

**PRE-ARBITRATION SETTLEMENT AGREEMENT
BETWEEN
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AND THE
UNITED STATES POSTAL SERVICE**

DATE: September 11, 2014

GATS Number: K11N-4K-C 14113973
NALC DRT NO: 13- 301060
NALC grievance No.: 55-14-SL-02
Grievant's Name: Kirkland Walker
Facility: Derwood Station, Rockville Maryland 20855

As a result of our discussion on this date, it is mutually agreed that the above cited grievance is resolved with the following;

It is further agreed that Samuel Montano will no longer (for the remainder of his USPS career), be allowed to supervise City Letter Carriers in the cities represented by NALC Branch 3825 to include, Rockville, Gaithersburg, Germantown and Damascus, Maryland.

By virtue of this full and final settlement agreement, this document shall also serve as the Union's official notification to Management that it is withdrawing this and the following cases listed below:

K11N-4K-C 12413996, Local Number 50-12-SL-189 (NALC)
K11N-4K-C 14022649, Local Number 53-13-KA- 89 (Shah)
KIIN-4K-C 14113977, Local Number 55-14-(16) – KW -238 (West)



Alton R. Branson
Local Business Agent Region 13, NALC



Anita O. Crews
Labor Relation Specialist

Date 9/11/2014

Date: 9/11/2014



STEP B DECISION

Corrected Grievant Name

STEP B TEAM:	DECISION:	IMPASSE
	USPS GATS #:	K11N-4K-C 14113973
USPS REPRESENTATIVE	GRIEVANT:	Walker, K
JAMES C. GRADY	BRANCH GRIEVANCE #:	55-14-SL-02
	BRANCH:	3825
NALC REPRESENTATIVE	INSTALLATION:	Rockville
DELANO M. WILSON	DELIVERY UNIT:	Derwood
	FINANCE NUMBER:	23-7884
DISTRICT GRIEVING:	STATE:	Maryland
CAPITAL	INCIDENT DATE:	01/09/2014
	INFORMAL STEP A INITIATED:	01/25/2014
FORMAL STEP A:	FORMAL STEP A MEETING:	02/07/2014
	RECEIVED AT STEP B:	02/14/2014
USPS REPRESENTATIVE	STEP B DECISION DATE:	03/05/2014
THERESA HUNT	ISSUE CODE:	15.2000
	NALC SUBJECT CODE:	N/A
NALC REPRESENTATIVE	ORIGINAL STEP B RECEIVED DATE:	N/A
ALTON BRANSON	DATE SENT TO ASSISTING TEAM:	N/A

ISSUE: Did Management violate, but not limited to Articles 19 of the National Agreement, (N/A) Specifically, the "Joint Statement on Violence and Behavior in the Workplace," (JSVBW), the Capital District Zero Tolerance Policy," and the M-39 –Section 115.4 and Section 665.24 of the "Employee and Labor Relations Manual", (ELM), on January 9, 2014, and if so, what is the appropriate remedy?

DECISION: The Step B Team has decided to declare an IMPASSE. The NALC National Business Agent may appeal this grievance to arbitration within fourteen (14) days after receipt of this joint report. The Step B Team has considered all arguments and evidence in the case file and any of this material may be cited in the event of arbitration.

DISCUSSION: After carefully reviewing all the facts and documentation in this case, the Dispute Resolution Team was unable to reach common ground in their discussion of this grievance. The Team members could not agree whether or not Management had violated the National Agreement in this instance

EXPLANATION: The Union alleges that on January 9, 2014 Supervisor Samuel Montana violated Article 19 of the National Agreement specifically, the "Joint Statement on Violence and Behavior in the Workplace," (JSVBW), the "Capital District Zero Tolerance Policy," dated January 27, 2014, The M-39 Section 115.4 and Section 665.24 of the "Employee and Labor Relations Manual," (ELM).

The Union Contends. That Supervisor Samuel Montana violated Article 19 of the National Agreement specifically, the "Joint Statement on Violence and Behavior in the Workplace," (JSVBW), the "Capital District Zero Tolerance Policy," dated January 27, 2014, The M-39 Section 115.4 and Section 665.24 of the "Employee and Labor Relations Manual," (ELM), when he became rude and disrespectful and acted in a threatening manner towards the Grievant on January 9, 2014.

