USPS – NALC Formal A Grievance Settlement

Local Grievance # TC-133-22

Issue: Did management violate Articles 15,17 and 31 of the National Agreement by failing to provide requested information to Steward within 72 hours of his information request dated 10/29/22, in spite of several previous grievance settlements on the same issue, and if so, what is the proper remedy?

Remedy: The parties agree management shall cease and desist violating Articles 15,17 and 31 in regards to information requests. Management shall comply with the terms of previous grievance settlements in the Tri-City facility regarding information requests. Management shall pay Steward a one-time lump sun of $25 for the repetitive violations of Articles 15,17 and 31 regarding information requests. Management shall provide proof to the union signatory to this agreement proof all payments have been input within 14 days of the signed settlement date.

X

USPS Representative Signature and Date
Formal A Designee

X 12/14/2022

NALC Representative Signature and Date
Formal A Representative

USPS – NALC Formal A Grievance Settlement

Local Grievance # TC-23-22

(2 pages)

Issue #1: Did management violate Articles 8 and 15 of the National Agreement when they required Non-ODL carriers to work either off assignment overtime or their NS Days during the week of pay period 7 week 1 of 2022, in spite of a multitude of grievance settlements, Step B decisions and Arbitration awards on the same issue at the Tri-City installation, and if so, what is the proper remedy?

Issue #2: Did management violate Articles 15, 17 and 31 of the National Agreement by failing to provide to the union information requested on 3/10/22, despite previous grievance settlements on the same issue, and if so, what is the proper remedy?

Remedy Issue #1: The parties agree management violated Articles 8 and 15 of the National Agreement and shall comply with those provisions in the future. The parties agree the following carriers will be compensated at the following rates of pay: D. Lane 5.52 Hours at the Penalty Overtime Rate. Management shall provide proof to the Union Formal A representative proof this payment was input within two (2) weeks of the signed settlement date.

Remedy Issue #2: 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 an 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.

Signature Page TC-23-22

X _______________ 4-26-2022

USPS Representative Signature and Date
Postmaster

X _______________ 4-26-2022

NALC Representative Signature and Date
Formal A Representative

V3

USPS – NALC Formal A Partial Grievance Settlement

Local Grievance # TC-35-23

Issues: Did management violate Articles 10 and 19 of the National Agreement, including but not limited to the ELM Handbook section 513, when they placed the grievant in a documentation deemed desirable status from 3/27/23 – 5/27/23, for Saturdays only, and if so, what is the proper remedy?

Did management violate Articles 15 17 and 31 by failing to provide information requested by Steward in spite of previous grievance settlements on the same issue, and if so, what is the proper remedy?

Did management violate Article 15 of the National Agreement when they failed to allow Steward requested union time to interview the grievant, and if so, what is the proper remedy?

Remedy: The parties have agreed to the following:

1. The grievant shall be removed from a documentation deemed desirable status in ERMS. Management shall provide proof to the union this was done within 7 days of the signed settlement date of this agreement.
2. Management shall cease and desist violating Articles 15, 17 and 31 of the National Agreement in regards to providing information, complying with grievance settlements, and providing union time.

The parties have impassed to the Step B team the issue of any monetary remedy for management's failure to provide information and abide by previous grievance settlements regarding providing information to the union.

6/23/2023 5/23/23

X
NALC Representative Signature and Date
Formal A Representative.

X
USPS Representative Signature and Date
Office-In-Charge

PRE-ARBITRATION SETTLEMENT AGREEMENT

PRE-ARBITRATION SETTLEMENT (AMENDED)

DATE:	December 20, 2023
USPS GRIEVANCE NUMBER (GATS):	J19N-4J-C23263047
GRIEVANT:	Class Action
LOCAL NALC #:	TC-35-23
NALC DRT #:	03-625295
LOCATION:	Tri-City Annex, Glenwood, IL

Pursuant to the terms and obligations as set forth in Article 15 of the National Agreement between the United States Postal Service and the National Association of Letter Carriers, AFL-CIO, management and union designees met at Pre-Arbitration of the grievance procedure. The result of that meeting on the above referenced case(s) is as follows:

The Formal A resolved this grievance in part. The parties have agreed to the following resolution for the issue(s) that remained in dispute:

The parties agree NALC Branch #4016 shall be compensated $50 for management's violations of Articles 15, 17, and 31 of the National Agreement. Management shall provide proof to the Union signatory of this agreement the paperwork required to process the agreed to payment to Branch #4016 has been processed within 14 days of the signing of this agreement.

