REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	Grievant: Class Action
between	)	Post Office: Lake Charles, LA.
United States Postal Service	)	USPS Case No.: G11N-4G-C 16454303
and	)	NALC DRT No.: 08-377654
National Association of Letter Carriers, AFL-CIO	)	

BEFORE: Louise B. Wolitz, Arbitrator

APPEARANCES:

For the U.S. Postal Service:	Sheileta D. Augustus
For the NALC:	Corey Walton
Place of Hearing:	921 Moss Street Lake Charles, LA
Date of Hearing:	January 6, 2017
Date of Award:	February 14, 2017

RECEIVED
MAR 1 - 2017
VICE PRESIDENT'S OFFICE
NALC HEADQUARTERS

AWARD SUMMARY:

We must conclude that the history and evidence in this record compels us to conclude that Management violated Article 8 of the National Agreement when they forced non-ODL and work assignment carriers off their assignments during the week of April 16, 2016 to April 22, 2016; and that management failed to comply with previous grievance settlements and awards instructing management to cease and desist from violations of Article 8

The grievance is sustained and the following remedy is hereby ordered:

Management in the Lake Charles Installation shall cease and desist from future violations of Article 8, Section 5 of the National Agreement.

Management in the Lake Charles Installation shall cease and desist from future violations of Article 15 of the National Agreement and adhere to Step B Team, Pre-Arbitrations and Arbitrations settlements.

Management in the Lake Charles Installation shall cease and desist from future violations of M-01517 and adhere to Step B Team, Pre-Arbitrations and Arbitrations settlements.

That the following Letter Carriers each be paid a lump sum payment equivalent to 8 hours at the overtime rate for the hours indicated below:

BROWN 1.77, RUBIN J 2.98, GAUTHIER 2.92, THOMAS. K 1.56, PRIMEAUX 4.08, DOWERS .95, MARTIN 1.35, MCNEAL 3.98, JOSEPH 3.46, JOUBERT .92, FREY 1.65, STEWARD 2.87, MCGEE 2.50, AYO 1.50, CAHEE.C 1.65, MATTEW. S 1.41, ACKEL 1.30

That the following Carriers on the 10/12 OTDL be paid up to 12.50 hours per day for service week 4/16 to 4/22/2016 :

THIERRY, DAVID, ALEXIS, LEWIS, GARRARD, WASHINGTON K.E., THOMAS, B, BROUSSARD, GONZALEZ, VENTRESS, SOTO AND WIMBERLY

That the following CCA's be paid up to 12 hours per day for service week 4/16 to 4/22/2016 .

CAHEE B, REMOND, COLEMAN, COLLINS, REYNAUD, CONLEY

That the following Carriers including CCA's be awarded $1000.00 each for management's non-compliance and repeated blatant violations of Article 8, 15 and M-01517.

BROWN, RUBIN J, GAUTHIER, THOMAS. K, PRIMEAUX, DOWERS, MARTIN, MCNEAL, JOSEPH, JOUBERT, FRY, STEWARD, MCGEE, AYO, CAHEE.C, MATTEW.S, ACKEL, THIERRY, DAVID, ALEXIS, LEWIS, GARRARD, WASHINGTON K.E, THOMAS, B, BROUSSARD, GONZALEZ, VENTRESS, SOTO, WIMBERLY, CAHEE B, REMOND, COLEMAN, COLLINS, REYNAUD, CONLEY.

Louise B. Wolitz, Arbitrator 2/14/2017

Louise B. Wolitz, Arbitrator

RELEVANT PROVISIONS:

National Agreement between the National Association of Letter Carriers & the United States Postal Service, 2011 – 2016.

....

ARTICLE 8

HOURS OF WORK

Section 5. Overtime Assignments

....

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.

JCAM

8 – 17:

National Arbitrator Mittenthal ruled in H4N-NA-C-21, April 11, 1986 (C-5860) that an employee on the ODL does not have the option of accepting or refusing work over eight hours on a nonscheduled day, work over six days in a service week or overtime on more than four of the five scheduled days in a service week; instead an employee on the ODL must be required to work up to 12 hours in a day and 60 hours in a week before management may require employees not on the ODL to work overtime. Arbitrator Mittenthal's award does not extend to situations involving a letter carrier working on his or her own route on a regularly scheduled day (see the discussion under 8.5.C.2.D and 8.5.G).

15-8 : A Step B decision established 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 the repetition of disputes on similar issues that have been previously decided in that installation

41-7 : In circumstances where the violation is egregious or deliberate or after local management has received previous instructional resolutions on the same issue and it appears that a "cease and desist" remedy is not sufficient to insure future contract compliance, the parties may wish to consider a further, appropriate compensatory

remedy to the injured party to emphasize the commitment of the parties to contract compliance. In these circumstances, care should be exercised to insure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy.

M-01517 USPS POLICY LETTER, May 31, 2002
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 non-compliance, and those steps should be documented

THE HEARING:

The hearing on this matter was held at 921 Moss Street Lake Charles, LA on January 6, 2017. Each party had a full opportunity to present its evidence, witnesses and argument. The parties entered into evidence Joint Exhibit 1, the National Agreement and JCAM and Joint Exhibit 2, the Case File. The parties called no witnesses, but each party presented their arguments in the form of Opening Statements and Closing Statements. The Postal Service acknowledged that it agreed at the Formal Step A that there has been a violation of Article 8. The Postal Service alleges that compensatory payments to the Overtime Desired List carriers who were not worked and the non-Overtime Desired List carriers who were required to work would come to $1,906.25. The Postal Service would agree to pay this amount. However, the Union also alleges that because of the repetitive nature of this violation in Lake Charles, as documented by numerous Formal A and Step B decisions, pre-arbitration agreements and arbitration awards, the remedy should include in addition to payments to the carriers for the hours missed or forced to work, a lump sum payment to the carriers for the repeated violation of cease and desist orders and Article 15. Based on the record in Lake Charles, the Union is asking for additional payments of $1,000 per carrier for the repeated violations. The Postal Service argues these payments are unjustified, would be unjust enrichment, are punitive, and violate the National Agreement. Each party's advocate presented and supported its arguments at the hearing by reference to the case file.

