REGULAR ARBITRATION PANEL

In the Matter of Arbitration

between

United States Postal Service

and

National Association of Letter Carriers
AFL-CIO

Grievant: Class Action

Post Office: North Broadway Post Office

G16N-4G-C 19180491
DRT: 10-464316
Local: 421-239-19

BEFORE: Thomas Strapkovic, Arbitrator

APPEARANCES:

For the U.S. Postal Service:	Gwenn Sambula, Labor Relations Specialist Jonathan Kleine, Technical Assistant
For the National Association of Letter Carriers:	Richard Gould, Vice President NALC 421 Adam Reyna, Technical Assistant
Place of Hearing:	San Antonio, Texas
Date of Hearing:	May 30, 2019
Date Hearing Closed:	July 3, 2019
Date of Award:	July 27, 2019
Relevant Contract Provision/s:	Article 15
Contract Year:	2016-2019
Type of Grievance:	Contract/Arbitrability/Remedy

AWARD SUMMARY:

The grievance is arbitrable. The grievance is sustained as detailed herein.

Thomas Strapkovic
Arbitrator

INTRODUCTION:

The hearing in this case was held on May 30, 2019, at the Rio Grande District office in San Antonio Texas before the undersigned Arbitrator who was duly appointed by the parties to render a final and binding decision in this matter. At the hearing, all witnesses provided sworn testimony and the parties were afforded full opportunity to present such evidence and argument as desired, including an examination and cross-examination of all witnesses. The parties agreed to submit post hearing briefs postmarked no later than June 30, 2019. The Postal Service's post hearing brief was postmarked June 30, 2019, and received on July 2, 2019.[1] The National Association of Letter Carriers' post hearing brief was postmarked June 29, 2019, and received on July 1, 2019.[2] Therefore, the record closed on July 3, 2019. The issues are defined below.

ISSUE:

In their post hearing briefs, the parties identified the proposed issues to be resolved.
The NALC defined the issues as:

Did management violate Articles 5 and/or 34 of the National Agreement by changing letter carrier clock rings, resulting in disallowed time and loss of pay, without documentation justifying the changes? If so, what is the remedy?

Did management violate Article 19 of the National Agreement via The Employee and Labor Relations Manual (ELM) Sections 432 and 665 and Handbook F-21, Time and Attendance, by changing letter carrier clock rings, resulting in disallowed time and loss of pay, without documentation justifying the changes? If so, what is the remedy?

The Postal Service defined the issues as:

Is the requested remedy by the Union appropriate? If not, is it then arbitrable?

Inasmuch as the parties could not mutually agree on the issues to be decided, the Arbitrator defines the issues as following:

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[1] Hereafter referred to as USPS, Postal Service or management
[2] Hereafter referred to as NALC or Union

Is this instant grievance arbitrable?

If so, did management violate Articles 5 and/or 34 of the National Agreement by changing letter carrier clock rings, resulting in disallowed time and loss of pay, without documentation justifying the changes? If so, what is the remedy?

Did management violate Article 19 of the National Agreement via The Employee and Labor Relations Manual (ELM) Sections 432 and 665 and Handbook F-21, Time and Attendance, by changing letter carrier clock rings, resulting in disallowed time and loss of pay, without documentation justifying the changes? If so, what is the remedy?

BACKGROUND:

On or about February 6, 2019, the Union filed a class-action grievance contending the following: Acting Station Manager Ruben Vela has systematically altered letter carrier clock rings and forged employee's signatures on PS Form 1260 for a prolonged period of time. The parties could not resolve this issue at the Formal A level of the grievance process and it was subsequently appealed to Step B on April 5, 2019.

The Rio Grande Dispute Resolution Team (DRT) met at Step B on or about April 19, 2019. The parties could not resolve this issue. On April 19, 2019, the parties mutually agreed to declare an impasse and, as such, the Union appealed this grievance to regular arbitration.[3]

RELEVANT CONTRACT LANGUAGE:

ARTICLE 1
UNION RECOGNITION

Section 1. Union
The Employer recognizes the National Association of Letter Carriers, AFL-CIO as the exclusive bargaining representative of all employees in the bargaining unit for which it has been recognized and certified at the national level - City Letter Carriers.

Section 2. Exclusions
1. Managerial and supervisory personnel;

ARTICLE 3
MANAGEMENT RIGHTS

[3] Joint Exhibit 2, the grievance package, consists of 256 pages

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;
B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary actions against such employees;

ARTICLE 5
PROHIBITION OF UNILATERAL ACTION

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

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE

Section 1. Definition
A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

Section 4. Arbitration
A. General provisions
6. All decisions of an arbitrator will be final and binding. All decisions of arbitrator 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

NALC-USPS JOINT CONTRACT ADMINISTRATION MANUAL-July 2014

In circumstances where the violation is egregious or deliberate or after local management has received previous instructional resolutions on the same issue and it appears that a "cease and desist" remedy is not sufficient to insure future contract compliance, the parties may wish to consider a further, appropriate compensatory remedy to the injured party to emphasize the commitment of the parties to contract compliance. In these circumstances, care should be exercised to insure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy.

EMPLOYEE LABOR RELATIONS MANUAL

432.712 Allowed Time
Supervisors must credit employees with all-time designated as working time under the Fair Labor Standards Act. Examples of time that must be credited as worktime if the supervisor knows or has reason to believe the activities are being performed during the time, include:

a. Time spent by employees in performing duties that are part of, or related to, the employee's principal work activity, such as pulling mail from a distribution case, collecting tools or supplies, and adjusting rest bars.
b. Time spent continuing to work after a tour ends in order to correct an error, to prepare records, or to finish up a task.
c. Time spent working during meal periods.
d. Time spent distributing work to workstations.

650 Non-bargaining Disciplinary, Grievance and Appeal Procedures

651 Disciplinary and Emergency Procedures

651.1 Scope
Part 651 establishes procedures for:
a. Disciplinary action against non-probationary employees who are not subject to the provisions of a collective bargaining agreement; and
b. Emergency action for conduct that also normally warrants disciplinary action.

651.2 Representation
Subject to prohibitions regarding Executive and Administrative Schedule (EAS)/Craft representation, employees have free choice of representation. Representatives designated by employees, if postal employees and if otherwise in a duty status, are granted a reasonable amount official time to respond to notices of proposed disciplinary action, to prepare for and represent the employee at a hearing held in accordance with 652.24 and/or to represent an employee who has appealed a letter of warning or emergency placement in a non-duty status in accordance with 652.4.
Employees covered under these provisions may request representation during investigative questioning if the employee has a reasonable belief disciplinary action may ensue.

651.7 Adverse Actions

651.71 Definition
Adverse actions are defined as discharges, suspensions of more than 14 days, furloughs for 30 days or less, and/or reductions in grade or pay.

