

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)
 Between) GRIEVANT: Richard Acampora
 UNITED STATES POSTAL SERVICE)
 And) POST OFFICE: New Haven, CT
 NATIONAL ASSOCIATION OF LETTER)
 CARRIERS, AFL-CIO)
 CASE Numbers:
 USPS: B11N4BC 14222547
 NALC: 19-433-14ALL
 DRT # 14-313998

BEFORE: Sherrie Rose Talmadge, Esq., ARBITRATOR

APPEARANCES:

For the U.S. Postal Service:	Glenn C. Smith, Labor Relations Specialist Beverly Dunnigan, Technical Advisor
For the Union:	Vincent J. Mase, Esq., President Branch 19 Kenneth Honore, Technical Advisor

Place of Hearing:	50 Brewery Street, New Haven, CT
Date(s) of Hearing:	October 16, 2014
Date of Award:	December 8, 2014
Relevant Contract Provisions:	Articles 5, 8, 19 and 29, ELM 804
Date of Contract:	2011-2016
Type of Grievance:	Contract

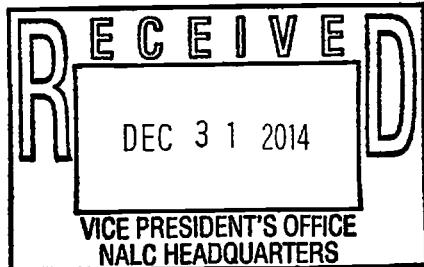
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AWARD SUMMARY

Management violated Articles 19 and 29 of the National Agreement, specifically the EL-804 Handbook, Section 422 when, on June 11, 2014, they improperly temporarily suspended the Grievant's driving privileges without notifying him in writing of the reasons for the action.

For the remedy, I direct the Post Office to cease and desist from temporarily suspending driving privileges pursuant to Section 421.3 when an employee is involved in an at fault accident without providing the employee a written notification of the reasons for the action. Having concluded that the February 19, 2014 Bruso memo did not rise to the level of a contractual violation, I do not find that the requested remedy of making the Grievant whole for lost overtime was warranted. Accordingly, the grievance is sustained in part and denied in part.

Sherrie Rose Talmadge, Esq., Arbitrator



Arbitration decision continued.

STATEMENT OF THE ISSUES

1. Did Management violate Articles 5, 8, 19 and 29 of the National Agreement, specifically the EL-804 Handbook, Section 42 when, on June 11, 2014, they improperly temporarily suspended the Grievant's driving privileges without notifying him?¹
2. If so, what is the appropriate remedy?

RELEVANT CONTRACTUAL PROVISIONS, HANDBOOKS and MANUALS

Article 29, National Agreement

An employee's driving privileges may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver.

Elements of an employee's on-duty record which may be used to determine whether the employee is an unsafe driver include but are not limited to, traffic law violations, accidents or failure to meet required physical or operation standards....

JCAM, pages 29-2, 29-3 (2009)

Revocation or Suspension of Driving Privileges.

Management may suspend or revoke a carrier's driving privileges under certain specified circumstances:

...

Temporarily following a vehicle accident, in which case "a full review of the accident will be made as soon as possible, but not later than fourteen days, and the employee's driving privileges must either be reinstated, suspended for a specified period of time not to exceed sixty days, or revoked as warranted. (Memorandum, paragraph 3)

VI. Suspension and Revocation of Driving Privileges

C. In Case of Accident

1. Review of Driving Privileges. The employee's driving privileges are reviewed at the time of an accident by the employee's supervisor and/or another official in charge. There are no provisions for the automatic suspension of an employee's driving privilege based on the fact that the employee was involved in a vehicle accident. Rather, the circumstances surrounding each accident are assessed at the time of the accident to determine whether a temporary suspension of driving privileges is warranted.
2. Assessment of Circumstances. The circumstances surrounding an accident that should be assessed include, but are not limited to, the employee's condition (shock, fatigue, alcohol/controlled substance impairment, or other related physical or emotional condition), the seriousness of the unsafe driving practices, if any, that resulted in the

¹ The parties did not agree on the framing of the issue and deferred to the arbitrator. I have adopted the B Team issue, as requested by the Union. The Service proposed, "Did Management violate the National Agreement when they temporarily suspended the driving privilege for FTR letter carrier Richard Acampora on June 11, 2014 for an at-fault motor vehicle accident?"

