Exhibit 1

7.2.B B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

7.2.C C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

[see Memo, page 145]

This Memo is located on JCAM page 7-15.

Cross-Craft Assignments. Article 7, Sections 2.B and 2.C set forth two situations in which management may require career employees to perform work in another craft. This may involve a carrier working in another craft or an employee from another craft performing carrier work.

Insufficient Work. Under Article 7.2.B, management may require an employee to work in another craft at the same wage level due to insufficient work in his or her own craft. This may affect a full-time employee or a part-time regular employee for whom there is insufficient work on a particular day to maintain his or her weekly schedule as guaranteed under Article 8.1. Or it may apply to any employee working under the call-in guarantees of Article 8.8—i.e., a regular called in on a non-scheduled day, or a PTF employee called in on any day. This section permits management to avoid having to pay employees for not working.

Exceptional Workload Imbalance. Article 7.2.C provides that under conditions of exceptionally heavy workload in one craft or occupational group and light workload in another, any employee may be assigned to perform other-craft work in the same wage level.

Limits on Management's Discretion to Make Cross-craft Assignments. A national level arbitration award has established that management may not assign employees across crafts except in the restrictive circumstances defined in the National Agreement (National Arbitrator Richard Bloch, A8-W-0656, April 7, 1982, C-04560). This decision is controlling although it is an APWU arbitration case; it was decided under the joint NALC/APWU-USPS 1981 National Agreement and the language of Article 7.2.B and C has not changed since then. Arbitrator Bloch interpreted Article 7.2.B and C as follows (pages 6-7 of the award):

> Taken together, these provisions support the inference that Management's right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforeseeable. There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel

usage; this is not what the parties have bargained. That an assignment across craft lines might enable Management to avoid overtime in another group for example, is not, by itself, a contractually sound reason. It must be shown either that there was "insufficient work" for the classification or, alternatively, that work was "exceptionally heavy" in one occupational group and light, as well, in another.

Inherent in these two provisions, as indicated above, is the assumption that the qualifying conditions are reasonably unforeseeable or somehow unavoidable. To be sure, Management retains the right to schedule tasks to suit its need on a given day. But the right to do this may not fairly be equated with the opportunity to, in essence, create "insufficient" work through intentionally inadequate staffing. To so hold would be to allow Management to effectively cross craft lines at will merely by scheduling work so as to create the triggering provisions of Subsections B and C. This would be an abuse of the reasonable intent of this language, which exists not to provide means by which the separation of crafts may be routinely ignored but rather to provide the employer with certain limited flexibility in the fact of pressing circumstances. ...

Remedy For Violations. As a general proposition, in those circumstances in which a clear contractual violation is evidenced by the fact circumstances involving the crossing of crafts pursuant to Article 7.2.B and C, a make whole remedy involving the payment at the appropriate rate for the work missed to the available, qualified employee who had a contractual right to the work would be appropriate. For example, after determining that management had violated Article 7.2.B, Arbitrator Bloch in case H8S-5F-C 8027/A8-W-0656 (C-04560) ruled that an available Special Delivery Messenger on the Overtime Desired List should be made whole for missed overtime for special delivery functions performed by a PTF letter carrier.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Re: Article 7, 12 and 13 - Cross Craft and Office Size

A. It is understood by the parties that in applying the provisions of Articles 7, 12 and 13 of this Agreement, cross craft assignments of employees, on both a temporary and permanent basis, shall continue as they were made among the six crafts under the 1978 National Agreement.

B. It is also agreed that where this Agreement makes reference to offices/facilities/installations with a certain number of employees or man years, that number shall include all categories of bargaining unit employees in the office/facility/installation who were covered by the 1978 National Agreement.

Date: August 19, 1995

Rural Carriers Excluded. Paragraph A of this Memorandum of Understanding (National Agreement page 145) provides that the crossing craft provisions of Article 7.2 (among other provisions) apply only to the crafts covered by the 1978 National Agreement—i.e., letter carrier, clerk, motor vehicle, maintenance, and mail handler. So cross craft assignments may be made between the carrier craft and these other crafts, in either direction, in accordance with Article 7.2. However, rural letter carriers are not included. So cross craft assignments to and from the rural carrier craft may not be made under Article 7.2. They may be made only in emergency situations as explained below.

Crossing Crafts in Emergency Situations. In addition to its Article 7 rights, management has the right to work carriers across crafts in an emergency situation as defined in Article 3, Management Rights. Article 3.F states that management has the right:

> 3.F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

This provision gives management a very limited right to make cross craft assignments. Management's desire to avoid additional expenses such as penalty overtime does not constitute an emergency.

Counting Employees or Workyears. Paragraph B of the memorandum provides that only the crafts covered by the 1978 National Agreement—i.e., letter carrier, clerk, motor vehicle, maintenance, and mail handler—are counted when any Agreement provision refers to the number of employees or man years in an office, facility, or installation. In the 1998 National Agreement the term man year was changed to workyear.

For example, Article 7.3.A below requires management to maintain at least an 88 percent full-time carrier craft work force in installations which have 200 or more workyears of employment. See also Article 8.8.C, which provides a call-in guarantee of four hours of work or pay "in a post office or facility with 200 or more workyears of employment per year," and two hours in smaller facilities.

7.3 Section 3. Employee Complements

Maximization of Full-Time Employees. Article 7, Section 3 contains the National Agreement's main maximization language, setting forth management's obligations to create full-time regular letter carrier positions. Sections 3.A-3.D set forth the following requirements.

Exhibit 3

- Add Evidence of rural work done

egregious

Exhibit 4

Dictionary Thesaurus

egregious adjective

egre·gious (i-'grē-jəs)

Synonyms of *egregious* >

1 : CONSPICUOUS

especially : conspicuously bad : **FLAGRANT**

egregious errors

egregious padding of the evidence
-- Christopher Hitchens

2 archaic : DISTINGUISHED

adverb

noun

Egregious comes from a Latin word meaning "distinguished" or "eminent." It was once a compliment to someone who had a remarkably good quality that placed him or her above others. Today, the meaning of the word is noticeably less complimentary, possibly as a result of ironic use of its original sense.

Exhibit 5

C-35505 A-C

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	**AWARD**
	)	
	)	**Grievant: Class Action**
between	)	**Post Office: Rock Hill, SC**
	)	
UNITED STATES POSTAL SERVICE	)	**Case Nos.: 4G 16N 4G C 21072406 (Case #1)**
	)	**4G 16N 4G C 21072425 (Case #2)**
	)	**4G 16N 4G C 21091887 (Caes #3)**
and	)	**DRT Nos: RHM012820; RHMO121320;**
	)	**RHMO1221**
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS	)	
	)	
	)	

Before: Jacquelin F. Drucker, Esq., Arbitrator

Appearances:

For the NALC: Don Lyerly, Regional Administrative Assistant

For the Postal Service: Mya Simpson, Labor Relations Specialist

Date of Hearing: October 19, 2021
Record Closed: November 23, 2021

Place of Hearing: 206 Wilson Street S
Rock Hill, SC 29730

Date of Award: December 23, 2021

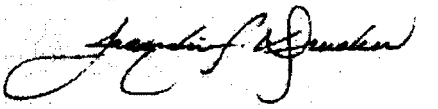
Relevant Contract Provision(s): Articles 8, 15, and 19

Contract Year: 2016- 2019

Type of Grievance: Contract

AWARD SUMMARY

As to the merits of the grievances, the evidence of record establishes that the grievance in Case No. 1 must be sustained and that the unresolved issue in the grievance in Case No. 3 must be denied. The grievance in Case No. 2 had been sustained on the merits at Step B and, thus, the issue here is solely that of remedy. With regard to the remedy in Case Nos. 1 and 2, the Arbitrator issues a cease and desist order, directs that the qualified ODL Carrier in each case be compensated at the overtime rate for the overtime hours to which the ODL Carrier would have been assigned but for the breach, and directs that the non-ODL Carriers who were required to work overtime be paid, as a compensatory remedy, their straight-time rates for all overtime hours that were required in breach of Article 8.



Jacquelin F. Drucker, Esq.

I. STATEMENT OF THE CASE

The instant grievances relate to the Union's assertion that Management breached the National Agreement regarding overtime. The hearing of these matters was held on October 19, 2021, at the Postal Service facility located at 206 Wilson Street S, Rock Hill, South Carolina, and appropriate measures were taken to ensure pandemic-related safety of all participants. At hearing, the parties were ably represented. There was not agreement, initially, as to whether the grievances would be addressed in a single award or in the three separate awards. The parties, however, presented the cases in single arguments, as the issues on the merits are similar and the issues as to remedy are the same. The Arbitrator, having reviewed the evidence and considered the arguments presented at hearing and in post-hearing briefs, as to each of the three grievances, has found that they most efficiently and fairly can be resolved in this single Award.

At hearing each party was given a full and fair opportunity to present evidence and make arguments as to each of the grievances. After the opening statements and review of the evidence and was concluded, the advocates agreed to present written closing arguments. The submissions from both parties were timely received and the record was closed. In reaching the conclusions and Award set forth herein, the Arbitrator has given full and careful consideration to all arguments posed, all awards and authorities cited, and all evidence of record.

II. ISSUE

The issues in Cases 1 and 3 are as follows: Did Management violate Article 8 of the National Agreement in the assignment of overtime to non-ODL Carriers? If so, what shall be the remedy? As to Grievance 2, as the breach has been found and the grievance was upheld at Step B, the only issue is the determination of the remedy.

III. RELEVANT LANGUAGE FROM THE NATIONAL AGREEMENT

Article 8, Hours of Work, provides in Section 5 as follows:

> When needed, overtime work for full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:
>
> A. Employees desiring to work overtime shall place their names on either the "Overtime Desired" list or the "Work Assignment" list during the two weeks prior to the start of the calendar quarter. . . .
>
> * *
>
> D. If the voluntary "Overtime Desired" list does not provide sufficient qualified people, qualified full-time regular employees not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee.
>
> ***
>
> 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.

IV. FACTS AND ANALYSIS

The parties have agreed that, as to Case No. 2, Management breached the foregoing provisions of the National Agreement. Thus, Case No. 2 requires a ruling only with regard to the remedy and therefore is addressed in the section which follows.

With regard to Case No. 1, the Union has established that, on December 7, 2020, Management at this facility was notified that a particular Letter Carrier would be absent from work on December 8, 2020. Letter Carrier Amanda Mason was on the ODL, but there was no effort to contact her prior to December 8. Management asserts that an attempt was made to reach Carrier Mason by telephone at 6:15 a.m. on December 8. The record indicates that Ms. Mason did not answer the telephone. Ms. Mason's written statement, which the parties at hearing agreed is to be regarded as her testimony if she had been called as a witness, indicates that she did not receive a telephone call and that, upon following up, she ascertained that the wrong telephone number had been used. (The record, however, shows that the telephone number used was what Management had in its records for Ms. Mason. It is not clear if that number was incorrect or, if it was, how it came to be listed in Grievant's record.)

Five Carriers who were not on the ODL and thus had not volunteered for overtime, however, were required by Management to report to work two hours before their scheduled tours on December 8. As specified in the JCAM, however, "Before requiring a non-ODL carrier to work overtime on a non-scheduled day or off his/her own assignment on a regularly schedule day, management must seek to use a carrier from the ODL, even if the ODL carrier would be working penalty overtimes." As the Union notes, these Carriers already had been notified that they were required to work and, in fact, had begun to work BEFORE any effort was made to notify Ms. Mason. Thus, as the Union correctly argues, Management's assertion of an effort to reach Ms. Mason at 6:14 a.m. for overtime necessitated by an absence of which Management had noticed the day before, does not constitute compliance with Article 8.

By requiring these Carriers to work without having sought to use an ODL Carrier, Management was in violation of Article 8, Section 5.D, and Ms. Mason was wrongfully passed over for overtime work on her non-scheduled day.[1]

As to Case No. 3, the record indicates that one of two alleged violations pursued by the grievance was confirmed as a violation by the Step B team. That pertained to Management assigning Carriers to more than the 12-hour contractual maximums. The issues on which the Step B team did not agree relates to Union's assertion that Management on January 2, 2021, violated Article 8, Section 5 by not assigning non-scheduled-day overtime to Ms. Mason, who was on the ODL. The Union asserts that Management initially asserted that it had all routes covered on that date, which, as the date immediately following a holiday, would have been busy. Nonetheless, says the Union, Management received sick calls from Carriers, which then raised the need for overtime. Management asserts that it then attempted to contact Ms. Mason to have her report for overtime and that she did not answer the telephone and did not later return the call. Ms. Mason, however, provided a written statement indicating that she "didn't get a call 1-2-21 to come into work." Management asserts that it was only after the supervisor had been unable to reach Ms. Mason that it assigned non-ODL Carriers to cover the two routes. The Union asserts that the non-ODL Carriers worked beyond their daily work hour limitations on that day.

The central issue here relates to the failure to assign non-scheduled-day overtime to Ms. Mason. The Union in a case such as this bears the burden of proof in establishing at least a prima facie violation of Article 8, Section 5. Its case is predicated upon Management's failure to seek to assign the overtime, or at least a portion of the overtime, that was worked on January 2 to Ms. Mason. There is a factual dispute as to whether the effort was made to contact Ms. Mason, and the Arbitrator finds that the evidence of record is insufficient to allow her to conclude that Management failed to make this effort. Further, the record supports Management's assertion that the absences were unexpected, and the sequence of events in this case suggests that an effort was

[1] Management at Step B and in argument at hearing also made some representations regarding the applicability of the Work Assignment provisions as to some, but not all, of the five Carriers who were required to report early. This argument was abandoned in Management's closing brief, however, wherein Management addresses only the issue of remedy, but for one sentence in which it argues that Ms. Mason had been contacted on the day in question. Management's only defense on this point thus has been addressed and rejected above, for the Carriers were assigned before any effort was made to assign Ms. Mason.

made to reach Ms. Mason and that it was only after she did not respond that steps were taken to cover the routes at issue with non-ODL Carriers. While the Arbitrator does not accept Management's assertions as true, she finds that the record adduced by the Union is insufficient to establish, by a preponderance of the credible evidence, that Management violated Article 8, Section D.5 in the manner alleged. Accordingly, the Union claims as to the unresolved portion of this grievance must be denied.

Turning to the question of remedy for the contract violations found in Cases 1 and 2, the Union requests that the Arbitrator issue a cease and desist order, require a compensatory remedy in which Ms. Mason is to be paid for the overtime to which she should have been assigned, and require payment to the non-ODL Carriers who were required to work in violation of the contract.

Arbitrator has given careful consideration to the history of the same violations that have been found in recent years at the Rock Hill Post Office, predominately by various Step B teams. In fact, the record at hearing indicates that in 24 different grievances, from 2015 through 2020, Article 8, Section 5 violations have been found by either Formal Step A or Step B teams. It is instructive that, in these many resolutions, the remedy in every case until 2020 included a cease and desist directive and payment of compensation to the non-ODL employees who had been required to work in violation of the National Agreement. In fact, in light of the repeated violations, the Step B teams in many cases put Management at Rock Hill on notice that continued violations would warrant escalating monetary remedies. In mid-2020, however, the Step B team, although in agreement that violations had occurred, were not able to agree on the remedy, with Management rejecting not only the compensatory remedies of the past but also the fundamental remedy of the cease and desist directive. This led to an arbitration in which Arbitrator Glenda M. August imposed the same three-part remedy as sought by the Union in this case. Case No. K16N 4K C 20300521; RHMO61220 (December 9, 2020, and February 22, 2021).

Unlike the multiple Step B teams to have agreed on this issue, Management in this case opposes the Union's request for a cease and desist order. Management's argument is a bit hard to follow and not supported by any citations to authority that is directly on point, but the suggestion is that

nothing in the National Agreement specifies that a cease and desist remedy is available. As other arbitrators who have addressed this odd argument have held, however, (a) cease and desist orders are traditional, common, and logical remedies for breaches of collective bargaining agreements and (b) contracts, including collective bargaining agreements, rarely address the available remedial options to be applied in the event of a breach. Indeed, parties seldom can anticipate the forms in which breaches may occur and the appropriate nature of any make whole remedy that would be applied, be it by an arbitrator with regard to a collective bargaining agreement or a court with regard to a contract. As held by the United States Supreme Court in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960), the need for the arbitrator to bring his or her informed judgment to bear in resolving a dispute under a collective bargaining agreement is "especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wise variety of situations."

In more than 30 years of arbitrating thousands of disputes under a vast variety of collective bargaining agreements, this Arbitrator has never before been presented with the suggestion that cease and desist orders are not appropriate remedies for contractual breaches. The Postal Service offers no relevant authority for this theory, which, to the extent it can be discerned from the arguments presented at hearing and in the closing brief, is wholly out of step with concepts of remedy in arbitral law, arbitral tradition, and basic contract law. Indeed, innumerable court decisions from all levels of the judiciary have confirmed arbitration awards that have included cease and desist orders. See, for example, *United Mine Workers of American v. Monongalia County Coal Co.*, 240 F. Supp. 3d 466 (N.D. W.V. 2017); *Honeywell Int'l. Inc. v. Industrial and Allied Workers Local Union No. 101,* 2009 U.S. Dist. LEXIS 70132, 2009 WL 2477550 (E.D. Va., 2009); and *Unite HERE Local 1 v. Hyatt Corp.*, 862 F.3d 588 (7th Cir., 2017). In fact, in *American Postal Workers Union, AFL-CIO v. United States Postal Service.*, 2019 U.S. Dist. LEXIS 202367, 2019 WL 6170056 (S.D. N.Y., 2019), the United States District Court for the Southern District of New York dismissed an action in which the union (in that case, the APWU) sought, among other remedies for repeated noncompliance with the contract, a cease and desist order from the court. In dismissing the union's complaint, the court noted that the APWU was seeking the kind of relief that it first must seek from an arbitrator under that National Agreement.

Management also seems to suggest that, as cease and desist orders are not referenced in the National Agreement, the determination of whether a cease and desist order is appropriate is a matter to be addressed at the national level. In this regard, Management alludes to a national-level award by Arbitrator Richard Mittenthal in *United States Postal Service and National Association of Letter Carriers*, Case No. N8-NA-0141 (1980). That award addressed a wholly unrelated and discrete question based on the highly specific facts related to the actions and failures of the National Joint Committee on Maximization that was agreed to in the Memorandum of Understanding on Maximization, which was incorporated in the 1978 National Agreement. It has no application here, for the purposes upon which Management seems to rely. Nonetheless, is it worth noting that Arbitrator Mittenthal cited the breadth of an arbitrator's authority to establish a fair remedy for breach of a collecting bargaining agreement by citing this passage from the United States Supreme Court's decision in *United Steelworkers of America v. Enterprise Care & Wheel Co., supra:* "the arbitrator 'must bring his informed judgment to bear in order to reach a fair solution. . [in] formulating remedies.'"

For all of the foregoing reasons, the Arbitrator finds that it is wholly appropriate that this Award include, as a remedy, an order that the Rock Hill Post Office cease and desist from breaches of Article 8, Section 5.

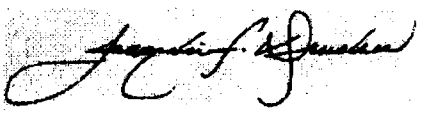
As to the compensatory remedies sought, the bypassed ODL Carriers in Cases 1 and 2 must be made whole by payment at the overtime rate for the time they would have worked were it not for Management's breach of Article 8. (In fact, the Step B team in Case No. 2 had agreed to this compensatory remedy.) In addition, the Arbitrator finds that a full make-whole, compensatory remedy in these two cases also requires that that the non-ODL Carriers for whom overtime was mandated be compensated for those hours at the straight-time rate for each overtime hour worked. The Arbitrator finds that this remedy is warranted both in light of the numerous Step B decisions in which it was agreed that this was an appropriate remedy and on the basis of rectifying the loss experienced by non-ODL Carriers who had exercised their contractual rights to establish their preference not to work overtime and who were protected against mandated overtime when sufficient, qualified ODL personnel were available. Contrary to Management's argument that such a remedy is punitive, the nature of this remedy is compensatory. As the

parties have jointly noted in the JCAM, one of the purposes of the ODL is to excuse full-time Carriers not wishing to work overtime from having to do so. This monetary award thus is not only derived from precedential Step B resolutions in which the remedy was crafted to correct the unwarranted imposition of overtime but also is issued as a means of compensating the non-ODL Carriers for the imposition on their lives and non-work hours when they were required by Management to work during times that, under the contract, they should have been free to spend in other life pursuits.

AWARD

Upon full and careful consideration of all evidence of record and the arguments and citations presented by the parties, the Arbitrator finds that, for the reasons stated above, the grievance in Case No. 1 is sustained and the unresolved portion of the grievance in Case No. 3 is denied. With regard to the remedy in Case Nos. 1 and 2, the Arbitrator (a) issues a cease and desist order, (b) directs that the qualified ODL Carrier in each case be compensated at the overtime rate for the overtime hours to which that ODL Carrier would have been assigned but for the breach, and (c) directs that the non-ODL Carriers who were required to work overtime be paid, as a compensatory remedy, their straight-time rates for all overtime hours that were required in breach of Article 8. The Arbitrator retains jurisdiction to resolve any disputes regarding the calculation and allocation of these remedies. The parties are to confer to identify the required payments and the recipients of same. If the parties have not been able to reach full agreement as to same within 90 days of the date of this Award, any unresolved disputes in this regard will be presented for determination by the Arbitrator.

December 23, 2021



Jacquelin F. Drucker, Esq.

Exhibit 6

Civil Action Number 3:08cv773
United States District Court, E.D. Virginia, Richmond Division

Honeywell Int. v. Ind. Allied Workers Local Union

Decided Aug 11, 2009

Civil Action Number 3:08cv773.

August 11, 2009

MEMORANDUM OPINION

RICHARD WILLIAMS, Senior District Judge

This matter is before the Court on the parties' cross motions for summary judgment. For the reasons stated below, the Court denies the plaintiff's motion and grants in part and denies in part the defendant's motion.

I.

Honeywell International, Inc. ("plaintiff" or "Honeywell") and Industrial Allied Workers Local Union No. 101 ("defendant" or "Union") have a thirty-year collective bargaining agreement history[1] in connection with Honeywell's Chesterfield plant, which produces plastic resin pellets. The Collective Bargaining Agreement ("CBA") at issue here was effective from May 15, 2005 through May 14, 2008. During this period, approximately fifteen to twenty Union truck drivers worked at the Chesterfield plant.

[1] Corporate ownership of the Chesterfield plant has varied over the years, but, as stipulated to by the parties and as noted by the arbitrator, such changes are irrelevant to the instant matter.

In 2007, after a cessation of a contractual relationship with a customer, Honeywell closed its "Warehouse 99," an offsite storage location in which "C-Train" materials were stored. Thereafter, Honeywell cancelled the lease on its third tractor, 2 which had, for more than thirty *2 years, been used by Union drivers to transport materials to offsite storage locations. In addition to transporting pellets to storage, Union drivers had used this tractor on an as-needed basis to transport lactam, a substance used in making the pellets, and lactam-related materials or, much less frequently, to engage in what Honeywell calls "tolling work," which involves the offsite transportation of pellets to local "tolling" companies, which blend, modify, and/or package the pellets according to customer specifications.

In May 2007, the Union filed two grievances, alleging violations of Article 4, Section 16(5) and Article 29 of the CBA insofar as Honeywell continued to subcontract offsite delivery work in the form of tolling deliveries without assigning such work to Union drivers. Honeywell denied these grievances, leading the parties to arbitration. On June 18, 2008, the parties conducted an arbitration hearing before Arbitrator Barton W. Bloom ("Arbitrator" or "Bloom"). Pursuant to the parties' past practices, the hearing was transcribed by a court reporter; this transcript was to serve as the official record of the hearing. In lieu of closing arguments, the parties agreed to submit post-hearing briefs, which were due thirty days after receipt of the transcript. Upon receiving the transcript, the Union lawyer sent an email to the Honeywell lawyer stating,

> If your Firm has a "do not use" list for court reporters, I think that the reporter who did our hearing in June should definitely be on it. This transcript is incoherent in parts. The hearing was not that chaotic. There are parts that make us both sound like we just learned English.

Honeywell's lawyer responded by email three minutes later, "That's unfortunate. Thanks for the heads-up." In its post-trial brief, the Union noted that the transcript "contained numerous errors in transcription," an assessment with which the Arbitrator concurred. Therefore, to supplement the transcript, Bloom referred to his notes from the
3 hearing. *3

At issue in the arbitration were four portions of the CBA: Article 1, Section 4, management function; Article 4, Section 16, truck driving assignments; Article 7, grievance procedure; and Article 29, subcontracting. Relevant portions of these provisions follow.

> Article 1, Section 4:
>
> Management Function — It is recognized that all management functions shall be retained by [Honeywell]. These functions shall include but are not limited to full and exclusive control of: the management and operation of the plant, the direction of the working forces, the scheduling and determination of the means and manner of production, the introduction of new or improved methods or facilities and the right to hire, train, suspend, discipline, discharge, promote, transfer and layoff employees and schedule and assign jobs. Such functions shall not be exercised contrary to the provisions of this Agreement. The intent of this Section is not to prevent the union from exercising its rights under Article 7.
>
> Article 4, Section 16 — Truck Driving
4 Assignments
>
> . . . .
>
> 5. It is agreed between [Honeywell] and [the] Union that all truck driving work within the Hopewell-Petersburg-Richmond area now being performed by the Materials Movement Section and all truck driving work subsequently assigned to Materials Movement personnel shall be performed by the Materials Movement Section. [Honeywell] may subcontract such work only when it does not have available equipment and/or drivers when such work is of a rush nature and requires immediate transportation.
>
> Article 7, Section 2 — Arbitration
>
> . . . .
>
> (b) The arbitrator shall not have the authority to amend or modify this Agreement or establish new terms or conditions under this Agreement. The arbitrator shall determine questions of arbitrability.
>
> The arbitrator shall have no power to add to, subtract from, or otherwise modify any of the terms of this Agreement or any other agreement supplemental hereto and shall have no power to establish or fix wage rates.
>
> Article 29, Section 1
>
> For the purpose of preserving job opportunities for the employees covered by this Agreement, [Honeywell] agrees that work currently performed by, or hereafter assigned to the bargaining unit shall not be subcontracted if it would result in a reduction of the work force, by rollback or layoff in the job which would normally perform the work being subcontracted.
>
> *4

On September 26, 2008, Arbitrator Bloom issued a thirty-five-page opinion in which he found that Honeywell was violating Article 4, Section 16(5) of the CBA "by failing to assign tolling delivery work to the third tractor operated by bargaining unit truck drivers before subcontracting with commercial carriers for such work." Finding that a constructive layoff, defined as a reduction in hours, occurred, the Arbitrator also found that Honeywell was violating Article 29 "by subcontracting with commercial carriers for tolling delivery work before assigning such work to the third tractor operated by bargaining unit truck drivers." He therefore ordered Honeywell to (1) acquire a tractor equivalent of the third tractor, to be operated by Union drivers performing bargaining unit work, including tolling work, before such work is subcontracted to commercial carriers, (2) pay, without interest or overtime, relevant back pay, and (3) cease and desist from (i) failing to assign to Union drivers and (ii) subcontracting to external contractors bargaining unit work before assigning it to Union drivers. On November 24, 2008, Honeywell filed its complaint under Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, asking that the Arbitrator's award be vacated as failing to derive its essence from the CBA and/or reflecting the Arbitrator's own notions of right and wrong. On March 20, 2009, Honeywell filed its motion for summary judgment and the Union filed its cross motion for summary judgment. On May 13, 2009, a hearing was held on the motions for summary judgment.

II.

Pursuant to Federal Rule of Civil Procedure 56, summary judgment should be granted when there are no material facts in dispute and one side is entitled to judgment as a matter of law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In reviewing a motion for summary judgment, a court must view the facts and any
5 inferences drawn from these facts in the *5 light most favorable to the nonmoving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Nguyen v. CNA Corp.*, 44 F.3d 234, 237 (4th Cir. 1995). A fact is material when proof of its existence or nonexistence would affect the outcome of the case and is in dispute "when its existence or non-existence could lead a jury to different outcomes." *Cox v. County of Prince William*, 249 F.3d 295, 299 (4th Cir. 2001) (citing *Anderson*, 477 U.S. at 248). Under these parameters, the Court will evaluate the cross motions for summary judgment, recognizing that, as the parties agree, no genuine issue as to any material facts exists.

As the Fourth Circuit has recently noted, " [j]udicial review of an arbitration award in the collective bargaining context is `extremely limited,' and `among the narrowest known to the law.'" *Merck Co., Inc. v. International Chem. Workers Union Council of the United Food and Commercial Workers, Local 94C*, No. 08-1917, 2009 WL 1916706, at *3 (July 6, 2009) (quoting *Long John Silver's Rests., Inc. v. Cole*, 514 F.3d 345, 349 (4th Cir. 2008)). Notwithstanding allegations of factual errors or misinterpretations of the parties' agreements, arbitrators' decisions are not subject to review on their merits. *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509 (2001). Rather, courts are entitled to "determine only whether the arbitrator did his job — not whether he did it well, correctly, or reasonably, but simply whether he did it." *Mountaineer Gas Co. v. Oil, Chem. Atomic Workers Int'l Union*, 76 F.3d 606, 608 (4th Cir. 1996). Thus, if an "`arbitrator is even arguably construing or applying the contract and acting within the scope of his authority,' the fact that `a court is convinced he committed serious error does not suffice to overturn his decision.'" *Eastern Associated Coal Corp. v. United Mine Workers of America*, 531 U.S. 57, 62 (2000) (quoting *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 38 (1987)). "The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular

claim, or determining whether *6 there is particular language in the written instrument which will support the claim." *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 568 (1960) (footnote omitted).

Under this exceedingly deferential standard, courts must enforce an arbitration award if it "draws its essence" from the CBA, *United Steelworkers of America v. Enterprise Wheel Car Corp.*, 363 U.S. 593, 597 (1960), which occurs provided that "[t]he arbitrator [does] not ignore the plain language of the contract," *Misco*, 484 U.S. at 38; *Norfolk W. Ry. Co. v. Transp. Commc'ns Int'l Union*, 17 F.3d 696, 700 (4th Cir. 1994). "An arbitrator does not have carte blanche, however, to `dispense his own brand of industrial justice,'" being instead "confined to interpretation and application of the parties' agreement." *United States Postal Serv. v. American Postal Workers Union*, 204 F.3d 523, 527 (4th Cir. 2000) (quoting *Enterprise Wheel*, 363 U.S. at 597). Moreover, as long as an arbitrator's factual findings and interpretation of the CBA are conducted within the parameters of the controlling agreement and are not "wholly baseless and without reason," *Norfolk W. Ry. Co.*, 17 F.3d at 700, "the courts have no business overruling him because their interpretation of the contract is different from his," *United States Postal Serv.*, 204 F.3d at 527.

