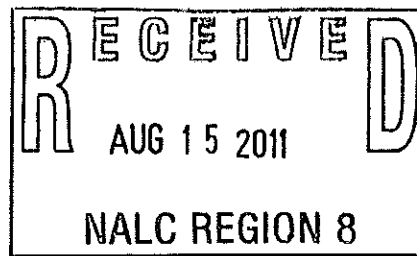


REGULAR ARBITRATION PANEL



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In the Matter of the Arbitration \*  
\*  
between: \*  
\*  
United States Postal Service \*  
\*  
and \*  
\*  
National Association of \*  
Letter Carriers, AFL, CIO \*  
-----

Grievant: J. Bowman  
Post Office: Nashville, TN  
USPS Case No: C06N-4C-D 11219738  
NALC Case No: B4-01104-11

BEFORE:

Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Eric Conklin

For the Union: Chris Verville

Place of Hearing: Postal Facility, Nashville, TN

Date of Hearing: July 19, 2011

Date of Award: August 10, 2011

Relevant Contract Provision: Article 16.7

Contract Year: 2006

Type of Grievance: Discipline

Award Summary:

The Grievant was involved in a Light Transport Vehicle rollaway accident. Management issued an Emergency Placement charging the Grievant with failure to follow safety regulations and violating the zero tolerance policy. First, the evidence shows the actions of the Agency in this case were premature. Secondly, the Agency failed to provide the Grievant/Union with a formal charge. Since the Emergency Placement was found to be improper, the second issue raised in this case becomes moot. The grievance is sustained and the Grievant shall be made whole.

  
\_\_\_\_\_  
Lawrence Roberts, Panel Arbitrator

**SUBMISSION:**

This matter came to be Arbitrated pursuant to the terms of the Wage Agreement between United States Postal Service and the National Association of Letter Carriers Union, AFL-CIO, the Parties having failed to resolve this matter prior to the arbitral proceedings. The hearing in this cause was conducted on 19 July 2011 at the postal facility located in Nashville, TN, beginning at 9 AM. Testimony and evidence were received from both parties. A transcriber was not used. The Arbitrator made a record of the hearing by use of a tape recorder and personal notes. The Arbitrator is assigned to the Regular Regional Arbitration Panel in accordance with the Wage Agreement.

**OPINION**

**BACKGROUND AND FACTS:**

The Grievant in this case is employed as a Letter Carrier at a Nashville, TN Postal facility, the Belle Meade Delivery Unit.

On 29 March 2011, the Grievant's light transport vehicle was involved in a rollaway accident during the course of route delivery that day. As a result, the Grievant received the following Letter, labeled, EMERGENCY PLACEMENT IN AN OFF-DUTY STATUS:

"You are hereby notified that effective March 29, 2011, you were placed in an non-duty, non-pay status under the provisions of Article 16, Section 7, of the National Agreement. The reason for this action is your failure to follow safety regulations and the zero tolerance policy.

You are placed in this Emergency off-Duty Status (without pay) under the provisions of Article 16, Section 7, of the national Agreement, which states in part as follows:

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious of self or others.

You shall remain on the rolls (non pay status) until further notice.

You are further advised that you are prohibited from interfering with the day-today operation of this postal facility and will not be allowed unescorted on the workroom floor.

If this action is overturned on appeal, back pay may be allowed, unless otherwise specified in the appropriate award or decision, ONLY IF YOU HAVE MADE REASONABLE EFFORTS TO OBTAIN OTHER EMPLOYMENT DURING THE RELEVANT NON-WORK PERIOD. The extent of documentation necessary to support your back pay claim is explained in the ELM, Section 436.

You have a right to file a grievance under the Grievance Arbitration procedures set forth in Article 15 of the National Agreement within 14 days of your receipt of this notice.

A copy of this notice is also being sent to you by priority mail, confirmation of delivery." (emphasis in original)

The above letter was signed by a Supervisor, Customer Services.

The Union's version of events contrasted with that of Management. Additionally, a secondary issue evolved regarding whether or not Management made every reasonable effort to assign

the Grievant to non driving duties following the alleged incident. Obviously, the Parties were unable to resolve their differences regarding either matter.

It was found the matter was properly processed through the prior steps of the Parties Grievance-Arbitration Procedure of Article 15, without resolve. The Step B Team reached an impasse on each of the respective issues on 23 June 2011. Therefore, the matter is now before the undersigned for final determination.

At the hearing, the Parties were afforded a fair and full opportunity to present evidence, examine and cross examine witnesses. The record was closed following the submission of oral closing arguments by the respective Advocates.

**JOINT EXHIBITS:**

1. Agreement between the National Association of Letter Carriers Union, AFL-CIO and the US Postal Service.
2. Grievance Package
3. Joint Contract Administration Manual

**EMPLOYER'S POSITION:**

The Service believes the evidence will show the presence of just cause for the Emergency Placement in this case.

According to Management, it is alleged the Grievant failed to observe the mandatory dismount procedures outlined in a USPS "Zero Tolerance" policy letter and Handbook M-41.

It is the contention of the Agency there are four distinct and separate actions designed and implemented to prevent an unattended vehicle from moving without an operator.

According to the Service, roll-away accidents are among the most serious encountered in the USPS. Fortunately, Management points out, that, in the instant case, there were no injuries, only property damage.

The Employer explains the vehicle was inspected at the scene and found to be in safe working operation. The Employer also mentions that a further inspection at the Vehicle Maintenance Facility yielded similar findings.

Even though the Union pointed out an issue with the vehicle, the Service points out this does not mitigate the fact that if all the proper dismount procedures had been followed, this accident would not have resulted the way it did.

According to the Employer, this record will show that the driving privileges of the Grievant have neither been suspended and/or revoked. It is the argument of Management that all arguments in that regard are not supported by the evidence and have no merit.

It is the position of the United States Postal Service that the Grievant violated Postal Policy and that the Emergency Placement was contractually sanctioned by the Parties Agreement under Article 3 of Joint Exhibit 1.

On that basis, Management respectfully requests that the instant grievance be denied in its entirety.

**UNION'S POSITION:**

It is the contention of the Union that the burden of proof in this case rests with the Employer.

The Union is prepared to show through contract provisions, testimony and tangible evidence that the Service has failed to meet the burden that would justify the Grievant being placed off the clock in a non-duty and non-pay status. In addition, the Union asserts the Employer failed to conduct a proper investigation and immediately put the Grievant out on Emergency Placement in spite of the fact that she answered all the supervisor's questions affirmatively. The Union also insists the Employer did not spell out the charges in the letter given to the Grievant. In support of their case the Union relies on a

precedent setting arbitration decision authored by Arbitrator Mittenthal. Accordingly, the Union believes the disciplinary action is procedurally defective.

The Union also maintains that the Service violated Step 4 Decision (M-1289) where the Parties at the National Level agreed to the following: Management has the right to articulate guidelines to its employees regarding their responsibility concerning issues relating to safety.

However, according to the Union, the Parties also mutually agreed that local accident policies, guidelines and procedures may not be inconsistent or in conflict with the National Agreement.

It is the argument of the Union that the discipline imposed for cited safety rule violations must meet the just cause provisions of Article 16. Furthermore, it is the contention of the Union that administrative action with respect to safety violations must be consistent with Articles 14 and 29.

The Union also suggests that Management in the Tennessee District has indeed established a local rollaway policy that is inconsistent with the Step 4 decision.

The Union insists the evidence will show where Management has failed in their obligations to apply the just cause principles as provided in Article 16.

It is the claim of the Union that the evidence will also show that Management has failed in their obligations under Article 29 by refusing to make every reasonable effort to reassign the Grievant to non-driving duties.

The Union asks the instant grievance be sustained in its entirety.

**THE ISSUES:**

1. Did Management violate Article 16, 19 of the National Agreement and Section 115 of the M-39 Handbook, when they placed the grievant on Emergency placement in off duty status on 03/29/2011 alleging failure to follow safety regulations and zero tolerance policy? If so, what is the appropriate remedy?

2. Did Management violate Article 14 and 29 of the National Agreement when they failed to make every reasonable effort to assign the grievant to non driving duties after they

suspended/revoked her driving privileges? If so what is the appropriate remedy?

**PERTINENT CONTRACT PROVISIONS:**

ARTICLE 16  
DISCIPLINE PROCEDURE

SECTION 7. Emergency Procedure

**DISCUSSION AND FINDINGS:**

This case involves an issue of Emergency Placement. The Parties were certainly not in sync regarding the events leading up to this Article 16.7 action. Regardless of circumstance or respective argument, the burden of proof falls on Management to establish reason for their actions.

While Article 3, Management Rights, provides the Employer with the power to "suspend, demote, discharge, or take other disciplinary action...", the Employer is limited in any decisions as restricted by other Articles or Sections of the Agreement.

According to the Agreement, no Employee may not be disciplined or discharged except for just cause. In my view the "just cause" provision is ambiguous, however, its concept is well established in the field of labor arbitration. The Employer cannot arbitrarily discipline or discharge any Employee. The burden of proof is squarely on the Employer to show the discipline imposed was supported with sound reasoning. Initial allegations must be proven, clearly and convincingly, through the preponderance of the evidence.

And that same just cause language, outlined in Article 16.1, carries forward to Article 16.7, the Emergency Placement provision, albeit, less demanding.

The Employer, in support of their Emergency Placement, references a 1990 National Award authored by Arbitrator Richard Mittenthal, Case Number H4N-3U-C 58637. The Union also relied on the Mittenthal decision.

Arbitrator Mittenthal points out the Employee is entitled to a written notice of charges within a reasonable period of time following the date of displacement. This will be discussed later in this decision. That National Award also provides the following in relation to the just cause requirements with respect to the provisions of Section 7:



"By the same token, "just cause" may depend to some extent upon the nature of the particular disciplinary right being exercised. Section 7 grants Management the right to place an employee "immediately" on a non-duty, non-pay status because of an "allegation of certain misconduct (or because his retention "may" have certain harmful consequences). "Just cause" takes on a different cast in these circumstances. The level of proof required to justify this kind of "immediate.." action may be something less than would be required had Management suspended the employee under Section 4 or 5 where then thirty days advance written notice of the suspension is given. To rule otherwise, to rule that the same level of proof is necessary in all suspension situations, would as a practical matter diminish Management's right to take "immediate.." action."

Article 16.1 requires that all discipline meet a just cause standard. The criteria varies from case to case, but, in most circumstances, just cause is met via the preponderance of evidence rule.

However, as I've stated in many other cases involving Article 16.7, Arbitrator Mittenthal sets forth a less stringent gauge, something less than the preponderance of evidence. Nonetheless, the Employer is required to show their Emergency Placement decision, made on the facts of the case available at the time of their decision, was reasonable. And in this case, my findings are based solely on the facts and circumstances, available to the Employer at the specific time the Emergency Placement took place.

And with that in mind, each Emergency Placement rests on its own set of facts and circumstances. Since this case does involve discipline, the Employer retains the burden to show just cause for the Emergency Placement.

The Article 16.7 language allows the Employer to immediately place an Employee in a non-pay, off-duty status, when allegations meet certain criteria. And that standard must show the conclusions reached by Management, at that time, with the information available, was with reason and not arbitrary or capricious.

However, the just cause standard cannot be gauged in the same matter in all cases since each discipline case is unique to its own set of facts and circumstances. Furthermore the purpose and intent of the Section 7 Emergency Procedure allows the Employer to make an immediate, but reasonable response, based on the evidence available to them, at that given snapshot of time.

First, Management must show that allegations were real based on an analysis of the information available at that specific point in time. There have been cases wherein Employees were absolved of all charges, but the Emergency Placement stood. It's just a matter of whether or not the evidence, available at the time of issuance, shows the Emergency Placement was

reasonable and justified, based on the circumstances appearing at that given time.

There was a lot of evidence introduced in this matter. Interesting was the fact the Employer presented a plethora of evidence to show that Management made the right decision in this matter. The Union also produced evidence to dispute Management's claims.

However, the written record in this matter clearly and rightfully challenges the Employer's own position. It is clear, by even the context of the Emergency Placement Letter cited above, dated 29 March 2011, and the unchallenged Joint Exhibit 2, indicating that the accident occurred on or about 12:25 pm on that same date.

That Letter was dated and mailed to the Grievant that very same day. The Letter itself even states it was mailed via Priority Mail.

Aside from all the evidence introduced at the hearing, this documentation provides one very clear admission to me.

The Grievant was placed on Emergency Placement solely as a result of the accident. Period. There was absolutely little or

no investigation. That is clear by the evidence introduced by the Employer, via Joint Exhibit 2 @ Page 19, which states:

"Acting Vehicle Maintenance Facility Supervisor (VMF) Supervisor, Robert Montgomery's statement dated March 30, 2011, includes the following regarding the vehicle recovery and testing that took place at the accident scene:

On March 29, 2011 our VMF was contacted with a call for recovering a roll away vehicle, I, Robert Montgomery, sent my mechanic Joel Lawson to Darden Ave..

..Once on the street, Mr. Lawson and the supervisor accompanied by the safety officer, did an on the spot operations check of the vehicle. My mechanic demonstrated that with the key out of the locking cylinder and in hand, the steering wheel was locked in place and could not move. The gear shift lever also could not be moved from the park position. He also tested the vehicle's parking brake and determined that the brake held the vehicle properly and prevented the truck from moving, even while the vehicle was in gear.."

It is very clear that any evidence was merely an afterthought. The record shows the statement was dated 30 March 2011 yet the Emergency Placement had already been decided on 29 March 2011. And given the time of the accident at approximately 12:30 and the fact that the Emergency Placement Letter, in order to be mailed by that same 29 March date, had to be completed prior to 5:30/6:00 to make the evening dispatch, there wasn't much time left for any type of reasonable investigation to have occurred.

And I am of the considered opinion, that even though my personal criteria has been that "snapshot" of time given emergency placement, in this case, I do not believe that Management had a reasonable opportunity to take a good picture of the facts of this matter.

Part of the basis of finding is the fact the 29 March Emergency Placement Letter fails to make a single reference to the rollaway.

Quite frankly, other than surmise, there was absolutely no link in that Emergency Placement Letter, of the Grievant to the rollaway. In fact, there was absolutely no reference whatsoever, to the rollaway, in the Emergency Placement Letter.

Also significant is the fact the Grievant testified she was returning from a delivery when the vehicle started to move. I was convinced that had the parking brake not been set, the vehicle would have begun moving down the hill immediately after the Grievant exited the vehicle. And I would believe that any type of investigation would certainly lead to a similar conclusion.

But all of this only leads to the conclusion of a clear lack of investigation by the Employer prior to issuing an Emergency Placement.

Following further contemplation of this entire matter, the undersigned is of the considered opinion there was certainly a rush to judgment in this case. And the convincing evidence in all of this was the time frame that sits on this record.

The accident happened at 12:30 pm. The investigating supervisor, traveled from the office to the accident scene, took a variety of pictures, interviewed the mechanic, talked to the grievant, verbally informed the grievant of an emergency placement, then, after all of that, made it back to the office and wrote a letter to the Grievant, that included none of the above, and that Letter met the dispatch that day.

Joint Exhibit 2, Page 117, indicates the Emergency Placement Letter was received by the Grievant at 11:53 AM on 03/30/2011. I am of the considered opinion, that in order for all of this to happen, within that short time frame, allowed very little time for any investigation, let alone consideration of the facts to take place.

The supervisor, who allegedly considered all the facts in this case and issued the subsequent Emergency Placement Letter clearly failed to consider all of the facts in this matter.

Even if all the facts were to the detriment of the Grievant which I doubt, the time frame of what happened in this case clearly prejudiced the Grievant in this matter.

And confirming this rush to judgment was the fact the Supervisor, Customer Services, clearly failed to include any detail, whatsoever, in that 29 March 2011 Emergency Placement Letter.

Each case is different. This wasn't a matter of bodily harm by an individual or a threat to either another Employee or anyone else for that matter. And given the circumstances of this case, I am of the considered opinion that it was clearly a hurried decision and the Emergency Placement was clearly in error.

As I've previously stated in numerous other decisions, the emergency placement in any case must be shown to have been justified with the facts available at that particular "snapshot" in time. And in this case, when that "snapshot" was taken, it was clear the Employer simply based their decision in total,

that a runaway had occurred. I was convinced that nothing else was even considered by the supervisor. Instead I believe the Supervisor was convinced of the Grievant's guilt as soon as he had learned of the rollaway that day.

And I was convinced of this by, among other things mentioned above, the fact the Emergency Placement Letter failed to reference any specifics whatsoever which was certainly telling. More importantly, albeit controlling, is the fact that it contradicts with the opinion of Arbitrator Mittenthal, which states:

"... the fact that no "advance written notice" is required does not mean that Management has no notice obligation whatever. The employee suspended pursuant to Section 7 has a right to grieve his suspension. He cannot effectively grieve unless he is formally made aware of the charge against him, the reason why Management has invoked Section 7. He surely is entitled to such notice within a reasonable period of time following the date of his displacement. To deny him such notice is to deny him his right under the grievance procedure to mount a credible challenge against Management's action. Indeed, Section 7 speaks of the employee remaining on non-duty, non-pay status "until disposition of the case has been had." That "disposition" could hardly be possible without formal notice to the employee so that he has an opportunity to tell Management his side of the story. Fundamental fairness requires no less."

I carefully reviewed the entire Joint 2 package and was unable to find any content that would satisfy the Mittenthal requirement cited above. The generic content of the 29 March



2011 document did not satisfy that requisite requirement. The Grievant was never made formally made aware of the charges.

For the 29 March document was only general in nature and made no specific reference to any of the charges that were presented in detail at the hearing. The Grievant was never provided a formal written detail of the charges. In fact, the only charge that shows on the record in this case is that of the alleged "failure to follow safety regulations and the zero tolerance policy." I would not expect anyone to put together a defense to such a broad charge.

The Employer takes the position that the Grievant should have been very well aware of the charges against her. However, Arbitrator Mittenthal sees it differently. And his precedent setting decision has survived several sessions of negotiation. Most significant is the fact that it just makes common sense.

When the Employer issues an Emergency Placement, oftentimes, it's done on the spur of the moment. That is the entire purpose of Article 16.7. However, at some point in time, within a reasonable time frame of that spur of the moment decision, the Employee is contractually entitled to a detailed written explanation of the charges. If for no other reason,

this forces the Employer to memorialize the charges and allow the Grievant/Union to counter a defense.

This matter was found to be procedurally defective on two separate and distinct counts. First, in my considered opinion, the Supervisor failed to perform a proper investigation. The fact the Grievant was involved in a rollaway accident, in and of itself, does not constitute immediate guilt and fault.

Secondly, the Employer failed to provide the Grievant/Union a formal charge. The "failure to follow safety regulations and the zero tolerance policy" fails to meet the requisite requirements of Article 16.7. Had the recommended process been followed by the Employer, the Supervisor should/would have certainly reconsidered the initial decision to deploy an Emergency Placement in the first place.

Therefore, based on the reasoning set forth above, the Emergency Placement of 29 March 2011 is found to be without merit. And with that, the second issue becomes moot.

The Grievant shall be made whole in every respect.

**AWARD**

The grievance is sustained and the Grievant shall be made whole.

August 10, 2011  
Fayette County, PA

## STEP B DECISION

### STEP B TEAM

Paul D. Robbins, USPS  
Fred Qualls, NALC

District: Tennessee  
DRT Number: 242-11

Decision:	<b>IMPASSED</b>
USPS number:	C06N-4C-D 11219738
Grievant:	Bowman, Janet
Branch Grievance Number:	B4-00104-11
Branch:	4
Installation:	Nashville
Delivery Unit:	Belle Meade
State:	Tennessee
Incident Date:	03/29/2011
Date Informal Step A Initiated:	04/01/2011
Formal Step A Meeting Date:	05/20/2011
Date Received at Step B:	05/25/2011
Step B Decision Date:	06/23/2011
Issue Code:	16.7000 16.1010
NALC Code:	000019 500201

### **ISSUE**

1. Did management violate Articles 16, 19 of the National Agreement and Section 115 of the M-39 Handbook, when they placed the grievant on Emergency placement in off duty status on 03/29/2011 alleging failure to follow safety regulations and zero tolerance policy? If so, what is the appropriate remedy?
2. Did management violate Articles 14 and 29 of the National Agreement when they failed to make every reasonable effort to assign the grievant to non driving duties after they suspended/revoked her driving privileges? If so what is the appropriate remedy?

### **DECISION**

The Dispute Resolution Team (DRT) has decided to declare an **IMPASSE**. The NALC National Business Agent may appeal this grievance to arbitration within fourteen (14) days after receipt of this joint report.

The Step B team has considered all arguments and evidence in the case file and any of this material may be cited in the event of arbitration.

### **EXPLANATION**

#### **UNION'S POSITION:**

The union contends that management violated Articles 14, 16, 19 and 29 of the National Agreement by placing the grievant in an Emergency Placement Off-Duty Status on 03/29/11.

1. The union contends that even if the grievant had failed to properly dismount, with a total lack of previous discipline in this grievance file, there **would not** have been justification for anything more than a minor discipline.

Therefore, certainly if management concluded that management would not be allowed to drive temporarily, management was clearly **obligated by Article 29 to furnish non driving duties.**

2. Management has exhibited a run-away imagination and made unproven and unfair/inappropriate (**new**) allegations in this instant case; such as management's suggestion that the grievant's cell phone record would enlighten the parties. The grievance file contains **no cell phone records.** Management at **Step A did not suggest** any need/interest in cell phone records. Certainly that suggestion was not made at Formal Step A as this case was being processed by the parties. That **new argument** and others which were not made at Formal Step A **must not be allowed in this grievance file** (the union at Formal Step A was not allowed the opportunity to answer the suggestion/accusation).

The Emergency Placement in Off-Duty status, dated March 29, 2011 reads in part as follows:

"SUBJECT: EMERGENCY PLACEMENT IN OFF-DUTY STATUS

You are hereby notified that effective March 29, 2011, you were placed in a non-duty, non-pay status under the provisions of Article 16, Section 7 of the National Agreement. The reason for this action is your failure to follow safety regulations and the zero tolerance policy.

You are placed in this Emergency off-Duty Status...."

The union notes the above memorandum stated the following two "reasons" for placing the grievant on emergency placement:

1. "your failure to follow safety regulations."
2. "the zero tolerance policy."

The union contends the documentation contained in this grievance file shows the grievant **did not violate safety regulations.**

The union contends that **management violated multiple Articles** of the National Agreement in the issuance of this discipline (emergency placement).

The grievant's statement reads in part as follows:

"My name is Janet Bowman, I run route 510. It has mostly park and loop, boxes on the porches with narrow dead end streets. On March 29<sup>th</sup> 2011, at approximately 12:25, I parked the postal truck between the many cars along both sides of the street. This was in front of 226 Carden Avenue. I put the truck in park, turned the engine off, took the key out and pulled up the hand brake.

I gathered a bundle of mail and shut the door behind me. I walked up a short walkway and up a couple of stairs, placed the mail in the box. As I started back to the truck, it began to move. I jumped off the porch and ran after the slow moving truck, not really sure what I was going to do. A home owner who was outside saw what was happening and ran after the truck too. I ran beside the truck and tried to get the door open.

The truck grazed a telephone pole on the drivers side and it swung in and broke the small side window. It rolled to a stop on a rock near the guard rail that is at the dead end of the road. The young woman arrived at the truck at the same time I did and we were shocked that it could move when obviously it shouldn't. We looked inside at the broken glass, the raised handbrake, the gearshift in park and back at each other. She said "Oh my gosh! Are you OK?" Yes, I think so. "Are you sure?" Because I was on my way to a Dr. Appointment, but I can stay if you need me." Thank you, I'm going to call my boss. He will come in a few minutes.

I called the station and told Tim Freels, then several minutes later I called the station again. I asked Tim to call Brian Buttrey. Tim said "I'm not sure I have his number" and I told him that I had it and would it be OK if I called him. That was OK with Tim. When Brian Buttrey drove up he hugged me and asked "Are you alright" He said "I can't believe I'm the first one here!" Did you call the station? I said yes Brian said "well he should be here by now". He asked if I had Tim's cell number. I told him yes, it's in my purse in the truck. My purse was under the ledge to the left of the hand brake. I carefully climbed in on the edge of the seat (covered with glass) using the steering wheel as balance and the wheel moved.

Brian noticed and said "Hey, your steering wheel isn't locked. It's supposed to. Where are your keys?" In my pocket I told him just a second. I let down the hand brake to pull my purse through the narrow space. I handed Brian the keys. I was still shaking when Tim pulled up in a postal van a moment later. I think Tim asked me if I was OK and also, did I move the truck? I said, no. Few minutes later Mike Vaughn pulled up followed by 2 women I didn't recognize. Mike Vaughn didn't speak to me at all, however the women introduced themselves and checked on my well-being. Tim Freels asked me several questions in the presence of Brian. Tim called it an interview.

Tim: Tell me what happened.

Jan: **I thought you were going to ask me questions.**

Tim: Was the truck in park?

Jan: **Yes.**

Tim: Was the truck shut off?

Jan: **Yes.**

Tim: Was the hand brake pulled?

Jan: **Yes.**

Tim: Did you have the keys?

Jan: **Yes.**

Tim: Was the door closed?

Jan: **Yes.**

We were then told to move the mail to the postal van.

Tim came up to me and told me he was placing me on Emergency Placement in Off-Duty Status without pay. I was driven back to the Post Office where I was escorted off the premises."

The grievant has over 13 years of service with the Postal Service and has no previous discipline in this grievance file.

The Emergency Placement was based solely on event that took place on March 29, 2011. Management's only charge is that the grievant allegedly failed to follow a safety rule/management's zero tolerance policy) on that date, 3/29/2011. The documentation contained in this grievance file does not show a violation by the grievant of a safety rule.

This grievance file contains Document M-1289, on which the parties agreed to the following:

"...The parties agree that management has the right to articulate guidelines to its employees regarding their responsibility concerning issues relating to safety. However, the parties also mutually agree that **local accident policies, guidelines, or procedures may not be inconsistent or in conflict** with the National Agreement.

The union contends that this local/district "accident policy" is inconsistent with the National Agreement and that the district "***accident policy***" is in violation of the above agreement.

Document M-1289 then continues as follows:

"Discipline imposed for cited **safety rule violations must meet the "just cause" provisions** of Article 18 of the National Agreement." (Emphasis added by union)

This discipline (emergency placement) clearly fails the principles of just cause and is in violation of the above agreement.

Document M-1289 then continues as follows:

"Further, administrative action with respect to safety violations must be consistent with **Articles 14 and 29...**"

Management failed to allow the grievant non driving duties which violate the agreement in Document M-1289. Both Document M-2289 (quoted above), along with Article 29 language is abundantly clear as to management's responsibility to assign non driving duties to carriers who are not allowed to drive due to alleged safety rule violations. Further, management confirmed to the union (documentation in the grievance file) that **non driving duties were available**. That confirmation is in questions 4 and 5 of a meeting that Steward Walton had with Supervisor Tim Freels on 4/1/11. Those questions and answers are as follows:

- 4 Article 29 states that you will make every reasonable effort to find her non driving duties in her craft or in other crafts. Have you done this? **No I'm not obligated to find her work. The zero tolerance policy says that.**

At this time I read the Step 4 decision # M-1289. Supervisor Freels said he had never heard that and he would check into it. I informed him that he was being punitive by not finding her work in the station is complete. He said **he would check on that.**

- 5 Do you have sufficient work in the station for Janet Bowman to do? **Yes, but I need to check on this first.**

Supervisor Freels confirmed the existence of non-driving duties, but claimed the belief that the district's "*Zero Tolerance Policy*" forgave the clear obligation to furnish the non-driving duties to the grievant.

1. The "*Zero Tolerance Policy*" letter was authored on July 19, 2010 by Greg A Gamble, District Manager. However, the letter/declared policy makes no claim that he was attempting to suspend Article 29.

2. Article 29 is very clear as to the obligation to assign the non driving duties. Step 4 Document M-1289 (as quoted above) makes abundantly clear that the parties agree that action taken as a result of safety violations would be consistent with Article 29 (obligation to assign non driving duties. Again, that quotation is as follows:

*"Further, administrative action with respect to safety violations must be consistent with Articles 14 and 29..."*

Article 29 and Document M-1289 clearly shows that management was obligated to furnish those non driving duties to the grievant.

The provisions of Article 29 of the National Agreement apply to this type of alleged infraction. Article 29 reads in part as follows:

"An employee's driving privileges may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver."

Clearly, management has chosen to revoke or suspend the grievant's driving privileges (the union contends in violation of multiple Articles of the National Agreement).

On pages 29-4 of the JCAM, the parties agreed to the following:

**"Every Reasonable Effort to Reassign.** Even if a revocation or suspension of a letter carriers driving privileges is proper, Article 29 provides that, **"every reasonable effort will be made to reassign the employee in non-driving duties in the employee's craft or other crafts."** This requirement is not contingent upon a letter carrier making a request for non-driving duties. Rather, it is management's responsibility to seek to find suitable work. National Arbitrator Snow held in I94N-41-D 96027608, April 8, 1998 (C-18159) that management may not reassign an employee to temporary non-driving duties in another craft if doing so would result in a violation of other craft's agreement. If it is not possible to accommodate temporary cross-craft assignments in a way that does not violate another craft's agreement, a letter carrier who is deprived of the right to an otherwise available temporary cross-craft assignment to a position in another craft **must be placed on leave with pay until such time as he may return to work** without violating either unions' agreement. In accordance with Arbitrator Snow's award, in situations where city letter carriers temporarily lose driving privileges, the following applies:

- Management should first attempt to provide non-driving city letter carrier craft duties within the installation on the carrier's regularly scheduled days and hours of work. If sufficient carrier craft work is unavailable on those days and hours, an attempt should be made to place the employee in carrier craft duties on other hours and days, anywhere within the installation.
- If sufficient work is still unavailable, a further attempt should be made to identify work assignments in other crafts, as long as placement of carriers in that work would not be to the detriment of employees of that other craft.
- If there is such available work in another craft, but the carrier may not perform that work in light of the Snow award, **the carrier must be paid for the time that the carrier otherwise would have performed that work.** (Emphasis added)

Management clearly failed in their responsibility to furnish the grievant work once they revoked/suspended her driving privileges.



Article 16.7 of the National Agreement reads in part as follows:

**"Section 7. Emergency Procedure**

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others..."

On page 16.9 of the JCAM, the parties also agreed to the following:

**"What Test Must Management Satisfy?** Usually employees are placed on emergency non-duty status for alleged misconduct. However, the provisions of this section are broad enough to allow management to invoke the emergency procedures in situations that do not involve misconduct—for example if an employee does not recognize that he or she is having an adverse reaction to medication. The test that management must satisfy to justify actions taken under this Article 16.7 depends upon the nature of the "emergency." In H4N-3U-C 58637, August 3, 1990 (C-10146) National Arbitrator Mittenthal wrote as follows:

My response to this disagreement depends, in large part, upon how the Section 7 "emergency" action is characterized. If that action is discipline for alleged misconduct, then Management is subject to a "just cause" test. To quote from Section 1, "No employee may be disciplined...except for just cause." (Emphasis added)

The union contends this discipline (emergency placement) is required to meet but fails to meet the principles of just cause.

On page 16-1 of the JCAM, the parties agreed to the following:

**"Just Cause Principle**

The principle that any discipline must be for "just cause" establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the "just cause" provision requires a fair and provable justification for discipline.

"Just cause" is a "term of art" created by labor arbitrators. It has no precise definition. It contains no rigid rules that apply in the same way in each case of discipline or discharge. However, arbitrators frequently divide the question of just cause into six sub-questions and often apply the following criteria to determine whether the action was for just cause. These criteria are the *basic considerations that the supervisor must use before initiating disciplinary action.*" (Emphasis added)

One of the six sub-questions is as follows:

**"Is there a rule? If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule?"**

The union contends **the grievant complied with the proper dismount rule**. The union contends the grievance file shows the grievant has been delivering the mail in this way since she was awarded the route and that she dismounted properly on that day.

One of the **six sub-questions** is as follows:

**"Is the rule a reasonable rule?** Management must make sure rules are reasonable, based on the overall objective of safe and efficient work performance."

The union contends the rule (to properly dismount) is not in contention **since the grievant did properly dismount**. The question is whether an emergency procedure is reasonable action in these circumstances. The union contends that management's implementation of the emergency procedure is not reasonable.

One of the **six sub-questions** is as follows:

**"Was a thorough investigation completed?** Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective. This is the employee's *day in court* privilege. Employees have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves *before* the discipline is initiated.

**No.** The union contends that the union at Informal and Formal Step A, have presented statements and documentation showing the equipment (FFV) was defective and certainly was capable of malfunctioning and causing the accident, after the proper dismount by the grievant. Example is the following statements, in part:

**March 30, 2011, Robert Montgomery Supervisor (A) Nashville VMF (First statement in which Montgomery claims to find the vehicle performed as designed):**

"...Mr Tummins visually and manually inspected each of the three components involved in holding the vehicle from moving. The first component checked was the key and steering wheel. When the key is removed and in hand, the shifter can not be moved from the park position. When the shifter is in the park position, a locking pin (pawl) inside the transmission itself locks the transmission output shaft (driveshaft) and prevents any movement of the vehicle. Also, the steering wheel locking mechanism is working properly and locks the steering wheel from being able to be turned in any direction while the key is out and in hand. The second component verified was the parking brake system. Mr. Tummins placed the vehicle in reverse and allowed the truck to roll backwards a short distance then applied the parking brake. The vehicle came to an abrupt halt and complete stop. Mr. Turmmins then placed the vehicle into drive and attempted to move forward and the truck did not move at all. The third component checked is the transmission gear selector. At that point, he attempted to remove the key from the locking cylinder while the truck was in drive. It did not come out. He then placed the vehicle 0238431 into the remaining gear selections of one, two, neutral and reverse. The key once again was not able to be removed from the locking cylinder. Only when the truck shifter selector was placed into the park position, was the key able to be removed and placed into his pocket."

**April 11, 2011, (12 days later) Robert Montgomery Supervisor (A) Nashville VMF (Second statement in which Mr. Montgomery acknowledged the vehicle does not perform as designed), then wrote the following to Mr. Vale (Postmaster, Nashville, TN), concerning the same (this instant) vehicle:**

"While using the normal key that is assigned to the vehicle the carriers demonstrated that the key was able to be removed while the vehicle shifter was not fully in park and they were able to shift the vehicle without the key in the locking cylinder. Under a normal functions check and operation of the key and shifter these two components were working properly as expected, but when operated with quick, jerking motions or **while in haste the key was able to be removed and the shifter shifted improperly**. The park brake was also checked at that time and when properly applied was able to hold the vehicle from rolling. As demonstrated to me by the supervisor, the park brake handle **needs to be pulled upwards a total of eight audible clicks** in order for this particular vehicle, 0238431, to be held in place to prevent any forward or backward movement. (Emphasis added)

Clearly, Postmaster Vale was informed via the above letter of the malfunctions of this instant vehicle. However, Mr. Vale chose to not "**do the right thing**", but proceeded to discipline this grievant.

The union notes that management has not acknowledged the major problems with the key, the shifter and that "this particular vehicle" requires "eight audible clicks" for the park brake to operate properly. The union is points out that on March 30 management declared the vehicle "*in safe proper working condition*" and then 12 days later discovered they had "gotten it wrong"; that the vehicle had major problems with the steering column, the key and etc. Further, the "particular vehicle" requires "eight audible clicks" for the park brake to work properly.

Documentation contained in the grievance file shows that on 04/08/11 (Work order 2951); in order to correct some of the problems shown above (Montgomery statement dated April 11, 2011), **vehicle maintenance replaced the following parts:**

1. Steering column
2. Lock Set
3. Shift Indicator

Documentation contained in the grievance file also shows (Work order 2951); that in order to correct some of the vehicle's problems shown above (Montgomery statement dated April 11, 2011), **vehicle maintenance performed labor as shown:**

Description of Work	Time	clock rings	Date
1. R & R Steering Column Assy.	2.5	17.00 14.50	4/8
2. R & R all locks	1.0	18.00 17.00	4/8
3. Inspect Park Brake System	.75	10.25 09.50	4/11
4. Inspect Park Brake System	.50	12.00 11.50	4/11

The union again calls attention to Mr. Montgomery's second statement (April 11, 2011) in which he stated that for the park brake to work properly, it had to be positioned with "eight audible clicks". The statement and the above work orders fail to disclose whether any adjustments were made in the parking brake system.

Management furnished statements which appear to infer the truck (steering column, key, brakes and etc) were working properly. The union furnished statements showing that

management was not correct. One of those statements was from Brian Buttrey, dated March 31, 2011 and reads in part as follows:

"...On March 29, 2011, I received a call from Corey Walton that Ms. Jan Bowman had had an accident while on her route...

...I arrived at Carden Avenue. Ms. Bowman was there by herself. I got out and asked Ms. Bowman if she was okay. She said that she was. I asked her if Mr. Freels had been there yet. She said no. I asked her if she had his number. Ms. Bowman said it's in my purse in the truck. Ms. Bowman opened the door to her postal truck, got in the vehicle, lowered the parking brake, reached under the mail tray, and got her purse. As she did, she grabbed the steering wheel to steady herself and I noticed that the steering wheel was not locked. I asked Ms. Bowman if her steering wheel locked and she said that she had not noticed. I asked her to get out of the vehicle. I looked at the gear selector to make sure it was in park. It was. I said do you have the keys to the vehicle? She said that she did and she took them off of her belt and handed them to me. I put the keys in the ignition, turned it forward, then back, and the steering wheel would never lock. I again looked at the gear selector to make sure it was in park. It was. I left the keys in the ignition so that I could point this out to Mr. Freels when he arrived. Mr. Freels arrived a short time later and I showed him the condition of the steering wheel, that it would not lock with the keys in or with the keys out..."

The statement from Steward Corey Walton reads in part as follows:

"...On March 31, 2011 at 9:00 am, by phone, Ms. Alley. I asked Ms. Alley if Assistant Shop steward Brian Buttrey had indeed shown her that the steering wheel of the postal vehicle would not lock into place with the key in or out of the ignition. She told me that the key was in the vehicle when she got there. I said I appreciate that but that wasn't the question. I again asked her the same question. She admitted that she did witness for herself that the wheel would not lock into place when the key was in or out of the ignition. I then asked her if she had taken MCSO (a) Mike Vaughn to the postal vehicle and shown him what she had seen. She said she could not remember. I said that the accident was just two days ago and she couldn't remember if she had shown Mr. Vaughn that the wheel wouldn't lock. She said it was just so busy she couldn't remember..." (Emphasis added)

Steward Walton's statement then continues as follows:

"I then contacted by phone MCSO (a) Mike Vaughn at approximately 9:40 am on the same day. I asked him if Ms. Alley had shown him, on the day of the accident, how the wheel would not lock into place with the key in and out of the ignition. He said yes she did. I then asked Mr. Vaughn if he indeed saw how the wheel would not lock into place with the key in or out of the ignition. He told me that the key was in the vehicle when he got there. I then stated that he and Ms. Alley had that part down but that wasn't the question. I then asked the question again and he said yes he did see for himself that the wheel would not lock into place with the key in or out of the ignition." (Emphasis added)

The union contends the documentation presented by the union in this grievance file clearly shows that management has declared the facts differently on several occasions in an attempt to justify this unwarranted and inexcusable emergency placement.

Steward Walton called to Two Rivers Service Center on 05/02/11 (a Ford dealership that performs service on Postal vehicles), and was referred to Master Mechanic, Paul Legnon. The following is a portion of the conversation between the two:

"...I introduced myself to Mr. Legnon and asked if he wouldn't mind answering a few questions and he said that would be fine. I discussed thoroughly the problems we found with the steering column in the vehicle that was in the rollaway accident. How you could

put the vehicle in drive and with it still running and in drive turn the vehicle off and remove the key. I also told how the vehicles wheel would not lock into place with the key out of the ignition. I told him how the gear indicator could be moved from park to reverse with the key out of the ignition.

Mr. Legnon then stated "Mr. Walton I can tell you that those steering columns were simply not designed to handle the wear and tear that ya'll put them through. The constant starting and stopping wears out the components in that steering column. Those steering columns have too many aluminum parts for that. They simply wear out."

I then asked him if there was any way that key should be able to be removed from the ignition while the vehicle was still running and in drive. He said, "absolutely not. Under no circumstances should you be able to remove that key from the ignition while it's running. Regardless of what you're doing to it. That key should never come out while in gear. I see the same things with UPS trucks. They just simply wear out. Those columns are just about all aluminum. They will wear out..."

The union presents the above statement as even more evidence these trucks can and do malfunction; just as the other statements, work orders, parts lists and etc show did happen with this instant truck.

While the PS Form 1769 (block 35) alleges "Improper parking", the union contends that the documentation contained in this grievance file shows the location at which the grievant parked that day was where she and other carriers **parked the vehicle**, management knew the location and **had never objected** to it and **had never instructed the carriers to park elsewhere**.

One of the **six sub-questions** is as follows:

**"Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record? The following is an example of what arbitrators may consider an inequitable discipline: If an installation consistently issues five-day suspensions for a particular offense. it would be extremely difficult to justify why an employee with a past record similar to that of other disciplined employees was issued a thirty-day suspension for the same offense. There is no precise definition of what establishes a good, fair, or bad record. Reasonable judgment must be used. An employee's record of previous offenses may never be used to establish guilt in a case you presently have under consideration, but it may be used to determine the appropriate disciplinary penalty.**

**No.** The grievant has over 13 years service and has no previous discipline in this grievance file. Management stated that the grievant had three industrial accidents. However, documentation contained in this grievance file shows the grievant had only one vehicle accident in the past five years, **(prior to this instant false accusation)**. The grievance file contains **no record of any previous discipline**.

While the document "*accident history*" contains the following entry "OWCP Reported Injuries" management's Formal Step A contentions admit the grievant has only had "***eleven lost work days due to injuries.***"

On page 16-2 of the JCAM, the parties agreed to the following:

**"Corrective Rather than Punitive**

The requirement that discipline be "corrective" rather than "punitive" is an essential element of the "just cause" principle. In short, it means that for most offenses management must issue discipline in a "progressive" fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense and a pattern of increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge). The basis of this principle of "corrective" or "progressive" discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution." (Emphasis added)

This discipline was clearly punishment. Not only was there no previous discipline cited, management also failed to prove the grievant acted as they have charged.

The grievance file also contains a statement dated 9/29/10 from the Chattanooga VMF in which the lead mechanic describes the potential for these LLVs to malfunction, which could lead to the very situation as exists here.

The grievance file also contains documentation from the National Traffic Safety Administration of complaints of vehicle rollaways after the driver shifted the vehicle into park and failure of the gearshift lever mechanism while shifting from or to the park position.

The union further contends the following:

1. None of the criteria set forth in Article 16.7 of the National agreement was present on September 20, 2010 with respect to this case. Therefore there was no legitimate basis to invoke Article 16, Section 7 on the day in question.
2. Management violated Article 29 of the National Agreement by not making every reasonable effort to assign the grievant to non-driving duties when they temporarily suspended/revoked the grievant's driving privileges on that day. As a matter of fact, the record is clear that Management made no effort whatsoever to assign the grievant non-driving duties. Instead, they circumvented their contractual responsibilities as outlined in Article 29 by placing the grievant on Emergency Placement.
3. Management failed to properly consider the grievant's tenure and no discipline in his record for more than 13 years.
4. The grievant is accused of misconduct in the instant case. Therefore, management must bear the burden of proving just cause existed to place the grievant on an Emergency Suspension in this case.
5. The grievant's supervisors along with safety personnel were shown (at the scene of the incident) the malfunctioning of the FFV.
6. PS Form 1769/301 (Block 35) mgt entered (Improper parking). In fact the documentation contained in this grievance file shows the grievant and other carriers constantly parked at that exact location, with the full knowledge of supervision. The union contends there was no cause to place the grievant on Emergency Placement.
7. The union contends the grievant followed proper dismount procedures.
8. Article 16 of the National Agreement states that, "In the administration of this article, a basic principle shall be that discipline should be corrective in nature,

rather than punitive. No employee may be disciplined except for just cause..." Management simply cannot establish/allege just cause in the case at bar. The discipline issued was punitive rather than corrective in nature. Placing a Carrier on Emergency placement for an **alleged** safety infraction is designed to punish rather than to correct unsafe practices and situations as intended in Article 14 of the National Agreement. The facts in this case clearly show this discipline was intended to punish, in violation of the National Agreement.

9. Regardless of how this situation is viewed, the inescapable conclusion is that management failed to follow Section 115 of the M-39 Handbook. Section 115.1 of the M-39 reads as follows:

### **"Discipline**

#### **115.1 Basic Principle**

In the administration of discipline, a basic principle must be that discipline **should be corrective in nature**, rather than punitive. No employee may be disciplined or discharged **except for just cause**. The delivery manager must make **every effort** to correct a situation **before resorting to disciplinary measures.**" (Emphasis added)

Management made no effort to "correct a situation", before issuing this discipline; when the above quoted Handbook requires "every effort".

Section 115.2 of the M-39 Handbook reads as follows:

### **"Using People Effectively**

Managers can accomplish their mission only through the effective use of people. How successful a manager is in working with people will, to a great measure, determine whether or not the goals of the Postal Service are attained. Getting the job done through people is not an easy task, and certain basic things are required, such as:

- a. Let the employee know what is expected of him or her.
- b. Know fully if the employee is not attaining expectations; don't guess — make certain with documented evidence.
- c. Let the employee explain his or her problem — listen! If given a chance, the employee will tell you the problem. Draw it out from the employee if needed, but get the whole story."

Section 115.3 of the M-39 Handbook reads as follows:

### **"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."

The union contends that management failed in their responsibilities as outlined above in 115.2 and 115.3 of the M-39 Handbook.

Management failed to meet their burden of proving just cause in this instant case. Additionally, the Union has demonstrated that Management's behavior with respect to this entire situation was wholly inappropriate and a blatant abuse of the authority entrusted to them.

Management cited a "Zero Tolerance Policy". The union contends the "Policy" written by an employee of the Tennessee District cannot supersede the agreements reached by the parties at the National Level in the National Agreement, Handbooks, Manuals and other Memorandums.

**The union further contends:**

On page 16-3 of the JCAM, the parties agreed to the following:

**"Examples of Behavior.** Article 16.1 states several examples of misconduct which may constitute just cause for discipline. Some managers have mistakenly believed that because these behaviors are specifically listed in the contract, any discipline of employees for such behaviors is "automatically" for just cause. The parties agree these behaviors are intended as examples only. Management must still meet the requisite burden of proof, e.g. prove that the behavior took place, that it was intentional, that the degree of discipline imposed was corrective rather than punitive, and so forth. **Principles of just cause apply to these specific examples of misconduct as well as to any other conduct for which management issues discipline."** (Emphasis added)

Management has not shown the grievant acted and charged.

The grievance file contains a request from the union dated 4/6/11 which reads as follows:

*"Videotape (with audio) FFV # 0238431. The union would like to videotape this vehicle inside and out for possible safety violations. Dave Clark and union representative will be performing the investigation of this vehicle".*

*There is a notation on the form stating "Denied 4/8/2011"*

The grievance file contains a "Memorandum" dated April 8, 2011, for "NALC" from Mike Vaughn, which reads as follows:

*"The request states "The union would like to videotape this vehicle inside and out for possible safety violations. Dave Clark and union representatives will be performing their investigation of the vehicle.*

*The request is denied.*

*Dave Clark and union representatives were notified immediately when the accident occurred and had a chance to come to the scene and conduct an on scene investigation. Also, the request for conducting their own investigation of the vehicle is also denied because neither Dave Clark no Corey Walton is qualified to conduct vehicle inspections on Postal Vehicles. However the union can interview the Vehicle Maintenance technician that provided a written report to Management and the NALC concerning his evaluation and investigation vehicle."*



The union was clearly deprived of the opportunity to examine and properly record their examination of this vehicle. Management denied the request and offered to substitute by giving the union to "interview" a technician from the VMF (the department that wrote two completely different reports), the final report admitting the truck parts were defective.

The union contends that management's above refusal clearly violates Articles 17 and 31 of the National Agreement.

The union contends the documentation contained in this grievance file does not show the grievant acted as charged. The documentation does show that management has violated multiple Articles of the National Agreement.

For all the reasons stated above and all the reasons and issues the union raised at Formal Step A of the grievance procedure, the union believes this grievance should be sustained in its entirety and the remedy requested should be granted.

## MANAGEMENT'S POSITION:

The Management Formal A representative effectively presented the Facts and Contentions. All of the arguments raised by Management at the Informal and Formal Step A meetings are brought forward to Step B and at Arbitration. The Step B representative would like to add the following:

Management contends the Emergency Placement of the grievant in Off-Duty Status on March 29, 2011, pending the outcome of an investigation of a willful and intentional safety violation, was reasonable, immediate and with just cause.

The Emergency Placement in Off-Duty status reads in part as follows:

"You are hereby notified that effective March 29, 2011, you were placed in a non-duty, non-pay status under the provisions of Article 16, Section 7, of the National Agreement. The reason for this action is **your failure to follow safety regulations** and the zero tolerance policy. (Emphasis added)

Management contends that Supervisor, Customer Services, Tim Freels acted in accordance with Article 16.7 of the National Agreement, which reads as follows:

### "Section 7. Emergency Procedure

**An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others. The employee shall remain on the rolls (non-pay status) until disposition of the case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge the employee, the emergency action taken under this Section may be made the subject of a separate grievance."** (Emphasis added)

The union's position appears to be that there is NO safety rule or regulation where "*failure to observe*" would warrant an emergency action.

"The union contends that even if the grievant had failed to properly dismount, with a total lack of previous discipline in this grievance file, there **would not** have been justification for anything more than a minor discipline."

The potential for serious injury or fatality may be no greater in any other set of rules and regulations within the United States Postal Service. Yet the union contends such a failure (improper dismount), at most, "*could not*" be "*justification for anything more than a minor discipline*". No wonder these types of accidents continue to occur all too often.

The national parties agree on page 16-8 of the JCAM to the following:

"The purpose of Article 16.7 is to allow the Postal Service to act "**immediately**" to place an employee in an off duty status in the specified "**emergency**" situations." (Emphasis added)

The "*allegation*" of an employees "*failure to observe safety rules and regulations*" is specifically listed among the qualifying offenses that allows "*the Employer*" to place an employee "*immediately*" in an "*off-duty status (without pay)*." Management contends that the potential/probable willful and intentional disregard of safety rules, in this instant

grievance, **failure to follow proper dismount procedures**, warrants the emergency placement pending the outcome of a thorough investigation.

Management included a copy of the Zero Tolerance Policy; Improper Dismount Procedures dated July 19, 2010, which reads in part as follows:

Failure to follow proper dismount procedures is a willful violation of postal policy. The Tennessee District has adopted a zero tolerance policy for violations of proper dismount procedures. Every postal employee in the Tennessee District will be presented the attached stand-up talk addressing this policy. A record of attendance will be established and maintained in the local file. This policy is in effect for every driver, including employees who drive administrative vehicles, lease vehicles and private vehicles on official postal business.

There is absolutely no excuse for a run-away. There is, however, the slim possibility of a mechanical failure causing a roll-away accident. In a case where an employee claims mechanical failure, the vehicle will be referred to the VMF to determine if a mechanical failure played any part in the accident.

An accident need not occur as a result of the violation. An observation of the violation is sufficient to support corrective action. Because this is a zero tolerance policy, any violation of this policy may result in disciplinary action, including removal. *(Italics and underlining added - holding from the original)*

Pursuant to Article 19 of the National Agreement, the following provisions in Handbook M-41 are incorporated in the collective bargaining agreement:

- 822 **Whenever the driver leaves the vehicle, the vehicle must be parked.** To park the vehicle:
- a. **Apply the foot brake and place automatic transmissions in the park position.** Place manual transmissions in gear.
  - b. Turn the vehicle's front wheels toward the curb if you are on a flat surface or when the vehicle is facing downhill. **If the vehicle is parked facing uphill, turn the front wheels away from the curb.**
  - c. **Set the hand-parking/emergency brake.**
  - d. **Turn off the engine and remove the key.**
  - e. Lock any sliding door(s) between the truck body and cab.
  - f. Lock the doors if you will be out of direct sight of the vehicle.
- (Emphasis added)**

The proper application of each of these elements, in concert, is designed to preclude the failure of any one (1) component from causing a roll away accident. The grievant's tenure does not excuse her from these requirements or consequences. Her experience should have made her all the more aware of the importance and potential hazards for failing to comply.

Although management acknowledges the possibility of a mechanical failure causing a roll-away accident, the evidence does not support such a claim in this instant grievance. Management's Formal Step A representative states the following in part:

"...the FFV number 0238431 that Ms Bowman was driving that day was in perfect working order as determined by Joel Lawson, Technician, Russell Tummins, Lead Technician, and Robert Montgomery, Supervisor (A) at the Nashville Vehicle Maintenance Facility.

Mr. Lawson, the technician who responded to the accident scene stated in part the following:

"On March 29, 2011 I was dispatched to Carden Ave to retrieve a FFV, 0238431, that was stuck on a rock wall...

While I was inspecting the FFV, the station Supervisor asked me to check and see if the shifter, the key cylinder, and the park brake was all working properly. I demonstrated all with out any problems. The station Supervisor called the Safety Officer over and I demonstrated the same for her...

I proceeded to load the FFV onto the wrecker and transport it to the Nashville VMF. Upon arriving at the VMF I unloaded the FFV and again checked the park brake, shift lever, and key cylinder, all ok. I advised my Supervisor of all activities."

Twice, while still on the accident scene and a third time upon arrival at the VMF, Technician Lawson tested and found no defects in the parking brake, key cylinder or shift lever. Keep in mind, had the grievant observed the "safety rules and regulations" for a proper dismount, two (2) or more of these elements would have had to fail simultaneously in order to cause this accident.

Acting Manager, Customer Service Operations (MCSO), Mike Vaughn's written statement reads in part as follows:

"On March 29, 2011 at 12:10 pm, I received a call from the Manager of Belle Meade Station (Jeffery Byrd) that one of his carriers was involved in an accident at 230 Carden Ave. When I arrived on the scene, there were three people on the scene. One was Supervisor (Tim Freels) and two carriers (Jan Bowman and B. Butter). At that time, the Supervisor was taking pictures of the accident scene. I asked him if anything had been touched and he informed me that the carrier (Ms. Bowman) stated that "she has not touched the vehicle since it came to rest where it is now". About that time, two Safety Officials (Kim Alley and Tammy McDonald) had arrived on the scene. I asked if they had a camera so I could take more photos showing that the key was still in the ignition and that the hand brake was not set. I also took photos showing the distance between where the LLV stated and ended rolling backwards, and the path the vehicle had taken.

...  
The Safety Officials and I waited for the tow truck driver to arrive on the scene. After he pulled the vehicle off of the tree and rock wall, he started the vehicle up and moved it forward to put on the tow truck. At that time the tow truck driver pulled the hand brake and turned vehicle off. The hand brake worked perfectly and the steering wheel also locked. The tow truck driver informed me that an investigation would be completed on the vehicle to make sure if anything was or was not working properly..." (Emphasis added)

The grievant attempts to explain the hand brake not being set when MCSO Vaughn made his observations in her typed statement which reads in part as follows:

"...My purse was under the ledge to the left of the hand brake. I carefully climbed in on the edge of the seat (covered with glass) using the steering wheel as balance and the wheel moved... I let down the hand brake to pull my purse through the narrow space..."

The photographs at M-42 and M-54 clearly show that lowering the hand brake would only further restrict access, from the driver's side, to an item under the carrier ledge. Maximum clearance would be obtained with the parking brake in the up (engaged) position.

In addition, the photographs at M-45 and M-49 show the vehicle came to rest at or near a steep drop off. A bridge and even deeper drop off is only a few feet further back.

However, the grievant supposedly felt comfortable disengaging the parking brake (she doesn't describe placing her foot on the brake pedal) and kneeling on glass, while supporting herself with the steering wheel, to retrieve her purse.

The grievant's statement is even less plausible when you consider the photographs at M-45 and M-54. M-54 shows the ease of access for retrieving an object from under the carrier ledge through the left side door. M-45 shows the sidewalk next to the left side vehicle door that would have allowed quick, safe and easy access to an object from under the carrier ledge. The ridiculously unsafe acrobatics described in the grievant's statement, the day after the accident, is just not credible.

The dismount location and the vehicle path during the roll away indicate the wheels of the FFV were certainly not curbed. The vehicle's path is consistent with the steering wheel being locked at the time the FFV rolled away.

Acting Vehicle Maintenance Facility (VMF) Supervisor, Robert Montgomery's statement dated March 30, 2011, includes the following regarding the vehicle recovery and testing that took place at the accident scene:

"On March 29, 2011 our VMF was contacted with a call for recovering a roll away vehicle. I, Robert Montgomery, sent my mechanic Joel Lawson to Carden Ave...

...Once on the street, Mr. Lawson and the supervisor accompanied by the safety officer, did an on the spot operations check of the vehicle. My mechanic demonstrated that **with the key out of the locking cylinder and in hand, the steering wheel was locked in place and could not move. The gear shift lever also could not be moved from the park position.** He also tested the vehicle's parking brake and determined that **the brake held the vehicle properly and prevented the truck from moving, even while the vehicle was in gear...** (Emphasis added)

According to these statements, there was no mechanical malfunction to cause this roll away. All mechanical test and observations made at the accident scene point towards a preventable, potentially catastrophic, accident caused by the grievant's failure to follow the established safety rules and regulations in regards to proper dismount procedures.

The union's position in this case would require ignoring the credentials and statements of multiple trained and certified technicians who conducted numerous test on every critical mechanical component that could play a role in a roll away and found zero defects (prior to returning the vehicle to service) in favor of the local union steward's supposed observations at the scene. In addition, the generalizations from a Ford mechanic, over a month after the roll away event, **that never inspected this vehicle**, are also supposed to supplant the finding from the thorough testing conducted on FFV 0238431 immediately following this incident.

The union asserts that management failed to meet the principles of just case in this instant grievance. In National Arbitration case C#10146 A & B, Arbitrator Richard Mittenthal stated the following in part regarding the level of proof required in applying Section 7 of Article 16:

"... "just cause" may depend to some extent upon the nature of the particular disciplinary right being exercised. **Section 7 grants Management a right to place an employee "immediately" on non-duty, non-pay status because of an "allegation" of certain misconduct** (or because his retention "may" have certain harmful consequences). "Just cause" takes on a different cast in these circumstances.

The case file shows the grievant was present during a December 2, 2010, Safety Talk (M12) on the "Zero Tolerance Policy: Failure to Follow Proper Dismount Procedures" which included the following:

"...A Zero Tolerance Policy for failure to follow proper dismount procedures is in effect. Any employee who violates this policy is subject to serious corrective action which could result in termination of employment...

"There is absolutely no excuse for a runaway or rollaway. Each time an accident of this type happens there is potential for a fatality. Postal drivers are required to follow all four steps listed above *every time* they get out of the drivers seat for any reason..." (**Emphasis added** – italics and bold without underlining in the original)

The grievant was well aware of the rule, the consequences for failure to follow the rule and the potential tragedy that could occur when failing to follow these critical safety rules and regulations, each time she left her vehicle.

Pursuant to Article 19 of the National Agreement, the following provisions in Handbook M-41 are incorporated in the collective bargaining agreement:

#### **112.4 Safety**

Conduct your work in a safe manner so as not to endanger yourself or others (see part 133 for general safety practices and part 812 for vehicle safety practices).

#### **812 Safety Practices**

812.1 Practice safety in the office and on the route.

812.2 Observe all traffic regulations prescribed by law. Rules applying to the public also apply to operators of postal vehicles.

Pursuant to Article 19 of the National Agreement, the following provisions in Handbook EL – 814, Postal Employees Guide to Safety are incorporated in the collective bargaining agreement:

#### **Section I: General Safety Rules**

##### **A. General Rules**

"Safety rules are for your benefit; **observing safe working practices and Postal Service safety rules is a primary responsibility of all Postal Service employees...**" (**Emphasis added**)

Management contends that in addition to postal rules and regulations, the grievant violated state law 12.40.030 and 12.40.040. Knowledge of these requirements is a prerequisite in obtaining any state driver's license and is incorporated in the U.S. Postal Service's driver orientation program. The grievant's statement does not dispute the alleged violation.

One of the **six sub-questions** is as follows:

"**Was a thorough investigation completed?** Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective. This is the employee's *day in court* privilege. Employees

The level of proof required to justify this kind of "immediate..." action may be something less than would be required had Management suspended the employee under Section 4 or 5 where ten or thirty days' advance written notice of the suspension is given. To rule otherwise, to rule that the same level of proof is necessary in all suspension situations, would as a practical matter diminish Management's right to take "immediate..." action..."

Management took "immediate" action based on the information available at that moment. For management to delay action pending additional vehicle inspection results, interviews, witness written statements or other evidence that may materialize weeks, days or even hours later, as the union asserts, would cause a violation of the immediacy requirements of Article 16.7. The initial investigation findings revealed sufficient inconsistencies to warrant emergency placement pending a comprehensive and complete investigation.

In H4N-3U-C 58637/H4N-3A-C 59518, National Arbitrator Mittenthal wrote:

The "emergency procedure" is, as those words indicate, a recognition that situations do arise where supervision **must act "immediately"** in suspending an employee because of immediate risks or dangers which do not allow for the more time-consuming procedures of Sections 4 and 5. Thus, Section 7 is a permissible variation from the conventional suspensions contemplated by the parties. But it is a suspension nonetheless, one which must be considered an integral part of the Article 16 "discipline procedure." (Emphasis added)

Arbitrator Mittenthal further stated in H4N-3U-C 58637/H4N-3A-C 59518:

"The critical factor, in my opinion, is that Management was given the right to place an employee **"immediately"** on non-duty, non-pay status on the basis of certain happenings. An "immediate..." action is one that occurs instantly, without any lapse of time. Nothing intervenes between the decision to act and the act itself." (Emphasis added)

Management acted immediately to implement the emergency placement, remove the grievant from her route, return her to the unit and escort her from the premises, as required. Again, the manager observations, initial vehicle tests, statements, etc. revealed sufficient evidence to warrant emergency placement pending a thorough investigation.

