observes:

"As for a remedy, the Union seeks a monetary award. Admittedly, monetary awards for non-compliance with prior grievance settlements are the exception, not the rule. Yet some of the cited settlements in the dispute resolution package actually reflect the prospect of a compensatory award based on non-compliance with a grievance settlement. In any event, the myriad of grievance settlements set forth in the present record suggests that local Management's commitment to its Step A obligation has been tepid, making a compensatory award proper on the particular facts of this case. "

And in Case #J01N-4J-C08106377/06-093373, Arbitrator, Thomas J. Erbs ordered the Service to pay the entire invoice of the Arbitrator rather than only half.

Many agreements are silent as to the remedy power of an arbitrator, (as is the agreement between the parties) who has found a violation of the agreement. Of course the parties may deal with the matter in the agreement, in the submissions or by stipulation at the hearing. While they on many occasions attempt to restrict the arbitrator's remedy power, as the Service did in this instant case, one must still look to the contract and past awards as have I. The agreement itself does not place such prohibition on the arbitrator. However, discretionary remedial authority is assigned the arbitrator when most issue statements include the phrase, "what shall the remedy be?"

It is important to realize that an arbitral assignment carries with it an inherent power to specify an appropriate remedy, unless there is a specific and clearly restrictive language withdrawing a particular remedy from the arbitrator's jurisdiction. The CBA contains no such constraints.

I find that Management clearly failed to comply with previous "cease and desist" settlements. I do not find, in light of the numerous violations, that Management inadvertently failed to meet their obligations. I believe the "failures to schedule" are too profuse to be an accident or lapse of their attentiveness. As stated, they appear to be intentional. To paraphrase Arbitrator Suardi, "the possibility of mischief" is obvious as Management could sit back and hope the Union would forget to appeal and Management may claim the grievance resolved.

I hold that the Union does suffer harm to its image and its relationship with its membership when Management intentionally fails to honor its commitments to the bargaining agreement with impunity. Furthermore, there is the cost incurred when the Union must accept the burden of moving to arbitration for a case which, it would appear, the Service was agreeable to settle at the lowest level, but for the failure to make an appearance at this Formal Step A. Again!

Regarding the Union's request that I disallow the Service's introduction of new

witnesses, it is very possible that the issue may be referable to a National Arbitration review as an interpretive issue.

The fact that I received Management's arguments should not be considered as precedent, but only in the context of this instant grievance. If Management's production of evidence, which was not introduced prior to the Step B proceedings, had any effect on this award, the Union's arguments would deserve serious contemplation, as I do believe the "new evidence" argument to have merit. However, as stated, it is possible that the definitive ruling is relegated to future proceedings.

Award

Management is in violation of Article 15.2 Formal Step A, and is hereby ordered to pay NALC Branch 142, $300.00 to compensate for repeated violations of the same contractual provisions. As such the sum is not punitive, but a small consideration for the Union's cost of a needless arbitration to enforce the agreement.

In addition, I hereby issue another cease and desist notice to Management in hopes that it will adhere to the contractual obligations of Article 15.

I maintain jurisdiction for a period of 30 days from the date of the award.

Date: 10/08/09 **Arbitrator:** Joseph Bark, Jr.

REGULAR ARBITRATION PANEL

In the Matter of Arbitration	(	Grievant:	Peter Ortiz
between	) (	Post Office:	Las Vegas, NV
UNITED STATES POSTAL SERVICE	) (	USPS Case No:	E06N-4F- 11401751
and	) (	NALC Case No:	838-11D
NATIONAL ASSOCIATION OF LETTER CARRIERS	) ( )		

BEFORE:	Jonathan S. Monat, Ph.D., Arbitrator
For the U.S. Postal Service:	Tom Tufano
For the Union:	Richard Griffin
Place of Hearing:	Las Vegas, Nevada District Offices
Date of Hearing:	March 15, 2012
Date of Award:	March 29, 2012
Relevant Contract Provision:	Article 16
Contract Year:	2006-2011
Type of Grievance:	Notice of Removal

Award Summary:

Management did not have just cause to issue the Grievant a Notice of Removal for attendance. Management violated the National Agreement when it flagged the Grievant and other employees in the eRMS system. Management violated the National Agreement when it failed to provide contentions or reasons for denying the grievance at Informal A. The Union failed to prove a violation of the National Agreement for retention adjudicated/stale discipline in files at the station. The remedy shall be as stated on page 12 of this award.

Jonathan S. Monat, Ph.D.
Arbitrator

INTRODUCTION

A hearing was held at the Las Vegas District Offices on March 15, 2012. The parties agreed that the matter was properly before the Arbitrator for a final and binding decision under the National Agreement and JCAM (NA)(J1). All evidence and testimony were admitted under oath duly administered by the Arbitrator. The hearing proceeded in an orderly manner. The advocates had a full and fair opportunity to present their cases, examine and cross-examine witnesses, and make oral and written arguments. The Moving Papers were admitted (J2:1-453). The advocates made oral arguments, at the conclusion of which the hearing record was closed. The Arbitrator will not reproduce entire sections of the NA or JCAM; rather pertinent sections will be quoted where essential and appropriate to the discussion.

ISSUES

The agreed to four issues as phrased by the Step B Team in its Impasse Decision of December 6, 2011. The issues are:

1) Did management have just cause to issue the grievant a Notice of Removal (NOR)? If not, what is the appropriate remedy?

2) Did management violate articles 3, 5, 10, 15 and/or 19 (ELM 513.361) of the National Agreement when they flagged employees in eRMS to provide medical documentation? If so, what is the appropriate remedy?

3) Did management violate articles 3, 15, and/or 19 of the NA by failing to provide contentions and/or a reason for the denial of the current grievance at Informal Step A? If so, what is the appropriate remedy?

4) Did management violate articles 3, 5, 15, 17, 19 (ELM, ASM, M-39 Handbook), and/or 31 of the NA by maintaining files in the station that contained adjudicated/stale discipline? If so, what is the appropriate remedy?

BACKGROUND

The Grievant was issued a NOR for "Unacceptable Attendance" on September 20, 2011. There are two prior elements in his file - a 14-day suspension for failing to be regular in attendance (May 11, 2011) and a LOW for unacceptable attendance (December 27, 2010). The NOR cited specific dates as unscheduled absences, unscheduled annual leave (AL) and/or unscheduled sick leave (SL). The Grievant reported for work on June 8, 2011, and informed his supervisor he would have to leave early because of a plumbing problem at his rental property. He was not denied permission to leave early his supervisor but told by the Station Manager (SM) that he was needed all day. SM Mixon said she could not make him stay but, if he left, it would be an unscheduled absence. The Grievant left and was charged 2.79 hours of unscheduled emergency AL.

On July 8 and 9, 2011, the Grievant was charged unscheduled absences when attended a funeral for his grandfather in New Mexico. He was told by his supervisor to advise her when arrangements were made final and to fill out a Form 3971. On August 26 and 27, 2011, the Grievant was charged with unscheduled sick leave, once contacting his supervisor directly and the second day using the Employee Service Line, which had been down on August 26th.

The Union grieved the case. The Informal A meeting was held on October 5, 2011. The matter procedure through Formal A on December 1, 2011 and was moved to Step B on December 1, 2011. The Step B Decision was issued on December 6, 2011, after which the Union made its demand for arbitration.

POSITION OF THE USPS

The Agency issued the NOR to the Grievant on September 20, 2011, for "Unacceptable Attendance." The Grievant failed to meet his responsibility to be regular in attendance. He took emergency annual leave on June 8, 2011, totally 2.79 hours, to deal a personal issue even though his supervisor advised him he could not authorize his absent. On July 7-9, 2011, the Grievant was charged with 16 hours of emergency AL after telling his supervisor he needed to attend a funeral for a death in the family. He

was charge with a total of 16 hours of sick leave for a knee injury which was approved because he called in to the EMRS. The Grievant admitted he was aware of the attendance policies of the Postal Service and that he had to be regular in attendance. The NOR of removal reviewed the details of his absences on these three (3) occasions (J2:92). Management claimed the Grievant failed to provide any relevant statements or evidence to support the unscheduled absences. In addition, the Grievant's unscheduled absences frequently occurred before and/or after holidays and SDOs. Therefore, the decision was made to issue the NOR believing other, lesser sanctions would not have the desired affect on his attendance.

ELM 511.4 defines an "unscheduled absence" as "any absences from work that are not requested and approved in advance." ELM 665.41 requires that employees be regular in attendance or be subject to discipline, including removal from the Postal Service. The Nevada-Sierra District has a permanent posting on employee bulletin setting out rules of conduct including, "8. Failure to be regular in attendance, tardiness, failure to submit acceptable medical evidence..." may subject them to disciplinary action, including removal. The Grievant had prior discipline for failing to be regular in attendance, including a fourteen-day suspension, issued May 11, 2011. Management considers the Grievant to be unable to correct his attendance problems, as evaluated on a case-by-case basis.

Although the Grievant may have had good reasons for being absent, there is no contractual obligation to retain an employee who is not able to maintain regular attendance. The Grievant had received progressive discipline, the last step of which is removal. An attendance problem was established by the evidence. Management was not arbitrary, capricious, unfair or discriminatory in its decision to the issue the NOR. The Grievant had been told by his manager on June 8, 2011, that if he left work, it would be an unscheduled absence. Once a schedule is posted, failure to work as scheduled is considered an unscheduled absence. The Grievant had 18.79 hours of unscheduled absences beyond the 16 hours taken off for the funeral. Based on the Grievant's continued issues with attendance and his failure to be regular in atten-dance as shown by the evidence, the grievance should be denied.

POSITION OF THE NALC

The Union argued that management did not have just cause to issue the NOR to the Grievant. Of the three charged unscheduled absences, one of which was for approved funeral leave and another for a medical issue with his knees. A third was for a plumbing emergency. The Grievant was not afforded progressive discipline, his most recent element being a 14-day suspension for attendance. Furthermore, the Grievant was flagged in eRMS for his sick leave usage and was required to provide documentation for each SL absence. In order for this requirement to be imposed, the ELM requires that the Grievant should first be placed on the "restricted sick leave" list, a requirement confirmed through Formal A and DRT decisions.

Management violated the Grievant's due process rights when it used already adjudicated discipline to reach its decision to issue the NOR. No management contentions were offered at Informal Step A of the grievance process in violation of Article 15.2. This article requires that the Service come to the Informal A and Formal A meetings prepared to present its case. The decision to issue the NOR was made in consultation between the supervisor and concurring official. Management failed to provide the concurring official at the hearing who could have testified to what she said.

The Service does not have a clear standard or measure of what it means to be regular in attendance. Neither the supervisor who issued the discipline or the concurring official (MCS) knew how many instances of SL is considered unacceptable nor what was the definition of "acceptable attendance." They said they would have to research to find an answer. The supervisor stated that she relied on the Grievant's sick leave balance and his length of service (13 years) in deciding to terminate. Hence, the Union argued that there is no clear rule with identifiable consequences.

The Grievant notified management in advance that he was going to New Mexico for a family member's funeral. Two days of emergency annual leave (EAL) were approved to attend the funeral. This made the absence scheduled rather than unscheduled. It is improper for management to discipline

the Grievant for two days of approved absences. The sick leave charged as EAL for his knee should not have been held against his record by its nature and the fact that he provided the required medical documentation. His supervisor testified that the absences would remain unscheduled even though the Grievant provided doc-umentation.

The NOR should be rescinded and removed from all files. The Grievant should be made whole plus co-pay and mileage for his required medical visit. The Union should be awarded $100 as a deterrent to the Service for "flagging" the Grievant in disregard of prior settlements. Similarly, Branch 2502 should be awarded $200 as a deterrent for disregarding prior settlements of Article 15 violations.

ARBITRATOR'S FINDINGS AND DISCUSSION

The Arbitrator has studied the entire record including examination and cross-examination of both witnesses, Moving Papers, NA and JCAM, other arbitration decisions and the post-hearing briefs of the parties. Management has the burden of proving its disciplinary action by clear and convincing evidence. The other alleged violations must be shown by a preponderance of the evidence as they are ancillary to the NOR and not disciplinary actions. The discussion below reflects the Arbitrator's review and analysis of the complete record, and addresses the compelling reasons on which the decision is based. Although not every document is discussed directly in this opinion in the interest of conciseness, all arguments made by the parties as well as the documentary evidence have been carefully considered.

The Gamser decision (M1), National Award AC-N-14034, states that failure to maintain regular attendance is subject to just cause discipline by management. While the specific absence may be legitimate (illness or unforeseen events, for example), a pattern of "irregular and unreliable attendance, regardless of the legitimacy of the reasons for the absences," may be the grounds for just cause discipline. It is the pattern, rather than the specific event legitimate single absence, that may be the basis of discipline instead of a "grant of immunity" to an employee's conduct. Arbitrator Gamser goes on to state that the attendance record must be substantiated to show irregular attendance but exercising the contractual right

to use sick leave for "illness or other physical incapacity" must be considered. An irregular pattern of attendance should not be permitted so that the employer must use overtime or hire extra employees.

That is the burden that management must meet in this case. It must show by hard, substantial evidence that the Grievant's pattern of attendance, whatever the reasons for it, was irregular and unreliable. Because this is a removal case, the standard applied is that of "clear and convincing" evidence, as this Arbitrator and others have discussed in many awards in the past. Merely stating the Grievant's pattern of irregular attendance to be "egregious" is insufficient to meet the burden of proof.

The NOR (J2:91-95) references three specific incidents of absenteeism between June 8, 2011, and August 27, 2011. There was no reference to any other absences and only the 14-day suspension for attendance issues. The first instance was for 2.79 hours of EAL for personal business issues even though the supervisor said he was needed on the shift. The second instance was for 16 hours of EAL so that the Grievant could attend a funeral in New Mexico, an absence for which he advised his supervisor several days in advance of the requested dates. There is evidence that the supervisor gave at least tacit approval, if not actual approval, to the absence. The instance was for sick leave to seek medical attention for a knee injury. He attempted to use the ERMS on August 26, but the line was malfunctioning so he talked with Ms. Batac. He was successful in leaving an ERMS message on August 27. Documentation was provided as required for his use of sick leave.

Concurring Official Mixson testified that she reviewed the instant discipline and the prior discipline resulting in the 14-day suspension. She stated the 14-day was still active when the NOR was issued to the Grievant. But she testified further that the Grievant had other attendance issues. She pointed to a pattern of taking unscheduled leave before and after holiday and scheduled days off. Nowhere in the NOR is mention made of this pattern of absences or other attendance problems. The NOR addresses only the three incidents charged and past active discipline. The same is true for the "Disciplinary/Administrative Action Request" which charged the Grievant had 3 instances of unscheduled leave. These were the

only absences cited (J2:78). The Arbitrator upheld an objection to this part of Mixson's testimony. If there were other reasons for the NOR, the NOR should have reflected them.

The Union alleged that management was applying a non-specific, vague standard when using the phrase, "be regular in attendance." Ms. Mixson was unable to state that there was a specific standard or number of absences defining when attendance became "irregular." The Arbitrator agrees that there is no such numerical standard stated in the NA or ELM. However, this is not a fatal defect in and of itself. It was correctly argued by management that the regularity of attendance is a judgment made based an employee's attendance history, the impact of absences on the workplace, the number of absences that were unscheduled, or the period of time over which the absences occur. It is clear from interview evidence in the file (J3:9) that different supervisors and managers used several definitions of regular attendance ranging from "report to work as scheduled" and "coming to work everyday" to "report to work as scheduled and don't abuse your sick leave." One supervisor was quoted as saying, "14 days."

The Grievant's unscheduled absences took place over a three (3) month period from June 8 to August 27, 2011. Management argued that 34.79 hours (4.25 days) over the three month period was egregious, considering his overall record and past discipline. However, the record shows that the Grievant gave notice of the funeral to his supervisor who, according to Ms. Mixson, told him the absence would be unscheduled but had no objection to the Grievant attending the funeral. The MOU between the NALC and USPS (J2:5) establish that a grandfather is a family member and documentary evidence of the family member's death is not required. The supervisor refused to change the absence from unscheduled because the schedule had been posted prior to the Grievant giving notice of the funeral.

