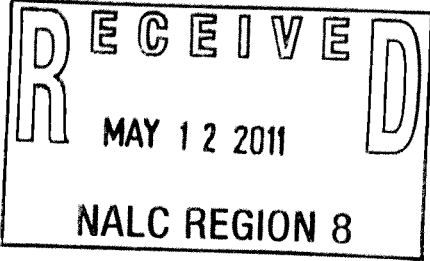


C 29394<sup>1</sup>

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	Grievant: Alexander
	)	
between	)	Post Office: New Orleans, LA
	)	
UNITED STATES POSTAL SERVICE	)	USPS Case No.: G06N-4G-D
	)	11002418
and	)	12429610
	)	
NATIONAL ASSOCIATION OF LETTER	)	NALC Case No.: 08-179823
CARRIERS, AFL-CIO	)	



BEFORE: Louise B. Wolitz, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Eddie Smith  
 For the NALC: Charlie Vigee  
 Place of Hearing: 701 Loyola Avenue, New Orleans, LA 70113-9401  
 Date of Hearing: April 7, 2011  
 Date of Award: May 5, 2011

Award Summary:

The Fourteen Day Suspension issued to Carrier Michael Alexander on October 4, 2010 was not issued for just cause. It is to be immediately expunged from all records of the Postal Service, as though it had never been issued. Mr. Alexander is to be made whole for any pay and benefits, including overtime pay, lost arising from the issuance of this suspension.

*Louise B. Wolitz, Arbitrator*

Louise B. Wolitz, Arbitrator

RELEVANT PROVISIONS:

**AGREEMENT between United States Postal Service and National Association of Letter Carriers, AFL-CIO, 2006 - 2011**

....

**ARTICLE 3**

RECEIVED

MAY 18 2011

VICE PRESIDENT'S  
OFFICE  
NALC HEADQUARTERS

## **MANAGEMENT RIGHTS**

*The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:*

- A. To direct employees of the Employer in the performance of official duties;*
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;*
- C. To maintain the efficiency of the operations entrusted to it;*
- D. To determine the methods, means, and personnel by which such operations are to be conducted;*

....

## **ARTICLE 16**

### **DISCIPLINE PROCEDURE**

#### **Section 1. Principles**

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

#### **Employee and Labor Relations Manual**

#### **Section 660, USPS Standards of Conduct**

##### **661.2 Application to Postal Employees**

*Prohibition against delay or destruction of mail or newspapers (18 U.S.C. 1703)*

##### **665.13 Discharge of Duties**

*Employees are expected to discharge their assigned duties conscientiously and effectively.*

##### **665.15 Obedience to Orders**

*Employees must obey the instructions of their supervisors. If an employee*

*has reason to question the propriety of a supervisor's order, the individual must nevertheless carry out the order and may immediately file a protest in writing to the official in charge of the installation or may appeal through official channels.*

## **Handbook M-41 City Delivery Carriers Duties and Responsibilities**

### **112.1 Efficient Service**

*Provide reliable and efficient service. Federal statutes provide penalties for persons who knowingly or willfully obstruct or retard the mail. The statutes do not afford employees immunity from arrest for violations of law.*

### **131.33 Actual Delivery**

*Unless otherwise instructed by a unit manager, deliver all mail distributed to your route prior to the leaving time for that trip and complete delivery within scheduled time. It is your responsibility to inform management when this cannot be done.*

### **131.41 Reporting Requirements**

*It is your responsibility to verbally inform management when you are of the opinion that you will be unable to case all mail distributed to the route, perform other required duties, and leave on schedule or when you will be unable to complete delivery of all mail.*

### **131.42**

*Inform management of this well in advance of the scheduled leaving time and not later than immediately following the final receipt of mail. Management will instruct you what to do.*

### **131.45**

*Do not curtail or eliminate any scheduled delivery or collection trip unless authorized by a manager, in which case you must record all facts on Form 1571.*

