REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	*	
between:	*	Grievant: Class Action
United States Postal Service	*	Post Office: Lake Charles, LA
and	*	USPS Case No: G11N-4G-C 16455651 A G11N-4G-C 16458520 B
National Association of Letter Carriers, AFL,CIO	*	NALC Case No: M091404232 M090105072

BEFORE: Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Shieleta D. Augustus

For the Union: Corey Walton

Place of Hearing: Postal Facility, Lake Charles, LA

Date of Hearing: July 27, 2017

Date of Award: August 28, 2017

Relevant Contract Provision: Article 8

Contract Year: 2011

Type of Grievance: Contract

Award Summary:

This matter involves two cases, each involving Article 8 violations. The Employer has acknowledged that of violation of the Parties Agreement has occurred on both instances. The issue in both cases has been consolidated to one of remedy. The evidence shows the Union's requested remedy is appropriate in both instances for the reasoning set forth below.

Lawrence Roberts, Panel Arbitrator

SUBMISSION:

This matter came to be Arbitrated pursuant to the terms of the Wage Agreement between United States Postal Service and the National Association of Letter Carriers Union, AFL-CIO, the Parties having failed to resolve this matter prior to the arbitral proceedings. The hearing in this cause was conducted on 27 July 2017 at the postal facility located in Lake Charles, LA. Testimony and evidence were received from both parties. A transcriber was not used. The Arbitrator made a record of the hearing by use of a digital recorder and personal notes. The Arbitrator is assigned to the Regular Regional Arbitration Panel in accordance with the Wage Agreement.

OPINION

BACKGROUND AND FACTS:

This matter involves two class action grievances both involving similar subject matters of Article 8.5. More specifically, both grievances allege the improper distribution of certain overtime assignments at this Lake Charles LA installation.

In the first matter, labeled Joint Exhibit 2 below, the Step B Team acknowledged a violation of the specific Article 8.5 language had occurred. In that case, the Parties were unable to formulate and/or mutually agree to a remedy in that matter.

In the second grievance, labeled Joint Exhibit 3 below, the Union claimed the Employer failed to participate at the Formal A

level and, therefore, should be disabled from offering any arguments in that case at arbitration.

In both cases, the respective Parties made similar arguments. The Union argues there were violations in both cases and their requested remedies are appropriate.

Conversely, the Employer argues, that while a remedy may be appropriate for a violation, any punitive award is simply inappropriate. Management requests any punitive awards in either of the cases be denied.

Obviously, the Parties were unable to resolve this dispute during the prior steps of the Parties Grievance-Arbitration Procedure of Article 15.

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

At the hearing, the Parties were afforded a fair and full opportunity to present evidence, examine and cross examine witnesses. The record was closed following the receipt of support cases by this arbitrator on 1 August 2017.

JOINT EXHIBITS:

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

2. Grievance Package (G11N-4G-C 16455651)

3. Grievance Package (G11N-4G-C 16458520)

UNION'S POSITION:

It is the position of the Union that the remedy requested in both cases is necessary. The Union argues the language of Article 8 regarding the distribution of overtime is a mandatory requirement on the part of the Employer.

As pointed out by the Union, the Overtime Desired List Employees have the right to work the overtime hours and, as well, the non-Overtime Desired List Employees have the right not to work those same overtime hours.

The Union contends that Management must meet the requirements of Article 8 regarding the distribution of overtime. Instead, the Union suggests that when it is not convenient for the Lake Charles management to meet those mandatory requirements of the Parties Agreement, they simply violate the language.

The Union contends management justifies their overtime decisions by arguing that all Letter Carriers are paid the applicable pay rate. According to the Union both the ODL and non-ODL Letter Carriers are harmed.

However, the Union argues that even though the non-ODL Letter Carriers are paid for that unanticipated and unwanted time worked, that same time was lost by that Letter Carrier. The Union reasons that all Letter Carriers are harmed by Management's failure to meet their contractual obligation regarding overtime.

This erosion of contractual rights harms each Letter Carrier at this Lake Charles Installation according to the Union. The Union also asserts the Union is also harmed, in that, their organization must continually argue these issues over and over again on the same issue.

