C-31620

REGULAR ARBITRATION PANEL

| | | |
|---|---|---|
| In the Matter of the Arbitration | ) | Grievant: Class Action |
| between | ) | Post Office: Lake Charles, La. |
| United States Postal Service | ) | USPS Case No.: G11N-4G-C 13169944<br>914-MO-03162013 |
| and | ) | NALC DRT No.: 08-276325 |
| National Association of Letter Carriers, AFL-CIO | ) | |

BEFORE: Louise B. Wolitz, Arbitrator

APPEARANCES:



| | |
|---|---|
| For the U.S. Postal Service: | Sheleta D. Augustus |
| For the NALC: | Corey Walton |
| Place of Hearing: | 921 Moss Street, Lake Charles, La. |
| Date of Hearing: | August 7, 2014 |
| Date of Award: | October 31, 2014 |

AWARD SUMMARY:

The grievance is sustained. We find that the Union has borne its burden of proof to show that Management violated Article 8 of the National Agreement when Management mandated Letter Carriers not on the WA/ODL to work overtime on routes off their assignments during the time period of March 16, 2013 to March 22, 2013, prior to utilizing available ODL Letter Carriers/CCA Letter Carriers We further find that Management violated Article 15 when it failed to comply with previous Step B Decisions. We take no position on the question of whether or not Management violated Article 5 (Past Practice) of the National Agreement when it attempted to establish a Window of Operation, as this issue was not addressed in this form by either party in this grievance.

We grant the remedy framed by the Union in this grievance. The remedy is not unjust enrichment or punitive, but is fully supported by the evidence in this record. All the identified carriers here suffered harm in having their contractual rights repeatedly violated, as explained in the Discussion at the end of this award.

1. Management in the Lake Charles installation is hereby mandated to cease and desist from future violations of Article 8, Section 5 of the National Agreement.

2. The following Letter Carriers each be paid a lump sum payment equivalent to 8 hours at the overtime rate and be paid 100% of their base pay or granted compensatory time off in the form of administrative leave for the hours listed below:

   PRIMEAUX – 15.92 OREILLY – 5.70 HANDY – 4.45 JOUBERT – 6.87
   FRYE – 5.91 WEST – 1.70 WALKER G. – 11.24 WYATT – 11.42
   WIMBERLY – 7.11 AYO – 4.15 MORVANT – 3.13 MARSHALL – 2.34
   STEWARD – 5.54 GREEN – 4.47 DEVILLE – 6.59

3. The following carriers on the 10/12 OTDL be paid the following Lump-sum payment of $250.

   DURBIN – DAVID – BROUSSARD – PRUDHOMME – MARTIN – SIMON – LEWIS D – BABINEAUX – ACKEL – ALEXIS – THIERRY M

4. The following carriers be awarded $500.00 each for management's non-compliance and repeated and blatant violations of Article 8, 15 and M-01527.

   PRIMEAUX – OREILLY – HANDY – JOUBERT – FRYE – WEST – WALKER G. WYATT – WIMBERLY – AYO – MORVANT – MARSHALL – STEWARD – GREEN – DEVILLE – DURBIN – DAVID – BROUSSARD – PRUDHOMME – MARTIN – SIMON – LEWIS D – BABINEAUX – ACKEL – ALEXIS – THIERRY M

Louise B. Wolitz Arbitrator
10/1/2014
Louise B. Wolitz, Arbitrator

RELEVANT PROVISIONS:

***National Agreement between the National Association of Letter Carriers & the United States Postal Service, 2011 – 2016.***

....

*ARTICLE 3*
*MANAGEMENT RIGHTS*

*The Employer shall have the exclusive right, subject to the provisions of* *this Agreement and consistent with applicable laws and regulations:*

A. *To direct employees of the Employer in the performance of official duties;*

B. *To hire, promote, transfer, assign, and retain employees in positions within the Postal Service to suspend, demote, discharge, or take other disciplinary action against such employees;*

C. *To maintain the efficiency of the operations entrusted to it;*

D. *To determine the methods, means, and personnel by which such operations are to be conducted;*

*ARTICLE 5*

*PROHIBITION OF UNILATERAL ACTION*

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

*(The preceding Article, Article 5, shall apply to City Carrier Assistant Employees.)*

....

*ARTICLE 8*

*HOURS OF WORK*

*Section 5. Overtime Assignments*

....

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

1. *may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5 F ) and*

2. *excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.*

*However, the Employer is not required to utilize employees on the "Overtime Desired" list at the penalty overtime rate if qualified employees on the Overtime Desired" list who are not yet entitled to penalty overtime are available for the overtime assignment.*

*JCAM*

*8 – 17:*

*National Arbitrator Mittenthal ruled in H4N-NA-C-21, April 11, 1986 (C-5860) that an employee on the ODL does not have the option of accepting or refusing work over eight hours on a nonscheduled day, work over six days in a service week or overtime on more than four of the five scheduled days in a service week; instead an employee on the ODL must be required to work up to 12 hours in a day and 60 hours in a week before management may require employees not on the ODL to work overtime. Arbitrator Mittenthal's award does not extend to situations involving a letter carrier working on his or her own route on a regularly scheduled day (see the discussion under 8.5.C.2.D and 8.5.G).*

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

*41-7 : 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 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.*

THE HEARING:

The hearing on this matter took place at 921 Moss Street, Lake Charles, La., on August 7, 2014. Each party had a full opportunity to present its evidence, witnesses, and argument and to cross examine each other's witnesses. The parties provided the arbitrator with an extensive case file, including 54 past Step B decisions on this issue. Jt. X 1 is the National Agreement and JCAM and Jt. X 2 are the Moving Papers or case file. Since this is a contract case, the Union bears the burden of proof. All witnesses were sworn. The Union called witness A.J. Breaux. The Postal Service witness, Supervisor Robert Schexnayder, was unavailable due to illness. The Postal Service called no other witnesses, but did cross examine Mr. Breaux. The parties presented Opening and Closing Statements and arbitration citations. The arbitrator has carefully reviewed the evidence in the case file, her notes on the testimony at the arbitration hearing, and the relevant arbitration citations provided by both parties. The Union *provided Case No. G11N-4G-C 13169938, DRT No. 08-276322, Lake Charles, La.*, decided by Arbitrator Christopher E. Miles on July 1, 2014; *G06N-4G-C 12184644, Lake Charles, La.*, decided by Arbitrator Lawrence Roberts on January 9, 2014; and *G06N-4G-C 12184648, Lake Charles, La.*, decided by Arbitrator Lawrence Roberts on March 29, 2014. The Postal Service provided *Case No. G06N-4G-C 08145764, DRT 08-099983, Lake Charles, La.*, decided by this arbitrator on September 17, 2008; *G11N-4G-C 13169938, DRT 08-276322, Lake Charles, La.*, decided by Arbitrator Christopher E. Miles on July 1, 2014; *G11N-4G-C 13324415, DRT 08-290864, Lake Charles, La.* decided by Arbitrator Christopher E. Miles, July 22, 2014; and *G06N-4G-C 12196685, Lake Charles, La.*, decided by Arbitrator Patrick Halter, June 22, 2013. These cases are all recent cases from the Lake Charles Post Office and provide a framework for the issues presented in the case before us here.

The parties did oral closing statements at the end of the hearing. The parties were kind enough to extend the due date of this award.

THE ISSUES:

The issues framed at Step B are:

1. *Did Management violate Article 8 of the National Agreement when Management mandated Letter Carriers not on the WA/ODL to work overtime on routes off their assignments during the time period of March 16, 2013 to March 22, 2013, prior to utilizing available ODL Letter Carriers/CCA Letter Carriers? If so, what is the appropriate remedy?*

2. *Did Management violate Article 15 or Article 41 of the National Agreement, or Step 4 M-01517, when it failed to comply with previous Step B Decisions? If so, what is the appropriate remedy?*

3. *Did Management violate Article 5 (Past Practice) of the National Agreement when Management attempted to establish a "Window of Operation"? If so, what is the appropriate remedy?*

BACKGROUND:

The parties have presented relevant recent arbitration cases from the Lake Charles installation. These cases set a framework for the analysis of these issues. We will discuss these cases in chronological order, starting with the cases offered by the Union. *Case No. G06N-4G-C 12184644, Class Action, Lake Charles, LA.* was decided by Arbitrator Lawrence Roberts, dated January 9, 2014. The issue in this case was defined as: *Did Management violate Article 8 of the National Agreement, or prior Step B Decisions, or M-01517 when Non-ODL/WA Carriers were mandated to work overtime prior to fully utilizing available ODL Carriers and TE Carriers at the Lake*

*Charles Installation? If so, what is the appropriate remedy?* The grievance in this case was filed when, on April 13, 2012, a Letter Carrier, not on the Overtime Desired List, worked over nine hours. It was alleged in the grievance that other Letter Carriers should have been assigned this work. The Employer claims that the work was properly assigned and there was no violation of the National Agreement. The Union contended that this was a continued and blatant violation of Article 8 and 15 of the Joint Contract Administration Manual. The Union claimed that there was a staggering volume of precedent setting Step B decisions that have been violated. The Union contended that the Service at this installation is continually forcing non-overtime desired list Letter Carriers into an overtime status when Letter Carriers on the Overtime Desired List were available to do that work. The Union identified in the record 54 precedent setting Step B decision and 32 pre-arbitration decisions which found that the Employer has violated Article 8. The Union points out that a Window of Operation does not exist at the Lake Charles installation. The Union requests, first, a final cease and desist order be issued. Second, the Union asks that all Carriers not on the ODL that were forced to work overtime on the days in question shall be granted administrative leave. Next, the Union requested that all Carriers on the ODL that were available to do the work that non - ODL Carriers were forced to work shall be paid that equivalent at the overtime rate. The Union asked that some eleven (11) Letter Carriers be awarded $1000 for Management's non-compliance and repeated and blatant violations of Article 8, 15 and M-01517. Lastly, the Union requested that Management be ordered to abide by Article 8.5.G and maximize those Letter Carriers on the ODL to the full 12 hours before requiring Letter Carriers not on the ODL to work one second of overtime. Additionally, the Union also requested that the Service be ordered to cease and desist from implementing its Window of Operation at the Lake Charles installation.

