

C-27000

REGULAR ARBITRATION PANEL

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In the Matter of the Arbitration	)	Grievant:	CLASS ACTION
Between	)		
	)	Post Office:	ROCKVILLE, MD
UNITED STATES POSTAL SERVICE	)		
and	)	USPS Case No:	K01N-4K-C 06022276
NATIONAL ASSOCIATION OF	)		
LETTER CARRIERS, AFL-CIO	)	NALC Case No:	542005RJ33
	)		DRT 13-043410

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BEFORE: JOEL S. TROSCH, Arbitrator

APPEARANCES:

For the Postal Service:	NORMAN E. SMITH
For the Union:	DONALD H. HUBER
PLACE OF HEARING:	ROCKVILLE, MD
DATE OF HEARING:	JANUARY 19, 2007
DATE OF AWARD:	MARCH 26, 2007
RELEVANT CONTRACT PROVISION:	ARTICLE 8
CONTRACT YEAR:	2001-2006
TYPE OF GRIEVANCE:	CONTRACT

AWARD

The five part-time flexible carriers identified in the class action grievance are each awarded an additional lump sum of \$75.00 and the non-ODL carrier identified in the grievance is awarded an additional lump sum of \$30.00 for violations of Section 432.32 of the ELM and Article 8.5.F, respectively, found by the parties in the January 31, 2006, Step B decision. It is further ordered that the Postal Service cease and desist from violating those provisions in the Rockville, MD, post office.

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## BACKGROUND

The union filed this grievance on October 27, 2005, alleging several different violations of Article 8 and Section 432.32 of the Employee and Labor Relations Manual (ELM). The parties resolved the substantive issues during the processing of this case in the grievance procedure, but reached impasse on part of the appropriate remedy for certain of the violations found at Step B. The remedy issue was referred to arbitration. A hearing before the undersigned was held on January 19, 2007, at which the parties presented evidence and agreed to submit post hearing briefs. The briefs were submitted timely and the record was closed on their receipt.

## FACTS

The underlying facts are not in dispute. On October 11, 2005, five part-time flexible (PTF) carriers worked in excess of 11 ½ hours, the maximum permitted under Section 432.32 of the ELM. In addition, one full-time carrier, who was not on the overtime desired list (ODL), worked in excess of ten hours, the maximum permitted under Article 8.5.F of the national agreement. The parties agreed in the formal Step B decision to pay the PTF carriers an additional 50% of their straight time rate for the hours over 11 ½ and further agreed to pay the full-time carrier an additional 75% of his straight time rate for the hours over ten. The Step B team declared an impasse on the Union's request for an additional \$75.00 for each of the PTF carriers and an additional \$30 for the full-time carrier.

The Step B decision file contained a total of 36 Step A resolutions (excluding duplicates) and eight Formal Step B decisions (excluding duplicates) agreed to by the parties at the facility dealing with grievances over the Postal Service working either PTF or non-ODL carriers beyond the maximum hours. The earliest of the resolutions was a Step B decision dated November 5, 2002; and the latest November 5, 2005. (The Step B decision in the instant case was dated January 31, 2006.) In all but three of the resolutions or decisions, the parties agreed that the employees would receive an additional 50% of straight time rate for the hours in excess of the respective maximums. (Two provided a 25% premium; one provided administrative leave.) In addition, in 13 of the Step A resolutions, a lump sum of \$15, \$25 or \$40 for each employee was added per

violation. The lump sums appeared in resolutions involving both PTF carriers and non-ODL carriers in 2003, 2004 and 2005. Some of the resolutions also contain cease and desist language.

### ARBITRABILITY

At the outset of the hearing, the Postal Service asserted that the grievance was not arbitrable. It described its position, both at the hearing and in its post hearing brief, in a blend of collateral estoppel, *res judicata* and *stare decisis* terms. The three doctrines, although bearing some relationship to one another, are applicable in different circumstances. The doctrine of collateral estoppel precludes the relitigation of an issue where an essential question of fact has been litigated and determined by a valid and final judgment in a prior action. In such a situation the determination is conclusive between the parties in a subsequent action or different cause of action. (*Hoag v. New Jersey*, 336 U.S. 464 (1958)) The doctrine of *res judicata* precludes relitigation of a claim where the cause of action and the parties are identical in both the prior and the current action. *Stare decisis* is the doctrine under which the ruling in a prior action involving the same issue, but different parties, constitutes precedent or authority for the decision in a subsequent case.

