C-33426

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NALC REGION 8

Regular Arbitration Panel

IN THE MATTER OF THE ARBITRATION

BETWEEN

UNITED STATES POSTAL SERVICE

AND

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

GRIEVANT: Class Action

POST OFFICE: Lake Charles, Louisiana

CASE NO.: G11N-4G-C 17525572

DRT NO.: 08-408563

UNION NO.: MO91406102

BEFORE: CHRISTOPHER E. MILES, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service:	Alan Powell, Manager, Labor Relations
For the Union:	Cliff Stoddard, NALC Arbitration Advocate
Place of Hearing:	Lake Charles, Louisiana
Date of Hearing:	April 17, 2018
Date Record Closed:	May 29, 2018
AWARD:	
Date of Award:	July 12, 2018
Panel:	Region 8 / Louisiana

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JUL 31 2018
VICE PRESIDENT'S OFFICE
NALC HEADQUARTERS

AWARD SUMMARY

After review and consideration of the particular circumstances surrounding this case, the class action grievance considered herein is sustained. Due to the violations of the Agreement identified above, and in accordance with prior settlements, Step B decisions and Arbitration decisions, the remedy awarded is as follows:

Management at the Lake Charles Installation shall cease and desist from future violations of Article 8, Section 5 of the Agreement and adhere to Step B decisions, pre-arbitration settlements and arbitration decisions concerning the assignment of overtime.

Management at the Lake Charles Installation shall cease and desist from future violations of Article 15 of the Agreement and adhere to Step B decisions, pre-arbitration settlements and arbitration decisions.

Management at the Lake Charles Installation shall cease and desist from future violations of M-01517 and adhere to Step B decisions, pre-arbitration settlements and arbitration decisions.

The following non-OTDL Letter Carriers shall each be paid a lump sum payment equivalent to eight hour at the overtime rate for the hours indicated below:

> **Pike 4.75; Lemelle 3.04; Woolridge 3.61; Gallien 9.79; Alexis 4.73; McGee 2.95; Brooks 2.00; McNeal 9.79; Brock 6.87; Gauthier 5.50; Ventress 5.70; O'Reilly 5.42; Cox 4.37; Steward 2.57; Dowers 4.83; Cormier 4.39; and Joseph O.; 2.30**

The following Letter Carriers, including CCAs, shall be paid $1,000 each, in accordance with the JCAM, page 41-7, as the appropriate compensatory remedy to emphasize the parties' commitment to contract compliance to correct Management's non-compliance and repeated blatant violations of Article 8, Article 15 and M-01517:

> **Pike, Lemelle, Woolridge, Gallien, Alexis, McGee, Brooks, McNeal, Brock, Dowers, Steward, Gauthier, Cormier, Joseph O, Ventress, O'Reilly, Cox, Lewis, Washington K E, Garrard, Soto, David, Wimberly, Stains, Bourgeois, Brousard E, McDuffy, Kelly, Molo, Durall, Joseph A, Cascio, Mejias, and Gumms.**

The remedy for the OTDL Letter Carriers and CCAs is remanded to the parties in order to formulate an appropriate compensatory amount for the number of overtime hours worked by the non-OTDL Carriers (82.71). The parties shall consider the provisions of Article 8, the MOU's concerning Article 8, and the JCAM, the fact that some OTDL Carriers only indicated a desire to work up to 10 hours each day, and the work hour restrictions as discussed in Article 8, the MOU's concerning Article 8, and the JCAM. The Arbitrator shall retain jurisdiction of this case for a period of sixty (60) days from the date of this Award to resolve any issues or questions concerning this portion of the remedy.



Christopher E. Miles, Esquire
Labor Arbitrator

I. BACKGROUND

The instant grievance concerns a class action filed by Branch 914 of the National Association of Letter Carriers (hereinafter referred to as the "Union") at the Main Post Office operated by the United States Postal Service (hereinafter referred to as the "Postal Service") in Lake Charles, Louisiana. It is asserted, inter alia, that Management forced City Carriers, not on the Overtime Desired List (OTDL) to work overtime on routes not assigned to them during the service week of June 10-16, 2017 in violation of Article 8 of the parties' collective bargaining agreement.[1] There were no Informal Step A or Formal Step A meetings for this grievance. At Step B, the Dispute Resolution Team (DRT) agreed to impasse this grievance on September 20, 2017. The issues were set forth as follows:

> 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 assignment list to work overtime on routes not assigned to them during the service week of June 10-16, 2017, when there were 10/12 OTDL Carriers and CCA's available to work up to 12 hours and where prevented from working? If so, what is the appropriate remedy? (sic)
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> 2. Did Management violate Article 15 via 19 of the National Agreement by failing to abide to previous Arbitration, Pre-Arbitration and DRT cease and desist decisions on violating Article 8? If so, what is the appropriate 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 so, what is the appropriate remedy?
>
> 4. Did Management violate Section M-01517 of the National Agreement by failing to abide to previous Arbitrations, Pre-Arbitrations and DRT cease and desist decisions on violating Article 8? If so, what is the appropriate remedy?
>
> 5. Did Management violate Article 5 (past practice) of the National Agreement when they established a window of operation? If so, what is the appropriate remedy?

