

REGULAR REGIONAL ARBITRATION PANEL

In the Matter of the Arbitration	§	<u>Grievant:</u> CLASS ACTION
	§	
	§	<u>Post Office:</u> MEMPHIS, TENNESSEE
	§	
Between	§	
	§	
	§	<u>Case Number:</u> 4G-19N-4G-C 22008330
	§	
UNITED STATES POSTAL SERVICE	§	<u>DRT No.:</u> 08-556200
	§	
and	§	
	§	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	§	<u>Union No.:</u> R8-27-1-21
	§	

BEFORE: TROY D. SOILEAU, Arbitrator

APPEARANCES:

<u>For the UNITED STATES POSTAL SERVICE:</u>	MR. ERIC W. CONKLIN, USPS Advocate
<u>For the NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO:</u>	MR. COREY L. WALTON, NALC Advocate

HEARING:

Place of Hearings: 525 South B.B. King Boulevard, Memphis, Tennessee 38101

Date of Hearings: May 17, 2022 and June 30, 2022

Record Closed: August 26, 2022

AWARD:

Issuance of Award: February 23, 2023

AWARD SUMMARY

I. The following **HOLDINGS** are adopted by your arbitrator in this **AWARD OPINION**:

- (A) **HOLDING**: The parties shall have a deep appreciation of, and closely follow, the **SOILEAU WORKPLACE SAFETY AND VIOLENCE SUMMARY** when complying with and implementing the **HOLDINGS** contained in this **AWARD**.

- (B) **HOLDING**: The **USPS** is **WARNED** that failure to comply with any **HOLDING** contained in this **AWARD** will result in the ***escalation of remedies***.

- (C) **HOLDING**: **MS. RESHIA BRASWELL** is immediately removed from her current managerial position, and may not, under any circumstance, supervise or manage any city letter carriers, either directly or indirectly.

- (D) **HOLDING**: **MS. TERRI BENSON** is immediately removed from her current managerial position, and may not, under any circumstance, supervise or manage any city letter carriers, either directly or indirectly.

- (E) **HOLDING**: **MR. JOSEPH BIRD** is immediately removed from his current managerial position, and may not, under any circumstance, supervise or manage any city letter carriers, either directly or indirectly.

- (F) **HOLDING**: **DISTRICT MANAGER ALEXANDER** is immediately removed from his current managerial position, and may not, under any circumstance, supervise or manage any city letter carriers, either directly or indirectly, should his retirement status change to full or part time employment with the **USPS**.

- (G) **HOLDING**: Management In the Memphis Installation shall immediately ***cease and desist*** violating **M-39 SECTION 115, ELM 665.24**, the **POSTAL SERVICE'S POLICY ON WORKPLACE**

HARASSMENT, and the JOINT STATEMENT ON VIOLENCE AND BEHAVIOR IN THE WORKPLACE, and the SOILEAU WORKPLACE SAFETY AND VIOLENCE SUMMARY, via Articles 14, 15 and 19 of the National Agreement.

- (H) **HOLDING:** The **USPS** shall reimburse the **NALC** for all costs in investigating the incident of October 12, 2021, as well as all costs in the prosecution of this case within the entire Article 15 process. Said reimbursement shall include, but not limited to, all costs of arbitration. All sums contemplated by this **AWARD** shall be paid within 30 days of the **USPS** receiving an invoice from the **NALC**. All objections as to amounts to be paid shall be presented to your arbitrator for resolution within 10 days of the objection, via ZOOM video conferencing.
- (I) **HOLDING:** All employees **USPS** and **NALC** employees, (to include full time, part time, and CCA **NALC** employees, as well as, any other city letter carrier on the employment roles) assigned to the Memphis Installation shall be provided with EAP services—paid entirely by the **USPS**. The time period for these services shall revert back to October 12, 2021, and continue thereafter until further ruling of your arbitrator.
- (J) **HOLDING:** (1) The parties shall create the **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE** made up of six individuals. The **USPS** may appoint three members from the regional or local area—at least one member shall be from the managerial area. The **NALC** may appoint three members from the regional or local area—at least one member shall be from the regional office. The committee shall be organized and assembled within 10 days of the issuance of this **AWARD OPINION**;
- (2) The **USPS** shall keep detailed records of the procedures and processes of the committee, and shall share with the **NALC**, upon request, the records that are maintained;
- (3) The purpose of the **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE** shall be to develop programs and processes, with the assistance of a conflict resolution coordinator, who shall serve as the chairman of the

committee;

(4) All unresolved conflicts of the **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE** shall be presented to your arbitrator for resolution within 10 days of the conflict, via ZOOM video conferencing;

(5) The **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE** shall meet twice each month for a minimum time period of four hours—or as further directed by the chairman of the committee or your arbitrator;

(6) The **USPS** shall pay all costs associated with the attendance of all committee members at all meetings (including the chairman of the committee); including, but not limited to, travel and other ordinary expenses. The chairman of the **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE** shall be reimbursed, individually, in the same manner, and under the same conditions, as your arbitrator. Furthermore, the **USPS** shall pay all costs associated with any outside Conflict Resolution Organization;

(7) The chairman of the **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE** shall be **PROFESSOR, SELINA J. SHULTZ, Esq., L.L.M.**;

(8) The **USPS** and **NALC**, as well as all committee members, shall work together, applying the tenants of good faith and fair dealing, to accomplish the goals of the **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE**; and

(9) The **USPS** may elect not to participate **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE**. If such an election is made, the **USPS** shall, within 30 days of such election, pay each **NALC** employee within the **MEMPHIS INSTALLATION**, (to include full time, part time, and CCA **NALC** employees, as well as, any other city letter carrier on the employment roles), a one-time lump sum payment of **\$1,000.00 (ONE THOUSAND DOLLARS AND no/100)**. Nothing in this **HOLDING** regarding the election contained herein shall be interpreted as to void any other **HOLDING** in this **AWARD OPINION**.

(K) **HOLDING**: The work of the **MEMPHIS INSTALLATION CONFLICT**

RESOLUTION COMMITTEE shall hereafter be known and cited as the **MEMPHIS PROJECT**.

(L) **HOLDING**: Your arbitrator retains jurisdiction of this case.

By: /S/ Troy D. Soileau
TROY D. SOILEAU, Arbitrator

AWARD OPINION

I. Introductory Matters

TROY D. SOILEAU¹ served as the appointed arbitrator and submits this **AWARD OPINION** of all contested issues presented.

The above styled and numbered cause arose out of the **MEMPHIS-EAST/LAMAR**, (Sometimes referenced, **MEM-EAST/LAMAR P.O.**) and was presented for arbitration as a Regular Regional Arbitration case—the merits of the case being originally called and heard on May 17, 2021. At the close of the day of the original hearing, the parties requested a recess due to the voluminous record and the number of witnesses remaining to be called. Thereafter, the hearing was recessed and rescheduled for June 30, 2022. See, ORIGINAL SCHEDULING LETTER, April 29, 2022; See, Also, RESCHEDULING LETTER, May 24, 2022.

After the hearing, the parties agreed to e-mail and cross-exchange each other and your arbitrator their closing briefs and authority on or before the close of business of August 26, 2022 at 5:00 p.m. Eastern Standard Time. All closing documents were timely received; therefore, the time-line for the presentment of this Award originally began on Monday, August 29, 2022.