On the morning of January 9, 2014, when the Grievant, Kirkland Walker reported to work he was approached by his supervisor Mr. Montana. Mr. Montana immediately confronted the Grievant in a very demeaning manner, asking him why he didn't report to work the day before. As the Grievant tried to explain to him that he was not on the schedule to work and he was not notified by a Management official that he was to work on January 8, 2014. Mr. Montana replied in an angry way that's "Bull Shit", and

continued to talk to the Grievant in a disrespectful manner and instructed him to move to route 55003. The Grievant tried to explain to Mr. Montana that he was on union time, however according to the Grievant Mr. Montana did not care and at this point Mr. Montana became even more agitated and angry and his behavior became more hostile towards the Grievant, as was waiting his turn in line to clock on the route 55003 as instructed, which was not fast enough for Mr. Montana. He ran over to the clock where the Grievant was waiting to clock in, invading his personnel space yelling at him, that he was being placed on 16.7 (Emergency placement) and he needed to clock out or else he was going to call the police.

The Union has provided statements from other employees to support the facts of this case and the account given by the shop steward and the Grievant. In reviewing those statements of the witnesses in the case file clearly supports the Unions position that the Supervisor failed to adhere to the provision of the (JSVBW), the Capitol District Zero Tolerance Policy," in addition to section 115.4 of the M-39 handbook and Section 665.24 of the (ELM). The remarks made by the Supervisor were viewed as being threatening, rude and disrespectful.

Management Contentions:

On January 9, 2014 Mr. Montano claimed he instructed Shop Steward Walker to end his Union time and and to report to route 5503; a few minutes went by and Mr. Montano saw Shop Steward Walker was leaning on the wall by the time clock instead of clocking over to route 5503 as he was told. Mr. Montano instructed Mr. Walker to stop leaning on the clock and move onto route 5503. At this point Mr. Montano and Shop Steward Walker began going backwards and forwards at the time clock. Mr. Montano claims that the Shop Steward became disrespectful and combative. Mr. Montano placed Shop Steward Walker on 16.7 because Mr. Montano claims that he believed Shop Steward Walker was a threat to himself and/ or other employees within the building. Shop Steward Walker was placed and a 16.7 and told to leave the building.

Management insists that the Union has gathered several statements on Mr. Montano, but only two of the statements are about the incident on January 9, 2014. They indicate the 1st statement written by Shop Steward Walker, reflects an exchange between the Grievant and Mr. Montano concerning instructions that was given. Management contends that dignity and respect is to be given and shown by everyone not just Management. They further state that the statement also says that there were several carriers at the clock that witnessed the incident but the statement by Sergio Lemus speaks to Mr. Montano placing the Grievant on a 16.7; it states that Mr. Montano believed that Mr. Walker was being disrespectful. Management indicates the 2nd witness claims that as they were clocking in as 9:30 that they heard Mr. Montano yelling across the workman floor and then approached Mr. Walker and placed him on a 16.7. Management insists that at 9:30 the incident was already over and Mr. Walker had left the post office by that time. In addition, Management asserts that the other statements are based on carriers from another office at Rockville that has no basis on the incident at the Rockville Main on January 9, 2013. Management is asking that each statement be weighed accordingly. Lastly, Management states that Mr. Montano is striving to do better communicating effectively with all employees and that Mr. Montano is strong assertive Supervisor that has improved greatly by coming to Rockville Main post office.

Management is respectful asking The Step B Team not entertain the idea of allowing the Union to dictate who supervise in Rockville.

NALC Representative's Position

The NALC Step B Representative agrees with all contentions, additions/corrections and the remedy requested of the Formal Step A Representative and would like to add the following:

The Union would like to first point out that Mr. Montano did not write a statement on his own behalf. Therefore the statement written by the Grievant must be taken as being truthful.

This Step B Representative has acknowledged the problems encountered by Letter Carriers' when under the supervision of Mr. Montano. The record is filled with similar grievances finding his behavior inappropriate toward employees.