The subsequent vehicle inspection conducted by Lead Technician, Russell Tummins on March 30, 2011, confirmed the original finding and observations made at the accident scene the previous day. The written statement from Lead Technician, Russell Tummins regarding his examination of FFV 0238431 reads in part as follows:

"On March 30, 2011 I was directed by my supervisor Robert Montgomery to inspect vehicle 0238431... **With the vehicle on an incline in the VMF parking lot and the parking brake applied, the vehicle did not move when shifted into neutral and my foot was removed from the brake pedal. I then tried shifting to reverse and drive. The vehicle still did not move, even with a slight amount of throttle applied...**" (Emphasis added)

With the engine running and the parking brake set, while on an incline, the vehicle did not move when placed in neutral and no pressure was applied to the brake pedal. In addition, the vehicle still did not move even when placed in reverse or drive; even when additional throttle was applied. If the grievant had set the parking brake, this accident would not have occurred. Clearly, the grievant did not set the parking brake.

The written statement from Lead Technician, Russell Tummins continues in part as follows:

"...I also checked the transmission shift mechanism. With the lock cylinder in the locked position and the key out, the shifter lever would not move from the park position with a reasonable amount of force applied. With the key in the lock cylinder and the lock cylinder turned to the run position and my foot off the brake pedal, the shifter still could not be moved from park with a reasonable amount of force applied. Only with the lock cylinder in the run position and my foot on the brake could I get the transmission to shift out of park. To test the vehicle's park mechanism I shifted the transmission to neutral and allowed the vehicle to roll back in its parking spot approximately a foot. I stopped the vehicle and shifted to park, then let off the brakes. The vehicle rolled about another three to four inches before engaging in park. I repeated this procedure again with the same result. I also tried several times allowing the vehicle to roll backwards while applying the parking brake. The vehicle stopped every time. I also noted that with the shifter in reverse, the key could not be removed from the lock cylinder.

I concluded on March 30, 2011 that vehicle 0238431 was safe to operate."

Less than 24 hours after the grievant's vehicle rolled or ran away, Lead Technician Tummins conducted multiple tests on each of the vehicle's key components and found no defects of any kind. Vehicle 0238431 did not experience a mechanical failure on March 29, 2011.

On page 16-9 of the JCAM, the parties agreed to the following:

**"Written Notice.** Management is **not required** to provide advance written notice prior to taking such emergency action. However, an employee placed on emergency off-duty status is entitled to written charges within a reasonable period of time. In H4N-3U-C 58637, August 3, 1990 (C-10146) National Arbitrator Mittenthal wrote as follows:

**The fact that no "advance written notice" is required does not mean that Management has no notice obligation whatever. The employee suspended pursuant to Section 7 has the right to grieve his suspension. He cannot effectively grieve unless he is formally made aware of the charge against him, the reason why Management has invoked Section 7. He surely is entitled to such notice within a reasonable period of time following the date of his displacement. To deny him such notice is to deny him his right under the grievance procedure to mount a credible challenge against Management's action."** (Emphasis added)

Track/Confirm – Intranet Item Inquiry shows management mailed the written notice of the charge on March 29, 2011. The First-Class Certified item was received and signed for by the grievant on March 30, 2011.

On page 16-9 of the JCAM, the parties agreed to the following:

**"What Test Must Management Satisfy?** Usually employees are placed on emergency non-duty status for alleged misconduct. However, the provisions of this section are broad enough to allow management to invoke the emergency procedures in situations that do not involve misconduct—for example if an employee does not recognize that he or she is having an adverse reaction to medication. The test that management must satisfy to justify actions taken under this Article 16.7 depends upon the nature of the "emergency." In H4N-3U-C



58637, August 3, 1990 (C-10146) National Arbitrator Mittenthal wrote as follows:

My response to this disagreement depends, in large part, upon how the Section 7 "emergency" action is characterized. If that action is discipline for alleged misconduct, then Management is subject to a "just cause" test. To quote from Section 1, "No employee may be disciplined...except for just cause." If, on the other hand, that action is not prompted by misconduct and hence is not discipline, the "just cause" standard is not applicable. Management then need only show "reasonable cause" (or "reasonable belief") a test which is easier to satisfy.

One important caveat should be noted. "Just cause" is not an absolute concept. Its impact, from the standpoint of the degree of proof required in a given case, can be somewhat elastic. For instance, arbitrators ordinarily use a "preponderance of the evidence" rule or some similar standard in deciding fact questions in a discipline dispute. Sometimes, however, a higher degree of proof is required where the alleged misconduct includes an element of moral turpitude or criminal intent. The point is that "just cause" can be calibrated differently on the basis of the nature of the alleged misconduct. (Emphasis added)

On page 16-1 of the JCAM, the parties agreed to the following:

#### "Just Cause Principle

The principle that any discipline must be for "just cause" establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the "just cause" provision requires a fair and provable justification for discipline.

"Just cause" is a "term of art" created by labor arbitrators. It has no precise definition. It contains no rigid rules that apply in the same way in each case of discipline or discharge. However, arbitrators frequently divide the question of just cause into six sub-questions and often apply the following criteria to determine whether the action was for just cause. These criteria are the *basic* considerations that the supervisor must use before initiating disciplinary action." (Emphasis added)

One of the six sub-questions is as follows:

"Is there a rule? If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule? It is not enough to say, "Well, everybody knows that rule." or, "We posted that rule ten years ago." You may have to prove that the employee should have known of the rule. Certain standards of conduct are normally expected in the industrial environment and it is assumed by arbitrators that employees should be aware of these standards."

Yes. The grievant's typed statement reads in part as follows:

"...I put the truck in park, turned the engine off, took the key out and pulled up the hand brake."

Clearly the grievant had received proper training and was aware of the safety rules and regulations in regards to a proper vehicle dismount.

have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves *before* the discipline is initiated.”

Yes. All mechanical test and observations made at the accident scene pointed towards a preventable, potentially catastrophic, accident caused by the grievant's failure to follow the established safety rules and regulations in regards to proper dismount procedures. Management reacted appropriately and in compliance with the requirements of Article 16, Section 7 of the National Agreement. The notice of written charges was mailed to the grievant the same day.

Further, the case file contains evidence of a continuing investigation, statements, interviews and other activities that may most appropriately be developed, discussed, etc. upon final disposition of this case and/or disciplinary action. Much of the union's presentation in this grievance file, developed days or weeks after the incident are not relevant to management's implementation of emergency procedures or whether management is obligated to invoke Article 14 and/or 29 of the National Agreement (stated issues by the union).

Article 14, Section 1 of the National Agreement reads in part as follows:

“It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility...” (Emphasis added)

The Postal Service works with OSHA to improve the safety of the postal workplace by attempting to reduce work related accidents and injuries. Specific goals are set and emphasis is made to reduce accidents by awareness, training and safe work practices. A copy of the Postal Service goals regarding accidents and injuries are available at [www.usps.com/strategicplanning](http://www.usps.com/strategicplanning). Management assumes the union shares the goal of reducing accidents and injuries for its members. Management is troubled by the fact the union has offered no constructive options that would support these efforts in this instant grievance.

In addition, veteran carrier and union official Brian Buttrey, arrived on the scene first and supposedly altered the scene by placing the keys in the ignition. Absent carrier Bowman's cell phone records it is impossible to determine exactly how carrier Buttrey was able to arrive on the scene before the management official carrier Bowman should have called first.

And finally, days after the grievant's vehicle passes all mechanical tests, by multiple technicians and is returned to service, the same vehicle components (except the parking brake) are damaged to the point the vehicle must be removed from service for repair.

Acting Vehicle Maintenance Facility (VMF) Supervisor, Robert Montgomery's letter to Mr. Vale (Postmaster Nashville, TN) dated April 11, 2011, reads in part as follows:

“...Reasons for the breakage could be from excessive and or harsh usage or simple daily wear and tear plus the age of the component.

...

“...The parking brake system is in very good, proper and safe working condition and will prevent the vehicle from moving when the park brake is properly applied.” (Emphasis added)

Management maintains that whether the change in mechanical function, several days after the vehicle was returned to service, was intentional and/or criminal, accidental

or from normal usage; it does not alter the fact that **these same vehicle functions were in perfect operating condition on the day of the rollaway incident.** The grievance file contains no legitimate evidence that the initial test were incorrect; only that the vehicle's mechanical condition had changed after being returned to service.

Management also contends and the evidence shows that *the parking brake STILL would have held the vehicle regardless; if only the grievant had properly followed the established safety rules and regulations.*

Management further maintains that the union's request to inspect, video tape, etc. FFV 0238431 more than a week after the incident and days after the vehicle had returned to service and the performance of the vehicle astonishingly changed; is irrelevant to this emergency placement.

Article 29 of the National Agreement reads in part as follows:

"An employee's driving privileges may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver..."

Management maintains that Article 29 of the National Agreement does not apply in this emergency placement. Article 29 provides that management may suspend or revoke a carrier's driving privileges under certain specified circumstances. If a decision is made to suspend or revoke an employee's driving privileges, the employee must be provided, in writing, the reason(s) for such action. The grievance file is absent such written notice.

One of the **six sub-questions** is as follows:

"Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record? The following is an example of what arbitrators may consider an inequitable discipline: If an installation consistently issues five-day suspensions for a particular offense, it would be extremely difficult to justify why an employee with a past record similar to that of other disciplined employees was issued a thirty-day suspension for the same offense. There is no precise definition of what establishes a good, fair, or bad record. Reasonable judgment must be used. An employee's record of previous offenses may never be used to establish guilt in a case you presently have under consideration, but it may be used to determine the appropriate disciplinary penalty."

**Yes.** Management contends that the *potential/probable willful and intentional disregard of safety rules*, in this instant grievance, "*improper dismount procedures*", warrants the emergency placement pending the outcome of a thorough investigation.

One of the **six sub-questions** is as follows:

"Was the disciplinary action taken in a timely manner? Disciplinary actions should be taken as promptly as possible after the offense has been committed."

**Yes.** Management acted immediately, at the accident scene, to invoke the "emergency procedure" in accordance with the requirements of Article 16.7 of the National Agreement.

On page 16-2 of the JCAM, the parties agreed to the following:

"Corrective Rather than Punitive

The requirement that discipline be "corrective" rather than "punitive" is an essential element of the "just cause" principle. In short, it means that for most offenses management must issue discipline in a "progressive" fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense and a pattern of increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge). The basis of this principle of "corrective" or "progressive" discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution."

Management agrees that Article 16 and Section 115.1 of Handbook M-39 provides that the basic principle of discipline should be corrective, not punitive. That concept supports the application of progressive discipline that attempts to correct an employee's unacceptable behavior over a period of time through a series of escalating disciplinary actions. "Just cause" requires that any discipline imposed be reasonable when considered in view of the nature of the offense and progressive discipline is generally a relevant factor in that determination. But there are types of conduct which are considered so severe that the first occurrence warrants other than progressive discipline, with theft and physical violence as examples.

Management contends that the potential willful and intentional disregard of safety rules, in this instant grievance, proper dismount procedures, warrants the emergency placement pending the outcome of a thorough investigation despite the grievant's tenure. Although the damages in this case are relatively minor, the potential for tragedy (note the child's riding toy in M-45) and the inherent risk to the public and employees has caused these procedures to be a point of significant emphasis for many years.

In conclusion, management contends there is no violation of Article 14, 16, 29 and/or 19, via Section 115 of the M-39 Handbook, of the National Agreement when they placed letter carrier Janet Bowman on Emergency Placement in Off Duty Status on March 29, 2011.

For all the reasons stated above and all the reasons and issues at Informal and Formal Step A of the grievance procedure, management is of the opinion that this grievance should be denied in its entirety and that the remedy requested should not be granted.

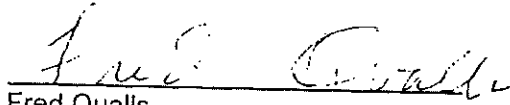
This grievance file contained the following documents:

- (1) PS Form 8190
- (2) Issue statement, 1 page
- (3) Management's contentions, 10 pages, (8 typewritten and 2 handwritten)
- (4) Memorandum from Tim Freels to grievant dated March 29, 2011
- (5) Notes from Corey L. Walton from meeting with Tim Freels, 2 pages
- (6) Notes of "Questioning of Super. Tim Freels", 2 pages
- (7) Investigative interview dated 4/7/11, 2 pages
- (8) Grievant's statement, 1 page
- (9) Employee Everything Report for grievant for 03/29/11
- (10) Notes by Corey L. Walton of Interview of Monica Weiss Sharp, 1 page
- (11) Statement from Brian Buttrey dated March 31, 2011, 1 page
- (12) Steward's statement, 5 pages
- (13) Statement from Brian Buttrey, no date, 1 page
- (14) Statement from Michael Wilson, 1 page
- (15) PS Form 1787, submitted 4/7/11
- (16) Request for information dated 4/6/11
- (17) Memorandum "for NALC" from Mike Vaughn
- (18) Statement (e mail) from Steve Weakley, 2 pages
- (19) Statement from Scott Tomlinson, 2 pages

- (20) Statement from Dave Clark
- (21) One page beginning "When FFV Truck # 0227375 was brought in..." dated 9/29/2010
- (22) Statement from Corey L. Walton dated 05/02/2011
- (23) One page from <http://www.postalmag.com/stewardinv.jpg>
- (24) Four pages from internet relating to vehicles
- (25) Vehicle maintenance work order, Parts only
- (26) Vehicle maintenance work order, Labor only
- (27) Statement from Robert Montgomery dated March 30, 2011
- (28) Statement from Joel Lawson dated April 9, 2011
- (29) Statement from Russell Tummins dated April 9, 2011
- (30) Statement from Robert Montgomery dated April 11, 2011
- (31) Statement from Mike Vaughn dated March 31, 2011
- (32) Statement from Laurent Bell dated 4/12/11, (Rt 4, 37211)
- (33) "Vehicle Repair Tags", 3 pages
- (34) Memorandum from Patty L. Frederick dated June 28, 2010
- (35) Form 3999X, 9 pages
- (36) Document M-1289, 2 pages
- (37) Pages 14-1, 14-2, 16-1, 16-2, 16-3, 16-8, 16-9, 29-3, 29-4 and 29-5
- (38) Request for information dated 4/18/2011
- (39) Management's contentions, 6 pages
- (40) Memorandum from Tim Freels to grievant dated March 29, 2011
- (41) Copies of PS Form 3811, for 7011 0470 0003 4962 7845 and 7011 3090 0001 0093 6803
- (42) Track/Confirm documents, 2 pages (M-8 and 9)
- (43) Page 648 from ELM 25
- (44) Memorandum from Greg A. Gamble dated July 19, 2010
- (45) "Zero tolerance policy", M-12)
- (46) "Employees on Clock", Dec 02/2010
- (47) Pages 1 and 4 from "Standard Operating Procedure" dated November, 2009
- (48) One page from internet (M-16)
- (49) One page beginning "Title 12 – Vehicles and traffic.
- (50) One unidentified page (M-18)
- (51) Pages 81 and 82 from M-41 Handbook
- (52) Memo from Mike Vaughn to Labor Relations dated May 16, 2011
- (53) Statement from Joel Lawson dated April 9, 2011
- (54) Statement from Russell Tummins dated April 9, 2011
- (55) Letter from Robert Montgomery to "Mr. Vaughn" dated March 30, 2011
- (56) Letter from Robert Montgomery to "Mr. Vale" dated April 11, 2011
- (57) Statement from Brian Buttrey dated March 31, 2011
- (58) Request for appropriate action dated 4/11/2011
- (59) Investigative interview dated 04/07/2011
- (60) Statement from Timothy W. Freels dated 04/11/2011
- (61) Two handwritten pages dated 3/29-30 (M-30 and 31)
- (62) "Accident History", 2 pages
- (63) Letter from Robert Montgomery to Mr. Vaughn dated March 30, 2011
- (64) Memorandum from Mike Vaughn to Labor relations dated March 31, 2011
- (65) PS Form 1769, 3 pages
- (66) PS Form 1700, 3 pages
- (67) Photographs, 13 pages
- (68) E mail from Jeffery Byrd to Dwayne Davis dated May 20, 2011
- (69) "Eastern Area, Area Safety Bulletin..."
- (70) E mail from Timothy Freels to Dwayne Davis dated May 23, 2011
- (71) Photographs, 2 pages (M-59 and 60)



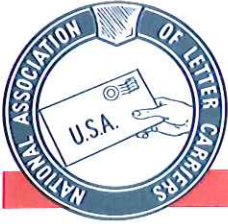
Paul D. Robbins  
USPS Step B Representative



Fred Qualls  
NALC Step B Representative

DRT Number: 242-11

Cc: Pete Moss, NALC NBA  
Jill Miniard, Eastern Area Labor Relations Office  
Dwayne Davis, USPS Step A Representative  
Leman D. Clark Jr., NALC Step A Representative  
Joel Barnes, District Manager Labor Relations (A)  
Greg Gamble, District Manager  
Patty Frederick, District Manager HR  
Tim Daulton, District Manager Operations Support (A)



# National Association of Letter Carriers

Fredric V. Rolando, President

**Pete Moss**

National Business Agent

NALC Region 8

160 Commissioner Drive

Meridianville, AL

35759-2038

256.828.8205

Fax: 256.828.8613

August 16, 2011

Dave Clark, President

Branch 4

National Association of Letter Carriers

P.O. Box 140816

Nashville, TN 37214-0816

Re: C06N-4C-D 11219738 - Janet Bowman (B4-00104-11) 08-202915

**Fredric V. Rolando**  
President

**Timothy C. O'Malley**  
Executive Vice President

**George C. Mignosi**  
Vice President

**Jane E. Broendel**  
Secretary-Treasurer

**Nicole Rhine**  
Asst. Secretary-Treasurer

**Lew Drass**  
Director, City Delivery

**Manuel L. Peralta Jr.**  
Director, Safety & Health

**Myra Warren**  
Director, Life Insurance

**Brian E. Hellman**  
Director, Health Insurance

**Ernest S. Kirkland**  
Director, Retired Members

**Board of Trustees:**

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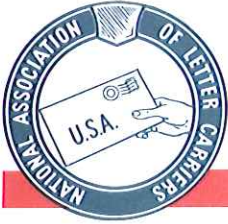
Dear Dave:

Enclosed is the Arbitration Award from Arbitrator Roberts. Please let me know if you have any questions.

In Solidarity,

Pete Moss  
National Business Agent  
Region 8

PM/sh



# National Association of Letter Carriers

Fredric V. Rolando, President

**Pete Moss**

National Business Agent

NALC Region 8

160 Commissioner Drive

Meridianville, AL

35759-2038

256.828.8205

Fax: 256.828.8613

July 8, 2011

Dave Clark, President

Branch 4

National Association of Letter Carriers

P.O. Box 140816

Nashville, TN 37214-0816

Re: C06N-4C-D 11219738 - Janet Bowman (B4-00104-11) 08-202915

**Fredric V. Rolando**  
President

**Timothy C. O'Malley**  
Executive Vice President

**George C. Mignosi**  
Vice President

**Jane E. Broendel**  
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Director, Safety & Health

**Myra Warren**  
Director, Life Insurance

**Brian E. Hellman**  
Director, Health Insurance

**Ernest S. Kirkland**  
Director, Retired Members

**Board of Trustees:**  
**Larry Brown Jr.**  
Chairman  
**Randall L. Keller**  
**Michael J. Gill**

Dear Dave:

This is to advise you the above referenced arbitration case has been assigned for hearing before Arbitrator Roberts at 9:00 am on July 19, 2011 at the postal facility located on 5421 Highway 100, Nashville, TN 37205.

Chris Verville, Local Business Agent, will represent the National Association of Letter Carriers at this hearing.

Please notify the grievant of the time and place of the hearing and advise him that he should make arrangements to be present at the hearing.

In the meantime, if you have any questions please let me know.

In Solidarity,

Pete Moss  
National Business Agent  
Region 8

PM/sh



USPS LR SERVICE CENTER HQ

\*\*\*\*\* SCHEDULE CHANGE NOTICE \*\*\*\*\*

07/08/2011

LAWRENCE ROBERTS  
1046 KIMBERLY DRIVE  
UNIONTOWN, PA 15401-6584

Pursuant to Article 15, section 4, B.2, of the 2006 National Agreement the following arbitration case(s) has been scheduled before this arbitrator on the Regular Regional Arbitration Panel. The hearing will begin at 9:00am on July 19, 2011 at the postal facility located at 5421 HIGHWAY 100 NASHVILLE, TN 37205.

C06N-4C-D 11219738 B40010411 BOWMAN

EMER NAS-BELLE MEADE P3

Where more than one case is scheduled at a location, cases will be heard in the order listed unless the parties mutually agree to present the cases in a different order.

This letter does not constitute a waiver by either party of any issues of arbitrability or timeliness as it relates to the processing of the grievances, as it merely serves to confirm to the arbitrator the location, date and time, pursuant to the terms of Article 15, Section 4, B.2 of the 2006 National Agreement and the back-up case(s) pursuant to Article 15, Section 4, A.4 of the 2006 National Agreement.

LR Service Center HQ

cc: Labor Relations, Tennessee  
National Business Agent  
Postmaster



# National Association of Letter Carriers

Fredric V. Rolando, President

**Pete Moss**

National Business Agent  
NALC Region 8  
160 Commissioner Drive  
Meridianville, AL  
35759-2038  
256.828.8205  
Fax: 256.828.8613

June 28, 2011

Dave Clark, President  
Branch 4  
National Association of Letter Carriers  
P.O. Box 140816  
Nashville, TN 37214-0816

Re: C06N-4C-D 11219738 - Janet Bowman (B4-00104-11) 08-202915

**Fredric V. Rolando**  
President

**Timothy C. O'Malley**  
Executive Vice President

**George C. Mignosi**  
Vice President

**Jane E. Broendel**  
Secretary-Treasurer

**Nicole Rhine**  
Asst. Secretary-Treasurer

**Lew Drass**  
Director, City Delivery

**Manuel L. Peralta Jr.**  
Director, Safety & Health

**Myra Warren**  
Director, Life Insurance

**Brian E. Hellman**  
Director, Health Insurance

**Ernest S. Kirkland**  
Director, Retired Members

**Board of Trustees:**

**Larry Brown Jr.**  
Chairman

**Randall L. Keller**  
**Michael J. Gill**

Dear Dave:

Attached is the Step B decision for the above referenced case. As you will note, the grievance has been impassed.

After reviewing this decision and the evidence contained in the file, it has been determined to request arbitration for this matter. Therefore, also attached is a copy of the request for arbitration.

If you have any questions regarding this matter, please feel free to contact me.

In Solidarity,

Pete Moss  
National Business Agent  
Region 8

PM/sh

Attachment

Affiliated with the AFL-CIO & Union Network International



**National Association of Letter Carriers (AFL-CIO)**

**REQUEST FOR ARBITRATION**

Certified No. 7010 2780 0002 9754 7850

DATE: June 28, 2011

TO: Collective Bargaining and Arbitration  
ATTN: Appeals/LR Service Center  
U.S. Postal Service - Eastern  
PO Box 23788  
Washington, DC 20026-3788

FROM: NATIONAL BUSINESS AGENT  
Pete Moss  
160 Commissioner Drive  
Meridianville, AL 35759-2038

**DISPUTE RESOLUTION PROCESS REQUEST FOR ARBITRATION**

USPS NO: C06N4CD11219738  
NALC DRT NO: 08-202915  
BRANCH GRIEV. NO: B4-00104-11  
BOWMAN, J  
NASHVILLE, TN  
DECISION RECEIVED: 06/28/2011  
VIOLATION: IMPROPER EMERGENCY PLACEMENT

Dear Sir or Madam:

Pursuant to the provisions of the NALC/USPS Joint Dispute Resolution Process, I hereby appeal the above referenced grievance to arbitration.

Sincerely,

Pete Moss

NATIONAL BUSINESS AGENT

cc: Branch President, NALC  
Step B Team  
Postmaster

CHRIS VERVILLE, *Vice President*  
EDWARD F. NAPPER, SR., *Treasurer*  
J. E. WOODARD, *Financial Secretary*  
LISA EHRHART, *Sergeant-At-Arms*  
GLENN WATTS, *Director of Retirees*

M. L. (Rip) MALONE  
BRANCH NO. 4

BOB KING, JR., *Health Benefits Representative*  
RAY RAYMER, *N.S.B.A. Clerk*  
ANDRE HINTON, *Trustee*  
DALE LYLES, *Trustee*  
JAMES BROWN, *Trustee*

# National Association of Letter Carriers

LEMAN D. CLARK, JR., *President*  
Suite 212, Bldg. C  
211 Donelson Pike  
P.O. Box 140816  
Nashville, TN 37214  
(615) 883-7687



PAUL GLAVIN, JR., *Secretary*  
Suite 212, Bldg. C  
211 Donelson Pike  
P.O. Box 140816  
Nashville, TN 37214  
(615) 883-7687

April 5, 2011

Janet M Bowman  
569 Croley Drive  
Nashville TN 37209-1771

RE: Grievance B4-00104-11 (Bowman, Janet M.)  
VIOLATIONS: Articles 16 & 19 of the National Agreement

Dear Sister Bowman,

The above referenced grievance regarding Emergency Placement was not resolved at the Informal Step A-Discussion Level of the Dispute Resolution Process. Therefore, the grievance has been escalated to the Formal Step A Meeting Level of the Dispute Resolution Process.

Fraternally,

A handwritten signature in cursive script that reads "Lemman D. Clark, Jr.".

Leman D. Clark, Jr.  
President

LDC/ts

CHRIS VERVILLE, *Vice President*  
EDWARD F. NAPPER, SR., *Treasurer*  
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(615) 883-7687

July 11, 2011

Janet M Bowman  
569 Croley Drive  
Nashville TN 37209-1771

Dear Sister Bowman,

Please be advised that your arbitration hearing on grievance B4-00104-11 is scheduled for July 19, 2011 at 9:00 a.m. at the postal facility located at 525 Royal Parkway, Nashville, TN 37229. Chris Verville, Local Business Agent, will represent you at this hearing, and your present is requested.

Sincerely,

Leman D Clark, Jr.  
President

LDC/ts

cc: Corey Walton

CHRIS VERVILLE, *Vice President*  
EDWARD F. NAPPER, SR., *Treasurer*  
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Nashville, TN 37214  
(615) 883-7687

June 23, 2011

Janet M Bowman  
569 Croley Drive  
Nashville TN 37209-1771

RE: Grievance B4-00104-11 (Bowman, Janet M.)

VIOLATIONS: Articles 16 & 19 of the National Agreement

Dear Sister Bowman,

The above referenced grievance regarding Emergency Placement was not resolved at the Step A-Discussion Level of the Dispute Resolution Process. Therefore, the grievance has been escalated to the Step B Meeting Level of the Dispute Resolution Process.

Fraternally,

Leman D. Clark, Jr.  
President

LDC/ts

CHRIS VERVILLE, *Vice President*  
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Suite 212, Bldg. C  
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P.O. Box 140816  
Nashville, TN 37214  
(615) 883-7687

May 23, 2011

Janet M Bowman  
569 Croley Drive  
Nashville TN 37209-1771

RE: Grievance B4-00104-11 (Bowman, Janet M.)

VIOLATIONS: Articles 16 & 19 of the National Agreement

Dear Sister Bowman,

The above referenced grievance regarding Emergency Placement was not resolved at the Step A-Discussion Level of the Dispute Resolution Process. Therefore, the grievance has been escalated to the Step B Meeting Level of the Dispute Resolution Process.

Fraternally,

Leman D. Clark, Jr.  
President

LDC/ts

cc: Corey Walton

## STEP B DECISION

### STEP B TEAM

Paul D. Robbins, USPS  
Fred Qualls, NALC

District: Tennessee  
DRT Number: 242-11

Decision:	<b>IMPASSED</b>
USPS number:	C06N-4C-D 11219738
Grievant:	Bowman, Janet
Branch Grievance Number:	B4-00104-11
Branch:	4
Installation:	Nashville
Delivery Unit:	Belle Meade
State:	Tennessee
Incident Date:	03/29/2011
Date Informal Step A Initiated:	04/01/2011
Formal Step A Meeting Date:	05/20/2011
Date Received at Step B:	05/25/2011
Step B Decision Date:	06/23/2011
Issue Code:	16.7000 16.1010
NALC Code:	000019 500201

### **ISSUE**

1. Did management violate Articles 16, 19 of the National Agreement and Section 115 of the M-39 Handbook, when they placed the grievant on Emergency placement in off duty status on 03/29/2011 alleging failure to follow safety regulations and zero tolerance policy? If so, what is the appropriate remedy?
2. Did management violate Articles 14 and 29 of the National Agreement when they failed to make every reasonable effort to assign the grievant to non driving duties after they suspended/revoked her driving privileges? If so what is the appropriate remedy?

### **DECISION**

The Dispute Resolution Team (DRT) has decided to declare an **IMPASSE**. The NALC National Business Agent may appeal this grievance to arbitration within fourteen (14) days after receipt of this joint report.

The Step B team has considered all arguments and evidence in the case file and any of this material may be cited in the event of arbitration.

### **EXPLANATION**

#### **UNION'S POSITION:**

The union contends that management violated Articles 14, 16, 19 and 29 of the National Agreement by placing the grievant in an Emergency Placement Off-Duty Status on 03/29/11.



1. The union contends that even if the grievant had failed to properly dismount, with a total lack of previous discipline in this grievance file, there **would not** have been justification for anything more than a minor discipline.

Therefore, certainly if management concluded that management would not be allowed to drive temporarily, management was clearly **obligated by Article 29** to furnish non driving duties.

2. Management has exhibited a run-away imagination and made unproven and unfair/inappropriate (**new**) allegations in this instant case; such as management's suggestion that the grievant's cell phone record would enlighten the parties. The grievance file contains **no cell phone records**. Management at **Step A did not suggest** any need/interest in cell phone records. Certainly that suggestion was not made at Formal Step A as this case was being processed by the parties. That **new argument** and others which were not made at Formal Step A **must not be allowed in this grievance file** (the union at Formal Step A was not allowed the opportunity to answer the suggestion/accusation).

The Emergency Placement in Off-Duty status, dated March 29, 2011 reads in part as follows:

"SUBJECT: EMERGENCY PLACEMENT IN OFF-DUTY STATUS

You are hereby notified that effective March 29, 2011, you were placed in a non-duty, non-pay status under the provisions of Article 16, Section 7 of the National Agreement. The reason for this action is your failure to follow safety regulations and the zero tolerance policy.

You are placed in this Emergency off-Duty Status...."

The union notes the above memorandum stated the following two "reasons" for placing the grievant on emergency placement:

1. "your failure to follow safety regulations."
2. "the zero tolerance policy."

The union contends the documentation contained in this grievance file shows the grievant **did not violate safety regulations**.

The union contends that **management violated multiple Articles** of the National Agreement in the issuance of this discipline (emergency placement).

The grievant's statement reads in part as follows:

"My name is Janet Bowman, I run route 510. It has mostly park and loop, boxes on the porches with narrow dead end streets. On March 29<sup>th</sup> 2011, at approximately 12:25, I parked the postal truck between the many cars along both sides of the street. This was in front of 226 Carden Avenue. I put the truck in park, turned the engine off, took the key out and pulled up the hand brake.

I gathered a bundle of mail and shut the door behind me. I walked up a short walkway and up a couple of stairs, placed the mail in the box. As I started back to the truck, it began to move. I jumped off the porch and ran after the slow moving truck, not really sure what I was going to do. A home owner who was outside saw what was happening and ran after the truck too. I ran beside the truck and tried to get the door open.

The truck grazed a telephone pole on the drivers side and it swung in and broke the small side window. It rolled to a stop on a rock near the guard rail that is at the dead end of the road. The young woman arrived at the truck at the same time I did and we were shocked that it could move when obviously it shouldn't. We looked inside at the broken glass, the raised handbrake, the gearshift in park and back at each other. She said "Oh my gosh! Are you OK?" Yes, I think so. "Are you sure?" Because I was on my way to a Dr. Appointment, but I can stay if you need me." Thank you, I'm going to call my boss. He will come in a few minutes.

I called the station and told Tim Freels, then several minutes later I called the station again. I asked Tim to call Brian Buttrey. Tim said "I'm not sure I have his number" and I told him that I had it and would it be OK if I called him. That was OK with Tim. When Brian Buttrey drove up he hugged me and asked "Are you alright" He said "I can't believe I'm the first one here!" Did you call the station? I said yes Brian said "well he should be here by now". He asked if I had Tim's cell number. I told him yes, it's in my purse in the truck. My purse was under the ledge to the left of the hand brake. I carefully climbed in on the edge of the seat (covered with glass) using the steering wheel as balance and the wheel moved.

Brian noticed and said "Hey, your steering wheel isn't locked. It's supposed to. Where are your keys?" In my pocket I told him just a second. I let down the hand brake to pull my purse through the narrow space. I handed Brian the keys. I was still shaking when Tim pulled up in a postal van a moment later. I think Tim asked me if I was OK and also, did I move the truck? I said, no. Few minutes later Mike Vaughn pulled up followed by 2 women I didn't recognize. Mike Vaughn didn't speak to me at all, however the women introduced themselves and checked on my well-being. Tim Freels asked me several questions in the presence of Brian. Tim called it an interview.

Tim: Tell me what happened.

Jan: I thought you were going to ask me questions.

Tim: Was the truck in park?

Jan: Yes.

Tim: Was the truck shut off?

Jan: Yes.

Tim: Was the hand brake pulled?

Jan: Yes.

Tim: Did you have the keys?

Jan: Yes.

Tim: Was the door closed?

Jan: Yes.

We were then told to move the mail to the postal van.

Tim came up to me and told me he was placing me on Emergency Placement in Off-Duty Status without pay. I was driven back to the Post Office where I was escorted off the premises."

The grievant has over 13 years of service with the Postal Service and has no previous discipline in this grievance file.

The Emergency Placement was based solely on event that took place on March 29, 2011. Management's only charge is that the grievant allegedly failed to follow a safety rule/management's zero tolerance policy) on that date, 3/29/2011. The documentation contained in this grievance file does not show a violation by the grievant of a safety rule.

This grievance file contains Document M-1289, on which the parties agreed to the following:

...The parties agree that management has the right to articulate guidelines to its employees regarding their responsibility concerning issues relating to safety. However, the parties also mutually agree that **local accident policies, guidelines, or procedures may not be inconsistent or in conflict with the National Agreement.**

The union contends that this local/district "accident policy" is inconsistent with the National Agreement and that the district "***accident policy***" is in violation of the above agreement.

Document M-1289 then continues as follows:

"Discipline imposed for cited **safety rule violations must meet the "just cause" provisions** of Article 18 of the National Agreement." (Emphasis added by union)

This discipline (emergency placement) clearly fails the principles of just cause and is in violation of the above agreement.

Document M-1289 then continues as follows:

"Further, administrative action with respect to safety violations must be consistent with **Articles 14 and 29...**"

Management failed to allow the grievant non driving duties which violate the agreement in Document M-1289. Both Document M-2289 (quoted above), along with Article 29 language is abundantly clear as to management's responsibility to assign non driving duties to carriers who are not allowed to drive due to alleged safety rule violations. Further, management confirmed to the union (documentation in the grievance file) that **non driving duties were available**. That confirmation is in questions 4 and 5 of a meeting that Steward Walton had with Supervisor Tim Freels on 4/1/11. Those questions and answers are as follows:

- 4 Article 29 states that you will make every reasonable effort to find her non driving duties in her craft or in other crafts. Have you done this? **No I'm not obligated to find her work. The zero tolerance policy says that.**

At this time I read the Step 4 decision # M-1289. Supervisor Freels said he had never heard that and he would check into it. I informed him that he was being punitive by not finding her work in the station is complete. He said **he would check on that.**

- 5 Do you have sufficient work in the station for Janet Bowman to do? **Yes, but I need to check on this first.**

Supervisor Freels confirmed the existence of non-driving duties, but claimed the belief that the district's "*Zero Tolerance Policy*" forgave the clear obligation to furnish the non-driving duties to the grievant.

1. The "*Zero Tolerance Policy*" letter was authored on July 19, 2010 by Greg A Gamble, District Manager. However, the letter/declared policy makes no claim that he was attempting to suspend Article 29.

2. Article 29 is very clear as to the obligation to assign the non driving duties. Step 4 Document M-1289 (as quoted above) makes abundantly clear that the parties agree that action taken as a result of safety violations would be consistent with Article 29 (obligation to assign non driving duties. Again, that quotation is as follows:

*"Further, administrative action with respect to safety violations must be consistent with Articles 14 and 29..."*

Article 29 and Document M-1289 clearly shows that management was obligated to furnish those non driving duties to the grievant.

The provisions of Article 29 of the National Agreement apply to this type of alleged infraction. Article 29 reads in part as follows:

"An employee's driving privileges may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver."

Clearly, management has chosen to revoke or suspend the grievant's driving privileges (the union contends in violation of multiple Articles of the National Agreement).

On pages 29-4 of the JCAM, the parties agreed to the following:

**"Every Reasonable Effort to Reassign.** Even if a revocation or suspension of a letter carriers driving privileges is proper, Article 29 provides that, **"every reasonable effort will be made to reassign the employee in non-driving duties in the employee's craft or other crafts."** This requirement is not contingent upon a letter carrier making a request for non-driving duties. Rather, it is **management's responsibility to seek to find suitable work.** National Arbitrator Snow held in 194N-4I-D 96027608, April 8, 1998 (C-18159) that management may not reassign an employee to temporary non-driving duties in another craft if doing so would result in a violation of other craft's agreement. If it is not possible to accommodate temporary cross-craft assignments in a way that does not violate another craft's agreement, a letter carrier who is deprived of the right to an otherwise available temporary cross-craft assignment to a position in another craft **must be placed on leave with pay until such time as he may return to work without violating either unions' agreement.** In accordance with Arbitrator Snow's award, in situations where city letter carriers temporarily lose driving privileges, the following applies:

- Management should first attempt to provide non-driving city letter carrier craft duties within the installation on the carrier's regularly scheduled days and hours of work. If sufficient carrier craft work is unavailable on those days and hours, an attempt should be made to place the employee in carrier craft duties on other hours and days, anywhere within the installation.
- If sufficient work is still unavailable, a further attempt should be made to identify work assignments in other crafts, as long as placement of carriers in that work would not be to the detriment of employees of that other craft.
- If there is such available work in another craft, but the carrier may not perform that work in light of the Snow award, **the carrier must be paid for the time that the carrier otherwise would have performed that work."** (Emphasis added)

Management clearly failed in their responsibility to furnish the grievant work once they revoked/suspended her driving privileges.

Article 16.7 of the National Agreement reads in part as follows:

**"Section 7. Emergency Procedure**

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others..."

On page 16.9 of the JCAM, the parties also agreed to the following:

**"What Test Must Management Satisfy?"** Usually employees are placed on emergency non-duty status for alleged misconduct. However, the provisions of this section are broad enough to allow management to invoke the emergency procedures in situations that do not involve misconduct—for example if an employee does not recognize that he or she is having an adverse reaction to medication. The test that management must satisfy to justify actions taken under this Article 16.7 depends upon the nature of the "emergency." In H4N-3U-C 58637, August 3, 1990 (C-10146) National Arbitrator Mittenthal wrote as follows:

My response to this disagreement depends, in large part, upon how the Section 7 "emergency" action is characterized. If that action is discipline for alleged misconduct, then Management is subject to a "just cause" test. To quote from Section 1, "No employee may be disciplined...except for just cause." (Emphasis added)

The union contends this discipline (emergency placement) is required to meet but fails to meet the principles of just cause.

On page 16-1 of the JCAM, the parties agreed to the following:

**"Just Cause Principle**

The principle that any discipline must be for "just cause" establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the "just cause" provision requires a fair and provable justification for discipline.

"Just cause" is a "term of art" created by labor arbitrators. It has no precise definition. It contains no rigid rules that apply in the same way in each case of discipline or discharge. However, arbitrators frequently divide the question of just cause into six sub-questions and often apply the following criteria to determine whether the action was for just cause. These criteria are the *basic considerations that the supervisor must use before initiating disciplinary action.*" (Emphasis added)

One of the six sub-questions is as follows:

**"Is there a rule?** If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule?"

The union contends the grievant complied with the proper dismount rule. The union contends the grievance file shows the grievant has been delivering the mail in this way since she was awarded the route and that she dismounted properly on that day.

One of the six sub-questions is as follows:

"Is the rule a reasonable rule? Management must make sure rules are reasonable, based on the overall objective of safe and efficient work performance."

The union contends the rule (to properly dismount) is not in contention since the grievant did properly dismount. The question is whether an emergency procedure is reasonable action in these circumstances. The union contends that management's implementation of the emergency procedure is not reasonable.

One of the six sub-questions is as follows:

"Was a thorough investigation completed? Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective. This is the employee's *day in court* privilege. Employees have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves *before* the discipline is initiated.

No. The union contends that the union at Informal and Formal Step A, have presented statements and documentation showing the equipment (FFV) was defective and certainly was capable of malfunctioning and causing the accident, after the proper dismount by the grievant. Example is the following statements, in part:

March 30, 2011, Robert Montgomery Supervisor (A) Nashville VMF (First statement in which Montgomery claims to find the vehicle performed as designed):

"... Mr Tummins visually and manually inspected each of the three components involved in holding the vehicle from moving. The first component checked was the key and steering wheel. When the key is removed and in hand, the shifter can not be moved from the park position. When the shifter is in the park position, a locking pin (pawl) inside the transmission itself locks the transmission output shaft (driveshaft) and prevents any movement of the vehicle. Also, the steering wheel locking mechanism is working properly and locks the steering wheel from being able to be turned in any direction while the key is out and in hand. The second component verified was the parking brake system. Mr. Tummins placed the vehicle in reverse and allowed the truck to roll backwards a short distance then applied the parking brake. The vehicle came to an abrupt halt and complete stop. Mr. Turmmins then placed the vehicle into drive and attempted to move forward and the truck did not move at all. The third component checked is the transmission gear selector. At that point, he attempted to remove the key from the locking cylinder while the truck was in drive. It did not come out. He then placed the vehicle 0238431 into the remaining gear selections of one, two, neutral and reverse. The key once again was not able to be removed from the locking cylinder. Only when the truck shifter selector was placed into the park position, was the key able to be removed and placed into his pocket."

April 11, 2011, (12 days later) Robert Montgomery Supervisor (A) Nashville VMF (Second statement in which Mr. Montgomery acknowledged the vehicle does not perform as designed), then wrote the following to Mr. Vale (Postmaster, Nashville, TN), concerning the same (this instant) vehicle:

"While using the normal key that is assigned to the vehicle the carriers demonstrated that the key was able to be removed while the vehicle shifter was not fully in park and they were able to shift the vehicle without the key in the locking cylinder. Under a normal functions check and operation of the key and shifter these two components were working properly as expected, but when operated with quick, jerking motions or while in haste the key was able to be removed and the shifter shifted improperly. The park brake was also checked at that time and when properly applied was able to hold the vehicle from rolling. As demonstrated to me by the supervisor, the park brake handle **needs to be pulled upwards a total of eight audible clicks** in order for this particular vehicle, 0238431, to be held in place to prevent any forward or backward movement. (Emphasis added)

Clearly, Postmaster Vale was informed via the above letter of the malfunctions of this instant vehicle. However, Mr. Vale chose to not "**do the right thing**", but proceeded to discipline this grievant.

The union notes that management has not acknowledged the major problems with the key, the shifter and that "this particular vehicle" requires "eight audible clicks" for the park brake to operate properly. The union is points out that on March 30 management declared the vehicle "*in safe proper working condition*" and then 12 days later discovered they had "gotten it wrong"; that the vehicle had major problems with the steering column, the key and etc. Further, the "particular vehicle" requires "eight audible clicks" for the park brake to work properly.

Documentation contained in the grievance file shows that on 04/08/11 (Work order 2951); in order to correct some of the problems shown above (Montgomery statement dated April 11, 2011), **vehicle maintenance replaced the following parts:**

1. Steering column
2. Lock Set
3. Shift indicator

Documentation contained in the grievance file also shows (Work order 2951); that in order to correct some of the vehicle's problems shown above (Montgomery statement dated April 11, 2011), **vehicle maintenance performed labor as shown:**

Description of Work	Time	clock rings	Date
1. R & R Steering Column Assy.	2.5	17.00 14.50	4/8
2. R & R all locks	1.0	18.00 17.00	4/8
3. Inspect Park Brake System	.75	10.25 09.50	4/11
4. Inspect Park Brake System	.50	12.00 11.50	4/11

The union again calls attention to Mr. Montgomery's second statement (April 11, 2011) in which he stated that for the park brake to work properly, it had to be positioned with "eight audible clicks". The statement and the above work orders fail to disclose whether any adjustments were made in the parking brake system.

Management furnished statements which appear to infer the truck (steering column, key, brakes and etc) were working properly. The union furnished statements showing that

management was not correct. One of those statements was from Brian Buttrey, dated March 31, 2011 and reads in part as follows:

"... On March 29, 2011, I received a call from Corey Walton that Ms. Jan Bowman had had an accident while on her route...

...I arrived at Carden Avenue. Ms. Bowman was there by herself. I got out and asked Ms. Bowman if she was okay. She said that she was. I asked her if Mr. Freels had been there yet. She said no. I asked her if she had his number. Ms. Bowman said it's in my purse in the truck. Ms. Bowman opened the door to her postal truck, got in the vehicle, lowered the parking brake, reached under the mail tray, and got her purse. As she did, she grabbed the steering wheel to steady herself and I noticed that the steering wheel was not locked. I asked Ms. Bowman if her steering wheel locked and she said that she had not noticed. I asked her to get out of the vehicle. I looked at the gear selector to make sure it was in park. It was. I said do you have the keys to the vehicle? She said that she did and she took them off of her belt and handed them to me. I put the keys in the ignition, turned it forward, then back, and the steering wheel would never lock. I again looked at the gear selector to make sure it was in park. It was. I left the keys in the ignition so that I could point this out to Mr. Freels when he arrived. Mr. Freels arrived a short time later and I showed him the condition of the steering wheel, that it would not lock with the keys in or with the keys out..."

The statement from Steward Corey Walton reads in part as follows:

"... On March 31, 2011 at 9:00 am, by phone, Ms. Alley. I asked Ms. Alley if Assistant Shop steward Brian Buttrey had indeed shown her that the steering wheel of the postal vehicle would not lock into place with the key in or out of the ignition. She told me that the key was in the vehicle when she got there. I said I appreciate that but that wasn't the question. I again asked her the same question. She admitted that she did witness for herself that the wheel would not lock into place when the key was in or out of the ignition. I then asked her if she had taken MCSO (a) Mike Vaughn to the postal vehicle and shown him what she had seen. She said she could not remember. I said that the accident was just two days ago and she couldn't remember if she had shown Mr. Vaughn that the wheel wouldn't lock. She said it was just so busy she couldn't remember..." (Emphasis added)

Steward Walton's statement then continues as follows:

"I then contacted by phone MCSO (a) Mike Vaughn at approximately 9:40 am on the same day. I asked him if Ms. Alley had shown him, on the day of the accident, how the wheel would not lock into place with the key in and out of the ignition. He said yes she did. I then asked Mr. Vaughn if he indeed saw how the wheel would not lock into place with the key in or out of the ignition. He told me that the key was in the vehicle when he got there. I then stated that he and Ms. Alley had that part down but that wasn't the question. I then asked the question again and he said yes he did see for himself that the wheel would not lock into place with the key in or out of the ignition." (Emphasis added)

The union contends the documentation presented by the union in this grievance file clearly shows that management has declared the facts differently on several occasions in an attempt to justify this unwarranted and inexcusable emergency placement.

Steward Walton called to Two Rivers Service Center on 05/02/11 (a Ford dealership that performs service on Postal vehicles), and was referred to Master Mechanic, Paul Legnon. The following is a portion of the conversation between the two:

"...I introduced myself to Mr. Legnon and asked if he wouldn't mind answering a few questions and he said that would be fine. I discussed thoroughly the problems we found with the steering column in the vehicle that was in the rollaway accident. How you could



put the vehicle in drive and with it still running and in drive turn the vehicle off and remove the key. I also told how the vehicles wheel would not lock into place with the key out of the ignition. I told him how the gear indicator could be moved from park to reverse with the key out of the ignition.

Mr. Legnon then stated "Mr. Walton I can tell you that those steering columns were simply not designed to handle the wear and tear that ya'll put them through. The constant starting and stopping wears out the components in that steering column. Those steering columns have too many aluminum parts for that. They simply wear out."

I then asked him if there was any way that key should be able to be removed from the ignition while the vehicle was still running and in drive. He said, "absolutely not. Under no circumstances should you be able to remove that key from the ignition while it's running. Regardless of what you're doing to it. That key should never come out while in gear. I see the same things with UPS trucks. They just simply wear out. Those columns are just about all aluminum. They will wear out..."

The union presents the above statement as even more evidence these trucks can and do malfunction; just as the other statements, work orders, parts lists and etc show did happen with this instant truck.

While the PS Form 1769 (block 35) alleges "Improper parking", the union contends that the documentation contained in this grievance file shows the location at which the grievant parked that day was where she and other carriers parked the vehicle, management knew the location and had never objected to it and had never instructed the carriers to park elsewhere.

One of the six sub-questions is as follows:

"Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record? The following is an example of what arbitrators may consider an inequitable discipline: If an installation consistently issues five-day suspensions for a particular offense, it would be extremely difficult to justify why an employee with a past record similar to that of other disciplined employees was issued a thirty-day suspension for the same offense. There is no precise definition of what establishes a good, fair, or bad record. Reasonable judgment must be used. An employee's record of previous offenses may never be used to establish guilt in a case you presently have under consideration, but it may be used to determine the appropriate disciplinary penalty.

**No.** The grievant has over 13 years service and has no previous discipline in this grievance file. Management stated that the grievant had three industrial accidents. However, documentation contained in this grievance file shows the grievant had only one vehicle accident in the past five years, (prior to this instant false accusation). The grievance file contains no record of any previous discipline.

While the document "accident history" contains the following entry "OWCP Reported Injuries" management's Formal Step A contentions admit the grievant has only had "eleven lost work days due to injuries."

On page 16-2 of the JCAM, the parties agreed to the following:

"Corrective Rather than Punitive

The requirement that discipline be "corrective" rather than "punitive" is an essential element of the "just cause" principle. In short, it means that for most offenses management must issue discipline in a "progressive" fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense and a pattern of increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge). The basis of this principle of "corrective" or "progressive" discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution." (Emphasis added)

This discipline was clearly punishment. Not only was there no previous discipline cited, management also failed to prove the grievant acted as they have charged.

The grievance file also contains a statement dated 9/29/10 from the Chattanooga VMF in which the lead mechanic describes the potential for these LLVs to malfunction, which could lead to the very situation as exists here.

The grievance file also contains documentation from the National Traffic Safety Administration of complaints of vehicle rollaways after the driver shifted the vehicle into park and failure of the gearshift lever mechanism while shifting from or to the park position.

The union further contends the following:

1. None of the criteria set forth in Article 16.7 of the National agreement was present on September 20, 2010 with respect to this case. Therefore there was no legitimate basis to invoke Article 16, Section 7 on the day in question.
2. Management violated Article 29 of the National Agreement by not making every reasonable effort to assign the grievant to non-driving duties when they temporarily suspended/revoked the grievant's driving privileges on that day. As a matter of fact, the record is clear that Management made no effort whatsoever to assign the grievant non-driving duties. Instead, they circumvented their contractual responsibilities as outlined in Article 29 by placing the grievant on Emergency Placement.
3. Management failed to properly consider the grievant's tenure and no discipline in his record for more than 13 years.
4. The grievant is accused of misconduct in the instant case. Therefore, management must bear the burden of proving just cause existed to place the grievant on an Emergency Suspension in this case.
5. The grievant's supervisors along with safety personnel were shown (at the scene of the incident) the malfunctioning of the FFV.
6. PS Form 1769/301 (Block 35) mgt entered (Improper parking). In fact the documentation contained in this grievance file shows the grievant and other carriers constantly parked at that exact location, with the full knowledge of supervision. The union contends there was no cause to place the grievant on Emergency Placement.
7. The union contends the grievant followed proper dismount procedures.
8. Article 16 of the National Agreement states that, "In the administration of this article, a basic principle shall be that discipline should be corrective in nature,

rather than punitive. No employee may be disciplined except for just cause..." Management simply cannot establish/allege just cause in the case at bar. The discipline issued was punitive rather than corrective in nature. Placing a Carrier on Emergency placement for an **alleged** safety infraction is designed to punish rather than to correct unsafe practices and situations as intended in Article 14 of the National Agreement. The facts in this case clearly show this discipline was intended to punish, in violation of the National Agreement.

9. Regardless of how this situation is viewed, the inescapable conclusion is that management failed to follow Section 115 of the M-39 Handbook. Section 115.1 of the M-39 reads as follows:

### **"Discipline**

#### **115.1 Basic Principle**

In the administration of discipline, a basic principle must be that discipline **should be corrective in nature**, rather than punitive. No employee may be disciplined or discharged **except for just cause**. The delivery manager must make **every effort** to correct a situation before resorting to disciplinary measures." (Emphasis added)

Management made **no** effort to "correct a situation", before issuing this discipline; when the above quoted Handbook requires **"every effort"**.

Section 115.2 of the M-39 Handbook reads as follows:

### **"Using People Effectively**

Managers can accomplish their mission only through the effective use of people. How successful a manager is in working with people will, to a great measure, determine whether or not the goals of the Postal Service are attained. Getting the job done through people is not an easy task, and certain basic things are required, such as:

- a. Let the employee know what is expected of him or her.
- b. Know fully if the employee is not attaining expectations; don't guess — make certain with documented evidence.
- c. Let the employee explain his or her problem — listen! If given a chance, the employee will tell you the problem. Draw it out from the employee if needed, but get the whole story."

Section 115.3 of the M-39 Handbook reads as follows:

### **"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."

The union contends that management failed in their responsibilities as outlined above in 115.2 and 115.3 of the M-39 Handbook.

Management failed to meet their burden of proving just cause in this instant case. Additionally, the Union has demonstrated that Management's behavior with respect to this entire situation was wholly inappropriate and a blatant abuse of the authority entrusted to them.

Management cited a "Zero Tolerance Policy". The union contends the "Policy" written by an employee of the Tennessee District cannot supersede the agreements reached by the parties at the National Level in the National Agreement, Handbooks, Manuals and other Memorandums.

The union further contends:

On page 16-3 of the JCAM, the parties agreed to the following:

"Examples of Behavior. Article 16.1 states several examples of misconduct which may constitute just cause for discipline. Some managers have mistakenly believed that because these behaviors are specifically listed in the contract, any discipline of employees for such behaviors is "automatically" for just cause. The parties agree these behaviors are intended as examples only. Management must still meet the requisite burden of proof, e.g. prove that the behavior took place, that it was intentional, that the degree of discipline imposed was corrective rather than punitive, and so forth. Principles of just cause apply to these specific examples of misconduct as well as to any other conduct for which management issues discipline." (Emphasis added)

Management has not shown the grievant acted and charged.

The grievance file contains a request from the union dated 4/6/11 which reads as follows:

"Videotape (with audio) FFV # 0238431. The union would like to videotape this vehicle inside and out for possible safety violations. Dave Clark and union representative will be performing the investigation of this vehicle".

There is a notation on the form stating "Denied 4/8/2011"

The grievance file contains a "Memorandum" dated April 8, 2011, for "NALC" from Mike Vaughn, which reads as follows:

"The request states "The union would like to videotape this vehicle inside and out for possible safety violations. Dave Clark and union representatives will be performing their investigation of the vehicle.

The request is denied.

Dave Clark and union representatives were notified immediately when the accident occurred and had a chance to come to the scene and conduct an on scene investigation. Also, the request for conducting their own investigation of the vehicle is also denied because neither Dave Clark nor Corey Walton is qualified to conduct vehicle inspections on Postal Vehicles. However the union can interview the Vehicle Maintenance technician that provided a written report to Management and the NALC concerning his evaluation and investigation vehicle."

The union was clearly deprived of the opportunity to examine and properly record their examination of this vehicle. **Management denied the request** and offered to substitute by giving the union to "interview" a technician from the VMF (the department that wrote two completely different reports), the final report admitting the truck parts were defective.

The union contends that management's above refusal clearly violates Articles 17 and 31 of the National Agreement.

The union contends the documentation contained in this grievance file does not show the grievant acted as charged. The documentation does show that management has violated multiple Articles of the National Agreement.

For all the reasons stated above and all the reasons and issues the union raised at Formal Step A of the grievance procedure, the union believes this grievance should be sustained in its entirety and the remedy requested should be granted.



## USPS-NALC Joint Step A Grievance Form

## INFORMAL STEP A — NALC Shop Steward Completes This Section

1. Grievant's Name (Last, first, middle initial) <i>Bowman, Janet</i>		2. Home Telephone No. <i>596-5220</i>	
3. Seniority Date (MM/DD/YYYY) <i>02/14/98</i>	4. Status (Check one) <input checked="" type="checkbox"/> FT <input type="checkbox"/> FTF <input type="checkbox"/> PTR <input type="checkbox"/> PTF <input type="checkbox"/> TE		5. Grievant's SSN
6. Installation/Work Unit <i>Belle Meade / Nashville</i>		7. Finance Number	
8. NALC Branch No. <i>4</i>	9. NALC Grievance No. <i>B4-00104-11</i>	10. Incident Date (MM/DD/YYYY) <i>03/29/2011</i>	11. Date Discussed with Supervisor (Filing Date) <i>04/01/2011</i>
12a. Companion MSPB Appeal? <input type="checkbox"/> Yes <input type="checkbox"/> No		12b. Companion EEO Appeal? <input type="checkbox"/> Yes <input type="checkbox"/> No	
13a. Supervisor's Printed Name and Initials (Completed by Supervisor) <i>Tom Freels JP</i>		13b. Steward's Printed Name and Initials (Completed by Steward) <i>Oray L. Walter w</i>	

## FORMAL STEP A — Formal Step A Parties Complete This Section

14. USPS Grievance No.	
15. Issue Statement/Provide Contract Provision(s) and Frame the Issue(s) <i>See attachment</i>	
16. Undisputed Facts (List and Attach All Supporting Documents) Attachments? <input type="checkbox"/> No <input type="checkbox"/> Yes Number _____	
17. UNION'S full, detailed statement of disputed facts and contentions (List and Attach All Supporting Documents) Attachments? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Number <i>78</i>  <i>See Attachments</i>	
18. MANAGEMENT'S full, detailed statement of disputed facts and contentions (List and Attach All Supporting Documents) Attachments? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Number <i>60</i>  <i>See Attachment's</i>	
19. Remedy Requested/Offered <i>The grievant be placed back to full duty status immediately. The grievant be made whole for all lost wages + benefits. What other remedy that may be deemed appropriate.</i>	
20. Disposition and Date (Check one) <input type="checkbox"/> Resolved <input type="checkbox"/> Withdrawn <input checked="" type="checkbox"/> Not Resolved Date of Formal Step A Meeting (MM/DD/YYYY) <i>5-20-2011</i>	
21a. USPS Representative Name <i>Kevin Agre Harris</i>	21b. Telephone No. (Include Area Code)
21c. USPS Representative Signature <i>Kevin Agre Harris</i>	21d. Date (MM/DD/YYYY)
22a. NALC Representative Name <i>Lemar D. Clark Jr.</i>	22b. Telephone No. (Include Area Code)
22c. NALC Representative Signature <i>Lemar D. Clark Jr.</i>	22d. Date (MM/DD/YYYY)

① Did management violate Articles 16, 19 & section 115 of the M-39 Handbook, National Agreement when they placed letter carrier Janet Bowman on Emergency placement in off duty status on 03/29/2011 alleging failure to follow safety regulations and zero tolerance policy, and if so, what should the remedy be?

② Did management violate Articles 14 and 29 of the National Agreement when they failed to make every reasonable effort to assign letter carrier Janet Bowman to non driving duties, if so, what should the remedy be?

**Union Contentions  
B4-00104-11  
Bowman, Janet  
Emergency Placement  
Belle Meade Station**

1. Did management violate Article 16, 19 of the National Agreement via Section 115 of the M-39 Handbook, when they placed Letter Carrier Janet Bowman on Emergency Placement in Off Duty Status on 3/29/11, alleging failure to follow safety regulations and zero tolerance policy.
2. Did management violate Articles 14 and 29 of the National Agreement when they failed to make every reasonable effort to assign Letter Carrier Janet Bowman to non-driving duties after they suspended/revoked her driving privileges at work.

The record shows that the grievant was placed on Emergency Placement on 3/29/11, alleging that she failed to follow safety regulations and zero tolerance policy. The record also reflects that the grievant has over 13 years of service with the Postal Service. This Emergency Placement was based solely on events that took place on 3/29/11.

Supervisor Freels acknowledged to Steward Walton that there was a sufficient amount of non-driving work at Belle Meade Post Office for Carrier Bowman to perform. The provisions of Article 29 of the National Agreement apply for this type of alleged infractions.

