

# GRIEVANCE GUIDE

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## INTRODUCTION / OVERVIEW

This guide was developed for use by local NALC stewards so that they have a starting point in trying to resolve some of the more common disputes that they might face.

Please note that many stewards may not have readily available access to the JCAM, Materials Reference System (MRS), and, certainly, all the Arbitration cases (noted by a "C") that are referenced in this guide. Nevertheless, these references, along with USPS handbook and manual references, are included in case additional research is desirable. Remember that neither this guide nor any similar reference guide will be all inclusive. It is recommended that, at the very least, local branches purchase the 2006 Contract CD for use by their stewards. There is a wealth of information contained therein, with an excellent search engine to afford easy access to that information. Additionally, the arbitrations are now available on a set of three DVDs at a minimal cost. The Arbitration On DVD 2006 package also includes the 2006 Contract CD. Both the CD and the DVD set are available for purchase from NALC's Supply Department.

Much of the material contained herein was initially developed by NALC — USPS representatives in the Pacific Area, and then condensed and updated by Region 5, NBA staff personnel. Much thanks to all those folks for their efforts.

Let me further note that there will undoubtedly be numerous "typos" along with the fact that cited page numbers, forms, etc. will change as various handbooks, manuals, the National Agreement, etc. are updated. Please feel free to point out those discrepancies to the Region 5 NBA office so that appropriate corrections can be made to any future updates of this guide.

Yours in Unionism.

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# CONTRACTUAL DISPUTES

## ARTICLE 1

### ISSUE: Supervisors Doing Craft Work

1. Definition: Any work done by supervisors/managers, which is part of the letter carriers job description, is prohibited, except in limited situations as described in Article 1, Section 6.
2. Contractual and Handbook cites:
  - A. National Agreement, Article 1, Section 6.
  - B. JCAM pg. 1-4, 1-5 & 1-6.
3. Documents which the parties may jointly develop and review to establish all relevant facts:
  - A. Statement from supervisor explaining any basis for their actions.
  - B. Overtime Desired List (if any). OTDL
  - C. Work Schedule/3997s for thy(s) in question.
  - D. TACS/Employee Activity Report/Employee Everything Report, Workhour/Workload Report/Overtime Alert Report for affected carriers.
  - E. Statements verifying amount and type of work performed by supervisors (preferably eyewitnesses).
  - F. Statements of carriers as to availability for contested work.
  - G. 1813 (Supervisor Summary Sheet of Leaving and Return Times).
  - H. Supervisor's Job Description.
4. Factors which must be considered when evaluating the case.
  - A. Were sufficient carriers available to do the work done by the supervisor?
  - B. Did an emergency situation exist as defined in Article 3, Paragraph F? (JCAM pg. 3-1 & MRS pg. 90 - M-00105)
  - C. Did management staff improperly and so cause the emergency?
  - D. Were the ODL and WAL utilized to the maximum extent possible?
  - E. Was the amount of work done by the supervisor *de minimus*?
  - F. Is this a recurring situation?
  - G. Were light duty carriers available?
  - H. Were PTF carriers available?
5. Possible Remedies/Citations:
  - A. Cease and Desist.
  - B. M-00206, Settlement Agreement, November 24, 1978: Where additional work hours would have been assigned to employees but for a violation of Article 1, Section 6A, and where such work hours are **not** *de minimus*, the employee(s) whom management would have assigned the work shall be paid for the time involved at the applicable rate. (MRS pg. 34)
  - C. M-00200, Step 4, March 3, 1978. The National Agreement does not limit the performance of bargaining unit work by supervisors to only emergency situations in offices of less than 100 employees. Conversely, the supervisor's job description does not intone (*sic*) that he would perform bargaining unit work as a matter of course every day but rather that he would perform such duties in order to meet established service standards. (MRS pg. 34)

## **ARTICLE 7**

### **ISSUE: Casuals (TE's) Worked When PTFs are Available**

1. Definition: The National Agreement requires that management must make every effort to ensure that qualified and available part-time flexible employees be utilized at straight time prior to assigning work to casuals. This requirement is further borne out in a June 22, 1976 Memorandum signed by then ASPMG James Conway, which stipulated that this effort must include using part-time flexible employees across craft lines prior to using casuals when the part-time flexible employees are at the straight time rate, and the qualifying conditions outlined in Article 7.2 have been met.
2. Contractual and Handbook cites:
  - A. National Agreement, Article 7, Section 1. B. 2 (JCAM pg. 7-3)
  - B. Memorandum June 22, 1976 (Conway).(M-003 12) (MRS pg. 49)
  - C. Pre-arbitration settlement July 11, 1988 (M-00847) (MRS pg. 50)
  - D. National Arbitrator Gamser C-00403 (MRS P. 49) (JCAM pg. 7-3)
3. Documents which the parties may jointly develop and review to establish all relevant facts:
  - A. Relevant 1813s (Supervisor's Daily Work Sheets).
  - B. TACS/Employee Activity Reports for affected PTFs and casuals.
  - C. Workhour/Workload Reports for affected PTFs & casuals.
  - D. Forms 3996 (Carrier Auxiliary Control Form).
  - E. Forms 3997 (Unit Daily Summary).
  - F. Forms 3971 (Requests for Leave).
  - G. Supervisor's weekly schedule.
  - H. Seniority roster.
  - I. Data indicating unit complement.
  - J. Job description of assigned work to casuals.
  - K. Charting of use of hours by casuals and PTFs (begin and end tours).
  - L. Relevant provisions of the Local Memorandum.
  - M. Statements of availability made by PTFs.
  - N. Supervisor's notes or statements as to why the casual was worked when the PTF was available
  - O. Form 50's for affected carriers (PTFs and casuals).
4. Factors which must be considered when evaluating the case:
  - A. Was the PTF available and qualified to do the work done by the casual at the straight-time rate?
  - B. Was the casual given training to perform the subject duties when the PTF could have been given the same training to qualify for the job?
  - C. Do the affected PTFs have a valid State Drivers License?
  - D. Does the charting of hours worked by casuals and PTFs indicate the PTFs were available?
5. Possible Remedies/Citations:
  - A. Management will cease and desist the use of casuals when PTFs are available and have not been scheduled up to 40 hours per week.
  - B. Management will utilize PTF carriers across craft lines when the relevant criteria are met and PTF carriers are not scheduled for 40 hours per week.
  - C. Management will make the PTF carriers whole for lost wages up to 40 hours at the straight-time rate.
  - D. Management will make PTF carriers whole for any annual leave used to compensate for lost work hours.

**ARTICLE 7**  
**ISSUE: Maximization**

1. Definition: The parties have agreed that the Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations.

In offices of 200 or more work-years of employment in the regular work force, 88 percent must be full-time employees.

If the Employer fails to staff along the above guidelines, the parties have agreed that the installation shall immediately convert and compensate the affected part-time carrier(s) retroactively to the date on which they should have been converted. Such pay would include:

- A. Straight-time pay for any hours less than 40 hours (five 8-hours days) in a particular week.
- B. Pay the 8-hour guarantee for any work beyond five days.
- C. If appropriate, based upon the aforementioned, pay the applicable overtime rates.
- D. The schedule to which the carrier is assigned when converted will be applied retroactively to the date the carrier should have been converted and the carrier will be paid out-of-schedule pay.
- E. Where application of the above shows a carrier is entitled to two or more rates of pay for the same work or time, management shall pay the highest of the rates.

Two other possibilities exist which would require management to convert a part-time carrier to full-time.

(1) A part-time flexible carrier working 8 hours within 10 on the same five days each week and the same assignment over a 6-month period will demonstrate the need for converting the assignment to a 11tH-time position. (Article 7.3.C)

(2) The parties have also agreed in installations of 125 work-years or more that a part-time flexible performing letter carrier duties in an installation at least 40 hours a week, five days a week over a period of six months, will cause the senior part-time flexible to be converted into a full-time flexible position as defined in the Memorandum of Understanding dated July 21, 1987. (JCAM, pg. 7-12 thru 7-15)

Arbitrator Mittenthal has ruled that the full-time flexible position is counted in installations of 200 work-years or more, in the determination of whether the installation meets the criteria of 90/10 (88/12) found in Article 7, Section 3. (C-09340, MRS pg. 204)

Arbitrator Mittenthal also concluded that when an installation falls below the 90/10 (88/12) requirement at the same time that a part-time flexible meets the criteria for conversion to full-time under the MOU, management “must first convert pursuant to the [88J% staffing requirement and thereafter convert pursuant to the Memoranda..” As a result, conversions to full-time flexible would be in addition to conversions to full-time regular under such circumstances. (C-09340, JCAM pg. 7-9)

2. Contractual and Handbook cites:

- A. National Agreement, Article 7, Section 3. (JCAM pg. 7-9 thru 7-16)
- B. Memorandum of Understanding, RE: 90/10 (88/12) staffing requirement, April 14, 1989. (M-00920) (JCAM pg. 7-10) (MRS pg. 204)
- C. Memorandum of Understanding, RE: Maximization/Full-time Flexible. (JCAM pg. 7-12).
- D. National Arbitrator Mittenthal, September 5, 1989, (C-09340). (JCAM pg. 7-9), (MRS pg.204)

3. Documents which the parties may jointly develop and review to establish all relevant facts:

- A. On-Rolls Complement Report.
- B. TACS/Employee Activity Reports.
- C. Workhour/Workload Reports for all PTF and casual carriers.
- D. Form 3996 (Carrier Auxiliary Control) for carriers who allegedly have qualified under the maximization criteria.
- E. Overtime Alert Reports
- F. Weekly charting of hours worked by part-time flexible carries.
- G. Summation of number of full-time employees and part-time employees within the installation (clerks and carriers).
- H. Documentation showing the number of work-years of employment within the installation.
- I. Number of hours associated with auxiliary routes, collection runs and/or any other part-time letter carrier work performed in the cited office.
- J. A list of routes not covered by a carrier technician.
- K. Documentation indicating a breakdown of the percentage of full-time employees by accounting period.

4. Factors which must be considered when evaluating the case:

- A. How many work-years of employment are in the installation?
- B. Did part-time flexibles meet the criteria for maximization in either Article 7, Section 3.C., or the full-time flexible memorandum?
- C. On what date should the part-time flexibles have been converted to full-time?
- D. Did management fail to maintain the 88/12 ratio?

5. Possible Remedies/Citations:

- A. JCAM pg. 7-10
- B. M-0 1032 Step 4, December 6, 1991: The issue in this grievance is whether the criteria for conversion found in Article 7.3C apply only to offices which have 125 or more man years of employment.(MRS pg. 205)
- C. C-10713, Regional Arbitrator Martin, July 20, 1990: Total hours used by part-time flexibles is an important perhaps determinative criterion to be used in evaluating whether management has complied with its general obligation to maximize. (MRS pg. 204)
- D. C- 10587, Regional Arbitrator Nolan, February 9, 1991: Management violated the contract when it did not combine work from segmentation assignments and auxiliary routes to form a full-time assignment. (MRS pg. 205)

- E. C- 12210, Regional Arbitrator Di Lauro, July 18, 1992: A withholding order notwithstanding, management violated the contract when it failed to maximize full-time letter carriers: Management gave only vague estimations of when a reduction in force is to take place and none of these estimations were evidence by any documentation. (MRS pg. 355)
  - F. Request the establishment of a Reserve Carrier position, to be put up for bid within the installation; then, convert the senior PTF to the resulting residual vacancy.
6. C-25755, Regional Arbitrator Dilts, February 17, 2005: The record shows that there are two T-6 technician positions to cover 14 city routes. Further, there is an Auxiliary Route with approximately 6.5 hours of work. The record also shows significant overtime and work performed by part time flexible employees and on overtime. All of this exists with only one unassigned regular full time carrier. The simple preponderance of evidence shows that there is work available to make a forty hour regular assignment for the senior part time flexible carrier in this office.