The original **TENNESSEE DISTRICT DISPUTE RESOLUTION STEP B TEAM CASE FILE** (hereinafter, **DRT CASE FILE**) contained well over 1300 pages. See, USPS CLOSING BRIEF, p.5. Additionally, the parties submitted extensive briefs and other authority for your arbitrator to consider. Therefore, your arbitrator requested an extension of the deadline for the filing of this **AWARD** until **October 16, 2022 at 12:00 a.m. Eastern Standard Time**. In addition to the granted extension above, your arbitrator subsequently extended the deadline for the presentment of this **AWARD** (until the actual date of submission) for the following reasons: (1) the novelty and complexity of the issues in this case; including, but not limited to, the preliminary issues advanced by the parties; and (2)

1. The surname of “Soileau” being pronounced “Swallow” for future reference.

the length of the record in this case.

II. Procedural Matters

A. Advocates -

The **NATIONAL ASSOCIATION OF LETTER CARRIERS** (hereinafter, **NALC**), presented this arbitration appeal by and through its authorized representative, **MR. COREY L. WALTON**, **NALC** Arbitration Advocate.

The **UNITED STATES POSTAL SERVICE** (hereinafter, **USPS**), defended this arbitration appeal by and through its authorized representative, **MR. ERIC W. CONKLIN**, Labor Relations Specialist.

B. Hearing Procedural Matters -

The arbitration consisted of both parties presenting oral opening statements and closing arguments. At the request of the parties, each witness was properly sworn by your arbitrator prior to offering testimony. Each advocate developed their respective cases by the presentment and cross examination of the witnesses, exhibits, and other evidence pursuant to the rules of arbitration. Upon Order of your arbitrator, both parties provided written closing briefs and other authority supporting their contentions and defenses.

Prior to the presentment of evidence in this case, the **USPS** presented “Preliminary Issues” for resolution. The parties were allowed to present arguments and defenses regarding all Preliminary Issues—and final ruling was taken under advisement. Upon further consideration of the Preliminary Matters presented to arbitration, an **INTERIM AWARD** was issued on February 22, 2023, and further numbered 4G-19N-4G-C 22008330; said Award being incorporated herein, by reference, and in its entirety, as if copied herein, verbatim.

The **NALC** was allowed to open and close both hearings.

C. Procedural History -

The **TENNESSEE DISTRICT DISPUTE RESOLUTION STEP B TEAM DECISION**

(hereinafter, **DRT DECISION**) presented for arbitration spells out the procedural history of this case as follows:

- (1) The grievance was filed as a **CLASS ACTION** case. See, **DRT DECISION**, p.2.;
- (2) The grievance incident date was identified as “Ongoing” . See, **Id.**;
- (3) The Informal Step A was initiated on October 26, 2021. See, **Id.**;
- (4) The Formal Step A meeting was held on November 8, 2021. See, **Id.**;
- (5) The **STEP B TEAM** received this case on November 12, 2021. See, **Id.**;
- (6) The **DRT DECISION** was issued on December 9, 2021. See, **Id.**;
- (7) The **STEP B TEAM** declared an **IMPASSE** of the contested issues. See, **Id.**; and,
- (8) The case was appealed to arbitration by letter dated December 17, 2021. See, **Id.**. See, **DRT CASE FILE**, p.1.

III. Reformed and Modified Issue ²

A. Issue -

The reformed and modified issue considered in this case was as follows:

When acting pursuant to its authority and responsibilities spelled out in the **CBA** and **JCAM**, did the **USPS** violate the Joint Statement on Violence and Behavior in the Workplace, the Postal Service's Policy on Workplace Harassment, the Tennessee District Workplace Violence/Zero Tolerance Policy, Section 115.4 of Handbook M-39, and ELM Section 665.24 via Articles 14, 15 and 19 of the National Agreement? ANSWER: Yes.

-
2. All Preliminary Issues have been omitted due to the **INTERIM AWARD** issued in this case—as all such issues were addressed and ruled upon therein.

Having previously established that the **NALC** presented a *prima facie case* regarding the above reformed and modified issue; and further, after issuance of Summary Judgment in favor of the **NALC** as contained in the **INTERIM AWARD** referenced above, the only remaining issue in this case is:

Whether further **AWARD** should be granted based upon the contractual violations on the part of the **USPS**?

IV. Exhibits

A. Joint Exhibits Offered and Admitted -

Prior to introductory comments or presentment of their respective cases, the parties jointly offered into evidence (each in their entirety), the following:

- (1) the **CBA**;
- (2) the **JOINT CONTRACT ADMINISTRATIVE MANUAL** (hereinafter, **JCAM**);
- (3) the **TENNESSEE DISTRICT DISPUTE RESOLUTION STEP B TEAM CASE FILE** (hereinafter, **DRT CASE FILE**); and
- (4) **JOINT STATEMENT ON VIOLENCE AND BEHAVIOR IN THE WORKPLACE** - M-01242 (hereinafter, **JSVBW**).

Hearing no objections, each of the afore-enumerated was admitted into evidence, in their entirety, and as separate exhibits to the hearing—being formally marked as follows:

- (1) **CBA** - Arbitration Joint Exhibit #1;
- (2) **JCAM** - Arbitration Joint Exhibit #2;
- (3) **DRT CASE FILE** - Arbitration Joint Exhibit #3; and
- (4) **JSVBW** - Arbitration Joint Exhibit #4.

B. Description of Joint Exhibits -

(1) **CBA** - The **CBA** is the written agreement (contract) between the **USPS** and the **NALC**, and contains, among other things, a variety of procedures, benefits, obligations, and responsibilities granted and imposed upon the **NALC** and its members,

as well as the **USPS** and its employees—including, but not limited to, the arbitration process;

(2) **JCAM** - The **JCAM** is a narrative explanation of the **CBA**, and was jointly prepared by the **USPS** and the **NALC** (updated July, 2021). As further explanation, the **JCAM** provides in the Introductory and Preface Comments the following guidance in the arbitration process:

“...Publication of the JCAM was undertaken in good faith in order to educate the local parties and facilitate the resolution of disputes concerning issues on which the national parties are in agreement. While the parties at the national level still dispute the proper application of some portions of the Collective Bargaining Agreement, there are significant areas of agreement. The JCAM represents the parties’ effort to inform labor and management in the field of these areas of agreement and encourage consistency and compliance with the issues treated. The narrative explanation of the Collective Bargaining Agreement contained in **the JCAM should be considered dispositive of the joint understanding of the parties at the national level** [emphasis added]. Some sections of the contract do not have a narrative explanation. No inference should be drawn from the lack of explanatory language...” **See, JCAM, INTRODUCTION**, p.1.

“The JCAM is self-explanatory and speaks for itself. It is not intended to, nor does it, increase or decrease the rights, responsibilities, or benefits of the parties under the Collective Bargaining Agreement. It neither adds to, nor modifies in any respect, the current Collective Bargaining Agreement. At each step of the grievance/arbitration procedure the parties are required to jointly review the JCAM in order to facilitate resolution of disputes. **The JCAM may be introduced in arbitration as dispositive of those issues covered by the manual** [emphasis added]. If introduced as evidence in arbitration, the document shall speak for itself. **Without exception, no testimony shall be permitted in support of the content, background, history or any other aspect of the JCAM’s narrative** [emphasis added].” **See, Id., PREFACE**;

(3) **DRT CASE FILE** - The **DRT CASE FILE** is a collection of documents supplied by the **STEP B TEAM**, and contains a variety of documents, including, but not limited to, the **DRT DECISION**, as well as all attachments, arguments, forms, and supporting documentation submitted and/or supplied by the **NALC, USPS**, and the **STEP B TEAM**, to explain, interpret, or support the parties contentions and defenses. For purposes of this award, the **DRT DECISION** shall consist of pages 02-31 of the **DRT CASE**

FILE. However, the remaining pages (attachments) of the **DRT CASE FILE** have been properly incorporated, by reference, into the **DRT DECISION**. Therefore, the attachments to the **DRT DECISION** are given equal weight and consideration as if each were copied, verbatim, in the **DRT DECISION**; and

(4) **JSVBW** - The **JSVBW** is a joint statement that was adopted on February 14, 1992 by the National Parties (**NALC** and **USPS**), along with other National Unions and other National organizations affiliated or working with the **USPS**. The **JSVBW** is a Memorandum (M-01242) that re-commits the **USPS** to providing, among other things:

“...a workplace where dignity, respect, and fairness are basic human rights, and where those who do not respect those rights are not tolerated. Our intention is to make the workroom floor a safer, more harmonious, as well as a productive workplace. **We pledge our efforts to these objectives** [emphasis added].” See, Arbitration Joint Exhibit #4, p.1.

