

REGIONAL ARBITRATION PANEL

In the Matter of Arbitration	)	Grievant: Class Action
Between	)	Post Office: Marietta, Georgia 30060
United States Postal Service	)	USPS No.: K16N-4K-C 17701866
And	)	Branch No.: C170928060
National Association of Letter Carriers,	)	09-431271

BEFORE: Jo Ann Nixon, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Charlene Thompson (Kevin Cook, TA)

For the National Association of Letter Carriers: Gregg Dixon

Place of Hearing: 257 Lawrence St., Marietta, GA 30060

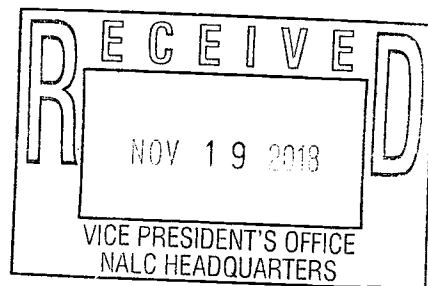
Date of Hearing: September 28, 2018

Date of Award: October 26, 2018

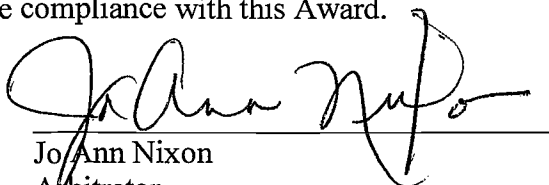
Relevant Contract Provision: Articles 19

Contract Year: 2011-2016

Type of Grievance: Contract



AWARD: The grievance is sustained. Management shall cease and desist violating the National Agreement and institute new procedures (in accordance with the National Agreement) for handling residual mail at the Marietta GA. Post Office. Management shall meet with a Union Official within the next 30 days to discuss the implementation of the new procedures. This Arbitrator shall retain jurisdiction to ensure compliance with this Award.



 Jo Ann Nixon
 Arbitrator

Kenneth R. Gibbs, Jr., NALC
National Business Agent

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Region 9
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I. ISSUE (s)

Did Management violate Article 19 of the National Agreement by not allowing carriers to case insufficient address and out of sequence mail pulled out by machine during Delivery Point Sequencing of mail? If so, what is the appropriate remedy?

II. STIPULATIONS

The parties agreed the following documents are to be considered as exhibits:

1. The Joint Contract Administration Manual between the US Postal Service & the National Association of Letter Carriers-JCAM (Joint Exhibit No. 1)
2. A packet of information documenting the grievance (Joint Exhibit No. 2)

III. RELEVANT CONTRACT PROVISIONS

ARTICLE 19 HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

IV. BACKGROUND

This grievance was initiated by the National Association of Letter Carriers (NALC) and is before the Arbitrator for decision pursuant to the National Collective Bargaining Agreement between the parties. The hearing was held on September 28, 2018, 2018 at the Marietta, Ga. Post Office located at 257 Lawrence St., Marietta, GA. 30060

V. FACTS

Management at the Marietta Post Office has allowed "insufficient address" and "out of sequence mail" with "secondary numbers" to be placed for delivery with Delivery Point Sequence (DPS) mail, in violation of the National Agreement. Management has recognized this practice as a violation and agreed to stop the practice immediately by implementing procedures consistent with the National Agreement.

VI. UNION'S POSITION

The Union contended that the issue in the case at bar is very straightforward and involves concise contract language which Management has not denied. They asserted that Management requested an opportunity to correct the violation, and the Union granted that opportunity but the violation was never corrected.

The Union argued that Management could have agreed to settle this clear violation at Formal Step A, Step B or at the Regional level, yet they did not. According to the Union, Management finally verbally offered to resolve the grievance a few days before arbitration but did not want to make that resolution citable. The Union stated that they are seeking a citable decision through arbitration.

It was the Union's position that there are three (3) simple facts that are the basis of the instant case:

- 1.) Delivery Point Sequence (DPS) is one bundle of mail in delivery point sequence.
- 2.) Residual mail is any mail that is not in DPS order.
- 3.) Residual mail is not DPS mail and it must be cased.

According to the Union the definition of DPS is found in a National Level agreement (M-01153-JX2-Page 16) entitled "Questions and Answers Concerning the September 1992 Memorandums" and states in the answer to Question 69 (JX-2 Page 18):

DPS mail is one bundle of mail in delivery point sequence. Mail that must be collated before delivery is not considered DPS mail. The number of dispatches is irrelevant.

The Union stated that Residual Mail is any mail that is not in DPS order, and the same National Level agreement defines Residual Mail as:

Residual mail is any mail that is not in DPS order once a delivery unit starts receiving DPS mail.

The Union contended that Residual mail is not DPS mail and it must be cased and cited Handbook M-41 at section 121.11 (JX-2, Page 22) in support of their position:

M-41

121.11 Route or case all classes of mail (exception, DPS mail will be cased only when management requires) in sequence of delivery along one or more established routes (see exhibit 121.11 for maximum time allowances). The

accurate and speedy routing of mail is one of the most important duties of a carrier; you must be proficient at this task.

According to the Union, in M-01246 the National Level parties agreed the DPS procedures cannot be obviated. It states in relevant part:

The established DPS implementation procedures are mandatory and cannot be obviated by calling mail in delivery point sequence “enhanced two pass” or by some other term. The Postal Service will immediately end such practices when they are brought to its attention. **(Emphasis added)**

The Union argued that although Management stipulated to the violation, the issue is not yet fully corrected and it was a blatant violation of clear contract language, therefore the Arbitrator should award not only a cease and desist order for the clear violations but should also award a compensatory award to deter future violations. They further argued that Management knew they were wrong but waited for an Arbitrator to order them to correct the violation. The Union asserted that Management could have fixed the problem immediately but chose to force the Union into Arbitration over a case they could not win. The Union requested that the Arbitrator sustain the grievance and issue an award appropriate to the blatant violations.

VII. MANAGEMENT’S POSITION

Management in the instant case stipulated to the violation alleged by the Union but contended that the Union’s request for remedy has been fulfilled so therefore the issue is moot.

According to Management, the Union requested a remedy on PS Form 8190 Section 19A which stated: ***“Cease and desist from placing insufficiently addressed mail and out-of-sequenced mail with secondary numbers in with (DPS) Delivery Point Sequence mail. Remove the listed addresses included in this file from the sort plan and place with 896 mail or residual mail for carriers to review and case in sequence each day to avoid any further delay in delivery. Or, whatever the Step B Team or an arbitrator deems appropriate”.***

Management cited the Union’s contentions and the Step B decision in further support of the fact that the Union’s requested remedy was to cease and desist placing residual mail in DPS and allowing the Carriers to case such mail. Management argued that they have honored the Union’s request and the instant grievance should be denied.

VII. DISCUSSION

As of the date of hearing in the instant case, there was no dispute remaining between the parties regarding the Union's allegations about how residual mail should be handled at the Marietta Post Office.

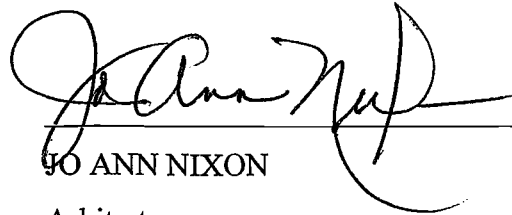
Management in the instant case stipulated to a violation of the National Agreement at Marietta; however, Management contended that the issue had been corrected. The Union contended that while Management has recognized the problem there needs to be a different procedure implemented to handle the residual mail (insufficient address", "out of sequence" etc..), and their requested remedy therefore has not been fully addressed. The Union also requested that this Arbitrator provide a remedy consistent with Management's blatant disregard for adhering to the National Agreement in regards to the handling of this residual mail.

Based on the evidence of record and the contentions of the parties, as well as the stipulation by Management regarding their acknowledgement of the contract violation the following will be my award:

Management at the Marietta Post Office, having recognized that the current practice for handling "insufficient address" and "out of sequence" mail with "secondary numbers" was done in violation of the National Agreement, they shall "cease and desist" that practice immediately and implement procedures consistent with the National Agreement. This "residual" mail shall be placed in a manner which will allow carriers to sort this mail at his/her case. As requested by Management, they shall have thirty (30) days from the date of this award to implement the new process. Management shall also meet with a member of the Union within the next 30 days to discuss the implementation procedures. This arbitrator will retain jurisdiction in this dispute to ensure that Management remains diligent in its efforts to correct the violation.