The Employer insisted that there is no violation of the parties Agreement. The Agency claimed that this case was similar in facts to a previous case that was already denied by another arbitrator. The Employer claims that the Union's case lacks facts, particularly a showing of who was available to work the overtime. The Employer says that a Part Time Flexible Employee worked the overtime and the language relied upon by the Union does not apply to Part Time Flexible Employees. The Employer says that the grievance should be denied in its entirety.

Arbitrator Roberts finds that this case was unlike a previous case, *G06N-4G-C*, in which Arbitrator Patrick Halter denied the grievance because the Union did not present persuasive evidence as to which carriers were on the OTDL or not on the OTDL, but argued only from the personal recollection of the Local President. The Union sought to establish the alleged violations without first-hand information from any of the carriers. Rather, Arbitrator Roberts found that in his case the Step A Team found that the undisputed facts showed that there were thirteen (13) Letter Carriers on the Overtime Desired List during quarter 2 of the year 2012 and five on the Work Assignment list. It listed the names of the specific Letter Carriers in the respective groups. At Step 3, Management said that: *The relevant facts in this case are not in substantial dispute. There is no dispute that carriers not on the overtime* *desired list were scheduled to carry mail on overtime on the day in the case file at the Lake Charles Main Office.* Arbitrator Roberts was not persuaded by Management's contention that the overtime assignment that day was worked by a Part Time Flexible Employee, so the Union's argument in this instance becomes moot. Instead, Arbitrator Roberts said that he was of the considered opinion that this was a new argument not presented by the Employer until the arbitration hearing. Moreover, the employee in question was not identified in the case file as being a PTF on the date in question. Furthermore, Arbitrator Roberts found that although the crux of the Employer defense was that of a Window of Operation, he could find no other evidence in the case file or witness testimony that would indicate, or even suggest, the presence of any type of Window of Operation in existence at this Lake Charles facility. And the record clearly shows the supposed WOO was often and regularly violated. There was no evidence in the case file that would indicate or even suggest that such a Policy was ever in place at the Lake Charles facility. The mere claim of the existence of a Window of Operation is simply not enough to qualify as a defense. The pre-requisite to a WOO defense is either documented proof of its existence or, credible testimony indicating that everyone at the facility was aware of its existence. And in addition to that would be a requisite sampling of time records to show a consistent compliance. None of that occurred in this case.

Arbitrator Roberts was convinced that there was clearly an Article 8 overtime assignment violation as alleged by the Union in this matter. He was further convinced by the case file that this has been an ongoing issue at this facility.

With that reasoning, Arbitrator Roberts granted the grievance. He said that the violation was clear. He granted the Union's requested remedy, only reducing Item 5 from $1000 to $500. The remedy granted by Arbitrator Roberts was:

1. *Management in the Lake Charles Installation must cease and desist from future violations of Article 8, Section 5 of the National Agreement. Otherwise an escalated monetary award may be awarded for future violations.*

2. *The following Letter Carrier shall each be paid a lump sum payment equivalent to 8 hours at the overtime rate:*

   *U. Primeaux - $469.00*

3. *The following Non-ODL Letter C Carriers shall be paid 100% of their base pay <u>or</u> granted compensatory time off in the form of administrative leave whichever is most acceptable to the employee.*

   *U. Primeaux – 9.38*

4. *The following carriers on the 10/12 OTDL shall be paid the following lump-sum payment*

*D. Prudhomme - $37 J. Ayo - $37 J. Simon - $37 P.Alexis - $37*
*C. McGee-$37 M. Thierry - $37 G. David -$37 L. Wimberly - $37*
*J. Gatewood - $37 G. Thierry - $37*

5. *The following carriers shall be awarded $500.00 (reduced from the requested $1000) each for management's non-compliance and repeated and blatant violations of Article 8, 15 and M-01517.*

   *U. Primeaux - D. Prudhomme – J. Ayo – J. Simon – P. Alexis*
   *C. McGee – M. Thierry – G. David – L. Wimberly – J. Gatewood*
   *G. Thierry*

Arbitrator Roberts decided a second related case, *G06N-4G-C 12184648, Class Action, Lake Charles, LA.,* on March 29, 2014. Again, the issue was: *Did Management violate Article 8 of the National Agreement, or prior Step B Decisions, or M-01517 when a Non-ODL Carrier was mandated to work overtime prior to fully utilizing available ODL Carriers at the Lake Charles installation? If so, what is the appropriate remedy?* The grievance in this case was filed when, on Saturday, April 14, 2012, a Letter Carrier, not on the Overtime Desired List, worked over eight hours. At that time, the ODL was not exhausted. The Union argued that the evidence will show that Management has been put on notice 54 times through past B-Team Decisions and numerous pre-arbitration settlements to stop violating Articles 8 and 15. It is explained by the Union that the evidence in this case will show that on April 14, 2012, a non-Overtime Desired List Letter Carrier worked 8.80 hours on his non-scheduled day. The evidence will also show that Management left one Carrier on the ODL stay at home on that same day. The Union claims that Management failed to maximize the ODL before using the non-ODL Letter Carrier. The case file shows that on April 14, ODL Carriers could have worked an additional 23 hours before their 12 hour limit was maximized, easily covering the 8.80 hours the non- ODL Carrier was forced to work. The clock rings in the case file will also show that Carriers regularly worked past Management's alleged Window of Operation. As a remedy, the Union asks that the award in the case discussed above, *G06N-4G-C 12184644* be mirrored. The Union asks that a cease and desist order be issued. Additionally, the Union asks that a group of nine (9) Carriers on the 10/12 hour ODL be paid a lump sum of $50 each to each individual mentioned. Additionally, the Union requests that a sum of $500 each be awarded to ten (10) Carriers specifically due to Management's alleged non-compliance and the repeated blatant violations of Article 8, 15 and M-01517.

The Employer maintains that there is no violation of the Agreement. It was their intent to cover the route in question with 8.80 units of time. Management insists non-ODL carriers were scheduled because there were five carriers with nonscheduled days off on that particular day. Three of the ODL carriers were already on Annual Leave. The service said that if an employee is on Annual Leave, that employee probably does not want to come in the next day to work. The Agency believes this is the way it has always been done and no dispute exists about that. It is the position of Management that if no one else is available on the ODL, a non-ODL Letter Carrier may be scheduled. Management says that the other Letter Carrier available on the ODL had requested to be off that day. A Supervisor granted that request. Management argued that a judgment call was made by the Employer and the remedy requested by the Union is totally inappropriate.

Arbitrator Roberts says that he decided an almost identical case by and between the same parties, in which the incident occurred the day before this case (see above). Similar to the previous case, part of the Employer argument included a Window of Operation. However, there was no evidence on this record to indicate that any form of Window of Operation was in place at this Lake Charles Facility. There were no clock rings over any convincing period of time to establish its existence. The arbitrator was convinced that there was clearly an Article 8 overtime assignment violation, as alleged by the Union. He was convinced by the case file that this has been an ongoing issue at this facility. The scheduling supervisor testified that a majority of the people on the ODL were not available because they had leave either the day before or the day after, so he couldn't use them. The supervisor only assumed that they were not available. There was no proof indicated that they were actually contacted and provided the opportunity to work on that Saturday. Besides, the language of Article 8.5G provides that *"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."* The language is clear.

Furthermore, based on the frequency of such violations at this facility, the supervisor should have been well aware of this language. The language offers a specific procedure for the administration of overtime opportunities. That specific procedure was clearly not followed in this case. Once the Employer determines that overtime is available, a certain sequence must first occur prior to any non-ODL carrier being scheduled. That didn't happen.

With that reasoning, Arbitrator Roberts granted the grievance. A violation was clear. There was no reason provided by the Employer that would allow them to circumvent the language of Article 8.5. Arbitrator Roberts granted the Union's requested remedy:

1. *That Management in the Lake Charles Installation again be issued instructions to cease and desist from future violations of Article 8, Section 5 of the National Agreement.*

2. *That Carrier E. Joubert be granted compensatory time off in the form of administrative leave for a period of 8.80 hours. There will be no additional pay since he was already paid for his time.*

3. *That the following carriers on the 10/12 OTDL be paid the following lump-sum payment for lost overtime:*

*D. Prudhomme - $50 J. Ayo- $50 J. Simon-$50 P. Alexsis - $50*
*C. McGee - $50 M. Thierry - $50 L. Wimberly - $50*
*J. Gatewood - $50 G. Thierry - $50*

4. *That the following carriers each be awarded a $500.00 punitive payment for management's non-compliance and repeated and blatant violations of Article 8, 15 and M-01517*

   *D. Prudhomme – J. Ayo – J. Simon – E. Joubert – P. Alexis – C. McGee – M. Thierry – L. Wimberly – J. Gatewood - G, Thierry*

The third arbitration case offered by the Union is *G11N-4G-C 13169938, DRT No. 08-276322, Lake Charles, La.*, decided by Arbitrator Christopher E. Miles on July 1, 2014. This case concerned a grievance with an incident date of March 23, 2013, with issues similar to the issues in our case*: 1) Did Management mandate Letter Carriers not on the WA/ODL to work overtime on routes off their assignments during the time period of March 23 to March 29, 2103 prior to utilizing available ODL Letter Carriers/TE Letter Carriers? If so, what is the appropriate remedy? 2) Did Management violate Article 15 or Article 41 of the National Agreement or Step 4 M-01517 when it failed to comply with previous Step B Decisions? If so, what is the appropriate remedy? 3) Did Management violate Article 5 (Past Practice) of the National Agreement when Management attempted to establish a "Window of Operation"? If so, what is the appropriate remedy?* The time period involved in this grievance, March 23 to March 29, immediately follows the time period involved in the grievance before us, March 16, 2013 to March 22, 2013.