In this case, the Arbitrator interpreted the CBA as providing that once Honeywell "assigns a task to the bargaining unit, that task remains bargaining unit work so long as [Honeywell], in its discretion, continues the operation for which such task is performed." Based on the materials before it and as presented to the Arbitrator, the Court cannot say this interpretation is "wholly baseless and without reason." The Court likewise reaches the same conclusion about the Arbitrator's findings concerning tolling work and the occurrence of a constructive layoff. Further, although Honeywell argues that the award enshrines the Arbitrator's own brand of industrial justice, pointing to his supplementation of the transcript with *7 his notes, the Court cannot concur with this assessment. Having reviewed the transcript, the Court can appreciate the need for reference to contemporaneous notes for clarification purposes, as the lawyers surely did.[2] Moreover, the Court could not identify any portion of the Arbitrator's opinion that was not based on testimony recorded in the transcript. In short, although it quite possibly would have, in the first instance, interpreted the CBA more in accordance with Honeywell's position, the Court must sustain the arbitration award.

[2] It is clear that the court reporter had difficulty hearing portions of the arbitration hearing. Thus, to forestall a repetition of the instant debate, it would behoove the parties to ensure that future court reporters have a better vantage point of the proceedings.

The Court finds, however, that an award of attorney's fees to the Union is not warranted. Only when a litigant seeking to vacate an arbitration award under Section 301 of the LMRA "literally [has] no reasonably arguable legal support" is an award of attorney's fees appropriate. *Media Gen. Operations v. Richmond Newspaper Prof'l Ass'n*, 36 Fed. Appx. 126, 134 (4th Cir. 2002). Here, Honeywell had a plethora of legitimate grounds for challenging the arbitration award. Consequently, the Court will not award attorney's fees to the Union.

III.

Having reviewed the submitted evidence, including the Arbitrator's opinion and arbitration hearing transcript, the Court cannot say that the Arbitrator's opinion "failed to derive its essence from the CBA" or that it enshrines the Arbitrator's own notions of right and wrong. Accordingly, the Court denies the plaintiff's motion for summary judgment and grants in part the defendant's motion for summary judgment. Specifically, the Court enforces the arbitration award, but denies the Union's request for attorney's fees.

An appropriate Final Order shall issue.

Exhibit 7

CIVIL ACTION NO. 1:16CV04
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

Monongalia Cnty. Coal Co. v. United Mine Workers of Am.

234 F. Supp. 3d 797 (N.D.W. Va. 2017)
Decided Feb 16, 2017

CIVIL ACTION NO. 1:16CV04

02-16-2017

MONONGALIA COUNTY COAL COMPANY, Plaintiff, v. UNITED MINE WORKERS OF AMERICA, International Union and United Mine Workers of America, Local Union 1702, Defendant.

Daniel D. Fassio, Michael D. Glass, Ogletree, Deakins, Nash, Smoak & Stewart, PC, Pittsburgh, PA, for Plaintiff. Charles F. Donnelly, UMWA Legal Department, Charleston, WV, for Defendant.

IRENE M. KEELEY, UNITED STATES DISTRICT JUDGE

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Daniel D. Fassio, Michael D. Glass, Ogletree, Deakins, Nash, Smoak & Stewart, PC, Pittsburgh, PA, for Plaintiff.

Charles F. Donnelly, UMWA Legal Department, Charleston, WV, for Defendant.

MEMORANDUM OPINION AND ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [DKT. NO. 13] AND GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [DKT. NO. 15]

IRENE M. KEELEY, UNITED STATES DISTRICT JUDGE

Pending for consideration are cross motions for summary judgment filed by the plaintiff, Monongalia County Coal Company ("Company"), and the defendants, United Mine Workers of America, International Union and United Mine Workers of America, Local Union 1702 (collectively "Union"). Finding that the Arbitrator's decision fails to draw its essence from the collective bargaining agreement and instead reflects the Arbitrator's own notions of right and wrong, the Court grants the Company's motion (dkt. no. 15) and **VACATES** the Arbitrator's award.

I. FACTUAL BACKGROUND

The Company operates the Monongalia County Mine (the "Mine"), an underground coal mine located in West Virginia and Pennsylvania. The Union represents the Company's bargaining unit (union) employees for purposes of collective bargaining. The Company and the Union are bound by a collective bargaining agreement ("CBA") (dkt. no. 7–1) that governs the wages, hours, and working conditions of union employees at the Mine.

In 2015, the Company contracted with a third-party, Jennchem, to design, supply, and install a pumpable crib system[1] in the Mine. This system requires workers to hang cylindrical bags from bolts installed in the mine roof at predetermined locations. The bags are then filled with a cementitious mixture, which dries quickly and forms a strong concrete-like pillar that provides support to the ceiling of the mine.

[1] "Cribbing" is used to support the ceiling of a mine. Traditionally, cribbing consisted of multiple layers of wood stacked in a box-like formation from the ground to the roof. Modern advances, however, have provided other forms of cribbing, including hydraulics, mechanical jacks, or concrete-like pillars, such as the ones at issue here.

At the outset, union mine employees hung the bags and Jennchem employees filled them with the cement mixture. After problems arose with the bag hanging performed by the union employees, however, the Company decided that, because of
800 Jennchem's familiarity and expertise with *800 the product, Jennchem should perform the entire operation. When the Union objected, the Company countered that it was allowed to contract all of this work out to Jennchem under Article 1A, § (i) of the CBA. This Article provides in pertinent part as follows:

> All construction of mine or mine related facilities including the erection of mine tipples and the sinking of mine shafts or slopes customarily performed by classified Employees of the Employer normally performing construction work in or about the mine in accordance with prior practice and custom, shall not be contracted out at any time unless all such Employees with necessary skills to perform the work are working no less than 5 days per week, or its equivalent for Employees working alternative schedules.

(dkt. no. 14 at 4).

The Company justified its decision to contract out the bag hanging to Jennchem based on the fact that, pursuant to Article 1A § (i), all union employees involved were working five days per week. The Union disagreed, arguing that, because hanging the bags was work previously performed by union workers, its members had suffered a loss of work. After the parties were unable to resolve the matter through the grievance process, the matter was referred for resolution to Arbitrator Betty Widgeon ("Arbitrator").

II. PROCEDURAL BACKGROUND

On July 10, 2015, the Arbitrator conducted a hearing with the parties at which the Company presented two arguments. It first contended that the installation of the pumpable crib bags was construction work under Article 1A, § (i) of the CBA. It next asserted that, because the Mine's union employees were working no less than five days per week, it was free to contract that work to Jennchem. Although the Union did not dispute that its members were working no less than five days per week, it contended the work involved was "maintenance" work under Article 1A, § (g)(2),[2] which required the Company to use only union workers. Thus, it reasoned that, even if all union members were already working a full work schedule, the maintenance work would have resulted in overtime and additional payments into the employees' benefit fund.

[2] Article 1A, § (g)(2), provides in pertinent part:

> Repair and Maintenance Work—Repair and maintenance work of the type customarily performed by classified Employees at the mine or central shop shall not be contracted out except (a) where the work is being performed by a manufacturer or supplier under warranty, in which case, upon written request on a job-by-job basis, the Employer will provide to the Chairman of the Mine Committee a copy of the applicable warranty or, if such copy is not reasonably available, written evidence from a manufacturer or a supplier that the work is being performed pursuant to warranty; or (b) where the Employer does not have available equipment or regular Employees (including laid-off Employees at the mine or central shop) with necessary skills available to perform the work at the mine or central shop.
>
> Dkt. no. 14–1 at 4

The Arbitrator rendered a decision ("Decision") favorable to the Union on August 31, 2015. She found that the Company had violated the CBA by using Jennchem to complete bargaining unit work (dkt. no. 4). Specifically, her Decision concluded that the "installation of pumpable cribs does not fall into the construction exception, and because it is, at the very least, repair and maintenance work, it is Union work." Dkt. no. 4 at 4. The Decision also required the Company to cease and desist using outside contractors to hang the bags, and
801 awarded the Union compensatory *801 damages for the hours billed by Jennchem. Id.

Following the Decision, a dispute arose concerning the formula to be used in determining the amount of damages to be paid by the Company (dkt. no. 14–1). After additional briefing, the Arbitrator issued a Supplemental Decision, accepting the Union's position and basing her award of the hours due on the calculations and estimates supplied by the Union (dkt. no. 4–1). Accordingly, she ordered the Company to compensate the Union for 3,000 labor hours connected to the bargaining unit work performed by Jennchem. Id.

The Company filed suit against the Union on January 8, 2016 (dkt. no. 1). Its complaint challenges the Arbitrator's Decision on the basis that it 1) exceeded the scope of the Arbitrator's authority and power; 2) failed to draw its essence from the Agreement; 3) was based on the Arbitrator's own notions of right and wrong; 4) was arbitrary and capricious; and 5) conflicted with public policy interests by undermining enforcement of the Agreement. As a remedy, it sought to vacate the Arbitrator's award with prejudice.

The Union filed a combined answer and counterclaim on February 17, 2016, challenging the Court's jurisdiction to vacate the award because the Agreement provides for final and binding arbitration as the sole means of resolving disputes arising under the Agreement (dkt. no. 7). Its counterclaim seeks a declaration that the award is final, binding, and enforceable. It also asks the Court to compel enforcement of the award and to permanently enjoin the Company from utilizing third-party contractors in any manner inconsistent with the Agreement.

Both parties have moved for summary judgment (dkt. nos. 13 and 15), and those motions are fully briefed and ripe for review.

III. LEGAL STANDARD

A. Summary Judgment

Summary judgment is appropriate where the "depositions, documents, electronically stored information, affidavits or declarations, stipulations ..., admissions, interrogatory answers, or other materials" establish that "there is no genuine

dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed R. Civ. P. 56(a), (c)(1)(A). When ruling on a motion for summary judgment, the Court reviews all the evidence "in the light most favorable" to the nonmoving party. Providence Square Assocs., L.L.C. v. G.D.F., Inc. , 211 F.3d 846, 850 (4th Cir. 2000). The Court must avoid weighing the evidence or determining its truth and limit its inquiry solely to a determination of whether genuine issues of triable fact exist sufficient to prevent judgment as a matter of law. Anderson v. Liberty Lobby, Inc. , 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

The moving party bears the initial burden of informing the Court of the basis for the motion and of establishing the nonexistence of genuine issues of fact. Celotex Corp. v. Catrett , 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the moving party has made the necessary showing, the non-moving party "must set forth specific facts showing that there is a genuine issue for trial." Anderson , 477 U.S. at 256, 106 S.Ct. 2505 (internal quotation marks and citation omitted). The "mere existence of a scintilla of evidence" favoring the non-moving party will not prevent the entry of summary judgment; the evidence must be such that a rational trier of fact could reasonably find for the nonmoving party. Id. at 248–52, 106 S.Ct. 2505.*802 **B. Judicial Review of Arbitration Awards**

Judicial review of arbitration awards is "among the narrowest known to the law." PPG Indus. Inc. v. Int'l Chemical Workers Union Council of United Food and Comm'l Workers , 587 F.3d 648, 652 (4th Cir. 2009) (internal citations omitted). Arbitration awards are presumptively valid. Mountaineer Gas Co. v. Oil, Chem. & Atomic Workers Int'l Union , 76 F.3d 606, 608 (4th Cir. 1996). This is because the parties to a CBA "bargained for the arbitrator's interpretation and resolution of their dispute." Id. Consequently, courts generally defer to the arbitrator's reasoning and should not overturn their factual findings unless there has been fraud by the parties or dishonesty by the arbitrator. Id. Indeed, "as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision." PPG Indus. , 587 F.3d at 652 (quoting United Paperworkers Int'l Union v. Misco, Inc. , 484 U.S. 29, 38, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987)).

Nevertheless, courts should overturn arbitration awards when the "award violates well-settled and prevailing public policy, fails to draw its essence from the collective bargaining agreement or reflects the arbitrator's own notions of right and wrong." Mountaineer , 76 F.3d at 608 (citing Misco , 484 U.S. at 38, 108 S.Ct. 364). Thus, an "arbitrator cannot 'ignore the plain language of the contract' to impose his 'own notions of industrial justice.' " PPG Indus. , 587 F.3d at 652 (quoting Misco , 484 U.S. at 38, 108 S.Ct. 364).

A court's review "must determine only whether the arbitrator did his job—not whether he did it well, correctly, or reasonably, but simply whether he did it." Mountaineer Gas , 76 F.3d at 608. This determination requires the Court to examine: "(1) the arbitrator's role as defined by the Agreement; (2) whether the award ignored the plain language of the Agreement; and (3) whether the arbitrator's discretion in formulating the award comported with the essence of the Agreement's proscribed limits." Id. (citing United Steelworkers of America v. Enterprise Wheel & Car Corp. , 363 U.S. 593, 597, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960)).

Moreover, when construing the contract, "the arbitrator must take into account any existing common law of the particular plant or industry, for it is an integral part of the contract." Clinchfield Coal Co. v. District 28, United Mine Workers of America & Local Union No. 1452 , 720 F.2d 1365, 1368 (4th Cir. 1983) (quoting Norfolk Shipbuilding and Drydock Corp. v. Local No. 684 of the Int'l Brotherhood of Boilermakers , 671 F.2d

797, 800 (4th Cir. 1982)). Finally, "[t]he 'basic objective' of a reviewing court in the arbitration context is 'to ensure that commercial arbitration agreements, like other contracts, are enforced according to their terms, and according to the intentions of the parties.' " PPG Indus. , 587 F.3d at 654 (quoting First Options of Chicago, Inc. v. Kaplan , 514 U.S. 938, 947, 115 S.Ct. 1920, 131 L.Ed.2d 985 (1995)).

IV. DISCUSSION

The material facts in this case are not in dispute. The parties either agree or concede that the work of hanging the bags was previously performed by union employees, and that those employees were working no less than five days per week during the relevant time period. The Company assigns two legal errors to the Arbitrator's Decision. First, it asserts that the Decision ignores the plain language of the CBA, as well as the "common law of the shop." Second, it contends that the damages awarded in the Supplemental Decision are arbitrary and capricious, and based on her own
803 sense of fairness or *803 equity. The Union argues that, under the CBA, the parties agreed to be bound by the Arbitrator's decision, and further argues that legal precedent requires courts to give arbitrators great deference and only overturn their awards in the most limited of circumstances, none of which they contend are present in this case.

A. The Arbitrator's Decision That The Work Was Not Construction

Cognizant of the very limited circumstances under which it may overturn an arbitration award, this Court still must do so if the award "fails to draw its essence from the collective bargaining agreement." Mountaineer Gas , 76 F.3d at 608. In determining whether the Arbitrator did her job, the Court must determine "whether the award ignored the plain language of the Agreement." Id.

The question presented is whether the work of hanging the bags was construction work or repair and maintenance work. Under the CBA, if the work was construction, the Company was free to contract it to Jennchem because union employees were working no less than five days per week. See Dkt. no. 14–1 at 5. If, however, the work was repair and maintenance, it belonged solely to the union employees, with limited exceptions that are not present in this case. See Dkt. no. 14–1 at 4. Because union employees were working no less than five days per week, the Union contended that hanging the bags was repair and maintenance work.

In order to determine whether the work was construction or maintenance, the Arbitrator necessarily had to construe the relevant language of the CBA, which does not explicitly categorize the work at issue. In support of its position, the Company submitted multiple prior arbitral decisions, which defined construction as "the creation of something new that had not existed before" (dkt. no. 4 at 4). Thus, "because the pumpable cribs were being erected and placed where there previously was nothing," the Company argued that "there is nothing to maintain" and the work "can only ever be viewed as construction." Id.

The entirety of the Arbitrator's reasoning rejecting this argument and concluding that the work was maintenance and repair work, not construction, is contained in a single paragraph of her Decision (dkt. no. 4 at 4). Disagreeing with the Company's characterization of the work, she found that, "[i]n the places where the pumpable cribs are being erected, there was previously something there: coal." Id. That coal "kept the ceiling of the mine from collapsing." Id. She credited the Union's argument that, "with the removal of the coal, various measures were put into effect to keep the ceiling stable and that the installation of these cribs was one of those measures."Id. The Arbitrator did not "view[ ] each installation ... as an individual construction project or even as a part of a larger construction project but as steps taken to maintain the integrity and stability of the mine ceiling." Id.

The words "construction" and "repair and maintenance" have distinct and clear definitions in the context of this case. To "construct" means "[t]o form by assembling or combining parts; build."[3] 804 To *804 "maintain," on the other hand, has two plausible definitions that could apply to this case: either "[t]o keep in an existing state; preserve or retain" or "[t]o keep in a condition of good repair or efficiency."[4] As the Company noted, and the arbitral precedent it cited confirms, in this context, the common usage of "repair and maintenance" refers to the upkeep of equipment, machinery, or existing facilities.[5] Indeed, the language of the CBA's clause covering repair and maintenance work supports such a finding, as it strongly suggests that it applies to machinery or equipment, and twice references that the repair or maintenance work might be performed in the "central shop." See Dkt. no. 14–1 at 4.

[3] See Construct , American Heritage Dictionary, https://ahdictionary.com/word/search.html?q=construct. Interestingly, Black's Law Dictionary (6th Ed. 1998) explicitly differentiates between the two terms, as it defines "construct" thusly:

> To build; erect; put together; make ready for use. To adjust and join materials, or parts of, so as to form a permanent whole. To put together constituent parts of something in their proper place and order. "Construct" is distinguishable from "maintain," which means to keep up, to keep from change, to preserve.

[4] See Maintain , American Heritage Dictionary, https://ahdictionary.com/word/search.html?q=maintain.

[5] See, e.g. , Case No. D–971AI–9, Consol–McElroy Coal Co. and UMWA Local Union 1638, District 6 , at 11–12 (Dec. 3, 1997) (Nicholas, Arb.) ("On the other hand, repair and maintenance that is work which—by definition—involves repairing existing equipment or servicing machinery or facilities in order to keep them in good working order.") (dkt. no. 18–1 at 96–97).

Despite the fact that the plain language of the CBA appears clear, the Arbitrator may have found some ambiguity, although she did not explicitly say so. See PPG Indus. , 587 F.3d at 654 (noting that courts should not second-guess an arbitrator's finding of ambiguity). The Court recognizes that "construing or applying the contract" is generally within the exclusive purview of the Arbitrator. See PPG Indus. , 587 F.3d at 652.

Nevertheless, had the Arbitrator found some ambiguity in the contract, she was not at liberty to impose her "own notions of industrial justice." Id. (quoting Misco , 484 U.S. at 38, 108 S.Ct. 364). Rather, she was obligated to look to the "existing common law of the particular plant or industry, for it is an integral part of the contract." Clinchfield Coal , 720 F.2d at 1368 (quoting Norfolk Shipbuilding , 671 F.2d at 800).

The Company provided the Arbitrator with numerous arbitral decisions defining construction work, including several that specifically concluded installation of roof support systems, such as the pumpable crib pillars at issue, was construction work, not repair or maintenance.[6] Some of those decisions also held that the definition of construction in the coal industry was a matter of res judicata.[7] The union provided no contrary precedent, and the Arbitrator cited none.[8]

[6] The list of cases provided by the Company in support is quite lengthy and need not be fully cited here. Those cases are collected at dkt. no. 18 at 13–14 n. 3; dkt. no. 18–1 at 1–108; dkt. no. 18–2 at 1–103; dkt. no. 16–2 at 8–54. These decisions are important in the instant case not only because they discuss the definition of construction work, but also for their precedential value.

7 See, e.g., Case No. D–20001AG–11, ARB No. 98–06–99–0258, McElroy Coal Co. v. Local Union 1638, District 6 (July 17, 2000) (Harr, Arb.) (finding that definition of construction within industry was matter of res judicata); Case No. D–881AI–2, ARB No. 84–2–87–146, Greenwich Collieries Co. v. UMWA Local Union 1609, District 2 , (Jan. 15, 1988) (Joseph, Arb.) (finding "arbitral consensus" that when new items are installed it constitutes construction).

8 In point of fact, in a previous arbitration, the Union had conceded that installation of pumpable crib pillars was construction work. Dkt. No. 18–1 at 34, 42.

Those past arbitral decisions clearly define the differences between construction and repair and maintenance work. Indeed, for decades arbitrators have concluded that

> [i]n the usual sense, construction work ... is work which brings something new to the mine which had not existed prior to the performance of the work in question. On the other hand, repair and maintenance that is work which—by definition—involves repairing existing equipment or servicing existing machinery or facilities in order to keep them in good working order. Generally speaking, repair and maintenance work does not involve introducing new material into the mine or the erection or fabrication of facilities which have not previously been part of the mine facilities.

Consol–McElroy Coal Co. v. UMWA Local Union 1638, District 6 , Case No. D–971AI–9, (Dec. 3, 1997)(Nicholas, Arb.); see also , Consol—McElroy Coal Co. v. UMWA Local Union 1638, District 6 , Case No. D–971AI–8, (Sept. 22, 1997) (Hammer, Arb.) (noting that repair and maintenance generally refers to the upkeep or restoration of equipment and machinery, while construction involves erecting, fabricating or installing mine or mine related facilities).

Several arbitral decisions specifically address whether roof supports are construction work. In Consol–Consol–McElroy Coal Co. v. UMWA Local Union 1638, District 6 , Case No. D–971AI–9, (Dec. 3, 1997) (Nicholas, Arb.), for example, Arbitrator Samuel Nicholas held that the installation of steel arches to support the roof of a mine was construction work. Finding that the steel arches had never been present in the mine prior to their installation, he concluded that their installation constituted construction work. Id.

Arbitrator Nicholas used the same reasoning in another case in which he decided that installation of supplemental roof supports, specifically, "pizza jacks," was construction work rather than maintenance work. Pittsburg & Midway Coal–North River Mine v. UMWA Local Union 1926, District 20 , Case No. D–20051AI–5 (Oct. 12, 2005) ("Clearly, and as other arbitrators have said, you cannot repair something into existence." (citing Island Creek Coal Co., Hamilton # 2 Mine , 84–23–87–49–ICC at 9 (1997) (Phelan, Arb.))).

Several arbitral decisions specifically address the installation of concrete roof support pillars using collapsible forms hung from the ceiling similar to the pumpable crib bags used by the Company in this case. In one such case, Arbitrator Lynn Wagner found that hanging the collapsible forms was a component of the concrete pillar installation process, and thus construction work. Consol–Loveridge Mine v. UMWA Local 9909 in District 31 , Case No. D–20081AG–1 (Mar. 3, 2008) (Wagner, Arb.) (also noting that "the Arbitrator lacks the contractual authority to ignore such binding ARB decisions and to, in effect, rewrite the Contract to conform with the Union's position").

Finally, in a decision directly on point, Arbitrator Elliot Shaller addressed a grievance over the identical pumpable crib bags installed by the same

contractor involved here.[9] The decision in The Marshall Cty. Coal Co. v. United Mine Workers of America, Local 1638 , Case No. 11–31–15–101 (July 27, 2015) (Shaller, Arb.), began by acknowledging the "ample arbitral precedent ... construing the term ['construction'] in a uniform way." Id. at 18. Arbitrator Shaller reiterated the definition of construction work as "involving the erection, fabrication or installation of new mine or mine-related facilities or additions," and noted in its distinction from repair and maintenance work.
806 Id. He also *806 recognized that the industry's definitions and distinctions were "so well settled that in a case involving this mine Arbitrator Don Harr ruled that the prior authority required him to apply the principle of arbitral res judicata pursuant to ARB 78–24 (February 19, 1980.)" Id. at 14. After discussing much of the same precedent cited by the Company in this case, he concluded that the "installation of permanent roof control support in an area in which it did not exist ... mak[es] it 'construction.' " Id. at 23.

> 9 The facts in the Marshal Cty. Coal case are on all fours with the facts in this case. Nonetheless, Arbitrator Widgeon refused to address it because, although the Company submitted the decision to her on July 27, 2015, she stated that she had closed the record earlier that same day. Nonetheless, it is persuasive in its reasoning, and informative in its compilation of prior arbitral precedent, which was clearly available to the Arbitrator.

These decisions establish that, under the "industrial common law—the practices of the industry and the shop—[which] is equally a part of the collective bargaining agreement although not expressed in it," the work in question in this case was construction work. United Steelworkers of America v. Warrior & Gulf Nav. Co. , 363 U.S. 574, 581–82, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960) ; see also Clinchfield Coal Co. v. District 28, United Mine Workers of America , 556 F.Supp. 522, 530 (W.D.Va. 1983), aff'd , 720 F.2d 1365 (4th Cir. 1983) (citing Warrior & Gulf); Clinchfield Coal Co. v. UMWA, Dist. 28 , 567 F.Supp. 1431, 1434 (W.D. Va. 1983), aff'd , 736 F.2d 998 (4th Cir. 1984) (applying principle that past decisions by the Arbitration Review Board under the National Bituminous Coal Wage Agreements constituted part of the common law of the shop).

Certainly, by ignoring this overwhelming precedent, if not the plain language of the CBA, the Arbitrator substituted her own "notion of industrial justice" when she concluded, without any support beyond the Union's argument, that the installation of the pillars was maintenance of the roof rather than construction of something new brought into the mine. Indeed, her conclusion that "there was previously something there: coal" contradicts the prevailing definition in the coal industry that construction work entails "bringing something to the mine that was not there before." Dkt. no. 4 at 4.

Not only does her conclusion misread the arbitral precedent, it is illogical. The defining characteristic of construction work is not whether there was something previously in the location of the construction, but whether the construction "brings something new to the mine which had not existed prior to the performance of the work in question." See Consol–McElroy Coal Co. , Case No. D–971AI–9. Moreover, by concluding that work cannot be considered construction where coal previously was located, the Arbitrator effectively rendered all work below the surface to be repair and maintenance work—regardless of its true nature.[10]

> 10 Nor does the Arbitrator's conclusion that the installation of the pumpable crib pillars was maintenance of the roof make practical sense. One could not credibly argue that an underground pipe is maintaining the earth above it, or that the foundation walls of a building are maintaining the earthen walls surrounding it. Of course, deeming the work maintenance was the only way the Union could have recovered given its

> concession that union employees were working no less than five days per week.
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Clearly, the installation of the pumpable crib bags, indeed the installation of the finished support pillars in toto , is construction work. Not only does this conclusion comport with the overwhelming arbitral precedent and the plain language of the CBA, and is consistent with the Court's objective of "ensur[ing] that commercial arbitration agreements, like other contracts, are enforced according to their terms, and according to the intentions of the parties." PPG Indus. , 587 F.3d at 654 (quoting First Options of Chicago, Inc. v. Kaplan , 514 U.S. 938, 947, 115 S.Ct. 1920, 131 L.Ed.2d 985 (1995)).

807 *807 Past arbitral decisions, which are "equally a part of the collective bargaining agreement although not expressed in it," remove any doubt that the work in question here was construction work. United Steelworkers of America v. Warrior & Gulf Nav. Co. , 363 U.S. 574, 581–82, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960). To allow the Arbitrator to ignore such consistent arbitral precedent would eviscerate the holdings of Warrior & Gulf and Clinchfield that explicitly incorporate such precedent into the CBA. 363 U.S. at 581–82, 80 S.Ct. 1347 ; 556 F.Supp. at 530 Because the arbitral precedent forms the common law of the shop, which necessarily is part of their CBA, the parties should be able to rely on such precedent to guide their actions, which is exactly what the Company did in this case. See id. at 582, 80 S.Ct. 1347.

In conclusion, despite the extremely narrow scope of judicial review of arbitration decisions, the Arbitrator's Decision in this case "fail[ed] to draw its essence from the collective bargaining agreement," instead "reflect[ing] the arbitrator's own notions of right and wrong." Mountaineer , 76 F.3d at 608 (citing Misco , 484 U.S. at 38, 108 S.Ct. 364). Accordingly, the Court **VACATES** the Arbitrator's award **WITH PREJUDICE**.

B. The Damages Award in the Arbitrator's Supplemental Decision

Having concluded that the work at issue was construction work, the Court need not decide whether the amount of damages calculated in the Arbitrator's Supplemental Decision (dkt. no. 4–1) was arbitrary or capricious. Nonetheless, because the Company has presented this argument in its motion for summary judgment, the Court will turn briefly to the issue.

Had the work in question been maintenance work, it would have been under the exclusive jurisdiction of the union employees, and the Arbitrator would have been fully within her authority to award the damages she did. See Brown & Pipkins, LLC v. Service Employees Int'l Union , 2017 WL 280733, at *7, 846 F.3d 716 (4th Cir. 2017) (noting that "we give arbitrators wide latitude to formulate remedies" (citing Enterprise Wheel , 363 U.S. at 597, 80 S.Ct. 1358)). This includes her finding that, even though the employees were working five days a week, they would have been able to procure overtime to perform the work. See Consolidation Coal Co. v. United Mine Workers of America Dist. 31, Local Union 1702 , 2013 WL 4758601, at *5 (N.D.W.Va. 2013) (noting that it was "within the scope of the arbitrator's authority" to award damages, including finding that the work would have eventually been done by union employees on overtime).

Therefore, to the extent it was necessary for the Arbitrator to calculate an award of damages to the Union, which the Court concludes it was not, the Arbitrator's Supplemental Decision clearly weighed the competing labor time estimates and, regardless of whether there may have been a more accurate formula, her calculation should remain undisturbed. Had the work in question actually been repair or maintenance, the amount of the Arbitrator's award would have drawn its essence from the CBA, and there would be no basis to overturn the calculation. See Baltimore Regional

Joint Bd. v. Webster Clothes, Inc. , 596 F.2d 95, 98 (4th Cir. 1979) ("[The Arbitrator's] award is legitimate only so long as it draws its essence from the collective bargaining agreement ...." (quoting Enterprise Wheel , 363 U.S. at 597, 80 S.Ct. 1358)).

V. CONCLUSION

For the reasons discussed, the Court **DENIES** the Union's motion for summary judgment (dkt. no. 808 13), **GRANTS** the Company's *808 motion for summary judgment (dkt. no. 15), **VACATES** the Arbitrator's award, and **ORDERS** this case stricken from the Court's active docket.

It is so **ORDERED**.

The Court directs the Clerk to transmit copies of this Memorandum Opinion and Order to counsel of record and to enter a separate judgment order.

Exhibit 8

No. 15-3668
United States Court of Appeals For the Seventh Circuit

Unite Here Local 1 v. Hyatt Corp.

862 F.3d 588 (7th Cir. 2017)
Decided Jul 6, 2017

No. 15-3668

07-06-2017

UNITE HERE LOCAL 1, Plaintiff-Appellee, v. HYATT CORPORATION, doing business as Hyatt Regency Chicago, Defendant-Appellant.

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Rovner, Circuit Judge.