AWARD

The grievance is sustained. Management shall cease and desist violating the National Agreement and institute new procedures (in accordance with the National Agreement) for handling residual mail at the Marietta GA. Post Office. Management shall meet with a Union Official within the next 30 days to discuss the implementation of the new procedures. This Arbitrator shall retain jurisdiction to ensure compliance with this Award.



JO ANN NIXON
Arbitrator

New Iberia, Louisiana

October 26, 2018

Regular Arbitration Panel

IN THE MATTER OF THE ARBITRATION)	
	)	GRIEVANT: Class Action
BETWEEN)	
	)	POST OFFICE: Decatur, Alabama
UNITED STATES POSTAL SERVICE)	
	)	CASE NO.: G16N- 4G-C 19205484
AND)	
	)	DRT NO.: 08-466992
NATIONAL ASSOCIATION OF)	
LETTER CARRIERS, AFL-CIO	)	UNION NO.: TPL0719DPS

BEFORE: CHRISTOPHER E. MILES, ARBITRATOR

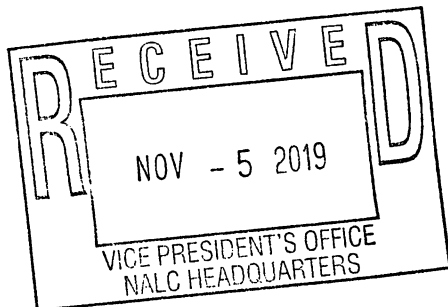
APPEARANCES:

For the U.S. Postal Service:	Jeff Calloway, Labor Relations Specialist
For the Union:	Greg Dixon, Assistant to the President For Contract Administration - NALC
Place of Hearing:	Decatur, Alabama
Date of Hearing:	September 11, 2019

AWARD:	
Date of Award:	October 21, 2019
Panel:	Region 8 / Alabama

AWARD SUMMARY

The class action grievance considered herein is sustained. The Postal Service violated the National Level Agreements M-01306, M-01153, and M-01246, and the M-41 Handbook, Section 121.1, when it included secondary address mail that is not in delivery order, or "residual mail", in the DPS trays. As the remedy, the Postal Service is directed to cease and desist from including secondary address mail, not in delivery order, or "residual mail", in the trays of DPS mail at the Decatur, Alabama installation. The Postal Service is further directed to work with Address Management Services (AMS) and In-Plant Support to correct this situation. No other remedy is awarded. However, should the Postal Service not comply, then a monetary remedy may be appropriate for the Carriers at the Decatur Post Office. The Arbitrator shall retain jurisdiction of this case for a period of 90 days to address any questions or issues concerning the implementation of this Award.



Chy E. Miles

 Christopher E. Miles, Esquire
 Labor Arbitrator

I. BACKGROUND

The class action grievance considered herein was filed by Branch 1314 of the National Association of Letter Carriers (hereinafter referred to as the “Union”) at the Postal facility operated by the United States Postal Service (hereinafter referred to as the “Postal Service”) in Decatur, Alabama. The Union asserts that the Postal Service is violating several National Level agreements and the M-41 Handbook by including secondary address mail that is not in delivery order, or “residual mail”, in the Delivery Point Sequence (DPS) trays at the Decatur installation which has to be collated by the Carriers on the street before delivery. The grievance, filed at Informal Step A on April 2, 2019, was processed pursuant to the procedure set forth in the parties' collective bargaining agreement¹ and the Step B Dispute Resolution Team (DRT) agreed to impasse the case on May 16, 2019. The issue was identified as follows:

Did management violate M-01306, M-01153, and M-01246 via Article 15 of the National Agreement and section 121.1 of the M-41 handbook via Article 19 of the National Agreement by including secondary address mail that is not delivery order in Delivery Point Sequence (DPS) trays at the Decatur AL installation, and if so what should the remedy be?

Having been unable to resolve the matter, the undersigned was appointed to hear and decide the issue. A hearing was conducted on September 11, 2019, in Decatur, Alabama. At the outset of the hearing, the Postal Service conceded that it has violated the National Level Agreements set forth in M-01306, M-01153 and M-01246 and Section 121.1 of the M-41 Handbook by including secondary address mail, or residual mail”, that is not in delivery order in the DPS trays. It agreed to work with Address Management Services (AMS) and In-Plant Support to rectify the situation. Therefore, the only issue for resolution is the appropriateness of the remedy requested by the Union and in that regard the parties were afforded full opportunity to present testimony and evidence, to cross-examine the witnesses, who were sworn, and to make arguments for their positions. At the conclusion of the hearing, the record in this case was closed.

II. RELEVANT PROVISIONS OF THE AGREEMENT

ARTICLE 15 GRIEVANCE – ARBITRATION PROCEDURE

ARBITRATION 19 HANDBOOKS AND MANUALS

¹ Collective Bargaining Agreement Between United States Postal Service and National Association of Letter Carriers, AFL-CIO, May 21, 2016 – September 20, 2019 (hereinafter referred to as the “Agreement”).

III. CONTENTIONS OF THE PARTIES

A. Union

The Union asserts that this case is straight forward and involves concise contract language that was negotiated before the implementation of automated or DPS mail. Historically, prior to DPS, Letter Carriers put all letter mail in delivery sequence by casing it. The casing of mail generally took three to five hours every morning, depending on the size and type of route. Because the automation of letter mail was going to have a direct and substantial impact on the Letter Carrier craft, the parties negotiated transition rules and limitations to automation. This grievance involves a negotiated provision that says only mail that is in delivery point sequence can be part of the DPS mail. The Union submits that there are three simple facts which form the basis of this case:

1. Delivery Point Sequence (DPS) is one bundle of mail in delivery point sequence,
2. Residual mail is any mail that is not in DPS order, and
3. Residual mail is not DPS mail and must be cased.

In this regard, the Union emphasizes that the Postal Service has agreed that it violated Article 19 of the Agreement, as well as National Level Settlements M-01153 and M-01246 when residual mail, which is not in delivery order, was included in the DPS trays at the Decatur, Alabama installation. Therefore, the only issue remaining is the appropriate remedy for this violation.

According to the Union, because of the Postal Service's blatant violation of the clear contract language, not only is a cease and desist order required, but also compensatory remedies. The Union argues that management in Decatur have been knowingly and intentionally leaving residual mail in the DPS mail. Management knew that it violated the Agreement and could have corrected it immediately. They chose not to and they are waiting for an arbitrator to make them correct the violation. Because of its blatant disregard for the Agreement, the Union requests the following remedy:

1. The Union requests that management cease and desist violation of M-01306, M-01153 and M-01246 via Article 15 of the National Agreement and Section 121.1 of the M-41 Handbook via Article 19 of the National Agreement by including secondary address mail that is not in delivery order in DPS trays.
2. That management immediately end practices which are in contravention of established DPS procedures.

3. That Letter Carriers(s) Steve Hood, Greg Wilson, John Adkins, Kim Heng, Daniel Clark, Ronnie Adams, Jennifer Olvera, Clyde Jackson, Neal McCreless, Allen Perdue, Paul Lawrence, Chris Malone, Quincy Miller, Kenneth Wright, Wendy Trousdale, Donie Rice, Taneisha Johnson, Jason Atchley, Brandon Jackson, each be paid a lump sum of \$100.00 to serve as an incentive for future compliance.
4. That all payments associated with this case be made as soon as administratively possible, but no later than 30 days from the date of settlement.
5. That proof of payment be provided to Paul Lawrence upon payment, and/or any other remedy the arbitrator deems appropriate.
6. The Union also asks that the arbitrator retain jurisdiction over the enforcement of the award.

B. Postal Service

The Postal Service stipulates that a violation of the Agreement occurred in this case. Therefore, the only dispute that remains is the remedy. It contends that the remedy requested by the Union is of a punitive nature. It maintains that punitive or exemplary damages are not available as a remedy for a contract breach. Such a remedy is not to be inferred from general contract language; there must be specific language authorizing punitive damages and there is no such language in the parties' Agreement.

Moreover, the Postal Service submits that punitive damages are disfavored in labor arbitrations and are rarely permissible under the National Labor Relations Act. If arbitrators are allowed to impose punitive damages, the usefulness of arbitration as a remedial purpose, would be destroyed. Furthermore, it is argued that an award of punitive damages against the Postal Service is barred by principles of sovereign immunity. It suggests that the Postal Service is immune from punitive damages in labor and employment disputes. Punitive remedies serve no meaningful deterrent effect, punish Postal ratepayers and divert resources central to the Postal Service's statutory mission.