## **THE HEARING:**

The hearing in this matter took place at 701 Loyola Avenue, New Orleans, LA on April 7, 2011. Each party had a full opportunity to present its evidence, witnesses, testimony and argument and to cross examine each other's witnesses. All witnesses were sequestered and sworn. The Postal Service called Gordon Calcagno, Manager of Customer Service, Central Carrier Station; and Dwayne Pressley, Customer

Service Supervisor, Central Carrier Station. The Union called Charles Lehman Jackson, Letter Carrier and Shop Steward, Central Carrier Station; and Michael Alexander, Letter Carrier, Union Vice President, and Grievant. The parties did oral closings at the end of the hearing. The arbitrator has studied carefully her notes on the witness testimony, the 365 page Joint Package, the opening and closing arguments of the advocates, and the arbitration citations provided.

#### THE ISSUE:

The issue before the arbitrator, as defined by the Step B Team, is: Did Management violate Article 16 of the National Agreement when the grievant was issued a Notice of Proposed Removal dated October 4, 2010 for "Unsatisfactory Work Performance, i.e., Failure to Deliver all Assigned Mail" which was unilaterally reduced to a 14-Day Suspension? If so, what is the appropriate remedy? A second issue was defined by the Step B team: Did Management violate Article 15.2 when it failed to schedule and meet at Formal Step A of the Grievance Procedure? If so, what is the appropriate remedy? The parties stipulated that this second issue is now moot. We will not discuss this second issue here.

#### BACKGROUND:

Grievant Michael H. Alexander has a seniority date of February 20, 1990 as a letter carrier and is also Vice President of the local union. On Tuesday, September 7, 2010, at about 4:00 P.M., while assigned to Route #1927, Carrier Alexander returned to the office two (2) feet of letters, one (1) foot of flats and 3 parcels. This constituted about forty five (45) minutes of delivery. The mail was first class mail that had to be delivered on overtime by other carriers. There is no disagreement about this fact. He was placed on a 16.7, non-duty, non-pay status on September 9, 2010, which was the subject of a separate consideration, and was ultimately overturned by the Step B team. He was scheduled for an investigative interview on September 14, 2010 at 10:A.M. On September 13, 2010, he contacted management and said that he was tied up doing Step A grievances and could not attend that meeting. There is disagreement between the parties about the circumstances of the rescheduling of the investigative interview. The Postal Service says that Mr. Alexander asked to reschedule the investigative interview to September 17 at 10:00 A.M., which they did. Mr. Alexander says that he was told that management would confirm the rescheduled date by certified letter. He never received a certified letter, nor is there any evidence that management sent this certified letter. In any case, Mr. Alexander did not appear for the investigative interview on September 17<sup>th</sup> because he says he never received confirmation. Mr. Alexander, as Union Vice President, was working on Union business at the facility during the course of that week, and suggested several other times for the investigative interview, which management did not arrange. Management's position is that Mr. Alexander was scheduled, at his request, for an investigative interview on September 17<sup>th</sup> and did not appear. In any case, no investigative interview was held. On October 4, 2010, management issued a Notice of Proposed Removal. As a preference eligible veteran, Mr. Alexander was

entitled to respond to the charges within ten days to the Postmaster before the Removal was finalized by a Letter of Decision. While Mr. Alexander did not make a formal response, he did meet with Postmaster Steve Swartz on October 12, 2010. Postmaster Swartz unilaterally reduced the Notice of Proposed Removal to a Fourteen (14) Day no time-off Suspension. In doing so, Postmaster Swartz said that he found that the charges as stated in the notice are fully supported, but warranted a lesser degree of discipline. So the question before us is whether the Fourteen (14) Day Suspension was issued for just cause, and, if not, what should the remedy be?

