In the Matter of Arbitration	)		
between	)	Grievant:	Class Action
UNITED STATES POSTAL SERVICE	)	Post Office:	Tri City Post Office
and	)	Local Case No:	TC-62-22
	)	USPS Case No:	J16N-4J-C22461876
NATIONAL ASSOCIATION OF	)		
LETTER CARRIERS, AFL-CIO	)		

UNION'S POST HEARING BRIEF

Before: Mark Sims, Arbitrator

Place of Hearing: Homewood, IL

Date of Hearing: September 22, 2023

For the Postal Service: Gerald Sims

For the Union: Hope Miles

PRELIMINARY STATEMENT

This arbitration hearing was conducted on September 22, 2023 at the Tri-City Post Office located at 701 Holbrook Road Glenwood, IL 60425 before Arbitrator Mark Sims. The Postal Service was represented by Gerald Sims, Labor Relations Specialist for the Illinois 2 District, and the Union was represented by Hope Miles, National Arbitration Advocate for Region 3 NALC. The parties agreed to submit post-hearing briefs. This document shall serve as the Union's clarification of the facts and contentions in the instant case as well as the final arguments and summation. The parties agreed to set October 10, 2023, as the closing date for post-hearing submissions based on the needs of the parties at the hearing.

There were no procedural or substantive issues brought forth by the Service and no stipulations were agreed upon. The Union objects to any new arguments and evidence the Service may submit in their Post Hearing Brief that weren't discussed in Step A or brought forth in testimony during the hearing.

ISSUE

#1 - Did management violate Article 5 and 19 via M –39 Section 122 of the National Agreement when they changed the carrier starting times for city letter carriers from 8 am to 8:30 am in the Tri City Post office effective 7/2/2022. If so, what is the appropriate remedy?

#2 - Did management violate Article 15, 17 and 31 by failing to properly respond to the Union's information request dated 6/27/22 and 6/28/22, even after a multitude of grievance settlements on the same issue? If so, what is the appropriate remedy?

JOINT EXHIBITS

JX1: NATIONAL AGREEMENT

JX2: JCAM, JOINT CONTRACT ADMINISTRATION MANUAL

JX3: CASE FILE, 102 PAGES

WITNESSES

For The Union

John Poskin: Certified Steward and Certified Formal A Representative, Tri-City Post Office

Sonya Alexander: Fulltime Regular Letter Carrier, 21 years of Service, 16 years at Tri City Post Office

James Lewis: Fulltime Regular Letter Carrier, 22 years of Service, 11 years at Tri-City Post Office

For the Service

Lavan Whitley Sr. Postmaster, Tri City Post Office

RELEVANT CONTRACTUAL LANGUAGE

Article 5: JX1

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

JCAM page 5-1: JX2

Prohibition on Unilateral Changes. Article 5 prohibits management from taking any unilateral action inconsistent with the terms of the existing agreement or with its obligations under law. Section 8(d) of the National Labor Relations Act prohibits an employer from making unilateral changes in wages, hours, or working conditions during the term of a collective bargaining agreement.

Article 19: JX1

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement,

shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

JCAM 5-2:

Article 5 may also limit the employer's ability to take a unilateral action where a valid past practice exists. While most labor disputes can be resolved by application of the written language of the Agreement, it has long been recognized that the resolution of some disputes require the examination of the past practice of the parties.

JCAM page 19-1: JX2

Handbooks and Manuals. *Article 19 provides that those postal handbook and manual provisions directly relating to wages, hours, or working conditions are enforceable as though they were part of the National Agreement.*

Handbook M 39 Management of Delivery Services

122 Scheduling Carriers

122.1 Establishing Schedules

122.11 Consider the following factors in establishing schedules:

a. Schedule carriers to report before 6 a.m. only when absolutely necessary.

b. Fix schedules to coincide with receipt and dispatch of mail. At least 80 percent of the carriers' daily mail to be cased should be on or at their cases when they report for work.

c. Schedule carriers by groups. Form groups of carriers who make the same number of delivery trips and whose office time is approximately the same.

d. Generally, schedule carriers of the same group to begin, leave, return, and end at the same time.

e. Schedule so that delivery to customers should be approximately the same time each day.

f. Make a permanent schedule change when it is apparent that one or more days' mail volume varies to where it is causing late leaving.

g. Schedule carriers' nonwork days in accordance with the National Agreement

Article 15.2.D FORMAL STEP A: JX1

At the meeting the Union representative shall make a full and Formal Step A (d) detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Articles 17 and 31.