Arbitrator Miles first addresses an arbitrability issue raised by the Postal Service which was also raised at our hearing. The Postal Service contended that the grievance was not arbitrable because the Union violated *Article 17, Sections 2 A and B.* The Postal Service asserts that Local Branch President, Mr. A.J. Breaux, appealed this and other grievances at Formal Step A without written certification. The Lake Charles Main Office qualified for two Stewards according to the formula in *Article 17, Section 2(A).* The Local Union certified two Stewards for the Lake Charles Main office; i.e., Marcus Green and J. Gatewood. Local Branch President A.J. Breaux was not identified as a Steward. If he was added as a primary or alternate, the Postal Service argued, it would increase the number of Stewards per *Article 17, Section 2(A). Article 17, Section 2 (B)* goes on to state, "*the Union officer shall be in lieu of a Steward designated under the formula in Section 2 (A).*" The Postal Service contended that Branch President Breaux is acting and serving as a Union Steward at Formal Step A in addition to Marcus Green and the alternate, J. Gatewood, Therefore, the Postal Service requested that the merits of the case not be heard or considered and that the grievance be deemed procedurally defective.

The Union argued that the Postal Service was well off base here. There is a distinction between the informal level and the formal level. This grievance was filed at the Informal Step A by Shop Steward Marcus Green, who was certified to file grievances. The Local Branch President, A.J. Breaux, met at Formal Step A in accordance with *Article 15, Section 2.* The Union contends that the Postal Service's arbitrability claim that this grievance is procedurally defective is without foundation. The grievance was properly filed at Informal Step A and heard at Formal Step A by the Local Branch President. The grievance is arbitrable and the Postal Service's procedural arbitrability claim should be dismissed.

On the arbitrability question, Arbitrator Miles finds that the record reveals that at the time this grievance was filed, the Branch President had certified Marcus Green and J. Gatewood as Stewards for the Lake Charles Main Office to investigate and file grievances. The National Agreement, at *Article 15, Section 2 ( c)* states that at Formal Step A *"the installation head or designee will meet with the Steward or a Union representative as expeditiously as possible..."* The JCAM indicates at page 15-5 that *"the Formal Step A meeting must be held between the installation head or designee and branch President or designee as soon as possible..."* There is nothing in the file to indicate that the Branch President had certified anyone else as his designee to represent the Union at Formal Step A. Thus, according to the National Agreement and JCAM, the Branch President would be the proper Union representative to appear on behalf of the Union at Formal Step A. In Arbitrator Miles' opinion, the fact that the Local Branch President represented the Union at Formal Step A concerning this grievance did not increase the number of Stewards authorized to investigate and file grievances at the Lake Charles Main Office. Consequently Arbitrator Miles denied the Postal Service's procedural arbitrability claim.

Insofar as the Postal Service made the same argument at our hearing, we reach the same conclusion as Arbitrator Miles did for the same reason and deny the Postal Service's argument that our grievance should be dismissed on the grounds that it is not procedurally arbitrable.

Arbitrator Miles also denied the Union's argument that this case represents a matter that has already been settled by 54 Step B and pre-arbitration decisions, and the two arbitration decisions of Arbitrator Roberts, discussed above, and therefore the case should not be re-litigated under the principle of *res judicata,* that it has already been decided. Arbitrator Miles says that to be applicable, *res judicata* requires identity in the thing sued for, as well as identity of cause of action and of persons for or against whom the claim is made. Arbitrator Miles denies this claim because there is not an identity of facts forming the cause of action. The facts in his case could not have been raised in the earlier grievances heard by Arbitrator Roberts because they had not yet occurred. The cases decided by Arbitrator Roberts involved two separate dates, April 13 and April 14, 2012. This case before Arbitrator Miles involves the dates of March 23 thought March 29, 2013. Many of the adversely affected employees are different. Thus, the cause of action and the potential remedy cannot be the same. So the Roberts' ruling cannot be applied to the case before Arbitrator Miles.

The Postal Service contended in this case that the Union wants the Arbitrator to take drastic measures and issue punitive monetary awards in an effort to punish management for alleged overtime violations. However, the Union has not proven that the Postal Service deliberately and purposely violated the Agreement to harm Carriers or deny overtime work. It further asserted that the Union cannot decide that there is a violation simply because an ODL Carrier did not work a total of 12 hours in a service day. This amounts to undue enrichment. The Union has failed to show any actual harm to support such remedies. The Union's requested remedies, above and beyond the contractual make whole remedy of payment at the appropriate rate for the work missed to the available and qualified employees who had a contractual right to the work, is unwarranted and unjust. The Postal Service further argues that the use of the term *"cease and desist"* does not guarantee that similar issues or disputes would end or stop forever. There was no intent by Management to violate the provisions of the Agreement. The Postal Service argues that the Union has made it impossible to resolve any overtime issues at the lowest step of the grievance process because the Union refuses to settle any grievances in a way that is not the same as the Awards issued by Arbitrator Roberts. The Union's continued request for punitive awards and language are outside the National Agreement and JCAM. The JCAM mandates that the remedy should be corrective and not punitive. The Postal Service requested relief from awards due to misinterpretation and to prevent undue enrichment.

Arbitrator Miles finds that the grievance file contains the clock rings for all of the Carriers which presents a prima facie case of violation. On the days in question, non - ODL Carriers were mandated to work off their routes when ODL Carriers had not been maximized. The Postal Service seems to admit this much in its contentions. The Postal Service raises some arguments concerning the availability of some of the Carriers on the ODL. Arbitrator Miles finds that without hearing the facts and arguments in this regard, a remedy cannot be formulated. So Arbitrator Miles remands it to the parties to attempt resolution of the remedy applicable to these particular fact circumstances and retained jurisdiction of the case for a period of 90 days should the parties be unable to come to a resolution concerning a remedy.

The Postal Service also offers recent arbitration awards from Lake Charles. The first award, *G06N-4G-C 08145764, NALC DRT 08-099983*, issued by this arbitrator on September 17, 2008 denies a monetary remedy requested by the Union when four routes were not properly adjusted to 8 hours. The Step B Team had already decided the substantive merits of the case in favor of the Union, but impassed the remedy. The Step B Decision voided the Route Count and Inspection, returned all routes back to their original state, ordered a re-inspection of the routes in accordance with *Handbook M-39, Section 2*, and issued a cease and desist order for violating the provisions of *Article 17* and *31* of the National Agreement. The Union requested as a remedy that four named City Carriers each be awarded $2,000.00 to ensure Management's future compliance with the provisions of *Handbook M-39, Chapter 2* and the National Agreement and the Union Steward be awarded $500 for Management's blatant failure to provide requested information and failure to abide by previous Step B Decisions concerning requests for information and *Articles 15, 17* and *31* of the National Agreement. The Union asserted recurring violations. Previous arbitrators had issued monetary remedies to individual grievants and/or the shop steward for repetitive violations of route inspection procedures and failure to provide documents to the Union. This arbitrator denied the Union's requested remedy to the grievants and the steward because she found that the Union had failed to delineate clearly and support their arguments. The first argument, that the grievants suffered harm beyond the payment of the time and a half payment for overtime and should be compensated for this harm, was supported by a statement signed by the four carriers., but there was no evidence of how much involuntary overtime was worked or of the specific harm caused to the carriers. The second argument, that payment would provide the Employer a reminder to follow the *M-39's* express provisions, which the Postal Service has repeatedly violated, was addressed by the cease and desist order. Past monetary awards had been unsuccessful in preventing future violations. There was no evidence that it would succeed this time. So the arbitrator found no grounds on which to order the monetary remedy requested by the Union based on the evidence and testimony in the record. However, the arbitrator did order that before any future route count and inspections are conducted at this facility, all participants are to be assembled at a meeting called by management and specifically informed of all the provisions of *Articles 17* and *31* and the *M-39* which require consultations with the Union and the carriers and the sharing of documentary evidence and information. The Union is to be present at this meeting. All participants in future route counts and inspections at this facility are to be explicitly directed to adhere to these provisions. It is management's responsibility to take steps to assure that violations do not continue to occur. Moreover, management was put on notice that should these violations continue to occur, the Union may well be able to establish through evidence and testimony that financial remedies are appropriate. However, the arbitrator found that in this case the Union had not borne its burden of proof,. We note that the violations alleged here had nothing to do with *Article 8,* but arose out of a route count and inspection,

