REGULAR ARBITRATION PANEL

In the Matter of Arbitration Between UNITED STATES POSTAL SERVICE and THE NATIONAL ASSOCIATION OF LETTER CARRIERS	GRIEVANT: Class Action POST OFFICE: Toledo, Ohio 43601 CASE NO.: C11N-4C-C 17484532 NALC NO.: 610C17

BEFORE: **Glenda M. August, Arbitrator**

APPEARANCES:

For the USPS:	Matthew A. Smith
For the NALC:	Mike Hayden
Place of Hearing:	435 S. Saint Clair St., Toledo, OH 43601
Date (s) of Hearing:	April 10, 218 & September 20, 2018
Briefs Received:	November 13, 2018
Date of Award:	December 27, 2018
Relevant Contract Provision:	Articles 15 & 19
Contract Year:	2016-2019
Type of Grievance:	Contract

AWARD SUMMARY: The grievance is sustained. Management shall cease and desist violating the National Agreement by making collection point assignment changes to collection or carrier routes prior to conducting a unit review and notifying the Union. The changes made to CPMS by Management in Toledo will be rescinded and the collection points returned to the dedicated collection routes. The Service will reimburse the Union a total of $5000.00 towards the cost of processing this grievance.

Glenda M. August

GLENDA M. AUGUST
Arbitrator

I. ISSUE

Did management violate the national Agreement including, Articles 15 and 19, multiple grievance settlements, previous DRT decisions, prior local arbitrations, when it removed collection boxes from collection routes in Toledo without performing route adjustment (collection) inspection per the M-39 section 234.3 and/or when it failed to conduct a unit review prior to making a route adjustment? If so, what is the appropriate remedy?

II. RELEVANT CONTRACT PROVISIONS

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE

Section 1.

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

ARTICLE 19

HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

III. FACTS

The instant grievance concerns collection routes in Toledo, Ohio where the Union alleged that Management made a unilateral change to assign collection boxes from dedicated collection routes to regular carrier routes without doing a unit review. An Arbitration Hearing was held on April 10, 2018 and a second Hearing was required on September 20, 2018 where the merits of the case were presented for decision by this Arbitrator pursuant to the 2016-2019 National Agreement between the United States Postal Service and National Association of Letter Carriers.

IV. UNION'S CONTENTIONS

The Union contended that in Toledo, OH, postal management unilaterally assigned collection boxes from the dedicated collection routes to regular carrier routes without ever doing a unit review, sharing the information with the Union and/or Carriers, without giving notice to the Union and/or Carriers, and without performing any type of inspections. Additionally, according to the Union, Management failed to extend this grievance and forfeited their right to put contentions in for this grievance at Formal A; the Union argued that any contentions or arguments from Management should be isolated to the DRT decision and anything else should be considered new argument.

It was the Union's position that Management violated the National Agreement when it improperly reassigned collections boxes from all 5 of the dedicated collection bid assignments within the Toledo Installation to city carrier routes. According to the Union, during the week of April 1, 2017 Management unilaterally changed the assignment of collection boxes; they contended that the impacted collection boxes were previously assigned by zip code followed by the letter P indicating its designation to a collection route. The Union asserted that after the changes went into effect the reports now code the boxes with the letter "C" signifying its new designation to a city carrier assignment.

According to the Union, this is not the first incident of Management improperly making route adjustments in the Toledo Installation; they stated that numerous agreements and Arbitration awards addressing this very issue are included in the moving papers. The Union asserted that Management in the instant case has failed to follow the guidelines set forth in the M-39 pertaining to route adjustments and the requirements which must be fulfilled prior to conducting any adjustment to an existing assignment. The Union offered numerous Formal A Resolutions and Arbitral Awards as well as Step B decisions regarding Management's violation of Article 19 at the Toledo Installation. (Joint Exhibit 2); they argued that Management at Toledo have failed to comply with these prior awards and continue to violate the Collective Bargaining Agreement by unilaterally removing collection boxes from dedicated collection routes without notifying the union, and without performing a unit review or inspection.