This grievance file contains M document (1289), dated 6/3/1997, which reveals the following relevant information:

"The parties agree that management has the right to articulate guidelines to its employees regarding their responsibility concerning issues relating to safety. However, the parties also mutually agree that local accident policies, guidelines, or procedures for cited safety rule violations must meet the "just cause" provisions of Article 16 of the National Agreement. Further, administrative action with respect to safety violations must be consistent with Articles 14 and 29."

On pages 29-3 thru 29-5 of the Joint Contract Administration Manual (JCAM) dated April 2007, the parties agreed to the following:

**"Suspension and Revocation of Driving Privileges For Unsafe Driving**

An employee's driving privileges may be suspended or revoked when the on-duty record shows that the employee is an unsafe driver.... Every reasonable effort will be made to reassign the employee in non-driving duties in the employee's craft or other crafts."

National Arbitrator Snow held in I94N-4I-D 96027608, April 8, 1998 (C-18159)

"that management may not reassign an employee to temporary non-driving duties in another craft if doing so would result in a violation of other craft's agreement. If it is not possible to accommodate temporary cross-craft assignments in a way that does not violate another craft's agreement, a letter carrier who is deprived of the right to an otherwise available temporary cross-craft assignment to a position in another craft must



be placed on leave with pay until such time as he may return to work without violating either unions' agreement."

In accordance with Arbitrator Snow's award, in situations where city letter carriers temporarily lose driving privileges, the following applies:

- Management should first attempt to provide non-driving city letter carrier craft duties within the installation on the carrier's regularly scheduled days and hours of work. If sufficient carrier craft work is unavailable on those days and hours, an attempt should be made to place the employee in carrier craft duties on other hours and days, anywhere within the installation.
- If sufficient work is still unavailable, a further attempt should be made to identify work assignments in other crafts, as long as placement of carriers in that work would not be to the detriment of employees of that other craft.
- If there is such available work in another craft, but the carrier may not perform that work in light of the Snow award, the carrier must be paid for the time that the carrier otherwise would have performed that work.

The union contends that management failed in their obligations under Article 29 of the National Agreement when they refused to make every reasonable effort to reassign the grievant in non-driving duties in the employee's craft or other crafts.

Article 16 Section 7 of the National Agreement reads in relevant part as follows:

#### **Emergency Procedure**

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others...

On page 16-9 of the JCAM the parties agreed to the following:

#### **What Test Must Management Satisfy?**

Usually employees are placed on emergency non-duty status for alleged misconduct. However, the provisions of this section are broad enough to allow management to invoke the emergency procedures in situations that do not involve misconduct— for example if an employee does not recognize that he or she is having an adverse reaction to medication. The test that management must satisfy to justify actions taken under this Article 16.7 depends upon the nature of the "emergency."

In H4N-3U-C 58637, August 3, 1990 (C-10146) National Arbitrator Mittenthal wrote as follows:

My response to this disagreement depends, in large part, upon how the Section 7 "emergency" action is characterized. If that action is discipline for alleged misconduct, then Management is subject to a "just cause" test. To quote from Section 1, "No employee may be disciplined...except for just cause."

On page 16-1 of the Joint Contract Administration Manual, the parties agreed to the following:

**Just Cause Principle**

"... arbitrators frequently divide the question of just cause into six sub-questions and often apply the following criteria to determine whether the action was for just cause. **These criteria are the basic considerations that the supervisor must use before initiating disciplinary action.**"

Management's reason in the letter of charges for taking action was due to the grievant's alleged failure to follow safety regulations and zero tolerance policy.

The grievant revealed in her statement the following relevant information:

"My name is Janet Bowman. I run route 510. It has mostly park and loop, boxes on the porches with narrow dead end streets. On March 29<sup>th</sup> 2011 at approximately 12:25, I parked the postal truck between the many cars along both sides of the street. This was in front of 226 Carden Ave. I put the truck in park, turned the engine off, took the key out and pulled up the hand break."

One of the basic considerations of the just Cause Principle is:

- **Is there a rule?** If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule?

The union contends that the grievant revealed in her statement that she followed the proper dismount rule. The union further contends that the grievant has been delivering the mail on Carden this way since she was awarded route 10, at Belle Meade station.

Another one of the basic considerations of the just Cause Principle is:

- **Is the rule a reasonable rule?**

The union contends that it is not a reasonable rule to place someone off the clock for an alleged safety violation when Article 29 of the National Agreement provides that management will make every reasonable effort to find that employee work; especially since the Supervisor even stated that there was work for the grievant to perform at the station.

This file also contains a copy of an interview that Steward Walton conducted with an eyewitness (Ms. Weiss Sharp) on March 29, 2011, which resides at 227 Carden. Her statement reads as follows:

"I was pulling down our street and I saw the postal vehicle sitting in the middle of the street. Vehicles always park on the curb because we don't have garages. The postal vehicle was on the appropriate side so I was going to try and pull around it. As I approached the vehicle I saw it begin to move backwards and notice that Jan wasn't in it. I honked my horn and saw Jan was already running after it. I saw her get even with it but she was not able to get in it. I pulled in my driveway and began to run after the vehicle with her. I was there with her at the same time when the vehicle came to a stop at the end of the cul-de-sac. I asked her if she was ok and she said yes. I clearly saw that the handbrake was set and the vehicle was in park."

This file also contains the Alternate Steward's (Brian Buttrey) statement, which reads in relevant part as follows:

"I asked her if she had his number. Ms. Bowman said it's in my purse in the truck. Ms. Bowman opened the door to her postal truck, got in the vehicle, lowered the parking brake, reached under the mail tray, and got her purse. As she did, she grabbed the steering wheel to steady herself and I noticed that the steering wheel was not locked. I asked her to get out of the vehicle. I looked at the gear selector to make sure it was in park. It was. I said do you have the keys to the vehicle? She said that she did and took them off of her belt and handed them to me. I put the keys in the ignition, turned it forward, then back, and the steering wheel would never lock. I again looked at the gear selector to make sure it was in park. It was. I left the keys in the ignition so that I could point this out to Mr. Freels when he arrived. Mr. Freels arrived a short time later and I showed him the condition of the steering wheel, that it would not lock with the keys in or with the keys out."

This file also contains a copy of the Regular Steward Corey Walton's statement, which reads in relevant and chronological order of the events as they unfold during his investigation of attempting to gather the facts, which are as follow:

- 3/29/11, Steward Walton was contacted at home by Alternate Steward Buttrey, informing him of his safety concerns of Carrier Bowman's Postal vehicle. Mr. Buttrey went on to inform Steward Walton that he had showed acting Safety Manager Kim Alley and MCSO Mike Vaughn the problem with the steering wheel not locking.
- 3/30/11, Steward Walton contacted VMF Supervisor Montgomery and asked him a question regarding the proper term for the pin that locked the steering wheel when the key was out of the ignition and he didn't know.
- 3/31/11, Steward Walton contacted Safety manager Kim Alley and MCSO Vaughn to verify that they witnessed that the steering wheel would not lock when the key was out of the ignition and they both confirmed that it would not.
- 4/2/11, Supervisor Freels informed Steward Walton that he had gone to the VMF earlier that day and inspected the grievant's postal vehicle. Supervisor Freels also told Mr. Walton that he had contacted the VMF the day prior and was told that as of the 1<sup>st</sup> the vehicle had not been touched.
- 4/6/11, Supervisor Freels handed Mr. Walton a letter from VMF Supervisor, Montgomery revealing that the vehicle had been thoroughly checked by his lead technician, Russell Tummins who revealed that he performed several component checks and his conclusion of the test found the vehicle to be in safe and proper working condition.
- 4/6/11, after Mr. Walton read the VMF's report he called the carrier driving FFV # 0238431, (Scott Tomlinson) and asked him to go through a series of test. Carrier Tomlinson reported that (1) the steering wheel wouldn't lock after the key was removed, (2) the vehicle would roll backwards with the handbrake set, (3) when he placed the vehicle in park and took the key from the ignition he could easily move the gear shifter from park to reverse. After the findings Steward Walton submitted a request to videotape FFV # 0238431, which was later denied by MCSO Vaughn and as a result a subsequent grievance has been filed.
- 4/7/11, Steward Walton discovered that Carrier Lisa Yarbrough was planning to use FFV # 0238431 on this date, which prompted him to file a PS form 1767 (report of hazard, unsafe condition or practice), which is included in this file. He also filled out a repair tag in a second attempt to get these safety issues taken care of.
- 4/7/11, at 10:00 a. m. NALC President, Dave Clark, Shop Steward Corey Walton, Assistant Steward Brian Buttrey, Safety Captains Steve Weakley and Mike Wilson were present and observed the same safety checks that Carrier Tomlinson found and reported to Steward Walton on the previous day.

- 4/8/11, VMF Supervisor, Robert Montgomery came to Belle Meade Station and accompanied Steward Walton and Carrier Tomlinson to vehicle # 0238431 and went through the same test that Carrier Tomlinson had discovered on 4/6/11, and VMF Supervisor Montgomery declared the vehicle unsafe and explained to Steward Walton that his tech just perform a few spot checks on the vehicles when they come down. Supervisor Montgomery and Mr. Walton also spoke about the parking brake and how terrible that mechanism was. Supervisor Montgomery also shared with Steward Walton that the vehicle shouldn't be doing all that it was doing.
- This file also contains statements from Brian Buttrey, Steve Weakley, Scott Tomlinson, Mike Wilson and Dave Clark, which will verify the unsafe findings of the test that Steward Walton referred to in his statement.

This file also contains other documentation in reference to Ford Explorer rollaways and read as follows:

- This file also contains a statement from a Chattanooga VMF lead mechanic, dated 9/29/2010, which reveals that he had investigated a couple of FFV's after they were involved in rollaways and revealed that the FFV vehicles in his area are experiencing some of the same mechanical problems with the false park and he also explains that the constant use of the park brake makes the brake become less effective and given a steep enough incline it could potentially cause the park brake not to hold, which is apparently what happened in this incident. This mechanic also wrote that when he went to his supervisor and informed him that after driving a vehicle all day under the conditions a letter carrier would experience are not the same as the test they conduct on the FFV and his Supervisor told him to keep his nose out of it.
- This file also contains a telephone interview with Two Rivers Ford Master Mechanic, Paul Legnon, conducted by Steward Corey Walton, which reveals that the steering columns and ignition switches used in the FFV vehicles by the USPS are not designed for the extensive starting and stopping that is required by the letter carriers every day use. He stated that the steering columns are just about all aluminum they will wear out. Mr. Legnon also revealed that the key should never be able to be removed from the switch unless the shift lever is in the park position.
- This file also contains documentation, which reveals that the Federal regulators have opened a probe into possibly faulty transmissions on Ford Explorers, where some complaints indicate problems with the vehicle slipping into gear from park. The National Highway Traffic Safety Administration (NHTSA) defect investigation documents say the agency has received 11 complaints of vehicle rollaways after the driver shifted the vehicle into park. In addition, 61 other vehicle owners have alleged failure of the gearshift lever mechanism while shifting from or to the park position.
- This file also contains a copy of a U. S. Postal Service vehicle maintenance work order, which shows that on 4-8-11, vehicle # 0238431 had a new steering column, shift indicator and lock set installed.
- This file also contains vehicle repair tags from other carriers that use the FFV postal vehicle identifying problems with the hand brake and also problems with the gearshift indicator.

This file also contains a statement from VMF supervisor Robert Montgomery, dated 3/30/11, addressed to MCSO Vaughn, where he reveals that his lead technician Russell

Tummins had completed a series of component checks and as a result of their findings he declared FFV # 0238431, safe and in proper working condition.

This file also contains a request from steward Walton to video FFV # 0238431; to expose the safety defects after the vehicle was returned from the VMF on 4/6/11, where the supervisor alleged that the vehicle was safe. MCSO Vaughn denied this request.

VMF Supervisor Montgomery wrote a second report dated 4/11/11, addressed to Postmaster Vale, where the union contends the supervisor attempt to cover up the safety defects that was pointed out to him by steward Walton and Carrier Tomlinson on 4/8/11.

This file also contains a copy of a memorandum from the TN District Manager, Human Resources, Patty Frederick dated 6/28/10, to Postmaster Nashville, which reads in relevant part as follows:

"Safety performance in the Tennessee District continues to decline....Effective immediately the following procedures must be followed:

- An investigative interview must be held within 24 hours after every accident.
- The Supervisor or Manager shall determine if corrective action is required.
  - a. If corrective action is requested, the packet must be sent to Labor within 3 business days.

**\*\*\*After corrective action is issued, send a signed copy to Labor and Lisa Lukacic, HR Secretary.**
  - b. If corrective action is not requested, a copy of the Investigative interview notes shall be sent to Manager, Human Resources within 3 business days with an explanation as to why no action is required.

A local Safety Review Board meeting must be held for any accident. Attendees shall include one higher level Management official (MPOO, Postmaster, Station Manager, MDO), Supervisor, Employee, Union Representative and Safety Specialist for your area. The meeting shall be held within 5 business days from the date of the accident. It is your responsibility to coordinate the meeting date and time with the required attendees. Managers may conduct this meeting in person or by phone. Safety Review Board meeting notes/actions must be recorded and submitted to Lisa Lukacic, HR Secretary, within two business days following the meeting.

These items will be tracked by Human Resources. Failure to comply may result in corrective action.

The union maintains that they have not been requested to be involved in any Safety Review Board meeting as referenced above. The union further reveals that the grievant was placed off the clock on 3/29/11 and the Formal Step A meeting is scheduled for 5/3/11, and the grievant remains off the clock and has not had any subsequent action taken against her to this date. The union contends that management has failed to follow their own protocol for investigating accidents.

Another one of the basic considerations of the just Cause Principle is:

- **Was a thorough investigation completed?** Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective. This is the employee's *day in court* privilege. Employees have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves *before* the discipline is initiated.

The union contends that they have presented a reasonable amount of detail as to the mechanical malfunction which would give reason for the rollaway. The union further contends that management failed to insure that a thorough and objective investigation was conducted, which violates the grievant's due process rights.

Another one of the basic considerations of the Just Cause Principle is:

- **Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record?**

The union contends that management's zero tolerance policy did not pass the test of just cause and for that reason the discipline is considered to be to severe.

This file shows that after the FFV was returned to the station on 4/6/11 and declared to be safe, the union found that the vehicle still had safety issues and requested to video these defects. The record shows that management denied this request.

On page 16-3 of the JCAM, the parties agreed to the following:

**Examples of Behavior.** Article 16.1 states several examples of misconduct which may constitute just cause for discipline. Some managers have mistakenly believed that because these behaviors are specifically listed in the contract, any discipline of employees for such behaviors is "automatically" for just cause. The parties agree these behaviors are intended as examples only. Management must still meet the requisite burden of proof, e.g. **prove that the behavior took place, that it was intentional, that the degree of discipline imposed was corrective rather than punitive, and so forth.** Principles of just cause apply to these specific examples of misconduct as well as to any other conduct for which management issues discipline.

The union contends that management failed to meet the requisite burden of proof as provided in the above quotation from page 16-3 of the JCAM. The union made management aware that FFV # 0238431 remained unsafe even after the VMF had cleared the vehicle to be in safe working condition. The union further contends that the VMF and management attempted to cover up the unions find when they refused to allow the union to video these defects. The VMF claimed that they had to change out the steering column and ignition switch because the key had broken off in the switch. How convenient. The union further contends that management's action toward the grievant was punitive and not corrective.

On page 16-2 of the Joint Contract Administration Manual (JCAM), the parties agreed to the following:

**Corrective Rather than Punitive**

The requirement that discipline be "corrective" rather than "punitive" is an essential element of the "just cause" principle. In short, it means that for most offenses management must issue discipline in a "progressive" fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense and a pattern of increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge). The basis of this principle of "corrective" or "progressive" discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution.

The union contends that management's actions toward the grievant were punitive when placing the grievant off the clock prior to providing her non-driving work as provided in Article 29 of the National Agreement.

Section 115.1 of the M-39 Handbook reads as follows:

**115.1 Basic Principle**

In the administration of discipline, a basic principle must be that discipline should be **corrective in nature, rather than punitive**. No employee may be disciplined or discharged except for just cause. The delivery manager must make every effort to correct a situation before resorting to disciplinary measures.

The union contends that it is clear that management has violated the above basic principle of discipline when the record shows that they proceeded to place the grievant off the clock in a non-pay status, prior to providing her non-driving work as provided in Article 29 of the National Agreement.

Section 115.3 of the M-39 Handbook reads as follows:

**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.

The union contends that management failed to recognize and meet their obligation to the grievant when after obtaining all the facts failed to admit that the grievant's stand had merit.

Unions Contentions for Gr.# B4-00104-11 continued:

① At the Formal Step A meeting the USPS Formal A designee maintained that Supervisor Freels determined that the grievant parked her FFV illegally. The union contends that the grievant as well as 3 part carriers that were assigned to Route 10 @ BelleMeade have always parked in the street to hop + make deliveries to houses on Carden due to the patrons parking on the street next to the curb. The grievant as well as the part carriers have parked this way while management has ridden with them while performing 3999's and they were never instructed to park differently. Since this incident (rollaway) the Steward @ BelleMeade Station has asked Supervisor Freels for updated instructions on where to park if there is no curb space but has yet to get instructions from Supervisor Freels.

② USPS designee also maintained that the picture in mang. file shows that there was space next to the curb for her to park. The union contends that this picture was taken @ least 45 minutes after the rollaway + grievant testified that traffic was coming + going before the investigating crew got to the scene.



Continued pg. 2 Union Contentions

The union further contends that the vacant space in the picture was in front of 230 Carden the last house on the street. The grievant was parked & making a dismount delivery @ 226 Carden where the delivery point is on the house and is 3 houses up from the end house. The union has also added to the file a PS Form 3999 filled out by Sheri Cole, date 6/11/08, where it shows on page 6 her following comment: "Carden Ave, A lot of cars parked on the street makes delivering mounted deliveries difficult." This file also contains a statement from Ms. Weiss Shaye who lives @ 227 Carden & states, "Vehicles always park on the curb because we don't have garages".

The union contends that the only dismount procedure that is in question according to Supervisor Freels is that the grievant didn't curb her wheels. The grievant should be given the opportunity to follow instructions on where to dismount on Carden Ave. when there is no place to park. But as of today the replacement carrier has not been given any instructions what to do.

Date: March 29, 2011

MEMORANDUM FOR: Mrs. Janet Bowman  
FTR City Letter Carrier  
EIN: 02377438  
Nashville, TN 37205-9998

7010 3090 0001 0093 6803  
Certified Mail  
Return Receipt Requested

SUBJECT: EMERGENCY PLACEMENT IN OFF-DUTY STATUS

You are hereby notified that effective March 29, 2011, you were placed in a non-duty, non-pay status under the provisions of Article 16, Section 7, of the National Agreement. The reason for this action is your failure to follow safety regulations and the zero tolerance policy.

You are placed in this Emergency off-Duty Status (without pay) under the provisions of Article 16, Section 7, of the National Agreement, which states in part as follows:

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U. S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others.

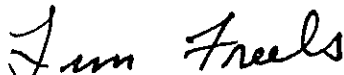
You shall remain on the rolls (non-pay status) until further notice.

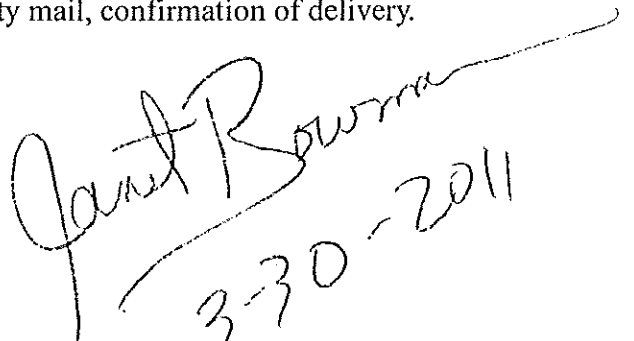
You are further advised that you are prohibited from interfering with the day-to-day operation of this postal facility and will not be allowed unescorted on the workroom floor.

If this action is overturned on appeal, back pay may be allowed, unless otherwise specified in the appropriate award or decision, ONLY IF YOU HAVE MADE REASONABLE EFFORTS TO OBTAIN OTHER EMPLOYMENT DURING THE RELEVANT NON-WORK PERIOD. The extent of documentation necessary to support your back pay claim is explained in the ELM, Section 436.

You have the right to appeal this action under the grievance-arbitration procedure set forth in Article 15, Section 2, of the National Agreement within 14 days of your receipt of this notice.

A copy of this notice is also being sent to you by priority mail, confirmation of delivery.

  
Tim Freels  
Supervisor, Customer Services

  
3-30-2011

Meeting with Supervisor Tim Freels 4/1/11.

① Is your investigation complete concerning the roll away accident involving Janet Bowman.

Ans. NO

② In the letter of ~~revo~~ "Emergency placement in off duty status" you stated this was a result of her "failure to follow safety regulations". Is that correct?

Ans. Yes.

③ Do you know that to be true since you have not completed your investigation?

Ans. No.

④ Article 29 States that you will make every reasonable effort to find her nondriving duties in her craft or in other crafts. Have you done this?

Ans. No I'm not obligated to find her work the zero tolerance policy says that.

Σ at this time I read the step 4 decision # M-1289

Supervisor Freels said he had never heard that

and he would check into it. I informed him that he was being punitive by not finding her work in the station until the investigation is complete. He said he would check on that.

⑤ Do you have sufficient work in the station for Janet Bowman to do?

Ans Yes, but I need to check on this first

Shop Steward

Corey L. Walton

## Questioning of Super. Tim Freels

Tim I have just a few questions to ask you so I can clarify some things is that o.k.?

Ans. Yes.

① On the day of the roll away accident did Jan Bowman give a statement on scene

Ans. No she did not, I asked her a few questions.

② So you interviewed her?

Ans. Well I just asked a few questions.

③ Did Jan Bowman insist on giving a statement or have Brian Buttrey tell you she was ready to give a statement?

Ans. No she never said that and Brian never said that.

④ Did the word statement ever come up?

Ans. Janet told me the only way she will give a statement is if Brian is present but she never gave a statement No.

⑤ When you arrived on scene were you the first person there?

Ans. No Brian was there already.

⑥ Tim were those keys in the vehicle when you arrived and looked in the vehicle?

Ans. No the keys were not in it.

⑦ So when you observed the vehicle there were no ~~keys~~<sup>keys</sup> in the ignition?

Ans. No

End of questioning

Corey L. Walton

Shop Steward

I Corey Walton asked the grievant + Brian Butler if at any time did they mention that Jan was ready to give a statement + both stated no.

II

4/7/11

10:20



1. In your own words what happened.

Gave copy of incident in statement form

2. When you exited the vehicle did you put the vehicle in park

Yes.

3. When you exited the vehicle did you set the hand brake.

Yes

4. When you exited the vehicle did you take out the keys.

Yes

5. When you exited the vehicle did you lock the truck.

No

6. When did you notice the vehicle moving.

As I was leaving their porch it started to move.

7. What did you do when you saw the vehicle moving.

~~USE~~ jumped off the porch and ran after the slowly moving truck.

8. Did anyone else see this happen.

Yes. Someone else saw it.

A. Do you have a name?

Not at the top of my head.

Did you try to move or alter anything in the vehicle after the vehicle stopped.

9. Did you try to move the vehicle.

No.

9e. Did ~~you~~ <sup>move</sup> / alter anything inside the vehicle ~~?~~ after the vehicle stopped? read statement.

10. If you want, I can give you the phone number to EAP.

Do you have anything to add at this time.

It ended 10:37

Eric Charles witness

Dave Clat witness

Tim Freels  
Supervisor Customer Service  
Nashville, TN 37205-8998

Copy



My name is Janet Bowman. I run route 510 . It has mostly park and loop, boxes on the porches with narrow dead end streets. On March 29th 2011 at aproxamently 12:25, I parked the postal truck between the many cars along both sides of the street. This was in front of 226 Carden Ave. I put the truck in park, turned the engine off, took the key out and pulled up the hand break.

I gathered a bundle of mail and shut the door behind me. I walked up a short walkway and up a couple of stairs, placed the mail in the box. As I started back to the truck, it began to move. I jumped off the porch and ran after the slow moving truck, not really sure what I was going to do. A home owner who was outside saw what was happening and ran after the truck too. I ran beside the truck and tried to get the door open. The truck grazed a telephone pole on the drivers side and it swung in and broke the small side window. It rolled to a stop on a rock near the guard rail that is at the dead end of the road. The young woman arrived at the truck at the same time I did and we were shocked that it could move when obviously it shouldn't. We looked inside at the broken glass, the raised handbrake, the gearshift in park and back at each other. She said "Oh my gosh! Are you OK?" Yes, I think so. "Are you sure?" "Because I was on my way to a Dr. appointment, but I can stay if you need me." Thank you, I'm going to call my boss. He will come in a few minutes.

I called the station and told Tim Freels, then several minutes later I called the station again. I asked Tim to call Brian Buttrey, Tim said "I'm not sure I have his number" and I told him that I had it and would it be OK if I called him. That was OK with Tim. When Brian Buttrey drove up he hugged me and asked "Are you alright" he said "I can't believe I'm the first one here!" did you call the station? I said yes Brian said "well he should be here by now". He asked if I had Tim's cell number. I told him yes, it's in my purse, in the truck. My purse was under the ledge to the left of the hand brake. I carefully climbed in on the edge of the seat (covered with glass) using the steering wheel as balance and the wheel moved. Brian noticed and said "Hey, your steering wheel isn't locked. It's supposed to. Where are your keys?" In my pocket I told him just a second. I let down the hand break to pull my purse through the narrow space. I handed Brian the keys. I was still shaking when Tim pulled up in a postal van a moment later. I think Tim asked me if I was OK and also, did I move the truck? I said, no. Few minutes later Mike Vaughn pulled up followed by 2 women I didn't recognize. Mike Vaughn didn't speak to me at all, however the women introduced themselves and checked on my well-being. Tim Freels asked me several questions in the presents of Brian. Tim called it an interview.

Tim: Tell me what happened

Jan: I thought you were going to ask me questions

Q Tim: Was the truck in park?

A Jan: Yes

Q Tim: Was the truck shut off?

A Jan: Yes

Q Tim: Was the hand brake pulled?

A Jan: Yes

Q Tim: Did you have the keys?

A Jan: Yes

Q Tim: Was the door closed?

A Jan: Yes

We were then told to move the mail to the postal van.

Tim came up to me and told me he was placing me on

Emergency Placement in Off-Duty Status with out pay.

I was driven back to the Post Office where I was escorted off the premises.



**UNITED STATES  
POSTAL SERVICE**

User ID: FN6SFB

Report: TAC500R3 v2.009

Restricted USPS T&A Information

Date: 04/01/11

YrPPWk: 2011-08-1

NAS-BELLE MEADE STA

Time: 07:22 AM

Fin. #: 47-6160

Employee Everything Report

Page: 1

YrPPWk: 2011-08-1

Tuesday

Sub-Unit: 0000

Pay Loc/Fin. Unit	005 / 0000	Variable EAS	N	Annual Lv Bal.	121.09	FMLA Hrs	1976.46
Employee ID	02377438	Borrowed	N	Sick Lv Bal.	04.00	FMLA Used	32.00
Employee Name	BOWMAN J M	Auto H/L	N	LWOP Lv Bal.	00.00	SLDC Used	00.00

Job	D/A	LDC	Oper/Lu	RSC	Lvl	FTF	FLSA	Route #	Fin. #	Loaned Fin. #	Effective Start	Effective End	Begin Tour	End Tour	Lunch Amt.	1261 Ind.	Schedule	OOS	Day
Base	13-4	2100	7220-05	Q0	01	N	N	005010	47-6160		2011-08-1		07.50	16.00	0.50	N	S-MT-TF		

Processed Clock Rings

Tuesday

Base 05200: 006.02 05904: 001.98

EBR #	Base	Oper/Lu	RSC	Lvl	FTF	FLSA	Route #	Fin. #	Loaned Fin. #	Effective Start	Effective End	Begin Tour	End Tour	Lunch Amt.	1261 Ind.	Schedule	OOS	Day
500-0003	BT	03/29	07.03	CDT	47-6160	7220-05	005010					00.00			(W)NonScheduled	Begin Tour		
888-8888	05904	03/29	07.50	CDT	47-6160	7220-05	005010	01.98	02369167	03/29		15.88						
500-0003	MV	03/29	09.21	CDT	47-6160	7210-05	005010					00.00						
500-0003	ET	03/29	13.55	CDT	47-6160	7220-05	005010					00.00			(W)NonScheduled	End Tour		
000-0000	OT	03/29	15.53	CDT	47-6160	7220-05	000000	02.00	02369167	03/29		07.80			(W)Ring Deleted From PC			
									02369167	03/29		15.83						

Weekly Total

Un-Processed Rings

EBR#

Interview of Monica Weiss Sharp.

Witness to rollaway accident involving City carrier Janet Bowman.

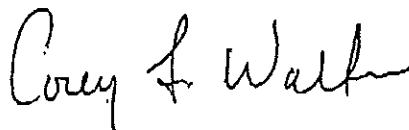
Interview was conducted by telephone on March 29, 2011 at approximately 3:05 pm. Ms. Weiss Sharp lives at 227 Carden.

I called Ms. Weiss Sharp and identified myself as Shop steward Corey Walton. I asked her if she was indeed a witness to the rollaway accident and she said that she was. I asked her if she didn't mind giving me her statement over the phone and she said she did not mind. I informed her I would be writing down the statement and she said that was fine. At this time she gave me her statement, which is as follows:

" I was pulling down our street and I saw the postal vehicle sitting in the middle of the street. Vehicles always park on the curb because we don't have garages. The postal vehicle was on the appropriate side so I was going to try and pull around it. As I approached the vehicle I saw it begin to move backwards and noticed that Jan wasn't in it. I honked my horn and saw Jan was already running after it. I saw her get even with it but she was not able to get in it. I pulled in my driveway and began to run after the vehicle with her. I was there with her at the same time when the vehicle came to a stop at the end of the cul-de-sac. I asked her if she was ok and she said yes. I clearly saw that the handbrake was set and the vehicle was in park."

That concluded her statement.

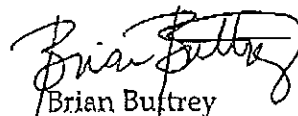
Shop Steward Belle Meade



Corey L. Walton

On March 29, 2011, I received a call from Corey Walton that Ms. Jan Bowman had had an accident while on her route and that he had talked with Tim Freels, Supervisor at Belle Meade Station, and needed me to go out and be the union representative for Ms. Bowman because it was Mr. Walton's day off and I am the Assistant Shop Steward.

I arrived at Carden Avenue. Ms. Bowman was there by herself. I got out and asked Ms. Bowman if she was okay. She said that she was. I asked her if Mr. Freels been there yet. She said no. I asked her if she had his number. Ms. Bowman said it's in my purse in the truck. Ms. Bowman opened the door to her postal truck, got in the vehicle, lowered the parking brake, reached under the mail tray, and got her purse. As she did, she grabbed the steering wheel to steady herself and I noticed that the steering wheel was not locked. I asked Ms. Bowman if her steering wheel locked and she said that she had not noticed. I asked her to get out of the vehicle. I looked at the gear selector to make sure it was in park. It was. I said do you have the keys to the vehicle? She said that she did and she took them off of her belt and handed them to me. I put the keys in the ignition, turned it forward, then back, and the steering wheel would never lock. I again looked at the gear selector to make sure it was in park. It was. I left the keys in the ignition so that I could point this out to Mr. Freels when he arrived. Mr. Freels arrived a short time later and I showed him the condition of the steering wheel, that it would not lock with the keys in or with the keys out. A short time later, Mr. Mike Vaughn, Area Supervisor, arrived and also Ms. Kim Alley, from Safety. I pointed out this steering condition to Ms. Alley. She tested it for herself with the keys in and the keys out that the steering wheel would not lock. A few minutes later, Mr. Freels told me that he needed to ask Ms. Bowman some questions and that he wanted me to be with her when he did. As the three of us were gathering, I noticed Ms. Alley had called Mr. Vaughn over to the vehicle and was pointing out the steering wheel condition to him. I saw him nod in the affirmative as she was showing him this. Mr. Freels questioned Ms. Bowman. At the end, Mr. Freels instructed Ms. Bowman to put the mail from her vehicle into the postal van that he was driving. I helped Ms. Bowman do that and then Mr. Freels, Ms. Bowman and I left.

  
Brian Buttre  
March 31, 2011

To whom it may concern,

On March 29, 2011 I was contacted at home by phone that one of the letter carriers in my station was involved in a rollaway accident. Assistant shop steward Brian Buttrey informed me that he was on scene and had major concerns about the safety of the postal vehicle. He informed me that the steering wheel would not lock into place when the key was removed from the steering column. He told me that he had expressed his concerns with Supervisor Tim Freels. He demonstrated that the wheel would not lock into place when the key was in or out of the ignition. Supervisor Freels acknowledged what Mr. Buttrey was showing him.

At that time Mr. Buttrey said he expressed his concerns to Acting Safety Manager Kim Alley, who was on scene. She moved the steering wheel herself and also acknowledged that in fact the steering wheel would not lock into place with the key in or out of the ignition. At that time Mr. Buttrey informed me that Ms. Alley showed Acting MCSO Mike Vaughn. He moved the wheel himself while the key was out of the ignition and was not able to get it to lock into place.

On March 30, 2011 I called the VMF and spoke with supervisor Robert Montgomery. I asked him when was the last time vehicle 0238431 was taken in and serviced. He told me that it was serviced on February 23, 2011 and closed out on the 24<sup>th</sup>. I asked him what was the proper term for the pin that locked the steering wheel in place when the vehicle was turned off and the key was removed from the ignition. He said he didn't know what it was called. I ended my conversation with him at that time.

On March 31, 2011 at 9:00 am, by phone, Ms. Alley. I asked Ms. Alley if Assistant Shop steward Brian Buttrey had indeed shown her that the steering wheel of the postal vehicle would not lock into place with the key in or out of the ignition. She told me that the key was in the vehicle when she got there. I said I appreciate that but that wasn't the question. I again asked her the same question. She admitted that she did witness for herself that the wheel would not lock into place when the key was in or out of the ignition. I then asked her if she had taken MCSO (a) Mike Vaughn to the postal vehicle and shown him what she had seen. She said she could not remember. I said that the accident was just two days ago and she couldn't remember if she had shown Mr. Vaughn that the wheel wouldn't lock. She said it was just so busy she couldn't remember. I ended my interview of her at that time.

I then contacted by phone MCSO (a) Mike Vaughn at approximately 9:40 am on the same day. I asked him if Ms. Alley had shown him, on the day of the accident, how the wheel would not lock into place with the key in and out of the ignition.. He said yes she did. I then asked Mr. Vaughn if he indeed saw how the wheel would not lock into place with the key in or out of the ignition. He told

me that the key was in the vehicle when he got there. I then stated that he and Ms. Alley had that part down but that wasn't the question. I then asked the question again and he said yes he did see for himself that the wheel would not lock into place with the key in or out of the ignition. I ended my interview at that time.

On Saturday April 2<sup>nd</sup> when I returned from my route Supervisor Tim Freels informed me that he had gone to the VMF earlier that day and inspected the vehicle for himself. I asked Mr. Freels why he would have done that and he stated that he had called the VMF the day prior and someone told him that as of the 1<sup>st</sup> (Friday) that vehicle hadn't been touched.

On April 6, 2011 I returned to work from my day off. The vehicle that had been involved in the rollaway had been returned to the Post office. Supervisor Freels handed me a letter dated March 30, 2011. It was from Nashville VMF Supervisor (a) Robert Montgomery. It stated that the vehicle had been thoroughly checked over by his lead technician Russell Tummins. I found the letter odd because it was dated the same day that I had called Mr. Montgomery. In the letter he describes the "locking pin (pawl) inside the transmission itself locks the transmission output shaft (driveshaft) and prevents any movement of the vehicle." He had informed me on the same day that he did not know what the pin was called. He then went onto say in his letter that the vehicle went through several component checks and at the conclusion of the test he found the vehicle to be in safe, proper working condition.

On the same day, April 6, 2011 I called city carrier Scott Tomlinson who was driving the vehicle in question. I asked him if he had checked the vehicle to see if in fact it was fixed. He said that he would pull over and check. I asked him if the wheel would lock into place with the key out of the ignition. He said no it wouldn't. I then asked if the vehicle would roll in reverse with the handbrake set and the vehicle turned off. He said yes it will. He then said he could turn the vehicle off, take the key out of the ignition and easily move the gearshift from park to reverse. I told him that vehicle was unsafe and instructed him to deliver what little route he had left on foot. Route ten is a majority walking, hopping route and he had a few loops left. When I returned to the station I informed Supervisor Freels that the vehicle was unsafe. I then put in a request for information form. On the form I requested to " Videotape (with audio) FFV # 0238431. The union would like to videotape this vehicle inside and out for possible safety violations."

On April 7, 2011 I asked City Carrier Lisa Yarbrough, who was delivering route ten, what vehicle key she had. She informed me that she had the key for vehicle 0238431. I told her I was not going to let her drive that vehicle. I then filled out a safety form and vehicle repair form on that vehicle and the fact that management was going to let someone continue to drive the unsafe vehicle. Mr. Freels instructed Ms. Yarbrough to take another vehicle. A few minutes later Supervisor Freels told me I had a phone call from MCSA (a) Mike Vaughn. Mr.

Vaughn asked me what I wanted to video on the vehicle. I informed him that the vehicle was still unsafe and I wanted it on video showing that nothing had been done to fix it. He then said that my request was too vague. I said I didn't agree. My request stated that I wanted to video the vehicle for possible safety violations. He said he needed more than that to approve the request. I asked him what would he want me to put on the request to make him feel better. He asked who was going to be with me and I informed him President Dave Clark was going to be with me. He said put down "Dave Clark and union representative will be performing their investigation of the vehicle." I then added that to my request form and faxed it to MR. Vaughn. Mr. Vaughn denied my request on April 8, 2011 stating in part that neither Dave Clark nor Corey Walton is qualified to conduct vehicle inspections on postal vehicles.

Also on April, 7 2011 I asked President of Branch 4 Dave Clark to come and see the vehicle himself. At 10:00 am he arrived at Belle Meade station. Mr. Clark, Assistant shop steward Brian Buttrey, Safety captains Mike Wilson and Steve Weakley and Myself performed a safety check of the vehicle. Mr. Buttrey took his key from route 522 and started route 510s vehicle. He then took route 510s key and started the vehicle. I asked Mr. Buttrey to pull the vehicle out into the alleyway which he did. The alleyway has a slight incline. I then asked him to put the vehicle into park, which he did. I asked him to turn off the vehicle and remove the key and he did. I asked him to move the gear selector to reverse which he did with ease. I asked him to do it again and he did with the same result. I then asked him to keep the vehicle in reverse and with his foot on the brake apply the hand break. I then asked him to remove his foot from the brake and the vehicle immediately began rolling down the alleyway. I asked him to pull back up and do it again which he did with the same result. I then asked him to turn off the vehicle and remove the key from the ignition. I asked him to see if the wheel would lock into place which it would not. It turn completely around in both directions. At that President Clark himself moved the wheel in both directions. I then asked Mr. Buttrey to start the vehicle and put it into drive with his foot on the break. I then instructed him to turn off the vehicle while it remained in drive and he did. I then asked him to remove the key from the ignition which he did with ease. I asked him to do it again, which he did with the same results. All five of us witnessed this first hand.

On April 8, 2011 Supervisor Tim Freels informed me that the VMF was coming to get the vehicle. I asked Mr. Freels if it would be ok if I showed whomever came to get the vehicle my concerns and he said yes that would be fine. At approximately 10:00am a gentleman entered the post office and Tim informed him that I wanted to show him my concerns about the vehicle. He introduced himself as Supervisor Robert Montgomery. Mr. Montgomery, Safety captain Steve Weakley, city carrier Scott Tomlinson (sub for route 510) and myself went to look at vehicle # 0238431. While walking to the vehicle I asked Mr. Montgomery if anyone outside the VMF had access to this vehicle while it was down there. He said "no". I asked him if the vehicle was in a secure place to

keep people from getting to it. He said "yes only people at the VMF had access to that vehicle." I asked him if he was sure and he said "yes". I then informed him that Supervisor Tim Freels had informed me that on Saturday April 2<sup>nd</sup> he had gone to the VMF and did his own inspection of the vehicle. Mr. Montgomery said he doesn't work on Saturday so he didn't know about that, but it shouldn't have happened.

At that time we arrived at route 510s vehicle. I asked Mr. Montgomery if he was the one who had written the letter stating the vehicle was in a safe, proper working condition and he said "yes". I said "good you are just the one I needed to see". At that time I asked city carrier Scott Tomlinson to enter the vehicle and pull it out into the alleyway. When the vehicle was in the alley way I asked Mr. Montgomery to step up to the drivers side door so he could observe what my concerns were.

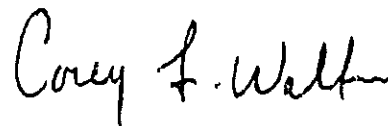
At that time I asked Mr. Tomlinson to place the vehicle in park, turn off the vehicle and remove the key, which he did. I then asked him to move the gear selector to reverse which he did. Mr. Montgomery then stated that Mr. Tomlinson had to use a little force to do that. I instructed Mr. Tomlinson to do it again but much slower. Mr. Tomlinson then returned the gear selector back to park and with TWO fingers moved the gear selector with ease to reverse. I asked him to do it again and he did. Mr. Montgomery stated "it definitely shouldn't do that". I then asked Mr. Tomlinson to apply the hand break and while the vehicle is off and the key removed from the ignition firmly put his foot on the brake. I then asked him to place the vehicle in reverse and remove his foot from the break, which he did. The vehicle immediately began rolling down hill. I then instructed Mr. Tomlinson to do it again. Mr. Montgomery stated that the hand break wasn't high enough so Mr. Tomlinson pulled it higher. I asked Mr. Montgomery if he was satisfied and he said yes. Mr. Tomlinson again removed his foot from the brake and the vehicle immediately began rolling down hill. I asked Mr. Montgomery if he understood why I was concerned about the vehicle and he said "Yes". I then asked Mr. Tomlinson to turn the steering wheel while the vehicle was off and the key removed which he did. He turned the wheel in both directions completely around. I asked Mr. Montgomery was he satisfied with that and he said yes. I then instructed Mr. Tomlinson to start the vehicle and place it into drive, which he did. I told him while the vehicle was still in drive to turn the vehicle off which he did. I then asked him to remove the key which he did with ease. I instructed him to repeat that scenario and he did. I asked Mr. Montgomery again did he see why I was concerned about this vehicle and he said "that's why it's good for me to come and see these things first hand. Now I understand what you are talking about and I can no longer say that this vehicle is safe". I then asked Mr. Montgomery if it was safe to say that they did not perform a thorough investigation of this vehicle and he said "yes, they just do a few spot checks on them when they come down." He then said that if the gear selector has a little play in them then they will look further into them.



When I returned inside the Post office Mr. Montgomery came in with the key to the spare vehicle. I informed Mr. Montgomery that a mechanic down at the VMF had informed me that the handbrakes for the VFF's were not meant to keep the vehicle from rolling in reverse only from rolling forward. He said "that's right". He then began to explain how terrible the braking mechanism was on the VFFs and they constantly had to change them out. He said that the braking mechanism in these vehicles was shoddy and looks makeshift. He then said the pads on these vehicles are (holding his fingers about a ¼ inch apart) this thick. He then stated that he would have to get permission from whoever was leading the investigation to tear the engine apart because he wanted to see what the problem was. I then said "so you are admitting there is a problem with that vehicle". He said "yes, it shouldn't be doing all that it's doing". I then informed him that Mr. Freels is conducting the investigation so he would have to ok it. He said he wasn't sure because the only people that had called him were I and Mike Vaughn.

Mr. Montgomery then told me it was very difficult to simulate carrier conditions where they are at. He said it was a flat surface and just very difficult. After Mr. Montgomery had left with the vehicle Supervisor Freels informed me that Mr. Montgomery had told him that with what the carriers had shown him about the vehicle he deemed the vehicle unsafe.

Shop Steward Belle Meade

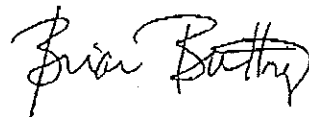


Corey L. Walton

5

On April 7, 2011, I was called from my case by Mr. Corey Walton. He told me that he needed me to come to the back parking lot with him, Mike Wilson, Steve Weakley (Safety Captain), Scott Tomlinson, and Dave Clark (Branch 4 President). Mr. Walton wanted me to demonstrate to Mr. Clark the fact that the vehicle assigned to Route 10, which had been examined by vehicle maintenance, deemed safe and put back into service, was in fact unsafe.

We got out to the vehicle and realized that we did not have the key. While we were waiting for someone to retrieve the key, I inserted the key for my postal truck into Route 10's vehicle door and it opened the door. I then stuck my key in the ignition. The ignition cylinder turned using the key for my vehicle. We then put Route 10's key in the cylinder, started the vehicle, and moved it to the ally where there is a slight incline. I then turned the ignition off, put the vehicle in reverse, let off the brake, and the vehicle rolled backwards with the engine off. I took the key out of the ignition while the vehicle was rolling back and showed this to Mr. Clark. I then started the vehicle and pulled it back up. I put the vehicle into park, set the parking break, turned the ignition off, let my foot off the brake, and the vehicle rolled backward. We reset the parking break, pulling it up even further, performed the same maneuvers and again the vehicle rolled backward. We repeated this several times. Each time, the vehicle rolled back. If it was in drive, if it was in reverse, or if it was in park, the vehicle rolled backwards. I demonstrated these things as Assistant Shop Steward in front of Dave Clark, Branch President, Corey Walton, Belle Meade Shop Steward, Steve Weakley, Safety Captain, Mike Wilson, and Scott Tomlinson.



Brian Buttrey

To whom it may concern,

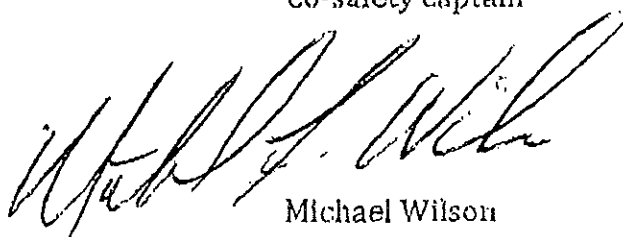
On April 7<sup>th</sup>, 2011 at approx. 10:00 am shop steward Corey Walton approached my case and asked if I would come outside and observe a safety check on a vehicle. When I got outside I observed vehicle #0238431 being pulled into the alley way. Present for the safety check were President of Branch 4 Dave Clark, Assistant shop steward Brian Buttrey, Co safety captain Steve Weakley, Shop steward Corey Walton and myself. Brian Buttrey was seated in the vehicle.

At that time Mr. Walton asked Brian to turn the vehicle off and remove the key. He then asked him to move the gear selector to reverse, which Brian did rather easily. Mr. Walton asked Brian to do it again, which he did with the same results. At that time he told Brian to keep the vehicle in reverse and keep his foot on the brake and pull up the hand brake. He then instructed Brian to remove his foot from the brake and the vehicle began to roll down the alley at a good amount of speed. Mr. Walton asked him to pull back up to us and do it again, which Brian did with the same results.

At that time Mr. Walton asked Brian to turn off the vehicle and remove the key. He then asked Brian to turn the steering wheel to see if it would lock into place and it did not. Mr. Clark then reached in and moved the wheel in both directions almost completely around and it would not lock into place. Mr. Walton then asked Brian to start the vehicle and with his foot on the brake move the gear selector to Drive. Mr. Walton then asked Brian to turn off the vehicle while it was still in drive and remove the key from the ignition. Brian did just that. Mr. Walton asked him to do it again and he did with the same results.

This vehicle had been returned to us a few days earlier stating that it had been inspected and was safe for the carrier to drive. As one of the safety captains I am deeply concerned that a vehicle had been returned to us after a rollaway accident in the same unsafe condition as before. I would hate to think an innocent child or anyone for that matter would be injured or God forbid killed because this vehicle was returned in such a manner.

Co-safety captain

A handwritten signature in black ink, appearing to read "Michael Wilson", written in a cursive style.

Michael Wilson

# REPORT OF HAZARD, UNSAFE CONDITION OR PRACTICE

## I. Employee's Action

Area (Specify Work Location) Vehicle # 0238451		
Describe Hazard, Unsafe Condition or Practice. Recommended Corrective Action. Vehicle was inspected by VMF on March 30th 2011. Vehicle was returned to Bellemede on April 5th 2011. This vehicle is still unsafe. The wheel does not lock in place vehicle will still move in reverse while handbrake set, vehicle gear shift will move from park to reverse while key is out of it. Vehicle still full of glass.		
Employee	Signature Craig L. Walker	Date and Tour 4/7/2011

## II. Supervisor's Action

Recommend or Describe Specific Action Taken to Eliminate the Hazard, Unsafe Condition or Practice. (If Corrective Action Has Been Taken, Indicate the Date of Abatement.) Called VMF and Reported		
Supervisor	Signature Lynn Franks	Date 4-7-11

## III. Approving Official's Action

(Check One and Complete)

<input checked="" type="checkbox"/>	The Following Corrective Action was Taken to Eliminate the Hazard, Unsafe Condition or Practice (Indicate Date of Abatement): A Work Order Has Been Submitted to the Manager, Plant Maintenance, to Effect the Following Change: There Are No Reasonable Grounds to Determine Such a Hazard Exists. This Decision is Based Upon: Truck Picked up by VMF 4/8/11 FOR Repair		
<input type="checkbox"/>	There Are No Reasonable Grounds to Determine Such a Hazard Exists. This Decision is Based Upon:		
Approving Official	Signature T.F.	Date 4-8-11	Date Employee Notified 4-8-11

Form Filled

This x is not on top two copies. T.F.

## IV. Maintenance Action (Complete If Necessary)

Maintenance Supervisor	Signature	Date	Date Hazard Abated
------------------------	-----------	------	--------------------

DAVE CLARK, Vice President  
RON ERLAND, Treasurer  
J.E. WOODARD, Financial Secretary  
MICHAEL ENGLAND, Sergeant-At-Arms  
GLENN WATTS, Director of Retirees

M. L. (Rip) MALONE  
BRANCH NO. 4

BOB KING, JR., Health Benefits Representative  
RAY RAYMER, N.S.B.A. Clerk  
C. R. HIRST, Trustee  
DALE LYLES, Trustee  
JAMES BROWN, Trustee

# National Association of Letter Carriers

THOMAS L. ROLLINS, President  
Suite 212, Bldg. C  
211 Donelson Pike  
P.O. Box 140816  
Nashville, TN 37214  
(615) 883-7867



CHRISTOPHER VERVILLE, Secretary  
Suite 212, Bldg. C  
211 Donelson Pike  
P.O. Box 140816  
Nashville, TN 37214  
(615) 883-7867

## REQUEST FOR INFORMATION (CONTRACTUAL)

Belle Meade/Nashville  
Station/Office

Date of Request 4/6/11

Dear Management:

Pursuant to Articles 17 and 31, of the National Agreement, I am requesting copies of the following information and/or documents, these documents are needed to investigate a possible grievance.

Videotape (with audio) FFV # 0238451. The union would like to videotape this vehicle inside and out for possible safety violations. Dave Clark and union representatives will be performing their investigation of the vehicle

This information/documentation is needed for the union to investigate a **POSSIBLE GRIEVANCE** pertaining to: 14, 16, 19, 17

Management's Signature: [Signature] Date: 4-6-11

Date Union received documentation Denied 4/8/2011

Thomas L. Rollins, President  
NALC Branch 4  
Nashville, TN, 37214-0816



April 8, 2011

MEMORANDUM FOR: NALC

SUBJECT: Request For Information on 04/07/11 (Jan Bowman)

The request states "The union would like to videotape this vehicle inside and out for possible safety violations. Dave Clark and union representatives will be performing their investigation of the vehicle."

This request is denied.

Dave Clark and union representatives were notified immediately when the accident occurred and had a chance to come to the scene and conduct an on scene investigation. Also, the request for conducting their own investigation of the vehicle is also denied because neither Dave Clark nor Corey Walton is qualified to conduct vehicle inspections on Postal Vehicles. However the union can interview the Vehicle Maintenance technician that provided a written report to Management and the NALC concerning his evaluation and investigation vehicle.

Mike Vaughn  
MCSO (A)

POSTMASTER'S OFFICE  
901 BROADWAY  
NASHVILLE, TN 37202-9998  
PHONE: 615-255-8844

4/20/2011

Untitled Document

**From:** Steve Weakley (reddnexx@att.net)  
**To:** reddnexx@att.net;  
**Date:** Wed, April 20, 2011 5:33:25 AM  
**Cc:**  
**Subject:** Re:

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**From:** Steve Weakley <reddnexx@att.net>  
**To:** reddnexx@att.net  
**Sent:** Wed, April 20, 2011 5:25:17 AM  
**Subject:** Fw:

----- Forwarded Message -----

**From:** Steve Weakley <reddnexx@att.net>  
**To:** Corey Walton <wltncry@yahoo.com>  
**Cc:** Scott Tomlinson <Tomlinson386@att.net>; Jan Bowman <myjanbowman@gmail.com>; Brian Butrey <bkbccb@comcast.net>  
**Sent:** Mon, April 18, 2011 11:39:11 AM  
**Subject:**

April 8, 2011

My name is Steve Weakley, I am the Safety Captain at Belle Meade Post Office, 37205. On 4-8-2011, Corey Walton (the shop steward at Belle Meade) asked me and Scott Tomlinson (the utility carrier for route 510) to be witnesses for an inspection being done by Robert Montgomery, a trainee supervisor from VMF.

Corey and I were waiting on the back dock area when we saw a person in regular street clothing walking up the back dock ramp. As this person got closer we could not see an Identification Badge and Corey asked him to show some ID. Without even slowing down this unidentified person reached into his back pocket, took out a billfold, flipped it open and as he walked past us he briefly flashed what appeared to be something looking like a Postal ID. He did not stop to show his photo or name to anyone, just walked on past without any regard to safety procedures upon entering a Postal facility where he had never been and was not known. I mentioned to Corey that this was not only a disregard for safety but rude. Whoever he was he continued into the Post Office and went to the supervisor desk where Timothy Freels was seated. Timothy is the Carrier Supervisor at Belle Meade station.

Tim walked this unknown person back to where Corey and I were and introduced him as Supervisor Robert Montgomery from VMF. We went to where FFV #0238431 was parked. Corey asked Mr. Montgomery if anyone other than VMF employees had access to this FFV while it was at VMF. Mr. Montgomery said that no one had looked at the FFV and that they couldn't because it was in a secured area where no one could get to it. Corey asked him if he was sure of this and he said yes. Corey then informed him that Tim Freels had told him (Corey) that he (Tim) had inspected the FFV at the VMF on 4-2-2011, a Saturday. Montgomery said he didn't work Saturdays but no matter no one should have been allowed to see the FFV,

Corey asked Montgomery if he knew who had written the Safety Report that said this particular FFV was safe to operate, and in good working order and should return to the station. Mr Montgomery admitted he was

1/3

the person that wrote the report and Corey answered "good you're the person I need to talk to". About this time Scott moved the FFV into the alley (note: the alley is on a slight incline and the FFV was headed upward which would have allowed it to roll backward if it was in need or repair). Corey asked Scott to put the FFV in Park, turn the FFV off and remove the key. Scott did this and Corey asked Scott to put the selector lever in Reverse and with the FFV turned off and the key out of the ignition Scott was able to move the selector in Reverse. Mr. Montgomery commented that Scott had used too much force to do this maneuver, I did not think so, but Corey asked Scott to repeat this procedure again and this time Scott used only two fingers and a very light shifting motion and got the same results, where the selector moved into Reverse with the FFV turned off and the key out of the ignition.

Scott repeated the "two finger" shift several more times and Mr. Montgomery stated this should never happen (I assume he meant that the FFV shouldn't shift as it had and not that Scott shouldn't use two fingers). Corey asked Scott to pull the hand brake up and take his foot off the brake pedal. Scott did and the truck rolled backward. Corey asked Scott to repeat everything he had just done and Mr. Montgomery asked that the hand brake be pulled up harder, Scott complied and got the same results; with the engine off, the transmission in Reverse, the hand brake set firmly the FFV rolled away again. Corey asked Scott to start the FFV, put the gear selector into Drive, turn off the ignition, remove the key and turn the steering wheel in both directions as far as it would go and Scott did all this and again after Scott removed his foot from the brake pedal the FFV rolled away again.

Corey asked Mr. Montgomery if he understood our concern with this FFV, Mr. Montgomery said he understood our concern, that is was a good idea to go to a station and see in person what the carriers were concerned about. Mr. Montgomery said that in nearly all instances vehicles were only given "spot checks" and thorough investigations were rarely done and no thorough investigation was performed on this FFV. Mr. Montgomery stated at this time that if he knew of all the defects with this FFV he would have deemed it to be UNSAFE and would not have put it back into service.

I asked Mr. Montgomery if he knew of any other FFV roll away accidents that involved the problems we had just witnessed and he said no. I asked him if he knew of the ones happening in other States and he said he did not know of any and asked if I knew of any, I said that I did, he asked how I knew and I told him he could find them on Google. I wonder if he took the time or cared enough to look?

I am wondering after all that Corey Walton has done to prove that the letter carrier, Jan Bowman, isn't at fault and he has shown repeatedly to several different management personnel that an FFV is defective and that it maybe exactly the same across the United States; why hasn't management taken this safety matter of FFVs rolling away even after carriers have dismounted safely, seriously? With all the Safety concerns stressed every day by management: mirrors that aren't adjusted properly will get you a Letter of Warning leading to Removal; shoulder belts not buckled to the lap belts parked in the Postal parking lot and the carrier clocked off and going home can get you a Letter of Warning leading to Removal; failure to "curb" your wheels can get you a Letter of Warning leading to Removal (and I have yet to see any management personnel "curb" their wheels when they come to our station); wouldn't it seem more dangerous to have a fleet of FFVs that have shown they will roll away, on their own, and wouldn't it seem vitally important that management make THIS safety problem a number 1 priority and not try to cover it up by putting the blame onto carriers that were faultless? USPS we got a problem!!!!

I'm a thanking you now,





To Whom it may concern

On April 8<sup>th</sup>, 2011 I started casing mail on route 510 at the Belle Meade Post Office. I've been the utility person for route 510 for about 3 years and have carried mail for 24 years. I was on route 510 casing mail on 510 when shop steward Corey Walton asked me to follow him to the truck (#0238431) route 510. Corey Walton, Steve Weckley (safety captain), Robert Montgomery (supervisor vehicle maintenance, and myself were walking out together. I heard Mr. Walton and Mr. Montgomery talking about truck 510 being secure so no one could tamper with it at the VMF. Mr. Montgomery responded the truck was secured, Mr. Walton told Mr. Montgomery that supervisor Mr. Tim Freels told him that he had gone to the VMF on Saturday April 2<sup>nd</sup> to look at the truck.


Mr. Walton then asked me to get in vehicle (0238431) r.t. 510 truck and show would not lock with key out of ignition, I then got into the vehicle to demonstrate to Mr. Montgomery, I put the key in the ignition put the truck in park, pulled the hand brake, then turned key in off position and pulled it out of the ignition. I then pulled the gear selector into reverse with very little force, and the truck started to roll with key out and hand brake up.

Mr. Montgomery was not pleased where I had the hand brake or how I pulled gear selector back. Then I pulled the hand brake higher and put the truck back in park with key out of ignition and proceeded to pull the gear selector into reverse with two fingers and very little force. I had then demonstrated how you can put the vehicle into drive and pull the key out of ignition, I have never seen any vehicle able to pull the key out of ignition while out of park. Mr. Montgomery also witnessed how the steering wheel would not lock with key out of ignition.

Mr. Montgomery was commenting to Steve Weckley (safety captain), Corey Walton and myself how he agreed this truck is not safe, I made the comment to him you could never do this with an LRV, they would not move even if vehicle was running and you pressed the sas.

On April 19<sup>th</sup> the VNF brought Truck #0238431 back to Belle Meade and had replaced ignition and what appeared to be steering locking mechanism. The truck had new keys and door locks, and now works properly, key will not come out of ignition out of park and everything locks with key out.

I have been in the postal service for 24 years and have driven many different vehicles and this is the first time I have witnessed a vehicle this unsafe.

Thank you  
Scott Tomlinson  


To Whom It May Concern:

On 3/29/11, J. C. Byrd, Station Manager of Belle Meade called to inform me that letter carrier Jan Bowman's postal vehicle had been involved in a roll away. He assured me that no one was injured and that the vehicle had rested on a mound next to a guardrail. The assistant steward at this station called me shortly after the station manager and began to inform me what he had observed. I was involved in a meeting and could not leave to visit the scene of the accident. Assistant Steward Buttrey shared with me the fact that when the ignition key was out of the vehicle and the shifter in park, the steering wheel would not lock. The next day I spoke with the regular steward, Corey Walton about the accident and he shared with me that a customer had witnessed the vehicle when it had began to move from its parked position. Corey also called me on 4/6/11, to inform me that the vehicle that was involved in the roll away was back and he still had concerns with the safety of this vehicle. I told him that I had to be at Melrose Station the next morning for an I I and I would come to Belle Meade after I was through and take a look at the vehicle. When I got to Belle Meade, Brian Buttrey, Steve Weakley, Scott Tomlinson, Mike Wilson and Corey went to route 10's vehicle (# 0238431) where carrier Buttrey began a series of test. He first showed that the ignition switch of this vehicle was faulty. You could turn the switch with any key or without a key. He then proceeded to show that the brake would not hold the vehicle from going backwards while on an incline. He then showed that with the key out of the vehicle and the gear shifter in park, he could easily move the shifter out of park. I got in the vehicle and performed the test of placing the shifter in the park position and turned the key in the off position, which is when the steering wheel is suppose to lock and it wouldn't. It is the union's contention that with all of these mechanical problems the Postal Service will not be able to bear the burden of proof that the carrier was responsible for this roll away and should return Carrier Bowman to work immediately and also make the proper repairs to make this a safe vehicle.