In support of its argument that the grievance was not arbitrable the Postal Service relied on the July 10, 2006, award of this Arbitrator involving this facility (Case No. K01N-4K-C 06027918) rejecting the Union's request for a lump sum or "escalating remedy" for violations of Article 8.5.G.2, a provision which establishes 12 hours per day and 60 hours per week as the maximum a carrier on the ODL may work. The Postal Service also relied on an Arbitrator Snow's national level award (Case No. A90N-4A-C 94042668 (1998)), in which he concluded that an October 19, 1988, Memorandum of Understanding (MOU) established the exclusive remedy for violations of Article 8.5.G.2. The MOU provided an additional premium of fifty percent of the base hourly straight time rate for hours full-time ODL employees worked in excess of the Article 8.5.G.2 limits.

The Union asserted that the grievance was arbitrable, asserting that the instant grievance presented different facts and issues from those in the prior cases. It argued that the instant case involves part time flexible employees and a full-time non-ODL

employee, not full-time ODL employees as were involved in the prior cases. It argued that the 1988 MOU is limited in its application to full-time employees on an ODL and is therefore not applicable in the instant case. Accordingly, it asserted that neither collateral estoppel nor *res judicata* support the Postal Service's arbitrability argument.

In presenting its arbitrability argument, the Postal Service asserted that there was no difference between the instant case and the July 10, 2006, award of this Arbitrator, noting that the same parties were seeking the same (or a similar) remedy in the same installation. It contended that the issues were the same. It did not address the question presented in the instant case of whether the MOU also applied to violations of Article 8.5.F and Section 432.32 of the ELM, which apply to non-ODL full time employees and PTFs, respectively. Rather, the Postal Service assumed that the MOU applied, although that question was not considered in the prior cases. Nor was that question that question addressed in the awards of Arbitrator Simon (Case No. J94V-1F-C 99012380 (2003) and Arbitrator Klein (Case No. J94N-4J-C 98023333 (2003), both relied on by the Postal Service). It was addressed by Arbitrator Levak (Case No. F01N-4F-C 04208743 (2005), a case discussed below. The answer to that question is critical the Postal Service's position on the merits and to the resolution of the instant case.

The Arbitrator also notes that the Postal Service argued that the Union was asserting that differences between full time and part time employees distinguished the instant case from the prior cases, and that such assertion was a new argument. It contended, therefore, that it was precluded under awards by Arbitrators Aaron and Mittenthal. (Case No. H8N-5B-C 17682 (1983) and Case No. H8N-5C-C 10418 (1981), respectively). The Postal Service ignored the fact that much of the Union's argument was in the nature of rebuttal to the Postal Service's arbitrability position. The Arbitrator also notes that the Step B decision did not reflect that the Postal Service took the position at that point that the lump sum remedy sought was precluded by either the MOU or any awards, but rather that its Step B representative stated that he "would like for a remedy be made that would stop the violations. Escalating remedies has not fixed the situation." (sic)

Neither collateral estoppel nor *res judicata* is applicable to this grievance, as the facts presented - the maximum hours limitations and the type of employees involved - as well

as the specific contract provisions violated present issues different than those decided in the cases cited by the Postal Service. Only the doctrine of *stare decisis* may be involved in the decision in this grievance, but whether the reasoning of the arbitrators set forth in the prior decisions apply to the instant case does not go to arbitrability but rather may be a consideration in the application of the case law interpreting the relevant contract provisions.

The matter is arbitrable.

#### POSITION OF THE PARTIES

##### UNION

The Union argued that in the Rockville facility the Postal Service had for some time routinely and intentionally violated the overtime limitations set forth in Article 8.5.F of the national agreement and Section 432.32 of the ELM. It contended that in prior Step A resolutions the local representatives had begun to include lump sum amounts for each grievant in an effort to influence management to cease overtime violations and now an arbitrator directed remedy is needed to cause local management to cease the violations. The Union asserted that the history of repeated violations was an egregious disregard of the contract by the Postal Service and, under those circumstances, the Arbitrator had the authority to fashion a remedy, including imposing a lump sum per violation, with the objective of ending such repeated violations.

