

Local Grievance # _____

Issue Statement (Block 15 of PS Form 8190):

Did management violate Article 8.5 of the National Agreement when they forced Non-Overtime Desired List (ODL) Letter Carriers to work overtime on and off of their assignments and Work Assignment (WA) Letter Carriers to work overtime off of their assignments during the period **[Date(s)]**, and if so, what should the remedy be?

Union Facts and Contentions (Block 17 of PS Form 8190):

Facts:

1. The following Letter Carriers are not on any overtime desired list for the **[Quarter]** of **[Year]** at the **[Station/Post Office]**: **[List non-ODL carriers]**. This is documented by the absence of these Letter Carrier's names on the current Overtime Desired List sign-up sheet in the case file.
2. The following Letter Carriers are on the Work Assignment Overtime Desired List for the **[Quarter]** of **[Year]** at the **[Station/Post Office]**: **[List WA carriers]**. This is documented by the Work Assignment Overtime Desired List sign-up sheet included in the case file.
3. The following Letter Carriers are on the 10/12-hour Overtime Desired List for the **[Quarter]** of **[Year]** at the **[Station/Post Office]**: **[List 10/12 hour ODL Carriers]**. This is documented by the 10/12 Hour Overtime Desired List sign-up sheet included in the case file.
4. The following Letter Carriers removed their name from the **[Work Assignment/10-12 Hour ODL]** during the **[Quarter]** of **[Year]**: **[List carriers who got off of WA or ODL during quarter along with the date they got off list]**. This is documented by the carrier statement(s) included in the case file.

Therefore, these Letter Carriers are to be considered as on no Overtime Desired List beginning on the day following their written request.

5. The first table below shows overtime hours worked by non-ODL and WA Carriers, their regular route, and the route on which the overtime was worked on **[Date]**. The second table shows the ODL and CCA Carriers, the number of overtime hours worked, the number of hours they were available at the regular overtime rate, and the number of hours they were available at the penalty

Contentions:

1. Management violated Article 8.5 when they worked Non-ODL Letter Carrier(s) overtime **[on and/or off their assignment/on their nonscheduled day(s)]** and Work Assignment ODL Letter Carrier(s) off their assignment(s) **[and/or non-scheduled day(s)]** when ODL and CCA Letter Carrier(s) were available to work the overtime at the appropriate overtime rate.
2. If management attempts to make the claim that overtime hours worked were somehow unknown to them, they would need documentation to prove their claim. The record is absent any such documentation. Similarly, any claim of a window of operation or dispatch of value would need documentation and proof that it was maintained at the **[Station/Post Office]**. The record contains neither. Additionally, any claim that Letter Carriers must return to the office 30 minutes before an imaginary deadline in order to get the outgoing mail on the truck is not true and just another attempt to escape contract compliance.
3. Management should have scheduled/called in CCA and/or ODL Letter Carrier(s) on their non-scheduled day or utilized the CCA and ODL Letter Carrier(s) they already had working to perform the overtime work on each day in question.
4. Article 8.5.A gives Letter Carriers the right to sign the Overtime Desired List before each quarter begins. If a Letter Carrier chooses to sign the ODL he/she then has a choice as to whether to sign the regular ODL or the Work Assignment ODL. When a Letter Carrier signs the regular ODL, he/she is obligated to work up to 12 hours per day and 60 hours per week. When and on what assignment ODL Letter Carriers work is for management to decide.
5. Article 8.5.C.2.a provides that when the need for overtime during the quarter arises, Letter Carriers on the ODL will be selected to perform the work. Therefore, an ODL Letter Carrier is available to work overtime on both regularly scheduled days and non-scheduled days. ODL Letter Carriers also have a right to work overtime before Non-ODL Letter Carriers are assigned to work overtime except in a few limited situations. None of those situations are present in this case.
6. Letter Carriers who sign the work assignment ODL are obligated to work up to 12 hours on their own assignment on their regularly scheduled days. When it comes to working overtime off their assignment or on their non-scheduled days, work assignment ODL Letter Carriers are the same as Non-ODL Letter Carriers.
7. When Non-ODL Letter Carriers are forced to work overtime on and off their assignments and/or Work Assignment ODL Letter Carriers are forced to work overtime off their assignments when ODL Letter Carriers are available to work, a contract violation occurs, causing harm to each group of Letter Carriers. ODL Letter Carriers lose their bargained right to earn extra money and Letter Carriers

forced to perform overtime work lose time outside of the workplace with their families or other personal matters that they are contractually entitled to have.