Arbitration decision continued.

accident, and a determination by the supervisor as to whether the public's or the employee's safety would be jeopardized by allowing the employee to continue driving.

3. Temporary Suspension. If an immediate determination cannot be made based upon a review of the above, the employee's driving privileges may be withheld temporarily pending completion of the accident investigation. At this time a final decision to suspend, revoke, or re-instate can be made. The length of time involved in withholding driving privileges pending investigation can vary in each case but must not exceed 14 days...If the decision is to suspend or revoke the employee's driving privileges provide the employee, in writing, of the reason(s) for such action.

4. Decision Criteria....

ELM 804

421.2 For Unsafe Driving

421.21 On-Duty Record

When the on-duty record shows that an employee is an unsafe driver, management may suspend or revoke the employee's Postal Service driving privileges. Elements of the on-duty record that may be used to suspend or revoke driving privileges include:

- a. Traffic law violations.
- b. Accidents.
- c. Failure to meet motor vehicle operational standards.
- d. Disregard for personal safety.

421.3 In case of Accident

When an employee is involved in a motor vehicle accident:

- a. There are no provisions for the automatic suspension of an employee's driving privilege based on the fact that the employee was involved in a motor vehicle accident.
- b. The individual circumstances surrounding each accident are assessed at the time of the accident to determine whether a temporary suspension of driving privileges is warranted.
- c. The supervisor must consider whether public safety or the employee's safety will be jeopardized if the employee is allowed to continue driving.

422 Temporary Suspension of Driving Privileges

If the supervisor cannot make an immediate determination based upon a review of the factors listed in 421.3, the supervisor may temporarily suspend the employee's driving privileges pending completion of an investigation. Once the investigation is completed, the supervisor can make the decision to suspend, revoke, or reinstate driving privileges.

Driving privileges may be withheld pending investigation for no more than 14 calendar days, after which the employee's driving privileges must be:

- a. Reinstated;
- b. Suspended up to 60 days; or
- c. Revoked.

If the employee's driving privileges are suspended or revoked, the supervisor must explain to the employee, in writing, the reasons for the action.

423 Decision criteria

Arbitration decision continued.

Management makes a decision to suspend or revoke driving privileges according to the following criteria:

- a. Investigate and determine the driver's:
 - (1) Fault or lack of fault (were the driver's actions the primary cause of the accident?)
 - (2) Degree of error.
 - (3) Record (on-duty driving history, prior corrective actions related to motor vehicle operation).
- b. Consider the severity of the accident.
- c. Consider factors about the driver such as:
 - (1) Training (quality or absence of training in a particular driving activity).
 - (2) Physical condition (did the employee meet the physical standards required by state licensing laws at the time of the accident?).

FINDINGS OF FACT²

On June 11, 2014, full-time regular Letter Carrier Richard Acampora, the Grievant, who is assigned to the New Haven – Allington Station Post Office, was involved in an at-fault motor vehicle accident. The Grievant, while on over-time delivering a split on another carrier's route, City Route 1617, struck a brick enclosure mail box post. As a result of the accident, the brick enclosure was moved approximately six (6) inches and the mail box fell off its' post. The Grievant testified that he had misjudged the front bumper and nudged the brick enclosure and the old, leaning mail box, which fell over. The carrier went to the front door of the patron and explained to the customer what happened and also called his supervisors. During the Grievant's thirty-four years of service he has had only two prior accidents that were not his fault, when he was hit from behind and when someone backed into him in a lot.

