

Regular Arbitration Panel

IN THE MATTER OF THE ARBITRATION)	
)	GRIEVANT: Class Action
BETWEEN)	
)	POST OFFICE: Decatur, Alabama
UNITED STATES POSTAL SERVICE)	
)	CASE NO.: G16N- 4G-C 19205484
AND)	
)	DRT NO.: 08-466992
NATIONAL ASSOCIATION OF)	
LETTER CARRIERS, AFL-CIO)	UNION NO.: TPL0719DPS
)	

BEFORE: CHRISTOPHER E. MILES, ARBITRATOR

APPEARANCES:

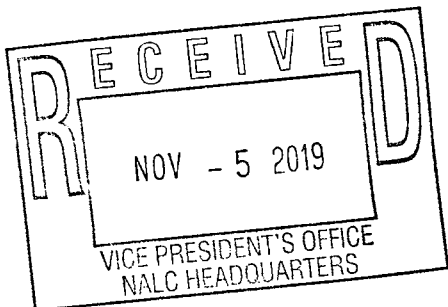
For the U.S. Postal Service:	Jeff Calloway, Labor Relations Specialist
For the Union:	Greg Dixon, Assistant to the President For Contract Administration - NALC
Place of Hearing:	Decatur, Alabama
Date of Hearing:	September 11, 2019

AWARD:

Date of Award:	October 21, 2019
Panel:	Region 8 / Alabama

AWARD SUMMARY

The class action grievance considered herein is sustained. The Postal Service violated the National Level Agreements M-01306, M-01153, and M-01246, and the M-41 Handbook, Section 121.1, when it included secondary address mail that is not in delivery order, or "residual mail", in the DPS trays. As the remedy, the Postal Service is directed to cease and desist from including secondary address mail, not in delivery order, or "residual mail", in the trays of DPS mail at the Decatur, Alabama installation. The Postal Service is further directed to work with Address Management Services (AMS) and In-Plant Support to correct this situation. No other remedy is awarded. However, should the Postal Service not comply, then a monetary remedy may be appropriate for the Carriers at the Decatur Post Office. The Arbitrator shall retain jurisdiction of this case for a period of 90 days to address any questions or issues concerning the implementation of this Award.



Chy E. Miles

 Christopher E. Miles, Esquire
 Labor Arbitrator

I. BACKGROUND

The class action grievance considered herein was filed by Branch 1314 of the National Association of Letter Carriers (hereinafter referred to as the "Union") at the Postal facility operated by the United States Postal Service (hereinafter referred to as the "Postal Service") in Decatur, Alabama. The Union asserts that the Postal Service is violating several National Level agreements and the M-41 Handbook by including secondary address mail that is not in delivery order, or "residual mail", in the Delivery Point Sequence (DPS) trays at the Decatur installation which has to be collated by the Carriers on the street before delivery. The grievance, filed at Informal Step A on April 2, 2019, was processed pursuant to the procedure set forth in the parties' collective bargaining agreement¹ and the Step B Dispute Resolution Team (DRT) agreed to impasse the case on May 16, 2019. The issue was identified as follows:

Did management violate M-01306, M-01153, and M-01246 via Article 15 of the National Agreement and section 121.1 of the M-41 handbook via Article 19 of the National Agreement by including secondary address mail that is not delivery order in Delivery Point Sequence (DPS) trays at the Decatur AL installation, and if so what should the remedy be?

Having been unable to resolve the matter, the undersigned was appointed to hear and decide the issue. A hearing was conducted on September 11, 2019, in Decatur, Alabama. At the outset of the hearing, the Postal Service conceded that it has violated the National Level Agreements set forth in M-01306, M-01153 and M-01246 and Section 121.1 of the M-41 Handbook by including secondary address mail, or residual mail", that is not in delivery order in the DPS trays. It agreed to work with Address Management Services (AMS) and In-Plant Support to rectify the situation. Therefore, the only issue for resolution is the appropriateness of the remedy requested by the Union and in that regard the parties were afforded full opportunity to present testimony and evidence, to cross-examine the witnesses, who were sworn, and to make arguments for their positions. At the conclusion of the hearing, the record in this case was closed.