NALC Branch 4 President  
Dave Clark

FFV  
When ~~CRV~~ Truck # D227375 was brought into the VMF to be inspected for mechanical problems after a rollaway accident, I went to my Supervisor, Janice Orr to ask that I not be the lead mechanic on the inspection since I was the regular mechanic for this truck. I wanted no conflict of interest in this investigation.

I did some simple test for MY DOWN CONCEPT  
Various tests were done, but none under the exact conditions that the truck was in at the time of rollaway. I voiced my concerns immediately and repeatedly that the test done were not 100% conclusive.

FFV  
Several years ago this same situation came up with another CRV. I would pull this information but the maintenance jacket is purged about once a year. The other CRV rolled away and was brought to the VMF to determine if there were any mechanical problems. Just as this situation everything seemed to be working properly, but it was sent out to a local dealer and only after pulling the transmission was it determined there was a mechanical problem.

I have also expressed to my supervisor that after driving a vehicle all day under the conditions a letter carrier would experience are not the same as the test conducted on this vehicle. At this point, my supervisor told me that I just needed to keep my nose out of it.

At best only ASSUMPTIONS have been made concerning the cause of this CRV roll away.

There are too many variables to determine what may have caused this incident and one being after this make of vehicle has been driven all day applying the brakes and park brake repeatedly the park brake becomes less effective and given a steep enough incline it could potentially cause the park brake not to hold.

I am a Certified Mechanic and one of the Lead Mechanics at the Chattanooga VMF.

*Alvin M. [Signature]*  
9/24/2010

THIS IS A VETERAN  
MECHANIC THAT INSPECTED LEE  
PORTER'S TRUCK AFTER THE ROLL-AWAY.

WORN LINKAGE, FALSE PARK,  
EMERGENCY BRAKES DID NOT HOLD IN  
REVERSE.

179 1091 P. WILHOITE

## STEWARD INVESTIGATION UNCOVERS MECHANICAL FLAWS

A rollaway accident last December led to a carrier being issued a Notice of Removal in one of the offices represented by Branch 47. Joe Halling, the NALC Steward for that office, began an intensive investigation into the mechanical repair records for the FFV vehicle involved in the rollaway.

His investigation uncovered a recurring problem with the FFVs. Although the FFV vehicles were only a couple of years old (2001), 15 of the 35 FFVs in that city had to have their gear shift assemblies removed and replaced. Not only that, but of those 15 vehicles, two (2) of them had the gear shifts replaced twice and two (2) had the gear shifts replaced three (3) times! There was a recurring problem in all the FFVs that were repaired – the gear shift indicators were inaccurate. The problem was that the driver thought he/she was in one gear when, in reality, he/she was in another.

Initially, Steward Halling was given paperwork by management showing that the parking brake in the rollaway accident had been tested and everything looked normal. Fortunately, Halling decided to investigate more deeply. He requested copies of all maintenance records on the FFVs in that office. That was how he discovered the recurring problems with the gear shift assemblies. Over and over again, the repair records held examples of gear shift problems:

- "Gear shift indicator doesn't line up."
- "Indicator is way off."
- "Gear selector off one position."
- "Indicator broken – verified carrier's concern."
- "Indicator not accurate – wiring in lever bad."
- "Gear shifter is loose – is not shifting correctly."
- "Indicator broken – removed several pieces."

These are just a few examples of things that were written in the repair records. Had it not been for Steward Halling's determination to conduct such a thorough investigation, the gear shift problems would not have come to light.

Not only did the Steward's investigation put a spotlight on a safety hazard, but it also saved the employee with the above-cited rollaway from the Notice of Removal that had been issued. "I don't know how to thank him for what he's done for me," said the employee. "I had no idea how much the union does for carriers everyday until this happened to me. It has really opened my eyes to what the union does and I'm so grateful for it being there for me."



The CRV and the FUV are the new breed of postal vehicles – a product of abuse. Please verify and be aware that your transmission may not be in good repair. Notify management and vehicle maintenance to repair, if necessary. Protect yourself and your brothers and sisters who drive that postal vehicle.

<http://www.postalmag.com/stewardinv.jpg>

05/02/2011

12:13 p.m. Questioning Paul Legnon Master Mechanic  
Ford Two Rivers Service Center

I called Two Rivers Ford and talked with a man named John. I asked who was the most experienced mechanic that could answer a few questions about the Postal FFVs. (They service the Post Office vehicles as witnessed by the vehicle jacket sent by the VMF). He stated that would be Paul Legnon, Master Mechanic. He then went and got Mr. Legnon.

I introduced myself to Mr. Legnon and asked if he wouldn't mind answering a few questions and he said that would be fine. I discussed thoroughly the problems we found with the steering column in the vehicle that was in the rollaway accident. How you could put the vehicle in drive and with it still running and in drive turn the vehicle off and remove the key. I also told how the vehicles wheel would not lock into place with the key out of the ignition. I told him how the gear indicator could be moved from park to reverse with the key out of the ignition.

Mr. Legnon then stated " Mr. Walton I can tell you that those steering columns were simply not designed to handle the wear and tear that ya'll put them through. The constant starting and stopping wears out the components in that steering column. Those steering columns have too many aluminum parts for that. They simply wear out."

I then asked him if there was any way that key should be able to be removed from the ignition while the vehicle was still running and in drive. He said, " absolutely not. Under no circumstances should you be able to remove that key from the ignition while it's running. Regardless of what your doing to it. That key should never come out while in gear. I see the same things with UPS trucks. They just simply wear out. Those columns are just about all aluminum. They will wear out."

I thanked him and that was the end of my interview.

Paul Legnon Master Mechanic 615- 515-1042.

Shop Steward  
Corey L. Walton

<http://www.newsinferno.com/2009/04/>

# Feds to Probe Ford Explorer, Mercury Mountaineer SUV Transmission Dangers

Date Published: Thursday, April 30th, 2009

Federal regulators have opened a probe into possibly *faulty transmissions* on Ford Explorers and Mercury Mountaineer SUVs. According to *The Atlanta Constitution-Journal*, some owners of these Ford SUVs have complained that they can unexpectedly slip out of park.

Consumers have filed scores of complaints with the *National Highway Traffic Safety Administration* (NHTSA) regarding transmission problems with the Explorer, the *Constitution-Journal* said. Most involve a delayed engagement of the transmission when the SUV is shifted from park into reverse, or into reverse from another gear. Some complaints indicate problems with the vehicle slipping into gear from park.

The alleged transmission problem is also the focus of a lawsuit that started this week in Georgia's DeKalb County. According to the *Constitution-Journal*, the plaintiff claims she was paralyzed after her Ford Explorer SUV slipped out of park and into reverse. Her spine was fractured after the vehicle slipped into reverse and ran over her after she exited the SUV.

Ford has blamed the woman's accident on "operator error".

The woman's Explorer was one of several Ford vehicles covered by a transmission repair service bulletin issued by the automaker in January 2005, the *Constitution-Journal* said. The bulletin notified owners that the factory-installed transmission fluid may over time cause their vehicles to experience "delayed/harsh reverse engagements." Ford told owners to take vehicles to dealers, who would install a transmission fluid additive to correct the existing fluid.

The Atlanta Constitution-Journal published its report on the Ford Explorer SUV's transmission problems on April 21. Two days later, the NHTSA said it would be looking into the issue. Regulators are looking at 2002 through 2005 model year Explorers and Mountaineers; about 1.4 million of these SUVs were produced, the Constitution-Journal said.

The NHTSA's defect investigation documents says the agency has received 11 complaints of vehicle rollaways after the driver shifted the vehicle into park. In addition, 61 other vehicle owners have alleged failure of the gear shift lever mechanism while shifting from or to the park position.

While Ford maintains that it does "not see a safety risk" with the SUV transmissions, the company said it would be cooperating with the NHTSA probe.

Posted in *Motor Vehicles* | [32 Comments »](#)



### Terminology

The park to reverse or false park defect is sometimes described in different terms such as unintentional rearward movement, unintended rearward movement, unintentional reverse, unintended reverse, unintentional acceleration, unintended acceleration, powered reverse, failure to hold in park, slipped gear, inadvertent movement, inadvertent rearward movement, jumped into reverse, kicked into reverse, slipped into reverse, change gear, changed gear, back over, backed over, roll backwards, lurched backwards, roll back, rolled back, rearward runaway, accidental shift, shift alone, shift into reverse, shift out of park, sudden shift, switch gears and went into reverse.

<http://www.usautoinjurylaw.com/cases/defects/transmission/false-park.htm>

## False Park: A Deadly Transmission Defect

### The Transmission Defect Explained

The "false park" or "park to reverse" defect is a flaw in a vehicle's transmission in which it is possible for the driver unknowingly to place the transmission shift selector into a position between park and reverse during normal vehicle operations.

When a vehicle is in false park, it appears to the driver that the vehicle is fully in park. However, the transmission is neither in park nor in hydraulic reverse. Instead, it is in an unstable position between the two gears.

Slight movements can cause the vehicle to self-shift into reverse. When the vehicle is running, this will cause the vehicle to move backwards unexpectedly under power. If the driver exit the vehicle with the engine running (to retrieve an item, lock a house door, etc.), a vehicle in false park can shift into powered reverse, running over the driver or a bystander.

### Number of Vehicles with False Park Defect

The defect allegedly affects over a million vehicles on the road today, including:

- 1988 through 2003 Dodge Dakotas
- certain 1988 through 2006 Dodge Rams
- certain 1993 through 2004 Jeep Grand Cherokees
- certain Ford rear-wheel drive vehicles including the Crown Victoria/Grand Marquis, Ford F-150, 250 and 350 pick-ups, Ford SUVs such as the Explorer, and other Ford vehicles with substantially similar transmissions such as the Econoline, and
- certain Ford front-wheel drive vehicles such as the Ford Aerostar minivan

### Faulty Park Transmission Lawsuits Against Chrysler

Lieff Cabraser, with local co-counsel, has successfully litigated personal injury-based wrongful death cases on the false park transmission defect. The defendants have included Chrysler and Ford.

### A National Tragedy

There have been hundreds of accidents where people suffered debilitating physical injuries when a vehicle suddenly moved into reverse. It is likely that at least 13 people have died as a result of the defect in Chrysler vehicles alone. Auto manufacturers have refused to accept legal responsibility for these injuries. Instead, they regularly blames the driver for the accident and denies its vehicle was defective. Learn more about false park lawsuits.

### Contact Transmission Defect Attorneys | Lawyers

People who have been injured in accidents involving faulty transmissions, or family members of loved ones who have died, whether in Chrysler or Ford vehicles or ones made by other manufacturers, should click here to contact a lawyer at the national law firm of Lieff Cabraser.



U.S. Postal Service  
Vehicle Maintenance Work Order

Date: 4-8-11

Est. Due Date

Vehicle No: 0238431

Order No: 45811

Work Order Number: 2951

YEAR	OD %	HC (pts)
1975/77	5.8	580
1977/78	4.3	490
1978	3.3	390
1981 & Newer	1.2	220

LAST SCHEDULE MAINTENANCE DONE:

Vehicle Assigned To: **R. Meade**  
 Location: **Nashville, TN**

- SCHEDULED "A" (TZ)
- SCHEDULED "B" (TZ)
- (UNSCHEDULED)
- ROAD CALL(S)
- ACCIDENT(S)
- ACCIDENT(S)
- VANDALISM(S)
- THEFT(S)

Supervisor Signature: *R. Meade*

MODIFICATION ORDER NO. \_\_\_\_\_

WORKORDER CONTINUED FROM: 2205841

Date: 4/20/11

Account Code	Action Code	Description of Work (qualify when completed)	Vehicle Code	Employee No.	Mileage	ERT	Time	Clock Range	Date
24	02	Refr steering columnassy	16	25	88	1.5	2.5	1700-1850	4/8
24	02	Refr Axl Lockes	02	25	88	1.0	1.0	1800-1900	4/8
24	01	INSPECT PARK Brake System	13	25	88	1.5	1.5	1025-1200	4/11
24	01	" " " "	13	25	88	1.5	1.5	1200-1150	4/11

APR 9 2011  
 JAB

## VEHICLE MAINTENANCE FACILITY



March 30, 2011

Mr. Vaughn,

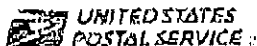
On March 29, 2011 our VMF was contacted with a call for recovering a roll away vehicle. I, Robert Montgomery, sent my mechanic Joel Lawson to Carden Ave to retrieve the roll away. The vehicle 0238431 was stuck on an approximately two feet high decorative wall in a customer's yard. The rear wheels had dropped off behind the wall and the frame was sitting on the top of the wall.

As Mr. Lawson was hooking the wrecker up to vehicle 0238431 the station supervisor checked the vehicle and informed my mechanic that the vehicle's park brake was off and ready to be pulled out. Mr. Lawson then continued on with recovering the vehicle off the wall and onto the street. Once on the street, Mr. Lawson and the supervisor accompanied by the safety officer, did an on the spot operations check of the vehicle. My mechanic demonstrated that with the key out of the locking cylinder and in hand, the steering wheel was locked into place and could not move. The gear shift lever also could not be moved from the park position. He also tested the vehicle's parking brake and determined that the brake held the vehicle properly and prevented the truck from moving, even while the vehicle was in gear. Everyone on scene was satisfied and the truck was returned to the VMF.

The next morning I sent my Lead Technician Russell Tummins to thoroughly check the vehicle 0238431 here at the VMF. Mr. Tummins visually and manually inspected each of the three components involved in holding the vehicle from moving. The first component checked was the key and steering wheel. When the key is removed and in hand, the shifter can not be moved from the park position. When the shifter is in the park position, a locking pin (pawl) inside the transmission itself locks the transmission output shaft (driveshaft) and prevents any movement of the vehicle. Also, the steering wheel locking mechanism is working properly and locks the steering wheel from being able to be turned in any direction while the key is out and in hand. The second component verified was the parking brake system. Mr. Tummins placed the vehicle in reverse and allowed the truck to roll backwards a short distance then applied the parking brake. The vehicle came to an abrupt halt and complete stop. Mr. Tummins then placed the vehicle into drive and attempted to move forward and the truck did not move at all. The third component checked is the transmission gear selector. At that point, he attempted to remove the key from the locking cylinder while the truck was in drive. It did not come out. He then placed the vehicle 0238431 into the remaining gear selections of one, two, neutral and reverse. The key once again was not able to be removed from the locking cylinder. Only when the truck shifter selector was placed into the park position, was the key able to be removed and placed into his pocket.

At the conclusion of our test here at the VMF, vehicle 0238431 is in safe, proper working condition.

Robert Montgomery  
Supervisor (A)  
Nashville VMF



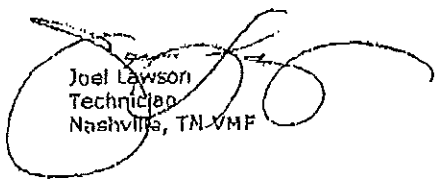
April 9, 2011

To Whom It May Concern:

On March 29, 2011 I was dispatched to Carden Ave to retrieve a FFV, 0230431, that was stuck on a rock wall. Once on scene I assessed the situation and planned out a method of extracting the FFV with minimal damage to the wall, that it had come to rest on, and vehicle. Once I figured out a way to extract the FFV I attached the wench cable from my wrecker to the FFV. When the FFV was secured to the cable the station Supervisor placed the FFV in neutral. Once everyone was clear of the FFV I began to extract the FFV. Once the FFV was on level ground I placed the FFV's shift lever in park and set the park brake. I then proceeded to inspect the vehicle for any damage that could not be seen from before. The FFV appeared to just have cosmetic damage to the body in front of the right rear wheel, right side cove glass, right side mirrors, and some body scratches/rub marks.

While I was inspecting the FFV, the station Supervisor asked me to check to see if the shifter, the key cylinder, and the park brake was all working properly. I demonstrated all with out any problems. The station Supervisor called the Safety Officer over and I demonstrated the same for her. Both the station Supervisor and the Safety Officer said they had seen enough and left.

I proceeded to load the FFV onto the wrecker and transport it to the Nashville VMF. Upon arriving at the VMF I unloaded the FFV and again checked the park brake, shift lever, and key cylinder, all ok. I advised my Supervisor of all activities.

  
Joel Lawson  
Technician  
Nashville, TN VMF



April 9, 2011

Dear Sirs,

On March 30, 2011 I was directed by my supervisor Robert Montgomery to inspect vehicle 0238431 as it had been involved in a roll away the previous day. I proceeded to check the vehicle's parking brake, transmission shifter, and the shift inter-lock mechanism. With the vehicle on an incline in the VMF parking lot and the parking brake applied, the vehicle did not move when shifted into neutral and my foot was removed from the brake pedal. I then tried shifting to reverse and drive. The vehicle still did not move, even with a slight amount of throttle applied. I also checked the transmission shift mechanism. With the lock cylinder in the locked position and the key out, the shifter lever would not move from the park position with a reasonable amount of force applied. With the key in the lock cylinder and the lock cylinder turned to the run position and my foot off the brake pedal, the shifter still could not be moved from park with a reasonable amount of force applied. Only with the lock cylinder in the run position and my foot on the brake could I then get the transmission to shift out of park. To test the vehicle's park mechanism I shifted the transmission to neutral and allowed the vehicle to roll back in its parking spot approximately a foot. I stopped the vehicle and shifted to park, then let off the brakes. The vehicle rolled about another three to four inches before engaging in park. I repeated this procedure again with the same result. I also tried several times allowing the vehicle to roll backwards while applying the parking brake. The vehicle stopped every time. I also noted that with the shifter in reverse, the key could not be removed from the lock cylinder.

I concluded on March 30, 2011 that vehicle 0238431 was safe to operate.

Russell Tummins  
Lead Technician  
Nashville Vehicle Maintenance Facility

VEHICLE MAINTENANCE FACILITY



April 11, 2011

Mr. Vale,

As requested by the Belle Meade Station I, Robert Montgomery, and my mechanic Joel Lawson arrived at on Friday, April 8<sup>th</sup> to retrieve the vehicle 0238431. While there I was able to talk to the carriers that were present and they were able to convey their concerns about the operation of the vehicle 0238431.

While using the normal key that is assigned to the vehicle the carriers demonstrated that the key was able to be removed while the vehicle shifter was not fully in park and they were able to shift the vehicle without the key in the locking cylinder. Under a normal functions check and operation of the key and shifter these two components were working properly as expected, but when operated with quick, jerking motions or while in haste the key was able to be removed and the shifter shifted improperly. The park brake was also checked at that time and when properly applied was able to hold the vehicle from rolling. As demonstrated to me by the supervisor, the park brake handle needs to be pulled upward a total of eight audible clicks in order for this particular vehicle, 0238431, to be held in place to prevent any forward or backward movement. When the vehicle was to be loaded onto the wrecker, the inside of the key cylinder broke prematurely and the vehicle was no longer able to be started. Reasons for this breakage could be from excessive and or harsh usage or simple daily wear and tear plus the age of the component.

Once the vehicle had returned to the VMF I had Mr. Lawson begin to remove and replace the steering column with a new assembly along with a new lock set for the vehicle. We also inspected the parking brake cables plus the linkage and removed the rear tires and rotors to inspect the parking brake shoes and we determined that the parking brake shoes and related parts are in good, working condition. When properly applied the parking brake holds the vehicle from moving in either direction.

I disassembled the removed steering column and carefully inspected the parts that are related to the key, locking cylinder, rack and gear, shift lock solenoid and shifter guide plate. My only findings were that the key was worn considerably thinner than that of a new key and the rack and gear have excessive play in it that could cause the key to be removed if the shifter was not fully seated in the park position. This problem has been resolved by replacing the entire steering column.

Under normal mechanical inspection the vehicle 0238431's key and shifter performed properly. When used in a hastily manner, these components did malfunction. The parking brake system is in very good, proper and safe working condition and will prevent the vehicle from moving when the park brake is properly applied.

Robert Montgomery  
Supervisor (A)  
Nashville VMF

707 CHRISTNUT STREET  
NASHVILLE, TN 37203-4700  
615 242-2886  
FAX: 615 726-2708



March 31, 2011

MEMORANDUM FOR:

Labor Relations

SUBJECT:

Roll away Accident – Jan Bowman

On March 29, 2011 at 12:10 pm, I received a call from the Manager of Belle Meade Station (Jeffery Byrd) that one of his carriers was involved in an accident at 230 Carden Ave. When I arrived on the scene, there were three people on the scene. One was the Supervisor (Tim Freels) and two carriers (Jan Bowman and B. Buttery). At that time, the Supervisor was taking pictures of the accident scene. I asked him if anything had been touched and he informed me that the carrier (Ms. Bowman) stated that "she has not touched the vehicle since it came to rest where it is now". About that time, two Safety Officials (Kim Alley and Tammy McDonald) had arrived on the scene. I asked if they had a camera so I could take more photos of the scene and Ms. McDonald had one. I walked up to the vehicle and took a couple of photos showing that the key was still in the ignition and that the hand brake was not set. I also took photos showing the distance between where the LLV started and ended rolling backwards, and the path the vehicle had taken.

At that point the vehicle, the mail was unloaded and put into two other vehicles to be delivered by other carriers. At that point Mr. Buttery informed the Supervisor that Ms. Bowman wanted to give her statement right there at the scene and since he was a Union Official, the statement was taken. After that, Mr. Buttery went back to his route to deliver mail and Ms. Bowman was taken back to the Station.

The Safety Officials and I waited for the tow truck driver to arrive on the scene. After he pulled the vehicle off of the tree and rock wall, he started the vehicle up and moved it forward to put on the tow truck. At that time the tow truck driver pulled the hand brake and turned vehicle off. The hand brake worked perfectly and the steering wheel also locked. The tow truck driver informed me that an investigation would be completed on the vehicle to make sure if anything was or was not working properly. I then left the scene.

Mike Vaughn  
MCSO (A)

POSTMASTER'S OFFICE  
901 BROADWAY  
NASHVILLE, TN 37202-9908  
PHONE: 615-265-8644

4/12/11

A FEW WEEKS AGO, I WAS  
SITTING IN MY MAIL TRUCK, WRITING  
A CERTIFIED LP, MY TRUCK SLIPPED  
OUT OF PARK AND ROLLED OFF. I HAD  
THE HAND BRAKE UP AND IT STILL  
ROLLED OFF.

LAUREN BELL. Rt 4, 37011

U.S. Postal Service <b>VEHICLE REPAIR TAG</b>		Date 4/7/11
Vehicle No. 0237118	Mileage 60530	Type of Vehicle <input checked="" type="checkbox"/> Postal <input type="checkbox"/> Leased

Mechanical irregularities must be reported immediately on this form to the dispatcher or supervisor when vehicle is checked in. Initials are required for valid tag report.

**Check repairs needed and explain under remarks**

Accident	Springs
Engine	Windshield Wipers
Body	Radiator
Brakes	Differential
Horn	Clutch
Steering	Lights
Transmission	Tires
Carburetor	Other Repairs (Specify)
Glass	

Indicate Possible Trouble (If not corrected on first tag, Supervisor to consult garage foreman or contractor)

Missing	Grab	Leaks
Heats Up	Fade	Slips
Pull	Broken	Short Out

Remarks  
*Gear Selector Broken*

Name of Station Branch  
*Woodbine*

Driver's Check-in Time (Hour)  
7:00  a.m.  p.m.

Driver's Signature  
*[Signature]*

Driver's Receipt for Reporting Defect (Signature of Lessor or Supervisor)

**TO BE COMPLETED BY SUPERVISOR**

Person Notified  
Notified  VMF  Lessor

Date

Signature of Supervisor  
Time Notified (Hour)  a.m.  p.m.

Person notified vehicle repaired for service  
Date

Time Notified (Hour)  a.m.  p.m.

Vehicle Defect Report Required  Yes  No

Signature of Supervisor Reporting Vehicle Ready for Service  
Date

U.S. Postal Service <b>VEHICLE REPAIR TAG</b>		Date 4-12-11
Vehicle No. 0237864	Mileage 50000	Type of Vehicle <input checked="" type="checkbox"/> Postal <input type="checkbox"/> Leased

Mechanical Irregularities must be reported immediately on this form to the dispatcher or supervisor when vehicle is checked in. Initials are required for valid tag report.

**Check repairs needed and explain under remarks**

Accident	Springs
Engine	Windshield Wipers
Body	Radiator
<input checked="" type="checkbox"/> Brakes	Differential
Horn	Clutch
Steering	Lights
Transmission	Tires
Carburetor	Other Repairs (Specify)
Glass	

Indicate Possible Trouble (If not corrected on first tag, Supervisor to consult garage foreman or contractor)

Missing	Grab	Leaks
Heats Up	Fade	Slips
Pull	<input checked="" type="checkbox"/> Broken	Short Out

Remarks  
*emergency brake does not hold (at all)*

Name of Station Branch  
*Woodbine*

Driver's Check-in Time (Hour)  
7:30  a.m.  p.m.

Driver's Signature  
*[Signature]*

Driver's Receipt for Reporting Defect (Signature of Lessor or Supervisor)

**TO BE COMPLETED BY SUPERVISOR**

Person Notified  
Notified  VMF  Lessor

Date  
4/12/11

Signature of Supervisor  
Time Notified (Hour) :40pm  a.m.  p.m.

Person notified vehicle repaired for service  
Date

Time Notified (Hour)  a.m.  p.m.

Vehicle Defect Report Required  Yes  No

Signature of Supervisor Reporting Vehicle Ready for Service  
Date

U.S. Postal Service <b>VEHICLE REPAIR TAG</b>		Date 3/30/11
Vehicle No. 8201863	Mileage	Type of Vehicle <input type="checkbox"/> Postal <input type="checkbox"/> Leased

Mechanical irregularities must be reported immediately on this form to the dispatcher or supervisor when vehicle is checked in. Initials are required for valid tag report.

**Check repairs needed and explain under remarks**

Accident	Springs
Engine	Windshield Wipers
Body	Radiator
Brakes	Differential
Horn	Clutch
Steering	Lights
Transmission	Tires
Carburetor	Other Repairs (Specify)
Glass	

Indicate Possible Trouble (if not corrected on first tag, Supervisor to consult garage foreman or contractor)

Missing	Grab	Leaks
Heate Up	Fade	Slips
Pull	Broken	Short Out

Remarks  
Hand BRAKE does not work,

Name of Station Branch  
WOODBINE

Driver's Check-In Time (Hour)  
0700  a.m.  p.m.  
Driver's Signature  
Evelyn Thompson

Driver's Receipt for Reporting Defect (Signature of Lessor or Supervisor)

**TO BE COMPLETED BY SUPERVISOR**

Person Notified  
Notified  VMP  Leasor  
Date

Signature of Supervisor  
Time Notified (Hour)  a.m.  p.m.

Person notified vehicle repaired for service  
Date

Time Notified (Hour)  a.m.  p.m.  
Vehicle Defect Report Required  Yes  No

Signature of Supervisor Reporting Vehicle ready for Service  
Date

U.S. Postal Service	Date
<b>VEHICLE REPAIR TAG</b>	

Vehicle No. <b>0237147</b>	Mileage <b>67932</b>	Type of Vehicle <input checked="" type="checkbox"/> Postal <input type="checkbox"/> Leased
-------------------------------	-------------------------	---

Mechanical irregularities must be reported immediately on this form to the dispatcher or supervisor when vehicle is checked in. Initials are required for valid tag report.

**Check repairs needed and explain under remarks**

Accident	Springs
Engine	Windshield Wipers
Body	Radiator
Brakes	Differential
Horn	Clutch
Steering	Lights
Transmission	Tires
Carburetor	Other Repairs (Specify) <b>SPEEDOMETER</b>
Glass	

Indicate Possible Trouble (If not corrected on first tag, Supervisor to consult garage foreman or contractor)

Missing	Grab	Leaks
Heats Up	Fade	Slips
Pull	Broken	Short Out

Remarks  
**1) GEAR SHIFT INDICATOR OUT OF SYNC**  
**2) SPEED @ INOP**

Name of Station Branch  
**WOODBINE**

Driver's Check-In Time (Hour) <b>0730</b>	Driver's Signature <b>R. Ben</b>
--	-------------------------------------

Driver's Receipt for Reporting Defect (Signature of Lessor or Supervisor)

**TO BE COMPLETED BY SUPERVISOR**

Person Notified	Notified <input type="checkbox"/> VMF <input type="checkbox"/> Lessor	Date
-----------------	---	------

Signature of Supervisor <b>Called</b>	Time Notified (Hour) <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
--	--

Person notified vehicle repaired for service	Date
--	------

Time Notified (Hour) <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.	Vehicle Defect Report Required <input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

Signature of Supervisor Reporting Vehicle Ready for Service	Date
---	------

June 28, 2010

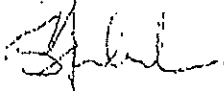
MEMORANDUM FOR: Plant Managers  
MPOO's  
Postmaster – Memphis, Nashville, Knoxville, Chattanooga

SUBJECT: Safety Performance – Accident Reduction

Safety performance in the Tennessee District continues to decline. We have focused our attention on accident reduction by increasing observations, providing training, messaging and safety reviews. All of these efforts have shown little improvement with the accident rate. Managers and Supervisors have been mandated to conduct an investigative interview after every accident. There has been a lack of compliance with this directive. Effective immediately, the following procedures must be followed:

- An investigative interview must be held within 24 hours after every accident. ✓
- The Supervisor or Manager shall determine if corrective action is required.
  - a. If corrective action is requested, the packet must be sent to Labor within 3 ✓  
business days.  
\*\*After corrective action is issued, send a signed copy to Labor and Lisa Lukacik, HR Secretary.
  - b. If corrective action is not requested, a copy of the investigative interview notes shall be sent to the Manager, Human Resources within 3 business days with an explanation as to why no action is required.
- A local Safety Review Board meeting must be held for any accident. Attendees shall include one higher level Management official (MPOO, Postmaster, Station Manager, MDO), Supervisor, Employee, Union Representative and Safety Specialist for your area. This meeting shall be held within 5 business days from the date of the accident. It is your responsibility to coordinate the meeting date and time with the required attendees. Managers may conduct this meeting in person or by phone. Safety Review Board meeting notes/actions must be recorded and submitted to Lisa Lukacik, HR Secretary, within two business days following the meeting.

These items will be tracked by Human Resources. Failure to comply may result in corrective action. Let's get serious about safety before we incur one more accident or injury. Someone's life may depend on it.

  
Patty L. Frederick  
Manager, Human Resources (A)  
Tennessee District

811 ROYAL PARKWAY  
NASHVILLE, TN 37229-0794  
(615) 855 0186  
FAX (615) 812-6556

PS Form 3999X Examination of Letter Carrier Route

ZIP Code: 37205 Unit: Belle Meade  
Route #: C010 Carrier: Lewis

Check one on each line.  
Route Type: Res Bus Mixed  
Primary Delv: Crb P&L Dsmnt CBU  
Vehicle: USPS Contract Other

Reference Vol:	Time Begin	Odometer Reading
Tot Cased Vol: <u>325 L / 6 F / = 935 Total</u>	15.95	
Tot Delvd Vol: <u>925 Cased + 725 Delv = 1650 Total</u>	3:57	15.3
Full Coverage Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	15.63	
Total Street Time: <u>6:10 hrs / 6.17 huo.</u>	3:38	11.9
Minus Allied Time: <u>1:00 hrs / 1.10 huo.</u>	14.13	
Net Delivery Time: <u>5:04 hrs / 5.07 huo.</u>	2:08	10.5
PDs as counted: <u>283</u>	13.63	
Deliveries Made: <u>277</u> % <u>98%</u>	1:33	7.9
PDs in Edit Book: <u>283</u>	10.32	
Park & Loop / Foot Routes	10:19	3.3
# of Park Points: <u>N/A</u>	9.78	
# of Rlys/Swings: <u>N/A</u>	9:47	0.0
	6:17	
	6:10	15.3mi

Yes	No	N/A	Verification of:	Identify the Following:	Location	Begin	End
			Form 4570	26 min. Street Waiting			
			Form 1564A'	1st Break	AFTER 3000 BOLLARD	12:14	12:32 10
			Form 4584	Lunch	By creek - TACO BALL - HARDING PL	1:33	2:03 30
			Form EB-MS	2nd Break	NONE		
			Forms 3982				
			Form OF-346				
			Valid State Lic.				

Yes	No	Check these items: (Comments on each "No" response on attachment.)
		Does the carrier wear a regulation uniform?
		Does the carrier maintain the route book?
		Are CLASS labels installed on the case?
		Have vertical flat labels been installed on the case?
		Is there a final withdrawal from hot case?
		Is vehicle capacity adequate?
		Does carrier finger the mail properly?
		Does carrier take all of the obvious shortcuts?
		Does line of travel match the CLASS labels?
		Are travel patterns relays & park points set up efficiently?
		Does the carrier perform office & street duties in a safe manner?

Examined by: Sherril L. Cole Date: 6/11/01

ZIP Code: 37205 Route: C010

Allied Function	Time	Delivery	Secondary	Res	Bus	ZIP+4	Seq
Delivery Method	Start	End	Used	Number	Desc-Unit	1621 1621  High   Firm   Add Info	No

Use the below space to describe functions performed on street time before arrival at the first delivery i.e. loading; travel to route; gassing vehicle; comfort stop; park point location; relay, Express, or special delivery; etc.

9:47	10:07	1:13						>Loading Vehicle - Roads from lower part into vehicle.
10:07	10:07	1:04						Back to office to return hamper - comfort break.
10:17	10:06	1:02						To parking lot to get lunch from car
10:06	10:11	1:05						To Gas station - fueling vehicle - Shell station
10:11	10:19	1:08						Travel to Route (R) Harding (R) Whitland 3.3 miles
3:38	3:40	1:02						Soaking empty Equip / Review mail
3:40	3:52	1:12						Return to Office. (D) Wilson (R) Wardlaw (B) Harding Rd (L) Page

Advos  
STREET  
↓

Time Enter	Time Used	Sec-Seg	1905
10:19	1:28		
10:20	10:23	①	
10:23	10:26	②	
10:23	10:26	③	
10:23	10:26	④	

Address	Unit	Count	Year	Seq
WHITLAND AVE				
3909	APT-205	4	1937	205
3909	APT-206	4	1937	206
3909	APT-207	4	1937	207
3909	APT-208	4	1937	208
3909	APT-105	4	1951	105
3909	APT-106	4	1951	106
3909	APT-107	4	1951	107
3909	APT-108	4	1951	108
3909	APT-201	4	1952	201
3909	APT-202	4	1952	202
3909	APT-203	4	1952	203
3909	APT-204	4	1952	204
3909	APT-101	4	1938	101
3909	APT-102	4	1938	102
3909	APT-103	4	1938	103
3909	APT-104	4	1938	104
3901	APT-1	4	1939	1
3901	APT-2	4	1939	2
3901	APT-3	4	1939	3
3901	APT-4	4	1939	4
3901	APT-5	4	1940	5
3901	APT-6	4	1940	6
3901	APT-7	4	1940	7
3901	APT-8	4	1940	8
3901	APT-9	4	1941	9
3901	APT-10	4V	1941	10
3901	APT-11	4	1941	11
3901	APT-12	4	1941	12
3901	APT-13	4	1942	13
3901	APT-14	4	1942	14
3901	APT-15	4	1942	15
3901	APT-16	4	1942	16
3901	APT-17	4	1943	17
3901	APT-18	4	1943	18

Residential	1: 0   2: 0   3: 0   4: 34   Det Box: 0   Possible Deliveries: 34 - 1
Business	5: 0   6: 0   7: 0   8: 0   NPU : 0   Deliveries Made: 33



CLASS: 4.00.01  
 DATE: 05/22/01

3999X

PAGE: 3  
 TIME: 08:23

ZIP Code: 37205 Route: C010

Allied Function	Time	Delivery	Secondary	Res	Bus	ZIP+4	Seq				
Delivery Method	Start	End	Used	Number	Desc-Unit	1621	1621	High	Firm	Add Info	No
				3901	APT-19	4		1943		19	35
				3901	APT-20	4		1943		20	36
				3901	APT-21	4		1944		21	37
				3901	APT-22	4		1944		22	38
				3901	APT-23	4V		1944		23	39
				3901	APT-24	4		1944		24	40
				3901	APT-25	4		1945		25	41
				3901	APT-26	4		1945		26	42
				3901	APT-27	4		1945		27	43
				3901	APT-28	4		1945		28	44
				3901	APT-29	4		1946		29	45
				3901	APT-30	4		1946		30	46
				3901	APT-31	4		1946		31	47
				3901	APT-32	4		1946		32	48

Backtracking to delivery class

10:47 10:51 10:03

Address	Time Enter	Time Used	Sec-Seg
WHITLAND AVE	10:50	:04	1953
3841			49
3843			50
3845			51
3847			52
3849			53
3851			54
3853			55
3855			56

Address	Time Enter	Time Used	Sec-Seg
S WILSON BLVD	10:50	:04	1925
203			57
205A			58
205B			59
207A			60
207B			61

Address	Time Enter	Time Used	Sec-Seg
S WILSON BLVD	11:00	:02	1929
401			62
403			63
405			64

① Dismount Parcel Picked into Drive

Address	Time Enter	Time Used	Sec-Seg
S WILSON BLVD	11:02	:03	1931
501			65
509			66
511			67

① Dismount Parcel Picked into Drive

Address	Time Enter	Time Used	Sec-Seg
WOODLAWN DR	11:05	:08	1934
3900			68
3902			69
3906			70
3938			71
3940			72
3942			73
3944			74
3946			75
3948			76
3950			77

Residential	1:	2	19	3:	8	4:	14	Det Box:	0	Possible Deliveries:	43	
Business	5:	0	6:	0	7:	0	8:	0	NPU :	0	Deliveries Made:	43

ZIP Code: 37205 Route: C010

Allied Function	Time	Delivery	Secondary	Res	Bus	ZIP+4	Seq
Delivery Method	Start	End	Used	Number	Desc-Unit	1621 1621 High Firm Add Info	No

				ENSWORTH AVE		Time Enter: 11:13	Time Used: :01	Sec-Seg: 2014
				200	2			78

				ENSWORTH AVE		Time Enter: 11:14	Time Used: :05	Sec-Seg: 2002
				148	2			79
Replenishing Mail (Drops to inside of vehicle - no dismount)	11:15	11:16	:01	146	2			80
				144	2			81
				132	2			82
				126	2			83
				120	2			84

				ENSWORTH AVE		Time Enter: 11:19	Time Used: :02	Sec-Seg: 2001
				143	2			85
				147	2V			86
				151	2			87

				ENSWORTH AVE		Time Enter: 11:21	Time Used: :02	Sec-Seg: 2015
				205	2			88

				ENSWORTH PL		Time Enter: 11:23	Time Used: :10	Sec-Seg: 1921
Drop / Insert Parcel Parcel - Pallets in DRIVE	11:24	11:25	:01	211	5	1997	ENSWORTH SCHOOL	89
				223	2			90
				231	2			91
				243	2			92
				245	2			93
				247	2			94
				251	2			95

				ENSWORTH PL		Time Enter: 11:33	Time Used: :11	Sec-Seg: 1922
Dismount Parcel				266	2			96
				250	2			97
				240	2			98
				230	2			99
				228	2			100
				226	2			101
				224	2			102
			218	2			103	

				WOODLAWN DR		Time Enter: 11:44	Time Used: :04	Sec-Seg: 1948
				3947	2			104
				3943	2			105
				3941	2			106

				WOODLAWN DR		Time Enter: 11:46	Time Used: :10	Sec-Seg: 1947
Parcel Replenish mail	11:46	11:47	:01	3937	2			107
	11:47	11:50	:03	3939	2			108

				WOODLAWN DR		Time Enter: 11:56	Time Used: _____	Sec-Seg: 1933
Write already dismounted parcel 1153 - parcel fix 3939	11:53	11:55	:02	3929	2			109
				3927	2			110
				3925	2			111
				3901	2			112

Residential	1:	0	2:	34	3:	0	4:	0	Det Box:	0	Possible Deliveries:	35	-	1
Business	5:	1	6:	0	7:	0	8:	0	NPU	:	0	Deliveries Made:	34	1

CLASS: 4.00.01  
DATE: 05/22/01

3999X

PAGE: 5  
TIME: 08:23

ZIP Code: 37205 Route: C010

Allied Function	Time	Delivery	Secondary	Res	Bus	ZIP+4	Seq
Delivery Method	Start	End	Used	Number	Desc-Unit	1621 1621 High Firm Add Info	No
Talking w/ Customer about directions.	11:59	12:00	01	S WILSON BLVD		Time Enter: 12:01 Time Used: 02	1932
				600	MSP (3) 1	HANDICAPPED	113
				S WILSON BLVD		Time Enter: — Time Used: —	1930
				406	1V	HANDICAPPED	114
				S WILSON BLVD		Time Enter: 12:03 Time Used: 00	1928
				316	2		115
				314	2		116
				312	2		117
				310	2		118
				ROLLAND RD		Time Enter: 12:05 Time Used: 07	2537
				3815	2		119
				3813	2	DROP2	120
				3811	2		121
				3809	2		122
				3807	2		123
				3805	2		124
				3803	2		125
				3801	2	DROP2	126
Deadhead to sway intersection Qu. Leonard -				ROLLAND RD		Time Enter: 12:12 Time Used: 01	2534
				3620	2		127
Down Alley D Parcel 3620				ROLLAND RD		Time Enter: 12:13 Time Used: 01	2538
				3806	2		128
1st Break Extended 8 min	12:14	12:32	18	S WILSON BLVD		Time Enter: 12:32 Time Used: 02	1926
				208	2		129
				206	2		130
				204	2		131
				WHITLAND AVE		Time Enter: 12:34 Time Used: 06	2441
				3823	1		132
				3821	2		133
				3819	2		134
				3817	2		135
				3815	2		136
D Parcel				CANTRELL AVE		Time Enter: 12:40 Time Used: 06	2419
				201	2		137
				203	2		138
				205	2		139
				207	2		140
				209	2		141
				211	2		142
				213	2		143
				215	2		144

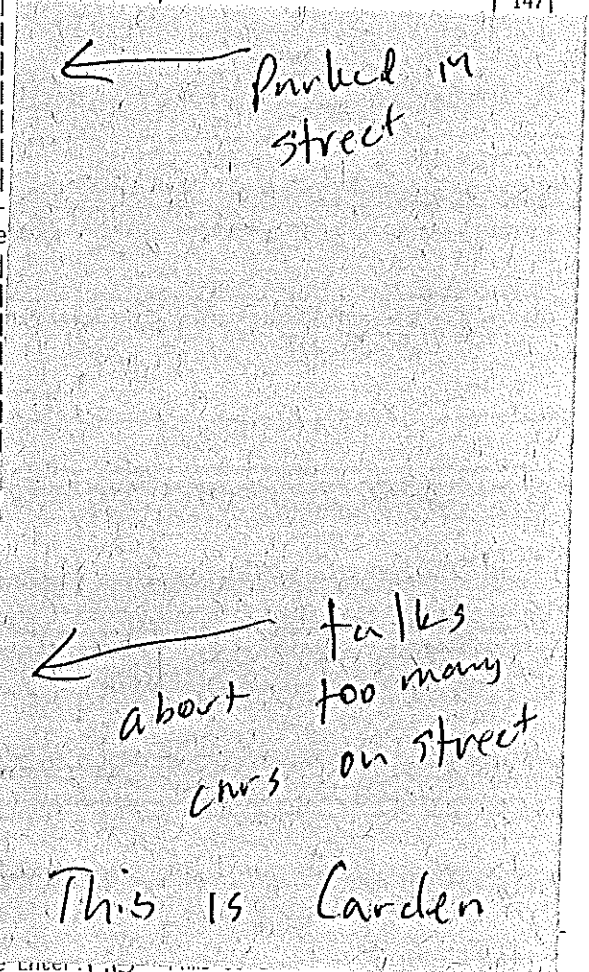
Residential	1:	3	2:	29	3:	0	4:	0	Det Box:	0	Possible Deliveries:	32	-	
Business	5:	0	6:	0	7:	0	8:	0	NPU :	0	Deliveries Made:	31	-	

ZIP Code: 37205 Route: C010

Allied Function	Time	Delivery	Secondary	Res	Bus	ZIP+4		Seq	
Delivery Method	Start	End	Used	Number	Desc-Unit	1621	1621	High Firm Add Info	No

			CANTRELL AVE		Time Enter: 12:46	Time Used: 10e	Sec-Seg: 2420	
			<del>218</del>	2				145
			<del>216</del>	2				146
			<del>214</del>	2				147
			<del>212</del>	2				
			<del>210</del>	2				
			<del>208</del>	2				
			<del>204</del>	2				
			<del>202</del>	1				
			<del>200</del>	2				

*Dismant*  
*Blue box* →



			WHITLAND AVE		Time
			<del>3813</del>	1	
			<del>3811</del>	1	
			<del>3809</del>	1	
			<del>3807</del>	1	
			<del>3805</del>	1	
			<del>3803</del>	1	
			<del>3801</del>	1	

*Hops*  
*these dismants*  
*return to Mail* 12:53 12:58 1:01  
*Parcel*

			CARDEN AVE		Time
			<del>203</del>	1	
			<del>205</del>	1	
			<del>211</del>	1	
			<del>213</del>	1	
			<del>215</del>	2	
			<del>217</del>	2	
			<del>219</del>	2	
			<del>221</del>	2	
			<del>223</del>	2	
			<del>225</del>	1	
			<del>227</del>	1	
			<del>229A</del>	2	
			<del>229B</del>	2	
			<del>231</del>	2	

*END ADVOS*  
*Alot of cars*  
*parked on street*  
*makes delivering*  
*mounted deliveries*  
*difficult.* 1:09 1:11 1:02  
*Parcel*  
*Parcel*  
*Parcel*

			CARDEN AVE		Time Enter: 1:12			
			<del>230</del>	MSP (4)	2			175
			<del>228</del>		1			176
			<del>226</del>		1			177
			<del>224</del>		1			178
			<del>222</del>		1			179
			<del>220</del>		2			180
			<del>218</del>		2			181
			<del>216</del>		2			182
			<del>210</del>		2			183
			<del>208</del>		2			184
			<del>206</del>		2			185
			<del>204</del>		2			186
			<del>202</del>		2			187
			<del>200</del>		2			188

*makes a*  
*loop -*  
*then delivers*  
*parcels Parcel*

Residential	1:	18	2:	26	3:	0	4:	0	Det Box:	0	Possible Deliveries:	44
Business	5:	0	6:	0	7:	0	8:	0	NPU :	0	Deliveries Made:	44

ZIP Code: 37205 Route: C010

Allied Function	Time	Delivery	Secondary	Res	Bus	ZIP+4	Seq
Delivery Method	Start	End	Used	Number	Desc-Unit	1621 1621  High   Firm   Add Info	No

*Backtracking - left parcel.*

*Dismount Blocked Box*

Time	Start	End	Used	Number	Desc-Unit	1621 1621  High   Firm   Add Info	Seq
1:30	1:31	1:31		WHITLAND AVE		Time Enter: 1:31 Time Used: 1:07 Sec-Seg: 2442	
				3749	2		189
				3747	2		190
				3745A	1		191
				3745B	1V		192
				3737	2		193
				3735A	2		194
				3735B	2		195
				3733A	1		196
				3731B	1		197

*Lunch*

*Drives to End of Leonard & drops mail at 234 Leonard - Then delivers parcels Last.*

*2:11- 2:04 Talking to husband on cell phone -*

Time	Start	End	Used	Number	Desc-Unit	1621 1621  High   Firm   Add Info	Seq
1:33	2:08	2:30		LEONARD AVE		Time Enter: 2:08 Time Used: 1:22 Sec-Seg: 2425	
	2:11	2:15		201	1		198
				203	1		199
				209	1V		200
				211	1		201
				213	1		202
				215	1		203
				217	2		204
				219	2		205
				221	2		206
				223	2		207
				225	2		208
				227	1		209
				229	1		210
				231A	2V		211
				231B	2		212
				233	1		213
				235A	2		214
				235B	2		215

LEONARD AVE

*insp (5)*

Time	Start	End	Used	Number	Desc-Unit	1621 1621  High   Firm   Add Info	Seq
				LEONARD AVE		Time Enter: 2:30 Time Used: 1:19 Sec-Seg: 2426	
				234	1		216
				232	1		217
				230	1		218
				228	1		219
				226A	1		220
				226B	1		221
				226C	1		222
				224A	1		223
				224B	1		224
				222	1		225
				220	1		226
				218	1		227
				216	1		228
				214	1		229
				212	1		230
				210	1		231
				208	1		232
				206	1		233
				204	1		234
				202	1		235
				200	1		236

Residential	1:	34	2:	14	3:	0	4:	0	Det Box:	0	Possible Deliveries:	48	-2
Business	5:	0	6:	0	7:	0	8:	0	NPU	:	Deliveries Made:	46	

ZIP Code: 37205 Route: C010

Allied Function	Time	Delivery	Secondary	Res	Bus	ZIP+4	Seq	
Delivery Method	Start	End	Used	Number	Desc-Unit	1621 1621	High   Firm   Add Info	No

<i>Replenish Mail</i>	2:47	2:48	01	WHITLAND AVE			Time Enter: <u>2:49</u> Time Used: <u>:08</u> Sec-Seg: 2429	
				<del>3713</del>	2			237
				<del>3711</del>	2			238
<i>2 Parcels</i>				<del>3709</del>	2			239
				<del>3707</del>	2			240
				<del>3705</del>	2			241
				<del>3701</del>	1			242

				WHITLAND AVE			Time Enter: <u>2:57</u> Time Used: <u>:01</u> Sec-Seg: 2427	
				<del>3619</del>	1			243

*+ :02 waiting*

<i>Talking w/ Sup about dogs at home</i>	2:58	3:00	02	WHITLAND AVE			Time Enter: <u>3:01</u> Time Used: <u>:04</u> Sec-Seg: 2428	
				<del>3604</del>	6		DAYCARE	244
				<del>3608</del>	2			245
				<del>3610</del>	1			246
				<del>3610A</del>	1V			247
				<del>3612</del>	1			248
				<del>3614</del>	2			249

				WHITLAND AVE			Time Enter: <u>3:05</u> Time Used: <u>:00</u> Sec-Seg: 2430	
				<del>3700</del>	1			250
				<del>3702</del>	2			251
				<del>3704</del>	1			252
<i>Discontinued Box blocked</i>				<del>3706</del>	2			253
				<del>3708</del>	2			254

				LEONARD AVE			Time Enter: <u>3:11</u> Time Used: <u>:01</u> Sec-Seg: 2423	
				<del>101</del>	1			255
				<del>103</del>	1			256

				WHITLAND AVE			Time Enter: <u>3:12</u> Time Used: <u>:17</u> Sec-Seg: 2443	
				<del>3730</del>	2			257
				<del>3734</del>	2			258
				<del>3736C</del>	1			259
				<del>3736A</del>	1			260
				<del>3736B</del>	1			261
				<del>3738</del>	1			262
				<del>3740</del>	2			263
				<del>3744</del>	2			264
				<del>3750</del>	1			265

<i>1 Parcel</i>	3:22	3:23	01	WHITLAND AVE			Time Enter: <u>3:20</u> Time Used: _____ Sec-Seg: 2432	
				<del>3800</del>	2			266
				<del>3802</del>	1			267
				<del>3804</del>	1			268
				<del>3806</del>	1			269
				<del>3808</del>	1			270
				<del>3810</del>	APT 1	4	2453	1
				<del>3810</del>	APT 2	4	2453	2
				<del>3810</del>	APT 3	4	2453	3
				<del>3810</del>	APT 4	4	2453	4
				<del>3810</del>	APT 5	4	2453	5
				<del>3810</del>	APT 6	4	2453	6

Residential	1:	18	2:	15	3:	0	4:	6	Det Box:	0	Possible Deliveries:	40	-
Business	5:	0	6:	1	7:	0	8:	0	NPU	:	0	Deliveries Made:	39

CLASS: 4.00.01  
 DATE: 05/22/01

3999X

PAGE: 9  
 TIME: 08:23

ZIP Code: 37205 Route: C010

Allied Function	Delivery Method	Start	End	Time Used	Delivery Number	Secondary Desc-Unit	Res 1621	Bus 1621	ZIP+4 High	Firm	Add Info	Seq No
					<del>3812</del>		2					277
					<del>3814</del>		1					278
					<del>3822</del>		2					279
					<del>3824</del>		1					280
					<del>3826</del>		2					281
					<del>3828</del>		2					282
					<del>3830</del>	MSP (6)	2					283

*Discontinued  
 mailbox*

END 13:38

\*\*\*\*\*ROUTE TOTALS\*\*\*\*\*

Residential	1: 77	2: 142	3: 8	4: 54	Det Box:	0	Possible Deliveries:	283
Business	5: 1	6: 1	7: 0	8: 0	NPU :	0	Deliveries Made:	

Residential	1: 2	2: 5	3: 0	4: 0	Det Box:	0	Possible Deliveries:	7
Business	5: 0	6: 0	7: 0	8: 0	NPU :	0	Deliveries Made:	7

M-1289

LABOR RELATIONS



RECEIVED

JUN 3 1997

CONTRACT ADMINISTRATION UNIT  
N.A.L.C. WASHINGTON, D.C.

Mr. Vincent Sombrotto  
President  
National Association of Letter  
Carriers, AFL-CIO  
100 Indiana Avenue, NW  
Washington, DC 20001-2197

Re: D94N-4D-C 97027016	D94N-4D-C 97027015
CLASS ACTION	CLASS ACTION
CHAPEL HILL, NC 27514-9998	ROCKY MOUNT, NC 27801-9998
D94N-4D-C 97027011	D94N-4D-C 97027003
CLASS ACTION	CLASS ACTION
GREENSBORO, NC 27420-9998	ROCKY MOUNT, NC 27801-9998

Dear Mr. Sombrotto:

On May 7, 1997, I met with your representative to discuss the above-captioned grievances at the fourth step of our grievance-arbitration procedure.

The issue in these listed grievances involves discipline issued to carriers based on various safety infractions. Is local management in violation of the National Agreement when it issued a local safety policy and subsequent stand-up talks?

The parties agreed that no national interpretive issue is fairly presented in these cases.

The parties agree that management has the right to articulate guidelines to its employees regarding their responsibility concerning issues relating to safety. However, the parties also mutually agree that local accident policies, guidelines, or procedures may not be inconsistent or in conflict with the National Agreement. Discipline imposed for cited safety rule violations must meet the "just cause" provisions of Article 18 of the National Agreement. Further, administrative action with respect to safety violations must be consistent with Articles 14 and 28.

Accordingly, the parties agreed to remand these cases to Step 3 for application of the above understanding and further processing, including arbitration, if necessary.

Please sign the attached copy of this decision as your acknowledgment of agreement to remand these cases.

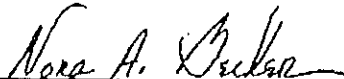


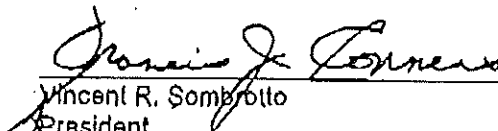
M-1289

Mr. Vincent R. Sombrotto  
Re: D94N-4D-C 97027016, et al  
Page 2

Time limits were extended by mutual consent.

Sincerely,

  
\_\_\_\_\_  
Nora A. Becker  
Grievance and Arbitration  
Labor Relations

  
\_\_\_\_\_  
Vincent R. Sombrotto  
President  
National Association of Letter  
Carriers, AFL-CIO

Date: 6/18/97

## ARTICLE 14 SAFETY AND HEALTH

### 14.1 Section 1. Responsibilities

It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility. The Employer will meet with the Union on a semiannual basis and inform the Union of its automated systems development programs. The Employer also agrees to give appropriate consideration to human factors in the design and development of automated systems. Human factors and ergonomics of new automated systems are a proper subject for discussion at the National Joint Labor-Management Safety Committee.

**Responsibilities.** It is management's responsibility to provide safe working conditions; it is the union's responsibility to cooperate with and assist management in its efforts to fulfill this responsibility.

### 14.2 Section 2. Cooperation

The Employer and the Union insist on the observance of safe rules and safe procedures by employees and insist on correction of unsafe conditions. Mechanization, vehicles and vehicle equipment, and the work place must be maintained in a safe and sanitary condition, including adequate occupational health and environmental conditions. The Employer shall make available at each installation forms to be used by employees in reporting unsafe and unhealthful conditions. If an employee believes he/she is being required to work under unsafe conditions, such employee may:

- (a) notify such employee's supervisor who will immediately investigate the condition and take corrective action if necessary;
- (b) notify such employee's steward, if available, who may discuss the alleged unsafe condition with such employee's supervisor;
- (c) file a grievance at Formal Step A of the grievance procedure within fourteen (14) days of notifying such employee's supervisor if no corrective action is taken during the employee's tour; and/or
- (d) make a written report to the Union representative from the local Safety and Health Committee who may discuss the report with such employee's supervisor.

Upon written request of the employee involved in an accident, a copy of the PS Form 1769 (Accident Report) will be provided.

Any grievance which has as its subject a safety or health issue directly affecting an employee(s) which is subsequently properly appealed to arbitration in accordance with the provisions of Article 15 may be placed at the head of the appropriate arbitration docket at the request of the Union.

**Priority Handling of Safety Issues.** Article 14.2 provides a special priority for the handling of safety and health issues, providing for cooperative correction of unsafe conditions and enforcement of safety rules, and requiring special handling of individual safety issues as they arise.

**Safety Grievances Filed at Formal Step A.** Article 14.2.(c) provides that safety and health grievances may be filed directly at Formal Step A of the grievance procedure. However, if a health or safety grievance is filed at Informal Step A instead, it is not procedurally defective for that reason.

**Priority Arbitration Scheduling.** Any grievance which has as its subject a safety or health issue directly affecting an employee(s) which is subsequently properly appealed to arbitration may be placed at the head of the appropriate arbitration docket at the request of the union. The Postal Service will not refuse to schedule a case in accordance with Article 14.2 based solely upon the belief that no safety issue is present. However, placement of a case at the head of the arbitration docket does not preclude the Postal Service from arguing the existence of the alleged "safety" issue or that the case should not have been given priority. Prearbitration Settlement F94N-4F-C-97024971, February 20, 2001, (M-01433).

#### 14.3 Section 3. Implementation

To assist in the positive implementation of the program:

A. There shall be established at the Employer's Headquarters level, a Joint Labor-Management Safety Committee. Representation on the Committee, to be specifically determined by the Employer and the Union, shall include one person from the Union and representatives from appropriate Departments in the Postal Service. Not later than 60 days following the effective date of this Collective Bargaining Agreement, designated representatives of the Union and Management will meet for the purpose of developing a comprehensive agenda which will include all aspects of the Employer's Safety Program. Subsequent to the development of this agenda priorities will be established and a tentative schedule will be developed to insure full discussion of all topics. Meetings may also be requested by either party for the specific purpose of discussing additional topics of interest within the scope of the Committee.

The responsibility of the Committee will be to evaluate and make recommendations on all aspects of the Employer's Safety Program, to include program adequacy, implementation at the local level, and studies being conducted for improving the work environment.

The Chair will be designated by the Employer. The Union may designate a coordinator who, in conjunction with the Chair, shall schedule the meetings, and recommended priorities on new agenda items. In addition, the coordinator may assist the Chair in conducting the activities of the Committee. The Employer shall furnish the Union information relating to injuries, illness and safety, including the morbidity and

## ARTICLE 16 DISCIPLINE PROCEDURE

### 16.1 Section 1. Principles

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

#### Just Cause Principle

The principle that any discipline must be for "just cause" establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the "just cause" provision requires a fair and provable justification for discipline.

"Just cause" is a "term of art" created by labor arbitrators. It has no precise definition. It contains no rigid rules that apply in the same way in each case of discipline or discharge. However, arbitrators frequently divide the question of just cause into six sub-questions and often apply the following criteria to determine whether the action was for just cause. These criteria are the *basic* considerations that the supervisor must use before initiating disciplinary action.

- **Is there a rule?** If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule? It is not enough to say, "Well, everybody knows that rule," or, "We posted that rule ten years ago." You may have to prove that the employee should have known of the rule. Certain standards of conduct are normally expected in the industrial environment and it is assumed by arbitrators that employees should be aware of these standards. For example, an employee charged with intoxication on duty, fighting on duty, pilferage, sabotage, insubordination, etc., may be generally assumed to have understood that these offenses are neither condoned nor acceptable, even though management may not have issued specific regulations to that effect.
- **Is the rule a reasonable rule?** Management must make sure rules are reasonable, based on the overall objective of safe and efficient work performance. Management's rules should be reasonably related to business efficiency, safe operation of our business, and the performance we might expect of the employee.
- **Is the rule consistently and equitably enforced?** A rule must be applied fairly and without discrimination. Consistent and equitable

enforcement is a critical factor. Consistently overlooking employee infractions and then disciplining without warning is improper. If employees are consistently allowed to smoke in areas designated as *No Smoking* areas, it is not appropriate suddenly to start disciplining them for this violation. In such cases, management loses its right to discipline for that infraction, in effect, unless it first puts employees (and the unions) on notice of its intent to enforce that regulation again. Singling out employees for discipline is usually improper. If several similarly situated employees commit an offense, it would not be equitable to discipline only one.