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Peter Andjelkovich, Attorney, Bradley J. Wartman, Attorney, PETER ANDJELKOVICH & ASSOCIATES, Suite 3950, 135 S. LaSalle Street, Chicago, IL 60603-0000, for Defendant-Appellant

Before Wood, Chief Judge, and Kanne and Rovner, Circuit Judges.

Rovner, Circuit Judge.

Defendant Hyatt Corporation, doing business as Hyatt Regency Chicago ("Hyatt" or the "hotel"), appeals the district court's entry of judgment on the pleadings in favor of plaintiff Unite Here Local 1 ("Local 1"), confirming the decisions of two arbitrators in Local 1's favor. *Unite Here, Local 1 v. Hyatt Corp.*, 2015 WL 7077329 (N.D. Ill. Nov. 13, 2015). Hyatt contends that the matter is either moot or does not present an appropriate case for confirmation of the awards, and that the district court's decision to confirm the awards needlessly interjects the court into an ongoing set of disputes between itself and Local 1 that should be resolved by way of further arbitration. We disagree and affirm the judgment. The district court's modest action in confirming the awards places the court's contempt power behind the prospective relief ordered by the arbitrators, while reserving the merits of any pending or future grievances for arbitration. Indeed, Local 1 has conceded that any contempt petition would be based solely on the outcome of arbitrations post-dating the district court's confirmation order. Consequently, we are not convinced that the court's decision to confirm the two awards in any

way undermines the parties' agreement to resolve their disputes through arbitration. We therefore affirm the district court's decision.

I.

The Hyatt Regency Chicago is a convention hotel with over 2,000 guest rooms, five ballrooms, and between 80 and 100 meeting and event rooms. It employs approximately 1,200 people, 850 of whom are hourly employees belonging to the union. Local 1 represents the members of the bargaining unit, who include door and bell
591 attendants; switchboard operators; room, *591 house, and public area housekeeping attendants; linen throwers and attendants; food and beverage hostesses, servers, bussers, cooks, bartenders, and cafeteria attendants; convention housemen; and various other workers. The size of the hotel's facilities and workforce enable it to host up to 10,000 guests at a time and thus to handle some of the city's largest professional conclaves and other gatherings.

Hyatt and Local 1 are parties to a longstanding collective bargaining agreement, the current version of which is effective from September 1, 2013 through August 31, 2018 (the "CBA" or "agreement"). Section 56 of that agreement prohibits the hotel's 140 managerial employees from performing work normally performed by bargaining-unit employees absent an emergency. R.1-1 at 48.[1] Section 46 of the CBA sets forth a multi-step grievance procedure for the resolution of disputes between the parties, and section 45 provides for the arbitration of any disputes over the interpretation or alleged violations of any terms of the agreement not resolved by the grievance procedure. In the second half of 2013 and the first part of 2014, there were a number of incidents in which managers performed bargaining-unit work in circumstances that Local 1 did not regard as emergencies. The union took two sets of grievances on that subject to arbitration in the Fall of 2014, both of which resulted in awards in Local 1's favor.

1 Section 56 states in full: "Supervisory personnel shall not perform work normally performed by bargaining-unit employees except in cases of emergency." R. 1-1 at 48.

In an award dated February 2, 2015, arbitrator George R. Fleischli found that Hyatt had violated section 56 by permitting managers to perform work normally done by housemen in the convention services department of the hotel. Housemen perform the tasks necessary to set up meeting rooms and ball rooms for the particular types of events scheduled for those rooms: they bring the appropriate types of tables into the rooms, arrange chairs around them, place linens on the tables if necessary, establish water and refreshment stations, and set up any podiums, stages, or dance floors that might be required. When an event has concluded, they then break down the room and set it up for the next event. Local 1 alleged that on some 17 occasions from September 2013 through June 2014, supervisors took on tasks that they should have left to housemen, including: setting up tables, replacing tables that had already been set up, straightening or adjusting chairs, placing drinking glasses on tables, setting up or moving special "highboy" cocktail tables, breaking down tables, stacking chairs, cleaning up trash, and so forth.

As a threshold matter, arbitrator Fleischli rejected the hotel's dual contentions that there was an established practice of "shared work" between housemen and supervisors that envisioned them both working side by side as necessary to set up and break down event rooms and, relatedly, that the individuals supervising housemen were "working supervisors" whose job responsibilities included pitching in as necessary to complete tasks. The evidence, in the arbitrator's view, simply did not support the existence of a consistent practice in either respect. (In the concluding section of his decision, he did allow that there had been lax enforcement of section 56 in the convention services department of the hotel

for many years which had effectively permitted supervisors in that department to violate the rule unchecked.)

On examining the terms of section 56, arbitrator Fleischli concluded that it was not self-evident what constituted an "emergency" that would
592 permit supervisors to *592 step in and perform tasks that were otherwise assigned to housemen. He rejected Hyatt's contention that the term should be defined simply as a set of unforeseen circumstances. Having weighed the parties' competing arguments on this point, Fleischli concluded that an "emergency" was properly defined as unforeseen circumstances that require immediate action, including in particular the need for the hands-on intervention of supervisors when bargaining-unit members are not reasonably available to take care of the urgent task at hand.

Ultimately, arbitrator Fleischli found that the union's grievances were arbitrable (*i.e.* , properly preserved and presented for decision) as to five of the incidents cited, and he concluded that Hyatt had violated section 56 in three of those incidents. The proven violations were relatively minor, in his view, but at least in the first two of the incidents, they were not de minimis. Fleischli declined to order make-whole relief in the form of backpay given the history of lax enforcement of section 56 in the department, but he did order Hyatt to cease and desist from further violations of section 56 and to take such steps as were necessary to ensure that hotel managers complied with the provision in the future.

In a second award dated March 1, 2015, arbitrator Ann S. Kenis likewise found that Hyatt had violated section 56 on multiple occasions. Arbitrator Kenis addressed a broader range of circumstances than had her colleague. She was presented with two grievances. The first involved supervisors doing work normally performed by bell attendants (also know as bellmen), including the receipt and storage of guest luggage, retrieving checked bags for guests, and loading luggage into guest vehicles. These incidents occurred in the Fall of 2013. The second, more general grievance involved bargaining-unit employees from multiple hotel departments and was based on supervisors performing any number of tasks (beginning on or about March 13, 2014 and continuing thereafter), including: cleaning (*e.g.* , mopping or sweeping floors, using mechanical ride-on "chariots" to clean ballroom or public area carpets, cleaning the front doors of the hotel, and emptying trash cans in public areas); serving guests in the hotel restaurants, café, and employee cafeteria (*e.g.* , seating guests, pouring drinks, making coffee, bussing tables, stocking the buffet, handing out condiments, working the cash register, wiping counters); transporting food, beverages, and dishes to and from ballroom banquets; loading soiled linens into the hotel laundry chute; and helping to clear rooms after events (*e.g.* , picking up trash, removing special items like ice sculptures, and so on).

Upon review of the evidence and the parties' arguments as to the proper construction of section 56, arbitrator Kenis agreed with arbitrator Fleischli as to certain key points. First, she found insufficient evidence to support Hyatt's contention as to a practice of shared work responsibilities between bargaining-unit employees and their supervisors or as to a practice of "working supervisors" who routinely pitched in to help the line employees they supervised. Second, she agreed with her colleague that the term "emergency" connotes more than just unforeseen circumstances, as Hyatt had suggested. Kenis noted that in the arbitration context, another arbitrator's interpretation of "emergency" was neither conclusive nor binding upon her. Yet, she believed that she should not disregard arbitrator Fleischli's reasoning absent substantially altered circumstances, which Hyatt had not established. In that regard, arbitrator Kenis noted that although Hyatt had attempted to convince her that there was
593 a longstanding, uniform *593 practice of managers doing bargaining-unit work whenever unforeseen

circumstances presented themselves, she regarded the hotel's proof on that point as being even weaker than the evidence presented to arbitrator Fleischli. Arbitrator Kenis therefore adopted her colleague's definition of emergency.

Turning to the evidence presented to her, arbitrator Kenis found that there were only a few genuine emergencies involving unforeseen circumstances coupled with a need for immediate action: One involved a pipe leaking water into a ballroom; the second involved a large professional conference and a shortage of staff members to handle all tasks despite management's efforts to summon additional workers; and the third involved scraping gum from pavement at the entrance to the hotel immediately prior to a VIP's arrival. Beyond those incidents, Hyatt had either failed to establish that there was a genuine emergency requiring immediate action as it claimed, or the facts showed that supervisors were simply pitching in to perform mundane, bargaining-unit tasks as a matter of course (in some instances, for hours at a time) without first ascertaining whether there was a bargaining-unit employee available to handle the task in question.

Arbitrator Kenis thus concluded that Hyatt had transgressed section 56 in all but the isolated instances in which she found there had been a true emergency. She rejected the hotel's suggestion that the violations were de minimis, reasoning that even if that characterization applied to certain individual incidents, "there is a cumulative pattern shown on this record that requires a remedy." R. 1-3 at 50. In this respect, she viewed the evidentiary record as being significantly different from the one presented to arbitrator Fleischli. Arbitrator Kenis therefore concluded that make-whole relief in the form of backpay (at an overtime rate) was appropriate to compensate the union for the time supervisors had spent performing bargaining-unit tasks. Like arbitrator Fleischli, she also ordered Hyatt to cease and desist from future violations of section 56.

Hyatt allowed 90 days to pass without filing a petition to vacate either of the awards in federal court;[2] the union, however, pursuant to section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a), filed a petition in the district court to confirm the two awards. In its complaint, the union alleged that Hyatt "has failed and refused and continues to fail and refuse to comply with or otherwise be bound by" the Fleischli and Kenis awards. R. 1 at 3 ¶¶ 16, 18. In support of that contention, Local 1 cited some 41 examples of managers allegedly performing bargaining-unit work in February through May of 2015, after the two arbitrators had ordered Hyatt to cease and desist from further violations of section 56. R. 1 at 3–7 ¶ 19. (These incidents constitute the same alleged 41 violations of section 56 pending between the parties, and working their way through the contractual grievance and arbitration procedure, that we refer to elsewhere in this opinion.)*594 The parties filed 594 cross-motions for judgment on the pleadings, and Judge Gettleman ultimately granted judgment on the pleadings in favor of Local 1.[3] Among other things, he noted that Hyatt had not timely challenged the awards, rendering them final and beyond review. 2015 WL 7077329, at *2 n.1. In any case, he reasoned, the awards drew their essence from the CBA and were therefore valid. *Id.* , at *2. He rejected Hyatt's contention that confirmation of the awards was foreclosed by this court's decisions in *United Elec. Radio & Mach. Workers of Am. v. Honeywell, Inc.* , 522 F.2d 1221, 1225-27 (7th Cir. 1975), and *Local 1545, United Mine Workers of Am. v. Inland Steel Coal Co.* , 876 F.2d 1288, 1294-97 (7th Cir. 1989). He pointed out that the unions in those cases were attempting to bypass the arbitration process and give prospective effect to arbitration awards that contained only backward-looking, make-whole remedies. This court held that a union could do this only if it met certain criteria. The arbitration awards in this case, by contrast, expressly granted prospective relief in the form of cease-and-desist orders. "Nothing in *Honeywell* or *Inland Steel*

suggests that an arbitration award granting prospective relief cannot be confirmed," Judge Gettleman reasoned. "Indeed, they both suggest just the opposite." 2015 WL 7077329, at *3 (N.D. Ill. Nov. 13, 2015).

[2] The limitations period for filing a motion to vacate an arbitration award is borrowed from state law, and the Illinois Uniform Arbitration Act specifies a period of 90 days for such a request. 710 Ill. Comp. Stat. 5/12(b) ; *see, e.g., Int'l Union of Operating Eng'rs, Local 150, AFL-CIO v. Centor Contractors, Inc.*, 831 F.2d 1309, 1311–12 (7th Cir. 1987). An action to confirm an arbitration award, on the other hand, is subject to a much more generous limitations period of five years in Illinois. *See* 735 Ill. Comp. Stat. 5/13-205 ; *Peregrine Fin. Grp., Inc. v. Futronix Trading Ltd.*, 401 Ill.App.3d 659, 341 Ill.Dec. 147, 929 N.E.2d 1226, 1227–28 (2010).

[3] Hyatt's motion alternatively asked the court to compel arbitration of the new disputes regarding section 56, a request that the district court denied. In the course of briefing the motions for judgment on the pleadings, Hyatt also asked the court to convert Local 1's motion into one for summary judgment pursuant to Federal Rule of Civil Procedure 12(d). The court likewise denied that request, finding it unnecessary to resort to matters outside of the pleadings in order to resolve the motion.

Hyatt filed a motion to stay the district court's judgment pending appeal. Hyatt raised two principal concerns about the court's order of confirmation. First, to the extent the order was viewed as an injunction (in that it confirmed the cease and desist commands entered by the arbitrators), the order gave Hyatt no notice of the duties imposed on it—*i.e.* , no description of the particular acts from which Hyatt was obligated to refrain. Essentially, the court, like the arbitrators, had merely told Hyatt, "Do not violate the contract." Hyatt was concerned that the lack of specifics placed it at undue risk of contempt sanctions. Second, in Hyatt's view, confirmation of the two awards had given the union the means to bypass the grievance and arbitration procedure set forth in the CBA by enabling the union to seek contempt sanctions for new violations of section 56. Rather than seeking a determination from an arbitrator as to new grievances, the union could simply seek a contempt finding from the district court. Given the nature of the hotel's business—including the variety of events it hosted, guest demands, and the unforeseen circumstances that may occur—Hyatt anticipated that the parties might be in front of the court on a regular basis.

At the hearing on Hyatt's motion, both the district court and the union contradicted the twin premises of the request for a stay. The district court pointed out that it had entered no injunction. It had done no more than confirm the two arbitration awards. To the extent Hyatt believed the cease and desist aspects of those awards gave it insufficient guidance as to what specific acts were prohibited, that would be a matter for the court to consider at a later contempt proceeding. Secondly, the court rejected the notion that confirmation gave the union license to bypass arbitration and bring future grievances directly to court by way of a
595 contempt petition. The *595 union's counsel expressly agreed with the court: Any pending and future grievances would be resolved by way of arbitration, she represented. The union had no immediate plans to file a contempt petition, and any such petition would be based on the outcome of future arbitrations post-dating the confirmation of the Fleischli and Kenis awards. R. 54.

With those points having been clarified, Hyatt withdrew its stay motion without prejudice. It proceeded with this appeal, contending that the court erred in confirming the awards.

II.

We review the district court's decision to enter judgment on the pleadings in favor of Local 1 de novo. *E.g.* , *Gill v. City of Milwaukee* , 850 F.3d 335, 339 (7th Cir. 2017). Judgment on the pleadings is appropriate when there are no disputed issues of material fact and it is clear that the moving party, in this case Local 1, is entitled to judgment as a matter of law. *E.g.* , *Nat'l Fidelity Life Ins. Co. v. Karaganis* , 811 F.2d 357, 358 (7th Cir. 1987). In reviewing the judgment, we, like the district court, are confined to the matters presented in the pleadings, and we must consider those pleadings in the light most favorable to Hyatt. *Id.*

Section 301 of the LMRA grants federal courts jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce," § 185(a),[4] and this jurisdiction is understood to include a request to enforce (or vacate) an award entered as a result of the procedure specified in a collective bargaining agreement for the arbitration of grievances. *See United Steelworkers of Am. v. Enter. Wheel & Car Corp.* , 363 U.S. 593, 595–96, 80 S.Ct. 1358, 1360, 4 L.Ed.2d 1424 (1960) ; *Evans v. Einhorn*, 855 F.2d 1245, 1253 (7th Cir. 1988) (per curiam).

[4] The grant of jurisdiction is not exclusive: state courts have concurrent jurisdiction over section 301 suits. *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 82 S.Ct. 519, 7 L.Ed.2d 483 (1962).

The Supreme Court has repeatedly recognized the central role that arbitration plays in national labor policy:

> [T]he grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government. Arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties. The processing of disputes through the grievance machinery is actually a vehicle by which meaning and content are given to a collective bargaining agreement.

United Steelworkers of Am. v. Warrior & Gulf Navigation Co. , 363 U.S. 574, 581, 80 S.Ct. 1347, 1352, 4 L.Ed.2d 1409 (1960) ; *see also United Steelworkers of Am. v. Am. Mfg. Co.* , 363 U.S. 564, 566–69, 80 S.Ct. 1343, 1346–47, 4 L.Ed.2d 1403 (1960) ; *Enter. Wheel & Car* , 363 U.S. at 596, 80 S.Ct. at 1360. More fundamentally, arbitration supplies the parties with a constructive means of resolving their disputes: "It, rather than a strike, is the terminal point of a disagreement." *Warrior & Gulf Navigation* , 363 U.S. at 581, 80 S.Ct. at 1352. When Congress conferred jurisdiction on the federal judiciary over disputes arising under collective bargaining agreements, it meant for us to support and reinforce, rather than displace, the arbitration process:

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> Plainly the agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike. Viewed in this light, [section 301] does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way.

Textile Workers Union of Am. v. Lincoln Mills of Ala. , 353 U.S. 448, 455, 77 S.Ct. 912, 917, 1 L.Ed.2d 972 (1957) ; *see also Am. Mfg. Co.* , 363 U.S. at 569, 80 S.Ct. at 1347 (forbidding courts from independently evaluating merits of grievances under guise of interpreting contractual grievance procedure); *Enter. Wheel & Car* , 363 U.S. at 596, 80 S.Ct. at 1360 ("The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards."). Thus, where appropriate, courts will compel the arbitration of disputes that the parties have contractually committed to arbitration, *e.g.* , *Lincoln Mills* , 353 U.S. at 456–59, 77 S.Ct. at 917–19, and, as relevant here, enforce awards resulting from arbitration as a means of affording parties complete relief, *see Enter. Wheel & Car* , 363 U.S. at 595–96 & n.1, 80 S.Ct. at 1360 & n.1 (citing *Textile Workers Union of Am. v. Cone Mills Corp.* , 268 F.2d 920 (4th Cir. 1959)); *id.* at 599, 80 S.Ct. at 1362 ; *Evans* , 855 F.2d at 1253. Confirmation of an arbitration award places the weight of a court's contempt power behind the award, *see* , *e.g.* , *Chrysler Motors Corp. v. Int'l Union, Allied Indus. Workers of Am., AFL-CIO* , 909 F.2d 248, 249–50 (7th Cir. 1990), giving the prevailing party a means of enforcement that an arbitrator would typically lack. *See Lincoln Mills* , 353 U.S. at 455, 456, 77 S.Ct. at 917 (congressional purpose in enacting section 301 "to provide the necessary legal remedies" and "place[ ] sanctions behind agreements to arbitrate grievance disputes").

Against the backdrop of ongoing disputes over supervisors doing bargaining-unit work, Local 1 sought confirmation of the Fleischli and Kenis awards in order to preserve its ability to seek contempt sanctions if Hyatt, contrary to the arbitrators' cease and desist directives, committed additional violations of section 56. As we turn to the merits of that request, a few prefatory remarks are in order.

This case differs from the usual proceeding seeking to confirm or vacate an arbitration award in that it involves awards ordering open-ended prospective relief, as opposed to backward-looking make-whole relief, such as an award of lost wages, *e.g.* , *Dexter Axle Co. v. Int'l Ass'n of Machinists & Aerospace Workers, Dist. 90, Lodge 1315* , 418 F.3d 762 (7th Cir. 2005), or finite forward-looking relief, such as the reinstatement of an employee whom the arbitrator has found to have been wrongfully discharged, *e.g.* , *Chrysler Motors Corp. v. Int'l Union, Allied Indus. Workers of Am., AFL-CIO* , 959 F.2d 685 (7th Cir. 1992). In both of the cases at issue here, the arbitrators ordered Hyatt to cease and desist from further violations of the CBA term they had interpreted and applied. Hyatt equates confirmation of that kind of order with prospective enforcement of an arbitration award in a manner that will disrupt, and potentially supplant, the grievance-and-arbitration procedure that the parties have incorporated into their agreement. When a party asks that an award be enforced prospectively, it is typically asking the court to apply the arbitrator's holding to a later dispute that has not been submitted to arbitration. Often the specific relief requested is the entry of declaratory or injunctive relief that dictates the resolution of the new dispute in harmony with the
597 arbitrator's prior ruling. *597 *E.g.* , *Honeywell* , *supra* , 522 F.2d at 1224–25. That type of relief places the court in the position of regulating the parties' conduct directly in lieu of having a second arbitrator resolve the merits of the later dispute. The prospective enforcement of arbitration awards is thus a matter that we approach with great caution, as evidenced by our decisions in *Honeywell* and *Inland Steel Coal* . *See Honeywell* , 522 F.2d at 1225 (noting extraordinary nature of request to prospectively enforce prior arbitration award to unarbitrated disputes); *Inland Steel* , 876 F.2d at 1293–94 (surveying high bars other circuits have posted to prospective enforcement); *see also Consol. Coal Co. v. United Mine Workers of Am., Dist. 12, Local Union 1545* , 213 F.3d 404, 406 (7th Cir. 2000) ("courts are reluctant to issue

labor injunctions"); *AG Commc'n Sys. Corp. v. Int'l Bhd. of Elec. Workers, Local Union No. 21* , 2005 WL 731026, at *10 n.7 (N.D. Ill. Mar. 28, 2005) (noting that "AGCS has not pointed to any cases in which the Seventh Circuit has prospectively applied an arbitration award as a bar to future grievances"). Specifically, courts have expressed a concern that prospective enforcement of an arbitration award will effectively nullify the parties' agreement to resolve their disputes by way of arbitration. *See Inland Steel Coal* , 876 F.2d at 1296 ; *Honeywell* , 522 F.2d at 1225. The premise of Hyatt's challenge to the district court's decision is that confirmation of the Fleischli and Kenis awards will produce that very result, in that confirmation invites the union to bring future disputes under section 56 directly to the court by way of a contempt petition, such that the court will be required to pass on such fact-intensive (and industry-specific) questions as whether there was an emergency justifying hotel managers in performing bargaining-unit work in particular instances—questions of the sort that normally would and should be resolved by an arbitrator. If that were the course of action that the union envisioned in requesting confirmation of the awards, then we would agree that confirmation presents the potential concerns about prospective enforcement that prior cases have expressed. But the precise relief that Local 1 has sought is more modest than Hyatt's challenge would suggest.

As below and again in its brief on appeal, the union has disavowed any attempt to bypass arbitration as to the additional 41 purported violations of section 56 pending between itself and Hyatt. Local 1 represents that it will arbitrate not only those incidents, but any future grievances post-dating the court's confirmation order. Only if Local 1 prevails in arbitrations concerning the latter set of grievances might the union seek contempt sanctions. In short, before Local 1 seeks contempt sanctions, the merits of any grievances underlying the contempt petition will have already been arbitrated; the court's role will be limited to deciding whether the union is entitled to the additional remedy of contempt sanctions based on the arbitrator's (or arbitrators') findings. That is the understanding on which the district court granted confirmation, and that is the understanding on which we evaluate the court's decision to confirm the Fleischli and Kenis awards.

The issue as presented to us is therefore a narrow one, as is our holding. As we explain below, the facts of this case readily distinguish it from the cases Hyatt relies upon to show that confirmation of the two awards was improper as a matter of law. We need not find more than that in order to sustain the district court's decision. Our holding today is naturally dependent on the particular facts and arguments presented to us. As in prior decisions, we abstain from an effort to look beyond the circumstances of this case and
598 articulate a *598 comprehensive standard as to when prospective enforcement of an arbitration award might or might not be warranted, and what types of relief might be appropriate when it is. *See Inland Steel Coal* , 876 F.2d at 1296 ; *Honeywell* , 522 F.2d at 1225.[5]

[5] Confirmation of the Fleischli and Kenis awards was decided on the pleadings, and Hyatt (despite one isolated reference in its briefs to the district court's "discretion, " *see* Hyatt opening brief at 8) has framed its appeal as presenting errors of law rather than of discretion in confirming the awards. We address its arguments on these terms. To the extent one might treat as two distinct issues the question whether a labor arbitration award is *eligible* for confirmation, in the sense that it meets the usual criteria for confirmation, *see infra* at 600–01, and the question whether it *should* be confirmed as a prudential matter, we have not been asked to draw such distinctions and to consider whether they are subject to different standards of review. We leave such matters for another day.

Hyatt initially attacks the judgment on the ground that there was and is no Article III case or controversy for a court to resolve. *See* U.S. CONST. art. III, § 2. Hyatt points out that it did not challenge either of the two arbitration awards and that once the time for doing so had passed, the awards were final and binding. *See McKinney Restoration Co. v. Ill. Dist. Council No. 1 of Int'l Union of Bricklayers & Allied Craftworkers, AFL-CIO* , 392 F.3d 867, 869 (7th Cir. 2004) (citing, inter alia, *Int'l Union of Operating Eng'rs, Local 150, AFL-CIO v. Centor Contractors, Inc.* , *supra* n.2, 831 F.2d at 1311); *see also Wm. Charles Constr. Co. v. Teamsters Local Union 627* , 827 F.3d 672, 678 (7th Cir. 2016) ("A failure to challenge an arbitration award within the applicable limitations period renders the award nearly impervious to attack."). Hyatt purports to accept both awards as valid and binding upon itself.[6] Consequently, Hyatt reasons, confirmation of the awards would accomplish nothing. If, as Local 1 represents, it is not seeking preemptive relief as to the additional disputes now being resolved through the grievance and arbitration process, then, in Hyatt's view, the union is not asking for anything that Hyatt has not already given it by accepting the first two awards without challenge. *Cf. Derwin v. Gen. Dynamics Corp.* , 719 F.2d 484, 491 (1st Cir. 1983) (questioning wisdom of court placing its imprimatur on arbitration award in "a factual vacuum").

[6] In support of that representation, Hyatt submitted the affidavit of its director of labor relations detailing various steps that the company has taken in order to comply with the arbitrators' directive that it cease and desist failing to comply with section 56. The affidavit was one of the extra-pleadings materials that the district court declined to consider when it denied Hyatt's request to convert the union's motion for judgment on the pleadings into a motion for summary judgment.

We are satisfied that there is a live controversy between the parties. Hyatt's decision to forego a challenge to either award may render both awards final, but that does not mean that confirmation of the awards can provide nothing of value to the union. *Cf. Ozinga v. Price* , 855 F.3d 730, 734 (7th Cir. 2017) (case becomes moot when the source of the plaintiff's prospective injury has been removed and there is no longer any effective relief that the court can order) (collecting cases). Confirmation renders the awards judicially enforceable by way of contempt sanctions, as both parties recognize. Indeed, much of Hyatt's briefing is devoted to arguing why it is inappropriate to make that weapon available to the union. And although Hyatt purports to accept the awards as binding, there is plainly a live dispute about whether Hyatt is in fact acting in compliance with the awards. The 41 pending alleged violations of section 56 demonstrate that *599 there is an ongoing controversy about the use of managers to perform bargaining-unit work.[7] Of course, the parties agree that the merits of those disputes must be resolved through the contractual grievance and arbitration process. But the existence of the additional disputes demonstrates that the parties remain at odds as to what section 56 means and whether Hyatt is complying with the section. That is sufficient to distinguish this case from others in which courts have dismissed a request to confirm an arbitration award for want of a "live and actual dispute between the parties." *See Chicago Reg. Council of Carpenters v. Onsite Woodwork Corp.* , 2012 WL 6189635, at *4 (N.D. Ill. Dec. 12, 2012) (collecting cases); *cf. Buffalo Forge Co. v. United Steelworkers of Am., AFL-CIO* , 428 U.S. 397, 403 n.8, 96 S.Ct. 3141, 3146 n.8, 49 L.Ed.2d 1022 (1976) ; *CSX Transp., Inc. v. Bhd. of Maint. of Way Employees* , 327 F.3d 1309, 1319–20 (11th Cir. 2003) ; *cf.* 13C C. Wright, A. Miller, & E. Cooper, FED. PRAC. & PROC. § 3533.3.1, at 116 (3d ed. 2008) (noting that "[l]abor disputes ... provide clear illustration of the private disputes that are preserved from mootness by the prospect of future repetition"). The Fleischli and Kenis

awards are relevant to those disputes in that they address what constitutes a genuine emergency permitting managers to perform such work; the awards also expressly impose an obligation on Hyatt to comply with their holdings by ordering the company to cease further violations. Confirmation gives teeth to these awards by exposing Hyatt to the prospect of contempt sanctions if it does not comply under circumstances sufficiently similar to those resolved by the two arbitrators. Absent confirmation, the union has no remedy in litigation if Hyatt chooses to ignore them: the awards are not binding in future arbitrations (although arbitrator Kenis elected to follow arbitrator Fleischli's reasoning, she recognized that she was not necessarily obliged to do so),[8] and the union would not have the option of seeking contempt sanctions from the district court. Whether and when such sanctions might be appropriate obviously is a question that the district court would have to resolve when presented with a request to find Hyatt in contempt. The only question that we need to answer for purposes of our jurisdiction is whether there remains a live
600 *600 case or controversy between the parties, and we have concluded that there is.[9]

[7] In its answer to the complaint, Hyatt professed ignorance as to the factual allegations underlying these additional purported violations (R. 9 at 11 ¶ 19), but the appellate briefs make clear that there is no dispute as to the fact that Local 1 has raised these alleged violations with Hyatt and that the parties have initiated the contractual grievance process to address the incidents in question.

[8] Generally speaking, the matter of a prior arbitration's preclusive effect on a later arbitration is one for the arbitrator himself or herself to address, as arbitrator Kenis's award itself reflects. *See Trustmark Ins. Co. v. John Hancock Life Ins. Co. (U.S.A.)*, 631 F.3d 869, 874 (7th Cir. 2011) ("Arbitrators are entitled to decide for themselves those procedural questions that arise on the way to a final disposition, including the preclusive effect (if any) of an earlier award."); *Lindland v. U.S.A. Wrestling Ass'n*, 230 F.3d 1036, 1039 (7th Cir. 2000) ("[a]rbitrators need not follow judicial notions of issue and claim preclusion"); *Consol. Coal Co., supra*, 213 F.3d at 407 (preclusive effect of prior arbitrations is matter of contract rather than law: "If the parties to the collective bargaining agreement want the first arbitrator's interpretation of a provision of the agreement or resolution of a dispute arising under the agreement to have preclusive effect, they can so provide; and whether they do so or not, the question of the preclusive force of the first arbitration is, like any other defense, itself an issue for a subsequent arbitrator to decide.") *Indep. Lift Truck Builders Union v. NACCO Materials Handling Grp., Inc.*, 202 F.3d 965, 968 (7th Cir. 2000) ("the preclusive effect of the first arbitrator's decision is an issue for a later arbitrator to consider") (internal quotation marks and citations omitted).

