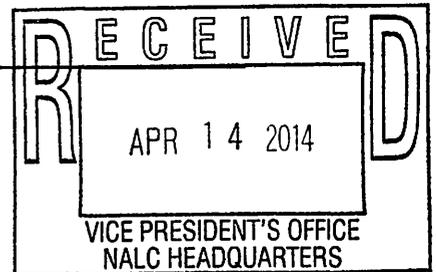


REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)	Grievant: Class Action
)	
between)	Post Office: Redondo Beach, CA
)	
United States Postal Service)	USPS Case No.:F06N-4F-C 12231043
)	RB-2199-12C
and)	
)	NALC DRT: 01-243687
National Association of Letter Carriers, AFL-CIO)	



BEFORE: Louise B. Wolitz, Arbitrator

APPEARANCES:

For the U.S. Postal Service:	John Cunningham
For the Union:	James D. Henry
Place of Hearing:	1201 N. Catalina Avenue, Redondo Beach, CA
Date of Hearing:	January 15, 2014
Briefs Postmarked:	February 18, 2014
Date of Award:	March 26, 2014

Award Summary:

We find that this grievance is arbitrable. The Postal Service has clearly violated the terms of the December 21, 2011 Step B decision, F06N-4F-C 1205327 when management failed to properly perform the sixty day reviews. We further find that this violation is egregious. The Postal Service in Redondo Beach shall cease and desist failing to abide by the terms of Step B decisions, the compliance with which is compulsory. In remedy for this particular violation, the Postal Service in Redondo Beach shall carry out the detailed remedy ordered at the conclusion of this award.

Louise B. Wolitz Arbitrator
 Louise B. Wolitz, Arbitrator 3/26/2014

RELEVANT PROVISIONS:

National Agreement between the National Association of Letter Carriers & the United States Postal Service, 2006 - 2011

....

ARTICLE 5

PROHIBITION OF UNILATERAL ACTION

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

....

ARTICLE 15

GRIEVANTCE-ARBITRATION PROCEDURE

....

Section 2. Grievance Procedure – Steps

Informal Step A

(a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. This constitutes the Informal Step A filing date. The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative. During the meeting the parties are encouraged to jointly review all relevant documents to facilitate resolution of the dispute. The Union also may initiate a grievance at Informal Step A within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. In such case the participation of an individual grievant is not required. An Informal Step A Union grievance may involve a complaint affecting more than one employee in the office.

....

Section 3 – Grievance Procedure – General

A. The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. At each step of

the process the parties are required to jointly review the Joint Contract Administration Manual (JCAM).

...

ARTICLE 17

REPRESENTATION

....

Section 3. Rights of Stewards

When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and such request shall not be unreasonably denied. In the event the duties require the steward leave the work area and enter another area within the installation or post office, the steward must also receive permission from the supervisor from the other area he/she wishes to enter and such request shall not be unreasonably denied. The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied....

....

ARTICLE 19

HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable and equitable. This includes, but is not limited to the Postal Service Manual and the F-21, Timekeeper's Instructions. Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. At the request of the Union, the parties shall meet concerning such changes. If the Union, after the meeting, believes the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed changes. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working

conditions, as they apply to employees covered by this Agreement, shall be furnished the Union upon issuance....

....

ARTICLE 31

UNION-MANAGEMENT COOPERATION

...

Section 3. Information

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information. Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or designee. All other requests for information shall be directed by the National President of the Union to the Vice President, Labor Relations. Nothing herein shall waive any rights the Union may have to obtain information under the National Labor Relations Act, as amended.

THE HEARING:

The hearing on this matter was held at the Redondo Beach Post Office on January 15, 2014. Each party had a full opportunity to present its evidence, witnesses and arguments and to cross examine opposing witnesses. All witnesses were sworn. The Union called witness Barbara Stickler, President, NALC Branch 1100, shop steward, and DPS coordinator. The Postal Service did not call any witnesses. The parties entered Jt. X 1, National Agreement and JCAM; Jt. X 2, Moving Documents; and Jt. X 3, FSS Memo M-1643. The parties mutually agreed to postmark briefs by February 14, 2014, later extended to February 18, 2014 by mutual agreement. The briefs were received timely by the arbitrator. The arbitrator has carefully studied the evidence in the Moving Documents, her notes on the witness testimony, and the briefs and arbitration citations offered by the parties.

