REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	*	
between:	*	Grievant: Class Action
United States Postal Service	*	Post Office: Nashville, TN
and	*	USPS Case No: C16N-4C-C 19421771
National Association of Letter Carriers, AFL,CIO	*	NALC Case No: B4-00454-19

BEFORE: Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Betsy Davis

For the Union: Corey Walton

Place of Hearing: Postal Facility, Nashville, TN

Date of Hearing: March 17, 2020

Date of Award: May 23, 2020

Relevant Contract Provisions: Articles 5-15-17-19-31-41

Contract Year: 2016

Type of Grievance: Contract

Award Summary:

This matter involves Management's alleged falsification of clock rings. The evidence in this case proved the initial allegations made by the Union were true. However, the Employer insisted the Union's requested remedy was improper. The grievance is sustained to the extent set forth in the Discussion and Findings 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 17 March 2020 at the postal facility located in Nashville, TN. Testimony and evidence were received from both Parties. A transcriber was not used. The Arbitrator made a record of the hearing by use of a digital recorder and personal notes. The Arbitrator is assigned to the Regular Regional Arbitration Panel in accordance with the Wage Agreement.

OPINION

BACKGROUND AND FACTS:

This is a class action grievance filed on behalf of Letter Carriers working at a Nashville Installation, the Green Hills Station.

This particular matter focuses on a Postal Service document known as an Employee Everything Report. Specifically to this instant grievance, this Report provides a detailed time analysis, via clock rings, of the various job functions performed by the letter carrier throughout their respective tour of duty.

The issue in this case involves the alleged falsification of those clock rings by Management. The record shows this alleged alteration did not result in any direct financial harm

to any of the Letter Carriers. The actual times of the respective tours of duty were not altered. All hours worked by the letter carriers were compensated appropriately. Instead, the allegation involves Management's alleged alteration of the times spent by Letter Carriers while performing the specific job functions associated with the Letter Carrier classification.

The Union contends the Employer clearly violated the Parties Agreement and their requested remedy, cited below, should be granted. Management insists the Letter Carriers suffered no financial harm and any compensation beyond that status quo ante would be punitive in nature and should be denied.

The Parties were unable to resolve this dispute resulting in an impasse being declared by the Step B Team on 21 November 2019.

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. While the Union Advocate opted to summarize their

position at the end of the live hearing, the record was officially closed following this Arbitrator's receipt of a written closing brief by the Employer on 25 April 2020.

JOINT EXHIBITS:

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

1A. Joint Contract Administration Manual (in pertinent part)

2. Grievance Package

UNION'S POSITION:

Initially, the Union references a previous decision from this Arbitrator as it relates to the issue of falsification of clock rings.

It is the contention of the Union that Green Hills Station is the third station in the Nashville Installation that has been caught falsifying clock rings since the Award referenced above was issued.

The Union also claims the evidence will show that the Local Shop Steward requested very specific information, in the form of employee EIN numbers, to pinpoint exactly which Supervisors and Managers were falsifying clock rings and that information was never provided.

According to the Union, the evidence will show that over a period of a few months, Management was caught falsifying over 500 hours of City Carrier clock rings.

The Union also insists the Employer's Step B Team have attempted to make a plethora of dishonest and blatantly false new arguments; as according to the Union, is the habitual method of procedure here in the Nashville Installation for Management's Formal Step A.

It is the Union's perspective that at Formal Step A Management makes very few arguments and sandbags their position until the B-Team.

In the Union's opinion Management has a horrendous record of non-compliance with grievance settlements in the Nashville Installation as it pertains to Article 17 and 31.

The Union claims one of the disputes in this case centers on the remedy for repeated and willful violations of the same contract provision(s), after prior grievances have been settled instructing Management to comply with that provision.

The Union believes it has been established and repeatedly confirmed, that arbitrators have both the right and the responsibility to bring their expertise and judgment to formulate remedies.

The Union references Article 15.3.A in support of their argument. And in that light, the Union expects that Management will exercise good faith and comply with the negotiated contractual provisions.

The Union also relies on the contents of the 2002 Patrick Donahoe letter, labeled M-01517, in support of their position.

