

REGIONAL ARBITRATION PANEL

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

Grievant: Class Action
 Post Office: Fayetteville, NC 28304
 USPS No.: K16N-4K- C 20295971
 Union No.: CA0510RR

APPEARANCES:

For the U.S. Postal Service

aLisa G. Bassa
Wendy Fuller, TA

For the National Association of Letter Carriers

Amber D. Blank

Place of Hearing: 907 Brighton Rd., Fayetteville, NC

Date of Hearing (s): December 10, 2020

Briefs Received: January 14, 2021

Date of Award: February 19, 2021

Relevant Contract Provision: Articles 3 & 7

Contract Year: 2016 - 2019

Type of Grievance: Contract

AWARD: The grievance is sustained. Management shall "cease and desist" violating the National Agreement at Article 7, and compensate the affected CCAs with an additional payment at 100% of the straight time rate for all hours worked in the rural craft on May 10, 2020.

Glenda M. August

 Glenda M. August
 Arbitrator

I. ISSUE

Did management violate Article 3 and 7 of the National Agreement when they assigned City Carrier Assistant (CCA) employees to perform work in the rural carrier craft? If so, what is the appropriate remedy?

II. RELEVANT CONTRACT PROVISIONS

**ARTICLE 3
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;
- E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and
- F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

(The preceding Article, Article 3, shall apply to City Carrier Assistant Employees.)

**ARTICLE 7
EMPLOYEE CLASSIFICATIONS**

Section 1. Definition and Use A. Regular Work Force. The regular work force shall be comprised of two categories of employees which are as follows:

- 1. Full-Time. Employees in this category shall be hired pursuant to such procedures as the Employer may establish and shall be assigned to regular schedules consisting of five (5) eight (8) hour days in a service week.
- 2. Part-Time. Employees in this category shall be hired pursuant to such procedures as the Employer may establish and shall be assigned to regular schedules of less than forty (40) hours in a service week, or shall be available to work flexible hours as assigned by the Employer during the course of a service week.

B. RESERVED

C. City Carrier Assistant Employees (CCAs)

The city carrier assistant work force shall be comprised of noncareer, bargaining unit employees, as follows:

1. City carrier assistants may perform the full range of letter carrier duties. The number of city carrier assistants who may be employed in any reporting period shall not exceed 15% of the total number of full-time career city carriers in that District.
2. In order to meet the fundamental changes in the business environment, including, but not limited to flexible windows which may be necessary to develop and provide new products and services, the Employer has the right to hire up to 8,000 CCAs in addition to those authorized in paragraph 1, above. The number of such city carrier assistants who may be employed in any reporting period shall not exceed 8% of the total number of full-time career city carriers in that District. CCAs hired under this Section will be so designated on their PS Form 50.
3. City carrier assistants shall be hired pursuant to such procedures as the Employer may establish. City carrier assistants shall be hired for terms of 360 calendar days and will have a break in service of 5 days between appointments.
4. Over the course of a service week, the Employer will make every effort to ensure that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to CCAs working in the same work location and on the same tour, provided that the reporting guarantee for CCA employees is met.

Section 2. Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.
2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to

maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

III. FACTS

On May 10, 2020, Management at the Fayetteville, NC Post Office, utilized CCA employees to perform work in the Rural Carrier Craft. The Union alleged that Management willfully, and deliberately violated the National Agreement by allowing the CCAs to perform work in the rural carrier craft, based on a previous Step B Decisions which established the Service's actions as a violation. The parties have agreed to settle the following grievances based on the Arbitrator's decision in the instant case:

CA05212020/GATS 20296032

CA05182020/GATS 20295994

CA05192020/GATS 20296013

CA05202020/GATS 20296018

The parties further agreed that this dispute is properly before this Arbitrator for a decision pursuant to the 2016-2019 National Agreement between the USPS and NALC.

IV. UNION'S CONTENTIONS

The Union contended that in this contract case, the burden is theirs to prove a violation occurred. They further contended that there is no dispute between the parties that City Carrier Assistants were utilized across craft lines and worked rural craft duties on May 10, 2020, in the Fayetteville, NC Post Office. According to the Union, the dispute lies in whether or not, utilizing CCAs across crafts to work rural craft duties, is a violation of Article 7 of the National Agreement.

