

IN THE MATTER OF REGULAR PANEL ARBITRATION BETWEEN

UNITED STATES POSTAL SERVICE
(Employer)

-and-

NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO
(Union)

BEFORE: **Doyle O'Connor**

APPEARANCES:

For the Service: **Jennifer Berry**
For the Union: **Scott Jackaway**

Place of Hearing: Oak Brook, IL-Video
Date of Hearing: March 23, 2023
Record Closed: March 31, 2023
Date of Award: April 07, 2023

Relevant Provisions: Article 5, 15 & 19

Contract Year: 2019-2023

Type of Grievance: Contract breach, refusal to implement settlements

Award Summary: The grievance is granted. The Employer improperly failed, without any explanation or plausible basis, to actually comply with multiple prior settlements, forcing the Union to continue to pursue what were uncontested claims. Substantive compensatory relief to the individual Grievants and to the Union itself is warranted and ordered. Employer cautioned that continued violations may result in escalated remedies.



Doyle O'Connor
Arbitrator

DECISION & AWARD

Grievants: Class Action
Post Office: **Oak Brook, IL**
Case #1
USPS J19N4JC22384141
Local #2022-1149

Case #2
USPS J19N4JC22384112
Local #2022-1063

Case #3
USPS J19N4JC22413906
Local #2022-1207

Case #4
USPS J19N4JC-22413963
Local #2022-1206

Issues:

By consent of the parties, four separate cases were consolidated for hearing, each of which share the same essential issues:

Did management violate Article 5, 15 and 19 of the National Agreement and the terms of multiple grievance settlements when they failed to comply with multiple signed grievance settlements in the four separate cases, and if so, what is the proper remedy?

Did management violate Article 15 of the National Agreement when they failed to properly meet at Formal Step A of the dispute resolution process in multiple cases, and if so, what is the proper remedy?

The DRT resolved the underlying disputes in part, finding violations for the failure to comply with settlement agreements and failures to meet, but were unable to resolve the question of appropriate remedies and the matters advanced to Arbitration.

Contentions

The Union contends: The Union asserts that the postmaster at the Oak Brook, Illinois installation has routinely and repeatedly violated the National Agreement, reached settlements agreeing to remedy those violations or otherwise acknowledged the violations, and then did nothing to actually implement the remedies agreed upon.

The Union further asserts that the Employer has violated the National Agreement, and at least in part waived the bringing of certain substantive claims, by failing in its mandatory obligation to provide a position statement or contentions at either the Informal or Formal Step A levels. It is further asserted that in failing to fulfill its obligations at the lower steps in the grievance process, the Employer has wrongfully forced the Union to take multiple essentially uncontested cases to Step B and ultimately to arbitration, all at great cost to the Union, as well as to the Service.

The Postal Service contends: The USPS acknowledges that it acted improperly when local management reached but then refused without basis or explanation to implement multiple grievance settlements over admitted contract violations.

The Employer further asserted in essence that no substantive relief could be awarded despite the multiple admitted violations, other than to issue another ‘cease and desist’ order.

Relevant Rules and Contract Language

The parties rely on their varying interpretations of Articles 5, 15 & 19. Various of those provisos may be addressed more specifically below.

Facts

The factual underpinnings of this dispute are surprisingly simple and not subject to much legitimate dispute. The cases share a common failure on the part of management to carry out its undisputed obligations, and share a common history with a strikingly long list of other cases in which Oak Brook management acknowledged or conceded specific violations, agreed to remedies, and then failed to implement those remedies, forcing the Union, and the Service, to both expend further resources at Step B and at arbitration on what were in essence uncontested matters.

The several separate dispute files each have their own origins of course:

Case #1

USPS J19N4JC22384141
Local #2022-1149

In the first dispute at issue here, in June of 2022, Oak Brook management granted grievances filed on behalf of carrier **Matthew Robb** and carrier **Briana Garcia-Silva**, acknowledging violations of their rights, and agreeing to specific payments, to Robb of 150% of his regular rate for 2.12 hours and to Garcia-Silva of 150% of her regular rate for 2.85 hours. Oak Brook then took no steps to comply with the grievance settlements, which constituted a repudiation of those settlements, a violation of the CBA, and of the duty to bargain in good faith under the NLRA. The Union was then required to advance the matter to Step B, where the representatives of the two parties found a violation, ordered management to pay the settlement amounts previously agreed to, and to provide documentation of the payments to the Union. Other relief sought by the Union was denied, based on a deadlock at Step B.

