REGULAR ARBITRATION PANEL

In the Matter of Arbitration	)	
	)	Grievant: Class
between	)	
	)	Post Office: Kansas City, MO
UNITED STATES POSTAL SERVICE	)	
	)	USPS No. E16N-4E-C 19334145
and	)	
	)	NALC DRT No. 05-473775
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	)	
	)	NALC Branch No. KC3019-267

Before: M. Zane Lumbley, Arbitrator, NAA

Appearances: For USPS: Ken Glassburner
For NALC: Troy Smith

Place of Hearing: Kansas City, MO

Date of Hearing: November 21, 2019

AWARD SUMMARY:

I. It is the Award of the Arbitrator that the appropriate remedy requires that 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 additional 50% of the straight-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, 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.

III. The Arbitrator hereby reserves jurisdiction for ninety (90) calendar days from the date of this Award for the limited purpose of assisting the parties as may be required in the implementation of the Award set forth above.

Date of Award: February 17, 2020

PANEL: Western Regular

OPINION

PROCEDURAL MATTERS

This matter was convened pursuant to Article 15 of the National Agreement at Kansas City, Missouri, on November 21, 2019. The parties were represented, called one witness who testified under oath administered by the Arbitrator and placed four Joint exhibits and five Union exhibits into evidence. The advocates agreed to file post-hearing briefs and timely briefs were received by the Arbitrator on December 28, 2019.

ISSUE

The parties were unable to agree on the precise statement of the issue to be resolved. At Step B, the designees addressed the following issue:

> Did management violate Article 8.5 of the National Agreement when they forced non-ODL and work assignment letter carriers to work off their bid assignments on PP 2019-02-1, and if so, what should the remedy be?

However, because the Formal A designees had agreed before advancing the dispute to Step B the on second of two occasions it was advanced that non-ODL carriers had been improperly mandated overtime for a total of 44.62 hours, the task given to the Step B designees was to attempt to agree whether any additional remedy beyond the payment of the overtime rate to the affected carriers already agreed upon was appropriate. When they could not, the dispute proceeded to arbitration.

Although the advocates at hearing were not able to agree on precise language to identify the remedy issue, they agreed the Arbitrator's goal should be to decide the appropriate remedy for the violation found in the Step B Decision. For its part, the Union sought a cease and desist order as well as either 1) $120 per hour for the hours

the ODL carriers should have worked (but have yet to be paid) and an additional $60 per hour for the hours the non-ODL carriers were required to work (and for which they have been paid at the overtime rate) sought at Formal A, 2) an increase in those amounts or 3) the requested monetary remedy for the ODL carriers and administrative leave in the number of hours improperly mandated for the non-ODL carriers. While not arguing against a cease and desist order, the Service opposed the Union's monetary remedy requests and the request for administrative leave, suggesting the Arbitrator should provide a "no" answer to the following question:

> Is it a contractually appropriate demand by the union to pay ODL carriers $120/hour for the hours they should have worked, and to pay an additional $60/hour to the non-ODL carriers for the hours they did work, or alternatively, to give the non-ODL carriers administrative leave equal to those hours they were mandated to work?

Ultimately, the advocates authorized the Arbitrator to frame the issue. In light of the specifics of the parties' dispute in this case, I believe the following statement of the issues accurately characterizes their dispute and will lead to its resolution:

> What remedy is appropriate to the agreed violation of Article 8.5 of the National Agreement that occurred when management improperly forced non-ODL and work assignment letter carriers to work off their bid assignments during PP 2019-02-1?

RELEVANT PROVISIONS OF THE NATIONAL AGREEMENT

The relevant provisions of the National Agreement are:

ARTICLE 8
HOURS OF WORK

. . .

Section 5. Overtime Assignments

When needed, overtime work for full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employee's regularly work

in accordance with the following:

A. Employees desiring to work overtime shall place their names on either the "Overtime Desired" list or the "Work Assignment" list during the two weeks prior to the start of the calendar quarter, and their names shall remain on the list until such time as they remove their names from the list. Employees may switch from one list to the other during the two weeks prior to the start of the calendar quarter, and the change will be effective during that new calendar quarter.

