WNY district management violated the March 12, 2014 binding settlement agreement of case C06N-4C-C 11133679 (NALC case no. 157.11) when they initially failed to rescind the policy entitled "Western New York Performance Cluster Limited Work Hours SOP", dated January 10, 2011 and again when they issued the exact same policy dated 12/20/14.

The position of the NALC has not changed since the filing of 157.11. A carrier whose medical restriction is that they can only work eight hours per day and forty hours per week is not considered to be in a light duty status.

Based on the tenets of EEOC case law, there are only two conditions that permit employer medical inquires:

1) Where there is a reasonable belief based on factual evidence that the employee may not be capable of fulfilling the essential functions;
2) Where there is a reasonable belief based on factual evidence that the employee may be a danger to self or others due to medical condition.

The WNY district should not require employees with eight hour/forty hour restrictions to provide medical documentation that is more specific than an attending physician's statement of incapacity unless the Postal Service has a reasonable belief, based on objective evidence, that an employee's ability to perform essential job functions will be impaired by his/her medical condition; or an employee will pose a direct threat due to a medical condition.

All other arguments are contained within the case file from the original grievance 157.11.

Remedy requested:

That the postal service rescind its policy and cease requiring medical documentation more specific than a physician's statement of incapacity for employees needing to restrict their hours of work to 8 hours per day and 40 hours per week.

Branch Grievance # 157.11
Class Action, all WNY District Installations within NALC Branch 3
Articles 2,5 and 19

NALC Informal Step A contentions

The union alleges a violation of the above cited Articles when management established new policies outlined in an SOP relating to the establishment of new criteria and requirements for letter carriers who may not work beyond 8 hours in a service day and/or 40 hours in a service week due to medical reasons.

The SOP includes the following requirements, in part:

> **"An employee that has a non-job related illness or injury and requires limited work hours must submit a written request to their installation head requesting limited hours. The written request must be supported by a medical statement from a licensed Health Care Provider with the following information.**
>
> - **Nature of Condition**
> - **Medical rationale for work hour limitation**
> - **Actual number of hours limited per day per week**
> - **Duration of the limitation**
>
> **At the request of the supervisor or manager the OHS staff will assist by reviewing the medical documentation to benchmark the request against established occupational medicine principals. The OHS staff will communicate the results of the review to the supervisor/manager via email"**

The SOP/policy established relative to 8 and or 40 hour work restrictions violates the National Agreement in several aspects. More information continues to be obtained by the union as this grievance moves along. There is no contractual authority for all requirements related to the request for medical information, in additionally there is no authority for establishing any "benchmarks" against established occupational medicine principals. Such requests for detailed medical reasoning to support a 8/40 hr work restriction violates the following:

JCAM page 2-2 provides:

> **"Article 2 also gives letter carriers the contractual right to object to and remedy alleged violations of the Rehabilitation Act through the grievance procedure. Postal Service guidelines concerning**

reasonable accommodation are contained in Handbook EL-307, *Guidelines on Reasonable Accommodation*."

Arbitrator Snow, in National level case #H1C-5K-C24191 found that requests for 8/40 hour limits are not subject to a light duty request and added, in part:

> **"There is another reason for concluding that the parties did not bargain for management to enjoy an unfettered right to include overtime as a requirement of any job. The parties intended their relationship to be circumscribed by the law, including such legislation as the Rehabilitation Act of 1973 and the ADEA. Such implicit limitations on the parties relationship cannot be ignored.**
>
> **Management's authority to assign overtime work must be understood within the context of laws such as the Americans with Disabilities Act. The Employer's authority to order overtime is not unfettered, and such overtime assignments cannot be viewed as an implied part of every job description. Management's right to require overtime of employees must be understood not only within the context of the parties' contractual agreement but also as informed by relevant legislation. Those sources make clear that the right of management to require overtime does not translate into an implied or inherent qualification for every postal position."**

Handbook EL-307, Section 53 states:

> **"Where no request for reasonable accommodation has been made by the employee or someone acting on his or her behalf, the Rehabilitation Act limits your ability to make disability related inquiries to that person or to medical personnel who may have access to such information. Prohibited inquiries are those likely to elicit information about an employee's disability (e.g., "what prescriptions are you taking?" "have you ever received workers' compensation payments?"). Such questions cannot be asked of an employee, the employee's coworkers, family members, the employee's health care providers, or Postal Service medical personnel.**
>
> **However, you may make disability related inquiries and require medical examinations when you have a reasonable belief, based on objective evidence, that an employee's ability to perform essential job functions may be impaired by a medical condition, or if an employee may pose a direct threat to his or her own health or safety or that of others due to a medical condition."**

Section 865 of the Employee and Labor relations Manual states:

"Return-to-work clearance may be required for absences due to an illness, injury, outpatient medical procedure (surgical), or hospitalization when management has a reasonable belief, based upon reliable and objective information, that:

a. The employee may not be able to perform the essential functions of his/her position, or

b. The employee may pose a direct threat to the health or safety of him/ herself or others due to that medical condition.