Seven weeks later the Grievant followed procedures to report his absence due to injury. This absence was unforeseen and legitimate. It was approved, non-FMLA (J2:450-51). More questionable was the absence on June 8 for personal business for which the Grievant took emergency AL even though he gave notice and was told his absence would be unscheduled if he left work. Altogether the Grievant

had three instances of unscheduled AL and SL leave totaling 4.25 days over three months.

The Union argued that management did not enforce attendance guidelines equitably in the installation, citing different cases involving the branch (J2:15). Management claimed that "satisfactory attendance" is defined as less than fourteen hours of sick leave used per quarter unless the employee suffers from a legitimate illness" (J2:15). Garside Station management found one employee (Haliewics) was irregular in attendance with more than 10 instances of unscheduled absences in a year. Another had twenty-one instances of sick leave within a year and only received a LOW. Other carriers were issued a LOW with widely varying numbers of unscheduled leave days, incidents and history (J2:230-239, 276-280).

Without reviewing every case cited by the Union in the file, it is apparent that there is inconsistency in issuing discipline for irregular. The Grievant's level of unscheduled absences and use of sick leave is not exceptional when compared to these other cases. Yet he was issued a NOR based on other factors including a 14-day suspension and an alleged pattern of unscheduled leave around holidays and SDOs, the latter point not argued until the arbitration. The Employer has not substantiated the alleged egregious absenteeism based upon the charge letter nor has it shown that it gave every consideration to the Grievant's use of the sick leave program. Management has not shown that it, in fact, scheduled additional employees or used more overtime to cover the Grievant's absences. The so-called "Attendance Review" dated July 11, 2011 (J2:437) contains no data on unscheduled absences. The only comment by Donnetta Mixson is, "Need to clean-up attendance. Not good." This statement is vague and provides absolutely no guidance on the severity of the problem or what specifically Mixson expects.

This Arbitrator does not discount the weight that should be given to properly introduced documentation and evidence that the Grievant's pattern of absences was generally coincident with SDOs and holidays. It provided no evidence or arguments at Informal A.. The case file contains a number of time sheets (J2:80-86) none of which were subject to analysis at previous steps nor referenced in the NOR.

Absences prior to June 8, 2011, in the time sheets were part of a prior 14-day suspension. The NOR states, "...in the previous action you were forewarned that future deficiencies would result in more severe, disciplinary action being taken against you, up to and including your removal...."

This case must be distinguished from the Arbitrator's decision in the Avila case (E06N-4E-D 09166443) wherein management established by clear and convincing evidence that Grievant Avila had a long, well-documented history of absences that included several incidences of AWOL. In the instant case, the Grievant was charged with three incidents of unscheduled leave, none of which were AWOL. The Arbitrator agrees with Arbitrator Gamser's National Award that legitimate reasons for absences do not prevent just cause discipline from being administered. But the instant case does not rise to that egregious level or is no more egregious than other similarly situated employees during the same period of time. If management had intended to charge the Grievant with taking unscheduled absences around holidays and SDO, the charge should have cited in the NOR. Management cannot point to after-discovered evidence (attendance sheets) for the first time at arbitration.

With respect to flagging of the Grievant's attendance in the eRMS system, there are at least two Forms 3971 in the file which were generated by the eRMS system (J2:450-451). For the Grievant to receive system-generated forms requiring medical documentation, he must have been flagged (J2:174). There is no evidence the Grievant was ever notified in writing that he was flagged by management in eRMS. This is a specific requirement set forth in ELM 513.392, Notice of Listing, requiring that an "employee must support all requests for sick leave by medical documentation or other acceptable evidence ." Had he not been on the restricted list, the Grievant would not have been required to provide verification of requests for USL, a two-day absence for his knee injury (ELM 513.361 and JCAM 10-14). Management offered no explanation for why the Grievant was on the restricted sick leave list (J2:112). The fact that the Grievant was on the restricted list without his knowledge and without receiving the required written notice is sufficient evidence to establish a violation of the NA. A review of Step B

decisions in the file establish that in similar flagging cases is that the employee is entitled to a remedy to include paying the cost of medical documentation, co-payment and mileage.

Article 15 of the National Agreement authorizes the supervisor to resolve the grievance at Informal Step A. The Steward or other Union representative has similar authority to reach a non-precedential resolution of the grievance (JCAM 15-3). Failing to resolve the grievance, the supervisor must give a reason for the denial. There is no evidence in the Step B Decision other than the Step B Team saying it was bringing forward the "adequately presented" facts and contentions at Informal A and Formal A.[1] Manager Mixson testified that the supervisor "can give a verbal decision at Informal A." The unrebutted testimony of the Shop Steward was that the supervisor said, "You know I can't do that," referring to a settlement . Thus, the preponderance of the evidence suggests that management did violate Article 15.

Concerning the issue of maintaining files at the station containing adjudicated/stale discipline, the Arbitrator finds insufficient evidence in the record to establish the Union's claim.

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[1] The Arbitrator's copy of the Step B Impasse decision stops at page 3 and shows only a few sentences of "Management Contentions."

AWARD

Management did not have just cause to issue the Grievant a NOR. The NOR shall be expunged from the Grievant's records and files. The Grievant shall be reinstated and made whole for all wages, benefits, TSA, and all leaves. He shall be awarded an additional $30 for his co-pay and mileage for being required to see a physician to get medical documentation for his absence August 26-27, 2010.

Management violated the NA when it flagged the Grievant in eRMS contrary to prior settlements over flagging employees in eRMS and for disregard of prior settlements over Article 15. Management is ordered to cease and desist the violation of these settlements. Branch 2502 shall receive $200 to serve as a tangible deterrent for ignoring prior settlements. The Arbitrator shall retain jurisdiction for 90-days to assure compliance with the remedies ordered.

March 29, 2012

Jonathan S. Monat, Ph.D., Arbitrator

REGULAR REGIONAL ARBITRATION

In the Matter of the Arbitration between UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	Grievant: Class Action Post Office: Rockville, MD - Twinbrook USPS Case #K11N-4K-C14093479 BRANCH Case #53-14-KA7 DRT #13-301057

BEFORE: Tobie Braverman ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Kate Sullivan

For the Union: Alton R. Branson

Place of Hearing: Rockville, MD

Date of Hearing: October 29, 2014

AWARD: The grievance is sustained in part and denied in part. The relief for the individual carriers is denied. The Employer shall pay the sum of $750.00 to NALC Branch 3825.

Date of Award: December 5, 2014

PANEL: USPS Eastern Area / NALC Region 13

Award Summary

Claims for compensation to Individual letter carriers who have been compensated for a contractual violation in a prior arbitration are barred since the claims have been arbitrated and resolved. A compensatory payment to the Union is justified where the evidence demonstrates that it has been forced to file serial grievances in order to gain compliance with B Team decisions.

Tobie Braverman

The instant case is submitted to the Arbitrator pursuant to the terms of the grievance arbitration provisions of the Collective Bargaining Agreement of the parties. Hearing was held at Rockville, Maryland on October 29, 2014. The parties argued their respective positions orally at the close of hearing, and the hearing was declared closed on that date. The parties did not stipulate that the matter is properly before the Arbitrator due to the Employer's contention that the matter is barred by doctrines of res judicata and collateral estoppel. The parties did stipulate that the issue before the Arbitrator for decision on the merits, is as follows:

What is the appropriate remedy for Management's violation as found by the B Team in a decision dated March 12, 2014 in this case?

FACTS

This case emanates from a previous grievance filed by the Union and ultimately arbitrated by this Arbitrator. After a route inspection at the Twinbrook post office within the Rockville, Maryland installation, two routes was eliminated effective September 2, 2013. This triggered the posting requirements of Article 41 and the parties' LMOU, which required that all routes below the seniority of Letter Carrier D. Pham be posted for bid within fourteen days. Those routes were not properly posted in a timely matter, and in a decision dated December 30, 2013, the B Team found a violation and ordered that the routes be posted by January 8, 2014. The B Team, however, disagreed as to the appropriate remedy for the violation. That case was arbitrated before this Arbitrator, and an Opinion and Award was issued dated April 28, 2014. At the time of hearing, it was determined that some of the affected routes in Zone 53 had been posted on February 27, 2014, but three routes in zone 51 remained unposted. The Award ordered that those

remaining three routes be posted within fourteen days of receipt of the Award, and that all affected carriers be paid the sum o f $20.00 per day from September 23, 2013 until the date on which they commenced their new bid route. The majority of letter carriers were paid in October, 2014, and the remaining routes were posted in late July, 2014.

While that grievance was still pending, the Union filed the instant grievance on January 17, 2014 seeking enforcement of the B Team's order that the routes be posted by January 8, 2014. At that time, none of the routes had been posted, and the Employer had clearly failed to comply with the December 30, 2014 B Team Decision. In fact, the routes which were posted prior to hearing on the first grievance were not posted until February 27, 2014. The current grievance, like the prior grievance sought that the routes be properly posted and that the affected letter carriers be paid a per diem payment of thirty dollars for each date on which the routes were not timely posted. This grievance, however, additionally seeks lump sum payments of five hundred dollars each for carriers Pham and Natividad to compensate for the denial of their bidding rights. It additionally seeks a payment to Branch 3825 in the amount of seven hundred fifty dollars as compensation for the continued violations by the Employer in failing to comply with B Team decisions which obligate the Union to file repeated grievances to obtain enforcement of those decisions.

The Union, through the testimony of Branch President, Kenneth Lerch, presented evidence concerning the Employer's repeated failure to abide by Step B resolutions, which, according to Lerch, has required the Union to serially file second and third generation grievances regarding the same issues in order to obtain compliance. The Employer, through the testimony of Acting Manager Don Cudjoe, presented evidence that the Employer has complied fully with Arbitrator's prior award in this matter, and has been working diligently to change the atmosphere in the

Rockville office in order to improve both relations with the Union and compliance with contractual obligations. According to Cudjoe, the situation has improved markedly. Lerch disagreed.

Although an extension of time was granted, the Employer did not provide any contentions of the grievance at Formal Step A. The B Team determined that the Employer had failed to comply with the prior B Team decision, and issued a second order that the routes be posted no later than April 1, 2014. The B team did not, however, reach resolution on the issue of remedy. The matter therefore proceeded to arbitration without resolution.

POSITIONS OF THE PARTIES

Union Position: The Union contends that it has met its burden of proof to demonstrate that the remedy requested should be awarded to the affected carriers. The Employer's obligations under Article 41 and the LMOU are clear. It must post routes created by vacancies within fourteen days. It did not do so here, and the B Team so found. Despite this determination and the order that the routes be posted by January 8, 2014, the Employer failed to do so, prompting the filing of this grievance. Shortly before arbitration most of the routes were posted, and the remainder were posted in July, 2014, well after the date ordered by the Arbitrator. The result was that carriers Pham and Natividad were unassigned regulars and were deprived of contractual bidding rights and a regular route for a substantial period of time. While they were compensated for the late posting, they were not compensated for the amount of time which they were obligated to spend as unassigned regulars. Additionally, the Union was required to file this grievance when

the Employer failed to abide by the B Team order in a timely manner. The evidence demonstrated that this is not an isolated incident. This type of conduct has recurred many many times. While the Employer contends that it has changed its attitude and practices, the evidence demonstrates otherwise. The end result is that the Union is forced to expend time and money well beyond what should be required to obtain compliance with clear contractual obligations. This and other arbitrators have found this conduct to be such that a monetary remedy is necessary to obtain compliance by the Employer. The Union therefore seeks lump sum remedies for the affected carriers as well as the Union to impress upon the Employer that it must abide by B Team decisions and contractual obligations as well as to compensate the Union for the loss of time, funds, and credibility with its membership. The grievance should be sustained in its entirety.

Employer Position: The Employer argues initially that this case has already been arbitrated and decided in the prior decision by this Arbitrator. It is therefore barred in its entirety by the doctrines of res judicata and collateral estoppel. The purpose of these doctrines is to bring finality to litigation. As applied here, the issue of the failure to timely post the routes for bid was decided in the prior case. The Arbitrator ordered the posting of the remaining routes, and that each affected letter carrier be paid a per diem compensation to compensate for the harm done in denying their bidding rights. Those issues were completely decided, and the Union should not be permitted to re-litigate the matter and obtain additional remedies merely because it filed a second grievance for compliance of the B Team decision while arbitration was pending. As to the Union's request that it be paid a sum to compensate for the Employer's failure to timely abide by the B Team decision in the prior grievance, this requested remedy is punitive and inappropriate. The purpose of a remedy in arbitration is to make a party whole. Here, the employees have been

made whole, and the additional remedy is purely punitive. Management has recognized that there has been a problem in Rockville, and a serious and committed effort is being made to rectify the situation. An additional payment to the Union will do nothing more than serve to punish the Employer. The grievance should therefore be denied in its entirety.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 15 - GRIEVANCE-ARBITRATION PROCEDURE

15.2 Formal Step A (d) At the meeting the Union representative shall make a full and detailed statement of the facts relied upon, contractual provisions involved, and remedy sought. ... The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents ...

15.3.A The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. ...

JCAM 15-8 A step B decision establishes precedent only in the installation from which the grievance arose. Fro this purpose, precedent means that the decision is relied upon in dealing with subsequent similar cases to avoid the repetition of disputes o similar issues that have been previously decided in that installation.

DISCUSSION AND ANALYSIS

As noted above, the sole issue in this case is that of the appropriate remedy for the Employer's acknowledged failure to comply with the B team decision dated December 30, 2013 which required the Employer to post routes for bid no later than January 8, 2014. The B Team in deciding this grievance, agreed that the Employer had failed to comply with the prior decision, but

impassed on the issue of remedy. As the Employer stresses, the burden of proof is on the Union to demonstrate that the requested remedy of a lump sum payment of five hundred dollars to carriers Pham and Natividad, as well as a payment of seven hundred fifty dollars to the Union is appropriate by a preponderance of the evidence. The Employer argues at the outset, however, that the Arbitrator lacks jurisdiction to determine the issue regarding payment to Pham and Natividad on the basis that the requested remedy is an effort to re-litigate their grievances which were already decided and remedied in the prior case decided by this Arbitrator in Case No. K11N-4K-C13386324 on April 28, 2014.

The Employer contends that the doctrine of collateral estoppel should serve to bar any claim of compensation on behalf of carriers Pham and Natividad. Arbitrator Carlton Snow has addressed this issue in several decisions provided to the Arbitrator here. In Case No. H4C-4H-C 25455, he explained that the doctrine of collateral estoppel is meant to limit further arbitration of issues arbitrated in a previous proceeding. Arbitrator Snow explained that:

> Rules of claim preclusion prevent a party from pursuing a later action on the original claim, and a final decision in favor of a party bars the other party from obtaining a second decision on the same claim. It means that a party may not split a claim into a number of disputes, and this fact makes the scope of the original claim highly important.

If the scope of the original claim has been fully decided in the prior case, it can not be subsequently re-litigated in the later action. In applying this doctrine to the facts of this case, the Arbitrator is compelled to agree that the issue of remedy for carriers Pham and Natividad was fully decided in the previous case.

The prior arbitration decided on April 28, 2014 was regarding the late posting of the routes involved here. As with this case, the B Team determined that there had been a violation of Article

41, and ordered the posting of the routes, but reached an impasse on the issue of remedy, which included a request for a per diem payment to each affected carrier, including Pham and Natividad. In fact, the Arbitrator determined that a per diem payment should be awarded, and all of the carriers were paid pursuant to that Award. The purpose of the payment was expressly stated to be to compensate the carriers for the denial of their bidding rights during the period in which the routes were not properly posted. The Opinion and Award addressed the fact that while pay for carriers remains the same, each route is different, and the bid process acknowledges that letter carriers should be able to exercise their bidding rights to accommodate their personal preferences.