C. Other Hearing Exhibits and Authority -

(1) **NALC Hearing Exhibits** - The **NALC** offered the following Hearing Exhibits in support of their contentions and arguments:

(a) **NALC Hearing Exhibit #1** - The first two paragraphs of the **Management’s Guide to Understanding, Investigating, and Preventing Harassment** (hereinafter, “**GUIDE**”). The portion of the **GUIDE** offered into evidence states, in total:

“**Overview of Steps** [emphasis in original text]
When encountering a harassment complaint or situation, **your role as a manager is to stop, listen, inquire, and try to resolve the harassment complaint** [emphasis in original text]. Keep in mind that the employee is addressing a sensitive topic.
RESPOND PROMPTLY [emphasis in original text] to the complaint regardless of its form or content. Remember that you could receive a complaint with no prior warning. Any report of harassment is enough to start an inquiry.” See, GUIDE, #1 Respond Promptly, page number unknown.

Hearing no objections, the foregoing was admitted into evidence as a separate exhibit to the hearing, and as specifically quoted above—being formally marked as **NALC HEARING EXHIBIT #1**;

(b) **NALC Hearing Exhibit #2 - STEP B DECISION, CLASS ACTION**, April 29, 2022, Memphis Installation, Heighland Heights Station, G19N-4G-C

221155291.

The **USPS** objected to the admission of the foregoing as a separate exhibit to the hearing. Having considered the objection and arguments by both advocates, the objection was sustained; however, the **NALC** was allowed to present the above case as other precedential authority or as an extension of their contentions and arguments; and

(c) **NALC Hearing Exhibit#3 - STEP B DECISION, EDMONSON**, February 14, 2022, Horn Lake Installation, Main Station, 4G-19N-4G C 22087572.

The **USPS** objected to the admission of the foregoing as a separate exhibit to the hearing. Having considered the objection and arguments by both advocates, the objection was sustained; however, the **NALC** was allowed to present the above case as other precedential authority or as an extension of their contentions and arguments.

(2) **USPS Hearing Exhibits** - The **USPS** did not offer Hearing Exhibits or Hearing Authority in support of their contentions and arguments.

IV. **Summary of The Case - Merits**³

(A) **Factual Summary and Prior Findings** - On October 12, 2021, at approximately 11:50 am, City Carrier Assistant (CCA) (hereinafter, Mr. Shooter)⁴ entered the East Lamar Carrier Station, where he shot and killed **STATION MANAGER JAMES WILSON** (emphasis added) and **SUPERVISOR DEMETRIA DORTCH** (emphasis added).

3. Your arbitrator has previously granted a Summary Judgment relating to the reformed and modified issue presented to arbitration. The summary herein is being offered to provide a background for the further discussions and rulings.

4. I reiterate herein as contained in the **INTERIM AWARD**.

The substantive rulings and curative measures contained in this Award should not be interpreted as to give any notoriety to Mr. Shooter. Based upon the unwarranted and horrific acts of the shooter employee, your arbitrator would advise that the name of Mr. Shooter be forgotten—and further erased from the memory of all involved within the United States Postal Service family. I will leave it up to other forums as to whether Mr. Shooter deserves specific mention by name due to his mental condition or other circumstances leading him to take the lives of innocent people—however, such cowardly actions on the part of Mr. Shooter will not be memorialized by your arbitrator.

Mr. Shooter then turned the gun on himself and took his own life.

“After this tragic incident occurred, National Business Agent (NBA) Steve Lissan sent a team of experienced Union representatives to the Memphis Installation to attempt to gain insight into the history of the Memphis Installation relating to violence and other contractually prohibited conduct.” **See, NALC OPENING STATEMENT**, p.1; **See, Also, NALC CLOSING BRIEF**, p.6. The results of the **NALC** investigations led to the filing of this grievance pursuant to the **CBA** and **JCAM**, and all contractual violations are contained within the above reformed and modified issue. I would also note at this juncture that the **USPS** conducted their own investigations into the shooting, including, but not limited to, investigations conducted by the Federal Bureau of Investigations and the United States Postal Inspectors Service. As of the date the closing of the record in this case, the **USPS** had not instituted, enforced, or implemented any current or new policy resulting from said investigations, and I quote:

“Testimony demonstrated both management and union have given close scrutiny to Memphis following the shooting. Unfortunately, we only know what is in the grievance file, **and we don’t know the extent of changes or recommendations resulting from these reviews. Surely, some things have changed already, we just don’t know what** [emphasis added]. **See, USPS CLOSING BRIEF**, p.9.

On February 22, 2023, an **INTERIM AWARD** was issued, whereby the grievance filed by the **NALC** in this case was sustained, *in total*. Your arbitrator found that the **USPS** was placed on “Notice” of contractually violative behavior on the part of its employees toward **NALC** members on at least 32 prior occasions—dating back to as early as September 17, 2015, and continuing through April 29, 2022 (said contractual violations being subsequently held to be “ongoing” and “continual” in nature and effect by your arbitrator). **See, INTERIM AWARD**, pp.103-108. More specifically, your arbitrator found that the Arbitration Record reflects specific contractually prohibited conduct that was either created or condoned by the **USPS**, such as:

- (i) failing to correct an **inappropriate, hostile, intimidating, abusive, disrespectful, and violent working environment**;
- (ii) allowing **USPS** employees to manage **NALC** members with a lack of **mutual respect and dignity**;

- (iii) allowing **NALC** members to be demeaned, belittled, bullied, harassed, threatened, removed and put off the clock in violation of CBA and JCAM provisions, pushed and shoved, held against their will, belittled, and threatened to be fired; and
- (iv) failing to correct unacceptable and contractually prohibited behavior on the part of **USPS** employees, such as: use of unprofessional language; harassing tactics; demonstrating disrespectful behavior; failing to report threats of death or bodily injury to authorities; slamming door in a NALC members face; instructing and assisting carriers to manually manipulate their actual clock rings to reflect the inaccurate and improper recording of time. See, *Id.* at pp.103-107.