Pointing to that document, the Union believes the positions of the Postal Service and the NALC are therefore in perfect agreement. Both Parties expect good faith observance of the negotiated provisions of the contract and compliance with grievance settlements.

The Union believes that when a contract violation occurs for the first time, a remedy to make the affected Parties whole is always appropriate. However, the Union contends when Management receives multiple instructions compelling them to comply with the same provisions(s) and the violations persist then it ceases to simply be a make whole violation.

It is the view of the Union that repetitive violations reveal Management's disregard for its good faith observance requirement in Article 15.3.A.

In the opinion of the Union, their requested remedy is not unjust enrichment or punitive; rather, it is fully supported by the evidence of this record. As argued by the Union, Management has repeatedly failed to abide by the same contractual provision(s) which are the subject of this grievance.

The Union mentions this record contains multiple Step B Decisions, settlements and Management instructions to abide by the same contract provisions that are part of the issue in this case, and repeated failures to abide by the same despite agreement for compliance. The Union presents the latest example is one of the subjects of this grievance.

As argued by the Union, given the egregious repeated violations of cease and desist orders for the Nashville area and instructional resolutions documented in this record as well as the egregious nature of the instant violation, it must be found that a further monetary remedy, in this instance, is not punitive.

In the Union's opinion, their request for an increased remedy simply seeks to return the Parties to an atmosphere where the agreements they sign are honored.

As predicted by the Union, the evidence in this case will overwhelmingly show that Management has failed again to comply with a grievance settlement; that being numerous B-Team and Formal Step A Decisions.

The Union queries as to when will enough be enough here in the Nashville Installation of Management turning their noses up at their directives to comply with these decisions? And the Union wonders what will it take to get someone's attention to force Management into compliance?

As indicated by the Union, the Decisions by DRT Teams, Pre-Arbitration Settlement negotiators and arbitrators are made to be read, studied, understood and complied with.

Yet, in the opinion of the Union, Nashville Management has once again acted as though those decisions have never been rendered. For all of these reasons, the Union requests the following requested remedy be granted:

1. Management at the Green Hills Station shall cease and desist violating Article 19 of the National Agreement and the practice of falsely editing carrier clock rings and utilizing inaccurate time codes.

2. Management be issued an additional cease and desist order for violating Article 15 of the National Agreement and Postal Service Policy Letter Step 4 (M-01517) for failing to comply

with grievance resolution/settlements in the Nashville Installation.

3. That for EIN 02380028 failure to comply with a cease and desist order and egregious altering of clock rings for over a period of months, the Union request to act as a deterrent that each Letter Carrier and CCA in the Green Hills Station be given a one-time lump sum payment of $500 to ensure contract compliance.

4. That for EIN 03598257 failure to comply with a cease and desist order and egregious altering of clock rings for over a period of months, the Union request to act as a deterrent that each Letter Carrier and CCA in the Green Hills Station be given a one-time lump sum payment of $500 to ensure contract compliance.

5. That for EIN 03524194 failure to comply with a cease and desist order and egregious altering of clock rings for over a period of months, the Union request to act as a deterrent that each Letter Carrier and CCA in the Green Hills Station be given a one-time lump sum payment of $500 to ensure contract compliance.

6. That for EIN 04250109 failure to comply with a cease and desist order and egregious altering of clock rings for over a period of months, the Union request to act as a deterrent that each Letter Carrier and CCA in the Green Hills Station be given a one-time lump sum payment of $500 to ensure contract compliance.

7. Furthermore, to act as a deterrent in efforts to ensure contract compliance management compensate Branch 4 via money order a one-time lump sum $500.00 for the resources utilized for the continual filing of grievances over the same settled dispute in Arbitration and Pre-Arbitration Settlements for Management continually violating Article 15 and 19 of the National Agreement and Postal Service Policy Letter (M-01517).

8. All data collected, and/or maintained related to any Letter Carrier's clock rings during the period cited in this grievance shall be null and void for data record keeping and shall not be relied upon in any future evaluations.

9. Management be issued an additional cease and desist from failing to provide information in a timely manner and compensate Branch 4 via money order a one-time sum lump equal to $500.00 for the resources utilized for the continual filing of

grievances over the same settled disputes for Management continually violating Article 17 and 31 of the National Agreement and Postal Service Policy Letter (M-01517).