The grievance here did not raise new or different issues regarding the posting of the routes. Rather, it was filed solely alleging that the Step B order to post the routes had not been complied with. The issue as it relates to Pham and Natividad, however, did not change in any way from the prior grievance which has already been arbitrated. They were forced to work as unassigned regulars for a period of time while the routes were not appropriately posted. Once posted, they bid, and were compensated for the failure to post by the prior award. Neither the nature of the contractual violation nor the affects of the violation upon Pham and Natifidad did not change in any way between the first and second grievances. The issue has been decided, and there is no basis for an additional remedy.

The issue as it relates to the Union's request for a lump sum payment to the Union, presents a somewhat different question. The prior grievance requested a remedy only for the affected letter carriers, and did not seek any compensation for the Union. The requested remedy is sought for failure to comply with the B Team's order, not for the initial failure to post the routes. This was clearly not addressed by the prior grievance, and presents a new issue not

addressed in the prior Opinion and Award. That is, should there be a remedy to the Union as a result of the Employer's failure to timely comply with the B Team decision? The Employer argues that the Union's requested remedy is punitive and therefore inappropriate, stressing that while there have admittedly been problems in the Rockville post office in the past, the Employer has implemented a sincere effort to address the problems and implement change. Acting Manager Cudjoe testified that interventions and an effort to stress contractual compliance have altered the formerly troubled state of relations with the Union. Union President Lerch, however, disputed that there has been any real change and expressed frustration at what he perceives as the need to file serial grievances in order to obtain even minimal contractual compliance.

While this professed goal is laudable, and the Arbitrator sincerely hopes that it is effective, to date, there is no evidence that there has been any substantial change. While the Employer argues that the examples provided by the Union all relate to occurrences prior to the managerial effort to affect change, in fact the failures appear to persist. Indicative of the continued problem is the fact that although the April 28, 2014 Opinion and Award ordered that the remaining routes be posted within fourteen days, they were not posted until more than two months later. Similarly, carriers were not paid pursuant to the Award until more than five months later, and at the time of this hearing, some of the affected carriers had not yet been compensated. This does not demonstrate the 360° turn around to which Cudjoe testified.

The Union has presented myriad examples of the Employer's failure to comply with B Team decisions. When there is compliance, it is only after substantial and unexplained delay. These violations are indeed ongoing and without justification. It appears that for the most part, the Employer does not comply with B team decisions until forced to do so by the filing of another

grievance alleging noncompliance. This conduct is indeed egregious, particularly in light of its ongoing nature over a period of years. If indeed the local management is able to implement a paradigm shift, relations should improve markedly in the future. For now, however, that change does not appear to have taken hold, and it is unreasonable to expect the Union to continue to bear the burden of the time and expense of filing multiple grievances to obtain timely compliance with decisions by the B Team.

As this Arbitrator has stated previously, it is clear that these parties have considered and acknowledged that there are occasions in which an award of a monetary remedy is appropriate in order to impress upon management the need for future contractual compliance. In particular, the parties have utilized this approach in instances wherein there have been repeated and egregious instances of noncompliance. Despite the testimony that Rockville management has changed, there was simply no evidence to support that conclusion. No one who testified provided any explanation for the either the lack of a Formal Step A contentions or for the failure to comply with the DRT decision in the first instance. In light of the evidence that despite its apparently sincere attempt to affect an overall change in relations with the Union, the Employer remains slow to comply with B Team decisions and arbitration awards, an increase in the compensation to the Union for again being forced to pursue an additional grievance to obtain timely compliance is appropriate. The Employer's continued delays in compliance undoubtedly cause damage to the Union's credibility with its membership by forcing it to appear to be inept in the face of the Employer's dilatory compliance. In order to compensate for this, as well as the time and expense of pursuing grievances which should not be necessary, the Arbitrator orders that the Employer pay

the Union the sum of $750.00.[1]

AWARD

The grievance is sustained in part and denied in part. The relief for the individual carriers is denied. The Employer shall pay the sum of $750.00 to NALC Branch 3825.

Dated: December 5, 2014

Tobie Braverman, Arbitrator

[1] The Arbitrator must reject the Union's suggestion that the Employer should be ordered to pay the Union's half of the fees and expenses of the Arbitrator. To do so would be in direct contradiction to the express language of Article 15.4.A.6 of the National Agreement.

UNITED STATES POSTAL SERVICE

October 30, 2014

SUBJECT: Partial Settlement Agreement

UNION: ~~APWU~~ NALC

In the matter of grievance

Name: **Class Action**
GATS Number: **K11N-4K-C 13386324**
(K11N-4K-C 14093479)
Union Number: **5313KA87A**
(5314KA7)
Office: **Twinbrook**

In compliance with Arbitrator Braverman's Award in grievance number 5313KA87A (GATS # K11N-4K-C 13386324) dated April 28, 2014, and as a partial settlement of grievance number 5314KA7 (GATS #K11N-4K-C 14093479), Management agrees to pay Letter Carrier R. Natividad (EIN 03726034) a lump sum of $3,440, which is equal to $20.00 per day for each work day between September 22, 2013 and the date Mr. Natividad commenced his new route (May 31, 2014).

This settlement is made in accordance with Article 15 and the Dispute Resolution process of the National Agreement.

Kate Sullivan
Management Representative

Date 10/30/14

Alton Branson
Union Representative

Date 10/30/14

REGULAR POSTAL PANEL

In the Matter of the Arbitration **between** **United States Postal Service** **and** **National Association of Letter Carriers, (AFL-CIO)**	**Class Action** **Case No: K11N-4K-C 14140664 5014KL01**

OPINION AND AWARD: Dr. Andrée Y. McKissick, **ARBITRATOR**

APPEARANCES:

For Management: Jamelle Wood
USPS Advocate
United States Postal Service
900 Brentwood Road, NE, Room 2024
Washington, DC 20066-9998

For Union: Alton R. Branson
NALC Advocate, Region 13
5929 Surratts Village Drive
Clinton, MD 20735

DATE OF HEARING: **November 7, 2014**

LOCATION OF HEARING: **500 N. Washington Street**
Rockville, MD 20850

AWARD:

This grievance is sustained on the sole issue of the appropriateness of a fair remedy. Accordingly, the Service must pay the Union processing fees, amounting to seven hundred and fifty dollars ($750) to restore the Union to its status quo ante.

December 4, 2014

BACKGROUND

This is the arbitration proceeding pursuant to the grievance and arbitration provisions of the Collective Bargaining Agreement between the United States Postal Service (hereinafter "the Service") and the National Association of Letter Carriers, AFL-CIO (hereinafter "the Union"). The hearing was held on November 7, 2014, at the postal facility located on 500 N. Washington Street, Rockville, Maryland 20850.

STATEMENT OF FACTS

This National Association of Letter Carriers (NALC)-United States Postal Service (USPS) Grievance Arbitration Settlement, dated March 7, 2014, comprises a composite of one hundred and seventy-nine (179) grievances alleging a violation of the "Rockville Union Time Policy." This Agreement was signed by Timothy Dowdy, National Business Agent, and USPS Manager Jasuantie Permail. It requires the Service to cease and desist current violations. It further establishes that a monetary award, amounting to forty thousand dollars ($40,000) which shall be payable to the NALC Branch 3825. This lump sum payment was paid, but it was untimely. It was due on April 6, 2014, but received on April 21, 2014. Due to this lump sum payment, the Union agreed to withdraw pending grievances regarding the "Rockville Union Time Policy."

Since the lump sum award was tardy, an additional two hundred dollars ($200) was required, plus ten dollars ($10) per week or fraction thereof, for each week past April 6, 2014. This was agreed to by the Service. Nonetheless, the Union is now requesting still another seven hundred and fifty dollars ($750) payment because this is a continuing violation and as a deterrent for future untimely payments.

The incident date is April 7, 2014, a day after the due date for the lump payment award. Informal Step A was initiated on April 8, 2014. On April 17, 2014, Formal Step A was held. On April 21, 2014,

Step B was received. The decision from Step B was received on May 15, 2014. Accordingly, this controversy involving the appropriateness of a remedy comes before this Arbitrator.

STIPULATED ISSUE

Whether or not the Service should pay the Union an additional fee for processing subsequent and continuing grievances on the same subject matter as the current settlement of March 7, 2014?

If so, what is the appropriate remedy?

PERTINENT PROVISIONS

The settlement agreement reads in part:

Rockville management will cease and desist violations of the Rockville Union Time Policy. There will be a monetary award in the amount of $40,000.00 payable to the local union branch, which is "NALC Branch 3825." This single lump sum payment will be delivered as soon as possible, and not later than 30 days after the date of this settlement.

With this settlement the union agrees these identified grievances are now fully adjudicated, and the union thereby withdraws these grievances from the grievance-arbitration procedure.

This settlement does not constitute a waiver of the pattern of remedies issued in grievances on this issue in this city. Finally, this settlement does not establish a precedent and will not be cited by either party in any future grievance and arbitration proceeding, except for purposes of the enforcement of the agreements made herein.

POSITIONS OF THE PARTIES

It is the Service's position that the additional payment of seven hundred and fifty dollars ($750) is punitive. The Service points out that punitive damages are not allowable under the Agreement. The Service asserts that it is willing to pay the small, additional late fee of two hundred and twenty dollars ($220), but not the punitive damages of seven hundred and fifty dollars ($750) requested for continuing violations which the Union requests. Still further, the Service contends that it complied with the forty thousand dollars ($40,000) lump sum award in concurrence with the settlement of March 7, 2014. Based upon the foregoing, the Service requests that the Arbitrator deny this grievance as the monetary remedy is inappropriate, unfair, and an unreasonable remedy.

On the other hand, the Union asserts that it is repeatedly required to process grievances based upon the same violations. This costs money which amounts to approximately seven hundred and fifty dollars ($750). Thus, it requests that the Service compensate them for these expenses directly related to these continuing violations. Based upon the foregoing, the Union requests that the Arbitrator sustains this grievance.

FINDINGS AND DISCUSSION

After a careful review of the record in its entirety, this Arbitrator finds that this grievance regarding the reasonableness of a remedy should be sustained for the following reasons.

First, the Service rightly notes that punitive damages are not provided for in the Agreement. Moreover, punitive damages are not appropriate in the labor-management arena. However, compensatory damages are regularly and rightly utilized to compensate the injured party. Compensating damages are also utilized for repeated, continuing violations of contractual obligations. Supportive of this analysis, see the following awards: In the Matter of Arbitration between the United States Postal Service and the National Association of Letter Carriers, No: K11N-41C-C: 133800538: S011352119,

Class Action, Arbitrator, Dr. McKissick, May 3, 2014; In the Matter of Arbitration between the United States Postal Service and the National Association of Letter Carriers, No: K11N-41C-C: 14118414: 53-13-KA16, Class Action, Arbitrator Braveman, September 17, 2014; In the Matter of the Arbitration between the United States Postal Service and the National Association of Letter Carriers, No: K11N-41C-C: 13377363: 55-13-5L19, Class Action, Arbitrator Durham, April 30, 2014.

Second, the Union sets forth a record of a plethora of subsequent grievances based upon the same issue. Correspondingly, it processes these grievances. It is costly and unnecessary, based on the prior settlement. Although the Service is willing to pay the late fee which amounts to two hundred and twenty dollars ($220), it refuses to pay the compensatory fee of seven hundred and fifty dollars ($750), the cost of processing these subsequent grievances.

Third, National Arbitrator Mittenthal in Case No: H1C-NA-C-97 at 123 and 124 states that the purpose of a remedy is to place one in the position, as if there was no violation. Applying that purpose and principle here, the Union shall be compensated for its processing fees pursuant to subsequent and continuing grievances on the same issue as the aforementioned settlement.

AWARD

This grievance is sustained on the sole issue of the appropriateness of a fair remedy. Accordingly, the Service must pay the Union processing fees, amounting to seven hundred and fifty dollars ($750) to restore the Union to its status quo ante.

December 4, 2014

Dr. Andrée Y. McKissick

REGULAR REGIONAL ARBITRATION

In the Matter of the Arbitration between UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	Grievant: Class Action Post Office: Rockville, MD - Twinbrook USPS Case #K11N-4K-C14118414 BRANCH Case #53-13-KA16 DRT #13-302501

BEFORE: Tobie Braverman ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Dave Preston

For the Union: Delano M. Wilson

Place of Hearing: Rockville, MD

Date of Hearing: September 17, 2014

AWARD: The Grievance is sustained in part. The Union shall be paid a compensatory remedy in the amount of $700.00. Solomon shall be compensated for any lost holiday pay retroactive to the date of his conversion to full time regular status. The Employer is ordered to appropriately meet at Formal Step A of the grievance procedure and to comply with all arbitration awards and DRT Team decisions on a timely basis. The Arbitrator will retain jurisdiction for thirty days to resolve issues regarding this remedy.

Date of Award: October 17, 2014

PANEL: USPS Capital Metro Area / NALC Region 13

Award Summary

The Employer's repeated failure to meet at Formal Step A and to timely comply with DRT Team decisions violates Article 15 of the National Agreement which results in harm to the Union, both in terms of credibility and expense in pursuing otherwise unnecessary grievances, warranting a monetary remedy.

Tobie Braverman

The grievance here is submitted to the Arbitrator pursuant to the terms of the grievance arbitration provisions of the Collective Bargaining Agreement of the parties. Hearing was held at Rockville, Maryland on September 17, 2014. The parties argued their respective positions orally at the conclusion of hearing, and the hearing was declared closed on that date. The parties stipulated that the matter is properly before the Arbitrator. The parties further stipulated that the issue before the Arbitrator for decision, is as follows:

What is the appropriate remedy for Management's failure to comply with a Step B decision finding a violation of Article 15 of the National Agreement in a timely manner?

FACTS

The facts of this case are straight forward and, for the most part, undisputed. On October 19, 2013 a regional Arbitrator issued an award ordering that then PTF carrier Brian Solomon be returned to work and made whole after a disciplinary action. Upon his return to work on October 24, 2013, Solomon learned that he had been bypassed for conversion to full time regular status, and a PTF carrier junior to him had been converted. He filed a grievance, and on January 24, 2014 the DRT Team determined that Solomon should have been converted as the most senior PTF carrier. It further ordered that he be converted retroactive to the date of the junior carrier's conversion and that this be completed no later than February 15, 2014.

It is undisputed that Solomon was not converted by that date. The Union filed a grievance on February 18, 2014 because of that failure. In that grievance, the Union asked not only that Solomon be converted, but that he be paid the sum of $1,000.00 and the Union be paid the sum of

$750.00 in order to encourage future compliance with Step B decisions. For reasons which were not explained at hearing, the Employer did not meet on the grievance at Formal Step A, and did not provide any contentions. That grievance therefore proceeded to Step B, and the Team issued a decision on March 24, 2014. In this second decision, the B Team concluded that the Employer had failed to comply with the earlier decision, and ordered that the conversion be completed no later than April 24, 2014. The B Team impassed, however on the issue of the remainder of the remedy, with the Management representative disagreeing that the monetary remedy sought was appropriate. At the time of the hearing, Solomon had been converted retroactive to September 21, 2013.

Union President Kenneth Lerch testified at hearing that this office has a history of failing to meet at Formal Step A and failing to comply with Step B decisions on a timely basis. He submitted a substantial number of Step B decisions which were provided to the B Team on these points. The Union additionally provided several arbitration awards from regional arbitrators which awarded a monetary penalty for repeated or intentional violations of these and unrelated issues regarding providing information to the Union. Lerch expressed his frustration both that the Union is required to file multiple grievances in order to enforce B Team decisions, and that despite the monetary payments to the Union, the problems have persisted.

The testimony demonstrated further that there have been recent interventions conducted at the facility, and both parties acknowledged that while these problems are ongoing, there has been some improvement. Employer witnesses testified that they comply with B Team decisions when they receive them, but Christy Park, Supervisor of Customer Services Support, who is responsible for receiving and processing both grievances and payments ordered by the B Team, could not

specifically recall what she had done regarding the two B Team decisions involved here. She had no specific recollection as to why the conversion was not completed prior to the second order to do so, but did note that she lacks authority to complete a conversion to full time regular status.