Article 15.3.A: JX1

The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. At each step of the process the parties are required to jointly review the Joint Contract Administration Manual (JCAM).

Article 17.1: JX1

Stewards may be designated for the purpose of investigating, presenting and adjusting grievances.

JCAM page 17-4: JX2

Steward Rights. Article 17, Sections 3 and 4 establish several steward rights:

• The right to investigate and adjust grievances and problems that may become grievances;

...

• The right to obtain management information;

...

A steward may conduct a broad range of activities related to the investigation and adjustment of grievances and of problems that may become grievances. These activities include the right to review relevant documents, files and records, as well as interviewing a potential grievant, supervisors, and witnesses. Specific settlements and arbitration decisions have established that a steward has the right to do (among other things) the following:

...

• Interview supervisors (Step 4, H7N-3Q-C 31599, May 20, 1991, M-00988);

...

• Review relevant documents (Step 4, H4N-3W-C 27743, May 1, 1987, M-00837);

...

• Write the union statement of corrections and additions to the Formal Step A decision (Step 4, A8-S-0309, December 7, 1979, M-01145);

JCAM 31-2

Information. Article 31.3 provides that the Postal Service will make available to the union all relevant information necessary for collective bargaining or the enforcement, administration, or interpretation of the Agreement, including information necessary to determine whether to file or to continue the processing of a grievance. It also recognizes the union's legal right to employer information under the National Labor Relations Act. Examples of the types of information covered by this provision include: • attendance records • payroll records • documents in an employee's official personnel file • internal USPS instructions and memorandums • disciplinary records • route inspection records • customer complaints • handbooks and manuals • photographs • reports and studies • seniority lists • overtime desired and work assignment lists • bidding records • wage and salary records • training manuals • Postal Inspection Service Investigative Memoranda (IM) • Office of Inspector General Reports of Investigation (ROI)

To obtain employer information, the union need only give a reasonable description of what it needs and make a reasonable claim that the information is needed to enforce or administer the contract.

MERITS, ISSUE STATEMENT #1

> #1 - Did management violate Article 5 and 19 via M –39 Section 122 of the National Agreement when they changed the carrier starting times for City letter carriers from 8 am to 8:30 am in the Tri City Post Office effective 7/2/2022. If so, what is the appropriate remedy?

On June 15, 2022 PM Lavan Whitley posted a notice that carrier start times would be changed from 8:00 am to 8:30 am effective 7/2/22. The notice provided on page U15 of the JX3, stated;

> *" Effective July 2, 22, All assigned carriers starting time will be 8:30 am until further notice, Lavan B Whitley Sr. "*

PM Whitley stated in his written contentions that the basis for changing the start time was to cut down on the impact of late transportation, eliminate carriers waiting on mail impacting the office percent to standard and allow additional time for the clerk operation to be successful in completing the processing for F2.

The Steward surveyed 16 letter carriers, all of whom documented that they had what they believed to be 80% of their caseable mail at their cases prior to the new start time change. Letter Carrier Sonya Alexander, carried mail at Tri City Post Office for 16 years, testified that most of her mail was at her case before the start time change. She stated she knew this to be so because the supervisor would go around telling the carriers the mail was up and then would give them a leaving time. James Lewis, a Letter Carrier with 11 years of service working at Tri City Post Office also testified to having most of his mail at his case prior to the start time change.

