

REGIONAL ARBITRATION PANEL

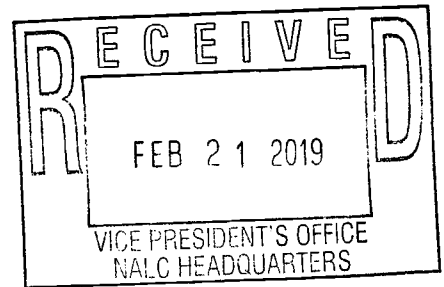
 In the Matter of Arbitration)
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 Between)
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 United States Postal Service)
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 And)
)
 National Association of Letter Carriers,)
)
 AFL-CIO)
 _____)
 BEFORE: Glenda M. August, Arbitrator

Grievant: Class Action
 Post Office: Hattiesburg, MS. 69401
 USPS No.: G16N-4G-C 18316064
 Union No.: BR938-001-18

APPEARANCES:

For the U.S. Postal Service Gregory White
 For the National Association of Letter Carriers Jason Atchley

Place of Hearing: 115 W. Pine St., Hattiesburg, MS. 39401
 Date of Hearing: January 4, 2019
 Brief Received: January 9, 2019
 Date of Award: February 4, 2019
 Relevant Contract Provision: Article 19
 Contract Year: 2016 - 2019
 Type of Grievance: Contract



AWARD: The grievance is sustained. Management violated the National Agreement, specifically the Joint Statement on Violence and Behavior in the Workplace, as well as the Postal Service's Policy on Workplace Harassment and other postal policies, when employees at Hattiesburg, MS were harassed and intimidated, according to the January 23, 2018 Climate Survey Report by the Mississippi District Manager of Human Resources. The remedy for that violation shall be enforced as stated in the body of the Award.

Glenda M. August

 Glenda M. August
 Arbitrator

I. ISSUE (s)

1. Did management violate the Joint Statement on Violence and Behavior in the Workplace, the postal service policy on Workplace Harassment, the Mississippi performance customer workplace violence zero tolerance policy, section 115.4 or the M-39 handbook, and section 665.24 of the ELM via Article 14, 15, and 19 of the National Agreement by the environment that was created at the Hattiesburg Downtown Station and if so, what is the remedy?
2. Did Jeremy Hanner's violate the Joint Statement on Violence and Behavior in the Workplace, the postal Service policy on Workplace Harassment, the Mississippi performance cluster workplace violence zero tolerance policy, section 115.4 of the M-39 handbook, and section 665.24 of the ELM via Article 14, 15, and 19 of the National Agreement by the pattern of behavior he has exhibited and if so, what is the remedy?
3. Did management at the Hattiesburg Installation violate Article 15.3 of the National Agreement along with Postal Service Policy Letter M-01517 by failing to comply with Formal A settlement for grievance # 938/J-5/2017 and if so, what should the remedy be?
4. Did management at the Hattiesburg Downtown Station violate Article 15.3 of the National Agreement along with Postal Service Policy Letter M-01517 by failing to comply with the pre-arbitration settlements for grievance numbers G16N-4G-C 18030640, G11N-4G-C 18030654, and G11N-4G-C 18118216 and if so, what should the remedy be?
5. Did management at the Hattiesburg Downtown Station violate Article 15, 17, and 31 of the national Agreement by failing to furnish relevant requested information to the union in a timely and if so, what should the remedy be?

II. RELEVANT CONTRACT PROVISIONS

**ARTICLE 14
SAFETY AND HEALTH**

Section 1. Responsibilities

It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility. The Employer will meet with the Union on a semiannual basis and inform the Union of its automated systems development programs. The Employer also agrees to give appropriate consideration to human factors in the design and development of automated systems. Human factors and ergonomics of new automated systems are a proper subject for discussion at the National Joint Labor-Management Safety Committee.

**ARTICLE 19
HANDBOOKS AND MANUALS**

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be

continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

IV. FACTS

The instant grievance was filed on behalf of the National Association of Letter Carrier (NALC) members of the Hattiesburg, MS. Post Office. The Union in this case alleges that there is a Hostile Work Environment at the Hattiesburg Post Office which continues to be fostered by Management and includes intimidation and an overall abusive working environment. The Union filed the instant grievance based on a violation of the Joint Statement on Violence and Behavior in the Workplace, the Postal Service's Policy on Workplace Harassment, the Mississippi Performance Cluster Workplace Violence/Zero Tolerance Policy, the M-39 and the ELM as well as the National Agreement between the parties at Articles 14, 15, and 19. The National Business Agent for the NALC assigned outside Union Stewards to investigate the climate in this office. A Climate Survey Report was issued by the Acting Manager for Human Resources and the Union cites the information contained in that document as the impetus for filing the instant grievance. The hearing was held on January 4, 2019 at the Hattiesburg Post Office located at 115 W. Pine St., Hattiesburg, MS. 39401.

V. UNION'S CONTENTIONS

The Union contended that they withdrew Issue # 4 since a separate grievance was filed on that issue. They further contended that the evidence of record demonstrates that Hattiesburg Management, specifically Manager Jeremy Hanners, has created an environment that egregiously violates the contractual provisions cited in the issue statements.