The Union recognized that in the July 10, 2006 award involving violations of Article 8.5.G.2, the undersigned, citing the 1988 MOU and the 1998 Snow award, concluded that the requested escalating remedies were outside the scope of the Arbitrator's authority. It argued, however, that the MOU provided a specific remedy only for violations of Article 8.5.G.2 affecting full time ODL employees. As the instant case did not involve violations of that Article 8.5.G.2 and the employees in the instant case were a full-time, non-ODL employee and five part time flexible employees, the Union argued that the MOU, the Snow award and the 2006 award by this Arbitrator did not bar the requested lump sum remedy. It cited the award of Arbitrator Rosen (Case No. K01N-4K-C 06059255 (August 31, 2006)) in which the arbitrator concluded that the case before

him did not involve full-time ODL employee and therefore was distinguishable from cases relying on the MOU. Further relying on Arbitrator Rosen's award, as well as cases involving arbitrators' authority to fashion remedies, the Union contended that the Arbitrator had and should exercise the authority to impose the requested lump sum remedy in order to put an end to the repeated contract violations by the Postal Service.

### POSTAL SERVICE

The Postal Service contended that the 1988 MOU established the exclusive appropriate for violations of Article 8.5.F and Section 432.32 of the ELM, relying on the award of Arbitrator Snow, as well as the 2006 award of this Arbitrator, both of which precluded the imposition of a penalty for overtime violations beyond that prescribed by the MOU. The Postal Service appeared to concede that the parties themselves may voluntarily agree to a remedy in the grievance procedure, but it was beyond the Arbitrator's authority to impose such a remedy. The Postal Service argued that the fact that the individual employees covered by the grievance were not full time ODL employees was, in effect, a distinction without a difference. It contended, essentially, that violations of overtime limits constituted a single category of contract violation without regard to the nature of the employee or the specific source of the limitation and were controlled by the MOU and the Snow award.

The Postal Service argued that, pursuant to Article 15.2 Formal Step A(e), the Step A resolutions may not be considered. Further, the Postal Service referred to an April 15, 2003, Step B decision in the record in which no lump sum remedy was provided and, presumably relying on the related JCAM provision, argued that Step B decisions establish local precedent, thereby precluding an award of such a remedy by the arbitrator.

Finally, the Postal Service asserted that the remedy sought by the Union would amount to "unjust enrichment" and was punitive in nature and therefore should not be imposed by the Arbitrator.

## DISCUSSION

There is no issue in this case as to whether the Postal Service violated Article 8.5.F and Section 432.32 of the ELM; the parties so found in the Step B decision. The sole question presented is what is the appropriate remedy?

Several articles of the national agreement, the ELM and the NALC-USPS Joint Contract Administration Manual (JCAM) are involved in the underlying violations.

Article 8.5.F of the national agreement provides:

Excluding December, no full-time regular employee will be required to work overtime on more than four (4) of the employee's five (5) scheduled days in a service week or work over ten (10) hours on a regularly scheduled day, over eight (8) hours on a non-scheduled day, or over six (6) days in a service week.

A step 4 settlement, dated January 4, 1990, provides that

Consistent with the provisions of Article 8.5.F of the National Agreement, excluding December, a letter carrier who is not on an overtime desired list may not be required to work over ten (10) hours on a regularly scheduled day,

The JCAM, p. 8-15, states:

[Article 8.5.F] applies to both full-time regular and full-time flexible employees.

The only two exceptions to the work hour limits provided for in this section are for all full-time employees during the month of December and for full-time employees on the Overtime Desired List during any month of the year....

Article 8.5.G provides, in relevant part:

Full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the "Overtime Desired" list:

\* \* \*

2. excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.

\* \* \*

A portion of the October 19, 1988, MOU states, in relevant part:

The parties agree that with the exception of December, full-time employees are prohibited from working more than 12 hours in a single work day or 60 hours within a service week. In those limited instances where this provision is or has been violated and a timely grievance filed, full-time employees will be compensated at an additional premium of 50 percent of the base hourly straight time rate for those hours worked beyond the 12 or 60 hour limitation. The employment of this remedy shall not be construed as an agreement by the parties that the Employer may exceed the 12 and 60 hour limitations with impunity.

When read together, Article 8.5.F and G provide maximum work hours for full-time carriers. The maximum for non-ODL carriers is ten hours per day (Article 8.5.F) but they cannot be required to work overtime work unless all available ODL carriers have worked their maximum of 12 hours per day or 60 hours per week (Article 8.5.G). The limitation on the number of hours non-ODL employees appears in Article 8.5.F and the only role Article 8.5.G plays in overtime for those employees is to require that available ODL employees be scheduled for overtime before scheduling non-ODL employees.