**ARTICLE 8**  
**ISSUE: Overtime - MANDATORY**

1. Definition: The bargaining history of the parties at the national level shows that the 1984 National Agreement included an Article 8 Memorandum which further clarified management's responsibilities when requiring a letter carrier to work overtime on their own route on a regularly scheduled day.

Disagreement developed between the parties as to the meaning of one paragraph in that Memorandum which has come to be known as the "Letter Carrier Paragraph." National Arbitrator Mittenthal was asked by the parties to determine whether the Letter Carrier Paragraph was a binding contractual provision on the parties.

In 1986 Arbitrator Mittenthal ruled that the Letter Carrier Paragraph was a binding, contractual commitment.

The Letter Carrier Paragraph is quoted here for clarity:

"In the Letter Carrier Craft, where management determines that overtime or auxiliary assistance is needed on an employee's route on one of the employee's regularly scheduled days and the employee is not on the overtime desired list, the employer will seek to utilize auxiliary assistance, when available, rather than requiring the employee to work mandatory overtime."

As a result of Arbitrator Mittenthal's decision, management must seek to use casuals, part-time flexibles at either straight time or overtime and individuals on the ODL up to the penalty overtime rate, prior to requiring non-ODL employees to work overtime on their own routes on a regularly scheduled day.

2. Contractual and Handbook cites:
  - A. National Agreement, Article 8, Section 5.C.2.D (JCAM pgs. 8-12, 13 & 14)
  - B. Article 8, Memorandum of Understanding, December 24, 1984. (JCAM pgs. 8-13 & 8-25)
  - C. Memorandum of Understanding, December 20, 1988. (M-00884) (JCAM pgs. 8-14 & 8-24)
  - D. Memorandum of Understanding, June 8, 1998. (M-00833) (JCAM pg. 8-27)
  - E. National Arbitrator Mittenthal Award (C-06297) (JCAM pg. 8-13) (MRS pg. 239)
  
3. Documents which the parties may jointly develop and review to establish all relevant facts:
  - A. TACS cards/Employee Activity Report for day(s) in question.
  - B. Form 3997 (Unit Daily Summary) for day(s) in question.
  - C. Form 1813 (Supervisor's Daily Worksheet) for day(s) in question.
  - D. Overtime Alert Reports for day(s) in question.
  - F. Statement from the carrier who was available as auxiliary assistance.
  - F. Statement of carrier required to work when auxiliary assistance was available.
  - G. Copy of the unit overtime desired list for the relevant quarter.
  - H. Unit seniority list.

4. Factors which must be considered when evaluating the case:
  - A. Was a non-ODL carrier mandated to work overtime when auxiliary assistance was available?
  - B. Was the auxiliary assistance available at the straight-time or regular overtime rate?
  - C. Costs associated with providing the assistance, e.g., travel time, e.g., “rule of reason”. (JCAM pgs. 8-14 & 8-24)
  
5. Possible Remedies/Citations:
  - A. The effects of any remedy should be to correct the harm to any employee who was improperly required to work and to any ODL employee who was available but was not worked, as well as to prevent future violations from occurring. Management believes that an appropriate remedy in these instances would be to compensate the ODL employees for the overtime they could have worked. The Union also believes that the ODL employees must be made whole. However, the non-ODL employees are entitled to some sort of compensation or remedy as well. Additionally, repeated violations may require higher monetary remedies. Arbitrators have ruled that administrative leave, additional time and a half or double time are viable remedies in these instances. These are referred to as compensatory remedies. Care should be taken to ensure they are corrective, not punitive, toward ensuring contract compliance.
  - B. C-10873, Regional Arbitrator Levin, May 22, 1991: When management violated the contract by requiring non-OTDL carriers to work overtime while carriers on the OTDL were available, the appropriate remedy is give the carriers not on the list “administrative time off for the amount of time they worked overtime” and to pay at the overtime rate the carriers on the list for the time they should have worked. (MRS pg. 245)
  - C. See “Remedies for Violations” (MRS pgs. 244 & 245.)

**ARTICLE 8**  
**ISSUE: Overtime - Equitable Distribution**

1. Definition: The National Agreement requires that during each calendar quarter, management must make every effort to distribute equitably, the opportunities for overtime among those on the Overtime Desired List. National Arbitrator Bernstein, in an award dated September 14, 1986, ruled that equitable distribution of overtime meant that hours, as well as opportunities, must be considered.

National Arbitrator Gamser, in an award dated April 3, 1979, ruled that in cases where management has shown a willful disregard or defiance of the contractual provision, a deliberate attempt to grant disparate treatment or favorite treatment to a carrier, or caused the situation where an equalizing opportunity could not be afforded in the next quarter, management is liable for a monetary penalty.

In all other cases Gamser held that the remedy is an equalizing opportunity in the next immediate quarter, or pay a compensatory monetary award if this is not done.

If a steward approaches a manager during a quarter and advises that equity does not exist and the manager ignores this information, an immediate monetary remedy may well be appropriate. Maintain a log of the days when management was put on notice regarding this issue and/or the opportunities during the quarter to make the distribution more equitable which were not utilized, to support this argument at the end of the quarter.

2. Contractual and Handbook cites:

- A. National Agreement, Article 8, Section 5.C.2.b. (JCAM pg. 8-10)
- B. National Arbitrator Bernstein, September 14, 1986 (C-06364).  
(JCAM pgs.8-10)
- C. National Arbitrator Gamser, April 3, 1979. (C-03200) (JCAM pgs. 8-11)
- D. Joint Statement on Overtime, June 8, 1988. (M-00833) (JCAM p. 8-27)

3. Documents which the parties may jointly develop and review to establish all relevant facts:

- A. ODL for disputed quarter.
- B. Charting of opportunities given, opportunities missed and hours worked by ODL employees.
- C. Form 3997 (Unit Daily Summary), for days opportunities were given or missed.
- D. Form 3996 (Carrier Auxiliary Control), for days opportunities were given or missed.
- E. Time cards/Employee Activity Reports (PSDS Offices).
- F. Overtime Alert Reports (weekly)
- G. Form 1813 (Supervisor's Daily Work Sheets).
- H. Statements as to availability of affected carriers.
- I. Supervisor's notes or statements explaining why the hours and opportunities were not equitable.
- J. Steward statements to show attempts made prior to the end of the quarter to inform management of apparent inequities.
- K. Prior grievances showing where inequitable distribution had occurred in prior quarters.
- L. Grievance settlements of prior inequitable distribution grievances.

4. Factors which must be considered when evaluating the case:

- A. Were hours and opportunities considered in determining equitability?
- B. Were ODL carriers available to carry overtime which would have caused a more equitable distribution?
- C. Has management treated the contract in an arbitrary and capricious manner as to the requirement to insure equitable hours and opportunities?
- D. Is there a lack of equity within the ODL?
- E. Is there a showing of favoritism or discrimination towards certain ODL carriers?
- F. Has management failed to properly distribute hours and opportunities among ODL carriers in prior quarters?
- G. Are there prior grievance settlements concerning equitable distribution in prior quarters?

5. Possible Remedies/Citations:

- A. Management cease and desist practice of violating Article 8.5.C.2.b.
- B. When appropriate, make-up opportunities being offered.
- C. When appropriate, monetary, make-whole remedies.
- D. C-10054, Regional Arbitrator Foster, June 1, 1990: Where overtime was inequitably distributed, remedy is payment, not correction of opportunities:  

*“In view of the fact that almost a year has passed, it is not likely that future overtime opportunities will provide a meaningful remedy and, in any event, would create the potential of impinging upon the rights of other employees on the OTDL.”* (MRS pg.245)
- E. Establish a reasonable number of hours as a “mean” that each ODL carrier should have been provided and request make-up opportunities or a monetary remedy, as appropriate, for those with fewer hours than the cited “mean” (average).

**ARTICLE 10**  
**ISSUE: Denial of Annual Leave**

1. Definition: Postal employees are guaranteed as a benefit, based on years of service, certain amounts of annual leave. This annual leave may be taken by employees and must be granted based on the provisions of the National Agreement and local memorandums.

During the initial round of choice vacation sign-up, each carrier is limited to either 10 or 15 days, depending on the number of days of annual leave earned per year. After this initial round, carriers may sign for the remainder of their leave on subsequent go-rounds either in or out of the choice vacation period dependent upon the provisions (and within any quotas or percentages allowed) in the Local Memorandum.

There must be enough weeks available to sign during the choice vacation sign-up period to allow for the minimum number of weeks necessary to meet the contractual obligations described above.

After the vacation planning period has ended, requests for leave must be granted based upon provisions in the ELM and local memoranda.

2. Contractual and Handbook cites:

- A. National Agreement, Article 10.
- B. National Agreement, Article 30.B.4-12 & 20.
- C. ELM, Section 512.
- D. Local Memorandum provisions concerning annual leave.
- B. JCAM pgs. 10-1 thru 10-9.

3. Documents which the parties may jointly develop and review to establish all relevant facts.

- A. Annual leave chart
- B. Form 3971 (Request for Leave).
- C. Weekly schedules showing the number of carriers on annual leave and the number of carriers working on the day(s) in question,
- D. Statements from carriers describing the request for annual leave.
- E. LMOU

4. Factors which must be considered when evaluating the case:

- A. Were the provisions of the National Agreement violated by denying the request for annual leave?
- B. Were the provisions of the Local Memorandum violated by denying the request for annual leave.?
- C. Did the carrier submit a timely and properly filled out 3971 for the desired annual leave?
- D. Did an emergency, as defined by Article 3.F. of the National Agreement, exist which would have precluded honoring the advance commitment for annual leave?
- E. Does the Local Memorandum provide for quotas within the choice and/or non-choice vacation sign-up periods?
- F. By denying the annual leave, did management place the carrier in a position of losing annual leave due to the restrictions on carry-over?

- G. Did the carrier have sufficient leave for the requested time frame?
- H. Was the carrier denied annual leave while other carriers were granted such, even though their request(s) were submitted later?
- I. Did the carrier request annual leave early enough in the leave year so that they would not lose annual leave over the carry-over amount?

5. Possible Remedies/Citations:

- A. M-00508, Step 4, June 15, 1984: Employees who have annual leave approved are entitled to such leave except in emergency situations. (MRS pg.154)
- B. M-00334, Step 4, April 5, 1973: The Postmaster will cease and desist from canceling the employee's bid vacation period during the choice period duty to count and inspection week. (MRS pg. 155)
- C. The letter carrier shall be granted another equivalent period of annual leave of their choice.
- D. The letter carrier shall be granted an equivalent amount of administrative leave, at their choice.

