REGIONAL ARBITRATION PANEL

In the Matter of Arbitration	Grievant:	August
Between	Post Office:	New Orleans, LA. 70113
United States Postal Service	USPS No.:	G16N-4G-C 18396827
And	Union No.:	124101318
National Association of Letter Carriers		

BEFORE: Glenda M. August, Arbitrator

APPEARANCES:

For the U.S. Postal Service	Paulette J. Gabriel
For the National Association of Letter Carriers	Tamberlynn Hawkins

Place of Hearing:	701 Loyola Ave., New Orleans, LA. 70113
Date of Hearing:	March 22, 2019
Date of Award:	April 20, 2019
Relevant Contract Provision:	Articles 16, 17, 19 & 31
Contract Year:	2016 - 2019
Type of Grievance:	Discipline

AWARD: The grievance is sustained. The Grievant shall be immediately returned to duty and made whole for all loss wages and benefits

Glenda M. August

Glenda M. August
Arbitrator

I. ISSUE (s)

1. Did Management violate Article 16 or section 115 of the M-39 handbook via Article 19 of the National Agreement when they placed Letter Carrier Kayla august on Emergency Placement on August 16, 2018? If so, what is the appropriate remedy?
2. Did management violate Article 17 or Article 31 of the National Agreement when they failed to provide the Union Steward with the information requested via the "Request for Information" dated August 24, 2018 which was submitted to Supervisor A. Legaux? If so, what is the appropriate remedy?

II. RELEVANT CONTRACT PROVISIONS

ARTICLE 16
DISCIPLINE PROCEDURE

Section 1. Principles

In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

Section 7. Emergency Procedure

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others. The employee shall remain on the rolls (non-pay status) until disposition of the case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge the employee, the emergency action taken under this Section may be made the subject of a separate grievance.

III. FACTS

The Grievant, a City Carrier Assistant at Central Carrier Station in New Orleans, LA., was notified, in writing, on August 17, 2018, that she was being placed in an off-duty, non-pay status under the provisions of Emergency Placement for Failure to Observe Safety Rules and Regulations. The Grievant was involved in a Runaway/Rollaway motor vehicle accident, when the postal vehicle she was driving rolled across the pavement and struck a car.

The Union filed the instant grievance alleging that Management did not have "just cause" to issue the Emergency Placement and further alleged that Management failed to provide requested information.

IV. MANAGEMENT'S CONTENTIONS

Management contended they had "just cause" to invoke Emergency Placement on August 17, 2018 when the Grievant was involved in a preventable Runaway/Rollaway accident. According to Management, on Thursday, August 16, 2018, at approximately 12:30 p.m., the Grievant was delivering mail and entered the Walgreens parking lot at 760 Harrison Ave., New Orleans, LA., 70124. They contended that the Grievant stated she placed her postal vehicle in park but must not have placed the gear shift all the way into park, and her vehicle rolled across the pavement and struck another car. Management further contended that the National Agreement at Article 3 gives the Service the right to take disciplinary action as a result of this safety violation.

The Service argued that after investigation, it was concluded that the accident was preventable and the employee warranted placement in a non-duty status. Management asserted that they had reasonable cause and reasonable belief to invoke EP since the Grievant did not secure the vehicle and it began to roll and hit a customer's vehicle which caused damage. According to Management, the Grievant was supposed to turn off her vehicle, curb the wheels and set the brakes as she had been trained to do when employed. Management asserted that the evidence of record and testimony at hearing supported the actions taken by Management and the Grievant acted as charged in the EP. The Service cited the National Agreement at Article 16.7 which states:

> **Section 7. Emergency Procedure**
> **An employee may be immediately placed on an off-duty status (without pay)** by the Employer, but remain on the rolls where the **allegation** involves intoxication (use of drugs or alcohol), pilferage, or **failure to observe safety rules** and

> regulations, **or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property,** loss of mail or funds, or where the employee may be injurious to self or others. The employee shall remain on the rolls (non-pay status) until disposition of the case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge the employee, the emergency action taken under this Section may be made the subject of a separate grievance.