The record indicates that Supervisors of Customer Service at the Allington Station, Lisa Millett and John Greco, arrived on site to conduct an investigation into the accident. The supervisors investigating the accident determined that the Grievant had struck the mail box post and was at fault in the accident, which the Grievant acknowledged. The Supervisors immediately made the determination that the Grievant had been engaged in an at-fault accident, and made the decision to suspend the Grievant's driving privileges. The Grievant testified that one of the Supervisors orally informed the Grievant that he would have to return to the office with them and that he could not go back on the street until he completed the Driver Improvement Training course. The Supervisors did not testify.

² The parties had an opportunity to question sworn witnesses on direct and cross-examination, and to submit relevant and material documentary evidence. After the conclusion of the hearing the parties presented oral closing arguments.

Arbitration decision continued.

The Grievant worked eight hours on the day of the accident and eight hours on the next day, June 12. The Grievant, who was on the OTDL, was not offered overtime on June 12 and was listed as having refused an hour of overtime that day, which affects his overtime hours at the end of the quarter. Management notified District Safety of the accident and the Grievant was scheduled for the training within the allotted time period. On Friday, June 13 the Grievant attended the Driver Improvement Training course and, upon his return from training, he resumed his duties, including working overtime that day. The Grievant did not recall whether at the end of the quarter his overtime hours were equal to everyone else.

District Safety Manager Roger Twerion oversees Safety Specialists and administers safety programs, including the Driver Safety Programs. Twerion testified that the procedure for an at-fault accident is to temporarily suspend the employee's driving privileges pending completion of the Driver Improvement Training Course, which must be provided within ten days of the accident. Twerion testified that at least since 2003 there has been a Driver Improvement Policy, which he provided to Manager of Human Resources Theresa Bruso to review and sign, as he had done for the prior two Managers of Human Resources, Fallen and Hern. Twerion testified that policy is addressed in EL-804. Subsequently, Bruso sent out a Memorandum dated February 19, 2014 for: Postmasters, Plant Managers, VMF manager, which stated:

This letter is being sent out to re-enforce the standing policy concerning driver improvement training requirements. If a driver has a preventable motor vehicle accident, the driver is NOT to be assigned driving duties until the Driver Improvement Training has been completed.

The Memo was not copied to the Union. The Grievant, an alternate steward at the Allington Station, testified that he had never observed the memo having been posted in the station.

Twerion testified that management is required to notify an employee in writing if the employee's driving privileges are being suspended for 14 days or more or revoked for 60 days. Twerion explained that if the supervisor decides at the site of the accident that the employee is at fault, then the supervisor need not put in writing the suspension of the employee's driving privileges.

POSITIONS OF THE PARTIES

UNION'S POSITION

Management violated the National Agreement when they temporarily suspended the driving privileges for FTR Letter Carrier Acampora on June 11, 2014 for an at-fault

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motor vehicle accident. The Union contended that the posting by Bruso is a unilateral act. Although the Service argued that this memo was posted on every bulletin board, the memo is directed only to Postmasters and POOMs, does not state to post on bulletin boards and was not copied to the Union. It was posted fourteen days from when the Union first learned of the memo and processed its grievance.

The Grievant, a long term employee, has had only two prior accidents which were not his fault. He nudged loose bricks on the bottom of the surround, and did not hit the post, while he was attempting to deliver the mail. The Grievant could have driven away but he notified the postal patron, who said that his son could fix it. The Grievant notified the Post Office. The Grievant was very credible. The two supervisors did not testify. There was no evidence that the two supervisors, Greco and Millet, were trained in safety investigations. In the steward's interview notes, the supervisors informed him that the criteria to revoke driving privileges was automatic. EL 804 Section 421.3 says there are no provisions for automatic suspensions. The memo signed by Bruso stating that "If a driver has a preventable motor vehicle accident, the driver is NOT to be assigned driving duties until the Driver Improvement Training has been completed" is in conflict with 421.3 regulations. There is no evidence to establish that the policy is longstanding, as claimed by the Service. The policy also conflicts with Section 422 which gives the Supervisor authority to make a determination whether to suspend or revoke driving privileges based upon review of factors, which was not done in this case.