Your arbitrator further found that the **USPS** was either instructed and/or informed to stop or correct the above conduct—either through grievance settlements within the Article 15 process, or by way of prior arbitration **AWARDS**, to wit:

- (i) “cease and desist future violations of prohibited conduct and working conditions”—on at least 10 separate occasions;
- (ii) “cease and desist non-compliance with prior settlements”;
- (iii) “cease and desist threatening to disapprove” contractually authorized time off”;
- (iv) “...maintain an atmosphere between employer and employee which assures mutual respect for each other’s rights and responsibilities”; and
- (v) warned of “escalation of remedies” for future contract violations relating to the above specified conduct. See, *Id.*

Irrespective of the above “Notice” and instructions, the **USPS** failed to institute and/or enforce **CBA** and **JCAM** provisions, as well as other **USPS** policies and procedures, designed to curb and suspend such abhorrent employee behavior and working conditions and/or environment(s). As demonstrated by the lack of curative measures relating to the overall problem, the **USPS** instead chose to ignore and “partially” comply with each grievance as they were presented—over and over, (and often involving the same individuals; namely, **MS. RESHIA BRASWELL, MS. TERRI BENSON, and MR. JOSEPH BIRD**). The failure of the **USPS** to: properly manage and control employee conduct; follow

prior **AWARDS** and agreements; and institute corrective and curative policies and procedures relating to employee conduct, working conditions, and the overall working environment; has led to your arbitrator having to issue this **AWARD OPINION** to protect the sanctity of the arbitration process and the contractual rights of the **NALC**, as well as, to provide partial curative measures to restore the health and safety of the **USPS** and **NALC** employees within the Memphis Installation.

B. USPS Requested Remedies -

The **NALC** seeks the following corrective and curative remedies for the contract violations:

- “1. That management In the Memphis Installation cease and desist violating M-39 Section 115, ELM 665.24, the Postal Service's Policy on Workplace Harassment, and the Joint Statement on Violence and Behavior in the Workplace via Articles 14, 15 and 19 of the National Agreement.
2. That Reshia Braswell be immediately removed from her managerial position and not be allowed to supervise/manage city letter carriers directly or indirectly.
3. That Terri Benson be immediately removed from her managerial position and not be allowed to supervise/manage city letter carriers directly or indirectly.
4. That Joseph Bird be immediately removed from his managerial position and not be allowed to supervise/manage city letter carriers directly or indirectly.
5. That Chris Alexander cease and desist violating M-39 Section 115, ELM 665.24, the Postal Service's Policy on Workplace Harassment, and the Joint Statement on Violence and Behavior In the Workplace via Articles 14, 15 and 19 of the National Agreement.
6. That all employees assigned to the East Lamar Station be provided with EAP services paid for by USPS indefinitely.
7. That all CCA employees in Memphis be converted to career employees immediately.
8. That all new hires in Memphis be hired as career employees.

9. That management cease and desist the fast track hiring process in Memphis.

10. Any remedy the DRT or an arbitrator deems appropriate.” See, NALC CLOSING BRIEF, p.9; See, Also, DRT CASE FILE, pp.82-83.

C. Hearing Witnesses -

(1) **NALC Witness** - The **NALC** offered the following witness in support of the filed grievance:

(a) **JASON ATCHLEY** - At the time of filing of the grievance, the subject of this Award, **MR. ATCHLEY** served as the **NALC** Region 8 Grievance Assistant, as well as the **NALC** Formal A Representative for this case;

(2) **USPS Witnesses** - The **USPS** offered the following witnesses in defense of the filed grievance:

(a) **GREGORY NEWBERRY** - At the time of filing of the grievance, the subject of this Award, **MR. NEWBERRY** served as the Postal Inspector for the Memphis Filed Office;

(b) **LARON McMILLON** - At the time of filing of the grievance, the subject of this Award, **MS. McMILLON** served as the Station Manager of the Mendenhall Station;

(c) **DENNIS WINFREY** - At the time of filing of the grievance, the subject of this Award, **MR. WINFREY** served as a Supervisor of Customer Service at the East Lamar Station;

(d) **JOSEPH ANDERSON** - At the time of filing of the grievance, the subject of this Award, **MR. ANDERSON** served as a City Wide Acting Supervisor for the Memphis Installation; and

(e) **MICHAEL VACCARELLA** - At the time of filing of the grievance, the subject of this Award, **MR. VACCARELLA** was the Postmaster of the Brentwood Station, and served as the **USPS** Formal A Representative for this case.

III. Merits Of The Case - Analysis, Discussion, and Holdings

A. General Understandings and Observations -

When selecting a Judge or Arbitrator, the most important quality that a candidate should possess is “professional maturity”. Although educational achievements, seniority, and professional experiences are important in this equation, other factors must be calculated by the organization or individual when deciding a candidates level of professional maturity—such as community and personal experiences.⁵ The end result of professional maturity is an ability to arrive at a just, right, and reasoned analysis and conclusion when sitting in judgment of a case. I mention the foregoing to convey and include my personal thoughts and observations in this **AWARD OPINION** regarding the United States Postal Service family—specifically intending to include all **USPS** employees and **NALC** members.

Through the years, I have come to the conclusion that the local Post Office is as important to community living and standards as local churches and other places of general gathering. Furthermore, I believe it is generally recognized that the local Post Office is a place for: (and I emphasis)

new parents and grandparents to introduce and show off their babies to their neighbors, other customers, and postal employees; reliving the victories and losses of the local High School teams; discussing and debating local political and social issues; parents to brag about their children’s personal and educational accomplishments;⁶ reestablishing and catching up on old friendships and relations; people to hear about their neighbors health and welfare; telling jokes; and numerous other positive social interactions—and I find that most people look forward to such interactions at their local Post Office.

Moreover, in most instances, individual postal employees become a part of the average persons circle of human interaction—and more often than not, considered within their circle of friends (more especially, the carriers that deliver the mail to their customers

5. I stop short of comment on my educational pursuits and courtroom accomplishments. However, I have said before that I have always been at the top of my class—**provided the lists were inverted.**

6. This much **my parents** didn’t need to worry with.

home, or the clerk that assist them at the counter). On any given day throughout this great country of ours, the elderly can be seen waiting at their mailbox or door for their mail to be delivered—as this is often the only human interaction they have from day to day. However, these same individuals often fail to realize that their carriers and clerks are watching out for them (largely because their interaction with their customers does not resemble job responsibilities or duties—but more closely resembles friendship, and genuine love and respect for their fellow man). It follows that it takes a special person to consider career employment within the postal service family. More often than not, friendliness, outgoing, responsible, respectful, loving, and charity are common characteristics of United States Postal Service employees—and I don't say this lightly.

We all recognize that delivering the mail rises to the level of United States Constitutional responsibilities. While most recognize that such employment is at the heart and soul of what is meant by a middle-class life style in America, it comes with a heavy load that all must carry up and down the chain—which adds the emphasis to the weight of the job. Therefore, working together as harmoniously as humanly possible, while extending basic respect and dignity to the customers and fellow employees, (as our mothers taught us) is not only requested, but mandated by generally accepted principles of decency.

In addition to the above, it is well established that the **USPS** and **NALC** have entered into agreements that rise to the level of contractual responsibilities. These contractually enforceable agreements are contained within the reformed and modified issue I previously ruled upon in the **INTERIM AWARD**, whereby I summarized:

“...grief and sympathy are not enough. Neither are ritualistic expressions of grave concern or the initiation of investigations, studies, or research projects...all of us who serve that institution must firmly and unequivocally commit to do everything within our power to prevent further incidents of work-related violence. It is a time for reaffirming the basic right of all employees to a safe and humane working environment.

We openly acknowledge that in some places or units there is an unacceptable level of stress in the workplace...and that there is no excuse for and will be no tolerance of harassment, intimidation, threats, or bullying by anyone. We also affirm that every employee at every level of the Postal Service should be treated at all times with dignity, respect, and fairness. Those who do not treat others with dignity and respect will not be rewarded

or promoted. Those whose unacceptable behavior continues will be removed from their positions. We obviously cannot ensure that however seriously intentioned our words may be, they will not be treated with winks and nods. But let there be no mistake that we mean what we say and we will enforce our commitment to a workplace where dignity, respect, and fairness are basic human rights, and where those who do not respect those rights are not tolerated.