It was the Union's position that Article 7 is clear and unambiguous on this issue and states:

Cross-Craft Assignments. Article 7, Sections 2.B and 2.C set forth two situations in which management may require career employees to perform work in another craft. This may involve a carrier working in another craft or an employee from another craft performing carrier work.

The Union contended that Article 7, Sections 2.B and 2.C clearly states that there are "two situations in which management may require career employees to perform work in another craft. They argued that CCAs are a *non-career* supplemental workforce, and therefore are not eligible to be utilized across craft lines. Additionally, contended the Union, rural carriers are excluded in

Article 7 of the National Agreement:

Rural Carriers Excluded. Paragraph A of this Memorandum of Understanding (National Agreement page 155) provides that the crossing craft provisions of Article 7.2 (among other provisions) apply only to the crafts covered by the 1978 National Agreement—i.e., letter carrier, clerk, motor vehicle, maintenance and mail handler. So crosscraft assignments may be made between the carrier craft and these other crafts, in either direction, in accordance with Article 7.2. However, rural letter carriers are not included. So crosscraft assignments to and from the rural carrier craft may not be made under Article 7.2. They may be made only in “emergency situations” as explained below.

The Union maintained that Management’s entire defense to the violations alleged was the COVID-19 pandemic and the Service continued to classify the pandemic as an emergency. According to the Union, an emergency is defined as a “serious, unexpected, and often dangerous situation requiring immediate action.” The Union argued that while the pandemic is serious, it is by no means unexpected and it has affected the United States since February of 2020. The Union noted that the incident date for the instant grievance was May 10, 2020.

Regarding emergency situations, the Union contended that the National Agreement states:

Crossing Crafts in “Emergency” Situations. In addition to its Article 7 rights, management has the right to work carriers across crafts in an “emergency” situation as defined in Article 3, Management Rights. Article 3.F states that management has the right:

3.F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

This provision gives management a very limited right to make crosscraft assignments. Management’s desire to avoid additional expenses such as penalty overtime does *not* constitute an emergency.

It was the Union’s argument that they strongly dispute Management’s assertion that Article 3F gives the Service the authority to violate the National Agreement. They maintained that the COVID-19 pandemic is not an “unforeseen circumstance” nor is it a “combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.” According to the Union, Management’s argument may have applied when the pandemic first started, but the Union insisted, that the Service cannot rely on that argument months later. Additionally, the Union argued that Management failed to provide any specific evidence

about how the pandemic has affected the Fayetteville Installation, or why it has affected the Rural Carrier craft much harder than the City Carrier Craft, which would cause Management to continuously violate the National Agreement at Article 7.2.

It was the position of the Union that Management's argument that an emergency existed is simply not substantiated by the evidence. The Union contended hearing testimony demonstrated, and this fact was undisputed, that the Fayetteville Installation had 54 RCAs on the rolls. Therefore, the Union contended, there were more than enough people to cover any vacancies in the rural craft without utilizing CCAs. The Union argued that the Postal Service and the NALC entered into several Memorandums of Understanding regarding the conditions rendered by the COVID-19 Pandemic, many of which were introduced at hearing by Management (MX-1). According to the Union, none of those MOUs included language about the rural carrier craft and RCAs, and therefore, none are relevant to the instant case, and utilization of CCAs in the rural carrier craft.

The Union contended that the NALC and the Service have both recognized the impact COVID-19 has had on operations and have entered into multiple MOUs addressing the issues related to COVID-19. The Union further contended that these agreements have allowed Management certain operational concessions due to COVID-19 issues that would normally be in conflict with the National Agreement. However, the Union argued, there was no MOU discussed, negotiated or agreed upon relating to allowing Management to utilize employees across craft lines due to any COVID-19 related issues in conflict with the Collective Bargaining Agreement. It was the Union's position that if Management wished to, or found it necessary to continuously mandate employees to cross craft lines due to COVID-19, the Service should have negotiated an MOU with the Union's involved as they have done so on numerous other issues (JX-2, Pages 4-5). Without an MOU on the issue, the Union argued that the provisions of Article 7 of the National Agreement remain in full effect.