The answer to this question hinges on what instructions Carrier Alexander was given on the morning of Tuesday, September 7<sup>th</sup>, the day after Labor Day. Despite the lengthy grievance package, the answer to this question is not clear. We will narrow our focus in this discussion to try to answer this question.

The parties agree that Mr. Alexander submitted a PS Form 3996 shortly after 8:00 A.M. on the morning of September 7<sup>th</sup> indicating that he could not complete his assignment in eight (8) hours. The Step B Team's explanation of Management's Explanation of Impasse, describes management's description of what happened that morning. We quote from the Step B Team's impasse decision:

*Management contends a different account of what happened and it is backed by the grievant's statement which is included in the case file. On the day in question, the grievant reported for duty at 7:53 a.m. and was assigned to Route #1927. The grievant immediately took count of the mail volume at the case and proceeded casing. According to the grievant's statement Supervisor Pressley placed bulk rate flats at his case. The grievant then requested PS Form 3996, took count of all mail at the case, including parcels. The grievant gave an estimation on PS Form 3996 based on all mails but did not include the bulk rate flats that were to be curtailed. The grievant requested four hours and 10 minutes (4.10) of overtime to complete delivery of all mail, excluding the bulk rate flats. Management later told the grievant to add the bulk rate flats and estimate how much time would be needed to deliver all mails. The grievant then changed the additional time needed to six hours and 40 minutes (6.40). In essence, the grievant was stating he needed a total of 14.40 hours to deliver his route.*

*Management contends the PS Form 8190 included in the case file indicates the grievant requested 6.40 hours of auxiliary assistance but only was approve .32 minutes. Management contends the Supervisor and Postmaster approached the grievant 30 minutes later and asked how much time would be needed to take the mail in the coffin. The grievant stated it would take 4 hours and ten minutes. The grievant was asked to shown where the 4 hours would start. The grievant answered it would start at the 3700 block of Orleans Avenue. The grievant states he was unfamiliar with the route and needed to give off more time. He was asked how much. The grievant then explained that the 4 hours and 10 minutes could very well be five (5)*

*hours or less. Supervisor Calcagno then asked the grievant how much time he needed to give off to make eight (8) hours. The grievant said it would be estimation at best and was instructed to make his best estimation. The grievant said to make eight (8) hours he should give off at 875 Taft Street.*

*The grievant had pulled down and separated the mail. Management instructed the grievant to take the four hours and 10 minutes (4.10) on the street. The grievant states a route examiner was sent to walk with him on that portion. However, there are no PS Forms 3999 or any other evidence to validate the grievant's statement. According to clock rings in the case file the grievant moved to the street to deliver mail at 10:72 a.m.*

The parties agree that at approximately 3:40 p.m., the grievant called the office to state that he was unable to finish delivery of all mails. He spoke to P.M. Supervisor Brenda Berkley, who instructed him to comply with the A.M. Supervisor's instructions and follow postal rules and regulations. Mr. Alexander says that his instructions were to make 8 hours, no overtime, so he had no choice but to bring the mail back to the Post Office undelivered.

#### POSITION OF THE POSTAL SERVICE:

Manager of Customer Service Gordon Calcagno testified that he was the concurring official on this discipline. Mr. Alexander failed to deliver his assignment and refused to complete it within the assigned time. Mr. Calcagno said that Mr. Alexander frequently carried route 1927. He is responsible to give a professional estimate of delivery time. Mr. Calcagno said that he and the Postmaster spoke about reducing the discipline to a 14 Day Suspension and he agreed with that decision.

On cross examination, Mr. Calcagno said that the instructions to Mr. Alexander in the morning were given not by himself but by Supervisor Dwayne Pressley. When Mr. Alexander called in, Supervisor Berkley told him to follow the instructions he was given. Those instructions, given by Supervisor Pressley, are reflected on the 3996 (Jt. X 2, p. 139), which shows that Mr. Alexander was approved for 32 minutes of overtime. Mr. Pressley authorized him for the appropriate overtime, 32 minutes for the route being out of adjustment. Mr. Calcagno said that he did not recall that it was the day after a holiday. Mr. Calcagno said that Mr. Alexander was familiar with the route and had carried it. The 32 minutes of overtime awarded was not based purely on the Delivery Operations Information System. That would be inappropriate. The instructions were between Mr. Alexander and his supervisor, Mr. Pressley.