THE ISSUE:

The Union's initial issue statement in this grievance was:

1. Did Management violate Article 8 of the National Agreement when management forced City Carriers not on the OTDL and City Carriers on the work assignment list to work overtime on routes not assigned to them during the week of 4/16/2016 to 4/22/2016 when there were 12/12 OTDL Carriers and CCA's available to work up to 12 hours and were prevented from working? If yes, then what is the proper remedy?

2. Did management violate Article 15 via 19 of the National Agreement by failing to abide to previous Arbitrations, Pre-Arbitrations and DRT Cease and Desist decisions on violating? If yes, then what is the proper remedy?

3. Did management violate Article 41 via 19 of the National Agreement by failing to abide to previous Arbitrations, Pre-Arbitrations and DRT Cease and Desist decisions on violating Article 8? If yes, then what is the proper remedy?

4. Did management violate M-01517 by failing to abide to previous Arbitrations, Pre-Arbitrations and DRT Cease and Desist decisions on violating Article 8? If yes, then what is the proper remedy?

5. Did management violate Article 5 (past practice) of the National Agreement when they established a window of operation? If yes, then what is the proper remedy?

The issue statement at Step B before the Northern New England Step B Team was: Did Management violate Article 8 of the National Agreement when they forced non-ODL and work assignment carriers off their assignments during the week of April 16, 2016 to April 22, 2016; and did management fail to comply with previous grievance settlements and awards instructing management to cease and desist from violations of Article 8? If so, what is the appropriate remedy?

It is the joint position of the Formal A parties that a violation of the contract was established in the instant case, and the only matter to be resolved is that of appropriate remedy. The union requests a lump sum payment of $1,000.00 per carrier in addition to the payment of appropriate wages for the hours of the violation. Management agrees to pay the ODL/non-ODL carriers for those hours; however, management contends that the requested $1000.00 lump sum is punitive, unwarranted, and unjustified.

Since the Postal Service has acknowledged that there has been a violation of Article 8, the parties agree that the only issue before the arbitrator today is: What shall be the remedy?

POSITION OF THE UNION:

The Union presents the following Undisputed Facts (Joint Exhibit 2, page 12).

The following Carriers signed up for the Overtime Desire List for Quarter 2 Year 2016 and were available up to 12.50 hours during service week 4/16 to 4/22/2016: THIERRY, DAVID, ALEXIS, LEWIS, GARRARD, WASHINGTON K.E., THOMAS, B, BROUSSARD, GONZALEZ, VENTRESS, SOTO AND WIMBERLY.
The Following Non-Overtime Desire List Carriers were forced to work off their assigned routes during service week 4/16 to 4/22/2016 the following hours: BROWN 1.77, RUBIN J 2.98, GAUTHIER 2.92, THOMAS. K 1.56, PRIMEAUX 4.08,

DOWERS .95, MARTIN 1.35, MCNEAL 3.98, JOSEPH 3.46, JOUBERT .92, FRYE 1.65, STEWARD 2.87, MCGEE 2.50, AYO 1.50, CAHEE.C 1.65, MATTEW. S 1.41, ACKEL 1.30.

The Following City Carrier Assistants (CCA) were available up to 12.00 hours During service week 4/16 to 4/22/ 2016: CAHEE B., REDMOND, REYNAUD, COLEMAN, COLLINS, CONLEY

The Union pointed specifically to several recent relevant cases.

Case No. G06N-4G-C 12184644, Class Action, Lake Charles, LA. was decided by Arbitrator Lawrence Roberts, dated January 9, 2014. The issue in this case was defined as: *Did Management violate Article 8 of the National Agreement, or prior Step B Decisions, or M-01517 when Non-ODL/WA Carriers were mandated to work overtime prior to fully utilizing available ODL Carriers and TE Carriers at the Lake Charles Installation? If so, what is the appropriate remedy?* The grievance in this case was filed when, on April 13, 2012, a Letter Carrier, not on the Overtime Desired List, worked over nine hours. It was alleged in the grievance that other Letter Carriers should have been assigned this work. The Employer claims that the work was properly assigned and there was no violation of the National Agreement. The Union contended that this was a continued and blatant violation of Article 8 and 15 of the Joint Contract Administration Manual. The Union claimed that there was a staggering volume of precedent setting Step B decisions that have been violated. The Union contended that the Service at this installation is continually forcing non-overtime desired list Letter Carriers into an overtime status when Letter Carriers on the Overtime Desired List were available to do that work. The Union identified in the record 54 precedent setting Step B decision and 32 pre-arbitration decisions which found that the Employer has violated Article 8. The Union points out that a Window of Operation does not exist at the Lake Charles installation. The Union requests, first, a final cease and desist order be issued. Second, the Union asks that all Carriers not on the ODL that were forced to work overtime on the days in question shall be granted administrative leave. Next, the Union requested that all Carriers on the ODL that were available to do the work that non - ODL Carriers were forced to work shall be paid that equivalent at the overtime rate. The Union asked that some eleven (11) Letter Carriers be awarded $1000 for Management's non-compliance and repeated and blatant violations of Article 8, 15 and M-01517. Lastly, the Union requested that Management be ordered to abide by Article 8.5.G and maximize those Letter Carriers on the ODL to the full 12 hours before requiring Letter Carriers not on the ODL to work one second of overtime. Additionally, the Union also requested that the Service be ordered to cease and desist from implementing its Window of Operation at the Lake Charles installation.

The Employer insisted that there is no violation of the parties' Agreement. The Agency claimed that this case was similar in facts to a previous case that was already denied by another arbitrator. The Employer claims that the Union's case

lacks facts, particularly a showing of who was available to work the overtime. The Employer says that a Part Time Flexible Employee worked the overtime and the language relied upon by the Union does not apply to Part Time Flexible Employees. The Employer says that the grievance should be denied in its entirety.