651.72 Policy
Adverse action may be taken against an employee:
a. Because lesser measures have not resulted in the correction of deficiencies in behavior or performance;
b. Because of the gravity of the offense; or
c. For non-disciplinary reasons, such as the correction of a position this ranking

652 Appeal Procedures

652.1 Scope
Part 652 establishes appeal procedures for employees not subject to the provisions of the collective bargaining agreement. These procedures do not:
a. Deprive an employee of the right to a remedy for an allegation of discrimination through equal employment opportunity procedures or
b. Deprive a preference eligible or other entitled employee of the right to appeal an adverse action to the MSPB. When MSPB rights are exercised, the employee waves access to the appeal procedure in 652.2

661.2 Application to Postal Employees
In addition to the statutes listed in Title 5, Code of Federal Regulations (CFR), Part 2635.901-902, the following statutes and regulations are applicable to all employees of the Postal Service.

665.16 Behavior and Personal Habits

Employees are expected to conduct themselves during and outside of working hours in a manner that reflects favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it does require that postal employees be honest, reliable, trustworthy, courteous, and of good character and reputation. The Federal Standards of Ethical Conduct referenced in 662.1 also contain regulations governing the off-duty behavior of postal employees. Employees must not engage in criminal, dishonest, notoriously disgraceful, immoral, or other conduct prejudicial to the Postal Service. Conviction for a violation of any criminal statute may be grounds for disciplinary action against an employee, including removal of the employee, in addition to any other penalty imposed pursuant to statute.

665.4 for Falsification of Recording Time
Recording the time for another employee constitutes falsification of a report. Any employee knowingly involved in such a procedure is subject to removal or other discipline. Failure of a supervisor to report known late arrivals is regarded as condoning falsification. These practices may also result in criminal prosecution.

Federal Code 18 U.S.C. 1001

(a) Except as otherwise provided in this section, whoever, in any manner within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully –
   1. falsified, conceals, or covers up by any trick, scheme, or device a material fact;
   2. makes any material false, fictitious, or fraudulent statement or representation; or
   3. makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entity; shall be fined under this title, imprisoned not more than five years or, if the offense involves international or 8 domestic terrorism (as defined in section 2331), imprisoned not more than years, or both. If the matter relates to an offense under Chapter 109 A, 109 B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

JOINT STATEMENT ON VIOLENCE AND BEHAVIOR IN THE WORKPLACE

We all grieve for the Royal Oak victims, and we sympathize with their families, as we have grieved and sympathize all too often before this similar horrifying circumstances. But grief and sympathy are not enough. Neither are ritualistic expressions of grave concern or the initiation of investigations, studies, or research projects

The United States Postal Service as an institution and all of us who served that institution must firmly and unequivocally commit to do everything within our power to prevent further incidents of work-related violence.

This is a time for a candid appraisal of our flaws and not a time for scapegoating, finger-pointing, or procrastination. It is a time for reaffirming the basic right of all employees to a safe and humane working environment. It is also the time to take action to show that we mean what we say.

We openly acknowledge that in some places or units there is an unacceptable level of stress in the workplace; that there is no excuse for and will be no tolerance of violence or any threats of violence by anyone at any level of the Postal Service; and that there is no excuse for and will be no tolerance of harassment, intimidation, threats, or bullying by anyone.

We also affirm that every employee at every level of the Postal Service should be treated at all times with dignity, respect, and fairness. The need for the USPS to serve the public efficiently and productively, and the need for all employees to be committed to giving a fair day's work for a fair day's pay, does not justify actions that are abusive or intolerant. "Making the numbers" is not an excuse for the abusive anyone. Those who do not treat others with dignity and respect will not be rewarded or promoted. Those whose unacceptable behavior continues will be removed from their positions.

We obviously cannot ensure that however seriously intentioned are words may be, they will not be treated with winks and nods, or skepticism, by some of our over 700,000 employees. But let there be no mistake that we mean what we say and we will enforce our commitment to a workplace where dignity, respect, and fairness are basic human rights, and where those who do not respect those rights will not be tolerated.

Our intention is to make the workroom floor a safer, more harmonious, as well as a more productive workplace. We pledge our efforts to these objectives.

POSITION OF THE PARTIES

Postal Service:

In their post hearing brief, the Postal Service argued that the Union's remedy requested in this case is unattainable and, as such, this grievance is not arbitrable. The Postal Service admitted that management at the North Broadway Station committed the serious allegations made by the Union and that as a result of these allegations, management initiated corrective action on the supervisory personnel involved in this dispute. The Postal Service claims that all of the affected letter carriers have been made whole financially for the work hours that had been deleted out of the TACS system by the supervisory personnel of the North Broadway Station, including the two acting supervisors (204B). Moreover, Acting Station Manager Vela's access to TACS was revoked but, he (Vela) will regain access to TACS in June 2019, after taking a TACS training session.

According to the Postal Service, the remaining remedy requested by the Union is inappropriate and is prohibited by the terms of the National Agreement and would impinge on the rights of the Postal Service to freely choose and direct its supervisors. This goes to the heart of management's right to manage its workforce, would necessarily impact the supervisor's career and would deny the supervisors of their due process rights. Moreover, managers and supervisors are excluded from Article 1 of the National Agreement and therefore are excluded

from the provisions of it. Because of this, the grievance is not arbitrable. The Postal Service supports this contention with several regional arbitration awards.

In case A01N-4A-C 03057175, Arbitrator Rosen denied the Union's grievance finding it not arbitrable. Arbitrator Rosen makes the following observations:

> "Under Article 1, Section 2 of the national agreement, managerial and supervisory personnel are excluded from the provisions of the contract. When the recognition clause excludes supervisors from the bargaining unit, arbitrators do not have the authority to impose discipline. Without jurisdiction I cannot direct the Postal Service to discipline the supervisor. Arbitrators have held that management has a right to decide if a supervisor should be disciplined, and if so, the severity of the penalty. However, without a clear contractual provision this right does not extend to the arbitrator. The National Agreement does not give either the Union or an employee a disciplinary option against a supervisor. It is generally agreed that except in the most extreme circumstances man arbitrator impose discipline on supervisor. These extreme conditions do not exist in this grievance. In the Step B Decision (A01N-4A-C 03097642) the parties stated, "the Postal Service guidelines relevant to any corrective action on management personnel do not fall under the scope of the National Agreement specifically the JCAM. The NALC's only authority is strictly related to its members and their negotiated contract. The Employee and Labor Relations Manual Section 650 strictly covers the Postal Service guidelines for any corrective action on managers. The section sets the procedures and guidelines for who may take action on managers." Included in the Step B Decision (Exhibit USPS 1) the parties also cited an arbitration award (A01N-4A-C 03097642) that supported the position that arbitrators, by virtue of the Agreement, or precluded from imposing discipline on supervisors are management. Based upon the above findings I have decided that under the National Agreement the Union's demand that the arbitrator impose discipline on a supervisor is not arbitrable."

