



STEP B DECISION

Step B Team:
USPS:
Michael Goden
NALC:
Karrie Blough

District:
Rio Grande

Formal A Representatives:
USPS
Did not meet
NALC
R. Gould

Decision: **RESOLVE**
USPS Number: **G11N-4G-C 1327 8579**
Grievant: **Henry Castro**
Branch Grievance Number: **421-630-13**
Branch: **421**
Installation: **San Antonio**
Delivery Unit: **Lockhill**
State: **TX**
Incident Date: **06/15-21/2013**
Date Informal Step A Initiated: **07/13/2013**
Formal Step A Meeting Date: **No meet**
Date Received at Step B: **07/29/2013**
Step B Decision Date: **08/06/2013**
Issue Code: **13.4120**
NALC Subject Code: **100925**

ISSUE:

Did management violate Articles 14 and 19 (ELM) by working the grievant beyond his medical restrictions? Did management violate Articles 15 and 19 by refusing to comply with Step B language and a Formal A agreement regarding medical restrictions? If so, what is the appropriate remedy?

DECISION:

The Dispute Resolution Team, (DRT), agree to **RESOLVE** this grievance. The case file did establish that management violated the National Agreement by forcing the grievant to work outside his prescribed work restrictions and for failing to comply with prior decisions on this matter. See the DRT Explanation.

EXPLANATION:

The union contends management violated Articles 14, 15, and 19 of the National Agreement by mandating the grievant to work beyond his medical restrictions and by refusing to comply with Formal A and Step B agreements regarding medical restrictions. Due to an on the job injury which required extensive surgery to his hand, the grievant's medical provider gave him work restrictions which clearly state "no overtime" and restricted him to only 8 hours per day.

Though management claims Lockhill is a Program Evaluation Guide (PEG) for safety, it is obvious that safety is not as big a concern as they want OSHA to believe. It is clear that not only did management know about the grievant's restrictions, but they chose to willfully and deliberately disregard them and subject the grievant to possible further injury to his hand. These actions by Lockhill management cannot be taken lightly and must

not be ignored considering the possible risk imposed upon employees on light or limited duty.

Management violated the grievant's right to work safely. Management's requirement to provide a safe work environment is not an unknown part of the handbooks and manuals and is discussed weekly. Management has failed at every level to ensure the grievant was safely working within his medical restrictions and subjected him to further injury by ignoring his restrictions and adding additional workload which brought him well beyond his restrictions by almost 2 hours on one day. The union requests as remedy that management cease and desist violating employees medical restrictions and also requests a compensatory award of \$250.00 to the grievant for management's willful refusal to comply and as a reminder of the importance of maintaining a safe work environment or otherwise make whole.

Management failed to schedule the Formal A meeting and did not provide any contentions.

The DRT reviewed the file and agreed that there was a violation when management forced the grievant to work beyond his restrictions as prescribed by his physician. The Forms CA-17 that were provided indicate the grievant has an 8 hour limitation with restrictions. The clock rings provided show the grievant worked well over 8 hours on many of the days included in the reports provided. The following is relevant language pertaining to this issue from the EL-505 and the ELM:

EL-505 Section 11.16

11.16 Monitoring the Injured Employee's Return to Work — ICCO or employee's supervisor _ Brief the immediate supervisor on the injured employee's medical status and work limitations.

_ Conduct periodic follow-ups in coordination with OWCP to assist in the employee's readjustment to a working environment, to ensure that the employee is working safely within the prescribed work restrictions, and to identify potential problems.

ELM

545.52 Determining Return to Work Capability

The control office or control point must monitor the employee's medical progress and determine return to work capability by obtaining periodic medical reports. Form CA-17 may be used for this purpose. This form:

- a. Enables the Postal Service to provide the attending physician of an employee injured on duty with a brief summary of that employee's normal work duties.
- b. Provides a checklist of physical requirements to permit the attending physician to indicate to the Postal Service what types of duties an injured employee may safely perform, and with what limitations. The control office or control point completes Part A of Form CA-17 before it is issued to the attending physician for completion. Particular attention should be given to Item 7, Description of Regular Work.
- c. Is used to facilitate an injured employee's return to suitable employment.