Supervisor of Customer Service Dwayne Pressley testified that he has been a supervisor for ten years. On the day in question, Mr. Alexander brought back deliverable first class mail for no apparent reason. His responsibility was to deliver the mail. He is on the twelve hour overtime desired list. He could have used

authorized overtime to deliver the mail. Brenda Berkley told him to perform his assigned duties. Yet, on September 7<sup>th</sup>, he did not work any overtime. The clock rings show that he clocked off at 4:01, after eight hours. He was an annual leave carrier. He has carried this particular route several times. He was instructed in the morning to make 32 minutes of overtime. If he could not, he would have called in to receive further instructions. Mr. Alexander was not told to make eight hours. Supervisor Pressley said that neither himself nor Brenda Berkley told him to make eight hours. The thirty-two minutes overtime is for volume amount which he was casing, so he would leave the office later. Mr. Alexander brought mail back and made eight hours, but was not told to make eight hours. He should have clocked out at 16:53, reflecting the 32 minutes of approved overtime, but he clocked out at 16:01.

On cross examination, Supervisor Pressley acknowledged that Mr. Alexander did submit a 3996 timely in the morning. He also acknowledged that Mr. Alexander called the station at 3:33. Brenda Berkley did not tell him to deliver the mail or to return the mail. She told him to perform his assigned duties. Mr. Alexander was in a non-duty, non-pay status (on 16.7) when the investigative interview was scheduled on September 14<sup>th</sup>. He called on the 13<sup>th</sup> and said that he could not make it on the 14<sup>th</sup>.

On redirect, Supervisor Pressley said that a carrier failing to deliver all his assigned mail is a performance issue. He was authorized 32 minutes overtime. That was his instruction. He was to deliver all assigned mail. At 3:33, when he called, he had about 45 minutes left. He had enough time to deliver all his mail. He still would have been within his scheduled time if he had delivered it. He had been approved for 32 minutes overtime. He would have used 12 minutes of the overtime and had 20 minutes to spare. He would have been within his schedule. He would have left at 4:15. He left at 4:01.

On cross examination, Supervisor Pressley said that Mr. Alexander was due off at 4 P.M. if he worked eight hours. He was approved until 4:31.

In its closing statement, the Postal Service said that the testimony and evidence supports the Fourteen Day Suspension for Unsatisfactory Work Performance and failure to deliver all mail. Management witnesses testified credibly. Mr. Alexander indicated on his 3996 that he needed 4 hours and 40 minutes. He was approved for a total of 32 minutes overtime. He pulled off four hours. When he spoke to Brenda Berkley, he said that he had 45 minutes left. That would have put him at 4:15. He was authorized 32 minutes of overtime because of the heavy mail volume causing him to leave late. He rescheduled his investigative interview for the 17<sup>th</sup>, but did not appear. He was supposed to contact the deciding official within ten days after he received the Notice of Proposed Removal. He never did that. He was made whole for the 16.7. There are no procedural errors or fatal flaws in the Post Office's case. The Union testimony that the station manager told him to just make eight hours is self-serving. He could have effectively delivered the mail within his time frame. Just

cause exists for the Fourteen Day Suspension. Mr. Alexander had no reason to bring the mail back.