In making this determination, management must consider the essential functions of the employee's job, the nature of the medical condition or procedure involved, guidance from the occupational health nurse administrator, occupational health nurse, and/or the Postal Service's physician regarding the condition or procedure involved, and any other reliable and objective information to make an individualized assessment whether there is a reason to require the return-to-work documentation."

The SOP/policy as outlined in the case file must be declared in conflict with the National Agreement and immediately rescinded. In addition, any and all effected letter carriers must be made whole for any losses remotely related to the establishment of these rules.

Formal Step A Contentions - NALC
Branch grievance # 157.11

In addition to the positions outlined in the case file, the union adds that the Das decision cited by the Service is not dispositive of the issue here.

That decision is specific to ELM 513.332 and the right to request info is specifically to determine if a) the absence is FMLA related b) its a job related injury or 3) for RTD as per ELM 865. 513.332 additionally that decision does not consider Rehab Act requirements for every instance. From our viewpoint Das does not cover this issue.

There is no contractual authority for management to require medical inquiries including "rationale" or "nature of condition" when an employee submits a document that states that he/she cannot work more than 8 hours in a day or 40 hours in a week. Such requests should be granted based solely on the submission of a note from a treating physician that states the basic restriction. Any further medical documentation requirements are in conflict with, and in violation of, the National Agreement as stated within this grievance.

When management was stopped from considering requests for "limited work hours" as light duty, it is clear that they attempted to continue the exact same requirements for medical documentation without using the term "light duty". Everything else is the same.

NALC Position on History

Subject: Restrictions on USPS right to make medical inquiries and require examinations

Background

The Americans with Disabilities Act (ADA) restricts employers' rights to 1) make medical inquiries of employees and 2) require employees to attend medical examinations.

While the ADA specifically excludes postal employees from coverage, the Rehabilitation Act incorporates the standards of the ADA.[1]

Since postal employees are covered by the Rehabilitation Act, violations of the standards of the ADA by USPS constitute violations of the Rehabilitation Act. Article 2 of the National Agreement provides that letter carriers may grieve such violations.[2]

The ADA restrictions on employer medical enquiry/examination authority arguably shifts the existing paradigm. The Postal Service has been busy changing pertinent handbook and manual provisions to reflect the ADA restrictions. However, the Postal Service has provided little explanation of the handbook changes to reflect the context of the ADA restrictions. It is highly unlikely that postal managers in the field are aware of any changed restrictions on their authority to require medical examinations or make medical enquiries. Nor is it apparent that NALC leaders in the field are aware of the ADA restrictions. The NALC might consider educational outreach on the issue. In addition, the medical documentation requirement language in ELM 513.362 remains unchanged and probably should be challenged.

The old paradigm

Previously, USPS handbook and manual language gave management broad discretion to make medical inquiries and require medical exams.

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[1] 29 USC 794(d)
Standards used in determining violation of section. The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

[2] JCAM page 2-1
Article 2 also gives letter carriers the contractual right to object to and remedy alleged violations of the Rehabilitation Act through the grievance procedure.

Old language in the EL-311 (later shifted to ELM 865) gave USPS broad authority to automatically require detailed medical reports following medical absence of 21 days; for specific conditions such as diabetes, cardiovascular, seizure disorders; following surgery, etc..

Old language in Pub 71 incorporated the automatic detailed medical certification requirements for absences of 21 days, for specified conditions, surgery, etc..

The above requirements were established management rights and were seldom if ever challenged, let alone successfully challenged, by local unions.

The ADA restrictions

The above requirements came into violation of the Rehabilitation Act, through the ADA restrictions.

USPS is only permitted to make a medical inquiry or require a medical examination if it is shown to be job-related and consistent with business necessity. USPS has the burden of proof to show this. The EEOC, in a policy guidance memorandum, has construed this to mean the employer must show that it has a reasonable belief based on objective evidence that (1) the employee's ability to perform essential job functions will be impaired by a medical condition or (2) the employee will pose a direct threat due to a medical condition. While the EEO construction is not binding interpretation of the statute, courts will typically consider it in their analysis.

