Arbitrators Have the Authority to Fashion Appropriate Remedies

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REGULAR REGIONAL ARBITRATION

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

BEFORE: Tobie Braverman ARBITRATOR

APPEARANCES:

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

For the Union: Alton R. Branson

Place of Hearing: Rockville, MD

Date of Hearing: March 2, 2016

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

Date of Award: March 24, 2016

PANEL: USPS Capital Metro Area / NALC Region 13

Award Summary

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

Tobie Braverman

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

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

FACTS

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

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

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

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

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

POSITIONS OF THE PARTIES

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

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

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

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 15 - GRIEVANCE-ARBITRATION PROCEDURE

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

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

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

DISCUSSION AND ANALYSIS

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

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

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

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

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

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

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

AWARD

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

Dated: March 24, 2016

Tobie Braverman, Arbitrator

REGULAR REGIONAL ARBITRATION

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

BEFORE: Tobie Braverman ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Kate Sullivan

For the Union: Alton R. Branson

Place of Hearing: Rockville, MD

Date of Hearing: October 29, 2014

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

Date of Award: December 5, 2014

PANEL: USPS Eastern Area / NALC Region 13

Award Summary

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

Tobie Braverman

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

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

FACTS

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

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

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

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

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

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

POSITIONS OF THE PARTIES

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

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

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

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

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 15 - GRIEVANCE-ARBITRATION PROCEDURE

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

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

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

DISCUSSION AND ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the Union the sum of $750.00.[1]

AWARD

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

Dated: December 5, 2014

Tobie Braverman, Arbitrator

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

UNITED STATES
POSTAL SERVICE

October 30, 2014

SUBJECT: Partial Settlement Agreement

UNION: ~~APWU~~ NALC

In the matter of grievance

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

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

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

Kate Sullivan
Management Representative

Date 10/30/14

Alton Branson
Union Representative

Date 10/30/14

REGULAR POSTAL PANEL

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

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

APPEARANCES:

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

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

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

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

AWARD:

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

December 4, 2014

BACKGROUND

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

STATEMENT OF FACTS

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

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

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

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

STIPULATED ISSUE

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

If so, what is the appropriate remedy?

PERTINENT PROVISIONS

The settlement agreement reads in part:

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

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

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

POSITIONS OF THE PARTIES

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

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

FINDINGS AND DISCUSSION

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

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

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

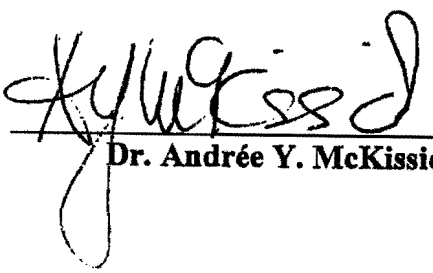
Second, the Union sets forth a record of a plethora of subsequent grievances based upon the same issue. Correspondingly, it processes these grievances. It is costly and unnecessary, based on the prior settlement. Although the Service is willing to pay the late fee which amounts to two hundred and twenty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

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

AWARD

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

December 4, 2014



Dr. Andrée Y. McKissick

REGULAR REGIONAL ARBITRATION

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

BEFORE: Tobie Braverman ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Dave Preston

For the Union: Delano M. Wilson

Place of Hearing: Rockville, MD

Date of Hearing: September 17, 2014

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

Date of Award: October 17, 2014

PANEL: USPS Capital Metro Area / NALC Region 13

Award Summary

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

Tobie Braverman

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

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

FACTS

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

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

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

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

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

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

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

POSITIONS OF THE PARTIES

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

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

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

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 15 - GRIEVANCE-ARBITRATION PROCEDURE

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

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

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

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

DISCUSSION AND ANALYSIS

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

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

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

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

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

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

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

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

AWARD

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

Dated: October 17, 2014

Tobie Braverman, Arbitrator

UNITED STATES POSTAL SERVICE

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

Rec'd 12-2-2014
Kenneth Lerch

Local # NALC 53-14-KA16
Arbitrator - Tobie Braverman
NON-Compliance with a STEP B

11-14-2014

NALC BRANCH 3825
PO BOX 1398

ROCKVILLE MD 20849-1398

NOT NEGOTIABLE

REMITTANCE ADVICE

NOT

THE ATTACHED CHECK REPRESENTS PAYMENT FOR GRIEVANCE NO. K11N-4K-C 14118414
FOR NALC BRANCH 3825

IMPORTANT INFORMATION

NOT NEGOTIABLE

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

NOT NEGOTIABLE

PAYMENT DATE	PAYMENT AMOUNT	CHECK NUMBER
11-14-2014	$******700.00	0103777654

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

- -Separate Along The Perforation- -

UNITED STATES POSTAL SERVICE®

FACE OF THIS DOCUMENT PRINTED IN RED, BLUE & GRAY IN

EAGAN MN 55121-9640

DATE 11-14-2014

[redacted]

52-837
213

0083-09

CHECK NO. 0103777654

Seven Hundred and 00/100 Dollars

VOID VOID VOID

VOID VOID VOID

PAY TO THE ORDER OF

0103777654
NALC BRANCH 3825
PO BOX 1398

[redacted]

JP Morgan Chase
Syracuse NY
5501 E. Taft Road
North Syracuse NY 13212-4710

ROCKVILLE MD 20849-1398

VOID VOID VOID

VOID AFTER ONE YEAR

TREASURER

VOID VOID VOID

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REGULAR REGIONAL ARBITRATION

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

BEFORE: Tobie Braverman ARBITRATOR

APPEARANCES:

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

For the Union: Alton R. Branson

Place of Hearing: Rockville, MD

Date of Hearing: April 18, 2014

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

Date of Award: May 15, 2014

PANEL: USPS Capital Metro Area/ NALC Region 13

Award Summary

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

Tobie Braverman

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

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

FACTS

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

issued discipline constituted double jeopardy.

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

POSITIONS OF THE PARTIES

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

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

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

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

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 15 - GRIEVANCE-ARBITRATION PROCEDURE

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

ARTICLE 17 - REPRESENTATION

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

not be unreasonably be denied. ...

ARTICLE 31 - UNION - MANAGEMENT COOPERATION

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

JCAM 41-15 Remedies and Opting

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

DISCUSSION AND ANALYSIS

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

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

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

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

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

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

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

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

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

AWARD

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

Dated: May 15, 2014

Tobie Braverman, Arbitrator

UNITED STATES POSTAL SERVICE

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

Rec'd 6-18-2014 Kenneth Lerch

K11N-4K C 13331059

06-06-2014

NALC
BRANCH 3825
P.O. BOX 1398

ROCKVILLE MD 20849-1398

Arbitrator Brueggman
Local grievance #53-13-KA54
Rockville Information Request Policy

NOT NEGOTIABLE

REMITTANCE ADVICE

NOT NEGOTIABLE

THE ATTACHED CHECK REPRESENTS PAYMENT FOR ARBITRATION NO. K11N-4K-C 13331059 FOR NALC BRANCH 3835. 3825 (Rec'd)

IMPORTANT INFORMATION

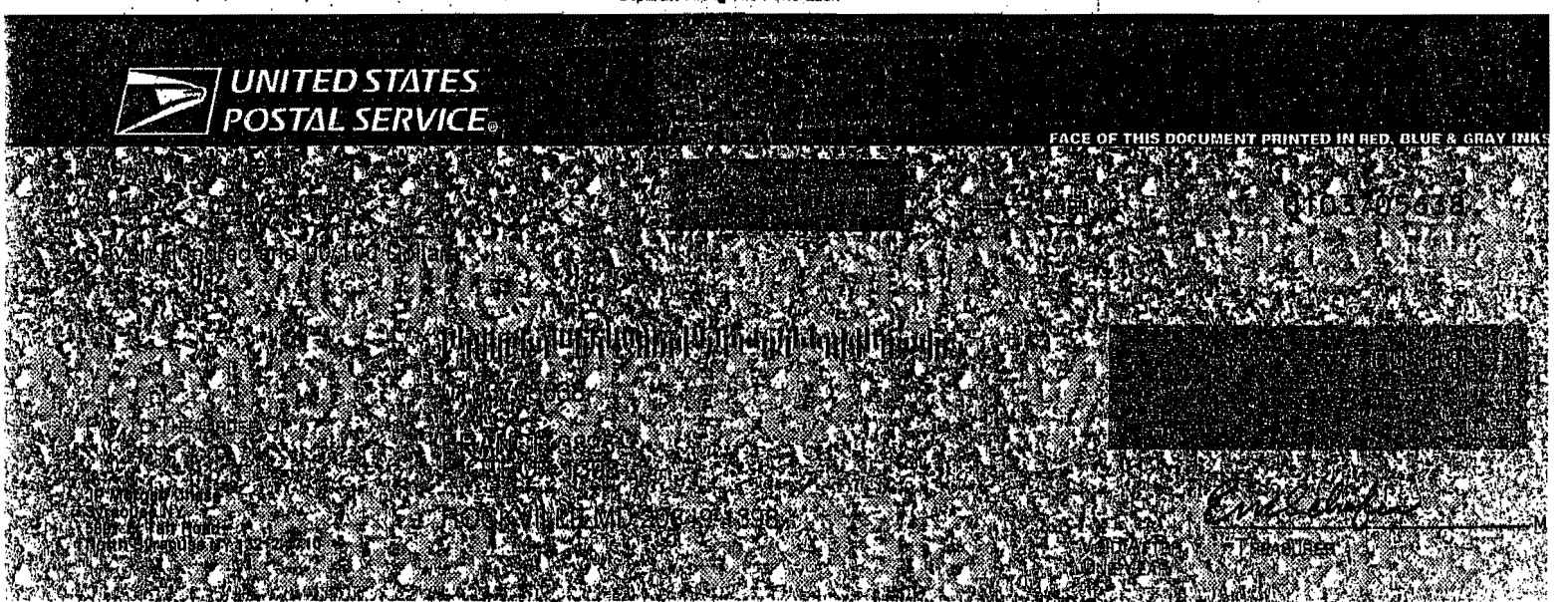
ANY TAX LIABILITY RESULTING FROM THIS PAYMENT IS YOUR RESPONSIBILITY. THE IRS MAKES THE DETERMINATION ON WHETHER TAXES MUST BE PAID. YOU SHOULD CONSULT THE IRS OR A TAX ATTORNEY TO ANSWER ANY TAX REPORTING QUESTIONS THAT YOU MAY HAVE.

NOT NEGOTIABLE

PAYMENT DATE	PAYMENT AMOUNT	CHECK NUMBER
06-06-2014	$******700.00	0103705638

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

--Separate Along The Perforation--



REGULAR ARBITRATION

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

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

APPEARANCES:

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

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

AWARD SUMMARY

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

Kathryn Durham

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

I. ISSUE

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

II. FACTS/POSITIONS OF THE PARTIES

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

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

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

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

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

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

Union Position

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

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

Management Position

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

Management insists that settlement agreements, including DRT resolutions, are not final and binding, even within the same installation. It relies on an award by Arbitrator Robert Steinberg, Case No. E06N-4E-C 08175058.

III. OPINION

The facts of this case are undisputed. Twice – once by Arbitrator McKissick and again by the DRT[1] – Management was directed to pay a remedy to Carrier Yu for failure to comply with the 14-day posting requirement in Article 41. In order to ensure that Mr. Yu received the payment he had twice been awarded, the Union was required to expend its time and resources to file a non-compliance grievance. Management had no valid justification for its failure to make the payment to Mr. Yu within a reasonable time after receipt of Arbitrator McKissick's award. However, through direct contact with its Eagan, MN office, management made sure the payment was processed just days before the hearing of this case.

Management agreed to the remedy requested by the Union to Mr. Yu. The only issue remaining for resolution at our hearing is whether the Union is entitled to an additional remedy for itself. The undersigned finds that it is.

[1] The undersigned is not persuaded by Management's argument that DRT settlements are not final and binding. Certainly they are final and binding with respect to the matter being resolved, as occurred in this case.

As Arbitrator Gamser's award aptly notes, regional Arbitrators have authority to fashion compensatory awards when the contract is silent on the issue of remedy. The only limitation is that such awards must avoid being punitive. Here, the remedy requested by the Union is not punitive. The Union was forced to spend money, time and effort to achieve something that should have been done automatically in a timely manner, but was not. Management's failure to comply with Arbitrator McKissick's award, and the DRT settlement, cost the Union resources unnecessarily.

Mr. Lerch testified that he spent approximately 15 hours preparing this case. Because he is retired from the Postal Service, he was paid by the local Union, at the rate of $28 per hour. This computes to a total of $420. Awarding this amount to the Union is purely compensatory, not punitive. It is not a windfall.

IV. AWARD

The grievance is sustained. Management shall promptly pay the local Union, NALC Branch 3825, the sum of $420.00 to compensate for the local advocate's time spent bringing this grievance. The payment shall accrue interest if not paid within 45 days from the date of this award. Jurisdiction retained over implementation of this Opinion and Award.