In case F94N-4F-C 98080210 Arbitrator Olson denied the Union's, grievance stating in part:

> "This arbitrator has no authority or jurisdiction to issue an award that would involve disciplinary action against supervisory employees, or cause the Employer to change a given supervisor's assigned duties, since these rights are retained exclusively by the Employer. Unquestionably, Article 1, Section 2 of the national agreement That expressly states that agreement does not apply to managerial or supervisory personnel."

In case K01N-4K-C 02247372 Arbitrator Powell ruled that the requested remedy is not arbitrable, stating in part:

> "Based on the clear intent of the Agreement, the arbitrators powerless and without authority to make any binding judgment against managerial or supervisory personnel. Arbitration under this Agreement is not the proper form for the adjudication of such charges. Not only is the arbitrator without authority, but the whole concept of due process is threatened. Although Mr. Jones was called as a witness, he was not informed that he was on trial for violation of the Joint Statement. Nor was he given the opportunity of being represented by counsel. Under the terms of this Agreement, the Postal Service may take adverse action against a member of the bargaining unit. He or she may appeal such action either through the collective bargaining agreement or through the Merit Systems Protection Board. It is to be noted that the power of discipline is vested solely in

> the hands of management. While such actions are reviewable, for bargaining unit personnel through the grievance procedure. Nevertheless, the initiating power rests solely with the Postal Service. The union here is seeking to extend such power to the arbitrator. They cannot do, nor can the arbitrator extend his authority beyond the permission and authority granted by this Agreement. Other arbitrators have been consistent in confirming that no arbitrable authority exists to remove her discipline Agency personnel under the Snow Award... Inasmuch as this arbitrator cannot direct any action against a supervisor, the matter of arbitrability must be decided in behalf of the Postal Service, and the present grievance is not arbitrable."

In case C8N-4C-C 5208, Arbitrator Dobranski denied the Union's grievance stating in part:

> "Article 1, which excludes supervisory personnel from the coverage of this Agreement, and Article 3, which sets forth the rights of management, make it clear that the Arbitrator does not have the authority to require the Postal Service to assign a supervisor from one location to another. Under these Articles the selection and work assignments of a supervisor is clearly a right retained by management. Moreover, I cannot agree with the union that Article 19 because it incorporates into the Agreement that Code of Ethical Conduct which was violated by Supervisor Byers. Even assuming the Code applies to all Postal Service employees, including supervisory personnel, it is clear that it is incorporated into the Agreement through Article 19 only insofar as bargaining unit employees are involved. In other words, the items incorporated through Article 19 cover only employees covered by the Agreement. The Agreement covers only employees in the bargaining unit and not supervisors. In summary, whatever contract violation may have occurred as a result of Byers' conduct, the Arbitrator does not have the authority to remedy that violation in the manner requested by the Union."

In case B94N-4B-C 98103840, Arbitrator Fraser upheld management's arguments regarding the Joint Statement when he ruled that the National Snow Award (Q90N-4F-C 94024977) did not in any way give arbitrators the right to issue discipline or adverse action against management personnel stating in part:

> "It is significant that Arbitrator Snow did not specify in his award any changes in the National Agreement that would flow to Article 1 and/or Article 3 as a result of his decision, because his decision did not bear on this provision. To conclude that the Snow Award gives arbitrators the authority to impose discipline would require the rewriting of Article 3, which was not the purpose nor addressed by his National Arbitration award. After his Award, supervisors and management still fall outside the scope of the collective bargaining agreement, as they had prior to 1996, and any action of a disciplinary nature still falls within the sole prerogative of management."

In case B94N-4B-C 97024116, Arbitrator Leibowitz made the following observation:

> "With all due respect to the final paragraph of Professor Snow's National Award, I am unaware of any binding legal authority for the proposition that an arbitrator may direct such action against supervisors who are excluded from the bargaining unit. Counsel for the union in this case cited no binding legal authority for that proposition and it is my understanding that there is none. Therefore, I declined to order a remedy outside my jurisdiction."

In case NB-N-134/135/136, Arbitrator Gamser made the following observation concerning the remedy requested by the Union:

> "On the other hand, the remaining remedy proposed by the Union, to divide all overtime among all senior carriers appears to be in the nature of the punitive action rather than an appropriate and realistic method of making the aggrieved regular carriers whole for actual lost overtime earnings opportunities."

The Postal Service asserts that the remedy requested by the Union is inappropriate. The Union has requested that every city carrier assigned to the North Broadway Station be paid a lump sum of $500, Steward Ramirez be paid $750 and that NALC Branch 421 received $1000 due to the egregious behavior by management. It is generally accepted that "monetary damages" in arbitration should normally correspond to specific monetary losses suffered.[4] Arbitrator Mittenthal stated in National Arbitration Award H7C-NA-C 36:

> "It is generally accepted in labor arbitration that a damage award, arising from a violation of the collective bargaining agreement, should be limited to the amount necessary to make the injured employees whole for their losses. They receive compensatory damages to the extent required, no more and no less."

In this instant case, payments were made to the 25 harmed employees identified by the Union. The cash payout amounted to $1170.28. Therefore, the grieved employees were made whole for their financial losses.

Black's Law dictionary defines compensatory damages as "Compensatory damages are such as will compensate the injured party for the injuries sustained, and nothing more; such as will simply make good or replace the loss caused by the wrong or injury. Damages awarded to a person as compensation, indemnity, or restitution for harms sustained by him. The rationale behind compensatory damages is to restore the injured party to the position he or she was in prior to the injury." By contrast, punitive or exemplary damages are damages assessed in order to punish a defendant for extreme and outrageous conduct and/or to reform or deter the defendant and others from engaging in conduct similar to that which formed the basis of the lawsuit.

The Postal Service argues the well-established general rule of law is that punitive or exemplary damages and not available as a remedy for a contract breach. In particular, punitive damages are disfavored in the context of labor agreements because they are not compensation for injury,

[4] Elkouri & Elkouri, How Arbitration Works, 4th edition 1985

but are instead private fines levied to punish reprehensible conduct and to deter future occurrence.[5] The award of punitive damages against the Postal Service is further barred by principles of sovereign immunity; moreover, because such costs are simply passed on to rate-payers, punitive awards against the government instrumentally fail to advance the public interest or deter misconduct.[6] Arbitrators themselves, including postal arbitrators at the National level, have declined to impose punitive remedies because contractual remedies are intended to be compensatory, and because punitive remedies do not foster the promotion of harmonious labor relations.[7]

The Postal Service indicated that Courts have vacated arbitral decisions imposing punitive remedies or "penalties" for breaches of labor agreements where the collective bargaining agreements do not explicitly provide for punitive awards, and the employer did not engage in wanton or willful misconduct.[8] To the extent an arbitrator orders payment of a "penalty" or other non-compensatory remedy directly to a union, it implicates the policy considerations of Section 302 of the Labor Management Relations Act (29 USC §186), which prohibits employers from making payments of money or other things of value to unions.[9]

Based on their arguments, the Postal Service request that the Arbitrator find no violation of the National Agreement and/or Handbooks/Manuals and deny the grievance in its entirely.