[9] Recognizing that there is a live controversy between the parties as to Hyatt's compliance with the two arbitration awards does not require us to resolve a disputed point of fact and assume that Hyatt is indeed violating the awards. We assume only that there is an ongoing dispute as to Hyatt's compliance with section 56 and the two awards, and the existence of that dispute is confirmed by the 41 pending alleged violations.

We should note at this point that nearly all of the circumstances material to the union's right to confirmation of the two arbitration awards are undisputed. There is no dispute that Hyatt and Local 1 are parties to a collective bargaining agreement; that the agreement sets forth a grievance and arbitration procedure for resolution of disputes between the parties; that disagreements

over the proper understanding and application of section 56 of the agreement are within the scope of the parties' agreement to arbitrate their disputes; that the parties did in fact engage in arbitration over instances in which managers performed tasks normally performed by bargaining-unit members; that those arbitrations culminated in the two awards at issue here; that the arbitrators examined the relevant provisions of the CBA in rendering their decisions; and that Hyatt did not timely pursue a challenge to either of the two awards. So, although there are, to be sure, some points of contention between the parties—in particular, whether Hyatt is in good faith endeavoring to comply with the awards and with section 56—they dispute no point relevant to the validity of the two awards.

Judicial review of a labor arbitration award typically is confined to the narrow question of whether the arbitrator's reasoning draws its essence from the parties' agreement. *Enter. Wheel & Car Corp.* , 363 U.S. at 597, 80 S.Ct. at 1361 ; *see also W.R. Grace & Co. v. Local Union 759, Int'l Union of United Rubber, Cork, Linoleum & Plastic Workers of Am.* , 461 U.S. 757, 764, 103 S.Ct. 2177, 2182, 76 L.Ed.2d 298 (1983) ; *U.S. Soccer Fed'n, Inc. v. U.S. Nat'l Soccer Team Players Ass'n* , 838 F.3d 826, 831–32 (7th Cir. 2016). By not pursuing a petition to vacate the awards, Hyatt waived even that limited review. *See , e.g.* , *Teamsters Local No. 579 v. B & M Transit, Inc.* , 882 F.2d 274, 276–78 (7th Cir.1989). Notwithstanding the waiver, Judge Gettleman, in view of the fact that Hyatt challenged the propriety of confirmation, examined the two awards and was satisfied that both drew their essence from the agreement. 2015 WL 7077329, at *2. Hyatt does not contend otherwise on appeal. On the threshold question of whether the awards were eligible for confirmation, then, there was no error in the district court's decision to grant judgment on the pleadings in Local 1's favor.

Hyatt contends nonetheless that it is inappropriate for a court to intervene in the ongoing dispute between itself and the union by confirming the awards and thereby laying the groundwork for contempt sanctions. The contractual dispute resolution process should be allowed to resolve the additional alleged violations of section 56, Hyatt argues, without the court placing a finger on the scale by giving the union leverage to seek contempt sanctions against Hyatt if it can convince the court that Hyatt has not complied with the cease and desist directives issued by the two arbitrators who resolved the initial grievances. For this argument, it relies on the line of cases we noted at the outset of our analysis which have cautioned against courts preempting the contractual grievance process by prospectively enforcing arbitration awards entered in a union's favor when there are ongoing disputes between
601 *601 the parties that would otherwise be resolved by way of further arbitration.

But we are not convinced that this is what the union has asked the court to do here. In the Fleischli and Kenis awards, Local 1 secured not only the backward-looking determination that Hyatt had violated section 56 on the particular facts confronting the arbitrators in those proceedings, but an articulation of a standard as to what constitutes a legitimate emergency, coupled with forward-looking relief ordering Hyatt to cease and desist from further violations. Whether the awards are clear enough to place Hyatt on notice of what actions, in what circumstances, are prohibited, *see Stotler & Co. v. Able* , 870 F.2d 1158, 1163 (7th Cir. 1989), is a separate matter to be resolved in a future contempt proceeding (if such a proceeding takes place). Yet we do not think that simple confirmation of the two awards is barred on the rationale that Hyatt has articulated.

To begin, this is not a case, like *Honeywell* , in which we concluded that the union was attempting to bypass the arbitration process by seeking declaratory and injunctive relief from the district

court that it could have sought from arbitrators but had not. At issue in *Honeywell* was the employer's purported ongoing failure to comply with a contractual provision barring (with limited exceptions) supervisors, foremen, and workers outside of the bargaining unit from engaging in work normally performed by unit members. The union already had prevailed in four arbitrations on that subject and the arbitrators had granted make-whole relief to the affected employees; but none of the awards had granted prospective relief to the union. The union, alleging that there were many other instances of the employer violating the provision—some number of which were still working their way through the contractual grievance process—filed a complaint asking the district court to enter declaratory relief that the employer was violating the collective bargaining agreement and injunctive relief requiring the employer to adhere to the contractual provisions regarding the proper assignment of work. We concluded that the union's complaint failed to state a cause of action for such extraordinary relief.

At the outset of our analysis, we noted the unusual nature of the union's case:

> The claim which the Union seeks to establish here is not the ordinary one. While there are numerous reported cases of parties seeking to force or enjoin arbitration or to enforce an arbitration award, it is most unusual to find a party seeking the right to bypass arbitration procedures which it is contractually bound to follow and which are concededly applicable to the particular incidents generating disputes. Although we do not foreclose the possibility that there might exist particularly egregious circumstances which, if alleged, might state a cause of action for relief from a contractual duty to arbitrate, it is our opinion that the allegations of the complaint before us are not sufficient to state such a cause of action.

522 F.2d at 1225.

We went on to identify at least three reasons why it would be inappropriate for the court to entertain the relief requested by the union. First, there was no showing that the union had sought to aggregate its multiple grievances into a single arbitration proceeding. *Id.* at 1226. Such aggregation would permit the union to establish that the employer was engaging in a course of conduct violating the contractual provision in question: and such a showing in turn might support the sort of broad declaratory and injunctive relief the union was
602 seeking. *Id.* Second, in the four grievances *602 already taken to arbitration, the union had not asked the arbitrators themselves to grant declaratory and injunctive relief. *Id.* "[S]uch relief is not inherently beyond the capacity of an arbitrator to grant," *id.* , and there were any number of examples of courts sustaining arbitration awards granting such prospective relief, *id.* at 1226–27 (collecting authorities).[10] Third, the union had not alleged that "the factual basis of the four arbitration awards [already resolved] in its favor [was] so nearly identical to the facts of the pending grievances [not yet presented for arbitration] that the Company's conduct constitutes wilful and persistent disregard of the arbitration awards." *Id.* at 1227 ; *see id.* at 1226. To the contrary, "[e]ach [pending] grievance appears to arise out of entirely different facts." *Id.* at 1227. Thus, it was not at all clear that arbitrators were likely to resolve the additional grievances in the union's favor, or that any prospective relief the court might enter would answer the fact-specific questions posed by those grievances. *Id.* at 1227–28.

[10] *See also* R. Schoonhoven, Fairweather's Prac. & Proc. in Labor Arbitration § 15X, at 494–96 (4th ed. 1999) (summarizing various forms of injunctive relief arbitrators may enter, including cease and desist orders, and collecting cases).

Although the factual backdrop to this case certainly is similar to that in *Honeywell* , the limited nature of the relief sought and obtained by the union from the district court is not. In this case, the union was not attempting to bypass the arbitration process in order to obtain prospective relief that it could have, but did not, ask an arbitrator to enter. In both of the two arbitrations at issue here, the union asked for and was granted forward-looking cease and desist orders by the arbitrators. Also, in resolving the particular grievances presented to them, the arbitrators necessarily had to articulate what constitutes an emergency permitting a manager to perform bargaining-unit work. The awards thus gave the parties at least some guidance on what was and was not permitted, and it was in that context that Hyatt was ordered to refrain from further violations of section 56 in the future. Moreover, in seeking confirmation of the awards, the union did not ask for, and the district court did not grant, the sort of broad declaratory and injunctive relief that its counterpart asked for in *Honeywell* . Local 1 asked only that the court confirm the two arbitration awards entered in its favor, period. Although confirmation opens the door to a contempt proceeding at a later date, nothing that the district court did prejudges the outcome of such a proceeding. The union agrees that any unresolved disputes must wend their way through the contractual dispute resolution process, and that any request for contempt sanctions will be premised on future arbitration awards arising from grievances that post-date the district court's confirmation order. There is, therefore, no attempt to bypass the arbitration process, and we can discern no concrete impact that confirmation of these two awards will have on the outcome of that process.

Nor is this a case comparable to *Inland Steel Coal* . The union in that case had prevailed in successive arbitrations challenging the employer's decision to send workers home early in two instances, occurring five years apart, despite the availability of so-called "dead work" to occupy the workers. In both cases, the arbitrator had ordered compensatory relief only; in the second case, the union had asked for but did not obtain a cease and desist order from the arbitrator. When the employer sent workers home early for a third time five years after the second incident, the union filed
603 suit seeking specific enforcement *603 of the two arbitration awards—in other words, the union asked the court to apply those awards prospectively to resolve the new dispute between the parties rather than having an arbitrator do so.

The district court denied relief to the union, and we affirmed that decision. We noted first that neither of the arbitrators had included language in their awards directed to future action by the employer, "strongly" suggesting to us "that the arbitrators did not want the awards to apply prospectively," a conclusion reinforced by language in the collective bargaining agreement confining an arbitrator's authority to the particular dispute before him. 876 F.2d at 1295. And although the union had made a case for the notion that facts underlying the employer's latest transgression were substantially the same as those presented in the prior arbitrations, it had not alleged that the company's conduct amounted to "wilful and persistent disregard" of the prior awards. *Id.* at 1295–96. And "[a]s a matter of law, we do not believe that three isolated incidents of sending workers home early when 'dead work' is available over a ten year period constitutes 'wilful and persistent disregard of the arbitration awards.' " *Id.* at 1296. Likewise, we were not convinced that judicial intervention was necessary to bring an end to repetitive grievances and arbitrations over the same point, given the limited number of disputes involved. "In submitting [the third] grievance to an arbitrator, the union is free to argue that it has already submitted this same dispute to arbitration. In that way, the arbitrator can consider the fact that the dispute was previously arbitrated and decide for himself if he

believes that declaratory and injunctive relief is warranted by the facts of the case." *Id.* (citation omitted).

Here, again, the union is simply seeking to confirm prospective relief that it has already litigated and obtained from two arbitrators. The serial disputes between Hyatt and the union as to managers performing bargaining-unit work demonstrates that this is not, in contrast to *Inland Steel* , an isolated problem. So confirming the two prior awards may prove to have some utility. And, at the same time, Local 1 is not asking for a court to enforce the two awards preemptively so as to dispose of the merits of the additional disputes in a judicial forum; the union agrees that those disputes should instead be resolved through the contractual grievance and arbitration procedure.

In short, the circumstances of this case do not trigger the barriers to prospective enforcement articulated in *Honeywell* or *Inland Steel Coal* . Local 1 is not asking for the court to award forward-looking relief not already awarded in arbitration, nor is it seeking to bypass or preempt further arbitration between the parties. To be clear, we are not saying that a union's request to confirm a cease and desist award in its favor must always be as circumscribed as Local 1's is in this case. Our decision in *Honeywell* does not wholly foreclose the possibility that there might be circumstances in which a court properly could prospectively enforce an award in such a way as to preempt further arbitration on the same question. 522 F.2d at 1225, 1228. But we leave consideration of when that course of action might be appropriate for another case.

Hyatt pursues another challenge to confirmation that is based on prudential concerns. It likens this case to those that confronted the First Circuit in *Derwin v. Gen. Dynamics Corp.* , *supra* , and which led that court to caution against confirming a labor arbitration in a "vacuum." 719 F.2d at 491.

The union and the employer in *Derwin* had
604 recurring disputes over the time off *604 owed to union stewards from their regular work so that they might investigate grievances and handle related union matters. The collective bargaining agreement specified an off-the-job pass system for this purpose, and the employer in turn had adopted a set of guidelines on the subject that the union opposed. An arbitrator upheld the guidelines and articulated certain principles regarding appropriate practices with respect to the passes. Three years after the arbitration award, when the employer and the union found themselves in the midst of some 17 grievances over the employer's failure to issue passes to stewards, the union filed suit seeking confirmation of the award. The district court dismissed the suit as untimely. The appellate court disagreed on that point but nonetheless upheld the judgment.

In the First Circuit's view, confirmation of the award was "unwarranted." *Id.* at 490. Although the union was seeking confirmation simpliciter, without contemporaneously asking for any declaratory, injunctive, or other prospective relief with respect to pending grievances, the court was concerned that such "paper" confirmation of the award (*id.*), because it opened the door to subsequent contempt proceedings, posed the risk of aggravating the parties' ongoing disagreement rather than facilitating its resolution. Where the parties have agreed to arbitrate their disputes, the court noted, established labor policy restricts the role of the federal judiciary; and courts had traditionally treated with skepticism requests to confirm a prior arbitration award in order to render the award binding in the context of a later, factually similar dispute. *Id.* at 491. "Only where an arbitral award is both clearly intended to have prospective effect and there is no colorable basis for denying the applicability of the existing award to a dispute at hand, will a court order compliance with the award rather than require the parties to proceed anew through the contract grievance procedure." *Id.* The union was asking the court to

effectively bifurcate a typical enforcement proceeding by seeking to confirm the award in a vacuum and reserve concrete questions about the propriety of enforcement (*i.e.* , translating the award into specific relief that might directly resolve the parties' ongoing disputes) for a later date. The court questioned the wisdom of that approach, fearing that confirmation of the award would merely give the parties something more to argue about. *Id.* at 491–92. The court, in its parting words, noted that the substantive law regarding section 301(a) subsumes the prudential values of Article III of the Constitution, which counsel against the confirmation of arbitration awards in the absence of a concrete dispute. While acknowledging the district court's authority to confirm the award and decide later whether the parties' disagreement should be resolved by a judge or an arbitrator, the court was not persuaded of the wisdom of that approach. "[W]e see no point to such spinning of the wheels...." *Id.* at 493.

Derwin , having been decided by a sister circuit, amounts to persuasive but not binding authority in this circuit. Although there are certain similarities between this case and *Derwin* , there are also significant differences. Given those differences, we do not believe that *Derwin* demonstrates any legal error in the district court's decision to confirm the awards at issue here.

First, as was not the case in *Derwin* , the two arbitrators here not only attempted to give the parties guidance on how to apply the relevant provision of the collective bargaining agreement but specifically ordered Hyatt to refrain from repeating the types of actions the arbitrators had found to be in violation of the agreement. The arbitrators plainly thought that section 56 of the
605 *605 CBA and their own rationale as to the violations was clear enough to grant the union's request for prospective, "cease and desist" relief. In this respect, confirmation of the awards serves to reinforce the scope of relief awarded by the arbitrators rather than broadening the awards in a way that the arbitrators themselves did not intend.

Second, Local 1 is not seeking confirmation in order to gain any particular advantage with respect to the many additional disputes pending between the parties, which by contrast *was* the evident (if unspoken) aim of the union in *Derwin* . The First Circuit plainly understood the union to be seeking confirmation in order to enable the court itself to resolve additional grievances that would otherwise be submitted to arbitration. *See id.* at 491. Local 1, by contrast, has conceded that it must arbitrate any grievances pre-and post-dating the district court's confirmation decision. Nothing in the union's request for confirmation suggested that it was asking the court to insert itself into the arbitration process or in any way restrict the authority of arbitrators to resolve the merits of future arbitrations as they see fit. Confirmation simply preserves the possibility of additional relief in the form of contempt sanctions if and when the union prevails in future arbitrations (and can make an appropriate case for such sanctions).

This case *is* like *Derwin* in that Local 1 is pursuing a bifurcated approach to enforcement of the arbitration awards: it has asked the court to do nothing more than confirm the awards now, and is reserving the matter of enforcement, through a contempt proceeding, for a future date. In that sense, the union asked the court to confirm the awards in a "vacuum," as *Derwin* put it. The court thus has not yet had the opportunity to evaluate whether and how the two awards might bear on any pending or future disputes on the same subject. The union may or may not have a case to make for contempt sanctions if and when those disputes result in findings by an arbitrator (or multiple arbitrators) that Hyatt has persisted in practices that violate section 56. If the union does seek contempt sanctions, the court will necessarily have to consider, among other factors, whether the circumstances of the later violations are similar enough to those found by arbitrators Fleischli and Kenis to warrant the inference that Hyatt has deliberately defied the cease and desist directives of those two arbitrators. No one can know at this

point whether there will be such a contempt proceeding and what the merits of the union's case for contempt sanctions might be. In that limited sense, this is merely a "paper" confirmation.

But we are not as convinced as the First Circuit was that confirmation in this context amounts to unwarranted busy work on the part of the court. Two arbitrators have already had an opportunity to consider a fairly substantial range of alleged violations of section 56, to articulate what constitutes an emergency permitting managers to perform bargaining-unit work, and to decide that Hyatt should be ordered to cease and desist from further violations of section 56. The foundation for confirmation is thus significantly stronger than it was in the cases we have just discussed. And although the matter of enforcing the awards (through a potential contempt proceeding) has been severed from the matter of confirmation, this bifurcation ensures that the merits of additional grievances are reserved for arbitration and that any contempt petition will in no way preempt or disturb that contractual dispute-resolution process. Again, given Local 1's concession, any contempt request will be premised on grievances that post-date confirmation of the awards. To our mind, this
606 grants maximum deference to *606 the contractual grievance and arbitration mechanism by granting judicial confirmation to what has already been resolved by the arbitrators and keeping the court's hands off of the matters that have not yet been resolved. It also affords Hyatt ample opportunity to conform its practices to the CBA and to the Fleischli and Kenis awards.

As we have said, the question whether the Fleischli and Kenis awards should be enforced through a contempt finding is a question to be taken up at a later date, if and when additional grievances have been arbitrated in the union's favor and the union makes a case for contempt sanctions. Nothing about the union's request for confirmation has asked the district court or this court to prejudge the merits of any such request, and the district court's own remarks confirm that it has not prematurely reached any conclusion as to the propriety of any such sanctions.

Hyatt has given us no reason to believe that confirmation of the Fleischli and Kenis awards now will in any way tie the hands of arbitrators in future proceedings as to grievances arising from the 41 pending alleged violations and any additional grievances beyond those. *See* n.8, *supra*. In any case, it is far from clear that postponing confirmation of these awards to a later date would make any difference insofar as Hyatt's position is concerned; its objection to confirmation at times appears absolutist. Hyatt goes so far as to suggest in the briefing that the proper remedy for Local 1 to pursue, if it believes that Hyatt is not complying with the Fleischli and Kenis awards, is to call a strike of its members. (Section 7 of the CBA provides that there shall not be strikes so long as Hyatt follows the grievance procedure and abides by the results of that procedure. R. 1-1 at 11 § 7(A).) That is a remarkable position at odds with both the spirit of the arbitration provision of the CBA and longstanding labor policy favoring the peaceable resolution of labor disputes through arbitration.

In sum, although Local 1's request to confirm the two awards can be understood to seek prospective enforcement of the awards in that it opens the door to a contempt proceeding at a later date, given the relative modesty of the union's confirmation request and its concession that any pending and future disputes regarding the application of section 56 must first be arbitrated and resolved in the union's favor before it pursues a request for contempt sanctions, we find nothing improper in the district court's decision to confirm the awards. Hyatt has asked us to remand the case to the district court so that the judgment can be amended to expressly reflect that any postjudgment disputes over section 56 indeed must be arbitrated before Local 1 invokes them as the basis for a contempt petition. We find that step to be unnecessary, given that the union has unequivocally voiced its intent

to arbitrate any such disputes, the district court resolved the case with that declaration in mind, and we have affirmed the district court's decision on that same understanding.

III.

The district court committed no error in granting Local 1's motion for judgment on the pleadings and confirming the two arbitration awards at issue in this case. There was no dispute of fact material to confirmation of the awards that precluded judgment on the pleadings, and none of the concerns we have cited as rendering prospective enforcement of a labor arbitration award improper was present.

AFFIRMED

Exhibit 9

C-22722

REGULAR ARBITRATION PANEL

In the Matter of Arbitration Between	**Grievant: Class Action**
UNITED STATES POSTAL SERVICE	**Post Office: Ft. Wayne, IN**
and	**USPS Case No: J98N-4J-C 00160893**
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	**NALC Case No: GTS 27903**

Before:	**Barry Goldman**
For the U.S. Postal Service:	**Merline Bowser**
For the Union:	**Ernest Haynes**
Place of Hearing:	**Ft. Wayne, IN**
Date of Hearing:	**October 1, 2001**
Date of Award:	**October 31, 2001**
Relevant Contract Provision:	**Articles 3 and 7**
Contract Year:	**1998-2001**
Type of Grievance:	**Contract**

AWARD SUMMARY

The grievance is sustained. The Service violated Article 7 of the National Agreement on 5/5/00 when it assigned two City Carriers to carry rural routes in the absence of an "emergency" as defined in Article 3.

Barry Goldman, Arbitrator

BACKGROUND

Under Article 7.2 of the National Agreement, the Service has the right to make certain cross-craft assignments. By agreement of the parties, rural carriers are excluded from those cross-craft assignments (JCAM 7.2.A.2, p 7-5).

Under Article 3 of the National Agreement, however, the Postal Service has the right, subject to the provisions of the Agreement and applicable law:

> F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

On May 5, 2000 management of the Ft. Wayne Post Office assigned two PTF City Carriers to carry rural routes. The Union filed a grievance on the grounds that the conditions in Ft. Wayne on May 5 did not constitute an emergency as defined in the Agreement. The Service denied the grievance on the grounds that conditions *did* constitute an emergency. The issue could not be resolved and the present arbitration resulted.

ISSUE

Did the Postal Service violate Article 7 of the National Agreement on 5/5/00 when it assigned city carriers to carry rural routes and, if so, what shall be the remedy?

DISCUSSION

This question is not a new one either for the parties at the national level or for the parties before me here. At this point it should be abundantly clear that only in an emergency, as

defined in the National Agreement and explained in the JCAM and relevant arbitral decisions, may a city carrier be assigned to a rural route.

In Ft. Wayne on May 5, 2000 there was a shortage of rural carriers. The argument of the Service in this case is that that shortage constituted an emergency. The difficulty with that argument is that there had been a similar shortage of rural carriers in Ft. Wayne for several months. Further, on May 5 there was no reason to suppose that the condition would soon change. In other words, the situation was expected to be of a recurring nature. Consequently, it was not an emergency as defined in Article 3.

The shortage of rural carriers may have been beyond the control of the management at Ft. Wayne, and management may have legitimately felt it had run out of other options for providing mail service on those rural routes. But the fact remains that management may cross crafts only in an emergency as defined in the Agreement, and the Agreement defines emergency to include only those situations that are not expected to be of a recurring nature. The situation in Ft. Wayne on May 5, 2000 simply does not fit that definition.

In a Step 3 Settlement dated 4/21/00, involving the NALC and the Ft. Wayne Post Office, and quoted in the Letter of Corrections and Additions in the present case, the parties agreed:

> Management is prohibited from assigning City Carriers to perform duties in the rural carrier craft with the exception of emergency situations, as specified in Article 3.F. of the National Agreement. Violations may result in a monetary remedy.

In the original grievance in the present matter, the Union's requested remedy was:

> Management cease and desist from using city carriers on rural routes, give the city territory from RR 11/26 to the nearest city routes, pay PTF Trevino and Hayes an additional 50% premium for the time worked on RR 11/26.

In the Letter of Corrections and Additions, the Union added the following:

> Besides the requested remedy submitted at step 2, the Union is requesting that all carriers who worked overtime on 05/05/00 be paid an additional 50% for each minute worked past his or her 8 hour tour.

Evidently, there was one carrier, not on the Overtime Desired List, who was assigned overtime on 5/5/00. The rationale for the additional remedy requested is that it would not have been necessary for that carrier to work overtime if the two PTF's were available instead of having been assigned to carry the rural routes.

At the hearing, the Union dropped the portion of its request seeking a transfer of the rural routes to city carriers.

I am convinced the Service was on notice that a monetary remedy was likely to be imposed if there was another violation of this provision of the National Agreement, and I find the Union's request reasonable under the circumstances.

I therefore order that PTF Trevino be paid an additional 50% premium for 1.42 hours, PTF Hayes be paid an additional 50% premium for 1 hour and 40 minutes, and that Carrier Tatum be paid an additional 50% premium for .91 hours of overtime worked on 5/5/00 when he was not on the ODL.

Exhibit 10

REGULAR ARBITRATION

C-35978

In the Matter of the Arbitration	**Grievant: Class Action**
between	**Post Office: Sparks, NV**
UNITED STATES POSTAL SERVICE	**USPS No. 4E 19N-4E-C 22178887**
-and-	**NALC No. C22110**
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	

Before:	Jonathan I. Klein, Arbitrator
Appearances:	
For the Postal Service:	Randi Jones Labor Relations Specialist
For the Union:	Stephanie Baiungo NALC Advocate
Place of Hearing:	Sparks, Nevada
Date of Hearing:	October 13, 2022
Briefs Filed:	November 14, 2022
Date of Award	December 22, 2022
Relevant Contract Provisions:	Articles 3, 7, and 15
Contract Year:	2019 - 2023
Type of Grievance:	Contract

AWARD SUMMARY

The grievance is sustained. The Postal Service violated the terms of the National Agreement when management assigned CCAs to perform work in the National Rural Letter Carriers (NRLC) craft during the week of February 26 through March 4, 2022. The Postal Service shall cease and desist from engaging in such violations. Each letter carrier in the class of grievants shall be compensated an additional 50 percent (50%) of his or her base hourly rate of pay for all time worked in the NRLC craft as set forth in the Award.

/S/ Jonathan I. Klein
Jonathan I. Klein

STATEMENT OF FACTS

The Sparks Vista post office is located in a city adjacent to Reno, Nevada, and comprised of approximately 41 city routes and 12 rural routes. During the week of February 26 through March 4, 2022, management at the Sparks Vista post office assigned 12 City Carrier Assistants (CCAs) to work a total of 271.44 hours in the NRLC craft. The Union filed a grievance on March 9, 2022, to protest the Postal Service's violation of the contract in connection with assigning CCAs to perform such work in the during the foregoing time frame. (Joint Ex. 2, at 12). The grievance provides, in part, as follows:

* * *

> Management has consistently been utilizing City Carriers to perform work in the Rural Letter Carrier Craft at the Vista Station Post Office since 12/06/2021 through . . . 03/04/2022.
> The Union has filed several grievances in the past regarding the utilization of City Letter Carriers in the Rural Craft. . . . Like this issue management was scheduling the carriers to perform work in another craft and claimed, **"It's an emergency."**
> On 11/13/2015 a class action grievance was filed on behalf of Letter Carriers at the Vista Station Post Office and resolved at the Step B Level by USPS NJ Shank and NALC Marcos Garcia.
> The grievance the Union filed was sustained and a monetary remedy was awarded for the time spent working in the Rural Craft. See attached Step B Decision F11N-4F-D-16112432.
>
> * * *
>
> Up until now management has been settling the grievances and paying the effected carriers an additional 50% for the time spent in either the Rural Craft or Clerk Craft. Recently management felt the Covid-19 pandemic was [an] opportunity to claim an emergency. By management claiming an emergency situation they seized the opportunity to wrongfully utilize the City Letter Carriers as they see fit. Management has failed to realize there is, "**No Emergency Situation,**" currently at the Vista Station Post Office as no Rural Carriers have been out because of Covid-19. Not only has no Rural Carrier been out with Covid-19 there has not been anyone in the Sparks Vista Station Post Office that has tested positive for Covid-19 for the entire month of March 2022.

> The Union has reminded management on several occasions the Pandemic is not in itself an emergency, as we have been in this pandemic for over two years now. Generally, emergencies are not of a recurring nature. Lastly, the Union and USPS have agreed to several Memorandums concerning the Pandemic and none of them cover management's right to cross crafts within their office. Specifically, none of the Memorandums address the issue of utilizing City Carriers to Cross Crafts into the Rural Carrier Craft. The reason for there not being a Memorandum is clear since is would go against the National Agreement.
>
> * * *
>
> (Joint Ex. 2, at 22-23) (emphasis in original).

The Union requested the following remedy as a result of the contractual violation by the Postal Service in this case:

> 1. Management be instructed to Cease and desist from future violations of Article 7 and Article 15 of National Agreement/JCAM.
> 2. Management agrees to make the following carriers whole for all hours worked Out of Schedule for the violation of Article 7 of N.A./JCAM: (An additional 50% for all hours worked below)
> A. Blackwell (5.05 hours), B. Brant (35.92 hours), K. Endemann (20.09 hours), C. Fleck (39.47 hours), G. Garcia (12.46 hours), T. Garcia (10.83 hours), B. Heywood (25.26 hours), C. Koch (31.30 hours), T. Leverett (37.43 hours), E. Sanchez-Ventura (1.43 hours), C. Wietstock (8.68 hours), and J. Zorn (43.52 hours).
> 3. Or any other decision that the Step B Team and/or Arbitrator deems appropriate.
>
> (Joint Ex. 2, at 33).

A Formal Step A meeting was held on April 4, 2022, and the grievance was subsequently progressed to Step B on April 7, 2022. On April 20, 2022, the Step B Dispute Resolution Team (DRT) declared an impasse. (Joint Ex. 2, at 2-11). The parties proceeded to arbitration and a

hearing was conducted on October 14, 2022, at which time the parties were afforded full opportunity to present documentary evidence, direct and cross-examine witnesses.[1] Each party subsequently submitted a post-hearing brief and several arbitration awards in support of their respective positions.

STATEMENT OF ISSUE

The stipulated issue in this case is, as follows:

> Did Management violate Articles 3, 5, 7, 15 and 19 of the National Agreement (JCAM) as well as Step B Decision F11N-4F-D-16112432 when they utilized City Carriers to perform work in the Rural Carrier Craft out of the Sparks, Vista Station? If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

Article 3 of the National Agreement entitled "Management Rights," states as follows:

> The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:
>
> * * *
>
> F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

Article 7 of the National Agreement entitled "Employee Classifications," provides, in pertinent part, as follows:

* * *

1. The parties stipulated that there were no arbitrability issues.

Section 2. Employment and Work Assignments

* * *

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

[see Memo, page 145]

* * *

Article 15 of the National Agreement entitled "Grievance - Arbitration Procedure," provides, in pertinent part, as follows:

* * *

3.A. 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. At each step of the process the parties are required to jointly review the Joint Contract Administration Manual (JCAM).

* * *

CONTENTIONS OF THE PARTIES

Union's Contentions

It is undisputed that during the week of February 26 through March 4, 2022, management at the Sparks, Nevada's Vista Station assigned 12 CCAs to work 271.44 hours in the rural letter carrier craft. The Union maintains that this is a clear-cut violation of Articles 3 and 7 of the National Agreement. It points out that Article 7 contains clear and unambiguous language regarding cross craft assignments. Under Article 7, the Rural Craft is excluded from cross craft assignments as that craft did not participate in the MOU negotiated under the 1978 National Agreement. The Union notes that management's right to make cross craft assignments may only be exercised in very restricted circumstances. Additionally, cross craft assignments to and from the Rural Craft may only be made in emergency situations as defined in Article 3 of the National Agreement.