Kathryn Durham

Kathryn Durham, JDPC, Arbitrator

UNITED STATES POSTAL SERVICE

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

Rec'd 5-30-2014
1:49 pm
Kenneth Lerch

05-21-2014

Arbitrator Kathryn Durham
Local grievance # 55-13-SL19

NALC
BRANCH 3825
PO BOX 1398

ROCKVILLE MD 20849-1398

REMITTANCE ADVICE

THE ATTACHED CHECK REPRESENTS PAYMENT FOR GRIEVANCE NO. K06N-4K-C 13377363 FOR NALC BRANCH 3825.

IMPORTANT INFORMATION

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

PAYMENT DATE	PAYMENT AMOUNT	CHECK NUMBER
05-21-2014	$******420.00	0103699618

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UNITED STATES POSTAL SERVICE®

FACE OF THIS DOCUMENT PRINTED IN RED, BLUE & GRAY INKS

EAGAN MN 55121-9640

DATE 05-21-2014 F 24585777 50-937/213 0083-09 CHECK No. 0103699618

Four Hundred Twenty and 00/100 Dollars

VOID

$******420.00

0103699618

PAY TO THE ORDER OF NALC
BRANCH 3825
PO BOX 1398

ROCKVILLE MD 20849-1398

JP Morgan Chase
Syracuse NY
5601 E. Taft Road
North Syracuse NY 13212-4710

VOID AFTER ONE YEAR

TREASURER MF

In the Matter of the Arbitration between NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO and UNITED STATES POSTAL SERVICE	Case No. NC-S-5426 Rossville, Georgia GAMSER 4/3/79 OPINION AND AWARD

APPEARANCES:

For the NALC - Mozart G. Ratner, P.C.
by: Kenneth J. Simon-Rose, Esq.

For the USPS - Larry B. Anderson, Esq.

BACKGROUND:

This case is before the Arbitrator upon the parties' request for a determination as to whether the Postal Service violates the provisions of the 1975 collective bargaining agreement when it does not pay an employee covered by the terms of Article VIII, Section 5-C-2 for having failed to provide that employee with an equitable opportunity to work overtime. The parties agreed that the case which arose at the Rossville, Georgia Post Office would be employed to illustrate the matter in issue. However, the facts in that particular case did not have to be adjudicated in order to dispose of the question posed in this proceeding.

At the Rossville Post Office it was conceded by the Postal Service in the 4th Step of the grievance procedure that in the case of the named grievant the Postmaster provided, "...less than an equitable opportunity to work overtime." To that extent the grievance

was sustained. The Postmaster was thereafter directed by his superiors to comply with both the "spirit and intent" of Article VIII, Section 5-C-2. The NALC contended that such a directive did not provide an appropriate remedy for the breach of the Agreement. The Union took the position that the Postal Service was obligated to compensate the grievant by paying him for the overtime he was not afforded the opportunity to work in the quarter.

THE ISSUE:

The parties did not agree upon a definition of the dispute to be presented for determination. However, from the contentions raised, it is apparent that in issue is whether the Postal Service must, if it fails to live up to its obligation to provide, in the quarter, for equitable opportunities for eligible employees to work overtime, pay the employees deprived of such opportunities for the overtime hours they did not work.

CONTENTIONS OF THE PARTIES:

The NALC contended that a violation of this provision of the Agreement is properly remedied only by awarding the grievant expectation or compensatory damages. The Union stated that the Agreement is silent on the question of appropriate remedy, and the prior agreements made in 1966, 1968 and 1971, which also contained the requirement for equitable distribution, lacked the additional specific reference to having same accomplished in accordance with a quarterly overtime desired list. Under those old agreements, the USPS arguably had an open-ended period to achieve equitability. However, under the 1975 Agreement, a violation specifically occurs at the end of a quarter. For that reason, the Postal Service had to provide monetary compensation to employees who

did not get an opportunity to share in the overtime opportunities in that quarter.

The NALC also contended that nothing in the previous bargaining history or the conduct of the Union regarding such violations indicated that it had waived or dropped its claim that monetary compensation was the appropriate remedy and contemplated by the language of the provision of the Agreement under consideration. The Union pointed out that it had consistently insisted that compensation, for those who grieved under this provision and had such grievances sustained, was required. As soon as the Postal Reorganization Act eliminated restrictions placed on such payments formerly imposed by the Comptroller General's Office, the Union renewed with increased vigor its claim that all such violations be compensated with appropriate payments at the end of the quarter.

The Union also argued that the fact that the Postal Service may have had a uniform policy of not providing such compensation should not be construed as an acceptance by the NALC of the appropriateness of such a policy. The Union also put into evidence certain grievance settlements which placed in issue the credibility of the Service's contention that payment was never forthcoming for such violations. Related to this contention was the Union's argument that advancing a demand in negotiations for a provision specifically providing for compensation was not an admission that such remedy was not already provided in the Agreement. According to the Union, the terms of the Agreement speak for themselves and the failure to cover the question of remedy substantiates the Union's claim that no agreement on an appropriate remedy was ever reached.

The Union them goes on to contend that the appropriate remedy

must be found to be a monetary award equal to the pay that the Carrier would have received if the contract had not been breached. This is the only way that a grievant could be made whole and also provide an effective deterrent against further contract violations. The Union asserted that merely directing a Postmaster to comply with the provisions of the contract cannot be regarded as an effective way to make a specific grievant whole nor insure future compliance with the requirements of the contract.

Even if the remedy required that the Postmaster provide the grievant with a make-up opportunity in a subsequent quarter, when that was done the spirit of equitable distribution during that quarter would be violated. The Union cited a number of arbitration decisions which held that this form of remedy, providing for monetary compensation, was well accepted, not punitive, and regarded as just and equitable. This is particularly true in this case because the agreement provides for a quarterly reassessment of overtime opportunities. Other agreements do not have expressed or established time periods in which management must achieve compliance with the overtime distribution provision. Once the quarter is over, according to the NALC, a new list is posted and it is too late for management to provide for a correction of an error which it committed in the previous quarter. In the current quarter, the overtime hours available must be distributed among those who signify their desire to be included on the overtime desired list. To use some of those hours for make up would create a violation of the terms of the National Agreement.

Finally, the Union argued that there were other provisions of the Agreement, such as Article XI, Section 6, dealing with holidays,

where although the provision does not contain a specific remedy an arbitrator found that monetary compensation for a breach was an appropriate remedy. The Postal Service has also agreed, according to the evidence in this record submitted by the Union, to provide monetary compensation to employees denied bargaining unit work which was improperly assigned to a non-bargaining unit employee in violation of Article I, Section 6A. This provision also does not contain any reference to an appropriate remedy for breaches.

The Postal Service argued that in the absence of an express provision in the Agreement providing for monetary damages the Arbitrator does not have inherent or implied authority to provide for such damages. For him to do so, according to the Postal Service, would be to violate the provision of Article XV, Section 3, which provides, inter alia, that the agreement may not be altered, amended, or modified by an arbitrator.

The Employer also argued that the intention of the parties can be ascertained from the language in the current agreement, the language in the prior agreements, and the manner in which the parties resolved disputes concerning equitable distribution of overtime which arose under those agreements. In this connection, the USPS provided testimony to establish that, since 1966, when the concept of equitable distribution first appeared in the agreement, failures to provide for such an opportunity were remedied by another opportunity to equalize the equitable distribution subsequently granted. The Postal Service also claimed that even after the rulings of the Comptroller General prohibiting payment for work not performed no longer applied the parties did not provide in the later agreements for such payment.

The Employer claimed that the Union had participated in the creation of a "time-honored" practice during the terms of the 1966, 1968, 1971 and 1973 agreements that equitable distribution violation cases would be resolved on a "makeup opportunity" basis. Management contended that the evidence submitted in this proceeding established that where the parties provided for monetary compensation as an appropriate remedy such a remedy was clearly written into the agreement, such as in Article XVI, or established by agreement of the parties, such as for remedying breaches of Article I, XIII, and XXIX. In the instant case, the Service claimed that the NALC could not point to any specific language or mutal agreement to support its claim that monetary damages were an accepted remedial action.

The Postal Service pointed to the fact that the NALC had proposed in the 1975 and again in 1978 specific language, in Section 5-C, which would provide for monetary compensation. Those proposals were rejected by the USPS. These persistent efforts, according to the Employer, provide convincing evidence that the parties had never understood that such a remedy already was implied by the terms of the Agreement. The Union could not have been seeking to clarify a right since it had not attempted to exercise the right prior to demanding the "clarifying" language in 1975. In addition, after the Union's efforts to provide for such language in the agreement were unsuccessful in 1975 and again in 1978, the Union continued to resolve grievances concerning alleged breaches of Section 5-C-2 by agreeing to accept make-up opportunities in most instances, and where monetary payments were made this was done on a non-precedential basis.

In addition, the Employer argued that the NALC did not present a persuasive case for the adoption of such a remedy if it were in the power of the Arbitrator to provide for it. The Employer

by granting a makeup opportunity has in effect made the aggrieved whole. This remedy has also, by practice, been considered a satisfactory and equitable one by the majority of NALC representatives who police the agreement. The makeup remedy, according to the Employer, has proved effective in preventing the abuse of the equal opportunity provision. At most, the aggrieved employee had only suffered a temporary postponement of an opportunity to earn additional compensation. The opportunity which the grievant missed was enjoyed prematurely by a fellow employee. Neither really suffered any permanent loss or gain from the failure to observe the requirements of Section 5-C-2 later corrected with a makeup opportunity. Any monetary remedy, according to the Employer, would provide for the unjust enrichment of an employee who was compensated in this manner. It would amount to an award of punitive damages which are only imposed in an arbitration award under the most exceptional circumstances.

Finally, the Employer argued that providing another opportunity to make up for the time missed is a well accepted remedy in industrial relations which has been adopted by the majority of arbitrators absent special circumstances not present in this case. The Service also distinguished the award of such damages in a holiday pay case on the basis of such loss being gone forever whereas the opportunity for makeup is clearly present in overtime cases.

OPINION OF THE ARBITRATOR:

It is necessary at the outset to dispose of one threshold contention raised by the Employer. It was contended that the agreement provides in Article XV that the arbitrator has no authority to add to, subtract from, or modify the terms of the agreement. So it

does. That restriction upon the jurisdiction of the arbitrator must be scrupulously observed. However, to provide for an appropriate remedy for breaches of the terms of an agreement, even where no specific provision defining the nature of such remedy is to be found in the agreement, certainly is found within the inherent powers of the arbitrator. No lengthy citations or discussion of the nature of the dispute resolution process which these parties have mutually agreed to is necessary to support such a conclusion.

Before the Arbitrator in this proceeding is the question of whether the parties have agreed upon the remedy to be provided for breaches of the Employer's obligation under Article VIII, Section 5-C-2, or, in the event they have not done so, what is an appropriate remedy for such breach as did occur in the Rossville, Georgia, Post Office.

Article VIII-C-2 reads as follows:

> 2. Only in the letter carrier craft, when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the list. During the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the list. In order to insure equitable opportunities for overtime, overtime hours worked and opportunities offered will be posted and updated quarterly. Recourse to the "Overtime Desired" list is not necessary in the case of a letter carrier working on his own route on one of his regularly scheduled days.

There is no additional language in this Section or in any other provision of the Agreement called to the Arbitrator's attention in this proceeding which would appear to spell out an agreement of these parties to remedy a breach of the above-quoted provision in a specific fashion either by providing a makeup opportunity, as the Employer contends is appropriate, or by providing monetary compensation to the aggrieved at overtime rates for the hours missed, as the

NALC desires.

Absent specific language in the Agreement, the intent of the parties may be determined from collateral sources. As to the past practice revealed by this record, it would appear that the remedy most frequently provided has been a makeup opportunity. However, the Union has furnished sufficient evidence of local practice to the contrary, even ignoring settlements made on a non-precedential basis which the Undersigned believes must be done, to indicate a certain amount of inconsistency which does not make the practice totally conclusive evidence of intent.

Also revealing intent of the parties is their exchanges during the negotiation of this and previous agreements. Here, the proposals advanced by the NALC at the 1975 as well as the 1978 negotiations, when the language of this provision was the same, gives strong indication that the Union did not believe there was a clear right to a monetary compensation remedy to be found in the agreement being renegotiated. It cannot be found that the Union was only seeking with these proposals to clarify a right since the testimony concerningthdse negotiations, and the respective positions of the parties regarding a monetary compensation remedy, indicated that the USPS had clearly contended no right to such compensation existed. The chief spokesman for the Union at the bargaining table strongly contended that such a monetary remedy was in order and then he put forward proposed contract language to insure it would be provided. It does appear that the rejection of this proposal and the signing of an agreement which did not contain any such language gives strong indication that the Union is now seeking something which it did not secure in negotiations, an agreement that breaches of Section 5-C-2 must be remedied by providing monetary compensation to the successful

grievant.