Case #2
USPS J19N4JC22384112
Local #2022-1063

In the second dispute at issue here, in June of 2022, carrier **Daniel Evans** called off sick, and was improperly denied sick pay and was improperly directed to file a medical certificate for the one-day absence, and management failed to respond to the Union's related information request. The Union was then required to advance the matter to Step B, where the representatives of the two parties found a violation, ordered management to pay the sick leave, the entitlement to which was never legitimately in dispute, and to correct Evans' payroll and attendance records. Other relief sought by the Union, including lump payments to Evans of \$150 for failure to respond to information requests and \$150 for delaying the sick leave payment, was denied, based on a deadlock at Step B.

Case #3
USPS J19N4JC22413906
Local #2022-1207

In the third dispute at issue here, a grievance was initially pursued as a class action grievance seeking to have the Employer properly fill a vacant slot. A settlement was reached on July 14, 2022, in which Oak Brook agreed that it would properly post and fill the route assignment, would pay out of schedule pay to whichever employee was ultimately assigned to the route, and would pay that employee an additional \$100 lump sum for the improper delay. Oak Brook also, again, expressly agreed that "*future violations may result in escalating remedies*". As reflected in the Step B Decision, carrier **Anices Gray** ultimately received the route, but Oak Brook again failed to comply with its settlement agreement and failed to pay her. The Step B Decision ordered Oak Brook to pay Gray \$4,138 in improperly withheld pay but deadlocked on the remaining requests for individual and group relief, resulting in the matter being advanced to arbitration.

Case #4
USPS J19N4JC-22413963
Local #2022-1206

In the fourth dispute at issue here, on July 25, 2022, carrier **Gopal Lutha** was injured on the job. There was no dispute about the underlying facts and Lutha was promptly certified by the Department of Labor as injured on the job. Oak Brook apparently properly implemented Continuation of Pay (COP) benefits initially, but improperly and without any explanation or legitimate purpose, failed to pay COP after the first week. A Formal A meeting was scheduled to address the improper cutoff of pay, with the relevant paystubs forwarded to the Oak Brook postmaster, who nonetheless failed to correct the improper withholding. The postmaster responded that he would only submit Lutha's pay continuation if the Union withdrew the grievance first, which would have required faith that the postmaster would then actually process the pay. The matter was, again, forced to be advanced in the grievance procedure with no legitimate dispute. The Step B decision ordered the immediate payment to Lutha of the thirteen days of pay which the Oak Brook postmaster had improperly withheld. The Step B team could not agree on additional compensation to Lutha, sought by the Union, to address the admittedly improper withholding of pay and the improper demand that the grievance be first withdrawn.

Common Factual Issues

At the several Step B proceedings, the Union cited to multiple prior instances of settlements, or Step B resolutions, where the Oak Brook Installation either agreed to future compliance or was ordered to '*cease and desist*' from its well-established pattern of non-compliance with prior resolutions. In its Step B presentation, the Union detailed at least five Step B decisions from 2022 alone in which Oak Brook was '*instructed*' to cease and desist. Additionally cited were at least four separate 2022 Formal A settlements in which it was agreed that Oak Brook had violated the CBA, that it would '*cease and desist*' and expressly that '*future violations may result in monetary awards*'. The Union additionally cited to at least eleven Step B or formal A resolutions from 2021 and 2022 in which future compliance was promised, and in three of which it was expressly agreed that '*future violations may result in escalating penalties*'.

The Service, and the management advocate, were placed at an extraordinary and unfair disadvantage in the presentation of facts and defenses at the hearing as a direct and necessary consequence of the inexplicable repeated failure, or refusal, of the Oak Brook postmaster to properly engage in his duties under the grievance procedure. As a necessary result, under the CBA, of the postmaster's failure to substantively take part in grievance processing, the Service was left with the Union's contentions from below as uncontested with the Oak Brook postmaster having waived and precluded the Employer's ability to present substantive factual defenses.