The Union presented a prima facie case whereas the burden then shifted to the Service to show they properly implemented the start time change in accordance with the National Agreement, handbooks and manuals. The Service attempted to shift its burden merely by stating that the Union failed to meet its burden while also in bad faith, delaying and failing to provide the requested information. Management's failure to provide the requested information should cast reasonable doubt on whether there was data and what the data might have shown.

National Arbitrator Carlton Snow interpreted regulations pertaining to managerial control of work schedules. Snow opined in his Award C-23986 (page 9) that the aforementioned instruction was not a suggestion but was imperative. He opined;

> *" Start times remain within management's control but must be exercised after giving due deference to the M-39 handbook."*

Snow clarified that;

> *"managerial control is not totally unfettered or without limitation"*

and that;

> *"Handbook M 39 specifies that schedules must be fixed to coincide with the receipt and dispatch of mail."*

To support his position, PM Whitley submitted Trip Logs, Mail Arrival Profiles and a Daily Up Time report (DUT) from 9/12/22 through 10/21/22. The DUT report provided was not requested and was irrelevant as its data

reported dates after the start time was implemented. The Mail Arrival profiles were minimal at best, covering a range of 5 days sparingly over a two-week period. PM Whitley testified that the clerks were responsible for updating these documents.

A negative inference should be drawn when considering PM Whitley's testimony. Whitley stated that he relied upon all the information he provided with his contentions but when 3 months of DUT reports was requested by the Union, after the decision was made to change the start times, PM Whitley testified that at the time of the request, he did not know what the DUT reports were. If PM Whitley was unable to locate the truck schedule and did not know what a DUT report was, how did he rely upon them when making the decision to change the start times?

The Service's decision to change the start times was inconsistent with the requirements of the M-39 Handbook with respect to scheduling carriers. The factors listed in Section 122.11 of Handbook M 39 are factors that the Service must consider when making scheduling changes. The Service failed to show that they fixed the schedule to coincide with the dispatch of mail and also failed to show that subsection (f) was considered, as the case file lacked any evidence that one or more day's mail volume varied to where it was causing late leaving. Handbook M 39 section 122 (b) and (f) provide;

> *"b. Fix schedules to coincide with receipt and dispatch of mail. At least 80 percent of the carriers' daily mail to be cased should be on or at their cases when they report for work."...*
>
> "f. Make a permanent schedule change when it is apparent that one or more days' mail volume varies to where it is causing late leaving."

PM Whitley testified that he relied solely on 100% of the mail being "up" as a factor in determining the start time change. Arbitrator Tim Brown Esq. opined on pages 5 –6 of his Award for USPS#C11N-4C-C-17182462 when considering subsection b of Section 122.11 ;

> *"In order to follow the command of the M39 on this subject, one of the necessary factors for deciding on whether to effectuate a schedule change is knowledge of the time that "at least 80% of the mail" is ready for the carriers. The Postal Service is a huge and complex enterprise, and its handbooks and manuals have been a long time in evolution. They are remarkably detailed and complex, the Service writes these documents and the Union, when changes or innovations are made, has the option of resisting those changes or innovations. A basic principle of contract interpretation is that language should be construed against the drafter. This means that a party who writes a language will not generally be heard to argue that the words in the document mean something more favorable to itself (the drafter) than they literally say. Put another way, when the Service writes a rule, it is bound by it as it wrote it, not in some way that serves them better than the words say on their face.*
>
> *Here the phrase "at least 80%" is a case in point, and in plain English it means not less than 80%, but it also does not mean "100%" or "90%" and so on. Assigning a value that is less than 100% makes sense because there are things that carriers must do with the mail in the morning. Before they leave. That takes some time, and even if all of the mail is not ready when they arrive, they can begin their work as the remainder of the mail comes in. If the threshold was 100%, then just a few missing pieces of mail might be a basis for not bringing them in until quite late."*

Arbitrator Brown then concludes;

"It therefore is binding on the parties and requires, by use of the words "consider the following" that the point in time "at least 80% of the mail" is ready must be known or determined by a count in order to make a decision to change schedules."