The changed handbook and manual language

USPS has been busy changing the above handbook and manual language to come into compliance with the EEOC construction of the ADA restriction.

On March 3, 2005, USPS advised NALC of changes to the ELM 865 intended "*to more accurately reflect current policy and practices.*" USPS deleted the automatic detailed medical certification requirements for absences of 21 days, for specified conditions, surgery, etc. USPS added language that flows right from the statute and the EEOC construction:

> *Return to work clearance may be required... when management has a reasonable belief, based on upon reliable and objective information, that the employee may not be able to perform the essential functions of his/her position or the employee may pose a direct threat...*

On March 22, 2005, USPS advised NALC of changes to Pub 71. USPS deleted the automatic detailed medical certification requirements for absences of 21 days, for specified conditions, surgery, etc. USPS added language that flows right from the statute and the EEOC construction:

> *...return to work clearance may be required when management has a reasonable belief, based upon reliable and objective information, that you may not be able to perform the essential functions of your position or that you may pose a direct threat...*

On July 26, 2005, in an internal memorandum [M-1547], USPS acknowledged that the changes to ELM 865 were made in order to comport *"with the requirements of the Rehabilitation Act that employers make medical inquiries only when there is a reasonable. objective basis to do so."*

QUESTION: The hours and days off she was working, Saturday and Sunday off, 1450 to 2300, is that identical to the job that she was bidding?

ANSWER: Yes, it was. (See, Tr., 70).

5. Another Potential Limitation

There is another reason for concluding that the parties did not bargain for management to enjoy an unfettered right to include overtime as a requirement of any job. The parties intended their relationship to be circumscribed by the law, including such legislation as the Rehabilitation Act of 1973 and the ADEA. Such implicit limitations on the parties' relationship cannot be ignored.

The rule of reasonableness with regard to overtime assignments must be construed within the context of the Americans with Disabilities Act which President Bush signed into law on July 26, 1990. This legislation provides federal protection for persons with disabilities. It extends rights associated with the Rehabilitation Act of 1973 to private employers, while the 1973 Act focused primarily on the federal government.

The legislation defines a "physical impairment" as:

> Any physiological disorder or condition . . . or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; . . . (See, 45 C.F.R. § 84.3(j)(2)(i) (2989)).

If a person has such a physical impairment, it must substantially limit the individual in a major life activity.

The legislation also makes clear that the Americans with Disabilities Act extends to "persons who have recovered--in whole or in part--from a handicapping condition such as a mental or neurological illness, but who may nevertheless be discriminated against on the basis of prior medical

history . . . ." (See, 120 Cong. Rec. 30531, 30534 (Sept. 10, 1974). In other words, the definition of a disability under ADA extends to an individual who had an impairment in his or her life and who, then, recovered from the disability. The new legislation prohibits discrimination against such individuals.

The Americans with Disabilities Act also covers individuals who are "regarded" as having an impairment. In other words, even if an individual has a physical impairment that does not substantially limit a significant life activity, but the person has been treated by the employer as though the person had such a limitation, that person is protected by the legislation. (See, 45 C.F.R. § 84.3(j)(2)(iv) (1989)). That is, the new legislation prohibits discrimination against a person who has been treated by the employer as though the individual were impaired. (See, School Board of Nassau County v. Arline, 480 U.S. 273 (1987)).

It is important to recognize that an impairment under the ADA must not be of any particular duration. In other words, a person with a temporary impairment would be covered by the legislation. One need only establish an impairment that substantially limits a major life activity. It would be possible to establish coverage under the legislation without regard to the duration of the impairment.

If a worker is a qualified individual with a disability, management has an obligation to make a reasonable accommodation for that person. The legislation states that the

employer commits discrimination by

> not making reasonable accommodations to the known physical or mental limitations of an otherwise [illegible] qualified individual with a disability who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation or business of such covered entity. (See, ADA § 102(b)(5)(A), 104 Stat. 332).

Section 101(9) of the legislation defines "reasonable accommodation" to include job restructuring as well as modifying work schedules. It is clear from the legislative history for the Act that the intent of the drafters was for management to make a determination about a specific accommodation on the basis of particular facts for individual cases. (See, Senate Rep. 116, 101 1st Cong., 1st Sess. 26, 31 (1989)). Legislators expected that management would be flexible with regard to job restructuring and modifying schedules. (See, Sen. Rep. 31). Legislators were clear about the fact that, even if the job restructuring or modified schedule reduced efficiency of an operation, it must be made, unless the inefficiencies could be defined as an "undue hardship" in specific cases.