THE ISSUE:

The issue in this case is: *Did Management violate the M-39 Handbook via Article 19, or compliance with prior Redondo Beach Step B Decision F06N-4F-C 12035327 via Article 15, or Article 17, or Article 31, of the National Agreement when Management*

failed to did not properly perform (sic) the sixty (60) day reviews? If so, what is the appropriate remedy?

BACKGROUND:

In Step B Decision F06N-4F-0C 12035327, the DRT made the following decision:

The Dispute Resolution Team has RESOLVED this grievance. A violation has been shown. The following remedy will be applied:

- * Upon receipt of this decision, Management's Formal Step A Representative will contact the Union's Formal Step A Representative to make arrangements to conduct a joint review of the FSS adjustments in Redondo Beach.*
- * Prior to the joint review, Management will give the Union the workhour/workload data for the 60 day period following the implementation of the FSS adjustments.*
- * In accord with the MOU Re: FSS Implementation (M-01643), if either party determines the routes in Redondo Beach were not properly adjusted, then the routes will be adjusted in accordance with the provisions of the Handbook M-39, or if applicable, a locally agreed upon adjustment formula.*

The decision notes that the Incident Date giving rise to this grievance is November 7, 2011 and the Informal A meeting on this grievance took place on November 16, 2011. There was no Formal Step A meeting. The Step B Decision is dated December 21, 2011.

The Explanation for the decision says: According to the file, FSS route adjustments were implemented in Redondo Beach on September 18, 2011. The subsequent 60 day review period ended on November 16, 2011. At that time, the Union contacted Management to initiate the 60 day review specified in the National FSS MOU. Management did not respond to the request. The Union also submitted a request for the workhour/workload data for the 60 day period following the implementation of the FSS adjustments. Management did not provide the information.

The Union contends that Management has failed to abide by Step B Decision F06N-4F-C 12035327, failed to conduct a joint review of FSS adjustments with the Union, failed to provide the Union with information prior to that joint review, and then failed to provide information and steward time for this instant grievance.

The grievance before us here shows an Incident Date of June 15, 2012. The Informal Step A was initiated on June 15, 2012. The Formal Step A Meeting was held on June 27, 2012. It was received at Step B originally on July 2, 2012 and sent to an Assisting Team on August 2, 2012. It was decided by the Louisiana/Albuquerque Dispute Resolution Team and sent to the Sana Ana Dispute Resolution Team for distribution to the respective parties and closing out in GATS. It was received by the deciding DRT on August 6, 2012. The Step B decision is dated August 14, 2012.

ARBITRABILITY

Position of the Postal Service:

Management argues in its Opening Statement that this grievance is not arbitrable because it is not timely filed. Management argues that the Postal Service responded to the December 21, 2011 Step B decision on March 30, 2012. Postmaster Tracy A. Jones sent a communication to the Union headed: *Redondo Beach 60 day FSS Adjustment Review*. The communication (Jt. X 2, p. 36) says:

Management Consideration after 60 days:

- 1) *Review 30 days data between October – November skipping December and reviewing 30 day data between January – February Walking all routes to evaluate street time, time wasting practices and performance issues.*

The secondary 60 day review and follow up of data for the month of February was done and the following was determined:

- 2) *Routes current routes for immediate review are: 77009, 77010, 77025, 77029, 77038, 78013, 78029, 78033 and 78034. These routes met the qualifying criteria under M39 Handbook, Section 271g and will be considered for residential or other delivery relief.*
- 3) *Management will continue conducting 3999's to evaluate street times. The pecking order of these routes will be jointly agreed to.*
- 4) *The employees reserve the right to invoke their 271 rights under the National contract provision.*

The Postal Service argues that this is the notification to the Union of management's response to the December 21, 2011 Step B settlement agreement. The Union could have filed a grievance within 14 days of receiving this notification. The Union did not file a grievance within 14 days. The Union waited ten weeks. The Union filed the instant grievance on June 15, 2012. Therefore, this grievance is not timely.

