REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	§	**Grievant:**	**Class Action**
Between	§	**Post Office:**	**Kansas City, MO**
UNITED STATES POSTAL SERVICE	§	**USPS Case No.:**	**J16N-4J-C 21040672**
And	§	**NALC No.:**	**KC3020-1185**
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	§	**NALC DRT No.:**	**05-521103**

BEFORE: Arbitrator Glynis F. Gilder

APPEARANCES:

For the U.S. Postal Service:	Mr. Kenneth Glassburner
For the Union:	Mr. Troy Smith
Place of Hearing:	Kansas City, Missouri
Date of Hearing:	May 25, 2021

AWARD:

Date of Award:	August 29, 2021
Panel:	Regular – Contract

AWARD SUMMARY

This grievance involves the Service's non-compliance with an arbitration decision ordering the Service to "cease and desist" improperly mandating overtime. The Service contends the grievance is not arbitrable because the affected employees have already received monetary compensation as a remedy for the violation pursuant to the relevant arbitration decision and the Union's requested remedy in this matter is an improper demand for punitive damages. The Union contends the Service's continued and flagrant actions in improperly mandating employees to work overtime merits an enhanced remedy to prevent future non-compliance. The grievance is sustained in its entirety.

Glynis F. Gilder, Arbitrator

INTRODUCTION

On May 25, 2021, the National Association of Letter Carriers, AFL-CIO (hereinafter "the Union") and the United States Postal Service (hereinafter "the Service," "Management," "the Agency," or "the Employer") came before this duly appointed arbitrator in Kansas City, Kansas and presented the following issues for resolution:

> **"Whether the Service violated Article 15§4(A)6 of the National Agreement and national memorandum M-01517 when it failed to comply with an arbitration decision rendered in Grievance No. E16N-4E-C19334145 regarding the manner in which overtime was mandated at the Raytown (Missouri) facility? If so, what shall the remedy be?"**

Both parties appeared and participated fully, presenting evidence and argument. The parties elected to present post-hearing briefs in lieu of closing arguments. The record was closed on July 16, 2020 upon receipt of documents from both advocates.

BACKGROUND INFORMATION

On March 6, 2019, local Union branch 30 filed local grievance No. KC3019-267 regarding Management's violation of Article 8§5 of the National Agreement during pay period 2019-02-1. Management at the Raytown station in the Kansas City, Missouri installation directed employees who had not signed onto the Overtime Desired List[1] ("ODL") to work overtime despite the availability of employees who *had* placed their names on the ODL not being mandated to perform those duties.

The matter—now designated Grievance No. E16N-4E-C19334145—was heard at arbitration on November 21, 2019 before distinguished arbitrator M. Zane Lumbley. Arbitrator Lumbley found for the Union and in his February 17, 2020 decision (hereinafter "the Lumbley decision") ordered the following:

> **"I. ...relevant ODL carriers be compensated at the overtime rate for the hours not worked and that relevant non-ODL and work assignment carriers be compensated an**

[1] An employee's placement of her name on the Overtime Desired List indicates a desire to work overtime.

additional 50% of the strait-time rate in addition to the overtime rate already paid them for the hours worked improperly off their bid assignments.

II. It is therefore Ordered that the Service *cease and desist from improperly mandating overtime in violation of Article 8.5 of the National Agreement* [emphasis added], that it promptly pay the overtime rate for the identified hours to affected ODL carriers and that it promptly pay an additional 50% of the straight-time rate for the identified hours to affected non-ODL and work assignment carriers over and above the overtime rate already paid them."[2]

On September 25, 2020, local Union branch 30 filed another grievance again involving Management's violation of Article 8§5 of the National Agreement in improperly mandating overtime at the Raytown facility during pay period 2020-20-1. The grievance was resolved on November 9, 2020 by a settlement agreement of the parties at Step Formal A that provided (1) Management had violated Article 8§5 and (2) the affected employees would be paid in accordance with the Lumbley decision.

On November 20, 2020, local Union branch 30 filed yet another grievance as a class action for Management's violation of Article 15 by its failure to comply with the "cease and desist" order of the Lumbley decision by continuing to improperly mandate overtime at the Raytown facility. It is this action by the Service that has resulted in this present grievance.

RELEVANT CONTRACTUAL PROVISIONS

"NATIONAL AGREEMENT BETWEEN NATIONAL ASSOCIATION OF LETTER CARRIERS (AFL-CIO) AND UNITED STATES POSTAL SERVICE

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE
Section 4. Arbitration
A. General Provisions
...

6. All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. Unless

[2]Grievance No. E16N-4E-C19334145, arbitrator M. Zane Lumbley (February 17, 2020) pg. 17.

otherwise provided in this Article, all costs, fees, and expenses charged by an arbitrator will be shared equally by the parties.

..."

Policy Letter M-01517 (Patrick R. Donohoe, Postmaster General—May 31, 2002)

"...

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.

..."