The point is that the Employer has an obligation to look to laws such as the Americans with Disabilities Act for general guidance about the nature of the Employer's obligation to provide reasonable accommodation for individuals who are impaired. The Employer's obligation extends to all employment decisions. Decisions must be made on a case-by-case basis looking at the facts of each specific problem. The legislation suggests that the Employer must use a problem

solving approach to the matter. This means management must identify aspects of the job that limit the person's performance; determine potential accommodations; evaluate the reasonableness of the alternative accommodations in terms of their impact on the employer; and, assuming no undue hardship on the employer, implement the most effective accommodation. (See, e.g., Davis v. Frank, 711 Fed. Supp. 447 (N.D. Ill. 1989)).

Management's authority to assign overtime work must be understood within the context of laws such as the Americans with Disabilities Act. The Employer's authority to order overtime is not unfettered, and such overtime assignments cannot be viewed as an implied part of every job description. Management's right to require overtime of employes must be understood not only within the context of the parties' contractual agreement but also as informed by relevant legislation. Those sources make clear that the right of management to require overtime does not translate into an implied or inherent qualification for every postal position.

PR Article Contract Talk

ELM 865 Revision: Limits on Medical Enquiries

Recent changes to ELM 865 underscore a significant limitation on management's right to make medical enquiries. The Postal Service Article 19 notice regarding ELM 865 provided a general, but incomplete statement of the purpose of the revisions. A later communication from the Postal Service, on a different but related matter, clarified the actual purpose: the Rehabilitation Act prohibits the Postal Service from making medical enquiries (including demands for documentation), except in limited circumstances. ELM 865 was revised to comply with this prohibition.

The prior ELM 865 allowed management to require employees returning to duty 1) after 21 days or more medical absence and 2) for certain stipulated medical conditions such as diabetes and seizure disorders, to provide detailed medical documentation of their ability to return to work. The requirement applied to all employees. (However, the Postal Service could not delay a return to work pending receipt of the documentation in the case of on-the-job injuries – see M-01487.)

The new ELM 865 deletes the language regarding 21 days and specific medical conditions. On its face, the new language applies to any return to work following illness or injury. However, the revised language includes significant new restrictions on the Postal Service's right to demand medical documentation. It requires the Postal Service to make an individualized assessment of whether there is a reason to require return-to-work documentation. It only allows the Postal Service to require medical documentation when it has a reasonable belief, based upon reliable and objective information, that the employee may be unable to perform the essential functions of the position, or may pose a direct threat to the health or safety of him/herself or others due to the medical condition.

The Postal Service provided the NALC with an Article 19 notice of the ELM 865 revisions on March 3, 2005. The notice advised that the purpose of the revisions was to reflect the Postal Service's policy of conducting an individual assessment of employees returning to duty after absence for medical reasons.

However, the Rehabilitation Act prohibits the Postal Service from making medical enquiries unless it has a reasonable belief, based upon reliable and objective information, that the employee may be unable to perform the essential functions of the position, or may pose a direct threat to the health or safety of him/herself or others due to the medical condition. The new language in ELM 865 comes directly out of Rehabilitation Act case law.

The Postal Service later acknowledged as much. On July 26, 2005, the Postal Service issued a memorandum related to the FMLA, ELM 865 and the recent 7th Circuit Court of Appeals decision, *Harrell v. U.S. Postal Service*. The memorandum explained the recent change to ELM 865:

Union Contentions
B4-00133-16

Medical Documentation

1. Did Management violate Articles 2, 5, and 19 of the National Agreement when they required the grievant to provide medical documentation confirming work hour and work load status while the record shows she has been, and continues to perform, the core job requirements of a city letter carrier? If so, what is the appropriate remedy?

2. Did Management violate Articles 2, 5, 19, and 21 of the National Agreement via the Joint Statement on Violence in the Workplace, Section 115.4 of the M-39 Handbook, and ELM 665.16 when harassing her by challenging her ability to perform her letter carrier duties after she had submitted her doctor's work restrictions of no more than 8 hours a day or 40 Hours a week? If so, what is the appropriate remedy?

3. Did the Postal Service violate Articles 15 and 19 of the National Agreement when they refused to reimburse the grievant for out of pocket medical expenses and for her mileage she incurred when fulfilling Management's request to furnish updated medical documentation? If so, what is the appropriate remedy?

The grievance file revels received several requests from Management in the for updated medical information due to her doctor restrictions limiting her to 8 hours a day and 40 hours a week. The Union further contends there was no request from the grievant for light duty, limited duty, or to be considered for reasonable accommodation.

