

Local Grievance # _____

Issue Statements (Block 15 on PS Form 8190):

1. Did management violate Articles 16 and Section 115 of the M-39 Handbook via Article 19 of the National Agreement when issuing Letter Carrier **[name]** a Notice of Removal dated **[date]** charging him/her with “**[list specific charge(s)]**”, and if so, what should the remedy be?
2. Did management violate Article 29 of the National Agreement by failing to assign Letter Carrier **[name]** to non-driving duties after management alleged his on duty driving record warranted suspending/revoking his driving privileges at work and, if so, what should the remedy be?

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

Facts:

1. Letter Carrier **[name]** was issued a Noticed of Proposed Removal dated **[date]** charging him/her with **[list specific charge(s)]**.
2. Letter Carrier **[name]** has **[# of years]** years of faithful service with the Postal Service.
3. The grievant had never been disciplined in **[his/her]** entire career until he received a Letter of Warning (LOW) on **[date]** for **[specific charge(s)]**. This is the first of 2 past elements of discipline cited in the Notice of Proposed Removal. The LOW was resolved at the local level on **[date]**. The parties agreed this LOW would be removed from the grievant's files. A copy of the settlement is included in the case file.
4. The second element of discipline cited is a LOW dated **[date]** for **[specific charge(s)]** and is currently in the grievance procedure and therefore not adjudicated. Additionally, the body of the charge in the second LOW is unrelated to the allegations for the Notice of Removal.
5. The grievant hasn't been involved in an at-fault accident of any kind in the last **[# of years]** years. The grievant has been awarded **[#]** Safe Driver Awards from the Postal Service.
6. The Notice of Removal was based solely on events that allegedly took place on **[date]**.
7. A statement from the grievant is included in the file. The grievant gives a detailed explanation of the events leading up to the allegations.

8. The grievant was/is on the Overtime Desired List.
9. Article 29 of the National Agreement states in relevant part:

“An employee’s driving privileges may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver...Every reasonable effort will be made to reassign such employee to non-driving duties in the employee’s craft or in other crafts....”

Contentions:

1. The Agency cited a past element of discipline that has been removed from the grievant’s record via a grievance settlement and a past element that has yet to be adjudicated. This is a fatal due process error that prejudiced the supervisor when deciding what level of discipline to request. This due process error cannot be dismissed as not being harmful to the grievant.

The Step 4 settlement M-00889, January 5, 1989, provides the following:

“A notice of discipline which is subsequently fully rescinded, whether by settlement, arbitration award, or independent management action, shall be deemed not to have been “initiated” for purposes of Article 16.10, and may not be cited or considered in any subsequent disciplinary action.”

2. The grievant didn’t act as charged. **Fully explain why this is true!**
3. However, even if management’s allegations had merit, management must issue discipline in a “progressive manner.” When all of the facts associated with the instant case are considered objectively, the only conclusion that can be drawn is the discipline issued in this case was punitive rather than corrective in nature. These are serious breaches of Article 16 of the National Agreement and a sufficient basis to warrant sustaining the instant grievance in its entirety. The following language appears in article 16 of the Joint Contract Administration Manual (JCAM):

Corrective Rather than Punitive

*The requirement that discipline be “corrective” rather than “punitive” is an essential element of the “just cause” principle. In short, it means that for most offenses management must issue discipline in a “progressive” fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense and a pattern of increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge). **The basis of this principle of “corrective” or “progressive” discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution.** (Emphasis Added)*

4. Management failed to properly consider the grievant's **[# of years]** years of faithful service with the Postal Service, and the **[#]** of Safe Driver Awards he/she has received.
5. Management failed to properly consider the grievant's discipline record. These are mitigating factors that were clearly ignored by the Agency in the instant case.
6. The Agency has attempted to circumvent their responsibilities as outlined in Article 29 of the National Agreement in this case. The grievant has a contractual right to non-driving duties or pay in lieu of work provided when his on duty driving record shows he/she is an unsafe driver. While this point (grievant being an unsafe driver) is in dispute with respect to the case at bar, the National Agreement and National Level Arbitrator Snow's award make clear that management is without authority to remove the grievant under the circumstances allegedly present in this case. This would be true regardless of the grievant's tenure or work history. The fact that the grievant has such a long tenure and great work history make the action taken by the Agency in this case particularly egregious.
7. Even if a revocation or suspension of a letter carriers driving privileges is proper, Article 29 provides that, "every reasonable effort will be made to reassign the employee in non-driving duties. The JCAM states in article 29:

Every Reasonable Effort to Reassign. *Even if a revocation or suspension of a letter carriers driving privileges is proper, Article 29 provides that, "every reasonable effort will be made to reassign the employee in non-driving duties in the employee's craft or other crafts." This requirement is not contingent upon a letter carrier making a request for non-driving duties. Rather, it is management's responsibility to seek to find suitable work.*