**ARTICLE 10**  
**Issue: Demand for Medical Certification**

1. Definition: Documentation for absences due to sick leave may be divided into two areas. For absences of more than three days, employees are required to submit documentation or other acceptable evidence of the incapacity for work. For absences of three days or less, supervisors may accept the employee's statement explaining the absence. Medical documentation is a requirement only in those circumstances where an employee is on restricted sick leave or where the supervisor deems it desirable for the protection of the interests of the Postal Service. Supervisory discretion in accepting medical documentation may not be exercised in an arbitrary and capricious manner.
2. Contractual and Handbook cites:
  - A. National Agreement, Article 10.
  - B. ELM, Section 513.36.
  - C. ELM, Section 513.37.
  - D. ELM, Section 513.39.
  - E. JCAM pgs. 10-9 thru 10-12.
3. Documents which the parties may jointly develop and review to establish all relevant facts:
  - A. 3972 of the affected carrier (Absence Analysis).
  - B. Relevant 3971s (Request for Leave).
  - C. Medical Certificate submitted by the carrier.
  - D. Grievant's statement of events which precipitated request for medical certification.
  - E. Copy of the doctor's billing for services.
  - F. Statement of the carrier as to other related expenses (travel costs and/or lost time).
  - G. Statement from the supervisor concerning the events which precipitated the request for medical certification.
  - H. Witness statements of individuals attesting to the physical state of the carrier on the day before or the day of the request for certification.
  - I. "Deems Desirable" function in eRMS. (Employee Management Screen eRMS 410, Employee Administration eRMS 260 Screen and Supervisor Comments Screen eRMS 515)
4. Factors which must be considered when evaluating the case:
  - A. Was the request for an absence of less than three days?
  - B. Was the carrier obviously ill?
  - C. Was Management arbitrary and/or capricious in requesting the medical certification?
  - D. Is there any recent evidence of sick leave abuse?
  - B. Is the carrier on restricted sick leave?
  - F. Was the supervisor aware of the carrier's illness prior to requesting medical certification?
  - G. Is the illness covered by FMLA? Or SLDC?
  - H. Was the employee notified that they had been placed on the "Deems Desirable" list? When were they put on that list and how long are they scheduled to remain there?
5. Possible Remedies/Citations:
  - A. Pay grievant the cost of securing medical certification.
  - B. Pay mileage and lost time for time spent procuring the certification.
  - C. See also MRS pgs. 208 thru 213

**ARTICLE 10**  
**ISSUE: Restricted Sick Leave**

1. Definition: An employee may be placed on restricted sick leave in one of two ways.

If evidence exists that an employee is abusing sick leave privileges, a supervisor may place them on the list.

Additionally, employees may be placed on restricted sick leave after their sick leave use has been reviewed on an individual basis and the following actions have been taken.

- (1) An absence file has been established.
- (2) A review of the absence file has been made by the immediate supervisor and higher levels of management.
- (3) Quarterly listings of LWOP and sick leave usage have been reviewed.
- (4) Supervisors have discussed the absence record with the employee.
- (5) The absence record of the employee has been discussed and the employee failed to show improvement in the subsequent quarter.

2. Contractual and Handbook cites:

- A. National Agreement, Article 10.
- B. ELM, Section 513.39.
- C. JCAM pgs. 10-12.

3. Documents which the parties may jointly develop and review to establish all relevant facts:

- A. The subject restricted sick leave letter.
- B. 3972 of the carrier (Absence Analysis).
- C. Relevant 397 1's (Request for Leave).
- D. Any medical certificates explaining absences which led to the issuance of the restricted sick leave letter.
- E. Carrier's statement explaining absence(s) causing restricted sick leave letter.
- F. Supervisor's notes relevant to the placing of the carrier on restricted sick leave.
- G. Doctor's records which would explain the carrier's use of sick leave (i.e., chart notes, prescriptions, appointment records, etc.).

4. Factors which must be considered when evaluating the case:

- A. Was the carrier treated disparately?
- B. Was the placement of the carrier on restricted sick leave done in a timely manner?
- C. Did the fact circumstances support a conclusion that the carrier abused their sick leave privileges?
- D. Was a past practice established in the office as to acceptable levels of sick leave usage?
- E. Was there any proof of sick leave abuse?
- F. Was a quarterly review done as required by the ELM, Section 513.39?
- G. Did the review of the subsequent quarter of sick leave and LWOP usage show improvement?

- H. Did management discuss with the carrier their dissatisfaction with the carrier's sick leave usage during the prior quarter?
- I. Were any of the absences covered by FMLA or SLDC?

5. Possible Remedies/Citations:

- A. M-00002, Step 4, August 23, 1977: Management should inform employees prior to placing them on restricted sick leave that their usage of sick leave demonstrates a pattern of abusing the use of sick leave. See also M-00704. (MRS pg. 165)
- B. M-00705, Step 4, Oct. 1977: The set percentage of sick leave usage, in and of itself, should not be the sole determining factor on taking further corrective action. (MRS pg. 165)
- C. Cease and desist improper placement and remove employee from restricted sick leave status.

**ARTICLE 11**  
**ISSUE: Holiday Scheduling**

1. Definition: Article 11 of the National Agreement requires that the Postal Service post a holiday schedule by the Tuesday prior to the work week in which the holiday falls. Additionally, the Postal service must schedule in such a manner that as many full-time and part-time regular schedule employees as can be spared will be excused from duty on a holiday or day designated as their holiday. This would include using casuals and part-time flexibles at the overtime rate. Local memoranda should define these pecking orders without violating the expressed intent of the National Agreement.
2. Contractual and Handbook cites:
  - A. National Agreement, Article 11.
  - B. ELM, Section 434.4.
  - C. ELM, Section 518.
  - D. JCAM pgs. 11-2, 11-3 & 11-4.
3. Documents which the parties may jointly develop and review to establish all relevant facts:
  - A. Leave calendar.
  - B. Holiday sign-up list for volunteers who wish to work.
  - C. Seniority list.
  - D. TACS./Employee Everything Reports
  - E. Daily work schedule of the holiday or designated holiday.
  - F. Local Memorandum (if any).
  - G. Holiday schedule with posting date.
4. Factors which must be considered when evaluating the case:
  - A. Was the holiday schedule posted by Tuesday of the prior work week in a previously designated location?
  - B. Has management granted annual leave outside the parameters of the local agreement to employees who should have been used as auxiliary assistance?
  - C. Has management violated the pecking order of the National Agreement or local memorandum?
  - D. Were seniority provisions violated?
  - E. Did management ask for volunteers to work their holiday or designated holiday?
  - F. Was the avoidance of penalty overtime used as a reason to violate the pecking orders of the National Agreement or local memorandum?
  - G. Was management arbitrary and capricious in their actions (steward should point out errors in advance)?
  - H. Was a past practice established as to holiday scheduling in those offices where no local agreement is in effect?
  - I. Were casuals and PTFs scheduled to the maximum extent possible, even if the payment of overtime is required?

5. Possible Remedies/Citations:

- A. M-00859, Memorandum, October 19, 1988: The parties agree that the Employer may not refuse to comply with the holiday scheduling “pecking order” provisions of Article 11, Section 6 or the provisions of a Local Memorandum of Understanding in order to avoid payment of penalty overtime. The parties further agree to remedy past and future violations of the above understanding as follows:
  - 1. Full-time employees and part-time regular employees who file a timely grievance because they were improperly assigned to work their holiday or designated holiday will be compensated at an additional premium of 50 percent of the base hourly straight time rate.
  - 2. For each full-time employee or part-time regular employee improperly assigned to work a holiday or designated holiday, the Employer will compensate the employee who should have worked but was not permitted to do so, pursuant to the provisions of Article 11, Section 6, or pursuant to a Local Memorandum of Understanding, at the rate of pay the employee would have earned had he or she worked on that holiday. (MRS pgs. 143 & 144)
- B. C-02975, National Arbitrator Fasser, August 16, 1978: Proper remedy for Article 11 holiday scheduling violation is full pay for missed work. (MRS pg. 144)
- C. Grant the grievant who was improperly scheduled 8 hours administrative leave, to use at their discretion.
- D. Pay an additional 50% for each hour worked or excuse the grievant from the next holiday when they could have been, legitimately required to work.
- E. When management fails to post the holiday schedule in a timely manner, pay an additional 50% premium to the affected employees who were required to work.

**ARTICLE 12**  
**ISSUE: Denial of Transfer**

1. Definition: Installation heads will afford full consideration to all reassignment requests from employees within the Postal Service. Both the losing and gaining installation heads must be fair in their evaluations. Evaluations must be valid and to the point, with unsatisfactory work records accurately documented. In offices of 100 or more man-years, one out of every four vacancies should be filled by individuals requesting transfer if sufficient qualified applicants are available. In offices of less than 100 man-years, the ratio should be one transferee for every six employees hired. A reassignment or transfer is not to be considered as a break in service.
2. Contractual and Handbook cites:
  - A. National Agreement, Article 12, Section 6.
  - B. Memorandum of Understanding RE: Transfers, July 21, 1987. (JCAM 12-38 thni 12-43)
3. Documents which the parties may jointly develop and review to establish all relevant facts:
  - A. Copy of written, dated request for transfer by the carrier.
  - B. Letter denying the transfer which includes the specific reasons for the denial.
  - C. Postal Service personnel records showing the ratio of hiring in the subject time frame.
  - D. Performance evaluations of the carrier done by his immediate supervisor.
  - E. Form 50 (Notification of Personnel Action).
  - F. Form 3972 (Absence Analysis).
  - G. Safety record of the carrier
  - H. Copies of commendations or quality step increases received by the carrier.
  - I. Copies of prior discipline and adjudicated results.
  - J. Workload and anticipated work hours for employee at new office.
4. Factors which must be considered when evaluating the case:
  - A. Did the denial letter lack specifics as to why the request for transfer was denied?
  - B. Was the request for transfer unreasonably denied?
  - C. Was the evaluation done by the carrier's immediate supervisor fair and accurate?
  - D. Was the evaluation done by the gaining installation head fair and accurate?
  - E. Was the denial based on disparity or discrimination, as determined by comparing with the records of other transferees to new hires met?
  - F. Was the required ratio of transferees to new hires met?
  - G. Were the attendance and safety records of the carrier satisfactory?
5. Possible Remedies/Citations:
  - A. M-01223, USPS Letter, August 27, 1993: From time to time, we receive letters from employees (primarily craft) stating that their requests to transfer from one facility to another have been turned down for what they believe are inappropriate reasons. Specifically, many assert that because of a low sick leave balance and for no other reason that their request for transfer was denied.

While we understand that attendance is extremely important to all of our operations, the use of sick leave balance per se as a sole determining factor is inappropriate. This is especially true in those situations where sick leave was used for a one time serious illness and other than that attendance was more than satisfactory. Where an employee requests a transfer, the responsible official at the gaining installation needs to look at the qualifications of the whole individual. By this we mean that we need to determine whether the individual possesses the necessary job experiences and other qualifications to fill the needs of the vacancy.