The Step B Team on August 7, 2012, directed that Management implement a procedure to address these issues with Supervision treating employees with dignity and respect in the Rockville Installation. The Record is unclear if any such procedure has been implemented. There is no dispute to any of the witness statements in the file affirming Supervisor Montano's bullying tactics and inappropriate behavior toward Letter Carriers over the course of the last two (2) years or toward the Grievant. The Joint Statement Memorandum affirms in pertinent part:

We also affirm that every employee at every level of the Postal Service should be treated at all times with dignity, respect and fairness. The need for the USPS to serve the public efficiently and productively, and the need for all employees to be committed to giving a fair day's work for a fair day's pay, does not justify actions that are abusive or intolerant. 'Making the numbers' is not an excuse for the abuse of anyone. Those who do not treat others with dignity or respect will not be rewarded or promoted. Those whose unacceptable behavior continues will be removed from their positions. (Emphasis Added)

The Joint Statement Memorandum does not differentiate between Craft Employees' and Management Officials. Had the parties intended for such, it would have been written this way. Simply because the oppressor in this instance is a Management official, does not exonerate him from being subject to the mandate above.

In this instance, Supervisor Montano's behavior is undisputedly volatile and has gone on unaddressed by Management in spite of Step B directives to do so. Therefore, I respectfully submit that the remedy requested is appropriate under the facts and circumstances of this case and in consideration of the violation found.

It seems as though that Supervisor Montano has ignored every attempt to bring to his attention the type of behavior that he continually displays is inappropriate. After reading some of the history of this particular Supervisor, I find his verbiage and actions inappropriate and to be sure, repugnant in a work place setting when voiced by an employee but especially by a member of **Management**. There is little question that they left the listener, particularly a subordinate, with the uncertainty along with unappetizing feeling that a veiled threat has just occurred. Because of the reoccurring nature of these events and the violent atmosphere that constantly seems to go along with this particular Supervisor, no other conclusion can be reached besides that of moving him to a location where he does not Supervise City Letter Carriers.

This Step B Representative would also like to state there is no waiver is granted on any argument or contention made at the Formal Step A Level and they are to be considered alive and valid. violaiion

USPS Representative's Position

The USPS Step B Representative agrees with all contentions, addition/corrections provided by the Formal Step A Representative. The decision by this Step B representative not to address any specific argument or contention of Management presented at Formal Step A does not now constitute a waiver of that position at Step B and those arguments or contentions still remain current and applicable to the case at hand. The following is offered for consideration:

In order to establish the creation of a 'hostile work environment', violative of the JSVBW, it must be demonstrated that a pattern of continuing, unwelcome, behavior that unreasonably interferes with an employee's work performance has taken place. Publication 552 *Management's Guide to Understanding , Investigating and Preventing Harrasment* provides:

Hostile Environment Harassment

Definition and Examples

Hostile Environment Harassment

Hostile environment harassment covers a broad range of behaviors and situations. It is most often defined as a pattern of continuing unwelcome behavior that unreasonably interferes with an employee's work performance or that creates an intimidating, hostile, or offensive work environment.

Examples of behavior that could result in a finding of hostile environment harassment include:

- Using racially derogatory words, phrases, or nicknames.
- Telling jokes or stories with national origin themes.
- Displaying posters or symbols offensive to individuals of a certain race, sex, national origin, religion, etc.
- Making derogatory or intimidating references to an employee's mental or physical impairment.
- Applying pressure for dates.
- Making offensive remarks about a person's looks, clothing, or body parts.
- Whistling or catcalling.
- Using sexual innuendo.
- Spreading false rumors about a person's sex life.
- Blocking a person's path

The case file was absent any indication that the local authorities were called to investigate any threatening behavior. There is no indication that the Grievant filed any charges stemming from the events and there is no evidence that any Equal Employment Opportunities (EEO) harassment charges have been filed by the Grievant against the Supervisor. Given the lack of corroborating evidence, this Step B representative finds that the incidents described on January 9, 2014 do not rise to the level of a violation of the JSVBW.