National Arbitrator Carlton Snow held in **I94N-4I-D 96027608, April 8, 1998 (C-18159)** that management may not reassign an employee to temporary non-driving duties in another craft if doing so would result in a violation of other craft's agreement. If it is not possible to accommodate temporary cross-craft assignments in a way that does not violate another craft's agreement, a letter carrier who is deprived of the right to an otherwise available temporary cross-craft assignment to a position in another craft must be placed on leave with pay until such time as he may return to work without violating either unions' agreement. In accordance with Arbitrator Snow's award, in situations where city letter carriers temporarily lose driving privileges, the following applies:

- *Management should first attempt to provide non-driving city letter carrier craft duties within the installation on the carrier's regularly scheduled days and hours of work. If sufficient carrier craft work is unavailable on those days and hours, an attempt should be made*

to place the employee in carrier craft duties on other hours and days, anywhere within the installation.

- *If sufficient work is still unavailable, a further attempt should be made to identify work assignments in other crafts, as long as placement of carriers in that work would not be to the detriment of employees of that other craft.*
- *If there is such available work in another craft, but the carrier may not perform that work in light of the Snow award, the carrier must be paid for the time that the carrier otherwise would have performed that work.*

8. National Level Arbitrator Snow made it clear in the above referenced national case that management is without authority to remove a letter carrier in instances where it is impracticable to fulfill its contractual obligation under both agreements:

“Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that Article 29 of the agreement with the National Association of Letter Carriers requires the Employer to make temporary cross-craft assignments in order to provide work for carriers whose occupational driver’s license has been suspended or revoked. The Employer is required to do so in a manner consistent with the APWU collective bargaining agreement.

In instances where it is impracticable to fulfill its contractual obligation under both agreements, the Employer is without contractual authority to remove such employee. Such individuals shall be placed on leave with pay and reinstated to working status as soon as work is available by placing the employee in a position which will not violate the collective bargaining agreement of either party.

Management may not reassign an employee to temporary non-driving duties in another craft if doing so would result in a violation of other craft’s agreement. If it is not possible to accommodate temporary cross-craft assignments in a way that does not violate another craft’s agreement, a letter carrier who is deprived of the right to an otherwise available temporary cross-craft assignment to a position in another craft must be placed on leave with pay until such time as he may return to work without violating either unions’ agreement.”

9. Regardless of how this situation is viewed, the inescapable conclusion is that management failed to follow Section 115 of the M-39 Handbook. Management must follow Section 115.1 of the M-39 Handbook which states:

"In the administration of discipline, a basic principle must be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause. The delivery manager must make every effort to correct a situation before resorting to disciplinary measures."

Management didn't pass the "any effort" much less the "every effort" test to correct this situation prior to resorting to discipline.

10. Section 115 of the M-39 Handbook also requires management to make sure they have all the facts, resolve problems before they become grievances, and most importantly, if the employee's stand has merit, admit it and correct the situation. Management has completely ignored these contractual requirements in this case. There was no objective investigation.
11. Letter Carrier **[name]** is entitled to the average number of overtime hours worked by ODL letter carriers at the **[Installation name]** Installation for the entire time he/she has/will be out of work as a result of management actions as part of a make whole remedy.
12. The Union respectfully requests that the grievance be sustained in its entirety, and the grievant be granted an appropriate remedy.

Remedy (Block 19 of PS Form 8190):

1. That the Notice of Proposed Removal dated **[date]** issued to letter carrier **[name]** for "**[specific charge(s)]**," be withdrawn and removed from all employee records and files effective immediately.
2. Letter Carrier **[name]** shall be made whole for all lost wages and benefits to include the average overtime hours worked at the **[Installation name]** Installation with interest at the Federal Judgment Rate in accordance with the MOU on page 172 of the National Agreement which states:

Re: Interest on Back Pay

Where an arbitration award specifies that an employee is entitled to back pay in a case involving disciplinary suspension or removal, the Employer shall pay interest on such back pay at the Federal Judgment Rate. This shall apply to cases heard in arbitration after the effective date of the 1990 Agreement.



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 Articles 16 and 19:

1. Copy of Letter Carrier **[name's]** Investigative Interview.
2. Copy of the Request for Discipline for Letter Carrier **[name]** dated **[date]**.

I am also requesting copies of any and all documents, statements, records, reports, audio/video tapes, photographs, or other information learned, obtained, developed or relied upon by the Postal Service in the issuance of the _____ dated **[date]** involving Letter Carrier **[name]**.

I am also requesting time to interview the following individuals:

1. **[name(s)]** at the **[Installation name]** Installation.

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,

Shop Steward
NALC

Request received by: _____

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: _____