We would also strongly suggest that where there are one of two questions with regard to the viability of the employee for the position, i.e. such as a low sick leave balance, that it is incumbent upon responsible management to obtain additional information into that situation. For example, if a low sick leave balance is indeed a concern then inquiry should be made as to the pattern of use and determine at that point whether there is a possible attendance problem. (MRS pg. 329)

It is also important to determine whether any of the employee's absences were protected by FMLA. It would be a violation of the contract as well as federal law to use such absences against the employee in the transfer process.

- B. C- 10614, Regional Arbitrator Martin, June 29, 1990: Where management improperly denied grievant's request to transfer to the Virgin Islands, management is ordered to pay grievant's moving expenses. (MRS pg. 329)
- C. C-10123, Regional Arbitrator Barker, July 3, 1990: Management's evaluation of grievant's attendance record was unfair; grievant should have been granted the transfer. (MRS p. 329)
- D. Grant the employee the transfer, with their seniority established retroactive to the date they would have been transferred had management not acted improperly.

**ARTICLE 13**  
**ISSUE: Denial of Light Duty**

1. Definition: The National Agreement provides for the employee to voluntarily submit a written request to the installation head for temporary assignment to light duty or other assignments, when recuperating from a serious illness or injury and temporarily unable to perform their assigned duties.

Installation heads should show the greatest consideration for full-time regular or part-time flexible carriers requiring light duty or other assignments, giving each request careful attention, and reassign such carriers to the extent possible.

When a request is refused, the installation head must notify the concerned carrier in writing, stating the reasons for the inability to reassign the carrier.

Light duty is to be differentiated from limited duty in that light duty is for off-the-job illnesses or injuries, while limited duty relates solely to injuries incurred on the job.

A request for light duty must be accompanied with a medical statement from a licensed physician or chiropractor stating the anticipated duration of the convalescence period and the physical limitation, if possible.

An ill or injured full-time regular or part-time flexible who has a minimum of five years of Postal service, may submit a voluntary request for permanent reassignment to light duty or other assignment to the installation head if the carrier is permanently unable to perform all or part of the assigned duties. The request shall be accompanied by a medical certificate from a physician designated by the installation head giving full evidence of the physical condition of the employee, the need for reassignment and the ability of the employee to perform other duties. Unlike the case in requests for temporary reassignment, a statement from the employee's own physician is not acceptable.

2. Contractual and Handbook cites:
  - A. National Agreement, Article 13.
  - B. National Agreement, Article 30 provisions which deal with local agreements concerning light duty. (30.B.15, 16 & 17. / JCAM pg. 30-3)
  - C. JCAM pgs. 13-1 thru 13-12.
3. Documents which the parties may jointly develop and review to establish all relevant facts:
  - A. Carrier's written request for light duty.
  - B. Medical documentation of physician which accompanied the written request.
  - C. Provisions agreed to locally, which negotiated the number of light duty assignments, as well as the method to be used in reserving those light duty assignments. Additionally, the local provisions which identify which assignments are to be considered light duty within the office.
  - D. The letter from the installation head required by Article 13, Section 2.C. stating the reasons for the denial. (JCAM pg. 13-4)
  - F. Supervisor statement explaining the denial of light duty work in each specific circumstance.
  - F. Documentation showing availability of work within the doctor's restriction(s).
  - G. Form 3997 (Unit Daily Summary) showing carrier work schedule for days light duty work was available.

- H. Form 1571 (Report of Undelivered Mail) for days light duty work was available.
- I. Any photographs of available work within medical restrictions.
- J. Statements from other carriers who could testify to available work.
- K. Statements showing that carriers with similar restrictions had been allowed or denied light duty/limited duty in prior circumstances.
- L. TACS/Carrier Activity Report for the time-frames light duty work was available.
- M. Proof of management's efforts to identify/assign work within the carrier's work limitation

3. Factors which must be considered when evaluating the case:

- A. Did the carrier properly request light duty in writing?
- B. Was the light duty work within the medical restrictions available in the carrier's craft (or another craft)?
- C. Would the light duty work adversely impact any full-time regular carrier?
- D. Does the denial of light duty have an adverse impact on the carrier?
- E. Was the written request for light duty accompanied by required medical documentation?
- F. Did the installation head respond in writing to the request for light duty, stating specific reasons for the denial?
- G. Does the Local Memorandum contain specific provisions concerning possible light duty work?
- H. Did management curtail mail or other work which could have been done by the carrier who had requested light duty within their restrictions?
- I. Did management allow other carriers in the past, with similar restrictions, to work light duty while denying the instant request?
- J. Did management advise the carrier of the need to submit a written request?

4. Possible Remedies/Citations:

- A. M-00146, Step 4, March 28, 1977: The fact that no specific types of assignments, number of assignments or hours of duty have been negotiated locally within different crafts does not negate this responsibility of management. It is our position that the posture in question in this case, that "temporary light duty assignment between crafts may not be made absent any provision to that effect in the local memorandum of understanding," is inconsistent with the terms and conditions of Article XIII of the National Agreement and is not enforceable as Postal Service policy. (MRS pg. 184)
- B. C- 10215, Regional Arbitrator Snow, August 3, 1990: Management violated Article 2 and 13 when it did not "reasonably accommodate" or provide light duty to a carrier with four years of service and a non-job related disability. (MRS pg. 185)

**ARTICLE 19**  
**ISSUE: Limited Duty**

1. Definition: An employee injured on the job may be required to work limited duty within their medical restrictions and within contractual obligations.

Management's obligations to carriers who have partially overcome their injury or disability include making every effort to assign the carrier to limited duty which is consistent with the carrier's medically defined work limitation tolerance.

In assigning such limited duty, the Postal Service must minimize any adverse or disruptive impact on the carrier within the following guidelines:

- A. To the extent there is adequate work available within the carrier's work limitations, management must first attempt to work the employee within the carrier craft; in the work facility to which the carrier is regularly assigned; and during the hours when the carrier regularly works.
- B. If adequate duties are not available as stated above within the carrier craft, then the carrier may be worked in another craft within the carrier's work facility and regular hours of duty.
- C. If adequate work is not available at the facility within the carrier's regular hours of duty, the carrier may be scheduled for work outside their regular schedule. All reasonable efforts shall be made to assign the carrier to limited duty within the carrier craft and to keep the hours of limited duty as close as possible to the carrier's regular schedule.
- D. A carrier may be assigned duty outside their normal work facility only if there is not adequate work within the carrier's facility within the work restrictions. In such instances, every effort will be made to assign the carrier to work within the carrier craft, within the carrier's regular schedule, and as near as possible to the regular work facility to which the carrier is normally assigned.

It is noted that limited duty differs from light duty in that limited duty involves on-the-job injuries or illnesses, while light duty deals with off-the-job illnesses or injuries.

2. Contractual and Handbook cites:

- A. National Agreement, Article 19.
- B. National Agreement, Article 21.
- C. ELM, Section 540.
- D. ELM, Section 546.141.
- E. JCAMpg.13-IO.

3. Documents which the parties may jointly develop and review to establish all relevant facts:

- A. Documentation showing the regular schedule and assignment of the injured carrier.
- B. Proof of available work within the carrier's work limitations which they were not allowed to perform.
- C. Forms 3996 (Carrier Auxiliary Control) during the time-frame that work was allegedly unavailable.
- D. Forms 1571 (Record of Curtailed Mail) during the time-frame that work was allegedly unavailable.
- E. Pictures of available work.
- F. Copy of medical documentation, indicating work limitations.
- G. Forms 3997 (Unit Daily Summary) for the days the Union alleges limited duty work was available.
- H. Statement from the supervisor who denied available work.
- I. Statements from carriers who can testify regarding available work.
- J. Proof of management's efforts to identify/assign work within the carrier's work limitations at each step of the pecking order. (ELM, Section 546.14)

4. Factors which must be considered when evaluating the case:

- A. Was the limited duty carrier worked within their regular craft?
- B. Was the limited duty carrier worked within their regular tour of duty?
- C. Was the limited duty carrier worked within their facility?
- D. If work was unavailable within the carrier craft, was the carrier worked within their schedule and facility?
- E. If work was unavailable within the carrier craft or facility, was the limited duty work provided as close as possible to their normal tour of duty?
- F. If work was unavailable within the carrier craft, schedule or facility, was the disruptive impact on the carrier minimized to the greatest extent possible?
- G. Was the work provided within the medical work limitation tolerances?

5. Possible Remedies/Citations:

- A. M-00583, Step 4, February 7, 1983: While the Postal Service strives to accommodate all injured employees, its responsibilities toward employees injured on duty differ from its responsibilities toward employees whose injuries or illness are not job related. As outlined in Part 546, Employees and Labor Relations Manual, the Postal Service has certain legal obligations to employees with job related disabilities pursuant to 5 U.S.C. Section 1851 and Office of Personnel Management regulations. Article 21, Section 4, of the National Agreement acknowledges these legal obligations toward employees injured on the job and Article 13 recognizes the importance of attempting to accommodate employees whose injuries or illness are not job related. However, the statutory and regulatory responsibilities toward on-the-job injuries are obligatory in nature and given priority consideration when assigning ill or injured employees.

The provisions promulgated in Part 546 of the Employee and Labor Relations Manual for re-employing employees partially recovered from a compensable injury on duty were not intended to disadvantage employees who occupy assignments properly secured under the terms and conditions of the collective bargaining agreement. This includes employees occupying permanent or temporary light-duty assignments acquired under the provisions set forth in Article 13 of the National Agreement.

- B. C-20901, Arbitrator Snow, August 4, 2000: "Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer violated the parties' collective bargaining agreement when management assigned the grievant to limited duty at Bayside station instead of her home station of Robertsville. Should the grievant return to the work force, the Employer is required carefully to follow the ELM 'pecking order' and to exercise good faith in an effort to place the grievant at the Robertsville Station or a station closer to her home."
- C. C-22205, Arbitrator Suardi, June 22, 2001: "The grievance is sustained. The Postal Service is ordered to reinstate the Grievant to his former position and to compensate him for all lost wages, level increases and benefits to which he would have otherwise been entitled as a letter carrier, plus out-of-schedule premium pay for all hours worked in the modified clerk craft position to which he was assigned."

**ARTICLE 19**  
**ISSUE: National Reassessment Process**

1. Definition: The Postal Service is contractually and legally obligated to make every effort to assign limited duty work to employees who have not fully recovered from an on-the-job injury. With the development of a new program called National Reassessment Process (NRP), the Postal Service is ignoring that obligation.

Through NRP, management is taking work away from injured workers whom they had previously provided with reasonable accommodation and designated these employees as “sent home, no work available.” Many times, the Service has removed carriers from their bid assignments solely because they have physical restrictions.

The NALC has created the Guide to NRP to help stewards file grievances when this happens. The following information is the core for every grievance and can be found in the Guide to NRP.

