



STEP B DECISION

Step B Team:
USPS: **Jennifer Lewis**
NALC: **Mark L. Malone**

District:
Rio Grande

Step A Reps:
USPS: **A Alderete**
NALC: **R Gould**

Decision: **RESOLVE**
USPS Number: **G11N-4G- C 1324 7654**
Grievant: **Class Action**
Branch Grievance Number: **421-462-13**
NALC Branch #: **421**
Installation: **San Antonio**
Delivery Unit: **Lockhill Station 48-7967**
State: **Texas**
Incident date: **05/31/2013**
Date Informal Step A: **06/14/2013**
Formal Step A Meeting Date: **07/09/2013**
Date Received at Step B: **07/16/2013** (AUS 08/19/2013)
Step B Decision Date: **08/21/2013**
Issue Code: **19.0000**
NALC subject code: **600207**
Original Step B Received Date: **07/16/2013**
Date Sent to Assisting Team: **07/16/2013**

TIME LIMITS AT STEP B EXTENDED BY MUTUAL AGREEMENT

ISSUE: Did management violate Articles 3, 15 and 19 of the National Agreement by requiring employees to sign and/or fill out locally developed forms? If so, what is an appropriate remedy?

Was there a violation of Articles 17 and 31 of the National Agreement when management failed to provide relevant requested documentation timely? If so, what is an appropriate remedy?

DECISION: The dispute resolution team mutually agreed to resolve this dispute. Management violated Article 19 by the use of unapproved locally developed forms which collect personally identifiable information. The use of these forms is discontinued. Management violated Article 15 when they required employees to sign-in at informational meetings – the practice will cease. Management violated Articles 17 and 31 when they refused to provide the union with relevant requested information in a timely manner – again. Management will provide the union with all relevant requested information and interviews in a timely manner.

EXPLANATION:

The union contends there was a violation of the National Agreement when management required carriers to sign and/or initial locally developed forms not approved in accordance with the ASM. Lockhill management has required carriers to initial a locally developed form for safety/information stand-up talks and sign their names on an AVDO sheet to verify the bar code was scanned. Carriers have been instructed that they are required to do so and failure to do so may result in disciplinary action. The forms have not been approved. There are at least two MOU's dealing specifically with the use of locally developed forms that do

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not comply with or have not been approved in accordance with the ASM. The national parties agreed to discontinue a local policy requiring carrier to sign a locally developed form. This is the same or similar situation that is occurring at Lockhill on a continual basis. The MOU, M-1302, describes exactly what is not supposed to be occurring, yet continues to occur weekly at Lockhill regardless of whether or not carriers want to initial or sign the sheets. As remedy the union requests that management 'cease and desist' the use of locally developed forms and discontinue the requirement to sign these forms.

Management contends that Lockhill is a PEG site and is required to have safety talks on a regular basis. The unit must have documentation to support that the training or safety meetings were held. The information is entered into the safety toolkit to support PEG and its requirements. The log is used to do a validation on how many employees were present and who still needs to be informed, granted the clockrings also show this data. However, there are many employees who do not make the correct moves. Currently at this unit the union has filed a grievance stating that 7820 (training) should be 7220. With that said, the safety log confirms who was present and who made the correct moves on the clock and who did not make a move. The ADVO log is to ensure that every route scanned the barcode to confirm delivery of Red Plum. This log is to help and assist the carrier from forgetting. Management believes that the reminders and the log have allowed for the 100% success. The 3M log is used to record DPS errors to provide to the plant in order to improve our mail quality. This log does not require signature or initial. The forms and logs mentioned in this grievance are to insure that the unit is in compliance, that a service is being provided and that our DPS quality is where it should be. This station has had this process in place for several years; it has never been an issue or concern. The date of infraction 5/28/2013 is a bogus date; nothing happened or was implemented on that date. If the union wanted to grieve this process and or logs they should have done it years ago which makes this grievance untimely. The union makes claim that information was not provided to them, however, during another Formal A meeting the information was provided. The union wants this process to stop, management declined their offer. Management is not in violation and the past practice of using these forms for several years has been fundamental in our successes.

Step B discussion

Management's position presents two procedural arguments which must be evaluated to determine if the merits of the case will be examined.