The Postal Service offers *G06N-4G-C 12196685, Lake Charles, La..,* decided by Arbitrator Patrick Halter on June 22, 2013. This case concerned the assignment of overtime work on Saturday, May 5, 2012. On that date, City Letter Carrier Milton West, assigned Route 1051, carried Route 1021 for .87 clicks or fifty-two (52) minutes. Carrier West was not on the overtime desired list. Nine (9) carriers on the OTDL were available for Route 1021 and had a total of 26.48 hours available to work on May 5th. These carriers were B. Martin, D. Prudhomme, J. David, P. Alexis, C. McGee, M. Green, J. Gatewood, J. Ayo and M. Thierry. Also available were Transitional Employees (TEs) B. Brown, A. McNeal, R. Brock and B. Gallien. The NALC asserts that the assignment of overtime to Carrier West, a non-OTDL carrier, violated the National Agreement, *Articles 8, 15* and *41*. The Postal Service contends that Mr. West, who is on the Work Assignment list (WAL), performed work in an overtime status on Route 1051 and not on Route 1021. Therefore, the Service did not violate the National Agreement and no remedy is warranted. Two issues were framed by the DRT Team for arbitration: *1) Did Management violate Article 8 of the National Agreement when Management forced city carriers not on the OTDL, and city carriers on Work Assignment only, to work overtime on routes not assigned to them on 5/5/2012 when there were 10/12 OTDL carriers and TEs available to work up to 12 hours and were prevented from working? If yes then what is the proper remedy?* 2) *Did Management violate Articles 15 and 41 via 19 of the National Agreement and M-01517 by failing to abide by previous DRT cease and desist decisions on violating Article 8? If yes then what is the proper remedy?*

The Union requested as a remedy: *1) A cease and desist order issued to the Service; 2) Carrier Milton West receive a lump sum payment equivalent to 8 hours at the overtime rate and payment of 100% base pay/ granted compensatory time off with administrative leave or other remedy the arbitrator deems appropriate; 3) Each carrier on the 10/12 OTDL receive a $150.00 lump sum payment or other remedy deemed appropriate by the arbitrator; the carriers are West, Prudhomme, David, Gatewood, Ayo, Alexis, Green, McGee, Thierry; and 4) A $1,000.00 payment to the following carriers for management's non-compliance and repeat violations of Article 8, Article 15, and M-01517: West, Martin, Prudhomme, David, Thierry, Gatewood, Ayo, Alexis, Green and McGee.*

The Postal Service argued that the burden of proof resides with the Union to establish the facts. The NALC fails to prove any violation because there is no OTDL document in the records. There can therefore be no determination of carriers on the list or not on the list in assessing a contract violation or formulating a remedy. The Postal Service says that for the week including May 5, 2012, the Service scheduled OTDL carriers to the maximum hours consistent with the National Agreement as a means to achieve the 6:30 p.m. Window of Operations (WOO). Management at the Lake Charles Installation used auxiliary assistance from OTDL carriers, the PTFs and TEs within the hours of operation for the WOO. Only after management determined that it could not meet the WOO and last dispatch of value for the day did it use non-OTDL carriers and non-WAL carriers. Under *Article 3* and *Article 8*, the Service can simultaneously schedule non-OTDL and OTDL carriers for overtime. With respect to Carrier West, the Service argued during the grievance procedure that his Route 1051 had under time on May 5th due to business closures. Route 1021 is geographically close. Therefore, it was effective and efficient for Carrier West to deliver for 52 minutes on Route 1021 during regular work hours.

The Postal Service argues that the Union is seeking punitive damages with its requested remedy of a $1,000 payment for 10 carriers based on the Union's view that management violated 54 Step B decisions. A review of those 54 decisions shows that they date from 2007, with the most recent 2010. There is no demonstrated pattern of continuing or egregious violations of Article 8 at the Lake Charles Installation for 2011 and 2012. Rather, all personnel are deployed to the maximum extent in accordance with Article 8 and Article 41, as testified to by Manager Schynaxder, the official responsible for making the work assignments on May 5, 2012. Numerous OTDL carriers are receiving 60 hours of work weekly and, thus, are not available for work. At least one of the carriers for which NALC requests a $150.00 lump sum payment did not report for work on May 5, 2012. The Union's request that non-OTDL carriers receive administrative leave and 100% pay at the base rate as they were "forced" to work overtime on May 5, 2012 is an improper remedy. The carriers received the proper and applicable rate for work performed on overtime in accordance with the National Agreement and Employee Labor Relations Manual.

Arbitrator Halter agrees that the burden of proof resides with the Union to establish the facts with probative evidence that shows the alleged violations. The record does not include the OTDL. Along with other documentary evidence and testimony, this indicates that the evidence is not persuasive in the Union's favor. The Union's assertion as to which carriers are on the OTDL or not on the OTDL rests solely with witness testimony from the Local President and his personal recollection of each carrier's status. The witness did not review the OTDL roster or interview any carrier identified for remedial relief as to that carrier's status on the OTDL or hours available on Saturday, May 5, 2012. Some of the carriers were not available for the claimed work. Manager Schexnayder testified that Saturday, May 5, was a regularly scheduled work day for Carrier Milton West. The parties noted that a carrier on the WAL, as Mr. West was, is considered a non-OTDL carrier. Clock rings show that Carrier West worked Route 1021 (not his assignment) during the middle of the work day and the 52 minutes he logged for overtime were incurred on his assigned Route 1051. The Service argued during the grievance process that Carrier West had under time on Route 1051 due to business closures and Route 1021 is nearby. Manage Schexnayder testified that Carrier West was not assigned overtime. The Union did not rebut this testimony. Based on this record, the evidence is not sufficient probative evidence to establish a violation. The Union did not meet its requisite burden of proof. Therefore, Arbitrator Halter concludes that the Service did not violate *Article 8, Article 15, Article 19* or *Article 41* on May 5, 2012. Therefore, Arbitrator Halter denied the grievance.

The Postal Service also offers *G11N-4G-C 13169938, DRT 08-276322, Lake* Charles, La., decided by Arbitrator Christopher E. Miles on July 1, 2014, which we have discussed in detail above. Arbitrator Miles remanded the grievance to the parties for a resolution of the applicable remedy in view of the particular fact circumstances, and retained jurisdiction for a period of 90 days in case the parties could not reach agreement concerning a remedy. Arbitrator Miles was responding to the argument made by the Postal Service concerning the availability of some of the carriers on the ODL. We have no further information on what decision was made about a remedy in this case.

The final arbitration decision offered by the Postal Service is *G11N-4G-C 13324415, DRT 08-290864,* Harvey, Louisiana, decided by Arbitrator Christopher E. Miles on July 22, 2014. This case is about the simultaneous scheduling of non-OTDL carriers and OTDL carriers to work at the same time, when the OTDL carriers were not maximized to 12 hours. The Postmaster testified that there is a 6 PM Dispatch of

Value and if the carriers are not back in time to make the last dispatch, the last CCA to return to the office had to run the extra mail to the downtown processing facility. The Postmaster said that some carriers have to be assigned off their own route to get the mail delivered. The Union contends that the Postal Service violated the provisions of *Articles 3, 5, 8, 15* and *19* by assigning city carriers who were not on the OTDL to work past their regularly scheduled eight hour assignments before maximizing the carriers on the OTDL up to 12 hours in a service day or 60 hours in a service week. The Union rejects the Postal Service's argument that a "Window of Operation" or "Dispatch of Value" legitimately exists which gives it the right to depart from the specific and unambiguous language of the Agreement.

The Union maintains that although the Postal Service wants the carriers off the street by 5 or 6 PM, the clock rings show that some carriers are working as late as 8 PM. The processing plant is open all night and someone can take the mail to the plant when the carrier returns after the dispatch. The Union requests that *the grievance be sustained in its entirety; that the Postal Service be directed to cease and desist violating the provisions of Article 8 of the Agreement; that the affected carriers on the OTDL be paid, at the overtime rate, for hours worked by carriers not on the OTDL; and that all carriers not on the OTDL who were forced to work overtime be paid a compensatory lump sum of $50 for being assigned mandatory overtime before working the CCA carriers and OTDL carriers to the maximum of 12 hours.*

The Postal Service contends that there were legitimate and valid reasons of operational necessity for establishing the Window of Operation; e.g., safety, consistent customer service, and to get all carriers back to the station in order to meet the Dispatch of Value. The Dispatch of Value is established based on the operational considerations beyond local control. Carriers are scheduled around operational dispatches, not the reverse. Allowing the OTDL carriers to work 12 hours and miss the Dispatch of Value would result in gross inefficiency because the mail returning with them would have to be transported to the processing facility by the same carriers, who already worked 12 hours for the day, or someone else at additional cost. Maximizing the OTDL prior to assigning work to the non-OTDL carriers is almost impossible. Operational needs are considered before determining overtime assignments. The Postal Service submits that the OTDL carriers were not available to work the routes needed because they were otherwise engaged at working other routes during the same time the non-OTDL carriers were used. The Postal Service contends that it has the contractual right to simultaneously schedule OTDL and non-OTDL carriers to work overtime.

According to the Union, on August 17, 2013, Carriers Calvary, Smith, Guilford, Gutierrez and Brandon worked a total of 5.64 hours off their assignment while OTDL Carriers Forbes, Alexander and Roy were not utilized to the maximum of 12 hours on that day, and again on August 21 and August 22, 2013. The Postal Service does not dispute that there was simultaneous scheduling of the OTDL and non-OTDL carriers on those days. It asserts that there are times when it is impossible to meet the 12 hours maximization of the OTDL Carriers due to working within the Window of Operation to get all carriers back to the station to meet the Dispatch of

Value. The Postal Service argued that the OTDL carriers could not have performed the necessary work during the period of time that the non-OTDL carriers were used because they were already working other routes.