810 Occupational Safety and Health Program

811.21 Management Commitment, Involvement, and Accountability

Managers must demonstrate commitment to providing safe and healthful working conditions in all Postal Service-owned and -leased installations, become involved in day-to-day safety performance, and be held accountable for safety performance and compliance with OSHA standards and regulations (see Handbook EL-802, Executive's and Manager's Safety Compliance Guide).

811.22 Vision Statement

The Postal Service will become a leader in occupational safety and health for the federal government and private sector by demonstrating a commitment to integrating safe work practices into all of our services. The Postal Service is committed to participation in the OSHA Voluntary Protection Programs (VPP). (See 811.25.) The Postal Service also engages in innovative safety efforts such as the Ergonomic Risk Reduction Program and joint labor-management safety and health committees (see 816).

811.23 Guiding Principles

The guiding principles of the Postal Service are the following:

- a. People — Employees are our most valued resource. Our employees must be provided a safe and healthful workplace.*

811.24 Safety Philosophy

The safety philosophy of the Postal Service is the following:

- a. Any occupational injury and illness can be prevented. This goal is realistic, not theoretical. Supervisors and managers have primary responsibility for the well-being of employees and must fully accept this principle.*
- b. Management, which includes all levels including the first-line supervisor, is responsible and accountable for the prevention of accidents and control of resultant losses. Just as the line organization is responsible for attaining production levels, ensuring quality of performance, maintaining good employee relations, and operating within cost and budget guidelines, supervisors and managers must likewise accept their share of responsibility for the safety and health of employees.*

812.32 Installation Heads and Managers

Installation heads and managers are responsible for employee safety and health, implementation of the occupational safety and health program, and compliance with OSHA standards and regulations, including maintenance of the accident reports, OSHA Log, and Summary of Injuries and Illnesses. They are also responsible for developing, implementing, and monitoring facility ARPs using the Safety Toolkit to achieve the corporate objectives of reducing injury, illness, and motor vehicle accidents. Refer to the Safety Resources site and the Safety Toolkit for additional information on developing, implementing, and monitoring ARPs. Installation heads are encouraged to attend annual safety and health training.

812.4 Middle-Level Managers

Middle-level managers are responsible for the safety and health program within their operations. This includes responsibility for administering OSHA-mandated written programs, conducting accident prevention activities, training employees, and evaluating the safety performance of supervisors. Middle-level managers coordinate activities, including correction of safety deficiencies, with other operational managers. Middle-level managers are encouraged to attend annual safety and health training.

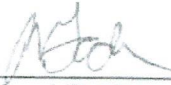
812.5 Supervisors' Responsibilities

812.51 General

Supervisors are responsible for identifying and correcting physical hazards, investigating and reporting accidents, administering OSHA-mandated written programs, conducting accident prevention activities, training employees, developing job safety analyses, and

enforcing safe work practices. Supervisors are encouraged to attend annual safety and health training.

Management has a responsibility to adhere to restrictions as stipulated by the employee's physician and will comply with providing employees work within their medically prescribed restrictions. Future violations may result in monetary remedy.



Michael Goden
USPS Step B Representative



Karrie Blough
NALC Step B Representative

Grievance File Contents:

PS Form 8190
Letter to Step B
Formal A Request
Union Contentions (3 pgs)
Forms CA-17 (3 pgs)
Grievant Statement
Workhour Workload Report (2 pgs)
Employee Moves Report (2 pgs)

Employee Everything Report (5 pgs)
Overtime Alert Report (2 pgs)
M-00487
Prior Settlements (5 pgs)
ELM Excerpt (5 pgs)
EL-505 Excerpt
Informal A Request

cc: District Manager, Rio Grande District
NALC NBA, Region 10
Manager, Human Resources, Rio Grande District
Manager, Labor Relations, Rio Grande District
Postmaster, San Antonio
NALC Branch President
USPS Formal A Representative
NALC Formal A Representative
DRT File