The Postal Service responded to the Union's Opening Statement by arguing that any argument by the Union that it did not receive the management communication on or about March 30th is new argument that should not be considered because the Union has never disputed its receipt of this communication in the file. The Postal Service also points out a letter in the file dated June 27, 2012 from management's Formal Step A representative which stated that the grievance is untimely in its denial of the grievance at Formal Step A. Management says:

1. *The grievance is Untimely. The actual adjustments were conducted on or about September 29, 2011 and the review meeting was conducted at the end of February of 2011. The union had 14 days from that meeting to file a grievance but failed to do so.*
2. *Mgmt contends a 60 day review did occur and on March 30, 2012 a letter was sent to the union identifying management considerations moving forward from the adjustment. (See attachment pages 2 – 6). In that letter management identifies a process that includes evaluating street times and time wasting practices. In addition routes are identified to have special route counts to further review and evaluate route times. Management contends there is a road map to review routes as a result of the 60 day review as outlined in attachment page #2.*

Union has not provided management with any documents, or information they appealed grievance to Formal A nor any facts that substantiate the Union's position.

In its brief, the Postal Service argues that management has pointed out correctly at all previous stages of this grievance that it was not initiated within the time limits imposed by Article 15.2 (Informal Step A). Management cites Elkouri & Elkouri, *How Arbitration Works*, (5th Edition, 1997) pp. 276 – 277, which says: *If the agreement does contain clear time limits for filing and prosecuting grievances, failure to observe them generally will result in dismissal of the grievance if the failure is protested. Thus, the practical effect of late filing in many instances is that the merits of the dispute are never decided.* Management argues that it has contended without rebuttal that the Union was informed of the results of Management's 60-day review in the letter dated March 30, 2012 (see above) which was delivered to the Union on or around that date. The Union has not disputed this at any point in the processing of this grievance. Rather than review management's results and offer its own determination or any challenge to Management's determination, the Union instead chose to wait approximately ten weeks and then to initiate a grievance claiming non-compliance with the Step B decision dated December 21, 2011.

The testimony of union witness Barbara Stickler that the March 30, 2012 letter caused the Union to contend that management had not complied with the Step B settlement dated December 21, 2011 proves that on or around March 30, 2012, the Union was aware or should have been aware of the alleged violation. This triggered the 14-day time period within which the Union must file a grievance on the matter or consider their right to do so waived. The Union did not contact Management to dispute its determination of the review. It should be inferred from this that the Union already considered Management to have failed to comply with the prior Step B settlement. The Union would have been within its rights to contend this within 14 days, but it did not. The Union's argument of a continuing violation in this case is meritless. As the Union has admitted to being aware of the alleged violation on or around March 30, 2012 with the Postmaster's notification to the Union of

Management's actions, to suggest that a continuing violation occurred after that would make as much sense as a grievance being filed more than 14 days after an employee had been issued a removal notice and the Union arguing that the employee continued to remain in a removed status, so the grievance is timely.

The Union has also contended that it requested information to file the instant grievance and that Management failed to provide it. The Postal Service contends, based on the information request included in the case file, that the Union did not request information for this grievance until June 25, 2012. The Union requested "*any other relevant information not specifically requested but relied upon by the employer to support its position, copy of proof of compliance or a detailed statement of reasons for failure to comply.*" The Postal Service contends, based on an email included in the file between NALC representative Barbara Stickler and Operation Manager Angelia Volz, documentation was provided to the Union. Ms. Volz stated in the email that although the documentation was provided to the Union earlier, Management had gathered the documentation. Management informed the Union that providing the information again may incur a cost based on Chapter 4 – 6.1 of the ASM 353. The Union did not address this email in its contentions.

Position of the Union:

The Union argues in its Opening Statement that the December 21, 2011 Step B decision required the Postal Service to provide information to the Union prior to any review being conducted and required that a joint review be done. The Postal Service did not conduct a joint review. The Postal Service did a unilateral review, and not of the entire City. Until a joint review is conducted, and every route in the city reviewed, the Postal Service is in ongoing violation of the December 21, 2011 Step B decision. The December 21, 2011 Step B decision does not say anything about routes being required to meet any Section 271g criteria. It says the Postal Service shall conduct adjustments. The Postal Service still has not met the terms of the December 21, 2011 Step B decision. The Postal Service is in continuing violation of the December 21, 2011 Step B decision because they have not completed the joint reviews for all postal routes. The Postal Service is in continuing violation until that is done. They did not review all the routes and the reviews that they did were not joint reviews.

