

REGIONAL ARBITRATION PANEL

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

Grievant: Jonathan Kuzma  
 Post Office: Nashville, TN  
 USPS No.: C16N-4C-C 21017116  
 Union No.: B40082220

APPEARANCES:

For the U.S. Postal Service

Hiram Velez  
Eric Conklin, TA

For the National Association of Letter Carriers

Corey Walton

Place of Hearing: 525 Royal Parkway, Nashville, TN. 37229  
 Date of Hearing (s): April 1, 2021  
 Briefs Received: May 8, 2021  
 Date of Award: June 18, 2021  
 Relevant Contract Provision: Article 10, 15, 19 & 41  
 Contract Year: 2016 - 2019  
 Type of Grievance: Contract

AWARD: The grievance is sustained. Management violated the National Agreement and the pre-arbitration award (04/30/2020) as well as prior grievance settlements when they arbitrarily denied the Grievant's request for sick leave pay on October 10, 2020. The remedy as clarified in the body of this decision is hereby awarded.

*Glenda M. August*

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 Glenda M. August  
 Arbitrator

**I. ISSUE**

1. Did Management violate Articles 10 and 19 of the National Agreement via Section 5 of the Employee Labor Manual (ELM), when they denied Jonathan Kuzma request for sick leave and arbitrarily input leave without pay (LWOP) on 10/10/2020? If so, what is the appropriate remedy?
2. Did Management violate Articles 10 and 19 of the National Agreement via Section 513 of the Employee Labor Manual (ELM), when they arbitrarily, capriciously and unreasonably placed letter carrier Jonathan Kuzma on Deems Desirable without any notice? If so, what is the appropriate remedy?
3. Did Management violate Articles 15.3 and the Postal Policy Letter (M-01517) via Articles 19 and 41 of the National Agreement by failing to comply with grievance resolution/settlements in the Nashville Installation? If so, what is the appropriate remedy?
4. Did Management in the Nashville Green Hills Station violate Articles 17, 31, 41, 15.3.A and the Postal Service Policy Letter Step 4 (M-01517) via Article 19 of the National Agreement by failing to comply with grievance resolutions instructing Nashville Installation Management to cease and desist their continued violations of failing to provide the Union with requested information? If so, what is the appropriate remedy?

**II. RELEVANT CONTRACT PROVISIONS**

**ARTICLE 10  
LEAVE**

**Section 1. Funding**

The Employer shall continue funding the leave program so as to continue the current leave earning level for the duration of this Agreement.

**Section 2. Leave Regulations**

The leave regulations in Subchapter 510 of the Employee and Labor Relations Manual, insofar as such regulations establish wages, hours and working conditions of employees covered by this Agreement, shall remain in effect for the life of this Agreement.

**ARTICLE 15  
GRIEVANCE-ARBITRATION PROCEDURE**

**Section 3. Grievance Procedure—General**

A. The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. At each step of the process the parties are required to jointly review the Joint Contract Administration Manual (JCAM).

**ARTICLE 17  
REPRESENTATION**

**Section 1. Stewards**

Stewards may be designated for the purpose of investigating, presenting and adjusting grievances.

**Section 3. Rights of Stewards**

The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.

**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.

**ARTICLE 31  
UNION-MANAGEMENT COOPERATION**

**Section 3. Information**

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

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

### **III. FACTS**

The Grievant in the case at bar, Jonathan Kuzma, called in sick on October 10, 2020, and requested eight (8) hours Sick Leave (SL). When Mr. Kuzma received his paycheck, which covered that specific time period, he noticed that he received Leave without Pay (LWOP) for that date, and was allegedly told by his supervisor that, “You only get paid when you come to work”.

The Union alleged that Management, arbitrarily and capriciously denied the Grievant’s use of sick leave, which he requested and which was available for use. They further alleged that the Postal Service, with their Unions, agreed to a liberal sick leave policy during the COVID-19 Pandemic. Nonetheless, the Grievant’s Supervisor unilaterally decided that Mr. Kuzma would suffer loss wages, when attempting to use the agreed upon COVID-19 leave policy.

The Union filed the instant grievance claiming that Management violated Articles 10, 15, 17, 19, 31 and 41, when they arbitrarily denied the Grievant’s use of his sick leave hours, failed to notify Mr. Kuzma that he had an attendance issue, arbitrarily placed the Grievant on the Deems Desirable list, failed to comply with grievance resolutions and settlements in violation of M-0517, and failed to provide information requested by the Union which was relevant to this grievance.