2. Legal Obligations:

- A. U.S. Code Title 5 8151 - This section of the law grants authority to the Office of Personnel Management (OPM) to issue the specific regulations for restoration to duty following an on-the-job injury.

- B. 5 CFR Part 353 - The OPM took the authority granted to it by 5 USC 8151 and issued regulations regarding restoration to duty in the Code of Federal Regulations. The regulations are found in 5 CFR Part 353 “Restoration to Duty from Uniformed Service or Compensable Injury.”

- C. Title 29 “Rehabilitation Act of 1973” - 5 CFR Part 353 holds the Postal Service to at least the standards of the Rehabilitation Act and requires the Postal Service to be a model employer in giving full consideration to the placement of injured workers.

3. Contractual Obligations:

- A. Article 2 - Non-Discrimination and Civil Rights
- B. Article 3 - Management must abide by applicable laws and regulations
- C. Article 5 - Prohibition Against Unilateral Action
- D. Article 14.3 - OWCP Compliance
- E. Article 15 - Grievance-Arbitration Process
- F. Article 19 - Handbooks and Manuals
- G. ELM Section 540 - Limited duty
- H. EL-SOS Sections 7 & 11 - OWCP, FECA, DOL and Rehabilitation Program obligations.

4. Other Citations:

- A. M-OI 550 - National correspondence in which the Postal Service agreed that it must make every effort to provide limited duty even if an individual cannot perform all of the duties of a letter carrier, even if the available work is less than 8 hours per day or 40 hours per week, and even if the work restrictions are permanent.

- B. USPS NIRP Handout - This is reprinted in the NALC Guide to NRP. The Postal Service verified that it provided all types of work, including what it refers to as “make work.”

- C. USPS National Arbitration Brief- This is also in the NALC Guide to NRP. The Postal Service argued in writing that its “make every effort” obligation required it to offer work for which there was no operational necessity.

5. Documentation Needed:

- A. Letter from OWCP accepting the injured worker's claim.
- B. Written Limited Duty Job Offer (LDJO) that is being withdrawn.
- C. All prior LDJOs to show history.
- D. Current CA-17 to show the injured worker's physical restrictions
- E. Prior CA-17s to show history.
- F. All correspondence or other written documents concerning the LDJO
- G. Written notice from management that the LDJO is withdrawn
- H. Current and recent Form SOs.
- I. Carrier schedules showing letter carrier duties performed by the injured worker for period of LDJO.
- J. TACS records showing hours spend doing actual duties for the entire period of the LDJO.
- K. Copy of the ICCO (Injury Compensation Control Office) file on the injured worker's claim. This is a Postal Service file and must not be confused with OWCP's files.
- L. All documents in which management has stated that the Service "is able to accommodate all restrictions, short of complete bed rest."
- M. Signed statements by the injured worker detailing the actual work they have been doing.
- N. Signed statements by the injured worker's co-workers who have observed this work being performed.
- O. Signed statements from the workers who are now performing the work that the injured worker used to do.
- P. Evidence to show who is performing the work that was taken away from the injured worker.
- Q. Evidence to counter any reason management gives for having taken away the limited duty.
- R. The injured worker's "NRP Activity file."
- S. The injured worker's "Current Modified Assignment/Position Worksheet."

6. Remedy:

- A. Immediately restore the employee to limited duty.
- B. Make the grievant whole for all lost wages and benefits, including but not limited to, lost wages, annual leave, sick leave, benefits, and overtime pay.

**ARTICLE 19**  
**ISSUE: Denial of Special Route Inspection**

1. Definition: Section 271(g) of the M-39 Handbook allows carriers to make requests for special route inspections. Carriers qualify for such six-day counts and inspections by using more than 30 minutes of overtime or auxiliary assistance three times a week for any consecutive six-week period. Management is required to complete these special route inspections within 4 weeks of the request if the carrier has properly qualified.

The six-day count and inspection must be performed in the same manner as a regular six-day count per Section 272 of the M-39. Management may not deny the special route inspection on the basis of unsatisfactory performance during the qualification period unless the deficiency occurred during the qualification period and discussions had been held with the carrier concerning the alleged unsatisfactory performance prior to the request for special inspection.

Arbitrators have allowed remedies for the Postal Service failing to complete the special route inspection within the 4 week time frame.

One day count/street inspections do not satisfy the requirement of 271(g) of the M-39 unless they are the result of a settlement reached between management and the Union.

In accordance with 271 (h), mail shall not be curtailed for the sole purpose of avoiding the need for a special route inspection.

2. Contractual and Handbook cites:

- A. National Agreement, Article 19.
- B. M-39, Section 271(g) & 271 (h).
- C. M-39, Section 272.
- D. MRS pgs. 303 & 304.
- E. National Pre-Arb (H7N-3A-C 39011, June 23, 1992. (M-01072) (MRS pgs. 299-300)
- F. M-000872 (MRS pg. 305)
- G. Memorandum of Understanding, July 21, 1987. (JCAM pg. 41-21)
- H. JCAM pg.19-1.

3. Documents which the parties may jointly develop and review to establish all relevant facts:

- A. Form 3996 (Carrier Auxiliary Control) of days used by the carrier to qualify for a special route inspection
- B. Proof that the carrier has requested a special route inspection.
- C. TACS/Carrier Activity Reports for the period of qualification.
- D. Workhour/Workload Report for the route during the time-frame in question.
- E. Form 1621 (Carrier Route Report).
- F. Supervisor/carrier notes of any discussions held during the six-week qualification period concerning performance.
- G. Form 1571 (Curtailed Mail Report), if applicable.

3. Factors which must be considered when evaluating the case:
  - A. Did the carrier qualify per the provisions of M-39, Section 27 1(g) andlor 271(h)?
  - B. Did management discuss with the carrier any alleged performance problems during the qualification period?
  - C. Did management complete the six-thy special route inspection within 4 weeks of the request?
  - D. If the regular carrier was not on their assignment during the whole six-week qualification period, did the replacement carrier meet the criteria of 271(g) of the M-39?
  - E. Was there an exception granted in accordance with the National prearb, regarding the implementation of the adjustments within 52 days?
  
4. Possible Remedies/Citations:
  - A. C- 10474, Regional Arbitrator Johnston, October 17, 1990: Where management wrongfully refused to give special route examination, remedy is to pay aggrieved carrier at the overtime rate for all hours of auxiliary assistance. (MRS pg. 305)
  - B. C-09970, Regional Arbitrator Lange, April 4, 1990: Management wrongly denied grievant's request for a special examination on the grounds that he had not sewed the route long enough to become proficient; monetary remedy ordered. (MRS pg. 305)
  - C. Cease and desist from improperly denying special inspection requests, perform the special inspection without delay and pay the affected carrier \$10 per day from the time the inspection should have been conducted until such time as it is completed.
  - D. Pay the grievant an additional 50% for all the overtime hours they worked from the time the inspection should have been conducted until such time as the required adjustments are implemented.

## **ARTICLE 29**

### **ISSUE: Suspension/Revocation of On-Duty Driving Privileges**

1. Definition: The National Agreement allows for suspension or revocation of On-Duty Driving Privileges when the on-duty driving record shows the employee is an unsafe driver.

If a carrier requests that a revoked or suspended driving privileges be reinstated, management will review the request and make a decision as soon as possible, but not later than 45 days from the date of the carrier's request. If the decision is to deny the request, the carrier will be provided with a written decision stating the reasons for the decision.

2. Contractual and Handbook cites:

- A. National Agreement, Article 29.
- B. Driver Training Program: Development Series TD-087, Section 1 (VI).
- C. Memorandum of Understanding RE: Reinstatement of Driving Privileges. (JCAM pgs. 29-1 & 29-2)

3. Documents which the parties may jointly develop and review to establish all relevant facts:

- A. Form 2480 (On-Duty Driving Record).
- B. Copy of the carrier's state drivers license.
- C. Forms 4584 (Street Observations).
- D. Letter of Revocation or Suspension.
- E. Forms 4582 (Operator's Record) and 4582-A (Summary of Driving Record) of the carrier.
- F. Carrier's training records.
- G. Form 1769 (Accident Report of all prior accidents.)
- H. Form 1700 (Vehicle Accident Investigation Worksheet) of all prior accidents.
- I. All relevant prior discipline of the carrier.
- J. Form 91 (Operator's Report of Motor Vehicle Accident) of all prior accidents.
- K. Copies of prior Safe Driving Awards.
- L. Form 1768 (Safe Driver Award Committee Decision).
- M. Relevant police reports
- N. Form 94 (Statement of Witnesses).
- O. Relevant civil vehicle codes.
- P. Relevant photographs of accidents.

4. Factors which must be considered when evaluating the case:

- A. Did management consider the whole safety record of the carrier?
- B. Did management consider any of the carrier's off-duty driving record?
- C. Was the criteria to consider revocation in the TD-087 met?
- D. Is the carrier a safe driver?
- E. Was the carrier at-fault in any of the accidents on which the suspension or revocation is based?
- F. Is there any documentation in the 4584s of unsafe practices?
- G. Was the carrier treated disparately?
- H. Was the carrier provided improvement (remedial) training to address any safety concerns involving an accident, etc?
- I. Has the carrier been provided non-driving duties during the period of suspension or revocation of driving privileges?

5. Possible Remedies/Citations:

A. MRS pgs. 80 thru 83.

B. C- 18159, National Arbitrator Snow, I94N-41-D 960276608, April 9, 1998:  
Arbitrator Snow held that Article 29 of the 1994 National Agreement with the NALC “required the Postal Service to make temporary cross-craft assignments in order to provide work for letter carriers whose driver’s licenses have been [temporarily] suspended or revoked.: He rejected the Postal Service’s argument that the APWU/NALC split. However, he also agreed with the APWU that Article 29 of the NALC Agreement could not be applied in a manner inconsistent with the APWU Agreement. Arbitrator Snow’s decision did not address cases where driving privileges are permanently revoked.

He held that if it is not possible to accommodate temporary cross-craft assignments in a way that does not violate the APWU Agreement, a letter carrier who is deprived of the right to temporarily cross craft assignment of a position in the APWTJ represented crafts must be placed on leave with pay until such time as he may return to work without violating either unions’ Agreement.

Accordingly, in cases where letter carriers temporarily lose driving privileges, the following applies:

Management should first attempt to provide non-driving letter carrier craft duties within the installation on the carrier’s regularly scheduled days and hours of work. If sufficient carrier craft work is unavailable on those days and hours, an attempt should be made to place the employee in carrier craft duties on other hours and days, anywhere within the installation.

If sufficient work is still unavailable, a further attempt should be made to identify work assignments in other crafts, as long as placement of carriers in that work would not be to the detriment of those other craft employees.

If there is such available work in another craft, but the carrier may not perform that work in light of the Snow award, the carrier must be paid for the time that the carrier otherwise would have performed that work.

Finally, if there is insufficient carrier craft work and also insufficient work in other crafts to which the carrier could be assigned but for the Snow award, and it is expected to continue that way for an extended period of time, the employee has the option of not working and not being paid or being permanently reassigned to another craft if a vacancy exists.