Furthermore, the Union argues that the Union did not get Management's communication, dated March 30, 2012 (Jt. X 2, p. 36) until the Formal A on this grievance, which took place on June 27, 2012. The communication was included in the Postal Service's Formal A arguments and in management's contentions at Formal A. Management has provided no proof that this communication was mailed or received on or around March 30th. Moreover, on the Form 8190, signed by both parties on June 27, 2012, under Undisputed Facts, it clearly states: *This grievance is timely.* (Jt. X 2, p. 12). Management did not strike it out as an Undisputed Fact at the Formal Step A meeting, which took place on June 27, 2012. If management disputed

the timeliness, they would have struck it out at the Formal A. At the Formal A, both parties reviewed the 8190 and signed it.

Union witness Barbara Stickler testified that both parties signed the 8190 (Jt. X 2, p. 12) saying they agree with what is written on the form. Line 16 on the form says under Undisputed Facts: *This grievance is timely*. It means that the parties jointly agreed the grievance was timely. It is not crossed off. This is a continuing violation, day after day. Since it occurs every day, it can be addressed by a grievance at any point. There was no secondary 60 day review. The FSS Memo does not require that routes meet the 271 criteria to be adjusted. Any route is out of adjustment if it is not between 7 hours and 50 minutes and 8 hours and 10 minutes. The Postal Service had to try to adjust routes to be within this time frame. The Postal Service's letter of March 30 does not indicate that anything was done jointly. It says they will review 9 routes. There are 75 to 80 routes in Redondo Beach. Even if they reviewed some routes, it was not a joint review. If there was not a joint review, they have to do a 6 day count. The 3999 is essential in determining adjustments. They have to adjust the route to the carrier. The March 30th letter indicated the adjustments weren't done yet. The December 2011 Step B decision is binding on the City. It is what gave rise to this instant grievance. It required management to contact the Union. That did not happen. Ms. Stickler contacted management in mid-March. She reached out. This is a repeat violation. She did not receive a 60 day review. She did not receive the work hour/workload report. The March 30th letter said management looked at October and November and January and February. This was not 60 days following the adjustment. It was not joint. It did not look at all the routes. The March 30th letter made it clear that management did not comply with the Step B decision. They had not done the 3999's yet. The Union could not look at the data because it was not done yet. The 60 day work hour/work load report starts the process. They then have to talk to the carrier to see if the carrier agrees or disagrees. The Union did not receive the requested information, RB2199-12C. From December 21, 2011 through June 18, 2012, the Service did not provide the information. Ms. Stickler said that she has been emailing and talking to them repeatedly requesting the information. The 1840 and 1840 R's have not been provided, showing what adjustments have been made, block by block. No joint review was ever done. A handful of routes had been counted, but not the entire installation. Until the information is provided and a joint review occurs and all the routes are counted, the Service is not in compliance with the Step B decision. This is an ongoing violation. Routes are still out of adjustment and the Union has been provided no information, no count and no adjustment.

In its brief, the Union maintains that the grievance is timely for numerous reasons. The Postal Service provided no confirmation as to when or if the unsigned letter from Tracy Jones, which they claim started the 14 day time frame, was received by the Union or when and if they mailed it. The file does not contain any documents to support a start date for filing a grievance. The Formal A parties acted in accordance with Article 15 and completed the Joint Step A Grievance Form 8190. The process calls for the parties to jointly complete the 8190 and to affix their signatures upon review and completion to signify agreement of the content and

finalization of processing. The parties have the option to mutually agree upon Undisputed Facts in Line 16 of the form. If either party does not mutually agree to an undisputed fact they either don't annotate any item as undisputed in Line 16 or cross out or delete any item not mutually agreed upon as undisputed. Neither of these occurred in this case. The Formal A parties in this case mutually agreed upon an Undisputed Fact in Line 16 that: *This Grievance is timely*. The union maintains that the form speaks for itself. The grievance therefore must be declared arbitrable regarding the timeliness.

The Union further maintains that the instant case is arbitrable based on a continuing violation. Even if the Service had provided a firm date of when the union was notified, it would only affect the begin date of the remedy sought, as the violation occurred every day and the start of the 14 day period to file was renewed every day until the failure to comply on all items and issues was satisfied completely. In this case, had the union waited more than 14 days after the Service had provided the information, conducted the requested 6 day route counts on all the assignments, conducted joint reviews and adjusted the routes to as close to 8 hours as possible, then perhaps the Service could make a *prima facie* case. However, in the instant case, the Service did nothing and made no genuine effort to comply with the Step B decision. Therefore, until compliance was completely effected, the violation was of a continuing nature. The union maintains that this grievance is arbitrable.