It was the position of the Union that Management adjusted routes by removing multiple collection boxes from all 5 of the dedicated collection routes and assigning them to city carrier

routes; all without inspection or unit review. According to the Union, these changes occurred during the first week of April, 2017 (CPMS Scanner History Report). The Union disputed Management's position in Exhibit 22 where the Service held that "HQ does not feel this is a route adjustment". In support of their position, the Union offered M-01624 USPS Internal Memorandum, November 14, 2005 and M-01664 Interpretive Step Settlement, July 7, 2007, Q01N-4Q-C 05022610 which stated:

> **M-01624**
> Other than obvious data entry errors, route-based information may only be changed through a full count and inspection or minor adjustment as defined in Handbook M-39, Chapter 2, Mail Counts and Route Inspections, and Section 141 Minor Adjustments.
>
> **M-01664**
> Other than obvious data entry errors, route based information may only be changed through a full count and inspection or minor route adjustment.

The Union contended that the most recent Formal A settlement states that "in all future situations, [management] will conduct a unit review and share the results with the carriers and the local union president prior to scheduling route inspections." They further contended that the Formal A settlements are always citable to enforce their own terms and Management has an obligation to comply with grievance settlements.

According to the Union M-01517 dated May 31, 2002 further speaks to Management's obligation to comply with arbitration awards and grievance settlements and states in pertinent part:

> M-01517
> Compliance with arbitration awards and grievance settlements is not optional. No manager or supervisor has the authority to ignore or override an arbitrator's award or a signed grievance settlement. Steps to comply with arbitration awards and grievance settlements should be taken in a timely manner to avoid the perception of non-compliance, and those steps should be documented.

The Union disputed Management's contention that the Postal Operations Manual (POM), as it relates to the Collection Point Management System, is not part of the National Agreement via Article 19 as it does not affect the working conditions of craft employees. The Union offered Section 314 Collection Point Management System, Collection Tests, and Density Tests (Volume Reviews which state:

314.1

All collection points are required to be entered in the Collection Point Management System (CPMS) by the responsible District where Internet access is available. No scheduled collection may be excluded from CPMS.

The information recorded in CPMS must be accurate and complete and must be reviewed at least annually by the District for accuracy. All exceptions must be in accordance with 313.3. **CPMS is utilized to electronically verify collections.** Any collection points recorded in these systems and receiving electronic scan data do not require the manual test as specified in 314.2.

Collection points are defined locations where a customer drops off mail for collection by the Postal Service. These can include mail chutes, receiving boxes, firm pickups, Self-Service Kiosk (SSKs) drops, lobby drops, and mail collection racks. Collection boxes are a subset of collection points.

It was the position of the Union that Management unilaterally changed the assignment of the boxes from the collectors to carrier routes and at hearing Management witnesses testified that this was done across the Nation and in those cases the changes made in CPMS initiated the carrier routes to pick up the mail. The Union argued that Arbitrations held regarding this nationwide program have resulted in favorable rulings from Arbitrators (Arbitral Reference 2); and in the first such Award, Management made the same argument as Management in this case, that in the time period involved, the carrier routes were not collecting the boxes, the collectors were still performing the collections. The Union asserted that the decision out of Cincinnati, OH (Arbitral Reference 2A), also references previous arbitrations for that city and even references arbitrations from the Toledo installation-the same ones included in the case file-to prove a contractual violation existed.

The Union asserted that the new assignments of the collection boxes are a route adjustment and as such Management must follow the M-39 and applicable arbitrations and agreements in the Toledo installation. They further asserted that Management in Toledo had numerous violations in regards to not conducting a unit review prior to inspections and route adjustments. The Union offered Formal A Settlements (JX-2 Pages 442-447), a Pre-Arbitration decision (JX-2 Page 448) as well as DRT decisions on the subject (JX2 Pages 449-454). The Union also cited the four most recent Arbitration Awards on the subject and about adjusting routes and eliminating boxes without a

formal inspection (JX-2 Pages 455-497). They noted that the first 3 Arbitral Awards are from three separate collection route inspections.

The Union contended that Exhibit 7 on page 455 of the Joint Exhibit 2, provides the most recent decision in August 2015 where the Arbitration stated all Toledo station/branch collection box pulls will be assigned to the collection routes. The Union further contended that after awarding thousands of dollars, the Arbitrator also states "the employer will "cease and desist" making route adjustments to letter carrier routes that have not been inspected in accordance with the M-41 and M-39. The Union noted language from a regional arbitration decision (K11N-4K-C 17310015) in which the arbitrator stated:

> The Union's requested remedy will be granted in full. Additionally, I believe a clear explanation as to the meaning and intent of a cease and desist order would be beneficial to the Parties. It means stop. It means immediately. It means to cease from the same action hereinafter into the future, without excuse. Compliance with this order is mandatory.

