

# Recent settlements

A recent prearbitration settlement successfully resolved a long-standing dispute concerning route adjustments following DPS implementation. The September 17, 1992 Memorandum on DPS route adjustments provides that "within 60 days of implementing the planned adjustments for future automated events, the parties will revisit those adjustments to ensure that routes are as near to eight hours daily as possible." The dispute concerned whether any additional adjustments required to ensure compliance with the eight-hour standard had to be accomplished within the 60-day period. NALC's grievance concerned management's stated position that although routes had to be "revisited" within the 60-day time limit, no actual adjustments were required. The prearbitration settlement M-01268 resolved this issue as follows:

The issue in this case deals with the 60-day revisitation of previously implemented DPS planned route adjustments. Specifically, whether or not the review of planned DPS adjustments within "60 days" of their implementation also includes and imposes the same 60-day deadline for implementing any further adjustments (if any), as a result of this review.

The parties mutually agree that the September 17, 1992, Memorandum entitled, "Resolution of Issues Left Open by the Mittenthal Award of July 10, 1992" requires that planned adjustments be revisited within 60 days after such adjustments are implemented. The parties further agree that adjustments required pursuant to the 60-day review should be implemented within the 60-day review period. The parties recognize, however, that adjustments within the 60-day review period may not be possible where there are valid operational circumstances which warrant an exception.

When management asserts that valid operational circumstances warrant an exception to the 60-day period, it must submit a detailed written statement substantiating the asserted circumstances to the local union within seven days

following the expiration of the 60-day period. Disputes concerning the asserted operational circumstances will be resolved through the grievance/arbitration procedure.

Note that the failure of management to anticipate and plan for any adjustments that might be necessary does not constitute a "valid operational circumstance" that would warrant an exception.

Another recent prearbitration settlement concerned cases where the Postal Service had inappropriately classified newly hired letter carriers as part-time regulars rather than as part-time flexibles. The settlement acknowledges that part-time regulars should not be hired to perform part-time flexible duties. The settlement in M-01269 states:

This grievance concerns the utilization of employees who have been classified as part-time regulars. After reviewing this matter, it was mutually agreed to the following:

Part-time regulars are regular work-force employees who are assigned to work regular schedules of less than 40 hours in a service week.

Part-time regular schedules should not be altered on a day-to-day or week-to-week basis.

Part-time regulars are normally to be worked within the schedules for which they are hired. They can occasionally be required to work beyond their scheduled hours of duty. However, their work hours should not be extended on a regular or frequent basis.

It was also agreed that part-time employees who are expected to be available to work flexible hours as assigned during the course of a service week should be classified as part-time flexibles. It was further agreed to remand this case for further processing consistent with the above understanding, including a determination of what remedy, if any, is appropriate in the case of a violation.

Of course the Postal Service does have a right to hire part-time flexibles in appropriate circumstances. Whether or not it has abused this right can only be determined on a case-by-case basis after examining the actual duties the part-time flexibles are performing and the hours of work they are being assigned. Significantly, the settlement acknowledges that a remedy may be necessary to correct violations. In some cases the appropriate remedy could include reclassification as a part-time flexible and a recalculation of seniority. ☐

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## FMLA

**Q** I will be requiring FMLA in the near future. Will the fact that I was on worker's compensation during the last year affect my eligibility for FMLA?

**A** It might. To be eligible for FMLA you must have been employed by the Postal Service for at least 12 months and must have worked at least 1,250 hours during the 12-month period immediately preceding the day the FMLA leave is to begin. Time spent on worker's compensation is considered being "employed" for the purpose of meeting the 12-month requirement. However, time spent on worker's compensation is not considered "work" for the purpose of meeting the 1,250-hour requirement. Thus, you will not be eligible for FMLA if the time you spent on compensation resulted in your having actually worked—not counting any form of leave—less than 1,250 hours in the 12 months immediately preceding the day you want to begin FMLA.

**Q** I took four weeks of FMLA leave earlier this year. At that time I had worked slightly more than the required 1,250 hours during the 12-month period immediately preceding the day the FMLA leave began. I will be requiring more FMLA for a different condition in the near future. I have been told that I will not be eligible for additional FMLA. I was informed that, because of the earlier FMLA, I will no longer have the required 1,250 hours of work during the 12-month period immediately preceding the day the second period of FMLA leave is to begin. Can this be correct? I am not even close to having used the 12 weeks for which I am eligible this year.

**A** The information you were given is correct. You must qualify for each separate period of FMLA leave usage. You will not be eligible for additional FMLA leave if your earlier FMLA leave use results in your not having worked the required 1,250 hours of work during the preceding 12-month period.