When one person attempts to charge another person with harassing and abusive behavior in support of violating the "Joint Statement on Violence and Behavior in the Workplace", the burden is heavy on the complainant to prove that the charge exists. This case is lacking any concrete evidence which suggests that Management engaged in anything more than their required duties to supervise the workforce and protect the interests of the Postal Service. In this instant case, the Union has offered as their evidence, prior grievances involving this Management official. Regardless of whether those actions were upheld or not, the grievance process is designed to allow employees an opportunity to defend against the charges. Simply because the Union may have prevailed in some instances, does not equate to a violation of the joint statement in this instance. Other attempts at building a case against Management rely primarily on third party information, innuendos or contrasting statements.

The Union request that Supervisor Montano no longer supervise City Letter Carriers. This Step B Representative argues that the Union cannot dictate what type of disciplinary action to take on Management. Only Management can hire, promote, discipline or take other appropriate and corrective actions with supervisors.

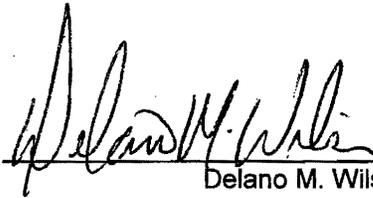
In contractual disputes, the Union bears the burden of proving with evidentiary documentation that a violation of the National Agreement has occurred if they wish to prevail in their complaint. In this instant case, the Union has not met that burden. Therefore, for all the reasons mentioned above, this USPS Step B Representative respectfully requests this grievance be denied

Case File Inventory:

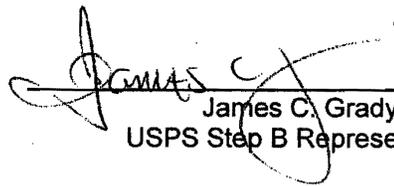
- PS Form 8190 – 1 page*
- Extension Agreements – 2 pages*
- Issue Statement – 1 page*
- Disputed Facts and Contentions – 3 pages*
- Additions and Corrections – 2 pages*
- Union's Requested Remedy – 1 page*
- Union and Managements appointment of Formal – 2 pages*
- Step B Decision #K11N-4K-C 13370711 – 3 pages*
- Step B Decision #K11N-4K-C 14009464 – 3 pages*
- Step B Decision #K11N-4K-C 14025886 – 6 pages*
- Step B Decision #K11N-4K-C 12413996*
- Step B Decision #K06N-4K-C 12241251– 3 pages*
- Step B Decision #K06N-4K-C 12221818– 3 pages*
- Step B Decision #K06N-4K-C 12221816– 3 pages*
- Step B Decision #K06N-4K-C 12221847– 2 pages*
- Formal Step A Resolution #55-14-SL-03 – 1 page*
- Formal Step A Resolution #55-12-KW28 – 2 pages*

Case File Inventory cont'd

Formal Step A Resolution #55-12-SL04 – 1 page
Formal Step A Resolution #55-12-KW75 – 1 page
Informal Step A Resolution #55-12-KW27 – 2 pages
Witness and Grievant's Statements – 25 pages
Arbitration Decision – 15 pages
Additional Pages Added by Union – 9 pages
Managements Disputed Fact and Contentions – 6 pages

 3-5-2014

Delano M. Wilson
NALC Step B Representative

 3-5-2014

James C. Grady
USPS Step B Representative

USPS GATS #: K11N-4K-C 14113973

CC: Step A Parties
District Labor Relations
District Manager
National Business Agent
Capital Metro Labor Relations

"UNION'S REQUESTED REMEDY"

GREIVANT'S NAME: Kirkland Walker

BRANCH CASE NO: 55-14-SL-02

DATE: January 30, 2014

REMEDY REQUESTED BY THE UNION:

Mr. Walker, the Grievant be treated with dignity and respect and the Union is requesting that supervisor Montana cease and desist from threatening, disrespecting and intimidating employees and that he write the Grievant a letter of apology re-confirming his commitment to the (JSVBW) "Capitol District Zero Tolerance Policy," and the M-39 section 115.4 and be removed from supervising letter carriers in the Rockville installation.

ARB

February 6, 2014

Contentions

Grievant: #55-14-SI-02

Union's position:

Union position is supervisor Montano be removed from supervising. Supervisor Montano displayed violence in the workplace.