The Union contended that clearly, Management at Toledo is not taking arbitration decisions and "cease and desist" orders seriously. They further contended that the Union should not be required to take the same case to arbitration for the 5th time; they noted that this would be the 4th time specifically involving Toledo collection routes. The Union cited Arbitrator Lalka's use of the term 'endemic' to describe the problem in Toledo, OH concerning the performance of unit reviews and route inspection in a proper manner. The Union asserted that this case and the decision I case number C06N-4C-C 09130076 provide proof that the problem remains almost three (3) years after Arbitrator Lalka issued his award.

The Union argued that the M-39 requires and provides Management guidance to achieve and maintain an appropriate daily workload for all routes and requires Management to do a unit review. According to the Union, the unit review verifies adjustments which need to be made, or if already made, ensures the route has the appropriate daily workload. The Union cited Section 2 of the M-39 Manual in support of this position. They noted that the unit review is a tool that should be used to determine if route adjustments are necessary; according to the Union, this did not happen with the collection routes, which is a clear violation of the M-39. The Union asserted that instead, Management took it upon themselves to change the collection routes by removing boxes from

dedicated collection routes and assigning them to carrier routes without following the M-39 sections 211, 212, 213, and 234.3.3. They further asserted that Management never conducted a unit review as required by section 211.1 of the M-39. Also they never performed a density check (JX-2 Pages 499-584). Additionally, according to the Union, Management never notified the Union on their intentions of doing a density check; they never notified the Union that they were going to make changes to the collection routes. They never did a unit review. The Union maintained that by removing the collection boxes from the dedicated collection routes and assigning them to city carrier routes, harm is not only caused to the collectors but also the carriers who had the boxes added to the street time of the routes.

Finally the Union argued that the only way to make these repeated violations stop is to seek escalated remedies. In a recent arbitration ruling on 10/24/2016 for the Toledo Installation, Arbitrator Brown stated in case number C11N-4C-C 16086245 (JX-2 Page 585):

> The question of just why the Service cannot or will not address this issue in a way that stops the violations from occurring was not litigated here. Whether these lapses occur because of sloppy scheduling or because of a lack of regard for the agreement, or if they occur because of some business need the Service has which it deems more important than contract compliance, the lapses should be made to stop, and absent a court order, **enhanced penalties** are the only means available here to try to make that happen.

The Union contended that they are requesting to be compensated in this case due to spending unnecessary resources to continually prepare, present, appeal and arbitrate this habitual repetitive violation due to the employer's refusal to cease the violations. They further contended that the Union continues to be forced into taking the same cases to arbitration over and over again which can cost several thousands of dollars each time; they noted that this is what Management wants to happen in an attempt to drain all of the branches resources in hopes that we can no longer afford the costs or time to keep going to arbitration. The Union argued that Management is making a mockery of the grievance-arbitration procedure and someone must make the serial non-compliance stop. The Union offered the arbitral opinion of Arbitrator Tobie Braverman (JX-2 Page 594) where she stated:

> ...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 or is obligated. Second generation grievances to enforce prior arbitration awards and grievance settlement should be required in only the rarest of circumstances. In this office, they appear to have become almost routine in recent years, and they unquestionably 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...

The Union noted that in her Award, Arbitrator Braverman awarded the Union a compensatory remedy in the amount of $500.00. They also offered other more recent Awards which provided more than $100,000.00 in compensatory damages to letter carriers in a non-compliance grievance. The Union lastly cited the final paragraph in Arbitrator Klein's decision involving Toledo collection where he provided:

> The employer will cease and desist making adjustments to letter carrier routes that have not been inspected in accordance with the M-41 and M-39. The employer will further cease and desist having employees other than letter carriers collect mail from collection boxes as this is the third arbitration this arbitrator has presided over in Toledo, Ohio involving similar violations. Future violations concerning Toledo collection routes may result in escalating, corrective monetary awards.