10. That for Management's failure to comply with a cease and desist order when failing to provide information, the Union request to act as a deterrent that each Letter Carrier and CCA in the Green Hills Station be awarded $20.00 a calendar day until Management complies with the information request or date of decision to ensure contract compliance.

11. All payments associated with this case be processed as soon as administratively possible, but no later than fourteen (14) days from decision and proof/receipt be provided to Formal A Representative Jason Leath within that time.

12. Whatever Step B Team or Arbitrator deems appropriate.

COMPANY'S POSITION:

Management insists the issue in this case is solely whether or not the Union is entitled to their punitive remedy request sought in their Step B decision.

The Employer notes the framing of the issues and offers their version of the facts of this case, as described by them as a time line of sorts.

It is the claim of the Agency the Union elevated this matter to arbitration citing failure to comply with a previous decision labeled C16N-4C-C 18266462 which was issued specifically at another location. The Service argues this instant case does not involve the Woodbine Station.

Management takes the position that no employee in Green Hills Station was harmed or injured. The Employer predicts the Union will simply be unable to prove an intentional, malicious or willful misconduct.

Therefore, it is the mindset of the Employer that the Union's requested remedy for each Letter Carrier in the Green Hills Station to receive a lump sum payment of $2000 "to act as a deterrent" simply cannot be understood to be anything other than a punitive remedy for employees who were gainfully employed.

The Employer asserts there is no evidence in this case of any intentional "falsifying" or "manipulating." Management suggests that if a failure to comply with previous grievance settlements/arbitrations caused a loss of wages or benefits, then compensation may be warranted.

However, according to the Employer, absent evidence in this case file causing an actual monetary loss of wages or benefits, then compensation may be warranted. As suggested by the Agency, absent evidence in this case file causing an actual monetary loss to the Grievant(s), an instructional remedy would be more suitable.

It is the position of the Employer that for a punitive award to even be considered in this instant case, there must be proof of malice and willful misconduct on Management's part, or any harm to the members of this class action. The Service believes that granting such an award would be altering, amending and modifying the National Agreement. It is the claim of the Agency the Union believes this arbitrator will continue to grant punitive remedies.

Management believes the Union shoulders the burden of proof in this instant case. The Service contends there is no evidence in the file to support the remedy they are seeking. The Service points to the Union's Formal A Contentions alleging that Management "intentionally utilized improper time coding for letter carrier employees and city carrier assistants to falsify times."

However, according to the Service, these allegations are not substantiated. The Employer notes the issue statements identified on the PS form 8190 as presented at Informal Step A, as well as advanced to the subsequent Steps, fail to even identify the time period the Union alleges the violation to have occurred. And as the Agency adds, there are no specific dates or pay periods, just a windfall allegation to inflate the remedy sought at this hearing.

The Service argues there is no evidence in this case file indicating that any Employee failed to be compensated for time worked.

Management mentions the Union describes the instant grievance as an ongoing violation; however, the problem with that argument is that the Union seeks to convince this Arbitrator that clock rings from January 2019 could possibly be considered as a non-compliance of a Pre Arb that wasn't even

signed until June 18, 2019. It is the argument of the Employer that is would be impossible to not comply with an Agreement that didn't even exist until almost six months later.

Furthermore, in the Agency's opinion, it is well known that even in an ongoing violation, the remedy being requested can only be considered for 14 days prior to the filing of the grievance. As implied by the Service, this is further evidence of the Union's attempt to escalate this punitive remedy they are seeking in this case.

The Employer insists that many of the grievance settlements the Union included in this case file are Informal and Formal A Settlements, which are not precedent setting as stated in the Joint Contract Administration Manual. Management goes on to cite the pertinent language in the Joint Contract Administration Manual, specifically as it relates to Article 15.

It is the opinion of the Agency the Union is attempting to use prior settlements as evidence of a pattern of willful disregard of the Contract, which the Contract specifically precludes unless the Parties have specifically so agreed.

In the view of Management, many of these settlements have been in other case files that have been adjudicated at arbitration. That causes the Employer to ask how many times is Management on the hook for these same settlements.