Management's position:

On January 9, 2014 Mr. Montano claimed he instructed Shop Steward Walker to end his union time and to report to route 5503; a few minutes went by and Mr. Montano saw Shop Steward Walker was leaning on the wall by the time clock instead of clocking over to route 5503 as he was told. Mr. Montano instructed Mr. Walker to stop leaning on the clock and move onto route 5503. At this point Mr. Montano and Shop Steward Walker began going backwards and forwards at the time clock. Mr. Montano claims that the shop steward became disrespectful and combative. Mr. Montano placed Shop Steward Walker on 16.7 because Mr. Montano claims that he believed Shop Steward Walker was a threat to himself and/or other employees within the building. Shop Steward Walker was placed on a 16.7 and told to leave the building.

The union has gathered several statements on Mr. Montano, but only two of the statements are about the incident on January 9, 2014. The 1st statement written I would like to address is by Shop Steward Walker; reflects them going backward and forwards about the instructions that was given. Dignity and respect is to be given and shown by everyone not just management. The statement also says that there were several carriers at the clock that witness the incident, but there is one of the statements by Sergio Lemus speaks on Mr. Montano placing Mr. Walker on a 16.7 it states that Mr. Montano believed that Mr. Walker was being disrespectful. The 2nd witness claims that as they were clocking in at 9:30 that they heard Mr. Montano yelling across the workman floor and then approached Mr. Walker and placed him on a 16.7. I do believe at 9:30 the incident was already over and Mr. Walker had left the post office by that time. The other statements are based on carriers from another office at Rockville that has no basis on the incident at the Rockville Main on January 9, 2013. Management is asking please weigh each statement accordingly. Mr. Montano understands the rule of treating all employees with dignity and respect. Mr. Montano is striving to do better communicating effectively with all employees. Mr. Montano is a strong assertive supervisor that give everything he has to the United States Postal Service he has made some mistakes along the way but has improved greatly by coming to Rockville Main post office.

Management is respectfully asking The Step B Team not entertain the idea of allowing the union to dictate who supervise in Rockville.

“UNION’S CONTENTIONS”

GREIVANT’S NAME: Kirkland Walker

BRANCH CASE NO: 55-14-SL-02

DATE: January 30, 2014

The Union contends that supervisor Samuel Montana violated Article 19 of the National Agreement specifically, the “Joint Statement on Violence and Behavior in the Workplace,” (JSVBW), the “Capitol District Zero Tolerance Policy,” dated January 27, 2014, the M-39 Section 115.4 and section 665.24 of the “Employee and Labor Relations Manual,” (ELM), when he became rude and disrespectful and acted in a threatening manner towards the Grievant on January 9, 2014.

On the morning of January 9, 2014, when the Grievant, Kirkland Walker reported to work he was approached by his supervisor Mr. Montana. Mr. Montana immediately confronted the Grievant in a very demeaning manner, asking him why he didn’t report to work the day before. As the Grievant tried to explain to him that he was not on the schedule to work and he was not notified by a management official that he was to work on January 8, 2014. Mr. Montana replied in an angry way that’s “Bull Shit”, and continued to talk to the Grievant in a disrespectful manner and instructed him to move to route 55003. The Grievant tried to explain to Mr. Montana that he was on union time, however according to the Grievant Mr. Montana did not care and at this point Mr. Montana became even more agitated and angry and his behavior became more hostile towards the Grievant, as he continued to instruct the Grievant to clock onto route 55003 all the while the Grievant was waiting his turn in line to clock on to route 55003 as instructed, which was not fast enough for Mr. Montana. He then ran over to the clock where the Grievant was waiting to clock in, invading his personnel space yelling at him, that he was being placed on 16.7 (Emergency placement) and he needed to clock out or else he was going to call the police. (See Grievant’s Statement)

The Union has provided statements from other employees to support the facts of this case and the account given by the shop steward and the Grievant. In reviewing those statements of the witnesses in the case file clearly supports the Union’s position that the supervisor failed to adhere to the provision of the (JSVBW), the Capitol District Zero Tolerance Policy,” in addition to section 115.4 of the M-39 handbook and section 665.24 of the (ELM). The remarks made by the supervisor were viewed as being threatening, rude and disrespectful.