Our intention is to make the workroom floor a safer, more harmonious, as well as a more productive workplace. We pledge our efforts to these objectives...but it is the front-line manager who controls management's attempt to maintain an atmosphere between employer and employee which assures mutual respect for each other's rights and responsibilities. The Postal Service is committed to the principle that all employees have a basic right to a safe and humane working environment...there must be no tolerance of violence or threats of violence by anyone at any level of the Postal Service. Similarly, there must be no tolerance of harassment, intimidation, threats, or bullying by anyone at any level. Violation of this policy may result in disciplinary action, including removal from the Postal Service. The Postal Service's workplace must be one in which all employees are treated with dignity and respect by supervisors, subordinates and coworkers. Supervisors and managers will take prompt action to prevent address, and remedy workplace conduct that is contrary to this policy.

Harassment is unwelcome verbal or physical conduct, which is so severe or pervasive that it interferes with or changes the conditions of one's employment by creating a hostile, intimidating, or abusive working environment. All managers and supervisors are responsible for preventing harassment and inappropriate behavior that could lead to illegal harassment, and must respond promptly when they learn of any such conduct. Any manager or supervisor who receives a complaint must see that a prompt and thorough investigation is conducted. Investigations of all forms of harassment must be done in accordance with the "Initial Management Inquiry Process (IMIP)". When harassment or inappropriate conduct is found, managers must take prompt and effective corrective action. In addition, bargaining unit employees may seek relief through the relevant grievance-arbitration procedures

Allegations involving any possible criminal misconduct should, at a minimum, be reported to law enforcement authorities as follows: any physical misconduct relating to workplace harassment (i.e any physical assault, threat of a physical assault...should be reported to the United States Postal Inspection Service (USPIS). The Postal Service does not tolerate any type of harassment, inappropriate conduct, or reprisal in the workplace... your role as a manager is to stop, listen, inquire, and try to resolve the harassment complaint.

This policy is not new, but is being reissued. There is Zero Tolerance for threats, assaults or other acts of violence in our workplace. Employees

are expected to immediately report threats of physical harm or assaults to local management for investigation and action. Management is expected to act on all such reports as well as their own observations of such behaviors. Local management will conduct the investigation into the reported threat or assault. This investigation will include statements from the employee reporting the threat and all parties, including witnesses that may have observed or overheard the incident.

Violence is not limited to fatalities or physical injuries. We recognize that any intentional words or actions which demean or provoke another can escalate and result in injury if not immediately and appropriately addressed. Threats, harassment, bullying, domestic violence, stalking, intimidation and other forms of behavior and physical violence may, if left unchecked, result in more serious violent behavior. Supervisors, managers and postmasters are responsible for recognizing and correcting violations of any of these behaviors. Supervisors, managers and postmasters should consult with Labor Relations, the Inspection Service and the Threat Assessment Team for guidance on any specific situation. At all times, the primary effort will be to ensure the safety of all postal employees.

It's with a profound appreciation of: all of the above general understandings; all of my prior **FINDINGS** and **HOLDINGS**; and the entire Arbitration Record; that I attempt to offer minimal final resolution and curative measures on the filed grievance in this case—and I now include the entirety of this section in the **SOILEAU WORKPLACE SAFETY AND VIOLENCE SUMMARY**.

HOLDING: The parties shall have a deep appreciation of, and closely follow, the above **SOILEAU WORKPLACE SAFETY AND VIOLENCE SUMMARY** when complying with and implementing the **HOLDINGS** contained in this **AWARD**.

HOLDING: The **USPS** is **WARNED** that failure to comply with any HOLDING contained in this **AWARD** will result in the escalation of remedies.

(B) Arbitrator Authority Regarding Remedies -

I start my discussion in this Section by recognizing that the relief requested by the **NALC** ranges from the widely accepted "cease and desist" **HOLDING**, to the more significant request of:

"2. That Reshia Braswell be immediately removed from her managerial

position and not be allowed to supervise/manage city letter carriers directly or indirectly.

3. That Terri Benson be immediately removed from her managerial position and not be allowed to supervise/manage city letter carriers directly or indirectly.

4. That Joseph Bird be immediately removed from his managerial position and not be allowed to supervise/manage city letter carriers directly or indirectly.” See, Supra.

In response to the above, the **USPS** argues:

“That Reshia Braswell, Terri Benson and Joseph Bird be immediately removed from their managerial position, and not be allowed to supervise/manage city letter carriers directly or indirectly. Even NALC Jason Atchley admitted there **was no timely misconduct demonstrated by any of these managers in the case file** [emphasis added]. Granting this remedy would be **grossly improper** [emphasis added]. While the NALC may have buyers remorse from entering into prior settlements with these managers, every allegation of misconduct by these managers is resolved and closed. NALC hasn’t proven any current misconduct by any manager, let alone these three that they want to have their careers ended, **without justification** [emphasis added].” See, USPS CLOSING STATEMENT, p.18

“The Union claims there is no recognition of due process rights afforded to Management in the National Agreement. It is undisputed that Management is not covered under the National Agreement per Article 1. However, **due process represents basic notions of fairness** [emphasis added] and there is no doubt the Union's request for removal of three Management officials for Issues involved in previously adjudicated grievances certainly **does not represent a basic notion of fairness and subjects those Management employees to a situation of double jeopardy where they are essentially being tried a second time for prior actions** [emphasis added]. Surely the Union is not insinuating that double jeopardy is improper for bargaining unit employees but is proper for non-bargaining unit employees.” See, DRT CASE FILE, p.19.

In analyzing the **USPS** arguments, I first note that the above **USPS** objection references the legal maxim of “Double Jeopardy”.⁷ The application of “double jeopardy”

7. While it makes no legal sense to apply “Double Jeopardy” to this clearly civil law action, perhaps the confusion rest in the fact that some of the conduct on the part of Managers Braswell, Benson, and Bird, as complained of in this grievance, might cause each significant concerns relating to criminal law responsibility had such been pursued in other forums—said concerns being understandable in my estimation as a practicing criminal law attorney.

specifically applies to the rights of a criminal defendant, and as I stated in my **INTERIM AWARD**, and is what some legal scholars have referred to as the civil law cousin to the *Doctrine of Res Judicata*. I have already ruled on the **USPS** Preliminary Issue regarding Res Judicata and the substantive arbitrability of the reformed and modified issue presented to me, and I need not address the issue again. However, I am concerned about the suggestions that my ultimate **AWARD** may not afford Managers **RESHIA BRASWELL**, **TERRI BENSON**, and **JOSEPH BIRD** due process of law protections as guaranteed by United States Constitutional standards. Therefore, I turn to prior National Awards and other controlling authority to offer clarity—since my prior review on the subject did not relate to the specific remedies requested by the **NALC**.

In entering his National Award on the rights of the **NALC** “...to remove or suspend supervisors”, **PROFESSOR SNOW** considered the question of “*whether the parties have amended managerial rights by entering into the Joint Statement of Violence and Behavior in the Workplace.*” **See, *Id.*** at p.7; **See, *Also*, DRT CASE FILE** p.436; and **See, *Also*, NALC CLOSING BRIEF**, pp.19-20. In answering the question, Professor Snow reasoned:

“The Joint Statement did not specify a method concerning how to enforce the agreement. It is logical to presume that the parties intended to use standard enforcement mechanisms for disputes that might arise between the parties, namely, their negotiated grievance procedure set forth in the collective bargaining agreement. Such an interpretation is consistent with the parties’ agreement.

Article 15.1 of the parties’ agreement makes clear that the negotiated grievance procedure is not limited to disputes under the National Agreement which has been negotiated in the traditional way...