Overtime for PTF employees is not addressed in Article 8.5.F or G, but rather is limited in Section 432.32 of the ELM, which provides, in relevant part

Except as designated in labor agreements for bargaining unit employees or in emergency situations as determined by the postmaster general (or his designee), employees may not be required to work more than 12 hours in 1 service day. In addition, the total hours of daily service, including scheduled workhours, overtime, and meal time, may not be extended over a period longer than 12 consecutive hours.

This effectively limits PTF employees to an 11 ½ hour day not including one-half hour for lunch.



The Postal Service argued that in the instant case it

paid the effected employees at the appropriate rate for the amount of time they worked beyond the limits outlined in Article 8 of the National Agreement in accordance with the Memorandum of Understanding dated October 19, 1988, as well as the National Level Arbitration Award issued by Arbitrator Carlton Snow dated November 30, 1998.

The MOU, however, does not address violations of the limitation of the number of hours non-ODL carriers may work. The JCAM, at 8-18, states the

National Arbitrator Snow held in A90N-4A-C 94042668, November 30, 1998 (C-18926) that the [October 19, 1988] Memorandum of Understanding (M-00859) provides the exclusive remedy for violations of the 12 hour and 60 hour work limits in Article 8.5.G.2.

In his analysis, Arbitrator Snow directed his attention to circumstances in which the grievants worked in excess of the 12 hour per day and 60 hour per week maximums provided for Article 8.5.G.2. Other than including the text of Article 8.5.F in his recitation of contract provisions at the outset of his award, Arbitrator Snow made no further reference to that provision in his award. There is no indication in the award that the case involved any allegations of a violation of the 10 hour maximum for non-ODL employees or the 11 ½ maximum for PTF employees.

The Arbitrator notes that the remedies found in the numerous prior Step A resolutions and Step B decisions in this record include, with three exceptions, a 50% premium on the hours worked over ten for the full time non-ODL employee and over 11 ½ for the PTFs. The source of the 50% premium is not articulated, although the Postal Service noted in its brief that it paid the employees "in accordance with the Memorandum of Understanding as well as the national level award issued by Arbitrator Snow." The Postal Service does not comment on the fact that the terms of the MOU and the related JCAM comment are quite clear that the MOU does not apply to other than full-time ODL employees. In the instant case, the parties at Step B agreed upon a 50% premium for excess hours for the PTFs and a 75% premium for excess hours for the full-time non ODL employee. Although the 50% premium may have been drawn from the MOU, the 75% premium was not, nor were the 25% premiums in two Step A resolutions in 2004.

The essence of the Union's argument is that postal management in this facility has repeatedly violated these, as well as similar, overtime limitations. It points to the history of resolutions agreed to in the grievance procedure and notes that in a number of those resolutions the parties agreed to the imposition of lump sum cash remedies, in addition to generally providing the 50% premiums, in attempts to cause the Postal Service to end such violations. It expressed its concern that when parties enter into a collective bargaining agreement, they have an obligation to follow the terms and conditions of that agreement, not simply disregard it and engage in "rampant" violations of those terms. The Postal Service does not dispute the history but contends that the terms of the resolutions (as opposed to the Step B decisions) should have no bearing on the instant case and that the Arbitrator does not have the authority to impose the remedy sought by the Union, characterizing it as exceeding a make whole remedy, to which it has already agreed, and therefore punitive.

The law is well settled that arbitrators have the authority to fashion remedies appropriate to the contract violations found. *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960) The parties may impose specific limitations on arbitrators' authority and have done so here with respect to violations of Article 8.5.G.2 in the 1988 MOU as construed by Arbitrator Snow. The facts and the nature of the violations in this case, however, are not within the scope of the MOU or Arbitrator Snow's award. Further, the parties may voluntarily agree to remedies beyond those within the scope of the arbitrators' authority; it is their contract to carry out as they mutually agree. (See the award of this Arbitrator in Case No. K01N-4K-C 06027918 (2006)) The parties here have not agreed on the scope Arbitrator's authority and dispute the implications of the remedies agreed to in prior local resolutions of similar violations.

With respect to the Postal Service's argument that the April 15, 2003 Step B decision, in which no lump sum was given, was precedent, that decision involved a violation of Article 8.5.G.2 and was therefore consistent with the MOU. In making its argument, the Postal Service assumed, without citing a basis, that violations of Article 8.5.G.2, Article 8.5.F and Section 432.32 of the ELM are all covered by the MOU. That is the underlying question in this case. Moreover, it assumed that the JCAM provision that states that Step B decisions are precedent setting in the local installation applies to remedies as

well as the determination of the substantive dispute. The Arbitrator offers no comment on that assumption.