If Handbook M-39 intended for management to rely upon a standard of 100%, it would've stated so. While PM Whitley may not have been able to calculate when exactly 80% of caseable mail was at carrier's cases, he relied solely upon the 100% up time and was unable to show data of when less than 80% of the caseable mail was at the carrier's cases prior to the implementation of the start time changes.

Arbitrator Sherrie Rose Talmadge Esq opined on page 10 of her Award for USPS B16N-4B-C 17669691;

"although it would be reasonable for Management to take into consideration an increase in caseable mail arriving later than the carriers' 7:30 am original start time when setting the work schedule, but without sufficient supportive data, Management failed to establish less than 80% of the mail was at the carriers' cases when they arrived for work or that it was apparent that one or more days' mail volume varied to where it caused late leaving."

The case file lacked any data showing that the late trucks had any effect on the actual daily mail volumes. In fact PM Whitley testified that he had as many as 5 clerks working in the morning processing mail. PM Whitley failed to show that the clerks weren't getting the mail processed in a timely manner. PM Whitley presented no evidence of projected leave times, failed to show waiting times of carriers, time wasting, operation standby, corrective action for time wasting or any other data that would substantiate his claim that an operational need existed to implement a permanent start time change.

Arbitrator Alissa J. Sammarco opined on pages 15 – 16 in her Award for USPS 4B 19N-4B-C22292129

"The cases relied upon by Management do not stand for ignoring the 80% rule, but only that there may be other factors present and considered under M-39 121.11(b). This Arbitrator does not find these positions inconsistent with each other, but rather, finds them distinguished on the facts of each case. There must be some legitimate business reasons based in fact and not speculation. In the present case, all reasons stated by Management are based on whether the mail is ready for the carriers when they arrive. Section 121.11(b) addresses what is considered legitimate business reasons based on mail's availability at the start time of the carriers – 80%. The other factors, including subsection (f) "make a permanent schedule change when it is apparent that one or more days' mail volume varies to where it is causing late leaving" were not considered.

….Anticipation without a legitimate basis is mere speculation. Speculation is not a legitimate business reason for making a unilateral change in violation of M-39 121.11"

If Management had a basis for their actions, 354 time or excessive overtime, they would likely have evidence to support a legitimate business reason, and thus have every right under Article 3 to make the schedule change. However, Postmaster Fire admitted that he did not keep records, or require carriers to change their clock rings to 354 time. Further, no testimony or evidence in the form of discipline regarding time wasting practices, or "working to the case load" were presented. This Arbitrator finds it shameful to assume that carriers at Hiler would slow their work pace if Management did not change the start time, thus the change would force them to work faster so that they could get home and to their families at the same time they did prior to the schedule change. Management presented no evidence to support their position. Management's burden must be met by evidence, not just speculation. Management has not met that burden that they had a legitimate business reason for changing the start time"

PM Whitley stated that he relied on "observation". No data was pulled from the actual Delivery Operations Information System (DOIS). The data presented was authored by an unknown person. PM Whitley testified that one of the clerks inputted the data. There is no evidence that the information recorded on the Mail Arrival profiles and Trip Logs was checked for accuracy and anomalies by any member of management. PM Whitley assumed that based on the Trip Log and Mail Arrival Profile, carriers were waiting, leaving late to their assignments and the office percent to standard was being affected. No data from DOIS was provided to corroborate the handwritten data provided in the case file nor to corroborate his concerns with office percent to standard.

In showing the decision to change the start times was made in good faith, the Service should have provided data proving there was an operational necessity to change the start times. In this instant case, PM Whitley provided cherry picked and irrelevant information, some of which was after the implementation of the start time change. He failed to prove a real operational necessity when implementing the start time change. Management's burden must be met by evidence, not just speculation. Management has not met that burden that they had a legitimate business reason for changing the start times.