Arbitrator Roberts finds that this case was unlike a previous case, *G06N-4G-C*, in which Arbitrator Patrick Halter denied the grievance because the Union did not present persuasive evidence as to which carriers were on the OTDL or not on the OTDL, but argued only from the personal recollection of the Local President. The Union sought to establish the alleged violations without first-hand information from any of the carriers. Rather, Arbitrator Roberts found that in his case the Step A Team found that the undisputed facts showed that there were thirteen (13) Letter Carriers on the Overtime Desired List during quarter 2 of the year 2012 and five on the Work Assignment list. It listed the names of the specific Letter Carriers in the respective groups. At Step 3, Management said that: *The relevant facts in this case are not in substantial dispute. There is no dispute that carriers not on the overtime desired list were scheduled to carry mail on overtime on the day in the case file at the Lake Charles Main Office.* Arbitrator Roberts was not persuaded by Management's contention that the overtime assignment that day was worked by a Part Time Flexible Employee, so the Union's argument in this instance becomes moot. Instead, Arbitrator Roberts said that he was of the considered opinion that this was a new argument not presented by the Employer until the arbitration hearing. Moreover, the employee in question was not identified in the case file as being a PTF on the date in question. Furthermore, Arbitrator Roberts found that although the crux of the Employer defense was that of a Window of Operation, he could find no other evidence in the case file or witness testimony that would indicate, or even suggest, the presence of any type of Window of Operation in existence at this Lake Charles facility. And the record clearly shows the supposed WOO was often and regularly violated. There was no evidence in the case file that would indicate or even suggest that such a Policy was ever in place at the Lake Charles facility. The mere claim of the existence of a Window of Operation is simply not enough to qualify as a defense. The pre-requisite to a WOO defense is either documented proof of its existence or, credible testimony indicating that everyone at the facility was aware of its existence. And in addition to that would be a requisite sampling of time records to show a consistent compliance. None of that occurred in this case.

Arbitrator Roberts was convinced that there was clearly an Article 8 overtime assignment violation as alleged by the Union in this matter. He was further convinced by the case file that this has been an ongoing issue at this facility.

With that reasoning, Arbitrator Roberts granted the grievance. He said that the violation was clear. He granted the Union's requested remedy, only reducing Item 5 from $1000 to $500. The remedy granted by Arbitrator Roberts was:

1. *Management in the Lake Charles Installation must cease and desist from future violations of Article 8, Section 5 of the National Agreement.*

Otherwise an escalated monetary award may be awarded for future violations.

2. *The following Letter Carrier shall each be paid a lump sum payment equivalent to 8 hours at the overtime rate:*

   U. Primeaux - $469.00

3. *The following Non-ODL Letter Carriers shall be paid 100% of their base pay or granted compensatory time off in the form of administrative leave whichever is most acceptable to the employee.*

   U. Primeaux – 9.38

4. *The following carriers on the 10/12 OTDL shall be paid the following lump-sum payment*

   D. Prudhomme - $37 J. Ayo - $37 J. Simon - $37 P.Alexis - $37
   C. McGee-$37 M. Thierry - $37 G. David -$37 L. Wimberly - $37
   J. Gatewood - $37 G. Thierry - $37

5. *The following carriers shall be awarded $500.00 (reduced from the requested $1000) each for management's non-compliance and repeated and blatant violations of Article 8, 15 and M-01517.*

   U. Primeaux - D. Prudhomme – J. Ayo – J. Simon – P. Alexis
   C. McGee – M. Thierry – G. David – L. Wimberly – J. Gatewood
   G. Thierry

Arbitrator Roberts decided a second related case, *G06N-4G-C 12184648, Class Action, Lake Charles, LA.*, on March 29, 2014. Again, the issue was: *Did Management violate Article 8 of the National Agreement, or prior Step B Decisions, or M-01517 when a Non-ODL Carrier was mandated to work overtime prior to fully utilizing available ODL Carriers at the Lake Charles installation? If so, what is the appropriate remedy?* The grievance in this case was filed when, on Saturday, April 14, 2012, a Letter Carrier, not on the Overtime Desired List, worked over eight hours. At that time, the ODL was not exhausted. The Union argued that the evidence will show that Management has been put on notice 54 times through past B-Team Decisions and numerous pre-arbitration settlements to stop violating Articles 8 and 15. It is explained by the Union that the evidence in this case will show that on April 14, 2012, a non-Overtime Desired List Letter Carrier worked 8.80 hours on his non-scheduled day. The evidence will also show that Management left one Carrier on the ODL stay at home on that same day. The Union claims that Management failed to maximize the ODL before using the non-ODL Letter Carrier. The case file shows that on April 14, ODL Carriers could have worked an additional 23 hours before their 12

hour limit was maximized, easily covering the 8.80 hours the non- ODL Carrier was forced to work. The clock rings in the case file will also show that Carriers regularly worked past Management's alleged Window of Operation. As a remedy, the Union asks that the award in the case discussed above, *G06N-4G-C 12184644* be mirrored. The Union asks that a cease and desist order be issued. Additionally, the Union asks that a group of nine (9) Carriers on the 10/12 hour ODL be paid a lump sum of $50 each to each individual mentioned. Additionally, the Union requests that a sum of $500 each be awarded to ten (10) Carriers specifically due to Management's alleged non-compliance and the repeated blatant violations of Article 8, 15 and M-01517.

The Employer maintains that there is no violation of the Agreement. It was their intent to cover the route in question with 8.80 units of time. Management insists non-ODL carriers were scheduled because there were five carriers with nonscheduled days off on that particular day. Three of the ODL carriers were already on Annual Leave. The service said that if an employee is on Annual Leave, that employee probably does not want to come in the next day to work. The Agency believes this is the way it has always been done and no dispute exists about that. It is the position of Management that if no one else is available on the ODL, a non-ODL Letter Carrier may be scheduled. Management says that the other Letter Carrier available on the ODL had requested to be off that day. A Supervisor granted that request. Management argued that a judgment call was made by the Employer and the remedy requested by the Union is totally inappropriate.