1) Management contends the grievance is untimely

While stating that the process has been in place for several years and that the union should have grieved it years ago management also states that nothing occurred on May 28th. The Informal Step A form shows that the date of incident was changed to May 31st. While it cannot be determined what date was originally there, for the sake of discussion May 28th will be used.

The union does not state specifically what occurred on May 28th or May 31st that caused this dispute to be initiated. The dispute addresses the use of locally developed forms and management's requirement that carriers sign or initial the form(s). The case file does show that on May 31st carriers were required to sign a Lockhill Station – Safety Talk Sign-in Sheet. The union contends this dispute addresses a continuing violation; management contends a 'past practice'. The PS Form 8190 records the incident date as May 31st.

Management's position supports the union's contention of a continuing violation; management states they have been using the forms for several years. While management

does not show or contend when the union reasonably became aware of the obligation to obtain clearance of locally developed forms prior to their use, on May 31st management required carriers to sign a Lockhill Station – Safety Talk Sign-in Sheet. Under the Doctrine of Laches, that the complainant may have 'slept on their rights' to pursue a claim such a delay does not preclude the complainant from seeking adjudication of the dispute. Based on the incident date listed on the PS Form 8190 and the supporting documentation showing the use of a locally developed form on May 31st it was mutually agreed this dispute was initiated timely at informal on June 14, 2013.

2) Management contends that a valid past practice exists as that the forms have been used for several years.

Article 5 provides the defining elements of a past practice as written by National Arbitrator Mittenthal.

- there should be clarity and consistency
- there should be longevity and repetition
- there should be acceptability
- One must consider, too, the underlying circumstances which give a practice its true dimensions. A practice is no broader than the circumstances out of which it has arisen, although its scope can always be enlarged in the day-to-day administration of the agreement. No meaningful description of a practice can be made without mention of these circumstances. For instance, a work assignment practice which develops on the afternoon and midnight shifts and which is responsive to the peculiar needs for night work cannot be automatically extended to the day shift. The point is that every practice must be carefully related to its origin and purpose
- Finally, the significance to be attributed to a practice may possibly be affected by whether or not it is supported by mutuality. Some practices are the product, either in their inception or in their application, of a joint understanding; others develop from choices made by the employer in the exercise of its managerial discretion without any intention of a future commitment

A past practice is generally established to fulfill one of three functions.

- To Implement Contract Language
- To Clarify Ambiguous Language
- To Implement Separate Conditions of Employment

In this case management's position of the existence of a valid past practice cannot be supported. The contract, via Articles 15 and 19, is not silent or ambiguous and the condition of employment, in this regard, has been adjudicated at the national level and found to be inconsistent with Postal Rules and Regulations.

This leads to management's position that the union was provided the documentation they requested. On May 31st management signed for the union's documentation request. The union requested:

- Copies of all safety/stand-up meeting sign in sheets for May 2013
- Copies of all ADVO scan sign-in sheets for May 2013
- Copies of all 3M sign sheets for 25-30 May 2013
- The union also requested to interview all carriers.

On June 5th Conrad Gonzales responded to the union's request stating:

- *No copies was provided due to the fact that the sign in sheets have been in used for the past several yrs. Past practice (sic)*
- *Union Rep will have a chance to interview carriers at mangement discretion (sic)*

While management states that the union was provided the documentation during the Formal Step A meeting for the grievance identified as G11N-4G-C 1322 9115, management does not state when that meeting was held or provide a list of the documentation which was provided. Management's position does not address why the information was not provided for this case. Management's position supports the union's position that the requested documentation was not provided timely. As a result, Lockhill Station management violated Articles 17 and 31 of the National Agreement when the 204b refused to provide the union relevant requested information in a timely manner.

Whether or not a contractual violation occurred, whether or not a valid past practice exists, management has an obligation to provide the union with relevant requested documentation in order for the union to investigate and determine if they (the union) believe a violation occurred. Management does not have the right to deny documentation based on an assumption, accurate or not, that a violation did not occur. The 204b also erroneously denied the union timely access to letter carriers to conduct interviews. The contractual obligations of Article 17 do not allow management the discretion to unduly delay the union's investigation. Management's determination that the union will have a chance to interview carriers 'at management's discretion' would violate the National Agreement if the interviews were not allowed timely.

