

REGIONAL ARBITRATION PANEL

 In the Matter of Arbitration)

Between)

United States Postal Service)

And)

National Association of Letter Carriers,)
AFL-CIO)

BEFORE: Glenda M. August, Arbitrator

Grievant: Class Action

Post Office: Clinton, MS

USPS No.: G16N-4G-C 20139761

Union No.: R8001C2020

APPEARANCES:

For the U.S. Postal Service

Joe Walker

For the National Association of Letter Carriers

Corey Walton

Place of Hearing: 406 E South St., Jackson, MS 39205

Date of Hearing: February 5, 2021

Briefs Received: March 8, 2021

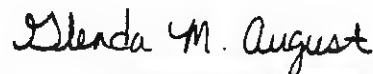
Date of Award: April 21, 2021

Relevant Contract Provision: Article 19

Contract Year: 2016 - 2019

Type of Grievance: Contract

AWARD: The grievance is sustained. Management, specifically Postmaster Kirby Ragsdale, violated the National Agreement, in particular, the Joint Statement on Violence and Behavior in the Workplace, by the pattern of behavior exhibited prior to, and on the incident date, January 27, 2020. The Postmaster's history of bullying and intimidation, at the expense of "making the numbers", his only defense, was a violation of the parties' intent in the JSOV, as well as the Postal Service's Policy on Workplace Harassment and the other postal policies cited. The Union's requested remedy, as defined in the body of this Decision is hereby awarded. This Arbitrator shall retain jurisdiction for a period of 120 days to ensure compliance with this Award.



 Glenda M. August
Arbitrator

I. ISSUE (s)

1. Did management specifically Kirby Ragsdale, violate 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 with his action on January 27, 2020 and if so, what is the remedy?
2. Did management, specifically Kirby Ragsdale 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 Clinton Installation violated 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 specifically Kirby Ragsdale 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-C19265929, along with Step B decisions for grievance numbers H01N-4H-C08011918, H06N-4H-C09140703, G11N-4G-C14338197, G11N-4G-C1705143, G16N-4G-C18197136 and G16N-4G-C19097639 and if so, what should the remedy be?
5. Did management at the Clinton Post Office violate Articles 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 15
GRIEVANCE-ARBITRATION PROCEDURE**

Section 1. Definition

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

**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 Union filed the instant grievance on behalf of the National Association of Letter Carrier (NALC) members of the Clinton, MS. Post Office. The Union alleges that Management at the Clinton Post Office, specifically, Clinton Postmaster, Kirby Ragsdale has repeatedly violated the Joint Statement on Violence and Behavior in the Workplace, by way of his threatening manner which includes the bullying of Letter Carriers in that office. The grievance in the case at bar was allegedly precipitated by Mr. Ragsdale threatening and belittling a carrier in front of postal business customers. The Union claims that carriers have been bullied, harassed and intimidated by Postmaster Ragsdale, despite numerous prior instructions and settlements.

The Union maintained in their arguments that the violations by Postmaster Ragsdale are so serious that they cannot be allowed to continue. The Union also contended that Management failed to meet at Informal Step A and failed to provide requested information. The Service maintained that the Postmaster is simply managing the office, and the Carriers are only perceiving it as harassment. They further contended that Management has not violated any policies, and the Union is only attempting to have Manager Ragsdale fired.

The parties were unable to resolve their dispute and the grievance was appealed to arbitration; a hearing was held on February 5, 2021 at the Jackson, Ms. Post Office. Following a presentation of the evidence, the parties requested the Arbitrator render a decision in accordance with the terms of the 2016-2019 National Agreement between USPS and NALC.

V. UNION'S CONTENTIONS

*****The parties withdrew issue number 5 from the Step B Decision; the remaining four issues remain as documented in this Award.**

The Union contended that the case at bar is one involving workplace violence and non-compliance with the “**Joint Statement on Violence in the Workplace**”, an Agreement which was entered into by the national parties in 1992. According to the Union, Clinton, Ms. Postmaster, Kirby Ragsdale is accused of harassment, intimidation and bullying of letter carriers in that office, and is guilty of some of the most revolting and appalling examples of continued inappropriate behavior.

It was the Union's position that the incident which led to the filing of the instant grievance, was the last straw; however, they noted that the grievance file is daunting. They argued that the evidence of record contains over eighty statements, sixty-two surveys and interviews, ten Step B Team decisions, five Workplace Climate Surveys, mandated training courses for Mr. Ragsdale, Police Restraining Orders, Postal Inspection Service Reports, and several pre-arbitration agreements; all regarding Postmaster Ragsdale's continued unacceptable behavior.

The Union asserted that the NALC, other postal unions, the United States Postal Service, and three postal supervisor's organizations, created and signed the Joint Statement on Violence and Behavior in the Workplace, in February 1992. According to the Union, the Statement (JSOV) was drafted in a meeting held in the wake of the tragic shootings of postal employees in Royal Oak, MI, in November 1991. The Union maintained that in the statement, the organizations committed to dignity, respect and fairness for all postal employees as a fundamental right. The Union further maintained that they also promised to rid the Postal Service of harassing, intimidating, abusive behavior which led to workplace violence, and they promised to deny rewards to those persons who violated that promise, as well as remove repeat offenders from the Postal Service. The Union noted that six (6) months after signing the initial Statement (JSOV),

the parties issued a second joint statement, committing to continue their dialogue and pursue the mandate of the original statement to foster a safer, more harmonious and productive workplace.

According to the Union, Manager Ragsdale's behavior has garnered multiple attempts on the part of the local parties to curb his abusive behavior. They contended that there have been climate surveys conducted and interventions held; as well as Step B team decisions mandating this Manager to "cease and desist" violating the JSOV. The Union asserted that the National Business Agent opened dialogue with labor officials from the Area office as well as the District and Local levels, to no avail. The Union maintained that their efforts have fallen on deaf ears.

The Union argued that Mr. Ragsdale blames everyone else for his actions (and the issues he faces in the case at bar); Management, the Union, the Step B Team, the NBA, the local shop steward, letter carriers and even postal customers, but not himself. They further argued that this Postmaster cannot escape the documented evidence that he has chosen to bully, intimidate, degrade, harass and terrify City Letter Carriers for more than thirteen years; however, the Union maintained that the last straw came on January 27, 2020 when he accompanied CCA Carrier, Merry Owens on her route.

On that date, the Union contended that Kirby Ragsdale, while in a place of business, began berating CCA Owens so loudly that several postal customers came out of their office to investigate. According to the Union, what those customers witnessed was Postmaster Ragsdale verbally abusing Ms. Owens, to the point of tears, at which time the customers intervened on her behalf. The Union asserted that two of those customers actually testified at hearing, and their statements as well as the statement of Carrier Owens, and other employees, are provided in the grievance file as evidence of Mr. Ragsdale behavior. The Union contended that these customers were so concerned that they intervened for the carrier and they provided the following statement:

We are writing to express grave concern regarding the display of unprofessionalism of Postmaster Kirby Ragsdale that we witnesses (sic) on Monday, January 27, 2020.