The grievant provided a statement in this file which reads as follows in relevant part and describes the events which led up to her being limited to 8-hour work days and 40-hour work weeks.

> ...I was having severe pain in my feet. I was having difficulty getting in and out of the jeep as well as going up and down steps. And I finally had to go to my podiatrist back in West, Tn. where I have been a patient since 2010. My doctor put me in braces and a restriction of 8 hours a day/40 hours a week.

The Grievance file contains Medical Documentation which was submitted to Management by as evidence of this statement, which reads as follows:

> This statement is to certify that was a patient in my office on 05/19/2015. Patient is able to return to work/school on 05/20/2015...Patient is only allowed to work 8 hour days 40 hours per week due to feet problems and pain to her feet with history of previous surgery.

The grievance file reveals was seen by in on 05/19/2015 in regards to pain related to her feet. The patient was released with no restrictions which would not allow her to perform the essential core functions of her job. They simply restricted her to 8 hours a day, 40 hours a week. The

file also reveals the grievant did not submit any letter to request light duty or reasonable accommodation in accordance with the Americans with Disabilities Act.

The grievance file contains a statement from which reads in part as follows:

> ...on 09/30/15 I was called to desk for an attendance review. At this time Micah put in writing on the PS Form 3972 that Management wanted updated medical documentation. I asked why they wanted one so soon. He stated the Postmaster wanted updated information. had just returned within a week or two from being away on detail) ...Then on 11/18/15 while I was casing mail, came to my case and asked had I gone to the doctor yet, and I said no because you denied me the leave to go. He stated he still needed me to go to the doctor for updated documentation.

The grievance file contains medical documentation from dated December 16, 2015 which reads in part as follows:

> I am writing to you on behalf of my patient, , who I have been treating for several years now. Due to the stress on her feet with all the walking on concrete and stepping in and out of her work vehicle, I have limited her work to 8 hour days and 40 hour weeks. During these hours, she is able to perform ALL letter carrier duties to the fullest extent, not to extend the 8 hour shifts per day or 40-hour work weeks.

The Union contends Management in the cannot require employees with eight hour/forty hour restrictions to provide medical documentation that is more specific than an attending physician's statement of incapacity unless the Postal Service has a reasonable belief, based on objective evidence that an employee's ability to perform essential job functions will be impaired by his/her medical condition; or an employee will pose a direct threat due to a medical condition. Any further medical documentation requirements are in conflict with; and therefore in violation of the National Agreement. **The Union contends the medical documentation in the file reveals the grievant is able to perform the essential functions of her job**, and Management has provided no evidence prior to requesting this documentation that she poses a direct threat to herself or others.

Page 5-1 of the JCAM reads in relevant part as follows:

> **Prohibition on Unilateral Changes.** Article 5 prohibits management taking any unilateral action inconsistent with the terms of the existing agreement or with its obligations under law. Section 8(d) of the National Labor Relations Act prohibits an employer from making unilateral changes in wages, hours or working conditions during the term of a collective bargaining agreement. In H1N-5G-C 14964, March 11, 1987 (C-06858) National Arbitrator Bernstein wrote concerning Article 5: The only purpose the Article can serve is to incorporate all the Service's "obligations under law" into the Agreement, so as to give the Service's legal obligations the additional status of contractual obligations as well. This incorporation has significance primarily in terms of enforcement mechanism—it enables the signatory unions to utilize the contractual vehicle of arbitration to enforce all of the Service's legal obligations. Moreover, the specific reference to the National Labor Relations Act is persuasive evidence that the parties were especially interested in utilizing the grievance and arbitration procedure spelled out in Article 15 to enforce the Service's NLRB commitments.

Page 2-1 of the Joint Contract Administration Manual reads in part as follows:

> Article 2 also gives letter carriers the contractual right to object to and remedy alleged violations of the Rehabilitation Act through the grievance procedure. Postal Service guidelines concerning reasonable accommodation are contained in Handbook EL-307, *Reasonable Accommodation, An Interactive Process.*

The Union contends that based on the tenets of EEOC case law, there are only two conditions which permit employer medical inquiries:

1. Where there is reasonable belief based on factual evidence that the employee may not be capable of fulfilling essential functions;
2. Where there is reasonable belief based on factual evidence may pose a direct threat to the health or safety of him/herself or others due to that medical condition.

The Union contends the Postal Service is only permitted to make a medical inquiry or require medical examination if it is shown to be job related and consistent with business necessity. The EEOC in its policy guidance memorandum has construed this to mean what is stated in the above tenets. While the EEO construction is not binding interpretation of the statute, courts will typically consider it in their analysis.