The parties were unable to reach common ground and/or resolve their dispute and have requested this Arbitrator to issue a decision on the merits, pursuant to the 2016-2019 National Agreement between the USPS and NALC.

### **IV. UNION’S CONTENTIONS**

The Union contended that the instant grievance centers around the denial of eight hours sick leave to City Letter Carrier, Jonathan Kuzma, on October 10, 2020, and Management’s arbitrary decision to charge the Grievant with Leave Without Pay (LWOP) instead. According to the Union, Management justified their actions by stating that Mr. Kuzma was placed on the “Deems Desirable”.

It was the position of the Union that Management intentionally withheld information from the Union which impeded their position in this case. The Union contended that this is an on-going issue in the Nashville Installation and has become commonplace when dealing with local Management regarding the receipt of information. The Union cited Arbitrator Lawrence Roberts in case number C11N-4C-C 13383717, where the Arbitrator found Management’s actions to be fatal to all the Service’s defenses in that grievance. Here, the Union contended that they submitted

numerous requests for information, yet the most pertinent information was withheld; a fact the Union argued was not rebutted by Management. According to the Union, this continual withholding of information is “par for the course” and should prove fatal to any and all of Management’s defenses offered in the instant case.

Regarding the merits of the case, the Union maintained that the Grievant, called in sick on October 10, 2020 and requested eight (8) hours of FMLA sick leave; however, unbeknownst to him, Management placed him on Deems Desirable and charged him with leave without pay (LWOP). The Union contended that, upon Mr. Kuzma’s return to work, he completed a PS Form 3971 (leave slip), and turned it into Management, but it was not returned to him. They asserted that when the Union submitted an information request, the leave slip was provided to the Union, but was returned unsigned, and the Grievant was never informed that documentation was required to cover his absence. In fact, the Union contended, Management *falsified* a leave slip (PS Form 3971) to justify their actions, a behavior which is commonplace in the Nashville Post Office.

The Union argued that Management placed Mr. Kuzma on the *Deems Desirable* list when his attendance record did not warrant; they noted the Grievant’s testimony, that Management had no discussions with him regarding his attendance in 2020. The Union maintained that Mr. Kuzma averred that he had no attendance reviews in 2020, no live discipline in his file from 2020 which was attendance related, and, Management never advised him of any attendance deficiencies serious enough to be placed on Deems Desirable. The Union argued that Management’s withholding of information did not allow them to present evidence which would show that the Grievant was not placed on Deems Desirable, on a case-by-case basis, but as part of a blanket policy.

The Union reiterated that in hearing testimony, Mr. Kuzma confirmed that he requested *sick leave* on October, 10, 2020 and he was approved for FMLA, but he was given LWOP instead. They noted that the Grievant testified that the signature on the leave slip (PS Form 3971) was not his signature (JX-2, Pages 48-50). The Union further noted that the Grievant averred that Management never notified him that he had any attendance deficiencies, nor did they make him aware of the fact that they placed him on Deems Desirable. According to the Union, NALC Steward, Rebecca Madsen stated that Management did not produce the handwritten leave slip, but instead presented a computer-generated form, and did not give any reasons for their failure to provide all documents.

According to the Union, there are numerous signed grievance settlements instructing Management to “cease and desist” doing exactly what was done to City Carrier Jonathan Kuzma. They noted that Green Hills Station has a terrible record of placing carriers on Deems Desirable by groups as a means to deter carriers from using their bargained for sick leave. The Union argued that Nashville has an on-going issue with compliance, including cease-and-desist orders regarding deems desirable. They further argued that the Service has received numerous “cease and desist” orders on failing to furnish the Union with its requested information. The Union cited the opinion of the undersigned Arbitrator in case number C16N-4C- 20263531, where the following conclusions were drawn:

There were numerous DRT decisions and Formal A Resolutions, included in the case file, which address the on-going issue in Nashville, of Management violating the National Agreement by not providing the information requested by the Union. The sheer number of grievances filed on this issue demonstrated the arbitrary and capricious manner with which Management views their obligation. Here again, the clear language of the Agreement places the responsibility squarely upon Management to provide the requested information, yet Management continues to violate the National Agreement. Management in the Nashville Installation has demonstrated a blatant failure to comply with the numerous instructional “cease and desist” instructions, issued by the DRT, even though many of the resolutions warned of escalating remedies.