8. The appropriate “make whole” remedy for this type of violation is overtime pay for the ODL Letter Carrier(s) that was/were deprived of their contractual right to work overtime and paid time off for the Non-ODL and/or Work Assignment Letter Carrier(s) that was/were deprived of their contractual right to time away from the workplace. A long line of arbitration awards supports the Union’s view on remedy by several well-respected regional arbitrators going back more than 30 years.

The following arbitration awards should be considered as reference material for the parties at Step B and beyond. These awards address all the arguments that some managers make as they attempt to resist making Letter Carriers whole who are improperly mandated to work overtime. The Union respectfully requests that the Step B Team consider the referenced authority and rationale when formulating a remedy in the instant case.

- A. On p. 4-5 in Case # W8N-5H-C 11311 (C-05393) (1982) Arbitrator Thomas Levak stated in relevant part,

“The Service argues that the Grievant has been adequately compensated through the payment of the overtime rate. The Arbitrator cannot agree. The rate of time and one-half is the contractually established premium for overtime work properly assigned under the terms of the National Agreement. The payment of that minimum premium cannot be deemed to compensate an employee for deprivation of a right improperly denied him. Stated another way, because the Grievant has been denied an express, extraordinary right under the National Agreement, he must be accorded a remedy...”

An employee who is required to perform overtime work in violation of the National Agreement has no choice but to work, then grieve and seek his remedy. The “work, then grieve” rule necessarily implies that the employee will be accorded a meaningful remedy for the Service’s violation. The forms of remedy of which the Arbitrator is aware of are either one day’s pay at the straight time rate or one day’s administrative leave with pay.

The fact that Mr. Bashore has also been compensated as a result of the Service’s violation is irrelevant. Article 8 of the National Agreement specifically protects the rights of both employees.

The fact that the violation was not a deliberate act is irrelevant. It is the established rule that an employee’s right to relief under a collective bargaining agreement does not depend upon the motives

of the employer. It is the violation itself which creates the right to a remedy.”

- B. On p. 2-3 in Case # S4N-3D-C 9474 (C-06750) (1986) Arbitrator Elvis Stephens stated in relevant part,

“Article 8.5 provides that carriers on the overtime desired list will be worked prior to those not on the list. Specifically, Article 8.5.G provides that carriers not on the list shall be required to work overtime only if all the carriers on the list are scheduled to work 12 hours per day or 60 hours in the service week...”

This arbitrator believes that the employer violated the contract when it required the grievant to work when other employees who were on the overtime desired list were available to work. The only question is that of the appropriate remedy. In case No. W8N-5H-C 11311, Arbitrator Levak held that the grievant could choose a day to be off and be given administrative leave for that day. It would appear that the appropriate remedy would be to allow the grievant have a day off, or require the employer to pay him for a day. If one of the other carriers who were on the overtime desired list had filed the grievance, they would have been eligible for pay.”

- C. On p. 3 in Case # H90N-4H-C93054055 (C-13584) (1994) Arbitrator Mark Lurie stated in relevant part,

“The arbitrator has broad authority to fashion a remedy appropriate, in nature and degree, to the detriment caused the Grievant. The Grievant had declined to work overtime, favoring instead time which he could expend as he determined. He was thus among the very class of employee which Article 8 was designed to protect from the demands of overtime work. The most closely corresponding remedy for this violation of the Agreement would be to restore to the Grievant the free time he was denied, through the granting of administrative leave. The Arbitrator appreciates that, under Part 519 of the Employee and Labor Relations Manual, administrative leave may be granted by Management only under prescribed circumstances, none of which apply here. However, this Award is not a managerial action, but rather a remedy for breach of contract, and so derives its authority not from the ELM, but from the inherent commission of the Arbitrator to fashion a remedy which will make the injured party whole.”