It was the position of the Union that the Joint Statement on Violence and Behavior in the Workplace was conceived after several instances of workplace violence in Post Offices across the country which culminated in the tragic events at the Royal Oak, Michigan facility. The Union argued that the intent of the JSVB was to prevent future violence, not to respond after the fact; they noted that thankfully, there has been no instance of a member of management physically attacking a letter carrier, however, they argue that the facts in the case at bar are extraordinary in their own right.

According to the Union, based upon their actions and inactions over a lengthy period of time, Management has failed to adhere to the letter and spirit of the Joint Statement. The Union argued that the JSVB plainly states that “there is no excuse for and will be no tolerance of harassment, intimidation, threats or bullying by anyone.” They further argued that the Statement provides that “...every employee at every level of the Postal Service should be treated at all times with dignity, respect and fairness” and that “...’making the numbers’ is not an excuse for the abuse of anyone.” The Union asserted that the JSVB is very clear as to the consequences when there is a violation of the Statement and that is that “...Those who do not treat others with dignity and respect will not be rewarded or promoted. Those whose unacceptable behavior continues will be removed from their positions.”

The Union contended that the pattern of behavior exhibited by Management at the Hattiesburg Post Office also violated the Postal Service Policy on Workplace Harassment written and signed by Postmaster General Megan Brennan on March 16, 2017. They further contended that this policy is similar in nature to the JSVB and it requires that all employees be treated with dignity and respect and prohibits harassment; the Union noted that the Policy on Harassment further defines harassment as “...unwelcome verbal or physical conduct, which is so severe or pervasive that it interferes with or changes the conditions of employment by creating a hostile, intimidating, or abusive working environment.” According to the Union, Hattiesburg Management failed to comply with Postmaster General Brennan’s Policy on Workplace Harassment. It was asserted by the Union that the Harassment policy initiated by PMG Brennan also addressed the issue of sexual harassment which is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, such as, but not limited to making or threatening to make employment decisions based on an employee’s submission to, or rejection of sexual advances...”, the Union further asserted that Management at Hattiesburg failed to comply with this language as well.

The Union maintained that PMG Brennan’s policy stated that “...employees who believe that they are victims of harassment prohibited by said policy...should bring the situation to the attention of a supervisor, a manager, or the manager of Human Resources...”. The appropriate Management official is then required to investigate and remedy the situation that is brought to their attention. According to the Union, the evidence in the instant case will prove that the employees

in Hattiesburg have been crying out for help from Management at all levels in the Mississippi District; from the District Manager, to the Human Resources Manager, to the Manager of Post Office Operations, to the Postmaster in Hattiesburg, to the Station Managers and the floor Supervisors in Hattiesburg...employees have done all they can to bring attention to their daily plight of abuse and harassment. They noted that one former employee even wrote his US Representative about the climate in Hattiesburg, but the employees at this office have been ignored and the dangerous working environment continues to fester.

Testimony at hearing by Union witnesses revealed that the employees there thought that there was a "good" environment in that office until Mr. Hanners arrived (See statement in JX-2 Pages 193-200). One witness testified that he was summoned to Mr. Hanner's office but refused to go without Union Representation, and, based on his actions Mr. Hanner called the police on this witness. Another witness testified that he was summoned to Hattiesburg by the NALC National Business Agent for that office, as an outside Steward. He explained that his job was to assess the "climate" in the office. This witness averred that he received a summary of a Climate Survey conducted by the Manager of Human Resources for the Mississippi District; according to this outside Union Steward none of the courses recommended by this report were ever taken by Managers at Hattiesburg and none of the recommended "stand-up" talks were given to employees.

Another Union witness testified that he was familiar with Mr. Hanners because they worked in the same office previously, where he administered discipline to an employee for one (1) "click" of overtime; denied employees the ability to go to doctor's appointments, and denied women bathroom breaks even when on their menstrual cycles. The witness further testified that while Mr. Hanners was working in Laurel, MS., there was another Climate Survey conducted with a similar report issued as well as similar problems in Biloxi, MS., while this Manager was stationed there. The Union argued that wherever Mr. Hanners worked, most employees were very stressed.

The outside Union Steward testified about the Climate Survey Report (JX-2 Pages 65-76) received by the Union on June 21, 2018, eight days prior to the Informal A meeting held in the instant case; the report, according to the Union, was the impetus for the grievance in the case at bar and guided the Steward's investigation into the employee's claims. The Union contended that the Report, drafted by the Manager of Human Resources for the District, was alarming and the actions, or rather inactions by Management following the report, were absurd and almost

unbelievable. The Union asserted that not only did letter carriers come forward to tell their stories but so did rural carriers and even one former Supervisor that worked under Mr. Hanners. According to the Union, when the outside Steward met with Management at Formal A, after hearing the Union's issues, evidence and contentions as well as their request for remedy, Management did not present anything...and, did not rebut any of the Union's contentions or evidence.