**Q** My wife and I both work for the United States Postal Service. Are each of us entitled to 12 weeks of FMLA leave?

**A** Yes, a husband and wife are each entitled to 12 weeks of FMLA leave per leave year. For example, if one of your children becomes sick with a serious health condition, together you will be eligible for 24 weeks of FMLA leave per leave year to care for the child.

**Q** My 30-year-old daughter who lives by herself was in a serious car accident. She broke both her legs and cannot take care of herself. Can I use FMLA leave to attend to her?

**A** No. For the purpose of determining FMLA eligibility, "child" means a biological, adopted or foster child, stepchild, or legal ward who stands in the position of a son or daughter to the employee, and who is under the age of 18, or, if over 18, is incapable of self-care because of a mental or physical disability. A disability must be a permanent condition the person has had either all or most of his or her life. Even a serious temporary condition, such as your daughter's broken legs, does not qualify as a disability.

**Q** May an employee who has been indefinitely suspended still bid on vacant duty assignments?

**A** Yes. Letter carriers who have been suspended or who remain on the rolls pending disposition of a removal action have full bidding rights. Article 41, Section 1.B.1 helps letter carriers exercise their rights in such situations by providing in pertinent part that:

*When an absent employee has so requested in writing, stating a mailing address, a copy of any notice inviting bids from the craft employees shall be mailed to the employee by the installation head.*

The Postal Service agreed that this provision applies to suspended or removed letter carriers in the Step 4 Settlement M-00947 which provides:

*Article 41, Section 1.B.1 of the National Agreement applies to letter carriers who have been suspended or removed. Notices inviting bids shall be sent to such letter carriers provided they submit a request per that provision. During the pendency of the grievance of a letter carrier who has been suspended or removed, management shall accept and honor the bid of such letter carrier for letter carrier craft duty assignments, and to such other assignments to which a letter carrier is entitled to bid.* ☒

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# Special route examinations

Many recurrent problems brought to the attention of the Contract Administration Unit have their origin in the failure of local managers to adjust overburdened routes. Fortunately, the requisite contract provisions are in place to force managers to live up to the Postal Service's commitment to adjust all letter carrier routes to as near to eight hours as possible. The M-39 Handbook, which is incorporated into the National Agreement by Article 19, requires that a special route inspection be given whenever a carrier requests one and it is warranted. M-39 Section 271 states:

*271g. If over any six consecutive week period (when work performance is otherwise satisfactory) a route shows over 30 minutes of overtime or auxiliary assistance on each of three days or more in each week during this period, the regular carrier assigned to such a route shall, upon request, receive a special mail count and inspection within four weeks of the request. The month of December must be excluded from consideration when determining a six consecutive week period. However, if a period of overtime and/or auxiliary assistance begins in November, and continues into January, then January is considered to be a consecutive period even though December is omitted. A new consecutive week period is not begun.*

*271h. Mail shall not be curtailed for the sole purpose of avoiding the need for special mail count and inspections.*

The special route inspections provided for in M-39 Section 271 must be conducted in exactly the same manner as regular counts and inspections. National Arbitrator Britton held in C-11099 that management must complete special route examinations within four weeks of the request whenever these criteria have been met even if the inspection must be conducted during the months of June, July and August. Of course, it is not always in the best interest of letter carriers to request a special route exam during the low volume summer months.

The provisions of Section 271 refer to the route and not the carrier on the route, despite the fact that the purpose of any such inspection is to adjust the route to the individual carrier. Thus the fact that the regular carrier on a route may have been absent for part of the six-week period is irrelevant

(see M-01262, M-01263, M-00688). Moreover, once a carrier requests a special route inspection and demonstrates that it is warranted, the Postal Service cannot evade the requirement to conduct the inspection by unilaterally providing relief, or making an adjustment. (see C-08727). Special route inspections are not unit and route reviews. The right to a special route inspection is unaffected by the fact that the office involved may be undergoing, or be scheduled for, a unit and route review.

Special route examinations are not a meaningless exercise. The M-39 Handbook requires not only that special inspections be conducted when warranted, but also that special inspections result in permanent adjustments to eight hours. M-39 Section 242.122 states:

*242.122 The proper adjustment of carrier routes means an equitable and feasible division of the work among all of the carrier routes assigned to the office. All regular routes should consist of as nearly eight hours daily work as possible.*

The guarantees provided by Section 271 of the M-39 Handbook are further strengthened by a Memorandum of Understanding on special counts and inspections. The Memorandum, which is reprinted in the current national agreement, states:

*Where the regular carrier has requested a special mail count and inspection, and the criteria set forth in Part 271g of the Methods Handbook, M-39, have been met, such inspection must be completed within four weeks of the request, and shall not be delayed. If the results of the inspection indicate that the route is to be adjusted, such adjustment must be placed in effect within 52 calendar days of the completion of the mail count in accordance with Section 211.3 of the M-39 Methods Handbook. Exceptions may be granted by a Division General Manager only when warranted by valid operational circumstances, substantiated by a detailed written statement, which shall be submitted to the local union within seven days of the grant of the exception. The union shall then have the right to appeal the granting of the exception directly to Step 3 of the grievance procedure within 14 days.*

These negotiated provisions give letter carriers a powerful weapon to protect themselves. We urge all letter carriers with overburdened routes to use it. NALC has taken literally dozens of cases concerning the violation of these provisions to regional arbitration. The majority of arbitrators have consistently ruled that where a violation is proven, a monetary remedy is necessary to make the grievants whole.

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## Mandatory overtime

**A**lthough management can require full-time regular letter carriers not on an Overtime Desired List to work overtime in certain circumstances, Article 8, Sections 5.F and G limit the total amount of overtime work that may be required. They provide that:

*F. Excluding December, no full-time regular employee will be required to work overtime on more than four (4) of the employee's five (5) scheduled days in a service week or work over ten (10) hours on a regularly scheduled day, over eight (8) hours on a non-scheduled day, or over six (6) days in a service week.*

*G. Full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the "Overtime Desired" list:*

- 1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.F); and*
- 2. excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.*

*However, the Employer is not required to utilize employees on the "Overtime Desired" list at the penalty overtime rate if qualified employees on the "Overtime Desired" list who are not yet entitled to penalty overtime are available for the overtime assignment.*

The January 4, 1990 national level pre-arbitration settlement M-00958 reconfirmed the clear meaning of Article 8, Section 5.F as follows:

*Consistent with the provisions of Article 8.5.F of the National Agreement, excluding December, a [full-time] letter carrier who is not on an overtime desired list may not be required to work over ten (10) hours on a regularly scheduled day.*

However, note that these limits apply only to full-time regular and full-time flexible employees. Furthermore, they do not apply during December. However, Part 432.32 of the *Employee & Labor Relations Manual* provides the following rule.

*Except as designated in labor agreements for bargaining unit employees or in emergency situations as determined by the PMG (or designee), employees may not be required to work more than 12 hours in 1 service day. In addition, the total hours of daily service, including scheduled work hours, overtime, and mealtime, may not be extended over a period longer than 12 consecutive hours. Postmasters, Postal Inspectors, and exempt employees are excluded from these provisions. (Emphasis added.)*

This section applies to all employees working in the letter

carrier craft, including casuals and transitional employees (National Arbitrator Snow, C-15699). The recent Step 4 Settlement E94N-4E-C 93031540 (M-01271) below, sustained NALC's position that it also applies during December.

*The issue in this grievance is whether management violated Section 432.32 of the Employee and Labor Relations Manual (ELM), by requiring full-time employees (not on the OTDL or work assignment list) and part-time flexible employees to work more than twelve hours a day in the month of December.*

*After reviewing this matter, we mutually agreed to settle this case as follows:*

*1. In accordance with Section 432.32 of the Employee and Labor Relations Manual (ELM), part-time employees may not be required to work more than 12 hours in one service day, even during December, subject to the exceptions set forth in Section 432.32 of the ELM. The 12 hour period includes mealtime and may not be extended over a period longer than 12 consecutive hours.*

*2. In accordance with Section 432.32 of the Employee and Labor Relations Manual (ELM), full-time employees not on the OTDL or the work assignment list may not be required to work more than 12 hours in one service day, even during December, subject to the exceptions set forth in Section 432.32 of the ELM. The 12 hour period includes mealtime and may not be extended over a period longer than 12 consecutive hours. (Emphasis added.)*

Because ELM Section 432.32 limits total daily service hours, including work and mealtime, to 12 hours, an employee is effectively limited to 11½ hours per day of work plus a half-hour meal. However, the ELM also permits the collective bargaining agreement to create exceptions to this general rule. The only exception to this rule in the NALC National Agreement is for full-time regular employees *on the overtime desired list* who, in accordance with Article 8.5.G, "may be required to work up to twelve (12) hours in a day." Since "work," within the meaning of Article 8.5.G does not include mealtime, the "total hours of daily service" for carriers on the overtime desired list may extend over a period of 12½ consecutive hours. This exception *does not apply* to full-time regular employees who are *not* on the overtime desired list. ☒

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# Performance of bargaining unit work

**Q** My station manager has been under great pressure to “make the numbers.” Recently he has been instructing a 204B to assist part-time flexibles with casing mail in order to get them to the street at the scheduled time. The 204B performs these casing duties as he has time along with his other supervisory duties. Is this permitted?