DECISION ON ARBITRABILITY:

We find that this grievance is arbitrable. We agree with the Union that the Postal Service clearly took no steps to comply with the December 21, 2011 Step B settlement agreement. It did not contact the Union to make arrangements to conduct a joint review of the FSS adjustments in Redondo Beach. It did not give the Union the workhour/workload data for the 60 day period following the implementation of the FSS adjustments. It did not determine if either party determined that the routes were not properly adjusted and it did not adjust the routes in accordance with the provisions of the Handbook M-39 or a locally agreed upon adjustment formula. That means that every day from the date of the Step B decision, December 21, 2011, the Postal Service was violating the settlement agreement. Therefore, a timely grievance could be brought on any day until the agreement was complied with. The March 30th letter did nothing to alter this state. It made no representation that the Union was contacted to make arrangements to conduct a joint review; it did not give the Union the workhour/workload date for the 60 day period following the implementation of the adjustments; it did not adjust the routes in accordance with the provisions of the Handbook M-39. It did not claim to be complying with the December 21, 2011 Step B settlement agreement, nor did it offer any evidence that it was complying. Therefore, it was continually in violation of that agreement. It was not in compliance with that agreement on the Incident Date indicated in this grievance, June 15, 2012. This grievance is timely filed. The parties also agreed that it was timely filed on the Form 8190 as an Undisputed Fact.

THE MERITS:**Position of the Union:**

Union Branch President Barbara Stickler testified that the implementation of FSS allows management to make first adjustments to the routes. Then it requires management to do a joint review after 60 days with the Union or to do a 6-day count under the M-39. Ms. Stickler testified that the parties attempted to do a joint review in November, which broke down. They tried again in March of 2012. They were unable to do it. The required 6-day count also did not occur.

We note that Jt. X 3, *Memorandum of Understanding, Re: FSS Implementation*, (M-01643)says:

The United States Postal Service and National Association of Letter Carriers, AFL-CIO mutually recognize that the delivery point sequencing of flat mail will change the delivery environment, ultimately producing better service for postal customers. The Postal Service experienced significant benefits in 1993 by automating the processing and sequencing of letter mail, as the parties worked together to implement that technology. In the interest of working jointly on this technology the parties agree to the following:

- 1. Once FSS is fully implemented in a delivery unit, management will determine the methods to estimate impact in a delivery unit and make route adjustments accordingly.*
- 2. Sixty days after implementing route adjustments for FSS, the local parties will review the adjustments to ensure that routes are as near 8 hours as possible. This sixty day period will not count toward the special route inspection process (Section 271, Handbook M-39; Section 918, Handbook M-41). If either party determines that the route(s) is not properly adjusted, then the route(s) will be adjusted in accordance with the provisions of Handbook M-39 or, if applicable, a locally agreed upon adjustment formula.*

The terms of this Memorandum are effective immediately and continue through all phases of Flats Sequencing System (FSS) Implementation.

Ms. Stickler also testified that the Union submitted requests for information on June 25, 2012 citing a failure to comply with RB-4211-11C and conduct a proper 60 day review/adjustment. The Union requested *any other relevant information not requested but relied upon by the employer to support its position and a copy of proof of compliance or detailed statement on reasons for failure to comply* (Jt. X 2, p. 27). The Union also faxed the request on June 25, 2012 (Jt. X 2, p. 28). The Union was notified by the Postal Service that the request was not received until July 2, 2012. The notification said that the envelope had a meter date of 6/25/12. The notice

further said that *the request will be processed today with a 48 hour turnaround*. Ms. Stickler said that she had been emailing and talking to the Postal Service from March through May requesting the information. The Union did not receive the requested information. Between December 21, 2011 and June 18, 2012, the Postal Service had not provided the information. It also did not provide the 1840 or 1840R. No joint review was ever done. A handful of routes had been counted, but not the entire installation. The unilateral adjustments weren't even for the immediate sixty (60) day period following the FSS implementation. She requested counts from the District Manager and from Angelia Volz. They were never done and they are not on the list for 2014. Until the information is provided and a joint review occurs and all the routes are counted, the Service is not in compliance with the December 21, 2011 Step B decision. The routes are still out of adjustment (see Jt. X 2, pp. 37 - 40). The forms on pages 37 -40 are not in the standard format for a DOIS report, were not provided prior to the Formal A meeting, and are not what the Union was requesting. There is no indication what time frame these numbers cover. The Union was looking for the 60 day work hour/workload DOIS report. The DOIS report estimates the carrier's day street time and actual time based on clock rings. However, even these forms, management's own document, shows that the routes are overwhelmingly out of adjustment. Employees have been working 10 hours a day. The process broke down because management did not want to make adjustments.