DISCUSSION

A. Role of the Arbitrator in Deciding a Case

As the advocates are of course aware, although individuals whose interests are affected by such decisions often are not aware, an Arbitrator is a mere creature of the Contract and is bound to apply its terms as drafted by the parties. As famously noted by Justice Douglas, an arbitrator "*does not sit to dispense his own brand of industrial justice*", or typically to assess the wisdom of actions that were taken, or the wisdom of underlying agreements, rather the faithful arbitrator applies the rules created by the Contract between the parties. See, *Steelworkers v Enterprise Wheel*, 363 US 593 (1960). The task in issuing a Decision is to examine the facts and determine if the disputed action was proper under the applicable language of the CBA, or other binding agreements.

It is the binding agreements between the parties, and not the Arbitrator, which creates the respective rights and obligations. As will be seen below, that understanding is central to the resolution of this dispute.

B. Merits of the case

Management is fully aware of and routinely acknowledges that it has an affirmative duty to comply with prior relevant grievance settlements; to timely provide relevant requested information; and to actually implement the terms of grievance settlements it reaches in particular cases. In Oak Brook, somehow the local postmaster has determined for himself, for unstated reasons, that he is not

obliged to fulfill such ordinary obligations of his position. Why he has done so is entirely unclear and cannot be determined on the record in this file, precisely because the Oak Brook management routinely fails to engage in the mandatory grievance process and thereby leaves regional management and advocacy staff with no factual basis for defending claims.

The Employer conduct in Oak Brook, specifically that of the postmaster, is profoundly destructive of the relationship between the NALC and the Service. The Oak Brook postmaster has acted in a way clearly designed to derail the healthy labor relations environment that the USPS-NALC seek to foster nationwide, which in other communities is enthusiastically, if sometimes imperfectly, embraced as the norm. The conduct detailed in the findings of fact above have been found by the Step B teams to have constituted contractual violations and, regardless, it is patently obvious in each instance that the Employer, acting through its postmaster, has willfully violated the National Agreement. The conduct of the postmaster adversely impacted the perception of employees in Oak Brook regarding the commitment of the Service to contractual compliance. The conduct further, rationally, must be seen as causing employees to doubt the effectiveness of their own Union in protecting and enforcing their rights. The pattern of conduct in Oak Brook can only be rationally viewed as a cumulative and persistent violation of the duty of good faith owed under the NLRA. Finally, in the Lutha matter, the conduct of the Oak Brook postmaster, and its apparent ratification by upper management, in refusing an employee pay to which he was indisputably entitled, unless the Union first withdrew a valid grievance, was a frank unfair labor practice, prohibited by and remediable under, the NLRA, as it constituted unlawful retaliation against Lutha for seeking the assistance of his Union and constituted interreference in the relationship of Lutha to his Union.¹

¹ The national parties who select arbitrators are aware that the undersigned arbitrator is well familiar with the nature of and remedies for unfair labor practices, having served nearly a decade as an administrative law judge hearing labor board cases.

The only matter that needs discussing in this case is the extent and nature of further remedies necessary to address the prior violations and to diminish the likelihood of a continuation of the pattern of the Oak Brook postmaster openly flaunting his willingness to violate the National Agreement and to ignore binding settlements.

C. Remedies

In fashioning an appropriate remedy it must be recognized, and reiterated, that the underlying violations were sometimes minor, but the ensuing acts which were destructive of the grievance process were not accidental or negligent. It was a willful and unwarranted refusal to comply with grievances settlements, which were in turn premised on acknowledged violations of the Contract. No explanation of the failure to simply keep the promises that were made in each case was even offered.

This case is fundamentally indistinguishable from one in which the undersigned issued a binding award on January 31, 2022, imposing substantial sanctions as well as an obligation to implement a training regimen for management officials to avoid a repeat of similar intransigence, arising in the same region. See, O'Connor Award, **Chicago Installation**, 4J19N-4J-C20502441 (I/31/22).