In support of their position, the Postal Service submitted the following arbitration awards for persuasive value:

A01N-4A-C 03057175	Arbitrator Stephen Rosen	August 22, 2003
K01N-4K-C 02247372	Arbitrator Walter Powell	March 25, 2003
B94N-4B-C 97024116	Arbitrator Margaret Leibowitz	April 13, 2001
F94N-4F-C 98080218	Arbitrator Donald Olson	January 1, 2001
B94N-4B-C 98103840	Arbitrator Bruce Fraser	October 20, 1999

[5] Williston on Contracts 4th edition, International Brotherhood of Electrical Workers v. Foust, 442, Labor Management Relations Act 71 A.L.R. Fed. 221
[6] Bowen v. US Postal Service, 470 F. Supp, McLean v. US Postal Service, 544 F. Supp, US Postal Service v. American Postal Workers Union, AFL-CIO,
[7] Morton Salt, 113 LA 969, Collins NAT-96-016- C, Byars Q98C-4Q-C 00062970
[8] Local 127, United Shoe Workers of America, AFL-CIO v. Brooks Shoe Manufacturing Co. 298 F. 2d 277, Baltimore Reg'l Joint Bd v Webster Clothes, Inc. 596 F. 2d 95, Merk v. Jewel Food Stores 945 F. 2d, Crawford v. Pittsburgh-Des Moines Steel Co. 386 F. Supp
[9] Mostly verbatim from the Postal Service's post hearing brief

C8N-4C-C 5028	Arbitrator Bernard Dobranski	December 12, 1980
NB-N-134/135/136	Arbitrator Howard Gamser	December 22, 1994

Union:

The Union believes that management has violated provisions of the National Agreement and, because the violation was so egregious, they [Union] are entitled to an additional remedy. The Union maintains that they are not asking for the termination of any managerial or supervisory personnel. The Union is requesting that the managerial and supervisory personnel be relieved of their "administrative" duties of supervising letter carriers. The Union believes that they are entitled to this based on National Arbitrator Carlton Snow's award, Q90N-4F-C 94024977/94024038.[10] Arbitrator Snow defined the issue in that case as: Does the Joint Statement on Violence and Behavior in the Workplace constitute an enforceable agreement between the parties so that the Union may use the negotiated grievance procedure to resolve disputes arising under the Joint Statement?[11] If so, what is the appropriate remedy? In his analysis of this case Arbitrator Snow stated:

> "... Whether or not the parties have amended such managerial rights by entering into the Joint Statement on Violence and Behavior in the Workplace (JSVBW)... Whether or not the parties made binding promises to each other in the Joint Statement and whether or not the parties intended to create legal duties to perform promises to each other."

Arbitrator Snow, after quoting Supreme Court's decision 91LRRM 1187, J. T. Sand and Gravel Co. (1976) opined:

> "It is clear that the US Supreme Court believes that the term open "contract" embraces not only traditional collective bargaining agreements, but also other documents negotiated between the parties such as "statements of understanding" drafted, for example, as a method of settling a strike."

Referring to the Steelworkers trilogy in which the US Supreme Court quoted the words of Professor Archibald Cox:

> "It is not unqualifiedly true that a collective bargaining agreement is simply a document by which the union and employees have imposed upon management Limited, expressed restrictions of its otherwise absolute right to manage the enterprise, so that an employee's claim must fail unless he can point to a specific contract provision upon which the claim is founded. <u>There are too many people, too many problems, too many unforeseeable contingencies to make the words of the contract the exclusive source of rights and duties. One cannot reduce all of the rules governing a community like an</u>

[10] Joint Exhibit 3
[11] Hereafter referred to as JSVBW

> industrial plant to fifteen or even fifty pages. Within the sphere of collective bargaining, the institutional characteristics and the governmental nature of the collective bargaining process demand a common-law of the shop which implements and furnishes the context of the agreement. (See, 72 Harv. L. Rev. 1482, 1498 (1959), Emphasis added."

After going into detail using arbitrable cites and references regarding the meaning of the joint statement, Arbitrator Snow recognized that this was a joint effort to combat violence between the parties whose intention was a pledge or commitment that would be enforced:

> "The Joint Statement committed the parties to a course of action and created obligations for them. Even if the expression of the parties' intent in the Joint Statement itself was clear in its manifestation of an intent to be bound; but even if one concluded that there was an imperfect expression of the parties' intent, the document was instinct with an obligation which supplied the binding requirement of the transaction."

In his conclusion as to whether or not the JSVBW was enforceable through the grievance procedure, Arbitrator Snow considered the language in Article 15 of the National Agreement recognizing that "the grievance procedure could be used to resolve "a dispute, difference, or complaint" related to "conditions of employment." Furthermore, Arbitrator Snow expressed that the Joint Statement did not provide an alternative means of enforcement; therefore, the grievance procedure could be used to resolve disputes under the JSVBW considering it involved complaints regarding conditions of employment. He also considered the fact that management use the JSVBW as a mechanism for disciplining non-supervisor employees whose behavior violated the Joint Statement. In closing he clearly recognized that the employees needed a method to enforce against management that which was being used against employees. He opined:

> "The grievance procedure of the National Agreement may be used to enforce the parties' bargain, and arbitrators have available to them the flexibility found in arbitral jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her administrative duties. As the US Supreme Court instructed:
>
> > "There [formulating remedies] the need is for flexibility in meeting a wide variety of situations. The draftsman may never have thought of what specific remedy should be awarded to meet a particular contingency. (See, United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 US 593 (1960)."

The Union argues that the Postal Service has admitted that the violations took place and it is undisputed that one or more supervisors manipulated clock rings on multiple occasions from November 2017 through February 2019. It is equally undisputed that one or more supervisor falsified PS Form 1260's forging employee [204B] Wilbanks' initials in order to cover up the initial act. Therefore, the only issue remaining in this case is remedy. The Union believes that

the Arbitrator has the authority to grant the Union's remedy based upon the language outlined in the National Agreement and past arbitral authority.

The Union argues that Arbitrator Snow recognized the National Agreement as a method of contract enforcement for the JSVBW. He [Arbitrator Snow] also recognized the parties acknowledge their bargaining rights extended beyond the language written in the contract itself and included the law and those parts of handbooks and manuals that directly relate to wages, hours, and conditions of employment. Those other items or documents include the ELM, F-21, and the Code of Federal Regulations as covered by Articles 5 and 19 of the National Agreement. The sections of the ELM the Union cites as violations, which was not disputed by management, apply to all employees and are an enforceable part of the agreement just as much as the JSVBW is enforceable.