The Union contends on March 3, 2005 the Postal Service advised the NALC of changes to Section 865 of the ELM Manual which intended to "more accurately reflect current policy and practices." and deleted the automatic detailed medical certification requirements for absences of 21 days, etc. They then added the language (in bold) which flows right from the EEOC construction. In internal memorandum (M-01547), the USPS acknowledged these changes to ELM 865 were made in order to comport, "with the requirements of the Rehabilitation Act that employers make medical inquiries only when there is a reasonable, objective basis to do so".

> 865.1 Clearance Required: All Bargaining Unit Employees and Those Non-Bargaining Unit Employees Returning from Non-FMLA Absences
>
> The decision to clear an employee to return to work rests with management. Management can require employees who have been absent due to an illness, injury, outpatient medical procedure (surgical), or hospitalization to submit documentation (as set forth in 865.3) in order to clear their return to work when management has a reasonable belief, based upon reliable and objective information, that:
>
> a. **The employee may not be able to perform the essential functions of his/her position; or**
>
> b. **The employee may pose a direct threat to the health or safety of him/herself or others due to that medical condition.**

On March 22, 2005, the USPS also advised the NALC of changes to Pub 71, and again added similar language from the same EEOC statute as they did to Section 865 of the ELM. It reads in part as follows:

> ...return to work clearance may be required when Management has a reasonable belief, based upon reliable and objective information, that you may not be able to perform the essential functions of your position or that you may pose a direct threat...'

Section 2 of the EL-307 which reads in part as follows:

> To request an accommodation, an individual may use plain language and need not mention the Rehabilitation Act or use the phrase "reasonable accommodation." An employee can make a request for accommodation to his or her supervisor or manager or the Manager, Human Resources (District). A job applicant may make a request for accommodation to the examiner, selecting official, or Manager, Human Resources (District)
>
> The reasonable accommodation process is activated whenever:
>
> - A request for reasonable accommodation is made by the employee or applicant, or someone acting on behalf of the employee or applicant.
> - An employee with a known physical or mental impairment is observed having difficulty performing the essential functions of his or her job because of an impairment.

The Union contends no reasonable accommodation process was activated in accordance with the provisions of the EL-307 and directs the parties to Section 53 of this Handbook which reads in relevant part as follows:

> When no request for reasonable accommodation has been made by the employee or someone acting on his or her behalf, the Rehabilitation Act limits your ability to make disability related inquiries to that person or to medical personnel who may have access to such information...However, you may make disability related inquiries when you have a reasonable belief, based on objective evidence that an employee's ability to perform essential job functions may be impaired by a medical condition.

The Union submits Memorandum of Understanding (M-01391) reads in part as follows:

> On October 1, 1999, I met with your representative to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure. As a result of our discussions, the parties agreed there is no dispute between the parties that **<u>Step 4 grievance settlements are precedential and binding.</u>**

National Arbitrator Bernstein's Step 4 decision dated August 7, 1987, H1N-1J-C 23247 clarifies the intention of the national arbitration process and reads in relevant part as follows:

> **The whole purpose of the national arbitration scheme is to establish a level of definitive rulings on contract interpretation questions of general applicability. <u>A National Arbitrator is not bound in any way by awards issued by regional arbitrators. National decisions bind regional arbitrations, but not the reverse.</u>** (Bold and underline added)

Arbitrator Snow, in National Level Case #H1C—5K-C24191 found that requests for 8/40 limits are not subject to a light duty request and added in part:

> There is another reason for concluding that the parties did not bargain for Management to enjoy an unfettered right to include overtime as a requirement of any job. The parties intended their relationship to be circumscribed by the law, including such legislation as the Rehabilitation Act of 1973, and the ADEA. Such implicit limitations on the parties' relationship cannot be ignored.
>
> Management's authority to assign overtime work must be understood within the context of our laws such as the Americans with Disabilities Act. The Employer's authority to order overtime is not unfettered, and such overtime assignments cannot be viewed as an

implied part of every job description. **Management's right to require overtime must be understood not only within the context of the parties' contractual agreement, but also as informed by relevant legislation. Those sources make clear that the right of Management to require overtime does not translate into an implied or inherent qualification for every postal position.** (Bold added)

The Union contends the attending physician determined the grievant can perform all the functions of her job as required as long as she is limited to an 8-hour work day and a 40-hour work week. Arbitrator Snow's Step 4 Decision reveals Management cannot argue overtime is an inherent qualification for every postal position. The parties have already agreed Management must abide by applicable laws and legislation in Article 5 of the National Agreement which does not allow for an unfettered authorization to order overtime.