Thereafter, the undersigned was appointed to hear and decide the issues presented and a hearing was conducted on April 17, 2018, in Lake Charles, Louisiana. At the hearing, the parties were afforded full opportunity to present evidence and testimony, to cross-examine the witnesses, who were sworn, and to make arguments for their positions. The record was held open for the receipt of a post-hearing brief from the Postal Service, which was received on May 29, 2018. Thereupon, the record in this case was closed.

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[1] Collective Bargaining Agreement Between United States Postal Service and National Association of Letter Carriers, AFL-CIO, January 10, 2013 – May 20, 2016 (hereinafter referred to as the "Agreement").

II. RELEVANT PROVISIONS OF THE AGREEMENT

ARTICLE 8
HOURS OF WORK

III. CONTENTIONS OF THE PARTIES

A. Union

The Union contends that Management at the Lake Charles, Louisiana Post Office violated Article 8 of the Agreement when it forced non-OTDL Carriers to work overtime off of their assigned route during the service week of March 25-31, 2017. It emphasizes that there was no Informal Step A or Formal Step A meeting for this grievance and therefore no contentions raised by the Postal Service.

Indeed, the Union submits that the Postal Service stopped scheduling meetings at Formal Step A after the arbitration Award of Arbitrator Louise Wolitz in a case arising at Lake Charles (Case No, G11N-4G-C 16454303, February 14, 20-17). Article 15 of the Agreement requires Management to schedule a date and time for a meeting after receipt of the appeal to Formal Step A. The Union argues that the Postal Service continues to blatantly refuse to comply with Article 15 despite repeated pre-arbitration settlements, Step B settlements and Arbitration Awards ordering the Postal Service to cease and desist from doing so.

The Union asserts that the Agreement requires Management to maximize the OTDL and utilize auxiliary help before mandating non-OTDL Carriers to work overtime off their assigned route. This grievance covers a week of violations by the Postal Service in this regard.

The Union maintains that the Postal Service violated Article 8 during the week in question when it forced Carriers not on the OTDL to work overtime off of their assigned routes, failed to maximize the Carriers on the 10/12 hour OTDL and failed to utilize the CCA's in Lake Charles prior to mandating non-OTDL Carriers to work overtime off their assigned routes.

The Union further argues that the Postal Service continues to violate the M-01517 which requires prompt compliance with arbitration awards and grievance settlements. The Postal Service has failed to abide by prior arbitration decisions and grievance settlements.

Therefore, for all of the above reasons, the Union asks that this grievance be sustained with the remedy requested. It submits that the remedy requested is only for what has already been awarded or settled upon in prior cases and an escalation thereof due to the continuing and ongoing violations.

B. Postal Service

The Postal Service contends that no violation of the Agreement was proven by the Union in this case. It submits that the grievance file fails to substantiate the Union's claims. No conclusive evidence to support the Union's contentions was established.

The Postal Service asserts that the determination of when employees are "needed" is Management's exclusive right. The Union ignores the "when needed" provision of Article 8 and suggests that Management could have worked employees on the OTDL up to 12 hours irrespective of the need. The "need" encompasses the when, the amount of overtime, the place and the employees to perform the work. Once the need for overtime is established, the parties' negotiated procedures are tailored to the need.

With regard to the overtime assignments in this case, the Postal Service maintains that nothing was presented by the Union to indicate that the provisions of Article 8, Section 5 was violated. Clock rings do not establish what the need was on any given day. It argues that there was no evidence presented to prove that a Carrier was "forced" overtime on another route. According to Article 8, Section 5.D (JCAM 8-17), if the OTDL does not provide sufficient qualified full time regulars for required overtime, Management may seek non-OTDL volunteers. There is nothing presented by the Union to show that any non-OTDL Carriers who worked overtime was not a willing volunteer. Thus, the Postal Service believes that the Union has not even established a prima facia case.

With regard to the OTDL Carriers, the Postal Service argues that the Union has also failed to substantiate that their rights per Article 8, Section 5 were violated. Moreover, there is a 10 hour and 12 hour OTDL, so the Union is being disingenuous to claim that all Carriers on the OTDL are entitled to 12.5 hours.