On this particular day there was a very loud abrasive male voice overhead (sic) in our building. So loud and alarming, that Tammie Patterson left her desk to go see with (sic) the commotion was all about. When Tammie reached the foyer, all three USPS employees were standing in the foyer but Mr. Ragsdale tone and conversation was very demanding to Ms. Owens...

The true complaint is the unprofessionalism and lack of respect that Mr. Ragsdale displayed with Ms. Owens in a place of business that was not his and in front of customers. He was uncomfortably rude and abrasive and it was obvious that Ms. Owens was intimidated (sic) by Mr. Ragsdale. She was almost in tears, very noticeable by Tammie Patterson and Keisha Robinson. Ms. Owens is ALWAYS very professional when she comes into our office, as are all other USPS employees with the exception of this encounter with Kirby Ragsdale...

A certain level of professionalism is expected more from someone in his position, rather than an obvious blatant abuse of power.

The Union contended that not only does Mr. Ragsdale disrespect, belittle, intimidate, harass and bully carriers, but the January 27, 2020, incident shows how it now reflects badly on the Service itself by the treatment of postal customers in their place of business. The Union further contended that there is *no excuse* for such behavior from any employee, much less someone in a position of authority. The Union cited the ELM at Section 665.16 where it speaks to Behavior and Personal Habits expected of postal employees and states:

665.16 Behavior and Personal Habits

Employees are expected to conduct themselves during and outside of working hours in a manner that reflects favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it does require that postal employees be honest, reliable, trustworthy, courteous, and of good character and reputation. The Federal Standards of Ethical Conduct referenced in 662.1 also contain regulations governing the off-duty behavior of postal employees. Employees must not engage in criminal, dishonest, notoriously disgraceful, immoral, or other conduct prejudicial to the Postal Service. Conviction for a violation of any criminal statute may be grounds for disciplinary action against an employee, including removal of the employee, in addition to any other penalty imposed pursuant to statute.

The Union argued that Mr. Ragsdale's behavior on January 27, 2020, did not reflect favorably on the Postal Service, and was in direct violation of the ELM and Federal Standards, including ELM section 665.24 which states:

665.24 Violent and/or Threatening Behavior

The Postal Service is committed to the principle that all employees have a basic right to a safe and humane working environment. In order to ensure this right, it is the unequivocal policy of the Postal Service that there must be no tolerance of violence or threats of violence by anyone at any level of the Postal Service. Similarly, there must be no tolerance of harassment, intimidation, threats, or bullying by anyone at any level. Violation of this policy may result in disciplinary action, including removal from the Postal Service.

The Union noted that the postal policy cited in ELM 665.24 states that it is an unequivocal policy and there can be no exceptions to the rule by anyone; there can be no tolerance of harassment, intimidation, threats or bullying by *anyone* at *any level*. It was the Union's position that Postmaster Ragsdale knows this rule very well because he has been made aware of the rule numerous times as well as the consequences for breaking the rule, which could include removal from the Postal Service. The Union emphasized that Mr. Ragsdale has a *long* history of violence, bullying, harassment and lack of respect, in every installation where he has worked.

The history of Mr. Ragsdale's behavior is documented in the numerous grievances filed and complaints made against Mr. Ragsdale about the working environment and the behavior which employees are subjected to on a daily basis. The Union contended that in 2008, District Management ordered a climate survey report, where an assessment team surveyed 25 employees, and found major issues such as; a lack of respect, hostile work environment, harassment, no dignity and respect, low morale, and a fear of retaliation. According to the Union, the report concluded by stating that the "employees feel hopeless that nothing will be done", and "Mr. Ragsdale had the 'green light' to do as he wished". The Union noted that this was an accurate perception since Management has not taken any action to correct the situation.

It was the Union's contention that just a short eight (8) months after that climate survey, Mr. Ragsdale was "back at it" (they argued that he never actually stopped), when he held a "threatening" service talk in front of 36 employees. In that talk, the Union contended that Mr. Ragsdale threatened the employees with Removal because they were not "making the numbers". In the talk, the Union asserted that Mr. Ragsdale stated "*that carriers really needed to think about whether they wanted to work for the postal service because they were going to hate coming to work every day*". Following the interaction, the Union contended that the DRT placed Manager Ragsdale on notice, informing him of the Joint Statement on Violence (JSOV) in the workplace in their decision. The Step B Team ordered training for Mr. Ragsdale in their resolution, yet he has failed to take heed to the opportunities provided for him to change his behavior in the workplace, and has openly and defiantly chosen not to heed the instruction since 2009.

The Union maintained that just 8 months later, Mr. Ragsdale had another incident on October 13, 2009, and in an effort to be corrective, the DRT ordered additional training and they reiterated the JSOV, but to no avail. Over the years, there have been numerous incidents with the

common denominator being Mr. Ragsdale, which is documented in the case file, contended the Union. They argued that carriers were so disturbed and in searching for help, one wrote his Senator back in 2012 asking for intervention, yet the continued behavior exhibited by Mr. Ragsdale demonstrates that he never stopped harassing, intimidating, threatening, and bullying employees. The Union asserted that, in October 2012, there was another environment assessment, conducted in Mr. Ragsdale's office, by both Management and the NALC, which surveyed twelve (12) employees; they maintained that there were major issues found regarding employees and customers. The Union stated that the report concluded with the recommendation that Management adhere to the contract, treat people with respect and for Kirby Ragsdale to not manage people. They noted that on November 2, 2012, Mr. Ragsdale received a Letter of Warning, but denied any wrongdoing based on that climate assessment; he blamed the Union and Labor Relations, who were "out to get him".

According to the Union, higher-level Management has been fully aware of the behavior exhibited by Mr. Ragsdale, but has dismissed his actions without investigation. They contended that the evidence of record goes on and on, regarding the same issues throughout the years, leading up to the subject incident in the instant case. The incident on January 27, 2020, was so concerning, contended the Union, that the National Business Agent (NBA) decided to appoint two outside stewards to investigate and handle the instant grievance; Cliff Stoddard, as Informal A and Jason Atchley as Formal Step A representatives.