In its argument related to punitive remedies, the Postal Service relied on Arbitration Mittenenthal's award (Case No. H1C-NA-C 97 (1989)) in which the arbitrator stated that the purpose of a remedy is to restore the *status quo ante* is overly broad and not compelling. The facts involved in that case and the context of his statement are significantly distinguishable from the instant case. It is correct to state, however, that when exercising the authority to fashion remedies, arbitrators have been generally reluctant to impose punitive damages. But there are some exceptions to the broad principle, one of which has occurred when arbitrators have considered a record that reflects egregious behavior including, but not limited to, repeated violations of the contract. There are not large numbers of such awards reported, but neither are there so few as to suggest that such awards are aberrations. In Case No. F94N-4F-C 98094984 (2001) Arbitrator Snow noted that punitive remedies are not permitted "except in limited situations" not relevant to the case before him, commenting on the absence of evidence of bad faith in the record. See also discussions of the subject in Fairweather's Practice and Procedure in Labor Arbitration, 477 (4<sup>th</sup> ed. 1999); Elkouri & Elkouri, How Arbitration Works, 1216-1217 (6<sup>th</sup> ed. 2003); Hill & Sinicropi, Remedies in Arbitration, Ch 9. (1981))

The only case that the Union presented in which punitive damages were awarded arose in this very facility. In an award in 2006, several months after the Step B decision was issued in the instant case, after considering a record of frequent violations of Section 8.5.G of a failure to maximize hours of ODL employees before using non-ODL employees for overtime, Arbitrator Rosen (Case No. K01N-4K-C 06059255 (August 31, 2006)) awarded an additional payment to a grievant beyond the premium granted by the Step B team. Arbitrator Rosen distinguished the Article 8.5.G case before him from issues arising out of Article 8.5.G.2, the 1988 MOU, the 1998 Snow award, and the award of this Arbitrator issued less than two months earlier. (Case No. K01N-4K-C 06027918 (July 10, 2006))

He noted that the Postal Service had "acknowledged those violations by agreeing to resolve such dispute[s] at numerous Step A and in pre-arbitration resolution agreement[s] by initially paying non-ODL carriers initially 100% of their straight service

rate. That payment rose to 125% in 2004." He paraphrased the Postal Service argument as the "Union failed to establish a violation of Article 8 or the [1988] MOU.... The 125% penalty the Union seeks is unfounded and contrary to that MOU." Arbitrator Rosen did not use the term "punitive damages" anywhere in his decision, but acknowledged that the Postal Service asserted that it was "inappropriate" to pay the grievant more than overtime, presumably thought to be a make whole remedy. He did not attribute to the Postal Service an argument related to his authority as an arbitrator nor did he directly discuss that issue.

The Postal Service cited awards by Arbitrators Klein and Levak that merit comment.

In 1996, Arbitrator Klein had awarded an additional penalty for violations of Article 8.5.G.2 over and above those provided for in the 1988 MOU. However, in 2003, citing Arbitrator Snow's 1998 award, she declined to award a similar remedy for alleged "repeated violations" (Case No. J94C-4J-C 98023333 (2003)) Not only is Arbitrator Klein's 2003 award not applicable to the instant case as it involved Article 8.5.G.2 violations, but, it reflected her willingness in 1996 in the absence of the Snow interpretation of the MOU to impose something beyond the 50% premium found in the MOU. (In a 2003 case arising under Article 8.5.G.2, Arbitrator Simon (Case No J94V-1F-C 99012380) discussed both of Arbitrator Klein's awards and followed her 2003 decision relying on arbitrator Snow's 1998 award.)

In 2005, Arbitrator Levak heard a grievance alleging violations of Section 432.32 of the ELM against a background of repeated violations. (Case No. F01N-4F-C 04208743) He concluded that the 1988 MOU, the 1998 Snow Award and a 2005 local settlement barred him from awarding a remedy requesting more than the 50% premium found in the MOU. According to the award, the 2005 local settlement provided

In light of the fact that the DRT had properly compensated the grievants the additional 50% premium for the violations, in accordance with the 1988 Memo signed by the National Parties, there is no other monetary remedy due.

In addition, Arbitrator Levak concluded that awarding the monetary remedy sought by the union would

constitute an arbitrator-directed entitlement for lower-ranked employees that an arbitrator is barred from awarding higher ranked employees, and would therefore

implicitly conflict with not only the mutual intent of the parties as expressed at the National level, as well as the 2005 Settlement, but also with the spirit of those writings.