The Postal Service contends that punitive awards in labor arbitrations are improper generally, and detrimental to harmonious labor relations. In this case, the Carriers will be made whole by Management correcting the infraction of insufficient address and secondary address mail being included with DPS mail. The Supervisors were only doing their best to fulfill the statutory obligation to deliver the mail. There simply is no extreme, outrageous, wanton or willful misconduct to support an award of punitive damages. Therefore, it is requested that the Union's request for punitive and unjust remedies be denied.

IV. DISCUSSION AND FINDINGS

This class action grievance was filed by the Union to protest the inclusion of secondary address mail that is not in delivery order, or "residual mail", in the Delivery Point Sequence (DPS) trays at the Decatur, Alabama installation. As such, the secondary address mail must be collated by the Carriers on the street before delivery. According to the National Level Agreement, M-01153, and the "Questions and Answers concerning the September 1992 memorandums," it is stated in answer to Question 69 that "DPS mail is one bundle of mail in Delivery Point Sequence. Mail that must be collated before delivery is not considered DPS mail. The number of dispatches is irrelevant." In addition, in M-01153, residual mail is defined in answer to Question 64 and provides that "residual mail is any mail that is not in DPS order once a delivery unit starts receiving DPS mail." In Section 121.11 in the Handbook M-41, it indicates that mail that is not in DPS must be cased. In addition, the Handbook M-39 at Section 121.11b provides that residual letter mail is to be cased separately into delivery sequenced order. Thus, the record is clear that 1) Delivery Point Sequence (DPS) is one bundle of mail in Delivery Point Sequence; 2) residual mail is any mail that is not in DPS order, and 3) residual mail is not DPS mail and it must be cased.

In this regard, the Postal Service confirmed at this hearing that the above-cited provisions have not been complied with at the Decatur Post Office. It has confirmed that it will work with the Address Management Services (AMS) and In-Plant Support in order to correct the situation. As the result, the issue for resolution is the appropriate remedy for the violation of the National Level Agreements and the provisions of the Handbooks incorporated into the Agreement via Article 19.

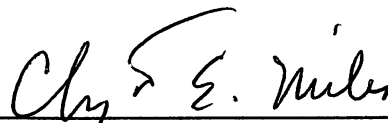
The Postal Service strenuously argued that a monetary remedy in this case is punitive in nature and not appropriate. It provided extensive argument and citations concerning its position. The Union believes that a compensatory remedy is warranted due to the Postal Service's admitted knowledge that Management was in violation of the Agreement and failed to take any action to rectify the matter. In addition, the Union believes that a compensatory remedy would serve as an incentive to ensure future compliance by the Postal Service. In my view, a monetary remedy is not appropriate at this juncture. Clearly, a cease and desist order is required at this point and as recognized by the esteemed Arbitrator Richard Mittenthal in Case No. H4N-NA-C-21 (5th issue) "should the Postal facility in question thereafter fail to comply with such an order, a money remedy might well be appropriate." (at page 9)

Consequently, for the above reasons, the class action grievance considered herein is sustained. The Postal Service violated the National Level Agreements M-01306, M-01153, and

M-01246, and the M-41 Handbook, Section 121.1, when it included secondary address mail that is not in delivery order, or "residual mail", in the DPS trays. The Postal Service is directed to cease and desist from including secondary address mail, not in delivery order, or "residual mail", in the trays of DPS mail at the Decatur, Alabama installation. The Postal Service is further directed to work with Address Management Services (AMS) and In-Plant Support in order to correct this situation. No other remedy is awarded. However, should the Postal Service not comply, then a monetary remedy may be appropriate for the Carriers at the Decatur Post Office.

AWARD

The class action grievance considered herein is sustained. The Postal Service violated the National Level Agreements M-01306, M-01153, and M-01246, and the M-41 Handbook, Section 121.1, when it included secondary address mail that is not in delivery order, or "residual mail", in the DPS trays. As the remedy, the Postal Service is directed to cease and desist from including secondary address mail, not in delivery order, or "residual mail", in the trays of DPS mail at the Decatur, Alabama installation. The Postal Service is further directed to work with Address Management Services (AMS) and In-Plant Support to correct this situation. No other remedy is awarded. However, should the Postal Service not comply, then a monetary remedy may be appropriate for the Carriers at the Decatur Post Office. The Arbitrator shall retain jurisdiction of this case for a period of 90 days to address any questions or issues concerning the implementation of this Award.



Christopher E. Miles, Esquire
Labor Arbitrator

October 21, 2019

REGIONAL ARBITRATION PANEL-AMENDED

_____)	
In the Matter of Arbitration	)	Grievant: Class Action
)	
Between	)	Post Office: Deland, FL
)	
United States Postal Service	)	USPS No.: G16N-4G-C 20114958
)	
And	)	Union No.: 25910320
)	
National Association of Letter Carriers,)	
_____)	

BEFORE: Glenda M. August, Arbitrator

APPEARANCES:

For the U.S. Postal Service Robin Cameron

For the National Association of Letter Carriers Greg Dixon

Place of Hearing: 240 W. New York Ave., Deland, FL 32720

Date of Hearing: November 20, 2020

Date of Award: December 30, 2020

Relevant Contract Provision: Articles 15 & 19

Contract Year: 2016 - 2019

Type of Grievance: Contract

AWARD: The instant grievance is sustained. Management violated the National Agreement, specifically the M-01306, and M-01153, when they failed to remove residual mail from the DPS, which the parties have agreed require casing in office. The Service will "cease and desist" including "residual mail" in the DPS trays at the Deland, FL., Post Office Installation. Management shall work with (AMS) and In-Plant Support to correct the residual mail issues in the DPS. This Arbitrator will retain jurisdiction to ensure compliance.

Glenda M. August

Glenda M. August
Arbitrator

I. ISSUE (s)

Did Management violate Articles 15 and 19 of the National Agreement (NA) by allowing “residual” mail/secondary address mail in the DPS? If so, what is the appropriate remedy?

II. STIPULATIONS

The parties stipulated that the Union witnesses, if called, would provide the same contents in testimony as provided in their statements provided in the Joint Exhibit 2.

III. RELEVANT CONTRACT PROVISIONS

**ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE**

Section 1. Definition A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

**ARTICLE 19
HANDBOOKS AND MANUALS**

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper’s Instructions.

III. FACTS

The Union alleged that Management in the Deland, Florida Post Office, violated the National Agreement by allowing “residual” mail/secondary address mail in the DPS and is requesting a “cease and desist” order be issued to Management. Management disputed the Union’s position on what mail is considered residual mail and what is considered DPS.

The parties have submitted this matter to the undersigned Arbitrator for decision in accordance with the 2016-2019 National Agreement between the United States Postal Service and the National Association of Letter Carriers.

IV. UNION'S CONTENTIONS

The Union contended that the dispute in the instant case is straightforward and involves very precise contract language which was negotiated prior to the implementation of automated or Delivery Point Sequence (DPS) mail. It was the position of the Union that this case involves a negotiated provision or rule which states that only mail that is in delivery point sequence can be part of the DPS mail.

The Union asserted that the evidence of record proved that Management violated Articles 15 and 19 of the National Agreement, as well as National Level Settlement Agreements, M-01306, M-01153, and M-01246 by leaving "residual mail" in the DPS mail. According to the Union there are four (4) simple facts that set the basis of this grievance:

1. Delivery Point Sequence (DPS) is one bundle of mail in delivery point sequence.
2. Mail that must be collated is not DPS mail.
3. Residual mail/secondary address is any mail that is not in DPS order.
4. Residual mail/secondary address is not DPS mail and it must be cased.

It was the Union's position that the definition of DPS mail is found in the National Level Memorandum of Understanding, M-01153, entitled "Questions and Answers Concerning the September 1992 Memorandums".

The Union argued that M-01153, in the answer to question 69, states that: ***"DPS mail is one bundle of mail in delivery point sequence. Mail that must be collated before delivery is not considered DPS mail. The number of dispatches is irrelevant."*** They further argued that the same National Level memo defines Residual Mail: M-01153-***"Residual mail is any mail that is not in DPS order once a delivery unit starts receiving DPS mail."*** According to the Union, any mail that cannot be put in delivery point sequence is by definition "residual mail". They noted that simply sorting mail to a primary street address is not in delivery point sequence when that address also involves secondary addresses like building numbers and suite numbers. The Union cited Handbook M-41, Section 121.11 which states:

Handbook M-41

121.11 Route or case all classes of mail (exception, DPS mail will be cased only when management requires) in sequence of delivery along one or more established routes (see exhibit 121.11 for maximum time allowances). The accurate and speedy

routing of mail is one of the most important duties of a carrier; you must be proficient at this task.