The Union noted that Mr. Stoddard was met with pushback from Postmaster Ragsdale, and he contended that Mr. Ragsdale blocked his attempts to meet at Informal Step A by intercepting the emails destined for the office's Supervisor. According to Mr. Stoddard, the Postmaster himself responded to the Union's attempts to meet, with the same bullying behavior he has exhibited throughout his postal career. The Union contended that Mr. Atchley testified at hearing that as a Special Steward assigned to this case, he met with Postmaster Ragsdale regarding the January 27, 2020 incident, and noted that the affected CCA resigned from the Postal Service seven and one-half (7½) months later. This Union witness testified that the Joint Exhibit 2, Page 34 provides a list of actions taken against Mr. Ragsdale, and noted that there were ten (10) cases against this Postmaster at different Post Offices.

Mr. Atchley stated that the Step B Team has found Mr. Ragsdale in violation of the JSOV on several occasions, and he has not changed his behavior. Mr. Atchley further testified that Manager Ragsdale uses curse words and intimidation; words like “f**k you”, and “mother f**king ass”. According to this witness, even more troubling was the fact that Mr. Kirby referred to himself in the third person, on numerous occasions while communicating with carriers, stating “There is a big Kirby and a little Kirby and you don’t want to meet little Kirby”. He contended that Mr. Ragsdale has resorted to cursing, intimidation, harassment, threats, and discussing sex with carriers. The Union asserted that Mr. Atchley has documented evidence of Mr. Ragsdale’s history of vile and abusive behavior toward carriers as well as of his reprehensible behavior towards women, homosexuals, African Americans and everyone else with whom he comes in contact. Finally, Steward Atchley argued that the Union requested a copy of the Richard Ridley Report, but Management failed to provide the requested information in violation of the National Agreement. The Union asserted that the Arbitrator should draw a negative inference from the Service’s action to withhold that information.

It was the Union’s position that the instant grievance is about “behavior”; a pattern of behavior exhibited by Management officials at all levels of the Mississippi District. They contended that it is particularly about the pattern of behavior shown by Mr. Kirby Ragsdale at several Post Offices in the Jackson, Mississippi area, that, according to the JSOV, will not be tolerated by the Postal Service and is also a violation of Federal Statutes of ethical code. They further contended that removing Postmaster Ragsdale from a position of managing carriers is not only warranted, but is necessary to protect the integrity of the Postal Service. The Union cited the following excerpts from the Joint Statement:

...that there is no excuse for and will be no tolerance of harassment intimidation, threats, or bullying by anyone.

“Making the numbers” is not an excuse for the abuse of anyone. 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 position.

The Union further cited the final section of the JSOV which reads:

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 over 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.

It was asserted by the Union, that the days are long past where they could seek help from Management concerning Mr. Ragsdale's well-documented history of harassment, intimidation, threats, and bullying. They argued that Manager Ragsdale violates the JSOV and feels that he is untouchable, and the rules do not apply to him. They cited his comments in a service talk to employees (cited in the grievance file), where he stated in open defiance to the process that, "the DRT cannot order me to comply". The Union noted that he told carriers to "jump off a bridge", and never apologized for it; instead, the Union had to send the case to Arbitration before Mr. Ragsdale complied.

The position of the Union was that Management's own handbook, the M-39 provides guidance on how Managers should conduct themselves while managing delivery services. According to the Union, Postmaster Ragsdale has continually failed to abide by his own managerial handbook which states:

115.4 Maintain Mutual Respect Atmosphere

The National Agreement sets out the basic rules and rights governing management and employees in their dealings with each other, **but it is the front-line manager who controls management's attempt to maintain an atmosphere between employer and employee which assures mutual respect for each other's rights and responsibilities**, or ELM Section 666.2.

The Union noted that there are 9 interviews with carriers in the grievance file, from a recent climate survey (June/July 2019), which demonstrated that nothing has changed. The Union asserted that this survey shows that there is fear of retaliation, stress regarding "making the numbers", bullying, and fear of violence in the Clinton Post office. According to the Union, Mr. Ragsdale threatened actions against anyone who wrote a statement against him, in violation of the Federal Whistle Blowers Act. They noted that Postmaster Ragsdale was made aware of this law in a DRT decision dated February 6, 2019, where he openly stated in his Formal A contentions that he will "move forward on with any adverse action taken against me", "Once these employees have to begin paying an attorney, what would you think the narrative be then?". The Union maintained that Ragsdale openly threatened employees who wrote a statement in this case to intimidate them to change their statements.

The Union's Step B Representative, chronicled the numerous DRT decisions and other actions which he stated, detailed the negative behavior exhibited by Mr. Ragsdale. He further cited Management's own publication 552, a guide to prevent workplace harassment which defines Hostile Environment Harassment which is illegal activity:

Hostile Environment Harassment Definition and Examples

Hostile environment harassment covers a broad range of behaviors and situations. It is most often defined as a pattern of continuing unwelcome behavior that unreasonably interferes with an employee's work performance or that creates an intimidating, hostile, or offensive work environment.

Examples of behavior that could result in a finding of hostile environment harassment include:

- Using racially derogatory words, phrases, or nicknames.
- Telling jokes or stories with national origin themes.
- Displaying posters or symbols offensive to individuals of a certain race, sex, national origin, religion, etc.
- Making derogatory or intimidating references to an employee's mental or physical impairment.
- Applying pressure for dates.
- Making offensive remarks about a person's looks, clothing, or body parts.
- Whistling or catcalling.
- Using sexual innuendo.
- Spreading false rumors about a person's sex life.
- Blocking a person's path.
- Following a person continually (i.e., stalking).

Keep in mind that behavior which is not necessarily sexual in nature, but which is nonetheless demeaning or abusive toward members of one sex, may also constitute hostile environment harassment.

The Union contended that Manager Kirby Ragsdale has violated almost ALL of the above examples of illegal hostile environment harassment as defined by Management themselves. They further contended that statement after statement included in the case file, explained how Manager Ragsdale blocks a carrier's path, gets in their face, calls them names, makes sexual comments, threatens consequences if they are not "making the numbers", make derogatory remarks about looks or age and continually stalks certain people and threatens retaliation. Here, there is a long-standing pattern of inappropriate behavior by Kirby Ragsdale, according to the Union.

In support of their position, the Union cited the arbitral opinion of National Arbitrator Carlton Snow in case number Q90N-4F-C 94024977/94024038, dated August 16, 1996, where he stated in part:

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Joint Statement on Violence and Behavior in the Workplace constitutes a contractually enforceable agreement between the parties. Accordingly, the Union shall have access to the negotiated grievance procedure set forth in the parties' collective bargaining agreement to resolve disputes arising under the Joint Statement. It is so ordered and awarded.

...

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.**

The Union contended that Arbitrator Snow, in the cited decision, issued national precedent setting language which is clear and unambiguous. They further contended that the JSOV is enforceable through Article 15 of the National Agreement and the Arbitrator has flexibility when formulating remedies, up to and including removing a supervisor from their duties. The Union argued that no other inference can be made from Arbitrator Snow's award.