The Union has shown that the start time change was implemented throughout IL 2 district by upper leadership and was not implemented in response to specific mail volumes of the Tri City Post Office. This decision was a mandate given by upper management. Steward Poskin included an email submitted by MPOO Suzanne Hankins. PM Whitley would testify to Ms. Hankins being "his boss". The email which was sent to the IL 2 Area G Postmasters, was sent on June 10, 2022.

The email stated;

> *"All,*
>
> *<u>There is a plan to change all carrier start times to 8:30 am</u>. Please speak with your local stewards about the possibility happening in your unit. This is for F2 delivery offices.*
>
> *Suzanne Hankins"*

This email is a key piece of evidence that should not be overlooked because it proves that this action was unilateral and was not implemented after considering the factors outlined in Handbook M 39 Section 122. This action was a DISTRICTWIDE mandate.

Management violated Article 5 when they failed to discuss the change with the Union. Steward Poskin stated that no member of management reached out to the local steward Pratt nor himself about the possibility of the change. PM Whitley's position was; *"management can change start times."*

JCAM page 5-1 provides in relevant part;

> "*<u>Prohibition on Unilateral Changes.</u> Article 5 prohibits management from taking any unilateral action inconsistent with the terms of the existing agreement or with its obligations under law. Section 8(d) of the National Labor Relations Act prohibits an employer from making unilateral changes in wages, hours, or working conditions during the term of a collective bargaining agreement.*

Arbitrator Donald E. Olson, Jr. opined on page 5-6 of his Award for USPS # F11N-4F-C 13249784 ;

> *"In the first place, this arbitrator finds that the Employer's management staff at the Hawaii Kai Station violated Articles 3, 5, and 19 of the National Agreement when they arbitrarily changed the city carriers begin tour time of7:00 a.m. and 7:30a.m. moving it later to 8:00a.m. effective on May 18,2013. Clearly,*

the record is clear that at the time management decided to effectuate this change they had never attempted to discuss or negotiate this proposed change with the Union. In fact, the change was a unilateral decision made by management, which in fact violated the express rights set forth in Article 5 of the National Agreement, which in pertinent part reads as follows:

> *"The Employer will not take any actions affecting, wages, hours and other terms and conditions of employment as defined Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law."*

This change by management regarding the employee's tour start time was clearly a classic prohibited unilateral action involving "hours". Of course, the Employer made a claim during the processing of this grievance that this was allowed under the guise of Article 3, which set forth its managerial rights. This arbitrator concurs with that claim, when in fact it is done properly, and not unilaterally. Undeniably, M-39 Section 122.1 entitled "Establishing Schedules" allows the Employer the express right to set employees work schedules, however, if a change for business reasons is contemplated, the Employer must not institute this kind of change unilaterally, as in this case. Section 8(d) mandates that the Employer cannot violate the terms of the National Agreement by taking unilateral action dealing with "hours" or that are otherwise inconsistent with its obligation under law."

PM Whitley was asked during cross examination if he was aware of the email sent by his boss Suzanne Hankins about the start times being changed. He denied knowing about the plan to change them throughout the IL 2 district and denied having any knowledge or ever being in receipt of the email. This is disingenuous as his MPOO made sure to inform every Postmaster in IL 2 District of the plan to change all carrier start times to 8:30 a.m. The email clearly states that it was "*a plan to change ALL carrier start times to 8:30*" This plan was initiated not by PM Whitley himself as he testified to. How could he not have known of this specific communication about "the plan to change all carrier start times to 8:30am" from "his boss"?

After the communication was emailed to him on June 10, 2022, PM Whitley then posted a notice to implement the start time change five days later, on June 15, 2022. Whitley then proceeded to testify that the plan was his own plan and was based off of his observations and the data he provided in the case file. He then testified that he considered all the factors of Handbook M-39 and that his intention was a permanent change after considering his 'observation" and data. Again, this data being the Truck Schedule which he could not locate for four months and the DUT report which he did not know what it was.

MERITS, ISSUE STATEMENT #2

> #2 - Did management violate Article 15, 17 and 31 by failing to properly respond to the Union's information request dated 6/27/22 and 6/28/22, even after a multitude of grievance settlements on the same issue? If so, what is the appropriate remedy?