The parties were unable to resolve the grievance, and it proceeded to arbitration.

POSITIONS OF THE PARTIES

Union Position: The Union contends that it has met its burden of proof to demonstrate that the remedy requested should be awarded. The evidence clearly demonstrated that the Employer failed to comply with an arbitration award and two Step B settlements. This, together with the plethora of previous similar violations, warrants the remedy requested. This should be treated similarly progressive discipline. Management employees in Rockville continue to disregard contractual obligations to meet at Formal Step A on grievances and to timely comply with grievance resolutions at the DRT level. The Union is forced to repeatedly file grievances in order to force compliance. There must be progressive compensation awarded in a continuing effort to impress upon management that it must adhere to its contractual obligations. Unfortunately, management representatives appear to ignore the problems because the monetary awards do not affect them personally. While there has been an intervention at this office, and there was testimony that conditions have improved, the improvement was not quantified, and the problems persist. The Union here is simply seeking that management meet at Formal Step A in an effort to resolve grievances and that they timely adhere to grievance resolutions and arbitration awards. As a result of the Employer's continued, repeated and persistent failure to comply, the escalating

remedy here should be awarded. The employee involved should be awarded $1,000 and the Union should be awarded $750.00.

Employer Position: The Employer argues that although the B Team found a violation of Articles 15 in failing to convert Solomon to a regular full time carrier in compliance with the prior decision, there are a variety of reasons that this and other recurring problems in Rockville have occurred. These include changes in management, inexperienced supervisors, and a contentious relationship with the Union. There is, however, an effort under way to implement change and there has been a joint intervention in the office. The mistakes were made in good faith, and the mistakes have been remedied. The monetary award, which has now become a recurring remedy insisted upon by the Union, started at $50.00 some ten years ago, and the Union now seeks $750.00. This continuing escalation is unreasonable and unwarranted, especially in light of the fact that management is sincerely attempting to improve the relationship and remedy the problems. Further, this approach does not seem to have been effective to date. Since that is the case, it should cease. Additionally, the award of monetary payments is punitive and one sided. When the Union makes a mistake, there is no monetary penalty. There should similarly be none here. The Employer is already attempting to remedy the situation, and in light of that fact, the Union is seeking what is essentially a windfall. The grievance should be denied.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 15 - GRIEVANCE-ARBITRATION PROCEDURE

15.2(d) At the meeting the Union representative shall make a full and detailed statement of the facts relied upon, contractual provisions involved, and remedy

sought. ... The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents ...

15.3.A The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. ...

J-CAM 15-8 A Step B decision establishes precedent only in the installation from which the grievance arose. Fort this purposed, precedent means that the decision is relied upon in dealing with subsequent similar cases to avoid the repetition of disputes on similar issues that have been previously decided in that installation.

DISCUSSION AND ANALYSIS

As noted above, the sole issue in this case is that of the appropriate remedy for the Employer's failure meet at Formal Step A on this grievance and to fail to timely comply with the Step B decisions requiring that Solomon be converted to full time regular status by twice specified dates. There is no question but that the Employer committed both offenses. There was no evidence as to any excuse for the Employer's failure to appropriately schedule a Formal Step A meeting on the grievance or for failing to provide contentions at that Step. There was additionally no evidence presented regarding why the Employer failed to at least initiate the conversion of Solomon to full time regular status upon receipt of the first B Team decision which required that the conversion be completed no later than February 15, 2014. While there was no evidence provided as to the date the conversion actually occurred, it was clear that it was not until some time after April 24, 2014, the second deadline set by the B Team, and after arbitration was pending on the grievance. While Park testified that she pays B Team resolutions promptly when

they are received, and has no authority to complete a conversion, she had no specific recall as to these grievances, and had no record as to any efforts which she made to initiate the conversion through personnel with the authority to implement it. Had there been a sincere effort made to complete the conversion, surely documents supporting that effort would have been available. There being none, it appears that the effort simply was not made until arbitration was imminent.

Against this dearth of explanation for its failures, the Employer urges that it is attempting to turn the situation in this office around. Since that is the case, and since there has been improvement, it argues, the continued escalating monetary remedies should cease. While, as the Employer notes, these parties began implementing the monetary remedies to the Union in small amounts ten years ago, they have indeed escalated to the point that they have come to have a significant financial impact on the Employer. The problem with this argument, however, is that there was no evidence presented to demonstrate any improvement in what has clearly been a long standing problem with management failing to meet at Formal Step A on grievances and failing to implement timely compliance with DRT and arbitration awards. While Employer witnesses testified that under new management they have been instructed in no uncertain terms that they must comply with the National Agreement and have resolved to be part of the solution, there was no quantifiable evidence to demonstrate that this paradigm shift has had any real impact up to this point. Rather, until now, the attitude appears to have been a long standing one of confrontation and obstruction. This attitude has obligated the Union to expend substantial energy and funds over a long period of time to enforce contractual rights. While the impact on the Union is not clear, it has undoubtedly had an effect both in terms of credibility with members, and financially.

While the shift in approach on the part of management is laudable and provides hope for

the future of the relationship between these parties, it cannot serve to justify a lack of any remedy to the Union here. In this case, it is clear that management chose both to fail to meet at Formal Step A and to disregard two DRT decisions until forced to take notice due to the pendency of arbitration.

As this Arbitrator has stated previously, it is clear that these parties have considered and acknowledged that there are occasions in which an award of a monetary remedy is appropriate in order to impress upon management the need for future contractual compliance. In particular, the parties have utilized this approach in instances wherein there have been repeated and egregious instances of noncompliance. Despite the testimony that the actions here were unintentional, there was simply no evidence to support that conclusion. No one who testified provided any explanation for the lack of a Formal Step A meeting and contentions or for the failure to comply with the DRT decisions on the conversion. In light of the testimony that the Employer is making a sincere attempt to affect an overall change in relations with the Union, while a monetary remedy to the Union remains justified for the reasons stated above, the rationale for escalation of the amount is somewhat mitigated.

Just as the Employer has failed to demonstrate any substantial sea change in the relations in this office, the Union did not present any substantive evidence in support of the $1,000.00 payment requested on behalf of Solomon. While the Union provided possible scenarios in which Solomon may have lost overtime pay as a result of the delays, those potential losses were contingent upon decisions which he could have made regarding the overtime desired list. There was no evidence presented as to what he would have chosen, what he has chosen regarding the list from which his decisions might have been inferred, or what overtime he actually worked during

the relevant period. Further, while he was not able to bid on routes during the period, there was no evidence that he actually was deprived of a bid on a route which he otherwise would have been awarded during the relevant period. The only financial loss which Solomon may have suffered which can be determined with any certainty, is the loss of holiday pay. If he has not been compensated for lost holiday pay to the retroactive date of his conversion in status, he clearly should be. The award of $1,000.00 to Solomon, however, is not supported by the evidence as justified to compensate him and make him whole. Making the employee whole is ultimately the goal of remedial action. Since Solomon did not testify, and since there was no evidence to demonstrate that he suffered any concrete additional harm, the requested payment of $1,000.00 has not been sufficiently justified as warranted.

AWARD

The Grievance is sustained in part. The Union shall be paid a compensatory remedy in the amount of $700.00. Solomon shall be compensated for any lost holiday pay retroactive to the date of his conversion to full time regular status. The Employer is ordered to appropriately meet at Formal Step A of the grievance procedure and to comply with all arbitration awards and DRT Team decisions on a timely basis. The Arbitrator will retain jurisdiction for thirty days to resolve issues regarding this remedy.

Dated: October 17, 2014

Tobie Braverman, Arbitrator

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	*	
	*	
between:	*	Grievant: Class Action
	*	
United States Postal Service	*	Post Office: Rockville, MD
	*	
and	*	USPS Case No: K11N-4K-C 13374003
	*	
National Association of Letter Carriers, AFL,CIO	*	NALC Case No: 5013-SL-121

BEFORE: Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Anita O. Crews

For the Union: Alton R. Branson

Place of Hearing: Postal Facility, Rockville, MD

Date of Hearing: June 3, 2014

Date of Award: June 29, 2014

Relevant Contract Provision: Article 15

Contract Year: 2011

Type of Grievance: Contract

Award Summary:

This class action grievance was resolved in part by the Step B Team. However the Step B Team was unable to agree upon the remedy and declared an impasse. The evidence presented in this case supports the Union position and therefore their requested remedy is hereby granted.

Lawrence Roberts, Panel Arbitrator

SUBMISSION:

This matter came to be Arbitrated pursuant to the terms of the Wage Agreement between United States Postal Service and the National Association of Letter Carriers Union, AFL-CIO, the Parties having failed to resolve this matter prior to the arbitral proceedings. The hearing in this cause was conducted on 3 June 2014 at the postal facility located in Rockville, MD, beginning at 9 AM. Testimony and evidence were received from both parties. A transcriber was not used. The Arbitrator made a record of the hearing by use of a digital recorder and personal notes. The Arbitrator is assigned to the Regular Regional Arbitration Panel in accordance with the Wage Agreement.

OPINION

BACKGROUND AND FACTS:

This is a class action contract grievance filed on behalf of Letter Carriers working at a Rockville, MD postal facility. The Step B Team resolved the case in part and declared an impasse in part.

In part, the Step B Team "finds that a violation of the National Agreement has been demonstrated in this instance and directs Management to adhere to the provisions of Article 15 as it pertains to implementation of grievance settlements." Accordingly, the Step B Team has processed payments awarded in Case Number K06N-4K-C 12170674.

That same Step B Team was unable to reach common ground in their discussion regarding the additional remedy requested by the Union and therefore decided to declare an impasse.

The Union contends that based on the arbitration decision the five individual names are due $2240 for three (3) days of January 29-31, 2012, twenty-nine (29) days in February 2012, thirty-one (31) days in March 2013, thirty (30) days for April 2012 and twenty-four days for May of 2012. Since the date of the award is August 22, 2013, the Union believes it is reasonable to use the date of September 20, 2013, as the date the named employees should have had their money.

The Union is requesting that the five individuals be paid an additional ten (10) dollars per week starting January 17, 2014 until the money is in the pocket of the individual named in the grievance and a $150 lump sum payment. In addition, they request a payment of $750 to the Union to defray the costs of repeatedly filing this grievance.

Countering, the Employer contends the request of the Union is inappropriate and should be denied.

Obviously, the Parties were unable to resolve this dispute during the prior steps of the Parties Grievance-Arbitration

Procedure of Article 15. The Step B Team declared the impasse mentioned above on 17 January 2014 and the matter was referred to arbitration.

It was found the matter was properly processed through the prior steps of the grievance procedure. Therefore, the dispute is now before the undersigned for final determination.

At the hearing, the Parties were afforded a fair and full opportunity to present evidence, examine and cross examine witnesses. The record was closed following the presentation of oral closing arguments by the respective Advocates.

JOINT EXHIBITS:

1. Agreement between the National Association of Letter Carriers Union, AFL-CIO and the US Postal Service.

2. Grievance Package

2A. Step B Decision K01N-4K-C 02186025

UNION'S POSITION:

The Union identifies this dispute to be a non-compliance issue. According to the Union, the Employer failed to make a timely pay adjustment.

The Union points out the merits have already been decided and the matter in this dispute is that of remedy only. The Union requests their remedy mentioned in their Undisputed Facts and Contentions found within that Step B Decision be granted.

And Union also asks the local be awarded a sum due to the fact it was necessary to file such an otherwise unnecessary grievance simply in order to obtain payment from a grievance

that had already been settled. The Union requests a reimbursement of $750 be made in that regard.

The Union insists this is an appropriate remedy given the fact this has been a past issue at this Rockville facility. The Employer, according to the Union, has continued to delay pay adjustments in the City.

According to the Union, the Employer failed to meet at the Formal Step A and failed to provide any supporting evidence to the case file record in this instance.

While the Management Step B Advocate did state a position, the Union asks that no consideration be given to this since Article 15 mandates that requirement to be at the Step A level. The Union insists this would be a new argument and cannot be recognized at arbitration.

The fact of the matter is, according to the Union, that Management has not presented any contentions within this particular case file.

Simply put, the Union mentions their only gain in this matter is Management's compliance with a prior grievance settlement. And in that light, the Union asks their request in this matter be granted.

COMPANY'S POSITION:

Management claims the settlement request made by the Union in this matter is improper.

The Employer insists any payment to the Local is improper as the Service is already paying their representatives to participate in the grievance process.

The Agency argues the Union interprets the JCAM only to the Union's benefit instead of accepting it at face value.

The Employer Advocate totally disagrees with the local union being paid in this matter as a part of the remedy.

The Service also claims there was no language in the prior award stating that payment had to be made by a specific date. It is the claim of the Employer Advocate that any delay was not on purpose.

Management also insists the Grievants should not be receiving additional monies relative to that prior award.

The Employer requests the Union's requested remedy be denied.

THE ISSUE:

Did Management violate but not limited to Article 15 when they failed to timely pay for the five individuals listed in arbitration #K06N-4K-C 12170674 and if so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS:

ARTICLE 15

DISCUSSION AND FINDINGS:

In the first portion of this record, the Step B Team noted a violation of the National Agreement and thus directed payment as ordered per case styled K06N-4K-C 12170674. And the impasse resulted from a request by the Union for an additional remedy.

And to that end, paramount in my decision, in the prior steps of the grievance procedure, there was no objection by the Employer to the formal Step A remedy request made by the Union.

However, in the Employer's verbal opening statement, there were several contentions made by the Agency regarding the Union's requested remedy. However, in my considered opinion, the language of the Parties Agreement is absolute. Any Employer contention not cited at Step A cannot be considered.

Controlling in this instant case is the language found in Article 15.2 Formal Step A (d), wherein both Parties are required to make a full and detailed exchange at the Formal Step A. And it all must be reduced to writing. As I'm sure the Parties are aware, no new facts or argument(s) may be introduced beyond that point. The Step B Team may expand or further argue any Step A contention, however, new argument, objections or contentions beyond Formal Step A cannot be considered.

And to that end the "USPS Representative's Steb B Position," extracted from Joint Exhibit 2, reads as follows:

> **"The case file was absent any contentions or supporting documentation from the Management Formal Step A Representative. The following is provided for consideration…."**

The undersigned is of the considered opinion the last sentence noted above is simply too late at Step B. The Employer, by not presenting any Formal A objections, simply waived any right to do so at a later date. For Article 15 makes no exclusions to the language of Article 15.2 Formal Step A (d).

The Union introduced a requested remedy at the Formal Step A and it became part of the record. There was no objection raised by the Employer at the Formal Step A. In fact, the Employer failed to make any statement of facts or contractual

provisions relied upon. It was the Employer's choice to do so, however, failure to raise any arguments at Formal Step A bars the introduction of any objection or argument beyond that point. And with that said, the Employer waived their right to raise an objection to any argument presented by the Union at arbitration.

And on that basis, I am of the considered opinion the Employer is now barred from coming to arbitration and arguing that a requested Formal Step A remedy requested by the Union is irrational. Instead, again, in my view, the Employer should have made their argument(s) regarding any requested remedy at the Formal Step A level.

And even though the Parties settled the dispute itself, the rules set forth in Article 15 do not change. Article 15 creates an even ground that allows both Parties an equal opportunity to present their case. And any suggested or requested remedy becomes part of the record. However, once the dispute extends beyond that point, any argument, including remedy, becomes moot. This is according to Article 15.2 Step B (c) which states:

> **"The written Step B joint report shall state the reasons in detail and shall include a statement of any additional facts and contentions not previously set forth in the record of the grievance as appealed from Formal Step A."**

It is clear the Employer did not argue any of the Union's requested remedy prior to arbitration. Either party cannot sandbag until Step B and present their entire case. Therefore, any argument made by the Employer at arbitration regarding remedy, simply cannot be considered.

And with that in mind, I have no other choice than to grant the Union's requested Formal Step A remedy request.

I found the remedy requested by the Union to be fair and reasonable considering all of the circumstances surrounding this matter.