The Union maintained that there are several dozen similar grievances being held, including four contained in the case file, pending the outcome of this Arbitration dispute. They contended that the remedy in this case, by agreement of the parties, will be applied to all cases being held. The Union noted that the NALC is requesting an appropriate remedy be awarded, one which would serve as a deterrent for Management, and will stop the continued violation of the National Agreement. The Union offered arbitral support for their position and remedy request.

In conclusion, the Union declared that the Postal Service violated Article 7 of the National Agreement when they utilized CCAs across craft lines in the rural carrier craft. They argued that Management clearly has not made any substantiated affirmative defense other than to say the violations were due to the COVID-19 pandemic. The Union maintained that the evidence of record in the instant grievance demonstrated that the grievance should be sustained in its entirety. They requested that the Arbitrator provide an appropriate remedy to ensure contract compliance.

V. MANAGEMENT'S CONTENTIONS

Management contended that although there are disagreements between the parties in this case, the only reason the instant grievance is before this Arbitrator is to issue an appropriate remedy. The Service argued that, the remedy sought by the Union is punitive, and noted that if anyone should be filing this grievance, it is the Rural Craft. According to Management, Exhibit M-1 supports the additional temporary employees need to continue operations at the Fayetteville, NC Post Office, during the on-going pandemic and noted that page 65 of the grievance file shows the requisitions that had been submitted to hire the required employees, prior to and during the pandemic.

It was the Service's position that the City Carrier Assistants (CCAs) utilized in the rural carrier craft, were compensated for their work and they were not harmed by Management's actions. Management contended that the Union in this case, offered no alternative as to what should have been done with the mail that needed to be delivered. Management cited the hearing testimony of their witness, Demaris McCants, who was Officer-In-Charge in the Fayetteville Post Office at the time of the incident. The Service maintained that several employees were out of work due to COVID-19 exposure and/or school or day care closures. According to Management, the assigning of the CCAs were not planned, and was due to the situation at hand, including carriers out delivering mail in the dark.

Management maintained that the Service was also experiencing a high turnover of employees during this time period, noting that new-hire orientations were occurring on a weekly basis, which they contended the Union President Frank Vega testified was not normal. Management contended that the new hires were afraid of becoming sick due to COVID-19, would leave and not return. The Service disputed the Union's contention that Management's violation

of the National Agreement was willful and deliberate and contended that this was simply not true.

The Service further disputed the Union's contention that the Pandemic was not unforeseen; they contended that the Postal Service, like the rest of the world could not have planned for such an event. Management argued that while Article 7 excludes Rural Carriers, Article 3, specifically, Article 3.F, gives Management the right to take whatever actions may be necessary to carry out its mission in emergency situations, and that Article of the National Agreement, includes City Carrier Assistants. Management argued that during the incident periods, the Service had to move the mail and could not allow mail to remain undelivered, thus, they invoked the authorizations provided by Article 3, to get the mail delivered to customers.

It was Management's position that the Union is attempting to obtain an unjust remedy; they argued that the intent of any remedy is to right a wrong and restore a loss. In this case, Management contended, there has not been a loss to NALC employees. Here, the Service asserted, the Union has failed to show any harm and a remedy is inappropriate; they argued that the request for and granting of punitive remedies has to cease where there has been no harm proven. Management contended that the Unions are well aware that the world is in the middle of a pandemic and the Postal Service has been shorthanded since the pandemic began. The Service maintained that if this was not the case, there would not have been so many MOUs signed, regarding the hiring of as many employees as possible, and then so many extensions to those MOUs signed by the parties. The Service offered arbitral support for their positions in this case.