Management contended that the parties agreed the purpose of Article 16.7 is to allow the Postal Service to act "immediately" to place an employee in an off-duty status in the specified "emergency" situations. The Service further contended that is what occurred in the instant case.

The Service maintained that the Grievant was verbally notified on April 16, 2018 that she was being placed in a non-duty, non-pay status, and was provided written notification in accordance with Article 16.7 of the National Agreement and JCAM. It was Management's position that contrary to the Union's argument, Management failed to cite the rules and regulations violated by the Grievant in their Letter of EP. The Notice only included the statement that the Grievant failed to observe safety rules and regulations. The Service noted that the principles of "just cause" must apply in the case of any discipline or discharge of an employee; however, Management maintained that Emergency Placement is not considered discipline or discharge and thus the Service need not achieve the merits of "just cause" to invoke EP.

Management argued that the "Just Cause" Principle requires that "any discipline must be for "just cause", and establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the "just cause" provision requires a fair and provable justification for discipline". Management further argued that the levels of discipline are Letters of Warning, 7 Day, 14 Day Suspensions or Removals, not emergency placement. The Service asserted that there is no language in the National Agreement indicating that placing an employee on emergency placement is considered discipline, therefore the Union cannot provide acceptable evidence demonstrating that language exists in the National Agreement which states that emergency placement is discipline.

According to Management, an on-site investigation was completed and it was determined that there were no injuries that required medical attention but also revealed that the cause of the runaway/rollaway accident was the Grievant's failure to set the handbrakes, remove the key from

the ignition and curb the wheels of the LLV. Management maintained that the Postal Service encountered a liability by having to pay for the damages to the customer's vehicle. The Service cited the Grievant's testimony in which she admitted that she turned the ignition off, moved the gear into park but must not have shifted the gear all the way into park. According to Management the Grievant failed to include in her testimony or her statement provided in the grievance file, that she failed to comply with Section 822 of the City Carriers Duties and Responsibilities (M-41) which state:

> **Section 822**
> Whenever the driver leaves the vehicle, the vehicle must be parked. To park the vehicle:
> a. Apply the foot brake and place automatic transmissions in the park position. Place manual transmissions in gear.
> b. Turn the vehicle's front wheels toward the curb if you are on a flat surface or when the vehicle is facing downhill. If the vehicle is parked facing uphill, turn the front wheels away from the curb.
> c. Set the hand-parking/emergency brake.
> d. Turn off the engine and remove the key.
> e. Lock any sliding door(s) between the truck body and cab.
> f. Lock the doors if you will be out of direct sight of the vehicle.

According to Management, in the case at bar, the Grievant did not apply the foot brake, did not ensure the transmission was placed in gear, did not turn the vehicle front wheels toward the curb, did not set the hand-parking emergency brake or remove the key from the vehicle. Management argued that all of the aforementioned actions (or non-actions) contributed to the vehicle rolling away, causing damage. They noted that this accident could have resulted in injury considering the area where the accident occurred.

Management cited numerous arbitral awards in support of their decision to invoke Emergency Placement, including this Arbitrator in case number (s) C11N-4C-D 15208438 and C11N-4C-D 15259631, where, as in the instant case, the Grievant was a short term employee and was involved in a serious accident, and at that point in his career had not built any "bank of goodwill". Based on the rulings of the multiple Arbitrators cited and given the fact circumstances of the instant case, the Service requested that this grievance be denied in its entirety.

V. UNION'S CONTENTIONS

The Union contended Management has the burden of proof in this discipline case. According to the Union, the Grievant has been employed with the Service for nearly two (2) years and has a discipline-free record, yet on August 17, 2018, Management issued her a Notice of Emergency Placement based on an incident which occurred on August 16, 2018.