The Union indicates the case file is lengthy and the very same violations have been occurring on a habitual basis for a very long time. Fifty four Step B Decisions and pre-arbitration settlements, as argued by the Union, are persuasive to that end.

The Union adds that the fact the Service continually ignores cease and desist orders only underscores the magnitude of this violation.

The Union goes on to cite the language of recent arbitration decisions dealing with this same issue. And in that same light, the Union points out that precedence is set for the express purpose of avoiding similar issues in the future. It is the observation of the Union this has not resolved the core issue of overtime assignments.

The Union challenges the fact the remedy is still being challenged by the Employer. And the Union then goes on to quote the specific language of the Parties Agreement as it addresses settlements and arbitration awards.

The Union argues that another arbitrator has stated that a thousand dollars is binding, yet the Employer still argues against such a remedy. It is the claim of the Union, they are not responsible for the schedule or the number of hours worked by a Letter Carrier in a day. Instead, the Union asserts they police the Parties Agreement and the matter has already been settled.

It is also the claim of the Union that the Joint Exhibit 3 contains no Management contentions at Step A. In fact, the Union asserts the Employer failed to meet and there was no challenge to the Union's requested remedy. The Union insists the Employer cannot challenge a remedy at arbitration when it was not challenged at Step A.

The Union implies the Employer has turned a deaf ear on this Lake Charles Installation. The Union goes on to cite past Step B Decisions in support of their argument.

The Union insists this case must be settled as per res judicata as the remedy has already been set. The Union believes they should not have to continually incur the costs of these cases when the matter has already been settled.

The Union requests that both requested remedies be granted in their entirety.

COMPANY'S POSITION:

Initially, the Union argues that res judicata does not apply as these instant cases are not the same. According to the Employer, the days, times and employees are different as

compared to the matter raised by the Union. The Employer argues to apply the same remedy would be unjust in this instant case.

The Agency also points out there is a cost when the Union opts to arbitrate a case instead of cooperating and settling a matter at the earliest possible level.

The Service goes on to cite other arbitration awards in support of their position in this matter.

And as mentioned by the Service, management each and every day fulfills their obligations. Furthermore, the Service contradicts a Union assertion that each and every Letter Carrier at Lake Charles was not harmed.

In the opinion of the Employer Advocate, Article 8 violations will continue to occur. It is the view of the Management these violations will always occur and that is the reason the Parties Agreement defines the remedy.

Management contends the remedies requested by the Union in these cases are not right. Furthermore, the Agency insists the Union simply refuses to settle these cases at a lower level of the grievance procedure.

It is the position of the Employer the Union's request for remedies are inappropriate. As inferred by the Agency, if there is an overtime error of one hour, the Union then requests a thousand dollar remedy for each Letter Carrier. And according to the Postal Advocate, this is simply improper. Instead, in the opinion of the Employer, the Union should not be entitled to any remedy over and above what is provided in the contract.

It is pointed out by the Advocate that Management at Lake Charles goes to great lengths to properly assign overtime. However, Management claims that violations do occur and queries whether or not a punitive remedy is appropriate.

The Employer agrees that each of the Lake Charles overtime cases may appear to be under a single heading, however, each matter is distinctly different.

It is the claim of the Agency the Union has taken bits and pieces out of the various cases since 2007 in order to assemble their argument today. And according to the Employer, this is simply improper as it does not provide a true representation.

The Postal Service does not deny the fact that ODL and non-ODL were required to simultaneously work overtime. However, the Employer point out that specific mail volume varies. The

Employer insists that a blanket remedy for all overtime violations is wrong.

The Employer also claims the requested remedy in one of these cases is literally seventeen times the actual value and, the Advocate suggests this is not only wrong but outrageous. It is the claim of the Agency the Union has failed to show any harm that would demand such a remedy.

The Agency claims there is no monetary harm to support what the Union is asking for here today. And the Employer points out the violation in the second case equaled approximately three thousand dollars but the requested remedy is forty three times that amount.

Management argues the Union's requested remedy is inappropriate. The Employer insists that any overtime penalties shall be at the appropriate rate. And the Service requests that any new arguments brought forth by the Union at arbitration be dismissed.