- **Was a thorough investigation completed?** Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective. This is the employee's *day in court* privilege. Employees have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves *before* the discipline is initiated.
- **Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record?** The following is an example of what arbitrators may consider an inequitable discipline: If an installation consistently issues five-day suspensions for a particular offense, it would be extremely difficult to justify why an employee with a past record similar to that of other disciplined employees was issued a thirty-day suspension for the same offense. There is no precise definition of what establishes a good, fair, or bad record. Reasonable judgment must be used. An employee's record of previous offenses may never be used to establish guilt in a case you presently have under consideration, but it may be used to determine the appropriate disciplinary penalty.
- **Was the disciplinary action taken in a timely manner?**  
Disciplinary actions should be taken as promptly as possible after the offense has been committed.

### **Corrective Rather than Punitive**

The requirement that discipline be "corrective" rather than "punitive" is an essential element of the "just cause" principle. In short, it means that for most offenses management must issue discipline in a "progressive" fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense and a pattern of increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge). The basis of this principle of "corrective" or "progressive" discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution.

Just cause for the discipline of Transitional Employees is addressed in Question 26 of the parties' joint Questions and Answers on TEs. The complete TE Q&As are found on pages 7-10-7-15.

**QUESTIONS AND ANSWERS (42)**  
**NALC TRANSITIONAL EMPLOYEES**

The attached jointly-developed document provides the mutual understanding of the national parties on issues related to NALC Transitional Employees. This document may be updated as agreement is reached on additional matters related to transitional employees.

**Date:** February 20, 2009

**26. Does the concept of progressive discipline apply to transitional employees?**

No. If just cause exists for discipline, the only action that can be initiated against a transitional employee is separation. Such action is subject to the grievance/arbitration procedure, but the action cannot be modified by an arbitrator; the separation can only be upheld or rejected in its entirety. However, the parties are not prohibited from agreeing to a lesser penalty during discussions at earlier steps of the grievance-arbitration procedure.

**Unadjudicated Discipline.** The parties agree that arbitrators may not consider unadjudicated discipline cited in a disciplinary notice when determining the propriety of that disciplinary notice. When removal cases are scheduled for a hearing before the underlying discipline has been adjudicated, an arbitrator may grant a continuance of a hearing on the removal case pending resolution of the unadjudicated discipline (National Arbitrator Snow, E94N-4E-D 96075418, April 19, 1999 C-19372).

**Examples of Behavior.** Article 16.1 states several examples of misconduct which may constitute just cause for discipline. Some managers have mistakenly believed that because these behaviors are specifically listed in the contract, any discipline of employees for such behaviors is "automatically" for just cause. The parties agree these behaviors are intended as examples only. Management must still meet the requisite burden of proof, e.g. prove that the behavior took place, that it was intentional, that the degree of discipline imposed was corrective rather than punitive, and so forth. Principles of just cause apply to these specific examples of misconduct as well as to any other conduct for which management issues discipline.

**Remedies.** The last sentence of Article 16.1 establishes the principle that discipline may be overturned in the grievance-arbitration procedure and that remedies may be provided to the aggrieved employee—"reinstatement and restitution, including back pay." If union and management representatives settle a discipline grievance, the extent of remedies for improper discipline is determined as part of the settlement. If a case is pursued to arbitration, the arbitrator states the remedy in the award.

**Back Pay.** The regulations concerning back pay are found in ELM Section 436. The parties agree that, while all grievance settlements or arbitration awards providing for a monetary remedy should be promptly paid, the following Memorandum of Understanding applies only to those back pay claims covered by ELM Section 436.

the employee was otherwise available for duty, and without prejudice to any grievance filed under B above.

D. The Employer may take action to discharge an employee during the period of an indefinite suspension whether or not the criminal charges have been resolved, and whether or not such charges have been resolved in favor of the employee. Such action must be for just cause, and is subject to the requirements of Section 5 of this Article.

Article 16.6.B, which deals with indefinite suspensions in crime situations, provides the following:

- The full thirty-day notice is not required in such cases. (See also Article 16.5.)
- Just cause of an indefinite suspension is grievable. An arbitrator has the authority to reinstate and make whole. In NC-NAT 8580, September 29, 1978 (C-03216) National Arbitrator Garrett wrote that an indefinite suspension is:

reviewable in arbitration to the same extent as any other suspension to determine whether 'just cause' for the disciplinary action has been shown. Such a review in arbitration necessarily involves considering at least (a) the presence or absence of 'reasonable cause' to believe the employee guilty of the crime alleged, and (b) whether such a relationship exists between the alleged crime and the employee's job in the USPS to warrant suspension.

- If the Postal Service returns an employee who was on an indefinite suspension to duty, the employee is automatically entitled to back pay for all but the first seventy days of pay. The indefinite suspension and entitlement to the first seventy days of pay still remains subject to the grievance provisions stated in Subsection (B).
- During an indefinite suspension, the Employer can take final action to remove the employee. Such removals must be for just cause and are subject to Article 16.5, like any other removal.

#### 16.7 Section 7. Emergency Procedure

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others. The employee shall remain on the rolls (non-pay status) until disposition of the case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge the employee, the emergency action taken under this Section may be made the subject of a separate grievance.

The purpose of Article 16.7 is to allow the Postal Service to act "immediately" to place an employee in an off duty status in the specified "emergency" situations.

**Written Notice.** Management is not required to provide advance written notice prior to taking such emergency action. However, an employee placed on emergency off-duty status is entitled to written charges within a reasonable period of time. In H4N-3U-C 58637, August 3, 1990 (C-10146) National Arbitrator Mittenthal wrote as follows:

The fact that no "advance written notice" is required does not mean that Management has no notice obligation whatever. The employee suspended pursuant to Section 7 has the right to grieve his suspension. He cannot effectively grieve unless he is formally made aware of the charge against him, the reason why Management has invoked Section 7. He surely is entitled to such notice within a reasonable period of time following the date of his displacement. To deny him such notice is to deny him his right under the grievance procedure to mount a credible challenge against Management's action.

**What Test Must Management Satisfy?** Usually employees are placed on emergency non-duty status for alleged misconduct. However, the provisions of this section are broad enough to allow management to invoke the emergency procedures in situations that do not involve misconduct—for example if an employee does not recognize that he or she is having an adverse reaction to medication. The test that management must satisfy to justify actions taken under this Article 16.7 depends upon the nature of the "emergency." In H4N-3U-C 58637, August 3, 1990 (C-10146) National Arbitrator Mittenthal wrote as follows:

My response to this disagreement depends, in large part, upon how the Section 7 "emergency" action is characterized. If that action is discipline for alleged misconduct, then Management is subject to a "just cause" test. To quote from Section 1, "No employee may be disciplined...except for just cause." If, on the other hand, that action is not prompted by misconduct and hence is not discipline, the "just cause" standard is not applicable. Management then need only show "reasonable cause" (or "reasonable belief") a test which is easier to satisfy.

One important caveat should be noted. "Just cause" is not an absolute concept. Its impact, from the standpoint of the degree of proof required in a given case, can be somewhat elastic. For instance, arbitrators ordinarily use a "preponderance of the evidence" rule or some similar standard in deciding fact questions in a discipline dispute. Sometimes, however, a higher degree of proof is required where the alleged misconduct includes an element of moral turpitude or criminal intent. The point is that "just cause" can be calibrated differently on the basis of the nature of the alleged misconduct.

**Separate Grievances.** If, subsequent to an emergency suspension, management suspends the employee for more than thirty (30) days or dis-



than fourteen days, and the employee's driving privileges must either be reinstated, suspended for a specified period of time not to exceed sixty days, or revoked as warranted." (Memorandum, paragraph 3)

- Where management can demonstrate that "the on-duty record shows that the employee is an unsafe driver." (Article 29, paragraph 1)

Additional rules regarding the suspension or revocation of driving privileges are contained in Section 1 (VI) of the management training program entitled *Driver Selection, Orientation, Familiarization and Certification*, issued in 1993. That handbook replaced former Handbook EL-827, *Driver Selection, Testing and Licensing*. Section 1(VI-B) states:

## VI. Suspension and Revocation of Driving Privileges

### B. For Unsafe Driving

1. An employee's driving privileges may be suspended or revoked when the on-duty record shows that the employee is an unsafe driver. Elements of an employee's on-duty record that may be used to determine whether the employee is an unsafe driver include, but are not limited to traffic law violations, accidents, or failure to meet required physical or operation standards.
2. When a suspension, revocation, or reissuance of an employee's driving privileges is under consideration, only the on-duty record may be considered when making the final determination. However, an employee's driving privileges will automatically be suspended or revoked concurrently with an suspension or revocation of State driver's license and restored upon reinstatement. It is the responsibility of the employee to provide documentation that the State license has been reinstated. If such suspension or revocation includes the condition that the employee may operate a vehicle for employment purposes, the driving privileges will not be automatically suspended or revoked. When suspension, revocation, or reissuance of an employee's driving privileges is under consideration based on the on-duty record, such conditional suspension or revocation of the State driver's license may be considered in making the final determination.

### C. In Case of Accident

1. Review of Driving Privileges. The employee's driving privileges are reviewed at the time of an accident by the employee's supervisor and/or another official in charge. There are no provisions for the automatic suspension of an employee's driving privilege based on the fact that the employee was involved

in a vehicle accident. Rather, the circumstances surrounding each accident are assessed at the time of the accident to determine whether a temporary suspension of driving privileges is warranted.

2. **Assessment of Circumstances.** The circumstances surrounding an accident that should be assessed include, but are not limited to, the employee's condition (shock, fatigue, alcohol/controlled substance impairment, or other related physical or emotional condition), the seriousness of the unsafe driving practices, if any, that resulted in the accident, and a determination by the supervisor as to whether the public's or the employee's safety would be jeopardized by allowing the employee to continue driving.
3. **Temporary Suspension.** If an immediate determination cannot be made based upon a review of the above, the employee's driving privileges may be withheld temporarily pending completion of the accident investigation. At this time a final decision to suspend, revoke, or re-instate can be made. The length of time involved in withholding driving privileges pending investigation can vary in each case but must not exceed 14 days. Not later than 14 days, the employee's driving privileges must either be reinstated, suspended for a period of time not to exceed 60 days, or revoked, as warranted. If the decision is to suspend or revoke the employee's driving privileges provide the employee, in writing, of the reason(s) for such action.
4. **Decision Criteria.** Decisions to suspend or revoke driving privileges are made after investigation and determination as to whether the driver was at fault (whether the driver's actions were the primary cause of the accident), the driver's degree of error, past driving and discipline records, and/or the severity of the accident. The quality or absence of prior training in a particular driving activity should be considered as well, and the employee's inability to meet USPS physical standards at the time of an accident is also a factor to be considered. The preventability or non-preventability of an accident as determined by the Safe Driver Award Committee is NOT a factor to be considered in the suspension or revocation of driving privileges. The decision of the Safe Driver Award Committee is for contest purposes only.

**Every Reasonable Effort to Reassign.** Even if a revocation or suspension of a letter carriers driving privileges is proper, Article 29 provides that, "every reasonable effort will be made to reassign the employee in non-driving duties in the employee's craft or other crafts." This requirement is not contingent upon a letter carrier making a request for non-driving duties. Rather, it is management's responsibility to seek to find suitable work.

National Arbitrator Snow held in I94N-4I-D 96027608, April 8, 1998 (C-18159) that management may not reassign an employee to temporary non-driving duties in another craft if doing so would result in a violation of other craft's agreement. If it is not possible to accommodate temporary cross-craft assignments in a way that does not violate another craft's agreement, a letter carrier who is deprived of the right to an otherwise available temporary cross-craft assignment to a position in another craft must be placed on leave with pay until such time as he may return to work without violating either unions' agreement. In accordance with Arbitrator Snow's award, in situations where city letter carriers temporarily lose driving privileges, the following applies:

- Management should first attempt to provide non-driving city letter carrier craft duties within the installation on the carrier's regularly scheduled days and hours of work. If sufficient carrier craft work is unavailable on those days and hours, an attempt should be made to place the employee in carrier craft duties on other hours and days, anywhere within the installation.
- If sufficient work is still unavailable, a further attempt should be made to identify work assignments in other crafts, as long as placement of carriers in that work would not be to the detriment of employees of that other craft.
- If there is such available work in another craft, but the carrier may not perform that work in light of the Snow award, the carrier must be paid for the time that the carrier otherwise would have performed that work.

DAVE CLARK, *Vice President*  
RON ERLAND, *Treasurer*  
J.E. WOODARD, *Financial Secretary*  
MICHAEL ENGLAND, *Sergeant-At-Arms*  
GLENN WATTS, *Director of Relations*

M. L. (Rip) MALONE  
BRANCH NO. 4

BOB KING, JR., *Health Benefits Representative*  
RAY RAYMER, *N.S.B.A. Clerk*  
C. R. HIRST, *Trustee*  
DALE LYLES, *Trustee*  
JAMES BROWN, *Trustee*

# National Association of Letter Carriers

THOMAS L. ROLLINS, *President*  
Suite 212, Bldg. C  
211 Donelson Pike  
P.O. Box 140818  
Nashville, TN 37214  
(615) 883-7887



CHRISTOPHER VERVILLE, *Secretary*  
Suite 212, Bldg. C  
211 Donelson Pike  
P.O. Box 140818  
Nashville, TN 37214  
(615) 883-7887

## REQUEST FOR INFORMATION (CONTRACTUAL)

Date of Request 4/18/2011

Belle Meade  
Station/Office

Dear Management:

Pursuant to Articles 17 and 31, of the National Agreement, I am requesting copies of the following information and/or documents, these documents are needed to investigate a possible grievance,

vehicle maintenance jacket for vehicle # 0238431

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This information/documentation is needed for the union to investigate a **POSSIBLE GRIEVANCE** pertaining to: 12, 16, 19, 20

Management's Signature: *Shirley Pyle* Date: 4-18-11

Date Union received documentation 4/27/2011

Thomas L. Rollins, President  
NALC Branch 4  
Nashville, TN. 37214-0816



May 19, 2011

Management Contentions  
B4-00104-11

Management contends the Emergency Placement of Full-time City carrier Jan Bowman into an Off-Duty Status dated March 29, 2011, was immediate and with just cause after her illegally parked FFV rolled away after Ms. Bowman failed to adhere to the Zero Tolerance Policy and Failure to Follow Proper Dismount Procedures which is a willful violation of Postal policy. Management contends that Belle Meade Supervisor, Customer Services, Tim Freels acted in accordance with Article 16.7 of the National Agreement, which reads as follows:

**“Section 7. Emergency Procedure**

**An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others.** The employee shall remain on the rolls (non-pay status) until disposition of the case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge the employee, the emergency action taken under this Section may be made the subject of a separate grievance. **(Emphasis added)**

The national parties agree on page 16-8 of the JCAM to the following:

The purpose of Article 16.7 is to allow the Postal Service to act “immediately” to place an employee in an off duty status in the specified “emergency” situations.

Mr. Freels also acted in accordance with section 651.4 of the ELM which states:

**Emergency Placement in Off-Duty Status**

An employee may be placed in an off-duty nonpay status immediately but remains on the rolls when he or she (a) exhibits characteristics of impairment due to alcohol, drugs or other intoxicant, (b) fails to observe safety rules, (c) fails to obey a direct order, (d) provides reason to be deemed potentially injurious to self or others, or (e) disrupts day-to-day postal operations in any other way. Placement in an off-duty nonpay status is confirmed in writing, stating the reasons and advising the employee that the action is appealable. The employee should be returned to duty after the cause for nonpay status ceases unless individual circumstances warrant otherwise. Use of these emergency procedures does not preclude disciplinary action based on the same conduct.

Mr. Freels also reviewed her previous accident history that showed that in the last 5 years before this accident, Ms. Bowman had another vehicle accident and three industrial accidents. She has also had eleven lost work days due to injuries.

Management Contentions B4-00104-11 (cont.)

On March 29, 2011, Ms. Bowman's FFV rolled away after she dismounted to deliver mail at 226 Carden Ave., Nashville, TN 37205. The FFV ran away to the end of the street and came to rest on a tree and brick wall.

After the initial on scene accident investigation, Belle Meade Supervisor Customer Service, Tim Freels determined that Ms. Bowman had:

1. Illegally parked the FFV in the middle of the street between parked cars on both sides of Carden Ave. This is in direct violation of Metro Davidson County codes and traffic laws. A copy of Metro Davidson County's Traffic laws Title 12.40.030 and 12.40.040 is attached and says in part:
  - a. 12.40.030 – "No person shall stand or park a vehicle in a roadway other than parallel with the edge of the roadway, headed in the direction of traffic, and with the curbside wheels of the vehicle within eighteen inches of the edge of the roadway"
  - b. 12-40-040 – "...no person shall stop, stand or park a vehicle on the roadway side of any vehicle stopped or parked at the edge or curb or a street.."

Also, under Section 812.2 of the Handbook M-41 "City Delivery Carriers Duties and Responsibilities states "Observe all traffic regulations prescribed by law. Rules applying to the public also apply to operators of postal vehicles.

2. violated the Zero Tolerance Policy dated July 19, 2010 and her Failure to Follow Proper Dismount Procedures.

Even though there were a few cars parked on both sides of Carden Ave. where Ms. Bowman was delivering mail, she could have parked behind or in front of the car parked on the right (delivery) side of the street as evident in the picture. If she had done so, she could have followed the Proper Dismount Procedures and she would have been able to curb her wheels so that in the unlikely event that both the parking brake fails and the gear shifter not staying in place failed, the FFV would not have ran away or rolled away and would have rested against the curb.

The extra few seconds to park properly and dismount properly and the few extra feet on walking to deliver 226 Carden Ave, would have been well worth the effort as that is the proper procedure and the accident and potential catastrophe would not have occurred. The attached picture after the incident of Ms. Bowman's FFV narrowly missing a child's riding toy shows how devastating and catastrophic this could have been.

Attached is a copy of the Zero Tolerance Policy concerning Improper Dismounting dated July 19, 2010 signed by Tennessee District Manager Greg Gamble that has been discussed with carriers during numerous Safety talks with the most recent being December 2, 2010. Attached is a copy of the Safety talk that was given by Mr. Freels and an Employee on the Clock report that shows that Ms. Bowman was in attendance and at work during this recent Safety talk.

(cont.)

Management Contentions B4-00104-11 (cont.)

The Zero Tolerance Policy; Improper Dismount Procedures dated July 19, 2010, which reads in part as follows:

Failure to follow proper dismount procedures is a willful violation of postal policy. The Tennessee District has adopted a zero tolerance policy for violations of proper dismount procedures. Every postal employee in the Tennessee District will be presented the attached stand-up talk addressing this policy. A record of attendance will be established and maintained in the local file. This policy is in effect for every driver, including employees who drive administrative vehicles, lease vehicles and private vehicles on official postal business.

*There is absolutely no excuse for a run-away. There is, however, the slim possibility of a mechanical failure causing a roll-away accident. In a case where an employee claims mechanical failure, the vehicle will be referred to the VMF to determine if a mechanical failure played any part in the accident.*

An accident need not occur as a result of the violation. An observation of the violation is sufficient to support corrective action. Because this is a zero tolerance policy, **any violation of this policy may result in disciplinary action, including removal.** (*Italics added*)

Ms. Bowman has been trained on the Proper Dismount Procedures when she began her Postal career as carrier and these procedures have been discussed numerous times during Safety talks over her Postal career. These procedures are also defined in the City Carrier SOP that is in Ms. Bowman's route book (Page 1 and 4 attached). The December 2, 2010 Safety talk is attached that reads in part the Proper Dismount Procedures which every driver is required to:

1. Set the hand parking/emergency brake.
2. Place the automatic transmission in park; place manual transmission in gear.
3. Curb (turn) wheels as appropriate.
4. Turn off the engine and remove the key.

Management contends that Ms. Bowman did not follow the Proper Dismount Procedures and she willfully violated Postal Safety policies.

1. Ms. Bowman definitely could not have curbed the wheels because she was illegally parked between two cars in the middle of the street.
2. Management contends that Ms. Bowman did not have the parking brake set properly. At all times, the parking brake was found in excellent working condition. Also, when Management arrived at the scene the parking brake was not set and Ms. Bowman told Supervisor Freels that she had not touched anything since the accident (see attached statement dated 04/11/2011 from Mr. Freels). Management also contends that lowering the hand brake to get her purse per Ms. Bowman written statement after one day had lapsed as not being credible.

(cont.)

3. Management contends that it is difficult to decide if Ms. Bowman had properly placed the shifter into park and removed the key, due to the fact that the key was in the ignition when Management arrived and that the Union official Brian Buttrey had been in the vehicle prematurely before the on scene investigation. Mr. Buttrey knows since being a veteran carrier and a union official that the vehicle is not to be moved or tampered with until Management arrives. In his statement, he stated that "...I put the keys in the ignition, turned it forward, then back, and the steering wheel would never lock....I left the keys in the ignition so that I could point this out to Mr. Freels when he arrived." Management contends that the gear shifter was also found to be in good working order unless it was used in haste or quick jerking motions.

Management also contends that the FFV number 0238431 that Ms. Bowman was driving that day was in perfect working order as determined by Joel Lawson, Technician, Russell Tummins, Lead Technician, and Robert Montgomery, Supervisor (A) at the Nashville Vehicle Maintenance Facility.

Statements from all three of these certified Postal vehicle technicians are attached. Mr. Lawson, the technician who was on the scene of the accident stated, "While I was inspecting the FFV, the station Supervisor asked me to check to see if the shifter, the key cylinder, and the park brake was all working properly. I demonstrated all with out any problems". Mr. Tummins, the Lead Technician that inspected the vehicle the previous day after the accident and ran numerous tests on the vehicle's parking brake, transmission shifter, and the shift inter-lock mechanism. After he concluded all of his extensive and thorough tests, he stated "I concluded on March 30, 2011 that vehicle 0238431 was safe to operate". Robert Montgomery, VMF Supervisor (A) stated "At the conclusion of our test here at the VMF, vehicle 0238431 is in safe, proper working condition".

On Friday April 8, 2011, Mr. Montgomery and Mr. Lawson were requested to come back out to Belle Meade station to address concerns that the Union had expressed about the same vehicle 0238431. Mr. Montgomery talked to the Union officials about their concerns and they demonstrated some of those concerns to him. He addressed those concerns in his attached statement dated April 11, 2011. He stated "...Under normal functions check and operation of the key and shifter these two components were working properly as expected, but when operated with quick, jerking motions or while in haste the key was able to be removed and the shifter shifted improperly.." He concluded in his letter "Under normal mechanical inspection the vehicle 0238431's key and shifter performed properly. When used in a hastily manner, these components did malfunction. The parking brake system is in very good, proper and safe working condition and will prevent the vehicle from moving when the park brake is properly applied".

Management contends that when the vehicle is properly placed in park and the parking brake is properly set, this vehicle was in safe working condition before and after the rollaway/runaway on March 29, 2011.

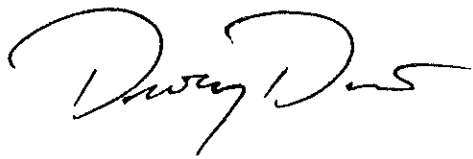
(cont.)



Management Contentions B4-00104-11 (cont.)

Management contends that Article 29 of the National Agreement does not apply in this emergency placement. The carrier's driving duties have not been revoked or suspended. She has been placed on Emergency Placement in accordance with the applicable provisions of Article 16 and the ELM. Article 29 merely states that Management "may" suspend or revoke driving privileges and place them in a non-driving duty after an accident. Article 29 does not state that Management "shall" or must act in any certain way in this type of incident and therefore is not applicable.

Management contends the Emergency Placement of the grievant in Off-Duty Status on March 29, 2011, pending the outcome of an investigation of a probable willful and intentional safety violation, was reasonable, immediate and with just cause.

A handwritten signature in black ink, appearing to read "Dwayne Davis". The signature is stylized with a large, looping initial "D" and a long horizontal stroke at the end.

Management Formal Step A Representative  
Dwayne Davis

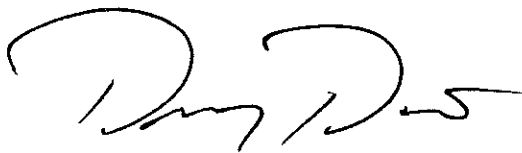
May 23, 2011

Management Contentions (continued)  
B4-00104-11

In the Union's additional contentions:

#1, the Union states that carriers that have carried route 510 have always parked in the middle of the street to make deliveries. Attached is an email from Supervisor Customer Service Tim Freels that states he has not observed any carrier parking in the middle of the street to make a delivery on that route. The Union also contends that no additional instructions have been given. Also attached is an email from Manager Customer Service J.C. Byrd that states that during a Mandatory Safety talk (attached) after Ms. Bowman's rollaway/runaway incident, he conducted the Safety talk and reminded the carriers again of the proper dismount procedures and instructed them to find a safe place to park, not in the middle of the street.

#2, the Union contends that the vacant space in the pictures is in front of 230 Carden. To clarify this again, Management has added a picture that shows the FFV at the end of Carden, an arrow pointing to 230 Carden, 228 Carden and the mailbox (228). Notice that no cars are parked in front of either of those houses. Management also resubmits a picture that shows that there is a car parked in front of 226 Carden, 3 X's to show where Ms. Bowman told Supervisor Freels where the FFV started its runaway/rollaway and an arrow showing the box at 224 Carden. This shows that no one was parked between 226 and 224 Carden. There were plenty of open spaces for Ms. Bowman to park and dismount properly. The Union also submitted a 3999 dated 06/11/01. They point out the comments of then Supervisor Sherri Cole that wrote comments "a lot of cars parked on the street makes delivering **mounted** deliveries difficult." Mrs. Cole did not remark that the carrier had to park in the middle of the street or had to dismount to make these deliveries. Mrs. Cole did however use brackets to identify a loop of deliveries (225, 227, 229 A & B, 231, 230, 228, 226, 224, and 222 Carden) which includes the delivery in question, and makes the comment that the carrier "makes a loop" which means the carrier parked the vehicle, dismounts, and delivers these addresses on foot.



Management Formal Step A Representative  
Dwayne Davis

\* PAGE 6 of Union's 3999 has a post it note on right side that is not the comments of the supervisor ie: "parked in street" + "talks about too many cars on street."

D. Davis  
5-23-11

MSS 1



Date: March 29, 2011  
MEMORANDUM FOR: Mrs. Janet Bowman  
FTR City Letter Carrier  
EIN: 02377438  
Nashville, TN 37205-9998

7010 3090 0001 0093 6803  
Certified Mail  
Return Receipt Requested

SUBJECT: EMERGENCY PLACEMENT IN OFF-DUTY STATUS

You are hereby notified that effective March 29, 2011, you were placed in a non-duty, non-pay status under the provisions of Article 16, Section 7, of the National Agreement. The reason for this action is your failure to follow safety regulations and the zero tolerance policy.

You are placed in this Emergency off-Duty Status (without pay) under the provisions of Article 16, Section 7, of the National Agreement, which states in part as follows:

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U. S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others.

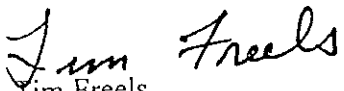
You shall remain on the rolls (non-pay status) until further notice.

You are further advised that you are prohibited from interfering with the day-to-day operation of this postal facility and will not be allowed unescorted on the workroom floor.

If this action is overturned on appeal, back pay may be allowed, unless otherwise specified in the appropriate award or decision, ONLY IF YOU HAVE MADE REASONABLE EFFORTS TO OBTAIN OTHER EMPLOYMENT DURING THE RELEVANT NON-WORK PERIOD. The extent of documentation necessary to support your back pay claim is explained in the ELM, Section 436.

You have the right to appeal this action under the grievance-arbitration procedure set forth in Article 15, Section 2, of the National Agreement within 14 days of your receipt of this notice.

A copy of this notice is also being sent to you by priority mail. confirmation of delivery.

  
Jim Freels  
Supervisor, Customer Services

ML

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Janet Bowman  
 569 Crowley Dr  
 Nashville TN  
 37209

2. Article Number  
(Transfer from service label)

7011 0470 0003 4962 7845

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee  
*Janet Bowman*

B. Received by (Printed Name)  Agent  
 Addressee  
 JANET BOWMAN

C. Date of Delivery  
 5/10/11

D. Is delivery address different from item 1?  Yes  
 No  
 If YES, enter delivery address below:

3. Service Type

Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Janet Bowman  
 569 Crowley Dr  
 Nashville TN  
 37209

2. Article Number  
(Transfer from service label)

7010 3090 0001 0093 6803

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee  
*Janet Bowman*

B. Received by (Printed Name)  Agent  
 Addressee  
 Janet Bowman

C. Date of Delivery  
 3/30/11

D. Is delivery address different from item 1?  Yes  
 No  
 If YES, enter delivery address below:

3. Service Type

Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes



Track/Confirm - Intranet Item Inquiry - Domestic

Tracking Label: 7010 3090 0001 0093 6803

<b>Destination</b>	<b>ZIP Code:</b> 37209	<b>City:</b> NASHVILLE	<b>State:</b> TN
<b>Origin</b>	<b>ZIP Code:</b> 37205-9998	<b>City:</b> NASHVILLE	<b>State:</b> TN

**Class/Service:** First-Class Certified Mail

Service Calculation Information

**Service Performance Date**  
Scheduled Delivery Date: 03/30/2011

**Weight:** 0 lb(s) 1 oz(s) **Postage:** \$0.88

**Delivery Option Indicator:** Normal Delivery **Zone:** 00

**Rate Indicator:** SINGLE PIECE - FLAT **PO Box?:** N

<b>Special Services</b>	<b>Associated Labels</b>	<b>Amount</b>
Certified Mail	7010 3090 0001 0093 6803	\$2.80
Return Receipt	7010 3090 0001 0093 6803	\$2.30

<b>Event</b>	<b>Date/Time</b>	<b>Location</b>	<b>Scanner ID</b>
DELIVERED	03/30/2011 11:53	NASHVILLE, TN 37209	030SHFH538
	<b>Input Method:</b> Scanned <b>Finance Number:</b> 476159 <a href="#">Request Delivery Record</a> <a href="#">View Delivery Signature and Address</a>		
ARRIVAL AT UNIT	03/30/2011 08:01	NASHVILLE, TN 37209	030SHFG738
ACCEPT OR PICKUP	03/29/2011 16:30	NASHVILLE, TN 37205	
	<b>Input Method:</b> Scanned <b>Finance Number:</b> 476160		

Enter Request Type and Item Number:

Quick Search  Extensive Search

[Explanation of Quick and Extensive Searches](#)

Version 1.0

Inquire on [multiple items](#).

Go to the Product Tracking System [Home Page](#).

M8



**Track/Confirm - Intranet Item Inquiry**  
**Item Number: 7010 3090 0001 0093 6803**

**This item was delivered on 03/30/2011 at 11:53**

Signature:	Signature	<i>[Handwritten Signature]</i>
	Printed Name	Janet Bowman
Address:	Address	<i>[Handwritten Address]</i>
	City, State, ZIP	569 Crater Dr.

**Enter Request Type and Item Number:**

Quick Search       Extensive Search

[Explanation of Quick and Extensive Searches](#)

Version 1.0

Inquire on [multiple items](#).

Go to the [Product Tracking System Home Page](#).

*M9*

## 650 Nonbargaining Disciplinary, Grievance, and Appeal Procedures

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### 651 **Disciplinary and Emergency Procedures**

#### 651.1 **Scope**

Part 651 establishes procedures for (a) disciplinary action against nonprobationary employees who are not subject to the provisions of a collective bargaining agreement, and (b) emergency action for conduct that also normally warrants disciplinary action.

#### 651.2 **Representation**

Subject to prohibitions regarding Executive and Administrative Schedule (EAS)/Craft representation, employees have free choice of representation. Representatives designated by employees, if postal employees and if otherwise in a duty status, are granted a reasonable amount of official time to respond to notices of proposed disciplinary action, to prepare for and represent the employee at a hearing held in accordance with 652.24, and/or to represent an employee who has appealed a letter of warning or emergency placement in a nonduty status in accordance with 652.4. Employees covered under these provisions may request representation during investigative questioning if the employee has a reasonable belief disciplinary action may ensue.

#### 651.3 **Nondisciplinary Corrective Measures**

Accountable managers/supervisors are responsible for the direct day-to-day performance management of subordinates. The accountable manager/supervisor monitors subordinates' performance and provides appropriate resources, coaching, and feedback to subordinates. The manager/supervisor is responsible for leading the employee to a higher level of achievement. Performance improvement should be a shared concern and effort between manager and employee. Early dialogue and guidance are critical to achieving positive results and continuance of an effective manager/employee relationship.

#### 651.4 **Emergency Placement in Off-Duty Status**

An employee may be placed in an off-duty nonpay status immediately but remains on the rolls when he or she (a) exhibits characteristics of impairment due to alcohol, drugs or other intoxicant, (b) fails to observe safety rules, (c) fails to obey a direct order, (d) provides reason to be deemed potentially injurious to self or others, or (e) disrupts day-to-day postal operations in any other way. Placement in an off-duty nonpay status is confirmed in writing, stating the reasons and advising the employee that the action is appealable. The employee should be returned to duty after the cause for nonpay status ceases unless individual circumstances warrant otherwise. Use of these emergency procedures does not preclude disciplinary action based on the same conduct.



July 19, 2010

**MEMORANDUM FOR:** Postmasters, Managers and Supervisors  
Tennessee District

**SUBJECT:** Zero Tolerance Policy -  
Improper Dismount Procedures

The Tennessee District has adopted a zero tolerance policy for violations of proper dismount procedures. This policy applies to every driver, including employees who drive administrative vehicles, lease vehicles and private vehicles on official postal business. Failure to follow proper dismount procedures is a direct violation of postal policy.

There is absolutely no excuse for a run-away. There is, however, the slim possibility of a mechanical failure causing a roll-away accident. In a case where an employee claims mechanical failure, the vehicle will be referred to the VMF to determine if a mechanical failure played any part in the accident.

An accident need not occur as a result of the violation. An observation of the violation is sufficient to support corrective action. Because this is a zero tolerance policy, **any violation of this policy may result in disciplinary action, including removal.**

If you have questions or need additional information, please contact the Labor Relations Office.

A handwritten signature in black ink, appearing to read "Greg A. Gamble", with a long horizontal line extending to the right.

Greg A. Gamble

811 ROYAL PARKWAY  
NASHVILLE, TN 37229-9998  
615/885-9252  
FAX: 615/885-9317

M 11



## TENNESSEE DISTRICT

### ZERO TOLERANCE POLICY

#### FAILURE TO FOLLOW PROPER DISMOUNT PROCEDURES

Failure to follow proper dismount procedures is a violation of postal policy. Our drivers training instructs us that any time you are not sitting in the drivers seat, the following four steps are required (this policy is the same for all vehicles whether it is a government vehicle, or a private vehicle being used by a carrier for mail delivery):

*Every driver is required to:*

- 1. Set the hand parking/emergency brake.
- 2. Place the automatic transmission in park; place manual transmission in gear.
- 3. Curb (turn) wheels as appropriate.
- 4. Turn off the engine and remove the key

A Zero Tolerance Policy for failure to follow proper dismount procedures is in effect. Any employee who violates this policy is subject to serious corrective action which could result in termination of employment. Failure to follow proper dismount procedures need not result in an accident to invoke action, just being observed violating these procedures is sufficient for disciplinary action.

There is absolutely no excuse for a runaway or rollaway. Each time an accident of this type happens there is potential for a fatality. Postal drivers are required to follow all four steps listed above *every time* they get out of the drivers seat for **any** reason.

#### NO EXCEPTIONS

If you get out of the seat for any reason, whether it be to get out of the vehicle or to get a package out of the back, do the right thing and follow the 4 steps listed above. You just might save a life. You might save your job.

#### **NOTE: Postmasters, Managers, and Supervisors:**

Record the date and the names of employees attending this talk on the page provided. Make sure that every employee who operates a motor vehicle in an official capacity is presented this talk.

M12



UNITED STATES  
POSTAL SERVICE®

User ID: KZV7QR

Report: TAC500R7 v2.003

Restricted USPS T&A Information

Date: 05/16/11

Fin. #: 47-6160

NAS-BELLE MEADE STA

Time: 06:40 AM

Employees On The Clock

Page: 1

Time Selected : Dec 02, 2010 09.00

Sub-Unit: 005

Employee ID	Employee Last Name	F I	M I	D/A	RSC	Last Func	Last Date	Last Time	Last Operation	Base Oper
01943066	HAMILTON	E	T	13-4	Q	BT	12/02/10	07.12	7220-05	YES
02085121	MEADOR	K	L	13-4	Q	BT	12/02/10	07.00	7220-05	YES
02337846	TOMLINSON	S	A	13-4	Q	BT	12/02/10	07.02	7220-05	YES
01981692	EVERETT	T	D	11-0	P	MV	12/02/10	08.73	7690-05	NO
02100143	HILL	C	M	13-4	Q	BT	12/02/10	07.01	7220-05	YES
02117742	AVERY	V	L	11-0	P	MV	12/02/10	08.74	7690-05	NO
02362013	BUTTREY	B	K	13-4	Q	BT	12/02/10	07.15	7220-05	YES
02145504	TINCH	B	L	13-4	Q	MV	12/02/10	09.00	7210-05	NO
01998277	HATCHETT	L		13-4	Q	BT	12/02/10	07.00	7220-05	YES
02363644	WILKERSON	D	W	13-4	Q	BT	12/02/10	07.01	7220-05	YES
02289941	GRAY	M	K	13-4	Q	BT	12/02/10	07.00	7220-05	YES
02165168	JORDAN	T	L	13-4	Q	BT	12/02/10	07.00	7220-05	YES
02133591	YARBROUGH	L	R	13-4	Q	BT	12/02/10	07.01	7220-05	YES
01959737	MAXEY	S	L	13-4	Q	BT	12/02/10	07.00	7220-05	YES
02335685	MEECE	T	W	13-4	Q	BT	12/02/10	07.02	7220-05	YES
02050199	SANDERS	T	A	13-4	Q	BT	12/02/10	07.07	7220-05	YES
02317559	CONNER	A	B	13-4	Q	BT	12/02/10	07.03	7220-05	YES
02369167	FREELS	T	W	09-0	E	BT	12/02/10	06.00	7050-05	YES
02212203	TEJEDA	F		13-4	Q	BT	12/02/10	07.00	7220-05	YES
02132643	RAY	C	K	13-4	Q	MV	12/02/10	08.75	7220-05	YES
02283040	BATES	C	L	11-0	P	BT	12/02/10	08.50	3550-05	YES
02242409	WEAKLEY	S	P	13-4	Q	BT	12/02/10	07.01	7220-05	YES
02098971	BASSHAM SR	J	T	13-4	Q	BT	12/02/10	07.06	7220-05	YES
02121495	HUTCHISON	K	W	13-4	Q	BT	12/02/10	07.00	7220-05	YES
02331848	BURNETT JR	J	R	11-0	P	MV	12/02/10	08.73	7690-05	NO
02338277	WILSON	M	L	13-4	Q	BT	12/02/10	06.50	7220-05	YES
02317414	WALTON	C	L	13-4	Q	BT	12/02/10	07.02	7220-05	YES
02111015	MC DONALD	R	O	13-4	Q	BT	12/02/10	07.03	7220-05	YES
02316314	REASONOVER	D	W	11-0	P	BT	12/02/10	07.18	5440-05	NO
02222009	DESKINS	T	L	11-0	P	BT	12/02/10	08.45	3550-05	YES
01992319	BERNHARDT	A	W	13-4	Q	BT	12/02/10	07.00	7220-05	YES
02357854	SAUMS	M	B	13-4	Q	BT	12/02/10	07.02	7220-05	YES
02377438	BOWMAN	J	M	13-4	Q	BT	12/02/10	07.04	7220-05	YES
02403605	BUSBY	R	A	13-4	Q	BT	12/02/10	07.00	7220-05	YES
02273280	BYRD	J	C	09-0	E	BT	12/02/10	08.50	7050-05	YES
02366102	BALADAD	T	A	13-4	Q	BT	12/02/10	07.00	7220-05	YES
02242836	JAMES	D	C	11-0	P	BT	12/02/10	08.40	3550-05	YES
02178441	MOSER	D	R	13-4	Q	BT	12/02/10	07.00	7220-05	YES

Employee Totals by Sub-Unit (Per Selection): 38

Employee Totals by Finance # (Per Selection): 38

M13



# STANDARD OPERATING PROCEDURE

TO: Postmasters,  
Managers, Customer Service Operations  
Managers, Customer Service  
Supervisors, Customer Service

DATE: November, 2009

CAROLYN CHAMBERS  
DISTRICT MANAGER  
TENNESSEE DISTRICT

## CITY CARRIER SOP

The Following are the Standard Operating Procedures for city routes within the Tennessee District. These procedures are to be followed unless management instructs otherwise. You are required to report to work promptly as scheduled. Do not clock in early unless authorized by management. Do not report to your workstation or linger around the workroom floor before your tour of duty or after your tour has ended.

### I. A.M. Office Duties

- a. Obtain your vehicle keys and proceed to your vehicle. Inspect your vehicle according to Notice 76. Do not linger in the parking lot. There will be no smoking or drinking coffee while inspecting your vehicle. Insure the vehicle will start. If you detect any damage or vehicle needs repair, complete Form 4565 and turn into supervisor.
- b. Retrieve your scanner and withdraw from both your letter and flat hot case and take your hot case card to your case or as required.
- c. Load your ledge with a minimum of 2 feet of flats removing straps and shrink wrap in one process, concentrating on preferential flats first, then begin casing the oldest standard flat mail until all flats are cased or you have received instruction from the supervisor. You are required to hold 6 inches of flats in your arm while casing. Keep your preferential mishrows separate from your non-preferential mishrows.
- d. Your supervisor will announce when the final receipt of mail has been given to you. You are to notify your supervisor if you cannot complete your assigned route within 8 hours. If you request a Form 3996, it needs to be completed immediately along with a completed Form 1571 curtail slip. It must list any mail you determine cannot be case (if required) and delivered without the use of overtime or auxiliary assistance. All OT requests must be justified with an explanation on the Form 3996 and available for your supervisor when they

- k. DPS backtrack mail discovered on the street must be delivered, though never back the delivery vehicle to redeliver pieces. Notify the supervisor of backtrack occurrences.
- l. After the last delivery, return immediately to the office via your authorized line of travel unless otherwise directed by Management.
- m. If you carried a hand-off, you must complete the bottom portion of the Form 3996 indicating delivery time separate from travel time and return it to the supervisor.

### **III. Park & Loop/Foot Routes**

- a. You must use your satchel when delivering on foot other than authorized dismount deliveries. Dog spray should also be carried.
- b. Park and Loop routes must park in their designated locations.
- c. Your satchel must be loaded with all letter and flat mail and SPR's for each loop from that park point unless this volume exceeds 35 lbs.
- d. You must take available shortcuts and you must finger mail except when driving or when safety hazards permit.
- e. Determine if customers receiving a parcel or accountable mail are available while delivering the loop, leaving a completed 3849 if no response. Inform available customers that you will return with parcel when loops are completed.
- f. When delivering accountable mail, ring the doorbell and/or knock on the door. Complete Form 3849 while waiting for the customer to respond.

### **IV. Curb line Delivery**

- a. You must serve curb line boxes by combining letters, flats and DPS in one motion. Multiple passes to the mail receptacle are not authorized unless the volume for the box is greater that can be held in one hand.
- b. Keep your DPS errors, CFS, and UAA mail separate.
- c. Curb wheels, turn off your engine, remove your key, and set the emergency break whenever you dismount your vehicle.
- d. Never back vehicle to redeliver pieces.

### **V. Central Delivery**

- a. Attempt delivery of all parcels and accountable mail for central delivery location before serving the central delivery unit if parcel lockers are unavailable. Deliver flats before letters into these types of boxes.

### **VI. PM Office Duties**

Search

Results 1 - 10 of about 1650 for title 12. Search took 0.75 seconds.

Next>

Sort by date / Sort by relevance

[PDF] Title 12 VEHICLES AND TRAFFIC Chapters: 12.04 Definitions 12.08 ...

Page 1. Title 12 VEHICLES AND TRAFFIC ... Sections: 12.08.010Compliance with Title 12 provisions. 12.08.020Applicability of provisions—To highways. ... www.nashville.gov/pw/pdfs/divisions/TITLE\_12.pdf - 2006-01-23 - Text Version

SUBSTITUTE ORDINANCE SO98-1352

A substitute ordinance to amend Title 12 and Title 13 of the Metropolitan Code of Laws of Nashville and Davidson County to regulate the use of roller skates ... www.nashville.gov/mc/ordinances/term\_1995\_1999/so98\_1352.htm - 11k - 2003-10-01 - Cached

ORDINANCE NO. O99-1815

An Ordinance amending Title 12 of the Metropolitan Code to provide revisions relating to the operating of bicycles on sidewalks, streets and roads of ... www.nashville.gov/mc/ordinances/term\_1995\_1999/o99\_1815.htm - 15k - 2003-10-01 - Cached [ More results from www.nashville.gov/mc/ordinances/term\_1995\_1999 ]

BILL NO. BL2002-1071

An ordinance amending Title 12 of the Metropolitan Code of Laws by changing the definition of "abandoned motor vehicle" in Section 12.08.210. ... www.nashville.gov/mc/ordinances/term\_1999\_2003/bl2002\_1071.htm - 7k - 2003-10-01 - Cached

ORDINANCE NO. BL2002-1127

... Section 1. Title 12 of the Metropolitan Code of Laws is hereby amended by adding the following new chapter: Chapter 12.69 Cruising on Public Streets. ... www.nashville.gov/mc/ordinances/term\_1999\_2003/bl2002\_1127.htm - 14k - 2003-10-01 - Cached [ More results from www.nashville.gov/mc/ordinances/term\_1999\_2003 ]

Nashville.gov - Metropolitan Clerk - AGENDA

... BILL NO. BL2009-491 (Stanley). An ordinance amending Title 12 of the Metropolitan Code regarding commercial vehicles operating on local streets. BILL NO. ... www.nashville.gov/mc/agenda\_archive/term\_2007\_2011/2009\_07\_07\_agenda.htm - 24k - 2009-07-01 - Cached

Nashville.gov - Metropolitan Clerk - AGENDA

... Committees. An ordinance amending Title 12 of the Metropolitan Code regarding commercial vehicles operating on local streets. BILL NO. ... www.nashville.gov/mc/agenda\_archive/term\_2007\_2011/2009\_12\_15\_agenda.htm - 24k - 2009-12-09 - Cached [ More results from www.nashville.gov/mc/agenda\_archive/term\_2007\_2011 ]

[PDF] Metro Grease Control Equipment Inquiry Form\_Web.xls

... Fax #: Authorized Representative Information 10. Contact Name: (Mr) (Ms) 11.Title: 12.Phone #: Email address: FACILITY INFORMATION 13.Available Seating: 14. ... www.nashville.gov/water/docs/Grease\_Control\_Equipment\_Inquiry\_Ltr.pdf - 2010-03-22 - Text Version

ORDINANCE NO. BL2009-491

SUBSTITUTE ORDINANCE NO. BL2009-491. An ordinance amending Title 12 of the Metropolitan Code regarding commercial vehicles operating on local streets. ... www.nashville.gov/mc/ordinances/term\_2007\_2011/bl2009\_491.htm - 10k - 2009-12-28 - Cached

ORDINANCE NO. BL2010-748

ORDINANCE NO. BL2010-748. An ordinance amending Title 12 of the Metropolitan Code regarding the operation and parking of large vehicles on local streets. ... www.nashville.gov/mc/ordinances/term\_2007\_2011/bl2010\_748.htm - 9k - 2010-10-08 - Cached [ More results from www.nashville.gov/mc/ordinances/term\_2007\_2011 ]

M16

Title 12

VEHICLES AND TRAFFIC

Chapters:

- 12.04 Definitions
- 12.08 General Regulations, Administration and Enforcement
- 12.12 Traffic-Control Devices
- 12.16 Rules of the Road
- 12.20 Speed Restrictions
- 12.24 Through Streets and Stop Intersections
- 12.28 One-Way Street and Alleys
- 12.32 Equipment
- 12.36 Size, Weight and Load Restrictions
- 12.40 Parking
- 12.41 Valet Services
- 12.42 Permit Parking Programs
- 12.44 Parking Meter Zones
- 12.48 Loading and Unloading
- 12.52 Pedestrians
- 12.54 Horse-Drawn Carriages
- 12.56 Parades
- 12.58 Scooters, Roller Skates and In-Line Skates
- 12.60 Bicycles
- 12.64 Motorecycles
- 12.68 Miscellaneous Driving Rules
- 12.69 Cruising on Public Streets
- 12.72 Tow-In Lots
- 12.76 Railroads and Grade Crossings
- 12.80 Ferries
- 12.84 Violations—Fine Schedules

- 12.40.190 Night parking restrictions—Tank trucks, school buses and certain other vehicles.
- 12.40.200 Unattended motor vehicles—Required procedures.
- 12.40.210 Illegal parking—Owner prima facie responsibility.
- 12.40.220 Removal of vehicles authorized when.
- 12.40.230 Chapter provisions not exclusive.

\* **Editor's Note:** Schedule VII, referred to in Sections 12.40.030, 12.40.040, 12.40.160, 12.40.170, 12.40.220 and 12.40.230 of this chapter, is on file for public inspection at the offices of the metropolitan traffic and parking commission.

**12.40.010 Application of chapter provisions.**

The provisions of this chapter prohibiting the standing or parking of a vehicle shall apply at all times, or at the times herein specified, or as indicated on official signs except when it is necessary to stop a vehicle to avoid conflict with other traffic, or in compliance with the directions of a police officer or traffic-control device. (Prior code § 27-1-158)

**12.40.020 Sign requirements.**

Whenever by this or any other regulation of the traffic and parking commission, any parking time is imposed or parking is prohibited on designated streets, it shall be the duty of the department of public works to erect appropriate signs giving notice thereof, and no such regulations shall be effective unless such signs are erected and in place at the time of any alleged offense. (Ord. 93-575 § 4(n), 1993; prior code § 27-1-160)

\* **12.40.030 Method of parking.**

No person shall stand or park a vehicle in a roadway other than parallel with the edge of the roadway, headed in the direction of traffic, and with the curbside wheels of the vehicle within eighteen inches of the edge of the roadway, except as provided in the following subsections:

A. Upon those streets which have been officially marked or signed for angle parking, vehicles shall be parked at the angle to the curb indicated by such marks or signs, and no vehicle shall occupy more than one parking stall or position when plainly marked;

B. Angle parking shall be permitted in suburban business districts within the jurisdiction of metropolitan government where ramps have been constructed in front of or adjacent to store buildings under plans and specifications approved by the traffic and parking commission, but in no case shall any vehicle project into the street from the nor-

mal curbline produced. Angle parking is permitted in the location described and designated in Schedule VII. (Ord. 90-1339 § 1 (27-7), 1990; prior code § 27-1-144)

\* **12.40.040 Stopping, standing or parking—Prohibited locations.**

A. Except when necessary to avoid conflict with other traffic, or in compliance with regulation of the directions of a police officer or official traffic-control device, no person shall:

1. Stop, stand or park a vehicle:

a. On the roadway side of any vehicle stopped or parked at the edge or curb of a street,

b. On a sidewalk; however, a bicycle may be parked on a sidewalk unless otherwise posted if it does not impede the normal and reasonable movement of pedestrians or other traffic. Any vehicle in violation of this provision shall be towed and the owner or operator shall be responsible for the payment of the towing charges,

c. Within an intersection,

d. On a crosswalk,

e. Between a safety zone and the adjacent curb, or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings,

f. Alongside or opposite any street excavation or obstruction, when stopping, standing or parking would obstruct traffic,

g. Upon any bridge or other elevated structure upon a highway or within a highway tunnel,

h. On any railroad tracks,

i. At any place where official signs prohibit stopping, standing or parking;

2. Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

a. In front of a public or private driveway,

b. Within fifteen feet of a fire hydrant,

c. Within thirty feet of a crosswalk at an intersection,

d. Within thirty feet upon the approach to any flashing signal, stop sign, yield sign or traffic-control signal located at the side of a roadway,

e. Within twenty-five feet of the driveway to fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of such entrance, when properly signposted,

f. At any place where official signs prohibit standing,

g. On any controlled-access highway,

h. In the area between roadways of a divided highway, including crossovers,

i. In front of any postal mail drop or box,

# 8 Vehicle Operations

## 81 Vehicle Regulations and Safety Practices

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### 811 Vehicle Regulations

#### 811.1 Responsibility of Carrier

- 811.11 Be sure you are qualified to drive the vehicle assigned to you; maintain a valid state driver's license.
- 811.12 Advise your immediate manager of suspension or revocation of your state license.

#### 811.2 Authorized Riders

- 811.21 Postal employees with proper identification may ride in motor vehicle when necessary to perform their official duties. Unauthorized riders in postal vehicles are prohibited.
- 811.22 Employees may not ride in postal vehicles when off duty, nor when on duty unless riding is essential to the duty being performed.
- 811.23 All employees, including route examiners and officials, are forbidden to ride on powered industrial mobile equipment as passengers.
- 811.24 Route examiners may use a separate motor vehicle for which they have been qualified and authorized when making light delivery vehicle route inspections.

### 812 Safety Practices

- 812.1 Practice safety in the office and on the route.
- ★ 812.2 Observe all traffic regulations prescribed by law. Rules applying to the public also apply to operators of postal vehicles.
- 812.3 Seatbelts must be worn at all times the vehicle is in motion. Exception for Long Life Vehicles: In instances when the shoulder belt prevents the driver from reaching to provide delivery or collection from curbside mailboxes, only the shoulder belt may be unfastened. The lap belt must remain fastened at all times the vehicle is in motion.
- 812.31 When traveling to and from the route, when moving between park and relay points, and when entering or crossing intersecting roadways, all external vehicle doors must be closed. When operating a vehicle with sliding driver's cab doors on delivery routes and traveling in intervals of 500 feet (1/10 mile) or less at speeds not exceeding 15 MPH between delivery stops, the right-hand sliding cab door may be left open.



- 812.32 For vehicles with separate driver and cargo compartments, only working mail should be kept in the driver's compartment while performing delivery and collection duties. Interior cargo doors (if any) may be kept in the "open" position to accommodate authorized passengers being transported in auxiliary seating, operator use of cargo area windows (if any), or to aid airflow. Consider the nature of mail or equipment being transported and use good judgment in deciding when an open internal door is suitable and will not interfere with the safety of vehicle operations. Internal cargo doors must be closed and locked when the vehicle is parked (see 822e).
- 812.4 Do not finger mail while driving or hold mail in your hands while the vehicle is in motion. You must use mirror to check for pedestrians ahead, in back, and on both sides before placing the vehicle in motion.
- 812.5 Arrange letter mail, flat mail, and small parcels in the work tray provided on the ledge behind the windshield so as not to obstruct vision or use of the vehicle controls. Trays must not be piled on top of other trays on the ledge behind the windshield.
- 812.6 Any authorized sticker placed on the windshield or on other glass of the vehicle must not hinder your vision.
- 812.7 Only authorized passengers are permitted to ride in postal-owned, GSA-owned, rental, or contract vehicles (including employees' privately owned vehicles when used in postal operations). All passengers must use seatbelts. Where conventional passenger seats have not been provided in the vehicle, an approved auxiliary seat, facing forward, and equipped with a backrest and seatbelts must be used. Sitting in other than an approved seat or standing in a postal vehicle while such vehicle is in motion is prohibited.

## 82 Postal Security

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- 821 Always keep the rear door and/or tailgate of the vehicle locked, except when loading or unloading the vehicle.
- ✈ 822 Whenever the driver leaves the vehicle, the vehicle must be parked. To park the vehicle:
- a. Apply the foot brake and place automatic transmissions in the park position. Place manual transmissions in gear.
  - b. Turn the vehicle's front wheels toward the curb if you are on a flat surface or when the vehicle is facing downhill. If the vehicle is parked facing uphill, turn the front wheels away from the curb.
  - c. Set the hand-parking/emergency brake.
  - d. Turn off the engine and remove the key.
  - e. Lock any sliding door(s) between the truck body and cab.
  - f. Lock the doors if you will be out of direct sight of the vehicle.
- 823 Inspect the inside of the vehicle for mail matter after completing street duties.

May 16, 2011

MEMORANDUM FOR: Labor Relations

SUBJECT: Roll away Accident – Jan Bowman

On March 29, 2011 at 12:10 pm, I received a call from the Manager of Belle Meade Station (Jeffery Byrd) that one of his carriers was involved in an accident at 230 Carden Ave. When I arrived on the scene, there were three people on the scene. One was the Supervisor (Tim Freels) and two carriers (Jan Bowman and B. Buttery). At that time, the Supervisor was taking pictures of the accident scene. I asked him if anything had been touched and he informed me that the carrier (Ms. Bowman) stated that "she has not touched the vehicle since it came to rest where it is now". About that time, two Safety Officials (Kim Alley and Tammy McDonald) had arrived on the scene. I asked if they had a camera so I could take more photos of the scene and Ms. McDonald had one. I walked up to the vehicle and took a couple of photos showing that the key was still in the ignition and that the hand brake was not set. I also took photos showing the distance between where the LLV started and ended rolling backwards, and the path the vehicle had taken.

At that point the vehicle, the mail was unloaded and put into two other vehicles to be delivered by other carriers. At that point Mr. Buttery informed the Supervisor that Ms. Bowman wanted to give her statement right there at the scene and since he was a Union Official, the statement was taken. After that, Mr. Buttery went back to his route to deliver mail and Ms. Bowman was taken back to the Station.

The Safety Officials and I waited for the tow truck driver to arrive on the scene. After he pulled the vehicle off of the tree and rock wall, he started the vehicle up and moved it forward to put on the tow truck. At that time the tow truck driver pulled the hand brake and turned vehicle off. The hand brake worked perfectly and the steering wheel also locked. The tow truck driver informed me that an investigation would be completed on the vehicle to make sure if anything was or was not working properly. I then left the scene.

Mike Vaughn  
MCSO (A)



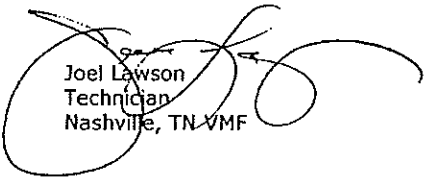
April 9, 2011

To Whom It May Concern:

On March 29, 2011 I was dispatched to Carden Ave to retrieve a FFV, 0238431, that was stuck on a rock wall. Once on scene I assessed the situation and planned out a method of extracting the FFV with minimal damage to the wall, that it had come to rest on, and vehicle. Once I figured out a way to extract the FFV I attached the wench cable from my wrecker to the FFV. When the FFV was secured to the cable the station Supervisor placed the FFV in neutral. Once everyone was clear of the FFV I began to extract the FFV. Once the FFV was on level ground I placed the FFV's shift lever in park and set the park brake. I then proceeded to inspect the vehicle for any damage that could not be seen from before. The FFV appeared to just have cosmetic damage to the body in front of the right rear wheel, right side cove glass, right side mirrors, and some body scratches/rub marks.

While I was inspecting the FFV, the station Supervisor asked me to check to see if the shifter, the key cylinder, and the park brake was all working properly. I demonstrated all with out any problems. The station Supervisor called the Safety Officer over and I demonstrated the same for her. Both the station Supervisor and the Safety Officer said they had seen enough and left.

I proceeded to load the FFV onto the wrecker and transport it to the Nashville VMF. Upon arriving at the VMF I unloaded the FFV and again checked the park brake, shift lever, and key cylinder, all ok. I advised my Supervisor of all activities.



Joel Lawson  
Technician  
Nashville, TN VMF

M 22



April 9, 2011

Dear Sirs,

On March 30, 2011 I was directed by my supervisor Robert Montgomery to inspect vehicle 0238431 as it had been involved in a roll away the previous day. I proceeded to check the vehicle's parking brake, transmission shifter, and the shift inter-lock mechanism. With the vehicle on an incline in the VMF parking lot and the parking brake applied, the vehicle did not move when shifted into neutral and my foot was removed from the brake pedal. I then tried shifting to reverse and drive. The vehicle still did not move, even with a slight amount of throttle applied. I also checked the transmission shift mechanism. With the lock cylinder in the locked position and the key out, the shifter lever would not move from the park position with a reasonable amount of force applied. With the key in the lock cylinder and the lock cylinder turned to the run position and my foot off the brake pedal, the shifter still could not be moved from park with a reasonable amount of force applied. Only with the lock cylinder in the run position and my foot on the brake could I then get the transmission to shift out of park. To test the vehicle's park mechanism I shifted the transmission to neutral and allowed the vehicle to roll back in its parking spot approximately a foot. I stopped the vehicle and shifted to park, then let off the brakes. The vehicle rolled about another three to four inches before engaging in park. I repeated this procedure again with the same result. I also tried several times allowing the vehicle to roll backwards while applying the parking brake. The vehicle stopped every time. I also noted that with the shifter in reverse, the key could not be removed from the lock cylinder.

I concluded on March 30, 2011 that vehicle 0238431 was safe to operate.

Russell Tummins  
Lead Technician  
Nashville Vehicle Maintenance Facility

A handwritten signature in cursive script that reads "Russell Tummins".

VEHICLE MAINTENANCE FACILITY



March 30, 2011

Mr. Vaughn,

On March 29, 2011 our VMF was contacted with a call for recovering a roll away vehicle. I, Robert Montgomery, sent my mechanic Joel Lawson to Carden Ave to retrieve the roll away. The vehicle 0238431 was stuck on an approximately two feet high decorative wall in a customer's yard. The rear wheels had dropped off behind the wall and the frame was sitting on the top of the wall.