In conclusion, the Service responded to the Arbitrator's request for information on whether the issue was the pandemic or whether it was a systemic issue, and they argued that it was the Union's burden to prove their case. Management maintained that the grievance file supported the fact that the incident dates were within the pandemic, and they noted that the Union's have all recognized that COVID-19 has affected operations. According to Management, the Union in this case, failed to prove that this issue was on-going prior to the affects of the pandemic on operations. The Service further noted the numerous employees who either did not return after orientation, or who decided to quit their job, due to concerns over the virus; they noted that this further impacted operations and required Management to invoke Article 3.F. Finally, the Service requested that the Arbitrator deny the Union's request for a punitive remedy, based on an Article 7 violation, as Management simply exercised their rights under Article 3 due to an on-going pandemic.

VI. DISCUSSION AND OPINION

**ARTICLE 3
MANAGEMENT RIGHTS**

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

(The preceding Article, Article 3, shall apply to City Carrier Assistant Employees.)

**ARTICLE 7
EMPLOYEE CLASSIFICATIONS**

Section 2. Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.
2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

JCAM

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Page 7-33

Rural Carriers Excluded. Paragraph A of this Memorandum of Understanding (National Agreement page 155) provides that the crossing craft provisions of Article 7.2 (among other provisions) apply only to the crafts covered by the 1978 National Agreement—i.e., letter carrier, clerk, motor vehicle, maintenance and mail handler. So crosscraft assignments may be made between the carrier craft and these other crafts, in either direction, in accordance with Article 7.2. However, rural letter carriers are not included. So crosscraft assignments to and from the rural carrier craft may not be made under Article 7.2. They may be made only in “emergency situations” as explained below.

The case at bar concerns the use of City Carrier Assistants (CCAs) in the Fayetteville, NC Post Office, to perform rural carrier duties. The Union has alleged a violation of Article 7 of the National Agreement, and there is no dispute between the parties that Article 7 excludes rural carrier duties from the crossing craft provisions of Article 7.2 of the National Agreement between the USPS and the NALC.

However, it is the position of Management in this case that they exercised their rights under Article 3.F to take the measures necessary to get the mail delivered in Fayetteville, during the ongoing COVID-19 pandemic. Additionally, Management argued that if anyone should have an issue with the use of CCAs to perform rural craft duties, it should be the NRLCA, not NALC. Management further argued that it was the conditions caused by the impact of the COVID-19 pandemic which led them to use CCAs to perform rural duties, and their actions were not willful or deliberate. The Service held that although the Service assigned CCAs contrary to the provisions of Article 7.2, they did so under the authority of Article 3.F, and there was no harm caused to any Carrier. Management asserted that the Union in this case is requesting a remedy that can only be determined to be punitive.

The Union disputes the Service’s position and argued that the acknowledgement of an Article 7 violation requires a remedy, based on Management’s continued disregard for the provisions of Article 7.2. They maintain that Management continues to violate the cross-craft provisions of the Agreement, and they further dispute the Service’s position that the COVID-19 pandemic continues to qualify as “emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected

to be of a recurring nature”. The Union further maintained that Management at Fayetteville, willfully and deliberately violated the National Agreement when they utilized CCA employees to perform work in the rural carrier craft. The Union asserted that while Article 7 allows cross-craft assignments, it does so only for “career” employees, and in clear and unambiguous language, excludes the rural craft.

According to the Union, the incident at issue in the instant case was premeditated and planned by Management, who has the obligation to properly staff their installation. The Union noted that a previous Step B decision has established Management’s actions as a violation, and the parties in this case have agreed to settle all similar grievances (held in abeyance) based on the decision in this case. Management disputed the Union’s argument that this was a willful violation, and that their actions were based on the affects of the pandemic, with employees on extended leave, and a lack of staffing. The Service noted that their attempts to hire additional personnel have been met with setbacks, which included employees who do not report for duty or do not stay based on their fears of the virus. Management contended that twenty-five (25) of their sixty-three (63) Rural Routes are vacant and the Fayetteville Post Office employs fifty-four (54) Rural Carrier Assistants. According to Management, this lack of staffing has caused the Service to mandate rural and city carriers across craft lines just to get the mail delivered to postal customers, on-time and safely, as the world maneuvers through this pandemic.