II. RELEVANT PROVISIONS OF THE AGREEMENT

ARTICLE 15 GRIEVANCE – ARBITRATION PROCEDURE

ARBITRATION 19 HANDBOOKS AND MANUALS

¹ Collective Bargaining Agreement Between United States Postal Service and National Association of Letter Carriers, AFL-CIO, May 21, 2016 – September 20, 2019 (hereinafter referred to as the "Agreement").

III. CONTENTIONS OF THE PARTIES

A. Union

The Union asserts that this case is straight forward and involves concise contract language that was negotiated before the implementation of automated or DPS mail. Historically, prior to DPS, Letter Carriers put all letter mail in delivery sequence by casing it. The casing of mail generally took three to five hours every morning, depending on the size and type of route. Because the automation of letter mail was going to have a direct and substantial impact on the Letter Carrier craft, the parties negotiated transition rules and limitations to automation. This grievance involves a negotiated provision that says only mail that is in delivery point sequence can be part of the DPS mail. The Union submits that there are three simple facts which form the basis of this case:

1. Delivery Point Sequence (DPS) is one bundle of mail in delivery point sequence,
2. Residual mail is any mail that is not in DPS order, and
3. Residual mail is not DPS mail and must be cased.

In this regard, the Union emphasizes that the Postal Service has agreed that it violated Article 19 of the Agreement, as well as National Level Settlements M-01153 and M-01246 when residual mail, which is not in delivery order, was included in the DPS trays at the Decatur, Alabama installation. Therefore, the only issue remaining is the appropriate remedy for this violation.

According to the Union, because of the Postal Service's blatant violation of the clear contract language, not only is a cease and desist order required, but also compensatory remedies. The Union argues that management in Decatur have been knowingly and intentionally leaving residual mail in the DPS mail. Management knew that it violated the Agreement and could have corrected it immediately. They chose not to and they are waiting for an arbitrator to make them correct the violation. Because of its blatant disregard for the Agreement, the Union requests the following remedy:

1. The Union requests that management cease and desist violation of M-01306, M-01153 and M-01246 via Article 15 of the National Agreement and Section 121.1 of the M-41 Handbook via Article 19 of the National Agreement by including secondary address mail that is not in delivery order in DPS trays.
2. That management immediately end practices which are in contravention of established DPS procedures.

3. That Letter Carriers(s) Steve Hood, Greg Wilson, John Adkins, Kim Heng, Daniel Clark, Ronnie Adams, Jennifer Olvera, Clyde Jackson, Neal McCreless, Allen Perdue, Paul Lawrence, Chris Malone, Quincy Miller, Kenneth Wright, Wendy Trousdale, Donie Rice, Taneisha Johnson, Jason Atchley, Brandon Jackson, each be paid a lump sum of \$100.00 to serve as an incentive for future compliance.
4. That all payments associated with this case be made as soon as administratively possible, but no later than 30 days from the date of settlement.
5. That proof of payment be provided to Paul Lawrence upon payment, and/or any other remedy the arbitrator deems appropriate.
6. The Union also asks that the arbitrator retain jurisdiction over the enforcement of the award.

B. Postal Service

The Postal Service stipulates that a violation of the Agreement occurred in this case. Therefore, the only dispute that remains is the remedy. It contends that the remedy requested by the Union is of a punitive nature. It maintains that punitive or exemplary damages are not available as a remedy for a contract breach. Such a remedy is not to be inferred from general contract language; there must be specific language authorizing punitive damages and there is no such language in the parties' Agreement.

Moreover, the Postal Service submits that punitive damages are disfavored in labor arbitrations and are rarely permissible under the National Labor Relations Act. If arbitrators are allowed to impose punitive damages, the usefulness of arbitration as a remedial purpose, would be destroyed. Furthermore, it is argued that an award of punitive damages against the Postal Service is barred by principles of sovereign immunity. It suggests that the Postal Service is immune from punitive damages in labor and employment disputes. Punitive remedies serve no meaningful deterrent effect, punish Postal ratepayers and divert resources central to the Postal Service's statutory mission.