It was the Union's contention that based on the agreement of the parties, "residual mail is any mail that is not in DPS order, *is not DPS mail*, and it must be cased.

According to the Union, Management violated the National Agreement, specifically at Article 19, via the M-41, Section 121.11, when they do not allow Carriers to route or case all classes of mail except DPS mail. The Union noted that the M-39 states that Carriers should "case residual letters:

M-39--121.11

b. On Delivery Point Sequence (DPS Routes, the proper use of all authorized equipment is required. The manager will select the most appropriate work method for each route from the following:

(1) Case residual letters in the same separations with vertically cased flat mail, pull down and carry as a single bundle.

(2) Case residual letter mail separately into delivery sequence order, pull down and carry as a composite (third) bundle.

The Union noted that the same language is found in M-1306, which simply reiterates that residual mail must be cased in one of two methods. They contended that considering these clear definitions, the Union maintained that Management admitted their violation when in their contentions the Service stated that "the amount of residual mail in the DPS is minimal". The Union argued that Management's admissions in their contentions proved the existence of a violation which requires a remedy.

The Union argued that the Step B Management representative also supported the Union's position when he wrote in part (JX-2, Page 5, Paragraph 5): "Residual mail is mail that cannot be sorted by automated equipment into DPS." The Union maintained that they agree with that statement and reiterate their position that "all residual mail must be cased." They noted that in the Step B Teams Decision on Impasse they wrote:

The Step B Team has considered all arguments and evidence in the case file and any of its material may be cited in the event of arbitration.

The Union further argued that Delivery Point Sequence means what it says and is clearly defined in the National Agreement between the parties. They asserted that Management's position would

mean that for a particular address, with 10 buildings and 16 suites per building, a Carrier would have to collate the mail for 160 individual addresses while on the street. The Union contended that collating mail on the street is not acceptable under the National Agreement and cannot be seen as efficient by any stretch of the imagination. They further contended that if for any reason mail cannot be placed into delivery point sequence, or if it requires any type of collation on the street, it is residual mail and it must not be placed or left in the DPS; the Union maintained that “residual mail” must be cased.

The parties at the National Level have agreed that DPS procedures cannot be avoided or hindered, stated the Union; they noted that in M-01246, the national parties agreed:

The established DPS implementation procedures are mandatory and cannot be obviated by calling mail in delivery point sequence “enhanced two pass” **or by some other term**. The Postal Service will immediately end such practices when they are brought to its attention (Emphasis added)

The Union argued that Management in this case is clearly attempting to obviate the DPS implementation procedures by changing the terms and claiming their local processes override the National Agreements. The Union further argued that those National Agreements are as binding today on the parties as the day they were signed; they noted that none of the Agreements were renegotiated or replaced and the Union has every right to enforce these binding National Level Agreements.

The Union cited the contention of Management’s Formal A representative who wrote (JX-2, Page31):

Union is wanting Management to remove mail from the DPS for Apartments and Businesses that come in the DPS in front of the address with no secondary addresses. These pieces are undeliverable pieces that default to the beginning of the address. These pieces are either insufficient addresses or not read by the machines when sorted.

It was the position of the Union that Management here admitted that this residual mail cannot be placed in delivery point sequence, but it is still being left in the DPS. The Union reiterated that “residual mail” must be cased and *not* left in the DPS for collation on the street. The Union further cited Management’s Formal A representative’s contentions on page 33 of the Joint Exhibit 2 where they further admitted to a violation and stated:

Management argues, that the amount of residual mail in the DPS is minimal. It is not business sense to handle the mail twice from DPS and the fact that this MO is

from 1992 when the DPS came on board. Volume from then to now has drastically dropped.

The Union asserted that the aforementioned argument could have been made at anytime over the past 27 years since the volume of mail has been decreasing over that entire period; however, the National parties agreed that residual mail is not DPS and it must be cased, whether it is one piece of residual or 500 pieces of residual mail. It was the opinion of the Union that the parties would have included in the original Agreement, any such caveats as suggested by Management, and noted that they had the opportunity to renegotiate the language of the Agreement during the past 27 years. According to the Union, Management did not make any effort to renegotiate the terms of the numerous Agreements, or make changes to the M-39 or M-41; thus, any arguments for any caveats at this time, should be rejected.

The Union contended that page 33 of the Joint Exhibit 2 contained another admission of a violation by Management's Formal A Representative, where he wrote:

Management disagrees with Unions statement that sequencing mail on the street is much more inefficient than casing it in delivery order in the office. First of all, residual mail is not sequence in the street and casing in the office does not put it in delivery order.

The Union asserted that the Service's contentions admit that Carriers are collating or sorting residual mail on the street; they argued that although Management can disagree about the efficiency of doing so, that does not change the agreement between the parties that "residual mail must be cased. The Union again cited page 33 of the Joint Exhibit 2, where the Service's Formal A Representative also stated; "Mail in the DPS defaulting in front of the DPS is handled per the M-41 section 131.36 and follow Managements instructions. According to the Union, based on the evidence in the record, there is no dispute that residual mail is being collated by carriers on the street in Deland, Florida in violation of the clear language of the National Agreement. They requested that Management be issued a "cease and desist" order.

It was the contention of the Union that there are numerous terms used to refer to "residual mail", such as 896 mail, S99 mail, or M Record mail; however, they noted that the only terminology that is important is that it is all "residual mail as defined by the Agreement of the national parties. The Union further contended that if mail is not in delivery point sequence order,

it is residual mail; they argued that if the mail requires any type of sorting or collating while on the street, it is residual mail and it must be cased. According to the Union, the violations which Management admitted to in their contentions, have a substantial impact on route evaluations and adjustments. The Union asserted that Carriers are not given office time credit for casing the residual mail that is improperly and intentionally being left in the DPS.

In addition to its being a clear violation for Management to leave residual mail in the DPS, the Union contended that collating mail on the street is not only inefficient, but it impedes effective delivery. According to the Union, this fact is supported by their witnesses, who gave a clear picture of how residual mail shows up in the DPS, and requires sorting and collating while on the street. The Union argued that the testimony of those Carriers, and Management's own acknowledgements made in their Formal A contentions, are proof of the violations that they have alleged in this case.

Finally, the Union maintained that at the crux of the instant case are the four (4) simple facts that they asserted were the basis of this grievance:

1. Delivery Point Sequence (DPS) is one bundle of mail in delivery point sequence.
2. Mail that must be collated is not DPS mail.
3. Residual mail/secondary address is any mail that is not in DPS order.
4. Residual mail/secondary address is not DPS mail and it must be cased.

The Union further asserted that the parties clearly defined what Delivery Point Sequence mail is and they also clearly defined what residual mail is. It was the Union's argument that DPS is not simply an identifier for trays of automated mail; they contended that **Delivery Point Sequence** is a contractual requirement. The Union further maintained that the parties made it clear that residual mail must be cased; they contended that the definitions have remained unchanged, and the evidence of this case demonstrated that there has been a clear violation of the terms of Agreement. Based on the evidence of record, as well as their arguments and contentions, the Union requested that the instant grievance be sustained and their requested remedy be awarded.

V. MANAGEMENT'S CONTENTIONS

It was Management's position that the Union has not proven a violation of the National Agreement in this case. The Service maintained the Union has offered numerous contentions but the grievance file lacks any substantive documentary evidence in support of their allegations. Management contended that the file lacks a single piece of mail to support the Union's position.

Management argued that in the Deland, Florida Post Office, there is a fundamental misunderstanding from the Union on what constitutes as residual mail. They contended that “residual” mail is mail that cannot be read by the Delivery Bar Code Sorter (DBCS machine). According to the Service, this mail is rejected by the machine after completion of the presort sequence, and residual mail lacks the volume set by standard to require or permit preparation to a particular destination.