A prior Arbitration Award involving the same regional parties, by Arbitrator Jo Ann Nixon (J16N-4J-C20062325) (December 19, 2020), reviewed a long pattern of a failure, in particular of the Chicago Installation management, to meet its clear contractual obligations. Arbitrator Nixon, in an effort to compel management to 'cease and desist' from continuing to violate its duty to timely produce requested and relevant information and, based on the multiple prior violations and recalcitrance, mandated that a substantive response to an information request be provided within 72 hours. Arbitrator Nixon further ordered the coercive relief that:

Management shall pay the Union the lump sum of \$1,000.00, based on their violation of Articles 15, 17 and 31. Further, Management shall institute a process for responding to Information Requests from the Union, within 72 hours of receipt. All responses must include the information requested, and/or a written explanation of why the

information cannot be provided or is not available; the document shall also show when, or if, such information will become available. Further violations of this nature *shall be subject to escalated awards*, depending on the circumstances revealed in each case. (Emphasis added).

Given that the violations are still ongoing, and given the multiple prior violations, and more importantly, given the repeated acknowledgment by management at varying levels that it had violated its obligations and the repeated promises that it would not do so in the future, and given that the violations strike at the core of the parties agreed upon dispute resolution system, an enhanced financial remedy would not be inappropriate. Indeed, such a financial remedy is not a remedy that an Arbitrator, such as Nixon or the undersigned, would lightly create.² As reflected above as to Oak Brook, the Employer has used its authority in crafting settlement and Step B language to agree that “*monetary awards*” and “*escalating penalties*” would be appropriate in the event of future comparable violations. That time has arrived.

The remedies requested by the Union appear largely reasonable and appropriately tailored to remedy in a practical way, and to likely prevent a recurrence of, the harms caused by the outright, and unwarranted, refusal of the Oak Brook postmaster to comply with the clear mandates of the CBA, the JCAM, and to comply with prior binding settlement agreements and Arbitration Awards, and the unexplained failure of those above him in the chain of command to take whatever steps are necessary to bring him into compliance.

Oak Brook management must comply with the CBA, and JCAM, just as managers at other facilities are obliged to comply. It is obvious that a non-supervisory employee whose conduct similarly and repeatedly resulted in financial losses to the Service of a scale comparable to those imposed in the prior Nixon Award and Jordan Award, both arising in this same region, would additionally face severe disciplinary consequences, including facing possible dismissal.

² The parties’ CBA, unlike some, does not expressly allow for the shifting of Arbitration fees to the losing party, even where a frivolous defense was offered. If such an option existed here, it would likely have been applied.

The Employer in this instance makes a comprehensive argument in support of the general proposition that Labor Arbitrators do not ordinarily award ‘punitive’ or ‘exemplary’ damages. The real, and understandable, focus of the Employer’s concern regarding arguably ‘*punitive*’ relief is the requested award of the sort of escalating financial compensation anticipated by, and directed to be imposed in, prior Awards and in the Employer’s own voluntary settlements.

First, the financial remedy is not ‘*punitive*’ in nature, even though it clearly exceeds traditional ‘*compensatory*’ grievance awards given in individual employee cases. Rather than classically ‘*punitive*’, the sums here are instead ‘*coercive*’. The distinction is essentially similar to the difference between criminal vs civil contempt of a court. Criminal contempt typically yields a sentence or penalty of a specific duration or amount, to punish improper behavior where that behavior has been completed. Civil contempt on the other hand typically involves imprisonment for an indeterminate duration, or similarly an escalating fine, with each designed to coerce compliance, that is, to stop an ongoing improper behavior. As is often said, in civil contempt the ‘prisoner’ has the keys to the cell in their own hand--comply and the penalty stops. Here too, the Employer had, and has, fully within its grasp the control over whether the financial penalties mount. Simply, the Employer needed to, and still needs to, in good faith compel compliance with the National Agreement and prior settlements by the Oak Brook postmaster.

The Service argues quite strongly that the only relief that can be imposed, despite repeated indistinguishable violations, is yet another toothless ‘*cease & desist*’ order. Where an Employer repeatedly and willfully refuses to comply with a contractual mandate, even after acknowledging the validity of the mandate, and after prior indistinguishable resolutions, then some effective remedy more than another toothless ‘*cease and desist*’ remedy must be imposed. As Arbitrator Michael Jordan appropriately noted, in case J16N-4J-C20274626 202001436 (April 7, 2021), another case involving yet another a refusal in this same region to comply with clear obligations notwithstanding prior ‘*cease & desist*’ orders:

It would be insane of us now to assume that basically doing *nothing* will change anything. One cited regional arbitrator agrees that management's repeated actions were contrary to their obligations, but merely repeats a cease and desist order that had no effect before, and refuses to impose a monetary remedy claiming that it would be punitive