USPS Letter to Area Vice Presidents (M-01807), dated March 19, 2012 and authored by present Postmaster General, Megan J. Brennan which reads in part as follows:

> **A decision was recently issued against the Postal Service in an Equal Employment Opportunity Commission (EEOC) case based upon a finding of disability discrimination and retaliation. The EEOC Administrative Judge awarded the employee, a letter carrier, $200,000 in compensatory damages, 39 days of back pay, $12,420 for psychological treatment, and $115,659 in attorney fees, expert witness fees and costs.**
>
> Subject: Employee Medical Restrictions
>
> When craft employees provide medical documentation indicating that they have a disability and cannot work more than eight hours, or that they require other accommodations that may impact their ability to deliver the mail in an efficient manner, this can be challenging for a manager with limited resources who is trying to move the mail. However, the answer is neither to work disabled employees outside of their restrictions, nor to discipline them for being unable to complete their route. Significant liability may result from those courses of action. **This case is significant because it highlights a growing trend in USPS EEOC complaints- allegations that managers are disregarding employees' medical restrictions.** In this particular case, the judge found that management was on notice of the carrier's restrictions by virtue of medical documentations she had submitted to management, as well as her statements regarding those restrictions. **The carrier's primary restrictions were a limitation that she could work no more than eight hours per day and a requirement that she be granted a ten-minute stretch break every hour. The judge determined that the carrier was frequently required to work more than eight hours and that her workload was not adjusted to allow for the ten minute breaks. There was also a finding that the carrier was harassed when she attempted to abide by her medical restrictions.**
>
> Human Resources and the Law Department have more appropriate ways to work through these issues. Therefore, it is critical that operations managers seek their assistance when faced with medical restrictions to ensure that the proper process is followed, and to ensure that Postal Service operational and financial resources are not compromised. (Bold Added)

The grievant's statement continues as follows:

> Now fast forward to late September when returned as Postmaster.

The grievant has provided a statement which reveals she has been singled out for harassment and humiliation by It reads in part as follows:

> **On November 16, 2015, the Postmaster changed my starting time (no one else) on Mondays and continued this until a recent DRT decision changed me back to my original schedule. Then 3996's starting being disapproved and knowing clearly that I have an 8-hour restriction.** I am giving them my estimate well in advance. I ask for my instructions in the morning as to whether or not to pitch all the mail at my case. Our instructions are to turn in a 3996 within 15 minutes after last call that all mail is up. Nothing to that point will be said about riding with me until I put in a 3996 and then the supervisor will come to me and say I am riding with you today. Referring too recent 3996's put in on 2/29/16 (I did not get my disapproved one back) supervisor said I am riding with you today. Then on 3/1/16 I put in a request for copies of my 4584 and 3999 for 2/29/26. I received my 4584 but got a response form for my 3999 stating it was not kept for city 7 the route I was on 2/29/16. **Then on 3/2/16 the supervisor was off and the postmaster was sitting behind the desk. She acted less than professional when she keep blurting out to me you are not listening, I ask how are you going to handle a 4th bundle pitch it or not. I kept stating I could not carry all the mail in 8 hours. She again blurted out (on workroom floor) I was not asking you about your 8-hour restriction, you are pitching it all.** After pitching all the mail, I then went to her and asked could I have a 3996. I pulled down route, loaded my jeep and as I came back in to return gurney, I ask where was. She thought she had left. I ask her to please call her because I needed a copy of my 3996. came to supervisor desk approved it but wrote on it that" management will be out to observe employee." At approximately 1:30 p.m. I noticed pulling up behind me. I requested a 4584 for that day but no 3999 because I was not visually followed for the first part of route. Other things I feel important to state is while delivering to a business I walked in with the mail and the postmaster was there. **She asked the business owner has this girl caused you any trouble which I felt was very unprofessional. I also have noticed I am the only one who has received a 4584 from the postmaster.** Other incidents include bringing mail back on 12/7/15 and Postmaster making a comment leave it right there and I will give it to whoever returns first. "They will be real happy about that." The very next day 12/8/16 I put up route early and started out door and Postmaster blurted out to the rest of the carriers pulled down and heading out and everybody started clapping. Out of all the years I have served with the United States Post Office, I have never worked in such an unpleasant environment.