Based upon such considerations discussed above, the question still remains how shall breaches of Section 5-C-2 be appropriately remedied absent a written agreement of the parties as to a specific means and also absent clear and compelling evidence of their intent. Contrary to the contention advanced by the NALC, the weight of arbitral opinion does not appear to support their position that an appropriate remedy for failure to provide the proper employee with the overtime opportunity requires that employee be made whole with a monetary award equaling the potential earnings that overtime would have provided. My reading of a fair sample of awards on this issue appears to support a finding that providing an opportunity to make up such overtime within a reasonable time is considered an appropriate remedy except under certain circumstances. Obviously, when the overtime was awarded to a person outside the eligible pool of employees to whom such overtime must be awarded, such as when machinist overtime is awarded to a millwright when the contract requires such overtime be shared only among machinists, many arbitrators have found that monetary compensation to the most eligible machinist is the appropriate remedy since there is no way of replenishing the bank of overtime available to employees in that job classification.

Likewise, there seems to be a general consensus that monetary compensation is also in order when the failure to provide the appropriate employee with the opportunity was caused by a flagrant disregard or defiance of the contractual obligation, such as distribution of overtime based upon favoritism or some other inappapropriate criteria. Here a monetary award would provide the deterrent effect which is plainly warranted.

Finally, monetary compensation is also awarded as an appropriate remedy in those cases where the possibility of providing an equalizing opportunity within a reasonable period of time is not available or only a remote possibility. Here again, those special circumstances dictate the only effective means of correcting the breach of an obligation to the adversely affected employee or employees.

Thus, directing in the instant case that the appropriate remedy for a breach of the obligation to provide an overtime opportunity to the proper member of the craft on the "Overtime Desired" list in a specific quarter must be remedied by providing an equalizing opportunity in the next immediate quarter, or pay a compensatory monetary award if this is not done, appears most appropriate. It was found in the case under review that the failure to comply with Section 5-C-2 was not caused by granting such overtime to a person outside the eligible pool, a willful disregard or defiance of the contractual provision, a deliberate attempt to grant disparate or favorite treatment to an employee or group of employees, or caused a situation in which the equalizing opportunity could not be afforded within the next quarter.

Such a disposition of the issue raised in this proceeding will be provided in the Award below.

A W A R D

The issue raised in Case No: NC-S-5426 shall be resolved in a manner consistent with the discussion in the Opinion above.

Howard G. Gamser

HOWARD G. GAMSER, ARBITRATOR

Washington, DC
April 3, 1979

REGULAR ARBITRATION PANEL

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

BEFORE: Lawrence Roberts, Arbitrator

APPEARANCES:

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

For the Union: Alton R. Branson

Place of Hearing: Postal Facility, Rockville, MD

Date of Hearing: June 3, 2014

Date of Award: June 29, 2014

Relevant Contract Provision: Article 15

Contract Year: 2011

Type of Grievance: Contract

Award Summary:

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

Lawrence Roberts

Lawrence Roberts, Panel Arbitrator

SUBMISSION:

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

OPINION

BACKGROUND AND FACTS:

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

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

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

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

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

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

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

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

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

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

JOINT EXHIBITS:

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

2. Grievance Package

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

UNION'S POSITION:

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

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

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

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

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

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

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

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

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

COMPANY'S POSITION:

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

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

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

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

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

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

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

THE ISSUE:

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

PERTINENT CONTRACT PROVISIONS:

ARTICLE 15

DISCUSSION AND FINDINGS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It is so ordered.

AWARD

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

Dated: June 29, 2014
Fayette County PA

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	Grievant: Class Action
between	Post Office: Rockville, Maryland Branch 3825
UNITED STATES POSTAL SERVICE	USPS No.: K11N4KC13294700
	BRANCH GRIEVANCE No.:5413AB003
	NALC DRT No.: 13-285122
and	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	

BEFORE: ARBITRATOR ELLEN S. SALTZMAN

APPEARANCES:

For the U. S. Postal Service: Ms. Jamelle Y. Wood, Labor Relations Specialist and Phyllis Busch, T.A.

For the Union: Mr. Alton Branson, NALC Advocate, Region 13

Place of Hearing: Rockville Post Office, 500 N. Washington Street, Rockville, MD

Date of Hearing: March 19, 2014

AWARD: Sustained

Date of Award: April 20, 2014

PANEL: NALC Region 13/USPS Capital Metro Area Regular Panel

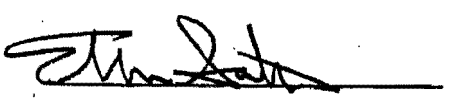
Award Summary

1. The seventy-five (75.00) dollars requested by the Union for the untimely pay adjustment is an appropriate remedy for the Article 15 violation determined by the Step B Team.

2. The seventy-five (75.00) dollar award to the Union for the untimely pay adjustment must be received by the Union no later than May 31, 2014 to avoid an additional penalty.

3. If the Union has not received the seventy-five (75.00) dollars by May 31, 2014, Management will pay an additional penalty in the amount of $5.00 per day beginning June 1, 2014.

4. If the Union has still not received the seventy-five (75.00) dollars by June 30th, 2014, beginning July 1, 2014, the penalty will be increased to $10.00 per day until such time local management pays the $75.00 dollars and the total of the additional penalties.



Ellen S. Saltzman, Esq.

In accordance with the 2011 National Agreement between the National Association of Letter Carriers & the United States Postal Service, (Joint Exhibit No. 1), the Undersigned was selected to hear and finally decide the Union's claim that a monetary remedy is warranted in this matter.

The issue as *originally* stated in the Step B Decision, (Jt. 2, p. 33): Did Management violate, but not limited to, Article 15 of the National Agreement when they failed to comply with grievance settlement #50-12-SLO9 in a timely manner, and if so, what is the appropriate remedy.

Decision: The Step B Team has decided to RESOLVE this case in part and declare an IMPASSE in part.

Resolved: The Team has determined that Management did violate Articles 15 of the National Agreement in this instance.

Impassed: The Team was unable to reach common ground in their discussion of an appropriate remedy for the Article 15 violation found herein. On the issue of appropriate remedy, the Step B team has decided to declare an Impasse.

Accordingly, the only remaining issue is that of appropriate remedy. At the hearing the parties stipulated to the following issue:

> Is the seventy-five (75.00) dollars requested by the Union for the untimely pay adjustment the appropriate remedy for the Article 15 violation determined by the Step B Team?

The parties were represented and were afforded a full and fair opportunity to present relevant evidence, to present witnesses and to cross-examine. The witness was sworn. Witnesses for the Union: Alton Branson, NALC Advocate and Formal Designee and Kenneth Lerch, President, NALC Branch 3825. There were no witnesses for Management.

The Arbitrator has given full and fair consideration to all arguments

made by the parties and all facts of record and all cited contractual provisions and submitted Awards and Step B Decisions in deciding this grievance.

Based on all of the evidence presented and arguments made, the Arbitrator renders this Opinion and Award.

RELEVANT CONTRACT PROVISIONS

Articles 15 and 19

BACKGROUND

This grievance was initially filed to protest management's violation of Article 15 and 19 of the National Agreement by its failure to effectuate a timely pay adjustment to the Union. The B Team resolved as stated in pertinent part (Jt.2, pg. 4):

> After carefully reviewing all the facts and documentation in this case, the Team finds that in this instance, Management did violate the National Agreement. In a contractual case such as this, the "burden of proof" rests with the Union to provide sufficient documentation to support that some provision(s) of the National Agreement has been violated. It was undisputed in the file that the payments granted in grievance #54-13-RW033 on April 26, 2013, were not paid. The Team finds this lengthy delay to be outside of the parameters of being n a "timely manner" and thus, this determination forms the basis for the finding of a violation of the National Agreement in this instance.
>
> The task then becomes that of an appropriate remedy for the violation. It was undisputed that the payment has not been completed. The Union advanced that due to the ongoing history of Rockville Management failing to render payments in a timely manner, and given the previous remedies granted for

> similar violation. It is with respect to an appropriate remedy that the Team was unable to reach a resolution. Relevant to the appropriate remedy for the present violation, the Team has reached an IMPASSE...

The remedy is the remaining issue and the only issue of this arbitration. The Incident date is April 26, 2013. Informal Step A of the grievance was initiated on July 24, 2013; the Step A Formal meeting was initiated on August 6, 2013; the grievance was received at Step B on August 19, 2013 and the Step B Decision of RESOLVE/IMPASSE is originally dated September 30, 2013.

Another STEP B Decision dated October 10, 2013 followed this. This Step B decision is a revision of the Resolve/Impasse decision decided on September 20, 2013. The Step B Team in that decision indicated that Management had not included any contentions and upon further review, the parties agreed that Management did in fact include contentions. Based upon these contentions, the parties amended this decision and the Step B Representative amended their positions accordingly. The Step B Team decisions on both dates are identical.

CONTENTIONS OF THE UNION

The Union believes it has met its burden of proof and the remedy should be granted due to the continuous violations in the past and present. As agreed by the parties at the national level, monetary remedies are appropriate where the record is clear in circumstances where the violation is egregious or deliberate or after local Management has received previous instructional resolutions on the same issue and it appears that a "cease and desist" remedy has not been sufficient to insure future contract compliance. Additionally, the Agreement states that the parties may wish to consider a further, appropriate remedy to the injured party to emphasize the

commitment of the parties to contractual compliance.

The Union has shown that Management has violated Article 15 of the National Agreement and precedent setting Step B Decisions on a number of occasions and has also done so on pre-arbitration settlement agreements, Step B Decisions and Formal Step A grievance resolutions on the very same issue. None of the previous resolutions has fixed the problem with management making untimely pay adjustments.

The Union believes the remedy requested is reasonable and necessary to impress upon Management that it must abide by the National Agreement and the instructions from Mr. Potter and Mr. Donahoe regarding the responsibility to comply with arbitration awards and grievance settlements and adherence to the provisions of our labor agreements.

The Union requests that the Arbitrator disregard the new arguments raised by Management in its' opening statement as they were not raised prior to this hearing.

The Union believes the remedy requested is reasonable, necessary and not punitive. The Union respectfully requests that the Arbitrator grant the Union's requested remedy.

CONTENTIONS OF MANAGEMENT

At the hearing, Management raised contentions that were objected to by the Union because they were not contentions that were timely made and were not contained in the revised Step B Decision or in the Formal A Contentions. Article 15.2 requires that the parties at Formal Step A make contentions. The JCAM 15.2 Step B (c) requires that the written Step B joint report shall state the reasons in

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

For these reasons, I am going to consider the contentions as stated in the Formal A Decision Letter, dated July 17, 2013, (Jt.2, pg. 110-111) and as included in the Step B decision, (Jt.2., pg. 4.) which was revised to include Management Contentions and presented by Management's Advocate:

> Management contends that there was no violation of Article 15 and 19 on a repeated basis by Management staff currently assigned to the location and has worked with the Union to resolve all matters at the lowest possible level. They maintain that the individuals that they are citing are no longer in the Rockville installation and the Union desires payment for an issue that has never been given the opportunity to correct. They further state that to group all of Rockville together and not to address the facility in itself is unfair.

Additionally, Management asserts that it will not offer excuses as to why it took six (6) months to process the payment but asserts that the Union could have negotiated an effectuation date during the settlement process at Formal A level and failed to do so. Management also states that this egregious payment that the Union is requesting will provide an unjust enrichment to the Union as the Union is already paid dues from its members to cover various costs including the "administrative" cost of filing grievances. Management's position is that the Union has already been improperly paid $550.00 from the Postal Service to "defray administrative cost"; and have not reduced the amount of money they collect from their members. Management asserts that this egregious payment would provide an unjust enrichment to the Union.

Management insists that this should be considered a punitive request and be

denied. For these reasons, Management requests that the Arbitrator deny this grievance in its entirety and deny the Union its requested remedy.

DISCUSSION & OPINION

In this contractual grievance, the Union bears the burden of proof. Based on the evidence and testimony, the Union has upheld its' burden of proof. The Union has demonstrated successfully that a compensatory remedy is appropriate to emphasize the commitment of the parties to contract compliance and to compensate the Union for the additional time, effort and costs of arbitration that would not have been necessary if Management honored it's Formal A Agreement, (Jt.2, p.19)

1. THE CONTRACT VIOLATION

The B Team decided that Management did violate the National Agreement by not paying the payment of $550.00 it had agreed to pay on April 26, 2013 in the Formal Step A Resolution, (Jt.2, pg.19) signed by Kenneth Lerch, Union Representative and Larry Martin, then Station Manager in Potomac. The Formal Step A Resolution states in part:

> Management violated the Rockville Union Time Policy on January 19, 2013. Hundreds of settlements on this issue have been signed at Step B, Formal A and Informal A including several agreements made at Labor/Management meetings which included signed minutes.
> Consistent with the five arbitrations cited by the Union in this grievance concerning non-compliance, NALC

> Branch 3825 is hereby paid a lump sum of $550.00 to defray the administrative costs in handling this repeat violation.