B. "Overtime Desired" lists will be established by craft, section or tour in accordance with Article 30, Local Implementation.

C.1. **(Reserved)**

C.2. a. When during the quarter the need for overtime arises, employee with the necessary skills having listed their names will be selected from the "Overtime Desired" list.

b. During the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the "Overtime Desired" list.

c. In order to ensure equitable opportunities for overtime, overtime hours worked and opportunities offered will be posted and updated **weekly.**

d. Recourse to the "Overtime Desired" list is not necessary in the case of a letter carrier working on the employee's own route on one of the employee's regularly scheduled days.

e. All overtime hours worked by, and all opportunities offered to, employees on the "Overtime Desired" list, regardless of whether the overtime/opportunity is on or off the employee's own route, will be considered and counted when determining quarterly equitability.

f. Only overtime hours worked for opportunities offered beyond eight hours on a holiday or designated holiday will be considered and counted when determining equitability.

D. If the voluntary "Overtime Desired" list does not provide sufficient qualified people, qualified full-time regular employees not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee.

E. Exceptions to C and D above if requested by the employee may be approved by local management in exceptional cases based on equity (e.g., anniversaries, birthdays, illness, deaths).

F. Excluding December, no full-time regular employee will be required to work overtime on more than four (4) of the employees 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.

[See Memos and Letter of Intent, pages **165-171**]

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BACKGROUND

This grievance was initiated at Informal A on March 6, 2019,[1] when NALC asserted that management had violated Article 8.5 of the National Agreement when they forced certain non-ODL and work assignment carriers to work off their bid assignments during PP 2019-02-1. The parties processed the grievance through the specified steps of the grievance procedure. As noted above, the parties met twice at Formal A. After the first unsuccessful meeting taking place on a date that is not clear from the record, the dispute was elevated to Step B. When it and seven others[2] were returned to the local parties on March 29 for "further development and possible

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[1] All dates hereinafter are 2019 unless otherwise noted.

[2] The Arbitrator was not advised of the outcome of those seven grievances. However, they are not among the 20 grievances referenced in note 4, *infra*, that Joint Exhibit No. 4 advises have been held in abeyance pending the outcome of the instant grievance.

resolution at the Formal Step A level,"[3] the instant grievance was discussed again at Formal A on July 19. The designees agreed there that certain non-ODL and work assignment carriers had been mandated overtime off their routes improperly for a total of 44.62 hours during the pay period in question but were unable to agree on a remedy for the violation. Impasse was reached at Step B on August 8 when the representatives there, like the designees at Step A, were unable to agree on a remedy. Thereafter, the dispute came on for hearing before the undersigned as set forth above.[4]

DISCUSSION AND ANALYSIS

Position of the Union

The Union asserts it is necessary for the Arbitrator to codify the increased corrective remedies found appropriate by the parties themselves recently in responding to management's blatant, continuing violations of Article 8.5 of the National Agreement demonstrated over the last three years during which Branch 30 filed over 1300 grievances, including over 130 at the Raytown Station, protesting improper mandating in Kansas City. In its view, although not disputing the Service's assertion that the numerous Informal A and Formal A resolutions placed into evidence from throughout the 15 Kansas City offices, including the Raytown Station where the instant grievance

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[3] Joint Exhibit No. 2, at 74.

[4] On September 19, Western Area Labor Relations Manager Works and NALC Region 5 RAA Sexton signed a Pre-Arbitration HOLD Agreement stating that 20 additional grievances (Case Nos./NALC Branch Nos. E16N-4E-C 19349943/KC3019-624, E16N-4E-C 19349988/KC3019-625, E16N-4E-C 19388215/KC3019-628, E16N-4E-C 19388027/KC3019-294, E16N-4E-C 19388090/KC3019-328, E16N-4E-C 19333920/KC3019-044, E16N-4E-C 19349588/KC3019-474, E16N-4E-C 19349787/KC3019-566, E16N-4E-C 19349903/KC3019-567, E16N-4E-C 19388275/KC3019-630, E16N-4E-C 19388292/KC3019-631, E16N-4E-C 19388333/KC3019-634, E16N-4E-C 19388161/KC3019-390, E16N-4E-C 19388180/KC3019-626, E16N-4E-C 19377643/KC3019-292, E16N-4E-C 19377567/KC3019-290, E16N-4E-C 19388308/KC3019-632, E16N-4E-C 19388247/KC3019-629, E16N-4E-C 19388314/KC3019-633 and E16N-4E-C 19388201/KC3019-627) would be held in abeyance pending the outcome of this representative grievance. See, Joint Exhibit No. 4. The hearing advocates stipulated that meant the 20 enumerated grievances will be resolved along with the present one by this decision.