The very title of the Joint Statement on Violence and Behavior in the Workplace [Emphasis Added] reflect that it was not exclusively intended to protect employees against violence, but also behavior. Although the impetus behind the JSVBW was a violent act, the parties were careful to separately address any behavior that would deprive employees of a fair day's work for a fair day's pay. Additionally, the parties affirm the basic right of all employees to be treated with dignity, respect, and fairness. The parties agree in the JSVBW that "Making the numbers' is not an excuse for the abuse of anyone."

The behavior in this case was a systematic campaign by two supervisors to use their access to time records to rob letter carriers of pay for work they had performed. The Union can think of no behavior more unconscionable than sneaking into the Time and Attendance Collection System (TACS) and falsifying letter carrier records to create the appearance they had not worked as much as they really had. This kind of thievery would have resulted in the immediate removal if perpetrated by a letter carrier, but inexplicably the Postal Service appears to have taken the position that it's supervisors should be somehow held to a lower standard than the craft employees they manage. The Postal Service insist that the only remedy available is to pay the employees back for the money that was stolen from them. Because the Union has not provided a receipt showing the value of the harm done to the work environment, the Postal Service urges no harm has come to the victims. The Postal Service also asserts "corrective action" has been taken against the supervisors in question, which should satisfy the Union.

The trouble with this position is that it does not satisfy the Union's desire for admitted paycheck thieves and document falsifiers not to have access to letter carrier time records. Although it surprised the Union that neither supervisor was terminated once the malfeasance was proven, such a result is not necessary to satisfy the Union's interest. The supervisors in question have shown what happens when they have access to letter carrier's time records. The Union is only requesting that they no longer have the ability to do that. Their due process concerns are satisfied, and the Union's fears assuaged if they retain their supervisory positions, but with the limitations specified in the Unions requested remedy.

Furthermore, when the parties signed the National Agreement, it included Article 19, which encompasses the handbooks and manuals. These manuals include the ELM Sections 665.16 and 665.44. The Postal Service appears to argue those provisions were intended to apply only to the craft employees but not EAS employees. On the contrary, ELM Section 660 as well as multiple statutes and regulations to include the Code of Federal Regulations apply to *all employees* of the Postal Service.

The National Agreement Was not intended to be a one-sided proposition for enforcement purposes. Article 19 clearly outlines the party's right to enforce those parts of the handbooks and manuals that have a direct effect on wages, hours, and working conditions. The JSVBW is used by both parties as an enforceable part of the contract. Therefore, it would go to sound reasoning that those sections of the ELM that apply to letter carriers also applies to management for enforcement purposes through the grievances and/or arbitration.

That management uses these sections to enforce administrative actions upon craft employees goes without saying. When a letter carrier breaches the trust of the Postal Service through illegal actions management has at their disposal the language in the ELM that supports their decision to take administrative action against an employee up to and including removal. Those same sections cannot serve as an exclusive right only meant to be used for group of employees but exclude others. On the contrary management must be held to a higher standard to include those standards outlined in the handbooks and manuals. There can never be a double standard on this issue.

Furthermore, what mechanism do employees have at their disposal to enforce breaches of trust and violations of law against them such as the case at hand? When management either fails to

act or refuses to act in situations where the handbooks and manuals are violated by their own supervisors and managers, employees and Unions have at their disposal those same handbooks and manuals to enforce the rules and remedies outlined in them.

The ELM Section 665.44 imposes a possibility of discipline, removal and/or criminal prosecution for violations of that section. The language falls in line with the JSVBW which states, "Those whose unacceptable behavior continues will be removed from their positions." Both of these provisions call for possible removal for breaches, yet both are not equal in nature. One involves breaches of moral turpitude and trust while the other involves violation of Federal Law as well as breaches of moral turpitude and trust. These supervisors knew what they were doing and knew about the consequences of their actions if caught. This is not a mystery as the same language being used by the Union is the same language used by management when employees under their supervision violate those same sections. To perform an act, knowing that action could result in a known penalty imposed by the ELM, is also to accept the penalty for those actions. In willfully and knowingly deleting clock rings, the supervisors accepted full responsibility if they were caught, unless they believed they would get off scot free as seems to have been the case thus far.

It cannot reasonably be inferred that the Arbitrator has the authority to enforce the JSVBW, but somehow the ELM language is outside of his or her authority. Arbitrator Snow's award and Article 19 gives the Arbitrator all the authority necessary to enforce both documents. The Union would argue that arbitrators can and must have the authority, in accordance with Arbitrator Snow's decision, to remove a supervisor from their administrative duties in instances where serious breaches have occurred, such as in this case, to the point that it is necessary to restore trust and ensure that it does not happen again.

Finally, management would argue that they have the exclusive right under Article 3 to hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take disciplinary action against such employees. This right however, is limited by negotiated contractual provisions. The Postal Service's exclusive right included the right to agree on the language and the intent outlined in the ELM. They also agreed that they were bound by that language. In that agreement is the acceptance that the remedies imposed by the ELM for violations were appropriate remedies for the actions outlined. How can the Postal Service now argue that the remedies requested by the Union are not appropriate, or

that an arbitrator does not have the authority to render a decision, when those requested remedies are actually lesser penalties than those that management agreed were appropriate remedy for the breaches that occurred in this instant case?

Therefore, the Union is requesting the following remedy:

1. Management's order to cease-and-desist the practice of falsely manipulating employees clock rings.
2. Management will provide clock rings upon request to the Union Steward for the following 26 pay periods at no cost to the Union with the steward provided time on the clock for review of the clock rings.
3. The data for the period in question cannot be used for route inspection purposes.
4. City Carrier Donte Dansby to be returned to his respective assignment and prohibited from serving in a supervisory role for a period of at least 24 months.
5. Supervisor Ruben Vela be permanently prohibited from supervising letter carriers in any administrative capacity.
6. Supervisor Ruben Vela provide an in-person apology to the letter carriers of North Broadway with Steward Steven Ramirez and Branch President Tony Boyd present.
7. Any additional remedy that the arbitrator deems appropriate.
8. The arbitrator shall retain jurisdiction during the implementation of this award for a period of 90 days.[12]

In support of their position, the Union submitted the following arbitration awards for persuasive value along with the US Supreme Court decision:

G16N-4G-C 18316064	Arbitrator Glenda August	February 4, 2019
C11N-4C-C 14252054	Arbitrator Robert Brown	January 25, 2016
NC-S-5426	Arbitrator Howard Gamser	April 3, 1979[13]
Steelworkers v Enterprise Corp	U. S. Supreme Court	June 20, 1960[14]

[12] Verbatim from the Union's post hearing brief.
[13] National Level Arbitration Award
[14] Steelworkers v. Enterprise Corp., 363 U.S. 593 (1960)

DISCUSSION AND FINDINGS

At the onset of this hearing, the Postal Service raised an arbitrability issue, arguing that this grievance is not arbitrable because of the remedy requested. The Union, on the other hand disputes this indicating that although the employees were eventually paid the monies owed them, there are outstanding remedy issues involved in this case, that need to be addressed. Based on the simple contractual language of Article 15, this Arbitrator concludes that this grievance is arbitrable.