The Service maintained that “residual mail” is different from sector segment, high rise, or 896 sort plans. They contended that the Union is claiming that mail lacking a secondary address or not in order by secondary address is residual. However, the Service argued, the DBCS machine has sorted the mail by destination or sector segment and is at the beginning of delivery point sequence for the primary address by destination. According to Management, if the mail was residual mail it would not be in the DPS, because the machine would not be able to read and sort it by destination. The Service asserted that the mail in question, was read and sorted by the zip code plus four destination, since the addresses are central point delivery or sector segment where delivery to several addresses can be achieved at one delivery point; such as a neighborhood delivery, or collection box unit known as a CBU where the Carrier can access several individual compartments at one time.

It was the position of the Service that the grievance file in this case lacked any substantive evidence from the Union which demonstrated that Carriers are required to collate mail to deliver; in fact, Management contended that the Union did not provide even one single piece of mail which would prove a violation. The Service offered the Postal Service’s definition of collate as: “To combine or merge two or more sets of sequence mail together into one bundle while maintain the sequence of delivery. The Service further offered the testimony of the Deland Postmaster who averred that during Route Inspections, Carriers are not collating the mail to deliver. Management cited the Union’s witness statement on page 16 of the Joint Exhibit 2 who stated: “Sorts? Small CBU’s, I just Deliver”.

Management argued that the Postal Service is not required to be at 100% delivery sequence order in DPS; they cited Chapter 4 in the “Building Our Future by Working Together” booklet (JX-4), which states that Management sets the targeted goal. They further argued that the Union’s request to case the mail they claim is residual mail in DPS would have no different result then how

it is carrier and delivered to the street. According to the Service, this mail would still be out of order for those blocked addresses, since the case is set up by sections, and not set up for apartments or business addresses with secondary address numbers.

Finally, Management argued that the Union's request for remedy is punitive and lacks any reason to make the NALC whole, since they failed to show any harm to the Union or its membership. Management further argued that there was no extreme or willful misconduct that would support an award of punitive damages. The Service asserted that the Union failed to establish a violation, and failed to prove at least prima facie evidence of a violation, in order to shift the burden to Management. Based on the evidence of record, or lack thereof, the Service requested that the instant grievance be denied in its entirety.

VI. DISCUSSION AND OPINION

The nature of the dispute between the parties in this case is focused around the definition of "residual" mail in the automated environment, now found in delivery units around the country. The Union alleged that the national parties have set a clear definition for "residual mail"; they further alleged that Management, in their contentions, admitted that Carriers in the Deland, Florida Post Office are currently handling residual mail on the street, in violation of the National Agreement. The fact of the matter is, the definition of "residual mail" is not so clearly defined by the multitude of documents included in the grievance file which refer to this type of mail.

According to the Union, Carriers are collating residual mail on the street, yet the Step 4 Question and Answers (M-01153) defines collating as putting together bundles of mail, both of which are in delivery order. That document, in Question 69, which was cited by the Union, references the receipt of more than one dispatch of DPS mail to a delivery unit, and the parties clarified that "Mail that must be collated before delivery is not considered DPS mail." Additionally, the answer to Question 64 in the same document states that residual mail is any mail that is not in DPS order once the delivery unit begins receiving DPS mail. This would indicate to this Arbitrator, that this would be any mail that was sent to the Unit outside of the DPS; maybe even mail that was rejected by the sorter as explained in Management's arguments.

The Union stated that there are numerous terms for the mail at issue in this case, but the key here is to define what the parties' expectation was for this particular type of mail. In order to

accomplish this task, we must take into consideration, the guidance provided by the M-39, M-41 and the Agreements reached by the parties in M-1306 (Building Our Future by Working Together), and M-01153 (Questions and Answers Concerning the September 1992 Memorandums). This Arbitrator considered the totality of the Agreements offered as Joint Exhibits to this grievance. In the M-1306, page 44 addresses the two DPS Work Methods Authorized and lists as “**The Problem**”-DPS and *residual* letter mail. The parties explained in that document that:

When delivery point sequencing is implemented, some letter mail will be sequenced by machines and **other, residual letters** will require casing. Letter carriers will have to adopt work methods to handle the residual letters.

- A. Casing residual letters with the flats and carrying the combined flats/residual mail as a single bundle and carrying the DPS letters as a second bundle.
- B. Casing and pulling down residual letter mail separately, and carrying it separately as a third bundle.

The Union’s allegations of a violation in this case, referred to letters that were included in the DPS, which would have been “sequenced” by machines; this is apparently not what the parties regarded as “residual mail” in this document. **However, Management, in their contentions stated:**

Union is wanting Management to remove mail from the DPS for Apartments and Businesses that come in the DPS in front of the address with no secondary addresses. These pieces are undeliverable pieces that default to the beginning of the address. These pieces are either insufficient addresses or not read by the machines when sorted.

The M-11053, in its answer to Question 64 states that “residual mail” is any mail that is not in DPS order once the delivery unit begins receiving DPS mail. The mail at issue in this case *is* received in the DPS mail, thus, it is not clear whether the parties in their answer to question 64, are referring to the apartment type mail the Union is questioning, when they refer to mail not in DPS order. The language included in the two referenced Step 4 Agreements do not specifically address mail with secondary addresses; nor do they specifically state how apartment mail, or mail destined for businesses with one address and suite numbers, should be handled. In Question 60, of the same document (M-11053) the following question was asked and answered:

Q-60 If the target percentage is 60%, do the carriers case the mail (DPS letters) until the 60% is reached or do they take the mail to the street with the selected method?

- A. **After managers are satisfied with the quality of the DPS mail received by the carriers, the carrier will stop casing the DPS mail and effect delivery using the selected work method.** The target percentage relates to when routes may be adjusted in response to DPS implementation.

The answer to Question 60 refers back to the M-1306, where work methods are provided to handle the “residual” mail which was not “sequenced” by machines. The limited definitions provided in each of the Agreements cited, demonstrated that the mail at issue in this case, would likely be determined to be DPS mail since it arrives in the DPS; not the “residual” mail referred to in the referenced agreements.

In support of their position the Union also cited Handbook M-41, Section 121.11, to define residual mail and the requirement that this mail be cased; the M-41 states:

Handbook M-41

121.11 Route or case all classes of mail (**exception, DPS mail will be cased only when management requires**) in sequence of delivery along one or more established routes (see exhibit 121.11 for maximum time allowances). The accurate and speedy routing of mail is one of the most important duties of a carrier; you must be proficient at this task.

The Union also noted that the M-39 states that Carriers should “**case residual letters**”:

M-39--121.11

b. On Delivery Point Sequence (DPS) Routes, the proper use of all authorized equipment is required. The manager will select the most appropriate work method for each route from the following:

- (1) Case residual letters in the same separations with vertically cased flat mail, pull down and carry as a single bundle.
- (2) Case residual letter mail separately into delivery sequence order, pull down and carry as a composite (third) bundle.

Although the M-39 and M-41 provided guidance on the requirement for casing residual mail, the issue still rests with the identification of that “residual mail”. Based on the evidence provided in the instant grievance, the parties have not included clear language to determine that apartment mail and business mail destined for suite numbers at the same address, **which are included in the DPS**, would be classified as “residual” mail. What is described in the instant case is mail that requires that carrier place the pieces in actual delivery sequence, such as by Apartment number, or suite number; but apparently this mail *is* located at the correct point of delivery into a centralized mail

receptacle or in close proximity to the delivery stop. The Union is requesting that this mail is left out of the DPS by some other means so that they can case the mail in office.

The Union and Management both offered the decision of Arbitrator Christopher E. Miles, in case number G16N-4G-C 19205484, a case similar to the one at bar, which originated in the Decatur, Alabama Post Office. In that case, **Management stipulated to a violation** and Arbitrator Miles concluded:

This class action grievance was filed by the Union to protest the inclusion of secondary address mail that is not in delivery order, or “residual mail”, in the Delivery Point Sequence (DPS) trays at the Decatur, Alabama installation. As such, the secondary address mail must be collated by the Carriers on the street before delivery. According to the National Level Agreement, M-01153, and the “Questions and Answers concerning the September 1992 memorandums,” it is stated in answer to Question 69 that “DPS mail is one bundle of mail in Delivery Point Sequence. Mail that must be collated before delivery is not considered DPS mail. The number of dispatches is irrelevant.” In addition, in M-01153, residual mail is defined in answer to Question 64 and provides that “residual mail is any mail that is not in DPS order once a delivery unit starts receiving DPS mail.” In Section 121.11 in the Handbook M-41, it indicates that mail that is not in DPS must be case. In addition, the Handbook M-39 at Section 121.11b provides that residual letter mail is to be cased separately into delivery sequenced order. Thus, the record is clear that 1) Delivery Point Sequence (DPS) is one bundle of mail in Delivery Point Sequence; 2) residual mail is any mail that is not in DPS order, and 3) residual mail is not DPS mail and it must be cased.