originated, do not establish precedent, it contends the Step B Decisions and Pre-Arbitration Settlements placed into evidence do set precedent throughout the Kansas City installation. According to the Union, what the Award of Arbitrator Dilts in *Case No. E01N-4E-C 06042723/NALC DRT No. 05-042334* (2006), as well as the Informal A, Formal A, and Step B decisions and the Pre-Arbitration Settlements in evidence serve to show is a history of flagrant disregard for Article 8.5 by Kansas City management and that the representatives appointed to resolve those numerous grievances filed over that disregard have themselves decided that extraordinary corrective measures have been and continue to be required to get management's attention and cause it to abide by its contractual obligations as well as the many cease-and-desist orders issued.

In response to the Service's other arguments, NALC contends first that they must be limited to those raised by the conclusion of the Formal Step A process and those brought forth at Step B and thereafter must be disregarded as untimely. The Union also asserts that the monetary remedies it seeks here are not punitive as the Employer argues inasmuch as they all have been awarded previously by the parties themselves in the aforementioned grievance settlements. Moreover, according to the Union, there is ample precedent for escalating or enhanced remedies in Article 16 of the National Agreement addressing employee discipline that also precludes punitive responses just as page 41-17 of the JCAM pointed to by the Service does. As regards its alternative request for administrative leave in the number of hours non-ODL and work assignment carriers were mandated, it points out that such a remedy has been found appropriate by other arbitrators in an effort to make non-ODL carriers whole for the personal time they lost and contends that such a remedy is not beyond the authority and responsibility of

this Arbitrator to enforce the terms of the National Agreement in an effort to encourage compliance therewith in a situation such as this one where management continues to ignore earlier cease-and-desist orders.

The Union therefore requests that some form of its suggested remedy be adopted.

Position of the Service

The Service, while not disputing the history of Article 8.5 violations in Kansas City, asserts the Arbitrator is without authority in the National Agreement and law, including the Employer's sovereign immunity from such damages, to award the Union's remedy request that amounts to a prohibited punitive response to the violation of Article 8.5 found to have occurred here designed to deter future conduct rather than making employees whole. The Employer also contends the Formal A and Step B decisions placed into evidence by the Union are not precedential since none of those Formal A decisions states it establishes precedent as required on page 15-6 of the JCAM and all the Step B decisions are not only outdated, having been rendered between 2002 and 2011, but specifically provide they are not intended to set precedent.

In reply to the specifics of the remedy sought by NALC, the Service argues that for it to be directed to pay affected ODL carriers $120 per hour for each of the hours improperly assigned to non-ODL employees must be found to be punitive as defined in Black's Law Dictionary and numerous legal and arbitral opinions since it would amount to roughly 2½ times the regular overtime rate of some $45 per hour specified in the National Agreement, thereby far exceeding a "make-whole" remedy compensating employees for "no more, no less" than their demonstrated losses. As regards the non-

ODL employees, the Employer contends that the requested payment of an additional $60 per hour for the hours they were assigned improperly to work also would cause them, like the ODL carriers, to be paid approximately 2½ times the overtime rate, a wage that also must be considered punitive since those carriers have already received the correct overtime payment of approximately $45 per hour for those hours. In this connection, it notes that, although there is no evidence in the record that any non-ODL carrier was caused to work penalty overtime during the pay period in question, a total of $105 per hour even amounts to 1¾ times the penalty rate.