The Service failed to give the Grievant notification in writing that they were going to suspend his driving privileges and this was a fatal flaw. There was no testimony that either Supervisors Greco or Millett investigated the accident. It was also inaccurate for the Service to say that the Grievant hit the post when he hit the bricks. This was a minor accident. This was not a carrier who had accidents. He was a thirty-four year employee who was not a jeopardy to self or others. He was not an unsafe driver. Nowhere does the Handbook state that if you have an at fault accident the supervisor does not have to put the reasons for suspending the driving privileges in writing. Rather, EL-804 provides that an employee must be notified in writing of the reasons for suspension of driving privileges.

The Union has established that the Bruso policy was a unilateral action in violation of Article 5 and the EL Handbook 804. The Union objected to the automatic suspension of driving privileges for a "preventable accident". If the Service wanted a forceful policy, it should be included in the manuals, which they have not done. There was no evidence that the policy was posted or provided to the Union. The Union learned about the memo in the

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course of the investigation for this grievance and, therefore, it was timely grieved within fourteen days of the date on which the Union first learned or may reasonably have been expected to have learned of its cause.

The Union urged that the grievance be sustained. As a result of Management's contractual violation, suspending the Grievant's driving privileges based on the Bruso policy, the Grievant lost two hours of overtime that he was not offered on June 11, despite being on the OTDL. Therefore, the Union requested that the policy in the Bruso memo, requiring automatic suspension of driving privileges for preventable motor vehicle accidents, be rescinded, that management pay the Grievant for two hours of missed overtime and that management be directed to comply with Article 29 and EL-804.

POSTAL SERVICE POSITION

The Union did not meet its burden of proving that there was a contractual violation when they temporarily suspended the driving privileges for the Grievant on June 11, 2014 for an at-fault motor vehicle accident. When the Supervisors investigated the accident on site, they determined that the Grievant, who acknowledged he struck a stationary object, was at-fault. Pursuant to Handbook EL 804, Section 423(a) (1) Management makes a decision to suspend or revoke driving privileges according to its investigation and determination that the driver was at fault or lack of fault. The Service has the contractual right to investigate at the site of the accident and to access the circumstances involving the actions of the Grievant. The Supervisor must make the decision to allow the carrier to drive and continue on the route, or return to the office with them and make arrangement to retrieve the vehicle and the mail. It is undisputed that the Grievant struck a stationary object (a mail box post surrounded by bricks). In the case of an at-fault accident, the Supervisor only has to verbally inform the driver at the site of the accident they would not be driving. There is no requirement to provide the driver this decision in writing.

Handbook EL 804, Section 422, which provides that if the supervisor cannot make an immediate determination based upon a review of the factors listed in 421.3, the supervisor may temporarily suspend the employee's driving privileges pending completion of an investigation, does not apply to this situation. This section is applicable if the supervisor cannot make an immediate determination and needs to explain in writing. In this case the Supervisor was able to make an immediate determination as to the driver's fault in the accident. There was no pending investigation; the Grievant admitted he was at fault, and the Supervisor was able to make an immediate decision. Thus, the requirement to explain in writing would not apply in this circumstance.

Arbitration decision continued.

The procedure for an at-fault accident is to temporarily suspend the Grievant's driving privileges pending completion of the Driver Improvement Training Course, which must be provided within ten days of the accident. EL-804, Section 351 (a) provides that a driver must take driver improvement training when the driver is deemed at fault in a motor vehicle accident. This policy was reinforced by the February 19, 2014 memo to Postmasters and Plant Managers by Manager of Human Resources Bruso. This memo was to re-enforce the standing policy that had been in effect for years. The Union did not grieve this policy when posted and it is untimely for the Union to do so at this time. In this case Management notified District Safety of the accident and the Grievant was scheduled for the training within the allotted time period.