MANAGEMENT AND THE UNION MUTUALLY AGREE, BASED ON THE ABOVE, TO CONSIDER THIS CASE(S) FORMALLY CLOSED EFFECTIVE WITH THE SIGNING OF BOTH PARTIES TO THIS AGREEMENT.

12/27/23
Labor Relations – Date
USPS IL District 2

12/27/23
NAA - Date
NALC Region 3

PRE-ARBITRATION SETTLEMENT AGREEMENT

PRE-ARBITRATION SETTLEMENT

DATE:	January 23, 2024
USPS GRIEVANCE NUMBER (GATS):	J19N-4J-C23369179
GRIEVANT:	
LOCAL NALC #:	TC-56-23
DRT #	03-625933
LOCATION:	Tri-City Annex, Glenwood, IL

Pursuant to the terms and obligations as set forth in Article 15 of the National Agreement between the United States Postal Service and the National Association of Letter Carriers, AFL-CIO, management and union designees met at Pre-Arbitration of the grievance procedure. The result of that meeting on the above referenced case(s) is as follows:

The Formal A resolved this grievance in part. The parties have agreed to the following resolution for the issue(s) that remained in dispute:

Management violated Articles 15,17 and 31 of the National Agreement when they failed to provide the Union requested information, failed to comply with previous grievance settlements in the file regarding providing the Union information and failing to meet at the Informal A step. Management shall cease and desist failing to provide the Union requested information and failing to abide by previous grievance settlements. In the future management shall meet at the Informal A step with the Union.

The parties agree NALC Branch #4016 shall be compensated $50 for management's violations of Articles 15, 17, and 31 of the National Agreement. Management shall provide proof to the Union signatory of this agreement the paperwork required to process the agreed to payment to Branch #4016 has been processed within 14 days of the signing of this agreement.

MANAGEMENT AND THE UNION MUTUALLY AGREE, BASED ON THE ABOVE, TO CONSIDER THIS CASE(S) FORMALLY CLOSED EFFECTIVE WITH THE SIGNING OF BOTH PARTIES TO THIS AGREEMENT.

2/7/24	1/23/2024
Labor Relations – Date	, NAA - Date
USPS IL District 2	NALC Region 3

LABOR RELATIONS

PRE-ARBITRATION SETTLEMENT

Grievant:
Union Number: TP-69(b)-22
DRT Number: 03-604561
Management Number: J19N-4J-C 23115416
Location: Tinley Park, IL

As a result of Pre-Arbitration discussions, the following full and binding resolution of the above referenced grievances was reached. The terms of which are set forth below:

1. The parties agree that Management violated Articles 15, 17, 31, and 41 of the National Agreement when they failed to post Route 38 timely, failed to award route 38, failed to provide requested information to the Union within 72-hours, and when they failed to meet at Formal Step A.
2. Management will cease and desist from violating Articles 17 and 31 of the National Agreement
3. The parties agree Management must comply with Article 15.2 Formal Step A (c), 15.3.A, and M-01492 by holding meetings at the Formal Step A with the Union.
4. Management will comply with the time limits of Article 41 when posting routes.
5. Management shall pay a onetime lump sum payment in the amount of $11,496.04 (minus applicable deductions) which represents out-of-schedule premium which the parties agree the Grievant is entitled.
6. Route 38 will be posted for bid within 14 days of the signing of this settlement.
7. Management will pay NALC Branch 4016 a lump sum payment of $200.00 due to repetitive violations of Article 15 of the National Agreement. This payment will be made to Branch 4106 within 60 days of the signing of this settlement.