The Union contended that the evidence of record, as well as the testimony of postal employees and customers at hearing, overwhelmingly demonstrated that Postmaster Ragsdale violated the Joint Statement on Violence and Behavior in the Workplace. They further contended that Mr. Ragsdale's appalling behavior continued despite instruction by the DRT, additional training on how to manage and treat people with dignity and respect. Regardless of these efforts, stated the Union, Mr. Ragsdale has proven by his continued actions that he will not comply with postal policies related to the JSOV. They contended that Management in the instant case has attempted to cite procedural flaws in the case at bar, however, the Union attempted to meet at the Informal Step A level concerning this serious issue, but instead of scheduling a meeting, Manager Ragsdale intentionally did not meet or contact a member of Management to meet with the Union after becoming aware of the Union's request on February 6, 2020, in violation of Article 15. The Union further discounted Manager Ragsdale contention at formal Step A, that the issue in this case was whether Management violated Article 41. The Union maintained that they did not allege an

Article 41 violation, and the language of that Article has nothing to do with the case at hand. The Union alleged that Manager Ragsdale used “boiler plate” contentions and cites “defective” on every case, without merit. They noted that even Management’s so called “credibility” statements provided in the grievance file are suspect, as Supervisor Carlton Bryant is a lower-level Supervisor working under Manager, Ragsdale, who openly threatened retaliation against anyone who testified against him in the instant matter.

It was the Union’s argument that Management never intended to settle this case, and refused to meet at Informal A, met at Formal A with no intent at resolution; they noted that the Union even requested information, which included the training records of Manager Ragsdale, and the Richard Ridley report, but the information was never provided to the Union. The Union noted that this was undisputed by Management. The Union further argued that Management stated that “The grievant was not disciplined or made to suffer any adverse consequences as a result of the verbal interchange”. The Union maintained that this was not a true statement, and contended that the Carrier suffered the belittling, bullying and harassment out in the full view of the public; they further maintained that Carrier Owens also received discipline for the incident on January 27, 2020, in the form of a Letter of Warning, cited in Manager Ragsdale supporting documents.

In support of his position, the Union contended that Manager Ragsdale included the finance report for the Clinton Station, and highlighted the numbers for that Station to show how well they did for the fiscal year and Quarter. The Union argued that this is Mr. Ragsdale’s excuse for his behavior, “making the numbers”. The Union argued that “making the numbers” will never excuse such intolerable behavior as displayed by Mr. Kirby Ragsdale. The Union reiterated that two witnesses and the Carrier saw the actions of Manager Ragsdale on January 27, 2020, and the grievance file contains statements from the employees and customers who witnessed the same incident. They argued that Management has the obligation to protect its employees and customers from harm; here, the Union contended, Management has provided no reasonable explanation for Mr. Ragsdale’s outrageous behavior.

The Union concluded that the crux of this case is simple; “Did Management, specifically Kirby Ragsdale, violate the Joint Statement on Violence and Behavior (JSOV) in the Workplace, by his behavior? They contended that the answer is overwhelmingly YES, and the Union’s requested remedy is appropriate. The Union requested that, based on the overwhelming evidence

of record, and witness testimony in this case, from both the Union and postal customers, that the Arbitrator sustain the instant 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 and involve an alleged violation of the Joint Statement on Violence and Behavior in the Workplace (JSOV). They further contended that the alleged subject of the cited incident failed to testify at Arbitration, thus the Union's case is predicated on the statement and testimony of witnesses, Keshia Robinson and Tammie Patterson, to establish whether or not Postmaster (PM) Ragsdale violated the JSOV.

According to Management, PM Ragsdale made no threats against CCA Owens as corroborated by the testimony of the Union's witness in their statements, as well as Postmaster Ragsdale and Supervisor Patterson in their statements. The Service contended that nor did PM Ragsdale threaten CCA Owens with discipline as established by the testimony of Robinson and Patterson as well as that of PM Ragsdale and the statement of Supervisor Jackson. Management reviewed the circumstances which led up to the alleged confrontation, and noted that PM Ragsdale was attempting to correct a delivery issue, where CCA Owens went inside to deliver mail which should have been delivered outside of the building. The Service maintained that the parties who signed the JSOV, based on a brutal and violent incident which occurred at Royal Oak, MI, certainly did not intend a matter where Management attempted to correct a blatant delivery deficiency to fall under the umbrella of the JSOV.

The Service further argued that, neither did Arbitrator Snow, who is the very authority that made the JSOV an enforceable contract between the parties, intend that such a situation would be covered under the Joint Statement. Management contended that Arbitrator Snow opined that the JSOV cannot be a prophylactic against every insult real or imagined, every harsh tone, real or imagined and does not eliminate personality conflicts. They further contended that Mr. Snow held that the purpose of the JSOV was to eliminate direct threats and also kinds of harassing conduct and or environment that could lead to unacceptable levels of stress and, thus, indirectly violence or threats of violence.

According to Management, the statements of the two witnesses (customers) contained no factual observations which support the characterizations made by those witnesses that PM Ragsdale was "demeaning", "belittling", or "aggressive". In fact, stated Management, the

testimony of both witnesses, regarding the conversation between PM Ragsdale and CCA Owens, supports the conclusion that the conversation was perfectly appropriate under the circumstances; legitimate work directions. Management argued that even if the conversation involved mere incivility, equivocal conduct, or if the instructions were given in an off-putting manner, or where better human resource relations skills could have been used; it did not establish a violation of the JSOV.

The Service noted that neither witness on that day called 911, nor did they file a formal complaint with the US Postal Service, or ask PM Ragsdale to leave their business. Management contended that Ms. Robinson and Ms. Patterson simply followed PM Ragsdale, Supervisor Jackson and CCA Owens outside to the Centralized Delivery Unit to discuss why the mail could not be delivered inside the building. Management argued that the concern of these witnesses was the delivery of their mail; they had their own interest in the delivery of their mail which likely skewed their view of the interaction between Kirby Ragsdale and CCA Owens. The Service maintained that the actions of Ms. Robinson and Ms. Patterson on the incident date, in response to PM Ragsdale's actions, do not support a conclusion that the JSOV was violated on January 27, 2020. They further maintained that Arbitrator Snow proclaimed that the JSOV is not intended by the parties to result in "witch hunting" in complaints about supervisors, and was certainly not intended to include add-on complaints about mail delivery.

Regarding the failure to provide requested information, Management argued that the Union's contention that they did not receive the "Ridley Report" and PM Ragsdale's training records is only supported by scan evidence of Management's failure to respond to those requests for records. The Service argued that even if the "Ridley Report" existed and Management failed to provide it, the Service submits that this oversight did not stop the Union from providing a very well-documented and delivered grievance, based on the voluminous grievance package. Further, Management argued, the Union failed to establish how the "Ridley Report", if such a report exists, and PM Ragsdale's training records, are relevant to establishing a violation of the JSOV occurred on January 27, 2020. Thus, the Service maintained that there was no harm suffered by the Union.