The Agency references a National Award, labeled H1C-NA-C 97/123/124, authored by Arbitrator Richard Mittenthal as it relates to remedy. In that regard, the Employer notes that generally in a breach of contract action, the injured party is entitled to a compensatory remedy that replaces what is lost; nothing more. And in this specific case, the Agency argues that nothing was lost.

According to the Employer, the Union has argued the impact of the alleged falsification of clock rings in relation to Article 41, stating Carriers have been deliberately placed in time codes to misrepresent the amount of time they are performing their duties in an effort to manipulate the evaluation of future route adjustments.

The Employer Advocate is eager to learn today just how the Union intends to prove that allegation, in that, Management has already sought to remove that request from the remedies sought in arbitration.

In an effort to resolve this grievance and move forward past these issues, Management asserts they have agreed that all data cited in this grievance here today will not be included for data record keeping nor relied upon in any future route evaluations.

Management notes they do not dispute that weekly service/safety talks are to be included on line 21 of the Form 1838-C during a route inspection, however, anything over and above the time credit allotted for such during the inspection would not be built into the route; resulting in a clock ring move to training time being appropriate.

According to the Agency, the Union failed to submit or request any information relative to route credit received at any route inspection in the Station. It is the Employer's opinion this information is imperative in determining the base times attributed to each route for all of the operational codes seen in the TACS Employee Everything Report.

Management references a prior Decision of this arbitrator as it relates to Article 15.4.A.6.

The Employer insists the cash payments the Union is seeking are unwarranted, contrary to established law and beyond the authority of the arbitrator.

The Agency believes the remedy the Union seeks is plainly punitive in nature and the well-established general rule of law is that punitive or exemplary damages are not available as a remedy for a contract breach.

In the Employer's opinion, this is true even where a breach is egregious or aggravated; contractual damages are intended to make a party whole, not to punish a defendant. From the Agency's viewpoint, it is a principle recognized and restated by a number of National Postal Arbitrators. It is also the belief of the Employer the law is also clear that because punitive damages are extraordinary remedies not generally available in contract action, the right to such a remedy will not be inferred from general contract language; there must be specific language in the contract authorizing punitive damages.

Management argues the only language in the Parties Agreement relative to punitive awards is found in Article 41, regarding opting, however, in this case, the Union is seeking to gain through Arbitration what they failed to acquire in negotiations.

The Employer goes on to point out the Joint Contract Administration Manual, Article 41 as it relates to their position regarding a punitive remedy.

According to Management the Union has stated they "cannot stress enough that there is no request for punitive damages at issue here. There is simply a request for incentive for compliance with Article 15.3.A and policy violations resulting from management's refusal to comply with prior instructional resolution."

The Agency believes the Union concedes, via carefully crafted linguistics, that the remedy it is seeking is punitive in nature and intended to punish the Postal Service for what it claims are repeated violations of cease and desist orders.

In the Employer's opinion, the Union additionally claims that the remedy it seeks is to reimburse the Union for costs it was forced to incur to ensure compliance with the contract. Again, in their view, the Postal Service has already paid the Union for steward time spent on adjusting grievances and presenting this case at Informal Step, Formal Step A and Step B, as provided under the contract.

Therefore, according to the Employer, any additional compensation for those activities would amount to a punitive windfall for the Union.

Management reiterates that payment to the Union of costs and expenses not agreed to by the Parties under the Contract, exceeds the authority of the arbitrator and amounts to a punitive sanction.

The Employer asserts that punitive remedies are particularly disfavored in the context of labor arbitrations and are rarely permissible under the Labor Management Relations Act. Furthermore, the Agency contends an award of punitive damages against the Postal Service is barred by principles of sovereign immunity.

Management insists that both Federal Courts and Postal Service Arbitrators at the National Level have held that punitive remedies are not available for breaches of labor agreements. It is the Employer's perspective that the vast weights of authority holds that punitive awards in labor arbitrations are improper generally and detrimental to

harmonious labor relations and District Courts have not been reluctant to vacate such awards.

The context of the Agency's also includes the NALC Contract does not provide for awards of punitive damages and because such awards are improper in labor arbitrations and impermissible against the Postal Service, the award of such damages directly to the Union raises the serious concerns under Section 302 of the Labor Management Relations Act, which establishes the general rule prohibiting payments to Unions by employers and prohibiting requests for such payments by Unions.