Under Article 3, an emergency is an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature. The only argument by the Postal Service in this case is that it had no choice but to work the CCAs in the rural carrier craft due to insufficient staffing which it equates to an emergency. The Postal Service argues that the insufficient staffing was due to unsuccessful hiring events, that rural carriers were out due to illness and/or injury, and that it worked rural carriers to their maximum. However, the Union maintains that these are simply excuses as there is no documented evidence in the case file supporting the Postal Service's position.

The Union also asserts that the combination of circumstances was both foreseen and recurring day after day, week after week and month after month as supported by the unrebutted testimony and documents contained in the case file. The situation was not unforeseen because management knew well in advance of the week in question that the station was short-staffed in the rural craft as it had been for months on end. The Union points out that the lack of proper staffing was not created by an emergency situation such as a tornado or blizzard, but simply due to management's failure to properly staff its operations. The testimony and case file demonstrates that management at the Sparks Vista Station has continued on a daily/weekly basis to work CCAs in the rural craft since November 2021.

The Step B Decision contained on page 41 of the case file sets a precedent at the Sparks Installation that management cannot assign CCAs to work in the rural craft except in emergency situations. At the arbitration hearing, Formal Step A representative Donald Lunau testified that management failed to comply with the aforementioned Step B Decision as there was no emergency. As such, the Postal Service's actions violated Article 15 of the National Agreement. Although not precedent setting or citable, grievances were continually filed and settled at the lower levels as a result management working CCAs in the rural craft. (Joint Ex. 2, at 87-100). Those settlements show that management admitted to Article 7 violations and paid the grievants an additional 50 percent for all hours worked in the rural craft. According to the Union, this became the standard operating procedure at the Sparks, Nevada Vista post office.

The Postal Service argues that the CCAs were paid for the work which they performed, and therefore, were not harmed by working in the rural craft. The Union vehemently disagrees with this argument. Mr. Lunau provided unrebutted testimony that management violated Article 5 of the National Agreement when it took the unilateral action of working CCAs in the rural craft. The Postal Service's unilateral action affected the wages, hours and working conditions of the CCAs. Mr. Lunau noted that CCAs receive approximately 17 cents per hour less than Rural Carrier Assistants and CCAs are not trained to work in the rural craft. He also pointed out that CCAs cannot hold dual appointments as they were regularly scheduled to perform duties in the rural craft. The documentation in the case file reveals that at least two CCAs worked 40 hours in the rural craft during the week in question. Although the Union acknowledges that the referenced CCAs do not officially hold a dual appointment, this shows that they were working full-time in a craft for which they were not hired.

Mr. Lunau provided further unrebutted testimony that management also violated Article 19 of the National Agreement via Sections 115.2 and 115.3 of the M-39 Handbook as a result of continually working CCAs in the rural craft every day of the week. The Postal Service failed to rebut any of the Union's contentions at Formal Step A of the grievance procedure or at the arbitration hearing. As such, any new argument raised by the Postal Service in its closing brief

must be given no weight in the arbitrator's decision. The Union references National Awards by Arbitrator Mittenthal (Case No. N8-W-0406) and Arbitrator Aaron (Case No. H8N-5B-C 17682) in support of its position that any new arguments by the Postal Service should not be considered.

In conclusion, the Union maintains that there is no dispute that the Postal Service violated Articles 3, 5, 7, 15 and 19 of the National Agreement when it worked 12 CCAs in the rural craft during the week of February 26 through March 4, 2022. The Union asserts that the violations in this case were deliberate and willful. The Postal Service argues that it had no choice but to work the CCAs in the rural craft in order to get the mail delivered. However, management made no attempt to avoid or minimize the use of CCAs in the rural craft. The unrebutted testimony reveals that management themselves could have delivered the mail on the rural routes, but they choose not to do so. According to the Union, management at the Sparks Installation had no plan to combat the insufficient staffing problem in the rural craft and made no attempt to utilize any other resources available to them. The Union has shouldered its burden of proof by a preponderance of evidence that violations of the National Agreement occurred during the week in question and that CCAs were harmed when they were required to perform work at the Sparks Vista Station in a craft for which they were not hired. It reiterates that there was no emergency. There are no National or Regional arbitration awards which allow the Postal Service to violate the National Agreement and cross craft lines due to an insufficient workforce in the rural craft.

As a result of the Postal Service's violation of the aforementioned provisions of the National Agreement and its failure to comply with a prior Step B Decision, the Union requests that the arbitrator issue the following remedy: sustain the grievance; find that the Postal Service violated Articles 3, 5, 7, 15 and 19 of the National Agreement; order the Postal Service to cease and desist violating the aforementioned articles of the National Agreement; award the CCAs identified in the case file an additional 50 percent for all hours worked in the Rural Craft; order the payment to be made within seven (7) days of the Award with proof to the Union; and any other appropriate remedy. The Union also requests that the arbitrator retain jurisdiction over this matter for a period of 60 days.

Management's Contentions

As set forth in the Step B Decision, the Postal Service contends that it had to utilize CCAs to work in the Rural Craft. The Postal Service points out that those arguments may be cited in the event of arbitration. The Step B designee indicated that ". . . over the past few months there have been numerous cases of COVID-19 in the office and days when management had to make the decision to use City Carriers in the Rural Craft because there was no one left to carry the mail as COVID was declared as a national emergency . . ." (Postal Service Post-Hearing Brief, at 2). Management also raised challenges with hiring in the Rural Craft due to COVID. It noted that there were continuous job postings with minimal results.

This case concerns the Postal Service fulfilling its mission, rather than the harm caused to CCAs who carried rural routes during a trying time. It maintains that this case is about whether management had the right to utilize CCAs during an emergency as stated in the National Agreement. According to the Postal Service, ". . . this is not a case about Sparks Management disregarding the Step B decision from 2016 about the city carrier craft which that decision includes full time regulars and city carrier assistants and during a Pandemic which did not occur in 2016, its about the best interests of the postal service and providing reliable service to the customer" (Postal Service Post-Hearing Brief, at 5). Although the aforementioned Step B decision is in the same installation, the circumstances surrounding that decision in 2016 are completely different from those in 2021. The Postal Service asserts that the pandemic has changed how businesses work and it points out that "[i]n Northern Nevada, there is a widespread byproduct of lack of staffing amongst all businesses." (Postal Service Post-Hearing Brief, at 6).

Management at the Sparks Vista station understood that this was a different situation than before as one call in due to COVID could trigger widespread absences in the office. The Postal Service points out that MOUs were in place for liberal sick leave due to the emergency of the pandemic. It maintains that the common mission of all Postal Service employees is to provide the service of processing and delivering the mail to customers. It is undisputed that CCAs were used to deliver mail on rural routes which could not be covered by the rural staffing available on

the dates in question. The Postal Service notes that those employees were paid their appropriate hourly wage to carry the mail.

The record reflects that the efforts made in Northern Nevada to hire additional replacement carriers for the rural craft were of no avail. During the period in question, there was only one relief carrier to cover an average of five routes per day. According to the Postal Service, supervisors were working open to close and did not carry mail due to their administrative duties.

The Union attempts to overcome the evidence of record in this case by showing that this was not an emergency outlined in Article 7.2 of the National Agreement. In order to prove its claim, the Union must demonstrate that the CCAs were harmed by working in the rural craft, that no emergency existed, and that management had other options to fulfill the Postal Service's mission. The Union argues that management's decision had nothing to do with the COVID 19 pandemic. However, "Step B during their meeting showed how many routes the rural craft had down in the office and Sparks Vista had to decide based on emergency situations." (Postal Service Post-Hearing Brief at 7). The Union also presented previous Informal A settlements which were based on the aforementioned Step B Decision. However, as testified to by Postmaster Heidi Clark, ". . . this is a different situation than in 2016." (Postal Service Post-Hearing Brief, at 7). Additionally, pursuant to Article 15.2 of the National Agreement, Informal Step A resolutions cannot be considered as precedent setting.

The Postal Service asserts that the arbitrator should recognize the Union's failure to show that management did not have the right to utilize CCAs to fill in as the pandemic did exist and unforeseen call-ins occurred. In the instant case, the City Carrier Craft was covered and able to carry out the mission of the Postal Service, however, the Rural Craft was unable to do so. The Union fails to recognize that businesses are struggling to hire employees and the Postal Service is no different. The employees who carried rural routes received the appropriate rate of pay, including the overtime rate at times. Those same employees would not have received as many hours as the City Carrier Craft was well staffed at the time.

The Postal Service maintains that under Article 15 of the National Agreement, the arbitration procedure requires arbitrators to decide cases by a reasonable preponderance of the evidence. In this instant case, ". . . a reasonable person would see that the evidence clearly demonstrates that management invoked Article 7.2 when an emergency circumstance arose." (Postal Service Post-Hearing Brief, at 8). The Union's case is based upon supposition and rhetoric in an attempt to mislead and distract the arbitrator from the situation at Sparks Vista station. Management had to make decisions each day after exhausting rural assistance available through their full-time regular and relief carriers. The Postal Service asserts that ". . . the Union purposely overlooks the fact that it was not a lack of Management decision making that brought the parties to th[is] point, but that it was the ramifications brought forward by the pandemic, the lack of new hires despite the efforts of the Postal Service, and the city carrier assistants used were not going to receive as many hours and some were on the verge of quitting if they did not receive hours." (Postal Service Post-Hearing Brief, at 9). The Postal Service notes that the Union's Formal Step A designee stated that "the Union has reminded management on several occasions the Pandemic is not in itself an emergency." (Joint Ex. 2, at 23). If the pandemic was not part of management's decision, the Postal Service questions why the Union would acknowledge it as such. The evidence presented in this case supports the fact that the Union did not meet its burden of proof, and the requested remedy is inappropriate given its inconsistency with the National Agreement. For each of the aforementioned reason, the Postal Service requests that the grievance be denied in its entirety.

OPINION AND ANALYSIS

The matter before the arbitrator concerns the use of CCAs at the Sparks Vista post office to perform rural carrier duties. Article 7 of the National Agreement places significant restrictions on cross craft assignments. The Postal Service asserts that it properly exercised its management rights under Article 3(F) of the National Agreement when it assigned CCAs to the rural letter carrier craft in an emergency situation. This purported "emergency" situation lies at the heart of

this dispute. For the following reasons, the arbitrator determines that the Union presented sufficient evidence to satisfy its burden of proof that management violated the terms of the National Agreement as a result of assigning CCAs to work in the rural letter carrier craft during the week of February 26 through March 4, 2022.

Donald Lunau, the Union's Informal A and Formal A representative in this case, testified that management "used city letter carriers in the rural craft every day of the week, Saturday through Friday." Mr. Lunau reviewed the clock rings and created a spread sheet identifying the CCAs and the hours which they worked in the rural craft during the week of February 26 through March 4, 2022. (Joint Ex. 2, at 34). He specifically noted that CCAs Zorn and Flek worked 43.52 and 39.47 hours, respectively, in the rural craft during the week in question. The Postal Service does not dispute the fact that CCAs were assigned to deliver mail on rural routes as alleged by the Union. The arbitrator notes that the Postal Service presented no evidence that the hours worked by CCAs in the rural letter carrier craft during the week in question as reflected on pages 33 and 34 of the joint case file are inaccurate.

Although the Postal Service does not dispute that CCAs were assigned to work in the rural letter carrier craft, Postmaster Clark testified that she made this decision because the Rural PTFs and Rural Carrier Assistants were maxed out and all of the mail could not be delivered otherwise.[2] According to Postmaster Clark "the decision was made daily after they exhausted the rural carrier resources in order to get the mail delivered to customers." She claimed that it was an emergency situation because all of the mail was not being delivered. Postmaster Clark further asserted that the office "had more CCAs than hours to work them," and she was informed by a steward that the Postal Service "would lose the CCAs if they did not get more hours."

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2. On cross-examination, Postmaster Clark acknowledged that the documentation contained on page 18 of the joint case file indicates that only eight packages were brought back to the station on February 28, 2022, however, it does not reflect a delay of any letters or flats on the aforementioned date. The Union notes that this is the only evidence in the joint case file regarding mail not being delivered during the week in question.

In contrast to the testimony presented by Postmaster Clark, Mr. Lunau maintained that this was not an emergency situation and management has repeatedly violated Article 7 of the National Agreement. He testified that CCAs have continued to work in the rural letter carrier craft since November 2021, and grievances filed regarding such violations were previously settled at the lowest level. Mr. Lunau pointed out that a Step B Decision dated April 6, 2016, which provides that CCAs may only be used in the rural letter carrier craft in emergency situations, is precedent setting at the Sparks installation. (Joint Ex. 2, at 41-43). He maintained that management "never disputed that this was an ongoing issue or that the Step B [Decision] was invalid." Mr. Lunau further noted that there was no claim by management at Formal Step A that the situation had anything to do with the Covid-19 pandemic, and that it "had been saying for several months that there was an emergency." Although he acknowledges that the "Postal Service has the right to manage, no emergency existed."

Article 7, Section 2(B) and (C) provide for cross craft assignments in the event of insufficient work in an employee's scheduled assignment and periods of exceptionally heavy workloads in an occupational group, respectively. However, management's right to cross craft lines is further limited as it concerns the rural letter carrier craft. Pages 7-15 and 7-16 of the Joint Contract Administration Manual (JCAM) contain the following provisions excluding cross craft assignments to and from the rural carrier craft except in emergency situations:

Memorandum of Understanding
Between the
United States Postal Service
and the
National Association of Letter Carriers, AFL-CIO

Re: Article 7, 12 and 13 - Cross Craft and Office Size

A. It is understood by the parties that in applying the provisions of Articles 7, 12 and 13 of this Agreement, cross craft assignments of employees, on both a temporary and

permanent basis, shall continue as they were made among the six crafts under the 1978 National Agreement.

B. It is also agreed that where this Agreement makes references to offices/facilities/installations with a certain number of employees or man years, that number shall include all categories of bargaining unit employees in the office/facility/installation who were covered by the 1978 National Agreement.

Date: August 19, 1995

Rural Carriers Excluded. Paragraph A of this Memorandum of Understanding (National Agreement page 145) provides that the crossing craft provisions of Article 7.2 (among other provisions) apply only to the crafts covered by the 1978 National Agreement - i.e., letter carrier, clerk, motor vehicle, maintenance, and mail handler. So cross craft assignments may be made between the carrier craft and these other crafts, in either direction, in accordance with Article 7.2. *However, rural letter carriers are not included. So cross craft assignments to and from the rural carrier craft may not be made under Article 7.2. They may be made only in emergency situations as explained below.* (Emphasis supplied).

Crossing Crafts in Emergency Situations. In addition to its Article 7 rights, management has the right to work carriers across crafts in an emergency situation as defined in Article 3, Management Rights. Article 3.F states that management has the right:

> 3.F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

This provision gives management a very limited right to make cross craft assignments. Management's desire to avoid additional

> expenses such as penalty overtime does not constitute an emergency.[3]

Based upon the National Agreement and the J-CAM (March 2022), it is clear that CCAs may only be assigned to the rural letter carrier craft in emergency situations. As defined by Article 3(F) of the National Agreement, an emergency situation is an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature. At hearing no probative evidence was presented by the Postal Service of any call-ins related to the COVID-19 pandemic during the week in question – or that a national or local COVID emergency existed. The arbitrator finds that it is not unforeseen that an office will experience absences due to illness or injury.[4] As such, illnesses and injuries to letter carriers, rural or city, which occur in the normal course of business fall well short of meeting the definition of an emergency under Article 3(F) of the National Agreement. *See, USPS -and- NALC*, Case No. S4N-3W-C 23922, at 4 (Arb. Raymond L. Britton) (April 25, 1988).

Postmaster Clark provided testimony regarding the Postal Service's attempts to hire additional employees, including job fairs and weekly postings.[5] The arbitrator recognizes the challenges faced by the Postal Service in hiring and retaining employees at the time the grievance was filed, and has no doubt that efforts have been made to fill open positions. Apparently, such

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3. *See, USPS -and- NALC*, Case No. F94N-4F-C 99093095, at 11 (Arb. Gary L. Axon) (October 9, 2001) ("The August 19, 1995, Memorandum of Understanding found at page 157 of the National Agreement supports the proposition rural carriers are excluded from cross-craft assignments except in emergency cases. The JCAM interprets this provision that rural carriers are excluded from cross-craft assignments.") (emphasis in original). Cross-craft assignments to and from the NRLC craft may not be made under Article 7-2.

4. Interviews of management at the Sparks Vista Post Office conducted by the Union reveal that the office was down rural routes due to "illness and injury." (Joint Ex. 2, at 24-26 and 44-49).

5. According to Mr. Lunau, management should hire more RCAs. He noted that management provided "no explanation as to why the Postal Service could not hire more Rural Letter Carriers."

efforts have been insufficient to adequately staff the rural routes at the Sparks Vista post office. Management has an obligation to adequately address insufficiencies in manpower, as well as plan for contingencies such as sickness or injury of employees to ensure the timely and efficient delivery of mail to its customers. Based upon the testimony and documentation contained in the joint case file, the situation at the Sparks Vista post office regarding an insufficient number of rural letter carriers is clearly recurring in nature, and it is not an emergency as that term is defined in Article 3. The decision by Arbitrator Glenda August in *USPS -and- NALC*, Case No. K16N-4K-C 20295871 (Arb. Glenda August) (February 19, 2021), supports a finding that the Postal Service violated Articles 3 and 7 of the National Agreement in this case:

* * *

> While the position Management finds itself in each day, was not of their own making, the resolution can only be found at the negotiation table. The 'emergency' was established when the COVID-19 virus was first identified in this country and spread rapidly throughout the states. However, the issue of absenteeism is one that every office in the nation is facing at this time, and clearly call for additional negotiations of MOUs which can help resolve staffing issues with available resources, in the face of numerous hiring issues, where people are scared of the exposure to COVID-19. The need to utilize personnel in other areas of the Post Office, maybe other crafts including the rural craft, just to get the mail delivered is a recurring situation in Fayetteville, NC and is subject to the terms of the National Agreement. In this case Article 7.2.
>
> * * *
>
> In the instant case, there is no dispute that the issue of utilizing CCAs to perform rural craft duties has been ongoing since the start of the pandemic. Now, more than a year in, the Union alleged that the violations continue. As in both Arbitrator Simmelkjaer and Arbitrator Britton's cases, Management in the case at bar argued that they made conscientious efforts to get the mail delivered and get additional staff hired. However, as in the cited cases, those efforts did not change the fact that using the carriers (in this case, CCAs) to perform rural craft work, was a violation of the National Agreement between the USPS and NALC. In both cases, the

> Arbitrators found that a remedy was required to cure that violation, and I agree.
>
> * * *

Id, at 12-14.

As it concerns the recurring nature of the circumstances presented in this case, Postmaster Clark testified that she became aware of prior grievance settlements regarding this issue in January 2022, at which time she instructed the Informal Step A team to "stop paying the grievances as the carriers were already paid." Postmaster Clark noted that there would be "no blanket payments" and she would "discuss each day on a case-by-case basis to determine what was necessary to get the mail delivered." She claimed that neither the Informal Step A settlements cited by the Union, nor the following 2016 Step B Decision in Case No. F11N-4F-D-16112432, dated April 6, 2016, are precedent setting:

> * * *
>
> ISSUE:
>
> Did Management violate Article 7 when they crossed craft CCA's to rural routes, if so, what is the appropriate remedy?
>
> DECISION:
>
> The Dispute Resolution Team (DRT) has resolved this grievance by determining that a violation of the National Agreement did occur. Management cannot assign CCA's to perform duties in the rural carrier craft except in emergency situations, as specified in Article 3.F of the National Agreement. The effective [sic] employees will be paid 50% of the out of schedule pay to M. Preito 118.15 hours ($948.74), J. Viden 8 hours ($64.24) and J. Penate 8 hours ($64.24) of Out of Schedule Pay.
>
> (Joint Ex. 2, at 41-43).

Mr. Lunau asserted that the Postal Service is required to comply with the Step B Decision and that management violated Article 15 of the National Agreement as a result of its failure to do

so in this case. However, Postmaster Clark maintained that the instant grievance is "not the same situation" as presented in the Step B Decision.[6] Contrary to the claim by Postmaster Clark, the arbitrator finds that the Step B Decision addressed the same issue as presented in the instant case and is precedent setting for the Sparks installation. The Step B Team unambiguously determined that management cannot assign CCAs to the rural letter carrier craft except in emergency situations. As previously stated, a determination of whether an emergency situation existed is at the heart of the dispute before the arbitrator in this case. The failure of the Postal Service to resolve this grievance at the lowest level in a manner consistent with the controlling Step B Decision amounted to a violation of Article 15 of the National Agreement.

For the reasons discussed above, the arbitrator finds that there is insufficient evidence of an emergency situation during the week in question. The testimony and documentation contained in the joint case file establishes that management has been repeatedly and consistently utilizing CCAs in the rural letter carrier craft since at least November 2021.[7] In the 2016 Step B decision, the improper use of CCAs to perform rural letter carrier duties obviously occurred prior to the outbreak of the COVID-19 pandemic. The arbitrator determines that a continuous, recurring insufficiency in the size of the workforce well after an immediate emergency has passed is not a defense to a violation of the terms of the National Agreement. In sum, the arbitrator holds that in the absence of an true emergency, management was not permitted to assign CCAs to work in the NRLC craft during the week of February 26 through March 4, 2022. The CCAs were harmed as a result of being improperly assigned to work in a craft for which they were not hired. Accordingly, the grievance is sustained as set forth in the Award.

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6. Postmaster Clark further stated that the CCAs were not harmed as they were paid their appropriate wages. Therefore, there is no need for an additional 50 percent payment which she deemed "unnecessary and arbitrary." Mr. Lunau pointed out that Rural Carrier Assistants receive a higher wage rate than CCAs.

7. As stated in the abovementioned Step B Decision, "[i]f it happens frequently it is 'reoccurring.'" (Joint Ex. 2, at 43).

AWARD

The grievance is sustained as follows. The Postal Service violated the terms of the National Agreement when management assigned CCAs to perform work in the NLRC craft during the week of February 26 through March 4, 2022. The Postal Service shall cease and desist from engaging in such violations. Each letter carrier in the class of grievants shall be compensated an additional 50 percent (50%) of his or her base hourly rate of pay for all time worked in the NRLC Craft during the period at issue within thirty (30) days from the date of this Award. The arbitrator shall retain jurisdiction over the implementation of this Award for a period of sixty (60) days.

/S/ Jonathan I. Klein
JONATHAN I. KLEIN, ARBITRATOR

Date of Issuance: December 22, 2022.

K16N-4K-C 20295971 Exhibit 11 C-35027

REGIONAL ARBITRATION PANEL

In the Matter of Arbitration	)	Grievant:	Class Action
Between	)	Post Office:	Fayetteville, NC 28304
United States Postal Service	)	USPS No.:	K16N-4K- C 20295971
And	)	Union No.:	CA0510RR
National Association of Letter Carriers,	)		

BEFORE: Glenda M. August, Arbitrator

APPEARANCES:

For the U.S. Postal Service — aLisa G. Bassa, Wendy Fuller, TA

For the National Association of Letter Carriers — Amber D. Blank

Place of Hearing:	907 Brighton Rd., Fayetteville, NC
Date of Hearing (s):	December 10, 2020
Briefs Received:	January 14, 2021
Date of Award:	February 19, 2021
Relevant Contract Provision:	Articles 3 & 7
Contract Year:	2016 - 2019
Type of Grievance:	Contract

AWARD: The grievance is sustained. Management shall "cease and desist" violating the National Agreement at Article 7, and compensate the affected CCAs with an additional payment at 100% of the straight time rate for all hours worked in the rural craft on May 10, 2020.

Glenda M. August

Glenda M. August
Arbitrator

I. ISSUE

Did management violate Article 3 and 7 of the National Agreement when they assigned City Carrier Assistant (CCA) employees to perform work in the rural carrier craft? If so, what is the appropriate remedy?

II. RELEVANT CONTRACT PROVISIONS

ARTICLE 3
MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted;

E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

(The preceding Article, Article 3, shall apply to City Carrier Assistant Employees.)

ARTICLE 7
EMPLOYEE CLASSIFICATIONS

Section 1. Definition and Use A. Regular Work Force. The regular work force shall be comprised of two categories of employees which are as follows:

1. Full-Time. Employees in this category shall be hired pursuant to such procedures as the Employer may establish and shall be assigned to regular schedules consisting of five (5) eight (8) hour days in a service week.

2. Part-Time. Employees in this category shall be hired pursuant to such procedures as the Employer may establish and shall be assigned to regular schedules of less than forty (40) hours in a service week, or shall be available to work flexible hours as assigned by the Employer during the course of a service week.

B. RESERVED

C. City Carrier Assistant Employees (CCAs)

The city carrier assistant work force shall be comprised of noncareer, bargaining unit employees, as follows:

1. City carrier assistants may perform the full range of letter carrier duties. The number of city carrier assistants who may be employed in any reporting period shall not exceed 15% of the total number of full-time career city carriers in that District.

2. In order to meet the fundamental changes in the business environment, including, but not limited to flexible windows which may be necessary to develop and provide new products and services, the Employer has the right to hire up to 8,000 CCAs in addition to those authorized in paragraph 1, above. The number of such city carrier assistants who may be employed in any reporting period shall not exceed 8% of the total number of full-time career city carriers in that District. CCAs hired under this Section will be so designated on their PS Form 50.

3. City carrier assistants shall be hired pursuant to such procedures as the Employer may establish. City carrier assistants shall be hired for terms of 360 calendar days and will have a break in service of 5 days between appointments.

4. Over the course of a service week, the Employer will make every effort to ensure that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to CCAs working in the same work location and on the same tour, provided that the reporting guarantee for CCA employees is met.

Section 2. Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.

2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to

maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

III. FACTS

On May 10, 2020, Management at the Fayetteville, NC Post Office, utilized CCA employees to perform work in the Rural Carrier Craft. The Union alleged that Management willfully, and deliberately violated the National Agreement by allowing the CCAs to perform work in the rural carrier craft, based on a previous Step B Decisions which established the Service's actions as a violation. The parties have agreed to settle the following grievances based on the Arbitrator's decision in the instant case:

CA05212020/GATS 20296032	CA05182020/GATS 20295994
CA05192020/GATS 20296013	CA05202020/GATS 20296018

The parties further agreed that this dispute is properly before this Arbitrator for a decision pursuant to the 2016-2019 National Agreement between the USPS and NALC.

IV. UNION'S CONTENTIONS

The Union contended that in this contract case, the burden is theirs to prove a violation occurred. They further contended that there is no dispute between the parties that City Carrier Assistants were utilized across craft lines and worked rural craft duties on May 10, 2020, in the Fayetteville, NC Post Office. According to the Union, the dispute lies in whether or not, utilizing CCAs across crafts to work rural craft duties, is a violation of Article 7 of the National Agreement.

It was the Union's position that Article 7 is clear and unambiguous on this issue and states:

> **Cross-Craft Assignments.** Article 7, Sections 2.B and 2.C set forth two situations in which management may require career employees to perform work in another craft. This may involve a carrier working in another craft or an employee from another craft performing carrier work.

The Union contended that Article 7, Sections 2.B and 2.C clearly states that there are "two situations in which management may require **career** employees to perform work in another craft. They argued that CCAs are a ***non-career*** supplemental workforce, and therefore are not eligible to be utilized across craft lines. Additionally, contended the Union, rural carriers are excluded in

Article 7 of the National Agreement:

> Rural Carriers Excluded. Paragraph A of this Memorandum of Understanding (National Agreement page 155) provides that the crossing craft provisions of Article 7.2 (among other provisions) apply only to the crafts covered by the 1978 National Agreement—i.e., letter carrier, clerk, motor vehicle, maintenance and mail handler. So crosscraft assignments may be made between the carrier craft and these other crafts, in either direction, in accordance with Article 7.2. However, rural letter carriers are not included. So crosscraft assignments to and from the rural carrier craft may not be made under Article 7.2. They may be made only in "emergency situations" as explained below.

The Union maintained that Management's entire defense to the violations alleged was the COVID-19 pandemic and the Service continued to classify the pandemic as an emergency. According to the Union, an emergency is defined as a "serious, unexpected, and often dangerous situation requiring immediate action." The Union argued that while the pandemic is serious, it is by no means unexpected and it has affected the United States since February of 2020. The Union noted that the incident date for the instant grievance was May 10, 2020.

Regarding emergency situations, the Union contended that the National Agreement states:

> Crossing Crafts in "Emergency" Situations. In addition to its Article 7 rights, management has the right to work carriers across crafts in an "emergency" situation as defined in Article 3, Management Rights. Article 3.F states that management has the right:
>
> > 3.F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.
>
> This provision gives management a very limited right to make crosscraft assignments. Management's desire to avoid additional expenses such as penalty overtime does ***not*** constitute an emergency.

It was the Union's argument that they strongly dispute Management's assertion that Article 3F gives the Service the authority to violate the National Agreement. They maintained that the COVID-19 pandemic is not an "unforeseen circumstance" nor is it a "combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature." According to the Union, Management's argument may have applied when the pandemic first started, but the Union insisted, that the Service cannot rely on that argument months later. Additionally, the Union argued that Management failed to provide any specific evidence

about how the pandemic has affected the Fayetteville Installation, or why it has affected the Rural Carrier craft much harder than the City Carrier Craft, which would cause Management to continuously violate the National Agreement at Article 7.2.

It was the position of the Union that Management's argument that an emergency existed is simply not substantiated by the evidence. The Union contended hearing testimony demonstrated, and this fact was undisputed, that the Fayetteville Installation had 54 RCAs on the rolls. Therefore, the Union contended, there were more than enough people to cover any vacancies in the rural craft without utilizing CCAs. The Union argued that the Postal Service and the NALC entered into several Memorandums of Understanding regarding the conditions rendered by the COVID-19 Pandemic, many of which were introduced at hearing by Management (MX-1). According to the Union, none of those MOUs included language about the rural carrier craft and RCAs, and therefore, none are relevant to the instant case, and utilization of CCAs in the rural carrier craft.

The Union contended that the NALC and the Service have both recognized the impact COVID-19 has had on operations and have entered into multiple MOUs addressing the issues related to COVID-19. The Union further contended that these agreements have allowed Management certain operational concessions due to COVID-19 issues that would normally be in conflict with the National Agreement. However, the Union argued, there was no MOU discussed, negotiated or agreed upon relating to allowing Management to utilize employees across craft lines due to any COVID-19 related issues in conflict with the Collective Bargaining Agreement. It was the Union's position that if Management wished to, or found it necessary to continuously mandate employees to cross craft lines due to COVID-19, the Service should have negotiated an MOU with the Union's involved as they have done so on numerous other issues (JX-2, Pages 4-5). Without an MOU on the issue, the Union argued that the provisions of Article 7 of the National Agreement remain in full effect.