As Mr. Lawson was hooking the wrecker up to vehicle 0238431 the station supervisor checked the vehicle and informed my mechanic that the vehicle's park brake was off and ready to be pulled out. Mr. Lawson then continued on with recovering the vehicle off the wall and onto the street. Once on the street, Mr. Lawson and the supervisor accompanied by the safety officer, did an on the spot operations check of the vehicle. My mechanic demonstrated that with the key out of the locking cylinder and in hand, the steering wheel was locked into place and could not move. The gear shift lever also could not be moved from the park position. He also tested the vehicle's parking brake and determined that the brake held the vehicle properly and prevented the truck from moving, even while the vehicle was in gear. Everyone on scene was satisfied and the truck was returned to the VMF.

The next morning I sent my Lead Technician Russell Tummins to thoroughly check the vehicle 0238431 here at the VMF. Mr. Tummins visually and manually inspected each of the three components involved in holding the vehicle from moving. The first component checked was the key and steering wheel. When the key is removed and in hand, the shifter can not be moved from the park position. When the shifter is in the park position, a locking pin (pawl) inside the transmission itself locks the transmission output shaft (driveshaft) and prevents any movement of the vehicle. Also, the steering wheel locking mechanism is working properly and locks the steering wheel from being able to be turned in any direction while the key is out and in hand. The second component verified was the parking brake system. Mr. Tummins placed the vehicle in reverse and allowed the truck to roll backwards a short distance then applied the parking brake. The vehicle came to an abrupt halt and complete stop. Mr. Tummins then placed the vehicle into drive and attempted to move forward and the truck did not move at all. The third component checked is the transmission gear selector. At that point, he attempted to remove the key from the locking cylinder while the truck was in drive. It did not come out. He then placed the vehicle 0238431 into the remaining gear selections of one, two, neutral and reverse. The key once again was not able to be removed from the locking cylinder. Only when the truck shifter selector was placed into the park position, was the key able to be removed and placed into his pocket.

At the conclusion of our test here at the VMF, vehicle 0238431 is in safe, proper working condition.

Robert Montgomery  
Supervisor (A)  
Nashville VMF

VEHICLE MAINTENANCE FACILITY



April 11, 2011

Mr. Vale,

As requested by the Belle Meade Station I, Robert Montgomery, and my mechanic Joel Lawson arrived at on Friday, April 8<sup>th</sup> to retrieve the vehicle 0238431. While there I was able to talk to the carriers that were present and they were able to convey their concerns about the operation of the vehicle 0238431.

While using the normal key that is assigned to the vehicle the carriers demonstrated that the key was able to be removed while the vehicle shifter was not fully in park and they were able to shift the vehicle without the key in the locking cylinder. Under a normal functions check and operation of the key and shifter these two components were working properly as expected, but when operated with quick, jerking motions or while in haste the key was able to be removed and the shifter shifted improperly. The park brake was also checked at that time and when properly applied was able to hold the vehicle from rolling. As demonstrated to me by the supervisor, the park brake handle needs to be pulled upward a total of eight audible clicks in order for this particular vehicle, 0238431, to be held in place to prevent any forward or backward movement. When the vehicle was to be loaded onto the wrecker, the inside of the key cylinder broke prematurely and the vehicle was no longer able to be started. Reasons for this breakage could be from excessive and or harsh usage or simple daily wear and tear plus the age of the component.

Once the vehicle had returned to the VMF I had Mr. Lawson begin to remove and replace the steering column with a new assembly along with a new lock set for the vehicle. We also inspected the parking brake cables plus the linkage and removed the rear tires and rotors to inspect the parking brake shoes and we determined that the parking brake shoes and related parts are in good, working condition. When properly applied the parking brake holds the vehicle from moving in either direction.

I disassembled the removed steering column and carefully inspected the parts that are related to the key, locking cylinder, rack and gear, shift lock solenoid and shifter guide plate. My only findings were that the key was worn considerably thinner than that of a new key and the rack and gear have excessive play in it that could cause the key to be removed if the shifter was not fully seated in the park position. This problem has been resolved by replacing the entire steering column.

Under normal mechanical inspection the vehicle 0238431's key and shifter performed properly. When used in a hastily manner, these components did malfunction. The parking brake system is in very good, proper and safe working condition and will prevent the vehicle from moving when the park brake is properly applied.

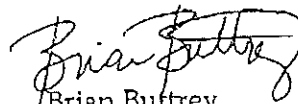
Robert Montgomery  
Supervisor (A)  
Nashville VMF

707 CHESTNUT STREET  
NASHVILLE, TN 37203-4700  
615 242-2686  
FAX: 615 726-2708

MZS

On March 29, 2011, I received a call from Corey Walton that Ms. Jan Bowman had had an accident while on her route and that he had talked with Tim Freels, Supervisor at Belle Meade Station, and needed me to go out and be the union representative for Ms. Bowman because it was Mr. Walton's day off and I am the Assistant Shop Steward.

I arrived at Carden Avenue. Ms. Bowman was there by herself. I got out and asked Ms. Bowman if she was okay. She said that she was. I asked her if Mr. Freels been there yet. She said no. I asked her if she had his number. Ms. Bowman said it's in my purse in the truck. Ms. Bowman opened the door to her postal truck, got in the vehicle, lowered the parking brake, reached under the mail tray, and got her purse. As she did, she grabbed the steering wheel to steady herself and I noticed that the steering wheel was not locked. I asked Ms. Bowman if her steering wheel locked and she said that she had not noticed. I asked her to get out of the vehicle. I looked at the gear selector to make sure it was in park. It was. I said do you have the keys to the vehicle? She said that she did and she took them off of her belt and handed them to me. I put the keys in the ignition, turned it forward, then back, and the steering wheel would never lock. I again looked at the gear selector to make sure it was in park. It was. I left the keys in the ignition so that I could point this out to Mr. Freels when he arrived. Mr. Freels arrived a short time later and I showed him the condition of the steering wheel, that it would not lock with the keys in or with the keys out. A short time later, Mr. Mike Vaughn, Area Supervisor, arrived and also Ms. Kim Alley, from Safety. I pointed out this steering condition to Ms. Alley. She tested it for herself with the keys in and the keys out that the steering wheel would not lock. A few minutes later, Mr. Freels told me that he needed to ask Ms. Bowman some questions and that he wanted me to be with her when he did. As the three of us were gathering, I noticed Ms. Alley had called Mr. Vaughn over to the vehicle and was pointing out the steering wheel condition to him. I saw him nod in the affirmative as she was showing him this. Mr. Freels questioned Ms. Bowman. At the end, Mr. Freels instructed Ms. Bowman to put the mail from her vehicle into the postal van that he was driving. I helped Ms. Bowman do that and then Mr. Freels, Ms. Bowman and I left.

  
Brian Butfrey  
March 31, 2011

TENNESSEE DISTRICT



Date: 04/11/2011

MEMORANDUM FOR: Manager, Labor Relations  
525 Royal Parkway  
Nashville, TN 37229-9401

SUBJECT: REQUEST FOR APPROPRIATE ACTION

EMPLOYEE'S NAME: \_Janet Bowman OFF DAYS: Sun .Wed

CRAFT DESIGNATION: City Carrier EIN:02377438

This employee has shown a deficiency in their: Safety, Conduct, Rollaway accident zero tolerance Improper Dismount Procedures (vehicle wheels not curbed)

Request that appropriate action be administered to this employee based on the Following: On 03/29/2011 Janet dismounted her vehicle and it rolled away in a straight line striking a phone pole and coming to rest on a rock wall.

(A) Investigative interview held? Yes \_\_\_ Date: 04/07/2011

(B) Prior discussion(s)? Yes \_\_\_ No \_\_\_ Discussion Date(s): Stand up talks zero tolerance policy dismount procedures 12/02/2010

(C) List other disciplinary actions still active (attach copy): \_\_\_ None

(D) Narrative attached? Yes

(E) Documentation attached? Yes X No \_\_\_ (See attached documentation checklist)

Tim Freels  
[Signature] Supervisor Name

Removal  
\_\_\_\_\_  
Recommended Action

CONCURRENCE

[Signature]  
Higher Level Manager or Designee

[Signature]  
Recommended Action

M27



BELLE MEADE POST OFFICE  
5421 HIGHWAY 100  
NASHVILLE TN. 37205-9998

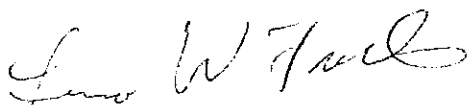


On 04/07/2011 an Investigative Interview was conducted with Janet Bowman for Roll Away accident.

In attendance was, Janet Bowman, City Carrier, Cory Walton NALC Shop Steward, and Tim Freels Supervisor Customer Service, Eric Charles MCS (witness) Dave Clark NALC local president (witness) I explained that this interview was to get Janet Bowman's explanation of what happened on 3/29/2011 and that this investigative interview that may or may not result in discipline.

The following questions were asked.

1. *In your own words what happened? Mr Walton ask if I would take her statement, I said yes. When he gave me her statement I read it. Statement attached.*
2. *When you exited the vehicle did you put the vehicle in park? Yes*
3. *When you exited the vehicle did you set the hand brake? Yes*
4. *When you exited the vehicle did you take out the keys? Yes*
5. *When you exited the vehicle did you lock the truck? No*
6. *When did you notice the vehicle moving? As I was leaving the porch it started to move.*
7. *What did you do when you saw the vehicle moving? I jumped off the porch and ran after the truck.*
8. *Did anyone else see this happen? I myself did not see, but someone blew their horn.*
- 8a. *Do you have the name of the person who saw the vehicle moving? Not off the top of my head.*
9. *Did you try to move the vehicle after it stopped? No*
9. A. *Did you move anything inside the vehicle after the vehicle stopped? Janet had a statement that she read. Attached. After reading the statement she also said, I let down the hand brake to remove purse from under the shelf, that's where I hide it.*
10. *If you want, I can give you the phone number to EAP. Yes*

  
Timothy W. Freels  
Supervisor Customer Service  
Belle Meade Post Office

M28



04/11/2011

Supervisor's Statement concerning Roll Away accident 03/29/2011

When I arrived on the scene, I looked at the vehicle (0238431) and found the parking brake not fully engaged, I ask Janet Bowman where did the truck start rolling from, She said in the middle of the street between those 2 cars. I took pictures of the vehicles and the path that vehicle rolled away.

The assistant shop steward Brian Buttrey was on the scene and she requested that he be there when I asked her to answer any questions about the roll away, I agreed.

I ask Janet what happened, she told me that I had to park and loop and cars were on both sides of the street I put the truck in park, set the emergency brake, turned off the truck and closed the door.

I then asked when did you noticed the truck moving, she said when I delivered the mail to the Lunn's house (226 Carden Ave) the truck slowly started to roll backwards and I ran after it.

I then asked her what she was going to do if she caught up with the truck, was the door locked, she said the door was shut but not locked I never left sight of the truck, I Was going to try to jump in and step on the brake.

I asked did you let off the brake or try to move the truck out of the ditch, she answered I have not touched the truck from the time of the roll off.(in her statement I received 04/07/2011 she said she let down the brake to get her purse from under the ledge).

One of the proper procedures to prevent a roll away is to curb the wheels, it is obvious that Janet did not curb the wheels because she was parked in the middle of the road and the vehicle rolled in a straight line for approximately 50 yards.

Timothy W Freels  
Supervisor Customer Service  
Belle Meade Post Office

A handwritten signature in cursive script, appearing to read "Timothy W Freels".

Question 1

3:29-30

12:25 pm

Janet M Bowman

I parked the postal truck between the cars along both sides of the street. @ (226 Garden Ave.)

I put it in park, turned it off, hooked the keys on my pocket, and pulled the handbrake. Collected their mail, shut the door, and walked up to their porch/box. As I started back to the truck, it began to move.

I jumped off the porch and ran after the slowly moving truck, not really sure what I was going to do. I ran beside the truck and tried to open the door (I guess I thought I could step on the break-pedal.)

If I gazed the telephone pole with the driverside mirrors and they swung in and broke the side window. It came to a stop on the rocks just near the guardrail of the deadend street.

Question 9.A ✓

Brian pulled up and said "I can't believe I'm the 1st on here. Are you ok?" He hugged me. He said "All you've got is a broken mirror and some broken glass... Did you call the station?"

"Yes". I said

Brian asked "Do you have Tim's cell phone #?"

I said it's in my purse, in the truck

Brian - "He's not here yet, I need it."

My purse was under the ledge, left of the handbrake

I climbed in on the edge of the seat (full of glass) using the steering wheel for balance, but it moved.

Brian noticed and said "Hey, your steering wheel is not locked! It should be! Where is your key?" My pocket - just a second. I let down the handbrake to pull my purse thru, and gave Brian my keys <sup>out</sup> of my pocket.

I was still shaking when Tim pulled up in a postal van. I think he asked me if I was ok. And also did I move the truck? I said no.

reels, Timothy W - Nashville, TN

Subject: FW: Accident History

From: Alley, Kimberly D - Cunningham, TN  
 Sent: Thursday, April 07, 2011 1:56 PM  
 To: Freels, Timothy W - Nashville, TN  
 Subject: FW: Accident History

*Prior to Roll Away Accident  
 on 3-29-11*

The information below is from eICPAS and does not reflect most recent accident.

EMPLOYEE INFORMATION as of 3/29/2011  
 \* RESTRICTED INFORMATION \*

JOB RECORD VIEW:

NAME:	Bowman, Janet M	SSN:	
ADDRESS1:	569 Croley Dr	DOB/AGE:	03/30/1956 - 54
ADDRESS2:		EOD DATE:	03/15/1997
CITY STATE ZIP:	Nashville TN 37209-1771	YRS/MO SERVICE:	14 / 0
OCCUPATION:	23102009 - Carrier (City)	EMPLOYEE STATUS:	A - Active
FINANCE NO:	476160	RETIREMENT ELIGIBLE:	03/30/2012
INSTALL ID:	NP68 - NAS-BELLE MEADE STA	RETIREMENT PLAN:	8
LOC/FON:	2100		
DAYS/ACT:	134	AL BALANCE:	132.82
PAY LOC:	005	SL BALANCE:	12.27
DEPT:			
RSC/LEVL/STEP:	Q/01/0		
SALARY RATES:	\$26.70 /HOURLY \$1,068.00 /WEEKLY \$55,530.00 /ANNUALLY	AVG HOURS P/WEEK:	40.0
HB CODES:	322	HB DEDUCTION:	\$100.57 /PP
LIFE INS:	Y1	LI DEDUCTION:	\$40.10 /PP

ACCIDENT AND INJURY HISTORY  
 \* RESTRICTED INFORMATION \*

5 YEAR ONLY)		(ALL CLAIMS)	
TOTAL ACCIDENTS:	4	TOTAL INJURIES:	11
VEHICLE ACCIDENTS:	1	OWCP Non-Reportable:	0
INDUSTRIAL ACCIDENTS:	3	OWCP REPORTED INJURIES:	11
OTHER ACCIDENTS:	0		

*M32*



VEHICLE MAINTENANCE FACILITY



March 30, 2011

Mr. Vaughn,

On March 29, 2011 our VMF was contacted with a call for recovering a roll away vehicle. I, Robert Montgomery, sent my mechanic Joel Lawson to Carden Ave to retrieve the roll away. The vehicle 0238431 was stuck on an approximately two feet high decorative wall in a customer's yard. The rear wheels had dropped off behind the wall and the frame was sitting on the top of the wall.

As Mr. Lawson was hooking the wrecker up to vehicle 0238431 the station supervisor checked the vehicle and informed my mechanic that the vehicle's park brake was off and ready to be pulled out. Mr. Lawson then continued on with recovering the vehicle off the wall and onto the street. Once on the street, Mr. Lawson and the supervisor accompanied by the safety officer, did an on the spot operations check of the vehicle. My mechanic demonstrated that with the key out of the locking cylinder and in hand, the steering wheel was locked into place and could not move. The gear shift lever also could not be moved from the park position. He also tested the vehicle's parking brake and determined that the brake held the vehicle properly and prevented the truck from moving, even while the vehicle was in gear. Everyone on scene was satisfied and the truck was returned to the VMF.

The next morning I sent my Lead Technician Russell Tummins to thoroughly check the vehicle 0238431 here at the VMF. Mr. Tummins visually and manually inspected each of the three components involved in holding the vehicle from moving. The first component checked was the key and steering wheel. When the key is removed and in hand, the shifter can not be moved from the park position. When the shifter is in the park position, a locking pin (pawl) inside the transmission itself locks the transmission output shaft (driveshaft) and prevents any movement of the vehicle. Also, the steering wheel locking mechanism is working properly and locks the steering wheel from being able to be turned in any direction while the key is out and in hand. The second component verified was the parking brake system. Mr. Tummins placed the vehicle in reverse and allowed the truck to roll backwards a short distance then applied the parking brake. The vehicle came to an abrupt halt and complete stop. Mr. Tummins then placed the vehicle into drive and attempted to move forward and the truck did not move at all. The third component checked is the transmission gear selector. At that point, he attempted to remove the key from the locking cylinder while the truck was in drive. It did not come out. He then placed the vehicle 0238431 into the remaining gear selections of one, two, neutral and reverse. The key once again was not able to be removed from the locking cylinder. Only when the truck shifter selector was placed into the park position, was the key able to be removed and placed into his pocket.

At the conclusion of our test here at the VMF, vehicle 0238431 is in safe, proper working condition.

Robert Montgomery  
Supervisor (A)  
Nashville VMF

March 31, 2011

MEMORANDUM FOR: Labor Relations

SUBJECT: Roll away Accident – Jan Bowman

On March 29, 2011 at 12:10 pm, I received a call from the Manager of Belle Meade Station (Jeffery Byrd) that one of his carriers was involved in an accident at 230 Carden Ave. When I arrived on the scene, there were three people on the scene. One was the Supervisor (Tim Freels) and two carriers (Jan Bowman and B. Buttery). At that time, the Supervisor was taking pictures of the accident scene. I asked him if anything had been touched and he informed me that the carrier (Ms. Bowman) stated that "she has not touched the vehicle since it came to rest where it is now". About that time, two Safety Officials (Kim Alley and Tammy McDonald) had arrived on the scene. I asked if they had a camera so I could take more photos of the scene and Ms. McDonald had one. I walked up to the vehicle and took a couple of photos showing that the key was still in the ignition and that the hand brake was not set. I also took photos showing the distance between where the LLV started and ended rolling backwards, and the path the vehicle had taken.

At that point the vehicle, the mail was unloaded and put into two other vehicles to be delivered by other carriers. At that point Mr. Buttery informed the Supervisor that Ms. Bowman wanted to give her statement right there at the scene and since he was a Union Official, the statement was taken. After that, Mr. Buttery went back to his route to deliver mail and Ms. Bowman was taken back to the Station.

The Safety Officials and I waited for the tow truck driver to arrive on the scene. After he pulled the vehicle off of the tree and rock wall, he started the vehicle up and moved it forward to put on the tow truck. At that time the tow truck driver pulled the hand brake and turned vehicle off. The hand brake worked perfectly and the steering wheel also locked. The tow truck driver informed me that an investigation would be completed on the vehicle to make sure if anything was or was not working properly. I then left the scene.

Mike Vaughn  
MCSO (A)

M35





PS Form 1769/301 Accident Report  
USPS Restricted Information

OPEN – SAFETY In-Process

Note: Shaded Rows Represent OSHA 301 Fields (where applicable).

Where did accident, injury, or illness occur:

1	Area(s):	➤ Eastern
2	Cluster(s):	➤ Tennessee
3	Charge To Cost Center(s):	➤ 476160 - MANAGER, NAS-BELLE MEADE STA (TN)
4	OSHA Cost Center:	BELLE MEADE
5	Location where accident, injury, or illness occurred:	230 Carden NASHVILLE, TN 37205
6	Accident Number:	149488
7	Accident Type:	Motor Vehicle (Type Code = MVI)

Brief Description of Accident:

8.	FFV rolled away from parked position	
9	On-Site investigation Conducted?	Yes
10	Serious Accident:	No

When did accident, injury or illness occur:

11	Fiscal Year:	2011
12	Calendar Year:	2011
13	Date Accident Created in EHS:	04/11/2011
14	Date Accident, Injury, Illness Occurred:	03/29/2011
15	Time of Accident, Injury, Illness:	12:25 PM
16	Day of Week:	Tuesday

Potential Hazardous Condition or Equipment:

17	Potential hazardous or unsafe condition:	➤ 98-No hazardous situations
18	Potential hazardous equipment or material:	➤ 98-No defects or hazardous equipment or material

(#1) Involved Person(s) – Any Person with an “Active Role” → Injury, Fatality, Driver, Passenger, Pedestrian:

19	Name:	Janet M Bowman
20	Involved Person Role:	NO Injury / Fatality exists on accident. / Other Role Codes = DRV
21	Employee ID:	2377438
22	Employee Group / Subgroup:	Full Time / City Carriers
23	Prior Motor Vehicle Accidents:	1
24	Prior Industrial Accidents:	3
25	Pay Location:	DEFAULT
26	Date of Birth:	03/30/1956
27	Age:	54 Years
28	Date Hired:	03/15/1997
29	Service Yrs & Months (per Current Date Hired):	14 Year(s) and 0 Month(s)
30	Time Began Work:	7:00 AM
31	Date of Death:	N/A
32	Gender:	Female
33	Overtime Status:	No
34	Unsafe Personal Factor(s):	➤ Failure to comply with rules
35	Unsafe Practice(s):	➤ Improper parking
36	Home Address:	569 CROLEY DR NASHVILLE, TN 37209-1771

M36



PS Form 1769/301 Accident Report  
USPS Restricted Information

37	What was the employee doing just before the incident occurred? Describe the activity, as well as the tools, equipment or material the employee was using. Be specific. Examples: "climbing a ladder while carrying roofing materials"; "spraying chlorine from hand sprayer"; "daily computer key-entry"	FT carrier J. Bowman was parked to carry a loop on carden street she was not in the FFV at the time of the roll away
38	What happened? Tell us how the injury occurred. Examples: "When ladder slipped on wet floor, worker fell 20 feet"; "Worker was sprayed with chlorine when gasket broke during replacement"; "Worker developed soreness in wrist over time."	Carrier states Parked FFV in middle of street there were cars on both sides of street set brake was delivering mail 226 carden looked back and FFV started roll backwards slowly I ran after it door on drivers side was unlocked it rolled into the yard at 230 carden the mirror hit a telephone pole broke off and busted the window out of the FFV on right side the FFV when thur the yard at 230 carden making ruts and knocked down a small tree-
39	What was the injury or illness? Tell us the part of the body that was affected and how it was affected; be more specific than "hurt", "pain", or "sore." Examples: "strained back"; "chemical burn, hand"; "carpal tunnel syndrome."	
N/A		
40	What object or substance directly harmed the employee? Examples: "concrete floor"; "chlorine"; "radial arm saw." If this question does not apply to the incident, leave it blank.	Unattended vehicle
41	Physician / Health Care Professional:	N/A
42	If treatment was given away from the worksite, where was it given?	N/A
43	Was the employee or contractor supervised person treated in an emergency room?	No
44	Was employee or contractor supervised person hospitalized overnight as an in-patient?	No

Accident Conditions:

45	Result:	<input checked="" type="checkbox"/> Non-Postal Property Damage <input checked="" type="checkbox"/> Postal Property Damage
46	Weather:	Clear
47	Surface Type:	Paved
48	Surface Condition:	Dry / Did not contribute
49	Cause / Circumstance:	MV-ROLLAWAY - ENGINE OFF
50	Item Causing Injury/Illness:	Other
51	Total # of vehicles involved in accident:	1

Postal: WITH A VID

52	Vehicle Number:	0238431
53	Vehicle Make-Model:	1/2T FORD/UTIL FFV 01 FLEXF RH
54	Vehicle Body:	LLV
55	Vehicle Year:	01
56	Vehicle Path:	Running off road
57	Rollover:	No
58	Area of Impact:	Right body side
59	Was Vehicle Equipped With Seat Belts?	No
60	Employee Ejected from Vehicle:	No
61	USPS Driving Experience:	14.0 y
62	Driving Experience for this Vehicle Type:	14.0 y
63	Driver's License Expiration Date:	03/30/2012

Accident Follow-Up:

64	Job Safety Analysis:	Yes
65	Preventative Action:	OTHER
66	If OTHER, explain:	Investigation to be held

Supervisor Information:

67	Completed by:	Timothy W Freels
68	Title:	SUPV CUSTOMER SERVICES
69	Phone:	423-954-6400

M37



PS Form 1769/301 Accident Report  
USPS Restricted Information

Supervisor: Retain this completed form for 5 calendar years from Date of Accident.

**OSHA 301**

**Attention:** This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.

**OSHA 301**

Public reporting burden for this collection of information is estimated to average 22 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a current valid OMB control number. If you have any comments about this estimate or any other aspects of this data collection, including suggestions for reducing this burden, contact: US Department of Labor, OSHA Office of Statistical Analysis, Room N-3644, 200 Constitution Avenue, NW, Washington, DC 20210. Do not send the completed forms to this office.

Additional information and requirements for investigation of an accident and completion of an accident report and it's contents are available in the 1769/301 Policy and Instructions document available on the Supervisor EHS screen.

M38

U.S. Postal Service® ACCIDENT INVESTIGATION WORKSHEET		THIS FORM IS FOR POSTAL SERVICE™ USE ONLY. Copies should not be given to others at scene of accident.			
1	Post Office™ <i>Belle Meade</i>	Date 03/29/2011	Time 12:25 PM	Day of Week Tuesday	Case No.
2	Exact Location of Incident 230 Carden NASHVILLE, TN 37205 US	No. Lanes <i>2</i>	Traffic Control <i>NONE</i>	Speed Limit <i>30 mph</i>	
3	Road Type Paved	Road Condition Dry / Did not contribute	Visibility <i>Clear</i>	Weather Clear	
4	Photos Taken <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Offense By (Officer's Name, Badge No., Precinct) <i>N/A</i>	POLICE CHARGES To		
5	Witness Name, Age, Address & Telephone No. (Include Apt./Suite No.)		Passenger Name, Address & Telephone No. (Include Apt./Suite No.)		
6	Injured or Killed (Private Party Only) (Name and Address) (Include Apt./Suite No.) Unknown or N/A <input checked="" type="checkbox"/>	Sex N/A <input type="checkbox"/>	First Aid By Unknown or N/A <input type="checkbox"/>	Age N/A <input type="checkbox"/>	
			Taken To (Doctor or Hospital) Unknown or N/A <input type="checkbox"/>	Taken By Unknown or N/A <input type="checkbox"/>	
7	Contact Point (Postal Vehicle) <i>Right Mirrow</i>	(Other Vehicle) <i>N/A</i>			
8	Post Office Operator Was Going (From) <i>Parked</i>	(To) <i>Parked</i>			

## OTHER VEHICLE(S)

9	Driver's Name (Other) Unknown or N/A <input type="checkbox"/> <i>N/A</i>	Age N/A <input type="checkbox"/>	Owner's Name, Address and Telephone No. (Include Apt./Suite No.) Unknown or N/A <input type="checkbox"/>		
	Street Address (Include Apt./Suite No.) Unknown or N/A <input type="checkbox"/>	Sex N/A <input type="checkbox"/>			
	City, State and ZIP + 4® Unknown or N/A <input type="checkbox"/>	Telephone No N/A <input type="checkbox"/>			
10	Driver's License (State & No.)	Expiration Date	Liability Insurance Company and Address		
11	Driver's Condition	Was seat belt installed? <input type="checkbox"/> Yes <input type="checkbox"/> No	In Use? <input type="checkbox"/> Yes <input type="checkbox"/> No		
12	Year, Make / Model Unknown or N/A <input type="checkbox"/>	Type N/A <input type="checkbox"/>	Color N/A <input type="checkbox"/>	Registration (Year, State & No.) Unknown or N/A <input type="checkbox"/>	
13	Odometer Reading Unknown or N/A <input type="checkbox"/>	Occupants (No.) Unknown or N/A <input type="checkbox"/> (Front) (Rear)	Estimated Speed N/A <input type="checkbox"/>	Distance Danger Notice Unknown or N/A <input type="checkbox"/>	
14	Travel Direction	Distance Traveled After Impact (Feet)	Driven Away <input type="checkbox"/> Yes <input type="checkbox"/> No (if No, How Moved?)		
15	Damage (Other Vehicle(s))				
16	Statement (Other Driver)				

Privacy Act Statement: Collection of information requested on this form is authorized by 39 U.S.C. 401, 410, 1001, and 1005. The information will be used to record and resolve the circumstances relating to an accident. Providing the information is mandatory; failure to do so may result in corrective action. We may disclose this information as follows: in relevant legal proceedings; to law enforcement when the U.S. Postal Service (USPS) or requesting agency becomes aware of a violation of law; to a congressional office; to entities or individuals under contract with USPS; to entities authorized to perform audits; to labor organizations as required by law; to federal, state, local or foreign government agencies regarding personnel matters; to the Equal Employment Opportunity Commission; and to the Merit Systems Protection Board or Office of Special Counsel.

## POSTAL VEHICLE AND EMPLOYEE

17	Employee Name <i>Janet M Bowman</i>	Age <i>54</i>	Position Title <i>City Carrier</i>	Service Type <i>FTR</i>
18	State Driver's License No. <i>071425452</i>	Expiration Date <i>3-30-12</i>	Restriction <i>None</i>	
19	Hours on Duty at Time of Accident <i>5 hrs 30 min</i>	Driving Experience (This Type Vehicle) <i>15 years</i>	Postal Service Driving Exp <i>15 yr</i>	Extent of Injuries (Operator) <i>None</i>
20	Liability Insurance Coverage <input type="checkbox"/> Yes <input type="checkbox"/> No	Insurance Company's Name Policy Number		
21	Was Investigation at Scene? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Was Driver Cooperative? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Was Vehicle Equipped With Seat Belts? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, Were They in Use at Time of Accident? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>N/A</i>

22	Year 2000	Make FFV	Vehicle No. 0239431	Odometer Reading 45789	RHD <input type="checkbox"/>	LHD <input type="checkbox"/>	No. of Occupants (Front) 0 (Rear) 0	Estimated Speed 5 to 10 mph
23	Distance Danger Noticed 45 to 50 yards		Direction of Travel Backwards		Distance Traveled After Impact (Feet) 20 yards after pole		Vehicle Defects Prior to Accident	
24	Nature and Extend of Damage Driver side Mirror / Driver side front window							

**ACCIDENT DESCRIPTION**

25	USPS Investigator Name (Print or Type) Tim Free's	Telephone No. (Include Area Code) 615-356-7465	Time of Call 12:20	Arrived at Scene 12:45
26	Description of How Accident Occurred Roll away			

**CUSTOMER OR PROPERTY DAMAGE (Not Motor Vehicle)**

27	Sex	Age	Approx.	Height	Condition of Customer or Property When Investigator Arrived on Scene	
28	Statement Made by Witness					
29	Damage to Property Other Than Motor Vehicle Utility Pole had splinters knocked off / Small tree flattened					
30	Customer's Name and Address, or Site of Property Damage (Include Apt./Suite No. and ZIP+4) 230 Cardon Ave				Date of Birth	<input type="checkbox"/> Male <input type="checkbox"/> Female
31	Was employee involved? <input type="checkbox"/> Yes <input type="checkbox"/> No (If "Yes," complete Item 17)					
32	Is premises leased? <input type="checkbox"/> Yes <input type="checkbox"/> No (If "Yes," attach copy of lease)					
33	Was customer injured? <input type="checkbox"/> Yes <input type="checkbox"/> No (If "Yes," Complete Item 6)					
34	Nature of Injury None					
35	Property damage <input type="checkbox"/> Yes <input type="checkbox"/> No (If "Yes," complete Item 30)					
36	Witness to accident <input type="checkbox"/> Yes <input type="checkbox"/> No (If "Yes," complete Item 5 & 28)					
37	Activity of customer prior to accident (Describe) <input type="checkbox"/> Walking <input type="checkbox"/> Running <input type="checkbox"/> Horse play involved					
38	Structural factors -- Building defects, sidewalks, steps, lighting, docks, or other if contributory to accident. Handrail available; Used (Describe) N/A					
39	Custodian factors -- Cleaning, waxing, mopping, lobby equipment if contributory to accident. Warning signs displayed. (Describe) Was custodian on-duty at time of incident? <input type="checkbox"/> Yes <input type="checkbox"/> No (If "Yes", request a written statement from the custodian and provide the full name of custodian.) Last Name: First Name: MI:					
40	Weather factors -- Rain, snow, ice or any other uncontrollable element if contributory to accident. (Describe) None					
41	Human factors -- Illness, physical, psychological, or medication used if contributory to accident. (Describe) No					

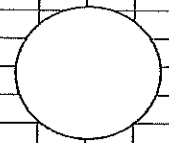
**CONCLUSIONS**

42			
43	Investigator's Printed Name and Signature Tim Free's Tim Free	Title and Official Telephone No. (Include Area Code) 615-356-7465 SCS	Date (MM/DD/YYYY) 03/29/2011

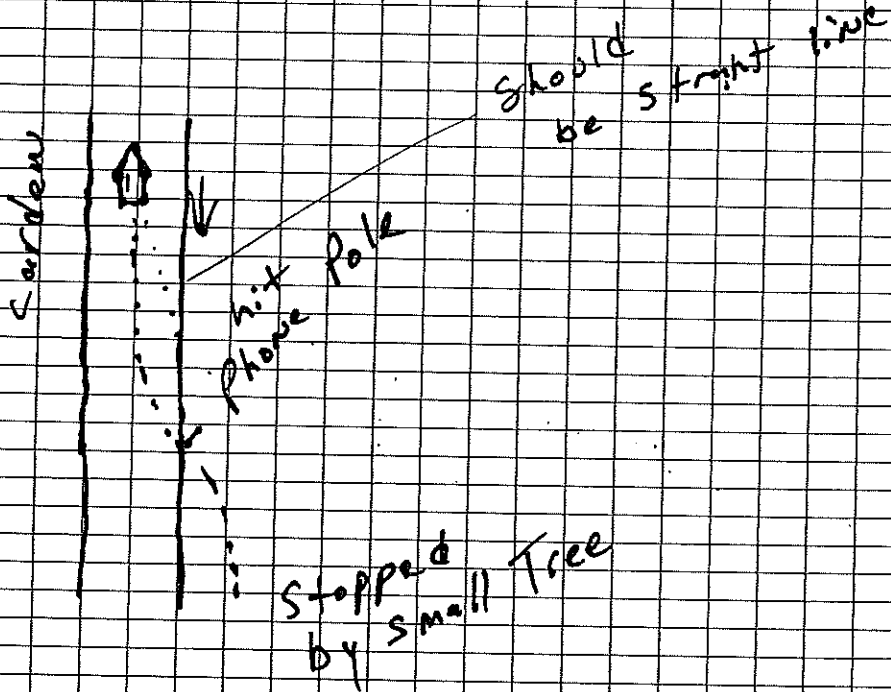
FIELD SKETCH (Use appropriate one)

#1 POSTAL VEHICLE

#2 PRIVATE VEHICLE



INDICATE NORTH

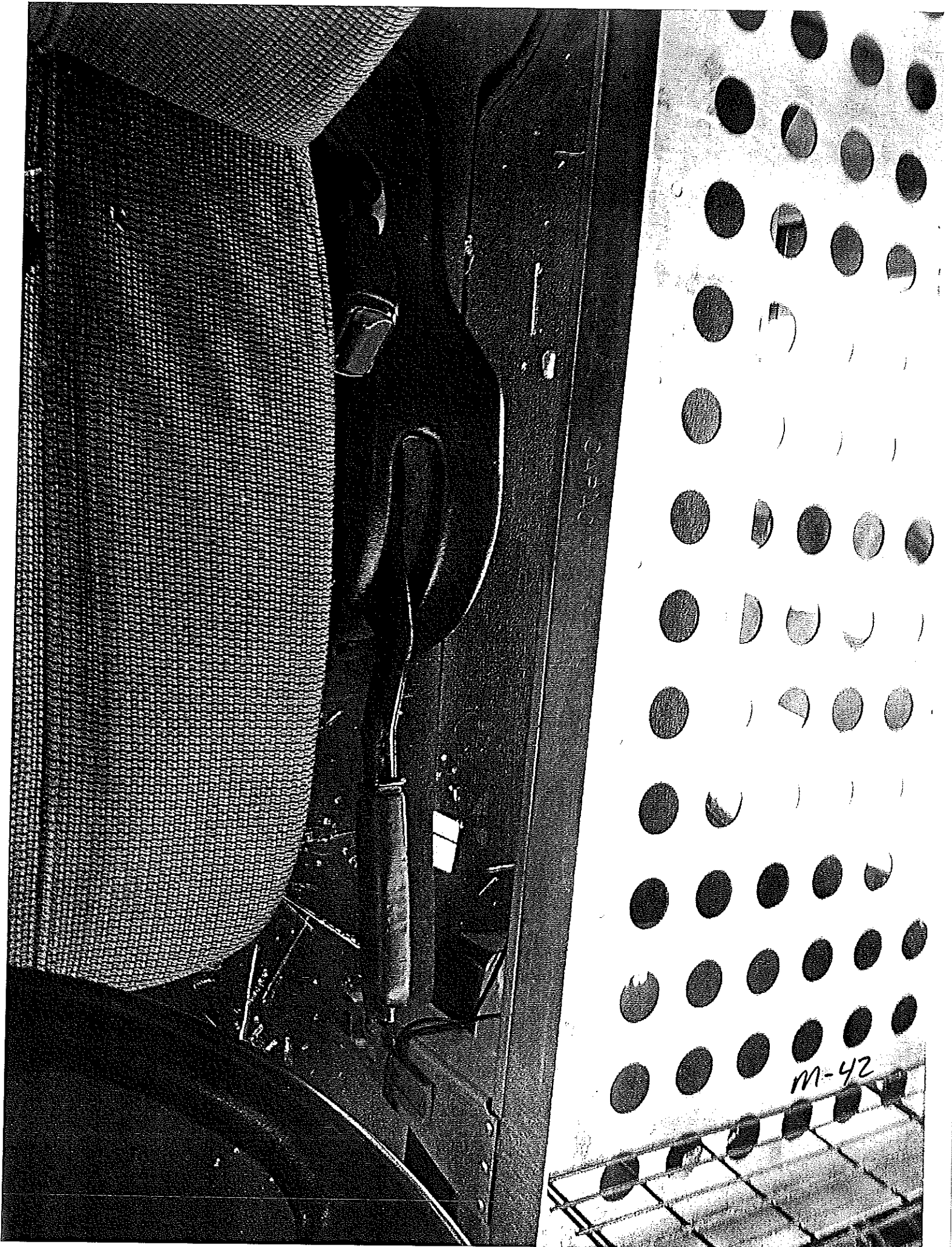


INDICATE  
Width of roadway  
traffic flow,  
parked vehicles,  
traffic signs or  
signals, etc.

OBTAIN ACCURATE  
MEASUREMENTS FROM  
FIXED OBJECTS

ALSO INDICATE  
approach of vehicles,  
point of impact and  
place where vehicles  
stopped after accident

M41





AVOID BACKING UP WHENEVER POSSIBLE

FAN

**WARNING**  
Do not touch the engine or other moving parts while the engine is running. The engine is hot and can cause serious injury or death. Do not touch the engine or other moving parts while the engine is running. The engine is hot and can cause serious injury or death. Do not touch the engine or other moving parts while the engine is running.

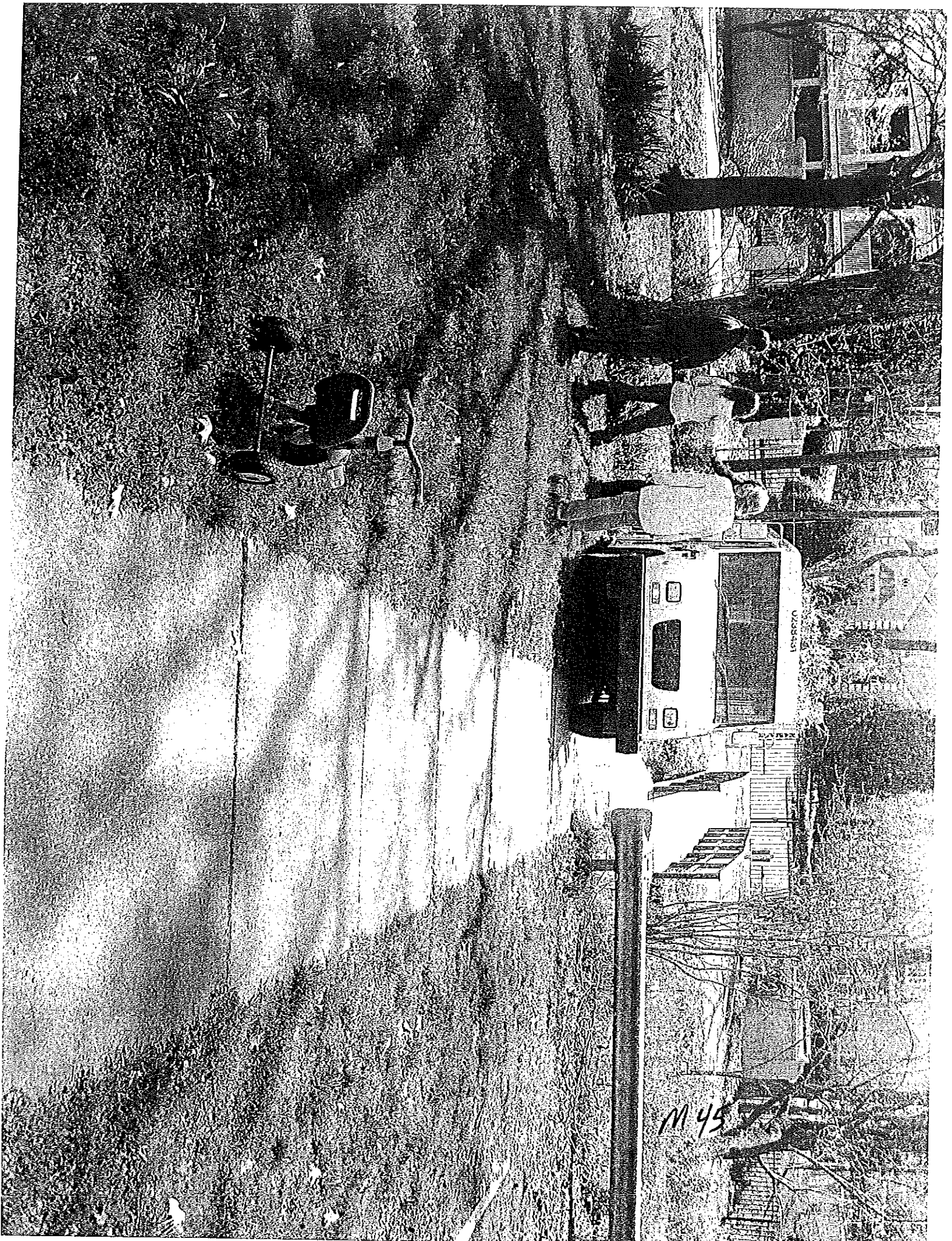
1143





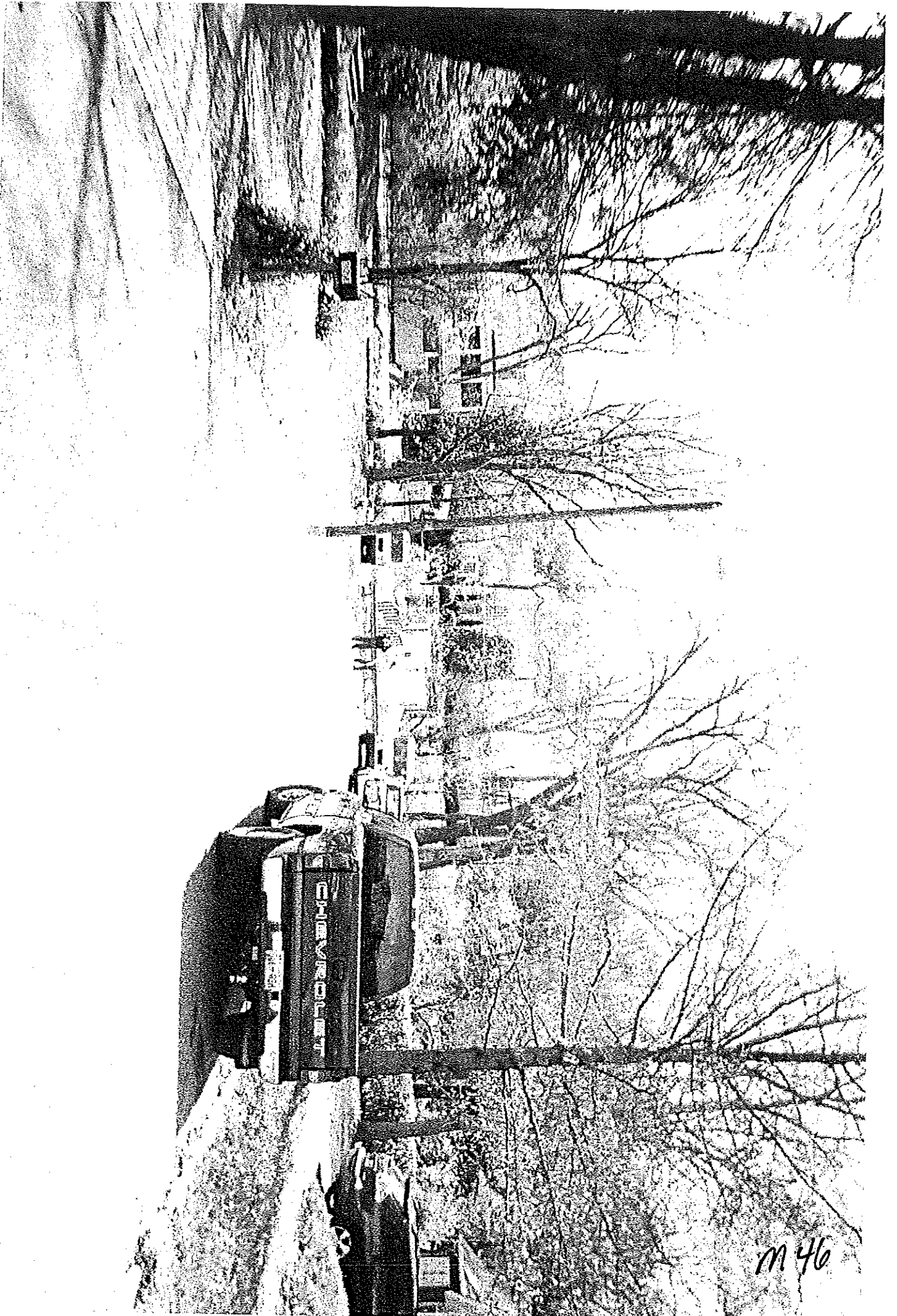
Ms. Bowman's FFV's Approximate parking spot between two cars

M44



M 45

Picture from the approximate starting point of Rollaway



M 46

Approximate parking spot of Mrs. Bowman's FFV before runaway.  
This would be a 1/2 mile.



M47

This picture shows she could have parked by the curb in front of  
behind this car & rubbed her rubouts



M 48

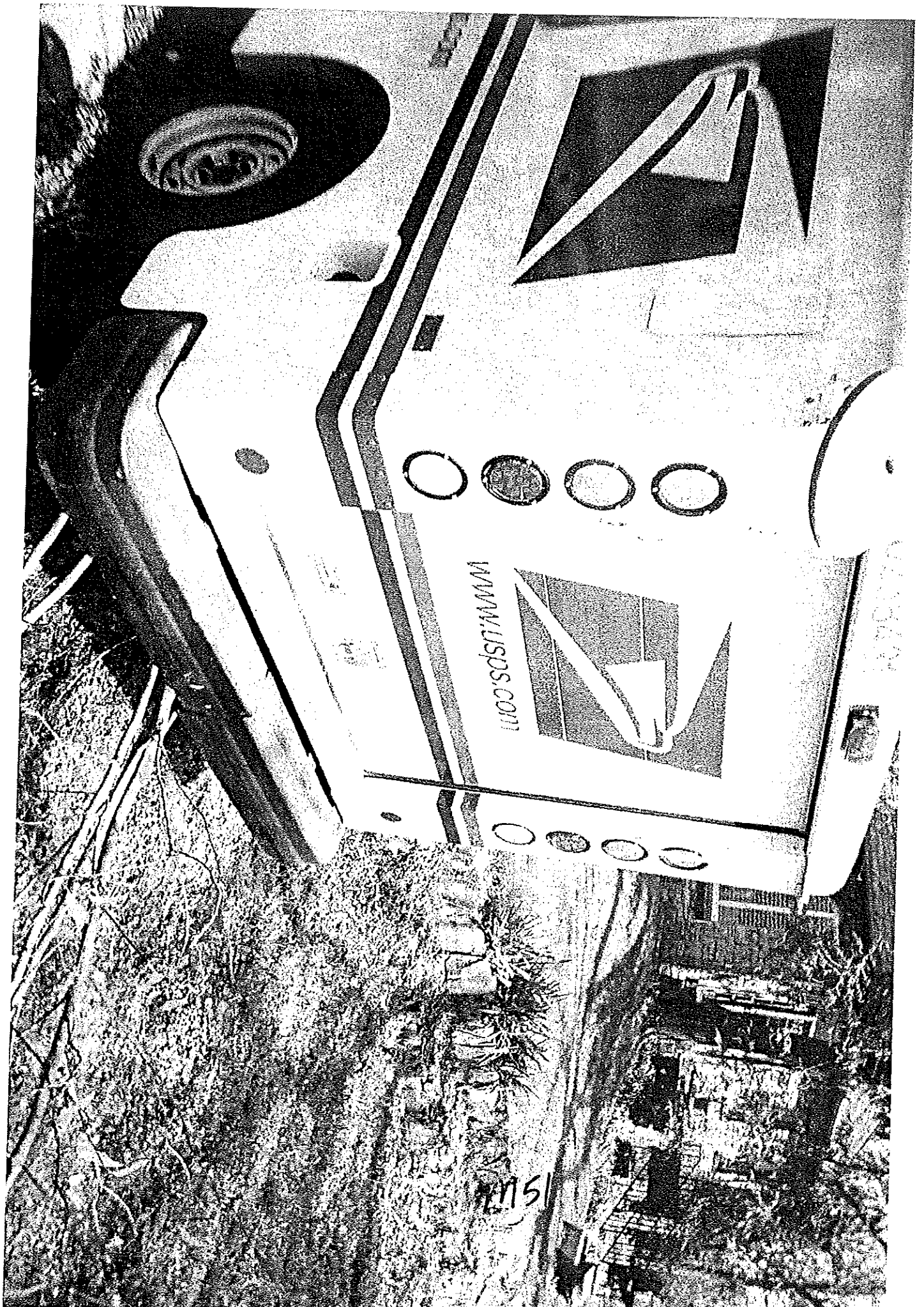
*Where vehicle stopped after runaway*



M49



M50



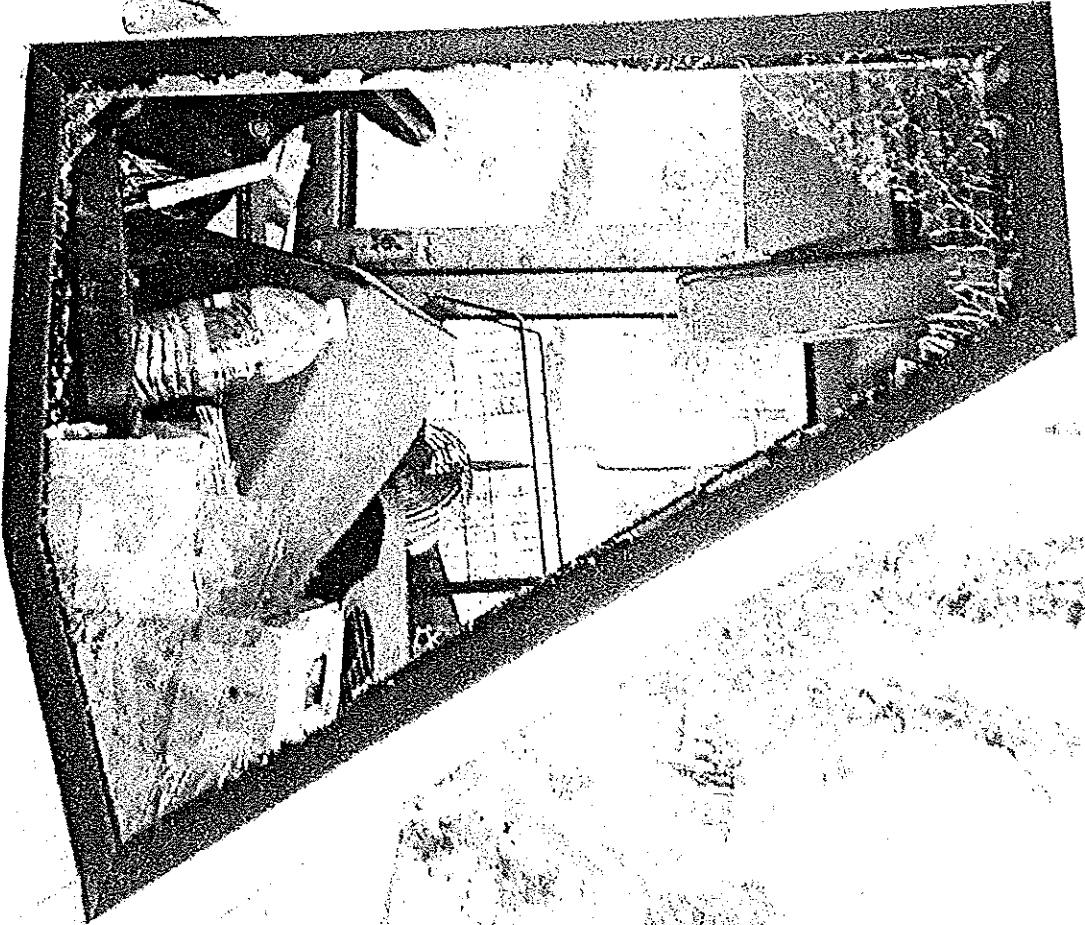
www.usps.com

11/15/11

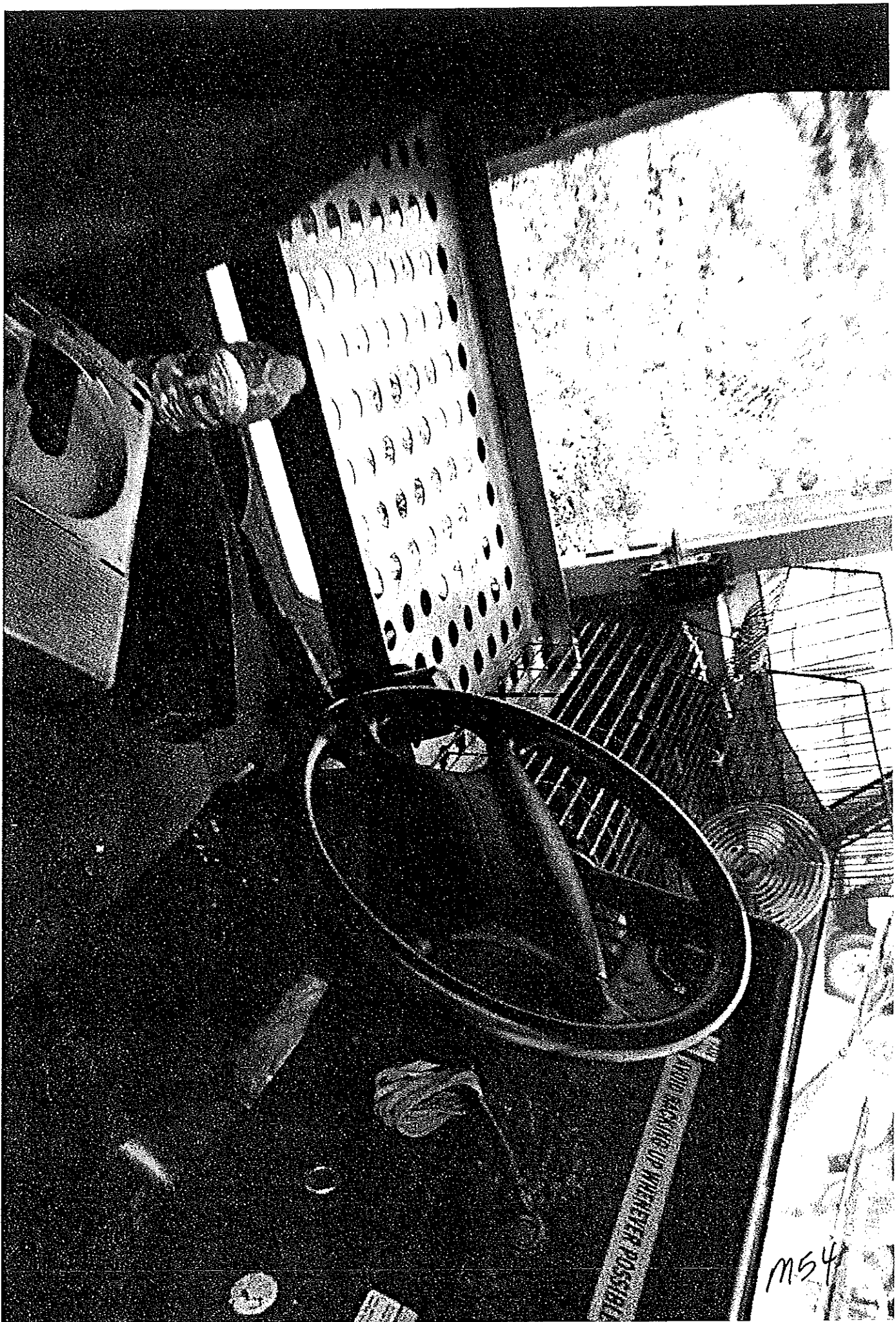




M52



M53



FROM THE LINE OF VIEW HERE POSSIBLE

MS4

**Davis, Dwayne E - Nashville, TN**

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**From:** Byrd, Jeffrey C - Nashville, TN  
**Sent:** Friday, May 20, 2011 8:33 AM  
**To:** Davis, Dwayne E - Nashville, TN  
**Subject:** FW: Talk

**J.C. Byrd**

---

**From:** Byrd, Jeffrey C - Nashville, TN  
**Sent:** Friday, May 20, 2011 8:27 AM  
**To:** Davis, Dwayne E - Nashville, TN  
**Subject:** Talk

After Rollway Runway I talked to the carriers during drive time the last week of March and the First week of April on the proper dismount procedures and where to park on street to find a safe place not in the middle of the street. The mandatory Rollway Runway was given and is logged on the web page.

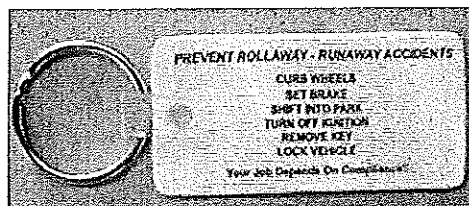
**J.C. Byrd**

MS6

## **Eastern Area**

# **Area Safety Bulletin *newsbreak***

## **Make sure it's secure: Rollaway & Runaway accidents are on the rise**



Old habits die hard.

Not taking the time to secure a Postal vehicle is a hard habit to break, especially for those who never experienced a Roll/Runaway vehicle. Two employees this week in the Northern Ohio and Tennessee districts each experienced a Rollaway. Was this the first time the vehicle wasn't properly secured?

A City Carrier with 14 years of service was making dismount deliveries on a dead end street in a residential neighborhood. The unsecured FFV rolled well over 50 yards to the end of the street where it stopped after hitting a tree. What if children were playing in the street? Would they be able to hear an unattended vehicle rolling towards them?

In the other Rollaway, a Full time city carrier was making a delivery to a business. The employee stated he is usually out of the vehicle for only 30-40 seconds. The vehicle traveled across the store parking lot and stopped between 2 parked cars. Again, what if customers were walking across the parking lot or entering the store? What statement does this make when we allow this type of unsafe behavior? Unsafe behaviors tarnish our brand name.

In all Roll/Runaway cases, the operator established a behavior of not properly securing the vehicle and had the behavior reinforced countless times when nothing bad happened. They may have been in a hurry or taking a shortcut, but for whatever reason, they didn't properly secure their vehicle before exiting and the consequences could be deadly.

USPS requirements for properly securing a vehicle have not changed. These requirements are stressed in employee driver training programs, employee safety talks and are observed during street observations. This type of accident occurs across the spectrum — from the new driver with less than one-month service to the professional driver with 30-plus years.

The following proper parking procedures are mandatory for every Postal employee driving a Postal vehicle.

- Place the gear selector in "Park."
- Curb turn the wheels to minimize vehicle travel distance.
- Set the parking brake.
- Turn off the engine.
- Remove the key and lock the vehicle.

**Make safety your key to success!**

**Davis, Dwayne E - Nashville, TN**

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**From:** Freels, Timothy W - Nashville, TN  
**Sent:** Monday, May 23, 2011 9:35 AM  
**To:** Davis, Dwayne E - Nashville, TN  
**Subject:** RE: Questions

No sir

---

**From:** Davis, Dwayne E - Nashville, TN  
**Sent:** Monday, May 23, 2011 9:00 AM  
**To:** Freels, Timothy W - Nashville, TN  
**Subject:** Questions

When you have observed or ridden with carriers on route 510, have you ever observed them parking in the middle of the street, dismounting, and making a delivery?