Arbitrator Roberts says that he decided an almost identical case by and between the same parties, in which the incident occurred the day before this case (see above). Similar to the previous case, part of the Employer argument included a Window of Operation. However, there was no evidence on this record to indicate that any form of Window of Operation was in place at this Lake Charles Facility. There were no clock rings over any convincing period of time to establish its existence. The arbitrator was convinced that there was clearly an Article 8 overtime assignment violation, as alleged by the Union. He was convinced by the case file that this has been an ongoing issue at this facility. The scheduling supervisor testified that a majority of the people on the ODL were not available because they had leave either the day before or the day after, so he couldn't use them. The supervisor only assumed that they were not available. There was no proof indicated that they were actually contacted and provided the opportunity to work on that Saturday. Besides, the language of Article 8.5G provides that *"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."* The language is clear.

Furthermore, based on the frequency of such violations at this facility, the supervisor should have been well aware of this language. The language offers a specific procedure for the administration of overtime opportunities. That specific procedure was clearly not followed in this case. Once the Employer determines that

overtime is available, a certain sequence must first occur prior to any non-ODL carrier being scheduled. That didn't happen.

With that reasoning, Arbitrator Roberts granted the grievance. A violation was clear. There was no reason provided by the Employer that would allow them to circumvent the language of Article 8.5. Arbitrator Roberts granted the Union's requested remedy:

1. *That Management in the Lake Charles Installation again be issued instructions to cease and desist from future violations of Article 8, Section 5 of the National Agreement.*

2. *That Carrier E. Joubert be granted compensatory time off in the form of administrative leave for a period of 8.80 hours. There will be no additional pay since he was already paid for his time.*

3. *That the following carriers on the 10/12 OTDL be paid the following lump-sum payment for lost overtime:*

   D. Prudhomme - $50 J. Ayo- $50 J. Simon-$50 P. Alexsis - $50
   C. McGee - $50 M. Thierry - $50 L. Wimberly - $50
   J. Gatewood - $50 G. Thierry - $50

4. *That the following carriers each be awarded a $500.00 punitive payment for management's non-compliance and repeated and blatant violations of Article 8, 15 and M-01517*

   D. Prudhomme – J. Ayo – J. Simon – E. Joubert – P. Alexis – C. McGee – M. Thierry – L. Wimberly – J. Gatewood - G, Thierry

The Union further cited Lake Charles case G11N-4G-C 13169944 decided by this arbitrator on October 31, 2014. We found the following: *The grievance is sustained. We find that the Union has borne its burden of proof to show that Management violated Article 8 of the National Agreement when Management mandated Letter Carriers not on the WA/ODL to work overtime on routes off their assignments during the time period of March 16, 2013 to March 22, 2013, prior to utilizing available ODL Letter Carriers/CCA Letter Carriers We further find that Management violated Article 15 when it failed to comply with previous Step B Decisions. We take no position on the question of whether or not Management violated Article 5 (Past Practice) of the National Agreement when it attempted to establish a Window of Operation, as this issue was not addressed in this form by either party in this grievance.*

We grant the remedy framed by the Union in this grievance. The remedy is not unjust enrichment or punitive, but is fully supported by the evidence in this record. All the identified carriers here suffered harm in having their contractual rights repeatedly violated, as explained in the Discussion at the end of this award.

1. *Management in the Lake Charles installation is hereby mandated to cease and desist from future violations of Article 8, Section 5 of the National Agreement.*

2. *The following Letter Carriers each be paid a lump sum payment equivalent to 8 hours at the overtime rate and be paid 100% of their base pay or granted compensatory time off in the form of administrative leave for the hours listed below:*

   PRIMEAUX – 15.92 OREILLY – 5.70 HANDY – 4.45 JOUBERT – 6.87
   FRYE – 5.91 WEST – 1.70 WALKER G. – 11.24 WYATT – 11.42
   WIMBERLY – 7.11 AYO – 4.15 MORVANT – 3.13 MARSHALL – 2.34
   STEWARD – 5.54 GREEN – 4.47 DEVILLE – 6.59

3. *The following carriers on the 10/12 OTDL be paid the following Lump-sum payment of $250.*

   DURBIN – DAVID – BROUSSARD – PRUDHOMME – MARTIN – SIMON – LEWIS D – BABINEAUX – ACKEL – ALEXIS – THIERRY M

4. *The following carriers be awarded $500.00 each for management's non-compliance and repeated and blatant violations of Article 8, 15 and M-01527.*

   PRIMEAUX – OREILLY – HANDY – JOUBERT – FRYE – WEST – WALKER G. WYATT – WIMBERLY – AYO – MORVANT – MARSHALL – STEWARD – GREEN – DEVILLE – DURBIN – DAVID – BROUSSARD – PRUDHOMME – MARTIN – SIMON – LEWIS D – BABINEAUX – ACKEL – ALEXIS – THIERRY M