The Union maintained that there are several dozen similar grievances being held, including four contained in the case file, pending the outcome of this Arbitration dispute. They contended that the remedy in this case, by agreement of the parties, will be applied to all cases being held. The Union noted that the NALC is requesting an appropriate remedy be awarded, one which would serve as a deterrent for Management, and will stop the continued violation of the National Agreement. The Union offered arbitral support for their position and remedy request.

In conclusion, the Union declared that the Postal Service violated Article 7 of the National Agreement when they utilized CCAs across craft lines in the rural carrier craft. They argued that Management clearly has not made any substantiated affirmative defense other than to say the violations were due to the COVID-19 pandemic. The Union maintained that the evidence of record in the instant grievance demonstrated that the grievance should be sustained in its entirety. They requested that the Arbitrator provide an appropriate remedy to ensure contract compliance.

V. MANAGEMENT'S CONTENTIONS

Management contended that although there are disagreements between the parties in this case, the only reason the instant grievance is before this Arbitrator is to issue an appropriate remedy. The Service argued that, the remedy sought by the Union is punitive, and noted that if anyone should be filing this grievance, it is the Rural Craft. According to Management, Exhibit M-1 supports the additional temporary employees need to continue operations at the Fayetteville, NC Post Office, during the on-going pandemic and noted that page 65 of the grievance file shows the requisitions that had been submitted to hire the required employees, prior to and during the pandemic.

It was the Service's position that the City Carrier Assistants (CCAs) utilized in the rural carrier craft, were compensated for their work and they were not harmed by Management's actions. Management contended that the Union in this case, offered no alternative as to what should have been done with the mail that needed to be delivered. Management cited the hearing testimony of their witness, Demaris McCants, who was Officer-In-Charge in the Fayetteville Post Office at the time of the incident. The Service maintained that several employees were out of work due to COVID-19 exposure and/or school or day care closures. According to Management, the assigning of the CCAs were not planned, and was due to the situation at hand, including carriers out delivering mail in the dark.

Management maintained that the Service was also experiencing a high turnover of employees during this time period, noting that new-hire orientations were occurring on a weekly basis, which they contended the Union President Frank Vega testified was not normal. Management contended that the new hires were afraid of becoming sick due to COVID-19, would leave and not return. The Service disputed the Union's contention that Management's violation

of the National Agreement was willful and deliberate and contended that this was simply not true.

The Service further disputed the Union's contention that the Pandemic was not unforeseen; they contended that the Postal Service, like the rest of the world could not have planned for such an event. Management argued that while Article 7 excludes Rural Carriers, Article 3, specifically, Article 3.F, gives Management the right to take whatever actions may be necessary to carry out its mission in emergency situations, and that Article of the National Agreement, includes City Carrier Assistants. Management argued that during the incident periods, the Service had to move the mail and could not allow mail to remain undelivered, thus, they invoked the authorizations provided by Article 3, to get the mail delivered to customers.

It was Management's position that the Union is attempting to obtain an unjust remedy; they argued that the intent of any remedy is to right a wrong and restore a loss. In this case, Management contended, there has not been a loss to NALC employees. Here, the Service asserted, the Union has failed to show any harm and a remedy is inappropriate; they argued that the request for and granting of punitive remedies has to cease where there has been no harm proven. Management contended that the Unions are well aware that the world is in the middle of a pandemic and the Postal Service has been shorthanded since the pandemic began. The Service maintained that if this was not the case, there would not have been so many MOUs signed, regarding the hiring of as many employees as possible, and then so many extensions to those MOUs signed by the parties. The Service offered arbitral support for their positions in this case.

In conclusion, the Service responded to the Arbitrator's request for information on whether the issue was the pandemic or whether it was a systemic issue, and they argued that it was the Union's burden to prove their case. Management maintained that the grievance file supported the fact that the incident dates were within the pandemic, and they noted that the Union's have all recognized that COVID-19 has affected operations. According to Management, the Union in this case, failed to prove that this issue was on-going prior to the affects of the pandemic on operations. The Service further noted the numerous employees who either did not return after orientation, or who decided to quit their job, due to concerns over the virus; they noted that this further impacted operations and required Management to invoke Article 3.F. Finally, the Service requested that the Arbitrator deny the Union's request for a punitive remedy, based on an Article 7 violation, as Management simply exercised their rights under Article 3 due to an on-going pandemic.

VI. DISCUSSION AND OPINION

ARTICLE 3
MANAGEMENT RIGHTS

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

(The preceding Article, Article 3, shall apply to City Carrier Assistant Employees.)

ARTICLE 7
EMPLOYEE CLASSIFICATIONS

Section 2. Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.
2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

JCAM
Page 7-31
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JCAM
Page 7-33
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The case at bar concerns the use of City Carrier Assistants (CCAs) in the Fayetteville, NC Post Office, to perform rural carrier duties. The Union has alleged a violation of Article 7 of the National Agreement, and there is no dispute between the parties that Article 7 excludes rural carrier duties from the crossing craft provisions of Article 7.2 of the National Agreement between the USPS and the NALC.

However, it is the position of Management in this case that they exercised their rights under Article 3.F to take the measures necessary to get the mail delivered in Fayetteville, during the on-going COVID-19 pandemic. Additionally, Management argued that if anyone should have an issue with the use of CCAs to perform rural craft duties, it should be the NRLCA, not NALC. Management further argued that it was the conditions caused by the impact of the COVID-19 pandemic which led them to use CCAs to perform rural duties, and their actions were not willful or deliberate. The Service held that although the Service assigned CCAs contrary to the provisions of Article 7.2, they did so under the authority of Article 3.F, and there was no harm caused to any Carrier. Management asserted that the Union in this case is requesting a remedy that can only be determined to be punitive.

The Union disputes the Service's position and argued that the acknowledgement of an Article 7 violation requires a remedy, based on Management's continued disregard for the provisions of Article 7.2. They maintain that Management continues to violate the cross-craft provisions of the Agreement, and they further dispute the Service's position that the COVID-19 pandemic continues to qualify as "emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected

to be of a recurring nature". The Union further maintained that Management at Fayetteville, willfully and deliberately violated the National Agreement when they utilized CCA employees to perform work in the rural carrier craft. The Union asserted that while Article 7 allows cross-craft assignments, it does so only for "career" employees, and in clear and unambiguous language, excludes the rural craft.

According to the Union, the incident at issue in the instant case was premeditated and planned by Management, who has the obligation to properly staff their installation. The Union noted that a previous Step B decision has established Management's actions as a violation, and the parties in this case have agreed to settle all similar grievances (held in abeyance) based on the decision in this case. Management disputed the Union's argument that this was a willful violation, and that their actions were based on the affects of the pandemic, with employees on extended leave, and a lack of staffing. The Service noted that their attempts to hire additional personnel have been met with setbacks, which included employees who do not report for duty or do not stay based on their fears of the virus. Management contended that twenty-five (25) of their sixty-three (63) Rural Routes are vacant and the Fayetteville Post Office employs fifty-four (54) Rural Carrier Assistants. According to Management, this lack of staffing has caused the Service to mandate rural and city carriers across craft lines just to get the mail delivered to postal customers, on-time and safely, as the world maneuvers through this pandemic.

The clear language of the Agreement established that utilizing the CCAs for rural craft work was a violation of the Collective Bargaining Agreement. While Article 7.2 limits cross-craft assignments to career employees, it also ***excludes*** assignments in the rural craft. Additionally, the ***CCA Questions & Answers***, listed under Article 7.1.C.1 states that CCAs may not hold dual appoints, which is described in Section 234.23 of the EL-312 Handbook as an appointment to "more than one noncareer position in the Postal Service. ***This is known as a dual appointment.*** Management acknowledged that the use of CCAs in the rural craft is not allowed under Article 7, but defended their position to do so as a right garnered under Article 3.F which states:

ARTICLE 3
MANAGEMENT RIGHTS

> F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances

> which calls for immediate action in a situation **which is not expected to be of a recurring nature.**

Based on the language of Article 3.F, Management may take whatever action they deem necessary, **in emergency situations,** however, the Union argued that while initially, COVID-19 may have required emergency action, that emergency does not continue.

The parties do not dispute that the time period of the incident in this case, and the incidents contained in the grievances held in abeyance awaiting the decision in this case, all occurred during the pandemic. Thus, the question is whether or not the COVID-19 pandemic was and still is considered an emergency under the provisions of Article 3.F. The key to the answer lies within that same Article, as the parties qualified the Service's right to take action when the situation **"is not expected to be of a recurring nature."** The very nature of the pandemic assures us that the situation which the Postal Service is facing, a lack of staffing for the number of routes which require coverage each day, based on employees' continued exposure to this virus, will be of a recurring nature for the foreseeable future.

While the position Management finds itself in each day, was not of their own making, the resolution can only be found at the negotiation table. The "emergency" was established when the COVID-19 virus was first identified in this country and spread rapidly throughout the states. However, the issue of absenteeism is one that every office in the nation is facing at this time, and clearly calls for additional negotiations of MOUs which can help resolve staffing issues with available resources, in the face of numerous hiring issues, where people are scared of the exposure to COVID-19. The need to utilize personnel in other areas of the Post Office, maybe other crafts including the rural craft, just to get the mail delivered, is a recurring situation in Fayetteville, NC and is subject to the terms of the National Agreement. In this case, a violation of Article 7.2.

The Union offered the decision of Arbitrator Michael J. Pecklers, Esq., in case number B01N-4B-C 03080075 and B01N-4B-C 03150239, in support of their position on this issue, where Arbitrator Pecklers decided:

> For its part, the Postal Service provided credible testimony by OIC Garbowski of the good faith efforts he made. The OIC confirmed: that is has always been difficult to hire RCAs and TRCs; that the most difficult thing to deal with is unscheduled absences; that one (1) RCA has been out two (2) years due to a serious accident; that the Help Wanted ad at EX. M-1 has been sent three (3) times in the last two (2)

years and also posted at colleges; that he asks for volunteers before assigning PTFs to Rural routes, and has assigned supervisors including himself the task; and that he considered sick leave, EAL, light and limited duty, and removals as emergencies.

In USPS and NALC, Case Nos. B94N-4B-C 99247620 27628; B94N-4B-C 99249076 27630 (Simmelkjaer, 200) (EX. U-2) Arbitrator Simmelkjaer expressly rejected parallel arguments by the Postal Service, that Rural Carrier craft injuries and vacancies constituted an "emergency" within the contemplation of Article 3.F for the extended period of time. At pages 15-16 of his award, the Arbitrator opined:

> [g]iven the emergency standard promulgated by the parties and the prima facie evidence of a contract violation established by the Union, the Service was unable to prove that an emergency existed. In the Arbitrator's opinion, no reasonable interpretation of Article 3.F could reconcile management's use of City Letter Carriers on a recurring basis for over one (1) year as an emergency.
>
> Notwithstanding the testimony of Mr. Krynicki that management has made a good faith effort to rectify the ongoing shortage of rural carriers, including recruitment, overtime assignment of rural carriers and supervisor substitution, continuous violation of the contract cannot be sanctioned as a viable alternative. Management has an obligation to address workforce contingencies such as carrier injuries, turnover, etc., without requiring city carriers to work continuously in a craft for which they were not hired as opposed to infrequent emergency assignments.

The words of Arbitrator Britton in USPS and NALC, Case No. s4N-3W-C 2392 3A-86-435 (Britton, 1988) (Ex. U-4) are also instructive. At page 4, he stated:

> [w]hile under Article 3.F of the National Agreement, management, in 'emergency situations', has the right to do whatever is necessary to carry out its mission, it is noted by the Arbitrator that 'emergency situations' are defined, **** Sickness, as hereinabove found by the Arbitrator is not deemed to posses the characteristics described, and therefore in his judgment, does not fall within the definition of 'emergency situations' found in Article 3F. to allow management to take the action here in question.****

The record before me amply demonstrates that the utilization of PTF City Carriers to cover Rural routes at this facility has become an indispensable pattern and practice of Danbury Management. Notwithstanding the OIC's conscientious efforts to deliver the mail, the fact remains that sick leave and EAL utilization; OWCP considerations; removals; and staffing shortages in the Rural ranks do not fall within the ambit of Article 3.F. Moreover, they are neither unforeseen nor non-recurring.

...

> The remaining issue to be addressed is that of remedy. A cease and desist order is appropriate. As is a monetary award. In regard to the latter, I do not subscribe to the Postal Service's argument that egregious behavior must be demonstrated to support such an award. As recognized by Arbitrator Simmelkjaer in the Westfield MA case, Management has an obligation to address workforce contingencies without requiring City Carriers like Mr. Rowe to work continuously in a craft for which they were not hired. Out of necessity, it made a business judgment to do so, in violation of the National Agreement.
>
> In my view, a mere garden variety cease and desist order will not remedy the situation, which as existed since at least 1994. A monetary penalty will therefore appropriately compensate the Grievants for the repeated violation of their contractual rights and serve as a deterrent to further abuses.

In the instant case, there is no dispute that the issue of utilizing CCAs to perform rural craft duties has been on-going since the start of the pandemic. Now, more than a year in, the Union alleged that the violations continue. As in both Arbitrator Simmelkjaer and Arbitrator Britton's cases, Management in the case at bar argued that they made conscientious efforts to get the mail delivered and get additional staff hired. However, as in the cited cases, those efforts did not change the fact that using the carriers (in this case, CCAs) to perform rural craft work, was a violation of the National Agreement between the USPS and NALC. In both cases, the Arbitrators found that a remedy was required to cure that violation, and I agree.

Regarding remedy, Management alleged that the Union's requested remedy was punitive, because the affected employees were not harmed. However, given the current situation in this pandemic, the CCAs faced exposure in new surroundings which were not normally assigned. The Union alleged that the CCAs were mandated to complete the duties and this was not a voluntary situation. By their own admission, Management contended that many of the rural craft employees quit because of their concern about the virus. This Arbitrator is certain many of the CCAs had the same concern, thus the harm comes when the Service denied them the right ***not*** to cross-crafts as provided by the National Agreement. In their remedy request, the Union asked that Management be ordered to cease and desist violating Article 7, and requested that the affected CCAs be compensated with an additional 100% at the straight time rate; or allow them to receive compensatory time off. Obviously, allowing compensatory time off, in a period during which the

Postal Service already has numerous staffing challenges, is not a feasible remedy and could only cause more grievances. The appropriate remedy in this case would be an order to "cease and desist" and the payment of an additional 100% at the straight time rate to the affected CCAs; this Award is ordered to remedy the violation of the CCAs rights, bargained for by the NALC.

Based on the totality of the evidence, and testimony at hearing, the grievance is sustained. Management at the Fayetteville, NC Post Office violated Article 7 of the National Agreement when they assigned City Carrier Assistant (CCA) employees to perform work in the rural carrier craft. Management shall "cease and desist" violating the National Agreement at Article 7, and compensate the affected CCAs with an additional payment at 100% of the straight time rate for all hours worked in the rural craft on May 10, 2020.

AWARD

The grievance is sustained. Management shall "cease and desist" violating the National Agreement at Article 7, and compensate the affected CCAs with an additional payment at 100% of the straight time rate for all hours worked in the rural craft on May 10, 2020.

Glenda M. August

GLENDA M. AUGUST
Arbitrator

February 19, 2021

New Iberia, LA

Exhibit 12

C-20466

REGULAR ARBITRATION PANEL

In the Matter of Arbitration	GRIEVANT: CLASS ACTION
between	POST OFFICE: WESTFIELD, MA
UNITED STATES POSTAL SERVICE	CASE NO: B94N-4B-C-99201634
and	N.A.L.C. No.: 98WF123
NATIONAL ASSOCIATION OF LETTER CARRIERS	G.T.S.: 27362

DATE OF HEARING: November 15, 1999

Before: Thomas F. Sharkey, Arbitrator

Appearances:

For the U.S. Postal Service:

Robert O'Connor	Advocate
Anthony Vosburg	Post Master

For the N.A.L.C.:

Jon Weisman	Advocate
Tina Marie Richards	Technical Advisor/Witness

Place of Hearing: Westfield, Massachusetts

Date of Decision: March 3, 2000

AWARD

The grievance is sustained.

See text for details.

ISSUE

The parties agree that the issue before the Arbitrator is as follows:

> "Did the U.S. Postal Service violate the National Agreement when it assigned City Carriers, Regular and Part-time Flexible, to perform rural letter carrier duties? If so, what is the appropriate remedy?"

BACKGROUND

There is little if any challenge to the facts of the case. The record shows, without challenge, that Part-time Flexible (PTF) carriers were assigned duties normally performed by members of the Rural Carrier craft. However, at issue is whether or not such usage of the PTF's constitutes a violation of the Collective Bargaining Agreement and if so, what is the remedy? The assignments were grieved by the N.A.L.C. and the matter was unresolved through the grievance procedure. The undersigned, a current member of the Northeast Region Regular Arbitration Panel, was assigned to hear and resolve the dispute. At the hearing the parties had full opportunity to examine and cross-examine witnesses, all of whom offered sworn testimony. The parties each made opening and closing statements and submitted documentary evidence in the form of exhibits. Each side submitted prior arbitration cases for my review and consideration. The case file was closed at the conclusion of the hearing on November 15, 1999.

POSITIONS OF THE PARTIES

The U.S. Postal Service admits to the assignment of PTF's to Rural Carrier duties but says it is empowered to do so by Article 3, the Management's Rights clause of the National Contract, specifically Article 3A:

> "To direct employees of the Employer in the performance of official duties";

And Article 3D:

> "To determine the methods, means and personnel by which such operations are to be conducted";

The Service argues that its overriding responsibility to deliver the mail in the face of continuing and acute staff shortages in the rural carrier craft made it necessary to use PTF City Carriers. Further, the Service asserts that said assignments were not made until all of the City routes were covered by regular or PTF Carriers, so no City Service route suffered. Moreover, since the City Routes were covered, those PTF's that were still available but not needed on a city route could have been sent home, as has previously happened. Since there was no loss of pay suffered by anyone, and all of the City routes were covered, the Service claims that there is no violation of the Contract and that no remedy can be fashioned if there is no suffering experienced by anyone. The Service urges the Arbitrator to deny the grievance in its entirety.

The N.A.L.C. maintains that there is only an issue of remedy. The Service has admitted the assignments and knows that they were improper but saw the use of the City PTF carriers as a convenience. The Union avers that Article 3 does indeed give management certain authorization to take unusual and drastic steps but only in an emergency situation and not one that is of a recurring nature. For further contractual support for their argument the Union points to Article 1, Section 2, Exclusions - Number 7 - Rural Letter Carriers, So the Union states the violation is clear and obvious. What remains is the matter of remedy. The Union maintains that there if there is no remedy other than to "cease and desist" the decision is meaningless and that Management will have no reluctance to again use this tactic or others without fear of penalty. The Union further asserts that it is not necessary that carriers suffer a real loss in wages because of the improper assignment. A monetary award is necessary to make the Service understand that it cannot knowingly violate the Contract with impunity. A decision that does not provide a remedy, but is merely a cease and desists order, fails to deliver the message that the Contract cannot be violated as a matter of convenience, the N.A.L.C. argues. In summary, the Union

asserts that the facts in this case clearly show a contractual violation. The violation was blatant with management ignoring responsibilities totally within their control.

Without a serious financial remedy, management will be encouraged to continue to wilfully violate the National Agreement, making a mockery of the document and its Grievance Procedure, rendering them null and void and causing the work force to lose faith in the system.

The N.A.L.C. urges the Arbitrator to find for them and to award an appropriate monetary amount to be paid by the Postal Service to the City Carrier work force.

DISCUSSIONS AND FINDING

First to be addressed is the reliance of the Postal Service on Article 3, Management's Rights to support their denial of a violation. There can be no challenge that the Service has the authority "to direct the employees of the employer in the performance of official duties"(Article 3D). What was not argued by the Service was Article 3F, and properly so, because that section deals with the wide latitude provided the Management takes immediate action and to take whatever actions necessary, in case of an emergency, not of a recurring nature. The conditions and assignments set forth by the parties in the hearing do not fit into the category envisioned by Article 3F. Further the preface that opens the Article is critical in that it sets forth controls and limits for all that comes after. "The employer shall have the exclusive right subject to the provisions of this Agreement and consistent with applicable laws and regulations" (emphasis added). So there is no unfettered right to make assignments other than in an emergency situation. The posture of the management that it continued to lose employees relatively quickly after hiring them may have enjoyed some understanding if the need to cover rural routes was new and non-recurring. The Arbitrator heard no plan that was developed to address the needs of the rural delivery system. It appears that because the PTF's were on the scene, they were deemed to be available for assignment to the rural craft. This solution, though convenient and responsive to the needs of the Management is not supported by the National Agreement. Platitudes such as the Postal Customers received the level of service they demanded, do not absolve the Management, a strong partner to the Collective Bargaining Agreement, from

avoiding resolutions to one problem or need by using methods that are precluded by the Contract.

The Management argues that because this is a contract case, the Union has the burden of proof to show that the Management at the Westfield Post Office repeatedly violated the Contract and did so deliberately. I find that the Union has met that burden. In fact, the Management has not denied that they made the assignments repeatedly over a six-month period of time and certainly did not indicate that the assignments were made accidentally as opposed to deliberately. The Arbitrator heard two positions from the Management. First, their actions were justified because a need existed in the Rural system, and secondly, since no carriers experienced a loss of wages, there was no damage to anyone, sort of a "no blood, no foul" mentality. There is no question that the Management should have looked elsewhere rather than the City Carrier force, Regular or PTF for resolution to the difficulties they were experiencing in the Rural Delivery System.

At issue and more difficult to determine is the matter of remedy. There is no question in the Arbitrator's mind relative to the authority to fashion a remedy. Case history is replete with arbitration decisions over a period of more than 30 years in both the public and private sectors, that make clear the authority vested in the Arbitrator to fashion a remedy. It is my firm belief that this tenet is so basic, so clear and so solidly supported by so much arbitral history, that it is unnecessary to further defend it. Similarly, the ability to decide on a monetary award has been similarly tested and advanced as an appropriate remedy. It is only the determination of the amount and distribution of said award that gives the Arbitrator pause.

The Union asks that the equivalent of 998 hours be paid to the PTF City Carrier Force. The number of hours comes from the work done by the City Carrier Force PTF's in the Rural Delivery System, and is understandable. However, the logic of providing a monetary award to only the PTF's escapes me. The arguments set forth by the Union which cite complaints beyond any monetary loss or reward must involve the entire City work force not only the PTF's. The compelling argument for a monetary award is to set out a deterrent not to reward any individual or group.

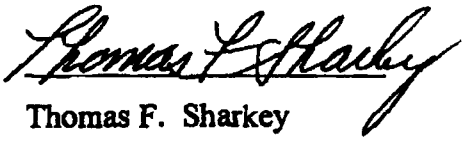
After reviewing the testimony at the hearing and rereading the Contractual passages cited by the parties and after full and complete consideration of the Arbitral history which deals with the issues extant in this instant case, the Arbitrator finds and makes the following:

AWARD

The U.S. Postal service did violate the National Agreement when it assigned City Carriers to deliver mail in the Rural Delivery System for a period of nearly six months and for a total number of Nine Hundred and ninety-eight (998) hours. As a matter of remedy, the Arbitrator has determined the following:

Ninety-eight (98) of the hours will be subtracted from the total 998 hours on the basis that some flexibility is available to the Management to deal with an initial and immediate need. I believe Article 3 supports such flexibility. After that period, the Management must find another solution.

The nine hundred (900) hours remaining will be distributed to the entire City Carrier work force. According to the Postmaster's direct testimony, there are 35 Regular City Carriers and 10 PTF City Carriers. Therefore assuming those numbers to be correct and constant, each of those 45 carriers shall receive an amount equivalent to that which each would earn for 20 hours of their regularly assigned work at their regular hourly rate. It is so ordered.



Thomas F. Sharkey

Arbitrator

Exhibit 13

C-36068

REGULAR ARBITRATION

In the Matter of Arbitration	)		
	)	Grievant:	Class Action
between	)		
	)	Post Office:	Topeka KS
UNITED STATES POSTAL SERVICE	)		
	)	Case No.:	4J 19N-4J-C 22363058
and	)		
	)	DRT No.:	05-582248
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	)	Union No.:	BR1022717

BEFORE: Barry E. Simon, Arbitrator

APPEARANCES:

For the U. S. Postal Service:	Venessa Freedle Allison Sikes
For the Union:	Blake Rockers
Place of Hearing:	Videoconference
Date of Hearing:	January 18, 2023
Briefs Received:	February 21, 2023

AWARD: The grievance is sustained to the extent as follows:

1. CCAs who were directed to perform service in the rural carrier craft are to be paid an additional 50% for all time worked in that craft.
2. Non-ODL carriers who were mandated to work overtime are to be afforded administrative leave in an amount equivalent to the overtime worked.
3. Management at the Topeka North Branch is directed to cease and desist from mandating non-ODL employees to work overtime on assignments other than their own, except as permitted by Article 8.5.D. of the National Agreement.

Date of Award: March 15, 2023

CENTRAL AREA REGULAR PANEL

Barry E. Simon

Background:

The facts in this case are undisputed. At the Topeka North Station, between July 23 and 29, 2022, the Service required City Carrier Assistants (CCAs) to work in the Rural Carrier craft, and mandated Letter Carriers who were not on the Overtime Desired List (ODL) to work overtime on assignments other than their own. The Service has acknowledged that it was in violation of the National Agreement in doing so, and has compensated the non-ODL carriers an additional 50% of their base wages for the overtime worked. The Union has filed this grievance seeking a further remedy, specifically:

1. That management cease and desist violating Articles 7.2, 8.5, Step B decisions and Step 4 settlements M-01276 and M-01870 via Article 19.

2. That all hours worked by city carriers in the rural craft be paid out of scheduled premium for all hours worked.

3. All WA/Non-ODL carriers be compensated at an additional 200% of regular wage and Administrative Leave equal to the amount of time they were improperly mandated.

4. That all payments associated with this case be made as soon as administratively possible, but no later than 10 days from the date of settlement.

5. That management cease and desist violating Article 15.3.A of the National Agreement and M-01517.

6. That CCAs Amanda Shughart and Tyler Kelly receive an additional $100 per occurrence as an incentive for future compliance due to the egregious and repeated nature of the violations.

7. That proof of payment be provided to Andy Tuttle or Branch 10 President Michelle Jellison upon submission.

8. Or whatever the DRT or an arbitrator determine is the appropriate remedy.

The grievance was denied by the Service, and was then progressed through the grievance procedure in accordance with the terms of the National Agreement. The parties being unable to reach resolution, the matter was submitted to arbitration before the undersigned Arbitrator. By

agreement between the parties, the hearing was held via videoconference. In lieu of oral closing arguments, the parties submitted post-hearing briefs that were received by the Arbitrator on February 17, 2023 (USPS) and February 21, 2023 (NALC). Upon receipt of both parties briefs. the Arbitrator declared the record to be closed.

Issues Presented:

Did management at the North Topeka Station violate Article 7.2, Step 4 settlements M-01276 and M-01870 (CCA Q & A #15) via Article 19 of the National Agreement by improperly assigning rural craft work to FTR CCAs Shughart and Kelly during PP 16-2 and if so, what should the remedy be?

Did management violate Article 8.5 when non-ODL carriers were forced to work overtime off assignment when they were required to perform rural craft work on overtime or because CCA was required to perform rural craft work and therefore unavailable to assist city carriers during PP 16-2 and if so, what is the appropriate remedy?

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 in the case file, and if so, what should the remedy be?

Position of the Union:

The Union explains that management, during the week of July 23-29, 2022, forced CCAs to carry rural route mail, making them unavailable to cover letter carrier routes. As a consequence. the Union says it mandated carriers who were on the overtime desired list to work overtime on routes other than their own. The Union avers this was part of a pattern and practice as the Topeka installation, and has been the subject of multiple Step B decisions. Despite those decisions. the Union complains that the practice continues. Consequently, the Union seeks a remedy that will serve as a deterrence against future violations.

According to the Union, the Service did not contest its request for the remedy sought at either the Informal or Formal Steps A of the grievance procedure. It says the Service's Formal A repre-

sentative argued only that the use of the CCAs on the rural routes was due to emergency conditions. At Step B, says the Union, the Service's representative knew this to be inaccurate so he introduced new arguments to minimize the damage. The Union further asserts the Service's advocate at the arbitration hearing additionally made arguments that had not been raised in the prior handling of the grievance. It cites this Arbitrator's Award in *Case No. G11N-4G-C 14377095*, in asking that new arguments not be considered in this case.

Citing the Supreme Court's decision in *Steelworkers v. Enterprise Wheel & Car*, 363 U.S. 593 (1960), the Union insists the Arbitrator has the authority to fashion an appropriate remedy for the Service's repeated contract violations. It says a cease and desist order is warranted to keep the Service from continually violating the same provisions. It also believe that an award of administrative leave is appropriate. It further asks for monetary payments to the affected CCAs and non-ODL carriers above what has already been allowed. In support of its position, the Union cites the following Awards:

G11N-4G-C 14377095	Arbitrator Simon
K11N-4K-C 14096713	Arbitrator Roberts
G06N-4G-D 10106125)	
G06N-4G-D 10147784)	Arbitrator Halter
NC-S-5246	Arbitrator Gamser
G16N-4G-C 18145815	Arbitrator Simon

Position of the Service:

As this is a contractual grievance, the Service argues the Union bears the burden of proving the existence of a violation of the Agreement and the appropriateness of the remedy sought. It acknowledges, though, that it improperly mandated the non-ODL carriers to work overtime when it worked CCAs in the rural craft rather than the city carrier craft. With regard to the remedy requested by the Union, the Service cites the Joint Contract Administration Manual - July 2021 (JCAM) with respect to Article 41.2.B.5:

> 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 further 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.

The Service denies the Union has articulated why the remedies it has requested are corrective in nature. According to the Service, monetary remedies should normally correspond to specific monetary losses. In this case, it says the employees were paid for their hours worked, and suffered no monetary harm. The Union, in examining the grievance settlements contained in the file, asserts that only three of the nine settlements are similarly situated to this case at the North Park Station. One, it says, occurred in June 2021, and the others in June 2022. These cases, says the Service, were settled by the Step B Team with payments to the CCAs or instructive language. Other settlements have no precedential value, argues the Service.

The Service explains its reasons for using the CCAs in the rural craft which, in turn, necessitated mandating the non-ODL carriers. Because of the COVID pandemic, it says the office was understaffed, with only seven regular rural carriers for nine rural routes, and it notes the record does not indicate whether all seven were available to work that week. The Service asserts management had been constantly posting position for hire. By August 25, 2022, it says eight RCAs had been hired, with all but two already working.