The Union argued that these continuing violations must stop and there must be a definitive remedy to encourage the Postal Service to comply with all resolutions and to stop the egregious and flagrant violations that keep requiring these escalated awards. As remedy, the Union requested that this Arbitrator rescind all route adjustments; Compensate each collector 1 hour of penalty overtime each day from April 7, 2017, until the changes are rescinded; also compensate each carrier whose route had a collection box added to it in the same manner (1 hour of penalty overtime for each day from April 7, 2017 until the changes are rescinded); and compensate the Union $5,000.00 for the noncompliance and for having to take the same case to arbitration numerous times. The Union requested the grievance be sustained and their requested remedy be awarded.

V. MANAGEMENT'S CONTENTIONS

Management contended that the Union in this case failed to meet its' burden of proof that there was a violation of the National Agreement or harm done to any City Letter Carrier at the Toledo Ohio Post Office. According to Management, the Union seeks roughly $700,000.00 in damages based on their request to pay each carrier one hour of penalty overtime pay per day from

April, 2017, until the changes at issue in this grievance are rescinded. Management cited National Arbitrator Carlton Snow in case number H0C-NA-C 12 where he was asked to provide a nationwide monetary remedy in a case involving Article 12. The Service contends that at pages 18, 19 and 20 of his award, where Management states he appropriately entitled the section "A Need for More Evidence" Arbitrator Snow explained:

> ...The Unions had the affirmative of the issue and needed to show by at least a preponderance of the evidence that there is a direct causal connection between the conflicting data and a violation of the parties' labor contract. Facts are stubborn things and must provide the basis for an interpretive decision. Speculation will not suffice. While the evidence in this case was sufficient to raise suspicions, the Unions did not present evidence that demonstrated a specific contractual violation...The totality of the record submitted to the arbitrator was not sufficient to establish that, while there now is uniformity in the parties' understanding of the disputed provisions, it was violated in this particular case. Nor was there sufficient evidence of harm to ascertain damages."

The Service addressed the Union's request by the Arbitrator to abide by the provisions of Article 15 and disallow any evidence submitted by Management outside of the DRT decision as new argument. According to the Union, Management failed to extend the grievance and forfeited their right to put contentions in for this grievance at the Formal A; Management requested that this Arbitrator to decide how she will approach that issue and that whatever approach is chosen by the Arbitrator, the Service simply requests that it be applied equally to both parties. Management argued that the Step B impasse reports that the appeal was received on September 27, 2017, almost a full month after August 29th, the date on which the Formal A meeting should have been held. They further argued that even though Management did not have the opportunity to provide contentions at Formal A, the Union's contentions are just contentions, not evidence and only reflect the Union's conclusions about evidence.

It was the position of Management that whatever information that the record does not demonstrate to have been requested should not now be presumed or otherwise credited to the Union. The Service contended that there is no information in the file which suggests anything other than the fact that the Union had a full and fair opportunity to obtain whatever they wanted to support their contentions. They further contended that where there are a variety of awards, resolutions and

Memoranda in the file to have an influence on the arbitrator's decision about the Union's contentions that information about the contentions would need to justify the influence and should be found in the moving papers. The other papers, stated Management, are a many paged table titled "Collection Point Management System-Scanner History Detail Report by Route" and accompanying a request for information in this grievance, an email from Dean Shroka (management's witness) stating that "No 1840's were completed. HQ does not feel this is a route adjustment."

Management asserted that there is no Request for Information in the moving papers to support that any Management Official provided the CPMS table as an answer to any of the Union's requests (RFI). The Service contends that the Union's contention that the CPMS table which provided the information on the "Belongs to Route" was obtained through another grievance is not supported by the case file. Additionally, the Service contended that the supporting papers contain no information that they or any source of their information either has any postal duty that required them to either be informed about the Belongs To Route field or to utilize it or has had any training about its function. Management further asserted that there is no statement of any kind from any carrier, specifically nothing stating that the pulling of any collection box was added to or removed from his or her duties.

According to Management, were a route adjustment attempted, the only explicit evidence in the supporting papers concerning the topic was the email that "HQ does not feel this is a route adjustment." They noted that there were on supporting papers to provide a framework or understanding to infer an attempted route adjustment. The Service argued that even viewing the Union's evidence in the moving papers as truthful, Management submits:

1. That there is insufficient evidence to find a violation of any cited provision in a handbook or manual which directly relates to wages, hours, or working conditions
2. That even were a violation to be found, there is insufficient evidence to find loss, harm, or any difference having been suffered by any carrier.