#### POSITION OF THE UNION:

Union steward Charles Lehman Jackson testified that when the 16.7 emergency suspension of Mr. Alexander was overturned, he spoke to Postmaster Swartz about bringing him back. Postmaster Swartz said that he was not bringing him back because he was going to issue a Removal. Mr. Alexander went directly into the Removal without coming back to work. Mr. Jackson said that he met with Supervisor Dwayne Pressley on the Removal grievance. Mr. Pressley told him that he was not bringing him back, *He's done*. Mr. Pressley made no effort to resolve the grievance. Mr. Jackson moved the grievance up to Formal A.

Grievant Michael Alexander testified that he has worked for the Postal Service for twenty-six years. He is now Vice President of the local union, an alternate shop steward, the district liaison, and a Formal A representative. Mr. Alexander testified that he was assigned to route 1927 on Tuesday, September 7, the day after Labor Day. He is a leave replacement carrier. He had never worked route 1927 on the day after a holiday. There also had been new additions to the route of about an hour and a half a few days before. On the old route, there was two hours of overtime every day. The leaving time for that route is 9:00 o'clock. He did not leave the station that morning until about 10:42, an hour and 42 minutes late. There was very heavy mail that day. He submitted a 3996. He estimated the work at 6 hours and 40 minutes. He was told that he was not authorized to make any overtime. He is on the twelve hour overtime desired list. He never turned down overtime. If he had been authorized 32 minutes of overtime, he would have taken it. He had a route examiner with him on the street the whole time. Supervisor Dwayne Pressley did not tell him to make eight hours. It was Manager Calcagno who told him to make eight hours. Supervisor Pressley was standing right there at the time and heard Manager Calcagno tell him that. Supervisor Pressley told him to throw off some mail. Mr. Alexander told Mr. Pressley verbally in the morning that he still couldn't make the time. Out on the route, Mr. Alexander said that he made three calls to the station. First, he was put on hold. Then he called back. On the third call, he spoke to Brenda Berkeley. He was an hour and 42 minutes late in leaving the station. He had to recover that time. Brenda Berkeley told him to follow his instructions. He told her twice that he was not authorized to make overtime. The next day, he clocked in and was working on a route for an hour. Dwayne Pressley told him that the Station Manager wanted to see him. He was put off on a 16.7, emergency suspension, on non-duty non-pay status, and told not to report back until contacted. He continued to come downtown to conduct his Union business as Formal A representative. The Postmaster's office is in the same building downtown. He was issued a Notice of Removal on October 4<sup>th</sup>. He was scheduled for an investigative interview on September 14<sup>th</sup>, a Tuesday. He called Mr. Pressley at 6 AM on the 13<sup>th</sup> and told him that he had to meet on Formal A's on Tuesdays and could not go to the investigative interview on the 14<sup>th</sup>. He asked if he could come in that day, the 13<sup>th</sup>. Mr. Pressley said that he would contact him by



certified mail as to the date of the investigative interview. He was never contacted by certified mail. He was downtown everyday that week meeting on Formal As.

On cross examination, Mr. Alexander said that he was never told about any meeting on the 17<sup>th</sup>. He told Brenda Berkley on the phone that he had 45 minutes left. Ms. Berkley told him to follow his AM supervisor's instructions. He spoke with her before his 4 hours and 10 minutes were up, at 3:33. Mr. Alexander said that he has been paid for his time on the 16.7. The Postmaster summoned him into his office to discuss the decision letter. That is when the Postmaster reduced the Removal to a 14-Day Suspension.