**A** No. The Step 4 settlement M-00021 provides that, except in accordance with Article 1, Section 6, of the National Agreement, an employee in a 204B status as a supervisor shall not perform bargaining-unit work while he or she is in the a 204B status. Form 1723 *Assignment Order* is the controlling document to be used in determining when the employee is in a 204B status. Furthermore, the Step 4 Settlement M-00755 reads that “in accordance with Article 41, Section 1.A.2, of the National Agreement, Form 1723 ‘shall be provided to the union at the local level showing the beginning and ending times of the detail.’ Such copies of Form 1723 should be provided to the union in advance of the detail or modification thereto.”

Article 1, Section 6 prohibits supervisors from performing any bargaining unit work except in very limit circumstances which do not apply in your case. It provides that:

#### Section 6. Performance of Bargaining Unit Work

A. Supervisors are prohibited from performing bargaining unit work at post offices with 100 or more bargaining unit employees, except:

1. in an emergency;
2. for the purpose of training or instruction of employees;
3. to assure the proper operation of equipment;
4. to protect the safety of employees; or
5. to protect the property of the USPS.

Branches that wish to determine whether a post office has 100 or more bargaining unit employees should contact the national business agent. The national level settlement agreement M-00206, which was intended to be of general

application, provides that “where additional work hours would have been assigned to employees but for a violation of Article 1, Section 6.A, and where such work hours are not *de minimis*, the employee(s) whom management would have assigned the work, shall be paid for the time involved at the applicable rate.” (“De minimis” means “trifling, unimportant, inconsequential.”)

An emergency is defined in Article 3, Section A.F as “an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.” Since the situation in your office is both foreseen and recurring it clearly does not constitute an emergency.

B. In offices with less than 100 bargaining unit employees, supervisors are prohibited from performing bargaining unit work except as enumerated in Section 6.A.1 through 5 above or when the duties are included in the supervisor’s position description.

This Section prohibits supervisors in offices with less than 100 bargaining unit employees from performing letter carrier bargaining unit work except for the reasons enumerated in Article 1, Section 6.A.1 through 5, or when the duties being performed are included in the supervisor’s position description.

The pre-arbitration settlement M-00832 provides that where the phrase “distribution tasks” or “may personally perform non-supervisory tasks” is found in a supervisor’s job description, this does not include casing mail into letter carrier cases. Furthermore, the memorandum M-00974 clarifies that “the provisions for distributing mail, as contained in a supervisor’s position description, refer to clerk duties and not the routing of mail into a carrier case.” Finally, the Step 4 decision M-00200 provides that no matter what appears in a supervisor’s job description, it does not authorize the supervisor to “perform bargaining unit work as a matter of course every day,” but rather “to meet established service standards.”

The appropriate remedy for a grievance in your situation is to pay the employee(s) whom management would otherwise have assigned the work for all the time the 204B spends performing bargaining unit work. The remedy should be calculated at what would have been the applicable pay rate, even if it results in overtime or penalty overtime. ☒

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## Recent settlements

The Contract Administration Unit has recently been successful in negotiating prearbitration settlements in a number of long-standing disputes with the Postal Service. We recognize that part of this achievement is undoubtedly attributable to our unprecedented string of national-level arbitration successes. However, it also appears to indicate a new willingness by the Postal Service to seriously address the merits of NALC cases. Among the more significant of these settlements are the following:

M-01310, May 11, 1998: "The parties agree that the provisions of the X-Route MOU are specific to DPS implementation and that, with the exception of management's selection of the targeted DPS percentage, all planning and adjustments in a delivery unit/zone using the X-route alternative process are joint endeavors. While management may unilaterally address non-DPS operational changes, if those changes impact the jointly planned X-routes, the parties must discuss and jointly replan any changes that may have become necessary to the unit wide (previously) joint planned route adjustments.

"The parties further agree that it is not the intent of the process to allow management to avoid its obligation to pre-plan DPS-related adjustments jointly with the union by unilaterally implementing adjustments designed to capture DPS savings, or to allow the local union to refuse to participate or cooperate with management by preventing contractually proper adjustments."

M-01311, May 11, 1998: "As a result of our discussions, the parties have agreed at the national level that the local parties are to be guided by the following mutual understanding of the issues presented in these grievances:

"Does the conversion of PTF to full-time in a delivery unit constitute 'PTF attrition' for purposes of TE hiring under Revised Chapter 6 of *Building Our Future by Working Together*? It was mutually agreed that the conversion of PTF to full-time does constitute 'PTF attrition' for purposes of TE hiring under Revised Chapter 6 **only** where the other criteria of Revised Chapter 6 regarding the DPS impact calculation are met and the unit is in the transition period.

