

used while awaiting adjudication of their cases by OWCP. In traumatic-injury cases, employees may be permitted to buy back only the leave that is used after the end of the 45-day continuation-of-pay period.

- b. When the employee buys back annual leave for a previous year that exceeds the applicable maximum (see [512.32](#)), the excessive leave is automatically forfeited. Employees are allowed to buy back only those hours that can be carried forward.
- c. Some loss of leave may occur when the period of absence is changed to an LWOP status as a result of leave buy-back. For every 80 hours of paid leave bought back and changed to LWOP, both annual and sick leave are adjusted by the amount earned in 1 pay period. The employee must be informed of this to avoid misunderstanding.

See [Exhibit 514.4](#), item [e](#), for further information.

## 513 Sick Leave

### 513.1 Purpose

#### 513.11 Sick Leave for Employee Incapacitation

Sick leave insures employees against loss of pay if they are incapacitated and cannot perform their duties because of illness, injury, pregnancy and confinement, or medical (including dental or optical) examination or treatment.

#### 513.12 Sick Leave for Dependent Care

A limited amount of sick leave may also be used to provide for the medical needs of a family member. Nonbargaining unit employees, and bargaining unit employees if provided in their national agreements, are allowed to take a maximum of 80 hours of their accrued sick leave per leave year to give care or otherwise attend to a family member (as defined in [515.2\(a\)](#), [515.2\(b\)](#), and [515.2\(c\)](#)) with an illness, injury, or other condition that, if an employee had such a condition, would justify using sick leave. If leave for dependent care is approved, but the employee has already used the maximum 80 hours of sick leave allowable, the difference is charged to annual leave or to LWOP at the employee's option. (See [515](#) for information about FMLA entitlement to be absent from work.)

### 513.2 Accrual and Crediting

#### 513.21 Accrual Chart

Time accrued is as follows:

Employee Category	Time Accrued
Full-time employees.	4 hours for each full biweekly pay period — i.e., 13 days (104 hours) per 26-period leave year.
Part-time employees.	1 hour for each unit of 20 hours in pay status for a maximum of 104 hours (13 days) per 26-period leave year.

### 513.38 Performance Ability Questioned

Exhibit #

When the reason for an employee's sick leave raises justifiable doubt concerning the employee's ability to satisfactorily or safely perform duties, a *fitness-for-duty medical examination* is requested through the appropriate authority. A complete report of the facts, medical and otherwise, must support the request.

### 513.39 Restricted Sick Leave

#### 513.391 Reasons for Restriction

Supervisors or installation heads with evidence indicating that an employee is abusing sick-leave privileges may place the employee on the restricted sick-leave list. In addition, employees may be placed on the restricted sick-leave list after their sick-leave use has been reviewed on an individual basis and the following actions have been taken:

- a. An absence file has been established on the employee.
- b. The immediate supervisor and higher levels of management have reviewed the absence file.
- c. Absences during the past quarter of LWOP and sick leave that the employee used have been reviewed. (No minimum sick-leave balance is established below which the employee's sick-leave record is automatically considered unsatisfactory.)
- d. The employee's supervisor has discussed the employee's absence record with the employee.
- e. Subsequent quarterly absences have been reviewed. If the absence logs indicate no improvement, the supervisor must discuss the matter with the employee and include in the discussion advice that if there is no improvement during the next quarter, the employee will be placed on restricted sick leave.

#### 513.392 Notice and Listing

Supervisors must provide written notice to employees that their names have been added to the restricted sick-leave listing. The notice also explains that, until further notice, the employees must support *all* requests for sick leave by medical documentation or other acceptable evidence (see [513.364](#)).

#### 513.393 Rescission of Restriction

The employee's supervisor reviews the employee's PS Form 3972 for each quarter. If the number of absences charged to sickness has substantially decreased, the employee's name is removed from the restricted sick-leave list and the employee is notified in writing of the removal.

### 513.4 Charging Sick Leave

#### 513.41 Full-Time Employees

##### 513.411 General

General provisions are as follows:

- a. Sick leave is not charged for legal holidays or for nonworkdays established by Executive Order.  
**Exception:** If employees shown to be eligible in [434.422](#) elect to receive annual-leave credit in lieu of holiday-leave pay (see [512.65](#)) and then become ill during their scheduled tour, sick leave may be charged to supplement work hours, up to and including the limit of their regular work schedule, on the holiday worked, provided the requirements of section [513.32](#) are met.
- b. Sick leave may be charged on any scheduled workday of an employee's basic workweek.

#### 513.412 Minimum Unit Charge

Minimum unit charges are as follows:

Employee Category	Minimum Unit Charge
All full-time nonexempt employees.	One-hundredth of an hour (0.01 hour).
Full-time exempt.	(See <a href="#">519.7</a> )
Regular rural carriers.	1 day (8 hours).
Substitute rural carriers and RCAs when in a leave-earning status and serving:	
a. Vacant routes.	1 day (8 hours).
b. Routes from which rural carriers are on extended leave.	1 day (8 hours).
RCAs when in a leave-earning status and servicing auxiliary routes.	1 hour.
Auxiliary rural carriers.	1 hour.
Triweekly rural carriers.	(See <a href="#">512.54</a> ).

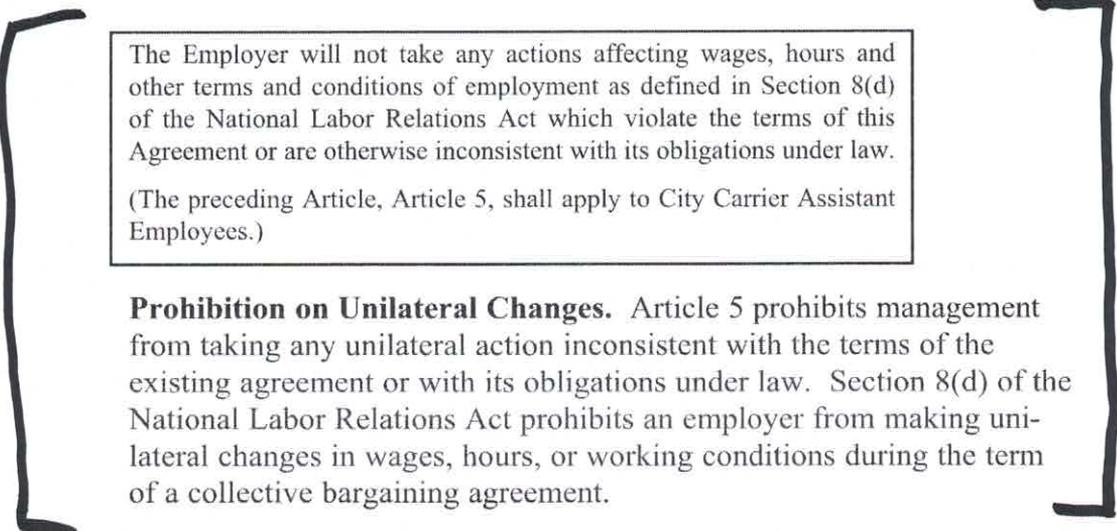
#### 513.413 Special Situations

The following provisions apply to special situations:

- a. *A-E Postmasters.* A-E postmasters are charged sick leave the same as annual leave (see [512.524](#)).

**ARTICLE 5 PROHIBITION OF UNILATERAL ACTION**

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.  
  
(The preceding Article, Article 5, shall apply to City Carrier Assistant Employees.)



**Prohibition on Unilateral Changes.** Article 5 prohibits management from taking any unilateral action inconsistent with the terms of the existing agreement or with its obligations under law. Section 8(d) of the National Labor Relations Act prohibits an employer from making unilateral changes in wages, hours, or working conditions during the term of a collective bargaining agreement.

In H1N-5G-C 14964, March 11, 1987 (C-06858) National Arbitrator Bernstein wrote concerning Article 5:

The only purpose the Article can serve is to incorporate all the Service's "obligations under law" into the Agreement, so as to give the Service's legal obligations the additional status of contractual obligations as well. This incorporation has significance primarily in terms of enforcement mechanism—it enables the signatory unions to utilize the contractual vehicle of arbitration to enforce all of the Service's legal obligations. Moreover, the specific reference to the National Labor Relations Act is persuasive evidence that the parties were especially interested in utilizing the grievance and arbitration procedure spelled out in Article 15 to enforce the Service's NLRB commitments.

Not all unilateral actions are prohibited by the language in Article 5—only those affecting wages, hours, or working conditions as defined in Section 8(d) of the National Labor Relations Act. Additionally, certain management decisions concerning the operation of the business are specifically reserved in Article 3 unless otherwise restricted by a specific contractual provision.

**Past Practice**

The following explanation represents the national parties' general agreement on the subject of past practice. The explanation is not exhaustive, and is intended to provide the local parties general guidance on the subject. The local parties must ensure that the facts surrounding a dispute in which past practice plays a part are surfaced and thoroughly developed so an informed decision can be made.

**ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE****15.1 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.

**Broad Grievance Clause.** Article 15.1 sets forth a broad definition of a grievance. This means that most work related disputes may be pursued through the grievance/arbitration procedure. The language recognizes that most grievances will involve the National Agreement or a Local Memorandum of Understanding. Other types of disputes that may be handled within the grievance procedure may include:

- Alleged violations of postal handbooks or manuals (Article 19);
- Alleged violations of other enforceable agreements between NALC and the Postal Service, such as Building Our Future by Working Together, and the Joint Statement on Violence and Behavior in the Workplace. In his award in national case Q90N-4F-C 94024977, August 16, 1996 (C-15697), Arbitrator Snow found that the Joint Statement constitutes a contractually enforceable agreement between the parties and that the union has access to the grievance procedure to resolve disputes arising under it. Additionally, in his discussion of the case, Snow writes that arbitrators have the flexibility in formulating remedies to consider removing a supervisor from his or her administrative duties, if a violation is found. (Note: The National parties disagree over the meaning of administrative duties.);
- Disputes concerning the rights of ill or injured employees, such as claims concerning fitness-for-duty exams, first aid treatment, compliance with the provisions of the ELM Section 540, and other regulations concerning OWCP claims (Step 4, G90N-4G-C 95026885, January 28, 1997, M-01264). However, decisions of the Office of Workers' Compensation Programs (OWCP) are not grievable matters. OWCP has the exclusive authority to adjudicate compensation claims, and to determine the medical suitability of proposed limited duty assignments;
- Alleged violations of law (Article 5);
- Other complaints relating to wages, hours or conditions of employment.

thirty (30) days thereafter. Any local grievances filed on the specific interpretive issue shall be held in abeyance at the appropriate level pending resolution of the national interpretive dispute.

Interpretive disputes are handled at the headquarters level in accordance with the above procedures.

- 15.3.A** 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).

The contract specifically requires that at each step of the grievance/arbitration process the parties review the Joint Contract Administration Manual (JCAM). In the Article 15 Dispute Resolution Process Memorandum, the parties have committed to updating the JCAM no less than once during the term of the National Agreement.

- 15.3.B** 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.

If management fails to raise the issue of timeliness, in writing, at Formal Step A, or at the step at which the employee or Union failed to meet the prescribed time limits, whichever is later, it waives the right to raise the issue at a later time. Management's obligations depend upon the step at which it asserts the grievance was untimely.

If management asserts that a grievance is untimely filed at Informal Step A, it must raise the issue in the written Formal Step A decision (because Formal Step A is later than Informal Step A) or the objection is waived. It is not sufficient to assert during the Informal Step A meeting that a grievance is untimely.

If management asserts that a grievance is untimely at Formal Step A or later, it must raise the objection in the written decision at the step at which the time limits were not met.

PATRICK R. DONAHOE  
Chief Operating Officer  
and Executive Vice President

*Exhibit #*



May 31, 2002

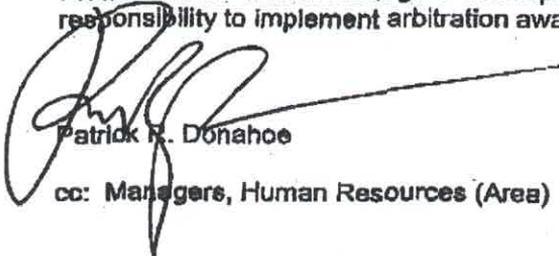
VICE PRESIDENTS, AREA OPERATIONS  
MANAGER, CAPITAL METRO OPERATIONS

SUBJECT: Arbitration Award Compliance

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 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 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.



Patrick R. Donahoe

cc: Managers, Human Resources (Area)

Documents in Support of Claim. An employee not paid within sixty (60) days of submission of the required documentation will receive an advance, if requested by the employee, equivalent to seventy (70) percent of the approved adjustment. If a disagreement exists over the amount due, the advance will be set at seventy (70) percent of the sum not in dispute.

(The preceding Memorandum of Understanding, Article 15 - ELM 436 - Back Pay, applies to NALC City Carrier Assistant Employees.)

The following Memorandum of Understanding provides that where an arbitration award specifies that an employee is entitled to back pay in a case involving disciplinary suspension or removal, the Postal Service must pay interest on the back pay at the Federal Judgment Rate.

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
UNITED STATES POSTAL SERVICE AND  
THE JOINT BARGAINING COMMITTEE  
(American Postal Workers Union, AFL-CIO, and  
National Association of Letter Carriers, AFL-CIO)**

**Re: Interest on Back Pay**

Where an arbitration award specifies that an employee is entitled to back pay in a case involving disciplinary suspension or removal, the Employer shall pay interest on such back pay at the Federal Judgment Rate. This shall apply to cases heard in arbitration after the effective date of the 1990 Agreement.

(The preceding Memorandum of Understanding, Interest on Back Pay, applies to NALC City Carrier Assistant Employees.)

**16.2**

**Section 2. Discussion**

For minor offenses by an employee, management has a responsibility to discuss such matters with the employee. Discussions of this type shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grievable. Following such discussions, there is no prohibition against the supervisor and/or the employee making a personal notation of the date and subject matter for their own personal record(s). However, no notation or other information pertaining to such discussion shall be included in the employee's personnel folder. While such discussions may not be cited as an element of prior adverse record in any subsequent disciplinary action against an employee, they may be, where relevant and timely, relied upon to establish that employees have been made aware of their obligations and responsibilities.

Although included in Article 16, a "discussion" is non-disciplinary and thus is not grievable. Discussions are conducted in private between a supervisor and an employee.

Both the supervisor and the employee may keep a record of the discussion for personal use. However, these are not to be considered official Postal Service records. They may not be included in the employee's personnel folder, nor may they be passed to another supervisor.

**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.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. At the request of the Union, the parties shall meet concerning such changes. If the Union, after the meeting, believes the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Union upon issuance.

Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to CCA employees only to the extent consistent with other rights and characteristics of CCA employees provided for in this Agreement and otherwise as they apply to the supplemental work force. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to CCA employees pursuant to the same standards and procedures found in Article 19 of the National Agreement.

[see Memo, page 213]

**This Memo is located on JCAM pages 19-2 and 19-3.**

**Handbooks and Manuals.** Article 19 provides that those postal handbook and manual provisions directly relating to wages, hours, or working conditions are enforceable as though they were part of the National Agreement. Changes to handbook and manual provisions directly relating to wages, hours, or working conditions may be made by management at the national level and may not be inconsistent with the National Agreement. A challenge that such changes are inconsistent with the National Agreement or are not fair, reasonable, or equitable may be made only by the NALC at the national level.

A memorandum included in the 2023 National Agreement establishes a process for the parties to communicate with each other at the national level regarding changes to handbooks, manuals, and published regulations that directly relate to wages, hours, or working conditions. The purpose of the memorandum is to provide the national parties with a

better understanding of their respective positions in an effort to eliminate unnecessary appeals to arbitration and clearly identify and narrow the issue(s) in cases that are appealed to arbitration under Article 19.

**Local Policies.** Locally developed policies may not vary from nationally established handbook and manual provisions (National Arbitrator Aaron, H1N-NAC-C-3, February 27, 1984, C-04162). Additionally, locally developed forms must be approved consistent with the Administrative Support Manual (ASM) and may not conflict with nationally developed forms found in handbooks and manuals.



National Arbitrator Garrett held in MB-NAT-562, January 19, 1977 (C-00427), that “the development of a new form locally to deal with stewards’ absences from assigned duties on union business—as a substitute for a national form embodied in an existing manual (and thus in conflict with that manual)—thus falls within the second paragraph of Article 19. Since the procedure there set forth has not been invoked by the Postal Service, it would follow that the form must be withdrawn.”

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
UNITED STATES POSTAL SERVICE  
AND THE  
NATIONAL ASSOCIATION OF LETTER CARRIERS,  
AFL-CIO**

**Re: Article 19**

1. When the Postal Service provides the Union with proposed changes in handbooks, manuals, or published regulations pursuant to Article 19 of the National Agreement, the Postal Service will furnish a final draft copy of the revisions and a document that identifies the changes being made from the existing handbook, manual, or published regulation. When the handbook, manual, or published regulation is available in electronic form, the Postal Service will provide, in addition to a hard copy, an electronic version of the final draft copy clearly indicating the changes and another unmarked final draft copy of the changed provision with the changes incorporated.
2. The document that identifies the changes will indicate language that has been added, deleted, or moved, and the new location of language moved. Normally, the changes will be identified by striking through deleted language, underlining new language, and placing brackets around language that is moved, with the new location indicated. If another method of identifying the changes is used, the method will be clearly explained, and must include a means to identify which language is added, deleted, and moved, as well as the new location of any language moved.
3. When notified of a change(s) to handbooks, manuals, and published regulations, pursuant to Article 19 of the National Agreement, the Union will be notified of the purpose and anticipated impact of the change(s) on city letter carrier bargaining unit employees.
4. At the request of the Union, the parties will meet to discuss the change(s). If the Union requests a meeting on the change(s), the Union will provide the Postal Service with notice identifying the specific change(s) the Union wants to discuss.

*Exhibit #*

# **Atlantic Attendance Training**



# Grievance Filed on RTW – Step B Impasse

## Grievance was filed by Union

## Union stating a blanket policy on addressing Unscheduled absences and lates

## The grievance decision was IMPASSED by the Step B Team

**IMPASSE**  
FTM-4F-C-15020467  
Cases  
14C-1200  
70  
San Diego  
City Wide  
California  
October 7, 2014  
October 14, 2014  
November 25, 2014  
December 1, 2014  
December 8, 2014  
16, 1010  
5059000

**STEP B DECISION**

Step B Team:  
Bostwick/Purdy

Decision:  
USPS #:  
Grievant:  
Branch Grievance#:  
Branch:  
Installation:  
Delivery Unit:  
State:  
Incident Date:  
Date of Informal Step A:  
Formal Step A Mtg.  
Received at Step B:  
Step B Decision:  
Leave Code:  
NALC Subject Code:  
5059000

District: San Diego

**ISSUE:** Did Management violate the National Agreement, including but not limited to: Articles 2, 3, 5, 10, 13, and/or 19, by making it a blanket policy to conduct attendance reviews for all unscheduled absences under when an employee does not report to work on time, regardless of whether one is warranted or not? If so, what is the appropriate remedy?

**DECISION:** The Dispute Resolution Team has decided to **IMPASSE** this grievance. 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. The National Business Agent (NBA) may appeal this grievance to Arbitration within fourteen days of receipt, in accordance with Article 15 of the National Agreement. All time limits have been extended by mutual agreement.

**EXPLANATION:** According to the file, the San Diego District Unscheduled Absence Standard Operating Procedure dated October 1, 2014 instructs Management to conduct an attendance review meeting with all employees for all instances of unscheduled leave.

**Union's Contentions**

The Union at Formal Step A has presented a case file that is particularly clear and comprehensive. The Union proved Management implemented a blanket policy to conduct attendance reviews for all unscheduled absences regardless of the fact circumstances relating to that absence and regardless of whether the absence is protected under the auspices of the Family Medical Leave Act (FMLA). The Union also provided the relevant provisions from the National Agreement and the ELM. There is no need to reiterate all that the Union at Formal Step A has so ably presented. Rather, the Union at Step B would simply like to augment the discussion by emphasizing the following points:

First of all, Management cites a number of provisions from the ELM and other Handbooks and Manuals in support of their blanket policy. Most of their citations are not at all relevant to the question presented

United States Postal Service  
1775 Rockwood, Room  
4623 Sacramento, CA 95834-5011  
4083 2344343411  
FAC: 0101734246

# RTW Process Case went to Arbitration

## Labor took a chance and went to Arbitration on the RTW process case

## Arbitrator ruled in favor of the USPS

## Arbitrator thought it was a good tool and SOP on addressing attendance with employees

REGULAR ARBITRATION

RECEIVED OCT 19 2015

In the Matter of Arbitration  
Between  
The United States Postal Service  
And  
The National Association of Letter Carriers, AFL-CIO

Grievant: Class  
Post Office: San Diego  
Case No.: E11N-4F-C-15026497  
DRT No.: 01-236608  
Union No.: 14C-1200

BEFORE: Arbitrator Nancy Han

APPEARANCES:

For the U.S. Postal Service: Mike Miller, Labor Relations Specialist  
San Diego District

For the Union: Tami Seaman  
Local Business Agent - Region 1

Place of hearing: San Diego, CA

Date of hearing: August 14, 2015

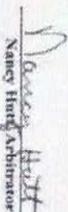
AWARD:

Date of Award: October 10, 2015

PANEL: Pacific

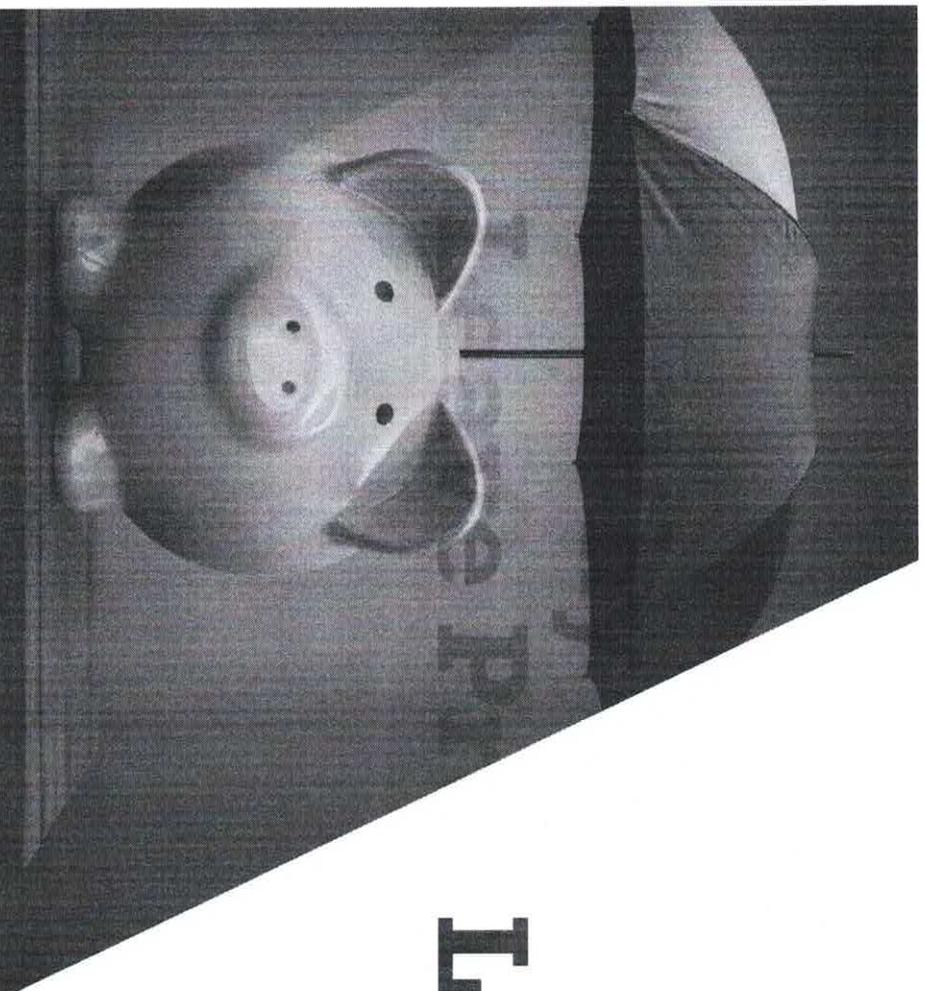
Award Summary:

The Postal Service did not violate the National Agreement by implementing the SOP and guide to notify NALC employees of their attendance responsibilities. The grievance is denied.