It was the position of Management that Union witness, Jason Atchley, in his dramatic and very opinionated testimony, did not establish a violation of the JSOV on January 27, 2020. The Service contended that the testimony of this witness was simply 2 hours of rehashing previously

adjudicated grievances that were of no value in determining whether a violation occurred on January 27, 2020. The Service contended that Mr. Atchley did not testify as to the events which occurred on January 27, 2020; they noted that this witness is working full-time in a union capacity as RAA under National Business Agent (NBA) Steve Lissan. Management further contended that the JSOV is not intended by the parties to result in “witch hunting” in complaints about supervisors from the NBA office in Alabama. They noted that Mr. Atchley testified but CCA Owens did not; not did anyone from the office in question testify on behalf of the NALC.

It was the argument of Management that Federal Rule of Evidence number 404 provides that “evidence of a person’s character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.” Management argued that the Union was allowed to do just that; they contended that despite their objections, Mr. Atchley offered opinion testimony on previously adjudicated grievances in an attempt to prove that PM Ragsdale violated the JSOV on January 27, 2020. Management’s Advocate argued that the previously adjudicated grievances were not material to determining whether PM Ragsdale violated the JSOV on the incident date.

The Service maintained that the Arbitrator should draw a negative inference from the fact that CCA Owens did not testify. They maintained the court can hold a person’s silence against him or her and is free to infer that they are “hiding” something. Management argued that in a case where the Union is asking for more than a “cease and desist” order or additional employee relations training be ordered, where was CCA Owens. Management further argued that if Mr. Ragsdale’s behavior was so pervasive on that date, and if he has an on-going history of such behavior, where were the other employees who have been subjected to such pervasive behavior? The Service asserted that this case cannot be decided based on the testimony of the Union’s RAA and customers where there was an underlying issue regarding the mode of their delivery.

According to Management the issues brought forth in the instant grievance do 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. The Service asserted that the Union filed this “class action” grievance in an attempt to re-visit previously adjudicated grievances and prejudice the Arbitrator against PM Ragsdale. The Service further asserted that not one employee, not one letter carrier from the

Clinton Post Office testified at Arbitration to substantiate the Union's allegation. Management contended that if the Union's allegations are to be believed, there would be letter carriers line up outside of the hearing room waiting to tell their story, yet not a single employee witness was produced. They further contended that if the allegations were true, officials from the APWU and clerks who work at the Clinton Post Office, would also be at hearing waiting to testify, but that did not occur.

Management disputed the Union's claims that the interaction on January 27, 2020, between PM Ragsdale and CCA Owens amounted to a violation of the Joint Statement on Violence in the Workplace, when the alleged "victim" did not even testify. The Service contended that the silence of CCA Owens is deafening, and discounted the Union's account where they stated that Ms. Owens says "she just wants to put it all behind her". Management noted that CCA Owens worked for almost a year after the January 27, 2020 incident, until resigning in December 2020, from an office which PM Ragsdale managed. The Service maintained that it is not credible to believe that Ms. Owens did not feel safe enough to appear in a hearing where the Arbitrator, Postal Advocate and Union Advocates were all present. They asserted that the Union provided no effort in seeking to have this former employee appear by offering testimony via telephone or having the Arbitrator issue a subpoena to secure her testimony as a witness, and alleged victim in the incident. Management again requested that the Arbitrator draw an adverse inference from the failure of CCA Owens to appear and answer questions under oath.

Management contended that even if the Arbitrator were to determine that a violation of the JSOV occurred, they argued that there has been little, or no activity from that office for nearly a year since the filing of the instant grievance and no indication that there is any enduring behavior on the part of PM Kirby which should be addressed in the drastic manner requested by the Union. The Service maintained that if a violation occurred on January 27, 2020, the remedy granted should be limited in scope; they suggested a "cease and desist" order or off-site training regarding interpersonal relationships, but not a drastic measure such as barring PM Ragsdale from ever supervising carriers. Management contended that this would unnecessarily impact his career as he would lose experience and the involuntary transfer to another position would be a "black mark" on any resume and a severe limitation on what jobs he would qualify for in the future. Management asserted that the instant case does not support such a drastic remedy as requested by the Union.

It was the position of Management that PM Ragsdale was simply performing his duties as a Manager while conducting street supervision on January 27, 2020. The Service asked the Arbitrator to acknowledge that PM Ragsdale had a right to be on the street on the incident date, and he observed a legitimate deficiency when CCA Owens did not follow the established procedure for the delivery of mail at 132 East Northside drive. Management contended that Section 134 of the M-39 (JX-4) provides that ***“accompanying carriers on the street is considered an essential responsibility of management and one of the manager’s most important duties. Managers should act promptly to correct improper conditions.”*** The Service asserted that “street management” does not limit a supervisor or manager to only observe carriers on the street and Section 16 of the M-41, *City Delivery Carriers Duties and Responsibilities*, states:

16 Supervision

Carriers may always expect to be supervised while in performance of their daily duties.

Management argued that performing “street management” is an essential responsibility of PM Ragsdale and he has every right and responsibility to observe carriers at all times while on the street.

The arbitration process is not a trial, according to Management. Here, the Union’s advocate attempted to place PM Ragsdale on trial, and they asked the Arbitrator to convict him on a violation of the JSOV; they did so by rehashing previously adjudicated Step B Team decisions, contended Management. The Service maintained that the JSOV was drafted to prevent matters from escalating, in order to avoid another Royal Oak, MI; not to hand down punishment. The Service argued that physical contact, profanity, threats, finger-pointing, “in your face” confrontation, are all the sort of actions that have been held to violate the JSOV. Management contended that none of that behavior occurred in the instant case. They further contended that PM Ragsdale testified that none of that type behavior occurred, the Union stipulated that Supervisor Jackson would corroborate PM Ragsdale’s testimony, and the Union provided no evidence to rebut their testimony.