"Additionally, it was agreed that management may unilaterally change the DPS target percentage. If the target percentage is changed, the 'DPS methodology' must be used to recalculate the estimated reduction in carrier office time. This recalculation must be made using the established methodology, and requires re-drawing the route map for the planned adjustments. It also impacts entitlement to transitional employees and may have the effect of requiring a reduction in TE hours.

"Further, the parties mutually agreed that TEs may be hired under Method A in Revised Chapter 6 ('Delivery Point Sequencing impact calculation plus triggers') only after the unit or installation has entered the transition period (defined as that length of time needed for attrition to fulfill staffing requirements). The question of whether this unit was in a transition period does not present an interpretive issue.

"It was further agreed that the hiring of TEs should be reasonable within the local fact circumstances. The attrition rate used should neither be artificially understated (so as to limit the hiring of TEs) nor artificially overstated (so as to permit excessive TE hiring).

"If TEs have been hired under Section A in Revised Chapter 6 ('Delivery Point Sequencing impact calculation plus triggers'), management must provide the local union with the 'DPS methodology' calculations under which those TEs have been hired, and, when requested, the supporting route inspection data.

"Finally, it was also agreed that there is no dispute between the parties at this level concerning management's obligation to notify the union concerning withheld positions. The requirement to notify the union at the regional level of withheld positions specified in Article 12.5.B. has not changed and is applicable."

M-01309, May 6, 1998: "There is no dispute between the parties that additional facts and contentions not previously set forth in the record as appealed from Step 2 may be presented for the first time at Step 3 as reflected in Article 15, Section 2, Step 3 (c) which provides that a Step 3 decision 'shall state the reasons for the decision in detail and shall include a statement of any additional facts and contentions not previously set forth in the record of the grievance as appealed from Step 2.'

"We also agreed that disputes relative to whether particular issues or evidence were raised or offered at the Step 3 meeting are non-interpretive and may be resolved by a regular panel arbitrator."

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## Recent prearbitration settlements

This month's column will continue to address significant recent national level prearbitration settlements. The prearbitration settlement M-01316, F94N-4F-C 96032816, dated May 21, 1998, is deceptively short but extremely significant. It provides that:

Pursuant to Article 3, grievances are properly brought when management's actions are inconsistent with applicable laws and regulations.

In this settlement the Postal Service has finally disavowed the position that the grievance arbitration procedure may not be used to enforce applicable external laws. The issue was joined in this case because the Postal Service had argued at the Area level that NALC was precluded from arguing that disciplining a letter carrier for using sick leave covered by the Family and Medical Leave Act violated the law. It had been the Postal Service's position that NALC could only enforce the FMLA provisions in ELM 515 through the grievance procedure. The Postal Service's Area representatives had argued that only the Department of Labor could enforce the actual law.

The prearbitration settlement M-01315, G94N-4G-D 96088399, May 21, 1998, addressed two significant issues; the prohibition on *ex parte* communication with an arbitrator and limits on the authority of an arbitrator. The settlement states:

The issue in this grievance is whether a party who chooses to file a post-hearing brief may be excluded from an arbitration hearing during the time in which the other party presents oral closing arguments.

In this case, the regular arbitrator issued a ruling that would have excluded the employer's representative from the hearing room during the Union's oral closing statement. During our discussion, we mutually agreed to settle the issue represented as follows:

In the absence of a contractual provision to the contrary, an arbitrator has inherent authority to decide procedural questions raised at the arbitration hearing. At the same time, the arbitrator has no authority to contradict procedural rules that the parties themselves have bargained for and made a part of their Collective Bargaining Agreement.

In this particular case, the MOU on *ex parte* communication would prohibit the ruling made by this particular arbitrator. In light of the above, this grievance will be remanded to regional arbitration in accordance with the memo on Step 4 procedures.

The parties have long agreed that *ex parte* communication with an arbitrator is strictly prohibited. *Ex parte* communication is any communication, whether orally or in writing, without the *actual presence or explicit advance concurrence* of the other party. Merely providing the other party with a copy of a communication with an arbitrator (for example with a "cc")

does not make an *ex parte* communication permissible. The only exception to this rule is communication in the ordinary course of business regarding necessary, routine scheduling matters. In order to underscore the importance of this issue, the parties have agreed to the following Memorandum of Understanding, M-00815, dated April 11, 1988:

The United States Postal Service and the National Association of Letter Carriers, AFL-CIO, agree that in order to maintain the integrity of the arbitral process, the parties and their agents, employees and representatives should avoid the least appearance of impropriety when making contact with an arbitrator. The parties must maintain an arm's length relationship with the arbitrator at all times.