The Postal Service contends that punitive awards in labor arbitrations are improper generally, and detrimental to harmonious labor relations. In this case, the Carriers will be made whole by Management correcting the infraction of insufficient address and secondary address mail being included with DPS mail. The Supervisors were only doing their best to fulfill the statutory obligation to deliver the mail. There simply is no extreme, outrageous, wanton or willful misconduct to support an award of punitive damages. Therefore, it is requested that the Union's request for punitive and unjust remedies be denied.

IV. DISCUSSION AND FINDINGS

This class action grievance was filed by the Union to protest the inclusion of secondary address mail that is not in delivery order, or "residual mail", in the Delivery Point Sequence (DPS) trays at the Decatur, Alabama installation. As such, the secondary address mail must be collated by the Carriers on the street before delivery. According to the National Level Agreement, M-01153, and the "Questions and Answers concerning the September 1992 memorandums," it is stated in answer to Question 69 that "DPS mail is one bundle of mail in Delivery Point Sequence. Mail that must be collated before delivery is not considered DPS mail. The number of dispatches is irrelevant." In addition, in M-01153, residual mail is defined in answer to Question 64 and provides that "residual mail is any mail that is not in DPS order once a delivery unit starts receiving DPS mail." In Section 121.11 in the Handbook M-41, it indicates that mail that is not in DPS must be cased. In addition, the Handbook M-39 at Section 121.11b provides that residual letter mail is to be cased separately into delivery sequenced order. Thus, the record is clear that 1) Delivery Point Sequence (DPS) is one bundle of mail in Delivery Point Sequence; 2) residual mail is any mail that is not in DPS order, and 3) residual mail is not DPS mail and it must be cased.

In this regard, the Postal Service confirmed at this hearing that the above-cited provisions have not been complied with at the Decatur Post Office. It has confirmed that it will work with the Address Management Services (AMS) and In-Plant Support in order to correct the situation. As the result, the issue for resolution is the appropriate remedy for the violation of the National Level Agreements and the provisions of the Handbooks incorporated into the Agreement via Article 19.


The Postal Service strenuously argued that a monetary remedy in this case is punitive in nature and not appropriate. It provided extensive argument and citations concerning its position. The Union believes that a compensatory remedy is warranted due to the Postal Service's admitted knowledge that Management was in violation of the Agreement and failed to take any action to rectify the matter. In addition, the Union believes that a compensatory remedy would serve as an incentive to ensure future compliance by the Postal Service. In my view, a monetary remedy is not appropriate at this juncture. Clearly, a cease and desist order is required at this point and as recognized by the esteemed Arbitrator Richard Mittenthal in Case No. H4N-NA-C-21 (5th issue) "should the Postal facility in question thereafter fail to comply with such an order, a money remedy might well be appropriate." (at page 9)

Consequently, for the above reasons, the class action grievance considered herein is sustained. The Postal Service violated the National Level Agreements M-01306, M-01153, and

M-01246, and the M-41 Handbook, Section 121.1, when it included secondary address mail that is not in delivery order, or "residual mail", in the DPS trays. The Postal Service is directed to cease and desist from including secondary address mail, not in delivery order, or "residual mail", in the trays of DPS mail at the Decatur, Alabama installation. The Postal Service is further directed to work with Address Management Services (AMS) and In-Plant Support in order to correct this situation. No other remedy is awarded. However, should the Postal Service not comply, then a monetary remedy may be appropriate for the Carriers at the Decatur Post Office.

AWARD

The class action grievance considered herein is sustained. The Postal Service violated the National Level Agreements M-01306, M-01153, and M-01246, and the M-41 Handbook, Section 121.1, when it included secondary address mail that is not in delivery order, or "residual mail", in the DPS trays. As the remedy, the Postal Service is directed to cease and desist from including secondary address mail, not in delivery order, or "residual mail", in the trays of DPS mail at the Decatur, Alabama installation. The Postal Service is further directed to work with Address Management Services (AMS) and In-Plant Support to correct this situation. No other remedy is awarded. However, should the Postal Service not comply, then a monetary remedy may be appropriate for the Carriers at the Decatur Post Office. The Arbitrator shall retain jurisdiction of this case for a period of 90 days to address any questions or issues concerning the implementation of this Award.



Christopher E. Miles, Esquire
Labor Arbitrator

October 21, 2019