And as suggested by the Service, even if the Union could overcome all of the hurdles outlined herein, the conduct of the Postal Service in this case amounts to nothing more than repeated breaches of a contract, for which there is already a contractually specified remedy.

According to the Employer's version of events, the Supervisors who allegedly failed to comply with the contract in this case were doing their best with the resources available to them to fulfill the statutory obligation of the Postal Service to deliver the mail.

In the opinion of the Service there simply is not the extreme, outrageous and wanton and willful misconduct necessary to support an award of punitive damages. Management also interjects that, particularly at a time when the Postal Service faces extraordinary financial pressures, windfall cash awards to the Union inflict significant damage to Postal Service operations and undermine the public interest.

The Agency is of the opinion that no employee in Green Hills Station was harmed or injured. The Employer predicts the Union simply will not be able to prove any intentional, malicious or willful misconduct.

Therefore, according to the Service's argument, the Union's requested remedy for each Letter Carrier in the Green Hills Station to receive a lump sum payment of $2000 to act as a deterrent simply cannot be understood to be anything other than a punitive remedy for Employees who were gainfully employed.

The Employer suggests that if a failure to comply with previous grievance settlements/arbitrations caused a loss of wages or benefits, then compensation may be warranted. Absent evidence in this case file causing an actual monetary lost to

the Grievant(s), the Employer believes that an instructional remedy would be more suitable.

Management notes that a Pre-Arbitration Settlement has been fulfilled. As of today, according to the Employer, there are no current grievances that Management has been made aware of for this same allegation in the Nashville Installation.

As mentioned earlier by the Agency, there must be proof of malice and willful misconduct on Management's part, or any harm to the members of this class action. And to grant such a punitive award, would be altering, amending and modifying the National Agreement.

The Agency requests the instant grievance be denied in its entirety.

THE ISSUES:

1. Did Management violate Article 5, Section 665 of the Employee Labor Relations (ELM), Step 4 (M-00605), Step 4 (M-01664), Section 126.42 and Chapter 2 of the M-39 Handbook, M-32 via Article 19 of the National Agreement at the Green Hills Station in the Nashville Installation by falsely editing Letter Carrier time clock rings? If so, what is the appropriate remedy?

2. Did Management violate Articles 15, Section 3.A, and Postal Service Policy Letter (M-01517) via Article 19 of the National Agreement by failing to comply with the grievance resolution/settlement for Grievance C16N-4C-C 18266462, C16N-4C-C 19079205, and C16N04C-C 19099998 in the Nashville Installation? If so, what is the appropriate remedy?

3. Did Management violate Articles 17, 31, 41, 15 Section 3.A, and 19 of the National Agreement via Postal Policy Letter (M-01517) by failing to comply with grievance resolution/settlements for the Nashville Installation concerning their continued violations of failing to provide the Union with requested information and compliance with grievance resolutions/settlements? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS:

ARTICLE 5
PROHIBITION OF UNILATERAL ACTION

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE

ARTICLE 17
REPRESENTATION

ARTICLE 19
HANDBOOKS AND MANUALS

ARTICLE 31
UNION-MANAGEMENT COOPERATION

ARTICLE 41
LETTER CARRIER CRAFT

DISCUSSION AND FINDINGS:

In preface, I would first like to provide insight into the Employer Advocate's missive in their opening statement with the same subject again resuscitated via Management's closing brief. My sensitivity regarding compensatory awards has been well documented in many of my past decisions. To that end, I would like to summarize my considered opinion on this very subject by first citing a previous Award of mine dated **18 February 2020** and labeled **C16N-4C-C 19297067:**

> **"The Agency insisted that escalating remedies and punitive awards violate the Parties Agreement. Several precedent setting Awards to that end were introduced, however, none were specifically on point to this specific issue.**

In a 1989 National Award, (H1C-NA-C 97/123/124), Arbitrator Richard Mittenthal stated:

> **"... the purpose of a remedy is to place employees (and Management) in the position they would have been in had there been no contract violation. The remedy serves to restore the status quo ante."**