In this award, we clearly explained our reasoning: *We must find that the Union has borne its burden of proof in this case. It is clear that this is not a new issue in Lake Charles, but that the Lake Charles installation has been violating Article 8.5G repeatedly over a long period of time and has been issued many Step B decisions, pre-arbitration settlements, and arbitration awards that begin with the directive to cease and desist these violations. Yet, management does not seem to take these directives seriously. While management surely has operational responsibilities to timely process and deliver the mail, it also has operational responsibilities to abide by the clear language in the National Agreement and to abide by Step B, pre-arbitration settlements and arbitration awards. This responsibility is not voluntary, but mandatory. In assigning work, 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.* Moreover *an employee on the ODL does not have the option of accepting or refusing work over eight hours on a nonscheduled day, work over six days in a service week or overtime on more than four of the five scheduled days in a service week; instead an employee on the ODL must be required to work up to 12 hours in a*

day and 60 hours in a week before management may require employees not on the ODL to work overtime. This language is clear. It provides contractual rights that adhere both to ODL employees and non-ODL employees. The ODL employees have the right to work the available overtime hours. Just as importantly, the non-ODL employees have the right not to work overtime hours not on their own route unless all ODL employees have worked twelve (12) hours in a day or sixty (60) hours in a service week. This means that when management assigns overtime work, it must pay attention, first and foremost, to meeting this requirement. It must meet this requirement even when it would like to do otherwise for convenience, for economic savings, or for any other reason. The language removes from management the ability to do otherwise. It must meet its contractual responsibilities. It seems like management in Lake Charles has determined that when it is not convenient to meet the responsibilities of this language, it may fail to do so, and just pay the ODL carriers for the missed work opportunities up to twelve (12) hours in a day or sixty (60) hours in a service week. It reasons that the non-ODL carriers who have been forced to work are getting paid for that work at the overtime rate, and hence are not harmed. However, what this fails to consider is that all the carriers are harmed by management's failure to honor its contractual obligation. Even if they are paid for the overtime they were not assigned to work but should have been, the ODL carriers are additionally harmed by management failing to honor its contractual responsibilities, which erodes the trust of the carriers in their management. The non-ODL carriers who are forced to work unwanted and unanticipated overtime are harmed by losing the use of that time however they had planned to use it, despite the fact that they are paid for their overtime. All the carriers in the bargaining unit, even those not directly impacted on a particular day, are harmed by the erosion of contractual rights. The collective bargaining relationship is harmed. The Union is harmed by having to bear the expense of processing grievances and potential arbitration cases over and over again on the same issue. This harm is clear and evident. It is particularly evident in repeated violations over a long period of time over the same issue and repeated failure to abide by settlements and awards.

We have reviewed the issues in this case in such detail because the question of remedy is not trivial. This file was 823 pages. The arbitration cases described in detail were recent and from Lake Charles. The 54 Step B decisions and pre-arbitration settlements were persuasive. The fact that the problem persists and the Postal Service excuses it away with a shrug that failures will occur and cease and desist is not always possible underscores the seriousness of this continued contractual violation.

In this case, the Union has provided persuasive data to support its allegations. There has been no challenge by the Postal Service of the carriers identified as on the Overtime Desired List. There has been no challenge by the Postal Service of the carriers identified as not on the Overtime Desired List but scheduled to work overtime off their own routes on the dates of this grievance, the week of March 16 – March 22, 2013. There is no challenge by the Postal Service of the hours of overtime worked by the ODL carriers that week or by the non-ODL carriers that week.

The Union has certainly made its prima facie showing that, in violation of Article 8.5 G, carriers not on the ODL were forced to work overtime not on their own routes while carriers on the ODL had not worked twelve (12) hours in a day or sixty (60) hours in a week, and still had time available to meet the overtime needs. The burden then shifted to the Postal Service to demonstrate that the carriers identified on the ODL who were not maxed out were not available to work the hours, as the Postal Service has hinted. It was incumbent upon the Postal Service to support this case. It was not the Union's burden to show the carriers were available, but rather it was the Postal Service's burden to show the carriers were not available. All of the carriers named by the Union worked during the week in question, so they were not on any long-term leave. While the Postal Service complains that the Union has not proven that they were available, the Postal Service has not shown that they were not available if that was the case. No such defense is offered, except the allegation that it was the Union's burden. The Union bore its burden to identify the carriers and show the hours they still had available. If the Postal Service wanted to show that they were not, in fact, available, it needed to do so. It made no such showing.

Therefore, in view of the persuasiveness of this record, we sustain this grievance in its entirety.

The Union further cites the most recent Step B decision on this issue in Lake Charles in case G11N-4G-C 16323760, with an Incident Date of 04/09/2016 and a Step B Decision Date of 06/08/2016. The issue was: *Did management violate Articles 5, 8, 15, 19, and/or 41 of the National Agreement, M-01517, numerous Formal A, Step B, Pre-Arbitration, and Formal Arbitration decisions/resolutions/settlements/ awards when they worked non ODL carriers in off assignment overtime prior to maximizing the available auxiliary assistance? If so what is the appropriate remedy?* The Step B decision by the San Francisco District Step B Team, said: *The Dispute Resolution Team (DRT) has decided to resolve this grievance. A violation of the National Agreement was established by the case file when management worked non ODL carriers in off assignment overtime prior to maximizing the available auxiliary assistance. They are once again instructed to cease and desist from said violations. As remedy they shall pay the non ODL's 100% of the straight time rate for all hours improperly mandated and shall pay the available auxiliary assistance (ODL's and CCA's) at the appropriate rate for the same number of hours. Any carrier who has a claim, either as an improperly mandated carrier or as auxiliary assistance who was available and should have done the work, shall receive an additional one-time lump sum of $900. We have calculated all payments as lump sums using the hourly rate of $28.78 and created a spreadsheet showing the total payout for each carrier. The Louisiana DRT shall make the payments in GATS and attach the payout history to this decision prior to distribution. No other remedy is provided at this time.*

The Step B Team explains its decision: *The evidence shows this to be a repetitive issue in the Lake Charles installation with a long and detailed history in the grievance procedure. The most recent arbitration decision by Arbitrator Wolitz is a 32 page decision that draws on the entire history of this issue including Formal A, Pre-*

Arbitration, and other Formal Arbitration decisions to provide a detailed and comprehensive reading of this history as well as a thorough explanation of the contractual issues involved. Given the voluminous history the parties have on this issue we find there is nothing more we can add to the record that hasn't already been said. This issue has led to substantial liability for the service and yet it continues to this day largely unabated. In her decision Arbitrator Wolitz notes there are no fewer than 54 Step B decisions on this issue for the Lake Charles Installation and she cited payouts in excess of $260,000. The evidence shows that since that decision there has been at least that much and likely more paid out to remedy Article 8 violations.