The above constitutes a full and complete settlement of the subject case.

8-22-23
Labor Relations USPS

Headquarters Advocate NALC 8-28-23

U12

PRE-ARBITRATION SETTLEMENT AGREEMENT

PRE-ARBITRATION SETTLEMENT

DATE:	November 14, 2023
USPS GRIEVANCE NUMBER (GATS):	4J-19N-4J-C23211996
GRIEVANT:	
LOCAL NALC #:	TP-22-23
NALC DRT #:	03-617782
LOCATION:	Tinley Park, IL

Pursuant to the terms and obligations as set forth in Article 15 of the National Agreement between the United States Postal Service and the National Association of Letter Carriers, AFL-CIO, management and union designees met at Pre-Arbitration of the grievance procedure. The result of that meeting on the above referenced case(s) is as follows:

The parties agree management violated Articles 15, 17, 31 of the National Agreement by failing to abide by previous grievance settlements/ decisions in the file, and failing to provide requested information to the union and failing to abide by previous grievance settlements. Management shall cease and desist violating Articles 15, 17 and 31 of the National Agreement in the future pertaining to supplying requested information to the union and complying with grievance settlements. The union has withdrawn the issue as to whether or not management failed to meet at Formal Step A.

The parties agree that management shall compensate the grievant a lump sum of $100 minus all applicable deductions for management's violations of Articles 15, 17, 31 of the National Agreement. NALC Branch #4016 shall be compensated $100 for management's violations of Articles 15, 17, and 31 of the National Agreement. Management shall provide proof to the Union signatory of this agreement proof that the payment for the grievant is entered into GATS and proof the paperwork required to process the agreed to payment to Branch #4016 has been processed within 14 days of the signing of this agreement.

MANAGEMENT AND THE UNION MUTUALLY AGREE, BASED ON THE ABOVE, TO CONSIDER THIS CASE(S) FORMALLY CLOSED EFFECTIVE WITH THE SIGNING OF BOTH PARTIES TO THIS AGREEMENT.

11/15/23 — 11/14/2023

Labor Relations – Date — NAA - Date

USPS IL District 2 — NALC REGION 3

34

C-36350 A-C

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration.	(	Grievant: Class Action
Between	)	Post Office: Glenwood, IL
UNITED STATES POSTAL SERVICE.	(	Case No.: 4J 19N-4J-C 23099056, 23089948, & 22465158
and	)	NALC No.: TC14322, TC14822, & TC11822
National Association of Letter Carriers, AFL-CIO	(	DRT No.: 03-604188, 03-604189, & 03-594547

BEFORE: Arbitrator Zachary C. Morris

APPEARANCES:

For the Service: Patrick Ertl, Labor Relations Specialist

For the Union: Jon Calloway, NALC National Advocate

Place of Hearing: 701 W. Holbrook Rd., Glenwood, IL 60425

Date of Hearing: Wednesday, October 4, 2023

AWARD:

Relevant Contract Provisions: Articles 8, 15, and 19

Resolution: The grievance is sustained.

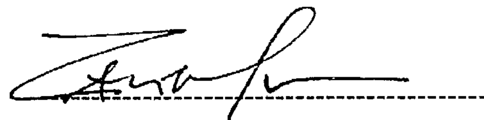
Date of Award: Monday, November 13, 2023

PANEL:

Illinois 2

Award Summary

Management violated Articles 8.5.F, 8.5.G.2, 15, and 19, via ELM §432.32. An appropriate remedy is provided below.



Zachary C. Morris, Arbitrator

PROCEDURAL BACKGROUND

These three cases come before the arbitrator after the Union filed grievances alleging that Management violated the maximum workhour limitations of Article 8.5.F, Article 8.5.G, and ELM §432.32 within the Tri-City Installation.