In this regard, the Postal Service confirmed at this hearing that the above-cited provisions have not been complied with at the Decatur Post Office. It has confirmed that it will work with the Address Management Services (AMS) and In-Plant Support in order to correct the situation. As the result, the issue for resolution is the appropriate remedy for the violation of the National Level Agreements and the provisions of the Handbooks incorporated into the Agreement via Article 19.

Arbitrator Miles, found for the Union and sustained the aforementioned grievance, based on **Management’s acknowledgement of a violation**. Similarly, in another case offered by the Union, Arbitrator JoAnn Nixon, reviewed a related case (K16N-4K-C 17701866) in which **Management also stipulated to a violation**. Both cases were sustained by the Arbitrator and Management was given a “cease and desist” order.

The instant case differs from the two cited cases, in that there was **no stipulation by Management in Deland, Florida, that there had been a violation of the Agreements between**

the parties, but the type of mail at issue was clearly the same as described by the Union in the cases cited. In the cited cases, Management acknowledged the allegations were about “residual mail”, in this case there was no such acknowledgement, thus, this case hinged on defining the subject mail. The Union provided statements from carriers that demonstrated that they incurred additional street time to “collate” this mail on the street, albeit, Management contended that the mail was located at the front of all mail destined for that same delivery point. The Service further asserted that the mail was delivered to one mail receptacle with multiple deliveries (such as a CBU). The fact that Management acknowledged that this mail defaults to the front of the address clearly indicates that it can be directed to some other default or residual mail tray for casing. Management also acknowledged that there was a minimal amount of “residual” mail included in the DPS.

The fact of the matter is that based on the cited arbitral decisions, some members of Management have already recognized this issue in other offices, that this secondary address mail would need to be cased in delivery order and is, or should be designated as “residual mail”; the Service, in those offices, has apparently promised to work to correct the problem. In Arbitrator Miles decision, he referred to Management’s confirmation at the Arbitration hearing that they would engage the assistance of Address Management Services (AMS) and In-Plant Support in order to correct the situation. This Arbitrator agrees with the recommendation of Arbitrator Miles and Management in the cited case.

Thus, based on the evidence of record, and testimony at hearing, the instant grievance is sustained. Management violated the National Agreement, specifically the M-01306, and M-01153, when they failed to remove residual mail from the DPS; mail that the parties have agreed require casing in office. The Service will “cease and desist” including “residual mail” in the DPS trays at the Deland, FL., Post Office Installation. Management shall work with (AMS) and In-Plant Support to correct the residual mail issues in the DPS. This Arbitrator will retain jurisdiction to ensure compliance.

AWARD

The instant grievance is sustained. Management violated the National Agreement, specifically the M-01306, and M-01153, when they failed to remove residual mail from the DPS, which the parties have agreed require casing in office. The Service will “cease and desist” the inclusion of “residual mail” in the DPS trays at the Deland, FL., Post Office Installation. Management shall work with (AMS) and In-Plant Support to correct the residual mail issues in the DPS. This Arbitrator will retain jurisdiction to ensure compliance.

Glenda M. August

Glenda M. August
Arbitrator

December 30, 2020

New Iberia, LA

Regular Arbitration

In the Matter of the Arbitration)	
)	
between	)	Grievant: Class Action
)	
United States Postal Service	)	Post Office: Warner Robins, GA
)	
and	)	USPS Case No: G16N-4G-C 19379996
)	
National Association of Letter Carriers, AFL-CIO	)	DRT No: 09-478765
)	
	)	NALC Case No: 25-2019

Before: Roberta J. Bahakel, J.D., Arbitrator

Appearances:

For the U.S. Postal Service:	Mr. Greg Holland
For the Union:	Mr. Greg Dixon
Place of Hearing:	Warner Robins, GA
Date of Hearing:	December 15, 2020

Award:

Date of Award:	February 12, 2021
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Panel:	Region 9/Southern
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Award Summary:

The grievance is sustained. Management will cease and desist including “residual mail” in with the carriers DPS mail at the Warner Robins, Georgia installation.

Roberta J. Bahakel

 Roberta J. Bahakel

BACKGROUND

The Union filed a class action contract grievance in Warner Robins, Georgia alleging that Management is in violation of Article 19, M-01306 (Building Our Future by Working Together, 1992), M-01153 (Questions and Answers Concerning the September 1992 Memorandums), M-01246 (Step 4 settlement that DPS cannot be characterized as “enhanced two pass” to avoid established DPS implementation procedures) and the M-41 Handbook, Section 121.1 in that there is mail contained in the carriers DPS mail that is not in delivery point sequence. Specifically, the Union argues that there is "residual" mail in the DPS and that this mail should be removed from the DPS and cased by the carriers prior to leaving the office.

The evidence presented at the hearing showed that the issue the carriers have is that when mail is being delivered to one street address which has multiple buildings and Neighborhood Delivery & Collection Box Units (NCBDU), the carriers are receiving some mail in their DPS tray in front of the street address that is not in delivery sequence order. For example, when delivering to a large office complex that has one main street address with multiple delivery points at that address, there is mail, sometimes a great deal of mail, in front of the DPS for the main address. While the majority of the subsequent secondary addresses are in delivery order, the mail in question is out of delivery order and the carriers must manually sort this mail while on the street and then deliver that mail along with the correctly addresses and sequenced DPS mail in their tray. The Union argues that this out of sequence mail is in fact residual mail, as defined by M-01153 and therefore should be cased by the carriers before they leave for the street.

Management argues that this mail has been sorted by the automation equipment to the main street address, therefore it is DPS mail and not residual mail. Management contends that it is due to sorting errors that this mail is not ultimately placed in delivery sequence order like the other mail for that address. Management also contends that because this is a sorting error that the mail is not residual mail as contended by the Union.

The parties were unable to resolve this issue in the grievance process and it was appealed to arbitration.

ISSUES

Is the grievance arbitrable?

Did Management violate the M-01306, M-01153, and M-01246 via Article 15 of the National Agreement and Section 121.1 of the M-41 Handbook via Article 19 by having residual mail in the DPS? If so, what is the proper remedy?

CONTRACT PROVISIONS

M-41 HANDBOOK

CITY DELIVERY CARRIERS DUTIES AND RESPONSIBILITIES

12 BASIC CARRIER DUTIES

121 Office Duties

121.1 Time Allowances

121.11 Route or case all classes of mail (exception, DPS mail will be cased only when management requires) in sequence of delivery along one or more established routes (see Exhibit 121.11 for maximum time allowances). The accurate and speedy routing of mail is one of the most important duties of a carrier; you must be proficient at this task.

DISCUSSION

I have reviewed the testimony and evidence presented at the hearing and considered the excellent briefs submitted by the parties, the last of which was received on January 13, 2021. Management has raised issues of arbitrability, therefore those issues will be addressed before the merits of this matter are considered.

Management contends that this case is not substantively arbitrable for several reasons: 1) a 1998 Step 4 agreement is dispositive of the issues presented, 2) the provisions of M-01306 (Building our Future by Working Together) provide for DPS issues to be addressed by

a joint task force, and 3) the Union contentions at the 2011 National Interest Arbitration and the resulting Das award on the 2011 National Contract, as well as the Snow award in regard to the Third Bundle case establish that this case is not proper for hearing.

Management's first arbitrability argument contends that the mail described by the Union in this case, i.e., mail that has been processed by the DPS sort program to the delivery point on the route and presented to the carrier in their DPS mail, but which is without a secondary sequence, is actually the result of DPS sort errors and that the following Step 4 decision, M-01356, which the parties agreed to in 1998, is dispositive of this issue. That Step 4 decision states as follows:

... "During our discussions, we mutually agreed that, as facilitated to city carriers through the USPS-NALC Joint Training, Delivery Point Sequencing for City Carriers, and DPS Implementation: A Training Guide for Delivery Management Street Impact: Local managers are responsible for establishing and advising carriers of local policy for handling, identifying and reporting of DPS sort errors found by city carriers during street delivery. Local quality guidelines for error identification and resolution procedures should cover all anticipated circumstances and contain clear instructions for carriers to follow regarding both the delivery and disposition of mail returned to the office."

Based on this Step 4 language, Management argues that the parties have agreed that Management at the local level has the responsibility to address and resolve these sort errors, therefore this matter is not arbitrable.