The Union argued in it Opening Statement in the instant case that clearly Management does not grasp the meaning of *cease and desist.* If they don't know how to schedule, they should get someone who does. Management should be educating people. There is nothing that the Union can add to the record. Precedent has been set for a lump sum to the affected carriers of $900. In the case before us here, the Postal Service had many hours available from ODL carriers, but they still violated the provisions. The lump sum payments started at $25 and are now up to $900 because Management continues to disregard the *cease and desist* orders.

In its Closing Statement, the Union said that the lump sum remedy did not start at $1,000. It was $300 in 2008 to each non-ODL and OWA carrier required to work overtime in violation of dozens of *cease and desist* orders. The remedy was agreed to by the DRT in an attempt to ensure contract compliance. A monetary award of $325 was held in abeyance for 18 carriers granted administrative leave. The payment was $400 in 2010. The payment was $500 in 2014. The payment was $900 in 2016. The Union will keep demanding escalating payments if the violation doesn't stop. The Postal Service can stop these payments by abiding by the *cease and desist* orders. It is not the Union's fault that the Postal Service continues to violate its *cease and desist* obligation. It is management's responsibility to schedule. The Union polices the contract. The Union wants only for management to cease and desist its violation of the contractual provisions. Yet, here we are gain. In this case, the violation is blatant. There were 170 hours left over at the end of the week. The carriers on the overtime desired list are supposed to work 12 hours. The lump sum remedy is now $900. The Union will not go backwards. This violation is blatant. The arbitrator should grant the Union's remedy in its entirety (see Joint Exhibit 2, pages 28 and 29).

Union's Requested Remedy (Block 19 of PS Form 8190) pages 28 and 29, Joint Exhibit 2.

That Management in the Lake Charles Installation be issued instructions to cease and desist from future violations of Article 8, Section 5 of the National Agreement.

That Management in the Lake Charles Installation be issued instructions to cease and desist from future violations of Article 15 of the National Agreement and adhere to Step B Team, Pre-Arbitrations and Arbitrations settlements.

That Management in the Lake Charles Installation be issued instructions to cease and desist from future violations of M-01517 and adhere to Step B Team, Pre-Arbitrations and Arbitrations settlements.

That the following Letter Carriers each be paid a lump sum payment equivalent to 8 hours at the overtime rate and or be paid 100% of their base pay/granted compensatory time off in the form of administrative leave or whatever remedy the Step B Team or an Arbitrator deems appropriate:

BROWN 1.77, RUBIN J 2.98, GAUTHIER 2.92, THOMAS. K 1.56, PRIMEAUX 4.08, DOWERS .95, MARTIN 1.35, MCNEAL 3.98, JOSEPH 3.46, JOUBERT .92, FREY 1.65, STEWARD 2.87, MCGEE 2.50, AYO 1.50, CAHEE.C 1.65, MATTEW. S 1.42, ACKEL 1.30

That the following Carriers on the 10/12 OTDL be paid up to 12.50 hours per day for service week 4/16 to 4/22/2016 or whatever remedy the Step B Team or an Arbitrator deems appropriate:

THIERRY, DAVID, ALEXIS, LEWIS, GARRARD, WASHINGTON K.E., THOMAS, B, BROUSSARD, GONZALEZ, VENTRESS, SOTO AND WIMBERLY

That the following CCA's be paid up to 12 hours per day for service week 4/16 to 4/22/2016 or whatever remedy the Step B Team or an Arbitrator deems appropriate:

CAHEE B, REMOND, COLEMAN, COLLINS, REYNAUD, CONLEY

That the following Carriers including CCA's be awarded $1000.00 each for management's non-compliance and repeated blatant violations of Article 8, 15 and M-01517.

BROWN, RUBIN J, GAUTHIER, THOMAS. K, PRIMEAUX, DOWERS, MARTIN, MCNEAL, JOSEPH, JOUBERT, FRY, STEWARD, MCGEE, AYO, CAHEE.C, MATTEW.S, ACKEL, THIERRY, DAVID, ALEXIS, LEWIS, GARRARD, WASHINGTON K.E, THOMAS, B, BROUSSARD, GONZALEZ, VENTRESS, SOTO, WIMBERLY, CAHEE B, REMOND, COLEMAN, COLLINS, REYNAUD, CONLEY

POSITION OF THE POSTAL SERVICE:

Management outlined its position at Formal A. Management contends that the union and management both agree there was a violation of Article 8 and they also agree based on the union's calculations in their contentions on the amount of time worked by the Non-ODL and work assignment carrier's off their assignments. Both parties also agree there were no violations on the dates of April 18, 19 and 20, 2016. Clock rings reflect Non-ODL and work assignment carriers worked overtime off their assignments on April 16 and 21, 2016 in the amount of 36.85 hours.

Management at Formal A reviewed all evidence and documentation presented and the record correctly reflects that the Non-ODL and work assignment carriers did work overtime off their assigned routes. Management also agreed to pay the ODL, Non- ODL and work assignment carriers for the amount of time worked by the Non-ODL and work assignment carriers off their route.

Management agreed to pay the OTDL carriers at the overtime rate as outlined in the National Agreement for the time they were available to work. Management also agreed to pay Non-ODL and work assignment carriers an additional 50% at their base straight time salary rate for the time worked off their assignments. Management contends that the union refused this offer because management did not agree with the additional punitive remedy requested by the union in the amount of $1,000.00 for each city carrier in the Lake Charles Main Office which would equal $36,000 ($1,000 per carrier for 36 carriers including CCA's).

Management contends that the additional remedy of $1,000.00 per carrier is punitive, unwarranted and unjustified as the union has failed to provide evidence to support the request of the punitive remedies. Additionally, the union has failed to prove that management blatantly or purposely violated the contract or that the management's actions were egregious or deliberate.