And in 1994, Arbitrator Mittenthal provided a similar message in another National Award styled H7C-NA-C 36/132, HOC-NA-C 28:

> **"It is generally accepted in labor arbitration that a damage award, arising from a violation of the collective bargaining agreement, should be limited to the amount necessary to make the injured employees whole. Those deprived of a contractual benefit are made whole for their loss. They receive compensatory damages to the extent required, no more and no less." (emphasis added)**

I agree with Arbitrator Mittenthal that a remedy serves to restore the status quo ante. In the second Award, Arbitrator Mittenthal stops short of making that "status quo ante" mandatory by the use of wording such as "generally accepted" and "should be limited." Such mandatory dialogue indicates the intent of Arbitrator Mittenthal was not to eliminate the use of punitive awards in certain situations. However in my considered opinion, this is certainly not one of those cases. The fact of the matter is, the Union was unable to show that a delay in the agreed upon training proved harmful to any member of the bargaining unit.

In many of my prior decisions regarding non-compliance, I have made corrective monetary awards when it was shown the non-compliance violation was not only repetitive in nature but also harmed one or more members of the bargaining unit."

To that end and under such National Level guidelines, corrective monetary remedies to bargaining unit Members as well as the Local Union are certainly appropriate, albeit under very specific conditions. Those circumstances are identified by several examples including delayed payments of previous grievance/arbitration settlements and/or clear defiance of cease and desist orders. And when a matter meets certain criteria, corrective remedies are appropriate. Such awards, not only from me, but many other Postal Arbitrators, have survived National negotiations without restriction from the chief negotiators via the addition of any contractual language through several bargaining sessions.

Regarding this instant case, the Union relied on two previous decisions I authored at the Nashville Installation, both including cease and desist orders. However, both orders were issued to the specific Stations, Woodbine **(C16N-4C-C 18266462)** and West Station **(C16N-4C-C 19297067)**. And with that

in mind, the cease and desist orders issued in both of those Decisions are non-applicable to this instant case.

The issue statements also indicate C16N-4C-C 19079205 and C16N-4C-C 19099998 include cease and desist orders. Those settlements become more applicable. The Pre-Arbitration Settlement in those cases is 13 June 2019 and the origin of the instant case is 27 August 2019. Management should have been well aware of the cease and desist orders that existed in those two previous cases. It seems this falsification occurred concurrently at various Stations across the Nashville Installation. Similar remedies should have been applied in this instant case.

Whatever arguments, objections or contentions the Employer brings forth could be easily offset via mere contractual compliance. Cease and desist means stop. One order should certainly be sufficient. The Union need not accumulate a canasta deck in order to take hold. And in that same vein, I understand there are sometimes administrative challenges to timely payments being made. That can also be resolved by Management alone. There is simply no excuse for non-compliance or delayed grievance payments.

The Employer, in their opening statement admitted to **"repeated breaches"** of the Parties Agreement yet argues **"the Postal Service faces extraordinary financial pressures."** It goes without saying that the elimination of repeated breaches would certainly alleviate some of those self-imposed financial pressures.

The Employer also argued that many of the grievance settlements the Union included in the file are Informal and Formal A settlements, which are not precedent setting as stated in the JCAM. The Joint Contract Administration Manual notes the following language:

> **Formal Step A Decision. The parties must make the Formal Step A decision and complete the Joint Step A Grievance Form on the day of the meeting, unless they agree to extend the time limit. Copies of the completed form must be sent to the steward and supervisor who failed to resolve the dispute at Informal Step A. Resolutions and withdrawals at Formal Step A do not establish a precedent unless the parties specifically agree otherwise. If the grievance is resolved, copies of the resolution must be sent to the steward and supervisor who discussed the grievance at Informal Step A.**

Specifically, the above language states that **"Resolutions and withdrawals at Formal Step A do not establish a precedent unless the parties specifically agree otherwise."** That statement speaks for itself. And in my considered opinion, if the Parties

agree that a cease and desist order is included in a Formal A Settlement, the intent of the Parties was clearly to specifically establish a precedent. There would be no other reason to include a cease and desist order in any settlement if the express intent of the Parties was not to establish and set precedent. The same would hold true for a Step B Decision.