Arbitrator Miles says that the burden of proof lies with the Union to show that the OTDL carriers were available to work at the time the non-OTDL carriers were working overtime, That is not what the record shows. The OTDL carriers and the non-OTDL carriers were working at the same time. The OTDL carriers were not available to work the same overtime worked by the non-OTDL carriers because they were working at the same time. The Memorandum of Understanding (MOU) regarding Article 8 says that the determination to use a carrier on the OTDL is to be made on the basis of "the rule of reason". For example, it would not be reasonable to require a carrier on the OTDL to travel 20 minutes to provide one hour of auxiliary assistance, but it would be reasonable to require him to travel for five minutes in order to provide one hour of auxiliary assistance. After review of the record in this case, Arbitrator Miles finds that the Postal Service did not violate the provisions of *Article 8* of the Agreement by assigning non-OTDL carriers at the Harvey, Louisiana Station to work overtime off their regular assignment and beyond their regular schedule before maximizing the OTDL carriers up to 12 hours. He so finds because it was not proven that the OTDL carriers were available to perform the overtime assignments during the time that the non-OTDL carriers were utilized for the overtime work. Simultaneous scheduling is permitted when needed to meet the service standards of the Postal Service. Consequently, Arbitrator Miles denied the grievance, based on the particular circumstances presented in this case.

We discussed these arbitration awards in such detail because they provide the framework in which to analyze the record before us in the instant grievance. We turn now to the case before us.

POSTION OF THE UNION:

The Union in its Opening Statement says that management continues to blatantly violate *Articles 8* and *15* of the National Agreement and JCAM. Management continues to force non-overtime desired list (ODL) carriers into an overtime status when carriers on the OTDL and TEs were available to do that work. There are 54 precedent setting B team decisions and 60 pre-arbitration decisions. Local 914 Branch President A.J. Breaux will show through Letter Carrier's clock rings and management's own contentions that for the week of March 16 – 22, 2013, non-ODL Carriers were forced to work overtime off their assignments and into an overtime status when Letter Carriers on the ODL and TEs were available to do that work. He will show that management has attempted to argue an alleged Window of Operation (WOO) of 18:30, but Letter Carriers' clock rings show that they regularly went past management's alleged WOO. Management has claimed a WOO in 54 B Team decisions, but not one was recognized. In every decision, Management has been instructed to cease and desist violating *Articles 8* and *15* of the JCAM. The decisions have escalated the remedies up to $425.00 per carrier. On page 41-7 of the JCAM, the parties have agreed that: *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 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.* On page 15-8 of the JCAM, the parties have agreed that: *A Step B decision established precedent only in the installation from which the grievance arose. For this purpose, precedent means that the decision is relied upon in dealing with subsequent similar cases to avoid the repetition of disputes on similar issues that have been previously decided in that installation.* A precedent establishes a pattern, sets a policy that must be followed in future cases. The Union contends that these precedent setting decisions have no statute of limitations. *Article 41* justifies the escalated remedies that have been awarded due to management's continued and egregious violations. The Union will also show that these same *Article 8* and *15* violations have been heard recently in arbitration. Two cases were heard by Arbitrator Lawrence Roberts, the first on January 9, 2014 and the second on March 29, 2014 (see above). In both cases, Arbitrator Roberts rules in favor of the Union and issued management with cease and desist orders, administrative leave, and escalating remedies of $500.00 per carrier. *Article 15.4.A.C* reads: *All decisions of an arbitrator will be final and binding.* B-teams across the nation have dealt with Lake Charles' continuous *Article 8* and *15* violations to no avail. Management in Lake Charles has snubbed their noses for years at those past decisions. Management in each and every case has argued a Window of Operation and in each and every case they have lost that argument. This case is no different. The Union asks the arbitrator to sustain this grievance in its entirety and grant its requested remedy on page 23 of the case file.

The Union's witness was A. J. Breaux, Branch President of Local 914 and Formal A representative. We have already discussed above that we agree with Arbitrator Miles' decision (see above page 9) that Mr. Breaux was a proper Formal A representative under the language of *Article 15, Section 2 ( c)* which states that at Formal Step A "*the installation head or designee will meet with the Steward or a Union representative as expeditiously as possible...*" The JCAM indicates at page 15-5 that "*the Formal Step A meeting must be held between the installation head or designee and branch President or designee as soon as possible...*" As Branch President, Mr. Breaux was clearly a proper Formal A representative and his representation at Formal A did not violate the provisions on number of stewards in *Article 17, Sections 2 A and B,* as argued by the Postal Service again in this case. Arbitrator Miles' decision on this point should have put this argument to rest.

Mr. Breaux testified that the record shows that at the Formal Step A, management's representative agreed that carriers not on the OTDL were forced to work overtime. We turn to the case file, *Management's Position and Detail Reasons for Denial,* at Formal Step A (Jt. X 2, pp 39-41). It says that clock rings reflect Non-ODL carriers worked overtime off assignments as follows:

*03/16/2013*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| *West* | *1.70* | *Frye* | *1.02* | *Deville* | *2.42* | *Walker* | *1.50* |
| *Wyatt* | *2.00* | *Wyatt* | *2.00* | *Handy* | *1.79* | *Steward* | *2.42* |
| *Wimberly* | *2.08* | *Marshall* | *1.25* | *Primeaux* | *2.27* | *Orielly* | *1.25* |

*(We note that on this chart, Wyatt was mistakenly listed twice.)*

*03/18/2013*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| *Joubert* | *1.21* | *Steward* | *1.47* | *Oreilly* | *1.00* | *Ayo* | *.87* |

*03/19/2013*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| *Morvant* | *1.35* | *West* | *.92* | *Frye* | *1.25* | *Deville* | *1.55* |
| *Walker* | *.50* | *Wyatt* | *1.44* | *Wimberly* | *1.64* | *Primeaux* | *1.46* |

*03/20/2013*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| *Joubert* | *1.83* | *Frye* | *1.42* | *Walker* | *1.25* | *Ayo* | *1.03* |
| *Green* | *1.37* | *Wimberly* | *1.31* | *Marshall* | *1.09* | *Primeaux* | *1.94* |
| *Oreilly* | *1.62* | *West* | *1.58* | | | | |

*03/21/2013*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| *Morvant* | *1.78* | *Frye* | *2.22* | *Joubert* | *1.66* | *Walker* | *7.99* |
| *Wyatt* | *7.98* | *Steward* | *1.65* | *Steward* | *1.65* | *Green* | *1.08* |
| *Green* | *1.08* | *Primeaux* | *8.01* | *Oreilly* | *1.83* | *Ayo* | *.75* |

*03/22/2013*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| *Joubert* | *2.01* | *Handy* | *2.66* | *Devile* | *2.61* | *Ayo* | *1.50* |
| *Green* | *2.02* | *Wimberly* | *2.08* | *Marshall* | *1.25* | *Primeaux* | *2.24* |

Management's representative explicitly states (p. 41) that she has reviewed all evidence and documentation presented and that the records correctly reflect that the above Non-ODL carriers did work overtime off their assigned routes. Mr. Breaux testified that management already had many cease and desist orders to not violate *Article 8* and 54 Step B decisions to not violate *Article 8* which are in the record. Also in the record is a *Pre-Arbitration Settlement* dated March 9, 2013 for five grievances on Article 8 violations when Non-ODL carriers worked overtime off their assigned routes prior to fully utilizing available Overtime Desired List Carriers. Management acknowledged in the settlement that it has violated *Article 8* and *15* of the National Agreement and agreed to award lump sum payments totaling

$2,062.00 to 18 named carriers (p. 49). We note that these payments were for the dates 5/30/2012, 5/31/2012, 6/1/2012, 7/7/2012 and 7/9/2012 (p. 51). The settlement agreement also included the statement: *In addition to the lump sum payments, management will cease and desist from violating Article 8.5. Management will comply with Step B decisions.* The settlement agreement was signed by Beverly Demery, USPS Labor Relations Specialist and Kyle Inosencio, NALC Representative on March 20, 2013.

The total overtime hours worked by non-OTDL carriers on March 16, 2013 (p. 28) is 19.71. (We note that on the chart listed above, for March 16, 2013, Wyatt 2.00 is mistakenly listed twice, which is why it adds up to 21.7 instead of 19.71). The Union (p. 28) contends that on March 16, 2013 the following carriers on the 10/12 OTDL worked the following hours: Prudhomme, 10.07; Simon, 10.25; David, 10.61; Lewis, 9.42; Babineaux, 9.67; Durbin, 10.00; Thierry. M, 9.95 for a total of 69.97 hours. They could have worked an additional 14. 03 hours. Mr. Breaux testified that all these carriers were available on that day to work the overtime. Also on March 16, 2013, the following TE's worked the following hours: Brown, 9.89; McNeal, 9.51; Brock, 10. 02; Gallien, 9.15; Hagan, 8.98; Pete, 8.45 for a total of 56.00 hours but could have worked an additional 16.00 hours. Between the OTDL carriers and the TE's, the 19.71 hours of overtime worked by the non-ODL carriers could have been covered (page 28).