Secondly, Management contends that M-01306, Building Our Future by Working Together, which the Union relies on to support their position in this case, sets out that any disputes concerning DPS mail will be resolved through a joint body at the National level. Management relies on the language found on page 42 of the M-01306, which states:

"Joint administration of Memorandums. The parties will resolve disputes concerning the memorandums through a joint process at the national level. a joint body is being created which will have continuing responsibility for seeing that the Memorandums are interpreted and enforced correctly and fairly. Questions regarding proper interpretations will be forwarded to this joint body for resolution."

Management contends that this National MOU clearly sets out the parties agreement that any disputes concerning the DPS MOU 01306 will be resolved through a joint body at the National level, therefore the grievance presented here is not properly before me for decision.

Thirdly, Management argues that Arbitrator Snow, in his 1996 National decision regarding an impasse over a third bundle and marriage mail issue, addressed the intent of contractual agreements and specifically M-01306, stating that parties cannot foresee all contingencies that might arrive, therefore in recognition of this reality have produced the gap-filling principles of contract law whereby the language and concepts in a collective bargaining agreement are given meaning. Arbitrator Snow further stated that such gap filling provisions will be used unless the parties agree otherwise. Management contends that by setting up the joint review process at the National level, the parties have agreed that DPS questions will not be ruled on by regional arbitrators. Management contends that this position is further supported by the Union's position letter for the 2011 Interest Arbitration and the resulting Das Award where the Union failed to set out that this same type of mail was a violation of the contract, but instead asked for additional pay to compensate the carriers for the additional work of delivering this type of mail. Based on these decisions and the Union's position at the Interest Arbitration Management argues that the grievance is not arbitrable.

In response to these arbitrability arguments , the Union contends that this dispute is arbitrable, and that Management's arguments regarding the M-01356 are improper in that this argument was never raised during the grievance process and is now presented as an arbitrability argument. Additionally, that Step 4 decision dealt with sorting errors and not with residual mail, which is the issue in this case, therefore it has no applicability to the issues here.

In regard to Management's argument about the M-01306 requiring that any disputes regarding the M-01306 be referred to a national task force for interpretation, the Union contends that Management appealed this grievance to Step 4 and the parties at the national level determined that there was no interpretive issue to be determined, therefore Management's contentions in that regard should fall. Additionally, the Union contends that M-01153, which jointly defines residual mail, was a direct result of the National level task force resolving disputes

in accordance with the M-01306. The Union contends that the M-01153 is enforceable through the grievance process.

In regard to Management's contentions regarding the Snow award and "gap filling principles" the Union contends that the gaps in M-01306 have been filled by the National Task Force in M-01153 and those provisions are binding and enforceable through arbitration.

In regard to Management's arguments regarding the 2011 Das award and the positions taken by the Union in that interest arbitration, the Union contends that in interest arbitration many requests are made by each side and ultimately many requests go unanswered, therefore no change is ultimately made to the existing provisions and agreements. The fact that something is raised in an interest arbitration and not addressed in the final award does not nullify the existing agreements.

The Union contends that if there was an unresolved DPS dispute that it would be ripe to be addressed at the national level, but this case represents a violation of an issue that has already been resolved by the national parties in M-01153. Therefore, the Union argues, the grievance should be found to be arbitrable.

I have considered each of the arbitrability arguments presented by Management and have made the following determinations:

In regard to Management's contentions that the 1998 Step 4 decision, M-01356, is dispositive of this issue, a reading of that Step 4 decision shows that it deals only with sort errors. While Management contends that the mail in question is a result of sort errors, the Union contends that such mail is residual mail, as defined by the parties in M-01153. This step 4 decision cannot be considered to be dispositive of the issues raised in this grievance until a finding of fact is made as to whether the mail in question is a sort error or is residual mail. After considering the arguments presented, it is my determination that without proof that the mail in question is a result of sort errors, this Step 4 decision cannot be found to bar the hearing of this matter at arbitration.

Management also contends that this case is not arbitrable because it should be referred to the joint task force set up in the M-01306. The M-01306 addresses 6 specific joint Memorandums in regard to DPS mail. Of the six, the only memorandum which would apply to this grievance is number 5, which deals with the two agreed upon work methods for incorporating DPS mail. The memorandum states that if the parties are unable to agree on which method to use, then the decision of which method will be implemented will be forwarded to the joint parties at the national level for resolution. There is no issue in this case as to the work method selected and implemented in Warner Robins. The M-01306 also sets forth the parties agreement that a joint body will be created which will have continuing responsibility for seeing that the six Memorandums are interpreted and enforced correctly and fairly. The M-01153 was issued by the parties as a supplement to the M-01306 for the purpose of jointly addressing the numerous issues that arose with the implementation of DPS. In that document the parties jointly defined DPS mail and residual mail. The issue in this case arises from those two definitions. Management appealed this case to Step 4 based on its belief that there were interpretive issues involved that should be resolved at the National level. This case was returned to the local parties with the joint determination from the National level parties that there were no interpretive issues to be decided. As the task force was created to deal with interpretation and enforcement issues, the fact that the National parties jointly determined that there were no interpretive issues to be decided in this case indicates that there is no need for the Task Force to consider this matter. Based on this, I do not find that Management's arbitrability contentions regarding failure to utilize the joint task force can be upheld.

In regard to Management's remaining arbitrability arguments, I do not find that the decision of Arbitrator Snow or the position letter of the Union in the 2011 Interest Arbitration and the resulting Das award have any bearing on the arbitrability of this matter. After considering all of Management's arbitrability arguments, it is my determination that this grievance is arbitrable and is properly before me for decision.

Merits

Having determined that this matter is arbitrable, I will now address the merits of the case. The Union contends that Management has violated several National Level Settlement Agreements, M-01306 (Building our Future by Working Together), M-01153 (Questions and Answers Concerning the September 1992 Memorandums), and M-01246 (Step 4 Settlement that DPS mail cannot be characterized as “enhanced two pass” to avoid established DPS implementation procedures), as well as Section 121.1 of the M-41 Handbook by having residual mail in the DPS. The Union argues that there are three simple facts that are the basis of this case:

1. Delivery Point Sequence (DPS) is one bundle of mail in delivery point sequence
2. Residual mail is any mail that is not in DPS order
3. Residual mail is not DPS mail and must be cased

The Union argues that the parties have jointly established definitions for DPS mail and for residual mail and that these definitions are set out in M-01153. Based on these definitions the Union contends that the mail that is sorted to the main street address, but not to a secondary address, i.e., building number, apartment number, suite number, etc, is residual mail and should therefore be cased by the carrier prior to leaving for the street.

The Union also contends that DPS mail is mail that is in delivery sequence, which means that it is ready to be delivered as it comes in the tray and that no further sorting of the mail is required. The mail in question may be in delivery sequence to the main address, but it has defaulted to the front of the main street address because it is not in delivery sequence to the secondary address like the other mail included in the DPS. Therefore, the carrier must sort this mail while delivering on the street. The Union acknowledges that it is not the small Neighborhood Delivery & Collection Box Units (NDCBU) that are the problem, but is the large complexes with numerous buildings, each with their own NDCBU that cause the problem. In those cases a carrier must either sort the mail in the back of their vehicle or on the NDCBU so that they are not moving from one NDCBU to another trying to deliver these mail pieces that are not in delivery order.

Management contends that the Union has not been able to establish a contractual violation, therefore the grievance must be denied. Management contends that it is impossible for residual mail to be in DPS mail in that the eleven digit barcode assures that mail in DPS is in delivery point sequence. Management argues that residual mail is mail that cannot be sorted by automated equipment into Delivery Point Sequence. The mail being contested by the Union is mail that has been processed and sorted by the DPS equipment and presented to the carrier in their DPS processed mail at the proper delivery address. However, this mail does not always have the secondary address, such as a building number, apartment number, or suite number. Management contends that even if this mail was cased by the carriers that it would still not be in exact delivery sequence, but would only be narrowed down to a range as the carrier's cases are set up by sections, i.e., apartment 1-20, 20-40, etc. When a carrier delivers to a NDCBU they would still have to sort the sectioned mail while delivering to the NDCBU.

Management also contends that the Warner Robins Post Office has a DPS 3M process where carriers are to return all Mis-sent, Mis-sorted, and Mis-sequenced mail to the office where it is reworked and delivered the following day. Management argues that it has the right under Article 3 to manage the operations and that the Union has not been able to establish any contract language which would prohibit Management from using the 3M process to resolve any DPS issues that might arise.