The Union held that this case is about a pattern of behavior at numerous Post Offices where Mr. Hanners has left a trail of victims; they noted that this Manager has no remorse and continues to state that he has done "no wrong" ever. The Union argued that the overwhelming evidence of harassment and bullying included in the case file proves that the work environment/climate at the Hattiesburg, MS Post Office is toxic. The Union cited the following from the Joint Exhibit 2 in support of their position:

Page 190-Hanners denied request for sick leave

Page 191-Employee harassed about going to the bathroom

Pages 193-194-Racial issues

Page 200-Loud and heated discussions with white employees however, the police were called only for a black employee.

Page 215-Threat of retaliation

Page 224-Hostile Work Environment

Page 225-Retaliation

Page 228-Conditions are due to Station Manager Hanners

Page 231-Migraines

Page 236-Management cares about numbers not carriers.

Page 259-Hattiesburg & Biloxi

Page 278-Hanners

Page 244-Supervisor spoke about leaving behind victims of Hanners, stated that the working conditions were horrible at the Hattiesburg Post Office because of Mr. Hanners.

Pages 174-185-Letters written by the Local President to District Managers about how dangerous it is in Hattiesburg (MPOO, HR, etc.); the recommendations have not been taken seriously.

In addition to the information cited above, the Union cited evidence from employees of the Biloxi Post Office (JX-2 Pages 256-258) and yet another Climate Assessment from the Laurel, MS. Post Office (JX-2 Pages 287-289), while Mr. Hanners was managing that office. They noted that the other outside Steward, sent to assist in Hattiesburg, also wrote a letter to the Mississippi District Managers (JX-2 Pages 174-181) as well as submitted written statements (JX-2 Pages 186-187) about threats made to him by Hanners.

The Union contended that in addition to the numerous violations of Postal Service Policy, Management failed to submit to the Union, information requested to process the instant grievance. In total, argued the Union, the evidence of record shows a clear pattern of unacceptable behavior; behavior that is prohibited by binding contractual language. The Union asserted that Management doesn't want this Arbitrator to hear the truth about the whole debacle at Hattiesburg, and the history of Mr. Hanners. The Union further asserted that the truth is ugly.

Finally, the Union stated that Management, although they submitted some evidence, they did not rebut the vast majority of the evidence submitted by the Union; therefore, it is too late for them to rebut the evidence now. The Union argued that it is not only Mr. Hanners and his floor supervisors who are culpable in the instant matter; they contended that Management at all levels in Mississippi have failed to act. As remedy, the Union requested:

1. That management at the Hattiesburg Downtown Station cease and desist violating the Joint Statement on Violence and Behavior in the Workplace via Articles 14, 15, and 19 of the National Agreement.
2. That management at the Hattiesburg Downtown Station cease and desist violating the Postal Service's Policy on Workplace Harassment via Articles 14, 15, and 19 of the National Agreement.
3. That management at the Hattiesburg Downtown Station cease and desist violating the Mississippi Performance Cluster Workplace Violence/Zero Tolerance Policy via Articles 14, 15, and 19 of the National Agreement.
4. That management at the Hattiesburg Downtown Station cease and desist violating Section 115.4 of the M-39 Handbook via Articles 14, 15, and 19 of the National Agreement.
5. That management at the Hattiesburg Downtown Station cease and desist violating and Section 665.24 of the ELM via Articles 14, 15, and 19 of the National Agreement.
6. That management at the Hattiesburg Downtown Station cease and desist violating Article 15.3 of the National Agreement and M-01517 by failing to comply with grievance settlements.
7. That management at the Hattiesburg Downtown Station cease and desist violating Articles 17 and 31 of the National Agreement.

8. That Branch 938 be paid a lump sum of \$500.00 for management's violation of Articles 15, 17, and 31 of the National Agreement, and M-01517.
9. That Supervisor Lavelma Mizelle be immediately removed from her supervisory duties and returned to her original craft position for her inability to maintain an atmosphere of mutual respect and her inability to foster a work environment free from bullying, harassment, and intimidation.
10. That Supervisor Jerald Robertson be immediately removed from his supervisory duties and returned to his original craft position for his inability to maintain an atmosphere of mutual respect and his inability to foster a work environment free from bullying, harassment, and intimidation.
11. That Jeremy Hanners be immediately removed from his managerial position at the Hattiesburg Downtown Station and not be allowed to supervise/manage city letter carriers directly or indirectly.
12. That Mississippi District Manager Elizabeth Johnson, MPOO Stacy Ellis and Postmaster Joe Dickens be instructed to write a letter of apology to the city carriers of the Hattiesburg Downtown Station for their lack of action regarding the environment at the Hattiesburg Downtown Station. This letter should be posted in a conspicuous location at all Hattiesburg Stations for a period of at least 90 days.
13. That management be instructed to implement all of the recommendations contained in the January 23rd, 2018 Climate Survey Report within 30 days from the date of the settlement of this grievance.
14. That management be instructed not to retaliate in any way against any city letter carrier who participated in interviews or submitted written statements in the investigation and processing of this grievance.