Mr. Breaux testified that the Union is aware of the injured and light duty carriers that management cited (P. 46): Nichols; Lewis; Blake; Devito; Knowlton; Hollie; Cross. The Union never disputed them. The Union never included them

Mr. Breaux further testified about March 18 (p.29), March 19 (p. 30), March 20 (p. 31), March 21 (p. 32) and March 22 (p. 33) with detailed information on which Non-ODL carriers worked overtime, and how many hours identified carriers on the OTDL and TE's worked each day, We will not repeat the detail here, but will cite the conclusions. On March 18, 2013, non-OTDL carriers worked a total of 4.71 overtime hours, not on their own route. OTDL carriers could have worked an additional 20.31 hours and TE's could have worked an additional 14.91. On March 19, 2013, non-_OTDL carriers worked a total of 10.11 overtime hours not on their own route. OTDL carriers could have worked an additional 21.29 hours and TE's could have worked an additional 14.43 hours. On March 20, 2013, non-OTDL carriers worked a total of 14.44 hours, not on their own route. OTDL carriers could have worked an additional 14.03 hours and TE's could have worked an additional 18.46 hours. On March 21, 2013, non-OTDL carriers worked a total of 34.95 hours not on their own route. OTDL carriers could have worked an additional 14.03 hours and TE's could have worked an additional 12.70 hours. On March 22, non-OTDL carriers worked a total of 16.77 hours not on their own route. OTDL carriers could have worked an additional 14.03 hours and TE's an additional 8.22 hours (pages 29-33) We note that we have presented only totals here, but the file identifies each carrier and hours worked for each date. Mr. Breaux testified that he did not include the injured carriers in his analysis. Mr. Breaux testified that all the ODL carriers listed on March

18, 19, 20, and 22 were available to work. Mr. Breaux testified that for March 21, they could have covered all the overtime hours if the three ODL carriers on a non-scheduled day had been called in.

Mr. Breaux testified to his contentions on pages 34 and 35. DRT decisions from different regions all over the country have stated in decisions after decision that management must cease and desist violating *Article 8* in Lake Charles, La. The *Pre-Arbitration settlement* signed on March 9, 2013 acknowledged that management at the Lake Charles installation has violated *Articles 8* and *15* of the National Agreement. In addition to the lump sum payments, it said that management will cease and desist from violating *Article 8.5* and the management will comply with Step B decisions. Mr. Breaux testified that he, along with his certified shop stewards, has tried over the last year at Informal and Formal A to work in good faith to settle all Article 8"s at the lowest level. But management still continues to violate *Article 8* in Lake Charles. Mr. Breaux testified that management has never proven that by following *Article 8*, it would cause a liability to the USPS. Management seems to have no problem that DRT teams across the country award city carriers from Branch 914 lump sum payments of $300, $325, $350, $375, $400 for management's failure to abide by Step B Team Decisions to cease and desist violations of *Article 8, Article 15.3* and *M-01517*. Mr. Breaux testified that the DRT team's continuing decisions and monetary awards are not getting the attention of management. He asks that the bar be raised to $500.00 per affected carrier when management fails to abide by Step B Team decisions to cease and desist violating *Article 8, Article 15.3* and *M-01517*. Mr. Breaux testified that since this file was compiled, a remedy of $500 per carrier has been granted in two arbitration decisions (see Arbitrator Roberts' awards, above).

Mr. Breaux further testified to his contentions that one purpose of the OTDL is to excuse carriers not wishing to work overtime from having to work overtime. Before requiring a non-ODL carrier to work overtime on a non-scheduled day or off his/her own assignment on a regularly scheduled day, management must seek to use a carrier from the ODL, even if the ODL carrier would be working penalty overtime. If the ODL does not provide sufficient qualified full time regulars for required overtime, *Article 8.5* permits management to move off the list and require non-ODL carriers to work overtime on a rotating basis starting with the junior employee.

There is no reason or excuse for management to continue to violate *Article 15* Cease and Desist orders and to continue to violate *Article 8* in Lake Charles when you have OTDL carriers and TE's available to carry up to 12 hours in a service day. Mr. Breaux said that management has offered two reasons. The first is that it is necessary to schedule this way to meet a Window of Operation (WOO). The second is *Article 3, Management Rights*, that they have the right to run their operation. The Union has never been notified in writing that there is a WOO. Mr. Breaux maintains that the *Employee Everything Reports* (pp. 73-207) amply demonstrate that there is no WOO. He points to p. 73, Carrier Deville, not a TE, who worked until 19.53 on

3/22, which does not meet an alleged 18:50 WOO. On page 75, Carrier Walker, who is not a TE, was off the street at 18:83 on 3/16, which does not meet an alleged 18:50 WOO. On page 78, Carrier Handy, was off the street at 19:79, which does not meet an alleged 18:50 WOO On page 79, Carrier Steward was off the street at 18:70, which does not meet an alleged 18:50 WOO (p. 79). Carrier Wimberly was off the street at 18:74 (p. 80). Carrier Green was off the street at 18:96 (p.82). Carrier Primeaux was off the street at 18.64 (p. 85). The evidence continues in a similar fashion through p. 205. Mr.Breaux demonstrates that it is not accurate to say that only TE's are out past the WOO. The WOO was not met over fifty times in one week. Regular carriers were out past the WOO. Overtime was approved past the WOO (see pages 213 -342). Twenty-four 3996's past the WOO were approved. None of the overtime was entered as unauthorized. The Union stated in its contentions that during the Service week of March 16 to March 22, 2013, City Carriers worked beyond 8:00 P.M. and anywhere from an hour to an hour and a half past management's mythical WOO and still management was able to get the mail processed. Management continued to use a mythical WOO as way to circumvent *Article 8* violations (p. 17).

The B Teams have agreed with the monetary remedies issued to carriers. The remedies have been escalated over the years by the B Teams. In all the decisions in this record, management's arguments about *Article 3* and the WOO have never succeeded.

Mr. Breaux points out that the B-Team on this grievance cites language from *Article 41* which states: *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 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.* Mr. Breaux points out that in the case file are over 500 pages of Step B Team Decisions where City Carriers were awarded to date $239,025 for *Article 15* violations and management's failure to abide by previous cease and desist orders from the Step B Team. These awards for *Article 8* violations date back to 2007. (p.20)

The Union requests the following remedy (p. 23):

1. *That Management in the Lake Charles installation be issued instructions to cease and desist from future violations of Article 8, Section 5 of the National Agreement.*

2. *That the following Letter Carriers each be paid a lump sum payment equivalent to 8 hours at the overtime rate and be paid 100% of their base pay/ granted compensatory time off in the form of administrative leave or whatever remedy the Step B Team or an Arbitrator deems appropriate:*

*PRIMEAUX - 15.92 OREILLY - 5.70 HANDY - 4.45 JOUBERT - 6.87 FRYE - 5.91 WEST - 1.70 WALKER G. - 11.24 WYATT - 11.42 WIMBERLY - 7.11 AYO - 4.15 MORVANT - 3.13 MARSHALL - 2.34 STEWARD - 5.54 GREEN - 4.47 DEVILLE - 6.59*

3. *That the following carriers on the 10/12 OTDL be paid the following Lump-sum payment of $250 or whatever remedy the Step B Team or an Arbitrator deems appropriate.*

   *DURBIN - DAVID - BROUSSARD - PRUDHOMME - MARTIN - SIMON - LEWIS D - BABINEAUX - ACKEL - ALEXIS - THIERRY M*

*Mr. Breaux acknowledged that Mr. Prudhomme was only available to work on Saturday that week. All the other carriers were available for the entire week.*

4. *That the following carriers be awarded $500.00 each for management's non-compliance and repeated and blatant violations of Article 8, 15 and M-01527.*

   *PRIMEAUX - OREILLY - HANDY - JOUBERT - FRYE - WEST - WALKER G. WYATT - WIMBERLY - AYO - MORVANT - MARSHALL - STEWARD - GREEN - DEVILLE - DURBIN - DAVID - BROUSSARD - PRUDHOMME - MARTIN - SIMON - LEWIS D - BABINEAUX - ACKEL - ALEXIS - THIERRY M*

We will discuss the cross examination of Mr. Breaux under the Postal Service's position, since the Postal Service's witness was ill and not present.

On redirect examination, Mr. Breaux said that discussions of unauthorized overtime by management at this hearing is new information. Management did not address unauthorized overtime at all during the grievance process. Management argues there is a WOO for all carriers of 18.50. It is still a violation of the WOO if CCA's and ODL's work past it. Marcus Green is the chief steward. He filed the 8190s and met at Informal A on this grievance. Mr. Breaux met at the Formal A. B-Team decisions have no time limit. They are precedent setting for the installation.

On further redirect examination, Mr. Breaux said that he had already removed Mr. Prudhomme from the remedy request for hours they could have worked. He also did not include Carriers Ackel and Alexis.