An arbitration hearing was held on the morning of October 4, 2023 at the Glenwood Post Office. Due to their similar natures, the three grievances were combined at the hearing. However, the parties' advocates did make separate arguments in relation to the second case due to the fact that it, alone, raises the issue of Article 8.5.G.

Testifying on behalf of the Union was John Poskin – letter carrier, Branch 4016 Secretary, and steward for these grievances. The Postal Service called no witnesses.

The parties made the following stipulations at the hearing:

> In regard to 4J 19N-4J-C 23099056 (the first case): Management violated Article 8.5.F of the National Agreement when they required non-OTDL Letter Carriers to work beyond 10 hours on a regularly scheduled day. Management violated Article 19, via ELM §432.32 of the National Agreement when they required CCA employees to work beyond 11.5 hours in a service day.
>
> In regard to 4J 19N-4J-C 23089948 (the second case): Management violated Article 8.5.F of the National Agreement when they required non-OTDL Letter Carriers to work beyond 10 hours on a regularly scheduled day. Management violated Article 19, via ELM §432.32, of the National Agreement when they required CCA employees to work beyond 11.5 hours in a service day. Management violated Article 8.5.G of the National Agreement when they required OTDL Carriers to work beyond 12/60 hours in a service day/week.
>
> In regard to 4J 19N-4J-C 22465158 (the third case): Management violated Article 8.5.F of the National Agreement when they required non-OTDL Letter Carriers to work beyond 10 hours on a regularly scheduled day.

Both the Postal Service and the Union were ably represented and were given a full and fair opportunity to present evidence, examine and cross examine witnesses, and make arguments.

In reaching the conclusions and making the Award set forth herein, the Arbitrator has given full consideration to all evidence of record.

ISSUE

I. Did Management violate Articles 8, 15, and 19 of the National Agreement, Section 432.32 of the Employee and Labor Relations Manual (ELM) and the terms of multiple previous grievance settlements when they required city letter carriers to work in excess of contractual workhour limits during the service week of 11/11/22, and if so, what is the appropriate remedy?

II. Did Management violate Articles 8, 15, and 19 of the National Agreement, Section 432.32 of the Employee and Labor Relations Manual (ELM) and the terms of multiple previous grievance settlements when they required city letter carriers to work in excess of contractual workhour limits during the service week ending on 12/2/22, and if so, what is the appropriate remedy?

III. Did Management violate Article 8.5.F and 15.3.A of the National Agreement and the terms of previous grievance settlements when Management required non-"Overtime Desired" list (ODL), non-"Work Assignment" list (WAL) city letter carriers to work over ten (10) hours on a regularly scheduled day during week 1 of pay period 21 in 2022? If so, what is the appropriate remedy?

STATEMENT OF THE CASE

The parties have stipulated that the alleged violations in these three cases have occurred and that the only remaining issue is one of remedy. It is, therefore taken as fact that during the week of 11/11/22, the Service violated Article 8.5.F by working non-ODL carriers in excess of 10 hours in a day and violated ELM §432.32 by requiring CCAs to work in excess of 11.5 hours in a day.

With regard to the second case, the Service, during the week ending 12/2/22, violated the aforementioned sections as well as Article 8.5.G.2 by working ODL carriers in excess of the 12/60 hour limits.

Finally, during week 1 of pay period 21 in 2022, Management violated Article 8.5.F by requiring non-ODL employees to work over 10 hours on a regularly scheduled day.

Joint Exhibits 2, 3, and 4 (the grievance files) also contain numerous previous settlements on these exact issues. These settlements were resolved at either Steps Informal or Formal A, but several of them contain language directing Management to cease and desist violations of Articles 8.5.F, 8.5.G, 15, and 19 (ELM §432.32). The settlements awarded the carriers 50% premium for all hours worked beyond the relevant established limits and some awarded additional lump sum payments of $25 to each carrier as well. Also in the File is a Step B decision, dated June 22, 2022, directing Management to cease and desist violations of Article 15.