The Union asserts that Management did not demonstrate that "just cause" existed to place the Grievant in a non-duty, non-pay status. They cited Arbitrator Richard Mittenthal's binding decision in case number H4N-3U-C 58637/H4N-3A-C 59518 which is incorporated into the JCAM on pages 16-8 and 16-9. In that decision he refers to Article 16.7 of the National Agreement between the parties and the test that Management must satisfy to justify any actions under this Article:

> The test that Management must satisfy under this Article 16.7 depends upon the nature of the "emergency". My response to this disagreement depends, in large part, upon how the Section 7 "emergency" action is characterized. If that action is discipline for alleged misconduct, the Management is subject to a "just cause" test. To quote from Section 1, "No employee may be disciplined...except for just cause." If, on the other hand, that action is not prompted by misconduct and hence is not discipline, the "just cause" standard is not applicable. Management then need only show "reasonable cause" (or reasonable belief") a test which is easier to satisfy.

According to the Union, the EP issued to the Grievant in this case was clearly for alleged misconduct and as such is subject to the "just cause" test, and the six sub-questions normally applied by labor arbitrators to determine if "just cause" existed, must be applied in this case.

In response to the "just cause" criteria the Union argued that the question of whether there is a rule of which the employee was made aware, Management cannot satisfy this question since the Notice of EP failed to identify the rule that the employee violated. Additionally, according to the Union, in Management's contentions, they state that the employee was made aware of the rule (s) she violated through street observations, however, Management failed to provide the Union with any PS Forms 4584 which are used to document street observations conducted on City Carriers. The Union argued that there is also no evidence that Management conducted a complete and objective investigation in this case, and in fact, did not do any investigation prior to issuing the Notice of Emergency Suspension, noting that the EP was issued on August 17, 2018, yet the

Investigative Interview was not conducted until August 21, 2018.

The Union maintained that discipline is required to be corrective rather than punitive and this requirement is an essential element of the "just cause" principle. They contended that the Grievant has been on emergency placement for more than seven (7) months with no further action taken by Management which can only be viewed as an attempt to punish the Grievant. It was the Union's position that there was no emergency when Management invoked EP before completing any investigation; and, even after Management completed an investigation, the Union contends there was no further action taken. According to the Union, the accident was over, the Grievant was not a danger to herself or others, and if she had in fact failed to follow a safety rule, once the investigation was completed Management was required to take further action and has not.

The Union noted that the Postal Service Accident Investigation Worksheet is not signed, does not contain the printed name of the Investigator and is dated September 5, 2018; they further contended that the Accident Report, 1769/301 was generated 20 days after the date of the accident. Here the Union argues, Management failed to follow their own policy guidelines as the Accident Report, according to the EL-801, is to be completed by the employee's immediate supervisor within 24 hours of notification of the accident. The Union argued that Management is also required to perform Observations of Driving Practices on PS Form 4584 on non-career employees with less than 90 days service, at least 3 times, with 4-23 months of service, on a quarterly basis and over 2 years of service, twice each year. They noted that although Management contended that the Grievant was made aware of the rules during these observations, they did not provide any proof to the Union that these observations were done. Additionally, according to the Union, they requested that Management provide the Union with any information they used to issue the discipline (EP) in this case, are required to do so, yet they did not provide the copies requested.

The Union maintained that Management violated the Grievant's due process rights when they failed to comply with the Request for Information (RFI) submitted by the Union Steward on August 24, 2018 and signed by Management. According to the Union, the following information was requested in that document:

- Copy of vehicle accident report on 8/15/2018 by K. August.
- Copy of maintenance record of vehicle in accident on 8/15/2018 by K. August.
- Copy of Investigative Interview conducted on K. August.

- Copy of driving training record.

The Union pointed out the PS Form 1700 and PS Form 1769 (Accident Report) were not submitted until September 5, 2018 and not printed until September 6, 2018, the date of the Formal A Meeting. The Union argued that Management deprived the Grievant of her "due process" rights by failing to provide this information prior to the Formal A. The Union asserted that Management, even until this date, has not provided a copy of the vehicle maintenance record as requested by the Union which further prevented the Union from mounting their defense in this case.