The clear language of the Agreement established that utilizing the CCAs for rural craft work was a violation of the Collective Bargaining Agreement. While Article 7.2 limits cross-craft assignments to career employees, it also *excludes* assignments in the rural craft. Additionally, the *CCA Questions & Answers*, listed under Article 7.1.C.1 states that CCAs may not hold dual appoints, which is described in Section 234.23 of the EL-312 Handbook as an appointment to “more than one noncareer position in the Postal Service. *This is known as a dual appointment.* Management acknowledged that the use of CCAs in the rural craft is not allowed under Article 7, but defended their position to do so as a right garnered under Article 3.F which states:

**ARTICLE 3
MANAGEMENT RIGHTS**

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances

which calls for immediate action in a situation **which is not expected to be of a recurring nature.**

Based on the language of Article 3.F, Management may take whatever action they deem necessary, **in emergency situations**, however, the Union argued that while initially, COVID-19 may have required emergency action, that emergency does not continue.

The parties do not dispute that the time period of the incident in this case, and the incidents contained in the grievances held in abeyance awaiting the decision in this case, all occurred during the pandemic. Thus, the question is whether or not the COVID-19 pandemic was and still is considered an emergency under the provisions of Article 3.F. The key to the answer lies within that same Article, as the parties qualified the Service's right to take action when the situation "**is not expected to be of a recurring nature.**" The very nature of the pandemic assures us that the situation which the Postal Service is facing, a lack of staffing for the number of routes which require coverage each day, based on employees' continued exposure to this virus, will be of a recurring nature for the foreseeable future.

While the position Management finds itself in each day, was not of their own making, the resolution can only be found at the negotiation table. The "emergency" was established when the COVID-19 virus was first identified in this country and spread rapidly throughout the states. However, the issue of absenteeism is one that every office in the nation is facing at this time, and clearly calls for additional negotiations of MOUs which can help resolve staffing issues with available resources, in the face of numerous hiring issues, where people are scared of the exposure to COVID-19. The need to utilize personnel in other areas of the Post Office, maybe other crafts including the rural craft, just to get the mail delivered, is a recurring situation in Fayetteville, NC and is subject to the terms of the National Agreement. In this case, a violation of Article 7.2.

The Union offered the decision of Arbitrator Michael J. Pecklers, Esq., in case number B01N-4B-C 03080075 and B01N-4B-C 03150239, in support of their position on this issue, where Arbitrator Pecklers decided:

For its part, the Postal Service provided credible testimony by OIC Garbowski of the good faith efforts he made. The OIC confirmed: that it has always been difficult to hire RCAs and TRCs; that the most difficult thing to deal with is unscheduled absences; that one (1) RCA has been out two (2) years due to a serious accident; that the Help Wanted ad at EX. M-1 has been sent three (3) times in the last two (2)

years and also posted at colleges; that he asks for volunteers before assigning PTFs to Rural routes, and has assigned supervisors including himself the task; and that he considered sick leave, EAL, light and limited duty, and removals as emergencies.

In USPS and NALC, Case Nos. B94N-4B-C 99247620 27628; B94N-4B-C 99249076 27630 (Simmelkjaer, 200) (EX. U-2) Arbitrator Simmelkjaer expressly rejected parallel arguments by the Postal Service, that Rural Carrier craft injuries and vacancies constituted an "emergency" within the contemplation of Article 3.F for the extended period of time. At pages 15-16 of his award, the Arbitrator opined:

[g]iven the emergency standard promulgated by the parties and the prima facie evidence of a contract violation established by the Union, the Service was unable to prove that an emergency existed. In the Arbitrator's opinion, no reasonable interpretation of Article 3.F could reconcile management's use of City Letter Carriers on a recurring basis for over one (1) year as an emergency.

Notwithstanding the testimony of Mr. Krynicky that management has made a good faith effort to rectify the ongoing shortage of rural carriers, including recruitment, overtime assignment of rural carriers and supervisor substitution, continuous violation of the contract cannot be sanctioned as a viable alternative. Management has an obligation to address workforce contingencies such as carrier injuries, turnover, etc., without requiring city carriers to work continuously in a craft for which they were not hired as opposed to infrequent emergency assignments.