The Postal Service seemed to endorse the hierarchy argument in its brief, stating that "there is no language in Article 7 that gives a PTF any benefits whatsoever over a full-time employee.

Arbitrator Levak then proceeded to fashion a nonmonetary remedy aimed at "correcting a repetitive, continuing, and therefore egregious" violations of the contract.

This Arbitrator reads the 1988 MOU as dealing exclusively with Article 8.5.G.2 and the Snow award concluded that by entering into that MOU the Union had given up its right to seek a greater remedy in arbitration for violations of that provision. In addition, the local parties in the case before Arbitrator Levak reached a settlement quite contrary to the local resolutions in the Rockville facility that preceded the instant case. Moreover, the Arbitrator does not view whatever hierarchy that may exist between full-time and part-time flexible employees as necessarily controlling or limiting the remedy available to either category of employee. Accordingly, the Arbitrator concludes that Arbitrator Levak's conclusions are not dispositive in the instant case.

The repeated violations of the Section 8.5.F and the ELM provision have the potential of adversely affecting the integrity of the contract for the parties at the local level. The numerous prior violations have been dealt with in a manner reflecting an apparent frustration on the part of the local Step A and B representatives in seeking a lasting resolution to the underlying overtime practices. The local representatives of the parties who dealt with those grievances sought to impose remedies that would change the practices but apparently the record does not indicate that they had any significant effect as the violations continued on what appears to be more than an occasional basis.

Under the circumstances presented in this record, some remedy beyond the 50% premium make whole remedy is called for. This conclusion, however, presents another issue, that is what remedy will lead to a diminution, if not a cessation, of violations of the nature involved here. The Union asserted that "given the number of cases provided by the local union, there is no question that only an escalating progressive remedy will act

to stop management's violations of these overtime violations." It asserted that the escalating remedies have "gotten the attention of higher management," although the Union then argued that the attention was not in the form of ceasing the violations but rather in an attempt to limit the remedy.

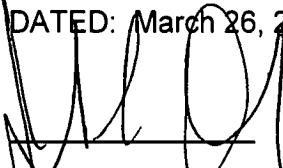
It is not clear whether the addition lump sum remedy sought by the Union will lead to a reduction or elimination of the violations. Without relying on the Union's argument that, pursuant to Article 15.4.A.6, either Arbitrator Rosen's award or the prior resolutions in the grievance procedure are controlling in this case, the Arbitrator considers the prior resolutions as helpful in informing the Arbitrator what the parties have considered potentially beneficial in dealing with the situation. The Arbitrator is not bound by the Step A resolutions, but does not read Article 15.2 Step A(e) as precluding the Arbitrator from being aware of the efforts of the parties locally to try to end the contract violations.

Simply naming an amount of a lump sum premium and inserting it in an award might be thought of as arbitrary. But the parties at the local level have, in prior grievances, considered the lump sum remedy as having potential to affect local management's overtime practices. The amounts sought by the Union reflect some increase in those agreed to in the prior resolutions, but are not inappropriate within the concept of the objective of influencing local management to discontinue the repeated violations that leads to a conclusion that the past violations have been egregious.

Repeated contract violations are potentially detrimental to the effective working relationships of the parties at the local level. The record of such past violations in this case suggests that a nonmonetary remedy aimed at correcting the situation in the future is appropriate. In the Step B decision, the Postal Service's representative judiciously expressed a desire for a remedy "that would stop the violations," observing that an "intervention team would be appropriate at a level which would hold Office accountable for keeping to the contract." The Arbitrator will not venture into the realm of such management tools, but will rely on the more typical "quasi-injunctive relief" of a cease and desist order to further encourage local management to comply with the provisions found to have been violated in this case.

Accordingly, based on this record, the Arbitrator grants the remedy requested by the Union, specifically that the five part-time flexible carriers identified in the class action grievance are each awarded an additional lump sum of \$75.00 and the non-ODL carrier identified in the grievance is awarded a lump sum of \$30.00 for the October 11, 2005, violations of Section 432.32 of the ELM and Article 8.5.F, respectively, as found by the parties in the January 31, 2006, Step B decision. It is further ordered that the Postal Service cease and desist from violating those provisions in the Rockville post office.

DATED: March 26, 2007



JOEL S. TROSCH  
ARBITRATOR