*Ex parte* communication with an arbitrator regarding the merits of a dispute, whether oral or written, shall not be permitted. Whenever it is necessary to contact an arbitrator relative to the merits of a matter in a dispute, the contact must in all instances be made jointly or with the concurrence of both parties. *Ex parte* communications made in the ordinary course of business regarding necessary, routine scheduling matters are permissible.

Any dispute arising from the constraints of this agreement must be brought to the attention of the parties signing this Agreement at the national level.

NALC members, including grievants, branch officers, and advocates should scrupulously observe the prohibition against *ex parte* communication with an arbitrator. Any violation of these rules by management should be brought to the immediate attention of the responsible national business agent.

The decision also highlights the limitations on an arbitrator's inherent authority to decide procedural questions raised at an arbitration hearing. The parties have agreed that an arbitrator has no authority to contradict procedural rules that the parties themselves have bargained for and made a part of the National Agreement. For example, Article 16, Section 10 provides that the records of a disciplinary action against an employee shall not be considered in any subsequent disciplinary action if there has been no disciplinary action initiated against the employee for a period of two years. Thus, regional arbitrators are prohibited from admitting or considering expired discipline during a hearing. ☒

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## Cross craft assignments

**A**rticle 7, Sections 2.B and 2.C set forth the two situations in which management may require career employees to perform work in another craft. This may involve a letter carrier working in another craft or an employee from another craft performing letter carrier work.

■ **Insufficient work.** Under Section 2.B, management may require an employee to work in another craft at the same wage level due to “insufficient work” in his or her own craft. This may affect a full-time or part-time regular employee for whom there is “insufficient work” on a particular day to maintain his or her weekly schedule as guaranteed under Article 8.1. Or it may apply to any employee working under the call-in guarantees of Article 8.8—i.e., a regular called in on a non-scheduled day, or a PTF employee called in on any day. This section permits management to avoid having to pay employees for not working.

■ **Exceptional workload imbalance.** Article 7, Section 2.C provides that under conditions of exceptionally heavy workload in one craft or occupational group and light workload in another, any employee may be assigned to perform other craft work in the same wage level.

■ **Limits on management’s discretion.** A national-level award by Arbitrator Richard Bloch (C-4560) underscores that management may not assign employees across crafts except in the very restrictive circumstances defined in the National Agreement. Arbitrator Bloch interpreted Article 7.2.B & C as follows (pp. 6-7):

Taken together, these provisions support the inference that Management’s right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforeseeable. There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel usage; this is not what the parties have bargained. That an assignment across craft lines might enable Management to avoid overtime in another group for example, is not, by itself, a contractually sound reason. It must be shown either that there was “insufficient work” for the classification or, alternatively, that work was “exceptionally heavy” in one occupational group and light, as well, in another.

Inherent in these two provisions, as indicated above, is

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

■ **Remedy for a violation.** When cross craft assignments are made in violation of these provisions, a “make whole” remedy should be sought. The appropriate “make whole” remedy is payment at the appropriate rate for all work missed to the available, qualified employee who had a contractual right to the work. In the national level APWU case cited above, Arbitrator Bloch ruled that an available special delivery messenger on the ODL should be made whole because special delivery work was assigned to a PTF letter carrier in violation of Article 7, Section 2.

■ **Rural carriers excluded.** The Article 7 Memorandum (National Agreement page 157) provides that the crossing craft provisions of Article 7, Section 2 (among other provisions) apply only to the six crafts covered by the 1978 National Agreement—i.e., letter carrier, clerk, motor vehicle, maintenance, mail handler and the recently abolished special delivery craft. So cross craft assignments may be made between the carrier craft and these other crafts, in either direction, in accordance with Article 7.2. However, rural letter carriers are not included. So cross craft assignments to and from the rural carrier craft may not be made under Article 7.2. They may be made only in “emergency situations” as provided for by Article 3. ☒

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## T-6 issues

**T**he May 28, 1985 Memorandum establishing work assignment overtime provides full-time letter carriers the right to indicate a desire for available overtime on their work assignment on their regularly scheduled days. The memorandum states that "T-6 or utility letter carriers would be considered available for overtime on any of the routes in their string." This provision has caused occasional confusion when it is incorrectly assumed that any route on a T-6 carrier's string is considered to be the assigned route or assignment for the purpose of applying the overtime provisions of Article 8, Section 5.

This is incorrect. The Work Assignment Memorandum and the overtime provisions of Article 8.5 are separate and distinct. When applying the provisions of Article 8, Section 5, a T-6 carrier's assignment is the *one specific route* to which he/she is assigned on any given day. Two recent Step 4 grievance settlements clarify this issue.