The Union Steward John Poskin, submitted two information requests (see pages U17 and U18) to PM Lavan Whitley requesting copies of the truck schedules transporting mail to the Tri City facility for the last 3 months and a reason why the carriers start time was changing from 8:00 to 8:30. Steward John Poskin also requested any and all information management relied upon to change the start time at the Tri City Facility, and the DUT report (Distribution Up Time) for the last 3 months. According to Steward Poskin, PM Whitley did not respond to the information request in violation of Article 15, 17 and 31 of the National Agreement.

PM Whitley was asked during cross examination why he did not respond to the information request and PM Whitley stated he did not know what a DUT report was and that the truck schedules were unavailable to provide to the Union. PM Whitley then delayed providing them for four months claiming that he didn't know where to locate them and testified that the information was in some sort of envelop system. He stated the clerks and supervisor worked for him, so to obtain them should have been as easy as making an inquiry with his staff.

Whitley's failure to provide all the information requested affected the Union's ability to enforce and administer the collective bargaining agreement, delayed the steward's investigation and hampered the Union's ability to establish a prima facie case. Whitley failed to comply with the grievance settlements he entered into in violation of Article 15 of the National Agreement; the Formal step A grievance settlements were provided in JX3, pages U36 – U40. Both Formal Step A settlements acknowledge management's violation of Article 15, 17 and 31 and provided the instructional remedy for future violations;

> *"Management violated Articles 15, 17 and 31 of the National Agreement by failing to provide requested information to the Union in this case. Management agrees in the future that information will be provided to the Union within 72 hours of the information being requested, unless the information is something that is not readily available. Any information that is not readily available, management shall supply the Union and explanation as why it is not available and when the information will be available. The reason for the delay must be a reasonable reason. If said information requested does not exist, management shall supply the union a written statement indicating that the information does not exist."*

The Union finds PM Whitley's excuse for not providing the requested information to be disingenuous. There is also no statement from PM Whitley indicating that the information did not exist.

REMEDY

The U.S. Supreme Court set forth the following in 1960, which is cited as the Steelworkers Trilogy ;

> *"When an arbitrator is commissioned to interpret and apply the collection bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There is the need for flexibility in meeting a wide variety of situations. The draftsman may never have thought of what specific remedy should be awarded to meet a particular contingency." United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593, 597, 80 S.Ct. 1358, 1361 (1960).*

National Arbitrator Howard Gamser opined in agreement with the Steelworkers Trilogy: …

> *"[T]o provide an appropriate remedy for breaches of the terms of an agreement, even where no such specific provision defining the nature of such remedy is to be found in the agreement, certainly is found within the inherent powers of the arbitrator. Based on these and their following decisions, the Arbitrator has authority and power to award a broad range of remedies, as appropriate to the circumstances of a grievance."*

Mr. Arbitrator, you have learned through the merits presented in this case and witness testimony that the Service improperly implemented a permanent start time change in Tri City Post Office. While Management has the right to manage its business and direct its workers, there is an implicit contractual condition of good faith and fair dealing; Management's action must not be arbitrary, capricious or discriminatory. If it is found that Management's judgment was arbitrary, capricious, unreasonable or made in bad faith, the decision may be set

aside. This principle does not require that a managerial decision ultimately be found to be incorrect —only that it be made in good faith.

Management is fully aware of and routinely acknowledges that it has a duty to comply with prior grievance settlements; timely provide relevant requested information; and implement the terms of grievance settlements it reaches in particular cases. Willful violations of the National Agreement and noncompliance of grievance settlements is seen as causing employees to doubt the effectiveness of their own Union in protecting and enforcing their rights.

The Union has presented a prima facie case proving that the Service implemented the start time change unilaterally in violation of Article 5. The Union has also proven that the Service failed to prove that the mail volumes affected carrier leave times prior to implementing a permanent start time change in accordance with handbook M 39 section 122 (f). The burden shifted to the Service to provide evidence, responses, or rebuttals to address the Union's assertions of bad faith bargaining, unilateral action and the aforementioned contractual violations. PM Whitley was dishonest and acted in a way deemed underhanded by Steward Poskin.