Finally, in response to the Union's alternative request for paid compensatory time to non-ODL employees in lieu of additional pay, the Service notes that such a remedy not only would enrich those employees beyond the compensation already making them whole, it would punish management and run afoul of ELM Section 519 that lays out the "special conditions" justifying administrative leave. In its view, for the Arbitrator to award such a remedy would exceed his authority proscribed in Article 15.5.A.6 of the National Agreement. According to the Employer, if time off for the personal time non-ODL employees lost by being improperly mandated is found to be appropriate, permitting them to take LWOP is all that is required to make them whole for that time at this juncture.

Thus, the Service requests dismissal of the grievance.

Decision of the Arbitrator

Having now had the opportunity to consider the entire record in this matter, I have decided that the remedy appropriate to the agreed violation of Article 8.5 of the

National Agreement that occurred when management forced non-ODL and work assignment letter carriers to work off their bid assignments during PP 2019-02-1 is intermediate between the alternative remedies sought by the Union and the alternative remedies suggested by the Service. Thus, I find it proper to pay the overtime rate to the relevant ODL carriers for the hours not worked and to pay the overtime rate plus an extra 50% of the straight-time rate to the relevant non-ODL and work assignment carriers for the hours improperly worked off their routes. While I have studied all the evidence submitted, considered each argument raised herein and read the 45 legal and arbitral citations provided, the following discussion will address only those considerations I found either controlling or necessary to make my decision clear.

In so deciding, I first must note that I disagree with the Union that any arguments raised by the Service at either Step B or arbitration were brought forward in an untimely fashion since all were explored at Formal A. The fact that they may not have been explored so thoroughly as they were at Step B and arbitration cannot change that. Having considered the arguments raised by both parties in light of the evidence contained in the record, I have to agree with the Employer that to grant any of the remedies sought by the Union would amount to punitive treatment and thus are beyond my authority to award. However, I agree with the Union that the remedies for non-ODL and work assignment carriers suggested by the Service do not provide a meaningful remedy for those employees.

Without question, the federal courts and national postal arbitrators have stated that arbitrators have wide latitude to determine appropriate remedies.[5] However, they

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[5] See, e.g., *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960). See, also, *Case No. NC-S-5426* (Gamser, 1979).

also have held that an arbitration award "is legitimate only so long as it draws its essence from the bargaining agreement,"[6] should seek "to place employees (and Management) in the position they would have been in had there been no contract violation"[7] and must not be punitive in nature.[8] As noted in Black's Law Dictionary, punitive damages are those "awarded in addition to actual damages and are "intended to punish and thereby deter blameworthy conduct," precisely the result the Union concedes it seeks here. As Black's notes further, such damages "are generally not recoverable for breach of contract." Perhaps more importantly, there is no authority for punitive damages in the National Agreement.[9] Thus, It is unnecessary to decide the sovereign immunity question raised by the Service.

This conclusion is not altered by the numerous Pre-Arbitration Settlements, Step B Decisions, Formal A agreements and Informal A resolutions placed into evidence because the escalating remedies agreed to by the parties in resolution of those grievances are not precedential vis-à-vis the current dispute. As the Service correctly notes, Informal A settlements, per Article 15.2 of the National Agreement, never set

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6 *Enterprise Wheel, supra*, at 597.

7 *Case Nos. H1C-NA-C 97, H1C-NA-C 123 and H1C-NA-C 124* (Mittenthal, 1989).

8 *McLean v. U.S. Postal Service*, 544. F.Supp. 821, 828 (W. D. Pa. 1982).

9 I disagree with the Union that such authority can be inferred from page 41-17 of the JCAM amplifying Article 41.2.B.3-5 of the National Agreement since the language therein relied on by NALC not only appears in a section of the JCAM that appears limited to addressing violations of the parties' agreement on opting that makes no reference to improper mandating, the subject of this grievance, but also provides that "**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 the case of "egregious or deliberate" violations and makes no reference to arbitrators providing such remedies. [Emphasis added]. Moreover, as the Service notes, that provision of the JCAM goes on to state, "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."