2. MANAGEMENT'S MISSED OPPORTUNIES TO RESOLVE THIS GRIEVANCE AT THE LOWEST LEVEL

When the Union had not received payment on the above by July 24, 2013, it filed another grievance, which is this instant matter. While going through the required Steps of this second grievance procedure, The Union offered to withdraw the grievance and the request for the $75.00 *if* Management would pay the $550.00 it had agreed to pay in the April 26, 2013 Formal A Resolution. Management refused and the grievance proceeded. In fact, even at the hearing, Management was still arguing that it should not have to pay the $550.00.

Article 15, Section 3 of the National Agreement expects that good faith observance by representatives will result in the resolution of grievances at the lowest possible step. In this matter, Management refused two opportunities to resolve this matter at the lowest possible steps. The first was by not timely paying the Formal Step A Resolution dated April 26, 2013. The second was by not agreeing to pay the $550.00 during at the Steps of this instant grievance.

Management has also failed to adhere to the instructions from high ranking USPS Officials. For example, Former USPS Postmaster General John E. Potter instructed in his letter dated February 23, 2009, (Jt.2, p.20) that we must adhere to the provisions of our labor agreement as they are our word and our pledge of fairness to our employees. Then Vice-President, Labor Relations, Mr. Potter wrote, (Jt.2, p.22) instructed Human Resource Managers, in pertinent part:

> It has been brought to our attention that we have an increasing problem with postal managers not complying with arbitration awards and grievance settlements,

especially back pay awards.

> Arbitration awards and grievance settlements are final and binding. Compliance is not an option, but a requirement... No manager or supervisor has the authority to override an arbitrator's award or a signed grievance settlement.
>
> Please take affirmative steps to ensure that all arbitration awards and grievance settlements are complied with in a timely fashion. Failure to do so only damages our credibility with both our employees and our unions.

On May 31, 2002, Patrick R. Donahoe, then Chief Operating Officer and Executive Vice President of the USPS wrote to Vice Presidents, Area Operations Manager Capital Metro Operations on the subject of Arbitration Award Compliance, (Jt.2, pg. 21) in part:

> ...While all managers are aware that settlements reached in any stage of the grievance/arbitration procedure are final and binding, I want to reiterate our policy on this subject.
> Compliance with arbitration awards and grievance settlements is not optional. No manager or supervisor has the authority to ignore or override an arbitrator's award or a signed grievance settlement. Steps to comply with arbitration awards and grievance settlements should be taken in a timely manner to avoid the perception of non-compliance, and those steps should documented...

Management did not present any testimony or evidence of any change in the above instructions and positions of Management Officials referred to within which could justify its' disregard for the Formal A Agreement to timely pay the $550.00.

3. HOW LONG SHOULD IT HAVE TAKEN MANAGEMENT TO PAY THE UNION THE $550.00?

The Union waited three months for Management to pay the $550.00 prior to filing this grievance. Management offers no excuse that it could not have been timely paid. In fact, the record indicates otherwise.

The record reveals that Management did not process the payment until *after* the First Step B Decision date of September 30, 2013, (Jt. 2, p.7). Management first initiated the payment of $550.00 on October 3, 2013, (Jt.4). On October 3, 3013, Supervisor Customer Support, Kristy Park, completed a two page Prearbitration or Agency Settlement Worksheet instructing that $550.00 be paid to NALC Branch 3825. The check was issued on October 11, 2013. In sum, it took less than ten days for the check to be issued.

4. THE HARM

Documented above is that local management did not honor the Formal A Agreement. In addition to the negatives of these actions cited by Messrs. Potter and Donahoe, the Union suffers increased costs by the filing of repetitive grievances as does Management. Management's failure to make timely payment as the result of a Formal A Resolution resulted in a waste of money, people time, energy, and resources. Additionally, by not honoring the agreement, there can be damage to the parties' relationship. The Union also feels it suffers harm to its image as well as its relationship with the employees it represents whenever Management fails to keep its commitments.

5. PRIOR HISTORY AND THE APPROPRIATE REMEDY

The Union has offered into evidence a packet of STEP B Decisions, (Union

1), all from the Rockville installation. The packet contains recent cases concerning Management's failure to implement pay adjustments and the remedies awarded by the Step B Team.

For example, in USPS GATS # K11N-4K-C 13299950, Branch Grievance # 53-13-KA48 decided 10/9/2013, the Step B team granted an additional lump sum payment of $150.000 to L Barksdale in consideration of the long documented history of similar violations in the Rockville Installation. The Step B team explained why:

> As it pertains to the additional lump sum payment to the Grievant due to the ongoing issues with Rockville Management falling to timely implement pay adjustments and the subsequent necessity to file this instant dispute to obtain compliance; the file contained 200 +/- pages of previous informal and Formal Step A settlements, Step B decisions and Pre-Arbitration agreements where the parties 1) agreed to similar violations; 2) gave "cease and desist' directives and 3; granted lump sum payments up to $125.00 as remedy. These settlements also include Step B Team warnings that continued non-compliance may result in additional remedies to ensure contract compliance.
> The Team concurs that these settlements are persuasive that Rockville Management is fully aware of their obligation to implement pay adjustments in a timely manner, yet similar violations continue even after warnings of additional remedies.

There is no specific contract language prohibiting monetary awards. Step B Teams as well as Arbitrators have issued monetary awards in situations such as this where there are continuous violations both past and present in order to encourage contractual compliance in the future.

IN CONCLUSION

The Union has upheld its' burden to prove that a monetary award of seventy-five ($75.00) dollars is appropriate in this matter. Local Management's actions in this matter are deliberate. Local Management had opportunities to correct its' failure to honor its' Formal A Resolution and failed to do so. If it had done so, it could have avoided the monetary award. The record is clear that this is a long standing problem and local management's behavior is repetitive and deliberate. When reviewing the entire record presented before this Arbitrator, local Management's actions are egregious.

The monetary award is meant to be corrective and to encourage contractual compliance. The Arbitrator was presented by the Union with a packet of Arbitrator's decisions with monetary awards in similar situations. In the same way that discipline is meant to be corrective and is progressive if necessary, so should monetary awards be in these situations. The many prior monetary remedies for untimely pay adjustments have been $75.00 and higher.

The Union has requested a $75.00 monetary remedy and I grant it for the failure of local Management to not abide by the Formal A Resolution. This monetary remedy will only partially compensate the Union for the unnecessary expenses, time and people efforts all necessary because of local management's failure to honor its own Formal A Resolution and timely issue the pay adjustment.

As evidence, (Jt.4), has demonstrated how much time it takes to have a check issued, I will be requiring a date certain by which the Union must receive this monetary award. I will include time for Management to receive my award and three (3) times the ten (10) days Management demonstrated it took to have the check issued. If the monetary award is not received by this date certain, then there

will be an additional penalty. The additional penalty is intended to add incentive to encourage contractual compliance for Management to make timely payments and to hopefully avoid a further grievance on this matter.

Therefore, based on the facts and circumstances of this particular case, the Undersigned issues the following award:

AWARD

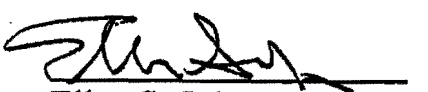
1. The seventy-five (75.00) dollars requested by the Union for the untimely pay adjustment is an appropriate remedy for the Article 15 violation determined by the Step B Team.

2. The seventy-five (75.00) dollar award to the Union for the untimely pay adjustment must be received by the Union no later than May 31, 2014 to avoid an additional penalty.

3. If the Union has not received the seventy-five (75.00) dollars by May 31, 2014, Management will pay an additional penalty in the amount of $5.00 per day beginning June 1, 2014.

4. If the Union has still not received the seventy-five (75.00) by June 30th, 2014, beginning July 1, 2014 the penalty will be increased to $10.00 per day until such time Management pays the $75.00 dollars and the total of the additional penalties.

April 20, 2014



Ellen S. Saltzman, Esq.
Arbitrator

UNITED STATES POSTAL SERVICE

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

Rec'd
5-22-2014
3:56 pm
Kenneth Lero

54-13-AB003

05-14-2014

NALC
BRANCH 3825
PO BOX 1398

ROCKVILLE MD 20849-1398

NOT NEGOTIABLE

REMITTANCE ADVICE

NOT

THE ATTACHED CHECK REPRESENTS PAYMENT FOR GRIEVANCE NO. K11N-4K-C 13294700 FOR NALC BRANCH 3825.

IMPORTANT INFORMATION

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UNITED STATES POSTAL SERVICE

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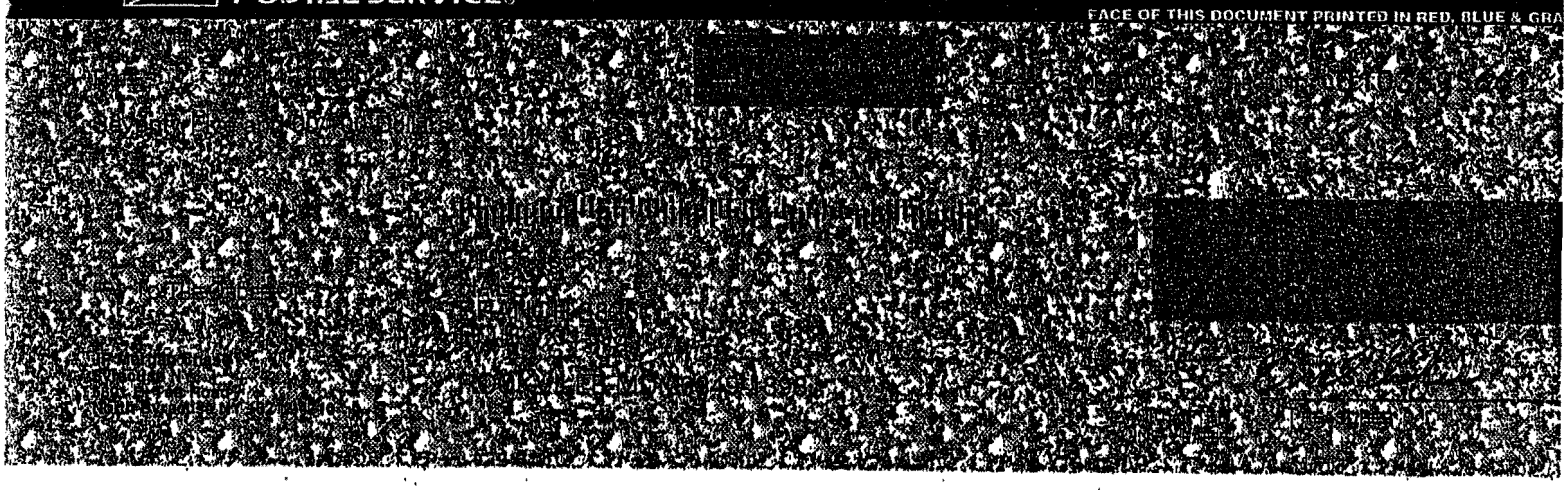

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ARBITRATION AWARD

July 7, 1980

UNITED STATES POSTAL SERVICE

-and- Case No. N8-NA-0141

NATIONAL ASSOCIATION OF LETTER CARRIERS

Subject: Authority of the Arbitrator - Maximization of Full-Time Assignments - Remedy

Statement of the Issues: Whether the arbitrator has the authority under the National Agreement to remedy the failure of the parties, through a Joint Committee, to agree on maximization criteria? If so, what is the appropriate remedy?

Contract Provisions Involved: Article VI; Article VII, Section 3; Article XV, Sections 2 and 4; and the Memorandums of Understanding on Maximization and on Jurisdictional Disputes of the July 21, 1978 National Agreement.

Grievance Data:

	Date
Grievance Filed:	September 21, 1979
Case Heard:	April 16, 1980
Transcript Received:	April 30, 1980
Briefs Submitted:	June 10, 1980

Statement of the Award: The arbitrator has the authority to remedy the Joint Committee's failure to agree on maximization criteria under the pertinent Memorandum of Understanding. The parties are directed to take the steps described in Part III (Remedy).

BACKGROUND

This case arises from the parties' failure to develop criteria for the establishment of additional full-time duty assignments pursuant to the Memorandum of Understanding on Maximization. The dispute concerns the arbitrator's authority to remedy this failure. NALC urges that the arbitrator has this authority and should exercise it; the Postal Service claims the arbitrator has no such authority.

The regular work force in a postal installation consists of full-time employees and part-time employees. The size of these groups, in relation to one another, has been a continuing source of disagreement between the parties. The National Agreement has provisions which govern this relationship. Article VII, Section 3 requires that any installation with 200 or more man-years of employment be staffed with "90% full-time employees." It states also that the Postal Service "shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules..." It contains the following conversion formula: "A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six-month period will demonstrate the need for converting the assignment to a full-time position."