Article 15 Section 1 defines a grievance as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, ***but is not limited to***, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement. [Emphasis Added] While the Postal Service believes that the remedy, they unilaterally initiated was sufficient, it did not satisfy the Union. Hence, the grievance was appealed.

The genesis of this grievance was that the Union, during the investigation of another issue, discovered that the letter carrier's clock rings, at the North Broadway Station, were being manipulated and deleted by managerial and supervisory personnel without the approval or consent of the affected letter carriers from November 15, 2017 through February 8, 2019.[15] The Union also discovered that managerial and supervisory personnel were also falsifying PS Form 1260s to support the deletion of the letter carrier's clock rings. Obviously, deleting the carrier clock rings resulted in a loss of pay for the time that the letter carriers were legitimately working.

After the Union filed this grievance the Postal Service acknowledged that the Union's allegations were accurate and, in an attempt, to settle the grievance at the Formal A level, the Postal Service paid the affected employees, who were harmed, monies which were owed to them. Additionally, the Postal Service initiated corrective action against the managerial and supervisory personnel involved in this grievance.[16] The Postal Service believed this had

[15] Step B decision page 1
[16] Joint Exhibit 2 pages 13-14 and USPS post hearing brief page 5

satisfied the Union. The Union disagreed and appealed this grievance to Step B because the Postal Service failed to completely comply with the Union's requested remedy.
After appealing this grievance to Step B, the Rio Grande Dispute Resolution Team (DRT) met and discussed this grievance. On April 19, 2019, DRT declared this grievance an impasse and the Union subsequently appealed to arbitration.

Therefore, having concluded that this grievance is arbitrable, the only remaining issue is one of remedy. This is based on the fact that management acknowledged that carrier clock rings were deleted and manipulated and that PS Form 1260s were forged by managerial and supervisory personnel at the North Broadway Station.[17]

The Union has argued that management, at the North Broadway Station, has violated the Joint Statement on Violence and Behavior in the Workplace (JSVBW) and by doing so an additional remedy is warranted.[18] In support of this argument, the Union solicited the testimony of Steven Wilbanks and Kirk Fraser.

Steven Wilbanks testified that he was a former 204B at the North Broadway Station, who was accused of manipulating and deleting carrier clock rings. Mr. Wilbanks indicated that on one occasion, after returning from his off day, he noticed that a clerk's clock rings had been deleted. He approached the clerk and advised her that the 30 minutes of overtime she worked the prior day had been deleted by 204B Donte Dansby, and advised her to contact her union steward. Several days later, other city letter carriers approached him and asked him why other union stewards were at the station reviewing the letter carrier's clock rings. Shortly thereafter another letter carrier approached him and informed him that the union steward was looking into clock rings being deleted. Mr. Wilbanks stated he texted Area Manager Yvonne Lopez and inquired what was going on. Mr. Wilbanks indicated Ms. Lopez never responded to his text. Mr. Wilbanks adamantly denied any involvement in the deletion and manipulation of the employees' clock rings.

Mr. Wilbanks testified that the union steward approached him with the records and he noticed that several of the deletions attributed to him were made during October 5-12, when he was out on paternity leave and was not at the station. He further noticed that some of the PS form 1260s

[17] Step B decision pages 1-7
[18] Joint Statement on Violence and Behavior in Workplace hereafter referred to as JSVBW

were alleged to have been initialed by him but, testified that it was not his handwriting and recognized that the handwriting belonged to 204B Dansby. Mr. Wilbanks claimed that he did not have access to the timekeeping reports but, Acting Manager Vela had provided him with his [Vela] employee's ID number (EIN) and password and realized at that point he was being set up as the scapegoat. Mr. Wilbanks indicated he has lost all faith in his co-workers [Ruben Vela and Donte Dansby]. As a result of this, he was given a pre-disciplinary interview and informed by upper management that he will never be able to advance his career. Moreover, he believes that his integrity has been damaged and lost and he will never be able to retrieve it. Mr. Wilbanks stated that in his new station he was asked to return to the 204B program but, advised management he wants nothing further to do with management. I found Mr. Wilbanks' testimony to be forthright and extremely credible and I further conclude that he had nothing to do with the manipulation or deletion of the letter carrier's clock rings nor did he forge any PS Form 1260s.

Mr. Kirk Fraser testified that prior to the arrival of the outside steward, that station management, via standup meeting, had informed the station personnel that outsiders were coming into the station with the intent of tearing up the cohesion in the station. Mr. Fraser indicated that when the outside steward arrived Mr. Vela immediately began to berate the steward in front of about 18 to 20 co-workers. Mr. Fraser stated Mr. Vela came within a foot of the steward's face and believed the two of them "were going to come to blows".

Mr. Fraser testified that when he was advised as to what was transpiring in the station, he could not believe it because while employed at this station, all he ever heard was about the integrity carriers must have and how the station is like building a family and how the customers have so much trust in them. Mr. Fraser explained that in the past, he has never checked his earnings statement to make sure he is getting paid for all the time he worked because, after all this is the government and he assumed his managers would never do anything like this. So, when he found out, it was devastating.

Mr. Fraser categorized this situation as immoral and an egregious breach of trust. Mr. Fraser relayed that these managers are entrusted to accurately input his leave time and wondered how long this has been actually been going on. Mr. Fraser indicated that at some point management conducted a standup meeting to discuss this situation. According to Mr. Fraser, during the standup meeting the Area Manager claimed that the deletion of the clock rings was just a simple mistake. Mr. Fraser stated that the claim that the deletion of clock rings was a simple mistake

was outrageous and indicates that management does not understand the severity of their actions. The mere fact that a manager falsified government forms [PS Form 1260s] is so egregious that he could not comprehend that. Clearly, falsifying dozens of the PS Form 1260s does not equate to a simple mistake but, rather something that was done deliberately. Mr. Fraser asserted that by management claiming the deletion of clock rings was a simple mistake, management is blatantly attempting to cover this up and by doing so they demonstrated no remorse.

Mr. Fraser openly questioned whether or not he has been paid for all the time he has worked in the past. Mr. Fraser implied that the actions committed by the Manager is no different than stealing a gift card out of the mail and does not understand why this Manager was not removed from the Postal Service.

Under cross-examination, Mr. Fraser with asked if it was his understanding that the supervisors had not been issued discipline? Mr. Fraser responded that he had no idea if they had been issued discipline or not but, when he was told that the supervisors would return to the station while the investigation was still ongoing, he believed that a decision had already been made.

Before determining if any additional remedy is warranted, I believe it is necessary to discuss some of the contentions made by management at the Formal A and the Step B level of the grievance process.