The parties agreed that the grievance procedure could be used to resolve ‘a dispute, difference, or complaint’ related to ‘conditions of employment.’” **See, *Id.***, at p.19; and **DRT CASE FILE** p.436.

Professor Snow went on to explain that in resolving disputes as contemplated by the issue presented in his case, which sits squarely on all fours with the case before me, that:

“The grievance procedure of the National Agreement may be used to enforce the parties’ bargain, and arbitrators have available to them the flexibility found in arbitral jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her administrative duties. As the U.S. Supreme Court instructed:

‘There [formulating remedies] the need for flexibility in meeting a wide the variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency.’ See, *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960).” See, *Id.*, at p.22; and DRT CASE FILE p.451; See, Also, BROWN AWARD; CLASS ACTION, Dayton, Ohio; C11N-4C-C 14252054 (01/25/2016), p.18; NALC CLOSING BRIEF, p.28.

In an attempt to have the **BAJORK AWARD** vacated; (**BARNETT**, Memphis, Tennessee; H94N-4H-C 95041405 (04/17/2000)), the **USPS** sought relief from the U.S. District Court, and subsequently appealed the District Court’s judgment denying their petition to the United States Court of Appeals for the 6th Circuit. If it’s possible to be more on point than the **SNOW AWARD** above, the 6th circuit noted:

“Seeking to vacate the award, the Postal Service brought this action arguing (1) that the arbitrator exceeded his authority under the collective bargaining agreement, and (2) that implementation of the award violated public policy because ***it would force the Postal Service to transgress both Boyd’s constitutional due process rights*** and his statutory, predeprivation procedural rights. In granting summary judgment to NALC and denying summary judgment to the Postal Service, the district court found that the Postal Service did not have standing to assert Boyd’s rights and that such claims were not ripe for review because it was unknown whether Boyd would assert a violation of those rights upon being demoted.

The only claim pursued by the Postal Service on appeal is that the district court should have vacated the arbitration award as contrary to public policy on the grounds that it would force the Postal Service to violate the statutory procedural protections it was obligated to provide Boyd under 5 U.S.C. § 7513.” See, USPS v. NALC - US CT APP-6th CIRCUIT; Memphis, Tennessee; 2003 FED App 0180P (6th Cir.)(06/05/2003); pp.4-5; DRT CASE FILE pp.532-533; and NALC CLOSING BRIEF, p.22; See, Also, AUGUST AWARD #1 - Hattisburg, Mississippi; CLASS ACTION, G16N-4G-C 18316064 (02/04/2019) p.18; NALC CLOSING BRIEF, p.28;

In arriving at its conclusion and affirming the lower Courts decision, the Appellate Court reasoned:

“The relevant question is not whether the underlying conduct, here Boyd’s alleged violation of the Joint Statement, violated public policy, but rather whether ordering the Postal Service to demote Boyd because he should not have been promoted would violate an explicit public policy. See *Interstate Brands, Corp. v. Chauffeurs Local Union No. 135*, 909 F.2d 885, 893 (6th Cir. 1990) (upholding arbitration award reinstating delivery driver charged with drug offenses for off-duty conduct). That is, would it force the

Postal Service to violate the law. See, e.g., *Am. Postal Workers Union, AFL-CIO v. United States Postal Serv.*, 682 F.2d 1280, 1286 (9th Cir. 1982) (award reinstating air traffic controller who participated in strike could not be enforced because federal statute prohibited employment of one who had participated in a strike against the government). See, *Id.* at pp.6-7; See, *Also, DRT CASE FILE* pp.533-534.

The **BAJORK** Court concluded that Boyd had other statutory rights in which he could pursue if he felt the arbitration award violated his individual rights, and further found:

“As the NALC concedes, any relief granted to Boyd by the MSPB would take precedence over the arbitration award. Thus, we find that implementation of the arbitration award would not force the Postal Service to violate the CSRA, and therefore is not contrary to public policy.” See, *Id.* at pp.8-9; and **DRT CASE FILE** pp.534-535.

In an abundance of caution, I have reviewed the regional **AWARDS** contained in the Appellate Record and in the **USPS** filings. While I find that said cases are non-binding precedent as discussed in my **INTERIM AWARD**, I nevertheless will show my fellow arbitrators the respect of considering their reasoning and judgment.

The **DRT CASE FILE** contains a single Award issued by Arbitrator **MACLEAN**, resolving two separate grievances. See, **MACLEAN AWARD; CLASS ACTION**, Wichita, Kansas; G16N-4E-C 18459685 and G16N-4E-C 18459701; **DRT CASE FILE**, pp.960-971. In both cases, Arbitrator **MACLEAN** acknowledged that the thrust of each grievance involved “*verbal confrontations*” involving the same **USPS** employee. See, *Id.* at p.2 (p.961). In denying the first grievance, Arbitrator **MACLEAN** reasoned:

“While this may be annoying and disruptive behavior that could upset some carriers, it does not, in the view of the Arbitrator, rise to the level of “harassment, intimidation, threats or bullying.” Arbitrator Cenci wrote in Case No. B06N-4B-C I 30117 that” ... not every supervisor with a brusque manner or deficient employee relation skills is in violation of the JSOV.

In Case No. E11N-4E-C 153169.56, arbitrator **CHAPDELAIN** wrote: ‘Regarding the Joint Statement, there can be no question that all employees must treat each other with dignity and respect, and that failure to do so can create unnecessary stress that has the potential of resulting in actual workplace violence. At the same time, however, the Joint Statement cannot realistically be expected to totally eliminate the normal day-to-day minor employee conflicts and hurt feelings that can arise from harsh words or petty offenses. In addition, while it is true that such harsh words and insults may be

appropriate and should be avoided, they do not necessarily rise to the level of a violation of the Joint Statement in every instance.’

In Case No. BR04-0114, Arbitrator **FURMAN** wrote:

‘The statement is a most powerful reflection of the parties’ mutual desire for a workplace that offers respect and dignity to all. It is a mission statement and a proactive course of conduct standard. But it arose out of a horrific context. It cannot be a prophylactic against every insult real or imagined, every harsh tone, real or imagined. It does not eliminate personality conflicts. To implicate the Joint Statement in all circumstances where there is a misunderstanding or a perception of rude or unprofessional treatment is counterproductive. It both slows down the grievance machinery and derogates from the laudable and important policy considerations reflect (*sic*) in the Joint Statement.’” See, Id. at pp.7-8 (pp.967-968).

However, in sustaining the second grievance, Arbitrator **MACLEAN** stated “*The Arbitrator finds that Mr. Lubrano's behavior in blocking or trapping Mr. Goss in his case constitutes threatening and intimidating behavior. It is not necessary to explicitly threaten violence to violate the JSOV. It is sufficient if the behavior itself is threatening.*” See, Id. at p.9 (p.968).

The **DRT CASE FILE** also contains an Award issued by Arbitrator **AUGUST** directly involving the interpretation and application of the **JSOV**. See, AUGUST AWARD; SPIKES, Hollywood, Florida; G16N-4G-C 20197834; DRT CASE FILE, pp.972-988. In arriving at her conclusion that the isolated incident in that case did not arise to the level of a violation of Articles 14 and 19 of the **CBA**, or the M-39 and **JSOV**, Arbitrator **AUGUST** reasoned:

“Most often, the matters involve serious allegations of harassment, and generally threatening behavior *which has developed over time, and continued, even in the face of efforts to improve interpersonal relationships in a specific post office* [emphasis added]. Most of the situations have risen to a level of fear and intimidation, the likes of which have led to other incidents that were evidenced by multiple Step B Decisions and Arbitral opinions, where they found violations of the JSOV. *The instant case differs from that scenario; here we have multiple grievances filed, based on the allegation of JSOV violations, and/or creating a hostile work environment, but the evidence did not support such a finding in those cases* [emphasis added]. See, Id. at p.13 (p.984).