The Union did not prove a violation of Article 8.5, Section 5. When management suspended the Grievant's driving privileges as a result of his at-fault accident, the Grievant was no longer qualified to perform his duties as a letter carrier and was not available for overtime assignments. Even if the Union was able to show that the Grievant was entitled to work overtime, as listed in the JCAM, overtime is not be rotation. Overtime opportunities must be distributed equitably, this does not mean that the work must be distributed equally. The Union did not prove that the Grievant did not receive the opportunities to work overtime, or that the days he was not available, affected his total opportunities for the quarter. Management would have had until the end of the quarter to fairly distribute the overtime.

The Union failed to prove a contractual violation. The Service properly applied the procedures and policies for an at-fault accident in this matter. The Service urged that the grievance be denied in its entirety.

DISCUSSION

At issue is whether Management violated Articles 5, 8, 19 and 29 of the National Agreement, specifically the EL-804 Handbook, Section 42 when, on June 11, 2014, they improperly temporarily suspended the Grievant's driving privileges without notifying him. The Union has the burden of proving a contractual violation.

Article 29 of the National Agreement provides that "An employee's driving privileges may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver. Elements of an employee's on-duty record which may be used to determine whether the employee is an unsafe driver include but are not limited to, traffic law violations, accidents or failure to meet required physical or operation standards..."

Arbitration decision continued.

The parties have incorporated by reference in Article 19 of the National Agreement, all handbooks, manuals and published regulations that directly relate to wages, hours or working conditions. The Handbook EL-804, Section 42, establishes provisions for the Suspension and Revocation of Driving Privileges.

In the instant case, on June 11, 2014, while on duty, the Grievant was involved in a motor vehicle accident when he struck a brick enclosure mail box post. As a result of the accident, the brick enclosure was moved approximately six (6) inches and the mail box fell off its' post. The Grievant testified that he had misjudged the front bumper and nudged the brick enclosure and the old, leaning mail box, fell over. The Grievant called the postal facility and two supervisors arrived at the scene and investigated the circumstances of the accident at the time of the accident to determine whether a temporary suspension of driving privileges was warranted as mandated by EL-804, Section 421.3 (b). The Grievant acknowledged that he was at fault when he hit the brick enclosure mail box post.

Section 421.3 (b) through (d) provides discretion in the supervisor or other Postal Service managers to assess whether a temporary suspension of driving privileges is warranted. Section 421.3 (c) provides that the supervisor must consider whether public safety or the employee's safety will be jeopardized if the employee is allowed to continue driving. To make that determination, Section 421.3 (d) states that the supervisor must assess factors related to the accident, to include the following: (1) Employee's condition. For example: (a) Shock, (b) Fatigue, (c) Impairment caused by use of alcohol or controlled substances, (d) Other physical or emotional factors, (2) Seriousness of the unsafe driving practice (if any) that contributed to the accident. At the scene of the accident the supervisors made an immediate determination that the Grievant had an at-fault accident, based on the Grievant's acknowledgement that he had hit the stationary brick enclosure which moved six inches and caused the mail box to fall off its' post, and orally informed him that they decided to temporarily suspend his driving privileges and drove him back to the station.

The supervisors' decision to temporarily suspend the Grievant's driving privileges, after having a preventable motor vehicle accident, followed a long standing practice that was referenced in the February 19, 2014 Memo on Driver Improvement Training issued by Manager Human Resources Bruso to all Postmasters, Plant Managers, VMF Managers, which states in part:

This letter is being sent to re-enforce the standing policy concerning driver improvement training requirements. If a driver has a preventable motor

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vehicle accident, the driver is NOT to be assigned driving duties until Driver Improvement Training has been completed..."