I agree with the rationale of **Arbitrator Ellen S. Saltzman** provided in **K11N-4K-C 13294700**, at this same location, dated **20 April 2014:**

> **"The monetary award is meant to be corrective and to encourage contractual compliance. The Arbitrator was presented by the Union with a packet of Arbitrator's decisions with monetary awards in similar situations. In the same way that discipline is meant to be corrective and is progressive if necessary, so should monetary awards be in these situations."**

And in that light, I agree with Arbitrator Saltzman with the thought regarding progression. The Parties Agreement cannot be read in a vacuum. Article 16 suggests progressive

discipline. And a corrective remedy for the violation by the Employer should be considered in the same regard.

I do not consider the requested remedy by the Union to be arbitrary or unreasonable. I believe there to be an unspoken guideline within the Wage Agreement that creates an equal playing field by and between the Parties. And the language of that same Agreement does not exclude a punitive award. And given the disregard for the discipline of Article 15, a punitive award is certainly within the boundaries of the Parties Agreement.

What the Union requests in this case is for Management to execute timely settlement payments.

First of all, this is a matter that is not directly defined via any Agreement language. Instead, this subject is one of those issues that fall under the general umbrella known as reasonableness. Again, that is a broad term when seeking specific guidance.

And there is not a single answer. I'm quite certain there are instances that require longer periods of calculation to arrive at an agreed upon settlement.

However, in the case of a defined payment, whether it is reached by and between the Parties or an arbitrator, the payment should process within the pay period. And it is understandable that some decisions may be reached or received at the very end of a particular pay period. And in cases such as this, it would only be reasonable to delay until the following pay period.

In their opening statement, the Employer Advocate stated "There was nothing in the contract or the arbitrator didn't say in the award that this payment must be made by a certain date. The award did not state that." This is a most unreasonable and absurd observation cutting to the core of Article 15 intent.

The following language written by the Step B Team in a **26 September 2013** Decision labeled **K11N-4K-C 13272222** is most applicable to this instant case:

> **"The DRP was designed to facilitate resolution of grievances at the lowest possible level. Both Management and the Union are obligated to specific requirements under Article 15. Management's failure to meet and/or provide written contentions affirming or refuting the claims of the Union hinder resolution of the dispute at the lower levels and denies them their ability to challenge the facts presented on any given grievance.**
>
> **When this circumstance occurs, as herein, the Team is obligated to rely on the documentation provided as an undisputed factual accounting of events, in order to resolve the dispute, as has been done in this instance."**

Even the local Parties recognize that the absence of Step A contentions formulate acquiescence and bar any further objection. And that is exactly what has happened in this matter. The Employer failed to present any argument or dispute any of the fact relative to this matter at Step A.

Therefore, with all of the above reasoning, the Union's requested remedy found on Page 15 of Joint Exhibit 2 is hereby granted, reading as follows:

> **#19. Remedy requested: Immediately pay each of the following five Carriers $2,340.00. Y. Chang, K. Tam, S. Yang, S. Heng and L. Pan. In addition to this, immediately pay each of the above listed five Carriers a lump sum of $150.00 due to the payment being untimely. Also, immediately pay the aforementioned five Carriers ten dollars per week from January 17, 2014 until the above five Carriers receive their due money.**
>
> **The Union is also requesting (so ordered) a payment of $750.00 payable to NALC Branch 3825 to help defray the costs of having to repeatedly grieve untimely pay adjustments.**
>
> **Management will cease and desist being untimely concerning pay adjustments.**

It is so ordered.

AWARD

The grievance is sustained and Union's requested remedy is granted in accordance with the above.

Dated: June 29, 2014
Fayette County PA

UNITED STATES POSTAL SERVICE

ACCOUNTING SERVICE CENTER, 2825 LONE OAK PARKWAY, EAGAN MN 55121-9640

Rec'd 8-20-2014
Kenneth Lerch

08-06-2014

Arbitrator Roberts
Untimely Pay adjustment
Local # 50-13-SL 121

NALC BRANCH 3825
PO BOX 1398

ROCKVILLE MD 20849-1398

REMITTANCE ADVICE

THE ATTACHED CHECK REPRESENTS PAYMENT FOR ARB NO. K11N-4K-C 13374003 FOR NALC BRANCH 3825.

IMPORTANT INFORMATION

ANY TAX LIABILITY RESULTING FROM THIS PAYMENT IS YOUR RESPONSIBILITY. THE IRS MAKES THE DETERMINATION ON WHETHER TAXES MUST BE PAID. YOU SHOULD CONSULT THE IRS OR A TAX ATTORNEY TO ANSWER ANY TAX REPORTING QUESTIONS THAT YOU MAY HAVE.

PAYMENT DATE	PAYMENT AMOUNT	CHECK NUMBER
08-06-2014	$******750.00	0103728341

Refer inquiries concerning this payment to the Minneapolis Accounting Service Center at the above address, or call the AHD at phone number 1-866-974-2733.

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EAGAN MN 55121-9640

DATE 08-06-2014 [redacted] 50-937/213 0083-09 CHECK NO. 0103728341

Seven Hundred Fifty and 00/100 Dollars

$*******750.00

PAY TO THE ORDER OF 0103728341
NALC BRANCH 3825
PO BOX 1398

ROCKVILLE MD 20849-1398

JP Morgan Chase
Syracuse NY
5801 E. Taft Road
North Syracuse NY 13212-4710

VOID AFTER ONE YEAR

TREASURER

⑈0103728341⑈ ⑆021309379⑆ 6301500835509⑈

REGULAR ARBITRATION

In the Matter of the Arbitration Between	) (	Class Action
UNITED STATES POSTAL SERVICE	) (	P.O.: Rkv-Twinbrook
And	) (	USPS#: K11N-4K-C 13379066
National Association of Letter Carriers, AFL-CIO	) ( ) (	DRT#: 13-293363 Union#: 55-13-KA-79

BEFORE: Arbitrator Kathryn Durham, J.D.,P.C.

APPEARANCES:

For the USPS: Anita O. Crews, Labor Relations Specialist
For the NALC: Alton R. Branson, NALC Advocate

Place of Hearing: Rockville, MD
Date of Hearing: May 12, 2014
Date of Award: June 9, 2014
PANEL: Capital Metro District

AWARD SUMMARY

The grievance is sustained. The remedy is that Management shall pay the local Union, NALC Branch 3825, the sum of $420. A cease and desist order would not be sufficient given Rockville managements' longstanding, repeated disregard of its duty to provide relevant information to the Union, as evidenced again in this case.

Kathryn Durham

Kathryn Durham, J.D.,P.C.

I. ISSUE as framed by the Arbitrator

> Whether the Union is entitled to a monetary remedy for local management's failure to provide relevant information, pursuant to a RFI and Article 31, within the locally-agreed upon timeframe? If so, what is the appropriate remedy?

II. FACTS/POSITIONS OF THE PARTIES

On September 24 or 25, 2013, the local Union was due information legitimately requested pursuant to an RFI in order to investigate and process a grievance. The information was not provided. On September 25, the Union appealed to informal A where the grievance was not resolved and the information was not provided. The parties met at formal A on October 24, 2013 and discussed the case. The information was not provided and the Step A official did not have his formal contentions prepared. Management did not agree to provide the information at this time. The Union offered an extension, and management requested first 400 hours, then 100 hours, to prepare its formal contentions. Union representative Branson considered this unreasonable and moved the information grievance to the DRT team. The DRT team concluded by decision dated December 18, 2013 that the Union was entitled to the information, and that it must be provided immediately to the Union if it had not already been provided.

The parties impassed the question of whether the Union was entitled to a monetary remedy (approximately $750.00).

The Union appealed to arbitration its claim for $750 arguing that a monetary remedy to the Union is necessary to persuade management to comply with its duties/agreements and to compensate the Union for its time in pursuing the case and its copying costs, which Mr. Branson claimed were $280 (approximately 2800 pages at 10 cents per page). Mr. Branson computed the time as being approximately 30 hours at Step B and arbitration at $28.02/hr.

The Union's evidence is of a hundred plus similar past cases in Rockville where management fails to comply with its agreements regarding processing information requests. See Jt A, pps.21 – 100 and 101-330 which are agreements and Step B decisions from 2002 - 2013.

The local agreement at bar is referenced as follows:

> Management agrees to a recommitment of prior agreements to provide information requested by the Union within 24 hours as well as the June 28, 2011 Labor/Management minutes (sic). As previously agreed, if there is an extensive information request, the

Postmaster or designee, will notify the local Union president, or designee, and a mutually agreeable date to provide the information will be worked out which will comply with the spirit and intent of good-faith bargaining.

In this grievance, management failed to provide the information within 24 hours. Therefore, management will award the Union $600.00 to be given to the charity of the Union's choice due to the ongoing and escalating remedies on this issue. (This is consistent with numerous prior grievance resolutions including precedent setting Step B decisions.)

In an ongoing effort to improve the Labor/Management climate at the Rockville installation, the Union will waive the monetary payment in this instance. Management agrees to provide the information requested in this grievance within 24 hours. Management violated the information request agreements for the city of Rockville on August 11, 2011.

Signed by Kenneth Lerch (Union) and Gregory Migliori (Mgmt) Jt. 2 p. 164, representative of pages 101-330 of Jt 2.

The Union relies on the decisions of Dr. Andree Y McKissick (K11N4KC13380538, 4.11.2014); Kathryn Durham (K11N4KC13377363, 4.30,2014); Stanley Sergent (H01N4HC03072480, 05. 13.2004); Thomas Erbs (J01N4JC08106377, 04.10.2008); and others to support a substantial monetary remedy in situations where management is clearly and egregiously in dereliction of its agreements with the Union. The Union argues that without a substantial monetary remedy Rockville will continue flagrantly ignoring the Union to the detriment of the bargaining union members. The Union tired of waiving the remedy of money to charity as had been done in Rockville in the past.

Management's position at the Steps A is not part of the record. We simply know that management refused to provide the information at the local level. At the DRT level, management agreed that local management violated the agreements reflected above by not providing the requested information timely, but argued that a monetary remedy to the Union is not appropriate for the following reasons:

1. Management had not been warned of the consequences of non-compliance.
2. There is no indication of an egregious violation.
3. The Union's request is punitive because the Union has not shown a correlation between the harmed party and the requested remedy.
4. Punitive remedies are not allowed by the National Agreement.

III. OPINION

The evidence clearly demonstrates the longstanding nature of Rockville management's refusal to timely provide relevant information pursuant to its obligations under the National Agreement.

Given the longstanding nature of the problem reflected at pages 21-330, the Undersigned is not persuaded that management was unaware of potential consequences of its repetitive violations. The file in our case contains the memo dated May 31, 2002, from Patrick Donahoe to VPs, Area Ops Mgr of Capital Metro Operations reiterating as follows:

> Compliance with arbitration awards and grievance settlements is not optional. No manager or supervisor has the authority to ignore or override an arbitrator's award or a signed grievance settlement. Steps to comply with arbitration awards and grievance settlements should be taken in a timely manner to avoid the perception of non-compliance, and those steps should be documented.

Additionally, there is not indication in the file that Rockville had any reason to withhold the information. Thus, management's actions are indeed egregious.

It is well understand that there are times when a monetary remedy is necessary to curtail egregious, flagrant, repetitive violations as indicated by the Union's citations. The situation in Rockville has progress significantly beyond one where a cease and desist order could be expected to have impact on management.

Reaching a decision as to how much money in remedy to the Union is necessary to begin to change management's practice is not an easy, clear-cut process. The Union stated that it spent 30 hours at Step B and arbitration and spent $280.00 in copying charges. Representative Branson's verbal description of copying charges of $280.00 incurred at a copy store is not accepted because he had no receipt or verification of such charge. Expectation of reimbursement of such a large cost incurs the obligation to produce a receipt

Mr. Branson contended that this case took the Union representative(s) 30 hours to prepare and present at Step B and arbitration. This issue is clearly ongoing and much of the thought process and work would have been previously done. The case at bar is identical to the case decided by Arbitrator Dr. Andree Y. McKissick, K11N4KC13380538 / 501352119, April 11, 2014, wherein Alton Branson NALC Region 13 Advocate was also the advocate. Therefore, the undersigned is unconvinced that 30 hours was a credible, reasonable claim for study and prep time in the case at bar.

In the decision rendered by the undersigned in a very similar Rockville grievance (K11N4KC13377363/ DRT# 13-291597, April 30, 2014), the remedy to the Union was $420.00. The April 2014 award was based on local President Lerch's credible testimony that 15 hours of time was necessary and was used, and that the local union paid him at the rate of $28.02.

The necessity of a monetary remedy in future cases of this nature may be considered moot by a subsequent arbitrator if management in Rockville begins now to clearly establish a new, continuing precedent of complying with its obligations to the Union and the bargaining unit which it has so long ignored.

IV. AWARD

The grievance is sustained. The remedy for the case at bar is that Management shall pay the local Union, NALC Branch 3825, the sum of $420.00 to be used for representational purposes.

Kathryn Durham

Kathryn Durham, JDPC, Arbitrator

UNITED STATES POSTAL SERVICE

ACCOUNTING SERVICE CENTER, 2825 LONE OAK PARKWAY, EAGAN MN 55121-9640

Rec'd 8-1-14 at 3:48 pm Kenneth Lerch

07-18-2014

Arbitrator - Kathryn Dyrham
Local # 53-13-KA79

NALC BRANCH 3825
PO BOX 1398

ROCKVILLE MD 20849-1398

NOT NEGOTIABLE

REMITTANCE ADVICE

NOT NEGOTIABLE

THE ATTACHED CHECK REPRESENTS PAYMENT FOR ARBRITRATION NO. K11N-4K-C 13379066 FOR NALC BRANCH 3825.

IMPORTANT INFORMATION

ANY TAX LIABILITY RESULTING FROM THIS PAYMENT IS YOUR RESPONSIBILITY. THE IRS MAKES THE DETERMINATION ON WHETHER TAXES MUST BE PAID. YOU SHOULD CONSULT THE IRS OR A TAX ATTORNEY TO ANSWER ANY TAX REPORTING QUESTIONS THAT YOU MAY HAVE.

NOT NEGOTIABLE

PAYMENT DATE	PAYMENT AMOUNT	CHECK NUMBER
07-18-2014	$******420.00	0103721286

Refer inquiries concerning this payment to the Minneapolis Accounting Service Center at the above address, or call the AHD at phone number 1-866-974-2733.

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Date 07-18-2014 Check No. 0103721286

Four Hundred Twenty and 00/100 Dollars

$420.00

0103721286

PAY TO THE ORDER OF NALC BRANCH 3825
PO BOX 1398
ROCKVILLE MD 20849-1398

JP Morgan Chase
Syracuse NY
5801 E Taft Road
North Syracuse NY 13212-4710

VOID AFTER ONE YEAR

TREASURER

REGULAR REGIONAL ARBITRATION

In the Matter of the Arbitration between UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	Grievant: Class Action Post Office: Rockville, MD - Twinbrook USPS Case #K11N-4K-C13331059 BRANCH Case #53-13-KA54 DRT #13-290256

BEFORE: Tobie Braverman ARBITRATOR
APPEARANCES:
For the U.S. Postal Service: Anita O. Crews

For the Union: Alton R. Branson

Place of Hearing: Rockville, MD

Date of Hearing: April 18, 2014

AWARD: The Grievance is sustained. The Union shall be paid a compensatory remedy in the amount of $700.00. All management personnel within the Rockville installation shall be provided with a copy of this Award with instructions to read the Award as well as Articles 17 and 31 of the National Agreement, and shall be expressly instructed to comply with information requests in a timely manner pursuant to the local agreement in the future. The Arbitrator will retain jurisdiction for thirty days to resolve issues regarding this remedy.

Date of Award: May 15, 2014

PANEL: USPS Capital Metro Area/ NALC Region 13

Award Summary

The Employer's long standing and repeated failure to provide information requested for the processing and investigation of grievances as required by Articles 17 and 31 of the National Agreement which results in harm to the Union, both in terms of credibility and expense in pursuing grievances on the issue, warrants the monetary remedy requested by the Union.