Branch Secretary John Poskin, who served as the steward at Informal and Formal A, testified that, while the parties agreed to the violation, he sought escalated remedies because of the history of these problems in the Tri-City Installation. He stated that there have been Article 8 issues for roughly two years now. He testified to the prior settlements included in the File and stated that the "cease and desist' language in those settlements has not been complied with as there continues to be violations.

He stated that his requested remedy was not meant to be punitive. Management had agreed to escalated remedies in the past, including a 50% premium and lump sum payments of $25. He requested the lump sum be increased to $50 in the instant grievance due to the continuous nature of these violations. Mr. Poskin also pointed to a signed settlement, dated October 25, 2022, between himself and Management Formal A representative, Rhonda Woddard, which reads: "The parties agree that management shall cease and desist violating Article 15 of the National Agreement in regard to complying with signed grievance settlements."

Prior to arbitration, the Service, in recognition of the violations, unilaterally provided to the affected employees a 50% premium for all hours worked in violation of the applicable provisions. Additionally, they provided a lump sum payment of $25 to each carrier.

RELEVANT CONTRACTUAL PROVISIONS

Article 8.4.D – Penalty overtime will be paid to full-time regular employees for any overtime work in contravention of the restrictions in Section 5.F.

Article 8.5.F – Excluding December, no full-time regular employee will be required to work overtime on more than four (4) of the employee's five (5) scheduled days in a service week or work over ten (10) hours on a regularly scheduled day, over eight (8) hours on a non-scheduled day, or over six (6) days in a service week.

Article 8.5.G – Full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the "Overtime Desired" list:

1. May be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.F); and
2. Excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.

However, the Employer is not required to utilize employees on the "Overtime Desired" list at the penalty overtime rate if qualified employees on the "Overtime Desired" list who are not yet entitled to penalty overtime are available for the overtime assignment.

Article 15.3.A – 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).

ELM §432.32 – Maximum Hours Allowed – Except as designated in labor agreements for bargaining unit employees or in emergency situations as determined by the postmaster general (or designee), employees may not be required to work more than 12 hours in 1 service day. In addition, the total hours of daily service, including scheduled workhours, overtime, and mealtime, may not be extended over a period of longer than 12 consecutive hours. Postmasters and exempt employees are excluded from these provisions.

POSITION OF THE UNION

Management, over objection of the Union, introduced three Step B decisions into the record at arbitration. These Step B settlements provided an additional 50% premium for hours worked in contravention of the contractual provisions at issue, as well as a $25 lump sum payment to each carrier. While Step B settlements are precedent setting within an installation, the settlements were reached after this grievance had already been appealed to arbitration and, therefore, have no bearing on the instant case. The JCAM, on page 15-8, states: "A Step B decision establishes precedent only in the installation from which the grievance arose. For this purpose, precedent means that the decision is relied upon in dealing with **subsequent similar cases** to avoid repetition of disputes on similar issues that have been previously decided in that installation." (emphasis added by the Union). The Union asks that the arbitrator disregard those settlements.

Making matters worse, Management sought to undermine the grievance process by making those payments to the Class of employees in this grievance unilaterally. There was no discussion with the Union. This was a bad faith effort, on the part of Management, to get rid of this grievance. If Management is allowed to "pay off" employees without negotiating with the Union in an attempt to get rid of grievances, the entire Article 15 process will be destroyed. The Union strongly encourages the arbitrator to disregard those previous payments when determining a potential remedy.

As for that remedy, the Union feels that the File establishes that escalated remedies are warranted. Testimony from John Poskin made clear that this problem has been going on for at least two years and that nothing agreed to so far as worked to actually stop the violations. Management has continuously violated Article 8. Making matters worse, they have violated Article 15.3.A, numerous prior settlements with cease and desist language, and USPS Policy Letter M-01517, which requires Management to abide by all signed grievance settlements – regardless of the point in the grievance process they were signed.