The Union argues in its Closing Statement that Management, at Step B, made no arguments about Article 8. Management said only that the Union's grievance was procedurally defective because A.J. Breaux was the Formal A representative and was not properly certified. The Union argues that Arbitrator Miles had put this argument to rest when he found that A.J. Breaux, as Branch President, was a qualified Formal A representative. Arbitrator Miles said that: "The JCAM indicates at page 15-5 that "*the Formal Step A meeting must be held between the installation head or designee* *and branch President or designee as soon as possible..."* Since A. J. Breaux was the Branch President, he was clearly a proper Formal A representative. Arbitrator Miles effectively removed that argument from consideration here. Arbitrator Miles denied the Union's *res judicata* argument. The Union argues that in this case, management has already agreed in its Formal A contentions that it violated Article 8 (pp. 40-41):*Management was aware, as well as the Union, that it would be necessary to utilize Non-ODL carriers to work overtime on and off their assigned routes...* Non-ODL carriers were forced to work off their assignments. Management's whole argument is that this was justified in order to meet the WOO of 18.50. However, the Union argues that there was no WOO, because carriers were not returning by 18.50. It does not matter who goes past the WOO, whether ODL carriers, regular carriers or TE's, if someone goes past it, Management cannot argue that there is a WOO. Management argues that employees returned to the office on time, with the exception of TE's. The Union argues that 54 carriers worked past the WOO: 10 ODL carriers, 3 Work Assignment carriers, 27 ODL carriers, and 14 TE's. Moreover, twenty-four 3996's were approved past the WOO. Management says (p. 42), *It would not have been economical or operationally feasible to work ODL carriers twelve hours per day.* The Union argues, but *it is contractual.* The National Agreement says nothing about operational feasibility or being economical. It is contractual, *Article 8.5 G.*

The Union has shown that there are 54 Step B decisions which all say the same thing. The Postal Service is violating Article 8. Some of the decisions say that this violation is egregious. The ODL carriers here still had 18 hours available. They were not maxed out. Management argues under Article 3, it had the right to run its operations. The Union says that it has the right to run its operations subject to the provisions of the National Agreement. Management is required to abide by Step B decisions. *Cease and desist* means you are prohibited from starting or continuing a specific action. *Cease and desist* means, *stop.* There is a continuing string of precedent setting B Team decisions which management has ignored, despite escalating monetary awards. This is egregious and deliberate. Many Step B decisions found it appropriate to issue compensatory remedies such as annual leave and money, up to $375. The last decisions warned that continuing violation of Article 8 will result in escalating remedies. The carriers who have not signed the OTDL did not sign for some reason. They do not want to work overtime. Administrative leave is required to make them whole. Management does not want to pay a compensatory remedy. Step B decisions have warned that continued violations of Article 8 will result in escalating remedies (see p. 436) and ordered management to cease and desist. Yet, here we have the same grievance and the same WOO claims. Management is not even trying. All the Step B decisions say the same thing, *cease and desist.* Management says that it is unreasonable to think that *cease and desist* orders will result in the actions stopping because we live in a world of failure. Management claims that it makes every effort, but Branch 914 in Lake Charles is requesting exorbitant remedies and continues to file grievances (p. 47). Management is saying that it is the Union's fault. They have yet to take responsibility for their actions. Monetary remedies are not working. The last monetary amount from a Step B team was $425. Management does not respond to money. $260,000 worth of remedies have been awarded. Lake Charles does not have a WOO. Management has made the same argument every time and has lost every time. The Union argues that the arbitrator should sustain this grievance and grant the remedy requested by the Union (p. 23) and order the Postal Service to cease and desist its violation.

POSITION OF THE POSTAL SERVICE:

The Postal Service says in its Opening Statement that since this is a contract case, the burden of proof lies squarely upon the Union. It is not true that Management at the Lake Charles Installation continues to blatantly violate *Article 8* and *15* of the JCAM and National Agreement. The Union will fail to provide any evidence that Management is deliberately violating the contract. The grievances, Step B Decisions, Pre-Arbitration Settlements, and Arbitration Awards are all during a specific time frame. The Awards the Union will present today were based on disputes that occurred almost consecutively and during the same time frame as this case in 2013. The Step B Decisions are also from prior years. There have been no such decisions and/ or settlements from the Step B Team or otherwise that would line up with the Union's requested remedy or the Awards. There have been Awards from other Arbitrators that have ruled there was no violation. In a most recent Award, Arbitrator Miles remanded the case to the parties for a resolution of the applicable remedy *"in view of particular facts and circumstances."* The Service will show that it made every effort to abide by the contract, specifically *Article 8*, when determining the need for overtime and assigning such overtime. The supervisor has made great efforts to stay in alignment with *Articles 8* and *15*. Non-ODL and ODL carriers were scheduled simultaneously in order to get the mail delivered. Simultaneous scheduling is permitted when needed to meet the service standards of the Postal Service.

The Union may show a listing of hours with no idea or evidence of the amount of effort and work Management has put in to distribute this work, cover every route, and ensure that every customer's mail is delivered. Every effort was made and continues to be made to assign overtime to Overtime Desired List carriers in accordance with the National Agreement. The records before the arbitrator today will also show that a number of ODL carriers worked very close to reaching sixty (60) hours for the week, in particular, carriers David, Durbin Lewis and Thierry. The table in Management's Formal Step A denial was representative of what those four carriers were available to work had additional overtime been assigned. Yet, the Union requests that their remedy be applied to all ODL carriers, regardless of availability. The Union requests the same remedies with no consideration of who was available and for how long.

Not all decisions are based on the exact same circumstances. The Step B Decisions used by the Union are from teams based outside of the Louisiana Team (Mississippi, Alabama, and Tennessee). There are also decisions and settlements made outside of Step B. Some are listed in Management's Formal Step A Decision. The settlement and/or remedy in these cases were in compliance with the National Agreement and addressed the carriers who were harmed. The Union's request for such astronomical remedies resulted in Lake Charles Main Office cases being appealed to a higher level in the grievance process. The contract specifies the proper make whole remedy when there is a violation and there is monetary harm. That is to make the employee whole by placing him/her where he/she would have been had there been no violation.

The Union will argue there is no Window of Operation. The Service argues that the Window of Operation is simply the time the last dispatch truck leaves the facility to transport all mail collected that day to the processing plants. The Service contends that all mail collected must be dispatched. Final dispatch times are nationwide in an effort to get the Nation's mail processed and ready for delivery the following day.

The Union's requested remedy for such large amounts are unfounded punitive awards. Such request is clearly outside of the National Agreement and the JCAM and prohibits Management from entering into any settlement at any level of the grievance procedure. The Service will show that these inappropriate remedies reach far past what is called for in the National Agreement and by other long standing arbitrators. The contract clearly states the appropriate remedy for overtime violations. Such awards are not the standard and should be denied. The Union's requested remedy is far and beyond contractual language. The Union must show how these carriers were harmed and to what extent. The Union has not done so and will be unable to do so today. The Union simply selected amounts with no regard to who was available. The Union broadly states in its requested remedy that all ODL carriers should be awarded these amounts without any regard to who was available.

Management's Informal and Formal representatives were unable to negotiate with the Union because of its unprecedented requested remedies to resolve the grievances. The Union continues its failure to bargain in good faith. These are outrageously retaliatory remedies.

The Service will show that the Union has provided no evidence or documentation to support their request for such extreme monetary remedies. The Union is unable to show harm to the ODL carriers that would substantiate these inflated remedies. The contract specifically states that a monetary remedy should put the employee where he/she would have been had no violation occurred. The Union will fail to prove all ODL carriers were available to perform the overtime assignments during the time frame stated in this grievance. Based on the particular circumstances presented today and the Union's lack of evidence and failure to support its arguments and requested remedies, the Service requests that this grievance be dismissed and/or denied.

On cross examination of Mr. Breaux, the Postal Service showed, from 3996's, that some carriers went over their approved time and came back later from the street.

The Postal Service further showed that it was mostly ODL carriers and TE's who worked past the WOO, except for carriers Walker, Morvant and Steward. Regarding the question of steward certification, Mr. Breaux acknowledged (p. 54) that he has certified A. Matthews as Drew Station Chief Steward, M. Green as Main Station Chief Steward, and J. Gatewood as Main Station Alternate Steward. He lists himself as Chief Shop Steward for Branch 914. The certified stewards handle only the Informal A. He is the Branch President and automatically handles the Formal A. He does not have to certify himself to handle the Formal A. He notifies the Postmaster if he has a designee. Mr. Breaux acknowledged that he has raised his requested remedy to the carriers for Management's violation of Step B Team Decisions to cease and desist violating Article 8, 15.3 and M-01517 to $500. (p. 34). $450 to $475 has already been awarded. Mr. Breaux acknowledged that the last such award may have been given in 2010 ($425). Mr. Breaux said that there were later decisions that were resolved at Step B, in 2012 (p. 352) and 2013. He does not remember Step B since 2010 paying remedies of $300 to $400. Step B is impassing these cases now. The cases heard by Arbitrator Roberts were in 2012. In 2012 and 2013, some cases were impassed and some were settled. Mr. Breaux acknowledged that during the week in question in this grievance, Carrier David worked 57.60 hours, Carrier Thierry worked 55.95 hours and Carrier Durbin worked 55.61 hours (p. 42). Mr. Breaux said that they were not maxed until they had worked 60 hours. They should have been maxed out to 60 hours. Mr. Breaux said that it would be a remedy to pay them the difference between 60 hours and the number of hours that they worked. Management acknowledged this part of the remedy. Mr. Breaux said that management does not want to pay for the violations of Article 15 or the violations of cease and desist orders. Mr. Breaux said that is why they could not resolve this grievance. The cease and desist orders were violated because the Article 8 violations continued. Mr. Breaux said that he has been Branch President for five and one-half years and was a steward prior to that. There have always been Article 8 violations, since 2001, as long as he can remember. All the circumstances are the same for all the grievances in this record. Whether you look at by the day or by the week, management violates Article 8. Mr. Breaux acknowledged that carriers going over approved overtime would contribute to that.

On recross, Mr. Breaux said that he met at the Formal A on this grievance. Mr. Breaux acknowledged that Carrier Prudhomme was gone the whole week after Saturday. Carrier Alexis was on Sick Leave on that Saturday. Carrier Ackel was off Sunday and Tuesday and was on some kind of leave on Saturday. Mr. Breaux acknowledged that if a carrier was on WOP or AL, he was not available. He further acknowledged that if a carrier was on leave in conjunction with his off day, he was not forced to come in.

On further recross, Mr. Breaux acknowledged that Mr. Prudhomme and Mr. Ackel were named in the remedy asked for on p. 23.