Ms. Stickler said that Redondo Beach routinely fails to comply with settlement agreements and denies information to the Union. Pages 54 -65 are all grievances on failure to comply with settlement agreements and failure to pay carriers as agreed. Pages 66-71 are Step B decisions on failure to comply, including payments to grievants. Pages 85 - 103 and 118 - 146 are cases on failure to provide requested information. Payments to carriers and the shop steward have been part of these decisions. Pages 104 - 117 and 148-168 are decisions on failure to provide union time, also providing cash payments to the shop steward and to grievants. These have been ongoing problems in Redondo Beach.

The failure to adjust routes properly has an adverse impact on the carriers. They have to work mandatory overtime. Management can make a carrier work overtime if the over time desired list employees will get into penalty overtime. Also, non-career carriers are based on the career complement. There is a domino effect of carriers being required to work overtime. It prevents the promotion of PTFs to career employees. PTFs do not get holiday pay, do not have a regularly scheduled day off and can be required to work seven days a week. Redondo Beach is one of the worst cities for requiring carriers to work overtime. Carriers here can be out until 10, 11, 12 PM. It has made the news. Management is aware of this.

In its brief, the Union goes over this testimony and reaffirms that grievance settlements must be complied with. The current Postmaster General, Patrick R. Donahoe, wrote the following Memo, dated May 31, 2002:

Headquarters is currently responding to union concerns that some field

offices are failing to comply with grievance settlements and arbitration awards. While all managers are aware that settlements reached in any stage of the grievance/arbitration procedures are final and binding, I want to reiterate our policy on this subject.

Compliance with arbitration awards and grievance settlements is not optional. No manager or supervisor has the authority to ignore or override an arbitrator's award or a signed grievance settlement. Steps to comply with arbitration awards and grievance settlements should be taken in a timely manner to avoid the perception of non-compliance, and those steps should be documented.

Please ensure that all managers and supervisors in your area are aware of this policy and their responsibility to implement arbitration awards and grievance settlements in a timely manner.

The Union contends that the employer has failed to live up to its most basic obligation to comply with this memo and installation precedent-setting Step B decisions. The Union presented a case with evidence that went completely un rebutted and unrefuted at the hearing and during the grievance arbitration procedure. Management did not offer any testimony in support of its position and/or any testimony or evidence contrary to the Union's position.

The Union maintains that the FSS Implementation Memo required management to conduct joint reviews within 60 days of implementation, adjust the affected routes to as close to 8 hours as possible, and perform route inspections in accordance with Handbook M-39 Section 271 if either party determine the routes were not properly adjusted. The Union further maintains that the Step B decision, F06N-4F-C 12035327 required the Service to comply with the FSS Memo, conduct joint reviews, contact the union Formal Step A representative, prior to the 60 day period following the implementation of FSS, provide the union the Workhour/Workload data and conduct the six day route inspections if either party determined the routes were out of adjustment. In the instant case, the Service failed to adhere to either the FSS Memo or the Step B decision.

The evidence (Joint X 2, pages 37 -40) presented at the hearing is clear and convincing that the routes in Redondo Beach are severely overburdened and out of adjustment, that no joint reviews were done, nor was any review, joint, unilateral or otherwise, conducted 60 days immediately following implementation of FSS, and despite the repeated request by Branch President Barbara Stickler. No route inspections were completed when it was determined the routes were not adjusted as close to 8 hours as possible.

The Redondo Beach Post Office has a long history of failing to comply with settlement decision. Joint Exhibit 2, pages 54 - 165 reflect the immense amount of prior violations of failing to comply and denial of information. The Service has, on numerous occasions, been ordered to cease and desist and pay compensatory remedies to no avail.