In M-001322 (E94N-4E-C 98097684) local management required T-6 letter carriers not on the overtime desired list or the work assignment list to work mandatory overtime on any route on a string without first seeking to provide auxiliary assistance as required by the "letter carrier paragraph" of the Overtime Memorandum. The settlement states:

The issue in this grievance concerns the application of the overtime provisions of Article 8, Section 5 to T-6 letter carriers. During our discussion we mutually agreed that:

A T-6 carrier technician **not** on the Overtime Desired List or Work Assignment List may, in accordance with Article 8.5.C.2.d, be required to work overtime on the specific route to which properly assigned on a given day only after management has fulfilled its obligation under the "letter carrier paragraph" to seek available auxiliary assistance.

A T-6 carrier technician **not** on the Overtime Desired List or Work Assignment List may be required to work overtime on a route other than the specific route to which properly assigned on a given day **only** in compliance with Article 8, Section 5.D, in which assignments are rotated among those not on the Overtime Desired List or Work Assignment List, by juniority.

We further agree that the above understanding does not conflict with or modify the May 28, 1985 Work Assignment Agreement which provides that T-6 letter carriers are considered available for "work assignment" overtime on any of the routes in their string.

In M-01323 (C94N-4C-C 98099737) the issue was how overtime worked by T-6 carriers on the overtime desired list should

be counted in determining the equitable distribution of overtime hours at the end of the quarter. The settlement states:

The issue in these grievances concerns the application of the overtime provisions of Article 8, Section 5 to T-6 letter carriers. During our discussion we mutually agreed that:

Overtime worked by a T-6 carrier technician on the Overtime Desired List on the specific route to which properly assigned on a given day, **is not counted** in the consideration of the equitable distribution of overtime hours at the end of the quarter.

Overtime worked by a T-6 carrier technician on the Overtime Desired List **is counted** in the consideration of the equitable distribution of overtime hours at the end of the quarter when: a) the overtime is not on a regularly scheduled day or b) the overtime is worked on any route in the delivery unit other than the specific route to which properly assigned on a given day.

We further agree that the above understanding does not conflict with or modify the May 28, 1985 Work Assignment Agreement which provides that T-6 letter carriers are considered available for "work assignment" overtime on any of the routes in their string.

In M-01324 (H94N-4H-C 98088785) local management refused to create a T-6 position despite the fact that there were more than five full-time assignments in the station. Instead, management covered the full-time routes on the regular carriers' non-scheduled days exclusively with part-time flexibles. The settlement sustained NALC's position that management must create a T-6 position for each five full-time letter carrier routes. The settlement states:

The issue in this case is whether management violated the National Agreement by not implementing the T-6 Program in the subject office.

After discussions and review of the Joint Contract Administration Manual, which reflects that Article 41.3.D is obsolete, it is our decision to sustain this grievance to the extent that the T-6 Program will be implemented in the subject office. ☒

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# Use of Form 1840-B

**W**e all recognize that the use of DPS work methods can have a major impact on street time. It would make no sense to adjust a DPS route's street time using data from a period before the DPS work methods were used. Nevertheless, this is exactly what can happen when the provisions of M-39 Section 242 are literally and thoughtlessly applied.

As you may recall, M-39 Section 242.32 describes the proper completion and use of the *Form 1840-B, Carrier Time Card Analysis*. Briefly, a completed Form 1840-B shows an average street time for randomly selected weeks from each of seven months during the year prior to the inspection (June, July, August and December are excluded). The proper use of the data from a completed Form 1840-B is described in M-39 Section 242 as follows:

*242.321 For evaluation and adjustment purposes, the base for determining the street time shall be either:*

*a. The average street time for the 7 weeks random time-card analysis and the week following the week of count and inspection; or*

*b. The average street time used during the week of count and inspection.*

*242.322 The manager will note by explanatory Comment on the reverse of Form 1840 or attachments thereto why the base street time allowance for the route was established at the time selected. The manager's selection of the street time allowance cannot be based on the sole criterion that the particular time selected was the lower.*

Since there is a choice, any sensible manager would use the average street time used during the week of count and inspection whenever there has been a change of delivery methods during the 1840-B analysis period. Unfortunately the fact that a grievance had to be appealed all the way to Step 4 proves that not all local managers have common sense.

Furthermore, simply agreeing never to use 1840-B times in any such situations would not be the best solution. For that

would mean that historical information could never be used to help establish street times, even when some valid information was available. In cases where the street times from the week of count and inspection are known not to be representative or typical, it makes no sense to blindly use them. That would only start the all-too-familiar cycle of overburdened routes, special route exams and grievances.