The language of the JCAM limits employees to 12 hours a day and 60 hours a week. In addition, the Postal Service points out that the OTDL list for Lake Charles indicates that five of the Carriers on the list requested not to work beyond 10 hours in a day or 56 hours in a week. Therefore, the Union's request to compensate those Carriers for overtime up to 12.5 hours is wholly unjustified and inappropriate. Furthermore, the clock rings of Carrier Stains reveal that she was working in a temporary supervisor assignment and as the result is not permitted to work overtime as a Carrier. In addition, the other Carriers who were on the 10 hour OTD list worked at or slightly over 10 hours on each of the days in question and the Union's claim that they were denied the opportunity to work up to 12 hours is contrary to their overtime request.

With regard to the CCAs, the Postal Service submits that the Union has not established any proof of violation of the Agreement. CCAs are not entitled to any guarantees in the

Agreement regarding rights to overtime. The JCAM provides that Management must seek to utilize auxiliary assistance before requiring a non-OTDL employee to work overtime and that would include CCAs. However, Management may also seek non-OTDL volunteers. Furthermore, if CCAs are chosen for overtime instead of non-OTDL Carriers, the CCAs will be assigned the work at the straight time or regular overtime rate. The regular overtime rate is time and one-half. The Union's request to compensate the CCAs up to 12 hours is inappropriate and inconsistent with the Agreement.

With respect to the alleged violations concerning the grievance process, the Postal Service asserts that the Union failed to establish that the grievance was properly appealed to Management at Formal Step A. It emphasizes that in order to file a grievance, a Union Steward must present the grievance to a Supervisor and, therefore, the notation on the grievance that the supervisor "failed to meet" is peculiar. Supervisor Lucretia Jones testified that she is regularly presented with overtime grievances by Union Steward Crystal McGee and she stated that Ms. McGee rarely, if ever, has any documentation, names, dates or other information to establish who was harmed if a contractual violation occurred. Moreover, the Postal Service argues that there is no requirement for Management to set up a meeting with the Steward at Formal Step A. Article 15, Section 2.c. provides that the installation head or designee will meet with the Steward or representative at Formal Step A as expeditiously as possible but no more than seven days following receipt of the Step A grievance form unless a later date is agreed upon by the parties. Consequently, the Postal Service believes that there is no proof that the grievance was properly presented at Informal Step A and no evidence that the installation head or designee refused to meet following appeal to Formal Step A.

For the above reasons, the Postal Service requests that the grievance be dismissed in its entirety. It points out that the dispute resolution process is a mutual commitment and that both parties are required to work together to resolve issues. The parties are required to jointly review the JCAM and it is expected that good faith be exercised by the parties' respective representative.

IV. DISCUSSION AND FINDINGS

This grievance represents yet another case, in a long line of cases, from Lake Charles, Louisiana, concerning the alleged failure of the Management there to properly assign overtime in accordance with Article 8 of the Agreement, to process the grievances in accordance with Article 15 of the Agreement filed to protest the overtime assignments, and to otherwise comply with prior settlements, Step B decisions, and Arbitration decisions in this regard. There is no

need to restate the history at this Post Office. That was done in the most recent decision by Arbitrator Louise Wolitz (Case No. G11N-4G-C 16454303, February 14, 2017) wherein she stated that:

> 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 7 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 the National Agreement.

With that in view, it is recognized that the Lake Charles Post Office has been dysfunctional in the manner by which overtime assignments are made and the procedure to process the grievances concerning the overtime assignments. Yet, it must also be recognized that each grievance represents a unique set of circumstances and it cannot be accepted carte blanche that the particular circumstances surrounding this grievance necessarily comport with the facts which resulted in each of the prior settlements, Step B decisions and Arbitration decisions that represent the dysfunctional situation at this Postal facility. What this Arbitrator is left with is the impasse of a grievance file that was essentially developed by the Union without any input from the local Management officials. At arbitration, the Postal Service advocate makes some compelling arguments, but it is noted that no testimony was presented to refute the Union's testimony, except from a Supervisor, Lucretia Jones, who revealed only that the Union Steward (Crystal McGee) routinely presents overtime grievances to her without documentation or identifying who may have been harmed. However, we are beyond the stage of attempting to re-create the grievance process. What the Informal Step A and Formal A Postal representatives in Lake Charles must do is process the grievances properly and take the Union to task concerning the facts and contentions made by the Union at each step rather than permitting the Union to move grievances along without doing so.