The Union offered the landmark Arbitrator Carlton Snow Award (JX-2 Pages 340-364) in support of the requested remedy in this case. They noted that Management would argue what the Arbitrator could not do and attempt to recycle arguments made before the Arbitrator in the post hearing briefs for that case (JX-2 Pages 379-430); the Union argued that those arguments were rejected then, and must be rejected now. The Union requested the Arbitrator sustain the grievance in its entirety and grant the Union's requested remedy.

VI. MANAGEMENT'S CONTENTIONS

Management contended that the issues in this case are numerous but the crux of the case at bar concerns the alleged violation of the Joint Statement on Violence and Behavior in the Workplace and the creation of a hostile work environment by Management, specifically, Manager Jeremy Hanners.

According to Management the issues brought forth in the instant grievance to not rise to the level of a Joint Statement violation. Management contended that none of the statements provided by the Union provide proof that Management has created a hostile work environment or

violated the Joint Statement. Additionally, according to Management, most of the statements are vague and generic and, honestly viewed, leads the reader to believe that Manager Hanners is simply doing his job by holding the employees accountable for doing theirs. The Service contended that Manager Hanners has been in the Hattiesburg office for approximately two (2) years and arrived in this office with a different Management style than the employees were used to since the previous management had a more gentle and hands-off approach to employees and their responsibilities. The Service asserted that Mr. Hanners has a more business-like approach to postal operations and holds his employees accountable to abide by postal regulations and policies.

At hearing Mr. Hanners testified that the teams that came into the Hattiesburg Post Office never talked to him during their investigation. According to Management, they believe that the witnesses were coached to say there will be retaliation. The witness further testified that he never yelled at an employee and he never called the police on an employee; Mr. Hanner averred that he instructed his supervisor to call the police. According to his testimony, Mr. Hanners stated that he doesn't use any form of intimidation and never disrespected any employee; he noted that he has done nothing wrong in the numerous grievances filed against him.

It was the position of Management that a review of the employee statements included in the file shows that the employees allude to Management "making the numbers", following them on the street, denying their leave, and forcing them to work overtime. Management argued that these are all legitimate, required management functions. In response to the Union contentions that Management harasses, intimidates and bullies the employees, Management argued that there is no evidence in the case file that proves any of these allegations. In response to the Union's allegations that since Mr. Hanners arrived at Hattiesburg, there has been more discipline issued in that office, Management asserted that Mr. Hanners has an obligation to the Service and the employees to correct any misbehavior or misconduct per the Employee and Labor Relations Manual and there comes a time when corrective action is the only way to accomplish that. According to Management, the Union has not proven that Mr. Hanners has singled out one or a group of employees and read collectively, the employee statements prove that Mr. Hanners is equal across the board in the treatment of the employees in Hattiesburg. The Service contended that the Union failed to prove that Management at Hattiesburg is doing anything other than the job that is required of them.

Management disputed the Union's contention that the Service violated Article 17 of the National Agreement by not providing all relevant requested information timely; they note that the Union stated timely and not that Management did not provide the requested information. Management contended that they complied with the Union's request in accordance with the National Agreement. The Service found it worthy to note that Hattiesburg, MS., is the home office for NALC Executive Vice President, Brian Renfroe and when the employees here don't like the present managerial style, they call Mr. Renfroe. Management noted that Mr. Renfroe gest one side of the story and then the Union is on a "witch hunt" to remove Mr. Hanners and demote the supervisors in that office so that they can come to work everyday and do as they please. Management asserted that the Postal Service is in business for one reason and one reason only: Trust. The American public trusts that their mail will be delivered in a safe, efficient, timely, professional manner. In order for the Service to be successful in this great responsibility, standards are expected and must be enforced within the parameters of postal policies and the Collective Bargaining Agreements.

Management argued that the Service takes the JSVB very seriously; they further argued that there is nothing in the case file to prove a violation of the Joint Statement. In fact, according to Management, if Mr. Hanners or any member of postal management, physically or verbally assaulted an employee, or it was proven that he bullied, threatened, or intimidated employees, we, more than likely, would not be here today since the Postal Service would live up to its obligation to change that behavior. Management further argued that nothing in the case file elevates to a violation of the Joint Statement and as such, the Service requested after considering the testimony and evidence presented, the Arbitrator deny the grievance in its entirety.

VII. DISCUSSION AND OPINION
THE JOINT STATEMENT ON VIOLENCE
AND
BEHAVIOR IN THE WORKPLACE

The Precipitating Event

On November 8, 1991, a discharged Letter Carrier armed with a loaded semiautomatic rifle, entered the Main Post Office in Royal Oak, Michigan from an unsecured rear loading dock. Seeking out supervisors who had been responsible for his discipline, the discharged Letter Carrier fired more than 100 rounds, hitting eight people before taking his own life. Four of his victims, including the principal witness at his arbitration hearing, died.

THE JOINT STATEMENT ON VIOLENCE AND BEHAVIOR IN THE WORKPLACE

"We all grieve for the Royal Oak victims, and we sympathize with their families, as we have grieved and sympathized all too often before in similar horrifying circumstances. But grief and sympathy are not enough. Neither are ritualistic expressions of grave concern or the initiation of investigations, studies, or research projects.