The Oak Brook postmaster, based on his repeated conduct, has seemingly concluded in the past that he can violate the CBA and the NLRA, then enter into a settlement with no apparent intent to actually carry out the terms of the settlement, as occurred here, and then face additional grievances or charges, all without any real threat of substantive sanctions. Those days appear to be over, at least following the Nixon Award, the Jordan Award, and the O'Connor Chicago Award. A similar outcome should be anticipated as to NLRB charges in the future. The NLRB General Counsel has issued formal guidance letters, which control the enforcement actions of the NLRB Regional staff, and in those letters has directed staff both in voluntary settlements and in cases that go to trial to seek full '*consequential damages*' in express recognition that mere traditional 'make whole' relief does not always effectively deter future misconduct. See, GC 21-06 "*Seeking Full Remedies*" and GC 21-07 "*Full Remedies in Settlement Agreements*" (<https://www.nlrb.gov/es/guidance/memos-research/general-counsel-memos>). Such '*consequential damages*' might include, in an appropriate case, reimbursing a Union for expenses incurred due to an employer's failure to bargain in good faith.

Here, ultimately the Postal Service is responsible for training its supervisory staff in what is expected of them. A penalty against individual Employer representatives would be extraordinary, even if not entirely unprecedented. While it is clear that the postmaster in Oak Brook *should* know what is required of him, by Contract, Settlement and Award; however, there is no record evidence of the extent of training actually provided to him.

The parties, and their representatives, as well as the Oak Brook postmaster, should in the future proceed with the clear understanding that in the event of another indistinguishable violation, an Arbitrator, including this one, might well award even more substantial financial remedies if that proves necessary to deter additional violations.

AWARD

The grievance is granted. The Employer must comply with its clear obligations under the National Agreement regarding grievance resolution efforts, with prior grievance settlements and binding arbitration awards, and with its obligations under the NLRA. Given the repeated, and inexplicable, failure and refusal to comply, more specific relief than would ordinarily be necessary must be awarded, to attempt to cure the general recalcitrance and to minimize the difficulties in future enforcement. In addition, detailed relief must be awarded regarding the several specific individual Grievants. In particular, the Employer is ordered to:

1. Cease and desist from violating its obligations under the CBA, prior settlements and Awards, and its bargaining and non-retaliation obligations under the NLRA, including by:
 - a. Failing to promptly and fully comply with grievance settlements and in particular by taking whatever steps are necessary to pay employees within thirty (30) calendar days of settlement all amounts individually owed;
 - b. Failing to respond substantively to Union requests for information;
 - c. Failing when responding to a Union request for information from promptly, within 72 (seventy-two) hours, providing the requested information or accurately indicating in writing that the information does not exist, is unavailable, or otherwise explaining accurately why the requested information has not been provided and/or what specific steps are being taken to secure the information;
 - d. Failing to train all managers and supervisors, including in particular the postmaster in Oak Brook, regarding their individual obligations to comply with Union information requests, to refrain from interfering in the relationship between the Union and its members, as well as their obligation to comply with the terms of prior settlement agreements and the relief awarded in this and other Arbitration Awards and Step B Decisions;

- e. Failing to properly investigate, and where appropriate impose effective discipline, where individual managers and supervisors continue, after the training mandated in this Award, to fail or refuse to comply with their obligations as described in this Award;
- f. The Employer is directed to initiate and conduct supervisory and managerial training for the Oak Brook Installation within ninety (90) calendar days of the date of this Award, in an effort to secure future compliance at all levels with the Employer's duty to in good faith comply with the National Agreement; to comply with prior settlements and Awards; to act consistent with the duty to bargain in good faith; and to avoid future adverse Awards and related costs to the Service. The training shall be conducted in a time and manner devised by the Employer and with a system of records kept as to participation, and with the training to be repeated as needed. The training will include, at a minimum:
 1. The duty to comply with prior settlements and Awards, including as explained in the Postmaster's memo M-01517;
 2. The duty to refrain from interfering in the relationship of the Union with its bargaining unit members;
 3. The potential for damages awards against the USPS based on supervisory failures of compliance, as exemplified by the Nixon Award, the Jordan Award, the prior O'Connor Chicago Award, and this Award, copies of which are to be included in the training materials;
 4. The potential for consequential damages awards against the USPS being assessed by the NLRB based on supervisory failures of compliance, as exemplified by the NLRB General Counsel memos GC 21-06 and