NALC has apparently been dissatisfied with both this 90% figure and the conversion formula. It believed that full-time employees should constitute even more than 90% of the work force and that many part-time employees should be converted to full-time status. It pressed for such changes. The question of maximizing the number of full-time employees was discussed in the 1978 negotiations. Those discussions resulted in the following Memorandum of Understanding which is incorporated in the 1978 National Agreement:

> "The parties hereby commit themselves to the maximization of full-time employees in all installations. Therfore, they agree to establish a National Joint Committee on Maximization. That Committee shall, during the first year of the 1978 National Agreement, develop criteria applicable by craft for the establishment of additional full-time duty assignments with either regular or flexible schedules. To this

end, the Committee shall develop both an approach to combining part-time flexible work hours into full-time duty assignments and a method for determining scheduling needs compatible with the creation of the maximum possible number of such assignments."*

NALC wrote to the Postal Service on February 28, 1979, requesting a meeting of the National Joint Committee. The first meeting was held on March 9. It was attended not just by NALC but by APWU and LIUNA as well, the other unions covered by the National Agreement. The parties agreed to exchange proposals with respect to maximization criteria. NALC submitted its proposal on March 19; the Postal Service sent its ideas to NALC on March 21, outlining the points to be pursued in developing the necessary criteria.

The second meeting was held on March 23. The ideas and proposals, exchanged earlier, were discussed. NALC requested data relating to auxiliary assignments. It was agreed that separate discussions would thereafter take place between the Postal Service and each of the unions. The initial meeting with NALC alone occurred on April 17. The Postal Service suggested "criteria for establishing a data base to determine the need to maximize the number of full-time duty assignments." The next meeting with NALC took place on May 10. NALC presented a list of pending maximization grievances, alleged violations of Article VII, Section 3. It asked that these grievances be handled in a more expeditious manner. It suggested a new set of criteria for the conversion of part-time hours into full-time assignments. It reduced this suggestion to writing, a letter proposal, and sent it to the Postal Service on May 11. In that letter, it also withdrew its previous request for data on auxiliary assignments.

The next meeting on September 12 involved all the unions. However, separate discussions between the Postal Service and NALC were resumed later that day. NALC initiated a Step 4 grievance on September 21, complaining of the failure of the Joint Committee to develop maximization criteria. It nonetheless was willing to engage in further discussion of the problem. The Postal Service replied by letter on October 26, proposing new maximization criteria.

* This Memorandum is dated September 15, 1978.

That proposal was discussed at another meeting on December 3. NALC was apparently prepared to accept such criteria if it was understood that coverage of scheduled and unscheduled absences by part-time employees could qualify the latter for conversion to full-time status. That condition was unacceptable to the Postal Service. The parties thus were unable to reach agreement. They tried once more, on January 4, 1980, but were again unsuccessful. NALC appealed the matter to arbitration on January 9.

It should be noted that the negotiations between the Postal Service and APWU and between the Postal Service and LIUNA were successful. Those negotiations led to written agreements on "experimental" maximization criteria. NALC was unwilling to accept the terms of those agreements.

POSITIONS OF THE PARTIES

NALC argues that the Memorandum of Understanding "mandated" the parties to develop maximization criteria, that the Postal Service and NALC failed to do so, and that this failure means the "Memorandum...has been violated." It believes this is a "breach of contract", the Memorandum being part of the National Agreement, for which the arbitrator should issue an appropriate remedy. It asserts that "a general unrestricted arbitration clause, such as Article XV, confers broad remedial powers on the arbitrator so as to deal with a wide variety of situations."

It insists it is not asking that the National Agreement be "altered, amended or modified" in any way. Rather, its position is that the arbitrator should do what the parties have improperly failed to do in violation of their contractual responsibilities. It claims adoption of the Postal Service view would mean that the Memorandum of Understanding was "a nullity -- an 'agreement' without any practical effect...which Management could violate with impunity." It alleges that the failure to carry out the Memorandum's mandate was "attributable solely to Management's bad faith."

It asks the arbitrator to remedy the claimed violation by either (1) issuing maximization criteria which would adopt NALC's last proposal in the December 1979-January 1980 Joint Committee meetings or (2) ordering the parties to resume negotiations on this matter, setting ground rules (including a deadline) for those negotiations, and reserving the power to formulate criteria in the event the parties are unable to do so.

The Postal Service contends that the arbitrator "lacks authority to remedy the parties' inability to develop maximization criteria." It urges that the arbitrator has only that authority which the parties have granted him under the National Agreement. It notes that the Memorandum of Understanding says nothing whatever about arbitration. It insists the parties nowhere gave the arbitrator the authority to resolve maximization issues which the Joint Committee was unable to resolve. It maintains that "had the parties intended [such] interest arbitration in the event agreement could not be reached, they would have included an arbitration clause in the Memorandum of Understanding."

It emphasizes the presence in the National Agreement of arbitration clauses to deal with the resolution of jurisdictional disputes not disposed of by the Committee on Jurisdiction* and to deal with the resolution of lay-off rules disputes not disposed of by the parties through Article VI negotiations. It believes the absence of such an arbitration clause in the Memorandum on Maximization indicates that the parties did not contemplate arbitration of any Joint Committee impasse.

It relies on Article XV, Section 4D(1) which says "only cases involving interpretive issues under this Agreement or supplements thereto...will be arbitrated at the national level." It asserts that this case, absent an arbitration clause in the Memorandum of Understanding, raises no "interpretive issue" and hence is not arbitrable. It states that NALC's desired remedies would modify the National Agreement contrary to the arbitral limitations in Article XV, Section 4A(6). Finally, it flatly denies that Management members of the Joint Committee were guilty of bad faith in negotiating maximization criteria.

For these reasons, the Postal Service says that this grievance is not a proper subject for arbitration and that the arbitrator has no authority to provide a remedy for the parties' failure to agree on maximization criteria.

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* These arrangements are spelled out in the Memorandum on Jurisdictional Disputes.

DISCUSSION AND FINDINGS

The arbitrator's authority is derived from the National Agreement. He is "limited" by Article XV, Section 4A(6) "to the terms and provisions of this Agreement." He is expressly prohibited by this same section from altering, amending or modifying such terms and provisions. He is, when serving on the "national panel", restricted by Article XV, Section 4D(1) to "interpretive issues under this Agreement or supplements thereto of general application..." His function, in short, is the interpretation and application of these various contractual commitments.

The Memorandum of Understanding on Maximization is either a "term" or "provision" of the National Agreement or a "supplement thereto of general application." NALC reads the Memorandum as establishing a firm and fixed obligation; the Postal Service reads the same words quite differently. Thus, the NALC grievance does raise "interpretive issues" with respect to the Memorandum. It follows that the dispute is arbitrable and that I have authority to consider the NALC allegation that the Memorandum has been violated.

The crux of this case is the meaning of the Memorandum, the significance of the failure of the Joint Committee created by the Memorandum to agree on maximization criteria. NALC insists that this failure is a violation of the Memorandum and that the arbitrator must therefore provide a remedy for this violation. The Postal Service disagrees, asserting that the Joint Committee simply deadlocked and that the parties failed to make provision in the Memorandum for resolution of such a deadlock. Its position seems to be that the Memorandum has not been violated and that the arbitrator has no authority to provide any kind of remedy in these circumstances.

The crucial issue, in other words, is whether there has been a contract violation. If a violation of the Memorandum has occurred, as NALC claims, the arbitrator must then formulate an appropriate remedy.* The authority

* The arbitrator may, of course, remand the remedy question to the parties. But he still must be prepared to devise a remedy in the event the parties are unable or unwilling to work out the problem themselves.

to do so is implicit in the terms of the National Agreement. Indeed, the remedy for an alleged violation is a facet of every grievance. The parties specifically stated in the grievance procedure that NALC must designate the "remedy sought" in its appeal to Step 2 and in the discussions at Step 2. As the grievance passes through later steps to arbitration, the "remedy sought" remains an essential ingredient of the dispute. Hence, when the arbitrator considers the grievance and finds merit in a NALC claim, he is free to deal with the remedy question. That must have been contemplated by the parties. The grievance procedure is a system not only for adjudicating rights but also for redressing wrongs.

I - Contract Violation

The Postal Service acknowledges that it was obliged to participate with NALC in a Joint Committee in an attempt to establish maximization criteria. It says it satisfied this procedural obligation. Its view seems to be that, from a substantive standpoint, the Memorandum involved merely a conditional commitment. It believes that Management would only be bound by maximization criteria if the Joint Committee agreed to such criteria. It maintains that because no agreement was reached, the condition was not met and Management was relieved of any duties it may otherwise have had regarding new maximization criteria. It concludes that the Memorandum was not violated and that the arbitrator should leave the parties precisely where he finds them.

This argument is not without a surface appeal. But a careful reading of the Memorandum, in light of its evident purpose and in contrast to the provisions of Article VII, Section 3, indicates that more than a conditional commitment was made in this case.

To begin with, Article VII, Section 3 requires postal installations with 200 or more man-years of employment to operate with 90% full-time employees. It also commits Management to "maximize the number of full-time employees ...in all...installations." The Memorandum repeats this commitment and then goes further. It creates a Joint Committee which "shall...develop criteria applicable by craft for the establishment of additional full-time duty assignments..." These underscored words, it seems to me, represent the real purpose of the parties. They reveal

that the Memorandum was intended as a means of expanding the complement of full-time employees beyond the 90% figure set forth in Article VII, Section 3. The Memorandum must be read with that purpose clearly in mind.

The Postal Services suggests that the parties are bound only by what the Joint Committee agrees to, that no obligation exists in the absence of a Joint Committee agreement. That is too narrow a reading of the Memorandum. The parties committed themselves, in unmistakeable terms, to greater maximization. They were uncertain how that agreed upon goal should be achieved. They appear to have recognized that maximization was a technical question which needed far more study. Hence, they placed the problem in the hands of a Joint Committee which was supposed to create the procedure, the maximization criteria, which would enable the parties to realize the greater maximization they had bargained for. The Joint Committee was a means to an end, not an end in itself.

The Memorandum, construed in this way, is certainly not a conditional commitment. It is a firm and definite commitment to greater maximization during the life of the 1978 National Agreement. The parties have no choice in this matter. They were commanded to appoint a Joint Committee which was in turn commanded to produce the necessary maximization criteria. The Memorandum's language is mandatory, the Joint Committee "shall...develop criteria..." and "shall develop...an approach to combining part-time flexible work hours into full-time duty assignments..." The failure of the Joint Committee meant that the purpose of the Memorandum has been defeated, that the parties' commitment to greater maximization has not been carried out.

For these reasons, I find there has been a contract violation. On account of the Joint Committee impasse, the parties are in breach of their Memorandum commitment to greater maximization. It is no less a breach because the parties bear equal responsibility for the impasse.* Most contract violations involve the employer inasmuch as the union is typically the grieving party. Few violations derive from union conduct. But this tradition, from a conceptual point of view, does not prevent the occurrence of a joint violation under the kind of unusual circumstances present here.

* The NALC charge that the Postal Service did not negotiate in good faith in the Joint Committee discussions is not borne out by the evidence.

I I - Other Considerations

In arriving at these conclusions, several Postal Service arguments have been considered and rejected. Those arguments deserve brief comment.

First, it is true that there is no mention of arbitration in the Memorandum of Understanding on Maximization. The Postal Service views this silence as a crucial consideration. However, given the existence of a contract violation (Part I) and given the arbitrator's inherent power to remedy violations, this silence is immaterial.*

Second, it is true that Article VI of the National Agreement specifically grants an arbitrator the right to dispose of "unresolved issues" with respect to lay-off rules and procedures. The Postal Service emphasizes that no such grant of arbitral authority is found in the Memorandum on Maximization. However, Article VI has a very special history. It was not written by the parties. It was written by Arbitrator Healy in an interest arbitration agreed to by the parties in an attempt to resolve a deadlock in the 1978 negotiations. The reference to arbitration in Article VI was a device for Arbitrator Healy to retain jurisdiction over certain phases of the lay-off controversy which he had returned to the parties for additional negotiations.

Third, it is true that the Memorandum on Jurisdictional Disputes expressly permits arbitration of disputes unresolved by the Committee on Jurisdiction. The Postal Service notes that no such provision was made for disputes unresolved by the Joint Committee on Maximization. However, these Committees are entirely different. The Jurisdiction Committee is a dispute-resolution group which anticipates disagreements. It required a special arbitration procedure because of the special problems posed by a dispute involving more than one union. The then

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* If the Postal Service had refused to participate in the Joint Committee at all, that refusal would be a violation of the Memorandum. An arbitrator could surely order the Postal Service to participate in the Joint Committee, to do what it had promised to do, notwithstanding the silence of the Memorandum on the matter of arbitration. Thus, alleged violations of the Memorandum can properly become the subject of arbitration proceedings.

existing procedure would not have bound anyone other than the aggrieved union and the Postal Service. The Maximization Committee, on the other hand, anticipated no disagreements. For it was commanded to work out the details necessary to realize the agreed upon goal of greater maximization. It required no special arbitration procedure. It was expected to carry out its function during the first year of the 1978 National Agreement.

None of these arguments call for a different result in this case.