In this case, there is absolutely no doubt the Employer violated the Parties Agreement via the falsification of clock rings. In fact, at the hearing, Management acknowledged that clock rings were changed. However, the Employer Advocate asserted that harm did not occur to any of the Letter Carriers and all the clock rings that appear will not be counted toward any route adjustments. There is no doubt Management violated the Parties Agreement via the alteration of clock rings for more than some five hundred (500) hours. Such an action is absurd.

The Union Steward acknowledged the record is devoid of personal statements from the affected Letter Carriers. And normally it would be the Union's responsibility to verify claims or allegations via some form of evidence. However, in this case, the Employer Advocate satisfied the Union's requirement in that regard by certifying that a violation did occur; the clock

rings were inappropriately altered. So, in that respect, the Union's burden was easily satisfied.

It was obvious that none of the Letter Carriers impacted by this falsification suffered any financial harm. However, gone undetected, this falsification would have produced improper route adjustments as a result of these time misalignments at this Green Hills Station. And had that occurred the direct impact on individual Letter Carriers would have certainly produced chaos. So in that light, while not financial, each Letter Carrier would have been adversely affected via the terms and conditions of employment, albeit, a direct violation of Article 5.

This act wasn't an accident or mistake, instead, willful and wanton Management conduct. While Management admits to the violation, such acknowledgement certainly does not negate its impact on all of the Letter Carriers working at the Green Hills Station. In my considered opinion, falsification is clearly a form of theft. In this case that theft was willful. And when one enters such an arena, mere admission fails to simply erase the act as though it never occurred. If this were a removal action involving theft by a member of the bargaining unit, Management would certainly demand the separation be upheld.

The Union also insisted that certain requests for information were denied. In this particular case, I was not convinced the Union met the burden of proof in that regard. However, Article 15 demands full disclosure. The failure of either Party to disclose all facts regarding any case, certainly hampers the ability of the same to present a formidable defense. Irrespective of any information request, the end result in this case would have been the same.

The grievance is sustained however, the Union's requested remedy will be modified to the following:

1. Nashville Installation Management shall immediately cease and desist from falsifying, manipulating and intentionally using inaccurate time codes when inputting timekeeping clock ring entries in the TACS system.

2. Management shall conduct time and attendance policies in accordance with all applicable Handbooks and Manuals, to include Article 19 of the National Agreement, The Employee Labor Relations Manual and the F-21 Time and Attendance Handbook.

3. Compensate Branch 4 via money order a one-time lump sum $500.00

4. All data collected, and/or maintained related to any Letter Carrier's clock rings during the period cited in this grievance shall be null and void for data record keeping and shall not be relied upon in any future evaluations.

5. Each Letter Carrier and City Carrier Assistant in the Green Hills Station whose clock rings were inappropriately altered shall be awarded a single lump sum of one hundred ($100.00).

6. All payments associated with this case shall be processed as soon as administratively possible, but no later than sixty (60) days from receipt of this decision and proof/receipt be provided to the Formal A Representative.

It is so ordered.

This is not a punitive award. Instead, it is an award that hopefully will encourage Management to refrain from future similar violations.

I shall retain jurisdiction over this case for 90 days from the date of this decision.

AWARD

The Grievance is sustained and the remedy for the contract violation is as follows:

1. Nashville Installation Management shall immediately cease and desist from falsifying, manipulating and intentionally using inaccurate time codes when inputting timekeeping clock ring entries in the TACS system.

2. Management shall conduct time and attendance policies in accordance with all applicable Handbooks and Manuals, to include Article 19 of the National Agreement, The Employee Labor Relations Manual and the F-21 Time and Attendance Handbook.

3. Compensate Branch 4 via money order a one-time lump sum $500.00

4. All data collected, and/or maintained related to any Letter Carrier's clock rings during the period cited in this grievance shall be null and void for data record keeping and shall not be relied upon in any future evaluations.

5. Each Letter Carrier and City Carrier Assistant in the Green Hills Station be awarded a single lump sum of one hundred ($100.00).

6. All payments associated with this case shall be processed as soon as administratively possible, but no later than sixty (60) days from receipt of this decision and proof/receipt must be provided to the Formal A Representative.

May 23, 2020
Fayette County, PA