precedent and Formal A settlements, also per Article 15.2 of the National Agreement, do so only if the advocates reaching those settlements say so in the settlement agreement. Having examined the Formal A settlements contained in the file, I find that none of them states it was intended to set precedent. As regards the four Step B Decisions entered in the record, not only are they severely outdated as the Employer asserts, the monetary payments agreed to as part of the remedies therein in no case exceeded the contractual overtime or penalty rate, whichever was appropriate in view of the hours worked by the affected ODL carriers, and no remedy to non-ODL carriers appears to have been directed in any of them. Indeed, in one of the four, the parties agreed to "a reduced lump-sum settlement for the amount of pay that they should have received for those days, if [the ODL carriers] had been maximized to 12 hours."[10] As to the ten Pre-Arbitration Settlements entered into evidence by the Union, every one of them expressly states that it is a non-precedent-setting agreement. Finally, the aforementioned 2006 Award of Arbitrator Dilts, while finding a violation of Article 8 and directing management to cease and desist therefrom, ordered only overtime pay for the ODL carriers who were not worked but found no additional remedy for the non-ODL carriers required to work because they had been paid for that work at the overtime rate.

As a result, notwithstanding the disturbing history of Article 8.5 violations in Kansas City, I cannot agree with NALC that any precedent exists for the sort of monetary remedies it seeks here, even if they were not punitive in nature. If the Union wishes to obtain such remedies for its members, it will need to bargain for them. As I stated at note 2 of my decision referenced by both parties herein in *Case No. E16N-4E-*

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10 Union Exhibit No. 5, at 2.

C 18364569/NALC DRT No. 05-441083 (2019), another dispute involving arguably egregious management failure to abide by the terms of the National Agreement, in which I quoted from my earlier decision in *Case No. E06N-4E-C 11414344 et al/NALC DRT No. 01-228519* (2013) that had, in turn, quoted Arbitrator Monat's reference to the constant tension in collective bargaining agreements between the rights of management and other provisions which tend to truncate those rights in his opinion in *Case No. E06N-4E-C 10117209/NALC Case No. 10063* (2011):

> It is not for me to legislate permanent relief from that tension; that is a matter properly left to the parties to address in negotiations. My mission is merely to apply as best I can the language providing the tension to the facts at hand, whatever they may be.

Until the Union does negotiate the kind of monetary remedies it seeks here, the controlling language as regards ODL carriers appears in the MOU set forth on pages 167-169 of the National Agreement providing in paragraph 4 thereof, "In cases where management violates the letter carrier paragraph by failing to utilize an available level letter carrier on the ODL to provide auxiliary assistance, the letter carrier on the ODL will receive as a remedy compensation for the lost work opportunity at the overtime rate."[11]

The remedy appropriate to non-ODL and work assignment employees improperly mandated is less clear. While the Service relies on the out-of-schedule premium language appearing on pages 8-4 and 8-5 of the JCAM, its application appears limited to situations involving temporary schedule changes and the potential payment of out-of-schedule premiums, a situation distinguishable from the facts seen here. Nor does any language in Article 8.5 or in any of the other MOUs appearing in the National

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[11] It should be noted that, in taking issue with my reasoning in *Case No. E16N-4E-C 18364569, supra*, the Service misreads the decision. Although the Award finds appropriate the payment of 200% the straight-time rate to ODL carriers denied the overtime at issue, as the Opinion notes on page 7, all the Award does in that regard is codify the agreement already reached by the parties.

Agreement directly address this question.[12] Thus, it is no wonder, as evidenced by the numerous arbitration decisions supporting each side's position provided with the party's briefs, that arbitrators are all over the map in attempting to answer the question as to what is required to make non-ODL and work assignment carriers whole.

For my part, I agree with the Service that not only can I not direct the payment of the hourly sums the Union seeks, I also cannot direct that these carriers be permitted to take paid administrative leave in the number of hours they were improperly mandated. Thus, it is clear from ELM Section 519 both that improper mandating is not among the "special conditions" listed for which the response of administrative leave is appropriate and that such a response from an arbitrator would far exceed the remedy required to make the employees whole since it would require payment to them of yet another straight time hourly wage over and above the overtime rate they have already been paid for performing the work at issue for a total of 2½ times their regular rate of pay. As the Employer points out, still other employees would have to be paid to perform the work that the non-ODL and work assignment carriers would have performed had they not been on administrative leave. That further expenditure, whether at the straight time rate or the overtime rate, cannot be viewed as anything but punitive.