  
Nancy Han, Arbitrator



Attendance – Sick Leave



# Why a Sick Leave Program?



# RTW Process - Key Indicator Report

## Entered on Duty Date

## Sick Leave Balance

## Annual Leave Balance

# All the Unscheduled Call Ins the employee has made or went home

<< RESTRICTED INFORMATION >>  
 United States Postal Service  
 Employee Key Indicators Report

Report ETR000114481  
 Current as of: 01/15/2024  
 Your Selection Criteria: Employee ID: \_\_\_\_\_ Date From: \_\_\_\_\_  
 Name: \_\_\_\_\_ Finance #: 2327 REGULAR CAREERS  
 Employee ID: 000207594 Pay Location: \_\_\_\_\_  
 Current: 254.88  
 Annual: 1182.5  
 Current YTD Hours: 96.00  
 Annual YTD Hours: 137.56

Reviewed with employee 2/7/2024

Page 1 of 2  
Report on: \_\_\_\_\_

Zone	Leave Type	# Hours of Leave	Unscheduled? Leave?
01090202	SICK LEAVE - REGULAR	8.00	Yes
01090202	SICK LEAVE - DEPENDENT CARE	8.00	Yes
01100202	SICK LEAVE - DEPENDENT CARE	8.00	Yes
01140202	SICK LEAVE - REGULAR	8.00	Yes
01180202	SICK LEAVE - DEPENDENT CARE	8.00	Yes
01210202	SICK LEAVE - DEPENDENT CARE	8.00	Yes
02180202	SICK LEAVE - REGULAR	8.00	Yes
03050202	SICK LEAVE - REGULAR	8.00	Yes
04180202	SICK LEAVE - REGULAR	8.00	Yes
06020202	SICK LEAVE - REGULAR	8.00	Yes
06150202	ANNUAL LEAVE - EMERGENCY	8.00	Yes
06160202	ANNUAL LEAVE - REGULAR	8.00	Yes
07130202	SICK LEAVE - DEPENDENT CARE	8.00	Yes
07180202	SICK LEAVE - REGULAR	8.00	Yes
07190202	SICK LEAVE - REGULAR	8.00	Yes
07200202	SICK LEAVE - REGULAR	8.00	Yes
07210202	SICK LEAVE - REGULAR	8.00	Yes
07220202	SICK LEAVE - REGULAR	8.00	Yes
07230202	SICK LEAVE - REGULAR	8.00	Yes
07240202	SICK LEAVE - REGULAR	8.00	Yes
07250202	SICK LEAVE - REGULAR	8.00	Yes
07260202	SICK LEAVE - REGULAR	8.00	Yes
07270202	SICK LEAVE - REGULAR	8.00	Yes
07280202	SICK LEAVE - REGULAR	8.00	Yes
07290202	SICK LEAVE - REGULAR	8.00	Yes
07300202	SICK LEAVE - REGULAR	8.00	Yes
07310202	SICK LEAVE - REGULAR	8.00	Yes
07320202	SICK LEAVE - REGULAR	8.00	Yes
07330202	SICK LEAVE - REGULAR	8.00	Yes
07340202	SICK LEAVE - REGULAR	8.00	Yes
07350202	SICK LEAVE - REGULAR	8.00	Yes
07360202	SICK LEAVE - REGULAR	8.00	Yes
07370202	SICK LEAVE - REGULAR	8.00	Yes
07380202	SICK LEAVE - REGULAR	8.00	Yes
07390202	SICK LEAVE - REGULAR	8.00	Yes
07400202	SICK LEAVE - REGULAR	8.00	Yes
07410202	SICK LEAVE - REGULAR	8.00	Yes
07420202	SICK LEAVE - REGULAR	8.00	Yes
07430202	SICK LEAVE - REGULAR	8.00	Yes
07440202	SICK LEAVE - REGULAR	8.00	Yes
07450202	SICK LEAVE - REGULAR	8.00	Yes
07460202	SICK LEAVE - REGULAR	8.00	Yes
07470202	SICK LEAVE - REGULAR	8.00	Yes
07480202	SICK LEAVE - REGULAR	8.00	Yes
07490202	SICK LEAVE - REGULAR	8.00	Yes
07500202	SICK LEAVE - REGULAR	8.00	Yes
07510202	SICK LEAVE - REGULAR	8.00	Yes
07520202	SICK LEAVE - REGULAR	8.00	Yes
07530202	SICK LEAVE - REGULAR	8.00	Yes
07540202	SICK LEAVE - REGULAR	8.00	Yes
07550202	SICK LEAVE - REGULAR	8.00	Yes
07560202	SICK LEAVE - REGULAR	8.00	Yes
07570202	SICK LEAVE - REGULAR	8.00	Yes
07580202	SICK LEAVE - REGULAR	8.00	Yes
07590202	SICK LEAVE - REGULAR	8.00	Yes
07600202	SICK LEAVE - REGULAR	8.00	Yes
07610202	SICK LEAVE - REGULAR	8.00	Yes
07620202	SICK LEAVE - REGULAR	8.00	Yes
07630202	SICK LEAVE - REGULAR	8.00	Yes
07640202	SICK LEAVE - REGULAR	8.00	Yes
07650202	SICK LEAVE - REGULAR	8.00	Yes
07660202	SICK LEAVE - REGULAR	8.00	Yes
07670202	SICK LEAVE - REGULAR	8.00	Yes
07680202	SICK LEAVE - REGULAR	8.00	Yes
07690202	SICK LEAVE - REGULAR	8.00	Yes
07700202	SICK LEAVE - REGULAR	8.00	Yes
07710202	SICK LEAVE - REGULAR	8.00	Yes
07720202	SICK LEAVE - REGULAR	8.00	Yes
07730202	SICK LEAVE - REGULAR	8.00	Yes
07740202	SICK LEAVE - REGULAR	8.00	Yes
07750202	SICK LEAVE - REGULAR	8.00	Yes
07760202	SICK LEAVE - REGULAR	8.00	Yes
07770202	SICK LEAVE - REGULAR	8.00	Yes
07780202	SICK LEAVE - REGULAR	8.00	Yes
07790202	SICK LEAVE - REGULAR	8.00	Yes
07800202	SICK LEAVE - REGULAR	8.00	Yes
07810202	SICK LEAVE - REGULAR	8.00	Yes
07820202	SICK LEAVE - REGULAR	8.00	Yes
07830202	SICK LEAVE - REGULAR	8.00	Yes
07840202	SICK LEAVE - REGULAR	8.00	Yes
07850202	SICK LEAVE - REGULAR	8.00	Yes
07860202	SICK LEAVE - REGULAR	8.00	Yes
07870202	SICK LEAVE - REGULAR	8.00	Yes
07880202	SICK LEAVE - REGULAR	8.00	Yes
07890202	SICK LEAVE - REGULAR	8.00	Yes
07900202	SICK LEAVE - REGULAR	8.00	Yes
07910202	SICK LEAVE - REGULAR	8.00	Yes
07920202	SICK LEAVE - REGULAR	8.00	Yes
07930202	SICK LEAVE - REGULAR	8.00	Yes
07940202	SICK LEAVE - REGULAR	8.00	Yes
07950202	SICK LEAVE - REGULAR	8.00	Yes
07960202	SICK LEAVE - REGULAR	8.00	Yes
07970202	SICK LEAVE - REGULAR	8.00	Yes
07980202	SICK LEAVE - REGULAR	8.00	Yes
07990202	SICK LEAVE - REGULAR	8.00	Yes
08000202	SICK LEAVE - REGULAR	8.00	Yes

Occurrences of unscheduled leave: 15  
 Total number of unscheduled hours: 120.00  
 LMS Occurrences: 0  
 Total Number of LMS Hours: 0.00

**Sick Leave (Non-FMLA/SLDC)**  
 Zone Leave Type # Hours of Leave  
 01090202 SICK LEAVE - REGULAR 8.00  
 01140202 SICK LEAVE - REGULAR 8.00  
 02180202 SICK LEAVE - REGULAR 8.00  
 03050202 SICK LEAVE - REGULAR 8.00  
 04180202 SICK LEAVE - REGULAR 8.00  
 06020202 SICK LEAVE - REGULAR 8.00  
 07130202 SICK LEAVE - REGULAR 8.00  
 07180202 SICK LEAVE - REGULAR 8.00  
 07190202 SICK LEAVE - REGULAR 8.00  
 07200202 SICK LEAVE - REGULAR 8.00  
 07210202 SICK LEAVE - REGULAR 8.00  
 07220202 SICK LEAVE - REGULAR 8.00  
 07230202 SICK LEAVE - REGULAR 8.00  
 07240202 SICK LEAVE - REGULAR 8.00  
 07250202 SICK LEAVE - REGULAR 8.00  
 07260202 SICK LEAVE - REGULAR 8.00  
 07270202 SICK LEAVE - REGULAR 8.00  
 07280202 SICK LEAVE - REGULAR 8.00  
 07290202 SICK LEAVE - REGULAR 8.00  
 07300202 SICK LEAVE - REGULAR 8.00  
 07310202 SICK LEAVE - REGULAR 8.00  
 07320202 SICK LEAVE - REGULAR 8.00  
 07330202 SICK LEAVE - REGULAR 8.00  
 07340202 SICK LEAVE - REGULAR 8.00  
 07350202 SICK LEAVE - REGULAR 8.00  
 07360202 SICK LEAVE - REGULAR 8.00  
 07370202 SICK LEAVE - REGULAR 8.00  
 07380202 SICK LEAVE - REGULAR 8.00  
 07390202 SICK LEAVE - REGULAR 8.00  
 07400202 SICK LEAVE - REGULAR 8.00  
 07410202 SICK LEAVE - REGULAR 8.00  
 07420202 SICK LEAVE - REGULAR 8.00  
 07430202 SICK LEAVE - REGULAR 8.00  
 07440202 SICK LEAVE - REGULAR 8.00  
 07450202 SICK LEAVE - REGULAR 8.00  
 07460202 SICK LEAVE - REGULAR 8.00  
 07470202 SICK LEAVE - REGULAR 8.00  
 07480202 SICK LEAVE - REGULAR 8.00  
 07490202 SICK LEAVE - REGULAR 8.00  
 07500202 SICK LEAVE - REGULAR 8.00  
 07510202 SICK LEAVE - REGULAR 8.00  
 07520202 SICK LEAVE - REGULAR 8.00  
 07530202 SICK LEAVE - REGULAR 8.00  
 07540202 SICK LEAVE - REGULAR 8.00  
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 07610202 SICK LEAVE - REGULAR 8.00  
 07620202 SICK LEAVE - REGULAR 8.00  
 07630202 SICK LEAVE - REGULAR 8.00  
 07640202 SICK LEAVE - REGULAR 8.00  
 07650202 SICK LEAVE - REGULAR 8.00  
 07660202 SICK LEAVE - REGULAR 8.00  
 07670202 SICK LEAVE - REGULAR 8.00  
 07680202 SICK LEAVE - REGULAR 8.00  
 07690202 SICK LEAVE - REGULAR 8.00  
 07700202 SICK LEAVE - REGULAR 8.00  
 07710202 SICK LEAVE - REGULAR 8.00  
 07720202 SICK LEAVE - REGULAR 8.00  
 07730202 SICK LEAVE - REGULAR 8.00  
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 07760202 SICK LEAVE - REGULAR 8.00  
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 07780202 SICK LEAVE - REGULAR 8.00  
 07790202 SICK LEAVE - REGULAR 8.00  
 07800202 SICK LEAVE - REGULAR 8.00  
 07810202 SICK LEAVE - REGULAR 8.00  
 07820202 SICK LEAVE - REGULAR 8.00  
 07830202 SICK LEAVE - REGULAR 8.00  
 07840202 SICK LEAVE - REGULAR 8.00  
 07850202 SICK LEAVE - REGULAR 8.00  
 07860202 SICK LEAVE - REGULAR 8.00  
 07870202 SICK LEAVE - REGULAR 8.00  
 07880202 SICK LEAVE - REGULAR 8.00  
 07890202 SICK LEAVE - REGULAR 8.00  
 07900202 SICK LEAVE - REGULAR 8.00  
 07910202 SICK LEAVE - REGULAR 8.00  
 07920202 SICK LEAVE - REGULAR 8.00  
 07930202 SICK LEAVE - REGULAR 8.00  
 07940202 SICK LEAVE - REGULAR 8.00  
 07950202 SICK LEAVE - REGULAR 8.00  
 07960202 SICK LEAVE - REGULAR 8.00  
 07970202 SICK LEAVE - REGULAR 8.00  
 07980202 SICK LEAVE - REGULAR 8.00  
 07990202 SICK LEAVE - REGULAR 8.00  
 08000202 SICK LEAVE - REGULAR 8.00

Occurrences of sick leave: 8  
 Total number of sick hours: 64.00

Administrator Action Summary  
 Zone Action Type Comments







## Deems Desire / IVR Call in message

So, as a disclaimer ALL IVR call-ins state *“Upon your return to work, you may be required to document your unscheduled absence”*. And that is played just before the employee gets their confirmation number.

However, if the employee is marked as Deems Desirable, before they are asked if they’d like to request another type of leave, they hear, *“Acceptable documentation is required because your supervisor deems it desirable”*.

In the case of an employee being identified as Deems Desirable, the employee will hear both notices.

## Why a Return-To-Work Process

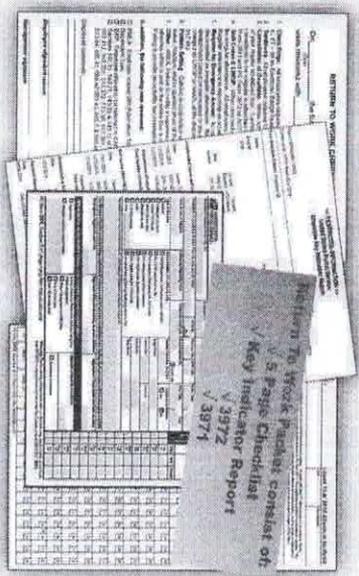
**The RTW packet is a tool and guide to manage uncheduled leave.**

- We need to inform our employees of their attendance responsibilities and that is to be regular in attendance.

### 511.42 Management Responsibilities

To control uncheduled absences, postal officials:

1. Inform employees of leave regulations. **RTW Checklist**
2. Discuss attendance records with individual employees when warranted. **KEY Indicator Report**
3. Maintain and review PS Form 3972, *Absence Analysis*, and PS Form 3971.



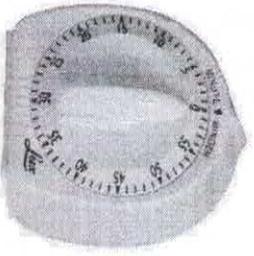
### 511.43 Employee Responsibilities

Employees are expected to maintain their assigned schedule and must make every effort to avoid uncheduled absences. In addition, employees must provide acceptable evidence for absences when required.

# How an Attendance Review is generated



1st Call in 1/31



Timer sets automatically

ERM415F0 - 10 Leave Management - 12 Month w/ 003 - Restricted Information

Employee Information: Employee ID:  Finance #:   
 Employee Name:  Pay Location:

Month	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
January 2024																															
February 2024																															
March 2024																															
April 2024																															
May 2024																															
June 2024																															
July 2024																															
August 2024																															
September 2024																															
October 2024																															
November 2024																															
December 2024																															

Legend: Sched Unsched SDG Holiday FMLA Light Duty Multi-Leav D - Denied

Close

## **-WOP Policy – ELM 514**

### **514.22 Administrative Discretion**

Each request for LWOP is examined closely, and a **decision is made based on the needs of the employee, the needs of the Postal Service, and the cost to the Postal Service. The granting of LWOP is a matter of administrative discretion and is not granted on the employee's demand except** as provided in collective bargaining agreements or as follows:

- a. A disabled veteran is entitled to LWOP, if necessary, for medical treatment.
- b. A Reservist or a National Guardsman is entitled to LWOP, if necessary, to perform military training duties under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103-353.
- c. An employee who requests and is entitled to time off under 515, Absence for Family Care or Serious Health Condition of Employee, must be allowed up to a total of 12 workweeks of absence within a Postal Service leave year for one or more of the reasons listed in 515.41(a) through 515.41(e), and up to 26 workweeks of leave during a single 12-month period to care for covered service members with a serious injury or illness.



# .WOP – No Reason Code

When processing a call-in or entering leave in the eRMS system, each Unit needs to determine what the reason is for entering LWOP.

The Reason Code plays an important roll in determining whether the LWOP is Controllable or Non-Controllable leave.

Entering 00 as the Reason Code does not describe what the LWOP is for and, does not determine if the LWOP is Controllable or Non-Controllable leave.

**All LWOP, whether Part Day (059) OR Full Day (060), will need to have a Reason Code entered at the same time.**

Leave Code	Leave Code Description	Reason Code	Reason Code Description
059	Part Day LWOP	00	
059	Part Day LWOP	01	In Lieu of Sick Leave
059	Part Day LWOP	02	Proffered (not to be used)
059	Part Day LWOP	03	Personal
059	Part Day LWOP	04	Other ( use for retiring only)
059	Part Day LWOP	05	Maternity
059	Part Day LWOP	06	Suspension (Clerks)
059	Part Day LWOP	07	Union Official
059	Part Day LWOP	08	Suspending (16.7/Termination/Passing)
059	Part Day LWOP	09	Late
059	Part Day LWOP	14	Bereavement
059	Part Day LWOP	99	FMLA
060	Full Day LWOP	00	
060	Full Day LWOP	01	In Lieu of Sick Leave
060	Full Day LWOP	02	Proffered (not to be used)
060	Full Day LWOP	03	Personal
060	Full Day LWOP	04	Other ( use for retiring only)
060	Full Day LWOP	05	Maternity
060	Full Day LWOP	06	Suspension (Clerks)
060	Full Day LWOP	07	Union Official
060	Full Day LWOP	08	Suspending (16.7/Termination)
060	Full Day LWOP	09	Late
060	Full Day LWOP	14	Bereavement
060	Full Day LWOP	99	FMLA
091	Overtime	00	Authorization
091	Overtime	01	Before Scheduled Tour
091	Overtime	02	After Scheduled Tour
091	Overtime	03	Full Tour
091	Overtime	04	Before Scheduled Tour - Out of Schedule
091	Overtime	05	After Scheduled Tour - Out of Schedule
091	Overtime	06	Full Tour - Out of Schedule

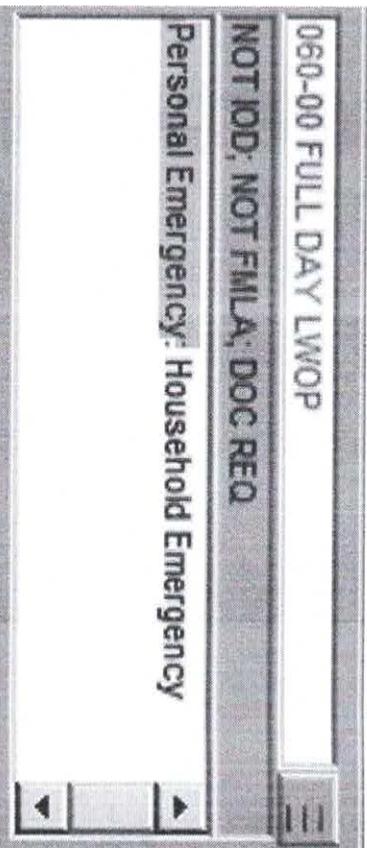
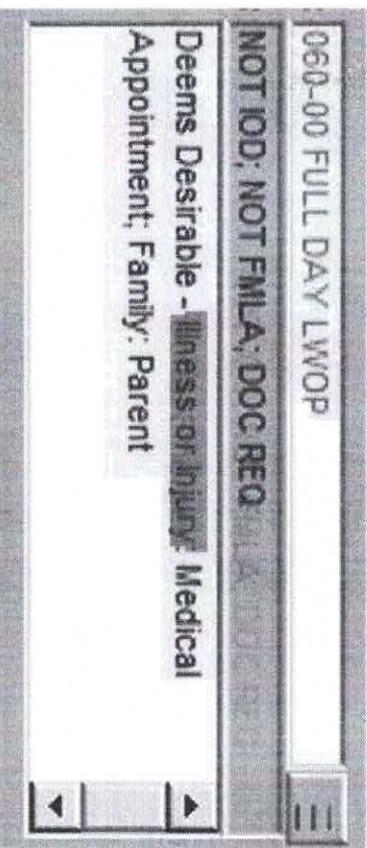


# LWOP | No Reason Code on IVR Call In ~

When an employee calls in on the IVR system, they are asked what the absence is due to.

1. **Illness or Injury (Reason Code 01)**
  - If they say Illness
  - Options to choose from – Sick Leave / Annual Leave / LWOP
2. **Personal Emergency (Reason Code 03)**
  - If they say Transportation problems / Household Emergency / Death in Family / Or none of these
  - Options to choose from - Annual Leave / LWOP

When the IVR Call In is processed by the EAS, before hitting save, the Reason Code needs to be corrected



# LWOP I No Reason Code ~

## Step 1

At home screen – Choose call in, then hit Respond

ERM's Home Mode  
Roles: AFRAYS  
Message Type: LEAVE REQUEST  
Employee Name: [ ] Emp ID: 11282023 Occur B.: 11282023 05:00:55  
Create Date: [ ]  
**Respond** Deactivate

## Step 2

Opens to Employee's 3972 for entry. Hit Approve button

Employee Information: 3972  
Legend: Scheduled | Unscheduled | SBO | Holiday | TRUCK | Light Duty | D - Denied | Admin Act | P - Pending  
Leave Request: 8.00  
Approve  
Deny  
Remove  
LV Details  
Print 3972  
TACS  
Close

## Step 3

Before hitting the save button to complete the LWOP call in, click on the Box with 3 lines (upper right corner) to correct Reason Code

Add/Edit Leave  
Leave Date: 09/05/2024  
Total Req Hrs: 8.00  
Submitted: 09/05/2024  
Schedule: 07:29  
Begin: 08:00  
End: 16:50  
Leave Type: 060-00 FULL DAY LWOP  
Personal Emergency: Transportation Problems  
Save

## Step 4

This boxes appears for you to change the Reason Code. Change and hit OK

List of Valid Leave Types  
Find: 0%  
Leave Type: 000-09 LATE - NO LEAVE USED  
000-12 ABSENT FROM OT  
024-00 AWOL  
024-09 AWOL LATE  
044-00 MILITARY LWOP  
045-00 DONATED LEAVE  
059-00 PART DAY LWOP  
059-01 PART DAY LWOP - IN LIEU OF SICK  
059-02 PART DAY LWOP - PROFERRED  
059-03 PART DAY LWOP - PERSONAL  
059-04 PART DAY LWOP - OTHER  
OK  
Cancel

## Step 5

Now hit Save button to process call in.

# LWOP | No Reason Code ~

## Step 1

At home screen – Choose call in, then hit Respond button

## Step 2

Opens to Employee's 3972 for entry. Hit Approve button

## Step 3

Write date/time employee called in, and was documentation requested. Hit Cancel to go out.

## Step 4

Hit Deny button and enter reason for the denial, hit Save and then Cancel.

## Step 5

Manually enter the leave with the correct information of call in from employee and the proper Reason Code. In this case it would be Reason Code 03.

# AWOL | Absence Flow Chart

## EMPLOYEE ABSENCE FLOW CHART NO CALL/NO SHOW

**STEP 1 - Day 1...** Employee does not report for duty and does not call:

- Check vacation board & Leave slips... on scheduled leave?
- Check with other supervisors... know where the employee might be?
- Call employee at home 60 minutes after reporting time... where are you?
- Leave message... call supervisor ASAP! (document the instruction).
- Ask co-worker, emergency contact, or union... know where employee is?
- Repeat call before end of tour if no message was left previously (no answering machine or voice mail).

**STEP 2 - Day 2...** Still no call/no show:

- Call employee again.
- Leave message... call supervisor ASAP! (document instruction).

**STEP 3 - No show/no call continues after day 2 (Contact Labor Relations):**

- Wait 3 calendar days... If employee still has not called or returned to duty, send letter (AWOL Letter #4) by Certified and Priority Tracking... Report to work or call supervisor immediately and/or provide acceptable reason (documented) to substantiate absence (within 3 days of receipt of letter) or action may be taken to remove you from the Postal service.

**STEP 4 - Still no call/no show after 3 days of receipt of first letter:**

- Send second letter (AWOL Letter #2) by Certified and Priority Tracking scheduling an investigative interview within 3 days of receipt of first letter... explain reason(s) for non-reporting (AWOL status)... also provide final warning to employee... If you don't report to work immediately, or if you don't report for the investigative interview, action may be taken to remove you from the Postal Service.

**STEP 5 - Still no call/no show and no response to correspondence (3 days after receipt of second letter):**

- Possible FINAL (AWOL Letter #3) letter and/or Request Removal... depends. Discuss with Labor.

**STEP 6 - Request Removal**

**Note:** Use same basic procedures if the employee has a continuing absence but calls in regularly. Instruct the employee to report for duty immediately or provide acceptable medical documentation (if illness or injury is reason for absence) to substantiate absence. Use same basic timelines for receipt of documentation (allow additional "reasonable" amount of time if employee has difficulty getting a medical appointment)... if documentation is not received in a timely manner, send the same type of notification letters, informing employee they are in an AWOL status and warning them they may be removed for AWOL (due to failure to provide documentation... ELM 513.365). Call Labor Relations for assistance.



- Is a serious offense
- Don't wait
- take appropriate steps and follow the flow chart

Occasional emergencies operations Supervisor inconsistent In order to meet no will be held Attached in these absences, if you have Relations. Thank you

**UNITED STATES POSTAL SERVICE**  
January 26, 2024

**REPLY TRACKING #** \_\_\_\_\_  
**ORDER TRACKING #** \_\_\_\_\_

**RESPONDENCE FOR:**

Name \_\_\_\_\_  
EMAIL \_\_\_\_\_  
Address \_\_\_\_\_  
City/State/Zip \_\_\_\_\_

**SUBJECT: Absence Without Leave (AWOL)**

You have been absent from work since (date) and have not provided the usual acceptable documentation to substantiate your absence. Your absence is being treated as an absence without leave (AWOL) unless you provide acceptable documentation within the 30 days of receipt of this letter. Failure to provide acceptable documentation within the 30 days of receipt of this letter will cause us to take appropriate disciplinary action against you.

**UNITED STATES POSTAL SERVICE**  
January 26, 2024

**SECOND NOTICE**

**REPLY TRACKING #** \_\_\_\_\_  
**ORDER TRACKING #** \_\_\_\_\_

**MEMORANDUM FOR:**

Name \_\_\_\_\_  
EMAIL \_\_\_\_\_  
Address \_\_\_\_\_  
City/State/Zip \_\_\_\_\_

**SUBJECT: PROMOTE MEDICAL DOCUMENTATION (Absence - Without Approval Leave) (AWOL) Report for an Investigative Interview**

A Form of Postal Service records indicates you have been absent from your official duty since (DATE). To date, you have failed to provide acceptable documentation justifying your absence. In light of the foregoing, you have been considered absent without leave (AWOL) since (DATE). AWOL is always considered a serious offense that cannot and will not be tolerated.