The behavior of the Supervisor unequivocally violated every contractual provision cited by the Union in this case. The Union has also provided statements from carriers about prior incidences and the behavior of Mr. Montana to show that this has been an ongoing

behavior pattern and management has been allowed him to manage letter carriers with this type of behavior without consequences. It is time that Mr. Montana is held accountable for his action in the workplace.

The Union has provided eight (8) Step B decisions, Four (4) prior Formal Step A Resolutions and four (4) contentions of Management's from other prior case were they have agreed that Mr. Montana's actions in those cases were found to be inappropriate and should not be condoned, yet he's been allowed to continue to work with the prove behavior that's in violation of our National Agreement. This has gone on much to long and must be brought to an end. (See attached statements and prior Step B decision)

In case number (M-01242) of the "Joint Statement on Violence and Behavior in the Workplace", (JSVBW) the parties at the National level have made a serious commitment to the policy. One of their commitments was to "unequivocally do everything within our power to prevent further incidents of work-related violence." While no violence occurred in this situation it certainly had the potential too. The parties also agreed "that "Making the numbers is no excuse for abuse of anyone and those who do not treat others with dignity and respect will not be rewarded or promoted." Based on the statements of the Grievant and the witnesses it is the Union's position that the Grievant was not treated with dignity and respect and the supervisor's approached and his management's style was very unprofessional and should not be tolerated in the workplace.

In the new "Capitol District Zero Tolerance Policy," dated January 27, 2014 the District Manager has pledged that every Postal employee has the right to perform his or her duties in an atmosphere free of threats and threats made directly or indirectly towards any employee, even in jest will not be tolerated. For Mr. Montana the time has come, someone needs to act and act now before something more serious happens.

Section 115.4 of the M-39 handbook, states that it is the responsible of the supervisor to maintain mutual respect on the workroom floor as outlined in the following;

- **115.4 Maintain Mutual Respect Atmosphere**

The National Agreement sets out the basic rules and rights governing management and employees in their dealings with each other, but it is the front-line manager who controls management's attempt to maintain an atmosphere between employer and employee which assures mutual respect for each other's rights and responsibilities.

It is the Union's position that an upper Management official should have taken aggressive steps to correct the actions of the supervisor Montana immediately once they became aware of the situation, but it is obvious for what ever reasons they chose not to. As arbitrator Molly Bowers opine in case number; (K06N-4K-C123671739), that allegations, even if proven, of disrespect, harassing, bullying, violent, and other related behaviors have been taken very serious by both parties for decades. When employees are alleged to have engaged in such behaviors, the Service Management has been quick to put them (Craft Employees) on "Emergency Placement," often with discipline, including discharge, to follow, but not their own (Supervisor or Managers), As demonstrated by

this case, and others, the Service has not been as energetic where allegations of such misconduct, even if proven, are made against Management personnel. This has seriously compromised its position that enforcement of Article 19 of the National Agreement, including the (JSVBW), "Capitol District Zero Tolerance Policy," the M-39 section 115.4 and it must be a two way street. *(See K06N-4K-C123671739).*

Arbitrator Bowers position is on point as it relates to this case, having a supervisor to act as Mr. Montana did defiantly violated the contractual violations cited by the Union and cannot be viewed as conducting himself in a professional manner.

To turn blind eye to what happened in this case would be clear proof of just what arbitrator Bowers stated in the above cited case. In the (JSVBW) the parties also have agreed that while we obviously cannot ensure that however seriously intentioned our words may be, they will not be treated with winks and nods, or skepticism, by some of our over 700,000 employees. But let there be no mistake that we mean what we say and we will enforce our commitment to a workplace where dignity, respect, and fairness are basic human rights, and where those who do not respect those rights are not tolerated. If this is true than Management need to put up by granting the Union it's requested remedy.

In this case the actions taken by the supervisor were egregious and deliberate; the Union is requesting that supervisor Montana cease and desist from threatening, disrespecting and intimidating employees and that he write the Grievant a letter of apology re-confirming his commitment to the (JSVBW) "Capitol District Zero Tolerance Policy," and the M-39 section 115.4 and be removed from supervising letter carriers in the Rockville installation.

Formal Step A designee



Alton R. Branson