Tobie Braverman

The instant case is submitted to the Arbitrator pursuant to the terms of the grievance arbitration provisions of the Collective Bargaining Agreement of the parties. Hearing was held at Rockville, Maryland on April 18, 2014. The parties argued their respective positions orally at the conclusion of hearing, and the hearing was declared closed on that date. The parties stipulated that the matter is properly before the Arbitrator, but were unable to stipulate as to the issue before the Arbitrator for decision. The issue, as framed by the Arbitrator, is as follows:

What is the appropriate remedy for Management's violation of Articles 17 and 31 of the National Agreement by failing to provide information requested by the Union on August 27, 2013?

FACTS

The facts of this case are straight forward and, for the most part, undisputed. On August 27, 2013 the Employer issued a Letter of Warning to carrier Gary Smith as the result of a missed scan. On the following day, Union Steward, Karim Abdullah, requested any and all documentation relating to the discipline. When he submitted the information request, he was advised verbally by Supervisor Ed Montano, who refused to sign the request, that the discipline was going to be rescinded and re-issued. In fact, the August 27, 2013 letter was rescinded, and a second Letter of Warning was issued on August 28, 2013. The two letters are identical in all respects except for the date. Despite the fact that the Union had already requested the information, Montano took the position that the request related only to the rescinded discipline, and that he was therefore, not required to provide the requested information. The Union contended that the information remained relevant to the discipline as well as to a claim that the re-

issued discipline constituted double jeopardy.

The Union filed the instant grievance regarding the failure to provide the information. The Employer did not hear the grievance at Formal Step A. The matter therefore proceeded to the B Team without contentions from management other than Montano's undated and unsigned statement that the discipline had been rescinded and re-issued. The B Team determined that the Employer had violated Articles 17 and 31 of the National Agreement by not providing the requested information. It therefore ordered the Employer to provide the information immediately. The B Team could not reach agreement, however, regarding the appropriate remedy. The moving papers contain multiple instances of orders of escalating compensatory remedies, both from the B Team and by agreement of the parties at the Informal and Formal A steps dating back as far as 2003 with a payment of $50.00, to a payment of $700.00 in July, 2013. Despite this documentation, the B Team could not agree regarding the remedy. The Union contended that a payment of $700.00 was appropriate to encourage future compliance after multiple instances of failure to provide information in a timely fashion, while the Employer contended that any such remedy was punitive rather than compensatory, and therefore inappropriate. It is in this posture that the matter proceeded to arbitration.

POSITIONS OF THE PARTIES

Union Position: The Union contends that it has met its burden of proof to demonstrate that the remedy requested should be awarded. The Employer's obligations under Articles 17 and 31 of the National Agreement and the parties' local information request policy are clear. The

Employer must provide information requested in order to process and investigate grievances within twenty-four hours unless an extension is agreed upon by the parties. In this case, the B Team found that the Employer has failed to provide information, and once again breached its contractual obligations. The evidence demonstrates that this is a recurring violation. Management has been warned repeatedly that it must comply, and the parties have agreed in numerous Informal A and Formal A settlements, as well as in numerous B Team settlements, that the Employer must comply and should pay escalating compensatory sums to the Union to encourage compliance and compensate the Union for the harm done both in its image with employees when the Employer repeatedly violates the National Agreement and expenses incurred in filing multiple grievances on the issue. The Employer has attempted to muddy the waters by claiming that it did not provide the information because the discipline was rescinded, but in fact the re-issued discipline was identical to the first one. This contention was not made at the Formal A Step, and should not be considered at all. In fact, the Employer has presented no evidence in this case. There have been scores of violations over time, and they continue to date. The Employer's continued violation is egregious, and an escalating monetary award is appropriate as provided at 41-15 of the JCAM. The grievance should be sustained in its entirety.

Employer Position: The Employer argues that while the B Team found a violation of Articles 17 and 31 regarding the providing of information, it did not, as the Union contends, agree that the award of a monetary remedy was appropriate. Even though the contractual violation was agreed upon by the B Team, the Union here still has the burden of proof to demonstrate that the remedy which it seeks is appropriate in this case. The Union has failed to meet that burden of proof. There was no evidence of any loss or cost to the Union. Although these parties have

agreed upon a monetary remedy in the past in order to avoid the cost of arbitration, that does not dictate that the same is appropriate here. The award requested is punitive. The JCAM language which the Union cites applies only to opting. It has no relevance here. Even if it is relevant, the violation here was clearly not egregious. The failure to provide the information was an honest mistake in this case. The information request related to discipline which had been rescinded. Although the B Team found a violation, the Supervisor reasonably believed that the information need not be provided since the request related to a disciplinary action which had been withdrawn. Under these circumstances, a punitive remedy is clearly inappropriate. The grievance should be denied.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 15 - GRIEVANCE-ARBITRATION PROCEDURE

15.2(d) At the meeting the Union representative shall make a full and detailed statement of the facts relied upon, contractual provisions involved, and remedy sought. ... The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents ...
15.3.A The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. ...

ARTICLE 17 - REPRESENTATION

Section 3. Rights of Stewards ... The steward, chief steward or other Union representative ... may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists ... Such requests shall

not be unreasonably be denied. ...

ARTICLE 31 - UNION - MANAGEMENT COOPERATION

Section 3. Information The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information. ...

JCAM 41-15 Remedies and Opting

... In circumstances where the violation is egregious or deliberate or after local management has received previous instructional resolutions on he same issue and it appears that a 'cease and desist' remedy is not sufficient to insure future contract compliance, the parties may wish to consider a further, appropriate compensatory remedy to the injured party to emphasize the commitment of the parties to contract compliance. In these circumstances, care should be exercised to insure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy.

DISCUSSION AND ANALYSIS

As noted above, the sole issue in this case is that of the appropriate remedy for the Employer's failure to provide the information which the Union requested relating to disciplinary action taken on August 27, 2013 which was rescinded and re-issued on the following day. It is beyond dispute that the B Team found that the Employer had violated Articles 17 and 31 of the National Agreement. While the Union contends that the B Team additionally agreed that a monetary remedy was in order but could not agree on the amount, the Arbitrator believes that the Union is misinterpreting the B Team decision. Under the Resolve portion of the decision the B Team stated that "The Union advanced that ... a compensatory remedy is in order. It is with

respect to this portion of the requested remedy that the Team was unable to reach a resolution." This is followed by a position from the Management representative that clearly indicates disagreement with a monetary remedy of any kind, contending that the Union has failed to meet its burden of proof to demonstrate the propriety of such a remedy. A careful reading of the language used in the B Team decision indicates that the parties disagreed on the issue of a monetary remedy, not just the amount. The Arbitrator therefore finds here, that the issue presented is not solely an issue of how much of a monetary remedy is warranted, but rather whether such a remedy is warranted, and if so, in what amount.

The Employer argues that the Union's requested remedy is punitive and therefore inappropriate, stressing that Supervisor Montano's mistake was an honest one, and not egregious as the Union contends. The Arbitrator cannot however, accept that the mistake was innocent. Rather, it appears to be more an apparent attempt to avoid providing the information by playing with semantics. While the Letter of Warning had been rescinded, the exact same Letter was issued one day later concerning the same incident. Clearly Montano, rather than making an innocent mistake, was attempting to make the Union jump through additional hoops by requesting the same information twice within two days. There undoubtedly existed information regarding the discipline, whether it was issued on August 27 or August 28. Montano chose to refuse to supply the information solely because he had opted to rescind and re-issue the discipline. This was clearly a choice which effectively made investigation of the grievance more difficult. He was fully aware of the Union's request, the information existed, and yet he refused to supply it based upon a hyper-technical argument concerning the date of issuance of the discipline. This conduct was simply unreasonable and indicative of an attitude of confrontation rather than cooperation.

There is no question but that this incident was only one of many in which the Rockville Management has failed to provide requested information as required. The moving papers contain more than one hundred settlements between the parties as well as numerous B Team resolutions concerning this issue. While the Union contends that JCAM Section 41-15 dictates that under these circumstances an escalating monetary remedy is deemed by the parties to be appropriate, this section does not appear to be applicable to the situation presented here. Section 41-15 of the JCAM is included as part of a discussion of seniority as it relates to hold-downs and opting. While the section on which the Union relies is entitled "Remedies and Opting", its placement in the JCAM would indicate that its intention was that it be applicable to situations involving repeated violations of the opting provisions. Had it been intended to apply to any and all repeated contractual violations, it would more appropriately have been included in either Article 15 or Article 31. While it is impossible to glean the intention of the parties in negotiating this language of the JCAM without having some evidence regarding bargaining history or interpretation by a National Award, it would appear, based upon its placement in the JCAM, that it is not applicable to the instant case.

That being said, it is clear that these parties have considered and acknowledged that there are occasions in which an award of an escalating monetary remedy is appropriate in order to impress upon management the need for future contractual compliance. In particular, the parties have utilized this approach in instances wherein there have been repeated and egregious instances of noncompliance. This concept has further been accepted by a number of regional arbitrators. Most importantly, the parties in the Rockville installation have accepted the remedy as appropriate. The moving papers demonstrate that these parties have applied an escalating

monetary remedy for repeated failures to provide information as required, slowly escalating amounts over the course of ten years, from $50.00 in 2003 to $700.00 in 2013. The Rockville installation has undoubtedly paid the Union and individual grievants at least several thousand dollars for repeated violations over that time period.

The disconcerting part of this, however, is that despite the significant payments over the years intended to encourage compliance, the Employer has continued to serially violate the contractual requirements for the providing of information. While the Employer claims innocent mistake, the facts of this case, together with the sheer number of violations, indicate otherwise. This is not a case of a minor violation such as providing the information in thirty-six rather than twenty-four hours. Rather, it is a case where information was not provided at all.

Under the circumstances presented in this case, the Arbitrator is hard pressed to believe that an additional monetary remedy will be effective to obtain future compliance. On the other hand, there is no doubt a cost to the Union to repeatedly process grievances to obtain information required to represent the membership. Not only is there a cost in terms of the credibility of the Union in the eyes of its membership, but there are real monetary costs in time spent and office supplies and equipment used by Union officers and advocates in preparing, processing and arbitrating grievances. While these expenses are ordinarily the cost of doing business, they are costs which would and should not be incurred were the Employer to comply with information requests as required. The repeated and intentional failure to supply information dictates that the Union be compensated in this case. Additionally, in an attempt to impress upon supervision that the contractual requirements must be complied with and information must be supplied in a timely fashion, all members of management within the Rockville installation should be provided with a

copy of this Award, instructed to read it in its entirety, and instructed expressly that they must comply with information requests as required by the National Agreement and the local policy.

AWARD

The Grievance is sustained. The Union shall be paid a compensatory remedy in the amount of $700.00. All management personnel within the Rockville installation shall be provided with a copy of this Award with instructions to read the Award as well as Articles 17 and 31 of the National Agreement, and shall be expressly instructed to comply with information requests in a timely manner pursuant to the local agreement in the future. The Arbitrator will retain jurisdiction for thirty days to resolve issues regarding this remedy.

Dated: May 15, 2014.

Tobie Braverman, Arbitrator

UNITED STATES POSTAL SERVICE

ACCOUNTING SERVICE CENTER, 2825 LONE OAK PARKWAY, EAGAN MN 55121-9640

Rec'd 6-18-2014 Kenneth Lord

K11N-4K-C 13331059

06-06-2014

NALC
BRANCH 3825
P.O. BOX 1398

ROCKVILLE MD 20849-1398

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[redacted]

0103705638

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NALC
BRANCH 3825
P.O. BOX 1398
ROCKVILLE MD 20849-1398

[redacted]

JP Morgan Chase
Syracuse NY
5801 E. Taft Road
North Syracuse NY 13212-2710

Void After One Year

TREASURER

REGULAR POSTAL PANEL

In the Matter of the Arbitration **between** **United States Postal Service** **and** **National Association of Letter Carriers, (AFL-CIO)**	**Grievant: Class-Action** **Case No: K11N-4K-C 13380538 501352119**

OPINION AND AWARD: Dr. Andrée Y. McKissick, **ARBITRATOR**

APPEARANCES:

For Management: Phyllis Y. Busch, Labor Relations Specialist
Janelle Wood, Management Technical Assistant
United States Postal Service Advocate
Capital District Human Resources
ATTN: Manager Labor Relations
900 Brentwood Road, NE, Room 2612
Washington, DC 20066-9998

For Union: Alton R. Branson
NALC Advocate, Region 13
5929 Surratts Village Drive
Clinton, Maryland 20735

DATE(S) OF HEARING: **April 11, 2014**

LOCATION OF HEARING: **500 N. Washington Street**
Rockville, Maryland 20850

AWARD: **This class action grievance is sustained on the issue of remedies. Based upon the admission of violations regarding the "Rockville Information Request Policy" by the Service, a seven hundred ($700) dollar compensatory damages award shall be awarded to the Union for these continuing violations of Article 15, Section 1; Article 17, Section 3; and Article 31, Section 3 of the Agreement.**

DATE OF AWARD: **May 3, 2014**

STATEMENT OF FACTS

The basis of this class action grievance focuses upon the "Rockville Information Request Policy." (Joint Exhibit II at 14.) In this policy, the Service must provide the Union with the information requested within twenty-four (24) hours. (See Joint Exhibit II at 99-100.) The Service concedes that the information requested was not forthcoming, as promised. (See Joint Exhibit II at 4.)

The record reflects that this incident occurred on August 21, 2013. Informal Step A Meeting was initiated on September 9, 2013. Formal Step A was held on November 1, 2013. The Step B decision was made on December 30, 2013. Upon impasse, it comes before this Arbitrator on the Regular Arbitration Panel of the National Association of Letter Carriers (NALC) and United States Postal Service (USPS) in Rockville, Maryland.

STIPULATED ISSUE:

Whether or not the Collective Amount of damages of seven hundred (700) dollars is appropriate for the conceded violations of Article 15, Section 1; Article 17, Section 3; and Article 31, Section 3 of the Agreement as per the "Rockville Information Request Policy"?

PERTINENT PROVISIONS

COLLECTIVE BARGAINING AGREEMENT
(Effective 2011-2016)
(Joint Exhibit I)

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE

Section 1. Definition
A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

ARTICLE 17
REPRESENTATION

Section 3. Rights of Stewards
When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and such request shall not be unreasonably denied.

In the event the duties require the steward leave the work area and enter another area within the installation or post office, the steward must also receive permission from the supervisor from the other area he/she wishes to enter and such request shall not be unreasonably denied.

The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.

While serving as a steward or chief steward, an employee may not be involuntarily transferred to another tour, to another station or branch of the particular post office or to another independent post office or installation unless there is no job for which the employee is qualified on such tour, or in such station or branch, or post office.

If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted. All polygraph tests will continue to be on a voluntary basis.

ARTICLE 31
UNION-MANAGEMENT COOPERATION

Section 3. Information
The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or designee. All other requests for information shall be directed by the National President of the Union to the Vice President, Labor Relations.

Nothing herein shall waive any rights the Union may have to obtain information under the National Labor Relations Act, as amended.

POSITIONS OF THE PARTIES

It is the Service's position that such a written policy never existed. Instead, there may be a non-viable, tacit agreement at best. However, the Service argues that there is no written rule or regulations which support the Union's version of events.

In regard to the Meeting Notes, the Service argues that these notes cannot be utilized to show an Agreement between the Parties, as the Union asserts.

In regards to remedy, the Service argues that a seven hundred ($700) dollar request is punitive, even if the Arbitrator sustains this grievance. Instead the Service argues in the alternative that if this grievance is sustained, a remedy of a cease and desist order is the appropriate remedy.

On the other hand, the Union points to the specific policy agreed upon and evidenced in the grievance papers, Joint Exhibit II. The Union also argues that this policy has been breached on many occasions. Moreover, the Union also asserts that it has waived the penalty in many prior grievances in the past to promote a harmonious relationship with the Service. Nonetheless, the Union maintains that a deterrent to these repeated violations is the only remedy to deter these continuous and ongoing violations. Thus, the Union requests a remedy of seven hundred ($700) dollars, as the appropriate remedy under these circumstances.