**UNITED STATES POSTAL SERVICE**  
January 26, 2024

**THIRD AND FINAL NOTICE**

**REPLY TRACKING #** \_\_\_\_\_  
**ORDER TRACKING #** \_\_\_\_\_

**MEMORANDUM FOR:**

Name \_\_\_\_\_  
EMAIL \_\_\_\_\_  
Address \_\_\_\_\_  
City/State/Zip \_\_\_\_\_

**SUBJECT: FINAL NOTICE TO PROVIDE DOCUMENTATION (REPORT FOR INVESTIGATIVE INTERVIEW) (AWOL)**

A review of Postal Service records indicates you have been absent from your official duty since (DATE). Recently, you were contacted to provide special medical documentation to substantiate your absence. In light of this reporting, you are now considered absent without leave (AWOL) since (DATE). AWOL is always considered a serious offense that cannot and will not be tolerated.



# Wounded Warrior Leave

## Treatment Verification for Wounded Warriors Leave



A. Employee Information (To be completed by the employee)  
Name (Last, First, Middle Initial)

Employer ID

Date Submitted

Name of Appointment with Health Care Provider

Type of Appointment with Health Care Provider

I certify that I am requesting Wounded Warriors Leave in conjunction with a military service-connected disability rated at 30 percent or more. I have provided documentation to the Postal Service from the Department of Veterans Affairs, or on any Office of Personnel Management (OPM) certification form developed for administration of Wounded Warriors Leave, certifying that I have a qualifying service-connected disability, as required in Management Instruction E-510-2016-B.

I also acknowledge that I have 15 calendar days from the date I return to work to provide the verification to the appropriate supervisor to use Wounded Warriors Leave in lieu of sick leave, annual leave, or leave without pay.

### In person visit only

### When needing to use – 5980 Form is required – Every Time

### Approved in advance? Most of the time and sometimes not

### Original Form is turned in

Privacy Act Statement: Your information will be used to administer leave. Disclosure is authorized by 51 USC 552, 404, 1001, 1133, and 1135; and 28 USC 2501 et seq. Providing the information is voluntary, but if not provided, we may not process your request. Your information may be disclosed as follows: in relevant legal proceedings; to law enforcement when the USFHS or requesting agency become aware of a violation of law; to a congressional office at your request; to entities under contract with USFHS and/or authorized to perform tasks; to other organizations as required by law; to government agencies upon request; to the EEOC; and to the Merit or Ethics or Special Counsel. For more information regarding our privacy policies visit [www.usfhs.gov/privacy](http://www.usfhs.gov/privacy).

B. Provider Information (To be completed by the health care provider)  
Name of the health care provider

Specialty

Name of Health Care Facility

Contact Employee Number

Please provide details of any treatment required, including the frequency and/or duration of any course of action you may prescribe, that would necessitate the employee taking additional leave from work beyond the date of appointment identified in the Employee Information portion of this verification form.

The above-retained employee is requesting to take leave under the Wounded Warriors Federal Leave Act of 2015 for treatment of a service-connected disability, as certified by the U.S. Department of Veterans Affairs. Treatment is defined as an in-person visit to a health care provider and includes the course of action prescribed by a health care provider. Your signature below, as the health care provider, verifies that the identified employee is undergoing treatment for a certified disabling condition.

Health Care Provider Signature

Date

Printed Name

C. Official Action on Application (Return copy of signed request to employer)

Approved

Disapproved

Reason/Reason Code for disapproval (if applicable)

Supervisor Signature

Date

PS Form 5980, December 2016

# Absence Inquiry Letters

UNITED STATES  
POSTAL SERVICE

Date: April 4, 2023

USPS Tracking # \_\_\_\_\_

Certified Tracking # \_\_\_\_\_

TO: Employee Name \_\_\_\_\_ Address of Record: Employee Address  
EIN: Employees EIN # \_\_\_\_\_ City/State/Zipcode \_\_\_\_\_

Subject: Notice of Absence Inquiry

In accordance with ELM 513.353, updated medical documentation is required to be submitted at appropriate intervals, but not more frequently than once every 30 days, in order for you to continue your absence. Our records indicate that you have been absent from duty since March 1, 2023. By this notice, you are being instructed to report to my office immediately, or provide me within three (3) calendar days from your receipt of this letter, with satisfactory and acceptable evidence of your inability to report to work. After that, should the absence continue, you are required to submit satisfactory medical evidence of your inability to report for duty once every month or at such shorter periods as instructed. **NO FURTHER NOTICES WILL BE SENT TO YOU.**

Your failure to respond to this notice and/or your failure to comply with the instructions herein, will result in you being charged with Absence Without Leave (AWOL) for all the time you are absent from work. Additionally, if you fail to respond or satisfactorily document your entire absence from work, you will be charged with being AWOL, and steps will be taken to remove you from the Postal Service.

As per the Employee Labor Relations Manual (ELM) 08/2013:

**513.363 Extended Periods**  
Employees who are on sick leave for extended periods are required to submit appropriate intervals, but not more frequently than once every 30 days, satisfactory evidence of continued incapacity for work or need to care for a family member unless some responsible supervisor has knowledge of the employee's continuing situation.

**513.364 Medical Documentation or Other Acceptable Evidence**

When employees are required to submit medical documentation, such documentation should be furnished by the employee's attending physician or other attending practitioner who is performing within the scope of his or her practice. The documentation should provide an explanation of the nature of the employee's illness or injury sufficient to indicate to management that the employee was (or will be) unable to perform his or her normal duties for the period of absence. Normally, medical statements such as "under my care" or "received treatment" are not acceptable evidence of incapacity to perform duties. Supervisors may accept substantiation other than medical documentation if they believe it supports approval of the sick leave request.

**513.365 Failure to Furnish Required Documentation**

If acceptable substantiation of incapacity is not furnished, the absence may be charged to annual leave, LWOP, or AWOL.

## Notice of Absence Inquiry Request for Medical

20

## Notice of Absence Inquiry FMLA – 480 Hours exhausted and continues to be out

UNITED STATES  
POSTAL SERVICE

Date: April 27, 2023

USPS Tracking # \_\_\_\_\_

Certified Tracking # \_\_\_\_\_

TO: Name of Employee \_\_\_\_\_ Address of Record: Employee Address  
EIN: 04400999 \_\_\_\_\_ City/State/Zipcode \_\_\_\_\_

Subject: Notice of Absence Inquiry

Our records indicate that you have been absent from duty since April 28, 2022. Additionally, your approved FMLA case for 480 hours has been exhausted and ended on July 13, 2022. By this notice, you are being instructed to report to my office immediately, or provide me within three (3) calendar days from your receipt of this letter, with satisfactory and acceptable evidence of your inability to report to work. After that, should the absence continue, you are required to submit satisfactory medical evidence of your inability to report for duty once every month or at such shorter periods as instructed. **NO FURTHER NOTICES WILL BE SENT TO YOU.**

Your failure to respond to this notice and/or your failure to comply with the instructions herein, will result in you being charged with Absence Without Leave (AWOL) for all the time you are absent from work. Additionally, if you fail to respond or satisfactorily document your entire absence from work, you will be charged with being AWOL, and steps will be taken to remove you from the Postal Service.

As per the Employee Labor Relations Manual (ELM) 08/2013:

**513.364 Medical Documentation or Other Acceptable Evidence**

When employees are required to submit medical documentation, such documentation should be furnished by the employee's attending physician or other attending practitioner who is performing within the scope of his or her practice. The documentation should provide an explanation of the nature of the employee's illness or injury sufficient to indicate to management that the employee was (or will be) unable to perform his or her normal duties for the period of absence. Normally, medical statements such as "under my care" or "received treatment" are not acceptable evidence of incapacity to perform duties. Supervisors may accept substantiation other than medical documentation if they believe it supports approval of the sick leave request.

**513.365 Failure to Furnish Required Documentation**

If acceptable substantiation of incapacity is not furnished, the absence may be charged to annual leave, LWOP, or AWOL.

In addition, you need to be aware of the process outlined in the ELM regarding returning to work:

**865.1 Clearance Required: All Bargaining Unit Employees and Those Unrepresented by a Union**  
Employees Requiring from Non-FMLA Absences  
The decision to clear an employee to return to work rests with management. Management can require employees who have been absent due to an illness, injury, outpatient medical procedure (surgical), or hospitalization to submit documentation (as set forth in 865.3) in

UNITED STATES  
POSTAL SERVICE

Date: April 27, 2023

USPS Tracking # \_\_\_\_\_

Certified Tracking # \_\_\_\_\_

TO: Name of Employee \_\_\_\_\_ Address of Record: Employee Address  
EIN: 04400999 \_\_\_\_\_ City/State/Zipcode \_\_\_\_\_

Subject: Notice of Absence Inquiry

Our records indicate that you have been absent from duty since April 28, 2022. Additionally, records show you do not qualify for FMLA cases due to not enough work hours. By this notice, you are being instructed to report to my office immediately, or provide me within three (3) calendar days from your receipt of this letter, with satisfactory and acceptable evidence of your inability to report to work. After that, should the absence continue, you are required to submit satisfactory medical evidence of your inability to report for duty once every month or at such shorter periods as instructed. **NO FURTHER NOTICES WILL BE SENT TO YOU.**

Your failure to respond to this notice and/or your failure to comply with the instructions herein, will result in you being charged with Absence Without Leave (AWOL) for all the time you are absent from work. Additionally, if you fail to respond or satisfactorily document your entire absence from work, you will be charged with being AWOL, and steps will be taken to remove you from the Postal Service.

As per the Employee Labor Relations Manual (ELM) 08/2013:

**513.364 Medical Documentation or Other Acceptable Evidence**

When employees are required to submit medical documentation, such documentation should be furnished by the employee's attending physician or other attending practitioner who is performing within the scope of his or her practice. The documentation should provide an explanation of the nature of the employee's illness or injury sufficient to indicate to management that the employee was (or will be) unable to perform his or her normal duties for the period of absence. Normally, medical statements such as "under my care" or "received treatment" are not acceptable evidence of incapacity to perform duties. Supervisors may accept substantiation other than medical documentation if they believe it supports approval of the sick leave request.

**513.365 Failure to Furnish Required Documentation**

If acceptable substantiation of incapacity is not furnished, the absence may be charged to annual leave, LWOP, or AWOL.

In addition, you need to be aware of the process outlined in the ELM regarding returning to work:

**865.1 Clearance Required: All Bargaining Unit Employees and Those Unrepresented by a Union**  
Employees Requiring from Non-FMLA Absences  
The decision to clear an employee to return to work rests with management. Management can require employees who have been absent due to an illness, injury, outpatient medical procedure (surgical), or hospitalization to submit documentation (as set forth in 865.3) in

## Notice of Absence Inquiry FMLA – Does not qualify

UNITED STATES  
POSTAL SERVICE



# Proof of Conversation Tool

- Blue Page

- Essential Links

- Forms

- Forms on right side

- 0-999

- (BuckSlip) Routing Slip

Form	Title
—	(BuckSlip) Routing Slip

**Routing Slip Instructions**

**Routing Slip**

**Proof of Conversation Requirement:**

1. Supervisor First and Last name/title
2. Unit/Station Name
3. **Date**
4. **Time**
5. "Informed employee of.."
6. Employee response – Verbatim
7. Supervisor response to employee

To	Date
1. Dean Acosta	
2. City Letter Carrier	
3.	
4.	
5.	
6.	

From: Fred Lee  
Supervisor Customer Services  
Story Lane Station

Date: 01/02/2023

Remarks:

At 8:35 AM, had a documented review with Dean Acosta on his attendance. 2 Occurrences so far.

I reminded Dean that he is required to be regular in attendance and that failure to be regular in attendance will lead to corrective action.

Dean understood and informed me that he will try to do better. He had no reason for the unscheduled absences.



Exhibit #

M 00387

UNITED STATES POSTAL SERVICE

Washington, DC 20262

November 17, 1982

LR300:WEHenry:ltd:4130

Letters of Information/Letters of Concern

Regional General Managers  
Labor Relations Division

Directors and General Managers  
Labor Relations Department

It has come to our attention through grievances appealed to step 4 that local managers in some areas are issuing "Letters of Information" or "Letters of Instruction" to employees, bringing to their attention matters of concern to local management about possible improprieties on the part of the employees. Such a procedure is highly suspect and is an attempt to avoid the discussion process provided in Article 16 of the National Agreements.

The use of such letters serves no useful purpose as an element for consideration in future actions against an employee, particularly when Article 16, Section 2, places the responsibility on management to discuss minor offenses with the employee.

Letters of Instruction and Letters of Information or similar type missives are not appropriate and will be discontinued immediately.

*James C. Glida*  
James C. Glida  
Assistant Postmaster General  
Labor Relations Department

Exhibit #

M-01335



Mr. Vincent R. Sombrotto  
President  
National Association of Letter  
Carriers, AFL-CIO  
100 Indiana Avenue, NW  
Washington, DC 20001-2197

RECEIVED  
JUL 16 1998  
CONTRACT ADMINISTRATION UNIT  
N.A.L.C. WASHINGTON, D.C.

Re: J94N-4J-C 98075371  
Class Action  
Dearborn, MI 48120-9998

Dear Mr. Sombrotto:

On July 7, 1998, I met with your representative to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this case is Letters of Information/Letters of Concern which are issued to employees.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case.

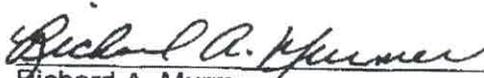
Accordingly, we agreed to remand this case to the parties at Step 3 for further processing or to be scheduled for arbitration, as appropriate, with the following understanding:

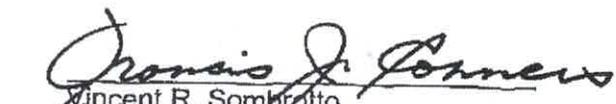
The letter dated November 17, 1982, signed by James C. Gildea, regarding Letters of Information/Letters of Concern will be controlling in the instant case, and such letters will be removed from the employee files.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

  
Richard A. Murmer  
Grievance and Arbitration  
Labor Relations

  
Vincent R. Sombrotto  
President  
National Association of Letter  
Carriers, AFL-CIO

Date: 7/17/98

Exhibit #

M 00074



UNITED STATES POSTAL SERVICE  
475 L'Enfant Plaza, SW  
Washington, DC 20260

DEC 9 1983

Mr. Halline Overby  
Assistant Secretary-Treasurer  
National Association of Letter Carriers, AFL-CIO  
100 Indiana Avenue, N.W.  
Washington, D.C. 20001-2197

Re: Class Action  
Youngstown, OH 44501  
HLN-4E-C 20307

Dear Mr. Overby:

On November 21, 1983, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question in this grievance is whether local management is proper in issuing "Letters of Concern" to letter carriers who have been bitten by dogs.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case:

The local office will immediately discontinue the use of "Letters of Concern."

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Sincerely,

  
A. J. Johnson  
Labor Relations Department

  
Halline Overby  
Assistant Secretary-Treasurer  
National Association of Letter  
Carriers, AFL-CIO

Exhibit #

M 00389



UNITED STATES POSTAL SERVICE  
475 L'Enfant Plaza, SW  
Washington, DC 20260

January 31, 1983

Mr. Halline Overby  
Assistant Secretary-Treasurer  
National Association of Letter Carriers, AFL-CIO  
100 Indiana Avenue, N.W.  
Washington, D.C. 20001

Re: D. Hinson  
Kinston, NC 28501  
HLN-3P-C 11303

Dear Mr. Overby:

On December 15, 1982, we met on the above-captioned case at the fourth step of the contractual grievance procedure set forth in the 1981 National Agreement.

The question raised in this grievance involves the propriety of the issuance of a Letter of Instruction.

→ [ After further review of this matter, we mutually agreed that no national interpretive issue is fairly presented in the particulars evidenced in this case. A Letter of Instruction as contained in this file is inappropriate. ]

Accordingly, as we further agreed, this case is hereby remanded to the parties at Step 3 for resolution. Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

  
Howard R. Carter  
Labor Relations Department

  
Halline Overby  
Assistant Secretary-Treasurer  
National Association of Letter  
Carriers, AFL-CIO

Exhibit #

M 00390



UNITED STATES POSTAL SERVICE  
475 L'Enfant Plaza, SW  
Washington, DC 20260

FEB 02 1983

Mr. Halline Overby  
Assistant Secretary-Treasurer  
National Association of Letter Carriers, AFL-CIO  
100 Indiana Avenue, N.W.  
Washington, D.C. 20001

Re: C. Starnes  
Spartanburg, SC 29301  
H1N-3P-C 8036

Dear Mr. Overby:

On December 15, 1982, we met on the above-captioned case at the fourth step of the contractual grievance procedure set forth in the 1981 National Agreement.

The question raised in this grievance involves the propriety of the issuance of a Letter of Awareness.

After further review of this matter, we mutually agreed that no national interpretive issue is fairly presented in the particulars evidenced in this case. A Letter of Awareness as contained in this file is inappropriate. This does not imply that management should not advise employees of the opportunity for reassignment to other positions within the Postal Service.

Accordingly, as we further agreed, this case is hereby remanded to the parties at step 3 for resolution. Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

  
Howard R. Carter  
Labor Relations Department

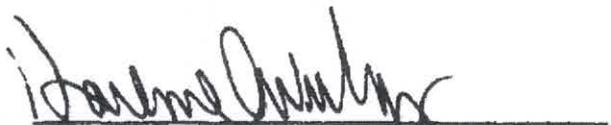
  
Halline Overby  
Assistant Secretary-Treasurer  
National Association of Letter  
Carriers, AFL-CIO

Exhibit #



M-00768

UNITED STATES POSTAL SERVICE  
Labor Relations Department  
475 L'Enfant Plaza, SW  
Washington, DC 20260-4100

Mr. Brian D. Farris  
Director, City Delivery  
National Association of Letter  
Carriers, AFL-CIO  
100 Indiana Avenue, N.W.  
Washington, DC 20001-2197

MAR 19 1987

Re: G. Cruise  
Laurel, MS 39440  
H4N-3Q-C 22215

Dear Mr. Farris:

On February 5, 1987, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management violated the National Agreement when the grievant was issued a letter because he was not available for a discussion.

→ [ During our discussion, we mutually agreed that letters of instructions and letters of informative or similar type missives are not appropriate and the use of such letters must be discontinued in this facility. Further, the subject letter dated December 4, 1985, will be removed from the records. Accordingly, the grievance is sustained. ]

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to close this case.

Time limits were extended by mutual consent.

Sincerely,

  
Loretta Huckabee  
Grievance & Arbitration  
Division

  
Brian Farris  
Director, City Delivery  
National Association of Letter  
Carriers, AFL-CIO

Exhibit #

M-00912



UNITED STATES POSTAL SERVICE  
475 L'Enfant Plaza, SW  
Washington, DC 20260

Mr. Lawrence G. Hutchins  
Vice President  
National Association of  
Letter Carriers, AFL-CIO  
100 Indiana Avenue, N.W.  
Washington, DC 20001-2197

Re: H7N-4M-C 7533  
Class Action  
Flint, MI 48502

Dear Mr. Hutchins:

Recently a meeting was held with the NALC Director of City Delivery, Brian Farris, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is the National Agreement was violated by the issuance of an accident incident letter.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. Letters such as these are not appropriate. Management will discontinue issuing these letters.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

  
Dominic J. Scola, Jr.  
Grievance and Arbitration  
Division

  
Lawrence G. Hutchins  
Vice President  
National Association of  
Letter Carriers, AFL-CIO

DATE 3/23/89



APPEAL TO STEP 4

DATE July 7, 1988

FROM NATIONAL BUSINESS AGENT  
Jack R. Sebolt  
National Business Agent  
K-I-M Region - NALC  
2722 E. Michigan Avenue #102  
Lansing, MI 48912-4080

SENIOR ASSISTANT POSTMASTER GENERAL  
EMPLOYEE AND LABOR RELATIONS  
UNITED STATES POSTAL SERVICE  
WASHINGTON, D.C. 20260

CARRIER	REGIONAL NO	GRIEVANT (OR CLASS)	POST OFFICE
CAU	C7N-4M-C 7533	Class Action	Flint, Michigan

DEAR SIR

PURSUANT TO ARTICLE XV, SECTION 2, OF THE NATIONAL AGREEMENT I AM APPEALING THE ABOVE-CAPTIONED CASE TO STEP 4 OF THE GRIEVANCE PROCEDURE

DATE STEP 3 DENIAL RECEIVED: 6-22-88

STEP 3 DECISION RENDERED BY: Stephen Bushelman

VIOLATION INCLUDING BUT NOT LIMITED TO: Article 19

CORRECTIVE ACTION REQUESTED: Management cease and desist from issuing "incident letters".

DESIGNATED NALC REPRESENTATIVE AT STEP 4: Contract Administration Unit.

SINCERELY YOURS,  
*Jack R. Sebolt*  
NATIONAL BUSINESS AGENT

Certified #P609132102

CC REGIONAL DIRECTOR FOR ELR  
NATIONAL OFFICER, NALC  
BRANCH PRESIDENT, NALC

Exhibit #

M-01334



Mr. William H. Young  
Vice President  
National Association of Letter  
Carriers, AFL-CIO  
100 Indiana Avenue, NW  
Washington, DC 20001-2197

RECEIVED  
JUL 16 1998  
CONTRACT ADMINISTRATION UNIT  
N.A.L.C. WASHINGTON, D.C.

Re: H90N-4H-C 96029292  
HON-SC-C 89353  
CLASS ACTION  
SARASOTA, FL 34230-9998

Dear Mr. Young:

Recently, we met in pre-arbitration discussion of the above-captioned grievance.

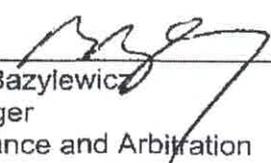
→ [ The issue in this grievance is whether management violated the National Agreement by developing a local form which was not approved in accordance with the ASM.

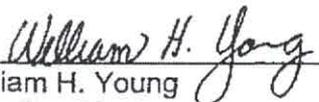
The development of Local forms is governed by the ASM. This grievance concerns a letter which is being issued to employees locally, entitled, "Accident Repeater Alert!!!"

During our discussion, we mutually agreed that the development of local forms is governed by the ASM. Therefore, the issuance of the "Accident Repeater Alert!!!" letter will be discontinued. ] ←

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand Case Number H90N-4H-C 96029292 and remove it from the pending national arbitration listing.

Sincerely,

  
\_\_\_\_\_  
Pete Bazylewicz  
Manager  
Grievance and Arbitration

  
\_\_\_\_\_  
William H. Young  
Vice President  
National Association of Letter  
Carriers, AFL-CIO

Date: 7/16/98

- b. Ensuring form version-control by maintaining forms metadata.
- c. Ensuring form integrity by maintaining a digital archive.
- d. Evaluating the need for a form.
- e. Analyzing and designing the form.
- f. Coordinating form use and disposition.
- g. Developing and managing corporate automated forms.

**323.3 Field Management**

Field managers must:

- a. Follow all policies and guidelines in corporate directives (such as *Postal Bulletin* articles, management instructions, and handbooks) when completing or processing a form.
- b. Ensure that the correct forms are used to support business processes.
- c. Ensure that completed forms are managed, retained, and disposed of as described in Handbook AS-353, *Guide to Privacy, the Freedom of Information Act, and Records Management*.
- d. Ensure that local forms do not interfere or conflict with nationally approved forms.

**323.4 Material Management**

Material Management is responsible for managing stocks of postal forms.

**324 Development, Coordination, and Clearance**

**324.1 Development**

Headquarters organizational units approve the requirements for new or revised forms within their functional areas. Forms Management analyzes and designs the form and assigns an identifying number.

**324.2 Coordination and Clearance**

The originating office obtains the necessary clearances from other affected organizational units before a new or revised form is approved. Required clearances include:

Type of Form	Required Clearance
Forms that affect wages, hours, and other terms and conditions of employment, or that concern any work and/or time standards or studies relating to any bargaining unit employees.	PS: Through the vice president of Labor Relations using the clearance option 3 memo (see MI AS-310-96-3, <i>Management of Policy and Procedure Information – Paper and On-Line</i> ). Local: Through the appropriate area Human Resources manager.
PS and local forms that: <ul style="list-style-type: none"> <li>a. Collect personally identifiable information about a customer, employee, or other individual (such as name or Social Security number) directly from those individuals.</li> <li>b. Are completed by a customer, employee, or other individuals.</li> </ul>	Through the manager, Records Office, using the clearance option 3 memo (see MI AS-310-96-3) for Privacy Act considerations (for details see Handbook AS-353, <i>Guide to Privacy, the Freedom of Information Act, and Records Management</i> ).
PS forms that are stocked in the material distribution centers.	Through Inventory Management, Purchasing and Materials, Head-quarters, on Form 189, <i>Stocking Plan for Directives and Forms</i> .

Exhibit #

M-00887



UNITED STATES POSTAL SERVICE  
Labor Relations Department  
475 L'Entant Plaza, SW  
Washington, DC 20260-4100

Mr. Lawrence G. Hutchins  
Vice President  
National Association of  
Letter Carriers, AFL-CIO  
100 Indiana Avenue, N.W.  
Washington, DC 20001-2197-

November 16, 1988

Re: W. Rain  
Rochester, MN 55901  
H4N-4C-C 38635

Dear Mr. Hutchins:

On October 26, 1988, a meeting was held with the NALC Director of City Delivery, Brian Farris, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management violated the National Agreement when it used a locally developed form.

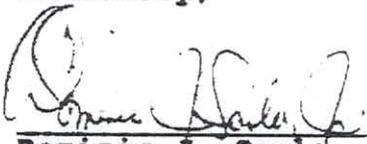
After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We also agreed that the issuance of local forms, and the local revision of existing forms is governed by Section 374.12 of the Administrative Support Manual (ASM). The locally developed form was not promulgated according to ASM 324.12. Therefore, management will discontinue the use of the subject form.