The Service further argued that even if a violation and suffering were found, there are national decisions which set the precedent to be followed; they offered the opinion of Arbitrator Richard Mittenthal in case number H1C-NA-C 97 at page 5 which states in part:

> Fourth, perhaps most important, the purpose of a remedy is to place employees (and Management) in the position they would have been in had there been no contract violation. The remedy serves to restore the status quo ante.

The Service also noted Arbitrator Collins National decision where he sustained the grievance and declined to award a monetary remedy stating; "Under contract law relief must be compensatory, and cannot be punitive.

Management provided testimony at hearing to support their position on substantive arbitrability, where they held that the Union had not established Article 19's applicability to the Postal Operations Manual (POM) at Section 314.1. Management held that their expert witness, Dean Shroka testified in support of Management's motion that POM 314.1 is a management-to-management instruction that relates to a management tool, CPMS. They noted he further testified that Headquarters Operations charges District Operations with performing the annual review for accuracy and it is Headquarters' Operations to whom District Operations reports; he noted that Toledo Post Office does not exercise authority over the CPMS information and District Operations does not, through the CPMS information, exercise authority over the Toledo Post Office. Mr. Shroka testified that the instruction in POM 314.1 exists in the relationship between District Operations and Headquarters Operations; he averred that the changes in the "Belongs to Route" column did not constitute a route adjustment, a step in a route adjustment, a trigger for a route adjustment, or a notification that a route adjustment was coming.

The Service cited an excerpt from Arbitrator Johnathan Klein in case number B11N-4B-C 15359325, where the Union argued that Management violated POM Section 313; Arbitrator Klein opined:

> [The] evidence of record presented in this case reveals that management clearly failed to consider the needs of affected customers and the community as required by POM Section 313.4. The arbitrator notes that the Postal Service did not contact any of the affected local business until their purported concerns were brought to management's attention by the Union after the p.m. collections had already been eliminated. Additionally, the arbitrator finds merit to the Union's arguments regarding both the validity and accuracy of the density test results obtained and utilized by management in determining that the volume of mail deposited in the four collection boxes did not warrant afternoon pickups.

> However, the arbitrator finds insufficient proof from which to conclude that the provisions contained in POM Section 313 are directly related to wages, hours or working conditions. The subject matter of those provisions pertains primarily to the scheduling of collections, the location of collection boxes and other relevant factors which management must consider in changing those schedules and/or box locations. The POM provisions do not assign or guarantee letter carriers any hours, nor do they limit or expand employee rights. The cited provisions are a directive to management and at best result in an indirect effect upon the wages, hours and working conditions of letter carriers. Accordingly, the arbitrator concludes any alleged violation of POM Section 313 is not arbitrable as it is not incorporated into the National Agreement by virtue of Article 19.

In the instant case, according to Management, the Union's argument about POM 314.1 is subject to the same arbitrability defects as Arbitrator Klein, applying the national Nolan award, identified in the union's argument about POM 313 above. The Service asserted that a grievance concerning a provision in a handbook or manual is not arbitrable where the Union failed to provide sufficient proof that it directly relates to wages, hours or working conditions. They further asserted that if POM Section 314.1 was directly related to wages, hours, or working conditions, the Union did not provide sufficient proof of that proposition; and, even if the changes in the "Belongs to Route" column was contrary to POM Section 314.1 those changes showed no effect on hours, wages, or working conditions of any letter carrier. Management argued that either the provision in POM Section 314.1 has not been shown to concern the "Belongs to Route" column or the provision has not been shown to directly relate to hours, wages, or working conditions. Management further argued that in a contract case, the Union invoking Article 19 bears the burden of proving that the handbook/manual provision "directly relates to wages, hours, or working conditions"; they contended that the Union's witnesses did not identify any direct relation to wages, hours, or working conditions and the case file is void of any documentation which would develop that argument in the Union's favor. Therefore, according to Management, POM 314.1 is not properly before the Arbitrator and the Service requested that the Arbitrator so find.