In summary, this award does not establish an automatic carrier entitlement to leave with pay. Rather, each case must be handled individually based upon making “every reasonable effort” to seek work. (MRS pg. 83)

C. M-00672, Step 4, June 19, 1972: The grievant was due those hours of work per day which did not necessitate utilization of a motor vehicle. Therefore, the grievant shall be paid the number of scheduled hours per day which normally would have been devoted to casing and non-motorized activities. (MRS pg. 83)

**ARTICLE 41**  
**ISSUE: Denial of Opt/Hold-Down Assignment**

1. Definition: A full-time reserve, unassigned full-time regular, or a part-time flexible letter carrier may exercise their preference for available full-time craft duty assignments of anticipated duration of five days or more within their assigned units. The process for notifying management of an employee's desire to opt is decided locally, but once the employee has made management aware, seniority shall be the determining factor.
2. Contractual and Handbook cites:
  - A. National Agreement, Article 41, Section 2.B. 3., 4 & 5.
  - B. JCAM pgs. 41-9 thru 41-15).
3. Documents which the parties should jointly develop and review to establish all relevant facts:
  - A. Posting of available hold-down assignments (if there are no provisions for posting hold-down assignments, carriers must learn of available assignments by word of mouth or by reviewing scheduling documents, and must then make their supervisors aware of their desire to opt for the vacant assignment(s)).
  - B. Relevant portions of the Local Memorandum of Understanding.
  - C. Past practice regarding the procedures for announcing vacancies and/or for opting on hold-down assignments
  - D. Annual leave sign-up chart.
  - E. Copy of notification requesting opt by carrier.
  - F. Weekly schedule showing the anticipated opting period of 5 days or more.
  - G. Statement from carrier substantiating their request for the opt.
  - H. Seniority list of the affected unit.
  - I. 3971 of the carrier whose assignment is available for 5 days or more.
4. Factors which must be considered when evaluating the case:
  - A. Did a vacancy of 5 days or more exist?
  - B. Did management fail to make the vacancy available for opt?
  - C. Did a junior carrier receive the opt instead of the senior carrier who had requested it?
  - D. Did the denial of the opt cause a carrier to receive fewer hours of pay than they would have otherwise received had the opt been granted?
  - E. As a result of the improperly denied opt, did a regular carrier work a schedule other than that of the opt?
5. Possible Remedies/Citations:
  - A. C-05287, Regional Arbitrator Rotenberg, November 1, 1985: Where management improperly refused to honor opting requests of two PTF carriers, management is ordered to make the carriers whole for any losses suffered as a result. (MRS pg. 223)
  - B. M-00237, Pre-arb, July 1, 1982: A temporary vacancy of five (5) days or more that includes a holiday may be opted for, per Article 41, Section 2.B. (MRS pg. 220)
  - C. C-06461, National Arbitrator Bernstein, September 12, 1986, Sections 3 and 4 of Article 41.2B: allow reserve and part-time flexible letter carriers to use their seniority to obtain five day assignments. There are no exceptions or qualifications in the language that would indicate that the sections apply only to potential bidders who can work the assignments without departing from straight time pay status. (MRS pg. 219)
  - D. Cease and desist, and pay an additional 50% for all hours worked off the opted-for assignment.

# DISCIPLINARY DISPUTES

## ARTICLE 16

### ISSUE: Discipline - Off-Duty Misconduct

1. Definition: It is well established that Postal Service employees have a higher degree of responsibility for off-duty conduct than employees in the private sector. Where it can be shown that a nexus or connection exists between off-duty misconduct and the interests of the Service, an employee may be disciplined, up to and including removal. It must be emphasized, however, that the nexus must be proven and may not be presumed. The actions of the carrier must result in actual prejudice to the Employer.
2. Contractual and Handbook cites:
  - A. National Agreement, Article 16.
  - B. National Agreement, Article 19.
  - C. ELM, Section 661.53.
  - D. ELM, Section 666.2.
  - E. JCAM pgs. 16-1 thru 16-3.
3. Documents which the parties may jointly develop and review to establish all relevant facts:
  - A. Letter of Proposed Removal of Removal.
  - B. Letter of Decision (if eligible for veteran's preference).
  - C. Copy of police reports (if applicable).
  - D. Postal Inspector's Memorandum (if applicable).
  - E. Public notices (i.e., newspaper articles, TV coverage, etc.).
  - F. Court records (if applicable).
  - G. Relevant medical and other evidentiary documentation (of applicable).
4. Factors which must be considered when evaluating the case:
  - A. Were the grievant's actions in self-defense?
  - B. Is there any proof that a nexus exists between the off-duty misconduct of the carrier and the efficiency of the Service?
  - C. Is the carrier guilty of the alleged misconduct?
  - D. Was a proper investigation completed prior to the imposition of discipline?
5. Remedies:
  - A. If no "just cause" for issuance exists, then a remedy with "rescind (the notice of formal discipline); purge it from all relevant files; and make grievant whole for all lost wages and benefits" would be appropriate.
  - B. If, "just cause" undeniably exists, and we are reduced to no more than mitigation of the severity, then a remedy that reflects the parties have agreed to a lesser level of discipline, would be appropriate.

## **ARTICLE 16**

### **ISSUE: Discipline - Expansion of Street Time**

1. Definition: Street times for evaluation and adjustment purposes may be established only by using the criteria of M-39, Section 242.321. Before discipline may be issued to employees, arbitrators have ruled that specific time-wasting practices must be noted with an employee continuing them after having been counseled to stop. Additionally, a consideration of mail volume on the days of the alleged expansion must occur. Remedial training must also be given prior to any disciplinary action. If these steps are followed and the employee has expanded their street time due to time wasting practices, discipline may follow.
2. Contractual and Handbook cites:
  - A. National Agreement, Article 16.
  - B. National Agreement, Article 19.
  - C. M-39, Section 242.321.
  - D. M-39, Section 270.
  - E. JCAM pg. 16-1 thru 16-12.
3. Documents which the parties may jointly develop and review to establish all relevant facts:
  - A. Form 25 (Accountable Sign-out).
  - B. Prior 1838c(s) (Carriers Count of Mail-Letter Carriers Route Worksheet), 183 8s, 1840 and 3999 (Street Inspection of Letter Carrier Route).
  - C. Form 1621 (Carrier Route Report) identifying new deliveries.
  - D. Form 4565 (Vehicle Repair Tags).
  - E. Form 1571 (Report of Undelivered Mail).
  - F. Witness statements as to weather/construction conditions
  - G. Statement of grievant explaining use of additional time.
  - H. Written request for special inspection (if applicable).
  - I. Form 3996 (Carrier Auxiliary Control).
4. Factors which must be considered when evaluating the case:
  - A. Has the carrier had additional stops added to the route since the last 3999?
  - B. Did the carrier fail to correct specific time-wasting practices even after a discussion?
  - C. Was the delay due to explainable reasons related to the carrier's duties?
  - D. Was the carrier refused a special route inspection even though requested and qualified?
  - E. Did management ever tell the carrier at any time that performance was unsatisfactory prior to discipline?
  - F. Is there any probative evidence that the carrier was doing anything wrong?
  - G. Did the volumes and/or percentage of coverage on the day of the alleged expansion differ from that of the last 1838 or 3999 done during a six day count and inspection?
  - H. Is the route out of adjustment?
5. Remedies:
  - A. If "no just cause" for issuance exists, offer a remedy with the substantive sense of putting the grievant back to work would include: "rescind (the notice of formal discipline); purge it from all relevant files; and make the grievant whole for all lost wages and benefits".
  - B. If, alas, "just cause" undeniably exists - and we are reduced to no more than mitigation of the severity of the penalty - a remedy that reflects that the parties have agreed to a lesser level of discipline, would be appropriate.
  - C. M-00304, Pre-arb Oct. 22, 1985, H1N-1N-D 31781. There is no set pace at which a carrier must walk and no street standard for walking. (MRS pg. 301)

**ARTICLE 16**  
**ISSUE: Discipline - Insubordination**

1. Definition: Insubordination cases commonly appear in one of two forms. One type is the willful refusal or failure to carry out a direct order, instruction or company rule. The other is a personal altercation between employee and supervisor, often involving shouting matches, profane or abusive words, and actual or threatened violence.
2. Contractual and Handbook cites:
  - A. National Agreement, Article 3.
  - B. National Agreement, Article 16.
  - C. ELM, Section 666.5.
  - D. JCAM pgs. 16-1 thru 16-12.
  - E. Joint Statement on Violence. (MRS pg. 347)
3. Elements of Insubordination:
  - A. Was the carrier given a direct order as opposed to instructions, advice or a suggestion?
  - B. Was the carrier aware that it was a direct order?
  - C. Was the order clear and understandable?
  - D. Was the carrier's alleged failure to comply intentional?
  - E. Was the carrier given forewarning of the consequences of the failure to follow the direct order?
  - F. Was the order reasonable and necessary to the safe, orderly and efficient operation of the organization?
  - G. Was the carrier's safety and health actually compromised by the order?
4. Documents which the parties may jointly develop and review to establish all relevant facts:
  - A. Request for disciplinary action (where relevant).
  - B. Copy of the disciplinary action.
  - C. Witness statements as to what occurred.
  - D. Statement of the manager as to what occurred.
  - E. Statement of the carrier as to exactly what was said by the manager when the instruction was given.
  - F. Steward/manager's personal notes of interviews.
  - G. EEO records (if any).
  - H. Prior disciplinary records of the carrier.
  - I. Copy of relevant rule or regulation upon which the order was based.
5. Factors which must be considered when evaluating the case:
  - A. Has the carrier been treated disparately?
  - B. Did the order put the carrier in an immediate danger to health and safety?
  - C. Did the carrier understand the order?
  - D. Did management provide clear and concise instructions or did they give conflicting instructions to the carrier?
  - E. Was the order reasonably related to the carrier's job?

- F. Did the carrier obey the order to the best of their ability?
- G. What is the history between the carrier and the supervisor?
- H. Was the carrier put on notice of the consequences of the refusal to obey the direct order?
- I. Were there any specific incidents which contributed to or provoked the alleged insubordination?

6. Remedies/Citations:

- A. If “no just cause” for issuance exists, then a remedy with the substantive sense of putting grievant back to work and rescind (the notice of formal discipline); purge it from all relevant files; and make grievant whole for all lost wages and benefits,” would be appropriate.
- B. If, alas, “just cause” undeniably exists - and we are reduced to no more than mitigation of the severity - a remedy that reflects that the parties have agreed to a lesser level of discipline, would be appropriate.
- C. MRS Citations pgs. 348 & 349.
- D. Send the grievant to EM to address any underlying issues and as a further means of mitigating any disciplinary corrective action.

**ARTICLE 16**  
**ISSUE: Discipline - AWOL/Attendance**

1. Definition: It is well settled in arbitration that employees have a responsibility to be regular in attendance. What is usually in dispute in disciplinary cases concerning AWOL/attendance is the level of attendance which is satisfactory. It is at the point of discipline that the just cause principles would be applied based on specific fact circumstances.

It should be stressed that LWOP (leave without pay) is an authorized absence from duty, while AWOL (absent without leave) is a non-pay status due to a determination that no kind of leave can be granted either because (1) the employee did not obtain advance authorization or (2) the carrier's request for leave was denied.