Management contends the fact that there are employees on limited duty and extended leave has an impact on management's ability to ensure that employees who do not desire to work overtime is granted. Management contends that there were no additional hours the OTDL could have worked because of the window of operation and/or truck dispatch. Management contends that Non-ODL carriers as well as ODL carriers were required to work simultaneously and that the union has provided no evidence or documentation that Non-ODL carriers indicated their inability to work overtime or harm.

Management contends that the hours available during the week of April 16-22, 2016 were 36.85 hours and if paid according to the National Agreement it equates to $1429.78 to be split among the ODL carriers who were available that week. The Non-ODL and work assignment carriers have been compensated at an additional 50% of their base straight time rate which equates to 476.47 to be split among the carriers who worked overtime off their assignments. Management contends that the actual violation in this instant grievance equates to $1906.25 and the union is seeking an additional $36,000.

The Postal Service argued in its Opening Statement that the Union alleges three issues:

Issue 1: Did Management violate Article 8 when Non-ODL and WA carriers worked overtime off their assignments on April 16, 2016, April 21, 2016 and on April 22, 2016?

Issue 2: Did Management violate Article 15 or Article 41 of the National Agreement or Step 4 M-01517 when it failed to comply with previous Step B Decisions?

Issue 3: Did Management violate Article 5 (Past Practice) of the National Agreement when it attempted to establish a "Window of Operation"?

The Service stipulates as it did in Formal Step A of the grievance process there was a violation of Article 8. The grievance is still before the arbitrator today because the parties at the prior grievance levels could not agree to a resolution. The Service agrees, there was a violation of Article 8 on the dates stated above. Management does not agree that the remedy requested by the Union is in accordance with the National Agreement or JCAM.

This is a contract case. Even though management agrees there was a violation, the requested remedy would award punitive pay. There have been violations, but the Service will show that such violations have decreased over time. There are less Step B Decision than in the past. Lake Charles Management staff has made improvements in their application of Article 8. Labor Relations has assisted and provided training to existing and new supervisors.

The contract, MOU in the JCAM (pages 8-26 through 8-27) specifically states: *In cases where management violates the letter carrier paragraph by failing to utilize an available letter carrier on the ODL to provide auxiliary assistance, the letter carrier on the ODL will receive as a remedy compensation for the lost work opportunity at the overtime rate. There is normally no remedy for a carrier improperly required to work overtime on his/her own route. However, on a one-time, non-precedential basis, the Postal Service will pay $7.00 for each hour of overtime worked to each carrier who has a timely grievance pending at Step 2 or 3 as of the date of this agreement.*

The case file will reflect the total number of hours violated amount to approximately $1,906.25, not $36,000.00 as requested by the Union. The Service argues that there are no provisions or language in the National Agreement for paying punitive awards. There is no language in the contract for paying City Carrier Assistants (CCAs). The Service argues that the parties in the negotiated contract made provisions for Article 8 violations. The Union's requested remedy is not one.

The contractual language likewise states that the Union must provide evidence to support punitive damages. The Service argues that there is no evidence to show punitive damages were agreed to in the contract or in Article 8. The contract language calls for making an employee whole; that is, to place the employee where he/she would have been had a violation not occurred.

Continuous granting of punitive awards results in a failure to resolve any Article 8 grievance at a level lower than Step B, pre-arbitration, or arbitration. Management argues that the Lake Charles Management Staff are not deliberately or egregiously

violating the contract. Contrary to the Union's belief, Management does care and are concerned with violations of any article in the contract or JCAM. The Lake Charles Management Staff make daily efforts to schedule employees to cover all routes for delivery. Likewise, every effort is made to abide by Article 8. However, on a day- to-day basis, there are call-ins and unforeseen circumstances (accidents, vehicle breakdown, illness, etc.). Even so, Management is responsible for ensuring that all mail is delivered timely and safely. There is no evidence that Management is deliberately violating the contract. There are no statements in this case file from any carrier that believes this. The Union will not be able to show any complaints filed by any letter carrier. The grievances, Step B Decisions, Pre-Arbitration Settlements, and arbitration awards are all during a specific time frame. The awards the Union will present today were based on disputes that occurred almost consecutively and during the same time frame as this case in 2013. The Step B Decisions are also from prior years and there have been no such decisions or settlements from the Step B Team or otherwise that would line up with the Union's requested remedy or the awards. There have been awards from other arbitrators that have ruled there was no violation and in a recent case the arbitrator remanded the case to the parties for a resolution of the applicable remedy *"in view of particular facts and circumstances"* The Service will show that it made every effort to abide by the contract, specifically Article 8, when determining the need for overtime and the assigning of such overtime. Management has made great strides in the efforts to stay in alignment with the National Agreement, specifically Article 8 and 15.

The Union states in its requested remedy that all ODL carriers should be paid these amounts without any regard to availability. The Union is not bargaining in good faith or being cooperative. The Union has provided no evidence or documentation to support continually requesting punitive damage awards. Based on the particular circumstances presented today, the Service requests the remedy awarded is in accordance with the National Agreement and JCAM. The Service requests the actual violation award of $1,906.25

In it Closing Statement, the Postal Service repeated these arguments. It added that the Postal Service does care. The Postal Service has done extensive training in Lake Charles based on the language in Article 8. Overtime grievances have decreased. Things have changed in Lake Charles. There have been very few cases since the cases discussed here. However, the Postal Service can't settle these grievances with the Union because the Union insists on $1,000 payments. The Union is not willing to accept anything else in remedy. The Union is not bargaining in good faith. The Postal Service's failures are not egregious in this case. There are different situations every day. This doesn't matter to the Union. Once there is a violation, the union wants $1,000. Staffing in Lake Charles has changed. There is not the same atmosphere. The remedy is wrong. The correct thing to do is to change that remedy. The Service requests a remedy of $1906.25. The Union is asking for a remedy that is 18.8 times the amount of the violation. The Union's requested remedy is not contained in the language of the contract. Management is not willfully and maliciously violating the contract. Management requests a remedy of compensatory damages where there is

a violation. The remedy should be limited to actual damages, to make whole the harm. The damages should correspond to the harm suffered. Compensatory damages may vary for each employee. An employee who has suffered no harm should receive no monetary award. The Union has failed to provide the specific loss to each employee. There is nothing in the contract that provides for this kind of a remedy. Management has stopped violating the contract, but violations will still occur. The remedy must have its basis in the collective bargaining agreement. Article 8 is not violated on purpose. Management is making sure all mail is delivered safely. Management uses a scheduling program based on Article 8. Things have improved in Lake Charles. There is no provision in the collective bargaining agreement for punitive awards. These violations are not blatant. There is no gross neglect or willfulness. The Union has not provided any proof that management's actions are arbitrary, capricious, or in bad faith. The Union controls the grievance. The Union has no basis to continually request punitive awards. The Postal Service concluded that violations are going to happen. If management violates Article 8, there should be a reasonable remedy and they should be able to resolve Article 8 grievances at the lower level.