I I I - Remedy

The appropriate remedy raises a different set of problems. Mr. Justice Douglas, speaking for the Supreme Court in the Enterprise Wheel case, observed that the arbitrator must "bring his informed judgment to bear in order to reach a fair solution...[in] formulating remedies."*

NALC asks the arbitrator to impose maximization criteria on the parties, to do what the Joint Committee failed to do. It believes I should adopt the criteria it suggested at the Joint Committee meetings. In my opinion, no such remedy could be justified at this time. There are not enough facts or arguments in the record to make a confident finding as to what would be fair maximization criteria. Fairness is, in any event, a "two-way street." Any remedy must be fair from the standpoint not only of the employees (i.e., providing greater maximization of full-time assignments) but also of Management (i.e., protecting the operational needs set forth in the Memorandum).

The remedy shall be two-fold. First, the Joint Committee is directed to return to the bargaining table and to make a good faith effort to reach agreement on maximization criteria. I cannot assume those negotiations will be fruitless. Indeed, the parties should realize that their failure to agree is likely to result in an imposed solution. That is a new element which should serve to prompt the parties to more sympathetic consideration of one another's needs. Second, should the Joint Committee fail to reach agreement within a period of 60 days from

* United Steelworkers of America v. Enterprise Car & Wheel Co., 363 U.S. 593, 597 (1960).

the date of this award, either party may request a hearing before one of the "national panel" arbitrators. At that hearing, both sides will be given an opportunity to propose criteria and to submit evidence and argument on the question of what criteria should be adopted. The arbitrator will then determine the criteria to apply under the Memorandum.

AWARD

The arbitrator has the authority to remedy the Joint Committee's failure to agree on maximization criteria under the pertinent Memorandum of Understanding. The parties are directed to take the steps described in Part III (Remedy).

Richard Mittenthal, Arbitrator

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	*	
between:	*	Grievant: S. Jenifer
United States Postal Service	*	Post Office: Washington, DC
and	*	USPS Case No: K11N-4K-D 16051602
National Association of	*	NALC Case No: 142-AN-20-245-15
Letter Carriers, AFL,CIO	*	

BEFORE: Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Dave Preston
For the Union: Joseph Henry

Place of Hearing: Washington, DC

Date of Hearing: July 1, 2016

Date of Award: July 28, 2016

Relevant Contract Provision: Article 16.7

Contract Year: 2011

Type of Grievance: Discipline

Award Summary:

The Grievant in this case was issued an "Emergency Placement in Off-Duty Status" document. The record in this case shows the Employer failed to participate in the Step A meeting thereby negating their ability to prove any of the initial allegations. The instant grievance is sustained and the Grievant shall be reinstated and made whole in every respect. Additionally, the Union shall also receive $500 in compensatory damages for the Employer's continued failure to comply with the Step A requirements of Article 15.

Lawrence Roberts, Panel Arbitrator

SUBMISSION:

This matter came to be Arbitrated pursuant to the terms of the Wage Agreement between United States Postal Service and the National Association of Letter Carriers Union, AFL-CIO, the Parties having failed to resolve this matter prior to the arbitral proceedings. The hearing in this cause was conducted on 1 July 2016 at the postal facility located in Washington, DC. Testimony and evidence were received from both parties. A transcriber was not used. The Arbitrator made a record of the hearing by use of a digital recorder and personal notes. The Arbitrator is assigned to the Regular Regional Arbitration Panel in accordance with the Wage Agreement.

OPINION

BACKGROUND AND FACTS:

The Grievant in this matter is employed as a City Carrier Assistant at a Washington, DC Postal facility, the Anacostia Carrier Annex. She has been employed by the Postal Service since December 2014.

On or about 12 November 2015, the Grievant received the following document, signed by a Supervisor. That document reads as follows:

> **"You are hereby notified that you were placed in an off-duty (without pay) status effective November 12, 2015 and are to report on Tuesday 12/17/2015 at 8:30 am.**
>
> **The reasons for the action are:**
>
> **Charge 1: You have been placed on a 16.7 Emergency Placement in an off-duty status because you verbally assaulted and threatened another postal employee. You also had to be restrained several times before**

you left the premises. You posed a threat to and may have been injurious to yourself or others.

A further decision shall be made as to whether or not discipline shall be issued to you for the alleged misconduct. That decision shall be forthcoming in the near future.

You have the right to file a grievance under the grievance/arbitration procedure set forth in Article 15 of the National Agreement within 14 calendar days of your receipt of this letter.

The Grievant, as well as the Union, refute the charges. The instant grievance was filed in protest. The Union asks the instant grievance be sustained, the Emergency Placement rescinded and the Grievant be made whole. In rebuttal, the Agency argues the evidence supports the Emergency Placement action and requests their initial decision be upheld.

Obviously, the Parties were unable to resolve this dispute during the prior steps of the Parties Grievance-Arbitration Procedure of Article 15. An impasse was declared by the Step B Team on 31 December 2015.

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

At the hearing, the Parties were afforded a fair and full opportunity to present evidence, examine and cross examine

witnesses. The record was closed following the receipt of oral closing arguments from the respective Advocates.

JOINT EXHIBITS:

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

2. Grievance Package

COMPANY'S POSITION:

The Agency argues the Emergency Placement in this case was issued to remove the Grievant from a situation. Management insists they rightfully exercised its right to invoke the provisions of Article 16.7 because of the immediate need to ensure the Grievance could not engage in the same or similar activity that is central to this case.

The Employer insists there was reasonable belief that the Grievant was injurious to self or others.

According to their version of events, the Service claims the Grievant returned to the Annex with undelivered mail and parcels without management authorization. When confronted by a supervisor, the Employer claims the Grievant became angry and addressed a supervisor with profanity. The Service also asserts the Grievant lunged at her Supervisor but was restrained by another employee.

Management insists that a Supervisor's query concerning undelivered mail should not have provoked such a response from the Grievant.

Management mentions the Grievant filed a police report however the supervisor was not interviewed by law enforcement.

The Agency requests the instant grievance be denied in its entirety.

UNION POSITION:

It is the claim of the Union this matter is teeming with procedural irregularities which denied the Grievant due process.

According to the Union, requested information was not provided and once again, the Employer failed to meet at Step A.

The Union insists the Employer has continually failed to comply with the mandated Steps of the Article 15 Grievance-Arbitration Procedure. The contractual language referenced by the Union was specifically cited.

It is the insistence of the Union the Employer in this case egregiously violated the procedural due process rights of the Grievant.

And thus, according to the Union, Management did not have just cause to place the Grievant on Emergency Placement.

In settlement, the Union requests the Emergency Placement be expunged and the Grievant be made whole. Additionally, the Union also requests $800 in compensatory damages for the Employer's continued failure to comply with the Step A requirements of Article 15.

THE ISSUE:

Did Management violate Article 16.7 of the National Agreement by issuing a Notice of emergency placement dated November 14, 2015, for charge: "Non Cited"? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS:

ARTICLE 16
DISCIPLINE PROCEDURE

Section 7
Emergency Procedure

DISCUSSION AND FINDINGS:

This matter involves an issue of discipline, wherein the conclusions drawn, are certainly contrasting between the Parties. Regardless of circumstance or respective argument, the

burden of proof falls on Management to establish reason for their actions.

While Article 3, Management Rights, provides the Employer with the power to "suspend, demote, discharge, or take other disciplinary action...", the Employer is limited in any decisions as restricted by other Articles or Sections of the Agreement.

According to the Agreement, no Employee may be disciplined or discharged except for just cause. In my view the "just cause" provision is ambiguous; however, its concept is well established in the field of labor arbitration. The Employer cannot arbitrarily discipline or discharge any Employee. The burden of proof is squarely on the Employer to show the discipline imposed was supported with sound reasoning. Initial allegations must be proven, clearly and convincingly, through the preponderance of the evidence.

And that same just cause provision outlined in Article 16.1, carries forward to Article 16.7, the Emergency Placement provision, albeit, less demanding.

Article 16.1 requires that all discipline meet a just cause standard. This requisite requirement varies from case to case,

but, in most circumstances, just cause is met via the preponderance of evidence rule.

Conversely, Article 16.7 requires a less stringent gauge, something less than the preponderance of evidence. Nonetheless, the Employer is required to show their Emergency Placement decision, made on the facts of the case available at the time of their decision, was reasonable.

And with that in mind, each Emergency Placement rests on its own set of facts and circumstances. Since this case does involve discipline, the Employer retains the burden to show just cause for the Emergency Placement. However, given the language of Article 16.7, the requirements in meeting that burden of proof are lessened somewhat, based on the facts and circumstances surrounding each individual case.

Nonetheless, that Article 16.7 language allows the Employer to immediately place an Employee in a non-pay, off-duty status, when allegations meet certain criteria. And that standard must show the conclusions reached by Management, at that time of the Emergency Placement, with the information available, was with reason and not arbitrary or capricious. It's all based on the information available to the Employer at that particular snapshot in time.

The above represents the criteria utilized by the undersigned in a plethora of Article 16.7 decisions spanning many years. And in my considered opinion, following careful review of several precedent setting decisions referencing Article 16.7, this was certainly the intent of the chief negotiators in their original formation of that language and has withstood many sessions of negotiation by and between the Parties.

I understand the allegations of the Employer in this case as outlined in the Emergency Placement document cited above. If proven, those allegations then become a very serious matter, one in which the Postal Service must address appropriately.

In this matter, the Union raised several procedural arguments. However, the fact the Employer failed to participate at Step A clearly becomes fatal to their case in chief. And for that reasoning alone, there is no reason to consider any of the other procedural irregularities raised by the Union.

The burden of proof rests with the Employer. And in the matter of an Article 16.7 Emergency Placement, that particular burden is somewhat lessened by the language contained within that same Section. Nonetheless, without any Step A participation, Management disables any ability to prove their

initial allegations. The only Employer evidence in this case is the contents of the Emergency Placement document itself. And without any other supporting evidence or argument, it remains simply a mere allegation, nothing more. Without a Step A participation, Management in this case totally mutes any argument(s) at arbitration.

The Union and its representative were placed in a defenseless position, a total lack of knowledge of any Employer position other than the Emergency Placement itself. And clearly, this was not the intent of that bargained for language of Article 15.

The Union cannot be expected to offer any type of defense or make any form of argument until the Employer position is explained to them and all the facts are discussed and exchanged by and between the Parties. And it was clear that didn't occur in this matter.

One of the very basic tenets of Article 16 is that of just cause. And part of the just cause definition requires a showing the Grievant was provided their inherent right to due process.

In this case, it was clear the Employer failed to participate in the Step A process. Specific and controlling in

this matter is the language found in the relative portion of the Parties Agreement, namely Article 15.2 Formal Step A, Paragraph d, which provides:

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

The Parties Agreement unambiguously lays out a meticulous format toward grievance resolution. Part of that requirement is an exchange of detailed facts and arguments, by and between the Parties, at the Step A level.

And the Parties Agreement, Article 15.3 makes it clear that:

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

Significant and controlling in this case is the fact the Employer failed to meet with the Union, as specifically required, at Step A. While the case moves forward in the procedure outlined in Article 15, the language is quite clear that a failure to meet at Step A bars the Employer from offering any argument or evidence into any future negotiation, up to and including arbitration.

In my considered opinion, this mutes any argument in this case made by the Employer. And since the burden of proof in any discipline case falls on Management, the inability to produce any relevant evidence in support of their case causes a default in favor of the Union.

That Step A process requires full disclosure by and between the Parties. The failure of either Party to fully participate squelches any argument at a later date by the same pertaining to the particular dispute. And in the case of the moving party, failure to participate and meet the requirements set forth by the Parties Agreement is always fatal to that respective case. So in that regard alone, it is impossible for the Employer to meet the just cause provisions set forth in Article 16.

And with that in mind, the instant grievance is sustained. The Emergency Placement will be set aside and the Grievant will be made whole in every respect. Additionally, all documentation pertaining to the Emergency Placement will be expunged from the Grievant's file.

Additionally, the Union made a compelling argument regarding the Employer's continuing disregard of the Step A process. The Joint file supports the argument made by the Union in that regard. And again, without any Step A contentions, the Employer was totally disabled in their challenge the Union's request in that regard. And for that reason, in addition to the make whole remedy the undersigned will also award five hundred dollars ($500) to the Union in light of that continuing violation.

The Employer Advocate was quite aggressive in making compelling arguments regarding their position in both the Emergency Placement and the Step A violations. The professionalism of the Advocate's presentation, convincing as it was, could not be considered due to that Step A violation. As previously pointed out, the failure to meet the Article 15 Step A requirements, disables any argument made by the same at any of the latter stages of the Grievance-Arbitration Procedure of

Article 15. And for that reasoning, the Union's requested remedy is granted as set forth above.

AWARD

The grievance is sustained. The Grievant shall be reinstated and made whole in every respect. Additionally, the Union shall also receive $500 in compensatory damages for the Employer's continued failure to comply with the Step A requirements of Article 15.