District Safety Manager Roger Twerion testified that there has been a Driver Improvement Policy at least since 2003. Prior to February 19, 2014, Twerion had provided a copy of the policy to Manager of Human Resources Bruso which she reviewed, signed and distributed, as Twerion had done for the prior two Managers of Human Resources.

The language in the policy memo stating that if a driver has a preventable motor vehicle accident, the driver is not to be assigned driving duties until Driver Improvement Training has been completed, does not improperly limit the supervisor's authority. Section 421.3 (d) provides that the supervisor must assess factors related to the accident including (2) the seriousness of the unsafe driving practice (if any) that contributed to the accident to determine whether the public or the employee's safety would be jeopardized by allowing the employee to continue driving. This language of Section 421.3, giving discretion to the supervisor to determine whether the safety of the public or the employee would be jeopardized by allowing the employee to continue driving, is not improperly limited by the memo which provides that if an employee engaged in an at-fault/ preventable motor vehicle accident, the driving privileges are to be suspended until the Driver Improvement Training has been completed.

The regulations make a distinction between the criteria used to determine suspension of driving privileges when a supervisor can make an immediate determination at the time of the accident and when a longer investigation is needed. It is only when the supervisor cannot make an immediate determination based on a review of the factors listed in Section 421.3, that the supervisor may temporarily suspend the employee's driving privileges for no more than 14 calendar days pending completion of an investigation after which the driving privileges must be reinstated, suspended up to 60 days or revoked. (See Section 422) During this pending investigation, Management makes its decision to suspend or revoke driving privileges according to the criteria listed in Section 423.

Furthermore, I do not find that the suspension of the Grievant's driving privileges for an "at fault" accident violated EL-804, Section 421.3 (a) which states: "There are no provisions for the automatic suspension of an employee's driving privilege based on the fact that the employee was involved in a motor vehicle accident." The supervisors did not suspend the Grievant's driving privilege based on the fact that the employee was involved in a motor vehicle accident, but instead assessed the individual circumstances surrounding the accident to determine that the Grievant had an "at-fault" accident.

Arbitration decision continued.

However, I am persuaded by the Union's argument that Management had an obligation to provide written notice to the employee of the reasons for the suspension of driving privileges. Although Section 421.3 permits a supervisor to make an immediate determination at the time of the accident whether a temporary suspension of driving privileges is warranted, or a more extensive investigation is needed, Section 422 provides "If the employee's driving privileges are suspended or revoked, the supervisor must explain to the employee, in writing, the reasons for the action". Without evidence to the contrary, it would appear that regulations contemplate written notification to the employee when driving privileges are suspended or revoked.

Therefore, I find that Management's failure to provide written notice to the Grievant explaining the reasons for the suspension of his driving privileges was a contractual violation. Having concluded that the Bruso memo did not violate Article 5 and did not improperly limit the supervisor's authority to make a determination pursuant to EL-804, Section 421.3, in this matter, I do not find that the requested remedy of making the Grievant whole for lost overtime was warranted. For the remedy, I direct the Post Office to cease and desist from temporarily suspending driving privileges pursuant to Section 421.3 when an employee is involved in an at fault accident without providing the employee a written notification of the reasons for the action.

AWARD

Management violated Article 19 and 29 of the National Agreement, specifically the EL-804 Handbook, Section 422 when, on June 11, 2014, they improperly temporarily suspended the Grievant's driving privileges without notifying him in writing of the reasons for the action. For the remedy, I direct the Post Office to cease and desist from temporarily suspending driving privileges pursuant to Section 421.3 when an employee is involved in an at fault accident without providing the employee a written notification of the reasons for the action. Having concluded that the February 19, 2014 Bruso memo did not rise to the level of a contractual violation, I do not find that the requested remedy of making the Grievant whole for lost overtime was warranted. Accordingly, the grievance is sustained in part and denied in part.

Respectfully submitted by:



Sherrie Rose Talmadge, Arbitrator