FINDINGS AND DISCUSSION

After a careful review of the record in its entirety, and after having had an opportunity to weigh and evaluate the testimony of witnesses, this Arbitrator finds that this grievance should be sustained for the following reasons.

First, Joint Exhibit II at 98-100, clearly establishes an agreement between Officer- In-Charge Lakhjit Dhemar and National Association of Letter Carriers (NALC) President Ken Lerch, who jointly agreed that the "Rockville Information Request Policy" will provide information requested within twenty-four (24) hours. (Joint Exhibit II at 96.)

Second, Joint Exhibit II at 4, the Service admits that it violated this policy. Thus, there was a breach. Based upon this breach, the Union requests compensatory damages as a deterrent to dissuade future behavior.

Third, although the Service points out that the "Minutes of the Good Faith Meeting" are not viable, this Arbitrator must disagree. Here, the "Rockville Information Request Policy" was incorporated in the Minutes of July 31, 2008. (See Joint Exhibit II at 98-100.) It was duly signed and adopted. Accordingly, the Agreement cannot now be challenged on a substantive basis.

Fourth, NALC-President Lerch explicitly testified that a plethora of grievances were presented to the Service regarding this same issue. (See Joint Exhibit II at 62-95.) However, he also testified and identified that many were waived in the interest of a harmonious relationship. (Joint Exhibit II at 62-95.) He also pointed out that due to these ongoing violations a compensatory remedy is required. In support of this position, he points to a line of awards.

Fifth, due to the egregious nature of these continuous violations, this Arbitrator finds that a seven hundred ($700) dollar violation to be appropriate as a deterrent to further violations. The following arbitrators concur with this Arbitrator's awards. (See In the Matter of Arbitration between United States Postal Service (USPS) and the National Association of Letter Carriers (NALC), Grievant: P.B., No: J01N-4J-C-00014967, Arbitrator Walt, March 20, 2008; also see Arbitrator,Dr. Monat, In the Arbitration between USPS and the NALC, Grievant P.O., No: E06N-4F-11401751, March 29, 2012.) The Service did not submit any cases on this issue.

AWARD

This class action grievance is sustained on the issue of remedies. Based upon the admission of violations regarding the "Rockville Information Request Policy" by the Service, a seven hundred ($700) dollar compensatory damages award shall be awarded to the Union for these continuing violations of Article 15, Section 1; Article 17, Section 3; and Article 31, Section 3 of the Agreement.

May 3, 2014

ARBITRATOR

C:\USPS-NALC(Class-Action) 04-2014.docx

UNITED STATES POSTAL SERVICE

ACCOUNTING SERVICE CENTER, 2825 LONE OAK PARKWAY, EAGAN MN 55121-9640

Rec'd 6-2-2014
3:40 pm
Kenneth Lerch

05-29-2014

NALC
BRANCH 3825
PO BOX 1398
ROCKVILLE MD 20849-1398

Arbitrator - Dr. McKissick
Local grievance # 50-13-SL 119
Rockville Information Request Policy

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JP Morgan Chase
Syracuse NY
5801 E. Taft Road
North Syracuse NY 13212-4710

$ 700.00

VOID AFTER ONE YEAR

TREASURER

MP

REGULAR ARBITRATION

In the Matter of the Arbitration Between	)	Class Action
UNITED STATES POSTAL SERVICE	)	P.O.: Derwood Delivery Unit
And	)	USPS#: K11N-4K-C 13377363
National Association of Letter Carriers, AFL-CIO	)	DRT#: 13-291597
	)	Union#: 55-13-SL-19

BEFORE: Arbitrator Kathryn Durham, J.D.,P.C.

APPEARANCES:

For the USPS: Karen K. Bowie, Labor Relations Specialist
For the NALC: Alton R. Branson, NALC Advocate

Place of Hearing: Rockville, MD
Date of Hearing: March 21, 2014
Date of Award: April 30, 2014
PANEL: Capital Metro District

AWARD SUMMARY

The grievance is sustained. Management violated Articles 15 and 41 of the National Agreement when it failed to pay Carrier Thomas Yu pursuant to Arbitrator McKissick's June 17, 2013 award, Case No. K06N-4K-C 12199770, within a reasonable time. The remedy is that Management shall pay the local Union, NALC Branch 3825, the sum of $420.00 in reimbursement to the local for the expense of the advocate's time spent bringing a grievance.

Kathryn Durham

Kathryn Durham, J.D.,P.C.

I. ISSUE

Whether Management violated Articles 15 and 41 of the National Agreement when it failed to pay Carrier Thomas Yu pursuant to Arbitrator McKissick's June 17, 2013 award, Case No. K06N-4K-C 12199770, within a reasonable time. If so, what is the appropriate remedy?

II. FACTS/POSITIONS OF THE PARTIES

On June 17, 2013, Arbitrator Andree Y. McKissick issued an award in Case No. K06N-4K-C 12199770, holding that Management violated Article 41.1.A.1 of the National Agreement by failing to comply with the 14-day posting requirement. As a remedy, Arbitrator McKissick directed that "a nominal amount of twenty (20) dollars shall be assessed, for each day past fourteen (14) days" be paid to the successful bidders on Route 055018. The successful bidder of that route was Thomas Yu.

Management did not make the $20/day payment to Mr. Yu, and the Union filed a grievance for non-compliance. The parties partially resolved the grievance at Formal A on October 3, 2013, agreeing that the Postal Service would pay the sum of $3,200 to Mr. Yu. The parties impassed the Union's request for additional sums: (1) an additional $150 lump sum to Mr. Yu due to delay in payment on the McKissick award, plus ten dollars per week for each week the payment is further delayed; and (2) a payment to NALC Branch 3825 in the amount of $750, to defray the costs of having to grieve untimely pay adjustments.

When Management failed to make the payment to Carrier Yu as directed by the Formal A resolution, the Union filed a non-compliance grievance, K11N-4K-C 14034414. That grievance was resolved at Step B on January 24, 2014, with the DRT finding that "Management violated the National Agreement as well as previous Step B decisions and numerous grievance resolutions when they failed to process the mutually agreed upon pay adjustment for Carrier Yu in a timely manner." The resolution provided that Management would pay Mr. Yu the sum of $3,350, which included the initial $3,200 as ordered by the Formal A resolution,

plus a $150 lump sum for "the long documented history of similar violations in the Rockville installation."

Despite the Step B resolution regarding payment of $3,350 to Mr. Yu, the Postal Service did not process that payment through Eagan until March 2014. An Eagan representative testified at the hearing that a payment of $3,350 to Mr. Yu was processed on March 18, 2014 – three days prior to the hearing of this matter. The Union had already moved this grievance to arbitration, and the hearing was only days away, when the payment was finally processed. As of the hearing, there was no indication that the Grievant had received the payment.

At the hearing, Local President and Advocate Kenneth Lerch testified about numerous Step B decisions and resolutions from the Rockville installation, in which the Postal Service agreed to pay lump sum payments to individual employees (but not to the Union itself) for non-compliance with prior settlements, resolutions and/or awards regarding untimely pay adjustments. He also introduced a number of regional arbitration awards (not from the Rockville installation) in which arbitrators included a payment to the Union as part or all of the remedy for Management's repeated failure to implement a grievance settlement or award. Finally, Mr. Lerch pointed to various memoranda issued by USPS Labor Relations headquarters, in which Area managers were reminded that arbitration awards and grievance settlements are final and binding, and that compliance with such is not an option.

Union Position

The Union argues that Management has repeatedly violated Article 15 of the National Agreement by failing to comply with settlements, resolutions and awards regarding untimely pay adjustments. It contends that a payment to the Union is necessary in order to defray the costs that the local branch was required to take in order to enforce awards and agreements, and to impress upon area Management that it cannot violate grievance settlements without consequence.

The Union urges that the Arbitrator has the inherent authority to fashion an appropriate remedy for breaches of the National Agreement, even where the contract does not provide a specific remedy for the violation at issue. It cites Case No. NC-S-5426, a regional award by Arbitrator Howard Gamser.

Management Position

Management's arguments were limited to those made at the local level because new argument is not allowed at arbitration. Admissible argument was that the Union has not met its burden to show that a payment to the local branch is compensatory rather than punitive. It claims that the remedy requested by the Union would be a windfall.

Management insists that settlement agreements, including DRT resolutions, are not final and binding, even within the same installation. It relies on an award by Arbitrator Robert Steinberg, Case No. E06N-4E-C 08175058.

III. OPINION

The facts of this case are undisputed. Twice – once by Arbitrator McKissick and again by the DRT[1] – Management was directed to pay a remedy to Carrier Yu for failure to comply with the 14-day posting requirement in Article 41. In order to ensure that Mr. Yu received the payment he had twice been awarded, the Union was required to expend its time and resources to file a non-compliance grievance. Management had no valid justification for its failure to make the payment to Mr. Yu within a reasonable time after receipt of Arbitrator McKissick's award. However, through direct contact with its Eagan, MN office, management made sure the payment was processed just days before the hearing of this case.

Management agreed to the remedy requested by the Union to Mr. Yu. The only issue remaining for resolution at our hearing is whether the Union is entitled to an additional remedy for itself. The undersigned finds that it is.

[1] The undersigned is not persuaded by Management's argument that DRT settlements are not final and binding. Certainly they are final and binding with respect to the matter being resolved, as occurred in this case.

As Arbitrator Gamser's award aptly notes, regional Arbitrators have authority to fashion compensatory awards when the contract is silent on the issue of remedy. The only limitation is that such awards must avoid being punitive. Here, the remedy requested by the Union is not punitive. The Union was forced to spend money, time and effort to achieve something that should have been done automatically in a timely manner, but was not. Management's failure to comply with Arbitrator McKissick's award, and the DRT settlement, cost the Union resources unnecessarily.

Mr. Lerch testified that he spent approximately 15 hours preparing this case. Because he is retired from the Postal Service, he was paid by the local Union, at the rate of $28 per hour. This computes to a total of $420. Awarding this amount to the Union is purely compensatory, not punitive. It is not a windfall.

IV. AWARD

The grievance is sustained. Management shall promptly pay the local Union, NALC Branch 3825, the sum of $420.00 to compensate for the local advocate's time spent bringing this grievance. The payment shall accrue interest if not paid within 45 days from the date of this award. Jurisdiction retained over implementation of this Opinion and Award.

Kathryn Durham

Kathryn Durham, JDPC, Arbitrator

UNITED STATES POSTAL SERVICE

ACCOUNTING SERVICE CENTER, 2825 LONE OAK PARKWAY, EAGAN MN 55121-9640

Rec'd 5-30-2014
1:49 pm
Kenneth Lerch

05-21-2014

Arbitrator Kathryn Durham
Local grievance # 55-13-SL19

NALC
BRANCH 3825
PO BOX 1398

ROCKVILLE MD 20849-1398

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50-937/213

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$******420.00

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NALC
BRANCH 3825
PO BOX 1398
ROCKVILLE MD 20849-1398

JP Morgan Chase
Syracuse NY
5801 E. Taft Road
North Syracuse NY 13212-4710

Eric Schafer
TREASURER

MF

VOID AFTER ONE YEAR

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	Grievant: Class Action
between	Post Office: Rockville, Maryland Branch 3825
UNITED STATES POSTAL SERVICE	USPS No.: K11N4KC13294700
	BRANCH GRIEVANCE No.:5413AB003
	NALC DRT No.: 13-285122
and	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	

BEFORE: ARBITRATOR ELLEN S. SALTZMAN

APPEARANCES:

For the U. S. Postal Service: Ms. Jamelle Y. Wood, Labor Relations Specialist and Phyllis Busch, T.A.

For the Union: Mr. Alton Branson, NALC Advocate, Region 13

Place of Hearing: Rockville Post Office, 500 N. Washington Street, Rockville, MD

Date of Hearing: March 19, 2014

AWARD: Sustained

Date of Award: April 20, 2014

PANEL: NALC Region 13/USPS Capital Metro Area Regular Panel

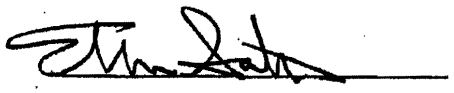
Award Summary

1. The seventy-five (75.00) dollars requested by the Union for the untimely pay adjustment is an appropriate remedy for the Article 15 violation determined by the Step B Team.

2. The seventy-five (75.00) dollar award to the Union for the untimely pay adjustment must be received by the Union no later than May 31, 2014 to avoid an additional penalty.

3. If the Union has not received the seventy-five (75.00) dollars by May 31, 2014, Management will pay an additional penalty in the amount of $5.00 per day beginning June 1, 2014.

4. If the Union has still not received the seventy-five (75.00) dollars by June 30th, 2014, beginning July 1, 2014, the penalty will be increased to $10.00 per day until such time local management pays the $75.00 dollars and the total of the additional penalties.



Ellen S. Saltzman, Esq.

In accordance with the 2011 National Agreement between the National Association of Letter Carriers & the United States Postal Service, (Joint Exhibit No. 1), the Undersigned was selected to hear and finally decide the Union's claim that a monetary remedy is warranted in this matter.

The issue as *originally* stated in the Step B Decision, (Jt. 2, p. 33): Did Management violate, but not limited to, Article 15 of the National Agreement when they failed to comply with grievance settlement #50-12-SLO9 in a timely manner, and if so, what is the appropriate remedy.

Decision: The Step B Team has decided to RESOLVE this case in part and declare an IMPASSE in part.

Resolved: The Team has determined that Management did violate Articles 15 of the National Agreement in this instance.

Impassed: The Team was unable to reach common ground in their discussion of an appropriate remedy for the Article 15 violation found herein. On the issue of appropriate remedy, the Step B team has decided to declare an Impasse.

Accordingly, the only remaining issue is that of appropriate remedy. At the hearing the parties stipulated to the following issue:

> Is the seventy-five (75.00) dollars requested by the Union for the untimely pay adjustment the appropriate remedy for the Article 15 violation determined by the Step B Team?

The parties were represented and were afforded a full and fair opportunity to present relevant evidence, to present witnesses and to cross-examine. The witness was sworn. Witnesses for the Union: Alton Branson, NALC Advocate and Formal Designee and Kenneth Lerch, President, NALC Branch 3825. There were no witnesses for Management.

The Arbitrator has given full and fair consideration to all arguments

made by the parties and all facts of record and all cited contractual provisions and submitted Awards and Step B Decisions in deciding this grievance.

Based on all of the evidence presented and arguments made, the Arbitrator renders this Opinion and Award.

RELEVANT CONTRACT PROVISIONS

Articles 15 and 19

BACKGROUND

This grievance was initially filed to protest management's violation of Article 15 and 19 of the National Agreement by its failure to effectuate a timely pay adjustment to the Union. The B Team resolved as stated in pertinent part (Jt.2, pg. 4):

> After carefully reviewing all the facts and documentation in this case, the Team finds that in this instance, Management did violate the National Agreement. In a contractual case such as this, the "burden of proof" rests with the Union to provide sufficient documentation to support that some provision(s) of the National Agreement has been violated. It was undisputed in the file that the payments granted in grievance #54-13-RW033 on April 26, 2013, were not paid. The Team finds this lengthy delay to be outside of the parameters of being n a "timely manner" and thus, this determination forms the basis for the finding of a violation of the National Agreement in this instance.
>
> The task then becomes that of an appropriate remedy for the violation. It was undisputed that the payment has not been completed. The Union advanced that due to the ongoing history of Rockville Management failing to render payments in a timely manner, and given the previous remedies granted for

> similar violation. It is with respect to an appropriate remedy that the Team was unable to reach a resolution. Relevant to the appropriate remedy for the present violation, the Team has reached an IMPASSE...

The remedy is the remaining issue and the only issue of this arbitration. The Incident date is April 26, 2013. Informal Step A of the grievance was initiated on July 24, 2013; the Step A Formal meeting was initiated on August 6, 2013; the grievance was received at Step B on August 19, 2013 and the Step B Decision of RESOLVE/IMPASSE is originally dated September 30, 2013.