The Service submits that administrative leave is not an appropriate remedy. It cites ELM Section 519 as listing the only circumstances that warrant administrative leave. It cites arbitral authority on the scope of an arbitrator's remedial power, noting that the objective is to make the grievant whole and not to punish the employer. It argues that its payment of an additional 50% to the non-ODL employees for the hours they were mandated when CCAs were working rural routes should have satisfied the need to remedy the contract violation. Anything above and beyond that, says the Service, would be punitive. It asks, therefore, that the grievance be denied. In support of its position, the Service cites the following Awards:

4J 19N-4J-C 21377785)
4J 19N-4J-C 21377777) Arbitrator Baggett-Hayes

W1C-5F-C 4734 Arbitrator Snow

Discussion:

At Step B, management wrote:

> The file demonstrates a violation of Article 7 and Step 4 Settlement M-01276 occurred when management scheduled City Carrier Assistants (CCAs) to perform Rural craft work on July 23rd, 26th, 28th, and 29th. Management contends between July 23rd and 29th two CCAs were improperly assigned Rural craft for a total of 9.67 hours.

Management further explained that it agreed, at Formal Step A, that a violation of Article 8 of the National Agreement occurred when the unavailability of the CCAs resulted in full time regular city carriers who were not on the overtime desired list being mandated to perform overtime work for a total of 9.67 hours. Management had agreed to pay an additional 50% to the non-ODL carriers for the overtime they worked, but there is no indication that any payment was made to the CCAs who worked in the rural craft.

Inasmuch as the Service has conceded it had violated the Agreement with respect to both the CCAs and the non-ODL carriers, the only issue before the Arbitrator concerns the remedies to be granted. The Union is correct that the Service had not addressed the Union's requested remedy until the grievance had reached the Dispute Resolution Team at Step B. The Union now challenges the Service making its first argument about remedy at Step B. This issue was addressed by the undersigned Arbitrator in *Case No. G11N-4G-C 14377095*, wherein he reviewed decisions of Arbitrators Lawrence Roberts and Patrick Halter, and held:

> The Awards of Arbitrators Roberts and Halter are, on the other hand, relevant. In *Case No. K11N-4K-C 14096713*, Arbitrator Roberts, in summarizing the Union's position, wrote:
>
> > According to the Union, the record was eventually updated by the Step B Team. The Union objects to this action since it is improper for the Step B Team to either add to or supplement a file.
>
> In his Findings, Arbitrator Roberts held:

> The issue was remanded back by the Step B Team twice. And the present Step B Team decided to supplement the record and add additional evidence to the record. This was simply an inappropriate action by this Step B Team. And for that reason, that supplement of additional information will have absolutely no influence or impact on my decision in this matter.

Similar findings were made by Arbitrator Halter, although the objections in those cases were raised by the Postal Service. In *Case No. G06N-4G-D 10106125/ 10147784*, he described the Service's position as follows:

> At Step B NALC argued that there was no review and concurrence; however, that issue was not raised at the Informal A and Formal A. Raising review and concurrence as an issue at Step B, as NALC has done, allows it to submit more additions and corrections without providing the Service an opportunity to address it prior to arbitration. Presenting review and concurrence at Step B is procedurally incorrect.
>
> The NALC Step B representative is rearguing the Union's case from ground zero. The parties signed off at Formal A and had the opportunity to make additions and corrections; none were submitted. The Step B is making new arguments under the guise of ensuring the file is complete and all relevant facts are considered. The parties have an option to return the case to Formal A to fully develop the facts. NALC is merely clouding the issue to ignore the facts.

In that case, Arbitrator Halter held:

> Turning initially to the review and concurrence and displacement of immediate supervisor with the OIC in the discharge grievance, these matters were brought forth by the Union's Step B representative and were not presented at Informal A and Formal A. The Service did not have an opportunity to address them prior to the arbitration. Although the Step B representatives are responsible for ensuring the file is complete in terms of documentation, raising arguments not disclosed during Informal A and Formal A is stretching the Step B role beyond its customary boundaries. The Step B representatives can return a case to the Formal A representatives for development of arguments and issues. Since review and concurrence and the dis-

> placement of the immediate supervisor are issues belatedly raised, they are not properly before the arbitrator.

Arbitrator Halter again addressed this issue in *Case No. G06N-4G-D 11334438*. In summarizing the Service's position, he wrote:

> Arguments raised by NALC's representative at Step B are untimely (review and concurrence, no independent investigation, nexus) since they were not presented at Informal A or Formal A. Thus, they should not be considered by the arbitrator.

He then held:

> Waiting to raise or frame arguments at Step B undermines the function and purpose of this grievance procedure where the parties seek to resolve grievances at the lowest possible level through full disclosure. Inserting additions and corrections at Step B is part of the grievance process but not constructing arguments from base line zero after all requested documents are provided for review at Informal A and Formal A and no additions and corrections are necessary.

> Based upon the arguments and Awards presented to him, the Arbitrator concludes the Union has satisfied its burden of proof with respect to the inadmissibility of the Service's argument. Of particular note is the fact that the Service successfully took the same position before Arbitrator Halter regarding evidence or contentions being offered for the first time at Step B. Because the Service has offered nothing that would contradict or repudiate that position, the Arbitrator must find that the Service's contention that Grievant had not provided the medical documentation is not properly before him.

Although the Union argued against consideration of the Service's position with respect to the remedy in its opening statement at the hearing, the Service did not address this issue in its post-hearing brief. Based upon the record before him, the Arbitrator finds that the totality of the Service's argument at both Informal and Formal Steps A consisted of an explanation for why it used the CCAs in rural service and mandated the non-ODL carriers. The Service made no argument regarding the appropriateness of the Union's remedy request until the grievance had reached Step B, at which point the argument was too late for consideration. In essence then, the Service has no argument before the Arbitrator with respect to the substance of the pending grievance. The Union, though, is not relieved

of its burden to show the appropriateness of the remedy it has requested. As this is a contract dispute, the Union must support all elements of its grievance, including the remedy portion. The fact that the Service has not presented a timely defense does not require a default judgment against it.

First, with respect to the CCAs who were improperly assigned to rural carrier work, they are entitled to a remedy for being required to perform work that was beyond the scope of their duties under the Agreement. The Arbitrator finds that the appropriate remedy, like that given to the non-ODL carriers, is the payment of an additional 50% of their rate of pay for the hours worked in rural service for the violation of Article 7 of the National Agreement.

Next comes the issue of the Service continuing to use CCAs in rural service and mandating non-ODL carriers to work overtime when there were either ODL carriers or CCAs available, despite numerous similar grievances being resolved through the Dispute Resolution Team process. To this end, the Union has documented nineteen various settlements in the Topeka installation. Of those, ten involved the North Park Station, which is the facility involved in this grievance. The remaining nine settlements involved Gage Center (four cases), North Topeka (three cases), and Hicrest (two cases). Six of the settlements involved findings that CCAs were improperly used to perform rural craft work. Two of those cases involved North Park, three involved North Topeka, and one involved Hicrest. Of the nineteen settlements, all but four involved grievances that either included non-ODL carriers with CCAs, or were only for non-ODL carriers. It is further noted that four of the Step B decisions were reached on either August 3 or 4, 2022, which was subsequent to the dates of the grievance herein. This analysis results in a finding that there was only one Step B settlement involving the use of CCAs performing rural craft work at North Park Station prior to the grievance herein. With regard to settlements involving the improper mandating of non-ODL carriers at North Park, there were eight cases that were resolved between August 13, 2021 and May 23, 2022.

On May 31, 2002, Chief Operating Officer Patrick R. Donahoe issued instructions to Vice Presidents, Area Operations Manager, Capital Metro Operations on the subject of Arbitration Award Compliance (M-01517), stating:

> Headquarters is currently responding to union concerns that some field offices are failing to comply with grievance settlements and arbitration awards. While all

> managers are aware that settlements reached in any state of the grievance/arbitration procedure are final and binding, I want to reiterate our policy on this subject.
>
> 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.
>
> Please ensure that all managers and supervisors in your area are aware of this policy and their responsibility to implement arbitration awards and grievance settlements in a timely manner.

The parties have the expectation that there would be compliance with the terms of the National Agreement. Section 15.3.A. of the Agreement states:

> 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. At each step of the process the parties are required to jointly review the Joint Contract Administration Manual (JCAM).

Where there has been a practice of contract violations of a similar nature over a period of time at a facility, it may become apparent that traditional remedies are insufficient to persuade management to abide by the Agreement. Arbitrators often prescribe a progression of remedies to serve as an incentive for management's compliance with the Agreement. These may begin with a cease and desist order, followed by increasing monetary awards.

In this case, the Arbitrator finds that there have been numerous Step B settlements regarding the improper mandating of non-ODL carriers at the Topeka installation, and at the North Park Branch in particular. It is evident that these decisions have not had a corrective effect. In eight of these settlements involving North Park Station, the Dispute Resolution Team awarded one-time lump sum monetary payments to be shared by the carriers at the North Park Branch. These awards are as follows:

Case No.	Step B Decision Date	Amount Awarded
J19N-4J-C 21314761	8/13/2021	$561
4J 19N-4J-C 21365770	9/15/2021	$410
4J 19N-4J-C 21365771	9/15/2021	$114
4J 19N-4J-C 21365790	9/15/2021	$182
4J 19N-4J-C 21365762	9/15/2021	$1009
4J 19N-4J-C 22223221	5/23/2022	$1094
4J 19N-4J-C 22223188	5/23/2022	$1509
4J 19N-4J-C 22223209	5/23/2022	$1055

The Step B decisions in these cases offer no explanation for the monetary awards. In the 2021 cases, it is likely these amounts were tied to the overtime hours worked inasmuch as there were no specific payments to individual carriers. In the 2022 cases, however, these payments were in addition to specific payments to individual carriers based upon a 50% allowance for the hours worked in excess of their contractual limits. In each of those three cases, the Issue Statement included a reference to Policy Letter M-01517, suggesting that the monetary award was intended to remedy that part of the grievance. While that may have been the basis for that monetary award, the Arbitrator is reluctant to draw that conclusion in the absence of an explanation by the DRT.

As to the use of CCAs in the rural craft, it is the Arbitrator's conclusion that there was only one Step B decision on this question prior to the violations that were the subject of this grievance. Furthermore, it appears that the additional hiring of rural carriers has ended the necessity for using employees from other crafts to perform this work. Consequently, no further remedy is warranted beyond the additional 50% pay for the hours worked in the rural carrier craft, as discussed above.

The Service's improper mandating of non-ODL carriers is another matter. This Arbitrator addressed this issue in *Case No. G16N-4G-C 18145815*, wherein he awarded administrative leave in an amount equivalent to the overtime worked, writing:

> The fact that the parties had not specified a remedy for this specific violation of the National Agreement does not preclude an arbitrator from imposing one. As a general principle, parties to a collective bargaining agreement set out the working conditions in their contract, and expect that they will be followed. They do not prescribe remedies for breaches of the contract except in certain cases, such as when discipline is without just cause. The arbitrator's authority to formulate a remedy was addressed in *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960) and

has been relied upon by arbitrators for more than half a century. To suggest that the parties should have included remedy provisions in their contract if they intended that such be provided goes against the long history of labor arbitration and should not have any persuasive value.

Furthermore, the fact that Grievants have been compensated for the overtime work they performed is not an adequate remedy. They were entitled to such compensation simply by working the overtime hours, whether or not such overtime was permitted by the Agreement. The remedy sought by the Union, and granted by Arbitrators Halter and Dorshaw, as well as by several Step B decisions, is for the violations of the Agreement. As noted by Arbitrator Dorshaw, the Grievants should be compensated for the improper deprivation of their free time.

Consistent with that decision, the Service is directed to grant the affected non-ODL carriers administrative leave in an amount equivalent to the overtime worked, in addition to remedies already granted. In light of the continuing violations of Article 8.5, it is the Arbitrator's conclusion that an order to cease and desist from mandating non-ODL employees to work overtime on assignments other than their own, except as permitted by Article 8.5.D. of the National Agreement, is appropriate in this case.

Award: The grievance is sustained to the extent as follows:

1. CCAs who were directed to perform service in the rural carrier craft are to be paid an additional 50% for all time worked in that craft.
2. Non-ODL carriers who were mandated to work overtime are to be afforded administrative leave in an amount equivalent to the overtime worked.
3. Management at the Topeka North Branch is directed to cease and desist from mandating non-ODL employees to work overtime on assignments other than their own, except as permitted by Article 8.5.D. of the National Agreement.

Barry El Simon, Arbitrator

Dated: March 15, 2023
Arlington Heights, Illinois

Exhibit 14

C-36047

REGULAR ARBITRATION

In The Matter of the Arbitration	)	**Grievant:** Class Action
	)	
Between	)	**Post Office:** East Falmouth, MA
	)	
United States Postal Service	)	**Case No.:** 4B 19N-4B-C 22407168
	)	
and	)	**DRT No.:** 22407168
	)	
National Association of Letter Carriers, AFL-CIO	)	**Union No.:** 18EF7622
	)	

BEFORE: Sheila Mayberry, Arbitrator

APPEARANCES:

For the US Postal Service: Wellington Espinal, Labor Relations Specialist; Shakeyia Swift, Technical Advisor

For the Union: Michael Murray, NALC Advocate

Place of Hearing: Hyannis Post Office, Hyannis, Massachusetts

Date of Hearing: January 13, 2023

DATE OF AWARD: February 24, 2023

AWARD SUMMARY

In addition to a cease and desist order, I find that a monetary remedy is required at this point to compensate for the harm caused to the integrity of the National Collective Bargaining Agreement by East Falmouth's continual violations of Articles 3, 5, 7, 15, and 19. As such, the Award below outlines the remedy that must be implemented.

Sheila Mayberry

Sheila Mayberry, Esq.
Arbitrator

I. ISSUE

What is the appropriate remedy for the Service's violation of Articles 3, 7, 15, and 19 of the National Collective Bargaining Agreement when it assigned City Carrier Assistants to perform Rural Carrier Craft work?

II. RELEVANT CONTRACT PROVISIONS

Article 3 - Management Rights

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

...

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

(The preceding Article, Article 3, shall apply to City Carrier Assistant Employees.)

JCAM 3-1

Article 3.F Emergencies. This provision gives management the right to take whatever actions may be necessary to carry out its mission in emergency situations. An emergency is defined as an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

Article 5 - Prohibition of Unilateral Action

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

(The preceding Article, Article 5, shall apply to City Carrier Assistant Employees.)

Article 7.2 - Employee Classifications

...

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

JCAM 7-15

Cross-Craft Assignments. Article 7, Sections 2.B and 2.C set forth two situations in which management may require career employees to perform work in another craft. This may involve a carrier working in another craft or an employee from another craft performing carrier work.
A national level arbitration award has established that management may not assign employees across crafts except in the restrictive circumstances defined in the National Agreement (National Arbitrator Richard Bloch, A8-W-0656, April 7, 1982, C-04560). This decision is controlling although it is an APWU arbitration case; it was decided under the joint NALC/ APWU-USPS 1981 National Agreement and the language of Article 7.2.B and C has not changed since then. Arbitrator Bloch interpreted Article 7.2.B and C as follows (pages 6-7 of the award): Taken together, these provisions support the inference that Management's right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforeseeable. There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel usage; this is not what the parties have bargained. That an assignment across craft lines might enable Management to avoid overtime in another group for example, is not, by itself, a contractually sound reason. It must be shown either that there was "insufficient work" for the classification or, alternatively, that work was "exceptionally heavy" in one occupational group and light, as well, in another. Inherent in these two provisions, as indicated above, is the assumption that the qualifying conditions are reasonably unforeseeable or somehow unavoidable. To be sure, Management retains the right to schedule tasks to suit its need on a given day. But the right to do this may not fairly be equated with the opportunity to, in essence, create "insufficient" work through intentionally inadequate staffing. To so hold would be to allow Management to effectively cross craft lines at will merely by scheduling work so as to create the triggering provisions of Subsections B and C. This would be an abuse of the reasonable intent of this language, which exists not to provide means by which the separation of crafts may be routinely ignored but rather to provide the employer with certain limited flexibility in the face of pressing circumstances.

Remedy For Violations.

As a general proposition, in those circumstances in which a clear contractual violation is evidenced by the fact circumstances involving the crossing of crafts pursuant to Article 7.2.B and C, a make whole remedy involving the payment at the appropriate rate for the work missed to the available, qualified employee who had a contractual right to the work would be appropriate. For example, after determining that management had violated Article 7.2.B, Arbitrator Bloch in case H8S-5F-C 8027/A8-W-0656 (C-04560) ruled that an available Special Delivery Messenger on the Overtime Desired List should be made whole for missed overtime for special delivery functions performed by a PTF letter carrier.

...

Crossing Crafts in Emergency Situations.
In addition to its Article 7 rights, management has the right to work carriers across crafts in an emergency situation as defined in Article 3, Management Rights. Article 3.F states that management has the right: 3.F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature. This provision gives management a very limited right to

make cross craft assignments. Management's desire to avoid additional expenses such as penalty overtime does not constitute an emergency.

Article 15 - Grievance Procedure

...

15.2 Formal Step

Formal Step A

(a) The Joint Step A Grievance Form appealing a grievance to Formal Step A shall be filed with the installation head or designee. In any associate post office of twenty (20) or less employees, the Employer shall designate an official outside of the installation as the Formal Step A official, and shall so notify the Union Formal Step A representative.

...

(c) The installation head or designee will meet with the steward or a Union representative as expeditiously as possible, but no later than seven (7) days following receipt of the Joint Step A Grievance Form unless the parties agree upon a later date. ...

(d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Articles 17 and 31. The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. In addition, in cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above.

15.3

A. 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. At each step of the process the parties are required to jointly review the Joint Contract Administration Manual (JCAM).

...

C. Failure by the Employer to schedule a meeting or render a decision in any of the Steps of this procedure within the time herein provided (including mutually agreed to extension periods) shall be deemed to move the grievance to the next Step of the grievance-arbitration procedure.

III. BACKGROUND

The National Association of Letter Carriers ("Union") initiated the grievance before this Arbitrator for a decision pursuant to the 2019-2023 National Collective Bargaining Agreement ("National Agreement") between the parties. The hearing was held on January 13, 2022, at the Hyannis Post Office in Hyannis, Massachusetts.

In this representative case, the parties agree that from September 1, 2022 through September 9, 2022, the East Falmouth Post Office management violated Articles 3, 5, 7, 15, and 19 of the National Agreement by assigning three City Carrier Assistants ("CCAs") work belonging to the rural carrier craft during non-emergencies, and failing and refusing to participate in Formal A Team meetings regarding the issue.

The Union cited 50 prior grievances occurring in 2022, wherein the East Falmouth management engaged in conduct of the same nature. In each case, the East Falmouth management repeatedly refused to abide by the B Team's instruction to adhere to provisions of Articles 3 and 7 and limit the utilization of city carrier employees in service of the rural carrier craft to emergency circumstances. The B Team also cautioned management that future similar violations could lead to additional remedies and reminded management to meet with the Union at Formal A Team meetings. The last B Team resolution with these instructions was issued on August 21, 2022, involving three CCAs being assigned to Martha's Vineyard's rural routes.

The parties stipulated that this grievance has been designated as representative of a group of 23 additional grievances from the East Falmouth Post Office involving cross-craft assignments of CCAs to the rural carrier craft during non-emergencies. They agreed that those grievances would be held in abeyance pending the outcome of this instant arbitration, and that the remedy in this case will be applied to each of those grievances.

The parties stipulated that the only issue remaining in this case is the formulation of an appropriate remedy.

IV. CONTENTIONS OF THE PARTIES

The Union's Contentions

The Union argues that this grievance represents the intentional and continuous violation of the National Agreement by East Falmouth management in assigning CCAs to the rural carrier craft

and, as such, that an escalating remedy is justified. It asserts that numerous instructions from the parties' B Teams have failed to adjust the behavior of management in this regard. The Union believes that monetary awards, as well as an order to convert rural deliveries to city deliveries, may be the best remedy to deter future violations.

The Union also argues that East Falmouth management must have an effective remedy to correct its continual failure to participate in A Team meetings to discuss the resolution of this particular issue. It asserts that management at East Falmouth blatantly, intentionally, and continuously ignores its obligations under Article 15 of the National Agreement to abide by the grievance procedure. It cites the B Team's admonition of East Falmouth management's ongoing behavior, stating that "Management is once again reminded to schedule and meet at Formal A." The Union believes that a monetary penalty is required in this case to help bring management to the table in Step A meetings.

The Union notes that Article 15 of the National Agreement states that Formal Step A meetings must be held. It cites Article 15(c), which states that the installation head or designee will meet with the steward or a Formal Step A(c) Union representative as expeditiously as possible, not no later than seven (7) days following receipt of the Joint Step A grievance form, unless the parties agree upon a later date. The Union emphasizes that the use of the words "must" and "will" clearly indicate that this behavior is mandatory.

The Union requests a remedy whereby East Falmouth management 1) ceases and desists from assigning city carriers to the rural carrier craft; 2) rewards the affected CCAs for time spent in the rural carrier craft at the rate of time and one-half beyond their regular compensations; 3) converts the rural deliveries to city deliveries to resolve this issue moving forward; 4) awards $18,10.00 to Local Branch 18 of the Union for each grievance, to cover the cost of having to continually grieve the same violation.

The Service's Contentions

The Service explains that there has been a severe staffing shortage in the rural carriers' bargaining unit and that during the busy summer months on Cape Cod and Martha's Vineyard, CCAs were assigned to the rural carrier craft delivery routes as a stopgap measure in order to have stable mail delivery. While it acknowledges that this was not an emergency measure, as defined in Article 3 and JCAM 3-1, it was done in order to fulfill the Postal Service's obligation to deliver mail to the public. It notes that there is no record indicating that any bargaining unit members were harmed financially or otherwise by being assigned work across crafts.

The Service argues that an award that includes a monetary remedy should not be part of a make-whole remedy in this case, since it would be punitive in nature.[1] Citing multiple decisions, it argues the Union is entitled only to a remedy that would bring bargaining unit members back to the status quo ante, the position they held prior to the violation. In this case, it contends that bargaining unit employees were not financially harmed by the assignment of rural carrier craft work, and therefore a monetary award would amount to unjust enrichment. In addition, the Service argues that paying the Union the cost of filing grievances for repeated offenses would be a windfall for stewards who represent the Union during the grievance procedure steps.

The Service acknowledges the language in the JCAM which states that a cease and desist remedy may not be sufficient in some cases to insure future contract compliance, and that the parties may consider an appropriate compensatory remedy to the injured party which emphasizes the commitment to contract compliance through corrective, rather than punitive, measures. It notes that the JCAM explains that an escalated remedy is proper only when there have been egregious, deliberate, and repeated violations after cease and desist remedies fail. It asserts, however, that this is a matter for the parties to consider during the grievance process, and that the JCAM is silent with respect to the Arbitrator's authority to award. It also claims that a monetary remedy would cause significant damage to Postal Service operations, undermine the public interest, and impact the Service's ability to provide wages and benefits to employees, including city delivery carriers.

[1]Mittenthal, H7C-NA-C- 36 (Et al);

V. ANALYSIS AND DECISION

Due to East Falmouth's violation of the National Agreement regarding the assignment of CCAs to rural carrier craft work, I find that, in addition to a cease and desist order, a further remedy is required to deter East Falmouth management from further violation of Articles 3, 5, 7, 15, and 19 of the National Agreement. While I agree with the Service that a punitive remedy is not appropriate at this time, I believe that a compensatory remedy is necessary to deter this behavior and reduce the deleterious effects it has had on the bargaining unit members and their ability to police and implement the National Agreement.

In formulating an appropriate remedy in Steelworkers v. Enterprise Wheel & Car Corp, 363 U.S.593 (1960) ("Enterprise Wheel"), the Supreme Court acknowledged that in crafting a remedy, there is a need for flexibility to address various circumstances, but stated that the award must draw its "essence" from the collective bargaining agreement. *Id.* at 597.

There is guidance for the implementation of a compensatory remedy in national awards. Arbitrator Mittenthal addressed the question of when the use of a compensatory award is appropriate. In IH4N-NA-C-21 (5th issue) (C-6297), he stated:

> To grant a money remedy for a violation of this commitment would penalize the Postal Service for exercising the discretion it still appears to possess under 5C2d. That would be a patently unfair result. Instead, the Postal Service should be ordered to cease and desist from any violation of the "letter carrier paragraph." Should the postal facility in question thereafter fail to comply with such an order, a money remedy might well be appropriate.

Also, compensatory remedies have been implemented in cases when management at other postal installations violated the National Agreement by assigning CCAs to rural carrier craft work. In case E-19N-4E-C 22287302, Arbitrator Grayson found that the Service repeatedly violated Article 3, 5, 7.2, 15, and 19, by unilaterally assigning CCAs to rural carrier craft work during non-emergency times. In that case, he determined that in addition to a cease and desist order, a stipulated agreement to provide monetary compensation was reasonable in order to deter the continual violations. In case K-16N-4K-C 20295971, Arbitrator August awarded CCAs an additional payment of 100% of the straight time rate for all hours worked in the rural carrier craft. In case 4B-19N-4B-C 21399097, when management in that installation failed to abide by

Arbitrator August's award and continued to assign CCAs to rural carrier craft bargaining unit work, Arbitrator Drucker increased the financial impact by awarding affected CCAs an additional payment of 150% of the straight time rate for all hours worked in the rural carrier craft.

Also at stake in this case is the harm being caused to the integrity of the National Agreement by East Falmouth's behavior in this grievance, including the effectiveness of B Team resolutions. In case 4B19N-4B-C 21399097, Arbitrator Drucker captured the essence of this concern based upon the continual and intentional act of assigning CCAs across crafts in violation of the National Agreement:

> The CCAs are being required to perform work they did not anticipate and that is not consistent with what they were hired to do under the contract that protects them and their work. Further, the integrity of the craft, a concept the parties jointly recognized in the National Agreement, is compromised with each breach, as is the integrity of the bargaining unit. The scope of the remedy, therefore, remains one that is compensatory. As noted above, the CCAs have experienced contractual harm that must be addressed and the consequence of inappropriately using CCAs to cross into the Rural Craft disguises the needed staffing levels and thus has a detrimental effect on the integrity and scope of the craft and, ultimately, the unit. That effect increases with repeated breaches that, while achieving only stop-gap, haphazard fixes, delay and interfere with the proper, contractual, systemic measures that should be taken to deal with the staffing and workload issues.

In this case, while the B Team agrees that management must be instructed again to stop its conduct and meet with the Union at Formal A Team meetings, the Union understands that it will most likely be ineffective, given management's continued defiance of prior B Team instructions and refusal to meet with the Union about this issue at Formal Step A meetings. I agree and find that a more robust remedy is required under these circumstances.

While it is understandable that the lack of staff in the Rural Letter Carrier bargaining unit makes postal delivery difficult, if not impossible, at times, the National Agreement is clear that only in emergencies, as defined in the National Agreement, may management cross crafts in assigning bargaining unit employees. There is no record of emergencies at the East Falmouth installation that would justify such repeated conduct. I find that the violations of Articles 3 and 7 by East Falmouth management are intentional. I also find that the refusal to participate in Formal A Team meetings, in violation of Article 15, is also intentional and egregious. I further find that the intentional noncompliance with B Team instructions to abide by the National Agreement in this

representative grievance and prior cross-craft assignment grievances is intentional and egregious. I find that East Falmouth management has blatantly defied the parties' collective bargaining relationship in the matter, which has eroded the integrity of the relationship, the National Agreement, and the bargaining unit members' trust in the ability of the Union to represent them, despite a legally binding collective bargaining agreement with the Service.

Under these circumstances, I find that both a cease and desist order and a compensatory remedy is required to address the harm caused to the integrity of the National Agreement by East Falmouth's violations of the Articles 3, 5, 7, 15, and 19. However, I do not find it within my jurisdiction to order that rural letter carrier work be subsumed within Union's bargaining unit work. I find that the Service and the Union must negotiate the parameters of the bargaining unit's work when it involves another craft. I also find it unnecessary at this point in time to have the Service compensate the Union for filing grievances of this nature, as the parties have agreed to allow a Union representative to file grievances on behalf of the bargaining unit during work time. Therefore, the Award below outlines the remedy that must be implemented.

VI. AWARD

The grievance is granted in part. The remedy is as follows:

1. The Postal Service shall cease and desist from violating 3, 5, 7, 15, and 19 of the National Agreement.
2. The Postal Service shall pay the affected bargaining unit employees an additional payment of 100% of the straight time rate for all hours worked in the rural carrier craft.
3. Within 5 business days of the receipt of this award, the East Falmouth Postmaster shall personally sign the poster attached to this award and post copies in all areas where employees gather, to be left in place for no less than one year from the date of this award.

Sheila Mayberry, Esq.
Arbitrator
February 24, 2023

NOTICE TO EAST FALMOUTH
NALC BARGAINING UNIT MEMBERS

By Arbitral Order, the Management of the
East Falmouth Post Office Shall:

1. Cease and desist from assigning CCAs to rural carrier craft work, in violation of JCAM 3-1

2. Fully comply with Article 15 of the National Agreement, including participating in good faith with the Union at Informal and Formal A Team meetings

3. Fully comply with resolutions to grievances mutually agreed upon by B Teams

_____

Postmaster
East Falmouth Post Office

Dated: February 24, 2023

This notice shall remain posted in all employee gathering places for no less than one year from the date above.

Exhibit 15

C-35695

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	**AWARD**
	)	
	)	**Grievant: Class Action**
between	)	**Post Office: Fayetteville, NC**
	)	
UNITED STATES POSTAL SERVICE	)	**Case No.: 4B 19N 4B C 21399097**
	)	**NALC No.: CC0614**
	)	**DRT No.: 09-553210**
and	)	
	)	
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS	)	
	)	

Before: Jacquelin F. Drucker, Esq., Arbitrator

Appearances:

For the NALC: Don Lyerly, Regional Administrative Assistant

For the Postal Service: Amit Rana, Labor Relations Specialist

Date of Hearing:	March 15, 2022
Place of Hearing:	301 Green Street Fayetteville, NC
Date of Award:	April 15, 2022
Relevant Contract Provision(s):	Articles 3, 7, and 15
Contract Year:	2019 - 2023
Type of Grievance:	Contract

AWARD SUMMARY

As a threshold matter, Management has challenged arbitrability, citing the principle of *res judicata*. That challenge is denied. The grievance is arbitrable. The Postal Service and the NALC at Step B found that Management at this installation breached Articles 7 and 3, and the 2021 Award, by assigning CCAs to work in the Rural Carrier Craft. The only issue presented in arbitration, therefore, is the remedy. In that regard, the Arbitrator orders that Management cease and desist from assigning CCAs to Rural Carrier duties. She further finds that the appropriate compensatory relief for the breach, which affects not only the individual CCA, but also the integrity and staffing of the unit and crafts, and which occurred in defiance of the clear cease and desist directives set forth in the 2021 Award and the 2021 Step B Decision, is additional compensation to the affected CCA at time and one-half for the hours spent working in the Rural Carrier Craft.

