

Local Grievance # _____

Issue Statements (Block 15 of PS Form 8190):

1. Did management violate Article 8.5 of the National Agreement when they forced Non-ODL and Work Assignment Letter Carriers to work off their assignments on **[date]**, and if so, what should the remedy be?
2. Did management violate Article 15, Sections 2 Step B (c) and 3.A of the National Agreement and Step 4 M-01517 by failing to comply with the Step B Decisions included in the case file, and if so, what should the remedy be?

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

Facts:

1. The following letter carriers are on the 12-hour overtime desired list for the **[1st, 2nd, 3rd, or 4th]** quarter of **[year]** at the **[Station/Post Office]: [list names]**
2. The following letter carriers are on the 10 hour overtime desired list for the **[1st, 2nd, 3rd, or 4th]** quarter of **[year]** at the **[Station/Post Office]: [list names]**
3. The following letter carriers are on the work assignment overtime desired list for the **[1st, 2nd, 3rd, or 4th]** quarter of **[year]** at the **[Station/Post Office]: [list names]**
4. The following letter carriers are not on any overtime desired list for the **[1st, 2nd, 3rd, or 4th]** quarter of **[year]** at the **[Station/Post Office]: [list names]**
5. On **[date]**, work assignment Letter Carrier **[name]** was assigned to route **[route #]** and worked **[#]** hours on route **[route #]**. (Repeat as many times as necessary to cover every single work assignment letter carrier that worked overtime off his/her assignment.)
6. The total overtime worked by work assignment letter carriers off their assignments on **[date]** was **[#]** hours.
7. On **[date]**, non-overtime desired list (Non-ODL) Letter Carrier **[name]** worked **[#]** hours overtime on his/her own assignment. (repeat as many times as necessary to cover every single non-ODL letter carrier that worked overtime on his/her assignment)
8. On **[date]**, non-overtime desired list (Non-ODL) Letter Carrier **[name]** worked **[#]** hours overtime off his/her own assignment. (repeat as many times as necessary to cover every single non-ODL letter carrier that worked overtime off his/her assignment)

9. The total overtime worked by non-ODL letter carriers on their own assignments on **[date]** was **[#]** hours.
10. The total overtime hours worked by work assignment and non-ODL letter carriers off their assignments totaled **[#]** hours.
11. On **[date]**, overtime desired list (ODL) letter carrier **[name]** worked **[#]** hours of overtime. (repeat as many times as necessary to cover every single ODL letter carrier that worked overtime)
12. The total amount of overtime worked by OTDL letter carriers on **[date]** was **[#]** hours.
13. These ODL carriers could have worked a total of **[#]** additional hours (up to the 12 hour limit) on **[date]**.
14. The following ODL letter carriers were non-scheduled on **[date]** and did not work **[list names]**:
15. If the ODL letter carriers above had been scheduled and worked on **[date]**, an additional **[#]** hours of overtime would have been available for them to work.
16. The total amount of overtime work available for ODL letter carriers at the **[Station/Post Office]** on **[date]** was **[#]** hours. (combine the totals from numbers 9, 10, and 12 above to determine the total OT work available on the day in question.)

Contentions:

1. Management violated Article 8.5 when they worked work assignment letter carrier(s) off their assignment(s) and Non-ODL letter carrier(s) overtime on and off their assignment when ODL letter carrier(s) were available to work.
2. Management should have scheduled/called in ODL letter carrier(s) on their non-scheduled day or utilized the ODL letter carrier(s) they already had working to perform the overtime work on the day in question.
3. 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.

4. However, Article 8.5.c.2 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.
5. 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.
6. When Non-ODL letter carriers are forced to work overtime on and off their assignments and/or work assignment 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 that they bargained to have.
7. 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 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 25 years.
8. 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 the past Step B Decisions included in the case file. Management in the **[Station/Post Office]** has a long history of violating Article 8. These egregious 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.

The following arbitration awards address all the arguments that some managers make as they attempt to resist making letter carriers whole when an Article 8 violation occurs. 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."

The Arbitration Awards quoted above address all the arguments that many managers make as they attempt to resist making letter carriers whole when an Article 8 violation occurs. The Union respectfully requests that the Step B Team consider the referenced authority and rationale when deciding the appropriate remedy in the instant case.

Remedy (Block 19 of PS Form 8190):

1. That management cease and desist violating Article 8, Section 5 of the National Agreement 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 **[list names]**:
3. That the following work assignment letter carriers be paid 100% of their base pay/granted compensatory time off for the amount of hours listed by each of their names **[list names]**:
4. That the following NON ODL letter carriers be paid 100% of their base pay/granted compensatory time off in the amount of hours listed by each of their names **[list names]**:
5. That each Letter Carrier in the **[Station/Post Office]** be paid a lump of \$100.00 to serve as an incentive for future compliance.
6. That all payments associated with this case be paid as soon as administratively possible or any other remedy the Step B Team or an Arbitrator deems appropriate.



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:

1. Copies TACS Employee Everything Reports for all Letter Carriers in the **[Station/Post Office]** for the period of **[date]** to **[date]**.
2. Copy of the overtime desired list for the **[Station/Post Office]** for the **[quarter]**.
3. Copies of all PS Forms 3996 submitted by letter carriers at the **[Station/Post Office]** on **[date]**.
4. A copy of the work schedule for the **[Station/Post Office]** covering the following week(s) **[dates]**.

I am also requesting time to interview the following individuals:

1. **[name(s)]** at the **[Station/Post Office]** 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,

Request received by: _____

Shop Steward
NALC

Date: _____



National Association of Letter Carriers Request for Steward Time

To: _____ Date _____
(Manager/Supervisor)

(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: _____