The words of Arbitrator Britton in USPS and NALC, Case No. s4N-3W-C 2392 3A-86-435 (Britton, 1988) (Ex. U-4) are also instructive. At page 4, he stated:

[w]hile under Article 3.F of the National Agreement, management, in 'emergency situations', has the right to do whatever is necessary to carry out its mission, it is noted by the Arbitrator that 'emergency situations' are defined, **** Sickness, as hereinabove found by the Arbitrator is not deemed to possess the characteristics described, and therefore in his judgment, does not fall within the definition of 'emergency situations' found in Article 3F. to allow management to take the action here in question.****

The record before me amply demonstrates that the utilization of PTF City Carriers to cover Rural routes at this facility has become an indispensable pattern and practice of Danbury Management. Notwithstanding the OIC's conscientious efforts to deliver the mail, the fact remains that sick leave and EAL utilization; OWCP considerations; removals; and staffing shortages in the Rural ranks do not fall within the ambit of Article 3.F. Moreover, they are neither unforeseen nor non-recurring.

...

The remaining issue to be addressed is that of remedy. A cease and desist order is appropriate. As is a monetary award. In regard to the latter, I do not subscribe to the Postal Service's argument that egregious behavior must be demonstrated to support such an award. As recognized by Arbitrator Simmelkjaer in the Westfield MA case, Management has an obligation to address workforce contingencies without requiring City Carriers like Mr. Rowe to work continuously in a craft for which they were not hired. Out of necessity, it made a business judgment to do so, in violation of the National Agreement.

In my view, a mere garden variety cease and desist order will not remedy the situation, which as existed since at least 1994. A monetary penalty will therefore appropriately compensate the Grievants for the repeated violation of their contractual rights and serve as a deterrent to further abuses.

In the instant case, there is no dispute that the issue of utilizing CCAs to perform rural craft duties has been on-going since the start of the pandemic. Now, more than a year in, the Union alleged that the violations continue. As in both Arbitrator Simmelkjaer and Arbitrator Britton's cases, Management in the case at bar argued that they made conscientious efforts to get the mail delivered and get additional staff hired. However, as in the cited cases, those efforts did not change the fact that using the carriers (in this case, CCAs) to perform rural craft work, was a violation of the National Agreement between the USPS and NALC. In both cases, the Arbitrators found that a remedy was required to cure that violation, and I agree.

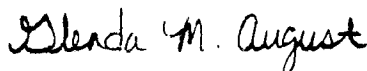
Regarding remedy, Management alleged that the Union's requested remedy was punitive, because the affected employees were not harmed. However, given the current situation in this pandemic, the CCAs faced exposure in new surroundings which were not normally assigned. The Union alleged that the CCAs were mandated to complete the duties and this was not a voluntary situation. By their own admission, Management contended that many of the rural craft employees quit because of their concern about the virus. This Arbitrator is certain many of the CCAs had the same concern, thus the harm comes when the Service denied them the right *not* to cross-crafts as provided by the National Agreement. In their remedy request, the Union asked that Management be ordered to cease and desist violating Article 7, and requested that the affected CCAs be compensated with an additional 100% at the straight time rate; or allow them to receive compensatory time off. Obviously, allowing compensatory time off, in a period during which the

Postal Service already has numerous staffing challenges, is not a feasible remedy and could only cause more grievances. The appropriate remedy in this case would be an order to “cease and desist” and the payment of an additional 100% at the straight time rate to the affected CCAs; this Award is ordered to remedy the violation of the CCAs rights, bargained for by the NALC.

Based on the totality of the evidence, and testimony at hearing, the grievance is sustained. Management at the Fayetteville, NC Post Office violated Article 7 of the National Agreement when they assigned City Carrier Assistant (CCA) employees to perform work in the rural carrier craft. Management shall “cease and desist” violating the National Agreement at Article 7, and compensate the affected CCAs with an additional payment at 100% of the straight time rate for all hours worked in the rural craft on May 10, 2020.

AWARD

The grievance is sustained. Management shall “cease and desist” violating the National Agreement at Article 7, and compensate the affected CCAs with an additional payment at 100% of the straight time rate for all hours worked in the rural craft on May 10, 2020.



GLENDAM. AUGUST
Arbitrator

February 19, 2021

New Iberia, LA