In its Closing Statement, Management asks if Management deliberately, blatantly and egregiously violated Article 8? In answer, Management said that it made every effort. The Union is seeking a punitive monetary award. Management understands the ODL carriers and works them accordingly. Most ODL carriers work overtime almost every day. Auxiliary assistance was assigned to ODL carriers. In this case, there are eleven ODL carriers who all worked close to 60 hours. Four carriers, David, Durbin, Lewis and Thierry were not available because they had reached 60 hours. Management's determination of who should be paid and how much rests on the number of hours available based on the hours already worked. At the end of the week, these carriers would have exceeded 60 hours of work by Thursday or Friday. It would be necessary to use non-ODL carriers. Some of the ODL carriers were unavailable because they were on Sick Leave, Annual Leave, or Leave Without Pay. Ackel was on AL on Monday and has Tuesday off. You cannot force a carrier in who is on AL in conjunction with an off day. Alexis was on SL on Saturday. Prudhomme only worked Saturday. The Union only requests a blanket remedy, disregarding carriers' availability. The Union makes no effort to resolve grievances. It is not a violation if the ODL carriers did not work 12 hours every day. There is no testimony in this record from Main Office carriers. A.J. Breaux does not work at the Main Office. Management's chart is generous. It proposes paying approximately $3,000 at the overtime rate. The Union President has been the Union's only witness. Management makes every effort to properly assign overtime. There are lots of considerations. Darkness is one. Management must deliver all mail to all customers. There has been no carrier testimony in this record. The Union has failed to show how any carrier has been harmed to the extent of the remedy they seek. The Union has shown no monetary harm to support its astronomical proposed remedies. It has shown no harm for each carrier. The arbitrator should not award punitive damages to the extent of the remedies requested. Punitive damages destroy the grievance process. The Union won't resolve grievances for what the contract states are suggested remedies. Management understands what *cease and desist* means, but violations will occur. There is not a guarantee that issues will stop. Arbitrator Halter, on June 22, 2013, rules in favor of the Service. Some carriers are not available for the claimed work. The Union has to show proof that carriers were available. The Union in this case violated Article 15 when it failed to bargain. It was their remedy or nothing. The violation was not intentional. Under Article 3, management is responsible for running its facility. The Union is not considering the circumstances or carrier availability. Management is not motivated by any improper reason. It is true that ODL list carriers did not work some overtime. There should be a make whole remedy for them. Management agrees that the remedy should be to pay at the appropriate rate the carriers who were available and qualified to work. The Union wants all the overtime desired list carriers to be paid. Arbitrator Snow has said that escalating remedies can be punitive. The Union made it impossible to resolve at its lowest level any overtime issue in Lake Charles. The grievances are not all the same. The Union has no incentive to resolve grievances. There is no Article in the National Agreement mandating escalating remedies. The Postal Service is not trying to save money or deliberately creating this problem. The Postal Service is seeking relief from monetary awards. They are undue enrichment. Not all awards in these cases included punitive pay. No award issued additional moneys to this extent. The remedy issued here must be based on the availability of qualified employees.

DISCUSSION:

We must find that the Union has borne its burden of proof in this case. It is clear that this is not a new issue in Lake Charles, but that the Lake Charles installation has been violating Article 8.5G repeatedly over a long period of time and has been issued many Step B decisions, pre-arbitration settlements, and arbitration awards that begin with the directive to *cease and desist* these violations. Yet, management does not seem to take these directives seriously. While management surely has operational responsibilities to timely process and deliver the mail, it also has operational responsibilities to abide by the clear language in the National Agreement and to abide by Step B, pre-arbitration settlements and arbitration awards. This responsibility is not voluntary, but mandatory. In assigning work, *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.* Moreover *an employee on the ODL does not have the option of accepting or refusing work over eight hours on a nonscheduled day, work over six days in a service week or overtime on more than four of the five scheduled days in a service week; instead an employee on the ODL must be required to work up to 12 hours in a day and 60 hours in a week before management may require employees not on the ODL to work overtime.* This language is clear. It provides contractual rights that adhere both to ODL employees and non-ODL employees. The ODL employees have the right to work the available overtime hours. Just as importantly, the non-ODL employees have the right not to work overtime hours not on their own route unless all ODL employees have worked twelve (12) hours in a day or sixty (60) hours in a service week. This means that when management assigns overtime work, it must pay attention, first and foremost, to meeting this requirement. It must meet this requirement even when it would like to do otherwise for convenience, for economic savings, or for any other reason. The language removes from management the ability to do otherwise. It must meet its contractual responsibilities. It seems like management in Lake Charles has determined that when it is not convenient to meet the responsibilities of this language, it may fail to do so, and just pay the ODL carriers for the missed work opportunities up to twelve (12) hours in a day or sixty (60) hours in a service week. It reasons that the non-ODL carriers who have been forced to work are getting paid for that work at the overtime rate, and hence are not harmed. However, what this fails to consider is that all the carriers are harmed by management's failure to honor its contractual obligation. Even if they are paid for the overtime they were not assigned to work but should have been, the ODL carriers are additionally harmed by management failing to honor its contractual responsibilities, which erodes the trust of the carriers in their management. The non-ODL carriers who are forced to work unwanted and unanticipated overtime are harmed by losing the use of that time however they had planned to use it, despite the fact that they are paid for their overtime. All the carriers in the bargaining unit, even those not directly impacted on a particular day, are harmed by the erosion of contractual rights. The collective bargaining relationship is harmed. The Union is harmed by having to bear the expense of processing grievances and potential arbitration cases over and over again on the same issue. This harm is clear and evident. It is particularly evident in repeated violations over a long period of time over the same issue and repeated failure to abide by settlements and awards.

We have reviewed the issues in this case in such detail because the question of remedy is not trivial. This file was 823 pages. The arbitration cases described in detail were recent and from Lake Charles. The 54 Step B decisions and pre-arbitration settlements were persuasive. The fact that the problem persists and the Postal Service excuses it away with a shrug that failures will occur and cease and desist is not always possible underscores the seriousness of this continued contractual violation.

In this case, the Union has provided persuasive data to support its allegations. There has been no challenge by the Postal Service of the carriers identified as on the Overtime Desired List. There has been no challenge by the Postal Service of the carriers identified as not on the Overtime Desired List but scheduled to work overtime off their own routes on the dates of this grievance, the week of March 16 – March 22, 2013. There is no challenge by the Postal Service of the hours of overtime worked by the ODL carriers that week or by the non-ODL carriers that week.
The Union has certainly made its prima facie showing that, in violation of Article 8.5 G, carriers not on the ODL were forced to work overtime not on their own routes while carriers on the ODL had not worked twelve (12) hours in a day or sixty (60) hours in a week, and still had time available to meet the overtime needs. The burden then shifted to the Postal Service to demonstrate that the carriers identified on the ODL who were not maxed out were not available to work the hours, as the Postal Service has hinted. It was incumbent upon the Postal Service to support this case. It was not the Union's burden to show the carriers were available, but rather it was the Postal Service's burden to show the carriers were not available. All of the carriers named by the Union worked during the week in question, so they were not on any long-term leave. While the Postal Service complains that the Union has not proven that they were available, the Postal Service has not shown that they were not available if that was the case. No such defense is offered, except the allegation that it was the Union's burden. The Union bore its burden to identify the carriers and show the hours they still had available. If the Postal Service wanted to show that they were not, in fact, available, it needed to do so. It made no such showing.

Therefore, in view of the persuasiveness of this record, we sustain this grievance in its entirety.

DECISION AND AWARD:

The grievance is sustained. We find that the Union has borne its burden of proof to show that Management violated Article 8 of the National Agreement when Management mandated Letter Carriers not on the WA/ODL to work overtime on routes off their assignments during the time period of March 16, 2013 to March 22, 2013, prior to utilizing available ODL Letter Carriers/CCA Letter Carriers We further find that Management violated Article 15 when it failed to comply with previous Step B Decisions. We take no position on the question of whether or not Management violated Article 5 (Past Practice) of the National Agreement when it attempted to establish a Window of Operation, as this issue was not addressed in this form by either party in this grievance.

We grant the remedy framed by the Union in this grievance. The remedy is not unjust enrichment or punitive, but is fully supported by the evidence in this record. All the identified carriers here suffered harm in having their contractual rights repeatedly violated, as explained in the Discussion above.

3. Management in the Lake Charles installation is hereby mandated to cease and desist from future violations of Article 8, Section 5 of the National Agreement.

4. The following Letter Carriers each be paid a lump sum payment equivalent to 8 hours at the overtime rate and be paid 100% of their base pay or granted compensatory time off in the form of administrative leave for the hours listed below:

   PRIMEAUX - 15.92 OREILLY - 5.70 HANDY - 4.45 JOUBERT - 6.87
   FRYE - 5.91 WEST - 1.70 WALKER G. - 11.24 WYATT - 11.42
   WIMBERLY - 7.11 AYO - 4.15 MORVANT - 3.13 MARSHALL - 2.34
   STEWARD - 5.54 GREEN - 4.47 DEVILLE - 6.59

3. The following carriers on the 10/12 OTDL be paid the following Lump-sum payment of $250.

   DURBIN - DAVID - BROUSSARD - PRUDHOMME - MARTIN - SIMON - LEWIS D - BABINEAUX - ACKEL - ALEXIS - THIERRY M

4. The following carriers be awarded $500.00 each for management's non-compliance and repeated and blatant violations of Article 8, 15 and M-01527.

   PRIMEAUX - OREILLY - HANDY - JOUBERT - FRYE - WEST - WALKER G. WYATT - WIMBERLY - AYO - MORVANT - MARSHALL - STEWARD - GREEN - DEVILLE - DURBIN - DAVID - BROUSSARD - PRUDHOMME - MARTIN - SIMON - LEWIS D - BABINEAUX - ACKEL - ALEXIS - THIERRY M