In closing, the Union said that Mr. Alexander is a carrier with 26 years of experience, Vice President of the Union, and a Formal A representative. The mail volume on September 7<sup>th</sup>, the day after a holiday, was extremely heavy. He submitted a 3996 at 8:15 AM that morning. We do not know how Mr. Pressley arrived at 32 minutes of approved overtime. Mr. Alexander was already leaving an hour and 42 minutes late, so there is an hour and 42 minutes of overtime right there. Mr. Pressley and Manager Calcagno determined what mail he should take. The 3996 went out the window. Now he was told to make eight hours. He saw that he could not make it in eight hours. If he went over eight hours, that would be unauthorized overtime. If he brought the mail back, he would not be delivering it. He was between a rock and a hard place. He spoke to Brenda Berkley for clarification. She told him to follow the instructions of his AM supervisor. She was not making a decision for him on what to do. If he had been approved 32 minutes of overtime, why would he have passed it up. He is on the twelve hour overtime desired list. Management failed to give clear and precise instructions. There is no record of any certified mail sent to Mr. Alexander about the investigative interview. He was not required to talk to the Postmaster before the letter of decision was issued. He was out on the 16.7 from September 8 through October 13<sup>th</sup>. He met with the Postmaster on October 12<sup>th</sup>. Without an investigative interview, the grievant had no opportunity to plead his case. This is a fatal flaw in the discipline. Mr. Alexander could not have done anything to avoid this situation. If he went over eight hours, he would be written up for unauthorized overtime. He was in a no-win situation. He did what he thought was best in that situation. He did call for instructions. Ms. Berkley could have told him to deliver it. He never refused to make overtime. The grievance should be sustained. The discipline should be rescinded and expunged from his record. He should be made whole for any lost suffered, including loss of overtime.

#### DISCUSSION:

Based on the evidence in this record, we must conclude that Mr. Alexander was not given clear instructions on September 7<sup>th</sup>. Although he was initially approved for 32 minutes of overtime on his 3996, a later discussion with Manager Calcagno and Supervisor Pressley resulted in his understanding that he was to make eight hours. Out on the street, at 3:33, he saw that he could not make eight hours. He still had 45 minutes of mail left to deliver. Eight hours would put him off at 4 o'clock. He called

the station for instructions. He told the afternoon supervisor, Brenda Berkley, that he had 45 minutes of mail left and was not approved for overtime. What should he do? The testimony of Mr. Alexander and the management witnesses agree that Supervisor Berkley did not give him explicit instructions. Rather, she told him to do his assigned duties. It is clear that Mr. Alexander had concluded that those instructions were to make no overtime. The record contains a form (Jt. X 2, p. 38) signed by Supervisor Berkley, dated September 7, 2010. It indicates a call in from Carrier M. Alexander, Route 1927, Time 3:33. Under *Carrier's Reasons for Not Completing Route Within Assigned Time, Supervisor's Statement to Carrier*, some printed instructions are checked. The checked instructions are: *Perform your assigned duties as instructed. Follow Postal rules and regulations. Follow the instructions of your morning supervisors. Perform your assigned duties you were hired and trained to perform.* There is a handwritten note at the bottom of the form saying, *45 mins. left. and Carrier commented Is there anyone there who can give concrete instructions.* It is clear that Mr. Alexander sought instructions from management. It is clear that he did not receive explicit instructions on what to do. Therefore, he was left to decide what his instructions had been in the morning. He had concluded that those instructions were to make no overtime. He had no choice, then, but to bring the mail back. This situation could have been easily avoided had Supervisor Berkley simply instructed him to finish delivering his mail. She did not do so. Moreover, Supervisor Berkley was not called to testify at the arbitration hearing. Even without her testimony, however, everyone agrees as to what she told Mr. Alexander.

We must conclude that management failed to give Mr. Alexander clear instructions as to what to do when he could not complete his assigned delivery within eight hours. Since he thought that those were his instructions, he brought mail back. He did his best to follow his instructions as he understood them. If he had misunderstood them, Ms. Berkley had the opportunity to correct that misunderstanding. She did not do so.

Under these circumstances, we must conclude that the discipline issued to Mr. Alexander was not issued for just cause.

#### DECISION AND AWARD:

The Fourteen Day Suspension issued to Carrier Michael Alexander on October 4, 2010 was not issued for just cause. It is to be immediately expunged from all records of the Postal Service, as though it had never been issued. Mr. Alexander is to be made whole for any pay and benefits, including overtime pay, lost arising from the issuance of this suspension.