It is the suggestion of the Employer that punitive awards only encourage subsequent filings of these grievances.

Again, it is the position of the Agency that even though supervisors have been trained that overtime violations are still going to occur.

And on that basis, the Employer requests the punitive remedies on both cases be denied.

THE ISSUES:

Joint Exhibit 2 (G11N-4G-C 16455651)

Did Management violate Articles 8, 15 and 19 of the National Agreement by not participating in an Informal A meeting and honoring previous Step B agreements, Pre-Arbitration and Arbitration decision's and M-01517 and the manner in which overtime assignments were assigned during the week of April 23, 2016 through April 29, 2016? If so what shall the remedy be?

Joint Exhibit 3 (G11N-4G-C 16458520)

1. Did Management violate Article 8 of the National Agreement when Management forced City Carriers not on the OTDL, and City Carriers on the work assignment list to work assignment list to work overtime on routes not assigned to them during the service week of May 07-13, 2016, when there were 10/12 OTDL Carriers and

CCA's available to work up to 12 hours and were prevented from working? If so, what is the appropriate remedy?

2. Did Management violate Article 15 via 19 of the National Agreement by failing to abide to previous Arbitration, Pre-Arbitration and DRT cease and desist decisions on violating Article 8? If so, what is the appropriate remedy?

3. Did Management violate Article 41 via 19 of the National Agreement by failing to abide to previous Arbitrations, Pre-Arbitrations and DRT cease and desist decisions on violating Article 8? If so, what is the appropriate remedy?

4. Did Management violate Section M-01517 of the National Agreement by failing to abide to previous Arbitrations, Pre-Arbitrations and DRT cease and desist decisions on violating Article 8? If so, what is the appropriate remedy?

5. Did Management violate Article 5 (past practice) of the National Agreement when they established a window of operation? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS:

ARTICLE 8
HOURS OF WORK

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE

DISCUSSION AND FINDINGS:

This matter involves two grievances combined for the purposes of arbitration. The Parties acknowledged that contractual violations occurred in both cases and the only remaining issue is one of remedy. At the onset of the hearing, the Parties agreed to Joint Exhibit 2 being the representative case. Both matters involve similar issues regarding the distribution of overtime.

I would first like to point out that I do agree with the Employer assertion that the doctrine of res judicata cannot be appropriately applied. While the occurrences in these two cases are strikingly similar to past cases, the details of any two overtime violations, regardless of when they may have occurred are simply not identical. Employees, routes, times and circumstances are all unique to individual cases. And to that end, it would be virtually impossible to apply the doctrine of res judicata to any two overtime matters.

However, I do agree with the Union, in that, this case file defines a clear track record of ritualistic and habitual violations of the Article 8.5 language, by local management, regarding the assignment of overtime. In fact, the Employer Advocate went as far as to state that Article 8.5 violations will continue to occur. I disagree with such reasoning. It is beyond my understanding the Employer would so emphatically predict that violations will continue to take place hereinafter and into the future.

The language of Article 8.5 is straightforward. I realize that mistakes occur and when that does happen, overtime assignments are made in error. However, those occasions should

be the exception rather than ritualistic, habitual and seemingly predictable.

Arbitrator Louise B Wolitz, on 14 February 2017 in Case styled G11N-4G-C 16454303, offered a very detailed historical synopsis of Article 8 violations at this facility. And in her Discussion, I agree with the following:

> "Taking full account of the history in Lake Charles of Article 8 violations, DRT cease and desist decision, pre-arbitration decisions, and arbitration decisions discussed above, and the cease and desist orders issued by DRT teams, settlement agreements, and arbitrators, we find the continued violation of the clear provisions of Article 8, Section 5 by Lake Charles management egregious, knowing, deliberate and explicable. The decisions by DRT teams, pre-arbitration settlement negotiators and arbitrators are made to be read, studied, understood and complied with. Yet, in the case before us, Lake Charles management has once again acted as though those decisions had never been rendered. This is a shocking violation not only of Article 8 and Article 15, but of management's clear responsibilities under the National Agreement. In this case, management acknowledges the clear violation, yet seems to shrug it off. Management's position seems to be that its responsibility is to get the mail delivered safely, which surely is correct, and not to pay serious attention to contractual constraints on scheduling. Management is willing to pay the make-whole penalties attached to proceeding this way, but not any penalties for repeated contractual violations, violations of cease and desist orders, and violations of the rights of the letter carriers under the National Agreement. In doing so, management violates its responsibilities to live up to the bargains it makes in collective bargaining and violates its obligations to the workers under the National Agreement. It weakens the foundation and meaning of a collective bargaining relationship, with mutual

rights and responsibilities, among the most important of which is living up to its commitments and respecting its agreements, settlements, and arbitration awards.