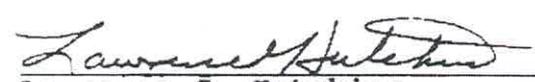
Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

  
Dominic J. Scola, Jr.  
Grievance & Arbitration  
Division

  
Lawrence G. Hutchins  
Vice President  
National Association of Letter  
Carriers, AFL-CIO



# National Association of Letter Carriers (AFL-CIO)

M-00887

## APPEAL TO STEP 4

CERTIFIED MAIL # P-592-866-389

DATE **November 17, 1987**

FROM: NATIONAL BUSINESS AGENT

**Gene McNulty**  
**NALC Region #7**  
**312 Central S.E., Room 490**  
**Minneapolis, MN 55414**

TO: SENIOR ASSISTANT POSTMASTER GENERAL  
EMPLOYEE AND LABOR RELATIONS  
UNITED STATES POSTAL SERVICE  
WASHINGTON D.C. 20260

CARRIER	REGIONAL NO	GRIEVANT (OR CLASS)	POST OFFICE
"CAU"	C4N-4C-C-38635	W. Rain	Rochester, MN

DEAR SIR: SINCE  NALC  USPS BELIEVE(S) THIS CASE INVOLVES AN INTERPRETIVE ISSUE UNDER THE NATIONAL AGREEMENT (OR SOME SUPPLEMENT THERETO OF GENERAL APPLICATION), I AM APPEALING THE ABOVE-CAPTIONED CASE TO STEP 4 OF THE GRIEVANCE PROCEDURE, PURSUANT TO ARTICLE XV, SECTION 2, OF THE NATIONAL AGREEMENT

DATE STEP 3 DENIAL RECEIVED: **November 13, 1987**

STEP 3 DECISION RENDERED BY: **Mary Savage**

VIOLATION INCLUDING BUT NOT LIMITED TO: **Article 15**

CORRECTIVE ACTION REQUESTED: **Have Items #8, #9, & #10 deleted from the "Limited Duty Assignments" Form or rescind the entire form.**

DESIGNATED NALC REPRESENTATIVE AT STEP 4: **Contract Administration Unit, N.A.L.C.**

SINCERELY YOURS,

NATIONAL BUSINESS AGENT

CC: REGIONAL DIRECTOR FOR ELP  
NATIONAL OFFICER, NALC  
BRANCH PRESIDENT, NALC

NATIONAL OFFICE COPY



Exhibit #

arr. 1-19-77

MB-NAT-562

MB-NAT-936

Harrett-1-19-77

C427

See page 16

UNITED STATES POSTAL SERVICE

and

NATIONAL POST OFFICE MAIL HANDLERS,  
WATCHMEN, MESSENGERS AND GROUP  
LEADERS DIVISION OF THE LABORERS'  
INTERNATIONAL UNION OF NORTH  
AMERICA, AFL-CIO

Arbitration Cases Nos.

MB-NAT-562

MB-NAT-936

Inglewood, California

ISSUED:

January 19, 1977

BACKGROUND

This national level arbitration involves two griev-  
ances, which took form at the Inglewood, California, Post  
Office, wherein the Mail Handlers Union asserts that intro-  
duction of a new policy and procedure at Inglewood improperly  
restricts the rights of Union Stewards protected under Article  
XVII of the 1973 National Agreement and also violates Articles  
V and XIX. A hearing was held on September 8, 1976 and  
briefs thereafter filed as of November 18, 1976.

1

Article XVII, Sections 3 and 4, are particularly  
significant here. They read:

2

"Section 3. Rights of Stewards. When it is  
necessary for a steward to leave his work  
area to investigate and adjust grievances,  
he shall request permission from his immedi-  
ate supervisor and such request shall not be  
unreasonably denied. In the event his  
duties require he leave his work area and

RECEIVED  
JAN 21 1977

2.

MB-NAT-562,  
MB-NAT-936

enter another area within the installation or post office, he must also receive permission from the supervisor from the other area he wishes to enter and such request shall not be unreasonably denied.

"The steward or chief steward may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance, and shall have the right to interview the aggrieved employee, 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 shift or to another facility unless there is no job for which he is qualified on his shift or in his facility, provided that this paragraph shall not apply to rural carriers.

"Section 4. Payment of Stewards. The Employer will authorize payment only under the following conditions:

Grievances:

Steps 1 and 2--The aggrieved and one Union steward (only as permitted under the formula in Section 2A) for time actually spent in grievance handling, including investigation and

3.

MB-NAT-562,  
MB-NAT-936

meetings with the Employer. The Employer will also compensate a steward for the time reasonably necessary to write a grievance.

Meetings called by the Employer for information exchange and other conditions designated by the Employer concerning contract application.

"Employer authorized payment as outlined above will be granted at the applicable straight time rate, providing the time spent is a part of the steward's (only as provided for under the formula in Section 2A) regular work day."

(Underscoring added.)

Late in 1974 Inglewood Post Office supervision became concerned that some Union Stewards might be taking excessive time to investigate and adjust grievances. On September 9, 1974 Acting Director of Mail Processing Ford sent a memorandum to all Inglewood Mail Processing Supervisors stating, in relevant part:

3

"It is Management's responsibility to determine amount of 'reasonable time' to be allowed steward to investigate and/or prepare grievance (Oper 560). When such time is requested, require from steward a specific time limit and necessary information to justify that time involvement.

"If you are satisfied time request is justified, approved [sic] request (using Form 7020, in duplicate) with the understanding with steward that steward will return to work no later than end of time approved. This will eliminate need for supervisor's harassing stewards to leave lunch room--which practice is demeaning to steward, distasteful to supervisor, and a waste of supervisor's time--which must stop. If a steward doesn't return by prescribed time, deal with that as a disciplinary problem. If steward needs more time, it is his responsibility to request same, which starts process over.

"If agreement can't be reached on appropriate amount of time, refer matter to Tour Supt for resolution."

(Underscoring added.)

5.

MB-NAT-562,  
MB-NAT-936

The Form 7020, to which reference is made in the second paragraph, above quoted, was developed by the Postal Service for general use throughout its operations. The Form is referenced specifically in Part 431 of Methods Handbook M-65, reading:

"431 Form 7020, Authorized Absence from Workroom Floor, will be used to record authorized absences from assigned duties on the workroom floor, e.g., scheme examination, visits to the medical unit, etc. At the time Form 7020 is issued, record the personnel change on Form 2345 to the closest six minute interval. Upon the employees return, collect Form 7020 and record the change to the closest six minute interval on Form 2345. The leaving and returning times on Form 7020 must coincide with time entries on Form 2345."

(Underscoring added.)

Form 7020 includes the following:

4

NAME OF EMPLOYEE OR NO. OF EMPLOYEES	DATE	
	SUPERVISOR'S INITIALS	TIME
LEAVE UNIT →		
ARRIVE →		
LEAVE →		
RETURN TO UNIT →		
REASON FOR ABSENCE		
SEE REVERSE SIDE FOR INSTRUCTIONS.		

PS Form  
Dec. 1970 7020

AUTHORIZED ABSENCE FROM WORKROOM FLOOR

(Reverse Side)

## INSTRUCTIONS

Use this form when employees leave for scheme examinations, medical unit, guide duty, civil defense, time devoted to grievances, consultations with personnel section and consultation with administrative officials.

The tour supervisor will insure the collection of this form from work center supervisors for transmittal to the Chief Accountant who will total time recorded on Forms 7020 and charge to appropriate operation number.

GPO 1971 O-413-113

(Underscoring added.)

Following issuance of Acting Director Ford's September 9, 1974 Memorandum, the Inglewood Post Office discontinued using Form 7020 to record time away from work by Stewards on Union business, in early 1975, and substituted a locally developed form entitled "Request for Official Time to Conduct Union Business." This reads as follows:

"REQUEST FOR OFFICIAL TIME TO CONDUCT UNION BUSINESS

DATE \_\_\_\_\_ APPROXIMATE TIME REQUESTED \_\_\_\_\_ HOURS \_\_\_\_\_ MINUTES  
REQUESTED FOR WHAT PURPOSE \_\_\_\_\_

IF CONFERRING WITH ANOTHER EMPLOYEE - HIS/HER NAME \_\_\_\_\_

IF REVIEW OF RECORDS NEEDED, WHAT RECORD NEEDED \_\_\_\_\_

REQUEST TO MAKE LOCAL TELEPHONE CALLS  
RELATING TO UNION BUSINESS (NO MESSAGE  
UNITS, TOLL OR LONG DISTANCE CALLS.)

NUMBER CALLED \_\_\_\_\_

\_\_\_\_\_ BEGIN TIME  
\_\_\_\_\_ END TIME

\_\_\_\_\_  
SIGNATURE OF REQUESTING EMPLOYEE

\_\_\_\_\_  
TITLE - UNION ORGANIZATION

REQUEST TO LEAVE WORK AREA

SUPERVISOR INITIALS		TIME
	LEAVE WORK AREA	
	ARRIVE OTHER AREA	
	LEAVE OTHER AREA	
	RETURN WORK AREA	

\_\_\_\_\_  
SIGNATURE OF APPROVING SUPERVISOR  
DATE REQUEST GRANTED \_\_\_\_\_

IF REQUEST IS DENIED - STATE REASON AND DATE DENIED \_\_\_\_\_

USE OTHER SIDE IF NEEDED

IF REQUEST IS DELAYED BEYOND DATE OF REQUEST, STATE REASON. (DOCUMENT  
ON A DAILY BASIS WHY REQUEST CANNOT BE GRANTED.)

USE OTHER SIDE IF NEEDED

ROUTE TO: Tour Subt.

As a result of these developments the present grievances were filed directly in Step 4 on October 18, 1974 and February 26, 1975, as national level grievances. Local 303 of the Mail Handlers also filed unfair labor practice charges claiming violation of Sections 8-A-1 and 8-A-5 of the National Labor Relations Act. On March 18, 1975 the NLRB declined to issue a complaint pending completion of the present arbitration proceeding.

The Union now contends that the local policy enunciated in the September 9, 1974 Memorandum, and implemented through the new form introduced at Inglewood, violates not only Article XVII, Section 3 of the National Agreement, but also Article XIX, which provides:

"Copies of all handbooks, manuals, and regulations of the Postal Service that contain sections that relate to wages, hours, and working conditions of employees covered by this Agreement shall be furnished to the Unions on or before January 20, 1974. Nothing in any such handbook, manual, or regulation shall conflict with this Agreement. Those parts of any such handbook, manual, or regulation that directly relate to wages, hours, or working conditions, as they apply to employees covered by this Agreement, 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."

"Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least 30 days prior to issuance. The parties shall meet concerning such changes, and if the Unions believe that the proposed changes violate the National Agreement (including this Article), they may submit the issue to arbitration in accordance with Step 4 of the grievance-arbitration procedure within 30 days after receipt of the notice of proposed change."

(Underscoring added.)

The Union stresses that the September 9, 1974 Memorandum assumes that it is Management's responsibility to determine the "reasonable time" to investigate a grievance and seeks to limit a Steward, in advance, to a fixed amount of time for such activity. To require a prior determination of the amount of time to investigate a grievance, says the Union, is inconsistent with Article XVII, Section 3. It agrees that this Section requires the Steward to request permission to leave his work area, and gives the Supervisor the right to deny permission to leave the work area, but nowhere does it suggest that a Supervisor can impose a fixed time limit upon a Steward, requiring that the Steward return to work at some specific time. Violation of Article XIX also is seen, in that use of Form 7020 is specified for this purpose in Methods Handbook M-65, Part 431, but the Form in

this respect has been replaced by an entirely new local form. In the Union view Article XIX requires the USPS to continue to use Form 7020 as provided in Methods Handbook M-65 until such time as notice is given to the Union of a proposed change, for negotiations pursuant to Article XIX. Although the Service claims that the new local form was necessary because of alleged abuse by Stewards at Inglewood, this is precisely the kind of problem which should be explored in the negotiations between the parties under Article XIX.

The Postal Service does not agree that the September 9, 1974 Memorandum at Inglewood asserts a Management right to determine the amount of time a Steward properly may spend on Union business. The Service concedes that one sentence may be so interpreted, if read out of context, but suggests that in context it should be construed to mean "that management must determine whether the amount of time that is requested for investigation or preparation of a grievance can be reasonably accommodated with the needs of the Postal Service." Such a reading of the Memorandum, says the Service, reveals that Inglewood supervision is not concerned with the total time spent investigating a grievance but only with the "impact of the time requested on operational needs." Under this analysis, the approval of a request for an hour to investigate a grievance does not establish that no more than an hour should be spent on the investigation, but only that the Steward can be spared only for an hour at the time he wishes to be absent from his work area. Any such determination, so the argument runs, necessarily is without prejudice to further requests for time to investigate the same grievance. Thus the Service stresses that the last sentence in the second paragraph of the Memorandum reads:

11.

MB-NAT-562,  
MB-NAT-936

"If steward needs more time, it is his responsibility to request same, which starts process over."

Insofar as the local Memorandum relates to the writing of a grievance, it is equally inoffensive, according to the Service. Here it quotes from Article XVII, Section 4:

9

"The Employer will also compensate a steward for the time reasonably necessary to write a grievance."

(Underscoring added.)

Indeed, the Service does not now claim that the local Memorandum instructs supervisors to determine that the time requested to prepare a grievance constitutes the amount necessary to complete the task. It urges:

"Instead, the Memorandum simply requires supervisors to balance a request for time to prepare a grievance against operational needs. Nothing in the 1973 National Agreement limits management's right to do so."

Given the right of the Service under Article XVII, Section 3, to determine the reasonableness of a Steward's request for permission to leave his work area, there is nothing in the Agreement to prohibit the Service from requiring a Steward to fill out a form including a blank space labeled "Approximate Time Requested." There was no impropriety in discontinuing use of Form 7020 for this purpose, says the Service, since Form 7020 was not designed for use in requesting authorization to leave a work area. Thus the Service suggests that Form 7020 is simply a record of the movement of an employee from one work area to another, where a request for such movement already has been authorized. (It stresses that Part 431 of the M-65 Handbook states that Form 7020 will be used to record authorized absences.)

Form 7020 has no value as a source of information for a Supervisor in determining the reasonableness of a request by a Steward for permission to leave his work area. The new local form thus is not a substitute for Form 7020, but actually is a supplementary form seeking information that Management is entitled to have. Since the Service is fully authorized under Article XVII, Sections 3 and 4, to determine the reasonableness of requests to leave the work area, it follows that to assess the reasonableness of such a request, the Supervisor must know how much time away from the work area is being requested and to require that this be provided on a form.

FINDINGS

The two grievances here present separate but related issues: first, whether the local September 9, 1974 Memorandum is consistent with Article XVII, Sections 3 and 4; and, second, whether the local form instituted early in 1975 to effectuate the Memorandum conflicts with an established procedure under the M-65 Manual, and protected by Article XIX.

12

The September 9, 1974 Memorandum indicates on its face that it is Management's responsibility to determine what is a reasonable time to investigate or prepare a grievance. It includes no reference to Article XVII, Sections 3 or 4, nor does it state that a request by a Steward for time to investigate a grievance "shall not be unreasonably denied." The critical language quoted earlier in this Opinion from the September 9, 1974 Memorandum is preceded by an underlined assertion "B. Union Stewards taking too much time preparing Step 2A grievances." The Memorandum instructs a Supervisor that if you "are satisfied time request is justified" the request should be approved on condition that the Steward will return "no later than end of time approved." If the Steward does not return "by prescribed time," moreover, this is to be dealt with as a "disciplinary problem." Finally, the Memorandum advises that if agreement "can't be reached on appropriate amount of time" the matter should be referred to the Tour Superintendent.

13

Further light is shed upon the objective meaning of the September 9, 1974 Memorandum by reference to the form developed locally to implement it. This requires the Steward to (1) furnish in advance the names of other employees who may be interviewed, (2) indicate in advance what records may be needed, and (3) to identify (by number) any local telephone calls which may be made and the time to be involved in the call. It also includes a line captioned "If request is delayed beyond date of request, state reason. (Document on a Daily Basis why request cannot be granted.)" Lastly, the Form is routed to the Tour Superintendent.

14

These various restrictive provisions apparently were designed to combat abuses which were thought to have developed at Inglewood in taking excessive time for investigation and preparation of grievances. This surely is a proper Management objective, generally speaking, but the problem here is whether the Inglewood program is permissible under Articles XVII and XIX of the 1973 National Agreement. This is by no means only a local problem--if such a unilateral program is permissible at Inglewood, it is equally permissible throughout the entire Postal Service.

15

While the Postal Service brief includes an unusually skillful effort to depict the Memorandum as no more than an effort to require a Supervisor to determine whether a Steward "can be spared" from his job at the time he or she seeks permission to leave, there is nothing in the Memorandum itself which supports this narrow interpretation of its purpose.

16

The fact is that the Memorandum does not accurately state the substance of Article XVII, Section 3, particularly since it assumes that a Supervisor is entitled to determine in advance the amount of time necessary to investigate a grievance and requires the Steward to specify the time likely to be required and to provide detailed information in advance "to justify" such time requirement. The Memorandum implies that the decision as to whether any such request is "justified" lies within the discretion of the individual Supervisor, and provides no standards to guide the exercise of such discretion nor any reference to the controlling language of Article XVII, Section 3.

17

Thus it now should be made clear that Article XVII, Section 3, does not authorize the Service to determine in advance the amount of time which a Steward reasonably needs to investigate a grievance. Since the September 9, 1974 Memorandum is inaccurate in this and other significant respects, it should be withdrawn and given no effect. This is not to say, of course, that Management cannot (1) ask a Steward seeking permission to investigate, adjust, or write a grievance to estimate the length of time that the Steward anticipates he or she will be away from his or her work station; or (2) that a Supervisor cannot decline to release a Steward from duty during a period of time when his or her absence during such period will unnecessarily delay essential work; or (3) that a Supervisor, in advance, may not specify a time period during which the Steward's absence will unnecessarily delay essential work. Nor does this decision in any way bar the Service from taking necessary action, consistent with the Agreement, in any case where it can be established that a Steward has improperly obtained

18

permission to leave his or her work station under the guise of investigating or preparing a grievance.

The special form developed at Inglewood early in 1975 was designed to implement the September 9, 1974 Memorandum and hardly can be used except to effectuate that Memorandum. In addition, Part 431 of Methods Handbook M-65 states that Form 7020 will be used to record authorized absences from assigned duties, and the instructions on Form 7020 make it applicable to "time devoted to grievances." The local form at Inglewood in fact has been substituted for Form 7020 when Stewards seek to leave their work stations.

19

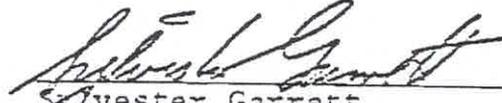
It is well settled by now that employee representation by a Union Steward or Grievance Committeeman constitutes a significant working condition, or condition of employment. Thus the matter here in issue falls within the scope of Article XIX. The development of a new form locally to deal with Stewards' absences from assigned duties on Union business--as a substitute for a national form embodied in an existing Manual (and thus in conflict with that Manual)--thus falls within the second paragraph of Article XIX. Since the procedure there set forth has not been invoked by the Postal Service, it would follow that the Inglewood form must be withdrawn.

20

AWARD

The grievances are sustained as indicated in this Opinion. The September 9, 1974 Memorandum and the local form developed to implement that Memorandum must be withdrawn and given no effect.

21

  
Sylvester Garrett  
Impartial Chairman

RECEIVED

JAN 21 1977

Exhibit #

M-01461

LABOR RELATIONS



Mr. Vincent R. Sombrotto  
President  
National Association of Letter  
Carriers, AFL-CIO  
100 Indiana Avenue, NW  
Washington, DC 20001-2144

Re: Q98N-4Q-C 02071061  
Class Action  
Washington DC

Dear Mr. Sombrotto:

On several occasions, I met with your representative to discuss the above-referenced case at the fourth step of our contractual grievance procedure.

The issue in this case is whether local management may alter a national form.

We mutually agreed that there are no material facts in dispute with this case.

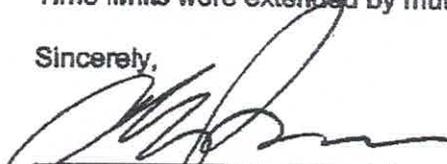
We further agree that, in accordance with Arbitrator Garrett's decision in National case MB-NAT-562, a national form directly relating to wages, hours or working conditions and embodied in an existing handbook or manual covered by the provisions of Article 19 can only be changed through the procedures specified in the second paragraph of Article 19.

→ [ Accordingly, the local forms at issue may not be used for route inspections in lieu of the national PS Form 1838-C. ]

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case at this level.

Time limits were extended by mutual consent.

Sincerely,

  
Sandra J. Savoie  
Labor Relations Specialist  
Labor Relations Policies  
and Programs

  
Vincent R. Sombrotto  
President  
National Association of Letter  
Carriers, AFL-CIO

Date: 4-24-02

Exhibit #

M-00852



UNITED STATES POSTAL SERVICE  
Labor Relations Department  
475 L'Enfant Plaza, SW  
Washington, DC 20260-4100

Mr. Brian D. Farris  
Director, City Delivery  
National Association of Letter  
Carriers, AFL-CIO  
100 Indiana Avenue, N.W.  
Washington, DC 20001-2197

JUL 1 1988

Re: S. Brown  
Oxnard, CA 93030  
H4N-5T-C 29994

Branch  
Santa Barbara, CA 93102  
H4N-5T-C 33587

Branch  
Canoga Park, CA 91303  
H4N-5T-C 33727

Branch  
Santa Clara, CA 95050  
H4N-5N-C 40772

Dear Mr. Farris:

On May 27, 1988, we met to discuss the above-captioned grievances at the fourth step of our contractual grievance procedure.

The issue in these grievances is whether local management violated the National Agreement when it promulgated certain locally developed forms.

During our discussion, we mutually agreed that no national interpretive issue is presented in these cases. We also agreed that the issuance of local forms, and the local revisions of existing forms is governed by Section 324.12 of the Administrative Support Manual (ASM). The locally developed forms at issue were not promulgated according to the ASM, Section 324.12. Therefore, management will immediately discontinue their use.

Mr. Brian D. Farris

2

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle these cases.

Time limits were extended by mutual consent.

Sincerely,

  
Charles J. Dudek  
Grievance & Arbitration  
Division

  
Brian D. Farris  
Director, City Delivery  
National Association of Letter  
Carriers, AFL-CIO



Exhibit #

UNITED STATES POSTAL SERVICE  
 Labor Relations Department  
 475 L'Enfant Plaza, SW  
 Washington, DC 20260-4100

Mr. Halline Overby  
 Assistant Secretary-Treasurer  
 National Association of  
 Letter Carriers, AFL-CIO  
 100 Indiana Avenue, N.W.  
 Washington, D.C. 20001-2197

SEP 04 1987

Re: Branch  
 Simi Valley, CA 93065  
 H4N-5T-C 33892

Branch  
 Simi Valley, CA 93065  
 H4N-5T-C 33776

Dear Mr. Overby:

On June 25, 1987, we met to discuss the above-captioned grievances at the fourth step of our contractual grievance procedure.

The issue in these grievances is whether management violated the National Agreement when it created a new form by combining three already existing forms into one. (3996-1813-1571)

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in these cases. The parties at the regional level are to apply part 324.12, of the ASM to the particular circumstances.

Accordingly, we agreed to remand these cases to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand these cases.

Time limits were extended by mutual consent.

Sincerely,

*Richard E. Beyer*  
 Richard E. Beyer  
 Grievance & Arbitration  
 Division

*Halline Overby*  
 Halline Overby  
 Assistant Secretary-Treasurer  
 National Association of  
 Letter Carriers, AFL-CIO



# National Association of Letter Carriers (AFL-CIO)

## APPEAL TO STEP 4

DATE: 10/29/86

TO: SENIOR ASSISTANT POSTMASTER GENERAL  
EMPLOYEE AND LABOR RELATIONS  
UNITED STATES POSTAL SERVICE  
WASHINGTON, D.C. 20260

FROM: NATIONAL BUSINESS AGENT  
**Brian Farris**  
NBA-NALC  
1128 W. Chapman  
Orange, CA 92668

CARRIER	REGIONAL NO.	GRIEVANT (OR CLASS)	POST OFFICE
"J"	W4N-5T-C-33892	Class	Simi Valley, CA

DEAR SIR: SINCE  NALC  USPS BELIEVE(S) THIS CASE INVOLVES AN INTERPRETIVE ISSUE UNDER THE NATIONAL AGREEMENT (OR SOME SUPPLEMENT THERETO OF GENERAL APPLICATION), I AM APPEALING THE ABOVE-CAPTIONED CASE TO STEP 4 OF THE GRIEVANCE PROCEDURE, PURSUANT TO ARTICLE XV, SECTION 2, OF THE NATIONAL AGREEMENT.

DATE STEP 3 DENIAL RECEIVED:

10/20/86

STEP 3 DECISION RENDERED BY:

Carson Moore

VIOLATION INCLUDING BUT NOT LIMITED TO:

19

CORRECTIVE ACTION REQUESTED:

....that Management cease and desist using or issuing this form to the carriers. Also, that the proper forms be used in accordance with the M-41 Handbook. Further, that all such 3996-1813-1571 forms issued and used be removed from all files and records, and the proper forms substituted with the proper information.

DESIGNATED NALC REPRESENTATIVE AT STEP 4:

Joseph Johnson  
Dir. of City Delivery, NALC  
100 Indiana Avenue N.W.  
Washington, D.C. 20001

RECEIVED

3 1986

JOSEPH JOHNSON'S OFFICE  
DIRECTOR, CITY DELIVERY

SINCERELY YOURS,

NATIONAL BUSINESS AGENT

CC: REGIONAL DIRECTOR FOR ELR  
NATIONAL OFFICER, NALC  
BRANCH PRESIDENT, NALC

NATIONAL OFFICE COPY





**NBA'S GRIEVANCE CASE COMMENTS**

ATTACH TO GRIEVANCE CASE SUMMARY (GRIEV-3)

DATE: 10/29/86

TO: NATIONAL OFFICER

Joseph Johnson  
Dir. of City Delivery, NALC  
100 Indiana Avenue N.W.  
Washington, D.C. 20001

FROM: NATIONAL BUSINESS AGENT

Brian Farris  
NBA-NALC  
1124 W. Chapman  
Orange, CA 92668

REGIONAL GRIEVANCE NO.	BRANCH	CITY	STATE
W4N-5T-C-33892	2902	Simi Valley	CA

COMMENTS:

Management has no right to amend or alter the M-41 Handbook. They are attempting to combine the 3996 and the 1571 into their own form.

