This packet of arbitrations bolsters the Union position that management is barred from making new arguments at Step B or arbitration when local management fails to provide written contentions at Formal A. This effectively bars management from putting on a case at Step B or arbitration.

Kenneth Lerch

Kenneth Lerch

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

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	*	
	*	
between:	*	Grievant: Class Action
	*	
United States Postal Service	*	Post Office: Damascus, MD
	*	
and	*	USPS Case No: K11N-4K-C 17310015
	*	
National Association of Letter Carriers, AFL,CIO	*	NALC Case No: 7216TAP06

BEFORE: Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Jamelle Wood

For the Union: Alton Branson

Place of Hearing: Postal Facility, Damascus, MD

Date of Hearing: April 18, 2017

Date of Award: May 13, 2017

Relevant Contract Provision: Article 15

Contract Year: 2011

Type of Grievance: Contract

Award Summary:

The instant grievance arose when local Management failed to participate in a Formal Step A meeting. The Employer made several arguments discounting the Union's position, including that "sometimes things just happen." All of management's arguments and contentions were silenced by their failure to participate in Article 15 Formal Step A of the Parties Grievance-Arbitration Procedure. The grievance is sustained and the Union's requested remedy is hereby granted.

Lawrence Roberts, Panel Arbitrator

SUBMISSION:

This matter came to be Arbitrated pursuant to the terms of the Wage Agreement between United States Postal Service and the National Association of Letter Carriers Union, AFL-CIO, the Parties having failed to resolve this matter prior to the arbitral proceedings. The hearing in this cause was conducted on 18 April 2017 at the postal facility located in Damascus, MD. 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 tape 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 grievance filed on behalf of the Letter Carrier Craft working at Damascus MD postal facility. The matter arose when the Employer allegedly failed to meet at the Formal Step A of the Parties Article 15 Grievance-Arbitration Procedure.

More specifically, the Union alleges that Management failed to show up for a mutually agreed Formal Step A meeting following their receipt of the appeal by mail. The Union further claims that Management failed to contact the NALC Formal Step A Representative afterward.

Citing previous violations, the Union requests a monetary remedy in addition to a cease and desist order. While the Agency admits their non-participation in a Formal Step A

meeting, they insist that any monetary award is inappropriate. Furthermore, the Employer insists that res judicata applies to this instant case in that, this matter was settled by a previous Step B Decision.

It was found the matter was properly processed through the prior steps of the Parties Grievance-Arbitration Procedure of Article 15, without resolve. The Step B Team reached an impasse on 22 December 2016. Therefore, the matter 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 submission 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

UNION'S POSITION:

In their opinion, the Union will prove they did everything in accordance with the National Agreement when the case was appealed to the Formal Step to be heard and more, yet Management failed to meet with the Union's Forma Step A Representative.

The Union views this violation as a repetitive contractual violation and do deem this to be an egregious violation after the supervisor had received proper notification of the appeal.

From the Union's perspective the evidence will prove that this was a very serious breach of our collective bargaining agreement. As implied by the Union the actions of the supervisor were deliberate and egregious.

The Union also notes that because Management failed to meet with the Union Representative, they also failed to provide any contentions to support their position. Additionally, the Union also asserts that Management also failed to provide any supporting evidence or documentation at both the Informal and the Formal Step of the grievance process.

In that light, the Union ask that no weight be provided to the position taken by the Management Step B Representative.

It is the Union's position that Management gave up its contractual rights to present a case against the Union here today because they failed to do so at the Informal and Formal steps of the grievance process.

The Union also believes that due to the fact that there was no position put forth by Management at the Informal and Formal Step, the Step B Representative cannot put forth any additional arguments. The Union also argues the Employer position cannot be considered as it becomes new information and argument put forth for the first time in arbitration.

Lastly the Union would also note that by not providing any contentions or evidence in the case file to support their position, Management has not taken a position with regards to the Union's case or requested remedy.

As a settlement, the Union requests a compensatory remedy seeking contractual compliance. To that end, the Union requests that Management pay NALC Local Branch 3825 a lump sum of three hundred dollars ($300) for Management's failure to meet at the Formal Step A of the Dispute Resolution Process as well as a cease and desist order for failing to comply with Article 15 and their obligation to meet at Step A of the dispute Resolution process.

COMPANY'S POSITION:

The Employer initially raises an arbitrability issue based on the doctrine of res judicata. It is Management's claim that this instant grievance is asking for a resolution of an issue that has been previously settled via another Step B Decision labeled K11N-4K-C 17102742.

The Agency insists this matter has already been settled and cannot be re-litigated.