M58

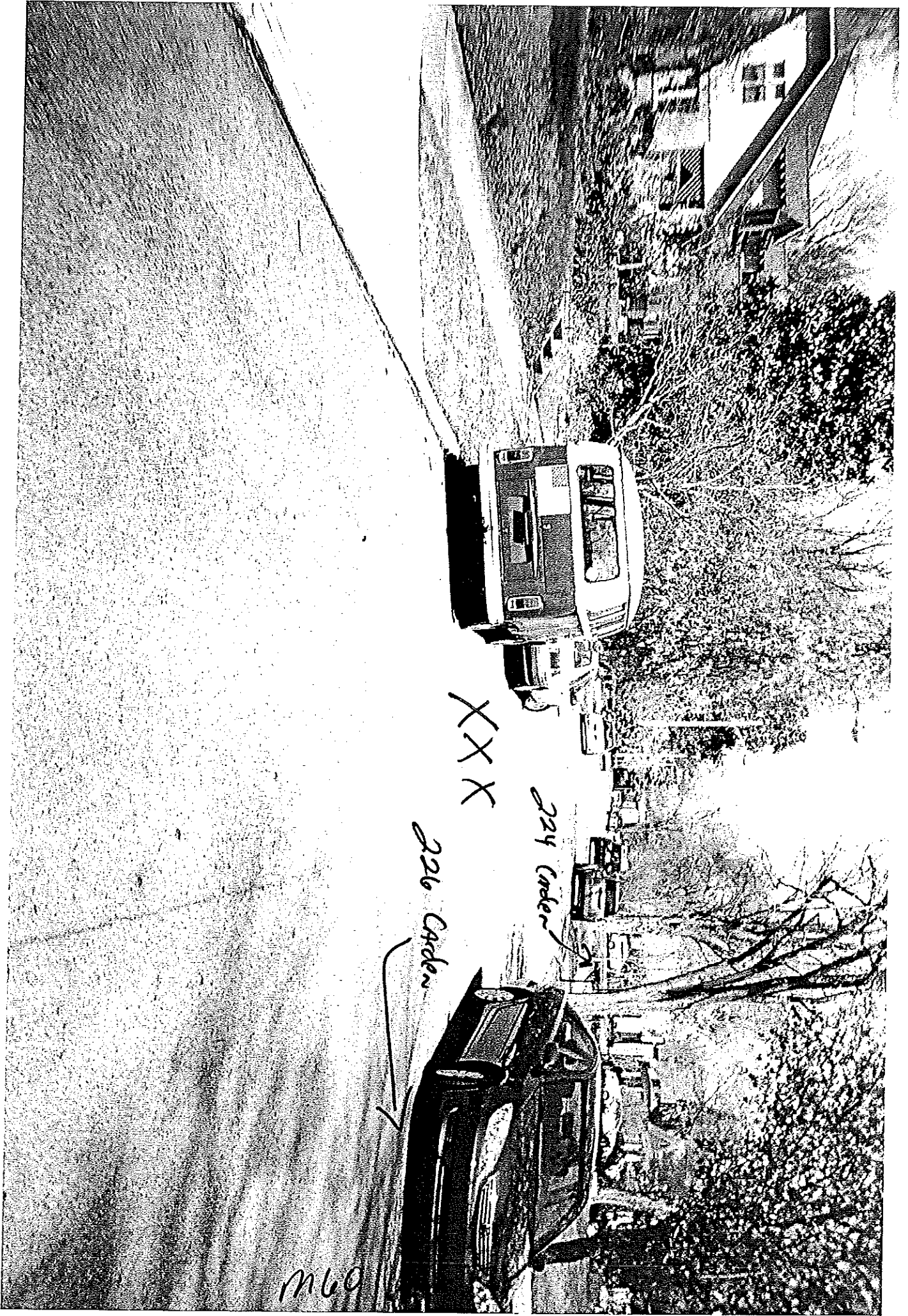


228 Carden

230 Carden

1159

CHEVROLET



XXX X

224 Carden

226 Carden

m60



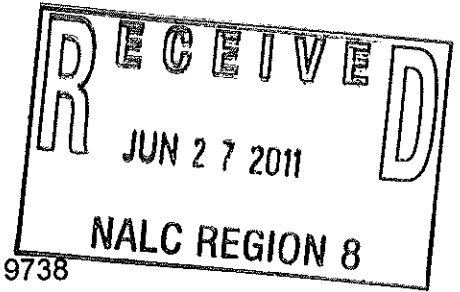
## STEP B DECISION

### STEP B TEAM

Paul D. Robbins, USPS  
Fred Qualls, NALC

District: Tennessee  
DRT Number: 242-11

Decision:	<b>IMPASSED</b>
USPS number:	C06N-4C-D 11219738
Grievant:	Bowman, Janet
Branch Grievance Number:	B4-00104-11
Branch:	4
Installation:	Nashville
Delivery Unit:	Belle Meade
State:	Tennessee
Incident Date:	03/29/2011
Date Informal Step A Initiated:	04/01/2011
Formal Step A Meeting Date:	05/20/2011
Date Received at Step B:	05/25/2011
Step B Decision Date:	06/23/2011
Issue Code:	16.7000 16.1010
NALC Code:	000019 500201



### **ISSUE**

1. Did management violate Articles 16, 19 of the National Agreement and Section 115 of the M-39 Handbook, when they placed the grievant on Emergency placement in off duty status on 03/29/2011 alleging failure to follow safety regulations and zero tolerance policy? If so, what is the appropriate remedy?
2. Did management violate Articles 14 and 29 of the National Agreement when they failed to make every reasonable effort to assign the grievant to non driving duties after they suspended/revoked her driving privileges? If so what is the appropriate remedy?

### **DECISION**

The Dispute Resolution Team (DRT) has decided to declare an **IMPASSE**. The NALC National Business Agent may appeal this grievance to arbitration within fourteen (14) days after receipt of this joint report.

The Step B team has considered all arguments and evidence in the case file and any of this material may be cited in the event of arbitration.

### **EXPLANATION**

#### **UNION'S POSITION:**

The union contends that management violated Articles 14, 16, 19 and 29 of the National Agreement by placing the grievant in an Emergency Placement Off-Duty Status on 03/29/11.

1. The union contends that even if the grievant had failed to properly dismount, with a total lack of previous discipline in this grievance file, there **would not** have been justification for anything more than a minor discipline.

Therefore, certainly if management concluded that management would not be allowed to drive temporarily, management was clearly **obligated by Article 29 to furnish non driving duties.**

2. Management has exhibited a run-away imagination and made unproven and unfair/inappropriate (**new**) allegations in this instant case; such as management's suggestion that the grievant's cell phone record would enlighten the parties. The grievance file contains **no cell phone records.** Management at **Step A did not suggest** any need/interest in cell phone records. Certainly that suggestion was not made at Formal Step A as this case was being processed by the parties. That **new argument** and others which were not made at Formal Step A **must not be allowed in this grievance file** (the union at Formal Step A was not allowed the opportunity to answer the suggestion/accusation).

The Emergency Placement in Off-Duty status, dated March 29, 2011 reads in part as follows:

"SUBJECT:                   EMERGENCY PLACEMENT IN OFF-DUTY STATUS

You are hereby notified that effective March 29, 2011, you were placed in a non-duty, non-pay status under the provisions of Article 16, Section 7 of the National Agreement. The reason for this action is your failure to follow safety regulations and the zero tolerance policy.

You are placed in this Emergency off-Duty Status...."

The union notes the above memorandum stated the following two "reasons" for placing the grievant on emergency placement:

1. "your failure to follow safety regulations."
2. "the zero tolerance policy."

The union contends the documentation contained in this grievance file shows the grievant **did not violate safety regulations.**

The union contends that **management violated multiple Articles** of the National Agreement in the issuance of this discipline (emergency placement).

The grievant's statement reads in part as follows:

"My name is Janet Bowman, I run route 510. It has mostly park and loop, boxes on the porches with narrow dead end streets. On March 29<sup>th</sup> 2011, at approximately 12:25, I parked the postal truck between the many cars along both sides of the street. This was in front of 226 Carden Avenue. I put the truck in park, turned the engine off, took the key out and pulled up the hand brake.

I gathered a bundle of mail and shut the door behind me. I walked up a short walkway and up a couple of stairs, placed the mail in the box. As I started back to the truck, it began to move. I jumped off the porch and ran after the slow moving truck, not really sure what I was going to do. A home owner who was outside saw what was happening and ran after the truck too. I ran beside the truck and tried to get the door open.

The truck grazed a telephone pole on the drivers side and it swung in and broke the small side window. It rolled to a stop on a rock near the guard rail that is at the dead end of the road. The young woman arrived at the truck at the same time I did and we were shocked that it could move when obviously it shouldn't. We looked inside at the broken glass, the raised handbrake, the gearshift in park and back at each other. She said "Oh my gosh! Are you OK?" Yes, I think so. "Are you sure?" Because I was on my way to a Dr. Appointment, but I can stay if you need me." Thank you, I'm going to call my boss. He will come in a few minutes.

I called the station and told Tim Freels, then several minutes later I called the station again. I asked Tim to call Brian Buttrey. Tim said "I'm not sure I have his number" and I told him that I had it and would it be OK if I called him. That was OK with Tim. When Brian Buttrey drove up he hugged me and asked "Are you alright" He said "I can't believe I'm the first one here!" Did you call the station? I said yes Brian said "well he should be here by now". He asked if I had Tim's cell number. I told him yes, it's in my purse in the truck. My purse was under the ledge to the left of the hand brake. I carefully climbed in on the edge of the seat (covered with glass) using the steering wheel as balance and the wheel moved.

Brian noticed and said "Hey, your steering wheel isn't locked. It's supposed to. Where are your keys?" In my pocket I told him just a second. I let down the hand brake to pull my purse through the narrow space. I handed Brian the keys. I was still shaking when Tim pulled up in a postal van a moment later. I think Tim asked me if I was OK and also, did I move the truck? I said, no. Few minutes later Mike Vaughn pulled up followed by 2 women I didn't recognize. Mike Vaughn didn't speak to me at all, however the women introduced themselves and checked on my well-being. Tim Freels asked me several questions in the presence of Brian. Tim called it an interview.

Tim: Tell me what happened.

Jan: I thought you were going to ask me questions.

Tim: Was the truck in park?

Jan: Yes.

Tim: Was the truck shut off?

Jan: Yes.

Tim: Was the hand brake pulled?

Jan: Yes.

Tim: Did you have the keys?

Jan: Yes.

Tim: Was the door closed?

Jan: Yes.

We were then told to move the mail to the postal van.

Tim came up to me and told me he was placing me on Emergency Placement in Off-Duty Status without pay. I was driven back to the Post Office where I was escorted off the premises."

The grievant has over 13 years of service with the Postal Service and has **no previous discipline in this grievance file.**

The Emergency Placement was based solely on event that took place on March 29, 2011. Management's **only charge is that the grievant allegedly** failed to follow a safety rule/management's zero tolerance policy) on that date, 3/29/2011. The documentation contained in this grievance file **does not show a violation by the grievant of a safety rule.**

This grievance file contains Document M-1289, on which the parties agreed to the following:

"...The parties agree that management has the right to articulate guidelines to its employees regarding their responsibility concerning issues relating to safety. However, the parties also mutually agree that **local accident policies, guidelines, or procedures may not be inconsistent or in conflict with the National Agreement.**

The union contends that this local/district "accident policy" is inconsistent with the National Agreement and that the district "***accident policy***" **is in violation** of the above agreement.

Document M-1289 then continues as follows:

"Discipline imposed for cited **safety rule violations must meet** the "**just cause**" provisions of Article 18 of the National Agreement." (Emphasis added by union)

This discipline (emergency placement) clearly fails the principles of just cause and **is in violation** of the above agreement.

Document M-1289 then continues as follows:

"Further, administrative action with respect to safety violations must be consistent with **Articles 14 and 29...**"

Management failed to allow the grievant non driving duties which violate the agreement in Document M-1289. Both Document M-2289 (quoted above), along with Article 29 language is abundantly clear as to management's responsibility to assign non driving duties to carriers who are not allowed to drive due to alleged safety rule violations. Further, management confirmed to the union (documentation in the grievance file) that **non driving duties were available**. That confirmation is in questions 4 and 5 of a meeting that Steward Walton had with Supervisor Tim Freels on 4/1/11. Those questions and answers are as follows:

- 4 Article 29 states that you will make every reasonable effort to find her non driving duties in her craft or in other crafts. Have you done this? **No I'm not obligated to find her work. The zero tolerance policy says that.**

At this time I read the Step 4 decision # M-1289. Supervisor Freels said he had never heard that and he would check into it. I informed him that he was being punitive by not finding her work in the station is complete. He said **he would check on that.**

- 5 Do you have sufficient work in the station for Janet Bowman to do? **Yes, but I need to check on this first.**

Supervisor Freels confirmed the existence of non-driving duties, but claimed the belief that the district's "*Zero Tolerance Policy*" forgave the clear obligation to furnish the non-driving duties to the grievant.

1. The "*Zero Tolerance Policy*" letter was authored on July 19, 2010 by Greg A Gamble, District Manager. However, the letter/declared policy makes no claim that he was attempting to suspend Article 29.

2. Article 29 is very clear as to the obligation to assign the non driving duties. Step 4 Document M-1289 (as quoted above) makes abundantly clear that the parties agree that action taken as a result of safety violations would be consistent with Article 29 (obligation to assign non driving duties. Again, that quotation is as follows:

***“Further, administrative action with respect to safety violations must be consistent with Articles 14 and 29...”***

**Article 29 and Document M-1289 clearly shows that management was obligated to furnish those non driving duties to the grievant.**

The provisions of Article 29 of the National Agreement apply to this type of alleged infraction. Article 29 reads in part as follows:

**“An employee’s driving privileges may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver.”**

Clearly, management has chosen to revoke or suspend the grievant’s driving privileges (the union contends in violation of multiple Articles of the National Agreement).

On pages 29-4 of the JCAM, the parties agreed to the following:

**“Every Reasonable Effort to Reassign.** Even if a revocation or suspension of a letter carriers driving privileges is proper, Article 29 provides that, **“every reasonable effort will be made to reassign the employee in non-driving duties in the employee’s craft or other crafts.”** This requirement is not contingent upon a letter carrier making a request for non-driving duties. Rather, **it is management’s responsibility to seek to find suitable work.** National Arbitrator Snow held in I94N-4I-D 96027608, April 8, 1998 (C-18159) that management may not reassign an employee to temporary non-driving duties in another craft if doing so would result in a violation of other craft’s agreement. If it is not possible to accommodate temporary cross-craft assignments in a way that does not violate another craft’s agreement, a letter carrier who is deprived of the right to an otherwise available temporary cross-craft assignment to a position in another craft **must be placed on leave with pay until such time as he may return to work** without violating either unions’ agreement. In accordance with Arbitrator Snow’s award, in situations where city letter carriers temporarily lose driving privileges, the following applies:

- Management should first attempt to provide non-driving city letter carrier craft duties within the installation on the carrier’s regularly scheduled days and hours of work. If sufficient carrier craft work is unavailable on those days and hours, an attempt should be made to place the employee in carrier craft duties on other hours and days, anywhere within the installation.
- If sufficient work is still unavailable, a further attempt should be made to identify work assignments in other crafts, as long as placement of carriers in that work would not be to the detriment of employees of that other craft.
- If there is such available work in another craft, but the carrier may not perform that work in light of the Snow award, **the carrier must be paid for the time that the carrier otherwise would have performed that work.”** (Emphasis added)

Management clearly failed in their responsibility to furnish the grievant work once they revoked/suspended her driving privileges.

Article 16.7 of the National Agreement reads in part as follows:

**"Section 7. Emergency Procedure**

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others..."

On page 16.9 of the JCAM, the parties also agreed to the following:

**"What Test Must Management Satisfy?** Usually employees are placed on emergency non-duty status for alleged misconduct. However, the provisions of this section are broad enough to allow management to invoke the emergency procedures in situations that do not involve misconduct—for example if an employee does not recognize that he or she is having an adverse reaction to medication. The test that management must satisfy to justify actions taken under this Article 16.7 depends upon the nature of the "emergency." In H4N-3U-C 58637, August 3, 1990 (C-10146) National Arbitrator Mittenthal wrote as follows:

My response to this disagreement depends, in large part, upon how the Section 7 "emergency" action is characterized. **If that action is discipline for alleged misconduct**, then Management is subject to a "just cause" test. To quote from Section 1, **"No employee may be disciplined...except for just cause."** (Emphasis added)

The union contends this discipline (emergency placement) is **required to meet** but **fails to meet the principles of just cause**.

On page 16-1 of the JCAM, the parties agreed to the following:

**"Just Cause Principle**

The principle that any discipline must be for "just cause" establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the "just cause" provision requires a fair and provable justification for discipline.

"Just cause" is a "term of art" created by labor arbitrators. It has no precise definition. It contains no rigid rules that apply in the same way in each case of discipline or discharge. However, arbitrators frequently divide the question of just cause into **six sub-questions** and often apply the following criteria to determine whether the action was for just cause. These criteria are the **basic considerations that the supervisor must use before initiating disciplinary action.**" (Emphasis added)

One of the **six sub-questions** is as follows:

**"Is there a rule?** If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule?"

The union contends **the grievant complied with the proper dismount rule**. The union contends the grievance file shows the grievant has been delivering the mail in this way since she was awarded the route and that she dismounted properly on that day.

One of the **six sub-questions** is as follows:

**"Is the rule a reasonable rule?** Management must make sure rules are reasonable, based on the overall objective of safe and efficient work performance."

The union contends the rule (to properly dismount) is not in contention **since the grievant did properly dismount**. The question is whether an emergency procedure is reasonable action in these circumstances. The union contends that management's implementation of the emergency procedure is not reasonable.

One of the **six sub-questions** is as follows:

**"Was a thorough investigation completed?** Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective. This is the employee's *day in court* privilege. Employees have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves *before* the discipline is initiated.

**No.** The union contends that the union at Informal and Formal Step A, have presented statements and documentation showing the equipment (FFV) was defective and certainly was capable of malfunctioning and causing the accident, after the proper dismount by the grievant. Example is the following statements, in part:

**March 30, 2011, Robert Montgomery Supervisor (A) Nashville VMF (First statement in which Montgomery claims to find the vehicle performed as designed):**

"...Mr Tummins visually and manually inspected each of the three components involved in holding the vehicle from moving. The first component checked was the key and steering wheel. When the key is removed and in hand, the shifter can not be moved from the park position. When the shifter is in the park position, a locking pin (pawl) inside the transmission itself locks the transmission output shaft (driveshaft) and prevents any movement of the vehicle. Also, the steering wheel locking mechanism is working properly and locks the steering wheel from being able to be turned in any direction while the key is out and in hand. The second component verified was the parking brake system. Mr. Tummins placed the vehicle in reverse and allowed the truck to roll backwards a short distance then applied the parking brake. The vehicle came to an abrupt halt and complete stop. Mr. Turmmins then placed the vehicle into drive and attempted to move forward and the truck did not move at all. The third component checked is the transmission gear selector. At that point, he attempted to remove the key from the locking cylinder while the truck was in drive. It did not come out. He then placed the vehicle 0238431 into the remaining gear selections of one, two, neutral and reverse. The key once again was not able to be removed from the locking cylinder. Only when the truck shifter selector was placed into the park position, was the key able to be removed and placed into his pocket."

**April 11, 2011, (12 days later) Robert Montgomery Supervisor (A) Nashville VMF (Second statement in which Mr. Montgomery acknowledged the vehicle does not perform as designed), then wrote the following to Mr. Vale (Postmaster, Nashville, TN), concerning the same (this instant) vehicle:**

"While using the normal key that is assigned to the vehicle the carriers demonstrated that the key was able to be removed while the vehicle shifter was not fully in park and they were able to shift the vehicle without the key in the locking cylinder. Under a normal functions check and operation of the key and shifter these two components were working properly as expected, but when operated with quick, jerking motions or while in haste the key was able to be removed and the shifter shifted improperly. The park brake was also checked at that time and when properly applied was able to hold the vehicle from rolling. As demonstrated to me by the supervisor, the park brake handle needs to be pulled upwards a total of eight audible clicks in order for this particular vehicle, 0238431, to be held in place to prevent any forward or backward movement. (Emphasis added)

Clearly, Postmaster Vale was informed via the above letter of the malfunctions of this instant vehicle. However, Mr. Vale chose to not "do the right thing", but proceeded to discipline this grievant.

The union notes that management has not acknowledged the major problems with the key, the shifter and that "this particular vehicle" requires "eight audible clicks" for the park brake to operate properly. The union is points out that on March 30 management declared the vehicle "in safe proper working condition" and then 12 days later discovered they had "gotten it wrong"; that the vehicle had major problems with the steering column, the key and etc. Further, the "particular vehicle" requires "eight audible clicks" for the park brake to work properly.

Documentation contained in the grievance file shows that on 04/08/11 (Work order 2951); in order to correct some of the problems shown above (Montgomery statement dated April 11, 2011), vehicle maintenance replaced the following parts:

1. Steering column
2. Lock Set
3. Shift indicator

Documentation contained in the grievance file also shows (Work order 2951); that in order to correct some of the vehicle's problems shown above (Montgomery statement dated April 11, 2011), vehicle maintenance performed labor as shown:

Description of Work	Time	clock rings	Date
1. R & R Steering Column Assy.	2.5	17.00 14.50	4/8
2. R & R all locks	1.0	18.00 17.00	4/8
3. Inspect Park Brake System	.75	10.25 09.50	4/11
4. Inspect Park Brake System	.50	12.00 11.50	4/11

The union again calls attention to Mr. Montgomery's second statement (April 11, 2011) in which he stated that for the park brake to work properly, it had to be positioned with "eight audible clicks". The statement and the above work orders fail to disclose whether any adjustments were made in the parking brake system.

Management furnished statements which appear to infer the truck (steering column, key, brakes and etc) were working properly. The union furnished statements showing that



management was not correct. One of those statements was from Brian Buttrey, dated March 31, 2011 and reads in part as follows:

"...On March 29, 2011, I received a call from Corey Walton that Ms. Jan Bowman had had an accident while on her route...

...I arrived at Carden Avenue. Ms. Bowman was there by herself. I got out and asked Ms. Bowman if she was okay. She said that she was. I asked her if Mr. Freels had been there yet. She said no. I asked her if she had his number. Ms. Bowman said it's in my purse in the truck. Ms. Bowman opened the door to her postal truck, got in the vehicle, lowered the parking brake, reached under the mail tray, and got her purse. As she did, she grabbed the steering wheel to steady herself and I noticed that the steering wheel was not locked. I asked Ms. Bowman if her steering wheel locked and she said that she had not noticed. I asked her to get out of the vehicle. I looked at the gear selector to make sure it was in park. It was. I said do you have the keys to the vehicle? She said that she did and she took them off of her belt and handed them to me. I put the keys in the ignition, turned it forward, then back, and the steering wheel would never lock. I again looked at the gear selector to make sure it was in park. It was. I left the keys in the ignition so that I could point this out to Mr. Freels when he arrived. Mr. Freels arrived a short time later and I showed him the condition of the steering wheel, that it would not lock with the keys in or with the keys out..."

The statement from Steward Corey Walton reads in part as follows:

"...On March 31, 2011 at 9:00 am, by phone, Ms. Alley. I asked Ms. Alley if Assistant Shop steward Brian Buttrey had indeed shown her that the steering wheel of the postal vehicle would not lock into place with the key in or out of the ignition. She told me that the key was in the vehicle when she got there. I said I appreciate that but that wasn't the question. I again asked her the same question. She admitted that she did witness for herself that the wheel would not lock into place when the key was in or out of the ignition. I then asked her if she had taken MCSO (a) Mike Vaughn to the postal vehicle and **shown him what she had seen**. She said she could not remember. I said that the accident was just **two days ago and she couldn't remember** if she had shown Mr. Vaughn that the wheel wouldn't lock. She said it was just **so busy she couldn't remember...**" (Emphasis added)

Steward Walton's statement then continues as follows:

"I then contacted by phone MCSO (a) Mike Vaughn at approximately 9:40 am on the same day. I asked him if **Ms. Alley had shown him**, on the day of the accident, how the wheel would not lock into place with the key in and out of the ignition. He said **yes she did**. I then asked Mr. Vaughn if he indeed saw how the wheel would not lock into place with the key in or out of the ignition. He told me that the key was in the vehicle when he got there. I then stated that he and Ms. Alley had that part down but that wasn't the question. I then asked the question again and he said **yes he did see for himself that the wheel would not lock into place with the key in or out of the ignition.**" (Emphasis added)

The union contends the documentation presented by the union in this grievance file clearly shows that management has declared the facts differently on several occasions **in an attempt to justify this unwarranted and inexcusable emergency placement.**

Steward Walton called to Two Rivers Service Center on 05/02/11 (a **Ford dealership** that performs service on Postal vehicles), and was referred to **Master Mechanic, Paul Legnon**. The following is a portion of the conversation between the two:

"...I introduced myself to Mr. Legnon and asked if he wouldn't mind answering a few questions and he said that would be fine. I discussed thoroughly the problems we found with the steering column in the vehicle that was in the rollaway accident. How you could

put the vehicle in drive and with it still running and in drive turn the vehicle off and remove the key. I also told how the vehicles wheel would not lock into place with the key out of the ignition. I told him how the gear indicator could be moved from park to reverse with the key out of the ignition.

Mr. Legnon then stated "Mr. Walton I can tell you that those steering columns were simply not designed to handle the wear and tear that ya'll put them through. The constant starting and stopping wears out the components in that steering column. Those steering columns have too many aluminum parts for that. They simply wear out."

I then asked him if there was any way that key should be able to be removed from the ignition while the vehicle was still running and in drive. He said, "absolutely not. Under no circumstances should you be able to remove that key from the ignition while it's running. Regardless of what you're doing to it. That key should never come out while in gear. I see the same things with UPS trucks. They just simply wear out. Those columns are just about all aluminum. They will wear out..."

The union presents the above statement as even more evidence these trucks can and do malfunction; just as the other statements, work orders, parts lists and etc show did happen with this instant truck.

While the PS Form 1769 (block 35) alleges "Improper parking", the union contends that the documentation contained in this grievance file shows the location at which the grievant parked that day was where she and other carriers **parked the vehicle**, management knew the location and **had never objected to it and had never instructed the carriers to park elsewhere.**

One of the **six sub-questions** is as follows:

**"Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record? The following is an example of what arbitrators may consider an inequitable discipline: If an installation consistently issues five-day suspensions for a particular offense, it would be extremely difficult to justify why an employee with a past record similar to that of other disciplined employees was issued a thirty-day suspension for the same offense. There is no precise definition of what establishes a good, fair, or bad record. Reasonable judgment must be used. An employee's record of previous offenses may never be used to establish guilt in a case you presently have under consideration, but it may be used to determine the appropriate disciplinary penalty.**

**No.** The grievant has over 13 years service and has no previous discipline in this grievance file. Management stated that the grievant had three industrial accidents. However, documentation contained in this grievance file shows the grievant had only one vehicle accident in the past five years, **(prior to this instant false accusation).** The grievance file contains **no record of any previous discipline.**

While the document "*accident history*" contains the following entry "OWCP Reported Injuries" management's Formal Step A contentions **admit** the grievant **has only** had "***eleven lost work days due to injuries.***"

On page 16-2 of the JCAM, the parties agreed to the following:

**"Corrective Rather than Punitive**

The requirement that discipline be “corrective” rather than “punitive” is an essential element of the “just cause” principle. In short, it means that for most offenses management must issue discipline in a “progressive” fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense and a pattern of increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge). The basis of this principle of “corrective” or “progressive” discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution.” (Emphasis added)

This discipline was clearly punishment. Not only was there no previous discipline cited, management also failed to prove the grievant acted as they have charged.

The grievance file also contains a statement dated 9/29/10 from the Chattanooga VMF in which the lead mechanic describes the potential for these LLVs to malfunction, which could lead to the very situation as exists here.

The grievance file also contains documentation from the National Traffic Safety Administration of complaints of vehicle rollaways after the driver shifted the vehicle into park and failure of the gearshift lever mechanism while shifting from or to the park position.

The union further contends the following:

1. None of the criteria set forth in Article 16.7 of the National agreement was present on September 20, 2010 with respect to this case. Therefore there was no legitimate basis to invoke Article 16, Section 7 on the day in question.
2. Management violated Article 29 of the National Agreement by not making every reasonable effort to assign the grievant to non-driving duties when they temporarily suspended/revoked the grievant's driving privileges on that day. As a matter of fact, the record is clear that Management made no effort whatsoever to assign the grievant non-driving duties. Instead, they circumvented their contractual responsibilities as outlined in Article 29 by placing the grievant on Emergency Placement.
3. Management failed to properly consider the grievant's tenure and no discipline in his record for more than 13 years.
4. The grievant is accused of misconduct in the instant case. Therefore, management must bear the burden of proving just cause existed to place the grievant on an Emergency Suspension in this case.
5. The grievant's supervisors along with safety personnel were shown (at the scene of the incident) the malfunctioning of the FFV.
6. PS Form 1769/301 (Block 35) mgt entered (Improper parking). In fact the documentation contained in this grievance file shows the grievant and other carriers constantly parked at that exact location, with the full knowledge of supervision. The union contends there was **no cause** to place the grievant on Emergency Placement.
7. The union contends the grievant followed proper dismount procedures.
8. Article 16 of the National Agreement states that, “In the administration of this article, a basic principle shall be that discipline should be corrective in nature,

rather than punitive. No employee may be disciplined except for just cause..." Management simply cannot establish/allege just cause in the case at bar. The discipline issued was punitive rather than corrective in nature. Placing a Carrier on Emergency placement for an **alleged** safety infraction is designed to punish rather than to correct unsafe practices and situations as intended in Article 14 of the National Agreement. The facts in this case clearly show this discipline was intended to punish, in violation of the National Agreement.

9. Regardless of how this situation is viewed, the inescapable conclusion is that management failed to follow Section 115 of the M-39 Handbook. Section 115.1 of the M-39 reads as follows:

### **"Discipline**

#### **115.1 Basic Principle**

In the administration of discipline, a basic principle must be that discipline **should be corrective in nature**, rather than punitive. No employee may be disciplined or discharged **except for just cause**. The delivery manager must make **every effort** to correct a situation **before resorting to disciplinary measures.**" (Emphasis added)

Management made **no effort** to "correct a situation", before issuing this discipline; when the above quoted Handbook requires **"every effort"**.

Section 115.2 of the M-39 Handbook reads as follows:

### **"Using People Effectively**

Managers can accomplish their mission only through the effective use of people. How successful a manager is in working with people will, to a great measure, determine whether or not the goals of the Postal Service are attained. Getting the job done through people is not an easy task, and certain basic things are required, such as:

- a. Let the employee know what is expected of him or her.
- b. Know fully if the employee is not attaining expectations; don't guess — make certain with documented evidence.
- c. Let the employee explain his or her problem — listen! If given a chance, the employee will tell you the problem. Draw it out from the employee if needed, but get the whole story."

Section 115.3 of the M-39 Handbook reads as follows:

### **"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.”

The union contends that management failed in their responsibilities as outlined above in 115.2 and 115.3 of the M-39 Handbook.

Management failed to meet their burden of proving just cause in this instant case. Additionally, the Union has demonstrated that Management's behavior with respect to this entire situation was wholly inappropriate and a blatant abuse of the authority entrusted to them.

Management cited a “Zero Tolerance Policy”. The union contends the “Policy” written by an employee of the Tennessee District cannot supersede the agreements reached by the parties at the National Level in the National Agreement, Handbooks, Manuals and other Memorandums.

**The union further contends:**

On page 16-3 of the JCAM, the parties agreed to the following:

**“Examples of Behavior.** Article 16.1 states several examples of misconduct which may constitute just cause for discipline. Some managers have mistakenly believed that because these behaviors are specifically listed in the contract, any discipline of employees for such behaviors is “automatically” for just cause. The parties agree these behaviors are intended as examples only. Management must still meet the requisite burden of proof, e.g. prove that the behavior took place, that it was intentional, that the degree of discipline imposed was corrective rather than punitive, and so forth. **Principles of just cause apply to these specific examples of misconduct as well as to any other conduct for which management issues discipline.” (Emphasis added)**

Management has not shown the grievant acted and charged.

The grievance file contains a request from the union dated 4/6/11 which reads as follows:

“Videotape (with audio) FFV # 0238431. The union would like to videotape this vehicle inside and out for possible safety violations. Dave Clark and union representative will be performing the investigation of this vehicle”.

There is a notation on the form stating “Denied 4/8/2011”

The grievance file contains a “Memorandum” dated April 8, 2011, for “NALC” from Mike Vaughn, which reads as follows:

“The request states “The union would like to videotape this vehicle inside and out for possible safety violations. Dave Clark and union representatives will be performing their investigation of the vehicle.

The request is denied.

Dave Clark and union representatives were notified immediately when the accident occurred and had a chance to come to the scene and conduct an on scene investigation. Also, the request for conducting their own investigation of the vehicle is also denied because neither Dave Clark no Corey Walton is qualified to conduct vehicle inspections on Postal Vehicles. However the union can interview the Vehicle Maintenance technician that provided a written report to Management and the NALC concerning his evaluation and investigation vehicle.”

The union was clearly deprived of the opportunity to examine and properly record their examination of this vehicle. **Management denied the request** and offered to substitute by giving the union to "interview" a technician from the VMF (the department that wrote two completely different reports), the final report admitting the truck parts were defective.

The union contends that **management's above refusal clearly violates Articles 17 and 31 of the National Agreement**.

The union contends the documentation contained in this grievance file **does not show** the grievant acted as charged. The documentation does show that management has violated multiple Articles of the National Agreement.

For all the reasons stated above and all the reasons and issues the union raised at Formal Step A of the grievance procedure, the union believes this grievance should be sustained in its entirety and the remedy requested should be granted.

## MANAGEMENT'S POSITION:

The Management Formal A representative effectively presented the Facts and Contentions. All of the arguments raised by Management at the Informal and Formal Step A meetings are brought forward to Step B and at Arbitration. The Step B representative would like to add the following:

Management contends the Emergency Placement of the grievant in Off-Duty Status on March 29, 2011, pending the outcome of an investigation of a willful and intentional safety violation, was reasonable, immediate and with just cause.

The Emergency Placement in Off-Duty status reads in part as follows:

"You are hereby notified that effective March 29, 2011, you were placed in a non-duty, non-pay status under the provisions of Article 16, Section 7, of the National Agreement. The reason for this action is **your failure to follow safety regulations** and the zero tolerance policy. (Emphasis added)

Management contends that Supervisor, Customer Services, Tim Freels acted in accordance with Article 16.7 of the National Agreement, which reads as follows:

### "Section 7. Emergency Procedure

**An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others. The employee shall remain on the rolls (non-pay status) until disposition of the case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge the employee, the emergency action taken under this Section may be made the subject of a separate grievance."** (Emphasis added)

The union's position appears to be that there is NO safety rule or regulation where "*failure to observe*" would warrant an emergency action.

"The union contends that even if the grievant had failed to properly dismount, with a total lack of previous discipline in this grievance file, there **would not** have been justification for anything more than a minor discipline."

The potential for serious injury or fatality may be no greater in any other set of rules and regulations within the United States Postal Service. Yet the union contends such a failure (improper dismount), at most, "*could not*" be "*justification for anything more than a minor discipline*". No wonder these types of accidents continue to occur all too often.

The national parties agree on page 16-8 of the JCAM to the following:

"The purpose of Article 16.7 is to allow the Postal Service to act "**immediately**" to place an employee in an off duty status in the specified "**emergency**" situations." (Emphasis added)

The "*allegation*" of an employees "*failure to observe safety rules and regulations*" is specifically listed among the qualifying offenses that allows "*the Employer*" to place an employee "*immediately*" in an "*off-duty status (without pay)*." Management contends that the potential/probable willful and intentional disregard of safety rules, in this instant

grievance, **failure to follow proper dismount procedures**, warrants the emergency placement pending the outcome of a thorough investigation.

Management included a copy of the Zero Tolerance Policy; Improper Dismount Procedures dated July 19, 2010, which reads in part as follows:

Failure to follow proper dismount procedures is a willful violation of postal policy. The Tennessee District has adopted a zero tolerance policy for violations of proper dismount procedures. Every postal employee in the Tennessee District will be presented the attached stand-up talk addressing this policy. A record of attendance will be established and maintained in the local file. This policy is in effect for every driver, including employees who drive administrative vehicles, lease vehicles and private vehicles on official postal business.

There is absolutely no excuse for a run-away. There is, however, the slim possibility of a mechanical failure causing a roll-away accident. In a case where an employee claims mechanical failure, the vehicle will be referred to the VMF to determine if a mechanical failure played any part in the accident.

An accident need not occur as a result of the violation. An observation of the violation is sufficient to support corrective action. Because this is a zero tolerance policy, **any violation of this policy may result in disciplinary action, including removal.** (*Italics and underlining added – bolding from the original*)

Pursuant to Article 19 of the National Agreement, the following provisions in Handbook M-41 are incorporated in the collective bargaining agreement:

- 822 **Whenever the driver leaves the vehicle, the vehicle must be parked.** To park the vehicle:
- a. **Apply the foot brake and place automatic transmissions in the park position.** Place manual transmissions in gear.
  - b. Turn the vehicle's front wheels toward the curb if you are on a flat surface or when the vehicle is facing downhill. **If the vehicle is parked facing uphill, turn the front wheels away from the curb.**
  - c. **Set the hand-parking/emergency brake.**
  - d. **Turn off the engine and remove the key.**
  - e. Lock any sliding door(s) between the truck body and cab.
  - f. Lock the doors if you will be out of direct sight of the vehicle.
- (Emphasis added)**

The proper application of each of these elements, in concert, is designed to preclude the failure of any one (1) component from causing a roll away accident. The grievant's tenure does not excuse her from these requirements or consequences. Her experience should have made her all the more aware of the importance and potential hazards for failing to comply.

Although management acknowledges the possibility of a mechanical failure causing a roll-away accident, the evidence does not support such a claim in this instant grievance. Management's Formal Step A representative states the following in part:

"...the FFV number 0238431 that Ms Bowman was driving that day was in perfect working order as determined by Joel Lawson, Technician, Russell Tummins, Lead Technician, and Robert Montgomery, Supervisor (A) at the Nashville Vehicle Maintenance Facility.

Mr. Lawson, the technician who responded to the accident scene stated in part the following:



"On March 29, 2011 I was dispatched to Carden Ave to retrieve a FFV, 0238431, that was stuck on a rock wall...

While I was inspecting the FFV, the station Supervisor asked me to check and see if **the shifter, the key cylinder, and the park brake was all working properly**. I demonstrated all with out any problems. The station Supervisor called the Safety Officer over and I demonstrated the same for her...

I proceeded to load the FFV onto the wrecker and transport it to the Nashville VMF. Upon arriving at the VMF I **unloaded the FFV and again checked the park brake, shift lever, and key cylinder, all ok**. I advised my Supervisor of all activities."

Twice, while still on the accident scene and a third time upon arrival at the VMF, Technician Lawson tested and found no defects in the parking brake, key cylinder or shift lever. Keep in mind, had the grievant observed the "safety rules and regulations" for a proper dismount, two (2) or more of these elements would have had to fail simultaneously in order to cause this accident.

Acting Manager, Customer Service Operations (MCSO), Mike Vaughn's written statement reads in part as follows:

"On March 29, 2011 at 12:10 pm, I received a call from the Manager of Belle Meade Station (Jeffery Byrd) that one of his carriers was involved in an accident at 230 Carden Ave. When I arrived on the scene, there were three people on the scene. One was Supervisor (Tim Freels) and two carriers (Jan Bowman and B. Butter). At that time, the Supervisor was taking pictures of the accident scene. I asked him if anything had been touched and he informed me that **the carrier (Ms. Bowman) stated that "she has not touched the vehicle since it came to rest where it is now"**. About that time, two Safety Officials (Kim Alley and Tammy McDonald) had arrived on the scene. I asked if they had a camera so I could take more photos showing that **the key was still in the ignition and that the hand brake was not set**. I also took photos showing the distance between where the LLV stated and ended rolling backwards, and the path the vehicle had taken.

...  
The Safety Officials and I waited for the tow truck driver to arrive on the scene. After he pulled the vehicle off of the tree and rock wall, he started the vehicle up and moved it forward to put on the tow truck. At that time **the tow truck driver pulled the hand brake and turned vehicle off. The hand brake worked perfectly and the steering wheel also locked**. The tow truck driver informed me that an investigation would be completed on the vehicle to make sure if anything was or was not working properly..." (Emphasis added)

The grievant attempts to explain the hand brake not being set when MCSO Vaughn made his observations in her typed statement which reads in part as follows:

"...My purse was under the ledge to the left of the hand brake. I carefully climbed in on the edge of the seat (covered with glass) using the steering wheel as balance and the wheel moved... I let down the hand brake to pull my purse through the narrow space..."

The photographs at M-42 and M-54 clearly show that lowering the hand brake would only further restrict access, from the driver's side, to an item under the carrier ledge. Maximum clearance would be obtained with the parking brake in the up (engaged) position.

In addition, the photographs at M-45 and M-49 show the vehicle came to rest at or near a steep drop off. A bridge and even deeper drop off is only a few feet further back.

However, the grievant supposedly felt comfortable disengaging the parking brake (she doesn't describe placing her foot on the brake pedal) and kneeling on glass, while supporting herself with the steering wheel, to retrieve her purse.

The grievant's statement is even less plausible when you consider the photographs at M-45 and M-54. M-54 shows the ease of access for retrieving an object from under the carrier ledge through the left side door. M-45 shows the sidewalk next to the left side vehicle door that would have allowed quick, safe and easy access to an object from under the carrier ledge. The ridiculously unsafe acrobatics described in the grievant's statement, *the day after the accident*, is just not credible.

The dismount location and the vehicle path during the roll away indicate the wheels of the FFV were certainly not curbed. The vehicle's path is consistent with the steering wheel being locked at the time the FFV rolled away.

Acting Vehicle Maintenance Facility (VMF) Supervisor, Robert Montgomery's statement dated March 30, 2011, includes the following regarding the vehicle recovery and testing that took place at the accident scene:

"On March 29, 2011 our VMF was contacted with a call for recovering a roll away vehicle. I, Robert Montgomery, sent my mechanic Joel Lawson to Carden Ave...

...Once on the street, Mr. Lawson and the supervisor accompanied by the safety officer, did an on the spot operations check of the vehicle. My mechanic demonstrated that **with the key out of the locking cylinder and in hand, the steering wheel was locked in place and could not move. The gear shift lever also could not be moved from the park position.** He also tested the vehicle's parking brake and determined that **the brake held the vehicle properly and prevented the truck from moving, even while the vehicle was in gear...** (Emphasis added)

According to these statements, there was no mechanical malfunction to cause this roll away. All mechanical test and observations made at the accident scene point towards a preventable, potentially catastrophic, accident caused by the grievant's failure to follow the established safety rules and regulations in regards to proper dismount procedures.

The union's position in this case would require ignoring the credentials and statements of multiple trained and **certified technicians** who conducted numerous test on every critical mechanical component that could play a role in a roll away and found zero defects (prior to returning the vehicle to service) in favor of the local union steward's supposed observations at the scene. In addition, the generalizations from a Ford mechanic, over a month after the roll away event, **that never inspected this vehicle**, are also supposed to supplant the finding from the thorough testing conducted on FFV 0238431 immediately following this incident.

The union asserts that management failed to meet the principles of just case in this instant grievance. In National Arbitration case C#10146 A & B, Arbitrator Richard Mittenthal stated the following in part regarding the level of proof required in applying Section 7 of Article 16:

"..."just cause" may depend to some extent upon the nature of the particular disciplinary right being exercised. **Section 7 grants Management a right to place an employee "immediately" on non-duty, non-pay status because of an "allegation" of certain misconduct** (or because his retention "may" have certain harmful consequences). "Just cause" takes on a different cast in these circumstances.

The level of proof required to justify this kind of "immediate..." action may be something less than would be required had Management suspended the employee under Section 4 or 5 where ten or thirty days' advance written notice of the suspension is given. To rule otherwise, to rule that the same level of proof is necessary in all suspension situations, would as a practical matter diminish Management's right to take "immediate..." action..."

Management took "immediate" action based on the information available at that moment. For management to delay action pending additional vehicle inspection results, interviews, witness written statements or other evidence that may materialize weeks, days or even hours later, as the union asserts, would cause a violation of the immediacy requirements of Article 16.7. The initial investigation findings revealed sufficient inconsistencies to warrant emergency placement pending a comprehensive and complete investigation.

In H4N-3U-C 58637/H4N-3A-C 59518, National Arbitrator Mittenthal wrote:

The "emergency procedure" is, as those words indicate, a recognition that situations do arise where supervision **must act "immediately"** in suspending an employee because of immediate risks or dangers which do not allow for the more time-consuming procedures of Sections 4 and 5. Thus, Section 7 is a permissible variation from the conventional suspensions contemplated by the parties. But it is a suspension nonetheless, one which must be considered an integral part of the Article 16 "discipline procedure." **(Emphasis added)**

Arbitrator Mittenthal further stated in H4N-3U-C 58637/H4N-3A-C 59518:

"The critical factor, in my opinion, is that Management was given the right to place an employee **"immediately"** on non-duty, non-pay status on the basis of certain happenings. An "immediate..." action is one that occurs instantly, without any lapse of time. Nothing intervenes between the decision to act and the act itself." **(Emphasis added)**

Management acted immediately to implement the emergency placement, remove the grievant from her route, return her to the unit and escort her from the premises, as required. Again, the manager observations, initial vehicle tests, statements, etc. revealed sufficient evidence to warrant emergency placement pending a thorough investigation.

The subsequent vehicle inspection conducted by Lead Technician, Russell Tummins on March 30, 2011, confirmed the original finding and observations made at the accident scene the previous day. The written statement from Lead Technician, Russell Tummins regarding his examination of FFV 0238431 reads in part as follows:

"On March 30, 2011 I was directed by my supervisor Robert Montgomery to inspect vehicle 0238431... **With the vehicle on an incline in the VMF parking lot and the parking brake applied, the vehicle did not move when shifted into neutral and my foot was removed from the brake pedal. I then tried shifting to reverse and drive. The vehicle still did not move, even with a slight amount of throttle applied...**" **(Emphasis added)**

With the engine running and the parking brake set, while on an incline, the vehicle did not move when placed in neutral and no pressure was applied to the brake pedal. In addition, the vehicle still did not move even when placed in reverse or drive; even when additional throttle was applied. If the grievant had set the parking brake, this accident would not have occurred. Clearly, the grievant did not set the parking brake.

The written statement from Lead Technician, Russell Tummins continues in part as follows:

"...I also checked the transmission shift mechanism. With the lock cylinder in the locked position and the key out, the shifter lever would not move from the park position with a reasonable amount of force applied. With the key in the lock cylinder and the lock cylinder turned to the run position and my foot off the brake pedal, the shifter still could not be moved from park with a reasonable amount of force applied. Only with the lock cylinder in the run position and my foot on the brake could I get the transmission to shift out of park. To test the vehicle's park mechanism I shifted the transmission to neutral and allowed the vehicle to roll back in its parking spot approximately a foot. I stopped the vehicle and shifted to park, then let off the brakes. The vehicle rolled about another three to four inches before engaging in park. I repeated this procedure again with the same result. I also tried several times allowing the vehicle to roll backwards while applying the parking brake. The vehicle stopped every time. I also noted that with the shifter in reverse, the key could not be removed from the lock cylinder.

I concluded on March 30, 2011 that vehicle 0238431 was safe to operate."

Less than 24 hours after the grievant's vehicle rolled or ran away, Lead Technician Tummins conducted multiple tests on each of the vehicle's key components and found no defects of any kind. Vehicle 0238431 did not experience a mechanical failure on March 29, 2011.

On page 16-9 of the JCAM, the parties agreed to the following:

**"Written Notice.** Management is **not required** to provide advance written notice prior to taking such emergency action. However, an employee placed on emergency off-duty status is entitled to written charges within a reasonable period of time. In H4N-3U-C 58637, August 3, 1990 (C-10146) National Arbitrator Mittenthal wrote as follows:

**The fact that no "advance written notice" is required does not mean that Management has no notice obligation whatever. The employee suspended pursuant to Section 7 has the right to grieve his suspension. He cannot effectively grieve unless he is formally made aware of the charge against him, the reason why Management has invoked Section 7. He surely is entitled to such notice within a reasonable period of time following the date of his displacement. To deny him such notice is to deny him his right under the grievance procedure to mount a credible challenge against Management's action." (Emphasis added)**

Track/Confirm – Intranet Item Inquiry shows management mailed the written notice of the charge on March 29, 2011. The First-Class Certified item was received and signed for by the grievant on March 30, 2011.

On page 16-9 of the JCAM, the parties agreed to the following:

**"What Test Must Management Satisfy?** Usually employees are placed on emergency non-duty status for alleged misconduct. However, the provisions of this section are broad enough to allow management to invoke the emergency procedures in situations that do not involve misconduct—for example if an employee does not recognize that he or she is having an adverse reaction to medication. The test that management must satisfy to justify actions taken under this Article 16.7 depends upon the nature of the "emergency." In H4N-3U-C

58637, August 3, 1990 (C-10146) National Arbitrator Mittenthal wrote as follows:

My response to this disagreement depends, in large part, upon how the Section 7 "emergency" action is characterized. If that action is discipline for alleged misconduct, then Management is subject to a "just cause" test. To quote from Section 1, "No employee may be disciplined...except for just cause." If, on the other hand, that action is not prompted by misconduct and hence is not discipline, the "just cause" standard is not applicable. Management then need only show "reasonable cause" (or "reasonable belief") a test which is easier to satisfy.

One important caveat should be noted. "Just cause" is not an absolute concept. Its impact, from the standpoint of the degree of proof required in a given case, can be somewhat elastic. For instance, arbitrators ordinarily use a "preponderance of the evidence" rule or some similar standard in deciding fact questions in a discipline dispute. Sometimes, however, a higher degree of proof is required where the alleged misconduct includes an element of moral turpitude or criminal intent. The point is that "just cause" can be calibrated differently on the basis of the nature of the alleged misconduct. (Emphasis added)

On page 16-1 of the JCAM, the parties agreed to the following:

#### "Just Cause Principle

The principle that any discipline must be for "just cause" establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the "just cause" provision requires a fair and provable justification for discipline.

"Just cause" is a "term of art" created by labor arbitrators. It has no precise definition. It contains no rigid rules that apply in the same way in each case of discipline or discharge. However, arbitrators frequently divide the question of just cause into six sub-questions and often apply the following criteria to determine whether the action was for just cause. These criteria are the *basic* considerations that the supervisor must use before initiating disciplinary action." (Emphasis added)

One of the six sub-questions is as follows:

"Is there a rule? If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule?" It is not enough to say, "Well, everybody knows that rule," or, "We posted that rule ten years ago." You may have to prove that the employee should have known of the rule. Certain standards of conduct are normally expected in the industrial environment and it is assumed by arbitrators that employees should be aware of these standards."

Yes. The grievant's typed statement reads in part as follows:

"...I put the truck in park, turned the engine off, took the key out and pulled up the hand brake."

Clearly the grievant had received proper training and was aware of the safety rules and regulations in regards to a proper vehicle dismount.

The case file shows the grievant was present during a December 2, 2010, Safety Talk (M12) on the "Zero Tolerance Policy: Failure to Follow Proper Dismount Procedures" which included the following:

"...A Zero Tolerance Policy for failure to follow proper dismount procedures is in effect. **Any employee who violates this policy is subject to serious corrective action which could result in termination of employment...**

"There is absolutely no excuse for a runaway or rollaway. **Each time an accident of this type happens there is potential for a fatality.** Postal drivers are required to follow all four steps listed above *every time* they get out of the drivers seat for **any reason...**" (**Emphasis added** – italics and bold without underlining in the original)

The grievant was well aware of the rule, the consequences for failure to follow the rule and the potential tragedy that could occur when failing to follow these critical safety rules and regulations, each time she left her vehicle.

Pursuant to Article 19 of the National Agreement, the following provisions in Handbook M-41 are incorporated in the collective bargaining agreement:

#### **112.4 Safety**

Conduct your work in a safe manner so as not to endanger yourself or others (see part 133 for general safety practices and part 812 for vehicle safety practices).

#### **812 Safety Practices**

812.1 Practice safety in the office and on the route.

812.2 Observe all traffic regulations prescribed by law. Rules applying to the public also apply to operators of postal vehicles.

Pursuant to Article 19 of the National Agreement, the following provisions in Handbook EL – 814, Postal Employees Guide to Safety are incorporated in the collective bargaining agreement:

#### **Section I: General Safety Rules**

##### **A. General Rules**

"Safety rules are for your benefit; **observing safe working practices and Postal Service safety rules is a primary responsibility of all Postal Service employees...**" (**Emphasis added**)

Management contends that in addition to postal rules and regulations, the grievant violated state law 12.40.030 and 12.40.040. Knowledge of these requirements is a prerequisite in obtaining any state driver's license and is incorporated in the U.S. Postal Service's driver orientation program. The grievant's statement does not dispute the alleged violation.

One of the **six sub-questions** is as follows:

"**Was a thorough investigation completed?** Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective. This is the employee's *day in court* privilege. Employees

have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves *before* the discipline is initiated.”

**Yes.** All mechanical test and observations made at the accident scene pointed towards a preventable, potentially catastrophic, accident caused by the grievant's failure to follow the established safety rules and regulations in regards to proper dismount procedures. Management reacted appropriately and in compliance with the requirements of Article 16, Section 7 of the National Agreement. The notice of written charges was mailed to the grievant the same day.

Further, the case file contains evidence of a continuing investigation, statements, interviews and other activities that may most appropriately be developed, discussed, etc. upon final disposition of this case and/or disciplinary action. Much of the union's presentation in this grievance file, developed days or weeks after the incident are not relevant to management's implementation of emergency procedures or whether management is obligated to invoke Article 14 and/or 29 of the National Agreement (stated issues by the union).

Article 14, Section 1 of the National Agreement reads in part as follows:

“It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility...” (Emphasis added)

The Postal Service works with OSHA to improve the safety of the postal workplace by attempting to reduce work related accidents and injuries. Specific goals are set and emphasis is made to reduce accidents by awareness, training and safe work practices. A copy of the Postal Service goals regarding accidents and injuries are available at [www.usps.com/strategicplanning](http://www.usps.com/strategicplanning). Management assumes the union shares the goal of reducing accidents and injuries for its members. Management is troubled by the fact the union has offered no constructive options that would support these efforts in this instant grievance.

In addition, veteran carrier and union official Brian Buttrey, arrived on the scene first and supposedly altered the scene by placing the keys in the ignition. Absent carrier Bowman's cell phone records it is impossible to determine exactly how carrier Buttrey was able to arrive on the scene before the management official carrier Bowman should have called first.

And finally, days after the grievant's vehicle passes all mechanical tests, by multiple technicians and is returned to service, the same vehicle components (except the parking brake) are damaged to the point the vehicle must be removed from service for repair.

Acting Vehicle Maintenance Facility (VMF) Supervisor, Robert Montgomery's letter to Mr. Vale (Postmaster Nashville, TN) dated April 11, 2011, reads in part as follows:

“...Reasons for the breakage could be from excessive and or harsh usage or simple daily wear and tear plus the age of the component.

...

“...The parking brake system is in very good, proper and safe working condition and will prevent the vehicle from moving when the park brake is properly applied.” (Emphasis added)

Management maintains that whether the change in mechanical function, **several days after the vehicle was returned to service**, was intentional and/or criminal, accidental

or from normal usage; it does not alter the fact that **these same vehicle functions were in perfect operating condition on the day of the rollaway incident.** The grievance file contains no legitimate evidence that the initial test were incorrect; only that the vehicle's mechanical condition had changed after being returned to service.

Management also contends and the evidence shows that *the parking brake STILL would have held the vehicle regardless; if only the grievant had properly followed the established safety rules and regulations.*

*Management further maintains that the union's request to inspect, video tape, etc. FFV 0238431 more than a week after the incident and days after the vehicle had returned to service and the performance of the vehicle astonishingly changed; is irrelevant to this emergency placement.*

Article 29 of the National Agreement reads in part as follows:

"An employee's driving privileges may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver..."

Management maintains that Article 29 of the National Agreement does not apply in this emergency placement. Article 29 provides that management may suspend or revoke a carrier's driving privileges under certain specified circumstances. If a decision is made to suspend or revoke an employee's driving privileges, the employee must be provided, in writing, the reason(s) for such action. The grievance file is absent such written notice.

One of the **six sub-questions** is as follows:

"Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record? The following is an example of what arbitrators may consider an inequitable discipline: If an installation consistently issues five-day suspensions for a particular offense, it would be extremely difficult to justify why an employee with a past record similar to that of other disciplined employees was issued a thirty-day suspension for the same offense. There is no precise definition of what establishes a good, fair, or bad record. Reasonable judgment must be used. An employee's record of previous offenses may never be used to establish guilt in a case you presently have under consideration, but it may be used to determine the appropriate disciplinary penalty."

**Yes.** Management contends that the *potential/probable willful and intentional disregard of safety rules*, in this instant grievance, **"improper dismount procedures"**, warrants the emergency placement pending the outcome of a thorough investigation.

One of the **six sub-questions** is as follows:

"Was the disciplinary action taken in a timely manner? Disciplinary actions should be taken as promptly as possible after the offense has been committed."

**Yes.** Management acted immediately, at the accident scene, to invoke the "emergency procedure" in accordance with the requirements of Article 16.7 of the National Agreement.

On page 16-2 of the JCAM, the parties agreed to the following:

**"Corrective Rather than Punitive**



The requirement that discipline be "corrective" rather than "punitive" is an essential element of the "just cause" principle. In short, it means that for most offenses management must issue discipline in a "progressive" fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense and a pattern of increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge). The basis of this principle of "corrective" or "progressive" discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution."

Management agrees that Article 16 and Section 115.1 of Handbook M-39 provides that the basic principle of discipline should be corrective, not punitive. That concept supports the application of progressive discipline that attempts to correct an employee's unacceptable behavior over a period of time through a series of escalating disciplinary actions. "Just cause" requires that any discipline imposed be reasonable when considered in view of the nature of the offense and progressive discipline is generally a relevant factor in that determination. But there are types of conduct which are considered so severe that the first occurrence warrants other than progressive discipline, with theft and physical violence as examples.

Management contends that the potential willful and intentional disregard of safety rules, in this instant grievance, proper dismount procedures, warrants the emergency placement pending the outcome of a thorough investigation despite the grievant's tenure. Although the damages in this case are relatively minor, the potential for tragedy (note the child's riding toy in M-45) and the inherent risk to the public and employees has caused these procedures to be a point of significant emphasis for many years.

In conclusion, management contends there is no violation of Article 14, 16, 29 and/or 19, via Section 115 of the M-39 Handbook, of the National Agreement when they placed letter carrier Janet Bowman on Emergency Placement in Off Duty Status on March 29, 2011.

For all the reasons stated above and all the reasons and issues at Informal and Formal Step A of the grievance procedure, management is of the opinion that this grievance should be denied in its entirety and that the remedy requested should not be granted.