The United States Postal Service as an institution and all of us who serve that institution must firmly and unequivocally commit to do everything within our power to prevent further incidents of work-related violence.

This is a time for candid appraisal of our flaws and not a time for scapegoating, fingerpointing, or procrastination. It is a time for reaffirming the basic right of all employees to a safe and humane working environment. It is also the time to take action *to show that we mean what we say*.

We openly acknowledge that in some places or units there is an unacceptable level of stress in the workplace; that there is no excuse for and will be no tolerance of violence or any threats of violence by anyone at any level of the Postal Service; and that there is **no excuse for and will be no tolerance of harassment, intimidation, threats, or bullying by anyone**.

We also affirm that **every employee at every level** of the Postal Service should be treated at all times with dignity, respect and fairness. The need for the USPS to serve the public efficiently and productively, and the need for all employees to be committed to giving a fair day's work for a fair day's pay, does not justify actions that are abusive or intolerant. "Making the numbers" is not an excuse for the abuse of anyone. Those whose unacceptable behavior continues will be removed from their positions.

We obviously cannot ensure that however seriously intentioned our words may be, they will not be treated with winks and nods, or skepticism, by some of our 700,000 employees. But let there be no mistake that we mean what we say and we will

enforce our commitment to a workplace where dignity, respect, and fairness are basic human rights, and where those who do not respect those rights are not tolerated.

Our intention is to make the workroom floor a safe, more harmonious, as well as a more productive workplace. We pledge our efforts to these objectives."

SIGNATORIES: National Association of Letter Carriers, National Association of Postal Supervisors, Federation of Postal Police Officers, National Association of Postal Mail Handlers, National Association of Postmasters of the United States, National League of Postmasters of the United States, National Rural Letter Carriers' Association, and the District of Columbia Nurses Association. Signed February 14, 1992

Listed Above: M-01242: **JOINT STATEMENT ON VIOLENCE AND BEHAVIOR IN THE WORKPLACE**

The aforementioned signatories in 1992, following the tragic circumstances that occurred in at the Main Post Office in Royal Oak, Michigan on November 8, 1991, found it compelling to join forces in unification to ensure such a tragedy would not occur again at any other Post Office in the United States. Out of that tragedy was born a stated commitment, on the part of the Postal Service and its Union's to find a way to ensure that all employees are treated with dignity and respect and an understanding that violence would not be tolerated by **anyone**.

The parties to the statement agreed that there would be "**no excuse for and will be no tolerance of harassment, intimidation, threats, or bullying by anyone.**" It appears that the parties were making themselves clear on their stance, however, complying with the intention of the "statement" has been the subject of many disputes between the Service and the Unions that represent their employees. Amid tragedy, everyone runs to offer their condolences and prayers; but I can say with certainty that the parties to the "statement" did not intend for another tragedy to occur before someone sought to provide assistance to prevent any such behavior in the workplace.

In the case at bar, the overwhelming majority of employees at the Hattiesburg, MS. Post Office have expressed their opinion that currently, there is a hostile working environment in the office where they work. Numerous employees have expressed that the situation is not improving and has actually deteriorated over time. The evidence of record is full of statements written by employees stationed at that office and those voices heard through their statements and testimony at hearing paint a troublesome picture. Management in this case has dismissed the opinions of these numerous employees and have taken the position that the employees were coached to make

the statements that they have submitted and that the reason for the outcry is because there is a National Union Official that makes his Home Office at Hattiesburg. According to the Service, the employees have contacted that official and based solely on the employees' outcries, the issue at Hattiesburg has been escalated to the point of filing the instant grievance.

The Union holds a different position in that they contended that impetus for filing the instant grievance was the Climate Survey Report provided by Management themselves. It was argued by the Union that they received a copy of the Report from the Mississippi District Manager for Human Resources on June 21, 2018. That report, according to the Union, was alarming; and what happened, or in this case, did not happen, following receipt of the report was absurd. The Union held that Management's inactions after receiving the results of the Climate Survey, led to a violation of the JSVB cited above as well as numerous other postal policies, including the Postal Service Policy on Workplace Harassment written and signed by Postmaster General (PMG) Megan Brennan on March 16, 2017. In that policy, PMG Brennan defines that harassment is "unwelcome verbal or physical conduct, which is so severe or pervasive that it interferes with or changes the conditions of one's employment by creating a hostile, intimidating or abusive working environment". The PMG goes on to state that "Although not every instance of inappropriate behavior may fit the legal definition of harassment, such behavior in the workplace *undermines morale and violates the Postal Service's standards of conduct. Disciplinary action may result even if the conduct does not constitute harassment under the law*".