MANAGEMENT'S POSITION AT STEP 3:

ARBITRATION RECOMMENDATION:  EXPEDITED  REGULAR  NATIONAL LEVEL  NO

STATE REASONS:

ATTACH TO GRIEVANCE CASE SUMMARY (GRIEV-3)

ORIGINAL TO NATIONAL OFFICE



D/4

UNITED STATES POSTAL SERVICE  
Western Regional Office  
San Bruno, CA 94099-0001

Mr. Brian Farris, NALC  
National Business Agent  
1124 West Chapman Avenue  
Orange, California 92668-2829

OCT 19 1986

Simi Valley, CA 93065  
Branch  
W4N-5T-C 33776  
W4N-5T-C 33892 ✓

Dear Mr. Farris:

This will confirm the Step 3 hearing between your designee Tom Young and myself concerning the above grievance on October 7, 1986.

The information required is on the revised form. Therefore, there is no contractual violation in management implementing the use of this revised form.

Based upon the above, this case is denied.

In our judgment, the grievance does not involve an interpretive issue pertaining to the National Agreement nor any supplement thereto which may be of general application. Unless the Union believes otherwise, the case may be appealed directly to regional arbitration in accordance with the provisions of Article 15 of the National Agreement.

Sincerely,

David H. English, Regional  
Labor Relations Executive

cc: PMDM:OF:FICR  
cc: Tom Young

130 207



# NATIONAL ASSOCIATION OF LETTER CARRIERS (AFL-CIO)

GRIEVANCE APPEAL TO **3**

DATE: **Sept. 17, 1986**

TO: REGIONAL DIRECTOR, EMPLOYEE AND LABOR RELATIONS  
UNITED STATES POSTAL SERVICE  
**850 Cherry Ave.  
San Bruno, Calif. 94099**

FROM: **BRANCH PRESIDENT**  
**Jon Gaunce**  
**Branch #2902 NALC**  
**7238 Canby Ave.**  
**Reseda, Calif. 91335**

BRANCH GR.#	GRIEVANT'S NAME	GRIEVANT'S S.S. #	JOB CLASSIFICATION	STATION
<b>6TV60CSIM</b>	<b>Class Action</b>	<b>N/A</b>	<b>Craft</b>	<b>Simi Valley</b>

PURSUANT TO ARTICLE XV, SECTION 2 OF THE NATIONAL AGREEMENT, WE HEREBY APPEAL TO STEP 3 THE DECISION AT STEP 2 OF THE POSTMASTER OR DESIGNEE **RR Jacobson, Designee** OF THE **Simi Valley** INSTALLATION, RENDERED ON **Sept. 2, 1986** AND RECEIVED ON **Sept. 3, 1986**

ATTACHMENTS (CHECK):  STANDARD GRIEVANCE FORM  STEP 2 DECISION  UNION CORRECTIONS OR ADDITION TO STEP 2 DECISION (IF FILED)

THE FOLLOWING INFORMATION WILL HOPEFULLY ASSIST THE PARTIES IN QUICKLY RESOLVING THIS PROBLEM. TO DISCUSS THIS GRIEVANCE FURTHER, KINDLY CONTACT OUR NATIONAL BUSINESS AGENT **Brian Farris** AT (ADDRESS) **1124 W. Chapman Ave. Orange, Calif. 92668** OR BY PHONE **997-8480**

VIOLATION: INCLUDING BUT NOT LIMITED TO NATIONAL (ART. & SECT.) **Art. 19 Art. 5** LOCAL (ART. & SECT.)  
OTHER GROUNDS: **M-41 Sections 280, 451, and 452**

REASONS FOR APPEAL: **Grievance was denied at Step 2. It is the Union's contention that Management has violated Section 280 of the M-41 Handbook and Article 5 of the National Agreement in issuing the new form 3996-1813-1571 to Letter Carriers. The Union also contends that the new form is in violation of Section 451 and 452 of the M-41 and should be discontinued.**

CORRECTIVE ACTION REQUESTED: **The Union requests that Management cease and desist using or issuing this form to Letter Carriers. The Union requests that the proper and authorized forms be used in accordance with the M-41 Handbook. The Union also requests that all such 3996-1813-1571 forms issued and used be removed from all files and records and the proper forms substituted with the proper information.**

cc: NATIONAL BUSINESS AGENT, NALC  
POSTMASTER

**SEP 18 1986**  
**Jon Gaunce**  
BRANCH PRESIDENT/DESIGNEE  
  
SIGNATURE

UNITED STATES POST OFFICE

DATE: September 2, 1986  
OUR REF: RRJ:goa  
SUBJECT: Grievance 6TV 60 CSIM

TO: Mr. Jon Gaunce NALC, Local 2902  
7238 Canby Street  
Reseda, CA 91335

Certified Mail P 459 406 170  
Return Receipt Requested

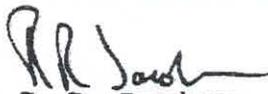
A step two meeting was held on August 26, 1986 on the above-captioned grievance.

This grievance is based upon new forms issued by management which combine 3996, 1813 and 1571. Management has issued instructions to carriers that new form is to be used in place of old form. This new form will eliminate unneeded paperwork, thus saving time for the craft.

It is the union's position that the use of the new form is improper as it is not authorized by M-41 or Article 19 of the National Agreement. The union maintains that management cannot create its own forms for use in local post offices, and requests that management cease use of the form.

It is management's position that Article 19 states, "The employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair. Article 3 gives managers the right to direct employees in the performance of duties and to maintain the efficiency of the operations entrusted to it. By using this form, excessive work will be eliminated, thus improving the efficiency of the operation. No hardship is caused to employees by use of the new form. Note that Steward Henschel informed me that he thought the new forms were a great idea which saved paperwork for carriers.

This grievance is denied.

  
R. R. Jacobson  
Acting S.P.O.



**NATIONAL ASSOCIATION OF LETTER CARRIERS (AFL-CIO)**  
 Pursuant to Article XV, Section 2, this form must be used to appeal a grievance to Step 2.

DATE	
NALC INITIALS	USPS INITIALS

# STANDARD GRIEVANCE FORM

DATE	BRANCH GRIEV NO	U S P S NO
19 Aug 86	6TV60CSIM	

TO: U S P S STEP 2 DESIGNEE (NAME & TITLE)	INSTALLATION	PHONE—OFFICE
R. R. Jacobson, SPO	Simi Valley, CA	

FROM: BRANCH NO	BUSINESS ADDRESS	PHONE—OFFICE	PHONE—OTHER
2902	7238 Canby Street, Reseda, CA 91335	818+996-1291	

STEP 2 AUTHORIZED UNION REP.	STEWARD
Jon Gounce	Louis Henschel

STEP 1 MEETING: HELD ON (DATE/TIME)	BETWEEN U S P S REPRESENTATIVE	AND GRIEVANT	STEWARD
p 5 Aug 86	Sue Kusnowski, Sup		Louis Henschel

GRIEVANT'S NAME (OR CLASS)	CITY	STATE	ZIP
Class			

JOB CLASSIFICATION	CRAFT SENIORITY DATE	USPS SENIORITY DATE	DUTY HOURS
Letter Carriers			

STATION OR BRANCH	SOCIAL SECURITY NO	VETERAN
Simi Valley Post Office		<input type="checkbox"/> YES <input type="checkbox"/> NO

OFF DAYS	FIXED—CHECK AS APPLICABLE	SA	SU	M	T	W	TH	F	LEVEL	STEP	REG	UNION-REG	RESERVE-REG	PTR	PTF
<input type="checkbox"/> ROTATING		<input type="checkbox"/>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						

STEP 1: RENDERED ON (DATE/TIME)	BY (NAME & TITLE)	SUPERVISOR'S INITIALS (UPON REQUEST)
12 Aug 86	Sue Kusnowski, Sup. Del & Col.	

PURSUANT TO ARTICLE XV OF THE NATIONAL AGREEMENT, WE HEREBY APPEAL TO STEP 2, THE FOLLOWING GRIEVANCE.  
 VIOLATION: INCLUDING BUT NOT LIMITED TO NATIONAL (ART. & SECT.) 19, NA 41.3G LOCAL (ART. & SECT.)  
 OTHER GROUNDS: Section 280, Methods Handbook M-41

FACTS: WHAT HAPPENED During the period of 21 July 86 thru 5 Aug 86 carriers requesting a PS Form 3996 were given a Form 3996, 1813-1571. This form does not meet the requirement of Sec 280, M-41 nor the requirement of Sec 3G, Art 41, NA. There has been no change in the USPS publications to show that such a new form is in fact authorized.

ADDITIONAL SHEET ATTACHED

UNION CONTENTIONS: REASONS FOR GRIEVANCE P.S. Form 3996 is used by the letter carrier to request auxiliary assistance when the carrier believes that the route cannot be finished in the authorized time. PS Form 1571 list mail that is curtailed or not delivered on the day the mail is made available. Letter carriers may request a copy of either or both Forms 1571 and 3996.. Discontinuance of these forms of the combining of the forms with other documents evade managements responsibility to provide copies to the employee when requested.

ADDITIONAL SHEET ATTACHED

CORRECTIVE ACTION REQUESTED: That the use of a Form that Combines Form 3996 and Form 1571 with other forms be discontinued immediately, and further hat the prescribed forms be furnished to letter carráans when required by M-41

BRANCH PRESIDENT / DESIGNEE Bob Kerlin SIGNATURE Bob Kerlin



**NATIONAL ASSOCIATION OF LETTER CARRIERS (AFL-CIO)**  
 Pursuant to Article XV, Section 2, this form must be used to appeal a grievance to Step 2.

WITHDRAWN \_\_\_\_\_ REFILED WITH \_\_\_\_\_  
 DATE \_\_\_\_\_  
 NALC INITIALS \_\_\_\_\_ USPS INITIALS \_\_\_\_\_

**STANDARD GRIEVANCE FORM**

DATE 8-5-86 BRANCH GRIEV NO 6TU 60 511 USPS NO \_\_\_\_\_

TO: USPS STEP 2 DESIGNEE (NAME & TITLE) NEIL HADEN Susan POLZMASRA INSTALLATION Simi Valley CA PHONE—OFFICE 526-1331

FROM: BRANCH NO. 2902 BUSINESS ADDRESS P.O. BOX 12 Simi Valley, CA 93062

STEP 2 AUTHORIZED UNION REP. JON GAUNCE PHONE—OFFICE \_\_\_\_\_ PHONE—OTHER \_\_\_\_\_

STEP 1 MEETING: HELD ON (DATE/TIME) 8-5-86 BETWEEN USPS REPRESENTATIVE KULNOWSKI AND GRIEVANT \_\_\_\_\_ STEWARD HEVICK

GRIEVANT'S NAME (OR CLASS) CLASS PHONE \_\_\_\_\_

HOME ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

JOB CLASSIFICATION \_\_\_\_\_ CRAFT SENIORITY DATE \_\_\_\_\_ USPS SENIORITY DATE \_\_\_\_\_ DUTY HOURS \_\_\_\_\_

STATION OR BRANCH \_\_\_\_\_ SOCIAL SECURITY NO \_\_\_\_\_ VETERAN  YES  NO

OFF DAYS:  ROTATING  FIXED—CHECK AS APPLICABLE SA  SU  M  T  W  TH  F LEVEL \_\_\_\_\_ STEP \_\_\_\_\_ REG \_\_\_\_\_

STEP 1: RENDERED ON (DATE/TIME) 8-12-86 BY (NAME & TITLE) KULNOWSKI, SUE reviewed SUPERVISOR'S INITIALS (UPON REQUEST) \_\_\_\_\_

PURSUANT TO ARTICLE XV OF THE NATIONAL AGREEMENT, WE HEREBY APPEAL TO STEP 2 THE FOLLOWING GRIEVANCE  
 VIOLATION: INCLUDING BUT NOT LIMITED TO NATIONAL (ART & SECT) 19. 41-3 b LOCAL (ART. & SECT.) 19. 41 Sec 22b  
 GROUNDS: \_\_\_\_\_

FACTS: WHAT HAPPENED ON JULY 21 - AUG 4, 1985 A REQUEST BY EMPLOYEES FOR FORM 3996- FORM. THE FORM IS FROM AUXILIARY CONTRACT. SAID FORM WAS NOT GIVEN EMPLOYEES - INSTEAD - A UNAUTHORIZED FORM 3996- 1813-1571 WAS GIVEN

ADDITIONAL SHEET ATTACHED

UNION CONTENTIONS: REASONS FOR GRIEVANCE GRIEVANCES HAVE BEEN FILED IN THE PAST CONCERNING REQUEST FOR OFFICIAL FORMS AT A STEP 3 HEARING MAY 22- 85. IT STATES THAT - MANAGEMENT WILL COMPLY WITH PROVISION OF SECTION 220 OF N.Y.

ADDITIONAL SHEET ATTACHED

CORRECTIVE ACTION REQUESTED: THAT - FORM 3996- 1813-1571 USE BE STOPPED IMMEDIATELY AND THAT - FORM 3996 BE GIVEN TO EMPLOYEES ON REQUEST

BRANCH PRESIDENT/DESIGNEE \_\_\_\_\_ SIGNATURE [Signature]



*Exhibit #*

UNITED STATES POSTAL SERVICE  
 Labor Relations Department  
 475 L'Enfant Plaza, SW  
 Washington, DC 20260-4100

Mr. Brian D. Farris  
 Director, City Delivery  
 National Association of Letter  
 Carriers, AFL-CIO  
 100 Indiana Avenue, N.W.  
 Washington, DC 20001-2197

MAR 25 1988

Re: Branch  
 Olympia, WA 98501  
 H4N-5R-C 45671

Dear Mr. Farris:

On February 9, 1988, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

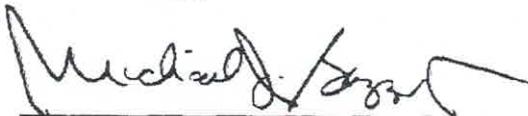
The issue in this grievance is whether management violated the National Agreement by modifying Form PSIN D1147, and posting the carriers prior casing ability.

→ [ During our discussion, we mutually agreed that no national interpretive issue is fairly presented in this case. We also agreed that Form PSIN D1147 will no longer be used in its revised form. Local management will return to using this form as originally issued, without the local modifications. ]

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,



Michael J. Guzzo, Jr.  
 Grievance and Arbitration  
 Division



Brian D. Farris  
 Director, City Delivery  
 National Association of Letter  
 Carriers, AFL-CIO

*Exhibit #*

UNITED STATES POSTAL SERVICE  
Labor Relations Department  
475 L'Enfant Plaza, SW  
Washington, DC 20260-4100

Mr. Brian D. Farris  
Director, City Delivery  
National Association of Letter  
Carriers, AFL-CIO  
100 Indiana Avenue, N.W.  
Washington, DC 20001-2197

JUL 8 1988

Re: Branch  
Edmonds, WA 98020  
H4N-5R-C 33012

Dear Mr. Farris:

On April 21, 1988, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management violated the National Agreement when it used a locally developed form to supplement the data provided on Form 3996.

→ [ During our discussion, we mutually agreed that no national interpretive issue is presented in this case. We also agreed that the issuance of local forms, and the local revision of existing forms is governed by Section 324.12 of the Administrative Support Manual (ASM). The locally developed form at issue was not promulgated according to ASM 324.12. Therefore, management will immediately discontinue using this form. ]

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

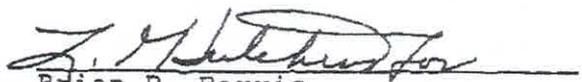
Mr. Brian D. Farris

2

Time limits were extended by mutual consent.

Sincerely,

  
Charles J. Dudek  
Grievance & Arbitration  
Division

  
Brian D. Farris  
Director, City Director  
National Association of Letter  
Carriers, AFL-CIO

CRW1078

NO. 10. 1971

Exhibit #

M-01107



UNITED STATES POSTAL SERVICE  
475 L'ENFANT PLAZA SW  
WASHINGTON DC 20260

RECEIVED

NOV 25 1992

CONTRACT ADMINISTRATION UNIT  
N.A.L.C. WASHINGTON, D.C.

Mr. Lawrence G. Hutchins  
Vice President  
National Association of  
Letter Carriers, AFL-CIO  
100 Indiana Avenue, N.W.  
Washington, DC 20001-2197

RE: H7N-2D-C 42122  
Class Action  
Wilmington, DE 19850

Dear Mr. Hutchins:

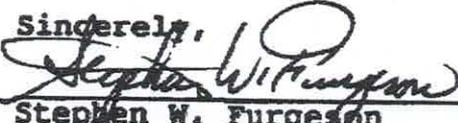
On November 9, 1992, we met in a prearbitration discussion of the above-referenced case.

The issue in this grievance is whether management violated the National Agreement when it used a locally developed form.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We also agreed that the issuance of local forms, and the local revision of existing forms is governed by Section 374.12 of the Administrative Support Manual (ASM). The locally developed form was not promulgated according to ASM 324.12. Therefore, management will discontinue the use of the subject form.

Accordingly, we agree to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand case number H7N-2D-C 42122 and remove it from the pending national arbitration listing.

Sincerely,  
  
Stephen W. Furgeson  
Manager  
Grievance and Arbitration

  
Lawrence G. Hutchins  
Vice President  
National Association of  
Letter Carriers, AFL-CIO

11/24/92  
Date

Enclosure

Francis J. Conners  
Executive Vice President  
Lawrence G. Hutchins  
Vice President  
Richard P. O'Connell  
Secretary-Treasurer  
Halline Overby  
Asst. Secretary-Treasurer  
Brian D. Farris  
Director, City Delivery  
George Davis, Jr.  
Director, Safety & Health



M-01107  
William M. Dunn, Jr.  
Director, Life Insurance  
Robert Vincenzi  
Director, Health Insurance  
Walter E. Couillard  
Director of Retired Members  
BOARD OF TRUSTEES  
James G. Souza, Jr.  
James Worsham  
Michael J. O'Connor

100 Indiana Avenue, N.W. Washington, D.C. 20001  
Telephone: (202) 393-4695

July 31, 1991

Assistant Postmaster General  
Labor Relations Department  
United States Postal Service  
Employee and Labor Relations  
475 L'Enfant Plaza West, S. W.  
Washington, D. C. 20260-4100

Certified letter number P 213 305 682

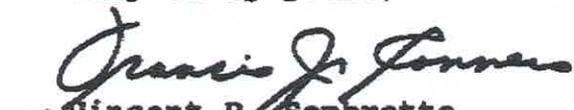
RE: Appeal from Step 4  
Request for Arbitration

NALC System No: 3690  
USPS No: H7N-2D-C-42122  
Wilmington, DE

Dear Sir:

Pursuant to Article 15, Sections 2 and 4  
of the National Agreement, I have authorized  
and hereby request certification of the above  
referenced case for arbitration.

Very truly yours,

  
Vincent R. Sombrotto  
President

cc:  
James P. Turner  
Moe Biller, President, APWU - with file



# National Association of Letter Carriers (AFL-CIO)

M-01107

## APPEAL TO STEP 4

3690

DATE: May 16, 1991

FROM: NATIONAL BUSINESS AGENT

TO: SENIOR ASSISTANT POSTMASTER GENERAL  
EMPLOYEE AND LABOR RELATIONS  
UNITED STATES POSTAL SERVICE  
WASHINGTON, D.C. 20260

James P. Turner  
5950 Symphony Woods Road - Suite 305  
Columbia, Md. 21044

CARRIER	REGIONAL NO.	GRIEVANT (OR CLASS)	POST OFFICE
2-12-1	B7N-2D-C 42122	Class	Wilmington, DE.

DEAR SIR:

PURSUANT TO ARTICLE XV, SECTION 2, OF THE NATIONAL AGREEMENT, I AM APPEALING THE ABOVE-CAPTIONED CASE TO STEP 4 OF THE GRIEVANCE PROCEDURE.

DATE STEP 3 DENIAL RECEIVED:

May 2, 1991

STEP 3 DECISION RENDERED BY:

William Mollo

VIOLATION INCLUDING BUT NOT LIMITED TO:

19

CORRECTIVE ACTION REQUESTED:

Discontinue the use of Record of Constructive Delivery Forms and comply with the M-39 and M-41 when instructing carriers to deliver certified mail.

DESIGNATED NALC REPRESENTATIVE AT STEP 4:

Contract Administration Unit

SINCERELY YOURS,

NATIONAL BUSINESS AGENT

CC: REGIONAL DIRECTOR FOR ELR  
NATIONAL OFFICER, NALC  
BRANCH PRESIDENT, NALC



UNITED STATES POSTAL SERVICE  
Eastern Regional Office  
P. O. Box 8801  
Philadelphia, Pennsylvania 19197-0840

April 29, 1991

MR JERRY KERNER  
REGIONAL ADMINISTRATIVE ASSISTANT  
5950 SYMPHONY WOOD RD SUITE 305  
COLUMBIA MD 21044-3521

RE: E7N-2D-C 42122  
CLASS ACTION  
WILMINGTON DE 19850  
2121

Dear Mr. Kerner:

On 04/15/91, the above referenced grievance was discussed at Step 3 of our contractual grievance procedure. The matters presented by the union concerning this grievance, as well as the applicable contractual provisions, have been reviewed and given careful consideration.

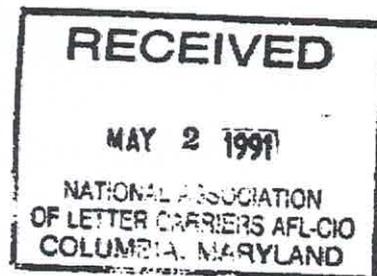
The union's Representative's oral argument and submitted documentation were considered, but were not sufficiently persuasive to alter local management's position. Therefore, the corrective action requested by the union is not granted.

In the opinion of the Postal Service, this grievance does not involve any interpretive issue(s) pertaining to the National Agreement or any supplement thereto which may be of general application. Therefore, this case may be appealed directly to regional arbitration in accordance with the provisions of Article 15 of the National Agreement.

Very truly yours,

William Molloy  
Labor Relations

cc: PM



MB



# National Association of Letter Carriers (AFL-CIO)

M-01107

GRIEVANCE APPEAL TO **3**

DATE: March 24, 1991

FROM: BRANCH PRESIDENT

Joseph Apostolico  
Branch #121, NALC  
217 N. Scott St.  
Wilmington, De. 19805

TO: REGIONAL DIRECTOR, EMPLOYEE AND LABOR RELATIONS  
UNITED STATES POSTAL SERVICE

Jack West  
P.O. Box 6631  
Philadelphia, Pa. 19127

BRANCH GR.#	GRIEVANT'S NAME	GRIEVANT'S S.S.#	JOB CLASSIFICATION	STATION
4-12-1	Class			

PURSUANT TO ARTICLE XV, SECTION 2 OF THE NATIONAL AGREEMENT, WE HEREBY APPEAL TO STEP 3 THE DECISION AT STEP 2 OF THE POSTMASTER OR DESIGNEE Linda Malone

OF THE Wilmington, De. INSTALLATION, RENDERED ON \_\_\_\_\_ AND RECEIVED ON \_\_\_\_\_

ATTACHMENTS CHECK:

STANDARD GRIEVANCE FORM

STEP 2 DECISION

UNION CORRECTIONS OR ADDITIONS TO STEP 2 DECISION (IF FILED)

THE FOLLOWING INFORMATION WILL HOPEFULLY ASSIST THE PARTIES IN QUICKLY RESOLVING THIS PROBLEM. TO DISCUSS THIS GRIEVANCE FURTHER, KINDLY CONTACT OUR NATIONAL BUSINESS AGENT James Turner

AT ADDRESS 5900 Symphony Woods Road OR BY PHONE (301) 991-1225  
Columbia, Md. 21044

VIOLATIONS INCLUDING BUT NOT LIMITED TO NATIONAL (ART. & SECT.) 17 LOCAL (ART. & SECT.) \_\_\_\_\_

OTHER GROUNDS: \_\_\_\_\_

REASON FOR APPEAL: Management of the Wilm. MDC has issued a locally developed form delivery of certified letters and instructing carriers to use them in lieu of forms 3349 and 3611. The use of these forms is not in compliance with the M-39 and M-41.

CORRECTIVE ACTION REQUESTED: Management immediately discontinue the use of Record of Constructive Delivery Forms and comply with the M-39 and M-41 when instructing carriers to deliver certified mail.

**RECEIVED**

APR 15 1991

NATIONAL ASSOCIATION  
OF LETTER CARRIERS AFL-CIO  
COLUMBIA, MARYLAND

cc: NATIONAL BUSINESS AGENT, NALC  
POSTMASTER

Joseph Apostolico  
BRANCH PRESIDENT/DESIGNEE

*Joseph Apostolico*  
SIGNATURE

**Step 2 Denial Letter  
Class Action Constructive Delivery**

If the merits of this case are considered, this form gives the written authority to the carrier to deliver the Official Certified Letter. The authorization specifically states:

**NOTE TO CARRIER**

**YOU ARE AUTHORIZED TO DELIVER THIS OFFICIAL CERTIFIED LETTER WITHOUT ADDRESSES'S SIGNATURE, IF UNAVAILABLE. RETURN THIS RECORD OF DELIVERY TO:**

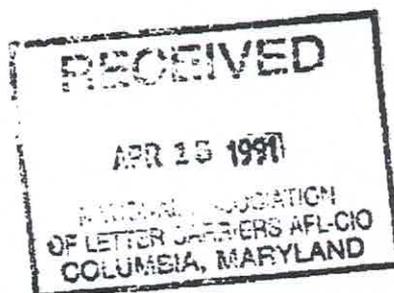
**UNITED STATES POSTAL SERVICE  
P.O. BOX 10000  
WILMINGTON DE 19850-9701**

If the recipient is not present to sign the certified letter then the carrier is authorized to deliver the certified letter.