The Union contended that they requested the maintenance record since the Notice of EP indicated that the vehicle driven by the Grievant in this accident was towed to the Vehicle Maintenance Facility (VMF), yet Management failed to provide any information to the Union as to results of the VMF's report. The Union argued that this was vital information and not providing it to the Union prevented them from knowing whether the Grievant had set the handbrake since the vehicle's braking system may have been faulty. The Union cited the testimony of the NALC Formal A representative who testified that he had personal knowledge of failure on hand brakes on LLVs during his career. The Union noted that the vehicle that the Grievant was driving is over 30 years old and there has been numerous mechanical problems with these vehicles in recent years; additionally they stated that the Grievant was just recently assigned to this Station and this was the first time she worked this route and drove that vehicle since she was previously assigned to drive a Pro-master and/or van which are relatively new vehicles.

The grievance file included numerous Step B decisions and Pre-Arbitration Settlements offered by the Union, which instructed Management to cease and desist violating Article 17 and 31 by not providing requested information to the Union; they noted that monetary compensation was provided to the Union in several of the cited cases. The Union also offered the Arbitration Award of Arbitrator Tim Maier who ordered Management to cease and desist failing to provide requested information relevant to a grievance.

It was the Union's position that accidents, in an of themselves, are not an appropriate basis for discipline. According to the Union, disciplinary actions must cite the actions of the employee in a specific situation which violated postal rules or regulations; the Union asserted that in the instant case, Management failed to do this. They contended that Management had no evidence at

the time of the Emergency Placement that the Grievant had violated any rules or regulations yet they placed her in a non-duty, non-pay status because she had an accident. The Union contended that the Service had an obligation under Article 29 of the National Agreement to seek to find suitable work for the Grievant if they were to revoke or suspend her driving privileges. The Union cited Management's own "Louisiana District Safety Policy" which requires Management to schedule Driver Improvement Training within 10 days of an accident; according to the Union Management also failed to do this.

Finally, the Union offered numerous arbitral decisions in support of their position and requested that this Arbitrator, based on the evidence of record, testimony at hearing and arbitral support provided, sustain the instant grievance.

VI. DISCUSSION AND OPINION

NALC-USPS
JOINT CONTRACT ADMINISTRATION MANUAL

Article 16
Discipline Procedure

16.1

Section 1. Principles

In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

Just cause principle

The principle that any discipline must be for "just cause" establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the "just cause" provision requires a fair and provable justification for discipline.

"Just cause" is a "term of art" created by labor arbitrators. It has no precise definition. It contains no rigid rules that apply in the same way in each case of discipline or discharge. However, arbitrators frequently divide the question of just cause into six sub-questions and often apply the following criteria to determine

whether the action was for just cause. These criteria are the basic considerations that the supervisor must use before initiating disciplinary action.

• **Is there a rule? If so, was the employee aware of the rule?** Was the employee forewarned of the disciplinary consequences for failure to follow the rule? It is not enough to say, "Well, everybody knows that rule," or "We posted that rule ten years ago." You may have to prove that the employee should have known of the rule. Certain standards of conduct are normally expected in the industrial environment and it is assumed by arbitrators that employees should be aware of these standards. For example, an employee charged with intoxication on duty, fighting on duty, pilferage, sabotage, insubordination, etc., may be generally assumed to have understood that these offenses are neither condoned nor acceptable, even though management may not have issued specific regulations to that effect.

• **Is the rule a reasonable rule**? Management must make sure rules are reasonable, based on the overall objective of safe and efficient work performance. Management's rules should be reasonably related to business efficiency, safe operation of our business, and the performance we might expect of the employee.

• **Is the rule consistently and equitably enforced?** A rule must be applied fairly and without discrimination. Consistent and equitable enforcement is a critical factor. Consistently overlooking employee infractions and then disciplining without warning is improper. If employees are consistently allowed to smoke in areas designated as No Smoking areas, it is not appropriate suddenly to start disciplining them for this violation. In such cases, management loses its right to discipline for that infraction, in effect, unless it first puts employees (and the unions) on notice of its intent to enforce that regulation again. Singling out employees for discipline is usually improper. If several similarly situated employees commit an offense, it would not be equitable to discipline only one.