Remedy Requested by the Union:

The Union argues that management in Redondo Beach, after multiple violations and failures to comply with settlement agreements, has acted with indifference to their obligation pursuant to Articles 15, 17 and 31 of the National Agreement. The Service has yet, after two years, made any appearance of compliance with the December 21, 2011 Step B decision. They believed that by ignoring their obligations it would go away. Management has placed its short term benefits above that of the carrier's rights and placed them in unpleasant working conditions. The carriers have to work overtime even though they do not want to because the routes are improperly recorded as 8 -hour assignments. Part-time Flexible Carriers have been unreasonably denied/delayed promotion to Full-time Carriers and corresponding benefits of holiday pay and regularly scheduled days off. By not properly adjusting the routes to as close to 8 hours as possible the number of deliveries for the city remains, but the carriers are expected to do 10 hours of work within 8 hours. The Service refuses to put routes in and hire the appropriate amount of carriers.

The Union is asking the arbitrator to find that management's actions did violate Articles 15, 17 and 31 by not adhering to good faith bargaining and the mandates of the FSS Memo #1643. The Union asks the arbitrator to fashion a remedy that would reflect a no tolerance attitude for continual violations and unwillingness to adequately address repeated violations of Article 15 by failing to comply with all prior settlements. The Union asks for the following:

1. The USPS Redondo Beach, CA PO management cease and desist failing to comply with previous settlements, and immediately comply with the FSS Memo and Step B Decision F06N-4F-C 12035327.
2. The USPS conducts the requested Route Inspections and adjust the routes to as close to eight (8) hours as possible immediately upon receipt of the arbitration decision.
3. The USPS management pay an additional amount of \$25. per day, up to six days per week from the date the routes should have been inspected (28 days from the initial request by the union) until all the routes are inspected and adjustments are completed.
4. A reinforcement of all information is to be provided to the union within 48 hours, all prior settlements related to denial of information remain in effect, and a precedent setting lump sum of \$300 be paid to each affected carrier for the egregious, willful and deliberate failure to comply with all prior settlements and M#1643.
5. Any and all other remedies deemed appropriate by the arbitrator.

The Union cites the JCAM, page 41-15 in support of these remedies:

In circumstances where the violation is egregious or deliberate or after local management has received previous instructional resolutions on the same

issue and it appears that a "cease and desist" remedy is not sufficient to insure further contract compliance, the parties may wish to consider a further, appropriate compensatory remedy to the injured party to emphasize the commitment of the parties to contract compliance. In these circumstances, care should be exercised to insure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy.

Position of the Postal Service:

The Postal Service argued strenuously that this grievance is not arbitrable. The Postal Service called no witnesses to the arbitration hearing to testify on the merits of the case.

In its brief, the Postal Service again argued strenuously that this grievance is not arbitrable. Management again noted that it is contending that the Union was informed of the results of management's 60-day review in a letter dated March 30, 2012 which was delivered to the Union on or around this date. The Union did not contact management to dispute the determination of the review. The Postal Service also contends, based on the information request included in the case file, that the Union did not request information for this grievance until June 25, 2012. The Postal Service contends, based on an email in the file between NALC representative Barbara Stickler and Operation Manager Angelia Volz, documentation was provided to the Union. Ms. Volz stated in the email that although the documentation was provided to the Union earlier, Management had gathered the documentation, however management was informing the Union that providing the information again may incur a cost based on Chapter 4 - 6.1 of the ASM 353. The Union did not address this email in its contentions.

With respect to the remedy, the Postal Service contends that the monetary awards requested by the Union in this case are punitive, and unsupported by any agreement between the parties or demonstration of financial harm to the employees affected by the alleged violation. If the arbitrator were to find this grievance arbitrable, and find a violation, and order further adjustment to the routes in Redondo Beach, the Postal Service contends that the results of the arbitrator's award would be required to show some sort of specific harm to specific carriers, such as working out-of-schedule, before it would be appropriate for a monetary award to be ordered.