THE UNION'S POSITION

The Union contends Management failed to comply with the "cease and desist" order in the Lumbley decision in persisting in improperly mandating overtime at the Raytown facility; that an enhanced and more severe remedy is needed to address Management's flagrant disregard of the requirements of Article 8§5 overtime mandates and prevent future violations; that the Union's requested remedy is one permitted by the arbitrator's inherent authority to craft a remedy for a violation.

THE SERVICE'S POSITION

The Service contends the remedy requested by the Union constitutes punitive contractual damages which are prohibited in labor arbitration; that the grievance is not properly before the arbitrator because the Service has already compensated affected employees in accordance with the settlement agreement between the parties that was predicated on the monetary portion of the award of the Lumbley decision.

ANALYSIS AND DISCUSSION

As this is a Contractual matter, customarily the Union has the initial burden to show the Agency committed the action grieved and that commission violated an applicable Contractual provision, or external rule, regulation of statute. Here, the Agency has conceded its actions in mandating non-ODL employees to work overtime before granting that opportunity to employees whose names *are* on the ODL. Further, the Agency has already paid monetary compensation to the impacted employees in accordance with the award in the Lumbley decision.

However, the actions the Agency has already taken in compensating those affected employees were taken pursuant to an admitted violation of Article 8§5 in local grievance KC2020-

1005. The task for this arbitrator is to craft an appropriate remedy for the violation of Article 15§4(A)6 committed by the Service when it failed to comply with the "cease and desist" order of the Lumbley decision in the first place. This violation was committed when Management failed to stop improperly mandating overtime.

The Service has raised the issue of arbitrability, that the grievance was not properly before the arbitrator for determination based on the Service having already compensated the impacted employees pursuant to the Lumbley decision in accordance with the parties' November 9th settlement agreement. The Service's argument is unpersuasive as that remedy was compensation for an entirely different violation—one involving Article 8§5. The hub around which this instant grievance revolves is a violation of Article 15§6 and for which a remedy is due.

Words have meaning and this is especially true of judicial opinions and arbitration decisions. In his February 17, 2020 decision, arbitrator Lumbley *ordered*—not suggested, not advised—Management to "cease and desist" improperly mandating overtime at the Raytown facility. Distinguished arbitrator Lawrence Roberts wrote, "Cease and desist means what is says. There are no variations to a cease-and-desist order. It was issued in the first place to ensure future compliance. And when that does not happen, there are other consequences. And the only way to prevent future violations is an escalating remedy."[3] There is no dispute Management has violated that portion of the Lumbley decision. In fact, Management has conceded the violation of the decision's "cease and desist" order. The only issue that remains to be addressed is what is the appropriate remedy for the Agency's conduct.

The Service has already compensated the affected employees for the Article 8 violation in accordance with arbitrator Lumbley's award. Impacted carriers on the Overtime Desired List were paid the overtime rate for identified hours they were denied the opportunity to work. Impacted carriers who were not on the Overtime Desired List were paid 50% of the straight-time rate for identified hours they were improperly ordered to work in addition to the overtime rate for those same hours already paid to them. Punitive damages are historically held as inappropriate in a contract matter. This arbitrator agrees with the Service's stance—the purpose of damages in a contractual setting are, to the extent possible, restore the *status quo ante*. That is the objective is to

[3] Grievance No. C16N-4C-C 18267277, pg. 15 (March 6, 2019).

place the parties in the position they would have occupied had the violation not occurred. However, when a "cease and desist" order is ignored with seeming impunity, true restoration of the *status quo ante*—the Agency's actual and lasting compliance with the order—may well be an impractical impossibility. And while a monetary award may be the only method available to address Management's persistent non-compliance, it appears what the Union actually seeks is not so much a remedy in the sense of compensation for the Article 15 violation as to have some sort of coercive force brought to bear on the Service to encourage and ensure future compliance with the Lumbley decision. As stated previously, restoration of the *status quo ante* is the objective in a contractual matter and may well be an unrealistic expectation in such a case as the one at bar. Here, the objective is to encourage Management to conform its conduct as regards to accordance with arbitration awards. The options available to an arbitrator confronted with such a situation and charged with crafting a remedy are somewhat limited to monetary compensation with the stated purpose not of punishing the Agency for its conduct but rather to draw attention to its failure to abide by an arbitration award as well as securing future compliance with arbitration decisions as well as the National Agreement itself.

AWARD

Based on the foregoing facts, information and analysis, it is this arbitrator's decision the Service did violate Article 15 when it failed to comply with the "cease and desist" order from the Lumbley decision regarding improperly mandating overtime at the Raytown facility.

The Service is directed to cease and desist improperly mandating overtime and violating Article 8§5 of the National Agreement at the Raytown facility.

The Service and the Union are directed to meet and jointly identify those affected employees in the instant matter and any companion grievances and to provide those employees with a choice between (1) receiving an additional 50% pay premium for the hours worked or (2) receiving administrative leave for the hours worked.

This arbitrator retains jurisdiction in this matter for the limited purposes of correcting any error, resolving any ambiguity, or to provide such other relief to which the parties may be justly entitled.