Based on the above, this grievance is denied.

*Linda Marie Malone*

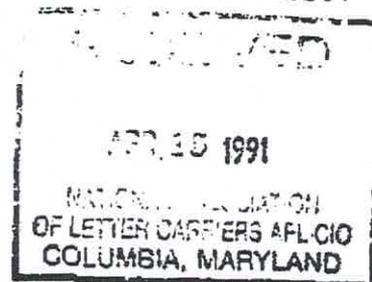
**Linda Marie Malone  
A/Labor Relations Representative**



UNITED STATES POST OFFICE  
MANAGEMENT SECTIONAL CENTER  
POST OFFICE BOX 10,000  
WILMINGTON, DE. 19850

March 25, 1991

Joseph J. Apostolico  
President, NALC Branch 191  
217 N. Scott St.  
Wilmington DE 19805-3436



RA: Class Action  
Union #: 2-12-1  
Wilm #: 1-509

CERTIFIED NO. #P 637 204 969  
RETURN RECEIPT REQUESTED

Dear Mr. Apostolico;

On March 8, 1991, I met with your step II designee, Mr. Robert Wilkerson, to discuss the above referenced grievance.

The matters as presented by him as well as applicable contractual provisions were reviewed and given careful consideration.

The issue addressed in this instant grievance was whether Management violated Article 19, especially the M-39 and M-41 by utilizing a locally generated form to substantiate the delivery of certain correspondence.

The Union maintains that the Constructive Delivery Forms is contrary to the Domestic Mail Manual which stipulates that for all certified mail a signature must be obtained. The Union feels that the Carriers should not be mandated to deliver this correspondence without a signature. The Union at the first meeting verbally stated that neither, New Castle nor Newark uses these forms.

The requested remedy is that Management "cease instructing carriers to use Record of Constructive Delivery Forms and comply with the M-41, M-39 and Domestic Mail Manual."

Management would like to state on the onset that this grievance is untimely. For years, this MSC has used some deviation of this form to constitute that a letter had, in fact, been delivered.

Attached, as exhibits are records of Constructive Delivery. These date back as early as September 1990. Records of Constructive Delivery are from both New Castle and Newark.

Management typically uses this mode of delivery to send correspondence to Postal Workers, usually this is notice of some adverse action or a request to return to duty.



# National Association of Letter Carriers (AFL-CIO)

Pursuant to Article XV, Section 2, this form must be used to appeal a grievance to Step 2.

M-01107

WITHDRAWN	RESOLVED
DATE	
NALC INITIALS	USPS INITIALS

## STANDARD GRIEVANCE FORM

DATE 2/26/91		BRANCH GRIEV NO 2-12-1		USPS NO											
TO: USPS STEP 2 DESIGNEE (NAME & TITLE) Margaret Rucker, Postmaster			INSTALLATION Eilmington MSC		PHONE—OFFICE 323-2227										
FROM: BRANCH NO. 191	BUSINESS ADDRESS 217 N. Scott St. Wilm., De. 19805														
STEP 2 AUTHORIZED UNION REP Joseph Apostolico			PHONE—OFFICE 888x88x 652-2933	PHONE—OTHER											
STEP 1 MEETING HELD ON (DATE/TIME) 2/22/91	BETWEEN USPS REPRESENTATIVE L. Malone	AND GRIEVANT		STEWARD W. Wilkerson											
GRIEVANT'S NAME (OR CLASS) Class					PHONE										
HOME ADDRESS		CITY	STATE	ZIP											
JOB CLASSIFICATION		CRAFT SENIORITY DATE	USPS SENIORITY DATE	DUTY HOURS											
STATION OR BRANCH Carrier Annex			SOCIAL SECURITY NO	VETERAN <input type="checkbox"/> YES <input type="checkbox"/> NO											
OFF DAYS	FIXED—CHECK AS APPLICABLE	SA	SU	M	T	W	TH	F	LEVEL	STEP	REG.	UNION JOB	RESERVE JOB	PTR	PT
STEP 2 RENDERED ON (DATE/TIME) SECTION		BY (NAME & TITLE)			SUPERVISOR'S INITIALS (UPON REQUEST)										

PURSUANT TO ARTICLE XV OF THE NATIONAL AGREEMENT, WE HEREBY APPEAL TO STEP 2 THE FOLLOWING GRIEVANCE  
 VIOLATION: INCLUDING BUT NOT LIMITED TO NATIONAL (ART. & SECT.) 19, M-39, M-41 LOCAL (ART. & SECT.)  
 GROUNDS: Domestic Mail Manual

FACTS: WHAT HAPPENED On Feb/ 21, 1991, Branch #191 was informed that management of the Wilm. MSC were instructing carriers to use Constructive Delivery Forms in lieu of forms 3849 and 3811.

ADDITIONAL SHEET ATTACHED

UNION CONTENTIONS: REASONS FOR GRIEVANCE This form has been generated locally and is not authorized by the M-39, M-41 and Domestic Mail Manual.

ADDITIONAL SHEET ATTACHED

CORRECTIVE ACTION REQUESTED: Management cease inatructing carriers to use Record of Constructive Delivery Forms and and comply with the M-41, M-39 and Domestic Mail Manual.

BRANCH PRESIDENT / DESIGNEE

Joseph Apostolico

SIGNATURE

*Joseph Apostolico*

UNITED STATES POST OFFICE  
WILMINGTON, DE 19850

RECORD OF CONSTRUCTIVE DELIVERY

TO WHOMEVER IT MAY CONCERN:

Date: \_\_\_\_\_

I am the regular carrier on Route # \_\_\_\_\_ . I deliver mail to the residence located at \_\_\_\_\_ .  
(Address)

All mail addressed to Mr. (Mrs.) \_\_\_\_\_ ,  
\_\_\_\_\_ , has been accepted.  
(exact address, city, state and ZIP Code)

On, \_\_\_\_\_ , 19\_\_\_\_ , at approximately \_\_\_\_\_ a.m./p.m., I delivered Certified Letter # \_\_\_\_\_ , addressed to (Mr., Mrs.) \_\_\_\_\_  
\_\_\_\_\_ (Complete Address)

into the regular mail receptacle at the address shown immediately above. Mail addressed to the above mentioned patron, which has been delivered by me to the address shown above, has not been returned to the Post Office marked to indicate that it was undeliverable or that the addressee was unknown at that address.

I certify that the above statements are true and correct according to the best of knowledge and belief.

NOTE TO CARRIER:  
You are authorized to deliver this official Certified Letter without addressee's signature, if unavailable. Return this record of delivery to:

United States Postal Service  
Labor Relations Representative  
P. O. Box 10,07  
Wilmington, DE 9850-9994

\_\_\_\_\_  
(Carrier's Name)  
\_\_\_\_\_  
(Route No., or Badge No.)

Exhibit #

LABOR RELATIONS

M-01325



RECEIVED

MAY 6 1998

CONTRACT ADMINISTRATION UNIT  
N.A.A.C. WASHINGTON, D.C.

Mr. Vincent R. Sombrotto  
President  
National Association of Letter  
Carriers, AFL-CIO  
100 Indiana Avenue, NW  
Washington DC 20001-2197

Re: I94N-4I-C 97116055  
CLASS ACTION  
WATERLOO IA 50701-9997

Dear Mr. Sombrotto:

On April 1 and April 16, 1998, I met with your representative to discuss the above-referenced grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management violated the National Agreement when it used a locally developed form.

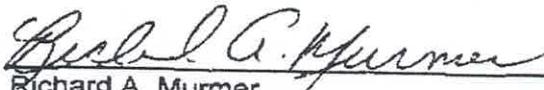
→ [ During our discussion, we mutually agreed that no national interpretive issue is presented in this case. We also agreed that the issuance of local forms, and the local revision of existing forms is governed by Section 325 of the Administrative Support Manual (ASM). The locally modified form at issue was not promulgated according to ASM325.12. Therefore, management will discontinue using this form. ]

Accordingly, we mutually agreed to remand this case to the parties at Step 3 for further processing or to be scheduled for arbitration, as appropriate.

Please sign and return the enclosed copy of this decision as your acknowledgment to remand this case. -

Time limits were extended by mutual consent.

Sincerely,

  
Richard A. Murmer  
Labor Relations Specialist  
Grievance and Arbitration

  
Vincent R. Sombrotto  
President  
National Association of Letter Carriers,  
AFL-CIO

Date: 5/26/98

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration )  
 )  
 )  
 between )  
 )  
 UNITED STATES POSTAL SERVICE )  
 )  
 and )  
 )  
 NATIONAL ASSOCIATION OF LETTER )  
 CARRIERS, AFL-CIO )  
 )

AWARD

Grievant: Class Action  
Post Office: LaGrange, GA

Case No.: 4G 19N 4G C23300921  
NALC No.: BR13423C20  
DRT No.: 09-612188  
Branch No. 1342

Before: Jacquelin F. Drucker, Esq., Arbitrator

Appearances:

For the NALC: Julius Vickers, Arbitration Advocate  
For the Postal Service: Richard K. Cannon, Labor Relations Specialist

Date of Hearing: January 11, 2024  
Record Closed: February 11, 2024

Place of Hearing: 3900 Crown Road  
Atlanta, Georgia

Date of Award: March 11, 2024

Relevant Contract Provision(s): Article 5, 15, and 19/ASM 324

Contract Year: 2019-2023

Type of Grievance: Contract

AWARD SUMMARY

Grievance sustained. The record establishes that Management at the LaGrange, George Post Office breached Article 19 of the National Agreement when it created and implemented a form used as part of the return-to-work process. The grievance therefore is sustained. The use of the form shall be discontinued, and Management shall cease and desist from future use, absent requisite approval per the ASM. Previously completed forms shall be removed from Letter Carriers' personnel records and files and are not to be relied upon for any purpose. The Union's requested remedy regarding any prior discipline, however, is not awarded.

Jacquelin F. Drucker, Esq.

## **I. STATEMENT OF THE CASE**

The instant grievance relates to the Union's assertion that Management at the LaGrange Georgia Post Office breached the National Agreement and related policies when it implemented a form used as part of return-to-work discussions with Letter Carriers. The hearing of this matter was held on January 11, 2024, at the Postal Service facility located at 3900 Crown Road, Atlanta, Georgia. At hearing, the parties were ably represented and were given a full and fair opportunity to present evidence, examine and cross examine witnesses, and make arguments. All witnesses testified under oath. After the taking of evidence was concluded, the advocates agreed to present written closing arguments. The submissions of both parties were timely received, exchange copies were forwarded by the Arbitrator's office, and the record was closed. In reaching the conclusions and Award set forth herein, the Arbitrator has given full and careful consideration to all arguments posed and all evidence of record well as all regional and National Level awards, policies, and contract provisions cited.

## **II. ISSUE**

The parties at hearing agreed that the issue to be resolved is as set forth at Step B, as follows: "Did Management violate the contractual provisions contained in Articles 5, 15 and 19 of the National Agreement via Sections 324 and 325 of the Administrative Support Manual by developing, implementing and utilizing a local developed [sic] form titled, Return To Work, and requiring carriers to initial or sign the form in relation attendance related matters? If so, what is the appropriate remedy?"

## **III. FACTS**

In early 2023, the Postmaster of the LaGrange Post Office implemented a program through which Letter Carriers who were off work because of unscheduled absences were, upon return, required to meet with their supervisors to discuss various leave requirements and the frequency of their absences. As part of that process, the supervisor was required to complete a two-page

document bearing the title "Return to Work." The document included excerpts from various passages from the ELM regarding attendance, tardiness, falsification of documents, use of leave, documentation requirements, etc. It also included a variety of blanks into which supervisors were to enter attendance data and other information. Each page also had a blank for the Letter Carrier's signature or initials. Supervisors were instructed that, before meeting with Letter Carriers upon their return to work, the supervisor was to fill in the information pertaining to the Letter Carrier, as noted below. This included the Letter Carrier's name on both pages and the "Date Discussed With Employee."<sup>1</sup> The supervisor also was required to fill in the following information:

Days/Incidents Past Year \_\_\_\_

Times Tardy Past Year \_\_\_\_

EAL: \_\_\_\_

AL Balance: \_\_\_\_

The document also provided a space for "Remarks" and a line for the supervisor's signature and title. During the discussion between the supervisor and the Letter Carriers, the Carriers were required to sign or initial the document in the spaces provided at the top of each page.

The Postmaster testified that the document had been "sort of" locally developed. She testified it was based on a form that had been "going throughout another office somewhere." After management at LaGrange obtained it, she added some ELM provisions and began using the version that is in the record. The purpose, she said, was to be informational for the employee.

Soon after the document was implemented, Letter Carriers began contacting the Union. The Union collected written statements from the Carriers, and these are part of the record, with the parties having agreed that, if the Carriers had been called as witnesses, they would have testified in accordance with the content of their written statements. These statements addressed the Letter Carriers' experiences with the meetings and use of the Return to Work document. One Letter

---

<sup>1</sup> It is not clear if the information sought here was the date of absence or the date of the return-to-work meeting. It appears from completed documents that supervisors were adding the date of the meeting.

Carrier reported that, during an investigatory interview that resulted in a Letter of Warning, the supervisor reviewed the Carrier's attendance experience and discussed the document as part of the interview. At that time, the Letter Carrier had been required to sign the Return to Work document, to which the supervisor had added a number of attendance instances from 2022. A Union Steward was present for that meeting. Approximately two months later, upon returning from an unscheduled absence, the same Letter Carrier was required to attend another meeting, without Union representation, and she was required to sign another Return to Work document. That document listed only 2023 attendance issues. A Letter of Warning was discussed, but it is not clear if it was a second Letter or the one that resulted from the January interview. Another Letter Carrier was off work on February 9 and, when returning on February 10, attempted to provide her medical documentation to the Postmaster but was told that she needed to wait until her supervisor could meet with her to "do the Return to Work meeting." At that meeting, the Carrier was allowed to provide her medical documentation and was required to sign the Return to Work document.

The Union Steward Eric Sloan initiated the instant grievance and met with Postmaster Hope at Formal Step A on or about May 12, 2023. At that time, Management agreed, as written on the grievance form, "Management will comply with not utilizing Return to Work forms effective immediately." The grievance, however, was not resolved, as the Union sought as part of the remedy a commitment by Management to cease and desist, to which Management would not agree. As there was no agreement on that point, the grievance was moved to Step B and, then, to arbitration.

#### **IV. ANALYSIS**

Through this grievance, the Union challenges only the use of the Return to Work document described above, which supervisors are required to complete, with various absence and leave data for a Letter Carrier who has had an unscheduled absence, and the Letter Carriers is required to sign or initial in the course of the are required to sign in the course of the return-to-work meeting. What is not at issue is Management's right to develop or the implementation of a system involving the monitoring of absences/leave, the meetings for discussions of same, or the

distribution to Letter Carriers of ELM provisions or other relevant policies or information. As a result, the multiple regional awards cited by Management, including one by this Arbitrator, are unpersuasive here, for they involve challenges to return-to-work systems and procedures rather than questions regarding locally developed forms. Similarly, Management's argument in its brief that there has been now showing that it violated ELM Section 510 is misplaced. The Union at no time has alleged (nor did the parties at Step B suggest) that the ELM provisions, which relate generally to Management's obligation to monitor attendance and maintain Postal Service system-wide forms such as the PS Form 3972 and 3971, were at issue or were breached.

The sole issue posed here relates to the Return to Work document. The Union argues that it is a locally developed form and that, as a result, the creation and use is in violation of Article 19 and the Administrative Support Manual (ASM). Management responds, first that the Return to Work document is not a "form." Rather, says Management, it is checklist and worksheet for the supervisor to use as a guide for and documentation of the return-to-work meeting. While the document may function, in part, as a worksheet and checklist for Management (although it is not structured as such), it indisputably is not limited to reference and use by the supervisor, as would be the case with a mere worksheet or checklist. Rather, after the employee-specific information has been added and then is reviewed one-on-one with the Letter Carrier, the Letter Carrier is required to sign it. Management also argues that, as the document contains provisions of the ELM, it is simply a permissible way of providing the Letter Carrier with information about absence and leave policies. Again, however, the document is not used solely for that purpose and does not contain only a reiteration of policies.

For Management to suggest that the Return to Work document is not a "form" denies its obvious nature and purpose. The Return to Work document was created as a set template for repeated use, with each use containing and seeking the same foundational content and format, with blanks into which prescribed information must be entered, and with additional space for signature by the supervisor and initials by the employee. The Return to Work document that supervisors at LaGrange are required to complete and use and that Letter Carriers are required to sign (hereinafter "Return to Work Form") fulfills the common concept and understanding of a "form."

In arguing that Management breached Article 19 of the National Agreement when it created and implemented the Return to Work Form, the Union relies on the Administrative Support Manual (ASM) Section 324, which is made applicable through Article 19 because, by its terms, it imposes requirements and restrictions on “Forms that affect wages, hours, and other terms and conditions of employment, or that concern any work and/or time standards or studies relating to any bargaining unit employees.” When such a form is “local,” ASM 324.2 requires that “clearance” first be obtained “through the appropriate area Human Resources manager.” The Union also has noted two national-level grievance settlements that reinforce this requirement. In one, M-01325, issued May 26, 1996, the then-President of the NALC and a national-level Labor Relations Specialist agreed “that the issuance of local forms, and the local revision of existing forms is governed by” the ASM. They further agreed that, as a “locally modified form” at issue in that case had not been promulgated as required in the ASM, its use was to be discontinued. This reflected a nearly identical prior national-level agreement, M-00852, which had been reached in 1988. The long-standing limitation on the development of local forms also is seen in *United States Postal Service and National Post Office Mail Handlers, et al. (National Level)*, Case No. MB-NAT-562 and 936 (Garrett, 1977). Much discussion in the lower stages of the grievance turned on Management’s insistence that the Union was in some way wrong for citing this National Level Award. While the focus of that National Award pertains to the separate and significant issue of local managerial interference with union time, it nonetheless also is a finding, reiterated many times since then, that locally developed forms, not “invoked by the Postal Service” through proper channels, are impermissible.

Management argues that, even if the document is a form, it was not locally developed and that therefore the cited provisions of the ASM do not apply. This is directly contradicted, however, by the testimony of the Postmaster, who explained that a version of this form was secured from another office – not from any of the Postal Service’s Human Resources operations – and that she then modified it for the LaGrange Post Office’s specific use. The record thus amply establishes that this form was locally developed. Indeed, the questions of origin, use, and the variations shown here are among the issues that the requisite processes of the ASM are designed, from an organizational standpoint, to monitor and control.

The Return to Work Form thus falls within the ambit of the ASM Section 324 and, if not promulgated in compliance with those provisions, its creation and use must be found to be in violation of Article 19 of the National Agreement. It is clear from the record regarding the development and origin of the form that it was not created and approved in compliance with the ASM processes. In the grievance procedure, Management had argued that the Union could not prove definitively that the form had not been approved or authorized as required by the ASM. That theory, however, misplaces the burden on such an element. The Union of course cannot provide proof as to a failure of internal actions by Management. As the Union has argued, however, it need only make a prima facie case indicating that requisite processes were not followed. Here, the record reveals more than the prima facie indication of failure to adhere to the required processes, given the testimony of the Postmaster regarding the source and modification of the form. Even if that were lacking, however, it is the Postal Service that would be in possession of the evidence to establish compliance, and the burden to produce same would fall to Management. Management in this proceeding has offered nothing to indicate that any effort to comply with the ASM requirements was made before the Return to Work Form was implemented. To the contrary, the evidence of record shows that it was developed locally, at the LaGrange Post Office, and implemented without the clearance required by the ASM and Article 19.

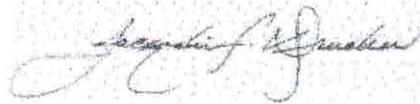
For these reasons, the Postal Service is found to have failed to follow its own requirements in developing, implementing, and using the Return to Work Form at the LaGrange Post Office and, therefore, to have breached Article 19 through the use of said form. As a result of these findings, and as presaged by Management's initial agreement to not utilize the form, Management at the LaGrange Post Office shall discontinue use of the Return to Work Form and shall cease and desist from future use, absent requisite clearance as required by the ASM. All previously completed forms are to be removed from Letter Carriers' personnel records and files, and said documents may not be cited or relied upon for any purpose. The Union also has asked that any discipline that may have been issued as a "direct or indirect result" of the use of the Return to Work Form be rescinded and expunged from the given Letter Carrier's records. The Arbitrator, however, finds that the evidence of record does not establish instances in which a Letter Carrier received discipline that was related to the Return to Work Form or to a resistance to signing

same. While absence-related discipline appears to have been meted out on at least one occasion in conjunction with the return to work meeting and use of the Return to Work Form, the evidence is insufficient to establish a link between the form and the actual absence record such that reversal of discipline would be warranted. Accordingly, that element of the requested remedy is denied.

### AWARD

Upon full and careful consideration of all evidence of record and the detailed arguments and citations presented by the parties, the Arbitrator finds that, for the reasons stated above, the Postal Service has violated the National Agreement and the grievance must be sustained. The LaGrange Post Office shall discontinue use of the Return to Work Form and shall cease and desist future use of said document, absent requisite clearance as required by the ASM. All previously completed forms are to be removed from Letter Carriers' personnel records and files, and said documents may not be cited or relied upon by Management for any purpose.

March 11, 2024



Jacquelin F. Drucker, Esq.

Exhibit #

M 00544



UNITED STATES POSTAL SERVICE  
475 L'Enfant Plaza, SW  
Washington, DC 20260

JUL 5 1985

Mr. Joseph H. Johnson, Jr.  
Director, City Delivery  
National Association of Letter  
Carriers, AFL-CIO  
100 Indiana Avenue, N.W.  
Washington, D.C. 20001-2197

Re: Class Action  
Bristol, CT 06010  
H1N-1J-C 40875

Dear Mr. Johnson:

On June 7, 1985, we met to discuss the above-captioned grievance at the fourth step of the contractual grievance procedure.

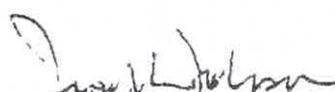
The issue in this grievance is whether management is properly using a locally developed form to document employees responsibilities concerning the operation of postal vehicles.

→ [ During our discussion, we mutually agreed that management may document the fact that specific provisions of handbooks and manuals were reviewed by the carriers and that information regarding vehicle operations was given to the carriers. However, inasmuch as there is no national requirement for carriers to acknowledge that the subject information was received, carriers should not be required to sign a local form, such as those referenced to in this grievance. ]

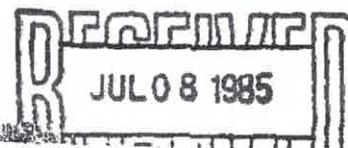
Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Sincerely,

  
Thomas J. Kang  
Labor Relations Department

  
Joseph H. Johnson, Jr.  
Director, City Delivery  
National Association of Letter  
Carriers, AFL-CIO

National Association of Letter Carriers



LABOR RELATIONS



RECEIVED

FEB 20 1998

CONTRACT ADMINISTRATION UNIT  
N.A.L.C. WASHINGTON, D.C.

Mr. William H. Young  
Vice President  
National Association of Letter  
Carriers, AFL-CIO  
100 Indiana Avenue, NW  
Washington DC 20001-2197

Re: H90N-4H-C 95018608  
CLASS ACTION  
GULFPORT MS 39503-9998

Dear Mr. Young:

Recently, we met in prearbitration discussion of the above-captioned grievance.

The issue in this grievance is whether management violated the National Agreement when a local policy was issued and carriers were required to sign off that they were present when the information was read to them.

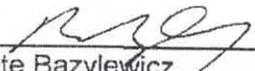
After reviewing this matter, the parties mutually agreed to the following:

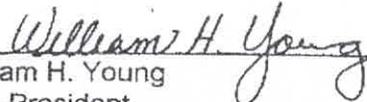
There is no requirement that a carrier sign that the subject information was received.

The issue of whether a local policy violated the National Agreement will be remanded back to the arbitrator of record in accordance with the MOU on Step 4 procedures.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to remand Case Number H90N-4H-C 95018608 and remove it from the pending national arbitration listing.

Sincerely,

  
Pete Bazylewicz  
Grievance and Arbitration  
Labor Relations

  
William H. Young  
Vice President  
National Association of Letter  
Carriers, AFL-CIO

Date: 2/24/98

Exhibit #

M 00015



EMPLOYEE AND LABOR RELATIONS GROUP  
Washington, DC 20260

DEC 9 1977

Mr. Thomas D. Riley  
Assistant Secretary-Treasurer  
National Association of Letter Carriers, AFL-CIO  
100 Indiana Avenue, NW  
Washington, DC 20001

Re: Branch 458  
Oklahoma City, OK  
NC-S-8696/NSOK-15158

Dear Mr. Riley:

On November 17, 1977, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

Signatures or initials may be required to verify attendance at a meeting, receipt of a document, etc. However, to require an employee to sign that he has read and understood instructions, as a condition of employment for which disciplinary action may be administered, is inappropriate.

In accordance with the above, this grievance is considered to be resolved.

Sincerely,

  
Robert B. Hubbell  
Labor Relations Department

Exhibit #

M 00319



UNITED STATES POSTAL SERVICE  
475 L'Enfant Plaza, SW  
Washington, DC 20000

Mr. Gerald Anderson  
Assistant Director  
Clerk Craft Division  
American Postal Workers  
Union, AFL-CIO  
817 14th Street, N.W.  
Washington, D.C. 20005-3399

Re: Local  
Yakima, WA 98901  
E1C-5D-C 30950

Dear Mr. Anderson:

On July 3, 1985, we met to discuss the above-captioned grievance at the fourth step of the contractual grievance procedure.

The issue in this grievance is whether management is properly requiring employees to use a locally developed form to document unsafe practices.