PMG Brennan used clear and unambiguous language regarding the expectations that the Service has regarding the treatment of others in the postal workplace. In the policy, the PMG recognized that unnecessary stress, particularly as pervasive as described by the employees at Hattiesburg (too numerous to list here, but a significant portion of the moving papers), can lead to a change in the conditions of employment and be perceived by the employees in the workplace as intimidating and abusive. The perception of the employees is their reality and it is that reality which must be addressed by the Service. PMG Brennan goes on to clarify, that even if the inappropriate behavior does not meet the legal definition of harassment, *the behavior undermines the morale of employees and as such violates the Postal Service's standards of conduct.*

VERLAIN J. BISHOP
 Director of Policy, EEO



March 3, 2016

Postal Service Policy on Workplace Harassment

The United States Postal Service® (Postal Service™) is committed to providing a work environment free of harassment based upon race, color, religion, sex (including pregnancy, sexual orientation, and gender identity including transgender status), national origin, age (40 or over), mental or physical disability, genetic information, uniformed (military) service, or in reprisal for an employee's or applicant's complaint about or opposition to discrimination or participation in any process or proceeding designed to remedy discrimination. The Postal Service's workplace must be one in which all employees are treated with dignity and respect by supervisors, subordinates, and coworkers. Supervisors and managers will take prompt action to prevent, address, and remedy workplace conduct that is contrary to this policy.

Prohibited Activities

Harassment is unwelcome verbal or physical conduct, which is so severe or pervasive that it interferes with or changes the conditions of one's employment by creating a hostile, intimidating, or abusive working environment. Examples may include, but are not limited to, making offensive or derogatory comments or engaging in physically threatening, intimidating or humiliating behavior based upon race, color, religion, sex (including pregnancy, sexual orientation, and gender identity including transgender status), national origin, age (40 or over), mental or physical disability, genetic information, past, present, or future uniformed (military) service, or in reprisal for an employee's or applicant's complaint about or opposition to discrimination or participation in any process or proceeding designed to remedy discrimination. These activities are prohibited by Postal Service policy and may amount to harassment in violation of federal anti-discrimination laws. Violation of this policy may result in disciplinary action up to and including termination. The Postal Service is committed to providing its employees a safe, productive, and inclusive workplace and will tolerate nothing less.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature such as, but not limited to: making or threatening to make employment decisions based on an employee's submission to, or rejection of, sexual advances or requests for sexual favors; deliberate or repeated unsolicited remarks with a sexual connotation or physical contact of a sexual nature that is unwelcome to the recipient; or behavior that creates a sustained hostile or abusive work environment so severe or pervasive that it unreasonably interferes with or changes the conditions of one's employment.

Although not every instance of inappropriate behavior may fit the legal definition of harassment, such behavior in the workplace undermines morale and violates the Postal Service's standards of conduct. Disciplinary action may result even if the conduct does not constitute harassment under the law.

Management Responsibility

All managers and supervisors are responsible for preventing harassment and inappropriate behavior that could lead to illegal harassment, and must respond promptly when they learn of any such conduct. Any manager or supervisor who receives a complaint must see that a prompt and thorough investigation is conducted. Investigations of all forms of harassment must be done in accordance with the "Initial Management Inquiry Process (IMIP)." Materials are available in Publication 552, *Manager's Guide to Understanding, Investigating, and Preventing Harassment*. When harassment or inappropriate conduct is found, managers must take prompt and effective corrective action.

475 | Equal Policy Unit
 Washington, DC 20390-0014
 202.268.4144

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Employees' Rights and Responsibilities


Postal Service employees who believe that they are the victims of harassment prohibited under this policy (i.e., harassment based on race, color, religion, sex (including pregnancy, sexual orientation, and gender identity including transgender status), national origin, age (40 or over), mental or physical disability, genetic information, uniformed (military) service, or in reprisal for an employee or applicant's complaint about or opposition to discrimination or participation in any process or proceeding designed to remedy discrimination) or who have witnessed such harassment or inappropriate conduct, which could lead to illegal harassment, should bring the situation to the attention of a supervisor, a manager, or the manager of Human Resources to address most forms of harassment described above. Refer to Publication 553, *Employee's Guide to Understanding, Preventing, and Reporting Harassment* for further information. In accordance with this policy, supervisors, managers, managers of Human Resources, or the next higher level manager (HQ and HQ field units) are responsible for ensuring that direct and prompt action is taken to investigate and, where appropriate, remedy such misconduct when brought to their attention. The Postal Service will protect the confidentiality of harassment complainants to the extent possible.

Federal law requires the Postal Service to prevent discrimination against employees and applicants for employment based on race, color, religion, national origin, sex (including pregnancy, sexual orientation, and gender identity including transgender status), age (40 or over), physical or mental disability, and genetic identification. Employment discrimination or reprisal for engaging in an EEO-protected activity is prohibited. Employees pursuing an EEO complaint should contact the Postal Service's EEO centralized intake center within 45 days of the conduct giving rise to the claim in order to preserve their rights under federal law. Employees making a complaint can call toll-free 1-888-EEO-USPS (1-888-336-8777). Deaf and Hard of Hearing employees can call 1-888-325-2914 (Federal Relay Service). In addition, bargaining unit employees may seek relief through the grievance-arbitration procedures, and if applicable, non-bargaining unit employees may use the grievance procedures described in Section 562.4, *Employee and Labor Relations Manual*.