DISCUSSION:

Taking full account of the history in Lake Charles of Article 8 violations, DRT cease and desist decisions, pre-arbitration decisions, and arbitration decisions discussed above, and the cease and desist orders issued by DRT teams, settlement agreements, and arbitrators, we find the continued violation of the clear provisions of Article 8, Section 5 by Lake Charles management egregious, knowing, deliberate and inexplicable. The decisions by DRT teams, pre-arbitration settlement negotiators and arbitrators are made to be read, studied, understood and complied with. Yet, in the case before us, Lake Charles management has once again acted as though those decisions had never been rendered. This is a shocking violation not only of Article 8 and Article 15, but of management's clear responsibilities under the National Agreement. In this case, management acknowledges the clear violation, yet seems to shrug it off. Management's position seems to be that its responsibility is to get the mail delivered safely, which surely is correct, and not to pay serious attention to contractual constraints on scheduling. Management is willing to pay the make- whole penalties attached to proceeding this way, but not any penalties for repeated contractual violations, violations of cease and desist orders, and violations of the rights of the letter carriers under the National Agreement. In doing so, management violates its responsibilities to live up to the bargains it makes in collective bargaining and violates its obligations to the workers under the National Agreement. It weakens the foundation and meaning of a collective bargaining relationship, with mutual rights and responsibilities, among the most important of which is living up to its commitments and respecting its agreements, settlements, and arbitration awards.

We are not comfortable with ordering compensatory payments to workers of $1,000 each for management's continued violation of the same provisions and of

all the agreements to cease and desist this violation. However, it is management that has the power to prevent such an award. Management can prevent such an award simply by living up to its responsibilities under the collective bargaining agreement. All it has to do is to prioritize scheduling according to the requirements of Article 8, Section 5, regardless of any difficulty or inconvenience that might entail. That is a responsibility equal to the responsibility of getting the mail delivered safely and timely. The Union has few means with which to force management to adhere to its responsibilities, responsibilities to which it has repeatedly agreed. The Union's remedy is raising the cost of failing to comply to an amount that will be noticed, so that the failure to comply with Article 8, Section 5 and Article 15 will cease. It is an amount that management cannot responsibly shrug off. It is the only weapon the Union has to enforce its rights under the collective bargaining agreement. Amounts from $300 to $900 have failed to get management's attention and compliance. Orders to cease and desist and warnings of escalating remedies have also failed to get management's attention and compliance. The $1,000 is not meant to be punitive, but to be compensatory and to achieve a cessation of the repeated failure to comply. It is an extraordinary remedy for extraordinary circumstances, egregious, repeated violations of a clear provision and repeated cease and desist agreements and orders. Management can put an end to escalating remedies by complying with its obligations under to National Agreement.

For these reasons, and because of the history of non-compliance in Lake Charles, we award the remedy sought by the Union, as follows:

Management in the Lake Charles Installation shall cease and desist from future violations of Article 8, Section 5 of the National Agreement.

Management in the Lake Charles Installation shall cease and desist from future violations of Article 15 of the National Agreement and adhere to Step B Team, Pre-Arbitrations and Arbitrations settlements.

Management in the Lake Charles Installation shall cease and desist from future violations of M-01517 and adhere to Step B Team, Pre-Arbitrations and Arbitrations settlements.

That the following Letter Carriers shall each be paid a lump sum payment equivalent to 8 hours at the overtime rate for the hours indicated below:

BROWN 1.77, RUBIN J 2.98, GAUTHIER 2.92, THOMAS. K 1.56, PRIMEAUX 4.08, DOWERS .95, MARTIN 1.35, MCNEAL 3.98, JOSEPH 3.46, JOUBERT .92, FREY 1.65, STEWARD 2.87, MCGEE 2.50, AYO 1.50, CAHEE.C 1.65, MATTEW. S 1.41, ACKEL 1.30

That the following Carriers on the 10/12 OTDL be paid up to 12.50 hours per day for service week 4/16 to 4/22/2016 :

THIERRY, DAVID, ALEXIS, LEWIS, GARRARD, WASHINGTON K.E., THOMAS, B, BROUSSARD, GONZALEZ, VENTRESS, SOTO AND WIMBERLY

That the following CCA's be paid up to 12 hours per day for service week 4/16 to 4/22/2016 .

CAHEE B, REMOND, COLEMAN, COLLINS, REYNAUD, CONLEY

That the following Carriers including CCA's be awarded $1000.00 each for management's non-compliance and repeated blatant violations of Article 8, 15 and M-01517.

BROWN, RUBIN J, GAUTHIER, THOMAS. K, PRIMEAUX, DOWERS, MARTIN, MCNEAL, JOSEPH, JOUBERT, FRY, STEWARD, MCGEE, AYO, CAHEE.C, MATTEW.S, ACKEL, THIERRY, DAVID, ALEXIS, LEWIS, GARRARD, WASHINGTON K.E, THOMAS, B, BROUSSARD, GONZALEZ, VENTRESS, SOTO, WIMBERLY, CAHEE B, REMOND, COLEMAN, COLLINS, REYNAUD, CONLEY.