Dated: July 28, 2016
Fayette County PA

STEELWORKERS v. ENTERPRISE CORP., 363 U.S. 593 (1960)

363 U.S. 593

UNITED STEELWORKERS OF AMERICA v. ENTERPRISE WHEEL & CAR CORP.
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.
No. 538.
Argued April 28, 1960.
Decided June 20, 1960.

Employees were discharged during the term of a collective bargaining agreement containing a provision for arbitration of disputes, including differences "as to the meaning and application" of the agreement, and a provision for reinstatement with back pay of employees discharged in violation of the agreement. The discharges were arbitrated after the agreement had expired, and the arbitrator found that they were in violation of the agreement and that the agreement required reinstatement with back pay, minus pay for a ten-day suspension and such sums as the employees had received from other employment. Respondent refused to comply with the award, and the District Court directed it to do so. The Court of Appeals held that (a) failure of the award to specify the amounts to be deducted from the back pay rendered the award unenforceable, though that defect could be remedied by requiring the parties to complete the arbitration, (b) an award for back pay subsequent to the date of expiration of the collective bargaining agreement could not be enforced, and (c) the requirement for reinstatement of the discharged employees was unenforceable because the collective bargaining agreement had expired. Held: The judgment of the District Court should have been affirmed with a modification requiring the specific amounts due the employees to be definitely determined by arbitration. Pp. 594-599.

(a) Federal courts should decline to review the merits of arbitration awards under collective bargaining agreements. Steelworkers v. Warrior & Gulf Navigation Co., ante, p. 574. P. 596.
(b) The opinion of the arbitrator in this case, as it bears upon the award of back pay beyond the date of the agreement's expiration and reinstatement, is ambiguous; but mere ambiguity in the opinion accompanying an award is not a reason for refusing to enforce the award, even when it permits the inference that the arbitrator may have exceeded his authority. Pp. 597-598.
(c) The question of interpretation of the collective bargaining agreement is a question for the arbitrator, and the courts have no [363 U.S. 593, 594] business overruling his construction of the contract merely because their interpretation of it is different from his. Pp. 598-599.
(d) The Court of Appeals erred in holding that an award for back pay subsequent to the date of expiration of the collective bargaining agreement could not be enforced and that the requirement for reinstatement of the discharged employees was unenforceable because the collective bargaining agreement had expired. Pp. 596, 599.
(e) The judgment of the District Court ordering respondent to comply with the arbitrator's award should be modified so that the amount due the employees may be definitely determined by arbitration. P. 599.

269 F.2d 327, reversed in part.

Elliot Bredhoff and David E. Feller argued the cause for petitioner. With them on the brief were Arthur J. Goldberg, James P. Clowes and Carney M. Layne.

William C. Beatty argued the cause for respondent. With him on the brief was Jackson N. Huddleston.

Opinion of the Court by MR. JUSTICE DOUGLAS, announced by MR. JUSTICE BRENNAN.

Petitioner union and respondent during the period relevant here had a collective bargaining agreement which provided that any differences "as to the meaning and application" of the agreement should be

submitted to arbitration and that the arbitrator's decision "shall be final and binding on the parties." Special provisions were included concerning the suspension and discharge of employees. The agreement stated:

> "Should it be determined by the Company or by an arbitrator in accordance with the grievance procedure that the employee has been suspended unjustly or discharged in violation of the provisions of this Agreement, the Company shall reinstate the employee and pay full compensation at the employee's regular rate of pay for the time lost." [363 U.S. 593, 595]

The agreement also provided:

> ". . . It is understood and agreed that neither party will institute civil suits or legal proceedings against the other for alleged violation of any of the provisions of this labor contract; instead all disputes will be settled in the manner outlined in this Article III - Adjustment of Grievances."

A group of employees left their jobs in protest against the discharge of one employee. A union official advised them at once to return to work. An official of respondent at their request gave them permission and then rescinded it. The next day they were told they did not have a job any more "until this thing was settled one way or the other."

A grievance was filed; and when respondent finally refused to arbitrate, this suit was brought for specific enforcement of the arbitration provisions of the agreement. The District Court ordered arbitration. The arbitrator found that the discharge of the men was not justified, though their conduct, he said, was improper. In his view the facts warranted at most a suspension of the men for 10 days each. After their discharge and before the arbitration award the collective bargaining agreement had expired. The union, however, continued to represent the workers at the plant. The arbitrator rejected the contention that expiration of the agreement barred reinstatement of the employees. He held that the provision of the agreement above quoted imposed an unconditional obligation on the employer. He awarded reinstatement with back pay, minus pay for a 10-day suspension and such sums as these employees received from other employment.

Respondent refused to comply with the award. Petitioner moved the District Court for enforcement. The District Court directed respondent to comply. 168 F. Supp. 308. The Court of Appeals, while agreeing that [363 U.S. 593, 596] the District Court had jurisdiction to enforce an arbitration award under a collective bargaining agreement, 1 held that the failure of the award to specify the amounts to be deducted from the back pay rendered the award unenforceable. That defect, it agreed, could be remedied by requiring the parties to complete the arbitration. It went on to hold, however, that an award for back pay subsequent to the date of termination of the collective bargaining agreement could not be enforced. It also held that the requirement for reinstatement of the discharged employees was likewise unenforceable because the collective bargaining agreement had expired. 269 F.2d 327. We granted certiorari. 361 U.S. 929 .

The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards. As we stated in United Steelworkers of America v. Warrior & Gulf Navigation Co., ante, p. 574, decided this day, the arbitrators under these collective agreements are indispensable agencies in a continuous collective bargaining process. They sit to settle disputes at the plant level - disputes that require for their solution knowledge of the custom and practices of a particular factory or of a particular industry as reflected in particular agreements. 2 [363 U.S. 593, 597]

When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency. Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.

The opinion of the arbitrator in this case, as it bears upon the award of back pay beyond the date of the agreement's expiration and reinstatement, is ambiguous. It may be read as based solely upon the arbitrator's view of the requirements of enacted legislation, which would mean that he exceeded the scope of the submission. Or it may [363 U.S. 593, 598] be read as embodying a construction of the agreement itself, perhaps with the arbitrator looking to "the law" for help in determining the sense of the agreement. A mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award. Arbitrators have no obligation to the court to give their reasons for an award. To require opinions 3 free of ambiguity may lead arbitrators to play it safe by writing no supporting opinions. This would be undesirable for a well-reasoned opinion tends to engender confidence in the integrity of the process and aids in clarifying the underlying agreement. Moreover, we see no reason to assume that this arbitrator has abused the trust the parties confided in him and has not stayed within the areas marked out for his consideration. It is not apparent that he went beyond the submission. The Court of Appeals' opinion refusing to enforce the reinstatement and partial back pay portions of the award was not based upon any finding that the arbitrator did not premise his award on his construction of the contract. It merely disagreed with the arbitrator's construction of it.

The collective bargaining agreement could have provided that if any of the employees were wrongfully discharged, the remedy would be reinstatement and back pay up to the date they were returned to work. Respondent's major argument seems to be that by applying correct principles of law to the interpretation of the collective bargaining agreement it can be determined that the agreement did not so provide, and that therefore the arbitrator's decision was not based upon the contract. The acceptance of this view would require courts, even under the standard arbitration clause, to review the merits of every [363 U.S. 593, 599] construction of the contract. This plenary review by a court of the merits would make meaningless the provisions that the arbitrator's decision is final, for in reality it would almost never be final. This underlines the fundamental error which we have alluded to in United Steelworkers of America v. American Manufacturing Co., ante, p. 564, decided this day. As we there emphasized, the question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his.

We agree with the Court of Appeals that the judgment of the District Court should be modified so that the amounts due the employees may be definitely determined by arbitration. In all other respects we think the judgment of the District Court should be affirmed. Accordingly, we reverse the judgment of the Court of Appeals, except for that modification, and remand the case to the District Court for proceedings in conformity with this opinion.

It is so ordered.

MR. JUSTICE FRANKFURTER concurs in the result.

MR. JUSTICE BLACK took no part in the consideration or decision of this case.

[For opinion of MR. JUSTICE BRENNAN, joined by MR. JUSTICE FRANKFURTER and MR. JUSTICE HARLAN, see ante, p. 569.]

Footnotes

[Footnote 1] See Textile Workers v. Cone Mills Corp., 268 F.2d 920 (C. A. 4th Cir.).

[Footnote 2] "Persons unfamiliar with mills and factories - farmers or professors, for example - often remark upon visiting them that they seem like another world. This is particularly true if, as in the steel industry, both tradition and technology have strongly and uniquely molded the ways men think and act when at work. The newly hired employee, the `green hand,' is gradually initiated into what amounts to a miniature society. There he finds himself in a strange environment that assaults his senses with unusual sounds and smells and often with [363 U.S. 593, 597] different `weather conditions' such as sudden

drafts of heat, cold, or humidity. He discovers that the society of which he only gradually becomes a part has of course a formal government of its own - the rules which management and the union have laid down - but that it also differs from or parallels the world outside in social classes, folklore, ritual, and traditions.

> "Under the process in the old mills a very real `miniature society' had grown up, and in important ways the technological revolution described in this case history shattered it. But a new society or work community was born immediately, though for a long time it developed slowly. As the old society was strongly molded by the discontinuous process of making pipe, so was the new one molded by the continuous process and strongly influenced by the characteristics of new high-speed automatic equipment." Walker, Life in the Automatic Factory, 36 Harv. Bus. Rev. 111, 117.

[Footnote 3] See Jalet, Judicial Review of Arbitration: The Judicial Attitude, 45 Cornell L. Q. 519, 522.

MR. JUSTICE WHITTAKER, dissenting.

Claiming that the employer's discharge on January 18, 1957, of 11 employees violated the provisions of its collective bargaining contract with the employer - covering the period beginning April 5, 1956, and ending April 4, [363 U.S. 593, 600] 1957 - the union sought and obtained arbitration, under the provisions of the contract, of the issues whether these employees had been discharged in violation of the agreement and, if so, should be ordered reinstated and awarded wages from the time of their wrongful discharge. In August 1957, more than four months after the collective agreement had expired, these issues, by agreement of the parties, were submitted to a single arbitrator, and a hearing was held before him on January 3, 1958. On April 10, 1958, the arbitrator made his award, finding that the 11 employees had been discharged in violation of the agreement and ordering their reinstatement with back pay at their regular rates from a time 10 days after their discharge to the time of reinstatement. Over the employer's objection that the collective agreement and the submission under it did not authorize nor empower the arbitrator to award reinstatement or wages for any period after the date of expiration of the contract (April 4, 1957), the District Court ordered enforcement of the award. The Court of Appeals modified the judgment by eliminating the requirement that the employer reinstate the employees and pay them wages for the period after expiration of the collective agreement, and affirmed it in all other respects, 269 F.2d 327, and we granted certiorari, 361 U.S. 929 .

That the propriety of the discharges, under the collective agreement, was arbitrable under the provisions of that agreement, even after its expiration, is not in issue. Nor is there any issue here as to the power of the arbitrator to award reinstatement status and back pay to the discharged employees to the date of expiration of the collective agreement. It is conceded, too, that the collective agreement expired by its terms on April 4, 1957, and was never extended or renewed.

The sole question here is whether the arbitrator exceeded the submission and his powers in awarding [363 U.S. 593, 601] reinstatement and back pay for any period after expiration of the collective agreements. Like the Court of Appeals, I think he did. I find nothing in the collective agreement that purports to so authorize. Nor does the Court point to anything in the agreement that purports to do so. Indeed, the union does not contend that there is any such covenant in the contract. Doubtless all rights that accrued to the employees under the collective agreement during its term, and that were made arbitrable by its provisions, could be awarded to them by the arbitrator, even though the period of the agreement had ended. But surely no rights accrued to the employees under the agreement after it had expired. Save for the provisions of the collective agreement, and in the absence, as here, of any applicable rule of law or contrary covenant between the employer and the employees, the employer had the legal right to discharge the employees at will. The collective agreement, however, protected them against discharge, for specified reasons, during its continuation. But when that agreement expired, it did not continue to afford rights in futuro to the employees - as though still effective and governing. After the agreement expired, the employment status of these 11 employees was terminable at the will of the employer, as the Court of Appeals quite properly held, 269 F.2d, at 331, and see Meadows v. Radio Industries, 222 F.2d 347, 349 (C. A. 7th Cir.); Atchison, T. & S. F. R. Co. v. Andrews, 211 F.2d 264, 265 (C.

A. 10th Cir.); Warden v. Hinds, 163 F. 201 (C. A. 4th Cir.), and the announced discharge of these 11 employees then became lawfully effective.

Once the contract expired, no rights continued to accrue under it to the employees. Thereafter they had no contractual right to demand that the employer continue to employ them, and a fortiori the arbitrator did not have power to order the employer to do so; nor did the arbitrator have power to order the employer to pay wages to [363 U.S. 593, 602] them after the date of termination of the contract, which was also the effective date of their discharges.