The Union asks that the arbitrator sustain the grievances and grant the remedy requested at Formal A:

1. Management cease and desist violating Articles 8.5.F, 8.5.G, 15 and 19 of the National Agreement including ELM §432.32 and M-01517.

2. That all carriers affected by the violations in these three grievances receive 50% base bay for the hours worked in violation of the applicable provisions.
3. That those same carriers also receive a one-time lump sum payment of $50 for the repeated violations of Article 15.
4. Carriers in the Tri-City annex may simply clock out and go home whenever they reach the applicable work hour limit provision that applies to that carrier (8.5.F, 8.5.G, or ELM §432.32), and cannot face discipline for doing so even in the face of an order from a manager.
5. Whatever other remedies the Arbitrator deem appropriate.

POSITION OF THE SERVICE

The Service argues that the prior settlements that the Union bases its claim for escalated remedies were decided at the Formal A level and are, therefore, not precedent setting within the Installation. Further, there is no specific language making them precedent setting. As such, there was no violation of Article 15.

The Union also seeks to establish an Article 19 violation by way of a Policy Letter. However, that letter was an internal memorandum from Management to other managers and supervisors. It was not signed by the Union, is not a handbook or manual, and therefore is not incorporated into the National Agreement by Article 19. The Union cannot cite this letter as the basis of a grievance.

As much is made clear in a Step 4 settlement reached by the parties. That Step 4 (M-01178) reads: "The parties agree that internal correspondence between management officials is not a grievable matter."

There is no need to fashion a remedy for the Article 8 and ELM work hour violations because the parties have already done so at the National level. Put simply, Article 8.4.D provides that penalty overtime is the appropriate remedy for violations of Article 8.5.F. A 1988 MOU and subsequent National Award in *Case No. A90N-4A-C 94042668,* Arbitrator Carlton J. Snow (1998) make it clear that a 50% premium is the exclusive remedy for violations of the 12/60 language contained in Article 8.5.G.2. If the Union seeks to change those remedies, they must do so at the bargaining table, not arbitration.

Management has, in recognition of its violations and in good faith, already provided a remedy beyond that which is required by contract. A 50% premium was provided to all employees in the Class, not just those on the ODL who worked over 12 hours in a day or 60 in a week. Additionally, each carrier received a lump sum payment of $25, which is consistent with what the parties have agreed to within the Tri-City Installation in the past.

For these reasons, Management asks the arbitrator to deny the grievances in their entirety. As for the Union's requested remedy, Management makes the following arguments:

1. A cease and desist order is inappropriate in situations where Management has already placed the employees in a status quo ante position.
2. The requested 50% premium has already been granted to the affected employees. No further remedy is warranted.
3. Consistent with prior non-precedent settlements of similar grievances, Management has provided lump sum payments of $25 to each carrier. This is also consistent with the remedies agreed to in the three Step B settlements introduced at the hearing.
4. Allowing an employee to simply clock and go home is not acceptable in the Postal Service or any other industry. If there is a violation in the future, employees must comply with management directives and then file a grievance if warranted.

OPINION

I have ruled on numerous Article 8 grievances in the past few years, making my opinion on remedies for such violations known to the parties. I fully recognize that the 1988 MOU on 12/60 violations and subsequent Snow Award foreclose any remedy for Article 8.5.G.2 violations beyond the language contained in the MOU – "an additional premium of 50 percent of the base hourly straight time rate for those hours worked beyond the 12 or 60 hour limitation." Arbitrator Snow made it explicitly clear that this 50% premium was the *exclusive* remedy for such violations.

Recognizing Arbitrator Snow's language that "the Union sought arbitration with regard to the *narrow issue* of whether the 50% remedy is the exclusive remedy for violation of Article 8.5.G.2", I have never contradicted Arbitrator Snow's ruling and I will not do so today.