PM Whitley attempted to delay and derail the Union's investigation by sandbagging the Union four months later with information not previously discussed, forcing the Steward Poskin to submit additions and corrections. PM Whitley's violation of Article 15, 17 and 31 and noncompliance of grievance settlements was willful and egregious.

USPS Postal Policy Letter M-01517, drafted by the Postmaster General provides in relevant part;

> *VICE PRESIDENTS, AREA OPERATIONS MANAGER, CAPITAL METRO OPERATIONS*
>
> *SUBJECT: Arbitration Award Compliance*
>
>> *" Headquarters is currently responding to Union concerns that some field offices are failing to comply with grievance settlements and arbitration awards. While all managers are aware that settlements reached in any stage of the grievance/arbitration procedure are final and binding, I want to reiterate our policy on this subject.*
>>
>> *Compliance with arbitration awards and grievance settlements Is not optional. No manager or supervisor has the authority to Ignore or override an arbitrator's award or a signed grievance settlement. Steps to comply with arbitration awards and grievance settlements should be taken in a timely manner to avoid the perception of noncompliance and those steps should be documented. Please ensure that all managers and supervisors in your area are aware of this policy and their responsibility to implement arbitration awards and grievance settlements in a timely manner.*
>>
>> *Patrick Donahoe"*

1. Due to the Service's inability to provide evidence justifying their decision to implement a permanent start time change when failing to show that mail volumes affected carrier leave times and also due to PM Whitley's willful, deliberate and intentional noncompliance of grievance settlements, the Union is asking that this arbitrator deem the start time change as improper and temporary and award a make whole remedy of out of schedule premium to the letter carriers of Tri City working outside of and instead of their regular base schedule time of 8am starting from 7/2/22 in accordance with the provisions of Article 8 of the National Agreement and restore the start times to their original time of 8 am.

Arbitrator Olson ruled on page 6 –7 of his Award for USPS F11N4F-C 13249784 that;

> *" once the Union made a prima facie case as they did, the burden of going forward with the evidence shifted to the Employer to prove that it complied with the express terms of Article 5 and 19 of the National Agreement as well as the terms set forth in Handbook M-39 dealing with "Establishing Schedules." This arbitrator concludes once the burden of proof shifted to the Employer, it failed to prove there was an operational need to change the carrier's starting time."*

Arbitrator Olson sustained the grievance and awarded the carriers out of schedule premium until their start times were changed back. He also ruled that no carrier start times in the future would be established and fixed unless the Employer's management at Hawaii Kai Station followed the exact procedure set forth in M-39 Section 122.11 and ordered a cease and desist.

Arbitrator Sammarco also awarded out of schedule premium in her Award for USPS 4B19N-4B-C22292129;

> " Management violated Article 3 and 5 of the National Agreement when it changed the start time at Hiler Station from 7:30 to 8:00 am without considering the factors listed in M 39 122.11, which are incorporated into the National Agreement via Article 19. Management shall reinstate the original start time of 7:30 am to the carriers at Hiler, and the Union's request for out of schedule premium pay to the carriers affected by the schedule change at Hiler station is granted..."

2. Due to the noncompliance of grievance settlements and previous instructional remedy, we ask that this Arbitrator mandate a cease and desist order for future violation of Article 5, 15, 17 and 31 of the National Agreement.
3. Further the Union is seeking a compensatory award of $100 to be paid to every class action grievant of the Tri City Installation for managements noncompliance of the aforementioned Formal Step A grievance settlements included in this grievance, for management's willful and deliberate failure to comply with the Union's information requests and failure to bargain in good faith.
4. The Union welcomes all additional remedies you deem necessary to resolve this grievance and a coercive remedy to prevent future similar violations of this type in this installation.

Hope Miles

National Arbitration Advocate, NALC Region 3