The judgment of the Court of Appeals, affirming so much of the award as required reinstatement of the 11 employees to employment status and payment of their wages until expiration of the contract, but not thereafter, seems to me to be indubitably correct, and I would affirm it. [363 U.S. 593, 603]

*See pages 5, 6

C 6238

ARBITRATION AWARD

June 9, 1986

UNITED STATES POSTAL SERVICE

-and

NATIONAL ASSOCIATION OF LETTER CARRIERS

Case Nos.
H4N-NA-C-21 (4th issue)
H4C-NA-C-27

-and-

AMERICAN POSTAL WORKERS UNION

Subject: Arbitrability - Remedy for Violation of 12-Hour Daily or 60-Hour Weekly Work Limitation

Statement of the Issues: Whether the Unions' claims in this case are arbitrable? Whether a violation of Article 8, Section 5G2, i.e., working an employee more than 12 hours in a day or 60 hours in a service week, justifies a remedy apart from or beyond the penalty overtime pay provided by Article 8, Section 4C and D? If so, what should the remedy be?

Contract Provisions Involved: Article 8, Sections 4 and 5 and Article 15, Section 4 of the July 21, 1984 National Agreement.

Appearances: For the Postal Service, J. K. Hellquist, General Manager, Labor Relations Division, Central Region; for NALC, Keith E. Secular, Attorney (Cohen Weiss & Simon); for APWU, Darryl J. Anderson, Attorney (O'Donnell Schwartz & Anderson).

Statement of the Award: The grievances are arbitrable and are granted to the extent set forth in the foregoing opinion.

BACKGROUND

These grievances concern the appropriate remedy for a violation of the work ceilings stated in Article 8, Section 5G2, namely, 12 hours in a day and 60 hours in a service week. The Unions urge that any hours worked beyond these limitations should be paid for at two and one-half times the straight time rate. The Postal Service claims that the negotiated remedy is two times the straight time rate and that anything beyond such double time cannot be justified under the terms of the National Agreement. It believes the Unions are seeking to add a new penalty overtime pay clause to Article 8 and are thus seeking to modify the National Agreement. For this reason, it maintains the grievances are not arbitrable.

The relevant provisions of Article 8 should be quoted:

Section 4 - Overtime Work

"A. Overtime pay is to be paid at the rate of one and one-half (1½) times the base hourly straight time rate.

"B. Overtime shall be paid to employees for work performed only after eight (8) hours on duty in any one service day or forty (40) hours in any one service week. Nothing in this Section shall be construed by the parties or any reviewing authority to deny the payment of overtime to employees for time worked outside of their regularly scheduled work week at the request of the Employer.

"C. Penalty overtime pay is to be paid at the rate of two (2) times the base hourly straight time rate. Penalty overtime pay will not be paid for any hours worked in the month of December.

"D. Effective January 19, 1985, penalty overtime pay will be paid to full-time regular employees for any overtime work in contravention of the restrictions in Section 5.F.

"F. Wherever two or more overtime or premium rates may appear applicable to the same hour or hours worked by an employee, there shall be no pyramiding or adding together of such overtime or premium rates and only the higher of the employee's applicable rates shall apply." (Emphasis added)

Section 5 - Overtime Assignments

"F. ...excluding December, no full-time regular employee will be required to work overtime on more than four (4) of the employee's five (5) scheduled days in a service week or work over ten (10) hours on a regularly scheduled day, over eight (8) hours on a non-scheduled day, or over six (6) days in a service week.

"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..." (Emphasis added)

In Case Nos. H4N-NA-C-21 (3rd issue) and H4C-NA-C-27, it was held that the underscored words in Section 5G2 constituted "an absolute bar to employees working more than 60 hours in a week." These words obviously are also an absolute bar to employees working more than 12 hours in a day. The 12-hour and 60-hour language in Section 5G2 establishes ceilings on the number of hours an employee may work. These ceilings, however, do not apply to work performed in the month of December.

The present case concerns the consequences of Management working an employee beyond 12 hours in a day or 60 hours in a week, the consequences of a violation of Section 5G2.

The Postal Service believes there should be no special consequences, at least none other than those already provided for in Article 8. It argues that no one can work more than

12 hours in a day or 60 hours in a week "without having contravened the limitations in Section 5.F." It says work over 12 or 60 therefore calls for penalty overtime pay, double time, pursuant to Section 4C and D. It stresses the broad reach of penalty overtime pay to "any overtime work in contravention of the restrictions in Section 5.F." It claims that payment of some further penalty for work over 12 or 60, as requested by the Unions, would violate the "no pyramiding" language in Section 4F and would improperly create a new penalty overtime pay rate by arbitral fiat.

The Unions contend that working someone beyond the 12 or 60 limitations is a violation of Section 5G2 and that such a violation should not go unremedied. They urge that mere payment of penalty overtime pay is not sufficient to deter Management from ignoring the work limitations imposed by 5G2. They view penalty overtime pay as simply a negotiated rate of pay for certain overtime work, not as a remedy for Management's failure to honor the 12 or 60 ceiling. They emphasize the parties' "pattern...of using an additional one-half of straight time pay increment as appropriate compensation for each successive layer of obligation and responsibility involving extended working hours." Specifically, they note that typical overtime work is paid for at one and one-half times the straight time rate and that penalty overtime work is paid for at two times the straight time rate. They see the "next step" in this "logical progression" as an "additional one-half of straight time pay." They ask, accordingly, that a violation of the 12 or 60 ceiling be paid for at two and one-half times the straight time rate.

DISCUSSION AND FINDINGS

The Postal Service claims, at the outset, that these grievances are not arbitrable. It notes that the parties have carefully written into Article 8 several overtime pay provisions, one and one-half times straight time for certain overtime work and two times straight time for other overtime work. It believes the Unions seek in this case to establish "an additional category of wage payment", two and one-half times straight time for work beyond 12 hours in a day or 60 hours in a week. It insists, however, that the parties have already created a rate for such work in Article 8, namely, two times straight time, and that the Unions' request for something more conflicts with this part of the National Agreement. It sees the grievances as a means of imposing a new

penalty overtime pay clause on the Postal Service, a means of "creat[ing] a general remedy, to be applied generally by other arbitrators, as well as the parties themselves." It urges that a ruling in the Unions' favor would modify Article 8 and thus go beyond the terms of the National Agreement. Such a result is, in its opinion, expressly forbidden by Article 15.

This argument is not persuasive. When Management works someone more than 12 hours in a day or 60 hours in a week, it has violated Section 5G2. Contract violations should, where possible, be remedied. The Postal Service claim that the parties have already provided a remedy for this violation in Sections 4D and 5F, namely, double time, is plainly incorrect. That will be made clear later in my discussion of the merits of the dispute. No remedy for a Management violation of the Section 5G2 work ceilings was written into Article 8. But the parties' silence does not mean that I am without power to fashion an appropriate remedy. One of the inherent powers of an arbitrator is to construct a remedy for a breach of a collective bargaining agreement.* The U. S. Supreme Court recognized this reality in the Enterprise Wheel case:

> "...When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency."**

* As Arbitrator Gamser observed in Case No. NC-S-5426, "...to provide for an appropriate remedy for breaches of the terms of an agreement, even where no specific provision defining the nature of such remedy is to be found in the agreement, certainly is found within the inherent powers of the arbitrator."

** United Steelworkers of America v. Enterprise Wheel & Car Corp., 80 S. Ct. 1358, 1361 (1960).

The Unions propose a single, uniform remedy for each and every violation of Section 5G2. The Postal Service disagrees with this approach. It considers the Unions' position to be tantamount to an effort to place a new penalty overtime pay clause in Article 8. This argument, however, misconstrues the thrust of the Unions' case. Once a contract violation is held to have occurred, the parties are free to urge whatever remedy they believe would be appropriate. A single, uniform remedy, if adopted here, would not modify the terms of the National Agreement. It would merely announce in advance the money consequences of Management violating Section 5G2 by working an employee beyond the 12 or 60 limits. It would not constitute another form of "penalty overtime pay" because that concept deals with permissible overtime under Section 5F, overtime contemplated by the parties. Work beyond the 12 or 60 limits involves impermissible overtime under Section 5G2, overtime expressly prohibited by the parties. The fact is that the Postal Service itself seeks a single, uniform remedy, namely, double time, for each and every violation of Section 5G2.

Thus, this case involves nothing more than a quarrel over the appropriate remedy for a Section 5G2 violation. That quarrel raises "interpretive issues" under the National Agreement. The remedy set forth later in this opinion does not modify Article 8 or otherwise ignore the terms of this Agreement. The dispute is arbitrable.

The Postal Service contends that the remedy for this contract violation is expressly stated in Article 8 and that no other remedy is warranted. It relies on Section 4D which calls for "penalty overtime pay", two times straight time, "for any overtime work in contravention of the restrictions in Section 5.F." It asserts that work beyond the 12 or 60 limits contravenes these restrictions and hence must be paid for at double time, nothing more.

This argument fails for several reasons. First, the Postal Service gives Section 5F a breadth that provision simply does not possess. Not all work beyond 60 hours contravenes the Section 5F restrictions.* These restrictions relate

* All work beyond 12 hours in a day, on the other hand, does contravene the Section 5F restrictions.

to number of hours of work in a day, number of days of work in a week, and number of overtime days in a week. They do not cover the number of hours of work in a week. Hence, Section 5F does not automatically apply to hours worked beyond 60. Those hours do not necessarily generate penalty overtime pay. For instance, if the hours beyond 60 fall within one of the employee's regularly scheduled tours, he would receive straight time for such work.* In these circumstances, Section 5F would offer no remedy whatever for Management's failure to honor the Section 5G2 prohibition of work beyond 60 hours.

Second, work beyond 12 or 60 may often be a "contravention of the restrictions in Section 5.F." But such work has another effect as well. It is a contravention of the restrictions in Section 5G2, a violation of the work ceilings erected by Section 5G2. The penalty overtime pay provisions in Sections 4D and 5F have nothing to do with these work ceilings. They certainly cannot be read to excuse a violation of Section 5G2. It follows that Sections 4D and 5F do not provide a remedy for a violation of Section 5G2.

Third, the same point can be made more forcefully by examining the purpose of these provisions. Sections 4D and 5F are a means of discouraging certain overtime work by making the Postal Service pay a higher premium, double time, for such work. Section 5G2 has an entirely different goal, the prohibition of any work beyond the 12 or 60 limits. The Unions' complaint here is not with the rate of pay for work over 12 or 60. It is not seeking to discourage penalty overtime pay situations. Rather, its position is that Management may not work anyone over 12 or 60. It requests a remedy which will enforce the Section 5G2 prohibition.

The Postal Service further contends that the remedy sought by the Unions, two and one-half times straight time for work beyond 12 or 60, conflicts with the "no pyramiding" ban in Section 4F. That provision says, "Wherever two or more overtime or premium rates may appear applicable to the same...hours worked..., there shall be no pyramiding...and only the higher of the applicable rates shall apply." This

* See, in this connection, the hypothetical example constructed in Case Nos. H4N-NA-C-21 (3rd issue) and H4C-NA-C-27. There, the employee's regular schedule was Monday through Friday on day tour. He worked 8 hours Sunday, 12 hours Monday through Thursday, and 8 hours Friday. His final 4 hours on Friday were over the 60-hour ceiling. But these hours, being part of his regularly scheduled tour, would be compensated at straight time rather than penalty overtime (or overtime).

argument is without merit. For the "no pyramiding" principle only addresses the "overtime or premium rates" set forth in the National Agreement. The money sought by the Unions here is not such an "overtime or premium rate." It is a suggested remedy for a violation of Section 5G2. A "premium rate" and a remedy (even when expressed in terms of some multiple of straight time pay) are different concepts. Hence, the fact that the Postal Service pays double time for most work over 12 or 60 does not preclude, in appropriate circumstances, a remedy which would require a further payment beyond double time. Section 4F cannot be read as a device for limiting the amount of a money remedy for a violation of Section 5G2.

For these reasons, I find that the remedy for a violation of Section 5G2 is not necessarily limited to double time. It could be a larger sum notwithstanding the provisions of Sections 4D, 4F and 5F.

This does not mean, however, that the single, uniform remedy proposed by the Unions, two and one-half times straight time, must be embraced. For not all violations of Section 5G2 are likely to be the same. Some may involve a willful disregard of the 12 or 60 work ceilings; others may be an innocent failure to appreciate the significance of these ceilings. Some may be a response to an emergency situation; others may simply occur in the normal course of postal operations. Some may be induced by the employee's own request; others may be strictly the product of supervision's wishes. The point is that there are likely to be varying degrees of culpability in violations of Section 5G2. The arbitrator should consider these kinds of matters in fashioning a proper remedy. That is precisely what the Supreme Court must have had in mind when it referred to the arbitrator's "need...for flexibility" in formulating remedies to "meet...a wide variety of situations." I therefore will not grant the single, uniform remedy requested by the Unions. The remedy will depend on the facts of each case as it comes along.

AWARD

The grievances are arbitrable and are granted to the extent set forth in the foregoing opinion.

Richard Mittenthal, Arbitrator