GC 21-07, copies of which are to be included in the training materials;

5. That supervisors or managers who have subordinate supervisors or managers under their authority have a duty to properly report or investigate, and where appropriate impose or recommend effective discipline, where individual managers and supervisors continue to, after the training mandated in this Award, fail or refuse to comply with their obligations as described in this Award;
6. That the above duties are a minimum and important part of each supervisor's job obligations and that the USPS will treat a failure of an individual supervisor to comply as a failure to meet the minimum obligations of their employment that may result in individual sanctions, up to and including termination or demotion, or such sanctions as may be awarded in the grievance procedure.

- j. Disclose to the Union in writing the nature and timing of the supervisory/managerial training implemented to comply with this Award and provide to the Union copies of all training materials utilized in the supervisor training ordered herein as well as sign-in sheets or other records indicating individual participation in the training;
- k. Compensation must be ordered paid to the Union for the unwarranted expenses incurred in the further pursuit of these matters to Step B and to arbitration where there was no legitimate dispute, including the costs of staff time and fees directly related to arbitration, as well as for the inherent adverse impact on the Union of the Employer's flaunting of its refusal to comply with settlements purportedly reached in good faith with

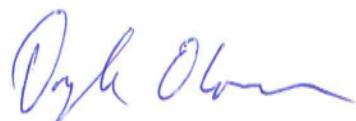
the Union, thereby denigrating the role and status of the Union amongst its members. The Union here economized by presenting four separate but related cases in one proceeding, thereby reducing the costs to itself and to the Service as well. The Employer is to reimburse the Union in a lump-sum amount, set to deter further comparable violations, of four thousand dollars (\$4,000), to be paid to NALC Region 3 to be used at its discretion in deferring the costs of servicing its members and/or to provide other services or benefits to its members, with payment to be tendered within **sixty (60) calendar days** of the date of this Award and in a manner as directed by NALC Region 3;

1. In ordering relief directly to the Union it is expressly understood that such relief is unusual and should rarely be awarded, but that, where the level of intransigence and unlawfulness exhibited here is present, some relief reasonably calculated to be effective must be awarded and this financial award is expressly intended to fix the attention of upper management on curing whatever fault exists at the Oak Brook Installation;
- m. Individual relief is ordered for each of the named grievants in these consolidated matters in an effort to compensate for the improper delay in payments and for the Employer's contractually improper, and in one instance unlawful, conduct toward them individually. Such financial compensation is a necessarily imperfect remedy the calculation of which is imprecise. The individual awards are as follows: **Matthew Robb & Briana Garcia-Silva** \$150 each; **Daniel Evans** \$150; **Anices Gray** \$250 in recognition of the greater amount of pay improperly withheld; **Gopal Luthra** \$1,500 in recognition of the fact that the Oak Brook postmaster's improper withholding of his pay, after an undisputed on-the-job injury, was outrageous and deprived his family entirely of the income needed for basic support, and was

unlawful retaliation prohibited by the NLRA. The individual amounts are to be tendered within **thirty (30) calendar days** and without deductions other than for necessary payroll tax withholding. If the individual amounts awarded are not paid by May 7, 2023, the amounts owed are to be doubled and promptly tendered;

- n. The Union request for individual monetary awards to each member of the Oak Brook unit is denied, as being unjustified and unnecessary on this record;
- o. The parties may mutually agree to changes in the mechanisms of compliance or the deadlines set forth above; however, any efforts at securing mutual agreement will not excuse a failure of timely compliance in the absence of an express written agreement to alter the deadlines;
- p. As previously held by Arbitrators Nixon and Jordan, it is directed that '*Further violations of this nature shall be subject to escalated awards, depending on the circumstances revealed in each case*';
q. Jurisdiction is retained to resolve any disputes as to initial or ongoing compliance, or to clarify the relief ordered, for a period of one hundred twenty (120) days from the date of this Award and continuing through any period of challenge to the Award, and during the pendency of any claim raised during such period.

No further relief is necessary or awarded at this juncture.



Doyle O'Connor, Arbitrator, NAA

Dated: April 7, 2023