However, I have also held that, while Article 8.4.D provides that penalty overtime will be paid to employees worked in contravention of the restrictions of 8.5.F, there is no language in the Contract or any National Award I have been made aware of indicating that penalty overtime is the sole and exclusive remedy for such violations. *See Case No. 4J 19N-4J-C* 23244612, Arbitrator Zachary C. Morris (2023). In other words, while additional remedies beyond penalty overtime are not warranted in every circumstance, in cases of continuous and egregious violations of 8.5.F or ELM §432.32, there is nothing explicitly restricting the arbitrator's inherent authority to fashion a remedy for a violation.

In the instant case, it is clear that these violations are of a continuous nature in the Tri-City Installation. Further, the parties have consistently agreed to additional penalties for 8.5.F and ELM §432.32 violations of the 50% premium (which is required of 8.5.G.2 violations) and even lump sum payments in some cases. They have agreed to additional penalties beyond the 50% premium for 8.5.G.2 violations as well. While these cases were settled at Formal A and would in no way be binding on the parties for settlement of future violations, they do show a pattern of violations and an accepted course of conduct for remedying such violations. Furthermore, a majority of these settlements contain language instructing Management to cease and desist further violations of Article 8.

Management cites language from Article 15 indicating that they are not bound by these settlements because they were reached at either Informal or Formal A. I cannot agree. While settlements made prior to Step B may not be *precedent setting* on the parties, that does not mean they are not *binding*. To rule otherwise would effectively turn any settlement reached at Informal or Formal A into a useless scrap of paper.

Furthermore, while none of the settlements in the File regarding Article 8 violations explicitly say that the agreements are precedent setting, it must be noted that cease and desist language is, by its very nature, prospective. By agreeing to cease and desist violations of Article 8, Management agreed to a certain course of conduct in the future – that they would stop violating the Contract. The Union, by citing Article 15 and including the settlements into the File, alleged as much in their contentions. I find that they have carried that burden.

To drive home their point that Management is required to abide by these settlements, the Union has cited, in addition to Article 15, M-01517, which reads, in part: "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."

Management has argued, convincingly I might add, that this internal letter is not binding and cannot be cited by the Union as the basis of a grievance. They introduced a Step 4 settlement, signed by both parties at the Headquarters level, stating that "internal correspondence between management officials is not a grievable matter."

I am in agreement with Management that the Union cannot base a grievance solely upon M-01517 because it is clearly "internal correspondence between management officials". The parties at the National level made as much clear in their Step 4 settlement. However, the principles contained within M-01517 are part and parcel of Article 15. It is not M-01517 that requires Management to comply with grievance settlements. It is Article 15.3.A, which mandates a "good faith observance" of the principles of Article 15, which would include the settlement of grievances. It should go without saying that when you sign a document indicating you agree to do something, you are bound by it. Similarly, arbitration awards must be complied with, not because of M-01517, but because of Article 15.4.A.6, which reads: "All decisions of an arbitrator will be final and binding."

The parties have agreed that Management violated Article 8.5.F, Article 8.5.G.2, and ELM §432.32 in these cases. I have determined that Management violated Article 15 by failing to abide by numerous prior grievance settlements requiring them to cease and desist future violations of those sections of the Collective Bargaining Agreement.

The Union argued at the hearing that the payments made unilaterally prior to the hearing were done in bad faith in an attempt to destroy the Article 15 process and should be disregarded. In other words, the Arbitrator should disregard the fact that Management already paid the employees a 50% premium and award them an additional 50% premium on top of what Management has already unilaterally paid out.

The Union submits an award from Arbitrator Carne, wherein the Service had unilaterally initiated a GATS payment for the grievant prior to arbitration. Arbitrator Carne writes: "The Postal Service argues, in its post-hearing brief, that its $1,000.00 payment to the Grievant was a 'good faith effort to resolve the grievance at the lowest level', but this is also patently untrue. It is fundamental that grievance resolutions reached at a pre-arbitration stage must be *mutually* agreeable. When the Postal Service *unilaterally* paid a compensatory amount to the Grievant,

without the Union's acceptance of the remedy, it was no longer acting within the parameters of the bilateral dispute resolution process set forth in the National Agreement. It was simply acting on its own, and settlement is not the right word for that kind of action." *Case No. J19N-4J-C 21319734*, Arbitrator Danielle L. Carne (2022), at 4-5.