- D. On p. 6-8 in Case #'s B94N-4B-C 99130675, B94N-4B-C 99130680, B94N-4B-C 99130683, B94N-4B-C 99130689, B94N-4B-C 99165538, B94N-4B-C 99165543,

B94N-4B-C 99170612, B94N-4B-C 99171009, B94N-4B-C 99171011, B94N-4B-C 99171014 (C-19972) (1999) Arbitrator George Shea stated in relevant part,

“The Service is correct in its contentions that the Union, as the moving party in this matter, must bear the burden of establishing the factual and contractual appropriateness of its requested remedy in these matters. It is equally correct in its contention that arbitral awards generally should be remedial and not punitive in nature and that the awarded remedies should correspond to the harm suffered by the aggrieved employee. These principles have been sanctioned by national Arbitrator Snow in his award in the matter designated as W1C-5F-C 4734 and have been recognized by this Arbitrator in previous awards.

The Union is also correct in its contention that arbitrators on the parties’ arbitral panels have the inherent power and flexibility to fashion specific remedies for violations of the Agreement. (United Steelworkers of America v Enterprise Wheel and Car Corp. 363 U.S. 593, (1960)). It is a well-recognized principle of contract law that contract damages are grounded in the anticipated benefits the injured parties could expect to derive from the proper performance of the contract. (W1C-5F-C 4734, Snow, 1987 at page 13 and H4N-NA-C 21, Mittenthal, 1986 at page 8)

The issue presented to this Arbitrator for resolution is not the proper remedial compensation to be given to the employees on the Overtime Desired List who were deprived of the opportunity to work overtime by the Service’s violation of the Agreement. The Service represented to the Arbitrator that it intended to or had already compensated those employees by paying them at the overtime rate for the hours of overtime they were deprived of by the Service’s admitted violation of the Agreement...The issue which separates the parties and which was presented to the Arbitrator for resolution in the instant matters is what, if any, remedy should be awarded to the employees who were not on an Overtime Desired List and were required to work overtime in violation of the Agreement...

The aggrieved employees in the instant matters are the employees not on an Overtime Desired List who were required to work overtime when the conditions set forth in Section 8.5.G of the Agreement did not exist. The Service’s violation of the Agreement deprived these aggrieved employees of their right not to be subject to employment obligations outside their regularly assigned hours. This loss was a foreseeable and predictable result of the Service’s improper assignment of overtime to the aggrieved employees. (J-#6-8). Arbitral principles require the Arbitrator to fashion a remedy

to correct this predictable loss of the anticipated contractual benefit of Section 8.5.G, as applied in conjunction with Section 41.1.C.1 of the Agreement. Consistent with remedies already awarded in like circumstances and known to the parties, the Arbitrator awards each of the Grievants in the above captioned matters, who were not on the Overtime Desired List and who were required to work overtime, one hour of leave with pay for each hour or major fraction of an hour he/she was required to work overtime in violation of the Agreement. The awarded leave will be taken at the Grievant's option. The Grievant will provide the Service with thirty days advance notice of the day or days he/she wishes to take the awarded paid leave."

9. Management violated Article 15, Sections 2 Step B (c) and 3.A of the National Agreement and Step 4 M-01517 by failing to comply with past Formal Step A settlements for the [**Station/Post Office**] and Step B Decisions included in the case file. Management at the [**Station/Post Office**] has a long history of violating Article 8 and these violations have been occurring on a weekly basis. These violations continue despite the fact that management has been instructed time after time to cease and desist these violations. For these reasons, the union requests an additional remedy to serve as an incentive for future compliance.
10. Management claims a Window of Operation of **[WOO time]** on this day in an effort to justify the Article 8 violations associated with this case. In addition to the position taken previously by the union, the time records associated with this case clearly show that the alleged dispatch of value time is not met on a regular basis, and therefore not legitimate. There were carriers out past the alleged Dispatch of Value time during this week. While it is good to set goals, and that is all the Window of Operation is, it does not give management the right to violate the contract in order to meet its goal.
11. Any "rule of reason" defense made by management is misplaced and undeveloped. In addition to the position taken previously by the union, the case file demonstrates that management could have avoided working Non-ODL Letter Carriers on their own routes on a scheduled day without paying penalty overtime. Also, there is no "rule of reason" when it comes to assignment of overtime work outside of the "Letter Carrier Paragraph" Article 8 rules.

Remedy (Block 19 of PS Form 8190):

1. That management cease and desist violating Article 8, Section 5 of the National Agreement at the **[Station/Post Office]** in the future.