Arbitrator **MACLEAN** also addressed the issue surrounding the **NALC** requested remedy of removing a **USPS** employee found to have violated the **JSOV** “...from any and

all administrative duties that put him in contact with city letter carriers.” See, **MACLEAN AWARD; CLASS ACTION**, Wichita, Kansas; G16N-4E-C 18459685 and G16N-4E-C 18459701; **DRT CASE FILE**, p.10 (p.969). While the grievance was ultimately sustained, Arbitrator **MACLEAN** refused the requested remedy of the **NALC** and followed the guidance of Arbitrator **LEVAK’S** and stated:

“Fortunately, we not need to wade into that issue in this case. The Arbitrator agrees with Arbitrator Levak's analysis in *Case No. F94N-4F-C 98 02651 J* (2001), *supra*, **that in order to establish a violation of the JSOV the Union must first establish that the supervisor violated the JSOV and second that, ‘Postal Service management failed to honor its Joint Statement by either sanctioning or failing to deal appropriately with the supervisor’s misbehavior [emphasis added].’ The evidence does not establish that management failed to respond appropriately in dealing with Mr. Lubrano’s misconduct.**” See, *Id.*

It’s obvious that the factual allegations contained in the above **AWARDS** are not closely related to those contained in this case. Not only am I dealing with multiple incidents over several years, the **USPS** has taken no curative action for the overall problem—and partial compliance with grievance settlements and Awards is not sufficient pursuant to Articles 3 and 14.

I would add to the prior list of complaints, and now offer the conclusions reached in Union Exhibits #2 and #3.

“The Dispute Resolution Team has RESOLVED this grievance. The ORT agrees Station Manager **Joe Bird violated Section 115.4 of Handbook M-39 when he failed to maintain an environment of mutual respect when engaging with letter carriers in the Memphis Installation Highland Heights Station** [emphasis added]. The ORT agrees Management is required to comply with Section 115.4 of Handbook M-39 and **Manager Bird will ensure he maintains a mutually respectful atmosphere when communicating with employees in the performance of their duties** [emphasis added].” See, **UNION EXHIBIT #2; STEP B DECISION; CLASS ACTION**, Memphis, Tennessee; C11-4C-C14343185 (04/29/2022); (3 pages) (Not admitted as Exhibit to hearing); p.1.

“The Dispute Resolution Team (DRT) has reviewed all of the information in the case file and has agreed to RESOLVE the grievance. **The Team agrees Manager Braswell violated M-39 section 115, M-39 Handbook section 134 and M-01517 in the way the street observation was handled and in failing to comply with prior settlements. Management shall cease and desist future violations.** The Team finds the Seven day suspension issued to Carrier Edmondson on 12/15/2021 shall be rescinded and expunged from all postal files and records from the date of

issuance.” See, UNION EXHIBIT #3; STEP B DECISION; EDMONSON, Horn Lake, Mississippi; 4G-19N-4G 22087572 (02/14/2022); (7 pages) (Not admitted as Exhibit to hearing); p.2.

Of special concern to me is the date of the resolutions in the above cases (04/29/2022 and 02/14/2022, respectively). Where was the Memphis management? Where was District Manager Alexander? At this point, believe it or not, I am at a loss of words and can only come up with “WOW!” and “REALLY”?

There is more than sufficient evidence for me to follow the requests of the **NALC** regarding Managers **RESHIA BRASWELL**, **TERRI BENSON**, and **JOSEPH BIRD**. However, considering the entirety of the Arbitration Record, **DISTRICT MANAGER ALEXANDER** is just as culpable, and should not be able to escape the same consequences as his subordinates, should he decide to come out of retirement.

HOLDING: **MS. RESHIA BRASWELL** is immediately removed from her current managerial position, and may not, under any circumstance, supervise or manage any city letter carriers, either directly or indirectly.

HOLDING: **MS. TERRI BENSON** is immediately removed from her current managerial position, and may not, under any circumstance, supervise or manage any city letter carriers, either directly or indirectly.

HOLDING: **MR. JOSEPH BIRD** is immediately removed from his current managerial position and may not, under any circumstance, supervise or manage any city letter carriers, either directly or indirectly.

HOLDING: **DISTRICT MANAGER ALEXANDER** is immediately removed from his current managerial position, and may not, under any circumstance, supervise or manage any city letter carriers, either directly or indirectly, should his retirement status change to full or part time employment with the **USPS**.

HOLDING: Management In the Memphis Installation shall immediately ***cease and desist*** violating **M-39 SECTION 115, ELM 665.24**, the **POSTAL SERVICE'S POLICY ON WORKPLACE HARASSMENT**, and the **JOINT STATEMENT ON VIOLENCE AND BEHAVIOR IN THE WORKPLACE**, and the **SOILEAU WORKPLACE SAFETY AND VIOLENCE SUMMARY**, via Articles 14, 15 and 19 of the National Agreement.

(C) **Arbitrator Authority Regarding Remedies Not Specifically Requested -**

I have previously considered the issue of “remedies” and the scope of my authority

in arbitrations. After careful review of the Arbitration Record in this case, I find no reason not to follow my prior rulings in this case, whereby I reasoned:

“Once it is established that a contract violation has occurred (as discussed above), the next step in the analysis must be to determine whether an award, as advance by the **GRIEVANT**, could *partially or wholly remedy the violation* [emphasis added]—or otherwise place the **GRIEVANT** in a *position he or she would have been in had the violation not occurred* [emphasis added]. *It must be noted that the award must have a rational basis to the alleged injury, given careful thought against duplication in remedies or resolutions* [emphasis added].” See, **SOILEAU AWARD**, Wessler, J16N-4J-C 21071981, pp.15-16; See, Also, **SOILEAU AWARD**, Boyd, 4J 19N-4J-C 21160778, pp.108-109; See, Also, **SOILEAU INTERIM AWARD**; Class Action, 4G-19N-4G-C 22008330; p.89.

Furthermore, I strongly believe that the above understandings relating to an arbitrator’s authority to Order curative measures is supported by **JCAM** Article 15.4(A)6, to wit:

“The decisions of arbitrators are final and binding [emphasis added]. Arbitration is the last step of the grievance/arbitration procedure and there are no further contractual avenues for management or the union to challenge or appeal an arbitration award. *The parties have agreed that filing a grievance for the enforcement of an arbitration award is permitted under Article 15 of the National Agreement* [emphasis added].” See, **JCAM**, Article 15.4(A)6, p.15-5. I next turn to see if any National Level cases address the issue of remedies relating to an arbitrator’s authority, (or jurisdiction); and I direct the parties to the **INTERIM AWARD** for further discussion regarding the use of precedent in Article 15 arbitrations. See, **SOILEAU INTERIM AWARD**; Class Action, 4G-19N-4G-C 22008330; p.83-84. In a case arising out of Torrence, California, **PROFESSOR SNOW** issued an **AWARD** that I believe applies to the question I discuss in this section. See, **SNOW AWARD**; **CLASS ACTION**, Torrence, California; Q90N-4F-C 940249977/94024038 (04/02/1996); **NALC CLOSING BRIEF**, pp.19-20 and **DRT CASE FILE** pp.428-452.