2. Contractual and Handbook cites:

- A. National agreement, Article 10.
- B. National Agreement, Article 16.
- C. National Agreement, Article 19.
- D. National Agreement, Article 35.
- E. ELM Section 513.39.
- F. ELM, Section 514.
- G. ELM, Section 666.8.
- H. ELM, Section 870.
- I. JCAM pgs. 16-1 thru 16-13.

3. Documents which the parties may jointly develop and review to establish all relevant facts:

- A. Form 3997 (Unit Daily Summary) for thy(s) in question.
- B. Relevant local memorandum provisions.
- C. Supervisor's notes concerning specific incidents on which the discipline is based.
- D. Form 3971 (Request for Leave) for thy(s) in question.
- E.. Form 3972 (Absence Analysis).
- F. Medical certificates covering the absences in question.
- G. Relevant medical documentation substantiating and explaining the carrier's absences.
- H. Limited duty and light duty restrictions, and the amount of work (number of hours) provided by management on the days in question.
- I. Carrier statement explaining absences.
- J. Statement from the carrier's physician (if applicable).
- K. Supervisor's statement explaining denial of requested leave.
- L. FMLA certification(s).

4. Factors which must be considered when evaluating the case:
  - A. Did the carrier have any knowledge as to the required reporting time?
  - B. Did an Act of God or an emergency prohibit attendance or cause tardiness?
  - C. Was the carrier held to a different standard relative to attendance than other carriers within the unit?
  - D. Was the 3971 requesting leave approved by the carrier's supervisor?
  - E. Would an EAP referral satisfactorily deal with the attendance problem?
  - F. Was favorable consideration given due to the carrier's entrance into a self-help program for substance abuse? (Article 35)
  - G. Was the carrier given a discussion prior to the issuance of discipline and told that their attendance record was unsatisfactory?
  - H. Was the carrier ever put on notice that the next problem with attendance could result in discipline?
  - I. Would FMLA or SLDC be applicable?
  
5. Remedies:
  - A. Rescind and purge the discipline, make whole for any lost time plus benefits, with interest at the Federal judgment rate.
  - B. Make whole for any time grievant could have worked on limited or light duty. (This would probably involve a separate contractual grievance)

**ARTICLE 16**  
**ISSUE: Discipline - Vehicle Accident**

1. Definition: A vehicle accident is an unforeseen occurrence in the operation of a motor vehicle which results in injury to person or property damage.
2. Contractual and Handbook cites:
  - A. National Agreement, Article 16
  - B. National Agreement, Article 19.
  - C. National Agreement, Article 29.
  - D. TD-087, Section 1 (VI).
  - E. P0-701, Section 261.
  - F. EL-801 Section 3-5.
  - G. Memorandum of Understanding RE: Reinstatement of Driving Privileges. (JCAM 29-1 & 29-2)
  - H. JCAM pgs. 16-1 thru 16-13.
3. Documents which the parties may jointly develop and review to establish all relevant facts:
  - A. Form 91 (Carrier Statement of Accident).
  - B. Form 1769 (Accident Report) including an explanation of codes used on the form.
  - C. Form 1768 (Report of the Safe Driver Award Committee).
  - D. Form 1700 (Vehicle Accident Investigation Worksheet).
  - E. Form 4582A (Street Observation Master Form).
  - F. Form 4584 (Street Observation).
  - G. Statement of Grievant concerning the accident.
  - H. Vehicle repair history (4565, repair invoices, etc.).
  - I. Prior job related accident record of the grievant.
  - J. Accident and disciplinary records of other carriers having similar accidents.
  - K. Statement of mechanic (if accident is allegedly caused by mechanical failure).
  - L. Police report (if applicable).
  - M. Investigator or witness notes taken at the scene of the accident.
4. Factors which must be considered when evaluating the case:
  - A. Was the discipline issued simply because an accident occurred? There should be no automatic application of discipline.
  - B. Were any specific safety rules or civil laws violated?
  - C. Was the carrier aware of the rule allegedly violated?
  - D. Was the carrier treated disparately?
  - E. Was the discipline progressive?
  - F. Were there any deliberate or willful acts committed by the carrier which caused the accident?
  - G. Was discipline the last resort to correct the safety concern?
  - H. Was a thorough investigation performed prior to the imposition of discipline?
  - I. Has the carrier had prior safety violations reasonably related to the accident?
  - J. Was the carrier required to use unsafe equipment?

5. Remedies:

- A. Rescind/purge the disciplinary notice.
- B. Purge the record of the grievant of any mention of the accident.
- C. Make employee whole for all lost wages and benefits.
- D. M-00486, Letter, May 15, 1981: Accidents or compensation claims are not in themselves an appropriate basis for discipline. (MRS pg. 74)
- E. M-01254, October 30, 1996: The parties are of the mutual understanding that local accident policies, guidelines, or procedures may not be inconsistent or in conflict with the National Agreement; hence, discipline taken for such accidents must meet the “just cause” provisions of Article 16. (MRS pg. 345)

## **ARTICLE 16**

### **ISSUE: Discipline - Assault on a Supervisor or Employee**

1. Definition: It is a well-settled principle in the grievance arbitration process, that an employee who physically assaults another, subjects themselves to discipline up to and including removal. Verbal assaults may also lead to discipline if the person receiving the verbal assault believes that they are put in a position of possible physical harm.
2. Contractual and Handbook cites:
  - A. National Agreement, Article 16.
  - B. National Agreement, Article 19.
  - C. ELM, Section 666.
  - D. Joint Statement on Violence and Behavior in the Workplace. (MRS pg. 347)
  - E. JCAM pgs. 16-1 thru 16-13.
3. Documents which the parties may jointly develop and review to establish all relevant facts:
  - A. TACS/Employee Activity Report of affected employees.
  - B. Signed witness statements of individuals who saw or heard the events leading up to the alleged assault.
  - C. Police records of affected persons (if applicable).
  - D. Prior disciplinary record of affected employees.
  - E. Postal Inspector's Investigative Memorandum.
  - F. Supervisor's notes concerning alleged assault.
  - G. Statements from individuals concerning the history between the affected persons.
  - H. Statements of involved persons.
4. Factors which must be considered when evaluating the case:
  - A. Does the history of either employee indicate a tendency toward violence?
  - B. Was either person provoked in their actions?
  - C. Did either party act in self-defense?
  - D. Was the assault verbal or physical?
  - E. If verbal, was the threat real and did the parties react in a way that indicated such was the case?
  - F. Are the actions of either party the result of a chemical dependency or emotional problem?
  - G. What was the past relationship between the affected persons?
  - H. Was the conflict caused by management ignoring a growing problem?
  - I. Did the assault occur on or off the clock?
  - J. Has management allowed other employees to act in the same or similar manner with no discipline being issued?
  - K. Were employees put on notice as to management's expectations concerning physical and verbal assault?
5. Remedies/Citations
  - A. If no 'just cause' for issuance exists, then a remedy with the substantive sense of putting grievant back to work and "rescind (the notice of formal discipline); purge it from all relevant files; and make grievant whole for all lost wages and benefits" still serves, would be appropriate
  - B. If, alas, "just cause" undeniably exists, and we are reduced to no more than mitigation of the severity, IBM a remedy that reflects that the parties have agreed to a lesser level of discipline, would be appropriate.
  - C. MRS pgs. 348, 349 & 350.

**ARTICLE 16**  
**ISSUE: Performance Related Discipline**

1. Definition: “Unacceptable Performance” is a vague charge; but, increasingly, management is issuing discipline to letter carriers based upon that charge. Sometimes, management may issue the discipline as “Failure to Perform” or, even, “Failure to Follow Instructions”, but the underlying issue and rationale are the same. They are using this disciplinary tool in an attempt to increase productivity, certainly beyond what is reasonable and generally beyond what is even humanly possible. This is yet another of management’s short-term solutions to the long-term problem of our structural financial issues. “Pay for Performance” bonuses are a component as well. Reliance on workload estimates and DOIS projections are usually at the core of management’s basis for proceeding with discipline although they generally try to support the charge with specific (albeit contrived) instances of unacceptable behavior. Their ultimate goal is to intimidate carriers, by means of the threat of progressive discipline up to and including removal, to force them to speed up.

Arbitration results are mixed. When management’s case is based on preconceived expectations or an arbitrary standard without any solid foundation, most arbitrators are reluctant to uphold an adverse action. However, a few arbitrators feel that once management makes a prima-facie case of some variance in performance, the burden shifts to the union to prove the carrier’s innocence. In other words, you cannot take anything for granted; you must be prepared to present an aggressive and effective defense to counter this charge.

The information contained in this packet provides you with the knowledge and resources needed to defend carriers who are facing such a vague charge as failing to perform up to some type of desired expectation. While the information contained herein covers many of the contractual cites and outlines many useful arguments, it should not be considered exhaustive. Each case is based on particular fact circumstances, and we do live in an increasingly changing work environment. As always, the NBA’s office is available to answer questions and provide assistance as needed.

1. Case Elements:

- A. An employee is facing discipline for an “Unacceptable Performance” charge.
- B. The grievant receives a notice of discipline (LOW, 7 Day Suspension, etc.) for:
  - 1. Unacceptable performance.
  - 2. Expansion of street time.
  - 3. Failure to meet demonstrated performance. (Management’s benchmark)
  - 4. Unauthorized overtime.
  - 5. Failure to perform duties conscientiously and efficiently.
  - 6. Failure to accurately estimate auxiliary assistance.
  - 7. Unsatisfactory effort.
  - 8. Failure to meet office standards.
- C. Management imposes an arbitrary performance standard or expectation on a carrier based upon demonstrated performance (how the carrier has worked an assignment on previous occasions) and/or workload estimates & DOIS projections regarding the time needed to complete an assignment on a daily basis.

- D. Management accuses a carrier of engaging in time-wasting practices and/or deliberately working at a slower pace.
- E. Management cites alleged time discrepancies in MSP scans.
- F. Management denies a request for a special inspection (271 .G), stating that the carrier's performance was not acceptable during the 6 week qualifying time frame. (The denial would actually trigger a contractual grievance; however, management may add insult to injury by trying to impose discipline for the cited performance issues as well.)
- G. Management imposes discipline for unauthorized overtime. (There are several possible components to this issue, including the carrier being required to carry a pivot off another route for alleged undertime.)

2. Definition of Issues:

- A. Has the regular carrier had sufficient time to become familiar with the route or carrier technician string?
- B. Are the route times (office and street) based on a week of count and inspection, with no substantial changes to the route or mail volume? Is the same carrier from the previous count and inspection still serving the route in question?
- C. Is DOIS (Delivery Operations Information System) the deciding factor as to the carrier's workload and the time-frame for the completion of his/her duties?
- D. Was the carrier placed on notice that their work performance was unacceptable? When and how?
- E. Were specific time-wasting practices cited, and was the carrier given the training and a reasonable amount of time to correct the practices in question? Were clear expectations conveyed to the carrier as to the level of improvement required?
- F. Has management objectively proven (met their burden of proof) that the carrier has, in fact, performed unsatisfactorily?
- G. Were variable factors (weather, volume, vehicles, etc.) taken into consideration?
- H. Has the grievant or the union previously challenged the length of the assignment? (Special inspection requests, 3996s, 1571s, minor adjustment discussions, etc.)
- I. Does the grievant's prior work record demonstrate there has been a change in his/her performance? Is there an underlying issue which may be driving the grievant's behavior?
- J. Is management citing other employees, by comparison, who perform the grievant's assignment at an "acceptable" level?
- K. Is management citing paces per minute as a demonstrated performance factor?