What can be determined from the record presented in this grievance file is that no Informal Step A meeting or Formal Step A meeting occurred. The Step B DRT even remanded the file back to Formal Step A and, yet, no Formal Step A meeting was held. The documentation in the file further reveals that non-ODTL Carriers at the Lake Charles Post Office worked overtime off their assigned routes during the week in question. Whether they did so voluntarily is not evident from the record. That would be an affirmative defense by the Postal Service to the alleged violation which was not established in this case prior to arbitration. In addition, the documentation established that there were Carriers on the OTDL as well as CCAs available at the time that the non-OTDL Carriers worked mandatory overtime off of their assigned routes. There was a total of 82.71 hours of overtime worked by non-OTDL Carriers during the week of June 10-16, 2017.

Thus, it is found that the Postal Service violated the rights of the non-OTDL Carriers as protected in Article 8, the MOU's concerning Article 8, and the JCAM, not to be forced to work

overtime off of their assigned routes when OTDL Carriers and CCAs were available to perform the work. In addition, the OTDL Carriers and CCAs were denied the opportunity to perform the work in question in violation of the provisions set forth in Article 8, the MOU's concerning Article 8 and the JCAM. Consequently, after review and consideration of the particular circumstances surrounding this case, the grievance is sustained. Due to the violations of the Agreement identified above, and in accordance with prior settlements, Step B decisions and Arbitration decisions, the remedy awarded is as follows:

> Management at the Lake Charles Installation shall cease and desist from future violations of Article 8, Section 5 of the Agreement and adhere to Step B decisions, pre-arbitration settlements and arbitration decisions concerning the assignment of overtime.
>
> Management at the Lake Charles Installation shall cease and desist from future violations of Article 15 of the Agreement and adhere to Step B decisions, pre-arbitration settlements and arbitration decisions.
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> Management at the Lake Charles Installation shall cease and desist from future violations of M-01517 and adhere to Step B decisions, pre-arbitration settlements and arbitration decisions.

The following non-OTDL Letter Carriers shall each be paid a lump sum payment equivalent to eight hour at the overtime rate for the hours indicated below:

> Pike 4.75; Lemelle 3.04; Woolridge 3.61; Gallien 9.79; Alexis 4.73; McGee 2.95; Brooks 2.00; McNeal 9.79; Brock 6.87; Gauthier 5.50; Ventress 5.70; O'Reilly 5.42; Cox 4.37; Steward 2.57; Dowers 4.83; Cormier 4.39; and Joseph O.; 2.30

The following Letter Carriers, including CCAs, shall be paid $1,000 each, in accordance with the JCAM, page 41-7, as the appropriate compensatory remedy to emphasize the parties' commitment to contract compliance to correct Management's non-compliance and repeated blatant violations of Article 8, Article 15 and M-01517:

> Pike, Lemelle, Woolridge, Gallien, Alexis, McGee, Brooks, McNeal, Brock, Dowers, Steward, Gauthier, Cormier, Joseph O, Ventress, O'Reilly, Cox, Lewis, Washington K E, Garrard, Soto, David, Wimberly, Stains, Bourgeois, Brousard E, McDuffy, Kelly, Molo, Durall, Joseph A, Cascio, Mejias, and Gumms.

The remedy for the OTDL Letter Carriers and CCAs is remanded to the parties in order to formulate an appropriate compensatory amount for the number of overtime hours worked by the non-OTDL Carriers (82.71). The parties shall consider the provisions of Article 8, the MOU's concerning Article 8, and the JCAM, the fact that some OTDL Carriers only indicated a desire to work up to 10 hours each day, and the work hour restrictions as discussed in Article 8, the

MOU's concerning Article 8, and the JCAM. The Arbitrator shall retain jurisdiction of this case for a period of sixty (60) days from the date of this Award to resolve any issues or questions concerning this portion of the remedy.

AWARD

. After review and consideration of the particular circumstances surrounding this case, the class action grievance considered herein is sustained. Due to the violations of the Agreement identified above, and in accordance with prior settlements, Step B decisions and Arbitration decisions, the remedy awarded is as follows:

> Management at the Lake Charles Installation shall cease and desist from future violations of Article 8, Section 5 of the Agreement and adhere to Step B decisions, pre-arbitration settlements and arbitration decisions concerning the assignment of overtime.
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The remedy for the OTDL Letter Carriers and CCAs is remanded to the parties in order to formulate an appropriate compensatory amount for the number of overtime hours worked by the non-OTDL Carriers (82.71). The parties shall consider the provisions of Article 8, the MOU's concerning Article 8, and the JCAM, the fact that some OTDL Carriers only indicated a desire to work up to 10 hours each day, and the work hour restrictions as discussed in Article 8, the MOU's concerning Article 8, and the JCAM. The Arbitrator shall retain jurisdiction of this case for a period of sixty (60) days from the date of this Award to resolve any issues or questions concerning this portion of the remedy.

Christopher E. Miles, Esquire
Labor Arbitrator

July 12, 2018