After considering the entirety of the factual and legal conclusions I have reached in this case, I now add to the above discussion that an arbitrator has an absolute and solemn duty to issue **AWARDS** that resolves the contested issues, in total—and irrespective of whether such **HOLDINGS** were specifically requested by a party to arbitration. This additional understanding, in my estimation, upholds the sanctity of the Article 15 process, and allows both parties to go forth with the deep appreciation that *all contested issues have been resolved*.

I am shocked that the **USPS** either knew, or should have known, of the problems in the Memphis Installation. Furthermore, the **USPS** objected to the use of the term “toxic environment” throughout the Arbitration Record, and in fact, argued that the term is difficult to define, apply, or understand. Therefore, I will leave it up to elementary school teachers to define and discuss the practical application of the term with their students, and state that a better word for the problems in the Memphis Installation is “**systemic**”. The **NALC** spent a significant amount of money trying to accomplish what is required of the **USPS** in Articles 3 and 14—**and affirmative steps and curative action to cure the systemic problems are not optional**. This too must be remedied, and is not a time for word choices.⁸

I want to be clear. I am not saying that any particular individual caused the events of October 12, 2021—and any further investigation will probably result in a significant waste of money. However, it must be recognized that in any employment situation, the employee spends a substantial part of the day either working, preparing to go to work, or commuting back and forth to work. I simply cannot imagine working in such an environment that has been presented in this case. I wonder, how many people would seek employment opportunities in the Memphis Installation if the above cited cases were attached to the employment application? Furthermore, I can appreciate the mental anguish of each employee within the **USPS** family—more especially, considering that their co-workers lost their lives while on the job. I’m sure that some in the Memphis Installation will continue to ask the question “What if...?” Obviously, professionals should be available to assist **USPS** and **NALC** employees with these deeps concerns and fears.

Clearly a reset button needs to be pushed, and the above **HOLDINGS** do little to accomplish this goal. In order to address the problem completely, I see the urgent and sincere need to:

1. Individually interview all **USPS** and **NALC** employees in the Memphis
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8. As a practicing attorney, I completely understand the feeling of facing a ruling authority when the factual and legal allegations and contentions are so lopsided that defeat is eminent. Once again, I applaud both advocates and assistants in this case, more especially at this juncture, the representatives of the **USPS**, for putting forth a professional argument and case—and irrespective of the ultimate outcome, or the factual and legal deficiencies of their case.

Installation—in order to gain an understanding of the underlying problems;

2. Consider individual training courses relating to respect and dignity in the workplace;
3. Consider of conflict resolution courses;
4. Consider additional management courses; and
5. Consider “company wide” activities on an annual or quarterly basis; along with other programs or procedures—designed by specialist in the field of conflict resolution.

Of course, this is not an all inclusive list, and I urge, ***and will enforce with future AWARDS***, absolute and complete compliance with all **HOLDINGS** contained in this **AWARD OPINION**.

Considering the above, I issue the following:

HOLDING: The **USPS** shall reimburse the **NALC** for all costs in investigating the incident of October 12, 2021, as well as all costs in the prosecution of this case within the entire Article 15 process. Said reimbursement shall include, but not limited to, all costs of arbitration. All sums contemplated by this **AWARD** shall be paid within 30 days of the **USPS** receiving an invoice from the **NALC**. All objections as to amounts to be paid shall be presented to your arbitrator for resolution within 10 days of the objection, via ZOOM video conferencing.

HOLDING: All employees **USPS** and **NALC** employees, (to include full time, part time, and CCA **NALC** employees, as well as, any other city letter carrier on the employment roles) assigned to the Memphis Installation shall be provided with EAP services—paid entirely by the **USPS**. The time period for these services shall revert back to October 12, 2021, and continue thereafter until further ruling of your arbitrator.

HOLDING: (1) The parties shall create the **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE** made up of six individuals. The **USPS** may appoint three members from the regional or local area—at least one member shall be from the managerial area. The **NALC** may appoint three members from the regional or local area—at least one member shall be from the regional office. The committee shall be organized and assembled within 10

days of the issuance of this **AWARD OPINION**;

(2) The **USPS** shall keep detailed records of the procedures and processes of the committee, and shall share with the **NALC**, upon request, the records that are maintained;

(3) The purpose of the **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE** shall be to develop programs and processes, with the assistance of a conflict resolution coordinator, who shall serve as the chairman of the committee;

(4) All unresolved conflicts of the **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE** shall be presented to your arbitrator for resolution within 10 days of the conflict, via ZOOM video conferencing;

(5) The **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE** shall meet twice each month for a minimum time period of four hours—or as further directed by the chairman of the committee or your arbitrator;

(6) The **USPS** shall pay all cost associated with the attendance of all committee members at all meetings (including the chairman of the committee); including, but not limited to, travel and other ordinary expenses. The chairman of the **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE** shall be reimbursed, individually, in the same manner, and under the same conditions, as your arbitrator. Furthermore, the **USPS** shall pay all costs associated with any outside Conflict Resolution Organization;

(7) The chairman of the **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE** shall be **PROFESSOR, SELINA J. SHULTZ, Esq., L.L.M.**;

(8) The **USPS** and **NALC**, as well as all committee members, shall work together, applying the tenants of good faith and fair dealing, to accomplish the goals of the **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE**;

(9) The **USPS** may elect not to participate in the **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE**. If such an election is made, the **USPS** shall, within 30 days of such election, pay each **NALC** employee within the **MEMPHIS INSTALLATION**, (to include full time, part time, and CCA **NALC** employees, as well as, any other city letter carrier on the employment roles), a one-time lump sum payment of **\$1,000.00 (ONE THOUSAND DOLLARS AND no/100)**. Nothing in this **HOLDING** regarding the election contained herein shall be interpreted as to void any other

HOLDING in this AWARD OPINION.

(C) My Final Thoughts -

From the very beginning of the first hearing, the tension in the room was palpable—irrespective of the “sides” or witnesses. I distinctly remember the pleas for help from the **NALC**, and the sense of the unknown from the **USPS**. Obviously, potential curative measures are above the pay grade of the advocates and their assistants—as scientific research might not provide sufficient answers. I have committed a substantial amount of time that I am scared to calculate; but hopefully, the end result will be well worth the effort. I have not asked for additional study days, nor have I avoided the tough choices. Everyone specifically gave me their commitment to be part of the solution—and I too offered both sides my complete attention and best efforts. **I want the parties to understand that I remain committed.**

Who knows if such a tragedy will strike again. It seems that shootings and violence have become a part of our social fabric. I pray that the measures taken herein will be enlightening and productive, and I anxiously await the results of the **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE**. With this in mind, the work of the **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE** shall be known and cited as the **MEMPHIS PROJECT**, and perhaps others may benefit from all of our efforts and hard work. I am reminded of some frequently referenced expressions that seem appropriate when considering what lies ahead, and I quote:

“Rome was not built in one day” (John Heywood—English playwright (1538));

“The journey of a thousand miles begins with one step” (Lao Tzu—ancient Chinese Taoist philosopher (4th-6th century BC));

“There is only one way to eat an elephant: a bite at a time” (Desmund Tutu—South African Anglican Bishop and Theologian (1931-2021)); and

“keep matriculating the ball down the field” (Coach Hank Stram—NFL Hall of Fame Coach (1923-2005)).

The entire city of Memphis is hurting. Perhaps healing and resolution can begin and

resonate from the **MEMPHIS INSTALLATION**.

Considering the above, I issue the following:

HOLDING: The work of the **MEMPHIS INSTALLATION CONFLICT RESOLUTION COMMITTEE** shall hereafter be known and cited as the **MEMPHIS PROJECT**.

HOLDING: Your arbitrator retains jurisdiction of this case.

By: */s/ Troy D. Soileau*
TROY D. SOILEAU, Arbitrator