• **Was a thorough investigation completed?** Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective. This is the employee's day in court privilege. Employees have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves before the discipline is initiated.

• **Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record?** The following is an example of what arbitrators may consider an inequitable discipline: If an installation consistently issues five-day suspensions for a particular offense, it would be extremely difficult to justify why an employee with a past record similar to that of other disciplined employees was issued a thirty-day suspension for the same offense. There is no precise definition

of what establishes a good, fair, or bad record. Reasonable judgment must be used. An employee's record of previous offenses may never be used to establish guilt in a case you presently have under consideration, but it may be used to determine the appropriate disciplinary penalty.

• **Was the disciplinary action taken in a timely manner?** Disciplinary actions should be taken as promptly as possible after the offense has been committed.

Section 7. Emergency Procedure

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others. The employee shall remain on the rolls (non-pay status) until disposition of the case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge the employee, the emergency action taken under this Section may be made the subject of a separate grievance.

The purpose of Article 16.7 is to allow the Postal Service to act "immediately" to place an employee in an off-duty status in the specified "emergency" situations.

Written Notice. Management is not required to provide advance written notice prior to taking such emergency action. However, an employee placed on emergency off-duty status is entitled to written charges within a reasonable period of time. In H4N-3U-C 58637, August 3, 1990 (C10146), National Arbitrator Mittenthal wrote as follows:

> The fact that no "advance written notice" is required does not mean that Management has no notice obligation whatever. The employee suspended pursuant to Section 7 has the right to grieve his suspension. He cannot effectively grieve unless he is formally made aware of the charge against him, the reason why Management has invoked Section 7. He surely is entitled to such notice within a reasonable period of time following the date of his displacement. To deny him such notice is to deny him his right under the grievance procedure to mount a credible challenge against Management's action.

What Test Must Management Satisfy? Usually employees are placed on emergency non-duty status for alleged misconduct. However, the provisions of this section are broad enough to allow management to invoke the emergency procedures in situations that do not involve misconduct—for example, if an employee does not recognize that he or she is having an adverse reaction to medication. The test that management must satisfy to justify actions taken under this Article 16.7 depends upon the nature of the "emergency." In H4N-3U-C 58637, August 3, 1990 (C10146), National Arbitrator Mittenthal wrote as follows:

> My response to this disagreement depends, in large part, upon how the Section 7 "emergency" action is characterized. If that action is discipline for alleged misconduct, then Management is subject to a "just cause" test. To quote from Section 1, "No employee may be disciplined...except for just cause." If, on the other hand, that action is not prompted by misconduct and hence is not discipline, the "just cause" standard is not applicable. Management then need only show "reasonable cause" (or "reasonable belief") a test which is easier to satisfy.
>
> One important caveat should be noted. "Just cause" is not an absolute concept. Its impact, from the standpoint of the degree of proof required in a given case, can be somewhat elastic. For instance, arbitrators ordinarily use a "preponderance of the evidence" rule or some similar standard in deciding fact questions in a discipline dispute. Sometimes, however, a higher degree of proof is required where the alleged misconduct includes an element of moral turpitude or criminal intent. **"The point is that "just cause" can be calibrated differently on the basis of the nature of the alleged misconduct."**

Separate Grievances. If, subsequent to an emergency suspension, management suspends the employee for more than thirty (30) days or discharges the employee, the emergency action taken under this section should be grieved separately from the later disciplinary action

The instant case concerns a City Carrier Assistant with a short tenure with the Postal Service. The Grievant was involved in a rollaway/runaway accident in which the LLV she was driving rolled across the pavement and struck another vehicle. Management, based on the circumstances of the accident and after ruling it preventable, invoked Emergency Placement (EP) and issued written Notice of EP to the Grievant on August 17, 2018, placing the Grievant in a non-duty, non-pay status.