In conclusion, the Service argued that the case at bar is a contract case, and the Union has the burden to establish that a violation of the National Agreement occurred, through the submission of probative and persuasive evidence. The Service further argued that allegations of violations,

which are not substantiated by evidence are simply allegations. Here, Management contended, the Union failed to provide the requisite proof for the Arbitrator to conclude that on January 27, 2020, Postmaster Kirby Ragsdale violated the Joint Statement on Violence in the Workplace, or any other provision of the National Agreement between the USPS and NALC. The Service maintained that the JSOV is not a license for Arbitrators to involve themselves in day-to-day management decisions; they contended that such intrusions should be limited to the egregious and extraordinary situations that the Joint Statement was genuinely intended to address. Should the Arbitrator find that a violation occurred, the Service requested that the Union remedy not be awarded, and that the Arbitrator reflect on her own comment at hearing; that the January 27, 2020 incident was relatively minor. Management argued that the incident on January 27, 2020, even if found by the Arbitrator to be regrettable, did not violate the Joint Statement or any other provision of the National Agreement. Based on their arguments and contentions, as well as the evidence of record, the Service requested that the grievance be denied 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 case at bar is in many ways similar to cases previously reviewed by the Undersigned Arbitrator. The incident giving rise to the grievance is never an isolated occurrence; when the allegations are presented, there are always prior issues cited, which normally have been addressed

in a multitude of settings. Most have been addressed in Step B Team decisions, prior arbitration awards, Climate Surveys, etc...Management in this case stated that the Union raised these prior issues, or “rehashed” previously adjudicated grievances simply to file the instant grievance as a Class Action case, while they went on a witch hunt. I have to disagree with the Service’s position on that issue and review the language of the contract provision at issue in the case at bar; the “**THE JOINT STATEMENT ON VIOLENCE AND BEHAVIOR IN THE WORKPLACE**” or **JSOV**.

The parties found it necessary to enter into such an agreement because of the tragic circumstances that occurred at the Main Post Office in Royal Oak, Michigan on November 8, 1991. The JSOV was borne out of that tragedy, and it was a stated commitment, on the part of the Postal Service and its Unions, to ensure that all employees were treated with dignity and respect and an understanding that violence would not be tolerated by anyone. While there was no cited violence which occurred on the incident date in this case, the behaviors which led to the violence in the Royal Oak tragedy, was also addressed in the Joint Statement.

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. In the case at bar, the overwhelming number of employees who provided statements regarding their experience at the Clinton, MS. Post Office, is revealing. The grievance file is also rife with prior DRT decisions, Arbitration Awards, Climate Surveys, and other communications, with a common denominator being the inappropriate behavior exhibited by PM Ragsdale. Much of the dialogue includes references of threats and intimidation (If you don’t do what I say, you will be gone, or you are nothing) degradation (come on pops hurry up) and authoritarianism (“in your face” Management style).

Management contended that PM Ragsdale did not violate the JSOV on January 27, 2020, the incident date listed, however, the DRT framed the issues to include that as the first issue but the remaining issues to be addressed focus not only the January 27, 2020 incident, but the pattern that incident helped to establish, regarding Mr. Ragsdale’s behavior. The key to the language

chosen by the parties to include in the JSOV, is the fact that they (the parties) decided to no longer hide behind their acknowledged shortcomings. The parties stated:

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.**

As an Arbitrator for the USPS and NALC, I have reviewed numerous cases, where the pattern of behavior exhibited by an employee was placed on display, to support the disciplinary action being taken against the Grievant. The JSOV, by its' unambiguous language, was the parties' way of stating that we will place the behavior of ALL of our employees on display, in a "**candid appraisal**", and based on those findings, we will commit to our stance that there can be "**no excuse for and will be no tolerance of harassment, intimidation, threats, or bullying by anyone.**" No excuse, means no excuse.

At hearing Postmaster Ragsdale discussed his objective in dealing with employees to help them improve in areas where they were deficient; he presented the "report card" for his office, and was proud to show how well the office was performing or had performed. That is admirable, however, the grievance file demonstrates another picture. The evidence of record shows that there has been a need for numerous climate surveys, grievance filings, arbitrations, DRT decisions, pre-arbitration discussions, all focused on one Manager's behavior. The consequences of PM Ragsdale's behavior, whether it is a matter of employee perception or not, has likely cost the Service more than the savings produced by the behavior. The Postal Service, was aware that these situations exist and, in the JSOV, they saw that it was necessary to include the following: "***Making the numbers' is not an excuse for the abuse of anyone***". The presentation of the office's report card, was not related to the issues in this case, however, it was apparently the impression of PM Ragsdale that it was ok for him to do whatever was necessary to "make the numbers", even at the expense of his relationship with employees.

The Service maintained that the single incident on January 27, 2020, did not rise to the level of a violation of the JSOV, but I must note that the incident also involved postal business customers, who were sufficiently moved to write a statement on the date of the incident and agreed to testify at the Arbitration hearing in this case. Management contended that the customers were

motivated by their own interests and got involved only because PM Ragsdale was going to change the mode of delivery to their business. While it is conceivable that the customers wrote a statement on the date of the incident because this Manager's behavior would also affect them, I believe the initial involvement occurred by the startling display of behavior from Mr. Ragsdale. Ms. Patterson averred that the PM was yelling loud enough (inside this customer's business) to draw her out of her office. This witness further testified that CCA Owens was crying as she was basically "chastised" by the Postmaster. Contrary to Management's argument regarding the customers' motivation, the Service acknowledged that the mode of delivery to this business still has not changed since the incident date; thus, if this was the original motivation of the customer, I doubt that they would have inconvenienced themselves to attend this arbitration hearing with nothing further to gain.

While Management provided evidence of the Postmaster's right and responsibility to conduct street observations or street supervision, there was no evidence presented which would have or should have guided Mr. Ragsdale or any other Supervisor to openly discipline a letter carrier in front of a customer. It is a basic skill of management (Management 101) that employees should be rewarded in public and corrected in private. Particularly once he was advised that mail was delivered to this address by going inside the business for more than 21 years; a change to that delivery mode, sprung on the customer in the midst of a delivery could only lead to confrontation. Chastising CCA Owens, could also only lead to embarrassment, and frustration.

Management argued that there could be no conclusion drawn, that on January 27, 2020, PM Ragsdale violated the JSOV. The Service even noted that the undersigned Arbitrator commented that the incident which occurred on that date, was a relatively minor issue. Based on the evidence, if this incident was an isolated issue, the fact circumstances would likely not allow a reasonable person to deduce that PM Ragsdale, or any Manager for that matter, was in violation of the Joint Statement agreed to by the parties; however, the grievance file dictates that this incident was not isolated. Management's advocate argued that Federal 404 does not allow the admission of character evidence to prove that on a Particular Occasion, the person acted in accordance with the character or trait. The rule specifically states:

Rule 404 – Character Evidence; Other Crimes, Wrongs or Acts

(a) Character Evidence.

(1) *Prohibited Uses.* Evidence of a person's character or character trait is **not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.**

(2) *Exceptions for a Defendant or Victim in a Criminal Case.* The following exceptions apply in a criminal case:

(A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;

(B) subject to the limitations in Rule 412, a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:

(i) offer evidence to rebut it; and

(ii) offer evidence of the defendant's same trait; and

(C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) *Exceptions for a Witness.* Evidence of a witness's character may be admitted under Rules 607, 608, and 609.