Management's position addresses PEG, Safety and Health Program Evaluation Guide, and states that management is not forcing anyone to do it (sign/initial the sign-in sheets), it is 'Postal Requirement period'.

The only known source of PEG is Handbook EL 800, Managing Contract Safety and Health Compliance. The transmittal letter which open this handbook states:

A. Explanation. Handbook EL-800 is a new guide prepared to help facility managers, contracting officers, contracting officers' representatives, and other enabling function representatives to implement Postal Service policies governing contractors' compliance with federal and Postal Service safety and health requirements.

City letter carriers are employees of the Postal Service; i.e. they are not contractors. While it is conceivable that the guidelines for assuring that contractors are aware of and in compliance with federal and Postal Service safety and health requirements may be used to assure Postal employees are aware of federal and Postal Service safety and health requirements, management at Formal Step A does not provide any documentation to support her position that signing in at safety talks is a Postal "Requirement" never the less an actual rule or regulation.

Whether or not the manager has to document her compliance with her job instructions to disseminate safety and health information this in no manner establishes a Postal rule or regulation which segues to craft employees. The case file does not contain any documentation, copy of rule or regulation, to support management's position that employees are required to sign-in at safety talks.

The dispute in this case also addresses the use of locally developed forms. The case file addresses three forms; the safety talk sign-in sheet, the Red Plum log and the 3M piece

The issue in this grievance is whether management violated the National Agreement when a local policy was issued and carriers were required to sign off that they were present when the information was read to them.

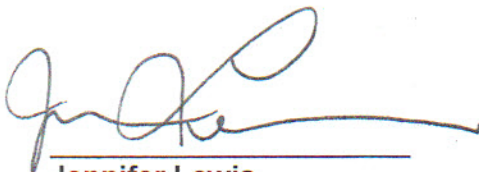
After reviewing this matter, the parties mutually agreed to the following:

There is no requirement that a carrier sign that the subject information was received.

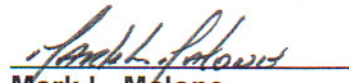
The issue of whether a local policy violated the National Agreement will be remanded back to the arbitrator of record in accordance with the MOU on Step 4 procedures.

While management may request the voluntary participation of employee, management may not require employees to sign-in at meetings to attest to their attendance. Similarly, management may request the voluntary participation of employee to sign such logs as the Red Plum; management may not require employees to sign.

As remedy the union requests management 'cease and desist' the use of locally developed forms and discontinue the requirement to sign these forms.



Jennifer Lewis
USPS Step B Representative



Mark L. Malone
NALC Step B Representative

cc: Manager, SW Area Labor Relations
Manager, Rio Grande District
Kathy Baldwin, NALC NBA, Region 10
Postmaster, San Antonio, Texas
Manager, Human Resources, Rio Grande District
Manager, Labor Relations, Rio Grande District
Management Formal Step A Designee
NALC Branch President
NALC Formal Step A Designee
DRT File

Grievance file content:

PS Form 8190
Union's position (2 pages)
Lockhill Station Red Plum list
Safety talk sign-in sheet
Memorandum B Tristán
Certification statement
Meeting notes R Gould
Extension agreement
Response to information request
Statement multiple signatures

JCAM page 19-2
MRS extracts (2 pages)
Prearbitration agreement M-1302
Request for formal meeting
Information request
Management's position (2 pages)
Safety tool kit printout (2 pages)
Safety talk sign-in sheet
3 M sheet
Lockhill Station Red Plum list

RIO GRANDE DISPUTE RESOLUTION TEAM - AUSTIN

PS Form 8190 421-464-13
Safety and health committee meeting
minutes
Certification statement
Safety talk sign-in sheet
Certification statement
Safety talk sign-in sheets (3 pages)
Certification statement
Safety talk sign-in sheets (2 pages)
Additions and corrections – union
Certification statement

Transcript of video message (6 pages)
Safety talk sign-in sheet
Employee moves report (2 pages)
Step B decision G06N-4G-C 1223 1449 (7
pages)
PS Form 8190 421-847-11
Letter of warning R Gonzales (2 pages)
DAP (3 pages)
Saturation mail scan compliance report
Lockhill Station Red Plum list (2 pages)
Management's rebuttal