While the payments made by Management in the instant case were in no way mutual, I fail to see the harm to the Class or to the Union. Unilateral payments like this do not destroy the Article 15 process, as the Union suggests, and, in my experience, are relatively common. The Postal Service can distribute as much money to as many employees as it sees fit, but doing so in no way restricts the Union's right to continue processing a grievance. The fact that Management already paid these employees a 50% premium and $25 lump sum payment did not resolve these grievances. That is because the Union did not agree to them. Further, the arbitrator's authority to fashion an appropriate remedy is in no way restricted by these payments, even should he choose to consider them in fashioning his remedy.

Certainly, Management may argue that the grievance is moot because the grievant or grievants have already been compensated, but it would not restrict the Union's right to disagree and appeal the grievance to arbitration where it would be left to Management's advocate to convince the arbitrator that those employees have already been adequately compensated. Ultimately, the question of whether a unilateral payment made by Management is sufficient to remedy a violation is going to be left to the Union or, potentially, an arbitrator. I see no reason why an arbitrator should be forced to disregard such payments in fashioning a remedy simply because the Union did not agree to them beforehand. An arbitrator is neither bound by those payments, nor is he or she obliged to disregard them.

There is one more point I must address regarding the Union's requested remedy. The Union has asked that employees be allowed to clock out without permission from Management or fear of discipline whenever they reach their respective work hour limitations. I awarded such a remedy in *Case No. 4J 19N-4J-C 23158064*, Arbitrator Zachary C. Morris (2023). Other arbitrators have issued similar remedies in cases of excess workhour limitation violations – *See Case No. F01N-4F-C 04208743*, Arbitrator Thomas F. Levak (2005) and *Case No. G06N-4G-C 13035534*, Arbitrator Lawrence Roberts (2013).

When writing the above-referenced award out of Cedar Rapids, I was very hesitant to do so. Such a remedy certainly solves the problem of excess overtime by putting the power into the

hands of the carriers. However, upon reflection, the ability to schedule employees is inherent to Management's Article 3 right to "direct employees of the Employer in the performance of official duties" and "determine the methods, means, and personnel" by which its operations are conducted. I am unwilling to grant the Union's requested remedy that employees be allowed to simply clock out whenever they reach their work hour restrictions.

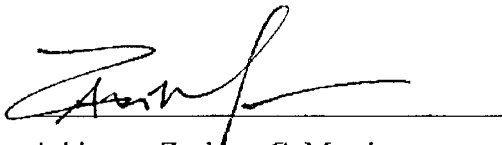
I recognize that Management's Article 3 rights are not unlimited. They are restricted by the work hour limits found in Article 8 and the ELM. As such, while Management has the inherent right to schedule employees, they do not, in doing so, have the right to violate other provisions of the Contract..

Still, the Postal Service has a job to do and granting carriers the ability to simply walk out before that job is done is not conducive to the fulfillment of the Postal Service's mission to deliver the mail in a timely manner.

AWARD

For the reasons set forth above, the grievance is sustained. Management has acknowledged violations of Articles 8.5.F, 8.5.G.2, as well as the ELM §432.32. The arbitrator further finds that the Service violated Article 15 by failing to comply with prior settlements in the File. For these violations, the following remedy is granted:

1. The carriers in these grievances shall be granted a $25 lump sum payment. This is in addition to the $25 lump sum already provided to the carriers.
2. In recognition of prior settlements made at the Informal and Formal A level, Management shall cease and desist violations of Article 8, ELM §432.32, and Article 15.3.A.



Arbitrator Zachary C. Morris
Charlottesville, VA
November 13, 2023