Regarding the merits, it is Management's position that many of the previous instances regarding failure to meet occurred some ten (10) years ago.

The Employer acknowledges the failure to meet was a previous issue, however, currently, the same is not a major issue at the Damascus facility. The Postal Service is aware of this arbitrator's previous rulings regarding this very subject. But with that in mind, the Service asks the arbitrator to review the facts of this specific case.

It is the assertion of the Employer this case is not an egregious overstep and certainly does not equate to the three-hundred-dollar remedy requested by the Union.

Management argues there was no methodology as to how the Union came up with such a random dollar amount.

It is the Agency's position today to focus back on what the Parties Agreement has already told us. According to the Joint Contract Administration Manual, the Employer insists that very specific instructions are given when talking about what happens when we fail to meet.

The Service insists the National Agreement was agreed to by both Parties and those same Parties recognize the fact that sometimes these things happen. And with that, it is the assertion of Management that those same Parties have also agreed to a remedy when these things happen.

And in this case, the remedy is that the Union move forward with the case at hand. The Agency insists that when monetary remedies are added to matters that have already been decided, it changes as to how we position ourselves in the procedure.

The Agency suggests this Local Union uses a case such as this to boast and brag about what they are doing to the Postal Service. Instead, the Employer suggests the Union should respect the language of the Parties Agreement in attempting to settle differences. The Employer asks this Arbitrator to visit the Local Union's website to view the boasting and bragging previously mentioned.

It is Management's position that yes, while there has been trouble in certain instances, such occurrences were at a different time and under a different Postmaster.

Management claims there is no evidence in this case that would illustrate any egregious actions were committed by the Employer in any instance. The Employer insists there is no egregious violation in this instant case.

The Employer does not disagree with the Union's claim of what happened, instead, insists the Agreement provides a clear direction as to what happens when the Parties fail to meet.

Management mentions the other cases placed into this file by the Union have nothing to do with the Damascus facility.

The Employer Advocate insists that sometimes the failure to meet just happens and in this particular case, it was just a single occurrence.

It is pointed out by the Advocate that Management is fully aware of the language of Article 15.2. However, Management also mentions that the negotiating Parties also realized that certain situations do occur and both Parties at the National Level agree to the language of Article 15.3.

The Agency insists this case today is certainly not deserving of any sort of monetary remedy. It is the position of the Postal Service that the instant file does not equate to a three hundred dollar penalty.

The Agency requests the grievance and the requested remedy be denied in its entirety.

THE ISSUE:

Did Management violate Articles 15 of the National Agreement when grievance #72-16-TAP06 was appealed to Formal Step A and Management failed to appear for a Formal A Meeting? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS:

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE

DISCUSSION AND FINDINGS

Initially, the Employer introduced a procedural argument based on the doctrine of res judicata. Management's procedural foundation was based on the following language of a previous Step B Decision, styled 72-16-TAP04, dated 24 October 2016, wherein the pertinent part of that Decision reads:

> **"... The Team agrees that Management failed to properly meet under Article 15. Management shall adhere to the relevant provisions of Article 15 regarding meeting at Formal Step A in order to preclude future similar violation. Future documented failures to meet may be subject to additional remedies."**

I disagree with the Employer's procedural assertion in this matter. Primary is the fact the Employer failed to raise such a contention earlier in the Procedure, namely at the Formal Step A meeting. It was obvious the Employer did not participate at that Step. And secondly, the last sentence of that settlement, mentioned above allows for additional remedies.

The Union is correct in their contention the remainder of the Employer's opening statement is new argument. In my view, the Employer should have first entered such an argument at the Formal Step A of this particular grievance. Instead, as the Union again correctly pointed out, the Employer failed to

participate or for that matter, make any effort to reschedule that Formal A Meeting.

Furthermore, the Union is also correct in pointing out that, at Step B, only additions and corrections to the record can be made. Without an existing record in the first place, there is absolutely no room to make any additional arguments or corrections. The Employer position, presented in their opening statement, becomes new argument and is therefore rejected in its entirety for that reasoning.

As I have stated in many of my prior Decisions, the language of Article 15.2 Formal Step A (d) is absolute. The placing of the word **"shall"** in Paragraph d makes the language mandatory instead of optional. This language requires both Parties to **"make a full and detailed statement of the facts."** Article 15.2 Step B allows for **"additional facts and contentions,"** however, the language makes it clear that any additional facts and contentions are to be merely a supplement to that full and detailed statement required at the Formal A. And either Party that fails to abide by the directive of that Formal Step A language is at a clear disadvantage in any case. Nonetheless, the moving Party, regardless of circumstance, is required to meet that contractual burden of proof requirement.