Allegations involving any possible criminal misconduct should be reported to the appropriate law enforcement authorities as follows: any physical misconduct relating to workplace harassment (i.e., any physical assault, threat of a physical assault, or stalking) should be reported to the Postal Inspection Service; use of any electronic device, computer, or Internet to transmit threatening or harassing communications, obscene or indecent images and materials, should be reported to the Office of Inspector General (OIG).

Reprisal against employees who raise a claim of harassment, report inappropriate conduct, or provide evidence in any investigation is illegal and can result in disciplinary action, and should be referred to the Inspection Service or OIG as appropriate.

The Postal Service will not tolerate any type of harassment, inappropriate conduct, or reprisal in the workplace.



Megan J. Brennan

Management contended that Mr. Hanners was only doing his job and was holding the complaining employees accountable for doing their jobs; however, Management's own report (Climate Survey Report) states otherwise and should have prompted Management to hold Mr.

Hanners and other members of Management in that office, accountable for the morale, working conditions and perceptions of the employees at Hattiesburg since it was their actions that changed the working conditions for employees and undermined their morale in violation of the Postal Service's standard of conduct.

The Climate Survey Report Summary, submitted by the Manager, Health & Resource Management for Mississippi District, Loretta Brown, (JX-2 Pages 66-69), provided insight into a workplace where she described there was a lack of respect, a hostile work environment, harassment, favoritism, low morale and a fear of reprisal. The Report concluded that the employees feel that nothing will be done to make positive changes to improve the overall environment in that office. In her recommended opinion, Ms. Brown suggested that Mr. Hanners and the other member of Management in Hattiesburg were the only ones who could have a positive impact on the employees' perception and create a better work environment for them. Apparently, that has not happened.

As late as at the Arbitration Hearing where Mr. Hanners had an opportunity to testify about his actions at Hattiesburg, he continued to deny having done anything wrong, nor did he take ownership for the environment that has been created at Hattiesburg. Mr. Hanners even mentioned the fact that "he has done nothing wrong in any of the numerous grievances that have been filed against him". The fact that numerous grievances have been filed against a Manager should be of concern to that Manager, but even of more concern to his superiors. The case file did not demonstrate that leaders above Mr. Hanners, including the Postmaster at Hattiesburg or his superiors, mandated any changes or held this Manager accountable; not for "making the numbers" but for creating an environment that is free from the "harassment" PMG Brennan described in her policy letter. No reasonable person can deny that the morale of employees at Hattiesburg has been seriously injured to the point that the Union felt the need to file the instant grievance for help.

Further, the evidence of record failed to identify any actions taken to satisfy the recommendations made by the Human Resource Manager in her Climate Survey Report; or actions taken by the Managers at Hattiesburg on their own accord in an attempt to "fix" things in that office. Management 101 teaches that no operation can be optimally efficient in the wake of low morale. The opposite is true, low morale can dispose of all the savings Management attempts to recover by harassment and intimidation of employees to work faster, or better. The Service,

particularly PMG Brennan recognized that fact and mandated that this type of behavior would not be tolerated. As an Arbitrator, I have visited many offices around the nation that are able to successfully balance the need to maintain efficient operations while treating all employees with dignity and respect in accordance with the Collective Bargaining Agreement. The Royal Oak tragedy, as well as the other postal tragedies that have occurred since, should be enough to remind us all of the need to find common ground to exist in the work relationships necessitated by the Postal Service's mission to serve the American Public.

The remedies requested by the Union cover everything from a "cease and desist" violating the National Agreement and policies governing harassment and other inappropriate behavior in the workplace to a lump sum payment of \$500.00 to the Union for violations of Article 15, 17 and 31 violations, to removal of Mr. Hanners and the other Supervisors from their positions, to letters of apology from their superiors, to implementation of the recommendations listed in the Climate Survey Report and lastly, instruction to prevent retaliation against City Letter Carriers at Hattiesburg.

Regarding this Arbitrator's authority to rule on the JSVB and as remedy displace the Managers and Supervisors involved in this matter, the Union offered the arbitral opinion of National Arbitrator Carlton Snow in case number Q90N-4F-C 94024977 and 94024038, where he concluded:

The Employer argued that using the negotiated grievance procedure is inappropriate because there is no quip pro quo. In other words, the Union allegedly gave up nothing to receive this additional benefit. In effect, the Employer argued that, even if there were a promissory undertaking on the part of the parties, it was an illusory promise based on a lack of consideration. The modern day requirement is that consideration be bargained for. But, except in instances not relevant in this case, courts do not test the economic equivalence of the bargain. As one court concluded:

The doing of an act by one at the request of another, which may be a detriment or inconvenience, however slight, to the party doing it, or may be a benefit, however slight, to the party at whose request it is performed, is a legal consideration for a promise by such requesting party. The judgment of the purchaser is the best arbiter of whether the thing is of any values, and how great, to him. (See, Hardesty v. Smith, 3 Ind. 39 (1851).

...

...