However, I continue to believe, in agreement with the Union, that the personal time of non-ODL and work assignment carriers has a value and, when it is taken from them improperly, some level of compensation is required, whether it is difficult to quantify or not. Even the Employer does not strenuously disagree with that proposition

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[12] This includes the language of paragraph 5 of the December 20, 1988, MOU codified on pages 167-169 of the National Agreement that provided a $7-per-hour premium over and above the overtime rate paid to non-ODL carriers improperly mandated to work overtime "on a one-time nonprecedential [sic] basis" to carriers who had "a timely grievance pending at Step 2 or 3 as of the date of this agreement."

since it concedes that perhaps a grant of LWOP for the hours non-ODL and work assignment carriers were improperly mandated. I am not inclined to agree with the Service that no monetary remedy is appropriate to non-ODL and work assignment carriers merely because they have already been paid at the overtime rate for the improperly mandated overtime hours. While they clearly were paid in that fashion, that is because the National Agreement requires that even properly assigned overtime work be compensated at the overtime rate. What the Union seeks here for non-ODL and work assignment carriers is some measure of compensation for the fact that their personal time, during which they presumably had personal activities planned, was taken from them without regard for the process negotiated by the parties.

Just as was the case in *Case No. E06N-4E-C 11414344, supra*, with which the Service takes issue on brief, I am of the view that an additional 50% of their straight-time rate over and above the overtime rate the Employer has already agreed to pay non-ODL and work assignment carriers is proper compensation for their loss.[13] While the Service finds even this limited compensatory remedy to be punitive, I disagree.[14] Rather, I analogize this remedy that, when added to the overtime rate already agreeably determined to be required for these carriers, ultimately totals the penalty rate of 200% of their straight-time wage, to compensation for the loss of what ordinarily would have been carrier personal time authorized elsewhere in Article 8 of the National Agreement.

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[13] In this connection, I respectfully disagree with the aforementioned view of Arbitrator Dilts that no further remedy for non-ODL carriers other than a cease-and-desist order was required since those employees had been compensated for the overtime work performed.

[14] Indeed, although I cannot agree with the Service that paragraph 5 of the December 20, 1988, MOU set forth at pages 167-169 of the National Agreement clearly and unambiguously applies to non-ODL and work assignment carriers improperly mandated to work off their own routes, even if it was intended to do so, and the Service's estimation that a $14 straight-time wage rate was in effect at that time is correct, the $7-per-hour remedy agreed to there, albeit expressly non-precedential, would have been the equivalent of the remedy I find appropriate for non-ODL and work assignment carriers here.

In my view, such a remedy falls clearly within the *Enterprise Wheel* admonition to arbitrators to fashion remedies corresponding to the harm suffered as well as the requirement stated by National Arbitrator Mittenthal in *Case Nos. H1C-NA-C 97, H1C-NA-C 123 and H1C-NA-C 124, supra,* to arrive at "compensatory damages to the extent required, no more and no less."[15] As National Arbitrator Gamser held in *Case No. NC-S-5426, supra*, although an arbitrator "has no authority to add to, subtract from or modify the terms of the agreement" being applied, ". . . to provide for an appropriate remedy for breaches of the terms of an agreement, even where no specific provision defining the nature of such remedy is to be found in the agreement, certainly is found within the inherent powers of the arbitrator."[16]

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[15] Sl. op. at 15. It should also be noted that, in the instant dispute, as in the case before Arbitrator Dilts, no demonstration of the existence of "demonstrable legitimate and valid reasons" referred to on page 22 of his decision was made to justify the mandates at issue. However, unlike in the case before Arbitrator Dilts, the Service here did not even argue at any stage of the proceedings that it had such reasons that might have justified the mandates being contested by the Union, choosing instead to place all its marbles in its "punitive award" basket at every step of the proceedings.

[16] Sl. op. at 7-8.

AWARD

I. It is the Award of the Arbitrator that the appropriate remedy requires that 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 additional 50% of the straight-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, 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.

III. The Arbitrator hereby reserves jurisdiction for ninety (90) calendar days from the date of this Award for the limited purpose of assisting the parties as may be required in the implementation of the Award set forth above.

/s/
M. Zane Lumbley, Arbitrator, NAA

February 17, 2020
Dated