Finally Management contended an assessment of the grievance file, only pages 25-436 have any relevancy to the instant grievance. They offered an appraisal of the documentation in support of their position. Management concluded that this case could not warrant a monetary remedy either to the members of the class or the union. The Service reiterated their objection to the Union's request

for a larger remedy at the hearing than it had requested earlier in the grievance procedure and contended that this was "new argument". Management maintained that their position that the instant grievance was not arbitrable and that the Union failed to advance a meritorious grievance since no employee's hours, wages, or working conditions was changed, and no harm to any employee was substantiated by the grievance file or during hearing testimony. Management requested the Arbitrator deny this grievance in its entirety.

VI. DISCUSSION

ARTICLE 19

HANDBOOKS AND MANUALS

> **Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement,** and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

The instant case concerns the assignment of collection box pick-ups in the Toledo Post Office. The Union here alleges that postal management unilaterally assigned collection boxes from the dedicated collection routes to regular carrier routes without ever doing a unit review, sharing the information with the Union and/or Carriers, without giving notice to the Union and/or Carriers, and without performing any type of inspections. According to Management, there was no route adjustment performed and the Union in this case failed to prove a violation occurred. Management further held that the instant grievance is not arbitrable since the Postal Operations Manual, Section 314.1 is not related to the employee's hours, wages, or working conditions.

Regarding Management's arguments on arbitrability, Article 19 provides in pertinent part, that "**Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement".** In the instant case, the Union's position is that the Collection Point Management System covered by Section 314 of the POM is clearly related to the wages, hours or

working conditions of their bargaining unit. Specifically, the Union cited their Exhibit 1 (U-1) as it provided the language for POM 314. Not only does this section covers CPMS but also provides the requirements for Manual Collection Tests and Volume Density Tests. The Union argued that collectors are required to scan boxes for the CPMS data and management has issued removals and other disciplinary actions where scans were shown to be missed. The Union held that certainly CPMS affects the working conditions of craft employees when they can receive discipline for missing a scan, and would receive overtime for having to be sent back out to scan any missed locations. Having heard many discipline cases involving missed scans, it is this Arbitrator's opinion that the POM Section 314 does directly relate to the working conditions of the employees covered by the bargaining agreement between the NALC and the USPS and therefore any grievance related to that section would be arbitrable and allowed to be heard on the merits. Additionally, the POM Section 314 goes on to provide guidance on Collection Tests and Density Test which could ultimately be used to adjust routes and therefore directly impacts the wages and hours for craft employees.

Management further alleged that the Union's Article 15 arguments against the Service presenting any contentions or arguments outside of their Step B contentions (because they did not meet the required Formal A deadlines and did not extend the grievance) should be applied to the NALC as well. The Service cited the fact that the Step B decision showed that the Union's appeal to the DRT was received nearly a month following the date that the Formal A meeting should have been held. However, the National Agreement at Article 15.3.B states in pertinent part:

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

Although Management contended that the appeal to Step B was not timely, that issue was not raised at Step B; therefore, based on the provisions of Article 15.3.B, Management's right to raise an objection is waived.

Based on the merits of the instant grievance, the Union alleges the changes made to the CPMS data were done without notification to the Union and without Management conducting a Unit Review. They offered CPMS reports to distinguish the assignments based on the designation of P to show the box or collection point was collected by a designated collection route and C to show the collection point was assigned to a carrier route. The reports (JX-2 page 25-436) show the changes made to the Belongs to Column, however each entry also shows that the boxes, or collections were made by designated collectors (with a "P" designation). Although the boxes were assigned to the Carrier routes, as suggested by Management, apparently the designated collectors continued to pull the boxes.

The Union's arguments include a claim that Management unilaterally made the changes demonstrated by the CPMS report, which provided the appearance of a route adjustment; they also allege that no unit review was conducted and Management failed to notify the Union of the changes. The POM 314, which Management's witness testified was a Management-to-Management instruction that relates to a management tool, actually provides guidance to Management for the utilization of the Management tool and states in pertinent part:

POM 314.1

> All collection points are required to be entered in the Collection Point Management System (CPMS) by the responsible District where Internet access is available. No scheduled collection may be excluded from CPMS.
>
> The information recorded in CPMS must be accurate and complete and must be reviewed at least annually by the District for accuracy. All exceptions must be in accordance with 313.3. **CPMS is utilized to electronically verify collections.** Any collection points recorded in these systems and receiving electronic scan data do not require the manual test as specified in 314.2,

Although, as averred, the provisions of Section 314 provide instructions for Management to abide by, the end result directly affects the employees providing the collection service. Of particular interest is the fact that the tool is used to "verify collections"; and Management is advised that **"the information recorded in CPMS must be accurate and complete"**. Missed collections is often used as the basis for discipline, and the Union's concerns that the information was changed in the

system without their knowledge is a valid one, despite Management's claim the data changed was not related to a route adjustment.