According to the Union, the Service did not have "just cause" to issue the EP and further argued that Management has since investigated the incident and still the Grievant remains in an Emergency Placement status after seven (7) months. The Union further alleges a due process violation by Management based on their failure to provide requested information relevant to the grievance.

The case file demonstrated that on August 24, 2018, the Union requested information from Management which was relevant to the instant grievance. The information requested was obviously related to the Grievant's defense. Albeit, the Grievant was a short-term employee, she is still entitled to a defense by the Union. The Union requested the following information:

- Copy of vehicle accident report on 8/15/2018 by K. August.
- Copy of maintenance record of vehicle in accident on 8/15/2018 by K. August.
- Copy of Investigative Interview conducted on K. August.
- Copy of driving training record.

The information listed appears to be the minimum information required to mount a defense for the Grievant. Certainly a copy of the accident report, employee's driver's training record with the Postal Service, and a copy of the Investigative Interview would be necessary to establish whether or not, prior to the accident, the Grievant was properly trained on the vehicle, whether anything established by the accident report demonstrated that the Grievant was negligent, or whether the Grievant, during the Investigative Interview said anything to shed light on her actions on that day. This information was not provided to the Union until the day of the Formal A Meeting which certainly, at best, would hinder the Union's ability to prepare for the Formal A and establish its' contentions based on the evidence available. However, the biggest issue for Management in this case is the failure to provide some of the information at all.

The Union also requested in their RIF, information regarding the maintenance record of the vehicle involved in the accident on August 15, 2018. The Union testified at hearing that the maintenance records were not provided and that the vehicle was a 1987 model, which by any stretch of the imagination is an old vehicle. This testimony was not rebutted, nor was it disputed in the evidence of record. Given the age of the vehicle, it was certainly an avenue to explore for an accident involving an employee who had no previous infractions; if that was the case. There

was also testimony at hearing by the Union's Formal A Representative that he had personal knowledge of the failure of hand brakes on the LLV during his career. Nevertheless, the information requested was relevant to the Grievant's defense and should have been provided; if there were any issues regarding Management's failure to provide those records, such as a delay in their ability to obtain the reports, this should have been brought to the Union's attention immediately and provided as soon as those reports were available.

In their Formal A Decision Letter Management contended that Requested Information was provided at the Formal A level which confirms the Union's arguments about receiving the information late; however, Management does not acknowledge that the vehicle maintenance reports were not provided. Articles 31 provides guidance on information requests:

ARTICLE 31

UNION-MANAGEMENT COOPERATION

Section 3. Information

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information. Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or designee. All other requests for information shall be directed by the National President of the Union to the Vice President, Labor Relations. Nothing herein shall waive any rights the Union may have to obtain information under the National Labor Relations Act, as amended.

(The preceding Article, Article 31, shall apply to City Carrier Assistant Employees.)

The JCAM at Pages 31-1 through 31-3 further clarifies the parties' position on the Union's right to information as follows:

> **Information.** Article 31.3 provides that the Postal Service will make available to the union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of the Agreement, including information necessary to determine whether to file or to continue the processing of

a grievance. It also recognizes the union's legal right to employer information under the National Labor Relations Act. Examples of the types of information covered by this provision include:

- attendance records • payroll records
- documents in an employee's official personnel file
- internal USPS instructions and memorandums
- disciplinary records
- route inspection records
- patron complaints
- handbooks and manuals
- photographs
- reports and studies
- seniority lists
- overtime desired and work assignment lists
- bidding records
- wage and salary records
- training manuals
- Postal Inspection Service Investigative Memoranda (IM)
- Office of Inspector General Report of Investigation (ROI)

To obtain employer information the union need only give a reasonable description of what it needs and make a reasonable claim that the information is needed to enforce or administer the contract. **The union must have a reason for seeking the information—it cannot conduct a "fishing expedition" into Postal Service records.**

Settlements and arbitration awards have addressed the union's entitlement to information in certain specific areas. For example**, the union has a right to any and all information which the employer has relied upon to support its position in a grievance (Step 4, H1C-3U-C 6106, November 5, 1982, M-00316).** Note that the union also has an obligation to provide the Postal Service with information it relies upon in a grievance (Article 15). The union is also entitled to medical records necessary to investigate or process a grievance, even without an employee's authorization, as provided for in Handbook AS-353, Guide to Privacy, the Freedom of Information Act, and Records Management and by Articles 17 and 31 of the National Agreement.