It was the Union’s position that the parties are here, yet again, with the same issue of non-compliance. They maintained that the Service cannot continue to explain away their negligence and contractual violations, over and over again.

The Union asserted that Arbitrator Louise Wolitz provided additional insight into the harm done when Management fails to comply with the collective bargaining agreement, grievance resolutions and awards, in case number G11N-4G-C 16454303, where she concluded:

*“...Management is willing to pay the make-whole penalties attached to proceeding this way, but not any penalties for repeated contractual violations, violations of cease-and-desist orders, and violations of the rights of the letter carriers under the national Agreement in doing so, management violates its responsibilities to live up to the bargains it makes in collective bargaining and violates its obligations to the workers under the national Agreement. It weakens the foundation and meaning of a collective bargaining relationship, with mutual rights and responsibilities, among the most important of which is living up to its commitments and respecting its agreements, settlements, and arbitration awards.”*

It was the Union's position that the numerous decisions concerning Management's continued violations of Articles 15, 17, and 31, were meant to be read, studied, understood and complied with; instead, Management shrugged off their obligation in the Nashville Installation.

Finally, the Union contended that on the date the Grievant requested sick leave (October 10, 2020) Management gave him LWOP instead; they noted that the Grievant signed his leave slip (PS Form 3971) on October 13, 2020, but Management had already falsified the form on October 10, 2020. The Union argued that the Grievant was never told to bring in documentation and never told he was on Deems Desirable. They contended that Management withheld the documentation so that the Union could not demonstrate that such actions are done as a blanket policy and not based on the attendance record of the individuals. The Union declared that the evidence of record demonstrates that Management failed to comply with previous cease and desist orders regarding their failure to provide information, and as such, their continued non-compliance should prove fatal to any and all arguments the Service presented in defense of their actions.

The Union requested that, based on the evidence presented and their arguments and contentions, the Arbitrator sustain the instant grievance in its entirety and award their requested remedy (JX-2, Pages 20-21)

#### V. MANAGEMENT'S CONTENTIONS

Management contended that Grievant, Jonathan Kuzma, called out from work on Saturday, October 10, 2020, and requested unscheduled FMLA sick leave for the absence. According to Management, Mr. Kuzma had been placed on Deems Desired, which required him to provide medical documentation for the absence, and when the Grievant failed to provide the required medical documentation, Management changed the leave request to leave without pay (LWOP).

According to the Service, the Union has failed to provide supporting evidence of a violation by Management. Management contended that the burden of proof lies with the Union in this contract case, to prove by a preponderance of the evidence that Management violated the National Agreement. The Service contended that in the case at bar, the Union presented numerous allegations but the record is devoid of facts and circumstances to prove a violation. They further contended that the Union has not shown that the Grievant did not have a record of abuse of leave, and noted that the Grievant's Supervisor in her testimony, and the evidence of record (JX-2, Pages

267-278) shows from the Grievants 3972s, that Mr. Kuzma had a pattern of calling out around holidays. Management argued that from January 2020 to October 2020, on 5 out of the 6 holidays, the Grievant called out before or after the holiday.

The Service disputed the Union's arguments, that Management never had a discussion with the Grievant about his attendance, or the fact that he was placed on Deems Desirable; they argued that testimony from Manager Tamika Jones confirmed that the Grievant was notified about his Deems status prior to the call out on October 10, 2020, and the 3971 on page 48 of the grievance file, which was signed by Mr. Kuzma, again notified the Grievant that documentation was required. Management asserted that in hearing testimony, the Grievant averred that he did not provide any documentation to Management for his absence on October 10, 2020.

Regarding the Union's allegation that Management failed to provide information, the Service maintained that the Union filled the case file with previous Formal A settlements, Step B decisions and arbitration awards in an attempt to build their case. Management cited documents in the case file which confirmed that they were provided at Formal Step A, and contended that the Union is attempting to prejudice the Arbitrator about past issues. The Service did not dispute the violations in those prior cases, and argued that the Union did not need all the information they requested to investigate their contentions of a blanket policy at Green Hill Station.

It was the position of Management that Manager Jones testified that there was no blanket policy, and the Service maintained that there was sufficient information in the grievance file to reach such a conclusion. According to Management Joint Exhibit 2, pages 47 and 273, contain leave usage logs for October 10, 2020 which show that Management did not blanket the employees at Green Hill Station since those logs show that several employees were not required to provide documentation.