During our discussion, we mutually agreed that management may document unsafe practices. However, inasmuch as there is no national requirement for employees to acknowledge that the subject information was documented, they should not be required to sign a local form, such as the one referenced to in this grievance.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

*Barbara Lerch*  
Barbara Lerch  
Labor Relations Department

*Gerald Anderson*  
Gerald Anderson  
Assistant Director  
Clerk Craft Division  
American Postal Workers  
Union, AFL-CIO

Exhibit #

RECEIVED

M-01229

MAY 5 1995

CONTRACT ADMINISTRATION UNIT  
N.A.L.C. WASHINGTON, D.C.



Mr. Vincent R. Sombrotto  
President  
National Association of Letter  
Carriers, AFL-CIO  
100 Indiana Avenue NW  
Washington DC 20001-2197

Re: H90N-4H-C 94027675  
H90N-4H-C 94028996  
Class Actions  
Memphis, TN 38101

Dear Mr. Sombrotto:

Recently, Charles Baker met with your representative to discuss the above-captioned grievances at the fourth step of our contractual grievance procedure.

The issue in these grievances is whether Management violated the National Agreement by developing and requiring carriers to sign a preprinted card apologizing for misdeliveries.

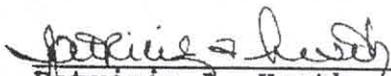
After reviewing this matter, it was mutually agreed that no national interpretive issue is fairly presented in these cases. Development and issuance of local forms is governed by Section 325.12 of the Administrative Support Manual. Further, employees should not be required to sign cards such as the ones referenced in this grievance.

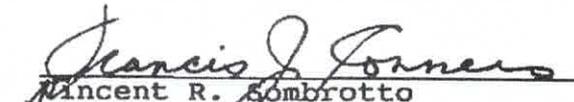
Accordingly, we agreed to remand these cases to the parties at Step 3 for further processing or to be rescheduled for arbitration, as appropriate, consistent with the above understanding.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to remand these cases.

Time limits were extended by mutual consent.

Sincerely,

  
Patricia A. Heath  
Grievance and Arbitration  
Labor Relations

  
Vincent R. Sombrotto  
President  
National Association of Letter  
Carriers, AFL-CIO

Date: 5/9/95

Exhibit #

M 00328



OFFICE OF THE POSTMASTER GENERAL

Washington, D.C. 20260

May 26, 1972

Mr. Tony Huerta  
National Field Director  
National Association of Letter  
Carriers, AFL-CIO  
100 Indiana Avenue, NW  
Washington, DC 20001

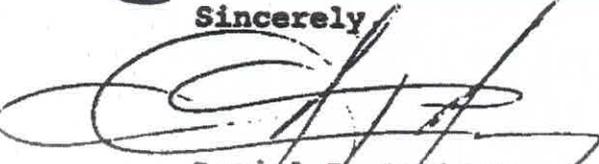
Re: Ray Hogan  
Glendora, California  
N-W-315

Dear Mr. Huerta:

On May 18, 1972, we met with you to discuss the above captioned grievance at the fourth step of our contractual grievance procedure.

Matters presented by you concerning this grievance, as well as the applicable contractual provisions, have been reviewed and given careful consideration. As a result of this review, it is the decision of the U. S. Postal Service that the signing of the form which is the subject of this grievance cannot be made a "condition of employment" and further that the failure of an employee to sign the attestation affixed thereto cannot be a subject for disciplinary action.

Sincerely,



Daniel P. Dockery  
Labor Relations Division  
Employee and Labor Relations Group

## GLENDDORA, CALIFORNIA 91740

I, AS AN EMPLOYEE OF THE GLENDDORA, CA. POST OFFICE, HAVE BEEN DIRECTED TO READ THE FOLLOWING POSTED INSTRUCTIONS.

FORM C.A. 10 - WHAT A FEDERAL EMPLOYEE SHOULD DO WHEN INJURED ON THE JOB.

POD SIGN 52 - MEDICAL EMERGENCIES.

PAH B.E.C. 11 - WHAT TO DO WHEN INJURED AT WORK.

POD SIGN 58 - ATTENTION ALL WINDOW CLERKS.

POSTER 21 - POLITICAL RECOMMENDATIONS PROHIBITED.

REGIONAL BULLETIN DATED 2-18-72 - HOW TO PROCESS E.E.O. PROBLEMS.

POSTMASTER LETTER - E.E.O. PLAN OF ACTION DATED 6-9-70.

POD POSTER 195 - REPORT ALL ASSAULTS THREATS, AND ROBBERIES.

POD POSTER 195 - WARNING! IT IS A FEDERAL OFFENSE TO ASSAULT A POSTAL EMPLOYEE.

POD POSTER 150 - CAUTION! YOU ARE WARNED THAT GAMBLING IS ABSOLUTELY FORBIDDEN IN THIS POST OFFICE.

C.S.C. FORM 1982 - THE HATCH ACT.

POSTMASTERS LETTER - EMPLOYEE INSTRUCTIONS IN CASE OF A FIRE.

POSTMASTERS LETTER - WHAT TO DO IN CASE OF A BOMB THREAT.

POSTMASTERS POLICY - UNSCHEDULED ABSENCES.

POSTMASTERS LETTER - INSIDE COVER OF LOCAL ORDER BOOK. (REMOVING OR DEFACING ORDERS).

I CERTIFY, THAT I HAVE READ, AND UNDERSTAND, ALL OF THE ABOVE POSTED INSTRUCTIONS. I FURTHER UNDERSTAND THAT IT IS MY RESPONSIBILITY AS AN EMPLOYEE TO READ THE LOCAL ORDER BOOK AT THE BEGINNING AND END OF EACH TOUR OF DUTY, SO THAT I WILL BE UP DATED ON CURRENT INSERTIONS.

SIGNED:

DATE:



UNITED STATES POSTAL SERVICE  
Labor Relations Department  
475 L'Enfant Plaza, SW  
Washington, DC 20260-4100

Mr. Vincent R. Sombrotto  
President  
National Association of Letter  
Carriers, AFL-CIO  
100 Indiana Avenue, N.W.  
Washington, DC 20001-2197

Re: W. Powell  
Seattle, WA 98109  
H7N-5R-C 5943

Dear Mr. Sombrotto:

Recently, a meeting was held with the NALC Director of City Delivery, Brian Farris, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management violated the National Agreement by its use of a "Checklist of Unsatisfactory Casing Procedures."

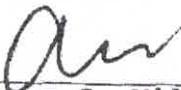
After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that while the checklist is an appropriate means by which a supervisor may acquire and maintain a set of personal notes on the individual performance of his subordinates, a carrier may not be required to sign the checklist.

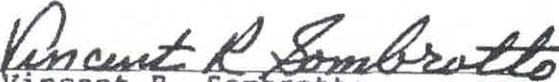
Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,

  
Arthur S. Wilkinson  
Grievance & Arbitration  
Division

  
Vincent R. Sombrotto  
President  
National Association of Letter  
Carriers, AFL-CIO

RECEIVED

JUN 7 1989

6-13-89

DATE



UNITED STATES POSTAL SERVICE  
475 L'Enfant Plaza, SW  
Washington, DC 20260

November 3, 1983

Mr. Joseph H. Johnson, Jr.  
Director, City Delivery  
National Association of Letter Carriers,  
AFL-CIO  
100 Indiana Avenue, N.W.  
Washington, D.C. 20001-2197

Re: Class Action  
Warren, MI 48089  
HLN-4B-C 18836

Dear Mr. Johnson:

On several occasions, the most recent being October 27, 1983, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

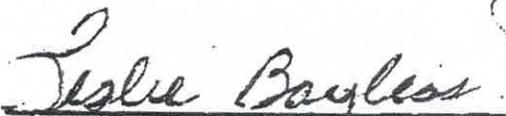
The question in this grievance is whether management may properly require an employee, who is involved in an accident, to complete the locally devised Accident Prevention Inquiry Form.

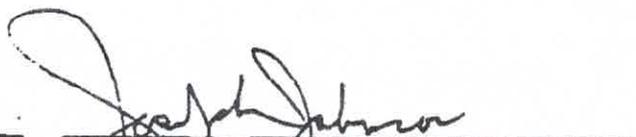
During our discussion, it was mutually agreed that the following would represent a full settlement of this case:

→ [ The completion of the local form by an employee shall be voluntary. However, an employee may be required to answer the questions verbally. Such information can then be documented by the manager on PS Form 1769. ]

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Sincerely,

  
Leslie Bayliss  
Labor Relations Department

  
Joseph H. Johnson, Jr.  
Director, City Delivery  
National Association of Letter  
Carriers, AFL-CIO

**REGULAR ARBITRATION PANEL**

		) Grievant: Class Action
In the Matter of the Arbitration Between	)	Post Office: Elmira, NY
United States Postal Service	)	Case No: 4B- 19N-4B-C 23197346
And	)	DRT No: 11-611173
National Association of Letter Carriers, AFL-CIO	)	Union No: E-104-2023
	)	

**BEFORE:    ARBITRATOR ALISSA J. SAMMARCO**

**APPEARANCES:**

For the U.S. Postal Service:	Leslie Selice
For the NALC:	Monique Mate
Place of Hearing:	Elmira, NY
Date of Hearing:	October 5, 2023
Briefing Completed:	October 25, 2023
Date of Award:	November 27, 2023
Type of Grievance:	Class Action
Relevant Contract Articles:	Articles 8.5.G, 15.3 & 19
JCAM:	8-16, 15-3
ELM:	432.32
Memo:	M-01517

**AWARD SUMMARY**

The Grievance is sustained. Management violated Article 15.3.A when it violated 8.5.G. However, the violation does not rise to the level of culpable intent such as warranting damages beyond the exclusive remedy of 50% penalty. The parties did agree to language “abide by” and “refrain from,” and Management violated the Step Be Decision. Management is hereby ordered to cease and desist from violating 8.5.G.




---

Alissa J. Sammarco, Arbitrator

## INTRODUCTION

Pursuant to the grievance-arbitration procedures between the United States Postal Service and the National Association of Letter Carriers, AFL-CIO, the undersigned arbitrator was selected to hear and decide the dispute herein and to render a final and binding Opinion and Award. The Union filed this grievance alleging that Management violated Articles 15.3 and 19 of the National Agreement and the M-01517 when Management failed to comply with five (5) Step B Settlements wherein they agreed to “abide by” Article 8, and “refrain from” working full-time carriers beyond their 12/60 limitations. They alleged that Management violated the settlement by subsequent violations of 8.5.G during pay period (PP) 2022-22-2. If Management violated Article 15.3 & 19 via M-01517, what is the remedy?

This grievance is the lead case for 18 other cases of the same circumstances.

**Burden of Proof:** The Union bears the burden of proof for a contract violation.

The following **exhibits** were offered and received at hearing:

- Joint Exhibit 1: Collective Bargaining Agreement / National Agreement (CBA) between the United States Postal Service and the National Association of Letter Carriers, AFL-CIO.
- Joint Exhibit 2: Joint Contract Administration Manual (JCAM)
- Joint Exhibit 3: The DRT Record of Proceedings

The following witnesses were sworn and testified at the Arbitration Hearing:

**For the Union**

1. Rodney Stanfield, President, Branch 21
2. Warren Groome, City Letter Carrier
3. Christine Caforio, City Letter Carrier
4. Jeffery Masker, City Letter Carrier

**For Management:**

5. None

The sworn testimony, submissions, the parties’ arguments, and submissions were carefully considered in rendering the following Opinion and Award.

**ISSUE I**

**DID MANAGEMENT VIOLATE ARTICLE 15.3 & 19 VIA M-01517 BY FAILING TO COMPLY WITH LOCAL GRIEVANCE SETTLEMENTS FOR VIOLATION OF ARTICLE 8.5.G?**

**ISSUE II**

**IF SO, WHAT IS THE APPROPRIATE REMEDY?**

**RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT,  
THE JCAM AND POLICIES AND MEMORANDUM**

**ARTICLE 8.5.G:**

Full-time employees not on the “Overtime Desired” list may be required to work overtime only if all available employees on the “Overtime Desired” list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the “Overtime Desired” list: 1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.F); and 2. excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week. However, the Employer is not required to utilize employees on the “Overtime Desired” list at the penalty overtime rate if qualified employees on the “Overtime Desired” list who are not yet entitled to penalty overtime are available for the overtime assignment.

[see Memos and Letter of Intent, pages 168-175]

**MEMO AND LETTER OF INTENT: EXHIBIT J-1, PAGE 170-175, 172:**

... In cases where management violates the letter carrier paragraph by failing to utilize an available letter carrier on the ODL to provide auxiliary assistance, the letter carrier on the ODL will receive as a remedy compensation for the lost work opportunity at the overtime rate.

**JCAM 8.5.C, Page 8-14 – 1-15:**

**Implementing Memorandum on Letter Carrier Paragraph. A**

memorandum of understanding signed December 20, 1988 (M-00884) further explained the requirement to seek to use auxiliary assistance before requiring letter carriers not on the ODL or Work Assignment List to work overtime on their own route on a regularly scheduled day.

CCAs are considered as auxiliary assistance. Accordingly, management must seek to use CCAs at either the straight-time or regular overtime rate prior to requiring letter carriers not on the ODL or Work Assignment List to work overtime on their own route on a regularly scheduled day.

Management must seek to use all of the following to provide auxiliary assistance:

- PTFs at the straight-time or regular overtime rate
- CCAs at the straight-time or regular overtime rate
- available full-time regular employees such as unassigned or reserve regulars at the straight-time rate
- full-time carriers from the ODL at the regular overtime rate

However, the memo states that management does not have to use ODL carriers to provide auxiliary assistance if such an assignment would mean that the ODL carriers would be working penalty overtime. In that limited situation—if no auxiliary assistance is available without going into penalty overtime—management can require full-time regular carriers not on the ODL to work overtime on their own routes on a regularly scheduled day. Remember that this limited exception applies only when a full-time non-ODL letter carrier is required to work overtime on his/her own assignment on a regularly scheduled day.

Before requiring a non-ODL carrier to work overtime on a non-scheduled day or off his/her own assignment, management must seek to use a carrier from the ODL, even if the ODL carrier would be working penalty overtime (Article 8.5.D).

The memo goes on to state that “the determination of whether management must use a carrier from the ODL to provide auxiliary assistance must be made on the basis of the rule of reason.”

For example, management is not required to use a carrier from the ODL when the travel time would be excessive for the amount of assistance being given. The full text of the memorandum is reprinted at the end of this article.

A Carrier Technician's own route for the purpose of applying Article 8.5.C.2.d and the Letter Carrier Paragraph is the specific route to which properly assigned on a given day. Overtime on any other route on the string is not considered to be on the Carrier Technician's own route and may only be required under the provisions of Article 8.5.D, below (Step 4, E94N-4E-C 98097684, October 2, 1998, M-01322).

#### **JCAM 8-16 through 8-17**

**Mandatory Overtime.** One purpose of the ODL is to excuse full-time carriers not wishing to work overtime from having to work overtime. Before requiring a non-ODL carrier to work overtime on a non-scheduled day or off his/her own assignment on a regularly scheduled day, management must seek to use a carrier from the ODL, even if the ODL carrier would be working penalty overtime. However, if the ODL does not provide sufficient qualified full-time regulars for required overtime, Article 8.5.D permits management to move off the list and require non-ODL carriers to work overtime on a rotating basis starting with the junior employee. This rotation begins with the junior employee at the beginning of each calendar quarter. Absent an LMOU provision to the contrary, employees who are absent on a regularly scheduled day (e.g., sick leave or annual leave) when it is necessary to use non-ODL employees on overtime will be passed over in the rotation until the next time their name comes up in the regular rotation.

#### **JCAM 8-17 through 8-18**

Article 8.5.F applies to both full-time regular and full-time flexible employees. The only two exceptions to the work hour limits provided for in this section are for all full-time employees during the penalty overtime exclusion period (December) and for full-time employees on the ODL during any month of the year (Article 8.5.G). Both work and paid leave hours are considered "work" for the purposes of the administration of Article 8.5.F. and 8.5.G. National Arbitrator Mittenthal ruled in H4N-NA-C-21, April 11, 1986 (C-05860), that an employee on the ODL does not have the

option of accepting or refusing work over eight hours on a non-scheduled day, work over six days in a service week or overtime on more than four of the five scheduled days in a service week; instead an employee on the ODL must be required to work up to 12 hours in a day and 60 hours in a week before management may require employees not on the ODL to work overtime. Arbitrator Mittenthal's award does not extend to situations involving a letter carrier working on his or her own route on a regularly scheduled day (See the discussion under 8.5.C.2.d and 8.5.G).

**MEMORANDUM OF UNDERSTANDING: M-00859:**

In those limited instances where this provision is or has been violated and a timely grievance filed, full-time employees will be compensated at an additional premium of 50 percent of the base hourly straight time rate for those hours worked beyond the 12 and 60 hour limitation. The employment of this remedy shall not be construed as an agreement by the parties that the Employer may exceed the 12 and 60 hour limitation with impunity.

**MANAGEMENT DIRECTIVE: M-01517**

Compliance with arbitration awards and grievance settlements is not an option. 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.

**STATEMENT OF FACTS**

Management argues that Article 8.5.G has an exclusive contractual remedy, payment of an additional 50% premium to the carriers. Therefore, additional damages are not recoverable for the violation of 8.5.G. The Union argues that this grievance is remedial in nature, and that damages are sought for violations of Article 15.3 and M-01517 wherein Management failed to comply with settlement agreements wherein they agreed to cease and desist violating 8.5.G. The Union argues that Management actions were willful and wanton and were so egregious that escalated remedy – money damages – should be awarded.

The Union presented four witnesses. Additional witnesses were listed but not presented. Management stipulated that additional witnesses would testify to having suffered similar harm from excessive overtime (8.5.G violations) as the carriers who were present.

Union President Rodney Standfield testified that grievances were filed for continued and ongoing 8.5.G violations in the Elmira Installation on a week-by-week. Management was scheduling carriers to work in violation of the 12/60 hour work limitations every week. The Overtime Alert Report evidenced daily violations of 8.5.G during the week in question for the Pay Period (PP) 2022-22-2. There are additional eighteen (18) grievances alleging Article 8.5.G & 15.3.A violations and requesting escalated damages for Management's action in subsequent weeks which are held abeyance pending this decision.

On the days when the violations occurred, CCA's were within their 12 hours limitation, and therefore were available to work so that the career carriers did not exceed their 12/60 limitations. Management is required to assign additional work to the auxiliary employees, then to the OTDL employees, then to the non-OTDL carriers. The record, as corroborated by Mr. Stanfield's testimony, shows that Management did not follow this procedure as required by 8.5.G and JCAM 8-16. The excessive overtime was not protected by any exemption to the 12/60 rule under ELM § 432.32 – December or emergency designated by the Postmaster.

The parties have settled multiple grievances at Informal A, requiring the Employer to cease and desist from violation of Article 8.5.G. The additional 50% penalty was also agreed in the settlements. Settlements included a penalty of \$100 per individual as an incentive for Management's compliance with 8.5.G and the cease and desist language. The parties agreed to five (5) Step B Settlements which are included in the record. They resolved the 8.5.G violations. They do not include "cease and desist" language, but state that Management will "abide by" Article 8.5.G, and "refrain from" violating the 12/60 limitations. The Step B Decisions are silent on the issue of penalty for violation of the settlement agreement or future violations of 8.5.G.

The Union agrees that the Informal A Settlements in the record are not precedent setting and thus not binding on this case.

**Testimony of the Letter Carriers Carriers/ Class Members:**

**Warren Groome**, an eighteen (18) year letter carrier, testified that he was forced to work beyond the 12/60 limit repeatedly. Working over the limits has caused him harm. It was very stressful and negatively impacted both his work and personal life. He has an autistic child. Because of the excessive overtime, Mr. Groome was unable to maintain the regular regulated schedule that his child requires to thrive. His physical health suffered as well, including increased foot, ankle, and hip pain due to the extended hours. Additional symptoms suffered include vertigo, dehydration, and exhaustion. Often, he was working both non-scheduled days, especially in 2021 and 2022.

**Christine Caforio**, a six (6) year letter carrier, was forced in violation of the 12/60 Rule. Ms. Caforio told her supervisor(s) when she was going to exceed the 12/60 hour limit. She did this by completing a 3996 or calling the office. Management never brought her back or provided assistance. Ms. Caforio's work and personal life suffered. She was unable to attend her children's sporting events. She would go days without seeing her young son because she got home after he was asleep and left for work before he woke up. The excessive overtime caused stress on the marriage and the family. It has taken a toll on her body as well.

**Jeffrey Masker**, a thirty-two (32) year letter carrier. He was forced to work in violation of the 12/60 limits on a regular basis. He utilized Form 3996 to notify Management when he expected he would exceed 12/60 limits and to request assistance. In addition, Masker called the office if he were going over his 12/60 hours. Management instructed him to continue carrying the mail. They did not call him back to the office. On one occasion, he had worked 60 hours by Wednesday. He called off work for the next two days. The Postmaster called him personally and tried to negotiate a deal for him to come in and work knowing that it was a violation of the 12/60 Rule. The postmaster even offered him additional hours pay if he agreed. Mr. Masker did not agree.

The Employer did not present any witnesses nor evidence beyond the content of Joint Exhibit B, the DRT Record.

## DISCUSSION AND FINDINGS

### DID MANAGEMENT VIOLATE ARTICLE 15.3 & 19 VIA M-01517 BY FAILING TO COMPLY WITH LOCAL GRIEVANCE SETTLEMENTS FOR VIOLATION OF ARTICLE 8.5.G?

This grievance arises out of Management's constant and continual violations of Article 8.5.G, forcing carriers to work beyond the 12/60 work limitations. There is no dispute that violations of 8.5.G were negotiated in M-00859. The core of the issue here is whether the underlying 8.5.G violations can be a separate violation under Article 15 and 19 via M-01517. If so, is the language in the prior settlements equivalent to a cease and desist order?

#### **1. Are the continued 8.5.G violations a separate violation under Article 15 & M-01517, and thus the grounds for a new and distinct grievance?**

Settlement agreements entered at Step B establish precedent for the installation from which the grievance arose. "For this purpose, 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." JCAM 15-8. The testimony and record shows that the repeated 8.5.G violations in the Elmira Installation have been dealt with in the past. The Step B decision clearly addresses the issue presented here. Therefore, the decision sets a precedent as to future violations.

Injunctive orders are enforceable. *Elkouri & Elkouri, 6<sup>th</sup> Ed.*, 18.2, page 1199, *see General Dynamics Corp. V. Marine & Shipbuilding Workers Local 5*, 469 F.2d 848, 81 LRM 2746 (1<sup>st</sup> Cir. 1972). A cease and desist order is an enforceable injunctive-type order.

As such, wherein there is such additional remedy agreed to, it may be the basis of future grievances. Violation of a settlement agreement is grievable.

#### **2. Is the "abide by" and "refrain from" language equivalent to a cease and desist order?**

There are many prior Informal A settlements which include cease and desist language. These settlements are not precedent setting and cannot be cited for the purpose of establishing that Management agreed to such language as controlling future disputes. They are, however, evidence that the parties knew the significance of "cease and desist" language, and that they did not use that language in the five (5) Step B Decisions.

The Step B decision contains different language. Rather than “cease and desist,” the parties wrote “Management is instructed to *abide by* Article 8.5.G and 15.3A of the National Agreement and *refrain from* working full time carriers over their 12 and 60 hour contractual limits.” We must look to the plain meaning of the language used rather than hold the parties to always utilizing some “magic language” to craft their agreement.

While the term “cease and desist” is a term of art with a well-established meaning, the creation of an agreement to result in the same outcome is not barred simply by not utilizing that “magic language” or “term of art.” Contract interpretation must be applied to determine the parties’ intention in agreeing to said language.

There are several approaches to contract interpretation. There is the Objective Approach, with its preference for the common meaning of the words. Such an approach promotes predictability, uniformity and stability in contractual relationships and minimizes the need for extended factual inquiry into what the parties may or may not have intended or believed. *Elkouri & Elkouri, 6<sup>th</sup> Ed.*, Chp. 9.1.B.i. Page 431. This approach is objective and takes nothing of the parties’ intent into consideration. Judge Learned Hand commented:

A contract has, strictly speaking, nothing to do with the personal, or individual, intent of the parties. A contract is an obligation attached by the mere force of law to certain acts of the parties, usually words, which ordinarily accompany and represent a known intent. If, however, it were provided by twenty bishops that either party, when he used the words, intended something else than the usual meaning which the law imposes upon them, he would still be held, unless there were some mutual mistake, or something else of the sort.

*Id.*, quoting *Hotchkiss v. National City Bank*, 200 F. 287, 293 (S.D.N.Y. 1911), *aff’d*, 201 F 664 (2<sup>nd</sup> Cir. 1912), *aff’d*, 231 U.S. 50 (1913).

The Subjective Approach is much less ridged. This approach defines “interpretation” as the ascertainment of the meaning of an agreement or a term thereof as intended by at least one party. *Id.* at Chp. 9.1.B.ii., page 432. In answering the question of “whose meaning prevails,” the *Restatement (Second) of Contracts* states as follows:

Where the parties have attached different meanings to an agreement or a term thereof, it is interpreted in accordance with the meaning attached by one of them if at the time the agreement was made that party did not know, or had no reason to know, of an different meaning attached by the other, and the other knew, or had reason to know t e meaning attached by the first party.

*Id.*, citing *Restatement (Second) of Contracts*, Sect. 201(2).

As such, the starting point in contract interpretation is always the words themselves. Interpretation comes into play only if the terms are ambiguous and susceptible to more than one meaning. The Plain Meaning Rules states “if the words are plain and clear, conveying a distinct idea, there is no occasion to resort to interpretation, and their meaning is to be derived entirely from the nature of the language used.” *Id.*, Chp. 9.2.A., page 434. The existence of an ambiguity must be determined from the “four corners of the instrument” without resort to extrinsic evidence of any kind. *Id.*

When reading the Step B language in light of its plain meaning, we look to each term, and then if there is ambiguity, to the settlement in its entirety – the four corners of the contract. The term “abide by” is defined by the Merriam-Webster Dictionary as 1. To conform – abide by the rules. Here, Management and Union agreed that Management will follow the requirements of 8.5.G. This includes complying with terms for violation of 8.5.G, which is to pay a 50% penalty premium to carriers who are forced beyond their 12/60 limitation.