2. That the following ODL Letter Carriers each be paid a lump sum payment equivalent to the amount of hours listed by each of their names at the appropriate overtime rate as shown (This is a cumulative total for the period **Dates included in this grievance**) for each Letter Carrier listed in item #5 of the Union's Facts):

[List ODL/CCA Carriers and number of hours to make them whole at the appropriate OT rate]

3. That the following Non-ODL Letter Carriers be granted compensatory time off in the amount of hours listed by each of their names:

[List Non-ODL Carriers and number of administrative leave hours to make them whole]

4. That the following Work Assignment Letter Carriers be granted compensatory time off in the amount of hours listed by each of their names:

[List WA Carriers and number of hours of administrative leave to make them whole]

5. That all payments associated with this case be paid as soon as administratively possible, as but no later than 30 days from the date of settlement and all compensatory time be granted by **[date]**.
6. That proof of payment be provided to **[NALC Official]** upon payment, and/or any other remedy the Step B team or an arbitrator deems appropriate.

Add the following issue statement, facts, contentions, and remedy request if we can prove the violation is repetitive:

Issue Statement:

Did management violate Article 15.3.A of the National Agreement along with policy letter M-01517 by failing to comply with the prior Step B decisions or local grievance settlements in the case file, and if so, what is the appropriate remedy?

Facts:

1. Article 15.3.A of the National Agreement states in relevant part:

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.

2. M-01517 states 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. 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.

3. Included in the case file are **[Arbitration Awards/Step B decisions/local grievance settlements, etc.]** in which management was instructed/agreed to cease and desist violating Article 8 and/or 15 of the National Agreement.

Contentions:

1. Management violated Article 15.3.A of the National Agreement and M-01517 by failing to abide by the previous Step B decisions/local grievance settlements in the case file. When management violates contractual provisions despite being instructed/agreeing to cease and desist these violations, they have failed to bargain in good faith.
2. The Union contends that Management has had prior cease and desist directives to stop violating Article 8 and/or 15 of the National Agreement.

3. Management's actions are continuous, egregious and deliberate. The Union has included past decisions/settlements in the case file to support this point.

Remedy:

1. That management cease and desist violating Article 15 of the National Agreement.
2. That Letter Carrier(s) **[Name], [Name], and [Name]** each be paid a lump sum of \$100.00 as an incentive for future compliance.



National Association of Letter Carriers Request for Information

To: _____
(Manager/Supervisor)

Date _____

(Station/Post Office)

Manager/Supervisor _____,

Pursuant to Articles 17 and 31 of the National Agreement, I am requesting the following information to investigate a grievance concerning a violation of Article 8 of the National Agreement:

1. Copy of the ODL sign-up sheets from **[Quarter]** of **[Year]**.
2. TACS Employee Everything reports for Carrier(s) **[Names]** for the period **[date to date]**.
3. Copies of all PS Forms 3996 for the period **[date to date]**.
4. Copy of carrier schedule from **[Date]**.
5. Copy of all Letter Carrier requests to be removed from ODL during **[Quarter]** of **[Year]**.

I'm also requesting time to interview the following individuals:

1. **[Name]**
2. **[Name]**
3. **[Name]**

Your cooperation in this matter will be greatly appreciated. If you have any questions concerning this request, or if I may be of assistance to you in some other way, please feel free to contact me.

Sincerely,

Request received by: _____

Shop Steward
NALC

Date: _____



National Association of Letter Carriers Request for Steward Time

To: _____
(Manager/Supervisor)

Date _____

(Station/Post Office)

Manager/Supervisor _____,

Pursuant to Article 17 of the National Agreement, I am requesting the following steward time to investigate a grievance. I anticipate needing approximately _____ (hours/minutes) of steward time, which needs to be scheduled no later than _____ in order to ensure the timelines established in Article 15 are met. In the event more steward time is needed, I will inform you as soon as possible.

Your cooperation in this matter will be greatly appreciated. If you have any questions concerning this request, or if I may be of assistance to you in some other way, please feel free to contact me.

Sincerely,

_____ Request received by: _____
Shop Steward
NALC
Date: _____

Use the worksheet below to tally your figures. The clock rings will come in the same order every time you get them, so once you fill out the left column of this worksheet one time you should be able to make copies of it and use it for the quarter. (Unless of course if someone gets off of an OT list during the quarter.)