3. Contractual and Handbook cites:

- A. National Agreement, Article 3: Management's rights are subject to the provisions of the National Agreement and must be consistent with applicable laws and regulations. (JCAM pg. 3-1)
- B. National Agreement, Article 15: Look for possible technical defenses and procedural issues associated with this Article and Article 16. These could include:
  - 1. Discipline was not timely issued
  - 2. Discipline was ordered by a higher authority
  - 3. Management's representative lacked the authority to settle the grievance.

4. Higher management failed to review and concur.
5. Insufficient charge or defective charge.
6. Management failed to properly investigate.
7. Improper citation of “past elements”.
8. Management refused to provide information or investigation time to Union.
9. Discipline imposed is too harsh, or no discipline is warranted, due to mitigating circumstances, such as:
  - a. Insufficient training or re-training.
  - b. Long prior service and/or good prior record.
  - c. Grievant was emotionally impaired, or impaired by drugs or alcohol.
  - d. Grievant was disparately treated.
  - e. Discipline was not progressive.
- C. National Agreement, Article 16: In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. Apply the six questions of just cause. (JCAM pgs. 16-1 thru 16-3)
- D. National Agreement, Article 19: There are numerous sections of the handbooks and manuals which management and/or the union may cite in developing a grievance regarding performance related discipline. These could include:
  1. ELM, Sections 661.21.3, 661.3.c, 666.2 and 666.51.
  2. M-41, Sections 112.1, 112.21, 112.24, 112.28, 112.29, 121.11, 121.12, 122.11, 123.2, 131.3, 131.4, 280 and 442.
  3. M-39, Sections 111.2(a), 115, 122.3, 134.21, 134.22, 141, Chapter 2, 242.12, 242.2, 242.311, 242.321, 242.34, 271 and 272.
- E. National Agreement, Article 34: The establishment of work and/or time standards must be in accordance with the provisions of this article. In particular, DOIS is not a part of the National Agreement, it cannot be used to establish new standards in violation of the existing procedures in the contract for doing so; and, even if it were used in that fashion, the resulting standards would not be fair, reasonable or equitable.
- F. National Agreement, Article 35: Play the EAP card, if it is applicable.
- G. National Agreement, Article 41: In particular, Section 3.A, 3.F, 3.O, 3.1, 3.K and 3.N.

4. The documentation/evidence that should be jointly developed/reviewed may include:

- A. Previous six day count and inspection data utilized to adjust route to its current status, including 1838Cs, 1838s, 1840 (front and reverse), 1840B, time calculations used to establish representative times, 3999s and examiner’s notes as well as any carrier comments.
- B. Results of any one day counts and 3999s completed since the last inspection. Was mail curtailed and was any auxiliary assistance included in the route’s evaluation for those days?
- C. Factors involved in changes to base data in DOIS, including office and street times, percent to standard, fixed office time, etc.
- D. Work-hour/Workload Report for the carrier and route in question.

- E. 3996s and 1571s for the carrier's assignment.
- F. 3997s for the dates or time-frame in question.
- O. Statements from other employees who carry the grievant's assignment, noting the size of the route and all possible difficulties and variables they have encountered while delivering it.
- H. Statements from carriers and clerks as to the amount of mail received during the time-frame in question as well as the inaccuracy of the linear volume count. Grievant's own notes or count of the mail as compared to management's numbers.
- I. Weather reports and/or carrier statements regarding weather factors such as snow, heat, rain, etc.
- J. The number of accountables and parcels being handled by the grievant on the days being cited by management. Did the carrier have any full coverages? How many trays of DPS were involved? Determine if time was used to deviate to maintain Express Mail standards or to back-track to deliver mis-sequenced DPS mail.
- K. Documentation regarding a health condition or disability which may be affecting the grievant's performance. FMLA conditions, OWCP claims and light duty, reasonable accommodations may be particularly relevant.
- L. Statements from customers on his/her route as to the grievant's professionalism, diligence and good work ethic.
- M. Review the grievant's OPF and in-station personnel file for any Achievement Awards and/or Letters of Commendation for his/her service.
- N. Review comparison data from other carriers, regarding the normal variance which occurs, on a daily basis, in performance, MSP scans, etc.
- O. Any changes in case configuration due to AMSOP, etc.

5. Other factors, arguments and citations to consider:

- A. DOIS is not part of the National Agreement. It is simply another program, in a long line of programs, which management uses as a guideline to manage the workload. It cannot be used as the sole basis for imposing performance-related discipline. This is consistent with previous systems such as reference volume, DUVRS and POST and is codified in the Step 4 decision (M-01444), dated 7/30/2001. This settlement also reaffirmed previous agreements regarding office and street standards (or the lack thereof).
- B. Language from the above-referenced settlement was cited in the grievance which was filed at the national level (QO IN-4Q-C 05022610) regarding the use of DOIS to determine evaluated office and/or street time based upon data from a one day inspection or inspections. This is, of course, an obvious violation of the route evaluation and adjustment process as outlined in Section 141 and Chapter 2 of the M-39 Handbook. Additionally, this information, in conjunction with the Piece Count Recording System (PCRS), is being used to harass carriers regarding their alleged workload and performance, on a daily basis. DOIS projections are inaccurate and unreliable for a number of reasons:

1. Inaccurate volume entries.
2. Inaccurate work-hour transfers.
3. Inaccurate fixed office times.
4. Misuse of percent to standard.
5. Inaccurate route base data involving office times, street times, volumes, etc.
6. Inability to compute daily route workload beyond base times.
7. Failure to give the carrier credit for other aspects of his/her daily workload.
8. Automatic deductions of certain office functions, i.e., service talks.
9. Using a weekly average to establish a daily standard.

C. C-03213, National Arbitrator Howard Gamser, 12/14/73:

*It must be observed that, the nature of the work performed by the carrier involves so many variables which enter into the day-to-day performance of the job, it is impossible to measure with great accuracy a perfect 8-hour route. At best, a route which under prevailing circumstances should require that particular carrier to spend close to 8 productive hours on the job is constructed... Each carrier, due to his physical condition and experience, performs at a pace which must be taken into consideration in determining his time requirements. These are not routine and repetitive jobs that can be paced by a machine or a belt. Nor has the Service indicated a desire to force each and every carrier to perform in accordance with unilaterally determined so-called normal time requirements.*

- D. M-00039: No requirement to carry flats on the arm while delivering mail.
- E. M-00326: Overtime authorization scenario.
- F. M-00360: No set pace and no street standard for walking.
- G. M-00398: Evaluation of a route based on the performance of another carrier.
- H. M-00464: Workload estimation.
- I. M-00504: Fingering flat mail between delivery stops.
- J. M-00600: Reference volume and expansion of street time.
- K. M-00813: Development of office time and daily volume estimations.
- L. M-00829: One day counts and inspections, and the establishment of performance standards.
- M. M-01259: Posting of office productivity information.
- N. M-01444: DOIS, POST and PCRS settlement.
- O. M-01448: Using a three (3) day count and inspection to make route adjustments.

P. C# 5952, Regional Arbitrator Thomas Levak, 12/19/1985:

*An overall reading of M-39, Chapter 2, leads the Arbitrator to the inescapable conclusion that route street standards can only be developed with reference to a specific individual carrier. That is, an evaluation must be based upon the performance of an individual carrier while giving a 'fair day's work.' That is, if a carrier is conscientiously working and is engaging in no deliberate or negligent improper practices, the assigned street time for the route must be adjusted and set according to this individual abilities. The fact that a previous carrier on the route may have possessed greater ability to carry the route in a lesser amount of time, or the fact that the*

*individual carrier himself as a younger or lighter person, may have carried the route faster, is irrelevant. .It should be noted that the reference in Section 271.G to otherwise satisfactory work performance necessarily relates to “improper practices” as that term is used in M-39, Chapter 2, and not to comparisons between the carrier and other carriers or between the carrier and himself at an earlier stage in his life.*

Q. C# 25795, Regional Arbitrator David Dilts, 2/25/05:

*Instructions must be clear, specific and unambiguous to be enforceable. Those instructions which are ambiguous are to be constructed against the claims of the author (in this case the Postal Service). Clearly the word “thinks” introduces a test of control. That word implies what the grievant believed at the drop-dead time of 3:00 p.m. is controlling, and no evidence was adduced concerning the grievant’s beliefs, thoughts or what she should have reasonably thought at that specific time she was to call into the Post Office. [DOIS] and the massive amounts of mail volume data adds absolutely nothing to our understanding what the grievant’s reasonable expectations should have been at 3:00 p.m. on those dates.. .To discharge someone for “Failure to Follow Instructions” at the bare minimum requires demonstrable unambiguous instructions. In this Arbitrator’s considered opinion, the proof here of such instructions does not exist.*

R. C# 10763, Regional Arbitrator Herbert L. Marx Jr., 4/11/91:

*“Extension of street time” may be the result of some deliberate action by a letter carrier, such as extended break time or failure to work at a normal pace. There is no showing that this is the case here. The Postal Service rests its judgment on the fact that the street time exceeded the standard of 5.80 hours, without more. This, in turn, means that the street time was “extended” by the carrier only ([it can be shown that the standard on which the letter carrier is measured has been properly formulated... it is simply not proven that the extra time taken and/or required on the spec (fled dates was in fact a ‘failure to properly perform... duties.’” The Postal Service ‘s responsibilities in such circumstances was fully reviewed in three awards by Arbitrator Bernard Cushman, cited by the Union. In Case No. RA-8147D-75 (Hamm, May 26, 1979), Arbitrator Cushman stated:*

*‘The efficiency of the Postal Service is, of course, a legitimate objective of the Postal Service. The Postal Service is not required to suffer incompetence on the part of the letter carriers. Nor is the Service required to permit “unsatisfactory effort” When, however, the Postal Service claims either incompetence or unsatisfactory effort, it must prove those claims. Unsatisfactory effort means that the carrier did not try or did not try hard enough. For the reasons set for the above, such proof does not lie solely in a comparison of posted route times and the actual time used by the carrier. Nor does such proof lie in a comparison with other routes manned by other carriers. In such limited comparisons, without more, it may fairly be said that the thinkers don’t count and the counters don’t think. Mere statistics so limited are not meaningful’.*

## 6. Remedies

- A. Rescind the disciplinary action and purge the notice of discipline from all files.
- B. If a removal is involved, include A. above as well as the immediate reinstatement of the grievant and that he/she be made whole for all lost wages and benefits, with interest at the Federal judgment rate.
- C. Cease and desist using DOIS workload estimates and projections to establish standards for a carrier’s performance.