We are not comfortable with ordering compensatory payments to workers of $1,000 each for management's continued violation of the same provisions and of all the agreements to cease and desist this violation. However, it is management that has the power to prevent such an award. Management can prevent such an award simply by living up to its responsibilities under the collective bargaining agreement. All it has to do is to prioritize scheduling according to the requirements of Article 8, Section 5, regardless of any difficulty or inconvenience that might entail. That is a responsibility equal to the responsibility of getting the mail delivered safely and timely. The Union has few means with which to force management to adhere to its responsibilities, responsibilities to which it has repeatedly agreed. The Union's remedy is raising the cost of failing to comply to an amount that will be notice, so that the failure to comply with Article 8, Section 5 and Article 15 will cease. It is an amount that management cannot responsibly shrug off. It is the only weapon the Union has to enforce its rights under the collective bargaining agreement. Amounts from #300 to #900 have failed to get management's attention and compliance. Orders to cease and desist and warning of escalating remedies have also failed to get management's attention and compliance. The $1,000 is not meant to be punitive, but to be compensatory and to achieve a cessation of the repeated failure to comply. It is an extraordinary remedy for extraordinary circumstances, egregious, repeated violations of a clear provision and repeated cease and desist agreement and orders. Management can put an end to escalating remedies by complying with its obligations under the National Agreement."

I agree in total with Arbitrator Wolitz. Her well written analysis is directly on point with both cases here today. And for the reasoning she sets forth above, I disagree with

Management's rationale the Union seeking a one thousand dollar resolution for a one hour violation as being absurd. In my considered opinion, the failure to respect cease and desist orders, without any regard to the escalating remedies is incongruous to the spirit and intent of not only the National Agreement itself, but also each and every member of that Lake Charles bargaining unit.

In my considered opinion, these escalating remedies should continue to intensify up until the time Lake Charles management opts to ritualistically and habitually follow that unambiguous Article 8.5 language.

And for that reasoning, I hereby grant the Union's requested remedy found in **Joint Exhibit 2**, labeled **G11N-4G-C 16455651** as follows:

> **"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.**
>
> **That Management in the Lake Charles Installation be issued instructions to cease and desist from future violations of Article 15 of the National Agreement and adhere to Step B Team, Pre-Arbitrations and Arbitrations settlements.**
>
> **That Management in the Lake Charles Installation be issued instructions to cease and desist from future violations M-01517 and adhere to Step B Team, Pre-Arbitrations and Arbitrations settlements.**

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

Brown 1.45, Rubin J. .78, Gauthier 2.40, Thomas.K 3.24, Primeaux 1.65, Dowers 2.51, Martin .81, McNeal 3.30, Joubert 3.24, Frye, 1.25, Steward 3.34, McGee 1.33, O'Reilly 4.44, Brock 1.77.

That the following Carriers on the 10/12 OTDL be paid up to 12.50 hours per day for the service week 4/23 to 4/29/2016:

Theirry, David, Alexis, Lewis, Garrand, Washington K.E., Thomas, B, Broussard Gonzalez, Ventress, Soto and Wimberly.