(b) **Other Crimes, Wrongs, or Acts.**

(1) *Prohibited Uses.* Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

**** (2) Permitted Uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.**

(3) *Notice in a Criminal Case.* In a criminal case, the prosecutor must:

(A) provide reasonable notice of any such evidence that the prosecutor intends to offer at trial, so that the defendant has a fair opportunity to meet it;

(B) articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose; and

(C) do so in writing before trial—or in any form during trial if the court, for good cause, excuses lack of pretrial notice.

(Pub.L. 93-595, § 1, Jan. 2, 1975, 88 Stat.1932; Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 27, 2020, eff. Dec. 1, 2020.)

Federal Rule 404 is in place to ensure that a **person's guilt** in a particular instance **is not determined by a previous record**. There is a similar rule found within the language of the National Agreement and its interpretation of the language found in the JCAM. The “just cause principle” provides that there can be no finding of “just cause” unless the employer can say yes to each of the sub-questions used by Arbitrators to determine if Just Cause existed prior to the issuance of discipline. One such tenet addresses the use of an employee’s previous record to establish guilt and states:

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.**

While both Federal Rule 404, and the JCAM’s interpretation of the just cause principles, prevent the use of character evidence to establish guilt of an employee on a particular incident, they both allow the admission of such evidence to prove motive, intent, knowledge, etc...; and even to determine remedy. In the instant case, the Union provided evidence of the prior grievances filed to establish the pattern of behavior exhibited by PM Ragsdale; that information only provided a possible motive for Mr. Ragsdale’s decision to find a need to correct CCA Owens in the middle

of this business. Mr. Ragsdale could have waited to review the authorized mode of delivery with Ms. Owens when she left the delivery, or when the parties returned to the office, certainly it should not have changed until after he had an opportunity to inform the customer of the change, since they had been receiving their mail that way for approximately 21 years. The fact is that PM Ragsdale's handling of the January 27, 2020, speaks volumes in light of the case evidence that has established a pattern of such behavior.

Although Management focused only on the January 27, 2020, incident, the issues to be resolved in the case at bar go beyond whether or not Mr. Ragsdale violated the JSOV only on that date, by that single incident. There are five (5) separate issues in this case, only one of which deals with the actual incident of January 27, 2020. The others deal mostly with the *pattern* of behavior that PM Ragsdale has established not only at Clinton, but at other facilities at which he has been assigned. One of the issues before this Arbitrator also deals with the failure of Management to provide requested information to the Union, which the Service's Advocate summarily dismissed. The cooperation between Management and the Union, as required by Article 31, is crucial to the foundation upon which the National Agreement stands. Without this cooperation, particularly as it pertains to the exchange of relevant information in order to enforce the Collective Bargaining Agreement, the grievance process is damaged. A violation of this important provision, cannot simply be dismissed, since, more often than not, the information withheld is crucial to determining the appropriate resolution to the case.

The parties to the JSOV recognized that they would be unable to control the behavior of all employees and included that information in the Joint Agreement stating:

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.

The key to the entire Joint Statement is found in the aforementioned cited words, particularly the words, dignity and respect as basic human rights. While the January 27, 2020 incident did not include any violence, CCA Owens basic right to dignity and respect was compromised by PM Ragsdale; maybe not to the extent that it would be considered egregious, or even extraordinary,

but this minor incident must also be considered serious since it involved postal business customers who witnessed the degradation of this employee. A greater issue in this case is that PM Ragsdale received prior instruction and was ordered to receive additional training to assist him with learning to manage interpersonal relationships. Manager-subordinate relationships are of high value in the Postal Service, because the sheer number of persons employed there makes it necessary that all managers treat the commitment to the JSOV as a high priority; not just higher-level managers but the front-line people who interact with employees every day. None of the language of the JSOV obstructs a Supervisor's ability to manage employees; it simply requires that they do so while treating those employees with dignity and respect. Stating that there's a big Kirby and a little Kirby and you don't want to meet little Kirby, or that You will do what I say or you'll be gone, certainly is outside the norm of professional, working relationships. I mention only a few instances relayed by employees, because I do not wish to place PM Ragsdale's entire career on display in this Award. My goal is to ensure he understands the need to grow away from the exhibited behavior, which was also the goal of numerous prior Step B Decisions, pre-arbitration settlements, etc...

Maybe the decision to confront Carrier Owens was just a matter of bad judgement on the incident date, however, the grievance file does not support that position. The evidence in the grievance file, followed by the cited incident, can only lead to the conclusion that there is a pattern of bad judgement displayed by PM Ragsdale. This display of bad judgement and the resulting behavior has been cited in numerous grievances and this Manager was ordered to training and a review of the very Joint Agreement at issue in this case. Although Management argued that their failure to provide requested information did not harm the Union, here is where I disagree. The Union requested the training records for PM Ragsdale, based on prior DRT decisions which ordered that this Manager undergo additional training to assist him with dealing with employees. Absent that information, the Union could not confirm that the training was undertaken and simply did not work, or whether this Manager was never required to comply with the instructions of the DRT. This information would also have been valuable to this Arbitrator, to decide what remedy would be required to cure the violation; is it that the Postmaster is simply defiant or that he has not been adequately trained and has not acquired the necessary skills to Manage employees without resorting to bullying and intimidation.

The Service focused on the fact that there were no allegations of violence on the part of PM Ragsdale; I would say to them that History has shown that employees who have returned to their workplace, on a mission to take another's life, did not simply wake up one morning and decide to do so. Typically, following an investigation, it is learned that these employees were part of an environment which could be described as "stressful", "hostile" and where intimidation and bullying are common place. Oftentimes, reports of such conditions go without correction and are deemed as employee's perception; however, perception is reality for most humans. Additionally, where that perception occurs over and over again, no matter what Station or Post Office an individual works in, there must be some acknowledgement that a problem exists. The fact of the matter is that PM Ragsdale may never resort to violence, but his behavior, left unchecked could very well lead others there. The parties to the JSOV recognized this as an issue and stated "**This is a time for candid appraisal of our flaws**"; and not a time for scapegoating, fingerpointing, or procrastination".

The Service's position was that PM Ragsdale was only doing his job, that which he has a right and obligation to do; it is not the fact that he is performing the duties of his position that is the issue. The issue in this case is the method by which he performs those duties which has been established by the record as being contrary to what the parties agreed to in the JSOV. This fact is well-documented in the case file, and Mr. Ragsdale's behavior on January 27, 2020, simply continued to display his lack of consideration for those postal employees he manages. The Service contended that if in fact, there was a violation affirmed in this case, the remedy requested by the Union should not be awarded. Their concern was the affect that the action requested by the Union would have on Mr. Ragsdale's career and his future. I share the Service's concern, not only for Mr. Ragsdale, but for other postal employees, such as CCA Owens, who resigned her position. We may never know if her resignation came as a result of the behavior exhibited by PM Ragsdale, since she worked almost a year after the cited incident; but because she did not testify at hearing, we also may never know if it was a result of the lack of respect for this employee's dignity, which led her to leave her position with the Service. This is another cost which was not taken into consideration by the Postmaster when he displayed his success via the office's report card.