In response to the Union's request for remedy, the Service maintained that several of their requests would amount to unjust enrichment if so awarded. Management contended that the evidence demonstrated that the Service had justification for placing Mr. Kuzma on Deems Desirable, based on his record of calling out before and after holidays. The Service noted that the Grievant himself confirmed in testimony that he did not provide any documentation as required, thus, the leave was change to LWOP. The Service further noted that Manager Jones testified that there was no "blanket" policy invoked at Green Hill Station, placing groups of employees on



Deems Desirable. The Service reiterated that the Union had enough information made available to them, to reach that conclusion, since the leave usage logs show that several employees were not required to bring documentation. Management again contended that the Union is attempting to prejudice the Arbitrator with the inclusion of past cases in the grievance file.

Finally, Management argued that the Union failed to prove a violation, and the Service did not violate the National Agreement; they requested that the instant grievance be denied in its entirety.

## **VI. DISCUSSION AND OPINION**

The dispute between the parties in the instant case, revolves around the Grievant's call-in on October 10, 2020, where he requested to use eight (8) hours of sick leave for that day. According to the Union, Management at Green Hill Station in the Nashville Installation, arbitrarily changed the Grievant's FMLA request for sick leave to reflect LWOP. Management contended that the Grievant had been placed on Deems Desirable, and as affirmed in his hearing testimony, Mr. Kuzma failed to provide any documentation to support his absence.

The Union and the Grievant alleged that Management had not advised him that he had been placed on Deems Desirable and further had not met with the Grievant or discussed with him any attendance deficiencies which would have caused him to be placed as Deems Desirable. The Union further alleged that Management's decision to request documentation for the October 10, 2020 absence was arbitrary and capricious, and the Service never notified the Grievant that Documentation was required.

The Grievant disputes the fact that the signature on the PS Form 3971, on page 48 of the grievance file, is his. Mr. Kuzma contended that he submitted and signed his leave slip on October 13, 2020 (JX-2, Page 49), upon his return to work, and Management never returned the form back to him. The form acknowledged by the Grievant, does not contain any information regarding the required documentation or the fact that the Grievant was Deems Desirable. The ELM Section 513 provides guidance for Supervisors and Managers in the administration of employee leave requests:

### **513 Sick Leave**

#### **513.1 Purpose**

##### **513.11 Sick Leave for Employee Incapacitation**

Sick leave insures employees against loss of pay if they are incapacitated for the performance of duties because of illness, injury, pregnancy and confinement, and medical (including dental or optical) examination or treatment.

### **513.342 Approval or Disapproval**

The supervisor is responsible for approving or disapproving requests for sick leave by signing PS Form 3971, a copy of which is given to the employee. If a supervisor does not approve a request for leave as submitted, the Disapproved block on the PS Form 3971 is checked and the reason(s) given, in writing, in the space provided. When a request is disapproved, the granting of any alternate type of leave, if any, must be noted along with the reason for the disapproval. AWOL determinations must be similarly noted.

Approval or Disapproval of sick leave is determined by the employee's Supervisor. The ELM requires that, if sick leave is disapproved, *"the Disapproved block on the PS Form 3971 is checked and the reason(s) given, in writing, in the space provided. When a request is disapproved, the granting of any alternate type of leave, if any, must be noted along with the reason for the disapproval."*

The Grievant was absent from work for one day (8 hours); and the ELM provides further guidance on documentation required for such an absence and states:

### **513.36 Sick Leave Documentation Requirements**

#### **513.361 Three Days or Less**

For periods of absence of 3 days or less, supervisors may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work or need to care for a family member is required only when the employee is on restricted sick leave (see 513.39) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service. Substantiation of the family relationship must be provided if requested.

The Union argued that Mr. Kuzma was never notified by Management that he was on Deems Desirable, and further was not aware that Management requested documentation for his October 10, 2020 absence. The Union contended that Management applies a blanket policy which places a group of carriers on Deems Desirable, without attendance reviews or notification of such status change. The case file contained a grievance resolution dated April 30, 2020 (JX-2, Page 52), in which the parties agreed that Management would not use blanket notations for Deems Desirable and would only use the classification on a case-by-case basis. The Agreement was precedent-setting and citable within the Nashville Installation. There was no evidence contained in the record which demonstrated that the Grievant was on Restricted Sick Leave either; according to the Union, Management simply arbitrarily decided to disapprove the Grievant's request for eight (8) hours sick leave, and change the time to LWOP.