The Union provided numerous arbitral awards and grievance resolutions surrounding collections in Toledo. One decision relied upon by the Union was that of Arbitrator Johnathan Klein in case number C11N-4C-C 13318083 where he stated:

> The instant case is controlled by the facts which are not in material dispute by the parties. Moreover, there is no significant difference between the facts presented in this matter and those in the grievances which were resolved in two prior awards by this arbitrator regarding adjustments to collection routes at the Toledo installation... ...Case No. C06N-4C-C 09245878, at 6, the arbitrator noted that "this is not the first time the issue of missing unit reviews and route adjustments has reared its menacing head in the Toledo installation."
>
> The applicable M-39 Handbook provisions require management to conduct at least annual unit reviews and share the results with both the local Union president and the regular letter carriers...The evidence of record presented in this case establishes that management failed to conduct a unit review prior to removing collection boxes and changing the duties of letter carriers assigned to collection routes. Additionally, no consultations with the impacted letter carriers were conducted by management.
>
> In addition to the aforementioned awards issued by this arbitrator, the documentary evidence contained in the joint case file clearly establishes that the parties have resolved this issue through previous settlement agreements. In USPS-and NALC, Case No. C06N-4C-D 09245878, the arbitrator referenced two citable Formal Step A settlements which indicated that management would conduct unit reviews in the future as required by the M-39 Handbook, as well as a Step B Decision which found that management violated Article 19 of the National Agreement by scheduling route inspections prior to completing a unit review and sharing the results with the Union and the regular carrier. The evidence of record reveals that management once again failed to comply with prior settlement agreements covering the issues presented in this case.
>
> For the aforementioned reasons, the arbitrator concludes that the Union has satisfied its burden of proof and the grievance shall be sustained as set forth in the Award.

Arbitrator Klein, in the cited case, awarded the collection routes to be reinstated, and compensated the affected carriers based on undisputed evidence that at least one hour was removed by management from each collection route and resulted in approximately $76,302.72 in compensation to the 6 affected letter carriers over 312 days. The fact circumstances differs in the case at bar. The

Union here satisfactorily convinced the Arbitrator by a combination of the evidence and testimony at hearing that a violation occurred when Management failed to ensure that CPMS data was accurate and complete. As alleged, Management unilaterally changed collection boxes from dedicated collection routes to city carrier routes without notifying the Union or performing a unit review; also in violation of prior cease and desist orders and Formal A resolutions. However, the Union failed to demonstrate the harm caused to Collectors and Carriers affected by the changes in CPMS; as previously discussed, although the boxes were assigned to the Carrier Routes in CPMS, the data reflects that the Dedicated Collections routes continued to do the actual work by scanning and pulling the collection points. This information does not support compensatory damages requested by the Union since Collection Route personnel continued to collect the boxes.

Based on the foregoing conclusions, the grievance is sustained. Management violated the National Agreement when they unilaterally changed the assignment of collection points from dedicated collection routes to City Carrier routes without notification to the Union and prior to conducting a unit review. The changes made in CPMS by Management in Toledo will be rescinded and the collection points returned to the dedicated collection routes. The Service will reimburse the Union a total of $5000.00 towards the cost of processing this grievance.

AWARD

The grievance is sustained. Management shall cease and desist violating the National Agreement by making collection point assignment changes to collection or carrier routes prior to conducting a unit review and notifying the Union. The changes made to CPMS by Management in Toledo will be rescinded and the collection points returned to the dedicated collection routes. The Service will reimburse the Union a total of $5000.00 towards the cost of processing this grievance.

Glenda M. August

GLENDA M. AUGUST
Arbitrator

December 27, 2018

New Iberia, LA