This Arbitrator has issued prior decisions on similar workplace matters and the Union offered that decision in support of their position; they also offered the arbitral opinion of National

Arbitrator Snow and Regional Arbitrators Lawrence Roberts and Jeffrey W. Jacobs. Arbitrator Jacobs in case number E16M-4E-C 18143936, reviewed a similar issue regarding the JSOV and concluded the following:

There was also considerable evidence that these actions were consistent with her actions that day and showed what the union argued was a troubling pattern of such behavior in the past. See, Federal Rule of Evidence # 406, which provides as follows:

“Evidence of a person’s habit or an organization’s routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.”

See also, Federal Rule of Evidence #405, which provides as follows:

Methods of proving Character

“(a) By Reputation or Opinion. When evidence of a person’s character or character trait is admissible, it may be proved by testimony about the person’s reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person’s conduct.

(b) By Specific Instances of Conduct. When a person’s character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person’s conduct.

Thus, under the Federal Rules of Evidence, habit evidence is defined as evidence of a repetitive response by a person to particular circumstances, characterized by particularity and frequency. Although the general rule is that propensity evidence is not admissible to prove conduct on a particular occasion, habit evidence is admissible as an exception to the general rule for the purpose of proving how someone would act or react in a particular situation at issue.

There was evidence that Ms. Fjeldseth was counseled on several occasions regarding her workplace demeanor and was given several opportunities for retraining including taking an online course regarding appropriate behavior in the workplace. While this example was one of multiple examples that showed that Ms. Fjeldseth did not take these seriously, one course was to take approximately one hour to complete by answering various questions and scenarios online.

It took her 6 minutes to complete it.

There was ample support both through direct evidence by Ms. Asquith as well as from the stipulated statements by some 14 employees and former employees whose stipulated statements showed that they had personal and direct contact with Ms. Fjeldseth regarding her alleged propensity to anger and abusive behavior under certain circumstances.

This evidence was of course not admitted to show that she actually violated the JSOV, ELM or M-39 on February 8, 2018, but showed by clear and convincing evidence that her habit was to do exactly what Ms. Asquith and the other witnesses said she did on that day.

Likewise in the instant case, the file evidence regarding Mr. Ragsdale's past behavior, was not admitted to support the allegation that this Postmaster violated the JSOV on January 27, 2020, but to support the Union's allegation and subsequent DRT defined issue that Mr. Ragsdale has demonstrated a *pattern* of behavior which has manifested itself into a violation of the JSOV and the January 27, 2020, incident was the catalyst.

It has been well established in arbitral history that the 1992 Joint Statement on Violence and Behavior in the Workplace, was an agreement between the signatories which is subject to the grievance procedure. Arbitrator Jacobs, in his award, made it clear that evidentiary consideration of past issues may be used to determine the appropriate remedy to be imposed, once a finding of a violation of the JSOV has been established. Here, PM Ragsdale has presented a pattern of behavior which has led to such a finding, with the January 27, 2020 incident becoming the catalyst to show that his behavior has not changed, even after clear instructions, DRT resolutions, Arbitration Awards and grievance resolutions.

The Union requested multiple sources of remedies to compensate for the harm caused to the employees of the Clinton, MS. Post Office. The following requests are hereby granted:

1. Management, and in particular, Postmaster Kirby Ragsdale 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, and in particular, Postmaster Kirby Ragsdale, 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, and in particular, Postmaster Kirby Ragsdale, 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, and in particular, Postmaster Kirby Ragsdale, 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, and in particular, Postmaster Kirby Ragsdale, shall cease and desist violating Section 665.24 of the ELM via Articles 14, 15, and 19 of the National Agreement.
6. Management shall cease and desist violating Articles 15.3, 17, 31 and M-01517 via Article 19, by failing to meet and failing to comply with grievance settlements, as well as failing to provide relevant requested information to the Union in violation of the National Agreement.
7. **By request of the Union, Postmaster Ragsdale shall be immediately removed from his position as Postmaster at the Clinton Post Office. Management may immediately assign Mr. Ragsdale in any other position which does not require him to supervise employees, nor have interaction with employees over which he has responsibility for disciplinary decisions or may affect their continued employment with the Postal Service. He also shall not be allowed to supervise/manage city letter carriers directly or indirectly for a period of two (2) years, over which time the Service is ordered to provide training and basic human resources assistance to prepare Mr. Ragsdale for future Management positions which will require him to supervise employees. Over the same two-year period, Postmaster Ragsdale shall be personally and directly monitored by a manager of higher level, whenever Mr. Ragsdale is required to have contact with bargaining unit employees. This condition is based on a history of ineffective employee communication, and a pattern of bullying and intimidation to accomplish his own work goals. Caution should be used in the placement of this Manager to ensure that the position meets with Mr. Ragsdale's knowledge, skills and abilities, or lack thereof, so that he is not allowed to adversely affect the working conditions of employees and membership of the NALC.**
9. Management shall conduct a Climate Survey in the Clinton, MS. Post Office to assess current conditions. The recommendations of such a Report shall be implemented within 30 days from the date the report is received. Management shall meet with the Union to review the report and establish ground rules for the incoming, or temporary Postmaster, so that leftover issues do not become obstacles to the Supervisor or Postmaster's ability to Manage their employees.
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. Mr. Ragsdale in particular, shall not retaliate against any city letter carrier or Union official who was involved in the processing of this grievance.
11. This Arbitrator shall retain jurisdiction for a period of 120 days to ensure compliance with this Award.

A current Climate Survey is required because, if the goal is to improve the workplace climate by the removal of Mr. Ragsdale, everyone remaining in the Clinton Post Office, both bargaining unit and Supervisory employees, should have a clean slate for the office to succeed; this is the commitment which all parties to the JSOV agreed.

AWARD

The grievance is sustained. Management, specifically Postmaster Kirby Ragsdale, violated the National Agreement, in particular, the Joint Statement on Violence and Behavior in the Workplace, by the pattern of behavior exhibited prior to, and on the incident date, January 27, 2020. The Postmaster's history of bullying and intimidation, at the expense of "making the numbers", his only defense, was a violation of the parties' intent in the JSOV, as well as the Postal Service's Policy on Workplace Harassment and the other postal policies cited. The Union's requested remedy, as defined in the body of this Decision is hereby awarded. This Arbitrator shall retain jurisdiction for a period of 120 days to ensure compliance with this Award.

Glenda M. August

GLENDAM. AUGUST
Arbitrator

April 21, 2021

New Iberia, LA