This grievance file contained the following documents:

- (1) PS Form 8190
- (2) Issue statement, 1 page
- (3) Management's contentions, 10 pages, (8 typewritten and 2 handwritten)
- (4) Memorandum from Tim Freels to grievant dated March 29, 2011
- (5) Notes from Corey L. Walton from meeting with Tim Freels, 2 pages
- (6) Notes of "Questioning of Super. Tim Freels", 2 pages
- (7) Investigative interview dated 4/7/11, 2 pages
- (8) Grievant's statement, 1 page
- (9) Employee Everything Report for grievant for 03/29/11
- (10) Notes by Corey L. Walton of Interview of Monica Weiss Sharp, 1 page
- (11) Statement from Brian Buttrey dated March 31, 2011, 1 page
- (12) Steward's statement, 5 pages
- (13) Statement from Brian Buttrey, no date, 1 page
- (14) Statement from Michael Wilson, 1 page
- (15) PS Form 1787, submitted 4/7/11
- (16) Request for information dated 4/6/11
- (17) Memorandum "for NALC" from Mike Vaughn
- (18) Statement (e mail) from Steve Weakley, 2 pages
- (19) Statement from Scott Tomlinson, 2 pages

- (20) Statement from Dave Clark
- (21) One page beginning "When FFV Truck # 0227375 was brought in..." dated 9/29/2010
- (22) Statement from Corey L. Walton dated 05/02/2011
- (23) One page from <http://www.postalmag.com/stewardinv.jpg>
- (24) Four pages from internet relating to vehicles
- (25) Vehicle maintenance work order, Parts only
- (26) Vehicle maintenance work order, Labor only
- (27) Statement from Robert Montgomery dated March 30, 2011
- (28) Statement from Joel Lawson dated April 9, 2011
- (29) Statement from Russell Tummins dated April 9, 2011
- (30) Statement from Robert Montgomery dated April 11, 2011
- (31) Statement from Mike Vaughn dated March 31, 2011
- (32) Statement from Laurent Bell dated 4/12/11, (Rt 4, 37211)
- (33) "Vehicle Repair Tags", 3 pages
- (34) Memorandum from Patty L. Frederick dated June 28, 2010
- (35) Form 3999X, 9 pages
- (36) Document M-1289, 2 pages
- (37) Pages 14-1, 14-2, 16-1, 16-2, 16-3, 16-8, 16-9, 29-3, 29-4 and 29-5
- (38) Request for information dated 4/18/2011
- (39) Management's contentions, 6 pages
- (40) Memorandum from Tim Freels to grievant dated March 29, 2011
- (41) Copies of PS Form 3811, for 7011 0470 0003 4962 7845 and 7011 3090 0001 0093 6803
- (42) Track/Confirm documents, 2 pages (M-8 and 9)
- (43) Page 648 from ELM 25
- (44) Memorandum from Greg A. Gamble dated July 19, 2010
- (45) "Zero tolerance policy", M-12)
- (46) "Employees on Clock", Dec 02/2010
- (47) Pages 1 and 4 from "Standard Operating Procedure" dated November, 2009
- (48) One page from internet (M-16)
- (49) One page beginning "Title 12 - Vehicles and traffic.
- (50) One unidentified page (M-18)
- (51) Pages 81 and 82 from M-41 Handbook
- (52) Memo from Mike Vaughn to Labor Relations dated May 16, 2011
- (53) Statement from Joel Lawson dated April 9, 2011
- (54) Statement from Russell Tummins dated April 9, 2011
- (55) Letter from Robert Montgomery to "Mr. Vaughn" dated March 30, 2011
- (56) Letter from Robert Montgomery to "Mr. Vale" dated April 11, 2011
- (57) Statement from Brian Buttrey dated March 31, 2011
- (58) Request for appropriate action dated 4/11/2011
- (59) Investigative interview dated 04/07/2011
- (60) Statement from Timothy W. Freels dated 04/11/2011
- (61) Two handwritten pages dated 3/29-30 (M-30 and 31)
- (62) "Accident History", 2 pages
- (63) Letter from Robert Montgomery to Mr. Vaughn dated March 30, 2011
- (64) Memorandum from Mike Vaughn to Labor relations dated March 31, 2011
- (65) PS Form 1769, 3 pages
- (66) PS Form 1700, 3 pages
- (67) Photographs, 13 pages
- (68) E mail from Jeffery Byrd to Dwayne Davis dated May 20, 2011
- (69) "Eastern Area, Area Safety Bulletin..."
- (70) E mail from Timothy Freels to Dwayne Davis dated May 23, 2011
- (71) Photographs, 2 pages (M-59 and 60)



Paul D. Robbins  
USPS Step B Representative



Fred Qualls  
NALC Step B Representative

DRT Number: 242-11

Cc: Pete Moss, NALC NBA  
Jill Miniard, Eastern Area Labor Relations Office  
Dwayne Davis, USPS Step A Representative  
Leman D. Clark Jr., NALC Step A Representative  
Joel Barnes, District Manager Labor Relations (A)  
Greg Gamble, District Manager  
Patty Frederick, District Manager HR  
Tim Daulton, District Manager Operations Support (A)

## STEP B DECISION

### STEP B TEAM

Paul D. Robbins, USPS  
Fred Qualls, NALC

District: Tennessee  
DRT Number: 242-11

Decision:	<b>IMPASSED</b>
USPS number:	C06N-4C-D 11219738
Grievant:	Bowman, Janet
Branch Grievance Number:	B4-00104-11
Branch:	4
Installation:	Nashville
Delivery Unit:	Belle Meade
State:	Tennessee
Incident Date:	03/29/2011
Date Informal Step A Initiated:	04/01/2011
Formal Step A Meeting Date:	05/20/2011
Date Received at Step B:	05/25/2011
Step B Decision Date:	06/23/2011
Issue Code:	16.7000 16.1010
NALC Code:	000019 500201

### **ISSUE**

1. Did management violate Articles 16, 19 of the National Agreement and Section 115 of the M-39 Handbook, when they placed the grievant on Emergency placement in off duty status on 03/29/2011 alleging failure to follow safety regulations and zero tolerance policy? If so, what is the appropriate remedy?
2. Did management violate Articles 14 and 29 of the National Agreement when they failed to make every reasonable effort to assign the grievant to non driving duties after they suspended/revoked her driving privileges? If so what is the appropriate remedy?

### **DECISION**

The Dispute Resolution Team (DRT) has decided to declare an **IMPASSE**. The NALC National Business Agent may appeal this grievance to arbitration within fourteen (14) days after receipt of this joint report.

The Step B team has considered all arguments and evidence in the case file and any of this material may be cited in the event of arbitration.

### **EXPLANATION**

#### **UNION'S POSITION:**

The union contends that management violated Articles 14, 16, 19 and 29 of the National Agreement by placing the grievant in an Emergency Placement Off-Duty Status on 03/29/11.

1. The union contends that even if the grievant had failed to properly dismount, with a total lack of previous discipline in this grievance file, there **would not** have been justification for anything more than a minor discipline.

Therefore, certainly if management concluded that management would not be allowed to drive temporarily, management was clearly **obligated by Article 29 to furnish non driving duties.**

2. Management has exhibited a run-away imagination and made unproven and unfair/inappropriate (**new**) allegations in this instant case; such as management's suggestion that the grievant's cell phone record would enlighten the parties. The grievance file contains **no cell phone records.** Management at **Step A did not suggest** any need/interest in cell phone records. Certainly that suggestion was not made at Formal Step A as this case was being processed by the parties. That **new argument** and others which were not made at Formal Step A **must not be allowed in this grievance file** (the union at Formal Step A was not allowed the opportunity to answer the suggestion/accusation).

The Emergency Placement in Off-Duty status, dated March 29, 2011 reads in part as follows:

"SUBJECT: EMERGENCY PLACEMENT IN OFF-DUTY STATUS

You are hereby notified that effective March 29, 2011, you were placed in a non-duty, non-pay status under the provisions of Article 16, Section 7 of the National Agreement. The reason for this action is your failure to follow safety regulations and the zero tolerance policy.

You are placed in this Emergency off-Duty Status...."

The union notes the above memorandum stated the following two "reasons" for placing the grievant on emergency placement:

1. "your failure to follow safety regulations."
2. "the zero tolerance policy."

The union contends the documentation contained in this grievance file shows the grievant **did not violate safety regulations.**

The union contends that **management violated multiple Articles** of the National Agreement in the issuance of this discipline (emergency placement).

The grievant's statement reads in part as follows:

"My name is Janet Bowman, I run route 510. It has mostly park and loop, boxes on the porches with narrow dead end streets. On March 29<sup>th</sup> 2011, at approximately 12:25, I parked the postal truck between the many cars along both sides of the street. This was in front of 226 Carden Avenue. I put the truck in park, turned the engine off, took the key out and pulled up the hand brake.

I gathered a bundle of mail and shut the door behind me. I walked up a short walkway and up a couple of stairs, placed the mail in the box. As I started back to the truck, it began to move. I jumped off the porch and ran after the slow moving truck, not really sure what I was going to do. A home owner who was outside saw what was happening and ran after the truck too. I ran beside the truck and tried to get the door open.

The truck grazed a telephone pole on the drivers side and it swung in and broke the small side window. It rolled to a stop on a rock near the guard rail that is at the dead end of the road. The young woman arrived at the truck at the same time I did and we were shocked that it could move when obviously it shouldn't. We looked inside at the broken glass, the raised handbrake, the gearshift in park and back at each other. She said "Oh my gosh! Are you OK?" Yes, I think so. "Are you sure?" Because I was on my way to a Dr. Appointment, but I can stay if you need me." Thank you, I'm going to call my boss. He will come in a few minutes.

I called the station and told Tim Freels, then several minutes later I called the station again. I asked Tim to call Brian Buttrey. Tim said "I'm not sure I have his number" and I told him that I had it and would it be OK if I called him. That was OK with Tim. When Brian Buttrey drove up he hugged me and asked "Are you alright" He said "I can't believe I'm the first one here!" Did you call the station? I said yes Brian said "well he should be here by now". He asked if I had Tim's cell number. I told him yes, it's in my purse in the truck. My purse was under the ledge to the left of the hand brake. I carefully climbed in on the edge of the seat (covered with glass) using the steering wheel as balance and the wheel moved.

Brian noticed and said "Hey, your steering wheel isn't locked. It's supposed to. Where are your keys?" In my pocket I told him just a second. I let down the hand brake to pull my purse through the narrow space. I handed Brian the keys. I was still shaking when Tim pulled up in a postal van a moment later. I think Tim asked me if I was OK and also, did I move the truck? I said, no. Few minutes later Mike Vaughn pulled up followed by 2 women I didn't recognize. Mike Vaughn didn't speak to me at all, however the women introduced themselves and checked on my well-being. Tim Freels asked me several questions in the presence of Brian. Tim called it an interview.

Tim: Tell me what happened.

Jan: **I thought you were going to ask me questions.**

Tim: Was the truck in park?

Jan: **Yes.**

Tim: Was the truck shut off?

Jan: **Yes.**

Tim: Was the hand brake pulled?

Jan: **Yes.**

Tim: Did you have the keys?

Jan: **Yes.**

Tim: Was the door closed?

Jan: **Yes.**

We were then told to move the mail to the postal van.

Tim came up to me and told me he was placing me on Emergency Placement in Off-Duty Status without pay. I was driven back to the Post Office where I was escorted off the premises."

The grievant has over 13 years of service with the Postal Service and has no previous discipline in this grievance file.

The Emergency Placement was based solely on event that took place on March 29, 2011. Management's **only charge is that the grievant allegedly failed to follow a safety rule/management's zero tolerance policy) on that date, 3/29/2011. The documentation contained in this grievance file does not show a violation by the grievant of a safety rule.**

This grievance file contains Document M-1289, on which the parties agreed to the following:

"...The parties agree that management has the right to articulate guidelines to its employees regarding their responsibility concerning issues relating to safety. However, the parties also mutually agree that **local accident policies, guidelines, or procedures may not be inconsistent or in conflict with the National Agreement.**

The union contends that this local/district "accident policy" is inconsistent with the National Agreement and that the district **"*accident policy*" is in violation of the above agreement.**

Document M-1289 then continues as follows:

**"Discipline imposed for cited safety rule violations must meet the "just cause" provisions of Article 18 of the National Agreement." (Emphasis added by union)**

This discipline (emergency placement) clearly fails the principles of just cause and **is in violation of the above agreement.**

Document M-1289 then continues as follows:

**"Further, administrative action with respect to safety violations must be consistent with Articles 14 and 29..."**

Management failed to allow the grievant non driving duties which violate the agreement in Document M-1289. Both Document M-2289 (quoted above), along with Article 29 language is abundantly clear as to management's responsibility to assign non driving duties to carriers who are not allowed to drive due to alleged safety rule violations. Further, management confirmed to the union (documentation in the grievance file) **that non driving duties were available.** That confirmation is in questions 4 and 5 of a meeting that Steward Walton had with Supervisor Tim Freels on 4/1/11. Those questions and answers are as follows:

- 4 Article 29 states that you will make every reasonable effort to find her non driving duties in her craft or in other crafts. Have you done this? **No I'm not obligated to find her work. The zero tolerance policy says that.**

At this time I read the Step 4 decision # M-1289. Supervisor Freels said he had never heard that and he would check into it. I informed him that he was being punitive by not finding her work in the station is complete. He said **he would check on that.**

- 5 Do you have sufficient work in the station for Janet Bowman to do? **Yes, but I need to check on this first.**

Supervisor Freels confirmed the existence of non-driving duties, but claimed the belief that the district's *"Zero Tolerance Policy"* forgave the clear obligation to furnish the non-driving duties to the grievant.

1. The *"Zero Tolerance Policy"* letter was authored on July 19, 2010 by Greg A Gamble, District Manager. However, the letter/declared policy makes no claim that he was attempting to suspend Article 29.

2. Article 29 is very clear as to the obligation to assign the non driving duties. Step 4 Document M-1289 (as quoted above) makes abundantly clear that the parties agree that action taken as a result of safety violations would be consistent with Article 29 (obligation to assign non driving duties. Again, that quotation is as follows:

*"Further, administrative action with respect to safety violations must be consistent with Articles 14 and 29..."*

Article 29 and Document M-1289 clearly shows that management was obligated to furnish those non driving duties to the grievant.

The provisions of Article 29 of the National Agreement apply to this type of alleged infraction. Article 29 reads in part as follows:

"An employee's driving privileges may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver."

Clearly, management has chosen to revoke or suspend the grievant's driving privileges (the union contends in violation of multiple Articles of the National Agreement).

On pages 29-4 of the JCAM, the parties agreed to the following:

**"Every Reasonable Effort to Reassign.** Even if a revocation or suspension of a letter carriers driving privileges is proper, Article 29 provides that, **"every reasonable effort will be made to reassign the employee in non-driving duties in the employee's craft or other crafts."** This requirement is not contingent upon a letter carrier making a request for non-driving duties. Rather, it is management's responsibility to seek to find suitable work. National Arbitrator Snow held in 194N-41-D 96027608, April 8, 1998 (C-18159) that management may not reassign an employee to temporary non-driving duties in another craft if doing so would result in a violation of other craft's agreement. If it is not possible to accommodate temporary cross-craft assignments in a way that does not violate another craft's agreement, a letter carrier who is deprived of the right to an otherwise available temporary cross-craft assignment to a position in another craft **must be placed on leave with pay until such time as he may return to work** without violating either unions' agreement. In accordance with Arbitrator Snow's award, in situations where city letter carriers temporarily lose driving privileges, the following applies:

- Management should first attempt to provide non-driving city letter carrier craft duties within the installation on the carrier's regularly scheduled days and hours of work. If sufficient carrier craft work is unavailable on those days and hours, an attempt should be made to place the employee in carrier craft duties on other hours and days, anywhere within the installation.
- If sufficient work is still unavailable, a further attempt should be made to identify work assignments in other crafts, as long as placement of carriers in that work would not be to the detriment of employees of that other craft.
- If there is such available work in another craft, but the carrier may not perform that work in light of the Snow award, **the carrier must be paid for the time that the carrier otherwise would have performed that work.** (Emphasis added)

Management clearly failed in their responsibility to furnish the grievant work once they revoked/suspended her driving privileges.



Article 16.7 of the National Agreement reads in part as follows:

**"Section 7. Emergency Procedure**

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others..."

On page 16.9 of the JCAM, the parties also agreed to the following:

**"What Test Must Management Satisfy?** Usually employees are placed on emergency non-duty status for alleged misconduct. However, the provisions of this section are broad enough to allow management to invoke the emergency procedures in situations that do not involve misconduct—for example if an employee does not recognize that he or she is having an adverse reaction to medication. The test that management must satisfy to justify actions taken under this Article 16.7 depends upon the nature of the "emergency." In H4N-3U-C 58637, August 3, 1990 (C-10146) National Arbitrator Mittenthal wrote as follows:

My response to this disagreement depends, in large part, upon how the Section 7 "emergency" action is characterized. If that action is discipline for alleged misconduct, then Management is subject to a "just cause" test. To quote from Section 1, "No employee may be disciplined...except for just cause." (Emphasis added)

The union contends this discipline (emergency placement) is required to meet but fails to meet the principles of just cause.

On page 16-1 of the JCAM, the parties agreed to the following:

**"Just Cause Principle**

The principle that any discipline must be for "just cause" establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the "just cause" provision requires a fair and provable justification for discipline.

"Just cause" is a "term of art" created by labor arbitrators. It has no precise definition. It contains no rigid rules that apply in the same way in each case of discipline or discharge. However, arbitrators frequently divide the question of just cause into six sub-questions and often apply the following criteria to determine whether the action was for just cause. These criteria are the *basic considerations that the supervisor must use before initiating disciplinary action.*" (Emphasis added)

One of the six sub-questions is as follows:

**"Is there a rule?** If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule?"

The union contends **the grievant complied with the proper dismount rule**. The union contends the grievance file shows the grievant has been delivering the mail in this way since she was awarded the route and that she dismounted properly on that day.

One of the **six sub-questions** is as follows:

**"Is the rule a reasonable rule?** Management must make sure rules are reasonable, based on the overall objective of safe and efficient work performance."

The union contends the rule (to properly dismount) is not in contention **since the grievant did properly dismount**. The question is whether an emergency procedure is reasonable action in these circumstances. The union contends that management's implementation of the emergency procedure is not reasonable.

One of the **six sub-questions** is as follows:

**"Was a thorough investigation completed?** Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective. This is the employee's *day in court* privilege. Employees have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves *before* the discipline is initiated.

**No.** The union contends that the union at Informal and Formal Step A, have presented statements and documentation showing the equipment (FFV) was defective and certainly was capable of malfunctioning and causing the accident, after the proper dismount by the grievant. Example is the following statements, in part:

**March 30, 2011, Robert Montgomery Supervisor (A) Nashville VMF (First statement in which Montgomery claims to find the vehicle performed as designed):**

"...Mr Tummins visually and manually inspected each of the three components involved in holding the vehicle from moving. The first component checked was the key and steering wheel. When the key is removed and in hand, the shifter can not be moved from the park position. When the shifter is in the park position, a locking pin (pawl) inside the transmission itself locks the transmission output shaft (driveshaft) and prevents any movement of the vehicle. Also, the steering wheel locking mechanism is working properly and locks the steering wheel from being able to be turned in any direction while the key is out and in hand. The second component verified was the parking brake system. Mr. Tummins placed the vehicle in reverse and allowed the truck to roll backwards a short distance then applied the parking brake. The vehicle came to an abrupt halt and complete stop. Mr. Turmmins then placed the vehicle into drive and attempted to move forward and the truck did not move at all. The third component checked is the transmission gear selector. At that point, he attempted to remove the key from the locking cylinder while the truck was in drive. It did not come out. He then placed the vehicle 0238431 into the remaining gear selections of one, two, neutral and reverse. The key once again was not able to be removed from the locking cylinder. Only when the truck shifter selector was placed into the park position, was the key able to be removed and placed into his pocket."

**April 11, 2011, (12 days later) Robert Montgomery Supervisor (A) Nashville VMF (Second statement in which Mr. Montgomery acknowledged the vehicle does not perform as designed), then wrote the following to Mr. Vale (Postmaster, Nashville, TN), concerning the same (this instant) vehicle:**

"While using the normal key that is assigned to the vehicle the carriers demonstrated that the key was able to be removed while the vehicle shifter was not fully in park and they were able to shift the vehicle without the key in the locking cylinder. Under a normal functions check and operation of the key and shifter these two components were working properly as expected, but when operated with quick, jerking motions **or while in haste the key was able to be removed and the shifter shifted improperly.** The park brake was also checked at that time and when properly applied was able to hold the vehicle from rolling. As demonstrated to me by the supervisor, the park brake handle **needs to be pulled upwards a total of eight audible clicks** in order for this particular vehicle, 0238431, to be held in place to prevent any forward or backward movement. (Emphasis added)

Clearly, Postmaster Vale was informed via the above letter of the malfunctions of this instant vehicle. However, Mr. Vale chose to not "**do the right thing**", but proceeded to discipline this grievant.

The union notes that management has not acknowledged the major problems with the key, the shifter and that "this particular vehicle" requires "eight audible clicks" for the park brake to operate properly. The union is points out that on March 30 management declared the vehicle "*in safe proper working condition*" and then 12 days later discovered they had "gotten it wrong"; that the vehicle had major problems with the steering column, the key and etc. Further, the "particular vehicle" requires "eight audible clicks" for the park brake to work properly.

Documentation contained in the grievance file shows that on 04/08/11 (Work order 2951); in order to correct some of the problems shown above (Montgomery statement dated April 11, 2011), **vehicle maintenance replaced the following parts:**

1. Steering column
2. Lock Set
3. Shift indicator

Documentation contained in the grievance file also shows (Work order 2951); that in order to correct some of the vehicle's problems shown above (Montgomery statement dated April 11, 2011), **vehicle maintenance performed labor as shown:**

Description of Work	Time	clock rings	Date
1. R & R Steering Column Assy.	2.5	17.00 14.50	4/8
2. R & R all locks	1.0	18.00 17.00	4/8
3. Inspect Park Brake System	.75	10.25 09.50	4/11
4. Inspect Park Brake System	.50	12.00 11.50	4/11

The union again calls attention to Mr. Montgomery's second statement (April 11, 2011) in which he stated that for the park brake to work properly, it had to be positioned with "eight audible clicks". The statement and the above work orders fail to disclose whether any adjustments were made in the parking brake system.

Management furnished statements which appear to infer the truck (steering column, key, brakes and etc) were working properly. The union furnished statements showing that

**management was not correct.** One of those statements was from Brian Buttrey, dated March 31, 2011 and reads in part as follows:

"... On March 29, 2011, I received a call from Corey Walton that Ms. Jan Bowman had had an accident while on her route...

...I arrived at Carden Avenue. Ms. Bowman was there by herself. I got out and asked Ms. Bowman if she was okay. She said that she was. I asked her if Mr. Freels had been there yet. She said no. I asked her if she had his number. Ms. Bowman said it's in my purse in the truck. Ms. Bowman opened the door to her postal truck, got in the vehicle, lowered the parking brake, reached under the mail tray, and got her purse. As she did, she grabbed the steering wheel to steady herself and I noticed that the steering wheel was not locked. I asked Ms. Bowman if her steering wheel locked and she said that she had not noticed. I asked her to get out of the vehicle. I looked at the gear selector to make sure it was in park. It was. I said do you have the keys to the vehicle? She said that she did and she took them off of her belt and handed them to me. I put the keys in the ignition, turned it forward, then back, and the steering wheel would never lock. I again looked at the gear selector to make sure it was in park. It was. I left the keys in the ignition so that I could point this out to Mr. Freels when he arrived. Mr. Freels arrived a short time later and I showed him the condition of the steering wheel, that it would not lock with the keys in or with the keys out..."

The statement from Steward Corey Walton reads in part as follows:

"...On March 31, 2011 at 9:00 am, by phone, Ms. Alley. I asked Ms. Alley if Assistant Shop steward Brian Buttrey had indeed shown her that the steering wheel of the postal vehicle would not lock into place with the key in or out of the ignition. She told me that the key was in the vehicle when she got there. I said I appreciate that but that wasn't the question. I again asked her the same question. She admitted that she did witness for herself that the wheel would not lock into place when the key was in or out of the ignition. I then asked her if she had taken MCSO (a) Mike Vaughn to the postal vehicle and **shown him what she had seen.** She said she could not remember. I said that the accident was just **two days ago and she couldn't remember** if she had shown Mr. Vaughn that the wheel wouldn't lock. She said it was just **so busy she couldn't remember...**" (Emphasis added)

Steward Walton's statement then continues as follows:

"I then contacted by phone MCSO (a) Mike Vaughn at approximately 9:40 am on the same day. I asked him if Ms. Alley had **shown him,** on the day of the accident, how the wheel would not lock into place with the key in and out of the ignition. He said **yes he did.** I then asked Mr. Vaughn if he indeed saw how the wheel would not lock into place with the key in or out of the ignition. He told me that the key was in the vehicle when he got there. I then stated that he and Ms. Alley had that part down but that wasn't the question. I then asked the question again and he said **yes he did see for himself that the wheel would not lock into place** with the key in or out of the ignition." (Emphasis added)

The union contends the documentation presented by the union in this grievance file clearly shows that management has declared the facts differently on several occasions in an attempt to justify this unwarranted and inexcusable emergency placement.

Steward Walton called to Two Rivers Service Center on 05/02/11 (a Ford dealership that performs service on Postal vehicles), and was referred to Master Mechanic, Paul Legnon. The following is a portion of the conversation between the two:

"...I introduced myself to Mr. Legnon and asked if he wouldn't mind answering a few questions and he said that would be fine. I discussed thoroughly the problems we found with the steering column in the vehicle that was in the rollaway accident. How you could

put the vehicle in drive and with it still running and in drive turn the vehicle off and remove the key. I also told how the vehicles wheel would not lock into place with the key out of the ignition. I told him how the gear indicator could be moved from park to reverse with the key out of the ignition.

Mr. Legnon then stated "Mr. Walton I can tell you that those steering columns were simply not designed to handle the wear and tear that ya'll put them through. The constant starting and stopping wears out the components in that steering column. Those steering columns have too many aluminum parts for that. They simply wear out."

I then asked him if there was any way that key should be able to be removed from the ignition while the vehicle was still running and in drive. He said, "absolutely not. Under no circumstances should you be able to remove that key from the ignition while it's running. Regardless of what you're doing to it That key should never come out while in gear. I see the same things with UPS trucks. They just simply wear out. Those columns are just about all aluminum. They will wear out..."

The union presents the above statement as even more evidence these trucks can and do malfunction; just as the other statements, work orders, parts lists and etc show did happen with this instant truck.

While the PS Form 1769 (block 35) alleges "Improper parking", the union contends that the documentation contained in this grievance file shows the location at which the grievant parked that day was where she and other carriers parked the vehicle, management knew the location and had never objected to it and had never instructed the carriers to park elsewhere.

One of the **six sub-questions** is as follows:

"Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record? The following is an example of what arbitrators may consider an inequitable discipline: If an installation consistently issues five-day suspensions for a particular offense. it would be extremely difficult to justify why an employee with a past record similar to that of other disciplined employees was issued a thirty-day suspension for the same offense. There is no precise definition of what establishes a good, fair, or bad record. Reasonable judgment must be used. An employee's record of previous offenses may never be used to establish guilt in a case you presently have under consideration, but it may be used to determine the appropriate disciplinary penalty.

**No.** The grievant has over 13 years service and has no previous discipline in this grievance file. Management stated that the grievant had three industrial accidents. However, documentation contained in this grievance file shows the grievant had only one vehicle accident in the past five years, (prior to this instant false accusation). The grievance file contains no record of any previous discipline.

While the document "accident history" contains the following entry "OWCP Reported Injuries" management's Formal Step A contentions admit the grievant has only had "eleven lost work days due to injuries."

On page 16-2 of the JCAM, the parties agreed to the following:

"Corrective Rather than Punitive

The requirement that discipline be "corrective" rather than "punitive" is an essential element of the "just cause" principle. In short, it means that for most offenses management must issue discipline in a "progressive" fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense and a pattern of increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge). The basis of this principle of "corrective" or "progressive" discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution." (Emphasis added)

This discipline was clearly punishment. Not only was there no previous discipline cited, management also failed to prove the grievant acted as they have charged.

The grievance file also contains a statement dated 9/29/10 from the Chattanooga VMF in which the lead mechanic describes the potential for these LLVs to malfunction, which could lead to the very situation as exists here.

The grievance file also contains documentation from the National Traffic Safety Administration of complaints of vehicle rollaways after the driver shifted the vehicle into park and failure of the gearshift lever mechanism while shifting from or to the park position.

The union further contends the following:

1. None of the criteria set forth in Article 16.7 of the National agreement was present on September 20, 2010 with respect to this case. Therefore there was no legitimate basis to invoke Article 16, Section 7 on the day in question.
2. Management violated Article 29 of the National Agreement by not making every reasonable effort to assign the grievant to non-driving duties when they temporarily suspended/revoked the grievant's driving privileges on that day. As a matter of fact, the record is clear that Management made no effort whatsoever to assign the grievant non-driving duties. Instead, they circumvented their contractual responsibilities as outlined in Article 29 by placing the grievant on Emergency Placement.
3. Management failed to properly consider the grievant's tenure and no discipline in his record for more than 13 years.
4. The grievant is accused of misconduct in the instant case. Therefore, management must bear the burden of proving just cause existed to place the grievant on an Emergency Suspension in this case.
5. The grievant's supervisors along with safety personnel were shown (at the scene of the incident) the malfunctioning of the FFV.
6. PS Form 1769/301 (Block 35) mgt entered (Improper parking). In fact the documentation contained in this grievance file shows the grievant and other carriers constantly parked at that exact location, with the full knowledge of supervision. The union contends there was no cause to place the grievant on Emergency Placement.
7. The union contends the grievant followed proper dismount procedures.
8. Article 16 of the National Agreement states that, "In the administration of this article, a basic principle shall be that discipline should be corrective in nature,

rather than punitive. No employee may be disciplined except for just cause..." Management simply cannot establish/allege just cause in the case at bar. The discipline issued was punitive rather than corrective in nature. Placing a Carrier on Emergency placement for an **alleged** safety infraction is designed to punish rather than to correct unsafe practices and situations as intended in Article 14 of the National Agreement. The facts in this case clearly show this discipline was intended to punish, in violation of the National Agreement.

9. Regardless of how this situation is viewed, the inescapable conclusion is that management failed to follow Section 115 of the M-39 Handbook. Section 115.1 of the M-39 reads as follows:

### **"Discipline**

#### **115.1 Basic Principle**

In the administration of discipline, a basic principle must be that discipline **should be corrective in nature**, rather than punitive. No employee may be disciplined or discharged **except for just cause**. The delivery manager must make **every effort** to correct a situation **before resorting to disciplinary measures.**" (Emphasis added)

Management made **no effort** to "correct a situation", before issuing this discipline; when the above quoted Handbook requires **"every effort"**.

Section 115.2 of the M-39 Handbook reads as follows:

### **"Using People Effectively**

Managers can accomplish their mission only through the effective use of people. How successful a manager is in working with people will, to a great measure, determine whether or not the goals of the Postal Service are attained. Getting the job done through people is not an easy task, and certain basic things are required, such as:

- a. Let the employee know what is expected of him or her.
- b. Know fully if the employee is not attaining expectations; don't guess — make certain with documented evidence.
- c. Let the employee explain his or her problem — listen! If given a chance, the employee will tell you the problem. Draw it out from the employee if needed, but get the whole story."

Section 115.3 of the M-39 Handbook reads as follows:

### **"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.”

The union contends that management failed in their responsibilities as outlined above in 115.2 and 115.3 of the M-39 Handbook.

Management failed to meet their burden of proving just cause in this instant case. Additionally, the Union has demonstrated that Management's behavior with respect to this entire situation was wholly inappropriate and a blatant abuse of the authority entrusted to them.

Management cited a “Zero Tolerance Policy”. The union contends the “Policy” written by an employee of the Tennessee District cannot supersede the agreements reached by the parties at the National Level in the National Agreement, Handbooks, Manuals and other Memorandums.

**The union further contends:**

On page 16-3 of the JCAM, the parties agreed to the following:

“**Examples of Behavior.** Article 16.1 states several examples of misconduct which may constitute just cause for discipline. Some managers have mistakenly believed that because these behaviors are specifically listed in the contract, any discipline of employees for such behaviors is “automatically” for just cause. The parties agree these behaviors are intended as examples only. Management must still meet the requisite burden of proof, e.g. prove that the behavior took place, that it was intentional, that the degree of discipline imposed was corrective rather than punitive, and so forth. **Principles of just cause apply to these specific examples of misconduct as well as to any other conduct** for which management issues discipline.” (Emphasis added)

Management has not shown the grievant acted and charged.

The grievance file contains a request from the union dated 4/6/11 which reads as follows:

“Videotape (with audio) FFV # 0238431. The union would like to videotape this vehicle inside and out for possible safety violations. Dave Clark and union representative will be performing the investigation of this vehicle”.

There is a notation on the form stating “Denied 4/8/2011”

The grievance file contains a “Memorandum” dated April 8, 2011, for “NALC” from Mike Vaughn, which reads as follows:

“The request states “The union would like to videotape this vehicle inside and out for possible safety violations. Dave Clark and union representatives will be performing their investigation of the vehicle.

The request is denied.

Dave Clark and union representatives were notified immediately when the accident occurred and had a chance to come to the scene and conduct an on scene investigation. Also, the request for conducting their own investigation of the vehicle is also denied because neither Dave Clark no Corey Walton is qualified to conduct vehicle inspections on Postal Vehicles. However the union can interview the Vehicle Maintenance technician that provided a written report to Management and the NALC concerning his evaluation and investigation vehicle.”



The union was clearly deprived of the opportunity to examine and properly record their examination of this vehicle. Management denied the request and offered to substitute by giving the union to "interview" a technician from the VMF (the department that wrote two completely different reports), the final report admitting the truck parts were defective.

The union contends that management's above refusal clearly violates Articles 17 and 31 of the National Agreement.

The union contends the documentation contained in this grievance file does not show the grievant acted as charged. The documentation does show that management has violated multiple Articles of the National Agreement.

For all the reasons stated above and all the reasons and issues the union raised at Formal Step A of the grievance procedure, the union believes this grievance should be sustained in its entirety and the remedy requested should be granted.

## MANAGEMENT'S POSITION:

The Management Formal A representative effectively presented the Facts and Contentions. All of the arguments raised by Management at the Informal and Formal Step A meetings are brought forward to Step B and at Arbitration. The Step B representative would like to add the following:

Management contends the Emergency Placement of the grievant in Off-Duty Status on March 29, 2011, pending the outcome of an investigation of a willful and intentional safety violation, was reasonable, immediate and with just cause.

The Emergency Placement in Off-Duty status reads in part as follows:

"You are hereby notified that effective March 29, 2011, you were placed in a non-duty, non-pay status under the provisions of Article 16, Section 7, of the National Agreement. The reason for this action is **your failure to follow safety regulations** and the zero tolerance policy. (Emphasis added)

Management contends that Supervisor, Customer Services, Tim Freels acted in accordance with Article 16.7 of the National Agreement, which reads as follows:

### "Section 7. Emergency Procedure

**An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others. The employee shall remain on the rolls (non-pay status) until disposition of the case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge the employee, the emergency action taken under this Section may be made the subject of a separate grievance."** (Emphasis added)

The union's position appears to be that there is NO safety rule or regulation where "*failure to observe*" would warrant an emergency action.

"The union contends that even if the grievant had failed to properly dismount, with a total lack of previous discipline in this grievance file, there **would not** have been justification for anything more than a minor discipline."

The potential for serious injury or fatality may be no greater in any other set of rules and regulations within the United States Postal Service. Yet the union contends such a failure (improper dismount), at most, "*could not*" be "*justification for anything more than a minor discipline*". No wonder these types of accidents continue to occur all too often.

The national parties agree on page 16-8 of the JCAM to the following:

"The purpose of Article 16.7 is to allow the Postal Service to act "**immediately**" to place an employee in an off duty status in the specified "**emergency**" situations." (Emphasis added)

The "*allegation*" of an employees "*failure to observe safety rules and regulations*" is specifically listed among the qualifying offenses that allows "*the Employer*" to place an employee "*immediately*" in an "*off-duty status (without pay)*." Management contends that the potential/probable willful and intentional disregard of safety rules, in this instant

grievance, **failure to follow proper dismount procedures**, warrants the emergency placement pending the outcome of a thorough investigation.

Management included a copy of the Zero Tolerance Policy; Improper Dismount Procedures dated July 19, 2010, which reads in part as follows:

Failure to follow proper dismount procedures is a willful violation of postal policy. The Tennessee District has adopted a zero tolerance policy for violations of proper dismount procedures. Every postal employee in the Tennessee District will be presented the attached stand-up talk addressing this policy. A record of attendance will be established and maintained in the local file. This policy is in effect for every driver, including employees who drive administrative vehicles, lease vehicles and private vehicles on official postal business.

There is absolutely no excuse for a run-away. There is, however, the slim possibility of a mechanical failure causing a roll-away accident. In a case where an employee claims mechanical failure, the vehicle will be referred to the VMF to determine if a mechanical failure played any part in the accident.

An accident need not occur as a result of the violation. An observation of the violation is sufficient to support corrective action. Because this is a zero tolerance policy, any violation of this policy may result in disciplinary action, including removal. *(Italics and underlining added - holding from the original)*

Pursuant to Article 19 of the National Agreement, the following provisions in Handbook M-41 are incorporated in the collective bargaining agreement:

- 822 **Whenever the driver leaves the vehicle, the vehicle must be parked.** To park the vehicle:
- a. **Apply the foot brake and place automatic transmissions in the park position.** Place manual transmissions in gear.
  - b. Turn the vehicle's front wheels toward the curb if you are on a flat surface or when the vehicle is facing downhill. **If the vehicle is parked facing uphill, turn the front wheels away from the curb.**
  - c. **Set the hand-parking/emergency brake.**
  - d. **Turn off the engine and remove the key.**
  - e. Lock any sliding door(s) between the truck body and cab.
  - f. Lock the doors if you will be out of direct sight of the vehicle.
- (Emphasis added)**

The proper application of each of these elements, in concert, is designed to preclude the failure of any one (1) component from causing a roll away accident. The grievant's tenure does not excuse her from these requirements or consequences. Her experience should have made her all the more aware of the importance and potential hazards for failing to comply.

Although management acknowledges the possibility of a mechanical failure causing a roll-away accident, the evidence does not support such a claim in this instant grievance. Management's Formal Step A representative states the following in part:

"...the FFV number 0238431 that Ms Bowman was driving that day was in perfect working order as determined by Joel Lawson, Technician, Russell Tummins, Lead Technician, and Robert Montgomery, Supervisor (A) at the Nashville Vehicle Maintenance Facility.

Mr. Lawson, the technician who responded to the accident scene stated in part the following:

"On March 29, 2011 I was dispatched to Carden Ave to retrieve a FFV, 0238431, that was stuck on a rock wall...

While I was inspecting the FFV, the station Supervisor asked me to check and see if **the shifter, the key cylinder, and the park brake was all working properly**. I demonstrated all with out any problems. The station Supervisor called the Safety Officer over and I demonstrated the same for her...

I proceeded to load the FFV onto the wrecker and transport it to the Nashville VMF. Upon arriving at the VMF I **unloaded the FFV and again checked the park brake, shift lever, and key cylinder, all ok**. I advised my Supervisor of all activities."

Twice, while still on the accident scene and a third time upon arrival at the VMF, Technician Lawson tested and found no defects in the parking brake, key cylinder or shift lever. Keep in mind, had the grievant observed the "safety rules and regulations" for a proper dismount, two (2) or more of these elements would have had to fail simultaneously in order to cause this accident.

Acting Manager, Customer Service Operations (MCSO), Mike Vaughn's written statement reads in part as follows:

"On March 29, 2011 at 12:10 pm, I received a call from the Manager of Belle Meade Station (Jeffery Byrd) that one of his carriers was involved in an accident at 230 Carden Ave. When I arrived on the scene, there were three people on the scene. One was Supervisor (Tim Freels) and two carriers (Jan Bowman and B. Butter). At that time, the Supervisor was taking pictures of the accident scene. I asked him if anything had been touched and he informed me that **the carrier (Ms. Bowman) stated that "she has not touched the vehicle since it came to rest where it is now"**. About that time, two Safety Officials (Kim Alley and Tammy McDonald) had arrived on the scene. I asked if they had a camera so I could take more photos showing that **the key was still in the ignition and that the hand brake was not set**. I also took photos showing the distance between where the LLV stated and ended rolling backwards, and the path the vehicle had taken.

...  
The Safety Officials and I waited for the tow truck driver to arrive on the scene. After he pulled the vehicle off of the tree and rock wall, he started the vehicle up and moved it forward to put on the tow truck. At that time **the tow truck driver pulled the hand brake and turned vehicle off. The hand brake worked perfectly and the steering wheel also locked**. The tow truck driver informed me that an investigation would be completed on the vehicle to make sure if anything was or was not working properly..." (Emphasis added)

The grievant attempts to explain the hand brake not being set when MCSO Vaughn made his observations in her typed statement which reads in part as follows:

"... My purse was under the ledge to the left of the hand brake. I carefully climbed in on the edge of the seat (covered with glass) using the steering wheel as balance and the wheel moved... I let down the hand brake to pull my purse through the narrow space..."

The photographs at M-42 and M-54 clearly show that lowering the hand brake would only further restrict access, from the driver's side, to an item under the carrier ledge. Maximum clearance would be obtained with the parking brake in the up (engaged) position.

In addition, the photographs at M-45 and M-49 show the vehicle came to rest at or near a steep drop off. A bridge and even deeper drop off is only a few feet further back.

However, the grievant supposedly felt comfortable disengaging the parking brake (she doesn't describe placing her foot on the brake pedal) and kneeling on glass, while supporting herself with the steering wheel, to retrieve her purse.

The grievant's statement is even less plausible when you consider the photographs at M-45 and M-54. M-54 shows the ease of access for retrieving an object from under the carrier ledge through the left side door. M-45 shows the sidewalk next to the left side vehicle door that would have allowed quick, safe and easy access to an object from under the carrier ledge. The ridiculously unsafe acrobatics described in the grievant's statement, the day after the accident, is just not credible.

The dismount location and the vehicle path during the roll away indicate the wheels of the FFV were certainly not curbed. The vehicle's path is consistent with the steering wheel being locked at the time the FFV rolled away.

Acting Vehicle Maintenance Facility (VMF) Supervisor, Robert Montgomery's statement dated March 30, 2011, includes the following regarding the vehicle recovery and testing that took place at the accident scene:

"On March 29, 2011 our VMF was contacted with a call for recovering a roll away vehicle. I, Robert Montgomery, sent my mechanic Joel Lawson to Carden Ave...

... Once on the street, Mr. Lawson and the supervisor accompanied by the safety officer, did an on the spot operations check of the vehicle. My mechanic demonstrated that **with the key out of the locking cylinder and in hand, the steering wheel was locked in place and could not move. The gear shift lever also could not be moved from the park position.** He also tested the vehicle's parking brake and determined that **the brake held the vehicle properly and prevented the truck from moving, even while the vehicle was in gear...** (Emphasis added)

According to these statements, there was no mechanical malfunction to cause this roll away. All mechanical test and observations made at the accident scene point towards a preventable, potentially catastrophic, accident caused by the grievant's failure to follow the established safety rules and regulations in regards to proper dismount procedures.

The union's position in this case would require ignoring the credentials and statements of multiple trained and certified technicians who conducted numerous test on every critical mechanical component that could play a role in a roll away and found zero defects (prior to returning the vehicle to service) in favor of the local union steward's supposed observations at the scene. In addition, the generalizations from a Ford mechanic, over a month after the roll away event, **that never inspected this vehicle**, are also supposed to supplant the finding from the thorough testing conducted on FFV 0238431 immediately following this incident.

The union asserts that management failed to meet the principles of just cause in this instant grievance. In National Arbitration case C#10146 A & B, Arbitrator Richard Mittenthal stated the following in part regarding the level of proof required in applying Section 7 of Article 16:

"...just cause" may depend to some extent upon the nature of the particular disciplinary right being exercised. **Section 7 grants Management a right to place an employee "immediately" on non-duty, non-pay status because of an "allegation" of certain misconduct** (or because his retention "may" have certain harmful consequences). "Just cause" takes on a different cast in these circumstances.

The case file shows the grievant was present during a December 2, 2010, Safety Talk (M12) on the "Zero Tolerance Policy: Failure to Follow Proper Dismount Procedures" which included the following:

"...A Zero Tolerance Policy for failure to follow proper dismount procedures is in effect. **Any employee who violates this policy is subject to serious corrective action which could result in termination of employment...**

"There is absolutely no excuse for a runaway or rollaway. **Each time an accident of this type happens there is potential for a fatality.** Postal drivers are required to follow all four steps listed above *every time* they get out of the drivers seat for **any reason...**" (**Emphasis added** – italics and bold without underlining in the original)

The grievant was well aware of the rule, the consequences for failure to follow the rule and the potential tragedy that could occur when failing to follow these critical safety rules and regulations, each time she left her vehicle.

Pursuant to Article 19 of the National Agreement, the following provisions in Handbook M-41 are incorporated in the collective bargaining agreement:

#### **112.4 Safety**

Conduct your work in a safe manner so as not to endanger yourself or others (see part 133 for general safety practices and part 812 for vehicle safety practices).

#### **812 Safety Practices**

812.1 Practice safety in the office and on the route.

812.2 Observe all traffic regulations prescribed by law. Rules applying to the public also apply to operators of postal vehicles.

Pursuant to Article 19 of the National Agreement, the following provisions in Handbook EL – 814, Postal Employees Guide to Safety are incorporated in the collective bargaining agreement:

#### **Section I: General Safety Rules**

##### **A. General Rules**

"Safety rules are for your benefit; **observing safe working practices and Postal Service safety rules is a primary responsibility of all Postal Service employees...**" (**Emphasis added**)

Management contends that in addition to postal rules and regulations, the grievant violated state law 12.40.030 and 12.40.040. Knowledge of these requirements is a prerequisite in obtaining any state driver's license and is incorporated in the U.S. Postal Service's driver orientation program. The grievant's statement does not dispute the alleged violation.

One of the **six sub-questions** is as follows:

"**Was a thorough investigation completed?** Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective. This is the employee's *day in court* privilege. Employees

The level of proof required to justify this kind of "immediate..." action may be something less than would be required had Management suspended the employee under Section 4 or 5 where ten or thirty days' advance written notice of the suspension is given. To rule otherwise, to rule that the same level of proof is necessary in all suspension situations, would as a practical matter diminish Management's right to take "immediate..." action..."

Management took "immediate" action based on the information available at that moment. For management to delay action pending additional vehicle inspection results, interviews, witness written statements or other evidence that may materialize weeks, days or even hours later, as the union asserts, would cause a violation of the immediacy requirements of Article 16.7. The initial investigation findings revealed sufficient inconsistencies to warrant emergency placement pending a comprehensive and complete investigation.

In H4N-3U-C 58637/H4N-3A-C 59518, National Arbitrator Mittenthal wrote:

The "emergency procedure" is, as those words indicate, a recognition that situations do arise where supervision **must act "immediately"** in suspending an employee because of immediate risks or dangers which do not allow for the more time-consuming procedures of Sections 4 and 5. Thus, Section 7 is a permissible variation from the conventional suspensions contemplated by the parties. But it is a suspension nonetheless, one which must be considered an integral part of the Article 16 "discipline procedure." (Emphasis added)

Arbitrator Mittenthal further stated in H4N-3U-C 58637/H4N-3A-C 59518:

"The critical factor, in my opinion, is that Management was given the right to place an employee **"immediately"** on non-duty, non-pay status on the basis of certain happenings. An "immediate..." action is one that occurs instantly, without any lapse of time. Nothing intervenes between the decision to act and the act itself." (Emphasis added)

Management acted immediately to implement the emergency placement, remove the grievant from her route, return her to the unit and escort her from the premises, as required. Again, the manager observations, initial vehicle tests, statements, etc. revealed sufficient evidence to warrant emergency placement pending a thorough investigation.

The subsequent vehicle inspection conducted by Lead Technician, Russell Tummins on March 30, 2011, confirmed the original finding and observations made at the accident scene the previous day. The written statement from Lead Technician, Russell Tummins regarding his examination of FFV 0238431 reads in part as follows:

"On March 30, 2011 I was directed by my supervisor Robert Montgomery to inspect vehicle 0238431... **With the vehicle on an incline in the VMF parking lot and the parking brake applied, the vehicle did not move when shifted into neutral and my foot was removed from the brake pedal. I then tried shifting to reverse and drive. The vehicle still did not move, even with a slight amount of throttle applied...**" (Emphasis added)

With the engine running and the parking brake set, while on an incline, the vehicle did not move when placed in neutral and no pressure was applied to the brake pedal. In addition, the vehicle still did not move even when placed in reverse or drive; even when additional throttle was applied. If the grievant had set the parking brake, this accident would not have occurred. Clearly, the grievant did not set the parking brake.

The written statement from Lead Technician, Russell Tummins continues in part as follows:

"...I also checked the transmission shift mechanism. With the lock cylinder in the locked position and the key out, the shifter lever would not move from the park position with a reasonable amount of force applied. With the key in the lock cylinder and the lock cylinder turned to the run position and my foot off the brake pedal, the shifter still could not be moved from park with a reasonable amount of force applied. Only with the lock cylinder in the run position and my foot on the brake could I get the transmission to shift out of park. To test the vehicle's park mechanism I shifted the transmission to neutral and allowed the vehicle to roll back in its parking spot approximately a foot. I stopped the vehicle and shifted to park, then let off the brakes. The vehicle rolled about another three to four inches before engaging in park. I repeated this procedure again with the same result. I also tried several times allowing the vehicle to roll backwards while applying the parking brake. The vehicle stopped every time. I also noted that with the shifter in reverse, the key could not be removed from the lock cylinder.

I concluded on March 30, 2011 that vehicle 0238431 was safe to operate."

Less than 24 hours after the grievant's vehicle rolled or ran away, Lead Technician Tummins conducted multiple tests on each of the vehicle's key components and found no defects of any kind. Vehicle 0238431 did not experience a mechanical failure on March 29, 2011.

On page 16-9 of the JCAM, the parties agreed to the following:

*"Written Notice. Management is not required to provide advance written notice prior to taking such emergency action. However, an employee placed on emergency off-duty status is entitled to written charges within a reasonable period of time. In H4N-3U-C 58637, August 3, 1990 (C-10146) National Arbitrator Mittenthal wrote as follows:*

**The fact that no "advance written notice" is required does not mean that Management has no notice obligation whatever. The employee suspended pursuant to Section 7 has the right to grieve his suspension. He cannot effectively grieve unless he is formally made aware of the charge against him, the reason why Management has invoked Section 7. He surely is entitled to such notice within a reasonable period of time following the date of his displacement. To deny him such notice is to deny him his right under the grievance procedure to mount a credible challenge against Management's action."** (Emphasis added)

Track/Confirm – Intranet Item Inquiry shows management mailed the written notice of the charge on March 29, 2011. The First-Class Certified item was received and signed for by the grievant on March 30, 2011.

On page 16-9 of the JCAM, the parties agreed to the following:

*"What Test Must Management Satisfy? Usually employees are placed on emergency non-duty status for alleged misconduct. However, the provisions of this section are broad enough to allow management to invoke the emergency procedures in situations that do not involve misconduct—for example if an employee does not recognize that he or she is having an adverse reaction to medication. The test that management must satisfy to justify actions taken under this Article 16.7 depends upon the nature of the "emergency." In H4N-3U-C*



58637, August 3, 1990 (C-10146) National Arbitrator Mittenthal wrote as follows:

My response to this disagreement depends, in large part, upon how the Section 7 "emergency" action is characterized. If that action is discipline for alleged misconduct, then Management is subject to a "just cause" test. To quote from Section 1, "No employee may be disciplined...except for just cause." If, on the other hand, that action is not prompted by misconduct and hence is not discipline, the "just cause" standard is not applicable. Management then need only show "reasonable cause" (or "reasonable belief") a test which is easier to satisfy.

One important caveat should be noted. "Just cause" is not an absolute concept. Its impact, from the standpoint of the degree of proof required in a given case, can be somewhat elastic. For instance, arbitrators ordinarily use a "preponderance of the evidence" rule or some similar standard in deciding fact questions in a discipline dispute. Sometimes, however, a higher degree of proof is required where the alleged misconduct includes an element of moral turpitude or criminal intent. The point is that "just cause" can be calibrated differently on the basis of the nature of the alleged misconduct. (Emphasis added)

On page 16-1 of the JCAM, the parties agreed to the following:

#### **"Just Cause Principle**

The principle that any discipline must be for "just cause" establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the "just cause" provision requires a fair and provable justification for discipline.

"Just cause" is a "term of art" created by labor arbitrators. It has no precise definition. It contains no rigid rules that apply in the same way in each case of discipline or discharge. However, arbitrators frequently divide the question of just cause into six sub-questions and often apply the following criteria to determine whether the action was for just cause. These criteria are the *basic* considerations that the supervisor must use before initiating disciplinary action." (Emphasis added)

One of the six sub-questions is as follows:

"Is there a rule? If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule?" It is not enough to say, "Well, everybody knows that rule," or, "We posted that rule ten years ago." You may have to prove that the employee should have known of the rule. Certain standards of conduct are normally expected in the industrial environment and it is assumed by arbitrators that employees should be aware of these standards."

Yes. The grievant's typed statement reads in part as follows:

"...I put the truck in park, turned the engine off, took the key out and pulled up the hand brake."

Clearly the grievant had received proper training and was aware of the safety rules and regulations in regards to a proper vehicle dismount.

have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves *before* the discipline is initiated."

Yes. All mechanical test and observations made at the accident scene pointed towards a preventable, potentially catastrophic, accident caused by the grievant's failure to follow the established safety rules and regulations in regards to proper dismount procedures. Management reacted appropriately and in compliance with the requirements of Article 16, Section 7 of the National Agreement. The notice of written charges was mailed to the grievant the same day.

Further, the case file contains evidence of a continuing investigation, statements, interviews and other activities that may most appropriately be developed, discussed, etc. upon final disposition of this case and/or disciplinary action. Much of the union's presentation in this grievance file, developed days or weeks after the incident are not relevant to management's implementation of emergency procedures or whether management is obligated to invoke Article 14 and/or 29 of the National Agreement (stated issues by the union).

Article 14, Section 1 of the National Agreement reads in part as follows:

"It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility..." (Emphasis added)

The Postal Service works with OSHA to improve the safety of the postal workplace by attempting to reduce work related accidents and injuries. Specific goals are set and emphasis is made to reduce accidents by awareness, training and safe work practices. A copy of the Postal Service goals regarding accidents and injuries are available at [www.usps.com/strategicplanning](http://www.usps.com/strategicplanning). Management assumes the union shares the goal of reducing accidents and injuries for its members. Management is troubled by the fact the union has offered no constructive options that would support these efforts in this instant grievance.

In addition, veteran carrier and union official Brian Buttrey, arrived on the scene first and supposedly altered the scene by placing the keys in the ignition. Absent carrier Bowman's cell phone records it is impossible to determine exactly how carrier Buttrey was able to arrive on the scene before the management official carrier Bowman should have called first.

And finally, days after the grievant's vehicle passes all mechanical tests, by multiple technicians and is returned to service, the same vehicle components (except the parking brake) are damaged to the point the vehicle must be removed from service for repair.

Acting Vehicle Maintenance Facility (VMF) Supervisor, Robert Montgomery's letter to Mr. Vale (Postmaster Nashville, TN) dated April 11, 2011, reads in part as follows:

"...Reasons for the breakage could be from excessive and or harsh usage or simple daily wear and tear plus the age of the component.

...  
...The parking brake system is in very good, proper and safe working condition and will prevent the vehicle from moving when the park brake is properly applied." (Emphasis added)

Management maintains that whether the change in mechanical function, several days after the vehicle was returned to service, was intentional and/or criminal, accidental

or from normal usage; it does not alter the fact that **these same vehicle functions were in perfect operating condition on the day of the rollaway incident.** The grievance file contains no legitimate evidence that the initial test were incorrect; only that the vehicle's mechanical condition had changed after being returned to service.

Management also contends and the evidence shows that the parking brake **STILL** would have held the vehicle regardless; if only the grievant had properly followed the established safety rules and regulations.

*Management further maintains that the union's request to inspect, video tape, etc. FFV 0238431 more than a week after the incident and days after the vehicle had returned to service and the performance of the vehicle astonishingly changed; is irrelevant to this emergency placement.*

Article 29 of the National Agreement reads in part as follows:

"An employee's driving privileges may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver..."

Management maintains that Article 29 of the National Agreement does not apply in this emergency placement. Article 29 provides that management may suspend or revoke a carrier's driving privileges under certain specified circumstances. If a decision is made to suspend or revoke an employee's driving privileges, the employee must be provided, in writing, the reason(s) for such action. The grievance file is absent such written notice.

One of the **six sub-questions** is as follows:

"Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record? The following is an example of what arbitrators may consider an inequitable discipline: If an installation consistently issues five-day suspensions for a particular offense, it would be extremely difficult to justify why an employee with a past record similar to that of other disciplined employees was issued a thirty-day suspension for the same offense. There is no precise definition of what establishes a good, fair, or bad record. Reasonable judgment must be used. An employee's record of previous offenses may never be used to establish guilt in a case you presently have under consideration, but it may be used to determine the appropriate disciplinary penalty."

**Yes.** Management contends that the potential/probable willful and intentional disregard of safety rules, in this instant grievance, "**improper dismount procedures**", warrants the emergency placement pending the outcome of a thorough investigation.

One of the **six sub-questions** is as follows:

"Was the disciplinary action taken in a timely manner? Disciplinary actions should be taken as promptly as possible after the offense has been committed."

**Yes.** Management acted immediately, at the accident scene, to invoke the "emergency procedure" in accordance with the requirements of Article 16.7 of the National Agreement.

On page 16-2 of the JCAM, the parties agreed to the following:

"Corrective Rather than Punitive

The requirement that discipline be "corrective" rather than "punitive" is an essential element of the "just cause" principle. In short, it means that for most offenses management must issue discipline in a "progressive" fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense and a pattern of increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge). The basis of this principle of "corrective" or "progressive" discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution."

Management agrees that Article 16 and Section 115.1 of Handbook M-39 provides that the basic principle of discipline should be corrective, not punitive. That concept supports the application of progressive discipline that attempts to correct an employee's unacceptable behavior over a period of time through a series of escalating disciplinary actions. "Just cause" requires that any discipline imposed be reasonable when considered in view of the nature of the offense and progressive discipline is generally a relevant factor in that determination. But there are types of conduct which are considered so severe that the first occurrence warrants other than progressive discipline, with theft and physical violence as examples.

Management contends that the potential willful and intentional disregard of safety rules, in this instant grievance, proper dismount procedures, warrants the emergency placement pending the outcome of a thorough investigation despite the grievant's tenure. Although the damages in this case are relatively minor, the potential for tragedy (note the child's riding toy in M-45) and the inherent risk to the public and employees has caused these procedures to be a point of significant emphasis for many years.

In conclusion, management contends there is no violation of Article 14, 16, 29 and/or 19, via Section 115 of the M-39 Handbook, of the National Agreement when they placed letter carrier Janet Bowman on Emergency Placement in Off Duty Status on March 29, 2011.

For all the reasons stated above and all the reasons and issues at Informal and Formal Step A of the grievance procedure, management is of the opinion that this grievance should be denied in its entirety and that the remedy requested should not be granted.

This grievance file contained the following documents:

- (1) PS Form 8190
- (2) Issue statement, 1 page
- (3) Management's contentions, 10 pages, (8 typewritten and 2 handwritten)
- (4) Memorandum from Tim Freels to grievant dated March 29, 2011
- (5) Notes from Corey L. Walton from meeting with Tim Freels, 2 pages
- (6) Notes of "Questioning of Super. Tim Freels", 2 pages
- (7) Investigative interview dated 4/7/11, 2 pages
- (8) Grievant's statement, 1 page
- (9) Employee Everything Report for grievant for 03/29/11
- (10) Notes by Corey L. Walton of Interview of Monica Weiss Sharp, 1 page
- (11) Statement from Brian Buttrey dated March 31, 2011, 1 page
- (12) Steward's statement, 5 pages
- (13) Statement from Brian Buttrey, no date, 1 page
- (14) Statement from Michael Wilson, 1 page
- (15) PS Form 1787, submitted 4/7/11
- (16) Request for information dated 4/6/11
- (17) Memorandum "for NALC" from Mike Vaughn
- (18) Statement (e mail) from Steve Weakley, 2 pages
- (19) Statement from Scott Tomlinson, 2 pages

- (20) Statement from Dave Clark
- (21) One page beginning "When FFV Truck # 0227375 was brought in..." dated 9/29/2010
- (22) Statement from Corey L. Walton dated 05/02/2011
- (23) One page from <http://www.postalmag.com/stewardinv.jpg>
- (24) Four pages from internet relating to vehicles
- (25) Vehicle maintenance work order, Parts only
- (26) Vehicle maintenance work order, Labor only
- (27) Statement from Robert Montgomery dated March 30, 2011
- (28) Statement from Joel Lawson dated April 9, 2011
- (29) Statement from Russell Tummins dated April 9, 2011
- (30) Statement from Robert Montgomery dated April 11, 2011
- (31) Statement from Mike Vaughn dated March 31, 2011
- (32) Statement from Laurent Bell dated 4/12/11, (Rt 4, 37211)
- (33) "Vehicle Repair Tags", 3 pages
- (34) Memorandum from Patty L. Frederick dated June 28, 2010
- (35) Form 3999X, 9 pages
- (36) Document M-1289, 2 pages
- (37) Pages 14-1, 14-2, 16-1, 16-2, 16-3, 16-8, 16-9, 29-3, 29-4 and 29-5
- (38) Request for information dated 4/18/2011
- (39) Management's contentions, 6 pages
- (40) Memorandum from Tim Freels to grievant dated March 29, 2011
- (41) Copies of PS Form 3811, for 7011 0470 0003 4962 7845 and 7011 3090 0001 0093 6803
- (42) Track/Confirm documents, 2 pages (M-8 and 9)
- (43) Page 648 from ELM 25
- (44) Memorandum from Greg A. Gamble dated July 19, 2010
- (45) "Zero tolerance policy", M-12)
- (46) "Employees on Clock", Dec 02/2010
- (47) Pages 1 and 4 from "Standard Operating Procedure" dated November, 2009
- (48) One page from internet (M-16)
- (49) One page beginning "Title 12 – Vehicles and traffic.
- (50) One unidentified page (M-18)
- (51) Pages 81 and 82 from M-41 Handbook
- (52) Memo from Mike Vaughn to Labor Relations dated May 16, 2011
- (53) Statement from Joel Lawson dated April 9, 2011
- (54) Statement from Russell Tummins dated April 9, 2011
- (55) Letter from Robert Montgomery to "Mr. Vaughn" dated March 30, 2011
- (56) Letter from Robert Montgomery to "Mr. Vale" dated April 11, 2011
- (57) Statement from Brian Buttrey dated March 31, 2011
- (58) Request for appropriate action dated 4/11/2011
- (59) Investigative interview dated 04/07/2011
- (60) Statement from Timothy W. Freels dated 04/11/2011
- (61) Two handwritten pages dated 3/29-30 (M-30 and 31)
- (62) "Accident History", 2 pages
- (63) Letter from Robert Montgomery to Mr. Vaughn dated March 30, 2011
- (64) Memorandum from Mike Vaughn to Labor relations dated March 31, 2011
- (65) PS Form 1769, 3 pages
- (66) PS Form 1700, 3 pages
- (67) Photographs, 13 pages
- (68) E mail from Jeffery Byrd to Dwayne Davis dated May 20, 2011
- (69) "Eastern Area, Area Safety Bulletin..."
- (70) E mail from Timothy Freels to Dwayne Davis dated May 23, 2011
- (71) Photographs, 2 pages (M-59 and 60)



Paul D. Robbins  
USPS Step B Representative



Fred Qualls  
NALC Step B Representative

DRT Number: 242-11

Cc: Pete Moss, NALC NBA  
Jill Miniard, Eastern Area Labor Relations Office  
Dwayne Davis, USPS Step A Representative  
Leman D. Clark Jr., NALC Step A Representative  
Joel Barnes, District Manager Labor Relations (A)  
Greg Gamble, District Manager  
Patty Frederick, District Manager HR  
Tim Daulton, District Manager Operations Support (A)