Fortunately, when it was brought to their attention, the Postal Service's headquarters representatives were able to confront this dilemma in a straightforward and responsive manner. The result was the recent prearbitration settlement M-01339 (G90N-4C-C 96014836) which provides that:

*The issue in this grievance is whether management violated the M-39 Handbook by utilizing the 1840-B to determine a route's average street time when the analysis period contained days when an authorized DPS work method was not used, but during the week of mail count and route inspection, one of the approved DPS work methods was used.*

*After discussing this matter, we agreed that no handbook violation occurred. However, the parties agree that the following will apply prospectively as an interim step until this issue is revisited from September through November 1998:*

*1. If there are not sufficient weeks in accordance with the M-39, Section 242.323 where the regular carrier was utilizing either of the approved DPS work methods during the normal 1840-B analysis period (7 eligible months preceding), then the analysis period will be comprised of the immediate six weeks prior to, and the two weeks after, the count and route inspection.*

*2. If such weeks do not exist where the regular carrier served the route using an approved DPS work method, the maximum number of weeks available prior to the mail count and route inspection, and up to four weeks after the count week, will be used for the random timecard analysis of street time.*

*3. The start of the 52 day period for implementation of route adjustments will begin the day after the final qualifying week for the 1840-B analysis period.*

Currently, this settlement only applies to route examinations conducted through November 1998. However, during the current round of contract negotiations we are discussing a more permanent solution. ☒

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# Recent settlements

**L**etter carriers know what many managers try to deny—that DPS mail volume directly affects street time. The Postal Service has finally acknowledged this obvious fact in a pre-arbitration settlement addressing situations where letter carriers, because of local practices, are required to complete Forms 3996 before they know the DPS mail volume on their routes. The pre-arbitration settlement M-01366 (H90N-4H-C 94048405) provides that:

The issue in this case involved whether Management violated the National Agreement by not allowing individual carriers to personally observe the amount of DPS mail intended for delivery on their assigned routes, prior to determining the need for overtime/auxiliary assistance.

After reviewing this matter, it was agreed that if, while in the normal course of picking up DPS mail, a letter carrier determines the need to file a request for overtime or auxiliary assistance (or to amend a request that was previously filed), the carrier may do so at that time. The supervisor will advise the letter carrier of the disposition of the request or amended request promptly after review of the circumstances.

If the local parties have agreed upon a practice where the letter carrier has access to their DPS mail prior to filling out a request for the overtime/auxiliary assistance, this settlement will not apply.

Competent supervisors will allow carriers to determine the DPS mail volume prior to completing Forms 3996. Their alternative is to be unable to plan for overtime and auxiliary assistance until the very last minute.

Step 4 settlement M-01367 (H94N-4H-C 98077431) clarifies the March 12, 1984 settlement M-00492 (H1N-5H-C 18583) which provided that:

Normally, employees on the overtime desired list who have annual leave immediately preceding and/or following non-scheduled days will not be required to work overtime on their off days. However, if they do desire, employees on the overtime desired list may advise their supervisor in writing of their

availability to work a non-scheduled day that is in conjunction with approved leave.

Local Postal Service representatives had argued that M-00492 only applied to week blocks of annual leave applied for under the provisions of Article 10, Section 3 and applicable local memorandum provisions. The Step 4 settlement M-01365 states that the earlier settlement “applies to ‘spot’ or incidental leave also.”

Step 4 Settlement M-01360 (E94N-4E-C 98057013) resolved a dispute concerning a letter carrier with medical restrictions against working overtime. Local Postal Service representatives had argued that in such circumstances management could require the employee to request a light duty assignment. The settlement provides that :

An inability to work overtime does not necessarily prohibit an employee from performing his or her normal assignment. Accordingly, such an individual working with such a restriction is not necessarily on “light duty.” Employees restricted from working overtime may bid on and receive assignments for which they can perform a regular eight-hour assignment.

Step 4 Settlement M-01361 (D94N-4D-C 96071608) resolved a dispute that arose when local management developed its own “collection cards” and required letter carriers to sign for them as accountable items. The settlement provides:

This grievance concerns the use of “collection cards” in an effort to improve service through proper collection of mail and the use of locally developed forms. After reviewing this matter, we mutually agreed that there is no dispute at this level concerning a carrier’s responsibility for the collection of mail, and for the proper use of cards used to verify and/or remind carriers of such collections. The parties further agree that management may document the fact that letter carriers have been given appropriate instruction on the proper handling of such cards. However, as these cards are not currently identified as “accountable items” in part 261 of Handbook M-41, carriers are not currently required to sign/initial to verify receipt of these cards. We also agreed that the issuance of local forms, and the local revision of existing forms is governed by Section 325.12 of the Administrative Support Manual (ASM). The locally developed forms at issue were not promulgated according to the ASM, Section 325.12. Therefore, management will immediately discontinue their use until such time as they comply with the above cited provision. ☒

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