The evidence presented at the hearing showed that the mail in question shows up in a bundle at the front of a street address in the carrier's DPS mail. Some of the mail pieces are there because the sender did not include a building, suite or apartment number, but some are correctly addressed, but for some reason are not in DPS delivery order. The dispute between the parties here is based on their disagreement as to whether this mail constitutes "residual" mail that should be cased by the carriers. The Union has asserted that any mail not in DPS order is residual mail that should be cased, while Management asserts that the mail in question is in DPS order and therefore it cannot be residual mail.

A review of the M-01153, the joint supplement to the original agreement regarding DPS mail set forth in M-01306 (Building our Future by Working Together) sets out in question and answer format the following:

Q-64 At what point does DPS mail trigger "residual mail"?

A Residual mail is any mail that is not in DPS order once a delivery unit starts receiving DPS mail.

Q-69 If DPS mail is received in a delivery unit on more than one dispatch, does that meet the requirement of putting mail in DPS order for two or more consecutive weeks considering the need to collate the bundles?

A DPS mail is one bundle of mail in delivery point sequence. Mail that must be collated before delivery is not considered DPS mail. The number of dispatches is irrelevant.

The problem that arises in this case is that the mail in question has gone through the DPS machines and has been sorted to the main delivery address, yet it has not been sorted enough to put it in delivery order for the secondary address. The evidence presented showed that the majority of the mail is properly sorted to the secondary address in the carrier's DPS. The Union argues that because the mail is not in delivery order that it becomes residual mail and should be cased in the office before delivery. Management contends that because the mail has been sorted to the main address that it is therefore DPS mail and cannot become residual mail.

The language in the M-01153 gives a basic definition of DPS and residual mail but does not specifically define the mail in question here, which has been partially sorted through DPS. Therefore, to assist in determining the intent of the parties, we can look to see how the parties have defined and applied these terms outside of the situation presented here. The Postal Service publishes its Glossary of Postal Terms, Publication 32, which, while not presented at this hearing, was given to arbitrators by the parties as a general reference guide. The Glossary gives its Purpose as follows:

Purpose. This glossary defines the most widely used words and phrases unique to, or with special meaning within, the United States Postal Service. It includes terms related to products and services, delivery and mail processing operations, automation technology, and strategic programs that boost productivity and improve the customer experience. This glossary does not, however, present comprehensive descriptions or furnish precise legal definitions such as those in 39 U.S.C and 39 C.F.R. If the glossary definition of a term contradicts the definition of the same term in another official and current Postal Service TM directive, the directive definition supersedes the glossary definition.

As the question raised in this case is what mail is defined as residual mail and the definitions set out in the M-01306 do not specifically define DPS and residual mail in relation to the specific mail in question here, it is helpful to see how Management has defined the terms "Delivery Point Sequence", "Delivery sequenced mail" and "Residual Mail". Those definitions are set out in the Glossary as follows:

Delivery point sequence — (1) The arrangement of mail into delivery order by using the delivery point code and other data elements. (2) An automated process of sorting mail by carrier routes into delivery order, eliminating the need for carriers to sort the mail manually in the delivery unit prior to their departure to the routes. (3) The sort plan or scheme in which letter mail is sorted to walk sequence for carrier routes using barcode sorting equipment such as the delivery bar code sorter. Depending on the barcode sorting equipment, DPS typically entails two or three passes to reach walk sequence order. (4) To sort mail into delivery order using this automated process.

Delivery sequenced mail — Mail that is arranged in delivery order for a particular carrier route. This mail requires no primary or secondary distribution.

Residual mail — Mail pieces remaining after completion of a presort sequence. Residual mail lacks the volume set by standard to require or permit preparation to a particular

destination. Residual mail usually qualifies for the highest presort price or a single-piece price. Also called non-qualifying mail and working mail.

The above definitions help establish the meaning that the Postal Service generally gives to the terms in question and helps to further determine the intent of the parties when using the terms set out in the M-01306 and the M-01153. These definitions are also helpful due to the fact that in some of the arbitration cites submitted by the Union in support of its position, the Management officials involved acknowledged that the mail in question was residual mail and was not properly in the carrier's DPS mail.

Question 64 in the M-01153 addresses when DPS mail triggers residual mail. The answer to that question is that residual mail is any mail that is not in DPS order. When this response is considered along with the definitions set out in the Glossary of Postal Terms, it reveals that DPS order means the arrangement of mail into delivery order, and that "delivery sequenced mail" is mail that is arranged in delivery order for a particular carrier route and requires no primary or secondary distribution.

The definition of "residual mail" states that it is the mail remaining after completion of a presort sequence. While a presort sequence is generally something that mailers do to get a better price for their bulk mail, it can also refer to what is done by the DPS machines as it sorts mail into delivery order. This indicates that in fact residual mail can be found in mail that has been sorted through DPS.

The testimony presented at the hearing established that carriers are being required to sort the mail in question while on the street so that it can be properly delivered. The intent of the DPS process is to sort mail for the carriers and have it in delivery order for the street without any further processing. The mail in question here is not in complete delivery order. It has been presorted to the main address, but for various reasons not sorted any further. After considering all of the above, it is my determination that the mail in question here is residual mail as defined by the parties in the M-01153 and should be cased by the carriers in the office and not sorted on the street.

Management contends that even if the mail in question is found to be residual mail that there is no violation of the National Agreement or any of the National Settlement Agreements because Management has established a local method for processing this mail, the 3M case. The evidence showed that this case is for Mis-sent, Mis-sequenced, and Mis-sorted mail. Management contends that the carriers can bring back mail that is improperly addressed and place that mail in the 3M case where it will be reworked and sent out for delivery the next day. The Union argues that the 3M case is not for this type of residual mail in that Mis-sent mail is mail sent to the incorrect Post Office, Mis-sequenced mail is mail that is not at the right address, and Mis-sorted mail is mail that is sorted to the wrong route. None of these situations would apply to the mail in question here, which has been sorted to the correct post office, route and address. The testimony from the Union's witness showed that she is familiar with the 3M case, but that the instructions from Management in the Warner Robins office are for the carriers to deliver all of their mail each day. Due to this instruction and the fact that the mail has been sorted to the correct main address, she sorts the mail in question on the street and delivers it each day. Based on the foregoing, it is my determination that the 3M case was not intended to deal with the mail in question here. Management's arguments in this regard are not supported by the evidence.

Management also argued at the hearing that the mail in question was not residual mail but was mail that was a result of sorting errors on the DPS machines. The Union objected to this as new evidence in that Management had not raised an issue that the mail in question was a result of sorting errors in the lower levels of the grievance procedure. Based on the contentions raised at the Informal and Formal A steps, I find that Management never raised any argument that the mail in question was the result of a sorting error. Therefore that argument was a new argument at arbitration and will not be considered.

After considering the provisions of the M-01306, M-01153 and the provisions of the M-41, it is my determination that the parties in those National Settlements generally defined DPS mail as mail in delivery point sequence and residual mail as any mail not in DPS order. The intent of DPS is to sort mail by carrier routes into delivery order, thereby eliminating the need for carriers to sort the mail manually prior to their departure to their routes. That infers that

the mail is ready for delivery and will not require additional sortation on the street. The parties, in M-01153, have agreed that any mail that is not sorted into delivery order is residual mail. After considering the evidence presented, I find that the mail that is in question here is residual mail if it meets each of the following parameters:

- 1) Is in DPS order only to the main address
- 2) Is not properly sorted to the secondary address
- 3) Has been included in the carrier's DPS mail, but kicked to the front of the main address because it is out of delivery order for the secondary address.

Based on all of the foregoing, it is my determination that the grievance is due to be sustained.

DECISION

The grievance is sustained. Management is found to have violated the National Level settlements M-01306 and M-01153 and Section 121.1 of the M-41 handbook when it included secondary address mail that was not in delivery sequence order in carriers DPS mail.

The Postal Service shall cease and desist from including secondary address mail not in delivery sequence order in the DPS trays at the Warner Robins installation. Management will work with In plant support and/or any other appropriate department to remove this “residual” mail from the DPS mail for the routes in Warner Robins.

This award is final, however I will retain jurisdiction over this matter for compliance with the above directives.

Done this 12th day of February, 2021.

Respectfully submitted,



Roberta J. Bahakel, J.D.
Arbitrator