The term “refrain from” is defined as to keep oneself from doing, feeling, or indulging in something and especially from following a passing impulse. The term does not mean “shall never,” nor does it mean “cease and desist.” Cease and Desist is a legal term is defined by the Oxford Dictionary as denoting a legally enforceable order from a court or government agency directing someone to stop engaging in a particular activity. Merriam-Webster defines the term as “to stop (doing something) immediately.” The term “cease and desist” has a specific definition and consequence of which both parties are well aware. They did not use this term of art. They negotiated for and used “refrain from” which has a less ridged use in the English language: “to keep yourself from doing.” It is not an absolute preclusion as the term of art. The parties chose not to use the absolute and chose to use the less ridged term.

When one uses “refrain from,” one thinks of a self-imposed limitation on future conduct. Clearly, the parties did not agree to the consequences of a “cease and desist” when they entered into the Step B Decisions. However, they did agree to at least try not to work full-time carriers beyond the 12/60 limitations.

The question becomes whether Management failed to use any restraint in their continued violations of 8.5.G, as such to violate the terms of the settlement agreement. The Union presented no evidence as to Management’s intent for their violation of 8.5.G. Likewise, Management

presented no evidence explaining their actions. Instead, they rest on their argument that continued 8.5.G violations are not a basis for a new and separate remedy from the exclusive remedy set forth in the Snow Decision (A90N-4A-C 94042668) and M-00859. This Arbitrator agrees that the issues are related, but that the exclusive remedy does not address the issues of *repeated violations of a settlement agreement* wherein the Management agreed to try.

The facts are undisputed that Management did violate 8.5.G after the agreement at Step B. The record is devoid of any explanation for the Management's continued violation to show that they made any effort not to work full-time carriers beyond their 12/60 limitations. Therefore, Management violated Article 15.3 and M-01517.

It is the Union's burden to show that management violated the settlement agreement. It is stipulated that they violated 8.5.G. Thereafter, they abided by 8.5.G and paid the 50% penalty. Did Management then refrain from working full time carriers in excess of the 12/60 limitations? The evidence shows that auxiliary help was available when the carries were worked beyond 12/60 on PP 2022-22-2. There is evidence that Management had notice that the carriers were going to exceed their 12/60 limitations, and that Management did not call them back to the office. As such, based on the evidence presented, Management violated the Step B Settlements, and thus Article 15.3.A, by failing to refrain from working full-time carriers beyond the 12/60 limitations.

## **ISSUE II**

### **WHAT IS THE APPROPRIATE REMEDY?**

It is well known that the USPS has had a work force crisis since the COVID pandemic of 2020. This decision cannot be made without recognizing the problem facing the USPS on a national level. This Arbitrator has addressed at least four grievances based on Article 8 violations resulting from post 2020 staffing problems. While this Arbitrator is aware of the challenges facing the letter carriers working beyond their 12/60 limitations, she is also cognizant of Management's challenges in ensuring delivery of the mail and continued operations of the Service. In difficult times, this dance becomes a difficult one, balancing employee contractual and human rights against management's rights, like dancers' pirouettes. This case must balance the settlement agreement and the violation and the harm against the remedy.

There are two main considerations when approaching remedies in an arbitration. First, does the arbitrator have the power to award a specific remedy. Second, if the arbitrator has the power to do so, is the remedy warranted in this case. *Elkouri & Elkouri, 6<sup>th</sup> Ed.*, 18.1, page 1188.

The Union relies on several arbitration decisions to support their request for monetary damages beyond the 50% penalty for violation of 8.5.G. They rely on Arbitrator August (C16N-4C-C 18352211, October 18, 2019). However, this case was not based on an underlying violation of 8.5.G, and thus the issue of exclusive remedy was not addressed. They site Arbitrator Mittenthal (H7C-NA-C 36, H7C-NA-C 132, H7C-NA-C 28, January 29, 1994) which does not address the issue of 8.5.G or the exclusive remedy. As these decisions were based on failure to comply with settlement agreements that were not married to a violation of 8.5.G violation, they are not applicable to our case.

Likewise, the Union refers to this Arbitrator's decision (B19N-4B-C 23018242, May 14, 2023). This case arose from an overtime violation, however, not a 12/60 limit violation. The May 14<sup>th</sup>, 2023, case arose from a violation of 8.5.C, which does not have a negotiated exclusive remedy, and is therefore distinct from the present case which arises out of violation of 8.5.G.

The parties have negotiated the remedy for 8.5.G violations, and that negotiated remedy is an exclusive remedy. M-00859; Arbitrator Snow (A90N-4A-C 94042668, November 30, 1998). The underlying 8.5.G violation is married to the violation of 15.3.A in the present case. Absent a showing of culpable intent, rising to the level of "outrageous" or "malicious" conduct, additional remedy cannot be ordered. Where punitive or escalated damages are to be ordered, they must be crafted such that they are not punishment, but rather corrective in nature. *Baltimore Regional Joint Board v. Webster Clothes, Inc.*, 596 F.2d 95, 100 BNA LRRM 3225, 85 CCH LC Para. 11227 (1979, CA4 Md).

Several arbitrators for the NALC/ USPS have held that punitive damages, including monetary damages couched as corrective or make whole, are not supported by the contract. See Arbitrator Stephen H. Cook (K16N-4K-C 18483761) (12/26/2019) wherein he agreed with Arbitrator David A. Stanton (K16N-4K-C 18131319) interpreting the contract does not provide for such a remedy. He stated "I believe that if the parties at the National level intended for the type of damages as requested to be awarded in this situation as appropriate, they would specifically negotiate that language..." Page 37.

However, most recently, Arbitrator Roberts (C16-N-4C-C 19079250) August 30, 2019, awarded punitive damages payable both to the NALC Carrier Grievants and to the Union. The Decision was appealed to the US District Court for the District of Columbia which upheld his decision on July 26, 2021. *United States Postal Service v. National Association of Letter Carriers, AFL-CIO*, US District Court Case No. 19-3685 (July 26, 2021). Honorable Judge Tanya S. Chutkan first addressed whether the USPS was shielded from punitive damages by the doctrine of sovereign immunity, and second the issue of whether Arbitrator Roberts exceeded his authority by awarding a remedy that was not expressly defined by the CBA (Collective Bargaining Agreement or NA as referred to herein).

Judge Chutkan examined the authority of the Arbitrator to award a remedy not specifically authorized by the National Agreement (NA). She reviewed both Arbitration Awards<sup>1</sup> and Case Law.<sup>2</sup> Her ruling on the authority of the arbitrator under the USPS-NALC National Agreement and applying it to Arbitrator Roberts' Decision considered the Supreme Court and DC Circuit opinions which have held that arbitrators may look beyond the explicit text of the agreement in fashioning an appropriate remedy. The NA being silent on remedy provides that authority to so craft one that fits the circumstances. *Id* at 12. Thus, the remedy requested is within the authority of this Arbitrator to consider.

Arbitrators have awarded escalated remedies for continued and repeated violations of settlement agreements and arbitration awards. Arbitrator Mittenthal, (H4N-NA-C-21, 6/26/1986, page 9) contemplates a grant of a monetary remedy:

[A monetary remedy] for a violation of this commitment would penalize the Postal Service for exercising the discretion it still appears to possess under Section 5C2d. That would be patently unfair result. Instead, the violation of the 'letter carrier paragraph.' Should the postal facility in question ***thereafter fail to comply with such and order, a money remedy might well be appropriate.***

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<sup>1</sup> Judge Chutkan cited cases supporting punitive damages by an arbitrator: *Int'l Association of Machinists & Aerospace Workers, AFL-CIO v. Northwest Airlines*, 858 F.2d 427 (8<sup>th</sup> Cir.) (An award for punitive damages was appropriate without express language because the industry practice was to award punitive damages); *Goss Golden West Sheet Metal, Inc. v. Sheet Metal Workers Int'l Union, Local 104*, 933 F.2d 749, 746 (9<sup>th</sup> Cir.) (The language of the collective bargaining agreement stated that the "arbitrator may grant any remedy or relief which is just and equitable and within the terms of the agreement of the parties," language which is slightly broader than the NA in this case).

<sup>2</sup> Fourth Circuit case reviewed which held that "absent an express provision in the collective bargaining agreement ... an arbitrator [may not] impose a punitive award or punitive damages." *Id*, at 11-12, citing, *Island Creek Coal Co. v. District 28, United Mine Workers of America*, 29 F.3d 126, 129 (4<sup>th</sup> Cir.).

*Id (emphasis added).*

Arbitrator Roberts, C16N-4C-C 19079250, 8/30/2019, considered the remedy for violation of a cease and desist order, stating:

In fact, the Employer even mentioned in their opening statement that “the Union has already been issued and been awarded two cease and desists in the file in the grievance we’re hearing today.” Simply ignoring such an order is clearly willful and malicious and clearly represents bad faith bargaining.

*Id.*, at page 19.

Punitive damages are only appropriate in situations where the conduct of the party is so egregious as to be shocking and abhorrent. In looking at the facts, there does not seem to be such conduct here. An Enhanced Remedy, likewise, applies where there has been a clear agreement for certain conduct, and on more than one occasion, the party has not complied with either agreement or order. This likewise has not occurred. The request for punitive or escalated damages is denied.

The Step B Decisions do not include the term of art “cease and desist” with known and understood consequences. Rather, the parties negotiated for the language used. It means something more than complying with 8.5.G, but something less than a cease and desist. There is no evidence presented by either side to show what consequences might have been anticipated by the parties by using the “refrain from” language.

Never-the-less, given the evidence presented that 8.5.G violations are repeated both before and after the Step B Settlements of April 2023, Management is ordered to cease and desist from violating Article 18.5.G.

#### **AWARD**

The Grievance is sustained. Management violated Article 15.3.A when it violated 8.5.G. However, the violation does not rise to the level of culpable intent such as warranting damages beyond the exclusive remedy of 50% penalty. The parties did agree to language “abide by” and “refrain from,” and Management violated the Step Be Decisions. Management is hereby ordered to cease and desist from violating 8.5.G.

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration )  
 )  
 )  
 between )  
 )  
 UNITED STATES POSTAL SERVICE )  
 )  
 )  
 and )  
 )  
 )  
 NATIONAL ASSOCIATION OF LETTER )  
 CARRIERS )  
 )

AWARD  
 Grievant: Class Action  
 Post Office: Rock Hill, SC  
 Case Nos.: 4G 16N 4G C 21072406 (Case #1)  
 4G 16N 4G C 21072425 (Case #2)  
 4G 16N 4G C 21091887 (Case #3)  
 DRT Nos: RHM012820; RHMO121320;  
 RHMO1221

Before: Jacquelin F. Drucker, Esq., Arbitrator

Appearances:

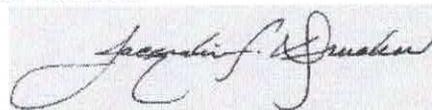
For the NALC: Don Lyerly, Regional Administrative Assistant

For the Postal Service: Mya Simpson, Labor Relations Specialist

Date of Hearing: October 19, 2021  
 Record Closed: November 23, 2021  
 Place of Hearing: 206 Wilson Street S  
 Rock Hill, SC 29730  
 Date of Award: December 23, 2021  
 Relevant Contract Provision(s): Articles 8, 15, and 19  
 Contract Year: 2016- 2019  
 Type of Grievance: Contract

## AWARD SUMMARY

As to the merits of the grievances, the evidence of record establishes that the grievance in Case No. 1 must be sustained and that the unresolved issue in the grievance in Case No. 3 must be denied. The grievance in Case No. 2 had been sustained on the merits at Step B and, thus, the issue here is solely that of remedy. With regard to the remedy in Case Nos. 1 and 2, the Arbitrator issues a cease and desist order, directs that the qualified ODL Carrier in each case be compensated at the overtime rate for the overtime hours to which the ODL Carrier would have been assigned but for the breach, and directs that the non-ODL Carriers who were required to work overtime be paid, as a compensatory remedy, their straight-time rates for all overtime hours that were required in breach of Article 8.



Jacquelin F. Drucker, Esq.

### I. STATEMENT OF THE CASE

The instant grievances relate to the Union's assertion that Management breached the National Agreement regarding overtime. The hearing of these matters was held on October 19, 2021, at the Postal Service facility located at 206 Wilson Street S, Rock Hill, South Carolina, and appropriate measures were taken to ensure pandemic-related safety of all participants. At hearing, the parties were ably represented. There was not agreement, initially, as to whether the grievances would be addressed in a single award or in the three separate awards. The parties, however, presented the cases in single arguments, as the issues on the merits are similar and the issues as to remedy are the same. The Arbitrator, having reviewed the evidence and considered the arguments presented at hearing and in post-hearing briefs, as to each of the three grievances, has found that they most efficiently and fairly can be resolved in this single Award.

At hearing each party was given a full and fair opportunity to present evidence and make arguments as to each of the grievances. After the opening statements and review of the evidence and was concluded, the advocates agreed to present written closing arguments. The submissions from both parties were timely received and the record was closed. In reaching the conclusions and Award set forth herein, the Arbitrator has given full and careful consideration to all arguments posed, all awards and authorities cited, and all evidence of record.

## **II. ISSUE**

The issues in Cases 1 and 3 are as follows: Did Management violate Article 8 of the National Agreement in the assignment of overtime to non-ODL Carriers? If so, what shall be the remedy? As to Grievance 2, as the breach has been found and the grievance was upheld at Step B, the only issue is the determination of the remedy.

## **III. RELEVANT LANGUAGE FROM THE NATIONAL AGREEMENT**

Article 8, Hours of Work, provides in Section 5 as follows:

When needed, overtime work for full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

A. Employees desiring to work overtime shall place their names on either the "Overtime Desired" list or the "Work Assignment" list during the two weeks prior to the start of the calendar quarter. . . .

\* \*

D. If the voluntary "Overtime Desired" list does not provide sufficient qualified people, qualified full-time regular employees not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee.

\*\*\*

G. Full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the Overtime Desired list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week.

#### IV. FACTS AND ANALYSIS

The parties have agreed that, as to Case No. 2, Management breached the foregoing provisions of the National Agreement. Thus, Case No. 2 requires a ruling only with regard to the remedy and therefore is addressed in the section which follows.

With regard to Case No. 1, the Union has established that, on December 7, 2020, Management at this facility was notified that a particular Letter Carrier would be absent from work on December 8, 2020. Letter Carrier Amanda Mason was on the ODL, but there was no effort to contact her prior to December 8. Management asserts that an attempt was made to reach Carrier Mason by telephone at 6:15 a.m. on December 8. The record indicates that Ms. Mason did not answer the telephone. Ms. Mason's written statement, which the parties at hearing agreed is to be regarded as her testimony if she had been called as a witness, indicates that she did not receive a telephone call and that, upon following up, she ascertained that the wrong telephone number had been used. (The record, however, shows that the telephone number used was what Management had in its records for Ms. Mason. It is not clear if that number was incorrect or, if it was, how it came to be listed in Grievant's record.)

Five Carriers who were not on the ODL and thus had not volunteered for overtime, however, were required by Management to report to work two hours before their scheduled tours on December 8. As specified in the JCAM, however, "Before requiring a non-ODL carrier to work overtime on a non-scheduled day or off his/her own assignment on a regularly schedule day, management must seek to use a carrier from the ODL, even if the ODL carrier would be working penalty overtimes." As the Union notes, these Carriers already had been notified that they were required to work and, in fact, had begun to work BEFORE any effort was made to notify Ms. Mason. Thus, as the Union correctly argues, Management's assertion of an effort to reach Ms. Mason at 6:14 a.m. for overtime necessitated by an absence of which Management had noticed the day before, does not constitute compliance with Article 8.

By requiring these Carriers to work without having sought to use an ODL Carrier, Management was in violation of Article 8, Section 5.D, and Ms. Mason was wrongfully passed over for overtime work on her non-scheduled day.<sup>1</sup>

As to Case No. 3, the record indicates that one of two alleged violations pursued by the grievance was confirmed as a violation by the Step B team. That pertained to Management assigning Carriers to more than the 12-hour contractual maximums. The issues on which the Step B team did not agree relates to Union's assertion that Management on January 2, 2021, violated Article 8, Section 5 by not assigning non-scheduled-day overtime to Ms. Mason, who was on the ODL. The Union asserts that Management initially asserted that it had all routes covered on that date, which, as the date immediately following a holiday, would have been busy. Nonetheless, says the Union, Management received sick calls from Carriers, which then raised the need for overtime. Management asserts that it then attempted to contact Ms. Mason to have her report for overtime and that she did not answer the telephone and did not later return the call. Ms. Mason, however, provided a written statement indicating that she "didn't get a call 1-2-21 to come into work." Management asserts that it was only after the supervisor had been unable to reach Ms. Mason that it assigned non-ODL Carriers to cover the two routes. The Union asserts that the non-ODL Carriers worked beyond their daily work hour limitations on that day.

The central issue here relates to the failure to assign non-scheduled-day overtime to Ms. Mason. The Union in a case such as this bears the burden of proof in establishing at least a prima facie violation of Article 8, Section 5. Its case is predicated upon Management's failure to seek to assign the overtime, or at least a portion of the overtime, that was worked on January 2 to Ms. Mason. There is a factual dispute as to whether the effort was made to contact Ms. Mason, and the Arbitrator finds that the evidence of record is insufficient to allow her to conclude that Management failed to make this effort. Further, the record supports Management's assertion that the absences were unexpected, and the sequence of events in this case suggests that an effort was

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<sup>1</sup> Management at Step B and in argument at hearing also made some representations regarding the applicability of the Work Assignment provisions as to some, but not all, of the five Carriers who were required to report early. This argument was abandoned in Management's closing brief, however, wherein Management addresses only the issue of remedy, but for one sentence in which it argues that Ms. Mason had been contacted on the day in question. Management's only defense on this point thus has been addressed and rejected above, for the Carriers were assigned before any effort was made to assign Ms. Mason.

made to reach Ms. Mason and that it was only after she did not respond that steps were taken to cover the routes at issue with non-ODL Carriers. While the Arbitrator does not accept Management's assertions as true, she finds that the record adduced by the Union is insufficient to establish, by a preponderance of the credible evidence, that Management violated Article 8, Section D.5 in the manner alleged. Accordingly, the Union claims as to the unresolved portion of this grievance must be denied.

Turning to the question of remedy for the contract violations found in Cases 1 and 2, the Union requests that the Arbitrator issue a cease and desist order, require a compensatory remedy in which Ms. Mason is to be paid for the overtime to which she should have been assigned, and require payment to the non-ODL Carriers who were required to work in violation of the contract.

Arbitrator has given careful consideration to the history of the same violations that have been found in recent years at the Rock Hill Post Office, predominately by various Step B teams. In fact, the record at hearing indicates that in 24 different grievances, from 2015 through 2020, Article 8, Section 5 violations have been found by either Formal Step A or Step B teams. It is instructive that, in these many resolutions, the remedy in every case until 2020 included a cease and desist directive and payment of compensation to the non-ODL employees who had been required to work in violation of the National Agreement. In fact, in light of the repeated violations, the Step B teams in many cases put Management at Rock Hill on notice that continued violations would warrant escalating monetary remedies. In mid-2020, however, the Step B team, although in agreement that violations had occurred, were not able to agree on the remedy, with Management rejecting not only the compensatory remedies of the past but also the fundamental remedy of the cease and desist directive. This led to an arbitration in which Arbitrator Glenda M. August imposed the same three-part remedy as sought by the Union in this case. Case No. K16N 4K C 20300521; RHMO61220 (December 9, 2020, and February 22, 2021).

Unlike the multiple Step B teams to have agreed on this issue, Management in this case opposes the Union's request for a cease and desist order. Management's argument is a bit hard to follow and not supported by any citations to authority that is directly on point, but the suggestion is that

nothing in the National Agreement specifies that a cease and desist remedy is available. As other arbitrators who have addressed this odd argument have held, however, (a) cease and desist orders are traditional, common, and logical remedies for breaches of collective bargaining agreements and (b) contracts, including collective bargaining agreements, rarely address the available remedial options to be applied in the event of a breach. Indeed, parties seldom can anticipate the forms in which breaches may occur and the appropriate nature of any make whole remedy that would be applied, be it by an arbitrator with regard to a collective bargaining agreement or a court with regard to a contract. As held by the United States Supreme Court in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960), the need for the arbitrator to bring his or her informed judgment to bear in resolving a dispute under a collective bargaining agreement is “especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations.”

In more than 30 years of arbitrating thousands of disputes under a vast variety of collective bargaining agreements, this Arbitrator has never before been presented with the suggestion that cease and desist orders are not appropriate remedies for contractual breaches. The Postal Service offers no relevant authority for this theory, which, to the extent it can be discerned from the arguments presented at hearing and in the closing brief, is wholly out of step with concepts of remedy in arbitral law, arbitral tradition, and basic contract law. Indeed, innumerable court decisions from all levels of the judiciary have confirmed arbitration awards that have included cease and desist orders. See, for example, *United Mine Workers of American v. Monongalia County Coal Co.*, 240 F. Supp. 3d 466 (N.D. W.V. 2017); *Honeywell Int'l, Inc. v. Industrial and Allied Workers Local Union No. 101*, 2009 U.S. Dist. LEXIS 70132, 2009 WL 2477550 (E.D. Va., 2009); and *Unite HERE Local 1 v. Hyatt Corp.*, 862 F.3d 588 (7<sup>th</sup> Cir., 2017). In fact, in *American Postal Workers Union, AFL-CIO v. United States Postal Service.*, 2019 U.S. Dist. LEXIS 202367, 2019 WL 6170056 (S.D. N.Y., 2019), the United States District Court for the Southern District of New York dismissed an action in which the union (in that case, the APWU) sought, among other remedies for repeated noncompliance with the contract, a cease and desist order from the court. In dismissing the union’s complaint, the court noted that the APWU was seeking the kind of relief that it first must seek from an arbitrator under that National Agreement.

Management also seems to suggest that, as cease and desist orders are not referenced in the National Agreement, the determination of whether a cease and desist order is appropriate is a matter to be addressed at the national level. In this regard, Management alludes to a national-level award by Arbitrator Richard Mittenthal in *United States Postal Service and National Association of Letter Carriers*, Case No. N8-NA-0141 (1980). That award addressed a wholly unrelated and discrete question based on the highly specific facts related to the actions and failures of the National Joint Committee on Maximization that was agreed to in the Memorandum of Understanding on Maximization, which was incorporated in the 1978 National Agreement. It has no application here, for the purposes upon which Management seems to rely. Nonetheless, it is worth noting that Arbitrator Mittenthal cited the breadth of an arbitrator's authority to establish a fair remedy for breach of a collective bargaining agreement by citing this passage from the United States Supreme Court's decision in *United Steelworkers of America v. Enterprise Care & Wheel Co.*, *supra*: "the arbitrator 'must bring his informed judgment to bear in order to reach a fair solution. . . [in] formulating remedies.'"

For all of the foregoing reasons, the Arbitrator finds that it is wholly appropriate that this Award include, as a remedy, an order that the Rock Hill Post Office cease and desist from breaches of Article 8, Section 5.

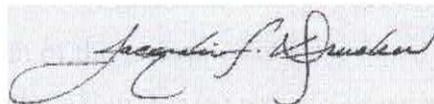
As to the compensatory remedies sought, the bypassed ODL Carriers in Cases 1 and 2 must be made whole by payment at the overtime rate for the time they would have worked were it not for Management's breach of Article 8. (In fact, the Step B team in Case No. 2 had agreed to this compensatory remedy.) In addition, the Arbitrator finds that a full make-whole, compensatory remedy in these two cases also requires that the non-ODL Carriers for whom overtime was mandated be compensated for those hours at the straight-time rate for each overtime hour worked. The Arbitrator finds that this remedy is warranted both in light of the numerous Step B decisions in which it was agreed that this was an appropriate remedy and on the basis of rectifying the loss experienced by non-ODL Carriers who had exercised their contractual rights to establish their preference not to work overtime and who were protected against mandated overtime when sufficient, qualified ODL personnel were available. Contrary to Management's argument that such a remedy is punitive, the nature of this remedy is compensatory. As the

parties have jointly noted in the JCAM, one of the purposes of the ODL is to excuse full-time Carriers not wishing to work overtime from having to do so. This monetary award thus is not only derived from precedential Step B resolutions in which the remedy was crafted to correct the unwarranted imposition of overtime but also is issued as a means of compensating the non-ODL Carriers for the imposition on their lives and non-work hours when they were required by Management to work during times that, under the contract, they should have been free to spend in other life pursuits.

### AWARD

Upon full and careful consideration of all evidence of record and the arguments and citations presented by the parties, the Arbitrator finds that, for the reasons stated above, the grievance in Case No. 1 is sustained and the unresolved portion of the grievance in Case No. 3 is denied. With regard to the remedy in Case Nos. 1 and 2, the Arbitrator (a) issues a cease and desist order, (b) directs that the qualified ODL Carrier in each case be compensated at the overtime rate for the overtime hours to which that ODL Carrier would have been assigned but for the breach, and (c) directs that the non-ODL Carriers who were required to work overtime be paid, as a compensatory remedy, their straight-time rates for all overtime hours that were required in breach of Article 8. The Arbitrator retains jurisdiction to resolve any disputes regarding the calculation and allocation of these remedies. The parties are to confer to identify the required payments and the recipients of same. If the parties have not been able to reach full agreement as to same within 90 days of the date of this Award, any unresolved disputes in this regard will be presented for determination by the Arbitrator.

December 23, 2021

A handwritten signature in cursive script, appearing to read "Jacquelin F. Drucker", is written over a light blue rectangular background.

Jacquelin F. Drucker, Esq.