Section 134.12 of the M-39 Handbook reads in relevant part as follows:

> Accompanying carriers on the street is considered an essential responsibility of management and one of the manager's most important duties. Managers should act promptly to correct improper conditions. **A positive attitude must be maintained by the manager at all times.**

Section 115 of the M-39 Handbook reads in relevant part as follows:

> 115.3 **Obligation to Employees**
>
> When problems arise, managers must recognize that they have an obligation to their employees and to the Postal Service to look to themselves, as well as to the employee, to:

a. Find out who, what, when, where, and why.
b. Make absolutely sure you have all the facts.
c. The manager has the responsibility to resolve as many problems as possible before they become grievances.
d. If the employee's stand has merit, admit it and correct the situation. You are the manager; you must make decisions; don't pass this responsibility on to someone else.

115.4 Maintain Mutual Respect Atmosphere

The National Agreement sets out the basic rules and rights governing management and employees in their dealings with each other, 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 statement and documentation in the file reveals Postmaster Pinager is creating a hostile work environment with Carrier Webb, strictly because she has been placed on work hour restrictions. This not only violates the M-39 Hand book, but is in violation of federal law which forbids this behavior.

Step 4 Decision (M-00701) dated September 10, 1973, NS 4877, reads in relevant part as follows:

> He was required to take 8 hours sick leave when he was not ill and could have been gainfully employed at his job. No illness existed, yet he was required to take sick leave. ...Carrier required to use 8 hours sick leave to obtain Doctor's statement—carrier credited with administrative leave.

The statement reveals the grievant was required to put in for sick leave when she was perfectly capable of performing her duties on the specific day she was instructed to obtain medical documentation. The Union contends the grievant is required to be reimbursed her sick leave in this instance by having her leave changed to reflect administrative leave.

Section 513.362 of the ELM Handbook reads in relevant part as follows:

> **Over Three Days**
>
> For absences in excess of 3 days, employees are required to submit medical documentation or other acceptable evidence of incapacity for work or of need to care for a family member and, if requested, substantiation of the family relationship

Step 4 Decision (M-00989) dated January 13, 1982, reads as follows:

> An arbitrator has the authority to grant relief in the form of the Postal Service paying for doctor's bill when it is found that supervisory personnel did not have reasonable and sufficient grounds to require medical verification from an employee for absences of 3 days or less.

Arbitrator Haber's Decision (C-01624) reads in part as follows:

> Employees on restricted sick leave are required to provide a medical certificate and pay for it. Employees who have had a record of abuse of sick leave are subject to the same requirement. The grievant does not fall in either category and he is entitled to reimbursement. It is the Arbitrator's Opinion and Award that the grievance is sustained

with respect to reimbursing Mr. Neirynick $16.00 for the expense incurred in obtaining the medical certification.

Management acted arbitrarily, capriciously, and outside the legal boundaries of their authorization when they required the grievant to provide updated medical documentation for her restrictions. The Union contends the grievant must be reimbursed her remaining bill in this instance. The Union further contends the demeanor displayed by Postmaster Pinager when the grievant requested payment is unacceptable and again in violation of the National Agreement.

The Union contends the grievant must also be reimbursed the mileage she used to obtain her documentation. The documentation in the grievance file reveals Management in the was aware of the location of her doctor when they requested the grievant update her medical documentation. The union further contends and the Supervisor made no statement as to why her restrictions needed to be clarified or updated so shortly after they were submitted.

Section 665.16 of the ELM Handbook reads in part as follows:

665.16 Behavior and Personal Habits

Employees are expected to conduct themselves during and outside of working hours in a manner that reflects favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it does require that postal employees be honest, reliable, trustworthy, courteous, and of good character and reputation. The Federal Standards of Ethical Conduct referenced in 662.1 also contain regulations governing the off-duty behavior of postal employees. Employees must not engage in criminal, dishonest, notoriously disgraceful, immoral, or other conduct prejudicial to the Postal Service. Conviction for a violation of any criminal statute may be grounds for disciplinary action against an employee, including removal of the employee, in addition to any other penalty imposed pursuant to statute. **Employees are expected to maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment.**

The Union contends the hostile environment which has created in the Post Office is in violation of Article 665 of the ELM Handbook. The file contains detailed statements of the harassment which the grievant has incurred since submitting her restrictions. It is the front line manager's job to maintain an atmosphere of mutual respect, but in this case it is obvious she has created a hostile environment which violates the grievants rights under the Rehabilitation Act.

At the Formal A meeting management submitted DRT decision for gr. # B4-00653-15, which shows @ the time they gave their decision they could not conclude there was a violation. The union contends that updated doc. has been submitted with this instant grievance.