Another STEP B Decision dated October 10, 2013 followed this. This Step B decision is a revision of the Resolve/Impasse decision decided on September 20, 2013. The Step B Team in that decision indicated that Management had not included any contentions and upon further review, the parties agreed that Management did in fact include contentions. Based upon these contentions, the parties amended this decision and the Step B Representative amended their positions accordingly. The Step B Team decisions on both dates are identical.

CONTENTIONS OF THE UNION

The Union believes it has met its burden of proof and the remedy should be granted due to the continuous violations in the past and present. As agreed by the parties at the national level, monetary remedies are appropriate where the record is clear in circumstances where the violation is egregious or deliberate or after local Management has received previous instructional resolutions on the same issue and it appears that a "cease and desist" remedy has not been sufficient to insure future contract compliance. Additionally, the Agreement states that the parties may wish to consider a further, appropriate remedy to the injured party to emphasize the

commitment of the parties to contractual compliance.

The Union has shown that Management has violated Article 15 of the National Agreement and precedent setting Step B Decisions on a number of occasions and has also done so on pre-arbitration settlement agreements, Step B Decisions and Formal Step A grievance resolutions on the very same issue. None of the previous resolutions has fixed the problem with management making untimely pay adjustments.

The Union believes the remedy requested is reasonable and necessary to impress upon Management that it must abide by the National Agreement and the instructions from Mr. Potter and Mr. Donahoe regarding the responsibility to comply with arbitration awards and grievance settlements and adherence to the provisions of our labor agreements.

The Union requests that the Arbitrator disregard the new arguments raised by Management in its' opening statement as they were not raised prior to this hearing.

The Union believes the remedy requested is reasonable, necessary and not punitive. The Union respectfully requests that the Arbitrator grant the Union's requested remedy.

CONTENTIONS OF MANAGEMENT

At the hearing, Management raised contentions that were objected to by the Union because they were not contentions that were timely made and were not contained in the revised Step B Decision or in the Formal A Contentions. Article 15.2 requires that the parties at Formal Step A make contentions. The JCAM 15.2 Step B (c) requires that the written Step B joint report shall state the reasons in

detail and shall include a statement of any additional facts and contentions not previously set forth in the record of the grievance as appealed from the Formal Step A. The Step B team will attach a list of all documents included in the file.

For these reasons, I am going to consider the contentions as stated in the Formal A Decision Letter, dated July 17, 2013, (Jt.2, pg. 110-111) and as included in the Step B decision, (Jt.2., pg. 4.) which was revised to include Management Contentions and presented by Management's Advocate:

> Management contends that there was no violation of Article 15 and 19 on a repeated basis by Management staff currently assigned to the location and has worked with the Union to resolve all matters at the lowest possible level. They maintain that the individuals that they are citing are no longer in the Rockville installation and the Union desires payment for an issue that has never been given the opportunity to correct. They further state that to group all of Rockville together and not to address the facility in itself is unfair.

Additionally, Management asserts that it will not offer excuses as to why it took six (6) months to process the payment but asserts that the Union could have negotiated an effectuation date during the settlement process at Formal A level and failed to do so. Management also states that this egregious payment that the Union is requesting will provide an unjust enrichment to the Union as the Union is already paid dues from its members to cover various costs including the "administrative" cost of filing grievances. Management's position is that the Union has already been improperly paid $550.00 from the Postal Service to "defray administrative cost"; and have not reduced the amount of money they collect from their members. Management asserts that this egregious payment would provide an unjust enrichment to the Union.

Management insists that this should be considered a punitive request and be

denied. For these reasons, Management requests that the Arbitrator deny this grievance in its entirety and deny the Union its requested remedy.

DISCUSSION & OPINION

In this contractual grievance, the Union bears the burden of proof. Based on the evidence and testimony, the Union has upheld its' burden of proof. The Union has demonstrated successfully that a compensatory remedy is appropriate to emphasize the commitment of the parties to contract compliance and to compensate the Union for the additional time, effort and costs of arbitration that would not have been necessary if Management honored it's Formal A Agreement, (Jt.2, p.19)

1. THE CONTRACT VIOLATION

The B Team decided that Management did violate the National Agreement by not paying the payment of $550.00 it had agreed to pay on April 26, 2013 in the Formal Step A Resolution, (Jt.2, pg.19) signed by Kenneth Lerch, Union Representative and Larry Martin, then Station Manager in Potomac. The Formal Step A Resolution states in part:

> Management violated the Rockville Union Time Policy on January 19, 2013. Hundreds of settlements on this issue have been signed at Step B, Formal A and Informal A including several agreements made at Labor/Management meetings which included signed minutes.
> Consistent with the five arbitrations cited by the Union in this grievance concerning non-compliance, NALC

> Branch 3825 is hereby paid a lump sum of $550.00 to defray the administrative costs in handling this repeat violation.

2. MANAGEMENT'S MISSED OPPORTUNIES TO RESOLVE THIS GRIEVANCE AT THE LOWEST LEVEL

When the Union had not received payment on the above by July 24, 2013, it filed another grievance, which is this instant matter. While going through the required Steps of this second grievance procedure, The Union offered to withdraw the grievance and the request for the $75.00 *if* Management would pay the $550.00 it had agreed to pay in the April 26, 2013 Formal A Resolution. Management refused and the grievance proceeded. In fact, even at the hearing, Management was still arguing that it should not have to pay the $550.00.

Article 15, Section 3 of the National Agreement expects that good faith observance by representatives will result in the resolution of grievances at the lowest possible step. In this matter, Management refused two opportunities to resolve this matter at the lowest possible steps. The first was by not timely paying the Formal Step A Resolution dated April 26, 2013. The second was by not agreeing to pay the $550.00 during at the Steps of this instant grievance.

Management has also failed to adhere to the instructions from high ranking USPS Officials. For example, Former USPS Postmaster General John E. Potter instructed in his letter dated February 23, 2009, (Jt.2, p.20) that we must adhere to the provisions of our labor agreement as they are our word and our pledge of fairness to our employees. Then Vice-President, Labor Relations, Mr. Potter wrote, (Jt.2, p.22) instructed Human Resource Managers, in pertinent part:

> It has been brought to our attention that we have an increasing problem with postal managers not complying with arbitration awards and grievance settlements,

especially back pay awards.

> Arbitration awards and grievance settlements are final and binding. Compliance is not an option, but a requirement... No manager or supervisor has the authority to override an arbitrator's award or a signed grievance settlement.
>
> Please take affirmative steps to ensure that all arbitration awards and grievance settlements are complied with in a timely fashion. Failure to do so only damages our credibility with both our employees and our unions.

On May 31, 2002, Patrick R. Donahoe, then Chief Operating Officer and Executive Vice President of the USPS wrote to Vice Presidents, Area Operations Manager Capital Metro Operations on the subject of Arbitration Award Compliance, (Jt.2, pg. 21) in part:

> ...While all managers are aware that settlements reached in any stage of the grievance/arbitration procedure are final and binding, I want to reiterate our policy on this subject.
> Compliance with arbitration awards and grievance settlements is not optional. No manager or supervisor has the authority to ignore or override an arbitrator's award or a signed grievance settlement. Steps to comply with arbitration awards and grievance settlements should be taken in a timely manner to avoid the perception of non-compliance, and those steps should documented...

Management did not present any testimony or evidence of any change in the above instructions and positions of Management Officials referred to within which could justify its' disregard for the Formal A Agreement to timely pay the $550.00.

3. HOW LONG SHOULD IT HAVE TAKEN MANAGEMENT TO PAY THE UNION THE $550.00?

The Union waited three months for Management to pay the $550.00 prior to filing this grievance. Management offers no excuse that it could not have been timely paid. In fact, the record indicates otherwise.

The record reveals that Management did not process the payment until *after* the First Step B Decision date of September 30, 2013, (Jt. 2, p.7). Management first initiated the payment of $550.00 on October 3, 2013, (Jt.4). On October 3, 3013, Supervisor Customer Support, Kristy Park, completed a two page Prearbitration or Agency Settlement Worksheet instructing that $550.00 be paid to NALC Branch 3825. The check was issued on October 11, 2013. In sum, it took less than ten days for the check to be issued.

4. THE HARM

Documented above is that local management did not honor the Formal A Agreement. In addition to the negatives of these actions cited by Messrs. Potter and Donahoe, the Union suffers increased costs by the filing of repetitive grievances as does Management. Management's failure to make timely payment as the result of a Formal A Resolution resulted in a waste of money, people time, energy, and resources. Additionally, by not honoring the agreement, there can be damage to the parties' relationship. The Union also feels it suffers harm to its image as well as its relationship with the employees it represents whenever Management fails to keep its commitments.

5. PRIOR HISTORY AND THE APPROPRIATE REMEDY

The Union has offered into evidence a packet of STEP B Decisions, (Union

1), all from the Rockville installation. The packet contains recent cases concerning Management's failure to implement pay adjustments and the remedies awarded by the Step B Team.

For example, in USPS GATS # K11N-4K-C 13299950, Branch Grievance # 53-13-KA48 decided 10/9/2013, the Step B team granted an additional lump sum payment of $150.000 to L Barksdale in consideration of the long documented history of similar violations in the Rockville Installation. The Step B team explained why:

> As it pertains to the additional lump sum payment to the Grievant due to the ongoing issues with Rockville Management falling to timely implement pay adjustments and the subsequent necessity to file this instant dispute to obtain compliance; the file contained 200 +/- pages of previous informal and Formal Step A settlements, Step B decisions and Pre-Arbitration agreements where the parties 1) agreed to similar violations; 2) gave "cease and desist' directives and 3; granted lump sum payments up to $125.00 as remedy. These settlements also include Step B Team warnings that continued non-compliance may result in additional remedies to ensure contract compliance.
> The Team concurs that these settlements are persuasive that Rockville Management is fully aware of their obligation to implement pay adjustments in a timely manner, yet similar violations continue even after warnings of additional remedies.

There is no specific contract language prohibiting monetary awards. Step B Teams as well as Arbitrators have issued monetary awards in situations such as this where there are continuous violations both past and present in order to encourage contractual compliance in the future.

IN CONCLUSION

The Union has upheld its' burden to prove that a monetary award of seventy-five ($75.00) dollars is appropriate in this matter. Local Management's actions in this matter are deliberate. Local Management had opportunities to correct its' failure to honor its' Formal A Resolution and failed to do so. If it had done so, it could have avoided the monetary award. The record is clear that this is a long standing problem and local management's behavior is repetitive and deliberate. When reviewing the entire record presented before this Arbitrator, local Management's actions are egregious.

The monetary award is meant to be corrective and to encourage contractual compliance. The Arbitrator was presented by the Union with a packet of Arbitrator's decisions with monetary awards in similar situations. In the same way that discipline is meant to be corrective and is progressive if necessary, so should monetary awards be in these situations. The many prior monetary remedies for untimely pay adjustments have been $75.00 and higher.

The Union has requested a $75.00 monetary remedy and I grant it for the failure of local Management to not abide by the Formal A Resolution. This monetary remedy will only partially compensate the Union for the unnecessary expenses, time and people efforts all necessary because of local management's failure to honor its own Formal A Resolution and timely issue the pay adjustment.

As evidence, (Jt.4), has demonstrated how much time it takes to have a check issued, I will be requiring a date certain by which the Union must receive this monetary award. I will include time for Management to receive my award and three (3) times the ten (10) days Management demonstrated it took to have the check issued. If the monetary award is not received by this date certain, then there

will be an additional penalty. The additional penalty is intended to add incentive to encourage contractual compliance for Management to make timely payments and to hopefully avoid a further grievance on this matter.

Therefore, based on the facts and circumstances of this particular case, the Undersigned issues the following award:

AWARD

1. The seventy-five (75.00) dollars requested by the Union for the untimely pay adjustment is an appropriate remedy for the Article 15 violation determined by the Step B Team.

2. The seventy-five (75.00) dollar award to the Union for the untimely pay adjustment must be received by the Union no later than May 31, 2014 to avoid an additional penalty.

3. If the Union has not received the seventy-five (75.00) dollars by May 31, 2014, Management will pay an additional penalty in the amount of $5.00 per day beginning June 1, 2014.

4. If the Union has still not received the seventy-five (75.00) by June 30th, 2014, beginning July 1, 2014 the penalty will be increased to $10.00 per day until such time Management pays the $75.00 dollars and the total of the additional penalties.

April 20, 2014

Ellen S. Saltzman, Esq.
Arbitrator

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54-13-AB003

05-14-2014

NALC
BRANCH 3825
PO BOX 1398

ROCKVILLE MD 20849-1398

NOT NEGOTIABLE

REMITTANCE ADVICE

NOT

THE ATTACHED CHECK REPRESENTS PAYMENT FOR GRIEVANCE NO. K11N-4K-C 13294700 FOR NALC BRANCH 3825.

IMPORTANT INFORMATION

ANY TAX LIABILITY RESULTING FROM THIS PAYMENT IS YOUR RESPONSIBILITY. THE IRS MAKES THE DETERMINATION ON WHETHER TAXES MUST BE PAID. YOU SHOULD CONSULT THE IRS OR A TAX ATTORNEY TO ANSWER ANY TAX REPORTING QUESTIONS THAT YOU MAY HAVE.

NOT NEGOTIABLE

PAYMENT DATE	PAYMENT AMOUNT	CHECK NUMBER
05-14-2014	$*******75.00	0103695661

Refer inquiries concerning this payment to the Minneapolis Accounting Service Center at the above address, or call the AHD at phone number 1-866-974-2733.

--Separate Along The Perforation--

UNITED STATES POSTAL SERVICE

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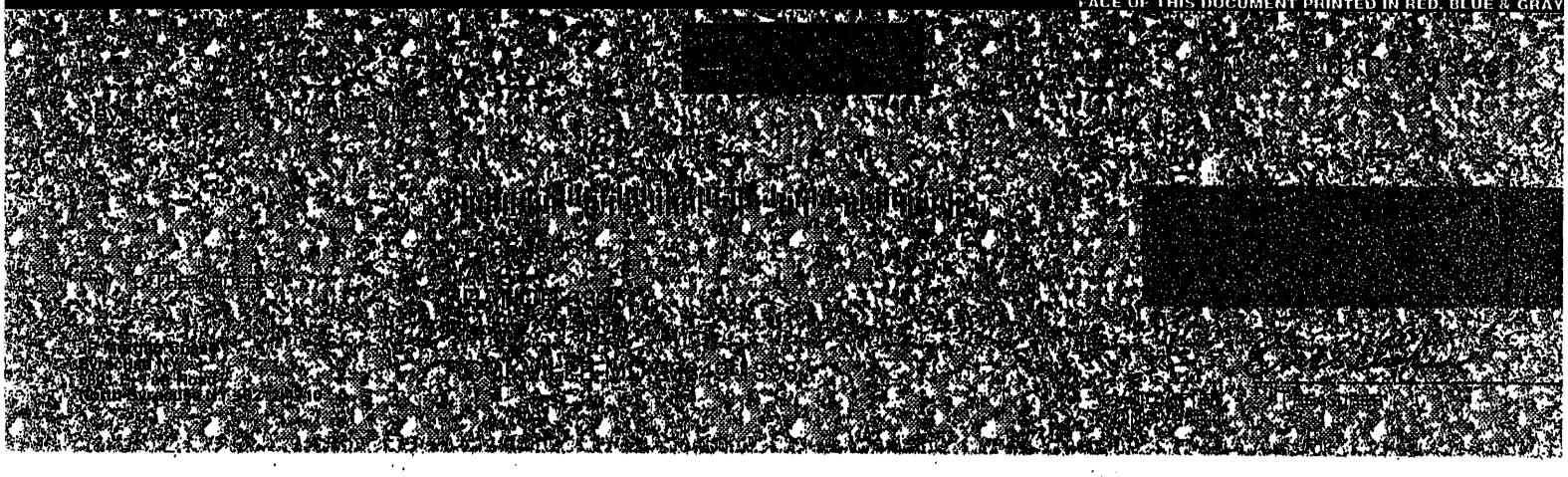

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