However, even though the Employer fails to participate and present a position, the particular grievance does not automatically default in the Union's favor. Instead, the Union, being the moving Party, is still required to meet the required burden of proof. And in this matter, I am of the considered opinion the Union has overwhelmingly and convincingly met that requisite requirement.

I was not convinced the Employer's failure to participate in this instant case was egregious, yet, it was quite clearly deliberate in nature. It was obvious to me the Employer was aware of the Union's intent to schedule the Formal A Meeting. I was also convinced the Employer simply failed to offer any type of reply to the Union concerning that Formal A Meeting. And such an action can be labeled as nothing other than deliberate and intentional.

There is absolutely no valid reason for either Party to simply fail to participate at the Formal Step A Meeting. I understand that animosity sometimes exists between certain advocates and/or that oftentimes it is virtually impossible to sync two different calendars for various reasons. However, in that same light, the virtual majority of cases that I've decided have some sort of mutual agreement to extend the time limits within the record.

The language of Article 15.3.b simply moves the grievance forward should the Employer fail to participate in any of the Steps, including Formal Step A. However, the failure by the Employer to participate in that Formal Step A also bars them from presenting any future argument or contention in that Article 15 process. And to some degree, I would hope this would encourage Employer participation. I have yet to experience a matter wherein the Employer failed to present Formal Step A arguments and contentions yet remained successful in the final outcome of that particular case.

And in this matter, the Employer failure to present a Formal Step A argument or contention mutes any argument made by the same at arbitration.

This record contains a list of previous settlements, dated 2008 and 2009, relating to similar issues. And those previous settlements have had little impact on my decision in this matter. Instead, it does prove this issue was absent between the Parties herein for a period of years. But what does have an impact in my decision is the last sentence in the more recent Step B Decision previously cited above. The Parties therein agreed that "**future documented failures to meet may be subject to additional remedies.**"

And in this case, the Union presented evidence that would certainly be subject to such a remedy. More importantly the Employer failed to offer any opposition via their elected absence from the Formal Step A process. And paramount, the Union's requested remedy is only considered reasonable.

I was convinced that an old issue of conflict between these local Parties has again resurfaced. The Decision written by the Step B Team cited above is reasonable and in accord with the Parties Agreement. And with that in mind, I see no reason not to characterize this instant dispute as a "**future documented failure**" that deserves additional remedies for the purpose of ensuring compliance hereinafter into the future.

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 case file indicates this violation was not an isolated occurrence. The incident date of the instant grievance was 5 October 2016. A previous Step B Decision found in Joint Exhibit 2, indicates an incident date of 9 September 2016

wherein the Employer failed to meet at Formal Step A. This record also indicates the Employer bypassed another Formal Step A Meeting, relating to an entirely different issue on a dispute initiated on or about 6 August 2016.

In closing, I would feel remiss leaving this discussion without mentioning a comment made by the Employer Advocate. When referencing the Employer's failure to meet with the Union at Formal Step A, the Employer Advocate stated that **"sometimes these things happen."** I disagree. The Parties herein have engaged in a written Wage Agreement. The entire purpose of Article 15 is to engage both Parties toward a resolution of any conflict at the earliest practical time. There is absolutely no excuse for a violation of this particular Section. Participation at Article 15.2 Formal Step A (d) is mandatory. This is also reinforced by the language of Article 15.3.C whereby the Parties are provided an option to mutually agree to an extension period of the time limits.

This is a clear directive of the Parties Agreement and is therefore compulsory, albeit without any other option. A full and detained exchange of facts, arguments and contentions by the respective Parties must be mutually exchanged at this Formal Step A meeting. If not done so, the non participant relinquishes their right to make any argument forward in the process.

And when this language is habitually disregarded, the remedy must escalate proportionally to encourage future compliance. Habitual in this case is based on the recent history of those Step B Decisions previously mentioned. The Employer may insist that such a remedy seems somewhat punitive, however, in that same breath, their failure to follow unambiguous language may seem as punitive to the opposing party as well.

The Union's requested remedy is hereby granted in its entirety. Management shall pay NALC Local Branch 3825 a lump sum of three hundred dollars ($300) for Management's failure to meet at the Formal Step A of the Dispute Resolution Process. Management at this Damascus facility is hereby ordered to cease and desist from any similar violations hereinafter into the future. Any further violations should result in an escalated monetary award.

AWARD

The grievance is sustained in its entirety.

Dated: May 13, 2017
Fayette County PA

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