The bargain theory of consideration supports a conclusion that the mutual exchange of promises in this case constituted consideration. The mutual exchange of promises involved a commitment from each party “to make the workroom floor a safer, more harmonious, as well as a more productive workplace.” (See Joint Exhibit No. 4). Use of the negotiated grievance procedure was an incidental result of the promissory exchange between the parties. Moreover, there was un rebutted evidence that the Employer, in fact, has benefited from the exchange between the parties and has used the joint Statement in regional arbitrations against workers who exhibited behavior inconsistent with the Joint Statement. There, in fact, was consideration in the bargained-for exchange between the parties. *The grievance procedure of the national Agreement may be used to enforce the parties’ bargain, and arbitrators have available to them the flexibility found in arbitral jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her administrative duties.* As the U.S. Supreme Court instructed:

There [formulating remedies] the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency. (See, *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960).

As concluded by Arbitrator Snow, the grievance process is available to employees when there is an allegation of inappropriate behavior on the part of Management, as the parties, Union and Management, had a “mutual exchange of promises’ to commit “to make the workroom floor safe, more harmonious as well as a more productive workplace.” In the case at bar, the serious damage done to the morale and working conditions at Hattiesburg was a breach of the parties promise and therefore a violation of the Postal Service’s JSVB and PMG Brennan’s Policy on Harassment, as well as other postal policies and the National Agreement. Thus, the instant grievance is sustained.

As remedy, the Union requested multiple recompenses for the harm suffered by the employees in Hattiesburg. The following 10 of the 14 original requests shall be granted (number 6 was omitted as I was advised by the Union that this issue and remedy was addressed in a separate grievance):

1. Management at the Hattiesburg Downtown Station shall cease and desist violating the Joint Statement on Violence and Behavior in the Workplace via Articles 14, 15, and 19 of the National Agreement.

2. Management at the Hattiesburg Downtown Station shall cease and desist violating the Postal Service's Policy on Workplace Harassment via Articles 14, 15, and 19 of the National Agreement.
3. Management at the Hattiesburg Downtown Station shall cease and desist violating the Mississippi Performance Cluster Workplace Violence/Zero Tolerance Policy via Articles 14, 15, and 19 of the National Agreement.
4. Management at the Hattiesburg Downtown Station shall cease and desist violating Section 115.4 of the M-39 Handbook via Articles 14, 15, and 19 of the National Agreement.
5. Management at the Hattiesburg Downtown Station shall cease and desist violating Section 665.24 of the ELM via Articles 14, 15, and 19 of the National Agreement.
6. Management at the Hattiesburg Downtown Station shall cease and desist violating Articles 17 and 31 of the National Agreement
7. Branch 938 shall be paid a lump sum of \$500.00 for management's violation of Articles 15, 17, and 31 of the National Agreement, and M-01517.
8. Manager Jeremy Hanners shall be immediately removed from his managerial position at the Hattiesburg Downtown Station. Management shall place Mr. Hanners in a position to be decided by the Postal Service and Mr. Hanners; the location shall be outside of any Post Office in Hattiesburg, MS. He also shall not be allowed to supervise/manage city letter carriers directly or indirectly based on a history of ineffective employee communication which has led to decreased morale and an overall perception of harassment among letter carriers in the offices that he has managed. Caution should be used in the placement of this Manager to ensure that the position meets with Mr. Hanners current skills and abilities and will not adversely affect the working conditions of other employees that may be subject to Mr. Hanner's supervision.
9. Management shall implement all of the recommendations contained in the January 23rd, 2018 Climate Survey Report within 30 days from the date of this Award.
10. Management shall not retaliate in any way against any city letter carrier who participated in interviews or submitted written statements in the investigation and processing of this grievance. The Climate Survey Report provided enough insight into the conditions in Hattiesburg so that the statements and interviews simply served to support those findings.

Regarding those requests that were not granted; the fact that the evidence of record and the Union contended that the Supervisors did whatever Mr. Hanners instructed, I find it unnecessary to remove those individuals from their workplace at this time. Additionally, with the implementation of the recommendations borne out of the Climate Survey, the Supervisors should be more equipped to communicate effectively with the employees they supervise in Hattiesburg and prevent any future issues. Further, I find no benefit from an apology from the Postmaster and his Superiors, particularly to simply post in a conspicuous location for all to see. Dignity and Respect works both ways and there is no respect in that action; the parties to the JSVB recognized this fact. While there is no denying that earlier action should have been taken by upper management to ensure a

safe and respectful environment at Hattiesburg, one that complied with the National Agreement, we now must rely on these same individuals to act. If the climate is to improve, everyone remaining in Hattiesburg, as well as those responsible for that office, should have a clean slate for the office to succeed; as morale improves so should overall efficiency.

AWARD

The grievance is sustained. Management violated the National Agreement, specifically the Joint Statement on Violence and Behavior in the Workplace, as well as the Postal Service's Policy on Workplace Harassment and other postal policies, when employees at Hattiesburg, MS were harassed and intimidated according to the January 23, 2018 Climate Survey Report by the Mississippi District Manager of Human Resources. The remedy for that violation shall be enforced as stated in the body of the Award.

Glenda M. August

GLENDAM. AUGUST
Arbitrator

February 4, 2019

New Iberia, LA