That the following CCA;s be paid up to 12 hours per day for service week 4/23 to 4/29/:

Cahee B, Coleman, Collins, Redmond, Reynaud, Conley

That the following Carriers including CCA's be awarded $1000.00 each for management's non-compliance and repeated and blatant violations of Article 8, 15 and M-01517:

Brown, Rubin J, Gauthier, Thomas.K, Primeaux, Dowers, Martin, McNeal, Joubert, Frye, Steward, McGee, Ayo, Ackel, Cox, McClacachlan, O'Reilly, Brock, Thierry, David, Alexis, Lewis, Garrard, Washington K.E., Thomas, B, Broussard Gonzalex, Ventress, Soto, Wimberly, Cahee B, Coleman, Collins, Redmond, Reynaud, Conley

Regarding the second matter, **Joint Exhibit 3**, labeled **G11N-4G-C 16458520**, the Union presented a prima facie case showing the Employer failed to participate at the Step A process. The case file simply lacked any Formal Step A contentions by the Employer.

That absence of paperwork only certified the Employer failed to participate in the Step A process. And controlling is the language found in the relative portion of the Parties Agreement, namely Article 15.2 Formal Step A, Paragraph d, which provides:

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

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

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

> **C. Failure by the Employer to schedule a meeting or render a decision in any of the Steps of this**

procedure within the time herein provided (including mutually agreed to extension periods) shall be deemed to move the grievance to the next Step of the grievance-arbitration procedure.

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

And in this matter, it was clear, the Employer failed to meet at the Formal Step A level. And in my considered opinion, this mutes any argument, moving forward, made by the Employer as it relates to the remedy portion of this particular case. That Step A process requires full disclosure by and between the Parties. The failure of either Party to fully participate squelches any additional argument at a later date by the same pertaining to the particular dispute.

Therefore, any remedy argument made by the Employer relating to the Joint Exhibit 3 grievance is of no relevance. And on that basis, the Union's requested remedy will be granted:

"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.

That Management in the Lake Charles Installation be issued instructions to cease and desist from future violations of Article 15 of the National Agreement and adhere to Step B Team, Pre-Arbitrations and Arbitrations settlements.

That Management in the Lake Charles Installation be issued instructions to cease and desist from future violations M-01517 and adhere to Step B Team, Pre-Arbitrations and Arbitrations settlements.

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

Woolridge 4.87, Rubin J 2.80, Gauthier 4.27, Dowers 1.33, Joubert.E 3.46, O'Reilly 3.22, Brock 5.56, Martin 1.46, Thomas.K 5.94, Frye 1.25, McGee 1.25, Brown 1.25, McNeal 3.04, Joseph 2.81, Mattew.S 2.89, Primeaux 1.93, Ackel .71.

That the following Carriers on the 10/12 OTDL be paid up to 12.50 hours per day for the service week 5/7 to 5/13/2016 or whatever remedy the Step B Team or an Arbitrator deems appropriate:

Thierry, David, Alexis, Lewis, Garrard, Washington K.E., Thomas, B, Broussard Gonzalez, Ventress, Soto and Wimberly.

That the following CCA's be paid up to 12 hours per day for service week 5/7 to 5/13/2016 or whatever remedy the Step B Team or an Arbitrator deems appropriate:

Redmond, Reynaud, Coleman, Conley

That the following Carriers including CCA's be awarded $1000.00 each for management's non-compliance and repeated and blatant violations of Article 8, 15 and M-01517.

Woolridge, Rubin J., Gautheir, Dowers, Joubert, E., O'Reilly, Brock, Martin, Thomas, K., Frye, McGee, Brown, McNeal, Joseph, Mattew, S., Primeaux, Ackel, Thierry, David, Alexis, Lewis, Garrard, Washington K.E., Thomas, B. Broussard Gonzalez, Ventress, Soto, Wimberly, Redmond, Reynaud, Coleman, Conley

In summation, I would like to reiterate an important point made by Arbitrator Wolitz. Until such time that Article 8 violations subside at this Lake Charles installation, the Union's only defense is a continual escalating scale in the form of a punitive award. In my view, this is one of the very few times that I would condone an escalating scale relative to a punitive award. The Union is required to perform the work, as assigned and then grieve later. And I credit the Union in their following of that protocol.

It was clear that both of these cases were not isolated instances, instead, full service weeks. I can understand a single day, whereby, overtime may not be properly assigned. However, at this installation that would clearly be the exception. So until that assignment style is radically altered, the Union's only alternative is monetary escalation.

AWARD

Both grievances are sustained and shall be resolved in accord with the above.

Dated: August 28, 2017
Fayette County PA