In these contentions, management knowledges that the managerial and supervisory personnel at the North Broadway Station, did in fact, manipulate and delete letter carrier's clock rings and supported the manipulations and deletions with falsified PS Form 1260s which resulted in the letter carriers being short paid. According to management's contentions, all the letter carriers were paid for these lost wages. Additionally, the Postal Service implied that it has initiated corrective action against Acting Manager Vela and that presently he does not supervise letter carriers. Record evidence also reflects that management conducted the investigative interviews/pre-disciplinary interviews with the 204B's in question.

As I noted earlier, based on his candor, testimony and record evidence Mr. Wilbanks appears to have had nothing to do with this scheme. As Mr. Wilbanks testified, he did not initial or sign the forged PS Form 1260s and that several of these PS Form 1260s were forged when he was out on paternity leave. I believe that Mr. Wilbanks was the designated scapegoat.

I have reviewed the testimony of both witnesses and reviewed the record evidence several times. According to the testimony and record evidence, management asserted that the managerial and supervisory personnel at the North Broadway Station simply made a mistake and everyone makes mistakes. In its Step B decision management representative states,

> "The Union states, "if they did it once they will do it again, so they should never be put into a position to affect craft again." This would be the same as management saying, "The carrier was caught not wearing a seatbelt, therefore he can never drive again, because if he did it once he will do it again."

This analogy used by the Postal Service is simply not realistic. This situation was not dealing with a minor infraction of wearing or not wearing a seatbelt. This situation dealt with a representative from management stealing time from letter carriers solely for the purpose of avoiding the payment of overtime/penalty overtime and to make himself look good and if it had not been for union steward Ramirez detecting this scheme, no one knows, for sure, how long this theft of time would have continued. The more proper analogy should have been what would management do if they caught a letter carrier clocking in and out a co-worker who was absent from work on multiple occasions. In this analogy, most likely both employees would have been discharged.

A simple mistake did not occur here. From November 15, 2017 to February 8, 2019 a management representative manipulated and deleted clock rings on at least 70 occasions. What occurred was a calculated act for a prolonged period of time, in which, management's representative forged PS Form 1260s as supporting documentation. Clearly, it rises to the level of repeated violations and not a simple mistake as the Postal Service argues.

While it is obvious that the Postal Service has initiated adverse action on the key management representative involved in this, the Postal Service argues that any additional monetary remedy would constitute punitive damages. I am not sure I agree.

In case NC-S-5426, Arbitrator Gamser stated the following opinion in this National level case:

> "It is necessary at the onset to dispose of one threshold contention raised by the Employer. It was contended that the agreement provides an Article XV that the arbitrator has no authority to add to, subtract from, or modify the terms of the agreement. So, it does. That restriction upon the jurisdiction of the arbitrator must be scrupulously observed. However, 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. No

lengthy citations or discussion of the nature of the dispute resolution process which these parties have mutually agreed to is necessary to support such a conclusion. Before the Arbitrator in this proceeding is the question of whether the parties have agreed upon the remedy to be provided for breaches of the Employer's obligation under Article VIII, Section 5-C-2, or, in the event they have not done so, what is an appropriate remedy for such a breach as did occur in Rossville, Georgia, Post Office.

Article VIII-C-2 reads as follows:

> 2 Only in the letter carrier craft, when during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the list. During the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the list. In order to ensure equitable opportunities for overtime, overtime hours worked and opportunities offered will be posted and updated quarterly. Resource to the "Overtime Desired" list is not necessary in the case of a letter carrier working on his own route on one of his regularly scheduled days.

There is no additional language in this Section or in any other provision of the Agreement called to the Arbitrator's attention in this proceeding which would appear to spell out an agreement of these parties to remedy a breach of the above-quoted provision in a specific fashion either by providing a makeup opportunity, as the Employer contends is appropriate, or by providing monetary compensation to the aggrieved at the overtime rate for the hours missed, as the NALC desires. Absent specific language in the Agreement, the intent of the parties may be determined from collateral sources. As to the past practice revealed by this record, it would appear that the remedy most frequently provided has been a makeup opportunity. However, the Union has furnished sufficient evidence of local practices to the contrary, even ignoring settlements made on a non-precedential basis which the Undersigned believes must be done, to indicate a certain amount of inconsistency which does not make the practice totally conclusive evidence of intent."

The Union has argued that management, at the North Broadway Station, violated the JSVBW, and by doing so, the Union is entitled to an additional remedy. The Union concludes that the actions of the managerial and supervisory personnel constituted a JSVBW violation. In their post hearing brief, the Union states in part,

> "The very title of the Joint Statement on Violence and Behavior in the Workplace reflects that it was not exclusively intended to protect employees against violence, but also behavior. Although the impetus behind the Joint Statement was a violent act, the parties were careful to separately address any behavior that would deprive employees of a fair day's work for a fair day's pay. Additionally, the parties affirm the basic right of all employees to be treated with dignity, respect, and fairness. The parties agreed in the JSVBW that "Making the numbers' is not an excuse for the abuse of anyone." The behavior in this case was a systematic campaign by two supervisors to use their access to time records to rob letter carriers of pay for work they had performed. The Union can think of no behavior more unconscionable than sneaking into the Time and Attendance Collection System (TACS) and falsifying letter carrier records to create the appearance they had not worked as much as they really had. This kind of thievery would result in the immediate removal if perpetrated by a letter carrier, but inexplicably the Postal Service

> appears to have taken the position that it's supervisors should somehow be held to a lower standard than the craft employees they manage."

The Union further supported this position by citing several regional awards, in which, arbitrators removed some administrative duties from the supervisors. In case C11N-4C-C 14252054, Arbitrator Brown sustained the Union's grievance and stated,

> "In response to the additional issue of what the appropriate remedy should be for violation of the Joint Statement, Arbitrator Snow stated that
>
> "... Arbitrators have available to them the flexibility found in arbitral jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her administrative duties."
>
> It is thus clear that there is ample authority for even such a penalty as removal of a supervisor from administrative duties. I am also aware that other laws may come into play, and that the Service may not be able to take reassignment action against this manager by fiat. It has the power to initiate such action, however, and if it does not succeed, other remedies are available. The arbitrator's award may also be enforced in court. I therefore direct that the Service assign this manager so that he has no authority to supervise, directly or indirectly, NALC represented employees for a period of two years...."

Arbitrator Brown arrived at this determination based on the facts before him. In that case a manager [Chris Bruno] had a reputation of being a "bully" who inspired apprehension and fear because he supervised through fear and that any time an employee questioned him; he would immediately instruct the employee to clock into [operation] 613 for a pre-disciplinary interview. Even the Postal Service acknowledged that the manager's communication style was abrasive, loud, or demanding. Arbitrator Brown found that the manager verbally intimidated employees, engaged in bullying and did so over a period of time to multiple employees. It was because of this that Arbitrator Brown fashioned his remedy the way he did.