The parties to the National Agreement, at Article 10 agreed to the following terms regarding sick leave as well:

**ARTICLE 10  
LEAVE**

**Section 5. Sick Leave**

The Employer agrees to continue the administration of the present sick leave program, which shall include the following specific items:

- A. Credit employees with sick leave as earned.
- B. Charge to annual leave or leave without pay (at employee's option) approved absence for which employee has insufficient sick leave.
- C. Employee becoming ill while on annual leave may have leave charged to sick leave upon request.

**D. For periods of absence of three (3) days or less, a supervisor may accept an employee's certification as reason for an absence.**

The April 30, 2020, pre-arbitration agreement, stated that the implementation of "deems desirable" cannot conflict with the ELM and/or Article 10.5. Without notification to the Grievant that he was placed on deems desirable, the employee's request would be seen as an incidental request for an absence of less than 3 days, as in section 5.D above and Mr. Kuzma's anticipation would be that he would not be required to provide documentation to his Supervisor. Management argued that the Grievant had presented a pattern of call-ins on days before or after a holiday; this type of attendance issue may very well have proven sufficient to warrant being placed on deems desirable during those periods. However, the decision to designate the employee deems desirable must be met with some sort of notification to the affected carrier and, prior warning of the attendance deficiency must be discussed.

There has apparently been issues at this Station before, on this very point. The grievance file contained several Formal A resolutions which demonstrated that Management made the decision to place the entire carrier unit in Green Hills Station on deems desirable over a particular weekend; and in another period, the Service declared all carriers using unscheduled leave to be deems desirable. The ELM and National Agreement reserves the use of such Management tools to when the employee is on Restricted Sick Leave, or otherwise when the Manager *justifiably* must protect the interests of the Postal Service. The Arbitrator *does not disagree* with Management that

a pattern of call-ins, in conjunction with a holiday, could justify a deems desirable designation; however, Management must notify the employee, prior to the use of such leave, and the designation, must be decided on a case-by-case basis in compliance with the April 30, 2020 pre-arbitration agreement.

The ELM actually explains that the very purpose of sick leave is to *“insure employees against loss of pay.”*

### **513.1 Purpose**

#### **513.11 Sick Leave for Employee Incapacitation**

Sick leave insures employees against loss of pay if they are incapacitated for the performance of duties because of illness, injury, pregnancy and confinement, and medical (including dental or optical) examination or treatment.

Mr. Kuzma is a twenty-two-year employee of the Postal Service, who averred that the only leave slip with his signature is the one he submitted to Management on October 13, 2020. On that leave slip, the Grievant requested that he be paid eight (8) hours of sick leave, to which he was entitled. Unrebutted testimony showed that the Grievant’s signed leave slip was not returned to him, thus, he was expecting payment for those eight hours when he received his paycheck on the appropriate pay day. To his surprise, eight hours pay was missing from that paycheck, because his supervisor disapproved the sick leave and changed the eight hours to leave without pay (LWOP), contrary to the terms of the National Agreement, ELM and April 30, 2020 Agreement between the parties.

Regarding the Union’s allegation that Management failed to provide information relevant to the processing of the instant grievance, that argument was supported by Management’s own acknowledgement that the Union had enough information to conclude that the Service did not make a blanket decision to place all carriers at Green Hill Station on Deems Desirable for October 10, 2020. Although Management cited numerous documents in the grievance file, which were part of the Union’s request, they did not assert that the RFI submitted by the Union were fulfilled. The Union’s issues as presented, alleged that Management violated Articles 17, 15.3.A, 31, 41 and Postal Service Policy Letter Step 4 (M-01517) via Article 19 of the National Agreement. They argued that Management failed to comply with grievance resolutions instructing Nashville Installation Management to cease and desist failing to provide the Union with requested information. Here again, the Union supports their position, that this is an on-going problem in Nashville, by the inclusion of numerous Step B Decisions and grievance settlements; these were

prior violations which were acknowledged by Management's Advocate. Noteworthy, is the fact that the Step B Decisions date back to 2018, and earlier; and the arbitration awards and grievance resolutions, date back as far as 2014 through 2015. These examples may not include more recent issues but it is the evidence presented in this case. The Service maintained that the Union was not impacted because they had everything, they needed to determine whether or not Management had issued a blanket Deemed Desirable designation for all employees. Irrespective of Management's position on this issue, Article 31 requires that the Service make available to the Union, "all relevant information necessary for collective bargaining or the enforcement of the National Agreement between the parties.