I. STATEMENT OF THE CASE

The instant grievance is presented in arbitration for resolution of the issue of remedy and Management's threshold challenge to arbitrability. The parties at Step B agreed that, at the Fayetteville installation, "management violated Articles 3 and 7 of the National Agreement by improperly assigning CCA Gholston to work in the Rural Letter Carrier Craft on June 14, 2021." It also was agreed that "in violating Articles 3 and 7 of the National Agreement, management necessarily violated Article 15 of the National Agreement by violating previous Step B Decisions included in the case file and Arbitration Award K16N-4K-C20295971; specifically, the directive for management to 'cease and desist' violating Article 7 of the National Agreement and other similar type directives."

The hearing of this grievance was held on March 15, 2022, at the Postal Service facility located at 301 Green Street, Fayetteville, North Carolina, and appropriate measures were taken to ensure pandemic-related safety of all participants. At hearing, the parties were ably represented. Each party was given a full and fair opportunity to present evidence through documents and witness testimony, and to make arguments. All witnesses testified under oath and were subject to direct, cross, and redirect examination. In reaching the remedial determinations set forth herein, the Arbitrator has given full and careful consideration to all arguments posed, all awards and authorities cited, and all evidence of record.

Prior to the hearing, the parties entered into a Pre-Arbitration Agreement dated March 2, 2022, stipulating that eleven other grievances from this installation, each posing similar or related violations and concomitant issues of remedy, would be held in abeyance pending the outcome of the instant arbitration and that the remedy determined in this case will be applied to each of those eleven cases.

II. FACTS AND ANALYSIS

A. Prior Violations Found in Arbitration and Step B Decision

The parties at Step B decided and the Postal Service in this case thus acknowledges that Management breached the National Agreement when it assigned City Carrier Assistant employees to perform Rural Carrier work. Indeed, a few months before the breach that occurred here, Arbitrator Glenda August on February 19, 2021, issued an Award ("February 2021 Award") holding that Management at this Post Office violated the National Agreement on May 10, 2020, when it engaged in the same behavior: assigning City Carrier Assistant employees to perform work in the Rural Carrier Craft. As in the instant case, that arbitration involved a single grievance but the parties had agreed to hold a number of other grievances, posing the same allegations, in abeyance pending the outcome of that arbitration.

Arbitrator August, citing the language of Article 7, Article 3.F, and the explicit language the parties developed in the JCAM, concluded that there was "no dispute" that Rural Carrier duties are excluded from the crossing-craft provisions of the contract. The Postal Service's primary defense to the action that was clearly contrary to the terms of the contract had been that the pandemic created an unforeseen emergency situation that, under Article 3, Section F, entitled Management to take actions that were otherwise prohibited. Arbitrator August rejected that argument, noting that any effect that the pandemic had on the staffing and hiring difficulties had been shown to be recurring in nature and, therefore, not a basis for invoking Article 3, Section F.

With regard to the remedy, Arbitrator August addressed the Union's argument that, in addition to a cease and desist order, Management's repeated breaches of Article 7 in this regard warranted an award of compensation to each affected CCA of an additional 100% at the straight-time rate or equivalent compensatory time off. Arbitrator August rejected the suggested remedy of compensatory time off, given the existing staffing challenges faced by the Postal Service. In addition to ordering the Postal Service to cease and desist, however, she ordered that the Postal Service was to "compensate the affected CCAs with an additional payment at 100% of the straight time rate for all hours worked in the rural craft on May 10, 2020."

That Award was issued on February 19, 2021. Not long thereafter, the Union and the Postal Service considered a series of grievances, most of which related to dates after the issuance of the 2021 Award and all of which alleged the same violation as addressed in the February 2021 Award. At Step B, on May 7, 2021, the parties agreed that Management at this installation again had violated Article 7 of the National Agreement. Further, while the parties stated that there "remains some dispute over the appropriate remedy," they agreed (1) that Management was instructed to refrain from assigning Carriers, including CCAs, to the Rural Carrier Craft and that each affected Carrier was to receive the compensatory remedy as applied in the February 2021 Award of an additional 100% of wages at the straight time rate for hours worked in the Rural Craft.

B. The Instant Grievance

Soon after, even though the clear terms of both the February 2021 Award and the May 2021 Step B Decision directed Management at this installation to cease the violative conduct, similar breaches recurred. Grievances were initiated regarding the breaches, one of which occurred on June 14, 2021, and is addressed herein. There was no Step A meeting on the instant grievance. It progressed to Step B, where the parties agreed that Management yet again had again violated Article 7 and that the provisions of Article 3, Section F provided no excuse. The parties were not able to reach agreement regarding the appropriate remedy. That, therefore, is the issue presented in this arbitration

C. Res Judicata Effects and Arguments

As an initial matter in the instant case, Management argues that this grievance is not arbitrable because the issue in dispute, says Management, was decided in the February 2021 Award by Arbitrator August and cannot be re-arbitrated. As recognized by the Step B Decision, the facts regarding the basic breach here are the same and, therefore, the parties herein of course are bound by the arbitral holding in this installation that it is a violation of Article 7 for Management to assign CCAs to perform Rural Carrier work and that the existence of the ongoing pandemic

does not excuse Management from complying with that contractual prohibition. The parties acknowledged this in the Step B Decision in which they jointly concluded that Management again had breached the National Agreement and, in doing so, failed to comply with the cease and desist order issued in that Award. The February 2021 Award thus stands in full force and effect, and adherence is required as provided in Article 15 and as has been repeatedly emphasized by the Postal Service at the highest levels. This is not in dispute, nor is it an issue presented in this proceeding for the Arbitrator to decide.

Res judicata means only that the thing has been decided. Thus, if the same facts and circumstances arise, as they have here, Management does not receive another chance to argue that its conduct is permissible. Rather, Management was on clear notice, effective February 2021, that it was a violation to assigned CCAs to perform Rural Carrier work and Management is expected to have complied with that holding. Even if this Arbitrator disagreed with the analysis and findings set forth in the February 2021 Award (which she does not), she would not be at liberty to reconsider that issue in this forum because it does have binding effect at this installation, and there is an obligation to comply. When Management fails to adhere to the same obligations that have been decided and reiterated, however, it is the grievance mechanism that enables the Union to cite and challenge that failure and to seek redress. The instant grievance has been pursued to this forum not because the Union seeks to relitigate the issue on the merits but, rather, because Management has failed to abide by the contract and the binding decision, and a remedy must be determined.

Management, however, extends its *res judicata* argument to the remedial portion of the February 2021 Award and contends that the remedy applied there is binding on all future violations and cannot be changed. It says that the Union is merely seeking to try additional arbitrators who may wish to impose harsher remedies when the specific remedy already has been determined. Management contends that if the Union insists on following the February 2021 Award as to the merits (which, of course, Management must do), the Union also must be restricted to the remedy achieved there.

Yet the question of remedy in this case is not the same as posed in the February 2021 Award, and comity of issues is required for res judicata effect. There is no question as to whether Management's actions breached the contract. They did. The question is what shall be the appropriate remedy for a violation that occurred on June 14, 2021, a mere four months after the February 2021 Award, a few weeks after the Step B Decision, and more than a year into the pandemic. The redress in this case therefore pertains not just to the breach of Article 7 but the additional element of failure to abide by a cease and desist order from the February 2021 Award and the similar cease and desist instruction issued by the parties' own mechanism in May 2021. Thus, there is no theory of *res judicata* that would limit the remedy for actions taken in June 2021, in clear and knowing breach of cease and desist directives, to only the remedies that were imposed in February 2021, for a breach had that occurred in May 2020.

D. The Appropriate Remedy

In arguing that no greater remedy and, perhaps, a lesser or no remedy, is appropriate, Management stresses that, notwithstanding efforts to comply, it continues to face the same staffing and personnel challenges that gave rise to the breach that occurred in May 2020. The Arbitrator recognizes that it was not until February 2021 that Management was placed on formal binding notice that (a) the action of assigning CCAs to Rural Carrier work violated the contract and was not excused by the pandemic-related circumstance and (b) Management must cease and desist from such action. But, thereafter, Management had ample time to take steps to deal with the staffing issues that it says gave rise to the impermissible assignment. Yet those steps were not taken and Management, by then knowing it was violating the contract, continued to act in breach of contract and in defiance of the February 2021 Award and then continuing, in this case, in defiance of that Award AND the May 2021 Step B Decision. Difficulty in achieving compliance does not change the nature of a clear contractual obligation, nor does it relieve the breaching party from responsibility for a remedy. If a party seeks to be released from a contractual obligation, the party must negotiate a change in the contract. If it simply repeats the breach, the deleterious effects are exacerbated and will give rise to a responsive remedy.

Management's theory that it may continue to ignore the contract and the cease and desist orders, engage in violative assignments, and then simply pay the 100% additional compensation indicates that it seeks to restructure the National Agreement. Management seems to suggest that the February 2021 Award simply created a formula saying that it was acceptable to cross crafts into the Rural Craft as long as the premium of 100% additional wages is paid. That, however, was not the holding. That Award found a contract breach --- a failure by the Postal Service to abide by the very terms to which it agreed and by which it is legally bound. But Management wishes to address ongoing or anticipated staffing situations by being relieved of its contractual obligations, being released from the cease and desist orders, and creating permissive crossing of crafts into the Rural Craft in exchange for a premium. This could be achieved only through negotiation with the Union, not by asking arbitrators to ignore the contract and ongoing breaches.

Management also argues that not every breach requires a remedy because sometimes there is no harm. While there are instances in which a breach is so minor that it is deemed to be de minimis and therefore not a breach. That is not the case here, for the breach is significant, on-going, and in defiance of clear directives to cease. Moreover, there indeed is harm caused by the breach. The CCAs are being required to perform work they did not anticipate and that is not consistent with what they were hired to do under the contract that protects them and their work. Further, the integrity of the craft, a concept the parties jointly recognized in the National Agreement, is compromised with each breach, as is the integrity of the bargaining unit.

The Union has argued that a part of the remedy at this point, following the defiance of the February 2021 Award and the May 2021 Step B Decision, should involve more than financial relief. The Union asks that any CCA who was inappropriately required to work in the Rural Craft should be awarded not only monetary relief but also compensatory time off. The Arbitrator recognizes the frustration faced by a party when it seems that the cost of the breach, in dollars, does not result in compliance. Yet, while the Union's thinking in that regard is creative, it draws on a remedy in an award that addressed a different form of breach. In supporting this theory, the Union has cited *United States Postal Service and National Association of Letter Carriers (Wilmington, NC)*; Case No. K11N 4K C 19326208; 09-475315 (Wolitz, 2019), in which paid time off was part of the awarded remedy. The breach in that case, however, involved improperly

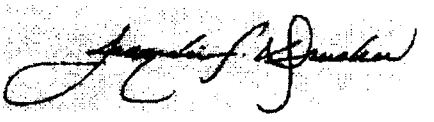
requiring non-overtime-desired-list employees to work overtime. The wrong in that case had actually resulted in an infringement of the unit employees' contractually protected time off duty. According, a remedy that provided time off had a direct correlation to the wrong, which is not the case with the instant breach.

The Union also argues in favor a punitive remedy, designed to penalize Management for the continued breaches and to deter future noncompliance. Management responds that punitive remedies are not appropriate under the National Agreement. There are awards in which punitive damages have been granted when breaches are found to have been willful and wanton, such as *United States Postal Service and National Association of Letter Carriers (Roanoke Rapids, NC),* Case No. K16N 4K C 20309966; 09-509728 (Stanton, 2021). In this case, however, the breaches, while repeated and knowingly committed, have not moved into the realm of willful and wanton actions that warrant the extraordinary relief of punitive damages. The scope of the remedy, therefore, remains one that is compensatory. As noted above, the CCAs have experienced contractual harm that must be addressed and the consequence of inappropriately using CCAs to cross into the Rural Craft disguises the needed staffing levels and thus has a detrimental effect on the integrity and scope of the craft and, ultimately, the unit. That effect increases with repeated breaches that, while achieving only stop-gap, haphazard fixes, delay and interfere with the proper, contractual, systemic measures that should be taken to deal with the staffing and workload issues.

AWARD

For these reasons, the measure of damages that was applicable for a breach that occurred in May 2020 no longer addresses the full impact of the breaches that occurred more than a year later and in defiance of an Award and a Step B Decision that stressed the need to adhere to the contract and, if followed, would have resulted in resolution of the staffing issues through proper contractual and organizational means. Thus, the remedy for the breach acknowledged herein is that Management will cease and desist from assigning CCAs to Rural Carrier Craft work and the CCA who was so assigned will be compensated for that time at the rate of time and one-half, in addition to the CCA's regular compensation, for the time worked in the Rural Carrier Craft.

April 15, 2022



Jacquelin F. Drucker, Esq.

Exhibit 16

RECEIVED

16 2022

Richard J. DiCecca, NBA
NALC - New England Region

July 28, 2022

Dave J Barbuzzi
NALC Branch 25 President
LETTER CARRIERS
2500 Main Street Suite 201
Tewksbury, MA 01876 -3185

Decision:	PRE-ARBITRATION
USPS Number:	4B 19N-4B-C 22211328
NALC Number:	
Step A Meeting Date:	
Step B Meeting Date:	
Date Received at Step R:	06-23-2022
Step R Decision Date:	07-28-2022
Issue Code:	072300
Grievant:	RONALD J LADUCA
Installation:	MANCHESTER, NH 03103-9998

Dear Dave J Barbuzzi:

The following full settlement is without prejudice to either parties' position and does not set precedent. This agreement resolves the representative case listed above.

Generally, the grievance involves a violation of Article 7 when management assigned CCA Laduca to perform work on Rural Route 12.

In effort to resolve this grievance, the parties agree CCA Laduca will be compensated an additional 50% for the 7.66 hours worked on April 6, 2022. Additionally, management shall adhere to Article 7.2.

Sincerely,

Amanda Hoffman

Amanda L Hoffman
Labor Relations Specialist

Dave J Barbuzzi
NALC Branch 25 President

Date: 8/15/2022

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	
	)	**GRIEVANT:** Class Action
Between	)	
	)	**POST OFFICE:** Manchester, NH
UNITED STATES POSTAL SERVICE	)	
	)	
And	)	
	)	**CASE Numbers:**
	)	**USPS:** 4B 19N-4B-C 24053141
NATIONAL ASSOCIATION OF LETTER	)	**NALC:** PRB23114
CARRIERS, AFL-CIO	)	**DRT**: 14-637371
	)	

BEFORE: Sherrie Rose Talmadge, Esq., ARBITRATOR

APPEARANCES:

For the U.S. Postal Service:	William Eurich, (A)Labor Relations Specialist Amanda Hoffman, Sr. Labor Relations Specialist, TA
For the Union:	Paul Boulanger, Local Business Agent Anthony Bossi, Regional Grievance Assistant

Place of Hearing:	955 Goffs Falls Road, Manchester, NH
Date(s) of Hearing:	May 17, 2024
Date of Award:	July 22, 2024
Relevant Contract Provisions:	Article 7
Date of Contract:	2019-2023
Type of Grievance:	Contract

AWARD SUMMARY

The grievance is sustained. To remedy Management's violation of Article 7 by assigning City Carriers to perform work in the National Rural Letter Carriers (NRLC) craft during the week of November 10 through November 17, 2023, I award the following:

The Postal Service shall cease and desist from engaging in such violations. Each City Letter Carrier in the class of grievants shall be compensated an additional 100 percent (100%) of his or her base hourly rate of pay for all time worked in the NRLC craft, as set forth in the Award.

The arbitrator shall retain jurisdiction over the implementation of this Award for a period of ninety (90) days.

Sherrie Rose Talmadge, Esq., Arbitrator

STATEMENT OF THE ISSUE

What is the appropriate remedy for the Service's violation of Article 7 of the National Agreement when they utilized City Carriers to perform Rural Carrier work from 11/10/2023 – 11/17/2023?

FINDINGS OF FACT[1]

The instant grievance is a representative case for 17 grievances filed for the same issue. Step B DRT parties determined that the Service violated Article 7 of the National Agreement when they assigned or allowed volunteer city carriers to work in the Rural craft. The DRT did not agree on the appropriate contractual remedy and, therefore, only the issue of the appropriate remedy was impassed.

At the Manchester, NH facility, City Carriers were utilized to perform Rural Carrier work from November 10, 2023, through November 17, 2023. The Manchester installation consists of three carrier units, Manchester Hookset Station, Manchester South Station and Manchester West Station, staffing around 155 letter carriers in total. Within the three carrier units there were 27 Rural Routes during the period cited in this grievance. At the time there was only one leave replacement.

Acting Post Office Operations Manager, Jason Lyon, testified that the Manchester Installation has struggled to hire supplemental help in the Rural craft. Lyon sent an email to the entire state of Maine, Vermont and New Hampshire authorizing overnight accommodations and per diem for anyone that lived over 50 miles that could help deliver Rural Mail. Acting Manager Customer Service Aamber Rose McIntrye testified to Management efforts before utilizing City Carriers in the Rural Craft. However, with PEAK season, when the Christmas mail volume increased, the Supplemental work force that had been borrowed from other offices returned to their home offices and the resources in Manchester were depleted. As a result, Management used City Carriers to perform Rural Carrier work.

There was one similar previous grievance with an incident date of April 6, 2022, whose resolution by the parties, included paying the City Carriers who were assigned to perform Rural Carrier work an additional 50% of his or her base pay for all time worked in the NRLC craft. There were no violations for nearly 19 months, until the present case which

[1] The parties had an opportunity to question sworn witnesses on direct and cross-examination, and to submit relevant and material documentary evidence. After the conclusion of the hearing, the parties presented their closing arguments.

occurred between the dates of November 10 and 17, 2023. During this time, Management utilized volunteer City Letter Carriers to work in the Rural craft, while also assigning PTF City Carriers to work on Sunday, November 12, 2023. The Article 7 violation continued for 16 additional weeks. On January 19, 2024, the DRT issued its decision in the present case finding that the Postal Service had violated Article 7 when it assigned City Carriers to perform Rural Carrier duties.

POSITIONS OF THE PARTIES

UNION'S POSITION

The Step B Team concluded that Management violated Article 7 of the National Agreement when it used City Carriers to do work designated to be performed by the Rural Carrier Craft. The Service had many avenues available to avoid violating the contract, but chose to do so regardless. The Service argued that supervisors and managers worked 7 days a week delivering rural mail, but the evidence showed this not to be the case. The Service argued that Rural Carriers were habitually canvassed to volunteer working overtime, but refused to do so. However, this is also untrue. The Postal Service has the contractual authority to require RCA non-career Rural Craft employees from other installations to work in Manchester, but failed to use this resource.

The Service argued that they were not able to staff the rural workforce. Manchester's City Carrier workforce had similar staffing issues in recent years and resolved it by converting to a career hiring model, which they could have done for the Rural Carrier Craft. When Management converted to a career hiring model for the Rural Carrier Craft in early 2024, the Rural complement in Manchester approached staffing goals. This would have addressed any staffing shortfalls claimed by the Service.

The Union's requested remedy is a cease and desist order, and a 100% additional base-pay remedy for hours worked in violation to compensate City Carrier employees who were improperly forced to work on rural assignments and to serve as an incentive for future compliance. The issue of using City Letter Carriers to perform Rural Craft work has been grieved and resolved previously in this installation. Management has previously agreed to cease and desist remedies, and has agreed to compensate City Carriers at 50% of their base pay for hours in violation, but continued to violate the contractual language. After the period at issue in this grievance, for which the Step B Team upheld a violation, the Service continued to violate the same provision continuously for 16 more weeks.

Despite the Service's argument that the Arbitrator does not have the ability to administer cease and desist remedies, arbitrators have always had the discretion to fashion remedies for contractual disputes, including the issuance of cease and desist orders.

Regardless of the Service's argument that a financial incentive remedy is punitive and that the arbitrator has no jurisdiction to make such a judgement, arbitrators are granted wide latitude by the Supreme Court in issuing remedies. The previous grievance settlements have not been sufficient to end this contractual violation. The Union requested that the Arbitrator craft a remedy which will compensate carriers who were improperly worked in the Rural Craft, and make the violation stop.

POSTAL SERVICE POSITION

The Union has not met its contractual burden to substantiate its allegations for the requested remedy with clear and convincing evidence. The case is absent of any evidence of repeated violations, any willful or intentional violation by Management, or any economic harm towards any employees. The case file is absent of any economic harm. The case file has no statements that the employees that had to work on the rural side were deprived, or not compensated properly for what they did, or any statements of City Carriers that had to do additional work or additional overtime because there were other City Carriers working on the Rural side.

The Manchester Installation consists of three carrier units, staffing around 155 Letter Carriers. Within the three carrier units, there were a total of 27 Rural Routes during the time of this grievance. Manchester had only one leave replacement. The Manchester Installation struggled to hire supplemental help in the Rural Craft for quite some time. During the summer of 2023, Management sought additional help outside of the Installation. During that time, management at the Manchester Installation were working up to six or seven days a week to service their customers in the Rural Craft while not utilizing any City Carriers for rural delivery.

Manager Post Office Operations, Jason Lyon, sent an email to the entire state Maine, Vermont and New Hampshire authorizing overnight accommodations and per diem for anyone that lived over 50 miles that could help deliver Rural Mail. The District Manager got involved helping to move resources into Manchester to get mail delivered. However, with PEAK season, these resources were depleted leaving Manchester with no other alternative but to use City Carriers. PEAK usually starts on or around the beginning of

November through the end of December. Before PEAK, some offices were able to assist Manchester during the summer of 2023 and early fall, when the mail volume is usually lighter. Due to the increase in mail volume because of PEAK, the resources depleted because the help that was being borrowed to Manchester was needed in the office. As a result of not having the staff in the Rural Craft and not having the manpower to service the customers of America during PEAK season, Management utilized City Carriers for Rural delivery.

The parties had one prior resolved grievance similar to the present case, with an incident date of April 6, 2022. The parties agreed that this agreement did not set a precedent in the installation. There were no violations for nearly 19 months, unit the present case for the period November 10 – 17, 2023. During this time frame, management utilized volunteer City Carriers to work in the rural craft, while also assigning PTF City Carriers to work on Sunday, November 12, 2023.

The JCAM, page 7-15, outlines the remedy when Management is in violation of Article 7 in which a clear contractual violation is evidenced by the fact circumstances involving the crossing of crafts pursuant to Article 7.2.B and C, a make whole remedy involving the payment at the appropriate rate for the work missed to the available, qualified employee who had a contractual right to the work would be appropriate. The contractual right to the work is the Rural Craft.

The Union's request for a monetary remedy is without merit. The Union is seeking a punitive remedy and intend to punish the Service for what they claim are repeated violations of the National Agreement, although there was only evidence of one prior incident that had been settled without prejudice nineteen months prior to the instant matter. The grievance does not support additional compensation. Employees were compensated at the appropriate rate for what they performed. Monetary relief should be limited to actual economic harm. The file is absent of any evidence supporting the Union's allegations of harm towards an employee. Moreover, there was no evidence of flagrant or willful violation of the contract. Punitive remedies have no foundation within the four corners of the National Agreement. A finding of a contractual violation does not provide a basis for such an award. There are no precedent setting decisions that either called for a cease and desist or a monetary or punitive remedy for this facility. The case file is absent any evidence that the Service repeatedly violated Article 7, or that Management's violation was willful and intentional. The Union failed to demonstrate there was any economic harm. As a result, the Service requested that the Union's request for a monetary remedy be denied.

DISCUSSION

At issue is the appropriate remedy for the Service's violation of Article 7 of the National Agreement when they utilized City Carriers to perform Rural Carrier work from 11/10/2023 – 11/17/2023.

Article 7, Section 2(B) and (C) provide for cross craft assignments in the event of insufficient work in an employee's scheduled assignment and periods of exceptionally heavy workloads in an occupational group. Nonetheless, Management's right to cross crafts is further limited as it concerns the rural letter carrier craft. The 2022 JCAM, pages 7-15 and 7-16, includes an MOU between the USPS and the NALC, Re: Article 7, 12 and 13-Cross Craft and Office Size, which excludes cross craft assignments to and from the rural carrier craft except in emergency situations.

> **Rural Carriers Excluded.** Paragraph A of this Memorandum of Understanding (National Agreement page 145) provides that the crossing craft provisions of Article 7.2 (among other provisions) apply only to the crafts covered by the 1978 National Agreement i.e., letter carrier, clerk, motor vehicle, maintenance, and mail handler. So cross craft assignments may be made between the carrier craft and these other crafts, in either direction, in accordance with Article 7.2. However, rural letter carriers are not included. So cross craft assignments to and from the rural carrier craft may not be made under Article 7.2. They may be made only in emergency situations as explained below.
>
> **Crossing Crafts in Emergency Situations**. In addition to its Article 7 rights, management has the right to work carriers across crafts in an emergency situation as defined in Article 3, Management Rights. Article 3.F states that management has the right:
>
> 3.F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.
>
> This provision gives management a very limited right to make cross craft assignments. Management's desire to avoid additional expenses such as penalty overtime does not constitute an emergency.

Thus, the National Agreement and the 2022 JCAM provide that city carriers can only be assigned to the rural letter carrier craft in emergency situations, which is defined as an unforeseen circumstances or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

Management's witnesses testified that beginning with November 10, 2023, with the beginning of PEAK season, they had insufficient rural carriers to cover the available routes, and provided evidence regarding the Postal Service's attempts to hire additional employees, including job fairs, emails to surrounding post offices and weekly postings. It was noted that one difficulty in hiring rural carriers was that the rural carriers were being paid at a lower rate than the city carriers. Management witnesses testified credibly about the challenges of hiring and retaining rural carriers at the time that the grievance was filed. However, this is a representation case for 16 other grievances reflecting the sixteen additional weeks that Management continued to assign city carriers to perform rural craft work. The Postal Service continued to violate Article 7 for approximately six more weeks after the DRT had issued its decision on January 19, 2024, finding a contractual violation. Thus, based on the testimony and documentation, the situation at the Manchester post office regarding the insufficient number of rural letter carriers was recurring in nature, and not an emergency as the term is defined in Article 3. The Postal Service continued to assign city carriers to perform rural duties until later in 2024 when the Postal Service converted to a career hiring mode and was able to hire additional rural carriers.

As noted by Arbitrator Jonathan Klein, "The arbitrator determines that a continuous, recurring insufficiency in the size of the workforce well after an immediate emergency has passed is not a defense to a violation of the terms of the National Agreement." [USPS and NALC, 4E 19N-4E-C 22178887, NALC C22110, (2022)]. In the present case, the DRT concluded that the Postal Service had violated Article 7 when it assigned city carriers to perform work in the NLRC craft during the week of November 10 through 17, 2023.

Although the Service argued that the appropriate remedy for a contractual violation of crossing crafts pursuant to Article 7.2.B and C, is discussed in "Remedy For Violations" in JCAM page 7-15, that provision is not applicable in the present case. The previously discussed MOU specifically excludes the application of Article 7.2.B and C to cross craft assignments to and from the rural carrier craft except in emergency situations.

As a result of Management's violation of Article 7 of the National Agreement by assigning city carriers to rural carrier craft work, I find that in addition to a cease and desist order, a compensatory remedy is appropriate to deter management from further violations of the National Agreement and reduce the deleterious effects on the

bargaining unit members and their ability to police and implement the National Agreement. See USPS and NALC, [4B 19N-4B-C 22407168, NALC: 18EF7622, (2023)], Arbitrator Mayberry, for a similar analysis.]

Arbitrator Mittenthal in his National Award [IH4N-NA-C-21, C-6297] considered the awarding of compensatory damages as follows:

> To grant a money remedy for a violation of this commitment would penalize the Postal Service for exercising the discretion it still appears to possess under 5C2d. That would be a patently unfair result. Instead, the Postal Service should be ordered to cease and desist from any violation of the "letter carrier paragraph." Should the postal facility in question thereafter fail to comply with such an order, a money remedy might well be appropriate.

A number of regional arbitrators have implemented compensatory remedies for Management's violation of Article 7 by assigning city carriers and/or CCAs to perform rural carrier duties. When Arbitrator Jonathan Klein in USPS and NALC, [Case 4E 19N-4E-C 22178887, NALC: C22110, (2022)] concluded that the Postal Service had violated Article 7 by assigning CCAs to perform rural carrier duties, he awarded a cease and desist order and compensated each grievant an additional 50% of his or her base hourly rate of pay for work in the NRLC craft. Arbitrator Glenda August in USPS and NALC, [Case K16N-4K-C 20295871, (2021)] awarded CCAs an additional payment of 100% of the straight time rate for all hours worked in the rural carrier craft. In response to Management's noncompliance with Arbitrator August's award and ongoing assignment of CCAs to rural craft duties, Arbitrator Drucker in USPS and NALC [Case No. 4B19N-4B-C 21399097] increased the payment to affected CCAs to 150% of the straight time rate for hours worked in the rural craft. Drucker noted, in part:

> The CCAs are being required to perform work they did not anticipate and that is not consistent with what they were hired to do under the contract that protects them and their work. Further, the integrity of the craft, a concept the parties jointly recognized in the National Agreement, is compromised with each breach, as is the integrity of the bargaining unit…

Applying a similar analysis to a repeated Article 7 violation in a non-emergency situation, Arbitrator Mayberry, cited above, also awarded a cease and desist order and compensatory monetary remedy at 100% of the city carriers' straight time rate for all time worked performing rural duties.

In the instant case, the arbitrator holds that in the absence of a true emergency, management was not permitted to assign the city carriers to the NRLC craft during the

week of November 10 -17, 2023. The city carriers were harmed by being improperly assigned to work in a craft for which they were not hired. The Postal Service shall cease and desist from engaging in such violations. Each city letter carrier in the class of grievants shall be compensated an additional 100 percent (100%) of his or her base hourly rate of pay for all time worked in the NRLC Craft during the period at issue within thirty (30) days from the date of this Award.

AWARD

The grievance is sustained. To remedy Management's violation of Article 7 by assigning City Carriers to perform work in the National Rural Letter Carriers (NRLC) craft during the week of November 10 through November 17, 2023, I award the following:

The Postal Service shall cease and desist from engaging in such violations. Each City Letter Carrier in the class of grievants shall be compensated an additional 100 percent (100%) of his or her base hourly rate of pay for all time worked in the NRLC craft. The arbitrator shall retain jurisdiction over the implementation of this Award for a period of ninety (90) days.

Respectfully submitted by:

Sherrie Rose Talmadge, Arbitrator