In case G16N-4G-C 18316064, Arbitrator August sustained the Union's grievance. In the remedy portion of her award Arbitrator August granted most of the Union's requested remedy including paying Branch 938 a lump sum of $500. Arbitrator August also ordered that Manager Jeremy Hanners be removed from his managerial position and placed into a location outside of any post office in Hattiesburg Mississippi and further ordered that he [Hanners] not be allowed to supervise/manage city letter carriers directly or indirectly based on a history of ineffective employee communications which led to the decreased morale and overall perception of harassment among letter carriers in the offices that he has managed.

In the case before Arbitrator August it was apparent that Manager Hanners had a history of creating a hostile work environment not only at Hattiesburg Downtown Post Office, where the grievance was filed, but also at the offices where he had worked in the past. Additionally, Arbitrator August indicated that the Manager, Health and Resource Management [Loretta Brown] had submitted a Climate Survey Report Summary which described the Hattiesburg Downtown Station. This report indicated that there was a lack of respect, a hostile work environment, harassment, favoritism, low morale and a fear of reprisal. Moreover, that the evidence of record indicated that the overwhelming majority of the employees expressed they worked in a hostile working environment and that the situation was not improving but, rather had actually deteriorated more over time.

The common factor in both cases above was that "management" had created a hostile working environment by using harassment, intimidation, retaliation and aggression over a period of time. In this instant case, according to record evidence, this did not occur. While it is true that over a prolonged period of time Acting Manager Vela manipulated and deleted letter carrier clock rings, none of the letter carriers indicated a hostile work environment existed prior. I have read the employee's responses when they were interviewed by steward Ramirez.[19] From the responses it is difficult to determine what the general consensus from these employees are. During their interviews, steward Ramirez asked the affected employees if they would like to add anything after seeing the evidence of the clock ring manipulation? Some of their responses are as follows:

> "My trust is broken... Just feel betrayed that they would do that... Finding out this egregious pattern has taken place really shakes my confidence in this institution and the management team... I am a little disappointed and I lost trust in my management... We should be able to trust our managers... I'm shocked and disappointed... I'm not happy with this, I can only imagine what other adjustments they are doing without my permission... I am very upset; this hurt financially and this continues to hurt me financially... If they would have asked me, I would have helped them out... The manipulation is egregious, I understand the reason that they do it I understand the pressure to do it... I just want him to stop doing it, he did it, he got caught just don't do it, I'm sure he's under a lot of pressure from his bosses."

[19] Joint Exhibit 2 pages 57-76

For the most part these responses expressed a loss of trust and disbelief but, did not indicate that there was a hostile work environment at the North Broadway Station because of the manipulation and deletion of clock rings, although one employee did state they were being harassed by 204B Dansby. Moreover, record evidence did not contain any statements from employees that indicated hostility was prevalent at this station.

However, record evidence indicates that on February 23, 2019, when steward Ramirez returned to the North Broadway Station to finish interviewing the letter carriers, he was met with hostility from Acting Manager Vela. According to Steward Ramirez, Acting Manager Vela used profanity and was very hostile towards him including "getting into his personal space". Clearly the actions of Acting Manager Vela were unprofessional, unprovoked, unacceptable and childish. There is no doubt that this event occurred as steward Ramirez recorded it in record evidence and letter carrier Fraser testified, he witnessed it.

But, does this single event rise to the level of a violation of the JSVBW and warrant an additional remedy? The obvious answer to this question is yes. When Acting Manager Vela verbally assaulted steward Ramirez he created a hostile working environment and did so with intent and in front of steward Ramirez' peers. I believe Station Manager Vela did this to demonstrate "he was in charge" and that the provisions of JSVBW did not apply to him but, the JSVBW applies to all postal employees, including managerial and supervisory personnel.

It is well recognized that the relationship between Management and Labor can often be an adversarial one. Because of this Congress passed the National Labor Relations Act (NLRA). Sections 7 & 8 (a) (1) of the NLRA grants protected concerted activity to union representatives. The purpose of these provisions is to prevent situations, like the one that occurred on February 23, 2019, from happening. Unfortunately, higher management failed to realize the seriousness of this event and the lasting effect it would have on employees at the North Broadway Station.

In their post hearing brief, the Postal Service vigorously argued that the remedy requested by the Union constitutes punitive damages which are not permitted by the National Agreement.[20]

[20] In their post hearing brief, the Postal Service cites a number of court cases and several National arbitration awards but, failed to provide copies of these court cases and National awards for consideration. This Arbitrator does not have access to a database which would have permitted review of the actual decisions. Therefore, the citations were not considered.

Included in their post hearing brief, the Postal Service submitted multiple regional awards. Although this Arbitrator thoroughly read these awards, the regional awards are not relevant in this instant case. Several of these regional awards dealt with the arbitrator's authority to terminate or issue another form of disciplinary action to a supervisor for violating the JSVBW.[21] I note for the record that the Postal Service has already issued corrective action to the responsible manager, and any additional corrective action would violate the responsible manager's right to due process.

In case NB-N 135,135, 136 [December 22, 1974] Arbitrator Gamser classified the remedy requested by the Union as a punitive action but, reversed himself five years later in case NC-S-5425 [April 3, 1979]. Additionally, case C8N-4C-C 5208 issued by Arbitrator Dobranski on December 12, 1980, was issued prior to the National Arbitration Award by Arbitrator Snow, in which, Arbitrator Snow stated in his analysis,

> "The grievance procedure of the National Agreement may be used to enforce the parties' bargain, and arbitrators have available to them the flexibility found in arbitral jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her administrative duties."

Concerning punitive damages, the Undersigned could not locate any specific contractual language in the National Agreement that permits payment of the punitive damages. However, the remedy requested by the Union, in their post hearing brief, does not ask for any monetary remedy or punitive damages, as such, this issue was not considered.

I conclude that the Union has satisfied its burden of proof and is entitled to an additional remedy.

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[21] A01N-4A-C 03057175 Arbitrator Rosen, K01N-4K-C 02247372 Arbitrator Powell, B94N-4B-C 97024116 Arbitrator Leibowitz, F94N-4F-C 98080218 Arbitrator Olson and B94N-4B-C 98103884 Arbitrator Fraser.

AWARD:

This grievance is arbitrable. The Union has proven by the preponderance of evidence that an additional remedy is warranted and the additional remedy is as follows:

1. The Postal Service is ordered to refer this case file with this decision to the Office of Inspector General for investigation. The Office of Inspector General has complete discretion as to whether or not an investigation is warranted.
2. Management is ordered to cease-and-desist the practice of manipulating or deleting employee's clock rings, without the affected employee's knowledge and consent.
3. Management will provide clock rings at the North Broadway Station upon request, to the union steward for the following 26 pay periods, from the initial date of this grievance, at no cost. The union steward, upon request, will be provided time on the clock to review the clock rings.
4. The Postal Service has indicated that Acting Manager Vela has been returned to his supervisory role at another location, where he currently supervises rural carriers. This action shall remain in effect for an additional 24 months from the initial date of this grievance.