DECISION ON THE MERITS:

There is no question that Management violated compliance with the prior Redondo Beach Step B Decision F06N-4F-C 12035327 via Article 15 when management failed to properly perform the sixty day reviews. Management shows no steps taken in compliance with this decision in the case file. Management has provided no evidence or testimony at this hearing that it complied with the very clear instructions of the Step B decision. Management did not contact the Union's

Formal Step A Representative to make arrangements to conduct a *joint review of the FSS adjustments* in Redondo Beach. Management did not give the Union the workhour/workload data for the 60 day period following the implementation of the FSS adjustments prior to the joint review. Management did not seek a determination of whether either party determined the routes in Redondo Beach were not properly adjusted. Management did not adjust the routes in accordance with the provisions of Handbook M-39 or a locally agreed upon adjustment formula. In fact, in an email to Barbara Stickler, sent on Friday, June 15, 2012, Angelia D. Volz states, as she questions what adjustments and processes Ms. Stickler is requesting information about, that: *Based on my understanding of the FSS MOU it doesn't require a joint review. FSS MOU states in relevant part, "the local parties will review the adjustments."* She further states that: *It is my understanding the documentation was furnished to you. I will have the documentation gathered however, I must inform you there maybe a cost associated with furnishing the documents per chapter 4-6.1 of the ASM 353. (Jt. X 2,p.26)* The Step B decision clearly required arrangements to be made *to conduct a joint review of the FSS adjustments*. There is no ambiguity in this statement. Moreover, there is no evidence that management ever sent the documentation they said they had gathered to the Union. The Postal Service is trying to say that the actions detailed by the March 30th communication met its obligations, when it clearly did not. It says nothing about a joint review. It identifies only 9 routes that may be at issue according to its unilateral determination. It says nothing about the workhour/workload report for the 60 day period following the implementation of the adjustments. It says nothing about having made any adjustments, even on the identified routes. It clearly does not meet the terms of the Step B decision. Furthermore, even if the Union did not ask for any information for this specific grievance until June 25, 2012 in order to process this grievance, the Postal Service had been directed to provide the workhour/workload reports to the Union by the December 21, 2011 Step B decision and to work jointly with the Union to conduct a joint review. It never did either. The Postal Service elected to call no witnesses at the arbitration hearing. Therefore, the Union's allegations that the Postal Service failed to comply with the Step B Decision F0-6N-4F-C 12035327 stand un rebutted. We note that the decision was rendered on December 21, 2011. This arbitration hearing was held on January 15, 2014. No further action to comply with the Step B decision has been taken by the Postal Service in the interim period. There is no question that the Postal Service's failure to abide by the Step B decision is egregious and indicates a complete lack of respect for its collective bargaining obligations.

The Remedy:

In remedy, we direct the Postal Service in Redondo Beach:

- 1) To cease and desist its pattern and practice of failing to abide by Step B decisions. We order the Postal Service to pay the Union \$1,000 in partial payment for the cost of having to grieve and take to arbitration a matter which was already decided by a Step B decision and for the damage

done to the collective bargaining relationship and good faith.

- 2) To immediately abide by the terms of the December 21, 2011 Step B Decision and the FSS Memorandum.
- 3) To immediately contact the Union to make arrangements to conduct a joint review of the FSS adjustments in Redondo Beach.
- 4) To in fact conduct with the Union a joint review of all the routes in Redondo Beach, either by the process defined in the M-39 or by a modified process agreed to by the Union and management.
- 5) To adjust all routes in Redondo Beach to as close to eight (8) hours as possible within six months of the date of this award or sooner.
- 6) To identify those letter carriers who have been working on routes over 8 hours and ten minutes between June 27, 2012 and the date of this award, March 26, 2014 and pay those carriers \$25 a day for each day worked more than 8 hours and ten minutes on an overburdened route, and to continue the payment of \$25 a day until such time as the route is adjusted to as close to 8 hours as possible (ie. 8 hours and ten minutes). This is not unjust enrichment. These routes should have been properly adjusted to as close to 8 hours as possible shortly after the December 21, 2011 Step B decision. The filing of the grievance before us here still did not move the Postal Service to act to properly work with the union and to adjust the routes as required. Carriers are harmed by being forced to work unwanted overtime on a regular basis. The failure to abide by the Step B decision was egregious and caused harm to the affected carriers.
- 7) To share with the Union all necessary information to make this determination and to make this determination jointly with the Union. To share with the Union all workhour/workload reports for Redondo Beach from the time of the initial FSS adjustments through the completion of any necessary route adjustments to meet the terms of this award.
- 8) To complete all route adjustments and payments to carriers under the terms of this award no later than six months from the date of this award.