## ARTICLE 31 UNION-MANAGEMENT COOPERATION

### **Section 3. Information**

**The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement.** Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

The numerous DRT decisions and Formal A Resolutions, included in the case file, demonstrated that there are or were issues related to Management's failure to comply with such awards and resolutions, particularly as it pertains to Requests for Information, which can be critical in allowing the Union to fully develop grievances and represent their bargaining unit. The Union offered the opinion of Arbitrator Louis B. Wolitz, in case number G11N-4G-C 13169944, where she concluded the following regarding non-compliance:

It seems like management in Lake Charles has determined that when it is not convenient to meet the responsibilities of this language, it may fail to do so, and just pay the ODL carriers for the missed work opportunities up to twelve (12) hours in a day or sixty (60) hours in a service week. It reasons that the non-ODL carriers who have been forced to work are getting paid for that work at the overtime rate, and hence are not harmed. However, what this fails to consider is that all the carriers are harmed by management's failure to honor its contractual obligation.

Even if they are paid for the overtime, they were not assigned to work but should have been, the ODL carriers are additionally harmed by management failing to honor its contractual responsibilities, which erodes the trust of the carriers in their management. The non-ODL carriers who are forced to work unwanted and unanticipated overtime are harmed by losing the use of that time however they had planned to use it, despite the fact that they are paid for their overtime. All the carriers in the bargaining unite, even those not directly impacted on a particular day, are harmed by the erosion of contractual rights. The collective bargaining relationship is harmed. The Union is harmed by having to bear the expense of processing grievances and potential arbitration cases over and over again on the same issue. This harm is clear and evident. It is particularly evident in repeated violations over a long period of time over the same issue and repeated failure to abide by settlements and awards.

While the instant grievance is not about ODL and non-ODL carriers, as Arbitrator Wolitz discusses, it does concern a failure on the part of Management, to comply with previous agreements, Step B Decisions and arbitration awards regarding the issues presented in this case. Management's reliance on, and compliance with, the parties' April 30, 2020, pre-arbitration settlement, could have prevented the instant grievance. Further, instructional language provided by the DRT should have guided Management's actions when fulfilling the Union's Requests for Information. RFIs should be fulfilled as soon as possible; Management must provide the information requested and/or written notification to the Union, as to why the information cannot be provided or why the information will be delayed.

Based on my review of the evidence, fact circumstances and the parties' arguments and contentions in the case at bar, the grievance is sustained. Management violated the National Agreement and the pre-arbitration agreement signed on April 30, 2020 when they denied carrier Jonathan Kuzma's eight (8) hours of sick leave pay on October 10, 2020, and placed him on the Deems Desirable list without prior notice. Additionally, the Union met their burden to prove that the Service failed to comply with prior grievance resolutions and Step B Decisions, when they failed to provide information requested by the Union. The following remedy is hereby awarded:

- Management shall cease and desist violating Article 17 and 31 by their failure to provide the Union with relevant information for grievance processing
- Management shall cease and desist failing to comply with grievance resolutions, settlements, and awards; particularly the Agreement entered into on April 30, 2020 at pre-arbitration, regarding the use of the Deems Desirable designation, in the Nashville Installation.

- Management shall immediately perform a pay adjustment to grant eight (8) hours of sick leave to the Grievant, Jonathan Kuzma to replace the eight (8) hours of LWOP provided for the date of October 10, 2020. Mr. Kuzma shall also be paid a lump sum of \$75.00 for the delay in processing his leave payment in violation of the April 30, 2020 agreement.
- All payments and pay adjustments associated with this award shall be processed as soon as administratively possible, but not later than 7 days from the date of the receipt of this Award by Management. Proof of payment made shall be provided via email to NALC Formal A Representative Jason Leath at Jason.leath@yahoo.com

**AWARD**

The grievance is sustained. Management violated the National Agreement and the pre-arbitration award (04/30/2020) as well as prior grievance settlements when they arbitrarily denied the Grievant's request for sick leave pay on October 10, 2020. The remedy as clarified in the body of this decision is hereby awarded.

*Glenda M. August*

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GLENDAM. AUGUST  
Arbitrator

June 18, 2021

New Iberia, LA