If requests for copies are part of the information request, then USPS must provide the copies (Step 4, H7N-5K-C 23406, May 21, 1992, M-01094). A national prearbitration settlement established that if the union provides the Postal Service with a list of officers and stewards, the Postal Service must indicate which (if any) applied for a supervisory position within the previous two years (National Prearbitration Settlement, H4C-3W-C 27068, February 13, 1990, M-01150). When

the union is provided with information, for example medical records, it is subject to the same rules of confidentiality as the Postal Service.

Cost. The costs which management may charge the NALC for providing information are governed by the Handbook AS-353 [Guide to Privacy, the Freedom of Information Act, and Records Management] Section 4-6.5. While the following Step 4 resolutions cite the ASM they are applicable to the AS-353 (Step 4, H4N-5R-C 30270, May 22, 1987, M-00826 and Step 4, H7C-3B-C 37176, June 26, 1992, M-01141). Currently the AS-353, Section 4-6.5 provides for a waiver of information fees for 1) the first 100 pages of duplication (currently 15 cents per page), 2) the first two hours of manual search time, and 3) the first two hours of computer search time. Furthermore, this section also provides that if the fee does not exceed $10, there is no charge for the information.

Additionally, the parties have agreed that if search fees apply to information requests from the union pursuant to Handbook AS-353, Section 4-6.5; and the "Computer personnel" cost involves "Operator time" and the "Computer processing" is "PC usage", the Postal Service will not charge the union at the higher "Computer personnel" or "Computer processing" rate only because the PC reads stored data from a mainframe computer (Prearbitration, Q01N-4Q-C 07278400, December 5, 2008, M-01698).

The National Agreement and JCAM are clear that **relevant** information must be provided to the Union. Here, in the instant case, there was no "fishing expedition" involving the Union. The information requested was clearly relevant to the Union's attempt to mount a defense for its' member. The maintenance report, if it revealed an issue with the braking system, could have explained the reason for the rollaway. Without the report we cannot establish if it was human error or a possible mechanical error which caused the accident. With a report that ruled out any mechanical error, it would have clearly established the failure of the Grievant to comply with safety rules and regulations regarding rollaway/runaway prevention. Since the report was not provided by Management, that question cannot be answered here; however, the fact that the Union did request the information and it was not provided, clearly established that the Grievant's due process rights were hindered.

Management was correct in their assumptions that, normally where that is a short-term employee who has not built a bank of goodwill by her tenure, immediate placement in a non-pay, non-duty status may be appropriate. However, as in this case, where it was not proven that the Grievant's accident was caused by her failure to observe safety rules and regulations, and not by a

mechanical issue, Management should have considered other options, such as their ***own "Louisiana District Safety Policy".*** That policy requires Management to schedule Driver Improvement Training within 10 days of an accident. Additionally, Article 29 of the JCAM provides guidance on the suspension of driving privileges and the subsequent review intended to determine if the On-duty record of the employee establishes that the employee is an "unsafe" driver. The grievance file is void of any evidence, such as previously conducted Driver's Observations that recorded unsafe acts on the part of the Grievant. This accident alone, in light of the fact that a mechanical issue could not be ruled out, was not "just cause" or even "reasonable cause" for invoking Emergency Placement. Thus, the instant grievance must be sustained.

AWARD

The grievance is sustained. The Grievant shall be immediately returned to duty and made whole for all loss wages and benefits.

Glenda M. August

GLENDA M. AUGUST
Arbitrator

April 20, 2019

New Iberia, LA